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.

**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 19
## PAGES 4501–4750

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| | 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

even remotely analogous,[6] rather than actually explain (since it cannot) how plaintiffs' motion lacks any good faith, non-frivolous, basis.

## VI. The stay of these proceedings, and the *Dubric* proceedings, involve manifest abuses of judicial discretion, circumstances that the Court need not address in resolving this motion.

A Cab extensively discusses and relies upon the *Dubric* proceedings and the prior decision of Judge Kierny to stay this case. None of that discussion, or reliance, is germane to the resolution of this motion, which seeks very narrow relief and does not request a dissolution of Judge Kierney's stay order.[7] Plaintiffs address the *Dubric* proceedings, and Judge Kierney's manifest abuses of discretion while presiding over this case, in the event the Court desires to obtain a correct understanding of the same.

### A. *Dubric* involves a collusive class action settlement purporting to resolve, by a later entered final judgment in *Dubric*, the earlier entered final judgment in this case.

The *Dubric* case resulted in a purported final judgment, entered on August 31, 2021, (Ex. "G" moving papers) releasing all claims of a certified class of A Cab

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[6] A review of three of A Cab's appellate case citations aptly confirms how it is inappropriately citing precedent. *Sweeney v. Resolution Tr. Corp.*, 16 F.3d 1, 7 (1st Cir. 1994), upheld an award of sanctions in response to a *third* motion to remand made after two prior identical motions were denied with detailed findings; *Mariani v. Doctors Assoc., Inc*., 983 F.2d 5, 7-8 (1st Cir.1993), involved a failure to seek timely reconsideration of an order and filing of multiple verbatim motions years after that determination; and *Time Aviation, Inc. v. Bombardier Capital Inc.*, 570 F. Supp. 2d 328, 332 (D. Conn. 2008), aff'd, 354 F. App'x 448 (2d Cir. 2009) upheld an award of Rule 11 sanctions against a party who filed a frivolous Rule 11 motion.

[7] Judge Kierny manifestly, and repeatedly, abused her discretion, prior to her being relieved of this case, by preventing collection of the plaintiffs' now affirmed judgment. The Nevada Supreme Court has indicated it will consider granting writ relief to address such conduct by Judge Kierny. While plaintiffs would welcome reconsideration of Judge Kierny's stay Order, and a reversal of that Order as part of the resolution of this motion, plaintiffs have not expressly requested that relief as part of this motion, as they are unsure if the Court would want to consider the same at this time.



004501

taxicab drivers, including those who are class members and judgment creditors under the August 21, 2018, judgment entered in this case against A Cab (Ex. "A" moving papers). It is impossible for the *Dubric* judgment to release the claims reduced to a final judgment in this case and affirmed by the Nevada Supreme Court. Neither A Cab's attorneys, nor Judge Kierny, have offered any explanation of how the *Dubric* judgment can impact the judgment in this case. It cannot. Only the Nevada Supreme Court, not *Dubric,* can modify the final judgment entered in this case.

The manifestly abusive and collusive nature of the *Dubric* proceedings and settlement, and Judge Delaney's abusive entry of a clearly void final class judgment in *Dubric*, is overwhelmingly apparent. As discussed in detail in plaintiffs' appeal brief in *Dubric* (Ex. "G" p. 1-11 setting forth statement of case and factual summary) the appointed class representative in that case, Jasminka Dubric, was unqualified for that appointment as a matter of law, she could not act as a fiduciary of the class members' interests as she was a judgment debtor to A Cab for over $50,000; *id.,* p. 32; Dubric had sought, and been granted, summary judgment individually and previously renounced her purported class claims, but later reversed her abandonment of those claims to secure a $5,000 individual payment and a $57,000 payment to her counsel from A Cab; *id.*; Dubric's counsel, appointed class counsel in *Dubric*, had no knowledge of the class claims it was settling, presented no evidence supporting the settlement, and relied upon A Cab's endorsement of Dubric as an appropriate class representative; *id.*, p. 32-34; and the *Dubric* settlement purported to release, for A Cab's benefit, claims far in excess of those that Dubric, personally, could prosecute under the statute of limitations; *id.*, p. 35-36. There was no rational or even plausible basis for the settlement approved in *Dubric*, it contained numerous improper terms, and under its own irrational justification metric the settlement needed to be 14 times larger than its actual amount; *id,* p. 26-30. Judge Delaney, in approving that settlement, was willfully blind to A Cab and Dubric's collusion and acted to facilitate



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their improper conduct, apparently out of personal hostility to plaintiffs' counsel. *Id.*, p. 37-42.

### B. Judge Kierny was previously found by the Nevada Supreme Court to have abused her discretion by denying enforcement of the judgment against A Cab.

As discussed, there is no basis to conclude, as Judge Kierny did without explanation, that the *Dubric* appeal and judgment warrant staying this case and denying the plaintiffs enforcement of their judgment against A Cab. Judge Kierny has a history of manifestly abusing her discretion by refusing to enforce the plaintiffs' judgment against A Cab. On February 22, 2021, Judge Kierny refused to consider, on the merits, the plaintiffs' request to appoint a receiver to enforce their judgment.[8] Ex. "H" Order. In doing so, she found that such a receiver appointment had previously been considered and denied in a prior Order by Judge Bare and did not warrant reconsideration. *Id.* She so found despite being advised that the Order from Judge Bare that she relied upon had been held by the Nevada Supreme Court to *not* deny the appointment of a receiver. Ex. "I" Order of Nevada Supreme Court, November 9, 2020. Her Order denying consideration of the appointment of a receiver on that basis was, of course, reversed by the Nevada Supreme Court as an abuse of discretion on February 17, 2022, (Ex. "J") as Judge Kierny's finding the receiver had previously been denied "squarely conflicted" with the Supreme Court's November 9, 2020, Order.

Judge Kierny has repeatedly and manifestly abused her discretion by refusing to apply the rule of law in this case and enforce the plaintiffs' judgment. The Supreme Court will have an opportunity to correct that conduct again when it resolves the plaintiffs' pending writ petition, though this Court may also do so on its own.

[8] A Cab has never posted a *supersedes* bond in this case and Judge Kierny also improperly found that it need not do so.





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## CONCLUSION

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

Dated: July 1, 2022

LEON GREENBERG PROFESSIONAL CORP.

/s/ *Leon Greenberg*
Leon Greenberg, Esq.
Nevada Bar No. 8094
2965 S. Jones Boulevard - Ste. E-3
Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Class

PROOF OF SERVICE

The undersigned certifies that on July 1, 2022, she served the within:

**PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO STAY, OFFSET, OR APPORTION AWARD OF COSTS AND/OR RECONSIDER AWARD OF COSTS**

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



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**APPENDIX OF EXHIBITS - *Murray v. A Cab LLC,* A-12-669926-C**
**Table of Contents**



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004505

# EXHIBIT “A”



004506

Electronically Filed
06/03/2022 9:02 AM
CLERK OF THE COURT

**ORDR**

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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,<br><br>Plaintiffs,<br><br>vs.<br><br>A CAB TAXI SERVICE LLC, A CAB SERIES LLC formerly known as A CAB, LLC, and CREIGHTON J. NADY,<br><br>Defendants. | Case No.: A-12-669926-C<br>Dept. No. IX<br><br>**ORDER GRANTING DEFENDANTS' MOTION FOR COSTS**<br><br>Hearing Date: February 16, 2022 |

This matter having come before the Court for hearing on February 16, 2022, before the Honorable Gloria Sturman, and counsel for Plaintiffs and Defendants having appeared, and having considered the Defendant A Cab Series, LLC formerly known as A Cab LLC's *Motion for Costs*, including the response and countermotion, reply and supplements filed by the parties and the arguments of all such counsel, and after due deliberation, the Court **GRANTS** Defendants' motion and **DENIES** without prejudice Plaintiffs' countermotion as follows:

**THE COURT FINDS** that pursuant to NRAP 39 and NRS 18.060 costs are properly

awarded from the District Court to Appellant/Defendant A Cab Series LLC ("A Cab") resulting from the appeal of the summary judgment entered in this matter on August 22, 2018, with associated orders. A Cab incurred these said costs in having to appeal the judgment entered in error in this matter, as reflected by the decision rendered by the Nevada Supreme Court at 137 Nev. Adv. Op. 84 on December 30, 2021. A Cab has properly supported its request with a verified Memorandum of Costs and accompanying receipts.

Specifically, A Cab is awarded $7,587.37 as costs incurred in the appeal minus $500 for prior appeals and related costs of $34.50.

Accordingly, Defendant A Cab is awarded a total of $7,052.87 as costs against Plaintiffs with Plaintiffs' counter-motion seeking to have that award of costs applied as a set off *pro-rata* against each of the Plaintiff class-member judgment creditors' individual judgment amounts is denied without prejudice. A Cab is stayed from seeking collection of its award of $7,052.87 in costs until a further Order is issued by this Court.

**THE COURT FURTHER FINDS** that the cost bonds posted by Defendants in the amount of $500.00 on March 23, 2017; and $500.00 on October 2, 2018, are properly released to Defendants and are addressed by separate order of this Court.

**IT IS SO ORDERED.**

Dated this ___ day of_____, 2022

**Dated this 3rd day of June, 2022**

Michael A Cherry

DISTRICT COURT JUDGE

**478 EC8 5624 8C5B**
**Michael Cherry**
**District Court Judge**

Approved as to Form:

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

NOT APPROVED

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

Submitted by:

**LEON GREENBERG PROFESSIONAL CORPORATION**

*/s/ Leon Greenberg*

Leon Greenberg, Esq.
Nevada Bar No. 8094
2965 South Jones Boulevard, Suite E4
Las Vegas, Nevada 89146
*Attorney for Plaintiffs*

# EXHIBIT “B”

RODRIGUEZ
LAW OFFICES, P.C.
www.rodriguezlaw.com

June 17, 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***
*Plaintiffs' Motion to Reconsider Award of Costs*

Dear Mr. Greenberg:

I am in receipt of *Plaintiffs' Motion to Reconsider Award of Costs*, filed on June 16, 2022. This letter advises you of our intent to seek sanctions against you and your clients under Rule 11 of the Nevada Rules of Civil Procedure for the filing of this motion.

004510

I am taken aback that you would continue in pursuit of this second duplicative order which you submitted to the Court; and which you have failed to correct with the Court. As I have already indicated to you, as an officer of the court you are required to be forthright with the Court; and there is no question that you should have advised Department 9 that an Order had already been entered on Defendants' Motion for Costs. Nevertheless, you proceed with these intentionally harassing acts of duplicative and improper filings all the while knowing that there is presently a stay which you are violating; and knowing that this Order should be retracted altogether by you. Your pursuit of this frivolous motion is in direct violation of Rule 11.

004510

NRCP 11(b)(1) requires that an attorney certify that by presenting a pleading to the court, it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation. NRCP 11(b)(2) further states that the legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.

With the filing of Plaintiffs' motion, you are in direct violation of the Court's Order entered on May 3, 2022, staying the proceedings in this matter. Secondly, you are improperly moving for reconsideration in violation of NRCP 60, EDCR 2.24, and EDCR 7.12. Thirdly, the Order upon which you seek reconsideration is one that should be retracted by you as it is duplicative. You refuse to retract the Order, and proceed to use it as a tool to re-file a second motion for reconsideration.

Yes, you have stated you do not believe it is your fault that there are now 2 Orders pertaining to the granting of Defendants' motion for costs and the denial of your countermotion. Instead, you indicate it is the fault of the two departments' staffs who failed to communicate between themselves. But you are the person who can correct this situation with a simple phone



**10161 Park Run Drive, Suite 150 | Las Vegas, Nevada 89145 | Phone 702.320.8400 | Fax 702.320.8401**

004510

call or correspondence to inform the department that this order had already been signed by Judge Sturman and entered. Instead, you choose not to engage in a simple communication, but to further add confusion to the record by now seeking reconsideration of this same improper Order.

Further, it is irrefutable that you are aware of the District Court's stay of proceedings, as you in fact filed a *Petition for Writ of Mandamus* to the Nevada Supreme Court asking for a reversal of the District Court's stay of proceedings. (Nevada Supreme Court Case No. 84456). The Nevada Supreme Court has not ordered a lifting of the stay. Therefore, there is no proper basis for you to completely disregard the Order of the District Court, and to proceed as if it is nonexistent.

Your actions clearly fall within the parameters of NRCP 11 whereby you are needlessly increasing the cost of litigation, by forcing Defendants to respond to this **Second** Motion for reconsideration and to appear for its scheduled hearing when there is a stay of proceedings. At the same time, you are forcing Defendants to respond to your writ to the Nevada Supreme Court on the same issue. Your motion to the court, is indeed being presented for the improper purpose of harassing Defendants and needlessly increasing the cost of litigation.

You offer no legal basis for completely disregarding the outstanding District Court Order which is in place, staying proceedings.

004511

Further, it is evident you filed the first motion for reconsideration on this same issue before Department 2; and now you are filing the same motion for reconsideration before Department 9 - all the while accusing the two departmental staffs of not properly communicating between themselves. Yet you are the one filing duplicative orders and then duplicative motions; and expect the Court staff to be attentive to this. Your attitude is that if they don't catch it, then you get away with it.

004511

As you are aware, Department 2 and the presiding judge at that hearing, Hon. Gloria Sturman, previously denied your opposition ("Response") and counter-motion to Defendants' Motion for Costs, which argued the exact same items you now argue again. An Order was entered on May 17, 2022 indicating as such. Your briefing and your arguments against the award of costs was the very same you argued in the **first motion for reconsideration**; and now again in your **second motion for reconsideration**.

You proceeded to submit another version of the Order to Department 9 (a department which is presently vacant), and to have a duplicative Order entered after Judge Sturman's order was entered. I have asked you to correct this duplication and to be forthright with the Court by informing Department 9 that an Order has already been entered. You have refused.

You then proceeded to file a duplicative motion of your Response and Countermotion seeking the exact same relief, which has already been denied, before Department 2 again. Not only was it the wrong department, you made absolutely no new arguments nor presented any new evidence other than what was already before the Court and decided in favor of Defendants.

Now you have filed yet again for reconsideration with another duplicative motion - the same as your countermotion, and the same as your first motion for reconsideration. This makes THREE times that you have filed the same motion.

EDCR Rule 2.24(a) states clearly, "No motion once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties." You have not sought leave of court to hear your arguments again. And you are in open violation of the Court's stay of proceedings.

NRCP 60 outlines the requirements for relief from judgment or order; and your motion does not address any of them.

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions.
(b) Grounds for Relief From a Final Judgment, Order, or Proceeding.
(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.

004512

004512

Your present motion for reconsideration argues again that the Order is erroneous in granting costs to "defendants" collectively including to Defendant Nady who was not part of the appeal. If you read the "original" Order signed by Judge Sturman, it clearly indicates that A Cab, LLC and A Cab Series, LLC were the moving parties and they are awarded the costs. You also never raised this Nady name issue at all when I asked you to approve the draft order I prepared.

Instead, in the order you subsequently submitted, you have deliberately changed the names of the defendants to add further confusion, and to insert words that the Court never indicated. You are the one who wrote in the Order, "Defendant A Cab Series, LLC formerly known as A Cab LLC"; and now complain that the Order is in error by stating the award includes Defendant Nady. This argument is not even supported by the order you prepared! Further, you added in wording to indicate that A Cab was stayed from seeking collection until further order of the court - this was never indicated by the Court and yet you unilaterally added it in for the Court to sign. This was a deceptive move in submitting this to a judicial officer who you know is merely substituting right now while the department is vacant, and who should be able to rely upon the integrity of the attorneys who are submitting items for signature as being candid and honest with the Court.



**10161 Park Run Drive, Suite 150 | Las Vegas, Nevada 89145 | Phone 702.320.8400 | Fax 702.320.8401**

004512

Accordingly, Defendants A Cab, LLC; A Cab Series, LLC; and Creighton J. Nady demand that your clients immediately withdraw this pending motion. This letter, along with the enclosed copy of Defendants' Motion for Sanctions, serves as notice that we will seek sanctions against you and your client under NRCP 11(c) if Plaintiffs' Motion is not withdrawn.

Sincerely,

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

*ECRodriguez*

Esther C. Rodriguez, Esq.

ECR:srd
enc.

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**10161 Park Run Drive, Suite 150 | Las Vegas, Nevada 89145 | Phone 702.320.8400 | Fax 702.320.8401**

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004514

# EXHIBIT “C”

004514



004514

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christian@gabroy.com

Attorneys for Plaintiffs

**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

| | |
|---|---|
| MICHAEL MURRAY, and MICHAEL RENO, Individually and on behalf of others similarly situated,<br><br>Plaintiffs,<br><br>vs.<br><br>A CAB TAXI SERVICE LLC, A CAB SERIES LLC formerly known as A CAB LLC, and CREIGHTON J. NADY,<br><br>Defendants. | Case No.: A-12-669926-C<br><br>Dept.: IX<br><br>**DECLARATION OF CLASS COUNSEL, LEON GREENBERG, ESQ.** |

004515

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

1. I have been appointed by the Court as class counsel in this matter. I offer this declaration in connection with plaintiffs' reply to A Cab's opposition to plaintiffs' motion to stay, offset, or apportion award of costs and/or reconsider award of appellant costs for court reporter expenses.

2. Plaintiffs' motion erroneously stated my assumption Judge Sturman had signed A Cab's proposed Order (submitted by them at 5:34 on May 16, 2022) prior to plaintiffs' submission of any proposed Order. Ms. Rodriguez submitted that Order in



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what I viewed as a discourteous manner, as we had made significant progress on the form of that Order and resolved most of the issues and was seeking further conferral with her about it. Ex. "1" hereto, my email of May 16, 2022, to her.

3. Upon further review of my office's emails and records, I realized that my office had submitted a proposed Order at 2:18 p.m. on May 17, 2022, to Department 9, and defendants' proposed Order, submitted to Department 2, was signed and entered by Judge Sturman later that day at 2:59 p.m. on May 17, 2022. I had also drafted a follow up letter for Department 9 on May 17, 2022, explaining why differing proposed Orders were being submitted. Ex. "2" hereto. That letter was never finalized or sent as by the time it was fully drafted Judge Sturman had signed defendants' proposed Order, never aware that plaintiffs' proposed Order was previously submitted to the Court but being held by the Department 9 staff.

4. A Cab's counsel, Esther Rodriguez, avers in her declaration of June 14, 2022, she received instructions from Department 2 on May 2, 2022, to submit her proposed Order to that Department. I was not a party to that phone call, I never received any such instructions, and Ms. Rodriguez did not advise me of her receipt of such instructions until she filed her declaration on June 14, 2022.

004516

004516

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

Affirmed this 30th Day of June, 2022

/s/ *Leon Greenberg*
Leon Greenberg, Esq.

004517

004517

# EXHIBIT “1”



004517

**From:** Leon Greenberg
**To:** Esther Rodriguez; "Ranni Gonzalez"
**Cc:** christian@gabroy.com; "Jay Shafer"; "Susan Dillow"
**Subject:** RE: A Cab - Order Draft
**Date:** Monday, May 16, 2022 5:40:00 PM

It was inappropriate for you submit this without conferring with me further. There are other options available to address the points you raise that you disagree with me on, we should have discussed them as I requested, and we are not in disagreement an most of what was decided (the $ number that was awarded in your client's favor, probably the primary issue). You are unnecessarily burdening the Court by proceeding in this fashion.

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Leongreenberg@overtimelaw.com

004518

**From:** Esther Rodriguez <esther@rodriguezlaw.com>
**Sent:** Monday, May 16, 2022 5:26 PM
**To:** 'Leon Greenberg' <wagelaw@hotmail.com>; 'Ranni Gonzalez' <ranni@overtimelaw.com>
**Cc:** christian@gabroy.com; 'Jay Shafer' <jshafer@crdslaw.com>; 'Susan Dillow' <susan@rodriguezlaw.com>
**Subject:** RE: A Cab - Order Draft

004518

While I disagree as to your position on the filing fees as they were associated with the 2 year statute of limitations issue upon which A Cab prevailed, I have gone ahead and removed $34.50 in filing fees. However, I cannot agree to your proposed language to add in items that were never discussed in briefing or in oral argument. You are asking the Court to make a finding of the number of "judgment creditors" that will ultimately be entered, and that has not been determined. You are also relying upon the 2018 judgment which has been found to be *in error* and reversed and remanded.

Further, submission of the Order to the Court is proper, given that the hearing occurred in February prior to entry of a stay. The Court is not subject to the stay and controls the stay -- just like it set the status check last week, and set another one in 90 days.

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Las Vegas, Nevada 89145

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(F) 702-320-8401
esther@rodriguezlaw.com


---

**From:** Leon Greenberg <wagelaw@hotmail.com>
**Sent:** Monday, May 16, 2022 12:53 PM
**To:** Esther Rodriguez <esther@rodriguezlaw.com>; Ranni Gonzalez (ranni@overtimelaw.com) <ranni@overtimelaw.com>
**Cc:** 'christian@gabroy.com' <christian@gabroy.com>
**Subject:** RE: A Cab - Order Draft

I do not think any order submission is proper on this at this time, as the case has been stayed as per your request (I did not consider that when we communicated last week).

But because I promised you substantive feedback on this last week, I think I need to give it to you (attached) and we can have a dialogue about this – I am NOT agreeing to the submission of the attached (or any other order at this time), which contains my substantive concerns.

In respect to the attached, the change in the number (to $7,052.87) includes $35.50 in other costs on the 2017 appeals that you have properly agreed were not ordered on this. In respect to the costs judgment itself, it is properly enforceable against all of the class members pro rata (as an offset of their judgments in the first instance) and I have inserted some language that can address that, though we can discuss that as well.

I do not have any problem with the submission of a separate order to release the bond amounts (those are usually done ex-parte anyway, or at least that is what I have always seen done)

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Attorney at Law
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Las Vegas, NV 89146
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Member Nevada, California
New York, New Jersey and Pennsylvania Bars
Website: Overtimelaw.com
Leongreenberg@overtimelaw.com

---

**From:** Leon Greenberg
**Sent:** Friday, May 13, 2022 6:25 PM



004519
004519
004519

**To:** Esther Rodriguez <esther@rodriguezlaw.com>; Ranni Gonzalez (ranni@overtimelaw.com) <ranni@overtimelaw.com>
**Subject:** apology - order draft

Esther: My apology, left office today did not attend to this as promised, was out most yesterday/today & just remembered. Not good conduct on my part, I am sorry, I will get this to you by mid-afternoon Monday – Ranni, please remind, put down for Monday. Thank you.

Leon Greenberg
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004520

004520



004520

004521

# EXHIBIT “2”

May 17, 2022

Presiding Judicial Officer
Eighth Judicial District Court - Department 9
200 Lewis Avenue
Las Vegas, Nevada 89155

Via Wiznet

Re: *Murray v. A Cab LLC et al.,* A-12-669926-c
Submission of Proposed Order, Hearing of March 16, 2022,
Motion to Award Certain Appellate Costs to Defendant

004522

004522

Dear Presiding Judge:

I submit with this letter plaintiffs' proposed Order (copy at Ex. "A") in respect to the foregoing. That proposed Order varies slightly from the one submitted by defendants' counsel on May 16, 2022. **Both plaintiffs and defendants proposed orders agree that an award of $7,587.37 in costs was made by the Court.** The varying Order submitted by plaintiff addresses the following additional issues:

1. It corrects the caption of the Order to reflect the amendment of the judgment and proper identification of defendant "A Cab" as a single defendant ("A Cab Series LLC formerly known as A Cab LLC") as provided for in the Court's Order of October 22, 2018 (Ex. "B"), and as affirmed by the Nevada Supreme Court on appeal.

2. It specifies the award of costs is to A Cab, not "defendants," as the co-defendant Nady was not a party to the appeal on which costs were

awarded.

3. The district court did not address the counter-motion of plaintiffs seeking to have the costs award apportioned *pro-rata* among the hundreds of class member judgment holders, meaning it was denied without prejudice. The judgment originally entered in this case was modified on appeal and reduced to approximately $686,000 plus post judgment interest for 661 class members. Rather than engage in a dispute over how the costs award of $7,587.37 may be enforced, plaintiffs' proposed Order stays enforcement of that award until a further Order of the Court is issued (page 2, lines 9-13). Judicial economy is fostered by that provision. If defendant's form of order is entered plaintiffs will be required to promptly make a motion to stay enforcement of that award and/or determine how that award may be enforced. Such issues are better deferred for a ruling (if that proves necessary) until such time as the Court addresses the other much more significant issues pending in this case.

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I thank Your Honor for your attention to this matter and for issuing an Order in such form as Your Honor determines is appropriate.

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Respectfully submitted,

Leon Greenberg

cc.: All Counsel

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# EXHIBIT “D”

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**RTRAN**

DISTRICT COURT

CLARK COUNTY, NEVADA

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|---|---|
| MICHAEL MURRAY,<br>Plaintiff(s),<br>vs.<br>A CAB TAXI SERVICE, LLC,<br>Defendant(s). | CASE NO: A-12-669926-C<br>DEPT. XXVI |

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BEFORE THE HONORABLE GLORIA STURMAN

DISTRICT COURT JUDGE

WEDNESDAY, FEBRUARY 16, 2022

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

APPEARANCES:

For Plaintiff(s): LEON GREENBERG, ESQ.
RUTHANN DEVEREAUX-GONZALEZ, ESQ.

For Defendant(s): ESTHER C. RODRIGUEZ, ESQ.
JAY A. SHAFER, ESQ.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

Las Vegas, Nevada; Wednesday, February 16, 2022

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

THE COURT: They've got –

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

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

THE RECORDER: Yeah, so – right.

THE COURT: -- nobody sent them the link?

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

THE RECORDER: Oh gosh.

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

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

THE COURT: Uh-huh.

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

THE COURT: Uh-huh.

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

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THE COURT: Okay.

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

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

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

THE COURT: Uh-huh.

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

THE COURT: So then we'd be looking for –

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

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

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

THE COURT: Okay.

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

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

THE COURT: Well, we need to see if –

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

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

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

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

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

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

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

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

THE COURT: Mr. Greenberg, hi.

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

THE COURT: Hi Mrs. Rodriguez.

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



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wrong BlueJeans link, apparently.

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

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

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

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

MR. GREENBERG: The 23rd of March.

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

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

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

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

THE COURT: Yeah.

MR. GREENBERG: There was some confusion with the

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

THE COURT: Uh-huh.

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

THE COURT: Right.

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

THE COURT: They're all close to appeal?

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

THE COURT: Okay.

MR. GREENBERG: -- today.

THE COURT: Thanks.

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

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

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

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

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

THE COURT: Uh-huh.

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

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

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

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



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

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

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

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

THE COURT: Okay.

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

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THE COURT: Okay.

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

THE COURT: Thank you for clarifying that.

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

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

MS. RODRIGUEZ: As –

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

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

THE COURT: Yeah.

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

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

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the transcripts.

THE COURT: Uh-huh.

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

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

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THE COURT: Yes. Yes.

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

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

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

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

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

MS. RODRIGUEZ: Yes, Your Honor.

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

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

MS. RODRIGUEZ: Exactly, exactly.

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

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

MS. RODRIGUEZ: Correct.

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

MS. RODRIGUEZ: Yes, and exact –

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

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

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

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

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

THE COURT: Uh-huh.

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

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

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

THE COURT: Uh-huh.

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

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

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

So I – what's good for the goose is good for the gander Your Honor.

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

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

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THE COURT: Uh-huh.

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

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

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

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

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

THE COURT: Yeah. Yeah, and it's –

MR. GREENBERG: It's --

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

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

THE COURT: Right.

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

THE COURT: Right. Uh-huh.

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

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

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

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

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

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

MR. GREENBERG: Well –

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

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

THE COURT: Yeah.

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

THE COURT: Okay.

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

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

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appeal?

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

THE COURT: Uh-huh.

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

THE COURT: Uh-huh

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

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

THE COURT: Uh-huh.

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

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

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

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

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THE COURT: Okay.

MR. GREENBERG: Thank Your Honor.

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

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

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

THE COURT: Prevail.

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

And as I discuss –

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

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

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

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

THE COURT: Okay.

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

THE COURT: All right. Thanks.

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

THE COURT: Right.

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

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THE COURT: Okay.

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

THE COURT: All right. Thanks very much.

MR. GREENBERG: Thank you Your Honor.

THE COURT: Ms. Rodriguez.

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

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

MS. RODRIGUEZ: He specifically says,

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

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

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

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

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

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

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

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

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

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

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

So even though those hearings --

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

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were all cited to in the record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. GREENBERG: Your Honor.

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

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

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THE COURT: Yes. Uh-huh.

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

THE COURT: So that's the – because there were –

MR. GREENBERG: This is at page 3 of –

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

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

THE COURT: Okay.

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

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

MR. GREENBERG: Yeah.

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

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

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

"Bring it up again on the final judgment."

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

THE COURT: So the –

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

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

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"Costs, subparagraph e, costs on appeal taxable in district courts. The following costs on appeal are taxable in district court for the benefit of the party entitled to costs under this rule."

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

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

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

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

"The filing fee for the notice of appeal."

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

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

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

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

MR. GREENBERG: Your Honor.

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

MS. RODRIGUEZ: Again, the –

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

MS. RODRIGUEZ: And I would –

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

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

THE COURT: No. No. No.

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

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

MS. RODRIGUEZ: Thank you Your Honor.

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THE COURT: Thank you.

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

* * * * * *

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



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# EXHIBIT “E”

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

A CAB TAXI SERVICE LLC, ADMINISTRATION COMPANY,

Plaintiff,

vs.

MICHAEL MURRAY, MICHAEL RENO and WELLS FARGO BANK NA,

Defendants.

**Case No.: A-19-792961-C**

**DEPT.: 14**

**ORDER GRANTING THE MOTION OF DEFENDANTS MURRAY AND RENO FOR AN AWARD OF ATTORNEY'S FEES AND COSTS AND DENYING THE MOTION OF THE PLAINTIFF TO RETAX COSTS AND STRIKE MEMORANADUM OF COSTS AND DISBURSEMENTS**

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The motion of defendants Michael Murray and Michael Reno for an Award of Attorney's Fees and Costs (Fees and Costs Motion) pursuant to NRS 7.085, NRS 18.010(2)(b) and the Nevada Constitution, Article 15, Section 16, the Minimum Wage Amendment (the "MWA") and the motion of plaintiff to Retax Costs and Strike Memorandum of Costs and Disbursements (Retax Motion) was set for a hearing on March 2, 2021, with the Court resolving both motions upon its thorough review of the written submissions and without oral argument from counsel, the Court finds as follows:

**Fees and Costs Motion**

NRS 7.085 provides:

> 1. If a court finds that an attorney has:
>
> (a) Filed, maintained or defended a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith; or
>
> (b) Unreasonably and vexatiously extended a civil action or proceeding before any court in this State, the court shall require the attorney personally to pay the additional costs, expenses and attorney's fees reasonably incurred because of such conduct.
>
> 2. The court shall liberally construe the provisions of this section in favor of awarding costs, expenses and attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award costs, expenses and attorney's fees pursuant to this section and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

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If claims, defenses, and other legal contentions are not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, the Court may, after notice and a reasonable opportunity to respond, impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. NRCP 11(c)(1).

"In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party… Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." NRS 18.010(2)(b).

Defendants Murray and Reno request a fee award of $18,720, or in the alternative, $30,240, claiming this amount to be a "more proper award." In its January 4, 2021, Order, this Court granted the motion of Defendants Murray and Reno for judgment on the pleadings pursuant to NRCP 12(c) on the ground that Plaintiff's complaint violated NRCP 11(b)(2). As found by the Court in that Order, Plaintiff brought this action without reasonable ground—in fact as the issues raised in Plaintiff's complaint were not warranted as these issues were precluded under the doctrine of collateral estoppel. This Court found in that Order that a sanction awarding Defendants Murray and Reno attorney fees and costs for defending this action was appropriate.

Given this Court's January 4, 2021, ruling, this Court awards Defendants Murray and Reno attorney fees in the amount of $18,720 pursuant to NRS 7.085 and NRS 18.010(2)(b) against Plaintiff and its counsel, attorney Jay Shafer. Defendants' request for $30,240 in attorney fees is denied. The Court finds in this case that attorney fees are not to be granted under the Minimum Wage Act (MWA). Although Defendants Murray and Reno prevailed on MWA claims in Case No. A-12-669926-C, they cannot use the MWA to seek attorney fees in this action. The proper avenue to seek attorney fees under the MWA in Case No. A-12-669926-C was to seek such fees in that case.

Defendants Murray and Reno request a costs award in the amount of $302.59. Defendants seek $253.00 for the filing fee incurred in filing their answer to Plaintiff s complaint, $7.59 for an electronic payment (credit card) fee charged by the Wiznet system to file that answer, and $52.50 in Wiznet filing charges.

Defendants have supported their request for costs in the amount of $253.00. *See Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121 (2015). Thus, this Court awards Defendants Murray and Reno $253.00 in costs.

The Court does not grant Defendants Murray and Reno's request that the fee and costs award that is granted be entered as a judgment with their counsel, Leon Greenberg, as the judgment creditor. The



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Court finds this request is not properly before this Court and their counsel has provided no legal authority or analysis in connection with the same.

Based on the foregoing findings, Defendants Reno and Murray's Motion (the Fees and Costs Motion) is **GRANTED IN PART AND DENIED IN PART.** Defendants Reno and Murray are awarded $18,720 in attorney's fees and $253.00 in costs, for a total award of $18,973.

**Retax Motion**

To retax and settle costs upon motion of the parties pursuant to NRS 18.110, a district court must have before it evidence that the costs were reasonable, necessary, and actually incurred. *Cadle Co. v. Woods & Erickson*, LLP, 131 Nev. 114, 121 (2015).

Plaintiff seeks to strike and retax Defendants Murray and Reno's cost memorandum on the ground they have failed to support their costs request. The Court has found Defendants Murray and Reno have supported their request for costs in the amount of $253.00.

Accordingly, Plaintiff's Retax Motion is **DENIED**.

**IT IS SO ORDERED.**

**Dated this 20th day of April, 2021**

Honorable Adriana Escobar
DISTRICT COURT JUDGE

**C0A 644 BC38 2BA7**
**Adriana Escobar**
**District Court Judge**

Submitted by:

*/s/ Leon Greenberg*

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# EXHIBIT “F”

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137 Nev., Advance Opinion 84

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



Appeal from a summary judgment and post-judgment orders in a minimum wage class action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

*Affirmed in part, reversed in part, and remanded.*

Hutchison & Steffen, PLLC, and Michael K. Wall, Las Vegas; Rodriguez Law Offices, P.C., and Esther Rodriguez, Las Vegas,
for Appellants.

Leon Greenberg Professional Corporation and Leon Greenberg, Las Vegas,
for Respondents.

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BEFORE THE SUPREME COURT, EN BANC.[1]

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[1]The Honorable Kristina Pickering, Justice, voluntarily recused herself from participation in the decision of this matter.



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*OPINION*

By the Court, STIGLICH, J.:

Under the Minimum Wage Act (MWA) of the Nevada Constitution, employers are required to pay their employees minimum wage and to annually notify employees of the minimum wage rate. Employers are also statutorily required to maintain records of wages and hours worked by employees and to readily provide that information to employees upon request.

Respondents Michael Murray and Michael Reno, the named representatives in this class action, were taxi drivers who brought suit against their former employer, appellants A Cab, LLC, and A Cab Series, LLC (collectively A Cab),[2] and its owner, alleging A Cab failed to pay them minimum wage. The district court severed the claims against A Cab's owner, Creighton Nady, and entered summary judgment for the drivers. A Cab appeals from the summary judgment, challenging certain interlocutory orders as well, and from several post-judgment orders.

We affirm in part, reverse in part, and remand. We must first consider subject matter jurisdiction, and after doing so, we conclude this matter was properly in front of the district court because plaintiffs in a class action may aggregate damages for jurisdiction. Accordingly, we overrule *Castillo v. United Federal Credit Union*, 134 Nev. 13, 409 P.3d 54 (2018), to the extent that it held to the contrary.

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[2]As discussed in this opinion, the parties strongly disagree as to whether "A Cab, LLC," and "A Cab Series, LLC," are separate entities or one and the same. Given the judgment appealed to this court lists them separately, we do so as well here.

For the reasons discussed in this opinion, we further conclude that (1) the district court erred in tolling the statute of limitations because it incorrectly interpreted the MWA notice requirement, (2) damages were reasonably calculated using approximation evidence, (3) claims against A Cab, LLC's owner were properly severed, (4) the attorney fees award must be reconsidered for reasonableness, (5) the award of costs, including expert witness fees, must be reconsidered under the proper standards, (6) the judgment was properly amended to include the new name of A Cab, LLC, and (7) the district court erroneously denied a motion to quash a writ of execution without conducting an evidentiary hearing.

## *BACKGROUND*

In 2006, Nevada voters amended the state constitution by enacting the MWA. Nev. Const. art. 15, § 16. The MWA requires, in part, that employers pay employees the minimum wage set forth therein, as adjusted yearly. *Id.* at § 16(A). Following publication of the yearly adjustment, employers "shall provide written notification of the rate adjustments to each of [their] employees." *Id.*

Murray[3] and Reno's 2012 district court class action complaint against A Cab and its owner alleged that A Cab failed to pay drivers the minimum wage under the MWA and compensation due to former employees

[3]Due to a clerical error, Murray was listed as Michael *Murphy* in the caption of the original complaint, which was corrected in the first amended complaint. Although A Cab alleged below and on appeal that "Michael Murray" and "Michael Murphy" are two different men, we have been provided with no evidence to support that contention, and it appears the correct parties are involved. A district court can correct a misnomer in the caption at any time, "so long as it is not misleading." *Detwiler v. Eighth Judicial Dist. Court*, 137 Nev., Adv. Op. 18, 486 P.3d 710, 716 (2021) (internal quotation marks omitted).



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under NRS 608.040.[4] The drivers sought compensatory damages, injunctive and equitable relief, and punitive damages. Although taxicab drivers were exempt from statutory minimum wage protections when the complaint was filed, in 2014, we clarified that taxicab drivers were afforded minimum wage protections under the MWA. *Thomas v. Nev. Yellow Cab Corp.*, 130 Nev. 484, 327 P.3d 518 (2014).

In 2015, A Cab offered to settle with Murray and Reno for $7,500 and $15,000, respectively, but they did not accept the offers. Also in 2015, the drivers amended their complaint to add Creighton Nady (the principal of A Cab) as a defendant. Two new claims were added specifically against Nady: one for civil conspiracy, concert of action, and liability as the alter ego of the corporate defendants; and the other for unjust enrichment. Thereafter, the district court certified the class as "all persons employed by any of the defendants as taxi drivers in the State of Nevada at any[ ]time from July 1, 2007[,] through December 31, 2015." Additionally, the district court equitably tolled the statute of limitations for drivers who were employed by A Cab on the annual minimum wage notification date because it found that A Cab did not provide proper annual notice for the minimum wage rate.

Throughout the litigation, the parties disputed what evidence should be provided to determine damages. In theory, minimum wage damages are simple to calculate: multiply the hours worked in a pay period by the applicable minimum hourly wage to calculate the minimum amount due, then subtract the actual pay received to determine whether a deficiency exists. For the time period between January 1, 2013, and

[4]In issuing the summary judgment, the district court dismissed the NRS 608.040 claims without prejudice.



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December 31, 2015, that is what occurred. A Cab electronically provided the drivers with all relevant data points, and the damages calculations were easily performed, compiled, and submitted by the drivers to the court as proof of damages. For the period between July 1, 2007, and January 1, 2013, however, A Cab provided the information in a different format. The drivers were given data, in electronic format, for the wages paid and the number of shifts worked. A Cab failed to provide computed hours worked data, however. Instead, A Cab provided copies of the drivers' handwritten "tripsheets," which reflected the hours actually worked during each shift. Extracting the needed hours-per-shift data from these tripsheets would have required extensive (and expensive) effort.

The district court found that supplying the hours-worked information only in the form of the tripsheets constituted noncompliance with the statutory requirements for employer record-keeping. Consequently, the district court appointed a special master to calculate the hours-per-shift information from the tripsheets and ordered A Cab to pay the special master's fees. A Cab failed to meet deadlines the district court set to pay the special master, however, so the drivers proved damages for the pre-2013 time period another way. The drivers' expert calculated the average hours per shift using the data from the 2013-2015 time period and multiplied that estimated average by both the number of shifts per each pay period and the minimum wage per hour to determine the wages that should have been paid for each pay period. The amount actually paid per period was subtracted to determine the deficiency. For this period, the only *estimated* data point was the hours-per-shift. Against A Cab's objection, the district court accepted the drivers' proof of damages.

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The district court then severed the claims against Nady and granted summary judgment against A Cab, determining that the drivers were entitled to damages for A Cab's failure to pay minimum wages. The parties engaged in lengthy post-judgment motion practice. A Cab moved to reconsider and to dismiss for lack of subject matter jurisdiction, arguing that Murray and Reno had failed to demonstrate their claims met the minimum threshold amount for district court jurisdiction under this court's decision in *Castillo v. United Federal Credit Union*, 134 Nev. 13, 16, 409 P.3d 54, 57 (2018), and that there was no longer a claim for injunctive relief. The court denied the motions to dismiss and for reconsideration, concluding it did not believe it was devoid of jurisdiction in the matter. The drivers moved to amend the judgment to include "A Cab Series, LLC," as a defendant and for costs and attorney fees. The court granted these motions. A Cab appeals the summary judgment and the post-judgment orders.

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## *DISCUSSION*

*District courts have original jurisdiction over class actions when the aggregate amount in controversy exceeds the statutory threshold*

A Cab argues that the district court lacked subject matter jurisdiction because no individual class member sought damages in an amount that met the statutory threshold. It argues that, per this court's decision in *Castillo*, individual class members' claims may not be aggregated to establish district court jurisdiction. *See Castillo v. United Fed. Credit Union*, 134 Nev. 13, 16, 409 P.3d 54, 57 (2018). A Cab further

contends that the district court did not have jurisdiction based on the drivers' request for injunctive relief.[5]

In Nevada, justice courts have original jurisdiction over most actions seeking to recover less than a statutory amount-in-controversy threshold, which, when this action was filed in 2012, was $10,000.[6] *See* 2011 Nev. Stat., ch. 253, § 54, at 1136 (amending NRS 4.370(1) and taking effect July 1, 2011); *Castillo*, 134 Nev. at 16, 409 P.3d at 57. District courts have original jurisdiction over matters in which the amount in controversy is greater than this statutory threshold. *See* Nev. Const. art. 6, § 6(1).

Historically, whether aggregation of class claims to meet the statutory threshold to establish district court jurisdiction was permitted under the Nevada Constitution had never been meaningfully challenged. And NRCP 23—setting out the rules for class actions—was silent on the issue prior to its amendment in 2019. In 2018, however, the ability to aggregate class claims to establish jurisdiction was directly challenged and heard by this court in *Castillo*.

In *Castillo*, plaintiffs in a consumer protection case sought to aggregate their claims to meet the statutory threshold amount to establish jurisdiction in the district court. 134 Nev. at 14, 409 P.3d at 56. The defendant filed a motion to dismiss, arguing the district court did not have jurisdiction because each plaintiff failed to prove that they were individually entitled to damages in excess of the statutory threshold. *Id.* at

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[5]In light of this disposition, we need not reach the issue of whether subject matter jurisdiction was proper as a result of the request for injunctive relief.

[6]The statutory amount has since been raised to $15,000. 2015 Nev. Stat., ch. 200, § 2.2, at 945.

15, 409 P.3d at 56. The district court determined the plaintiffs could not aggregate their claims and dismissed the case. *Id.* The plaintiffs then appealed to this court. *Id.* Ultimately, a panel of this court reversed the district court's decision and remanded the case, but did so on the basis that the district court had jurisdiction through the plaintiffs' request for injunctive relief. *Id.* at 19, 409 P.3d at 59.

However, in *Castillo*, the court also considered the aggregation issue and concluded that class claims could not be aggregated to establish district court jurisdiction. *Id.* at 14, 409 P.3d at 56. In deciding that aggregation of class claims was not permissible, the *Castillo* court looked to other jurisdictions and distinguished Nevada. *See id.* at 16-17, 409 P.3d at 57-58. *Castillo* noted that "[o]ther jurisdictions have allowed for aggregation" in meeting their district court equivalents' jurisdictional threshold because those states' courts of limited jurisdiction are not "equipped to adjudicate class actions." *Id.* (quoting *Dix v. Am. Bankers Life Assurance Co. of Fla.*, 415 N.W.2d 206, 210-11 (Mich. 1987), and citing *Thomas v. Liberty Nat'l Life Ins. Co.*, 368 So. 2d 254, 257 (Ala. 1979); *Judson Sch. v. Wick*, 494 P.2d 698, 699 (Ariz. 1972); and *Galen of Fla., Inc. v. Arscott*, 629 So. 2d 856, 857 (Fla. Dist. Ct. App. 1993)). *Castillo* distinguished Nevada because, under JCRCP 23, "justice courts have the ability to hear class actions." *Id.* at 17, 409 P.3d at 58.

Thereafter, disagreeing with the court's conclusion regarding aggregation of claims, multiple parties moved to proceed as amicus curiae and requested this court depublish *Castillo*. *See generally* Amicus Curiae Progressive Leadership Alliance of Nev.'s Motion to De-Publish Opinion and to Stay Issuance of Remittitur, and for Possible Alternative Relief and Motion to Exceed Page Limitation, *Castillo v. United Fed. Credit Union*,



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Docket No. 70151 (Apr. 27, 2018). This court denied the motion to depublish and stated that, "[b]ecause the aggregation discussion is not necessary to the disposition, it arguably constitutes dictum, not mandatory precedent." *Castillo*, Docket No. 70151, at *2 (Order Denying Motion to Depublish, June 12, 2018).

Then, in 2019, NRCP 23 was amended to expressly allow for the aggregation of class claims to establish district court jurisdiction. *See In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, Dec. 31, 2018). Under the current rule, "[t]he representative parties may aggregate the value of the individual claims of all potential class members to establish district court jurisdiction over a class action." NRCP 23(b).

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Recognizing this complicated and conflicting history, we take this opportunity to review our decision in *Castillo* and to clarify the rule regarding aggregation of class claims to establish district court jurisdiction. Applying this court's precedent, we are not persuaded the aggregation holding in *Castillo* is nonbinding dicta. In *St. James Village, Inc. v. Cunningham*, we indicated, "[a] statement in a case is dictum when it is unnecessary to a determination of the questions involved." 125 Nev. 211, 216, 210 P.3d 190, 193 (2009) (internal quotation marks omitted). Despite the panel's subsequent equivocation in its Order Denying Motion to Depublish, the *Castillo* court expressly chose to consider the aggregation issue prior to resolving the injunctive-relief issue, and therefore, we disagree that the aggregation discussion was mere dicta. *See* 134 Nev. at 16-17, 409 P.3d at 57-58.

"[U]nder the doctrine of *stare decisis*," this court will not overturn its prior decisions absent compelling reasons to do so. *Armenta-Carpio v. State*, 129 Nev. 531, 535, 306 P.3d 395, 398 (2013) (alteration in original) (quoting *Miller v. Burk*, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008)). Compelling reasons include "badly reasoned" or "unworkable" decisions. *State v. Lloyd*, 129 Nev. 739, 750, 312 P.3d 467, 474 (2013) (internal quotation marks omitted). We are persuaded that there are compelling reasons for overturning *Castillo*, to the extent that it holds that individual class members' claims cannot be aggregated to determine jurisdiction.[7]

First, *Castillo* suggests that justice courts' ability to hear class actions under JCRCP 23 somehow counsels against aggregation, but nothing in JCRCP 23 speaks to aggregation and the two concepts are not mutually exclusive.[8]

Second, the *Castillo* aggregation holding is in conflict with the newly amended NRCP 23(b),[9] which expressly allows for aggregation of claims to establish district court jurisdiction.

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[7]This opinion does not alter the approach to aggregation of claims in non-class actions. In non-class actions with multiple plaintiffs, each plaintiff must meet the statutory and constitutional requirements for the court to have subject matter jurisdiction over its claim. *See* NRS 4.370(1); Nev. Const. art. 6, § 6(1).

[8]Nothing in this opinion prevents justice courts from hearing *small* class actions in which the *total* amount claimed does not exceed the jurisdictional threshold.

[9]While the recently amended NRCP 23(b) expressly permits aggregation of class members' alleged damages for jurisdictional purposes, amendments to court rules do not apply retroactively, so NRCP 23(b) does not apply in this case. *See Nev. Pay TV v. Eighth Judicial Dist. Court*, 102



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Finally, we believe the opinion did not account for the purposes behind the jurisdictional threshold and failed to fully consider the impact of its decision on justice courts, which, as this case illustrates, could be significant. *Castillo* correctly observed that Nevada justice courts have the authority under JCRCP 23 to hear class actions, but it did not consider whether a justice court is—as a practical matter—"equipped to adjudicate" a *large* class action, with hundreds of plaintiffs and millions of dollars at stake. The foreign cases the court cited, soundly, were not concerned so much with the legal authority of local courts of limited jurisdiction to adjudicate such a case as with those courts' ability to provide "*effective* relief." *Wick*, 494 P.2d at 699 (emphasis added). Justice courts are designed to handle relatively small cases efficiently and quickly; that is precisely why the Legislature has imposed a maximum amount in controversy on the jurisdiction of justice courts. In our view, the monetary threshold of NRS 4.370 was designed to limit justice courts' civil docket to relatively small and simple cases—not to blindly impose a rule that would result in a justice court hearing a massive and complex case like the one before us today.

We find these practical concerns to be serious and not fully ameliorated by the existence of a procedural rule—JCRCP 23—allowing justice courts to preside over class actions. We are unaware of even a single large class action that has ever been tried in a Nevada justice court pursuant to JCRCP 23. We have the utmost respect for the competence and professionalism of Nevada's justices of the peace, but we think the best way

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Nev. 203, 205 n.2, 719 P.2d 797, 798 n.2 (1986) (citing NRS 2.120), *superseded by rule on other grounds as stated in State, Dep't of Motor Vehicles & Pub. Safety v. Eighth Judicial Dist. Court*, 113 Nev. 1338, 948 P.2d 261 (1997).



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to show that respect is by declining to saddle them with massive class actions for which they are wholly unprepared.

Accordingly, as it appears that no "legitimate reliance interest[ ]" will be affected by our decision today, *South Dakota v. Wayfair, Inc.*, ___ U.S. ___, ___, 138 S. Ct. 2080, 2098 (2018) (internal quotation marks omitted) ("Reliance interests are a legitimate consideration when the Court weighs adherence to an earlier but flawed precedent."), we hold that the jurisdictional interpretation set forth in *Castillo* regarding aggregation was incorrect and that total damages sought by the class, rather than those sought by any individual class member, must be considered in determining whether the justice court has jurisdiction under NRS 4.370.[10] Because the class here sought more than $10,000, jurisdiction was proper in district court. *Castillo* is overruled to the extent it is inconsistent with this opinion.

*The district court improperly interpreted the MWA notice requirements and so improperly tolled the statute of limitations*

A Cab contends that the district court's equitable tolling of the MWA's two-year statute of limitations was based on an improper interpretation of the MWA's notice requirement in the Nevada Constitution. *Perry v. Terrible Herbst, Inc.*, 132 Nev. 767, 768, 383 P.3d 257, 258 (2016) (concluding that applying the two-year statute of limitations in NRS 608.260 is proper for MWA claims). "We review questions of

[10]At oral argument before this court, counsel for A Cab expressed concern that, should we overrule *Castillo*, plaintiffs would have the option of aggregating their damages or not as they saw fit and could therefore choose whether to file in district court or justice court. We can identify no legal basis for that concern, but to remove any doubt, we clarify that the total damages sought by the class *must*—not may—be considered.



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constitutional interpretation de novo." *W. Cab Co. v. Eighth Judicial Dist. Court*, 133 Nev. 65, 73, 390 P.3d 662, 670 (2017).

Under the MWA, the Labor Commissioner is required each spring to publish a bulletin announcing the adjusted minimum wage rates. The MWA provides that "[a]n 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." Nev. Const. art. 15, § 16(A). Here, the district court concluded that "[a] plain reading of the MWA can only result in an obligation on the employer to 'provide' to 'each' of its employees 'written notification' of the rate adjustments to the minimum wage." Upon determining that the drivers had not been properly informed of yearly minimum wage increases, the district court remedied the situation by tolling the statute of limitations, such that drivers whose claims arose prior to October 2010 and who were employed by A Cab on the annual notification date—July 1—of 2007, 2008, 2009, and/or 2010 were included in the class.

The purpose of the MWA annual notification requirement is to inform employees of the current minimum wage. There is no express requirement that each employee be individually provided with written notice; notice posted in a common work area is a form of written notification that is available to each employee. The drivers here obtained this notification, in writing, through the notices posted by A Cab in employee common areas along with other required employment information. We therefore conclude that, by posting the written notices in a common, conspicuous area to which each driver had access, A Cab fulfilled the MWA's

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requirements to provide written notice to each employee.[11] *See, e.g.*, NRS 608.013 (requiring employers to "conspicuously post and keep so posted on the premises where any person is employed a printed abstract of this chapter [on Compensation, Wages and Hours] to be furnished by the Labor Commissioner" to inform employees of their rights).

Given that the district court's incorrect reading of the MWA was its only justification for tolling the statute of limitations, we reverse the tolling decision and conclude that the drivers' claims extend backwards only two years before their suit was filed. We remand to the district court to recalculate damages for this shorter time period.

*The district court properly granted summary judgment for the drivers*

A Cab contends that the district court erred by entering summary judgment in favor of the drivers, arguing that there were outstanding issues of material fact regarding claims for wages for both the 2013-2015 period and prior to 2013. A Cab argues that, as for the pre-2013 period, detailed analysis of the tripsheets it provided is the only accurate way to calculate any damages, although the district court found that A Cab did not present any evidence of inaccuracy in the final calculations.

A district court's decision to grant summary judgment is reviewed de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other

[11]While we do not defer to an agency's interpretation of the state constitution, we find it persuasive that, for over a decade, the Office of the Nevada Labor Commissioner has required only posted notice. The Office of the Labor Commissioner website instructs employers to post the annual minimum wage bulletin in each place of business where employees work and does not mention sending additional notices. State of Nev. Dep't of Bus. & Indus., Office of the Labor Comm'r: Required Emp'r Postings (Dec. 3, 2021) (https://labor.nv.gov/Employer/Employer_Posters/).

evidence on file demonstrate that no genuine issue of material fact exists "and that the moving party is entitled to a judgment as a matter of law." *Id.* (internal quotation marks omitted). All evidence "must be viewed in a light most favorable to the nonmoving party." *Id.* To withstand summary judgment, the nonmoving party cannot rely solely on general allegations and conclusions set forth in the pleadings but must instead present "specific facts demonstrating the existence of a genuine factual issue" supporting the party's claims. *Id.* at 731, 121 P.3d at 1030-31 (internal quotation marks omitted).

*Period between 2013 and 2015*

Reviewing A Cab's claim that the district court erred in ordering summary judgment, this later time period, 2013-2015, presents a simple question for our review. A Cab provided the drivers with its own computerized pay and hour records, and the drivers' expert simply entered that data into a spreadsheet to calculate each driver's hours, pay, and minimum wage deficiencies. The calculations showed a disparity between the amounts owed as minimum wage and the actual pay, entitling the drivers to recovery. The district court concluded that these spreadsheets were mathematically accurate and entered summary judgment for the damage amounts calculated in those spreadsheets.

A Cab argues that we should reverse the summary judgment as to this period, yet it has not demonstrated existing issues of material fact on the underlying data points (data points *it* provided to the drivers), the calculations performed by the drivers' experts, or the minimum wage deficiencies revealed by those calculations. As a result, we have been provided with no justification to reverse the district court's order granting summary judgment for this period.



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*Period before 2013*

A Cab contends the district court incorrectly granted summary judgment for the pre-2013 time period, arguing the records it provided to the drivers were sufficient and that the district court improperly shifted the burden to A Cab by requiring it to pay for a special master. Because A Cab believes it provided all statutorily required information, A Cab further asserts that the district court allowing reasonable approximation damages was not appropriate. We review this issue de novo and conclude the district court properly granted summary judgment for this period.

Pursuant to NRS 608.115(1), every employer is required to "establish and maintain records of wages" for each pay period for its employees. In pertinent part, these wage records must "show[ ] for each pay period," among other things, the "[g]ross wage," "[n]et cash wage," and "total hours employed in the pay period by noting the number of hours per day." NRS 608.115(1)(a), (c) & (d). Additionally, employers are required to maintain these records for two years, and the employer is required to provide this information "to each employee within 10 days after the employee submits a request." NRS 608.115(2)-(3).

During the discovery process, A Cab provided the drivers with two forms of pay information for the period before 2013: data from its computerized pay records and handwritten tripsheets. There is no dispute that the computerized data for this period did not contain information regarding the total hours worked per shift. However, the tripsheets accounted for all hours worked by the drivers, including the start and end times and handwritten notes from the drivers about breaks during the shift. So, the wage and shift information was in the computerized form, and the hours worked information was in the handwritten tripsheets. Therefore, to determine hours worked per shift and pay period for each of the drivers in



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the class based on the tripsheets, it would have been necessary to perform extensive calculations from the tripsheets, and then to harmonize those with the shift and wages per pay period information to establish any deficiencies.

The district court held that the information A Cab provided to the drivers did not conform to the requirements of what records employers must keep and provide under NRS 608.115. We agree. The plain meaning of the statute requires employers to keep records showing an employee's wage and the number of hours worked per day and to provide this information to employees on request. *See* NRS 608.115(1), (2); *Beazer Homes Nev., Inc. v. Eighth Judicial Dist. Court*, 120 Nev. 575, 579-80, 97 P.3d 1132, 1135 (2004) (providing this court interprets clear and unambiguous language by its plain meaning). Although the drivers could have ultimately determined hours worked from what was provided, A Cab did not fulfill its burden to provide this statutorily required information to the drivers.[12]

As a result, we conclude that the district court properly required A Cab to pay for a special master to analyze the information. Under NRCP 53, a court may appoint a master to assess and determine factual issues, and the court is required to consider fairness when imposing the expenses of the master on the parties. We agree with the district court

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[12]We recognize that this information provided by A Cab may be sufficient in other civil actions. *See Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 265, 396 P.3d 783, 787 (2017) (recognizing that a party requesting damages has a duty to provide a computation of damages based upon information available to it). However, in this matter, the employer has the burden to maintain and produce the records in the manner provided by the statute. *See* NRS 608.115.

that "it would not have been equitable nor justified to require Plaintiffs to pay for work performed by the Special Master when it was Defendant A Cab's failure to comply with NRS 608.115" that led to the need to hire a special master in the first place.

After A Cab did not pay the special master fees, the district court appropriately permitted the drivers to approximate the damages for this time period. In doing so, the district court relied on *Anderson v. Mount Clemens Pottery Co.*, 328 U.S. 680 (1946), *superseded by statute on other grounds as stated in Integrity Staffing Sols., Inc. v. Busk*, 574 U.S. 27 (2014), which this court relied upon in *Bombardier Transportation (Holdings) USA, Inc. v. Nevada Labor Commissioner*, 135 Nev. 15, 28, 433 P.3d 248, 259 (2019). In *Mount Clemens*, the United States Supreme Court permitted plaintiffs to use approximate calculations of damages in a Fair Labor Standards Act action when the defendant employer failed to keep proper and accurate records and also failed to produce evidence to negate the approximation evidence. 328 U.S. at 687-88. In *Bombardier*, this court agreed with that analysis on the grounds that employees "should not be penalized for the employer's failure to keep accurate records as required by law." 135 Nev. at 28, 433 P.3d at 259 (internal quotation marks omitted).

Although here, A Cab had the information required and requested, it was in a form different and more complicated than that required by statute, and we conclude this difference is immaterial for the purposes of a *Mount Clemens* analysis. We conclude that the district court's decision to permit the drivers to approximate damages was proper, given A Cab's insufficient information and refusal to pay the special master.

We must next consider whether the spreadsheets for this period were reasonable approximations of the records that the district court found



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defendants should have produced. In *Mount Clemens*, the approximation evidence presented was employee testimony regarding time spent walking to worksites and engaging in extensive work-related preparation before the shift period began, which the employees would not be able to prove with a high degree of reliability or accuracy. 328 U.S. at 692-93. In *Bombardier*, the evidence was in the form of the plaintiffs' reasonable estimates of what proportion of hours worked and tasks completed "constituted repair work." 135 Nev. at 28, 433 P.3d at 259. Here, as described above, the drivers made calculations from the actual pay given to the drivers, the actual number of shifts worked by the drivers per pay period, and an approximation of the hours worked per shift (using the hours-per-shift in the 2013-2015 data to estimate the average shift length in the earlier time period). We agree this was an appropriate method to approximate damages. *See Mount Clemens*, 328 U.S. at 693 ("Unless the employer can provide accurate estimates, it is the duty of the trier of facts to draw whatever reasonable inferences can be drawn from the employees' evidence . . . .").

A Cab points out that the district court initially declined to enter summary judgment on the calculations based on the estimations, which is true. However, the district court had merely said that, while its *preference* would have been for the special master to make calculations based on the tripsheets, A Cab did not enable that to happen, and consequently, the district court was permitted to use less specific data to calculate damages. *See id.* at 687-88 (stating that when an employer does not keep accurate records, "[t]he burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the



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court may then award damages to the employee, even though the result be only approximate"); *see also Bombardier*, 135 Nev. at 28, 433 P.3d at 259. The spreadsheets provided reasonable approximations of the records that defendants should have produced and provided appropriate calculations of damages. The only approximation evidence was the 9.21 hours-per-shift average estimate, which had ample support, including one of A Cab's own experts' testimony acknowledging that his average sampling would have allowed for 9.7 hours-per-shift. Therefore, with damages calculated based on these reasonable estimates, the district court properly granted summary judgment. We affirm the district court's summary judgment; however, as stated above, we remand to the district court to recalculate damages based on the two-year statute of limitations.

*The district court did not abuse its discretion in severing the claims against Nady*

A Cab argues that the district court erred in severing the claims against Nady, contending that the district court severed the claims only "to artificially create finality" to beat a similar, concurrently litigated class action to judgment. We have not previously stated the standard of review for a severance under NRCP 21. We note that "NRCP 21 parallels FRCP 21," *Valdez v. Cox Commc'ns Las Vegas, Inc.*, 130 Nev. 905, 908, 336 P.3d 969, 971 (2014), and under the federal rule, "[t]he trial court has broad discretion to sever issues to be tried before it," *Brunet v. United Gas Pipeline Co.*, 15 F.3d 500, 505 (5th Cir. 1994). We today clarify that we review a district court's severance of claims for an abuse of discretion.

Under NRCP 21, the court may drop or add a party through a motion of any party or on its own, and the court may sever claims. We have said that "when a judgment has been entered resolving claims properly severed, it is final and appealable, despite the existence of other pending,



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unsevered claims." *Valdez*, 130 Nev. at 907, 336 P.3d at 971. However, we have not provided guidance on when severance is proper.

Federal courts consider several factors in deciding whether severance is proper under FRCP 21, including

> (1) whether the claims arise out of the same transaction or occurrence;
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> (2) whether the claims present some common questions of law or fact;
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> (3) whether settlement of the claims or judicial economy would be facilitated;
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> (4) whether prejudice would be avoided if severance were granted; and
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> (5) whether different witnesses and documentary proof are required for separate claims.

*Parchman v. SLM Corp.*, 896 F.3d 728, 733 (6th Cir. 2018).

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The trials of A Cab and Nady had already been bifurcated for purposes of judicial economy under NRCP 42(b). During the summary judgment hearing, the drivers stressed the importance of finality as to the corporate defendants and asked the court to sever the remaining claims against Nady. The district court severed all claims against Nady pursuant to NRCP 21 and stayed them for 60 days in its order.[13]

A Cab's only cogent argument against the severance is based on one case, where the United States Court of Appeals for the Second Circuit found an abuse of discretion because "the severance was so transparently a confusion of" bifurcation and severance "or an attempt to separate an essentially unitary problem" for the purposes of creating finality. *Spencer*,

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[13]In 2019, we dismissed Nady's appeal in this matter on the jurisdictional ground that no final judgment had been entered against Nady since the claims against him had been severed. *Nady v. Murray*, No. 77050, 2019 WL 3072593 (Nev. July 12, 2019) (Order Dismissing Appeal).

*White & Prentis Inc. of Conn. v. Pfizer Inc.*, 498 F.2d 358, 362 (2d Cir. 1974) (internal quotation marks omitted). A Cab argues this matter is comparable to *Spencer* and that the district court severed the claims against Nady to win the race between the two similar class actions, to get to a final judgment to vindicate the MWA, and to defeat Nady's right to a timely trial.

We find no merit in A Cab's arguments that the district court abused its discretion and no support for its bald claims regarding the district court's supposed ulterior motives for severing the case. A Cab speculates on the judge's actual reasons for granting finality while ignoring the judge's legitimate, stated reasons. In considering the *Parchman* factors, we see several reasonable justifications for the district court's severance. Most prominently, the district court sought to facilitate settlement and judicial economy by severing the alter ego claims—particularly because, if the drivers collected the full amount of their judgment against the corporate defendants, there would be no need to proceed with the claims against Nady. The claims against Nady (as an alter ego of A Cab and under an unjust enrichment theory) were severable under the *Parchman* factors because those claims involved different forms of evidence and might be rendered unnecessary. Therefore, we conclude that A Cab has not shown that the district court abused its discretion in severing these claims.

*The award of attorney fees must be reconsidered, in light of this disposition, and the district court abused its discretion in awarding costs*

A Cab argues that the district court disregarded procedural rules and awarded excessive fees and costs, even though the eventual

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recovery by the class representative plaintiffs was less than the amounts A Cab had offered in settlement.[14]

Under the MWA, "[a]n employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs." Nev. Const. art. 15, § 16(B). "A district court's decision regarding an award of costs will not be overturned absent a finding that the district court abused its discretion." *Village Builders 96, L.P. v. U.S. Labs., Inc.*, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005). The district court in this matter awarded the drivers $568,071 in attorney fees and $46,528 in costs, including $29,022 in expert fees. For the reasons outlined below, we reverse the award of attorney fees and costs, and remand to the district court for further proceedings consistent with this opinion.

*Attorney fees*

With respect to attorney fees, district courts have discretion regarding which method is used to determine the fees but must consider the four factors outlined in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969). These factors include the attorney'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." *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 865, 124 P.3d 530, 549 (2005).

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[14]A Cab argues the drivers did not best the settlement offer under NRCP 68 and therefore may not recover any attorney fees or costs. However, we need not consider this argument because the drivers were entitled to reasonable attorney fees and costs under the MWA. *See* Nev. Const. art. 15, § 16(B).

A Cab argues the attorney fees award was excessive and that the drivers did not provide proper documentation for the district court to calculate the amount awarded. The drivers supported their request for attorney fees with a declaration by counsel that detailed the experience of the advocates, the difficulty of the work, and the time devoted to the work through a review of "contemporaneous time records" (which were not attached). A Cab argues this did not meet NRCP 54(d)(2)(B)'s requirement at the time that a request for fees must, among other things, "state the amount sought or provide a fair estimate of it; and be supported by counsel's affidavit swearing that the fees were actually and necessarily incurred and were reasonable, [as well as] documentation concerning the amount of fees claimed." NRCP 54(d)(2)(B) (2009). The district court awarded attorney fees in the amount of $568,071. It supported that award by going through three possible formulations to calculate hours and fees and through a consideration of the four *Brunzell* factors. We conclude that the declaration of counsel constituted the "documentation" required under NRCP 54(d)(2)(B), and A Cab has not shown that the attorney fees award was unsupported or excessive beyond asserting that the drivers did not provide the appropriate documentation. However, in light of this disposition and the district court's improper tolling of the statute of limitations, the amount of the attorney fees must be reconsidered for reasonableness, and we therefore reverse and remand the award of attorney fees.





*Costs*

With respect to costs, trial courts are urged to exercise restraint and strictly construe statutes permitting recovery of costs. *Bergmann v. Boyce*, 109 Nev. 670, 679, 856 P.2d 560, 566 (1993), *superseded by statute on other grounds as stated in In re DISH Network Derivative Litig.*, 133 Nev. 438, 451 n.6, 401 P.3d 1081, 1093 n.6 (2017). "To support an award of costs,

justifying documentation must be provided to the district court to demonstrate how such [claimed costs] were necessary to and incurred in the present action." *In re DISH*, 133 Nev. at 452, 401 P.3d at 1093 (alteration in original) (internal quotation marks omitted).

The drivers supported their request for nonexpert costs with a declaration by counsel that included a table noting litigation expenses extracted from a review of office records. However, this documentation was insufficient because the drivers did not provide justification for why each cost was necessary or proof that each cost was incurred in the present action. *See id.*; *see also Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049, 1054 (2015) ("'[J]ustifying documentation' must mean something more than a memorandum of costs."); *Village Builders 96, L.P. v. U.S. Labs, Inc.*, 121 Nev. 261, 276-78, 112 P.3d 1082, 1092-93 (2005) (explaining that providing justification for each copy made or call placed is necessary in order for the district court to properly assess whether the cost was actually incurred and reasonable); *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352-53, 971 P.2d 383, 386 (1998) (concluding the district court abused its discretion in awarding costs where parties did not provide itemization or justification of certain costs incurred). Accordingly, the district court abused its discretion in awarding the drivers their nonexpert-related costs, and we remand for further proceedings.

A Cab additionally argues that the district court erred in its award of expert witness fees because the amount exceeded the statutory cap and the case did not go to trial. NRS 18.005(5) caps expert witness fees at $1,500 per expert, for not more than five experts. Any award beyond that cap requires careful evaluation by the district court, in which the court must consider several factors, including "the importance of the expert's testimony



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to the party's case," the extent of the expert's work, and "whether the expert had to conduct independent investigations or testing." *Frazier v. Drake*, 131 Nev. 632, 650-51, 357 P.3d 365, 377-78 (Ct. App. 2015).

We conclude that the district court did not adequately support its award of expert witness fees in excess of NRS 18.005(5)'s limitation, in light of *Frazier*'s instructions for how that analysis should be conducted. The district court referenced the dispute regarding who bore the burden of providing and analyzing wage-and-hour information, saying "defendants might have a colorable argument against the [drivers'] expert costs had the [s]pecial [m]aster completed his work regarding the trip sheets. . . . [The drivers'] experts were necessary and their expenses were reasonable given the extent of the work performed in calculating the damages based upon the computer data information which was provided by A Cab." However, this weighs against awarding excess expert witness fees. The drivers did not hire an expert to do the work the special master would have done; their expert performed only the wage-and-hour calculations that would have been required even if A Cab had provided sufficient information for both time periods. Given that the district court did not provide a reasonable justification for such excess expert fees, we also reverse and remand this portion of the costs award for further consideration by the district court in light of *Frazier*.

*The district court did not err in amending the judgment, but it should have held an evidentiary hearing on the motion to quash collection of the judgment amount*

The day after summary judgment was entered, the district court granted a motion to amend the judgment to include "A Cab Series LLC" (one of the named appellants here). This order allowed the judgment to be amended "to indicate it is against 'A Cab Series LLC' as the current



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name of the originally summoned defendant and judgment debtor 'A Cab LLC.'" A Cab contends that "A Cab, LLC," and "A Cab Series, LLC," are different entities and the district court's order "add[ed] a party after final judgment." The drivers insist that "A Cab Series, LLC," is simply the new name of the defendant they originally sued.

A Cab urges us to review this order as an impermissible addition of a third party as a judgment debtor. For the purposes of framing this question, we use the language of amending the judgment, as per the district court's order. NRCP 59(e) permits motions to alter or amend a judgment. Orders deciding an NRCP 59(e) motion are not independently appealable but are reviewed for an abuse of discretion when included with a proper appeal. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010).

In 2005, Nevada amended NRS 86.296 to allow for the creation of "Series LLCs," a relatively new form of corporate entity that exists only in certain states. 2005 Nev. Stat., ch. 459, § 27, at 2193-94. Within a Series LLC structure, an "LLC may establish and contain within itself separate series or cells. . . . Each such separate Protected Series is treated as an enterprise separate from each other and from the Series LLC itself." Alberto R. Gonzales & J. Leigh Griffith, *Challenges of Multi-State Series and Framework for Judicial Analysis*, 42 J. Corp. L. 653, 655 (2017). If certain conditions are met, then "[t]he debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series are enforceable against the assets of that series only, and not against the assets of the company generally or any other series." NRS 86.296(3). In Nevada, a Series LLC is created by first allowing for the creation of one or more cell series in the articles of organization or operating

agreement of an LLC. NRS 86.296(2). Second, in order to trigger the liability shield protections of the created cell series, a cell series must have separate records from the LLC as a whole and from any other cell series, and the articles of organization or operating agreement must provide that debts, liabilities, and expenses are only enforceable against that individual cell series. NRS 86.296(3).

Although we have not previously had occasion to interpret the statutory scheme, the plain text of the statute governs a few important considerations for this case. First, the one-or-more cell series within the Series LLC is created by the LLC's operating agreement or articles of organization—not by a filing with the Nevada Secretary of State. NRS 86.296(2). Second, NRS 86.296(2) provides a list of optional, but not mandatory, attributes for a Series LLC. Third, the liability shield protections require the triggers discussed above, which are shown in the operating agreement or articles of organization and through the practice of separate and distinct record-keeping and accounting. NRS 86.296(3).

In 2012, A Cab, LLC, amended its articles of organization and filed them with the Secretary of State. The attached articles listed the name of the company as "A Cab, LLC," and stated in one article—

> This is a Series Limited Liability Company that may establish designated series of members, managers, company interests having separate rights, powers or duties with respect to specified property or obligations of the Company or profits and losses associated with specified property or obligations, and, to the extent provided in the Operating Agreement of the Company, any such series may have a separate business purpose or investment objective and/or limitation on liabilities of such series in accordance with the provisions of Section 86.161(e) of the Nevada Revised Statutes.

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According to A Cab, after the Series LLC was formed, at least five separate cell series entities were created: "A Cab Series, LLC, Maintenance Company; [A] Cab Series, LLC, Administration Company; A Cab Series, LLC, Taxi Leasing Company; A Cab Series, LLC, Employee Leasing Company[;] A Cab Series, LLC, Medallion Company; and others." In 2016, the Nevada Taxicab Authority authorized "Admiral Taxicab Service, LLC d b a A Cab, LLC," to operate 115 taxicab medallions. In 2017, A Cab, LLC, again filed with the Secretary of State an amendment to the articles of organization, with the statement, "The name is now A Cab, Series L.L.C."

Following the district court's summary judgment in August 2018, the drivers moved to amend the judgment to include "A CAB SERIES LLC," and then served a writ of garnishment (execution) on Wells Fargo Bank for any accounts or monies "owned by judgment debtors A Cab LLC or A Cab Taxi Service LLC."[15] The defendants moved to quash that writ of execution on the grounds that funds were taken from "separate independent entities which although related to A Cab LLC are not subject to execution," i.e., various series companies created under the umbrella of A Cab Series, LLC, and that the court had not yet granted the drivers' motion to amend the judgment. The district court then granted the drivers' motion to amend the judgment to include "A Cab Series, LLC," and denied the defendants' motion to quash the writ of execution.





[15]A Cab Taxi Service LLC was named as a party to the case from the beginning but was not served and did not appear, and it does not appear to exist.

On appeal, A Cab argues again that the district court should not have allowed a new, third party (A Cab Series, LLC) to be added to the judgment and should not have allowed garnishment from accounts belonging to separate series entities such as "A Cab Series, LLC, Maintenance Company." A Cab argues that the requirements of NRS 86.296 have been met, and as a result, separate, shielded series entities exist. The drivers respond that no third party was added because "A Cab Series, LLC," is one and the same as "A Cab, LLC," given the name change in 2017. Further, the drivers contend that collection from the individual series entity accounts is appropriate because no cell series entities with the NRS 86.296(3) liability shield exist. Even if cell series entities *did* exist, the drivers insist the cell entities' alleged injury should not be part of this appeal since neither of the appellants may assert the rights of third parties.

The record convinces us that the drivers are correct that the original defendant "A Cab, LLC," no longer exists except under the changed name of "A Cab Series, LLC," and the district court properly allowed the judgment to be amended to reflect that change. In 2012, A Cab, LLC, became a Series LLC, and, in 2017, it changed its name to reflect that shift. A Cab's arguments that there are two separate entities is belied by the record, the 2017 name change document, and even the way the names were used interchangeably to refer to the parties within the dispute below and on appeal. As a result, we conclude that the district court did not abuse its discretion in amending the judgment to include "A Cab Series, LLC."[16]

[16]For clarity, the district court should have *substituted* "A Cab, LLC," with "A Cab Series, LLC," to reflect the fact that there was only ever one such entity.



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We next must consider whether the district court nevertheless erred in permitting collection from the Wells Fargo accounts without conducting an evidentiary hearing on whether the requirements of NRS 86.296 had been met and the separate series liability shield had been created. Series entities under the umbrella of a Series LLC either exist or not based on their compliance with NRS 86.296. In a hearing on the motion to amend the judgment, the district court said, "I don't think this is the time to take evidence, frankly," and such evidence was never taken. We acknowledge that the district court's concerns about standing were valid. The district court was understandably unsure of what corporate entities were even *represented* during the hearings discussing the motions to quash the writ of execution and to amend the judgment.

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

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## *CONCLUSION*

This complex litigation ultimately hinged on two questions: (1) were the drivers underpaid? and (2) if yes, by how much? As a preliminary matter, we necessarily conclude the district court had jurisdiction over this class action because the drivers could aggregate their claims to meet the statutory threshold. Accordingly, we overrule *Castillo* to the extent that it conflicts with this opinion.

We conclude the district court erred by tolling the statute of limitations far beyond two years based on an erroneous interpretation of the MWA's notice requirements. We affirm the district court decision to grant summary judgment for the drivers using reasonable approximation evidence when A Cab failed to disclose the drivers' hours worked as required by statute. And we conclude the claims against Nady were properly severed. However, we conclude the district court must reconsider the award of attorney fees, in light of this disposition. Furthermore, the district court erred in its award of costs because its order did not adequately support the award of expert fees in excess of the statutory cap. Additionally, the drivers did not provide sufficient documentation for the district court to award the remaining costs. Finally, while the district court properly amended the judgment to include "A Cab Series, LLC," it erred by denying A Cab's motion to quash the execution of judgment without taking evidence on what corporate entities existed and were actually liable for the judgment.

Accordingly, we affirm in part the district court's summary judgment, as amended to include A Cab Series, LLC, and the severance of claims against Nady; however, we reverse the summary judgment as to damages for claims outside of the two-year statute of limitations, the order denying the motion to quash, the order awarding attorney fees, and the



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costs award. We remand this matter to the district court for further proceedings consistent with this opinion.

_____, J.
Stiglich

We concur:

_____, C.J.
Hardesty

_____, J.
Parraguirre

_____, J.
Cadish

_____, J.
Silver

_____, J.
Herndon

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# 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.

**Supreme Court No. 77050**
District Court Case No. A669926

## REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: February 03, 2022

Elizabeth A. Brown, Clerk of Court

By: Andrew Lococo
Deputy Clerk

cc (without enclosures):
Hutchison & Steffen, LLC/Las Vegas \ Michael K. Wall
Rodriguez Law Offices, P.C. \ Esther Rodriguez
Leon Greenberg Professional Corporation \ Leon M. Greenberg, Dana Sniegocki
Cory Reade Dows & Shafer \ Jay A. Shafer
Kenneth C. Cory

## RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on FEB - 4 2022.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
APPEALS
FEB - 4 2022
CLERK OF THE COURT



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# EXHIBIT “G”

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**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,<br><br>Appellants,<br><br>vs.<br><br>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,<br><br>Respondents. | Supreme Court No. 83492<br><br>Dist. Ct. Case No. A-21-836353 |



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# APPELLANTS' OPENING BRIEF

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**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,<br><br>Appellants,<br>vs.<br><br>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,<br><br>Respondents. | Case No.: 83492<br><br>Dist. Ct. Case No. A721063 |



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**NRAP RULE 26.1 DISCLOSURE STATEMENT**

The undersigned counsel of record certifies that all Appellants are individuals and not corporations and none are using a pseudonym. The only counsel appearing for the appellants in this case, and currently expected to appear for them in the future in this case before this Court or the district court, are Leon Greenberg and Ruthann Gonzalez of Leon Greenberg Professional Corporation. Attorney Dana Sniegocki of Leon Greenberg Professional Corporation has

previously appeared in the district court for appellants.

Date: February 2, 2022

*/s/ Leon Greenberg*

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## 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.

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## 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. AA[1] 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).

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[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.

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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

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*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.

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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.

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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.

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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.

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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.*

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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,

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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.

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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

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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.

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## 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.

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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.

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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.

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*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).

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## 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.

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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*,

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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.

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### 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.

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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)

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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

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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)



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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.

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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.

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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's[5] eight *Churchill* factors.[6] *See, Kim v. Allison*, 8. F.4th 1170, 1178 (9th Cir. 2021), *citing*

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[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



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(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.

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#### 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.

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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.

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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.*

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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 Omps 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 Omps 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.

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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.

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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

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[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.

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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,

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[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.

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### 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:

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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.

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- 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.

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- 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.

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[10] The only evidence heard by the district court on the alleged fairness of the settlement (except for Omps 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*,

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[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).

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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.

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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.

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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]

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[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 putitive class claims and the proposed settlement's approval process — exactly as demanded by A Cab.

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**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 <u>an appearance of impropriety requiring recusal.</u>**

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.

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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.

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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.

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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

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[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*
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# EXHIBIT “H”

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| MICHAEL MURRAY and MICHAEL RENO, Individually and on behalf of others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>A CAB TAXI SERVICE LLC and A CAB, LLC, and CREIGHTON J. NADY,<br><br>Defendants. | Case No. : A-12-669926-C<br>Dept. No.: II<br><br>**ORDER ON PLAINTIFFS' MOTION FOR APPOINTMENT OF A RECEIVER TO AID JUDGMENT ENFORCEMENT OR ALTERNATIVE RELIEF**<br><br>Date of Hearing: February 1, 2021<br>Time of Hearing: Chambers |

Plaintiffs' Motion for Appointment of a Receiver to Aid Judgment Enforcement, having been heard on February 1, 2021, with Plaintiffs represented by Leon Greenberg. Defendants were represented by Jay Shafer. Having considered Plaintiffs' Motion for Appointment of a Receiver to Aid Judgment Enforcement or Alternative Relief, Defendants' Opposition to the same and Plaintiffs' Reply in support, the Court rules as follows: Plaintiffs' motion is DENIED on several grounds. The Court hereby makes the followings findings of fact and determination of law.

First, EDCR 7.12 provides, "When an application or a petition for any writ or order shall have been made to a judge and is pending or has been denied by such judge, the same application, petition or motion may not again be made to the same or another district judge,

except in accordance with any applicable statute and upon the consent in writing of the judge to whom the application, petition or motion was first made". In reviewing the lengthy history of this case, plaintiffs have brought forth the same motion seeking the same relief multiple times before Judge Kenneth Cory and Judge Rob Bare, which were all denied as appointment of receiver was not deemed appropriate when considering the entire circumstances of the case. *See* Bowler v. Leonard, 269 P.2d 833 (1954) ( The Court must consider the entire circumstances of the case when considering the appointment of a receiver. ) The instant motion was first brought before Judge Cory on December 13, 2018. Judge Cory denied the request to appoint a receiver but granted to a limited extent in the form of an appointment of special master. The relief was brought forth again on January 30, 2019, which in the March 4, 2019 Order, the Court approved the Special Master appointment, and endorsed the report as well as the ongoing service and reappointment of the special Master. The matter was stayed due to bankruptcy but once that was lifted, plaintiffs brought the same request before Judge Bare, who reactivated the role of Special Master Swarts. Thus, plaintiffs failed to comply with EDCR 7.12 as there is no indication written consent was sought before this duplicative and untimely motion was submitted.

Second, the Court fully reviewed the briefings of the parties and finds this is a motion for reconsideration and not a new motion. As noted above, it has been litigated numerous times. Thus, it is governed by EDCR 2.24. Under EDCR 2.24(a)-(b), there is no right to a rehearing or motion for reconsideration without leave of the Court. A party seeking reconsideration of a ruling of the court, other than any order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion for such relief within 14 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order. Here, the issue on the ruling of the receiver must have been brought for reconsideration by March 17, 2019. The Supreme Court of Nevada even noted this point in its recent order stating the district court's [July 17, 2020] post judgment order reactivated a special master pursuant to a prior order of the court. Thus reconsideration of the denial for a receiver must have been brought by January 2, 2019, or if by the March 3, 2019 order, by March 17, 2019.



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Third, relief under NRCP 60(b) is time-barred. NRCP 60(b) allows relief from a final judgment, order, or proceeding for the following potential 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. Importantly, motions on grounds (1), (2), or (3) must be brought within 6 months. NRCP 60(c)(1) holds, the time for filing the motion cannot be extended under Rule 6(b). The other three reasons outside NRCP 60's 6-month limitation do not apply here nor have plaintiffs argued they apply here. Absent good cause, an untimely motion for reconsideration will be denied. Carmar Drive Tr. v. Bank of Am., N.A., 386 P.3d 988 (2016).

Additionally, in Geller v. McCowan, the Nevada Supreme Court held re-hearings are not granted as a matter of right and are not allowed for the purpose of re-argument, unless there is a reasonable probability that the court may have arrived at an erroneous conclusion. 177 P.2d 461 (1947). Here, plaintiffs stated Judge Bare's July 17, 2020 Order was clearly erroneous, however, plaintiffs did not provide substantive argument to support this assertion. The record reflects Judge Bare was careful in his decision and he did factor in the Nelson factors before rendering a limited stay as defendants had posted a partial security of nearly $300,000.

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Finally, plaintiffs have put forth no good cause argument to support its almost two year delay in bringing the instant motion. Thus, under EDCR 2.24 and NRCP 60, the instant motion is DENIED.

**IT IS SO ORDERED.**

Dated this ___ day of_____, 2021.

Dated this 22nd day of February, 2021

DISTRICT COURT JUDGE

7CA B39 FA1B 4F3C
Carli Kierny
District Court Judge

Submitted by:
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Attorney for the Plaintiffs



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# EXHIBIT “I”

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. 81641



*ORDER DISMISSING APPEAL*

This is an appeal from a district court postjudgment order: (1) denying a motion to allow judgment enforcement, (2) denying a motion to distribute funds held by class counsel, (3) denying a motion requiring the turnover of certain property of the judgment debtor pursuant to NRS 21.320, (4) granting a countermotion for a stay of collection activities pending the appeal from the underlying judgment, and (5) reactivating a special master to gather additional information regarding the possibility of requiring further security deposits during the pendency of the appeal from the underlying judgment. Respondents have filed a motion to dismiss, arguing that the district court's order is not substantively appealable. Appellants have opposed the motion, and respondents have filed a reply.

This court has limited jurisdiction, and may only consider appeals authorized by statute or court rule. *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013). "[T]he burden rests squarely upon the shoulders of a party seeking to invoke our jurisdiction to establish, to our satisfaction, that this court does in fact have jurisdiction."

*Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 527, 25 P.3d 898, 899 (2001).

First, appellants assert that the district court's order is appealable as a special order entered after final judgment. NRAP 3A(b)(8) allows an appeal from "[a] special order entered after final judgment." To qualify as an appealable special order entered after final judgment, the order "must be an order affecting the rights of some party to the action, growing out of the judgment previously entered." *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002). Crucially, however, "no statute or court rule appears to allow for an appeal from an order that relates to the mere enforcement of a prior judgment." *Superpumper, Inc. v. Leonard Tr. for Morabito*, Docket Nos. 79355 & 80214 (Order Dismissing Appeal and Regarding Motions, March 6, 2020).

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For example, in *Gumm v. Mainor*, this court concluded that a postjudgment order that distributed a significant portion of the appellant's judgment proceeds to certain lienholders was appealable because it altered his rights under the final judgment. *See id.* at 920, 59 P.3d at 1225. We noted, in contrast, that a postjudgment order directing a portion of the appellant's judgment proceeds to be deposited with the district court clerk pending resolution of the lien claims was not appealable. *See id.* at 914, 59 P.3d at 1225.

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In a number of similar contexts, this court has consistently reiterated that postjudgment orders that do not affect the rights incorporated in the judgment are not appealable as special orders after final judgment. *See, e.g., Superpumper, Inc. v. Leonard Tr. for Morabito*, Docket Nos. 79355 & 80214 (Order Dismissing Appeal and Regarding Motions, March 6, 2020) (orders denying claims of exemption asserted by appellants

in post-judgment enforcement proceedings were not appealable); *Zandian v. Margolin*, Docket No. 69372 (Order Dismissing Appeal, March 4, 2016) (postjudgment order requiring appellant to appear for a debtor's examination and produce documents was not appealable).[1]

Here, the district court's postjudgment order did not alter the amount of appellants' judgment or distribute any portion of the judgment to other parties. Nor did the order reduce respondents' liability or obligations under the judgment. Instead, the order simply stayed appellants' judgment enforcement proceedings during the pendency of respondents' appeal of the underlying judgment, thereby reserving resolution of appellants' efforts to enforce their judgment. Thus, because the district court's postjudgment order did not affect the rights incorporated in the judgment, it is not appealable as a special order entered after final judgment. *See* 15B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3916 (2d ed. 1992 and Supp. 2020) ("Appeal ordinarily should not be available as to any particular post-judgment proceeding before the trial court has reached its final disposition."); *see also Aspen Fin. Servs. v. Eighth Judicial Dist. Court*, 128 Nev. 635, 640, 289 P.3d 201, 205 (2012) (noting that an order granting or denying a stay of proceedings is not appealable).[2]

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[1]Appellant cites *McCulloch v. Jeakins*, 99 Nev. 122, 659 P.2d 302 (1983), for the proposition that an order staying judgment enforcement is appealable. *McCulloch*, however, did not discuss jurisdiction and predates this court's decision in *Gumm*.

[2]Although appellants argue that the district court's order directed them to split the costs of a special master, this did not alter their legal rights under the substance of the judgment and, thus, does not render the order

Next, appellants contend that the district court's order is appealable as an order appointing or refusing to appoint a receiver. Under NRAP 3A(b)(4), "[a]n order appointing or refusing to appoint a receiver or vacating or refusing to vacate an order appointing a receiver" is appealable. The rule does not, however, mention an order appointing a special master. And, this court has repeatedly held that such an order is not appealable. *See, e.g., Russell v. Thompson*, 96 Nev. 830, 832, 619 P.2d 537, 538 (1980) (concluding that the district court's appointment of a special master to facilitate an appropriate division of certain property was not appealable, noting, "reference to a special master is not an appealable order"); *Hammer v. Rasmussen*, Docket No. 70647 (Order Dismissing Appeal, Aug. 9, 2016) (observing that "[n]o statutes or court rules provide for an appeal from . . . an order appointing a special master").

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Here, the district court's postjudgment order neither granted nor denied a request to appoint a receiver. Rather, the order reactivated a special master to provide additional information to the court regarding the possibility of further security deposits during the pendency of the appeal from the underlying judgment. As noted, however, such an order is not appealable.[3]

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an appealable special order after final judgment. *See generally Morrel v. Edwards*, 98 Nev. 91, 92, 640 P.2d 1322, 1324 (1982) (amendment that merely struck an award of costs from a judgment "did not affect the legal rights and obligations of the parties" in the substance of the judgment and, therefore, was not appealable).

[3]While appellants assert that the district court's minutes show that it intended to appoint a receiver, this court has made clear that "the clerk's minute order, and even an unfiled written order are ineffective for any purpose." *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987).

Finally, appellants contend that the district court's postjudgment order is appealable as an order "resolving a supplementary judgment enforcement proceeding" under NRS 21.320. "A 'supplementary proceeding' is 'held in connection with the enforcement of a judgment, for the purpose of identifying and locating the debtor's assets available to satisfy the judgment.'" *Nevada Direct Ins. Co. v. Fields*, Docket No. 66561 (Order Vacating Judgment and Remanding, Feb. 26, 2016) (quoting *Black's Law Dictionary* (8th ed. 2004)). Pursuant to NRS 31.460, "appeals may be taken and prosecuted from any final judgment or order in such proceedings as in other civil cases."

Assuming, without deciding, that appellants' various postjudgment enforcement efforts could be construed as a "supplementary judgment enforcement proceeding," the district court has yet to reach a final disposition in such proceedings. Instead, as explained above, the district court stayed those proceedings during the pendency of respondents' appeal of the underlying judgment, thereby reserving resolution of appellants' efforts to enforce their judgment. Thus, the district court's postjudgment order is not appealable under NRS 31.460. As it does not appear that the challenged order is otherwise appealable at this time, we conclude that this court lacks jurisdiction, and we grant the motion to dismiss and

ORDER this appeal DISMISSED.

_____, J.
Gibbons

_____, J.
Stiglich

_____, J.
Silver

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

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# EXHIBIT “J”

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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



*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

[1]Pursuant 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

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

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

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

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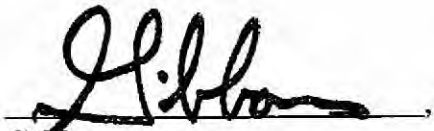
[4]Although EDCR 7.12 generally prohibits re-filing a pending motion, district courts must balance this procedural rule with Nevada's policy of resolving cases on their merits. *See Stoecklein v. Johnson Elec., Inc.*, 109 Nev. 268, 271, 849 P.2d 305, 308 (1993) ("[T]he district court must consider the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

_____, C.J.
Parraguirre

_____, J.
Hardesty



_____, Sr.J.
Gibbons

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

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[5]Because 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.").

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



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Attorneys for Plaintiffs

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | |
|---|---|
| MICHAEL MURRAY, and MICHAEL RENO, Individually and on behalf of others similarly situated,<br><br>Plaintiffs,<br><br>vs.<br><br>A CAB TAXI SERVICE LLC, A CAB, LLC, and CREIGHTON J. NADY,<br>Defendants. | Case No.: A-12-669926-C<br><br>Dept.: IX<br><br>**ORDER DENYING MOTION WITHOUT PREJUDICE AND WITH LEAVE TO RENEW**<br><br>HEARING DATE: JUNE 29, 2022 |

This matter having come before the Court for hearing on June 29, 2022, before the Honorable Mark Gibbons, and counsel for Plaintiffs and Defendants having appeared, and having

considered the plaintiffs' motion for turnover of property pursuant to NRS 21.320 or alternative relief, defendants' opposition thereto and counter-motion for attorneys fees, reply of plaintiffs, and the arguments of all such counsel, and after due deliberation;

THE COURT FINDS that it is denying without prejudice the motion and that the motion may be renewed as soon as the Supreme Court decides the pending case of Murray v. Dubric, Supreme Court Case Number 83492, and that the counter-motion is denied.

IT IS SO ORDERED.

Dated this ___ day of_____, 2022.

**Dated this 8th day of July, 2022**

DISTRICT COURT JUDGE
**92A 088 6C13 AC73**
**Mark Gibbons**
**District Court Judge**

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Submitted by:

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**CSERV**

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|---|---|
| Michael Murray, Plaintiff(s)<br>vs.<br>A Cab Taxi Service LLC, Defendant(s) | CASE NO: A-12-669926-C<br>DEPT. NO. Department 9 |

**AUTOMATED CERTIFICATE OF SERVICE**

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

| | | |
|---|---|---|
| MICHAEL MURRAY and MICHAEL RENO, Individually and on behalf of others similarly situated,<br><br>Plaintiffs,<br><br>vs.<br><br>A CAB TAXI SERVICE LLC and A CAB, LLC, and CREIGHTON J. NADY,<br><br>Defendants. | Case No.:<br>Dept. No. | A-12-669926-C<br>II |

**NOTICE OF ENTRY OF ORDER DENYING PLAINTIFFS' MOTION FOR TURNOVER OF PROPERTY PURSUANT TO NRS 21.230 OR ALTERNATIVE RELIEF WITHOUT PREJUDICE**

PLEASE TAKE NOTICE that an Order Denying Plaintiffs' Motion for Turnover of Property Pursuant to NRS 21.230 or Alternative Relief Without Prejudice was entered

. . .

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by the Court on July 8, 2022. A copy of the Order is attached hereto.

DATED this 8th day of July, 2022.

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

/s/ Esther C. Rodriguez, Esq.
Esther C. Rodriguez, Esq.
Nevada State Bar No. 006473
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 8th day of July, 2022, I electronically filed the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

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Gabroy Law Offices
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*Co-Counsel for Plaintiffs*

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

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**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

**ORDER DENYING PLAINTIFFS' MOTION FOR TURNOVER OF PROPERTY PURSUANT TO NRS 21.230 OR ALTERNATIVE RELIEF WITHOUT PREJUDICE**

Hearing Date: June 29, 2022

This matter came before the Court for hearing on June 29, 2022, before the Honorable Mark Gibbons, with counsel for Plaintiffs and Defendants both appearing.

Plaintiffs' motion requested "an Order transferring certain contract rights of defendant judgment-debtor A Cab Series LLC to plaintiff judgment-creditors pursuant to NRS 21.320." Specifically, "Plaintiffs seek an Order transferring to them, pursuant to NRS 21.320, A Cab's right to receive back the $57,500 paid to Dubric's attorneys and the $5,000 paid to Dubric when the Dubric final judgment is reversed. Alternatively, the Court can issue an Order directing A Cab to timely demand those funds and deposit them with the



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Clerk of the Court or a Receiver."

Defendants' Opposition attaches the district court order of stay entered May 3, 2022, arguing that Plaintiffs are in contempt of this order. Further, Defendants assert that the motion is frivolous and speculative arguing for items that may never come to fruition including a reversal and remand by the Nevada Supreme Court and an un-doing of the settlement agreement; and that Plaintiffs' motion is filed in the wrong court as the *Dubric* court would have subject matter jurisdiction over the termination of the Agreement and the settlement funds paid pursuant to the Agreement.

Having considered the Plaintiffs' *Motion for Turnover of Property Pursuant to NRS 21.230 or Alternative Relief*, including the Opposition and Reply filed by the parties and the arguments of all such counsel, and after due deliberation, the Court **DENIES** Plaintiffs' *Motion* without prejudice.

**THE COURT FINDS** that the *Motion* may be renewed as soon as the Supreme Court decides the pending case of *Murray v Dubric*, Supreme Court Case Number 83492, ~~and the district court order of stay is lifted.~~

**IT IS SO ORDERED.**

Dated this ___ day of_____, 2022. **Dated this 8th day of July, 2022**

Mark Gibbons

**DISTRICT COURT JUDGE**

**27B 9E0 5439 2D05**
**Mark Gibbons**
**District Court Judge**

Submitted by:

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

*/s/ Esther C. Rodriguez, Esq.*

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**CSERV**

DISTRICT COURT
CLARK COUNTY, NEVADA

| | |
|---|---|
| Michael Murray, Plaintiff(s)<br>vs.<br>A Cab Taxi Service LLC, Defendant(s) | CASE NO: A-12-669926-C<br>DEPT. NO. Department 9 |

**AUTOMATED CERTIFICATE OF SERVICE**

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/8/2022

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**DISTRICT COURT**
**CLARK COUNTY, NEVADA**

| | |
|---|---|
| MICHAEL MURRAY, and MICHAEL RENO, Individually and on behalf of others similarly situated,<br><br>Plaintiffs,<br><br>vs.<br><br>A CAB TAXI SERVICE LLC, A CAB SERIES LLC formerly known as A CAB LLC, and CREIGHTON J. NADY,<br><br>Defendants. | Case No.: A-12-669926-C<br><br>Dept.: IX<br><br>**PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO RECONSIDER AWARD OF COSTS AND RESPONSE TO DEFENDANTS' COUNTER-MOTION**<br><br>**Hearing Date: July 29, 2022**<br>**In Chambers** |

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Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation, hereby submit this reply to defendants' opposition to plaintiffs' motion to reconsider its award of costs.

## ARGUMENT

### I. The Court should consolidate this motion with the motion submitted in Chambers on July 11, 2022, so the Court's two overlapping Orders can be appropriately reconciled.

Owing to an *ex parte* communication by A Cab's counsel, discussed *infra*, on June 3, 2022, the Court, as discussed in the moving papers, entered two Orders dealing with the issues addressed in plaintiffs' motion. The Court's June 3, 2022, Order, while not identical to the May 17, 2022, Order, still contains errors the plaintiffs seek to



Case Number: A-12-669926-C

correct in this motion. Plaintiffs take no position on whether the May 17, 2022, or the June 3, 2022, Order is controlling (where those terms differ, certain terms are identical). They have filed a notice of appeal of both orders and seek reconsideration of each. The reconsideration motion addressing the May 17, 2022, Order was submitted in Chambers on July 11, 2022.

The Court should coordinate its resolution of this motion with the one submitted in Chambers on July 11, 2022, and resolve the overlapping June 3, 2022, and May 17, 2022, Orders. It can indicate the relief it is granting (or deny any relief) and merge the two Orders and their conflicting terms into a single Order as the Court deems appropriate.

**II. Plaintiffs' motion is properly presented, it does not violate the stay.**

Plaintiffs' motion advised the Court of the stay Order entered on May 3, 2022 (moving papers, p. 2, l. 20-23, Ex. "E"). They have fully respected that stay. That Order did not bar the presentation of all (or any specific) motions to the Court. Plaintiffs' motion seeks, as would any motion in this case at this time, a *de facto* modification of that stay since the Court is being asked to grant some specific relief and take some specific action (not just keep this case 100% "stayed"). The Court's May 3, 2022, Order (Ex. "E" moving papers) could have, *but did not*, direct that "no party shall file any motions with the Court" or "no requests to modify the stay imposed by this Order shall be made" until a certain date or conditions came to pass.

Defendants' assertion the Court's stay Order was violated by plaintiffs' presentation of this motion is nonsensical. That stay prohibited unilateral litigation activity by the plaintiffs, such as the service of subpoenas on non-parties. It did not limit the plaintiffs' right to petition the Court for assistance, whether to address circumstances arising *after* the stay Order (such as those triggering plaintiffs' motion)



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or to lift the stay itself so this action could proceed.[1] Indeed, the presentation of the plaintiffs' motion for reconsideration was time limited, if it had not been presented timely no doubt defendants would then claim it was barred from consideration as untimely!

Justice Gibbons never ruled that the stay in this case prohibited all parties from filing motions for relief (and defendants submit no such order or ruling). The Court may decide, on the merits, that plaintiffs' motion should be denied (or granted). But the presentation of that motion did not violate the stay Order and that motion should be addressed on its merits.

### III. Plaintiffs have not had an "improper" Order entered by the Court; defendants engaged in an *ex-parte* communication with the Court causing the submission of proposed orders in an irregular fashion and the Court's unintentional, and uninformed, entry of two Orders.

Plaintiffs' moving papers (p. 3, l. 3-18) explain that the Court entered two Orders in this case because defendants' proposed Order was submitted to the wrong department, which signed defendants' proposed Order without even seeing plaintiff's proposed Order (which was submitted to the correct department). This issue is also discussed in more detail in plaintiffs' reply submitted on July 1, 2022, in respect to the motion to reconsider the May 17, 2022, Order.

Defendants' accusations against plaintiffs' counsel regarding the submission of an improper order are baseless and untrue. Defendants' proposed Order was submitted to the *wrong Department*, as this case had been reassigned to Department 9 on March 25, 2022. Defendants' counsel now affirms she was instructed "on or about

[1] The May 3, 2022, Order found a stay was proper pending the *Dubric* appeal's resolution but did not direct a termination of the stay when that appeal was resolved or under any other circumstances. A Cab is arguing until the Court *sue sponte* modifies the stay any request to the Court, including one to lift the stay after the *Dubric* appeal's conclusion, violates the stay. That is absurd and A Cab has violated that interpretation of the stay Order by submitting a proposed Order on May 16, 2022, that they requested be entered (it was entered by the Court on May 17, 2022).



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May 2, 2022" by Court staff to submit such Order to Department 2 and not Department 9. Opp., Ex. "5" ¶ 4, p. 2, l. 14-20. But that submission by defendants' counsel was still presumptively to the *wrong Department* as such counsel never advised plaintiffs' counsel of that *ex-parte* conversation taking place two weeks earlier — and did not advise of that conversation until filing their motion opposition on the motion to reconsider the May 17, 2022, order. *See,* Reply filed July 1, 2022, Ex. "C" ¶ 4. The next day, at 2:18 p.m., plaintiffs' counsel submitted their proposed form of Order via email to Department 9, the presumptively correct Department. *Id.* ¶ 3. Later that same day, at 2:59 p.m., the defendants' form of Order was signed and entered by Judge Sturman. *Id.* It was Judge Sturman who had heard the motion for Department 2 and its staff forwarded the defendants' proposed Order to her for review.

Plaintiffs' counsel (and perhaps defendants' counsel as well) had assumed the Court's entry of defendants' proposed Order on May 17, 2022, resulted from the proper presentation of proposed Orders duly considered by the Court or a decision by Judge Sturman to not further await presentation of plaintiffs' proposed Order. But it was neither of those things. Defendants' proposed Order was not emailed to Department 9, where this case was assigned. It was emailed, pursuant to *ex parte* instructions defendants' counsel secured and never communicated to plaintiffs' counsel, to Department 2 which sent it to Judge Sturman instead of the Department 9 staff. Judge Sturman never saw plaintiffs' proposed Order, submitted prior to her signing of the defendants' proposed Order. That proposed Order was held by the Department 9 staff and entered by its presiding Judge on June 3, 2022, who were obviously unaware of the actions taken by Department 2's staff and Judge Sturman. This unintended course of events resulted in two different Orders being entered that addressed the same motion (with neither jurist signing those Orders having the benefit of first considering *both* counsel's timely submitted proposed Orders).

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Whatever "blame" may exist for the entry of two Orders by the Court lies with defendants. If Ms. Rodriguez had engaged plaintiffs' counsel in her May 2, 2022, call to Department 2 and not proceeded with an *ex parte* communication, or advised plaintiffs' counsel of the instructions she received on that date, the parties proposed order submissions would have proceeded properly. There is no reason to believe Ms. Rodriguez acted with any animus, but there was a failure by her to properly communicate and that failure caused the Court to enter two Orders.

**IV. Plaintiffs are not making multiple reconsideration requests; they have filed two requests because there are two Order and it is not known which Order is the operative Order, reconsideration had to be sought within 10 days of the entry of each Order.**

Plaintiffs' are not seeking to have "two" requests for reconsideration heard, as defendants are well aware (yet they loudly accuse plaintiffs of misconduct for doing so). This Court's rules require reconsideration requests be made within 10 days of an Order's entry and service. Plaintiffs will appeal whichever Order is the "operative" Order unless reconsideration is granted (though the June 3, 2022 Order errs to a lesser extent than the May 17, 2022, Order). Plaintiffs do not assert one or the other of the two Orders is controlling and agree that their reconsideration request as to the "inoperative" Order is not to be considered.[2] The "two orders" circumstances at issue were created by defendants' errors and plaintiffs have not engaged in any misconduct, their reconsideration requests were properly filed.

**V. Plaintiffs have not misrepresented the status of this case — it is defendants who make a litany of misrepresentations about the Nevada Supreme Court's decisions and this case's current status.**

Defendants insist the statements in plaintiffs' motion regarding the judgment in this case (moving papers, p. 2, l.4 - p. 3, l.2 and Exhibits referenced) are wrong and there "are several reversible errors" (none of which it specifies) preventing any

[2] Defendants could have worked cooperatively to resolve this "two orders" situation through dialogue and a stipulation but refused plaintiffs' invitation to make an attempt to do so.



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understanding, at this time, of the amount of that judgment. They add to these untrue assertions in footnote 5 of their brief, frivolously claiming A Cab may seek "decertification" of the class and a disallowance of amounts awarded and affirmed by the Supreme Court. As discussed in the moving papers, and the plaintiffs' other recent briefs to this Court, and in the Nevada Supreme Court's decisions, the judgment in this case is known and certain and in the record (albeit delayed in formal confirmation as a result of defendants' machinations and Judge Kierny's manifest abuse of discretion, currently being reviewed by the Supreme Court, in granting a stay).

## VI. The Court's award of court reporter expenses was manifestly erroneous; the "reasonableness" of the reporter's charges and A Cab's desire for those transcripts did not render them "necessary."

Only the portion of the Court's award of court reporter costs is presented for reconsideration, based upon clearly erroneous rulings and misunderstandings of established law by the Court. That plaintiffs also rely on the previously presented (and misunderstood/misapprehended) record and arguments do not, as defendants' claim, render that request for reconsideration improper. Plaintiffs' counsel sought additional time at the motion hearing to explain to the Court how it was misapplying the law on this point, but the Court denied that request. Ex. "A," p. 28, l. 18-20. Even if the Court now elects to deny reconsideration, plaintiffs' submission of that reconsideration request is not frivolous in light of the Court's denial of plaintiffs' request to address such issue at the motion hearing.

The court reporter costs sought by A Cab were excessive for two reasons: (1) Many of the transcripts for which costs were sought were not used in its appeal, they were not in its appendix, and did not involve any issues appealed; and (2) Those transcripts were not actually secured for the appeal, they were costs incurred during the district court litigation (costs it could not collect as the losing party in district court). The Court, at the February 16, 2022, hearing, in considering these issues, and reviewing particular court reporter charges, stated as follows:



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> That's the big lump, the 1,250. So that one appears to have been requested and for the purposes of using it in the appeal. Whether it actually made it into the – into the appeal if any particular issue was or wasn't raised in the appeal if -- and it wasn't attached, it was in the appendix.
>
> If it was still used for them in figuring out if that was something they could raise and, and they have documented it with an invoice showing that it was actually incurred; nobody's really challenging whether it was reasonable. The issue is whether it was necessary. And so, we have the actually incurred point and we have the reasonableness issue. So we only have the question of what's – I mean actually incurred and reasonableness of the fee.... Ex. "A" p. 22, l. 19 - p. 23, l. 5
>
> .....The issue again solely is reasonableness, reasonable, necessary and actually incurred. Nobody's challenging how much the transcripts were charged, how much the transcriptionist charged to do their work. And I – they're all documented as having been actually paid. It's just this question of reasonableness. **And for my purposes if they – if they reviewed it whether it made it into the appeal or not. If it was something they ordered for their purposes in preparing for the appeal, then I think it can be recovered.** *Id.*, p. 23, l. 23 - p. 24, l. 5. (emphasis provided).

After making the foregoing findings the Court allowed discussion by counsel as to other costs issues but denied plaintiffs' counsel's request to address its foregoing court reporter costs ruling. *Id.*, p. 24, l. 23 - p. 28, l. 20.

The Court committed plain error by holding, *supra*, that the court reporter transcript costs were properly awarded "whether it made it into the appeal or not." It clearly erred in holding that A Cab's "reasonable" desire to secure and review those transcripts rendered those costs "necessary" to the appeal. It did not. The Supreme Court has repeatedly made clear, as discussed in plaintiffs' motion and in the appeal of this very case, 137 Nev. Adv. Op. 84, p. 24-25, that "necessary" and "reasonable" are separate elements *both* of which need to be established by the party claiming costs. The "reasonable" prong involves the *amount* of the cost claimed, while the "necessary" prong concerns whether the cost is *needed* and thus properly claimed (but only in a "reasonable" amount). *See*, *id.*, and cases cited therein.

That it was "reasonable" for A Cab to seek the transcripts does not, and cannot, resolve whether they were "necessary" meaning *needed* for its appeal. The Court erred by conflating those two separate issues into a single question, finding that since it was





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"reasonable" for A Cab to secure a transcript it was properly awarded as a cost "necessary" for the appeal even if it was not used. That is not only contrary to controlling precedent, it contradicts NRAP 39(e)(2) awarding costs for only transcripts needed by the Supreme Court to *determine* the appeal, not costs "reasonably" incurred by A Cab to decide *what* to appeal. Transcripts not used by A Cab in its appendix were not needed to determine the appeal and could not be awarded as costs. Without those transcripts A Cab's appeal would have proceeded in the same fashion, upon the same appendix, and raised the same issues. Transcript costs incurred *prior to judgment* were also not costs incurred because they were "necessary" for the appeal as no possible appeal even existed until the adverse judgment was entered. The Court's prior Order granting such court reporter costs was plainly erroneous and contrary to law. A Cab, as detailed in the moving papers, has not established more than $1,050.82 of its court reporter costs were "necessary" to its appeal and properly awarded as appellate costs.

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## VI. A Cab's sanctions request is frivolous and not properly presented; it will be addressed in its frivolously filed NRCP Rule 11 motions.

While defendants reference NRCP Rule 11 as part of their request for an "award of sanctions and attorney's fees" they have not complied with that rule and the Court cannot grant such an award when resolving this motion. Indeed, defendants actually *violate* NRCP Rule 11 by making that request and not advising the Court they have *three separate NRCP Rule 11 motions filed and pending.* Those motions (all frivolous) will be addressed by plaintiffs in their responses to those motions.

Plaintiffs may not prevail on their motion for reconsideration. But that motion was not presented in bad faith or under circumstances warranting the imposition of sanctions, as will be discussed in the three NRCP Rule 11 motions that defendants are forcing plaintiffs' counsel to respond to.



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## IN RESPONSE TO THE COUNTER-MOTION TO STRIKE THE ORDER

**The Court should render justice and correct the previous errors in the operative Order; plaintiffs take no position on "striking" a prior Order.**

As discussed, in this briefing and the substantially overlapping briefing seeking reconsideration and involving the May 17, 2022, Order, the Court should render justice. It should award costs as properly provided for by law (neither Order did so) and otherwise direct a just, and judicially efficient, result. To do so it needs to amend *whichever of the two orders are operative*, be it the May 17, 2022 Order or the June 3, 2022, Order. As a result, plaintiffs take no position on whether either Order should be stricken and implore the Court to grant appropriate reconsideration, and amendment, of the operative Order.

## CONCLUSION

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

Dated: July 20, 2022

LEON GREENBERG PROFESSIONAL CORP.

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Leon Greenberg, Esq.
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PROOF OF SERVICE

The undersigned certifies that on July 21, 2022, she served the within:

**PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO RECONSIDER AWARD OF COSTS AND RESPONSE TO COUNTER-MOTION**

by court electronic service to:

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/s/ *Ruthann Devereaux-Gonzalez*
Ruthann Devereaux-Gonzalez

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# EXHIBIT “A”

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DISTRICT COURT

CLARK COUNTY, NEVADA

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|---|---|
| MICHAEL MURRAY,<br>Plaintiff(s),<br>vs.<br>A CAB TAXI SERVICE, LLC,<br>Defendant(s). | CASE NO: A-12-669926-C<br>DEPT. XXVI |

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BEFORE THE HONORABLE GLORIA STURMAN

DISTRICT COURT JUDGE

WEDNESDAY, FEBRUARY 16, 2022

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

APPEARANCES:

For Plaintiff(s): LEON GREENBERG, ESQ.
RUTHANN DEVEREAUX-GONZALEZ, ESQ.

For Defendant(s): ESTHER C. RODRIGUEZ, ESQ.
JAY A. SHAFER, ESQ.

RECORDED BY: KERRY ESPARZA, COURT RECORDER





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Las Vegas, Nevada; Wednesday, February 16, 2022

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

THE COURT: They've got –

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

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

THE RECORDER: Yeah, so – right.

THE COURT: -- nobody sent them the link?

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

THE RECORDER: Oh gosh.

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

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

THE COURT: Uh-huh.

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

THE COURT: Uh-huh.

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

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THE COURT: Okay.

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

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

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

THE COURT: Uh-huh.

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

THE COURT: So then we'd be looking for –

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

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

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

THE COURT: Okay.

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

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

THE COURT: Well, we need to see if –

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

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

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

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

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

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

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

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

THE COURT: Mr. Greenberg, hi.

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

THE COURT: Hi Mrs. Rodriguez.

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

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wrong BlueJeans link, apparently.

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

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

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

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

MR. GREENBERG: The 23rd of March.

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

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

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

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

THE COURT: Yeah.

MR. GREENBERG: There was some confusion with the

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

THE COURT: Uh-huh.

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

THE COURT: Right.

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

THE COURT: They're all close to appeal?

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

THE COURT: Okay.

MR. GREENBERG: -- today.

THE COURT: Thanks.

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

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

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

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

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

THE COURT: Uh-huh.

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

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THE COURT: Okay.

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

THE COURT: Thank you for clarifying that.

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

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

MS. RODRIGUEZ: As –

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

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

THE COURT: Yeah.

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

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

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the transcripts.

THE COURT: Uh-huh.

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

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

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THE COURT: Yes. Yes.

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

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

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



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

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

MS. RODRIGUEZ: Yes, Your Honor.

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

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

MS. RODRIGUEZ: Exactly, exactly.

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

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

MS. RODRIGUEZ: Correct.

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

MS. RODRIGUEZ: Yes, and exact –

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

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

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

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

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

THE COURT: Uh-huh.

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

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

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

THE COURT: Uh-huh.

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

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

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

So I – what's good for the goose is good for the gander Your Honor.

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

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

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THE COURT: Uh-huh.

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

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

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

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



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

THE COURT: Yeah. Yeah, and it's –

MR. GREENBERG: It's --

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

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

THE COURT: Right.

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

THE COURT: Right. Uh-huh.

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

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

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

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

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

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

MR. GREENBERG: Well –

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

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

THE COURT: Yeah.

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

THE COURT: Okay.

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

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

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appeal?

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

THE COURT: Uh-huh.

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

THE COURT: Uh-huh

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

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

THE COURT: Uh-huh.

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

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

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

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

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THE COURT: Okay.

MR. GREENBERG: Thank Your Honor.

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

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

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

THE COURT: Prevail.

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

And as I discuss –

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

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

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

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

THE COURT: Okay.

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

THE COURT: All right. Thanks.

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

THE COURT: Right.

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

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THE COURT: Okay.

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

THE COURT: All right. Thanks very much.

MR. GREENBERG: Thank you Your Honor.

THE COURT: Ms. Rodriguez.

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

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

MS. RODRIGUEZ: He specifically says,

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

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

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

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

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

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

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

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

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

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

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

So even though those hearings --

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

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were all cited to in the record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. GREENBERG: Your Honor.

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

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

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THE COURT: Yes. Uh-huh.

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

THE COURT: So that's the – because there were –

MR. GREENBERG: This is at page 3 of –

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

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

THE COURT: Okay.

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

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

MR. GREENBERG: Yeah.

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

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

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

"Bring it up again on the final judgment."

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

THE COURT: So the –

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

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

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"Costs, subparagraph e, costs on appeal taxable in district courts. The following costs on appeal are taxable in district court for the benefit of the party entitled to costs under this rule."

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

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

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

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

"The filing fee for the notice of appeal."

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

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

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

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

MR. GREENBERG: Your Honor.

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

MS. RODRIGUEZ: Again, the –

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

MS. RODRIGUEZ: And I would –

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

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

THE COURT: No. No. No.

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

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

MS. RODRIGUEZ: Thank you Your Honor.

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THE COURT: Thank you.

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

* * * * * *

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



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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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| MICHAEL MURRAY, MICHAEL RENO, Plaintiffs, | ) | CASE NO. A-12-669926-C |
| vs. | ) | DEPT. NO. IX |
| A CAB TAXI SERVICE, LLC, A CAB, LLC, CREIGHTON J. NADY, Defendants. | ) | **Transcript of Proceedings** |

BEFORE THE HONORABLE MARIA GALL, DISTRICT COURT JUDGE

**CASE MANAGEMENT CONFERENCE**

MONDAY, JULY 25, 2022

APPEARANCES:

For the Plaintiffs: LEON GREENBERG, ESQ.

For the Defendants: ESTHER C. RODRIGUEZ, ESQ.
(Via Video Conference)
JAY A. SHAFER, ESQ.
(Via Video Conference)

RECORDED BY: GINA VILLANI, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript produced by transcription service.



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MONDAY, JULY 25, 2022, AT 10:00 A.M.

THE COURT: Okay. Let me call the case. This is the matter of *Michael Murray and Michael Reno*, individually, on behalf of all other similar situated *versus A Cab Taxi Service, LLC, et al.*, case number A-12-669926-C. We are on by the Court's request for a status and a case management conference.

Could I have appearances of counsel, please, starting with plaintiffs' counsel?

MR. GREENBERG: Good morning, Your Honor. Leon Greenberg for plaintiffs.

THE COURT: Good morning, Mr. Greenberg. Thank you for being here.

Could I have defense counsel, please?

MS. RODRIGUEZ: Good morning, Your Honor. Are you able to hear me?

THE COURT: I am. Thank you.

MS. RODRIGUEZ: Oh, thank you. This is Esther Rodriguez for the defendants. I apologize I'm not able to be there in person. I had a little accident last week and I kind of have a torn shoulder. So, I apologize that I'm not present in person.

THE COURT: I can see. No problem. And I hope you're on the mend, Ms. Rodriguez.



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MS. RODRIGUEZ: Thank you.

THE COURT: Thank you. Okay.

So, this is really -- this is -- I mean for this to be informal. This conference is really an opportunity for me, as the newly reassigned Judge who inherited this case, to get up to speed on what's happening. I appreciate the status reports that were filed by both sets of counsel. Those were really helpful.

I have read a significant amount of papers in this case that I believe are relevant to getting up to speed. But I still have some questions. So, I'm going to tell you what my understanding is, briefly, of where the case is at. And, if I'm wrong, I would like for counsel to correct me.

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So, my understanding -- and I'm going to do this very basically, is that this is a class action, minimum wage class action. Summary judgment was entered in favor of the class against A Cab Taxi Service, LLC, and A Cab, LLC. The claims against Creighton Nady, if have that -- if I'm pronouncing that correctly, were severed.

Following entry of summary judgment, the Judgment was appealed to the Nevada Supreme Court. And the Supreme Court -- I'm not going to repeat their entire ruling. I have -- I've read it. But, my understanding is, is that there has to be a recalculation done based on the Supreme Court's decision on the tolling of the statute of



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limitations.

In addition, there is a waterfall effect on fees and costs based on what may have to be recalculated. And, in addition, there is a -- effectively, a post-judgment writ of execution issue where this Court will need to have an evidentiary hearing to see if the amended judgment debtor of the series LLC is in fact -- if the writ of execution was properly imposed on it.

That is my understanding -- and, then, I'm going to get to what happened post-judgment in this Court. But that is my understanding of where things stand following remand of the appeal.

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Now, I'm going to start with plaintiffs' counsel. I'm going to let him put on the record, do you believe I have any of that incorrect?

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MR. GREENBERG: Your Honor, I don't believe there's anything necessarily incorrect. But there's some shorthand language you used that I just want to clarify is that --

THE COURT: Sure.

MR. GREENBERG: -- the evidentiary hearing that is potentially necessary now, post-remand, doesn't concern whether A Cab Series, LLC, is liable for the Judgment. That has been affirmed. It concerns whether the particular property seized was in fact its property or whether it

belonged to other entities, which was alleged.

So, the reason why I'm emphasizing this is that in the post-remand pleadings and in the -- you know, in the writ proceeding that's ongoing with the Supreme Court, there is this repeated representations that somehow there is a question as to whether A Cab Series, LLC, is in fact the proper judgment debtor. There is no question. They are the judgment debtor. They are responsible for the Judgment. This was affirmed by the Supreme Court. The Judgment was, in fact, amended to correct it to that name because that's the current name that's discussed in the opinion.

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So, I just want to clarify that. I think Your Honor understands my point.

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THE COURT: Thank you for that clarification.

MR. GREENBERG: Thank you, Your Honor.

THE COURT: Ms. Rodriguez?

MS. RODRIGUEZ: Thank you, Your Honor.

For the most part, I think you've done a wonderful job catching up on a very extensive case. So, I think the Court's grasped the larger points. And I would agree with your assessment.

I think the series issue that the Court and Mr. Greenberg just mentioned is going to be a very important issue that was on remand and that would require further



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briefing because, again, this morning I was just looking over the Supreme Court decision. And I think it's pretty clear on page 32 where Justice Stiglich indicated that the District Court erred without taking evidence on what Court -- specifically, this is her wording:

> Without taking evidence on what corporate entities existed and were actually liable for the Judgment.

So, I think, once the stay is lifted, Your Honor, this is something, as I mentioned in the status report, that the -- we would like to continue to brief to the District Court.

The series -- the series LLC issue -- and I know Your Honor's corporate background. The Court is probably familiar with the complexity of the series LLC and that there's not a lot of case law other than personal injury. So, this will probably be a first in terms of -- I don't -- I don't -- I will not be surprised if this is another issue that goes back up to the Supreme Court for their -- for further clarification on this series LLC.

But it is the defendants' position that the defendant, the appropriate defendant, has not been determined, as well as the damages that we also on remand, Your Honor.

THE COURT: Understood. And my guess is Mr. Greenberg disputes that, to a certain extent, based on what



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he just told me.

MR. GREENBERG: Your Honor, damages for one of the three periods that were assessed in the original Judgment were set aside based on the statute of limitations issue, which is prior to October of 2010. However, all of the original damages, for the three different periods, which are actually discussed in the Supreme Court's opinion, were calculated in the record. And, then, added together to create the Judgment that was entered in August of 2018.

So, at this point, there is nothing to do except go to the record and reduce the Judgment by the amount it was previously calculated for the period prior to October of 2010.

So, what's before the Court regarding the recalculation of the Judgment, honestly, Your Honor, isn't gathering evidence, it isn't presenting new evidence, it is simply taking what's in the record, applying arithmetic to it, and modifying the Judgment accordingly because the amounts are known. They were already determined. The Supreme Court upheld the method of calculation of the amounts for the period after October of 2010. So, it was an issue on the appeal. It's discussed in the opinion.

So, recalculation is not necessarily an accurate word. But my point is that the calculations are already in the record. They've been affirmed. It's a question of

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arithmetic. And we've actually presented that to the Court that we're not here to discuss the pending motions unless Your Honor wishes to. I don't want to deviate into that.

So, it's really a ministerial task at this point or an arithmetical task that the District Court is charged with in terms of entering a Modified Judgment. There are no additional findings to made regarding the amount of damages, just a question of what's already been determined in the record, backing out and subtracting that portion that was already determined from October of 2010. Doing math that's on the rest of the record and modify the Judgment accordingly.

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THE COURT: I apologize, Mr. Greenberg. I wasn't very clear. I was referencing Ms. Rodriguez's comments about the scope of what needs to be decided with regard to the series LLC. I think you and she have some disagreement in that regard.

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MR. GREENBERG: Your Honor, Ms. Rodriguez, when she quoted that portion from the Supreme Court decision, did not read to you the entire sentence. The entire sentence says:

> Finally, while the District Court properly amended the Judgment to include A Cab Series, LLC, it erred by denying A Cab's Motion to Quash the Execution of Judgment without taking evidence on what corporate



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entities exited and were actually liable for the Judgment.

The Court is referring to that particular execution on the Wells Fargo monies. To the extent that those monies do not belong to A Cab Series, LLC, they obviously were not properly subject to the Judgment execution. That is the issue.

It's not a question of litigating the existence of the series LLCs or who is responsible for this Judgment, besides A Cab Series, LLC. A Cab Series, LLC, is a real entity. It's registered with the Secretary of State. The Judgment was amended to enter the Judgment against -- A Cab Series, LLC, claims that these Wells Fargo funds are, in fact, possessed by other entities, other series LLCs that it issued.

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And defendants have a right to a further hearing on that. They haven't requested it as of yet. We would get to that -- we can discuss that process if Your Honor would like because we certainly believe those $200,000 of funds were properly executed on.

But there's on broader question as posed at this point in this case, beyond ownership of those Wells Fargo funds regarding the existence or nonexistence of these series LLCs or who is responsible for the Judgment. Our position is, you know, we want to proceed, we want to enter



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the Judgment. We believe A Cab Series, LLC, clearly can pay the Judgment. They're the ones who have the medallions issued by the Taxi Commission. We believe they have the resources to pay the Judgment.

So, we're not particularly interested -- we're not asking the Court, at this point, for some sort of relief against these other alleged entities, Your Honor. Just a question is, there are allegations that that money that was taken belongs to those other entities.

THE COURT: I understand your position, Mr. Greenberg.

MR. GREENBERG: Thank you, Your Honor.

THE COURT: And, you know, right now, we're on a stay. And this is probably a good segue to get to the stay that my predecessor -- or, rather, the previously assigned department, entered. Let's talk about that a little bit because that's where I probably need the most education, including on this other case called -- am I going to say it right? *Dubric*?

MR. GREENBERG: Correct, Your Honor.

MS. RODRIGUEZ: Yes. Yes, Your Honor.

THE COURT: Okay. I'm going to start with Mr. Greenberg. But I'm going to hear from both. And, if you can just briefly tell me why would the *Dubric* -- why would the outcome in the *Dubric* case potentially affect the



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things that this Court has to do post-remand, which are the items I articulated at the beginning: The recalculation of the various awards and the evidentiary hearing that I'm going to have to hold, on whatever the scope of that evidentiary hearing may be?

I'm going to start with Mr. Greenberg. And, in your position, since I think you oppose the stay, maybe that it shouldn't affect what this Court has to do. But let me hear from you.

MR. GREENBERG: Your Honor, there is one judgment debtor in this case, which is A Cab Series, LLC. That Judgment was entered in August of 2018. *Dubric* entered a purported Final Judgment releasing class claims in August of 2021, three years later, supposedly against that same corporate entity, A Cab Series, LLC, as well as other entities and individuals such as Mr. Nady, who is a defendant in this case, but he's not subject to the current Judgment.

Now, as Your Honor can understand, whatever force the *Dubric* Final Judgment has, it cannot displace an earlier entered Final Judgment in this case against anyone. So, it cannot impact the Final Judgment in this case against A Cab Series, LLC.

What effect it may have regarding Mr. Nady's liability, because he's not subject to the Final Judgment

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of this case, is a different question. I believe it would. But that's beyond the scope of anything we're dealing with now in the context of the remand.

Now, when we were before Judge Kierny, we were arguing over these issues. And no one, not Judge Kierny, not defendants, have articulated any basis for finding that the appeal, which is ongoing now of that Final Judgment, can in any way impact the Final Judgment in this case against A Cab Series, LLC. It is simply impossible as a matter of law.

That Final Judgment was entered before the Final Judgment in the *Dubric* proceedings. *Dubric* never could have gotten subject matter jurisdiction over those claims to the extent that it could displace the Final Judgment issue in this case, which was under appeal when that Final Judgment was issued in *Dubric*, the appeal coming down in December of 2021. So, it was void ab initio when that Final Judgment was entered in *Dubric*, in respect to A Cab Series, LLC. In respect to Mr. Nady, again, that's a different issue.

Now, the only argument that has ever been made as to why the *Dubric* proceedings can impact this case is that plaintiffs have intervened in *Dubric* and have appealed that Final Judgment. So, somehow, plaintiffs concede that the *Dubric* Judgment must impact this Judgment in these

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proceedings; and, therefore, we need to see what happens with that appeal.

THE COURT: Why have your client -- they're your clients. Right? When you say -- yeah.

MR. GREENBERG: Yes. My --

THE COURT: Why have they intervened in *Dubric*?

MR. GREENBERG: Your Honor, we have intervened in *Dubric* because the *Dubric* Judgment proports to release Mr. Nady and other potentially liable parties who are not subject to the Final Judgment in this case. That is why we intervened, to protect our interest against Mr. Nady, who is also a defendant in this case.

Now, by the way, Your Honor, it's our position that, even in respect to Mr. Nady, that Final Judgment can't impact those liabilities. But it's less clear because there is, in fact, no Final Judgment in this case. The claims against Mr. Nady in this case are completely derivative. They involve alter ego claims. This was discussed in the Supreme Court's opinion.

So, therefore, it -- the claim -- you know, the *Dubric* Judgment presumably can't release those claims either, since they are dependent upon the Judgment in this case. But it's a little unclear, Your Honor. Let's face it. Okay? That's why intervention was sought and an appeal was taken.

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Now, in addition, Your Honor, if we hadn't intervened and appealed in *Dubric*, we would be in this position here in this case, Your Honor, with defendants insisting that the *Dubric* Final Judgment released these claims; and, therefore, this Court can't proceed to enforce the Judgment.

So, we were going to be faced with this -- litigating this issue one way or the other, either collaterally, you understand, Your Honor, in this case, or directly on appeal in Dubric. It seemed as though it would be most sensible and efficient time wise -- this case has been pending for 10 years, Your Honor, to bring that appeal directly in *Dubric* and get it in front of the Supreme Court.

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I'm not going to get into the merits of what happened in *Dubric*. I don't think Your Honor believes it should -- we can discuss it. But we're not here to review that.

THE COURT: I can read --

MR. GREENBERG: Of course not, Your Honor.

So, I think that explains the configuration we're in here and why the *Dubric* Judgment, for whatever impact it may have, clearly does not impede this Court from proceeding. In fact, this Court is obligated to proceed as directed upon remand by the Supreme Court as to A Cab



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Series, LLC, modify the Judgment as instructed, and proceed with whatever other necessary tasks are needed to get my clients paid their Judgment. I mean, their Judgment was rendered. It was affirmed on appeal. And there's no dispute that they are owed this money.

Every -- as I said, it's been reduced. We understand that. But, otherwise, its calculation, its means of being arrived, that have been affirmed, Your Honor. It's all in the record here. So, there is nothing more to do except the arithmetic, which is presented to the Court, which defendants have actually not disputed except for $888, which we concede was in error. A Modified Judgment should be entered, we should proceed, and they need to pay the Judgment or they need to face the consequences of not paying the Judgment. That's the corporation, Your Honor. Not -- Mr. Nady is in a different position than the corporation.

THE COURT: So, let me ask you --

MR. GREENBERG: Yes.

THE COURT: -- kind of, at bottom, the reason you intervened in *Dubric* is to ensure that whatever settlement, Judgment, etcetera, that may be entered in the *Dubric* case, and, lest by that Court with regard to Mr. Nady, does not have a preclusive effect with regard to plaintiffs' claims against Mr. Nady in this case?

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MR. GREENBERG: That is correct, Your Honor. That reason standing alone compelled us to proceed to intervene in *Dubric*. As I said, there were other reasons just as a questions of efficiency. Because, if we did not intervene in *Dubric* and appeal directly, we would be dealing with litigating this issue collaterally in this case. And, then, subsequently, perhaps appealing that collateral litigation in this case, a potential two-step process, as opposed to a single one-step process by intervening in *Dubric* and appealing directly when the Final Judgment was entered.

I want to just, by way of background on the *Dubric* litigation, Your Honor, I want Your Honor to understand -- and this is discussed in the record. It's in the Petition for Intervention, which the Supreme Court has directed answers to and is now fully briefed. Excuse me. Not Petition. For writ relief relating to the stay.

The *Dubric* proceedings were proposing to enter Final Judgment prior to August of 2018. And they had actually held a hearing in May of 2018 in accordance of doing that. At that time, they denied intervention to my clients, who were trying to prevent that from happening because we believed the settlement was collusive and so forth.

It never arrived at Final Judgment in 2018. And



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we had a writ petition pending before the Supreme Court over that issue, the fact that we were denied intervention in May of 2018. And they directed defendants to answer. And they were considering that. And, then, in August of 2018, we had Final Judgment in this case. And that was, obviously, while there was no Final Judgment in *Dubric*.

I advised the Supreme Court of the change of circumstance at that time. And they issued a decision denying that proceeding without prejudice because they found that the final adjudication in this case had resolved the question of the liability of A Cab to my clients. And there -- because it was a Final Judgment, the proceedings in *Dubric* did not purport at that time to threaten that Final Judgment. The claims were resolved. And this opinion is, again, is in the record. It was issued in September of 2018.

So, there's a long history here. And, then, the *Dubric* case laid dormant, for whatever reasons, for basically three years -- or two years before they decided to proceed to Final Judgment anyway, even though the Supreme Court, in dismissing that writ petition, made clear the obvious, which is that these claims had been resolved, and, therefore subject to jurisdiction of the *Dubric* Court. But they allowed *Dubric* to proceed because the proceeding should go ahead in the District Court.

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And, in rendering that opinion, -- and there was a second request for relief that I brought in 2020, when the *Dubric* proceedings were going ahead. And it didn't -- and they said that: Well, we don't really know exactly what the contours of the Final Judgment are going to be in *Dubric*. Because, remember, there were other defendants there, it covers a somewhat different time frame, so they could've limited relief to claims outside the scope of claims adjudicated in the August 2018 Final Judgment in this case.

So, in the secondary proceeding, 2020, they also directed answers. You received briefs on that. And they denied that. But, specifically in denying, it said: Since you've now been granted intervention -- because, by 2020, Judge Delaney had changed her mind and granted us intervention in the request for that, you can appeal from the Final Judgment in *Dubric* if you believe you're aggrieved by it.

So, that's part of the other reason why we appealed the Final Judgment in *Dubric*, although as I explained to you, we had other ways to do so. The Supreme Court was clearly indicating it was their preference that, if there were issues arising there, let it go to Final Judgment, and appeal it, and we'll deal with it in that context. So, this is part of an intricate background, Your



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Honor, if the Court understands.

THE COURT: Understood. No. I appreciate that. Thank you, Mr. Greenberg.

Let me hear from Ms. Rodriguez. Ms. Rodriguez, so, going back to my prior question that I posed to Mr. Greenberg, you brought the Motion to Stay, of course, which I reviewed. Although, I do not -- I will say, I did not review all the briefing on that motion. And I did not read the transcript. So, I apologize for basically ask -- I'm basically asking you to tell me your arguments again.

MS. RODRIGUEZ: Sure.

THE COURT: But how does the *Dubric* case impact what this Court is charged with doing on appeal?

MS. RODRIGUEZ: Okay. Your Honor, again, I'll try to really focus in on the issues here because there are a lot of them. But I want to be clear to the Court that *Dubric* is a very old case and settled back in 2016. This -- through the Eighth Judicial District Court settlement conference. It was Judge Wiese. It was a fair settlement in terms of, you know, we had to put on the prehearing, preapproval, all of that, put on our evidence as to why this settlement was a legitimate settlement that was reached through Judge Wiese.

All of those funds have been paid. There are numerous drivers. My understanding, there is already over

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350 drivers that have cashed their checks. There are ongoing status reports to Judge Delaney. It's a final deal. She entered final approval.

The reason that there was a delay between the time of 2016 and when a final order was finally entered is because Mr. Greenberg continued to try to stop that class action settlement from going forward. He's just gone through a number of things with the Court. And he has a very unique interpretation of the readings from the Supreme Court decisions.

But, just briefly, Your Honor, he's filed multiple writs, multiple appeals, multiple injunctions against Judge Delaney, doing everything possible to stop that *Dubric* resolution from going forward. He even put A Cab into a voluntary bankruptcy in the Federal Court. So, there was a huge delay in getting the final approval entered. But final approval was entered. There is a Final Judgment in *Dubric*. There is a release. There is monies already been paid.

And, so, one of the big, big issues in this case is that if all of those drivers have all signed releases, accepted monies. Instead of opting out of *Dubric* to proceed in this litigation, we're coming to Your Honor, to this Court, to say, here's a release. They cannot receive a double recovery, accepting funds in *Dubric*, and then coming in for the same claims here, asking them in the





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*Murray Reno* case.

And, so, Mr. Greenberg took this appeal, rather than waiting for the procedure to come through this Court, where we would file a motion, he'd oppose it, and if Your Honor would rule in our favor, he could appeal that to the Supreme Court, he chose to cut that off at the pass and appeal *Dubric* instead. And he's gone to the Nevada Supreme Court and asked the Nevada Supreme Court: I would like an opinion from the Nevada Supreme Court to say Department 9 cannot consider all of these releases and that these folks have all taken money in the *Dubric* case.

And, so, when this came in front of Judge Kierny, Judge Kierny said: Well, obviously, then, the factors for the *Dollar Rent A Car* case in supporting a stay have been met because A Cab may be paying out double recovery then, if they've already paid out money in *Dubric.* And they're going to have to pay out money in *Murray* and *Reno*. And it -- the Court can anticipate it would be pretty impossible to try get these small figures of $50 here and there from drivers to recover it.

Plus, the monies have already been paid out, the -- Judge Kierny found that there was sufficient monies that had already been paid out. A Cab had paid out approximately 225,000 in the *Dubric* case already. Mr. Greenberg holds approximately 300,000 in his trust account

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from garnishment and A Cab had already paid out about 139,000 to -- through the Department of Labor towards minimum wage claims. So, that totals -- you know, I'm sorry, Your Honor, I don't have figures off my head, but I think it was about 600, $680,000 between those three payments, which exceeds Mr. Greenberg's best day off of his spreadsheets.

So, Judge -- even though Mr. Greenberg will -- you know, was arguing, well, they need to post a $1 million supersedeas bond, Judge Kierny found there was already sufficient security, either posted, or paid out, or held in Mr. Greenberg's account.

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So, getting back to the actual *Dubric*. You know, I'm hopeful that the Supreme Court is actually going to deny his appeal. I don't believe that it's appropriately in place in the *Dubric* matter. I anticipate it's going to -- again, I'm sorry, Your Honor. I think it's going to be back in your department. You know, we anticipate bringing these motions to Your Honor to say we want a release based on the funds. Mr. Greenberg will oppose them. And I anticipate that's the appropriate route that's going to go back up to the Supreme Court.

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But we cannot move forward with his Motions to Enter a New Judgment on these recalculations without considering what's happening in the *Dubric* matter.

Because, the most important thing -- and this is my final point. I apologize for going on so much. There is no Final Judgment in this case. He keeps indicating to the Court there was a Final Judgment. But, as Your Honor, knows, there's extensive case law to say a Final Judgment is when all of the rights and liabilities of the parties have been adjudicated. And Your Honor caught on right away that there's many rights and liabilities that are yet to be determined. We don't have a damages calculation. We don't even know who the proper defendant is.

And, -- you know, so we cannot -- when the Supreme Court reversed and remanded specifically in their Order, they vacated the fact that there's a Final Judgment. There is no Final Judgment. They said, you can consider the approximations for this particular period. But, at this point, Your Honor, the Court needs to consider everything else that has been ongoing throughout the time of this appeal, including the release by multiple drivers that chose to take money instead of proceeding through this case.

THE COURT: Ms. Rodriguez, let me ask you -- and this is -- and I apologize for asking such basic questions. But I really want to get a hold of this case.

I heard Mr. Greenberg say, and if I heard him wrong, somebody correct me, that the *Dubric* case is not



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against the series LLC. If that's correct, how -- are the -- maybe it's better asked this way. Are the releases that the plaintiffs are providing in the *Dubric* case against, you know, everyone under the sun, all affiliates, all under common ownership? Is that how the releases would impact --

MR. GREENBERG: Your Honor, --

THE COURT: Or is that your argument of how the releases would impact the award in this case?

So, Mr. Greenberg, I'll let -- I'll give you a chance to respond.

MR. GREENBERG: Okay. It's fine.

MS. RODRIGUEZ: That's a good question, Your Honor. And that's something I skipped over because Mr. Greenberg mentioned that pretty much for the first time today that he's only appealing *Dubric* because of the effects that it would have on Mr. Nady. That's not what he argued to the Supreme Court. He argued for a -- he's actually asking for a declaratory order from the Supreme Court. He wants an order from the Supreme Court to say nothing that happens in *Dubric* should affect the entry of a Judgment in the *Murray* matter.

And he did not specify: Oh, as pertains to defendant Nady only. No. There are overlapping defendants. A Cab Series, LLC, is an overlapping defendant. Creighton Nady, the owner of the company, is an

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overlapping defendant. And A Cab, LLC, as well as the *Dubric* case, also has the correct series entity that is responsible. In that matter, the A Cab employee leasing company -- I'm sorry. I'm probably not giving you the right name. I think it's A Cab Series, LLC, Employee Leasing Company, which is the entity that pays the drivers.

THE COURT: Thank you, Ms. Rodriguez.

Mr. Greenberg, I'm going to let you respond. But I really want to cabinet to this one point, which is, I understand -- like, for me, right now, Mr. Nady is sequestered off.

MR. GREENBERG: Yes.

THE COURT: Because we're not dealing with his claims. What I'm really focused on is the entities and the Judgment that, you know, I'm going to have to revisit with regard to the entities. And how the *Dubric* case and the appeal that you filed, why it could impact the Judgment that this Court ultimately, at some point, will have to issue?

MR. GREENBERG: Your Honor, just to clarify, the *Dubric* Judgment does purport to release all claims against A Cab Series, LLC, the judgment debtor in this case. I want to be very clear. I've always maintained that in my representations to this Court.

And, again, they had no subject matter

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jurisdiction to do that. I mean, that is a void order or a void release to the extent that the Final Judgment there releases anything. It clearly cannot release. It's indisputable that it cannot release the claims adjudicated to the Final Judgment in this case against A Cab Series, LLC.

And Ms. Rodriguez attempts to avoid that issue by insisting there's no Final Judgment in this case. But that simply isn't true, Your Honor. Post the decision in December of 2021, I moved before the Supreme Court for instructions on remand in respect to the assessment of interest on the Judgment from August of 2018, the Modified Judgment amount, as well as an award of counsel fees on appeal.

In denying those requests, the Supreme Court -- and this is the Order of February 3rd. I can give Your Honor the citation to the authorities. Ms. Rodriguez is to say -- is claiming that there is authority that indicates that this position from the Supreme Court means there's no Final Judgment.

Citing *Schiff*, this is versus *Winchell*, which is at 237 P.3d 99-101:

> That when a Judgment is affirmed in part and reversed in part on appeal, the portions which are affirmed are considered to have maintained an existence



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since the date of the original entry.

Therefore, we are entitled to interest from August of 2018 on the remaining amount of the Judgment that was affirmed by the Supreme Court for the period after October of 2010. So, there is a Final Judgment in this case that has existed continuously.

And, of course, how could, in August of 2021, *Dubric* enter a Final Judgment affecting a Final Judgment in this case, entered in August of 2018, when that Judgment hadn't even been considered or modified by the Supreme Court? It wasn't until four months later. So, at the time when *Dubric* was entering this purported disposition, Final Judgment, authorizing the release of claims against A Cab Series, LLC, they had no jurisdiction to do so because the Final Judgment was standing in this case. It wasn't even modified yet by the Supreme Court on appeal.

In fact, this Court wouldn't have had jurisdiction to modify it at that time. Because, as Your Honor understands, once the appeal is taken, this Court loses jurisdiction over the Judgment, unless it's sent back on *Honeycutt* remand for modification, pursuant to an order of the Supreme Court. So, clearly, there was never any subject matter jurisdiction by *Dubric* to do anything in August of 2021 regarding the Judgment in this case entered in August of 2018.

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Now, in respect to Ms. Rodriguez's other assertion, well, these drivers executed releases in *Dubric*. Your Honor, the Judgment entered in this case specifically prohibited A Cab from securing satisfactions or releases of any claims that were incorporated in that Judgment without prior permission from this Court in this case.

And that provision was put in the Judgment, Your Honor, by Judge Cory at my request because we were well aware that A Cab would very likely try to do that. And there's a question of overreach here when you're dealing with taxi drivers of minimum wages. I think Your Honor can understand the imbalance of the relationship, potentially, between A Cab and the drivers.

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I can quote Your Honor the section with the Judgment if you'd like.

THE COURT: That's --

MR. GREENBERG: Okay.

THE COURT: That's fine. I think I actually -- Mr. Greenberg, I think I have a handle on this temporal point of the case. So, let me --

MR. GREENBERG: Yes.

THE COURT: Let me fast forward us now to this -- to post-stay. So, Judge Kierny entered a stay. And, what I would like to know -- and this is without addressing the merits in any way, is, you know, there's a stay in this



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case. Whether the stay is -- stay was providently or improvidently granted, you know, we can sit here and all argue about all day. But what I'm living with right now is a stay.

So, Mr. Greenberg, I know you filed a number of motions. And, now, Ms. Rodriguez has filed a number of motions in reaction to your motions. Not all of the motions are fully briefed. They're on calendar for August. So, Mr. Greenberg, why did you file the motions that you have, post-stay?

MR. GREENBERG: Your Honor, the only motions that I have filed post-stay have to do with two developments since the stay was entered. The first development was the award of costs on appeal that was entered by the Court on defendants' motion.

And the second is the question of requesting a turnover order, an attachment, as to A Cab's right in the *Dubric* case to the return of the funds that were paid to Dubric's counsel, to Dubric, about $56,000. That right is a limited right possessed by A Cab that must be executed within 20 days of any reversal of the *Dubric* appeal. That event only came to my attention in May of -- May 25th or 22nd of 2022. So, to the extent that I have made applications to the Court, Your Honor, it has specifically been limited to the developments since the stay.

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I appreciate that Your Honor's new on this case. Judge Kierny was clear on her view of necessity for the stay. I mean, I don't want to belabor the point regarding my view that it was an abuse of discretion. That is before the Supreme Court right now.

I have not moved for reconsideration before Your Honor regarding the question of the stay. I do believe the stay should be lifted. I think Your Honor would be advancing the cause of justice by immediately lifting the stay and proceeding, which is as I stated in my status report. But that's up to Your Honor. And I don't profess to know how you should do your job. I advocate for what I think would be most sensible in the interest of my clients, Your Honor.

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So, I think I answered your question regarding why I've made applications to the Court since the stay was issued by Judge Kierny.

THE COURT: Let me ask you, Mr. Greenberg, presuming -- because I have not read the motions that have been filed yet. I generally know what they are about. But, presuming that your motions were based on developments since the stay were granted, if I do not decide the motions in deference to the stay, are you or your clients going to suffer any prejudice? Are you losing any right?

MR. GREENBERG: Well, in respect to the request



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for the turnover, an Order was entered on that just about 15 or 16 days ago. And that was heard by Justice Gibbons. And I would concede, Your Honor, that because there's this 20-day window for A Cab to exercise that right, when the appeal is issued in *Dubric* and there's a reversal, we would have time, potentially, to come to the Court within that 20 days and get that attachment issued.

But we would have to do it on an order shortening time. And it would be quite burdensome and, I believe, unnecessary, because there is no question that the turnover should be granted. They haven't paid the Judgment. They haven't posted security. It's clearly a right that they have upon reversal of the *Dubric* Judgment. And there's no reason to deny the release. But, that -- but, again, if the Court believes -- as Judge Gibbons denied it but without prejudice to leave to renew upon developments in the *Dubric* appeal.

So, we would be back here -- if *Dubric* gets reversed, we're going to be back here on an expedited basis to get that turnover order issued within 20 days to be sure that that right doesn't dissipate to get that money back and paid over to my clients. But, again, that's a decision by the Court.

So, can I tell the Court we would be irreparably prejudiced by that situation? I cannot, Your Honor. I

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think it's not efficient. I don't think it's sensible. But that was how Justice Gibbons left it when we made that application. I think Your Honor understands I had good reason to make the application, given those circumstances.

In respect to the costs award, Your Honor, we filed the Notice of Appeal of Cost Award. We believe the cost award is clearly not consistent with the decision issued in this case because the documentation just isn't there to support these costs. I don't think you want to hear all the details of it.

The Supreme Court will hear the appeal, if reconsideration isn't granted. We do believe that there was a manifest application of an improper legal standard by Justice Sturman -- by Judge Sturman. Excuse me. When she found these were both reasonable and necessary. She basically grouped these concepts together.

And, while it was reasonable to request this stuff, the transcripts is what we're talking about, about $5,000 in transcript costs, but was it necessary? Okay? They're different concepts. And I would argue that it may be reasonable for them to request it. But it certainly wasn't necessary for the appeal, when a lot of it didn't even go into the Appendix and wasn't used on the appeal. It involved issues that were not raised on the appeal.

So, I think that answers Your Honor's question



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regarding why those motions were made.

THE COURT: It does. Thank you very much.

Ms. Rodriguez, let me hear from you on your position.

And I also want to know this issue of security. Is there not a supersedeas bond still posted in this case for the amount of the original Judgment?

MS. RODRIGUEZ: No. There has never been a bond posted, Your Honor. That was brought in front of Judge Cory, Judge Bare, and, then, Judge Kierny. All of that has been -- all of the Judges that have been assigned to this case have all heard extensive briefing and oral argument on that and made a determination that it was unnecessary.

The -- what was -- what was determined most recently, I believe by Judge Bare, before Judge Kierny, was that there was sufficient security posted at the time. And, if there was a further question, then a Special Master was appointed by the Court to look at all the finances the Bank had, to look at the financial condition of the company, and whether they could make additional payments towards security, that type of thing.

But Judge Bare ruled that the fair thing to do was, since Mr. Greenberg was pushing for this issue, was for the parties to share in the fees for the payment of the Special Master, Mr. Swarts. And that's where it fell by

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the wayside because Mr. Greenberg did not want to pay his share of the attorneys' fees to -- or, excuse me, of the Special Master fees, to get to the heart of this issue. If he was complaining that there wasn't severe -- sufficient security, he needed to pay his portion. So, he never did that. And that went by the wayside.

He's asked again for that, with Judge Kierny. This time saying: Well, I want appointment of a receiver to look at all of this stuff and to take over the company. And she denied that as well because she went back and looked extensively at the record and saw that there was this outstanding order. So, that's the reason that there is no bond. Any further security is because this has been left to a super -- a Special Master.

In the meantime, Mr. Swarts did pass away. The Special Master passed away. So, we don't have presently a Special Master in place. But we have -- neither party has pushed for one because Mr. Greenberg's not willing to pay for it. So, why push for a Special Master in that area?

I did want to mention to the Court, I think that the Court understands that this issue of the stay, he does -- he did file a writ on that. That is fully briefed in front of the Supreme Court.

And there's also -- Your Honor was asking him about these other motions. Everything that he's filed in



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