IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB SERIES LLC, f/k/a; A CAB, LLC, Appellant, *vs.* MICHAEL MURRAY; and MICHAEL MURRAY, individually and on behalf of others similarly situated, Respondents.	)	No. 85850 District Ct. Case No.: A-12-669926-C

RESPONDENTS' ANSWERING BRIEF

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NRAP RULE 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that all Respondents are individuals and not entities as described in NRAP 26.1(a), and do not need to be disclosed. These representations are made so that the judges of this court may evaluate possible disqualification or recusal.

Date: March 18, 2024

/s/ Leon Greenberg

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Nevada Supreme Court & Court of Appeals Decisions

Page(s)

Page(s)

Other Court Decisions

Page(s)

STATUTES

OTHER AUTHORITIES

In Response to Appellant's Statement of Jurisdiction

Jurisdiction only exists to consider the district court's rulings on the two issues returned to it by remittitur.

The appellant's ("A Cab's") two-sentence statement of jurisdiction asserting "[t]he district court entered a final judgment upon remand on November 17, 2022" is untrue. The final judgment was entered on August 21, 2018, appealed by A Cab and affirmed, as modified, *A Cab v. Murray,* No. 77050, 501 P.3d 961, 979 (Nev. Sup. Ct. 2021)(en banc), with this Court's subsequent Order confirming such "....modification on appeal was, in effect, an affirmation of the original judgment." AA 16, 3795.[1]

No jurisdiction exists to appeal the previously affirmed final judgment. Only the district court's compliance with this Court's remittitur directing a single modification of the original judgment is now appealable. *See*, *Budget Financial Corp. v. System Investment Corp.*, 511 P.2d 1047 (Nev. Sup. Ct. 1973) (first appeal established garnishment lien priorities; second appeal of the district court's refusal to proceed contrary to remittitur and invalidate garnishments dismissed for lack of jurisdiction; "[a]s to all matters encompassed by the judgment concerned in the first appeal, the action was terminated when remittitur was issued.")

[1] AA references are to volume and page of Appellant's Appendix.

This Court's affirmance and remittitur were clear:

> 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 costs award. We remand this matter to the district court for further proceedings consistent with this opinion. 501 P.3d at 979.

Only one issue concerning the final judgment is now appealable: whether the district court reduced the final judgment entered on August 21, 2018, by the proper "outside of the two-year statute of limitations" amount. A Cab cannot appeal the district court's refusal to take any other action in respect to the final judgment and the district court also lacked the power to take any such actions.

A Cab also previously appealed the district court's post-final judgment order of February 6, 2019, awarding pre-judgment attorney's fees to plaintiffs' (the "Taxi Drivers") counsel. This Court affirmed the district court's methodology for making that award but directed upon remand a reconsideration of the award's amount in light of "...the district court's improper tolling of the statute of limitations..." and in a manner "consistent with this opinion." 501 P.3d at 975, 979. A Cab's appeal of the district court's award of pre-judgment attorney's fees (its post-remittitur order, AA 22, 5404-5409) is limited by the scope of this Court's remittitur. *Budget Financial, id.* No jurisdiction exists over any appeal of

the district court's refusal to reduce that award of attorney's fees for reasons other than "...the district court's improper tolling of the statute of limitations...."

In Response to Appellant's Routing Statement

A Cab's final judgment appeal was resolved by the Supreme Court, *en banc,* after oral argument, meaning the *en banc* Court is already familiar with this case. It is likely judicial efficiency, and the interests of justice, would be best served by having this post-remittitur appeal returned to the *en banc* Court.

In Response to Appellant's Statement of the Issues Presented

The only issues properly presented are those authorized by this Court's remittitur for further proceedings in the district court. They are the following:

1. Did the district court properly reduce the final judgment by the "outside of the two-year statute of limitations" amount?

2. Did the district court properly reconsider the reasonableness of its prior award of attorney's fees to the Taxi Drivers' counsel based upon this Court's finding damages "outside of the two-year statute of limitations" should not have been awarded?

3. Did the district court properly award the Taxi Drivers' attorney's fees for having the final judgment affirmed in the prior appeal and properly deny A Cab's post-remittitur motions for Rule 11 sanctions?

In Response to Appellant's Statement of the Case

The only issue properly argued by A Cab is whether the Taxi Drivers' counsel are entitled to an award of attorney's fees on appeal. No basis exists to consider A Cab's argument that the Taxi Drivers' attorney fee awards should be reduced based on the *Dubric* proceedings or for the other reasons A Cab argues.

Over two years ago this Court, *en banc,* affirmed the final judgment in this case, with the proviso that one of three separately calculated damage portions, "for claims outside of the two-year statute of limitations," be set aside upon remittitur. *See, A Cab*, 501 P.3d at 970-973, 979 (finding damages were properly calculated and affirming the same for two periods; damages for a third earlier period to be set aside) and this Court's post-Opinion, pre-remittitur, Order of February 3, 2022, confirming its "....modification on appeal was, in effect, an affirmation of the original judgment." AA 3806-06. This Court also directed the district court to reconsider the amount of its prior attorney's fee award in light of such modification. 501 P.3d at 975.

A Cab is presenting an "attorney fees appeal" to this Court. AOB 1.[1] It makes no request for a reversal of the district court's orders modifying, per this Court's remittitur, the final judgment to $685,886 in unpaid minimum wages on

[1] AOB references are to the pages of Appellant's Opening Brief.

behalf of 661 taxi drivers. Yet A Cab seeks reversal of the district court's attorney fee award based on the fiction a "near unanimous settlement in a companion case" (*Dubric*) exists where "all but three plaintiffs released the claims for which the district court awarded attorney fees." AOB 1. No jurisdiction exists to consider that argument. Nor could such a settlement have occurred in *Dubric* because:

(1) *Dubric* lacked subject matter jurisdiction to order any settlement of the final judgment in this case. Nor did any district court judge have such jurisdiction on August 31, 2021, when the *Dubric* judgment relied upon by A Cab was issued. The final judgment in this case was on appeal to this Court on such date, completely divesting the district court of jurisdiction over the final judgment. The *Dubric* judgment is *void ab initio* in respect to the final judgment in this case.

(2) The *Dubric* judgment was issued three months before this Court affirmed the final judgment in this case. A Cab did not advise this Court, prior to that affirmance, of A Cab's claim *Dubric* had settled the claims incorporated into the final judgment. A Cab, by failing to raise that argument in its initial appeal of the final judgment, waived any right to do so in subsequent proceedings once this Court affirmed the final judgment.

(3) The final judgment in this case included an injunction that has remained in force continuously since August 21, 2018, prohibiting A Cab from

securing any release or satisfaction of such judgment except through a further order issued in this case. AA 7, 1616-1616. A Cab's unclean hands bars its claims based on the *Dubric* judgment it secured in violation of that injunction.

(4) The *Dubric* judgment and settlement do not mention the judgment in this case and purport to release the claims of a defined "settlement class" whose members are not identified by name. A Cab has not met its burden of establishing which, or if any, of the 661 Taxi Driver judgment holders in this case are within either of the two conflicting *Dubric* settlement class member definitions.

In Response to Appellant's Statement of Facts

A Cab's Statement of Facts is Almost Entirely Irrelevant

Only the actions taken by the district court after its receipt on February 4, 2022, of this Court's remittitur are arguably relevant to this appeal and the *Dubric* proceedings are entirely irrelevant.

A Cab's Statement of Facts Contains Untrue Statements

A Cab makes numerous untrue assertions of fact.

1. A Cab's untrue statements about the district court's proceedings in this case prior to this Court's remittitur.

The assertion "exemptions from execution" of the district court judgment were filed by "other companies in the A Cab Series LLC" is incorrect. AOB 4.

Those "exemption" documents, AA 8, 1991 - 9, 2016, were filed in "the proper person" and were nullities as entities cannot appear in the proper person. *See, Salman v. Newell*, 885 P.2d 607, 608-9 (Nev. Sup. Ct. 1994). They were also nonsensical, as the NRS 21.090 exemptions from judgment they reference involve judgment debtors or their dependents and such alleged entities were neither.

2. A Cab's untrue statements about this Court's Opinion affirming the final judgment against A Cab.

A Cab untruthfully claims this Court's *en banc* Opinion "reversed and remanded the award of damages" and was in its totality an "appellate judgment reversing and remanding." AOB 5, 7. This Court *affirmed* the final judgment and damages awards except "...as to damages for claims outside the two-year statute of limitations." 501 P.3d at 824 and Order of February 3, 2022, "...the modification on appeal was, in effect, an affirmation of the original judgment." AA 16, 3795.

A Cab falsely asserts this Court "...reversed the district court's denial of A Cab's motion to quash, with instructions to hold an evidentiary hearing on the A Cab entities' corporate separateness." AOB 5. That is untrue. 501 P.3d at 824. This Court reversed the denial of A Cab's motion to quash a writ of execution and directed the district court to reconsider that motion. *Id.* And when it did so, A Cab, and "the series entities, if they actually exist and join the action," were to

have an opportunity to present certain evidence. *Id.* A Cab's assertion the district court recognized its right to that hearing upon remittitur but "declined to order" it is untrue. AOB 9, fn 8. The district court never refused to reconsider the motion to quash and A Cab never requested such a hearing.

3. A Cab untruthfully asserts the *Dubric* class includes all but three of the 661 Taxi Driver class members in this case; A Cab has never established which, or if any, of those 661 Taxi Drivers met the *Dubric* settlement class definition.

A Cab insists the *Dubric* settlement class by its terms included all of the 661 Taxi Driver class members in this case, except three that *Dubric* excluded by name. AOB 5-6, 10. That is untrue. The *Dubric* settlement and judgment did not identify the *Dubric* settlement class members by name or by reference to the judgment in this case. As discussed, *infra,*[2] it used two contradictory definitions of the *Dubric* settlement class that would either (1) Exclude from the *Dubric* settlement class all Taxi Drivers in this case who ceased employment with A Cab prior to July 7, 2013, a presumptively large number since the affirmed judgment concerns minimum wages owed since October 8, 2010; or (2) Exclude from the *Dubric* settlement class every Taxi Driver in this case.

[2] Argument at II(F).

4. A Cab's untrue and incomprehensible statements about this Court's rulings in *Dubric*.

A Cab falsely, and incomprehensibly, asserts this Court has held the *Dubric* settlement impacts the affirmed final judgment in this case. AOB 8. It asserts this Court "rejected" arguments concerning "jurisdiction" in *Dubric,* implying this Court ruled on the subject matter jurisdiction of *Dubric* when it made no such ruling. This Court expressly stated it was not reaching that issue. *See, Murray v. Dubric,* No. 83492*,* 2022 WL 3335982 fn. 5 ("We decline to consider appellants' argument that the district court lacked subject matter jurisdiction....")

A Cab also makes the following incomprehensible statement:

> "As to the first argument, this Court found that plaintiffs waive it won appeal." AOB 8.

A Cab may be asserting this Court found the Taxi Drivers had waived any objections to *Dubric's* subject matter jurisdiction. As discussed, *supra*,[3] no such waiver was possible since a lack of subject matter jurisdiction is never waived.

Summary of Argument

The final judgment rendered in 2018 in this almost 12 year old case was appealed by A Cab and affirmed by this Court in 2021 for $685,886 against A Cab

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[3] Argument at II(D)(5).

for unpaid minimum wages owed to 661 of its taxi cab drivers. Rather than respect this Court's *en banc* resolution of its final judgment appeal, A Cab improperly reargues issues resolved by this Court in A Cab's prior appeal.

The only two issues argued by A Cab and properly considered in this appeal are (1) Whether Nevada law authorizes an award of attorney's fees on appeal to prevailing plaintiffs under the Nevada Constitution's Minimum Wage Amendment Article 15 Section 16 (the "MWA"); and (2) Whether the district court properly denied A Cab's post-remittitur motions for Rule 11 sanctions. The district court should be affirmed on both of those issues. Attorney's fees on appeal are properly awarded to plaintiffs under the MWA pursuant to this Court's analogous precedent. The district court had broad discretion to award or deny Rule 11 sanctions and properly exercised that discretion in denying A Cab's sanctions motions.

None of A Cab's other arguments are properly considered; all involve issues this Court resolved with finality in 2021 when it affirmed the final judgment. Those arguments misstate this Court's rulings, with A Cab insisting this Court reversed the final judgment when this Court affirmed it and that this Court issued "express instructions" for an evidentiary hearing on the final judgment when it did not. A Cab also argues something that is impossible as a matter of law — that the

district court in *Dubric* "settled" the final judgment affirmed by this Court and over which *Dubric* lacked subject matter jurisdiction.

In Response to Appellant's Statement on the Standard of Review

In its footnote addressing the standard of review A Cab erroneously claims the Taxi Drivers' status as a "prevailing party" entitled to any award of attorney's fees is an issue of law subject to *de novo* review, as in *145 E. Harmon II Trust v. Residences at MGM Grand,* 460 P.3d 455, 457-458 (Nev. Sup. Ct. 2020). In *145 E. Harmon II* a question of law was presented as to whether a voluntary dismissal could confer "prevailing party" status. *Id.* This appeal presents no such issue. This Court's affirmance of the final judgment established the Taxi Drivers as a prevailing party as a matter of law.

Whether the Taxi Drivers are entitled to an award of attorney's fees on an MWA appeal would present an issue of law subject to *de novo* review if A Cab did not waive that issue in the district court. AA 3797-3802.

Whether A Cab was entitled to an award of attorney's fees as a sanction, as sought in its denied Rule 11 motions, is reviewed for an abuse of discretion. *Simonian v. University and Community College System,* 126 P.3d 1057, 1063 (Nev. Sup. Ct. 2006).

ARGUMENT

I. No basis exists to vacate or modify the final judgment; nor does A Cab make any request that this Court do so; that judgment remains affirmed for $685,886 on behalf of 661 taxi drivers.

A Cab does not argue for reversal or modification of the district court's orders amending the final judgment as affirmed by this Court to $685,886 against A Cab on behalf 661 of its taxi cab drivers. A Cab's opening brief states it is only appealing the district court's other post-remittitur orders awarding attorneys fees. AOB 1. By doing so it has waived any right to seek a reversal or modification of the district court's orders amending the final judgment. *See, Hung v. Berhad*, 513 P.3d 1285, 1287-88 (Nev. Ct. App. 2022) (appellant's failure to dispute district court's rulings results in their "unchallenged" affirmance; appellate courts only address the questions presented by the parties, citing *Senjab v. Alhulaibi*, 497 P.3d 618, 619 (Nev. Sup. Ct. 2021) and other cases). *See, also*, *Khoury v. Seastrand*, 377 P.3d 81, 88, fn 2 (Nev. Sup. Ct. 2016) (issue raised for first time in reply brief is deemed waived and not considered).

A modification of the attorney fee award cannot impact the affirmed final judgment. While the Court should affirm the attorney fee award, if it grants any aspect of A Cab's attorney fee appeal it is urged to expressly state its decision decision does not impact the final judgment, as amended by the district court.

II. No basis exists to reverse or modify the district court's award of pre-judgment attorney's fees to the Taxi Drivers.

A Cab argues the Taxi Drivers did not prevail in this case and as a result should receive no attorney fee award. Alternatively, they argue the fees awarded were excessive because they only secured relief of $12,000 for three taxi drivers and not $685,886 on behalf of 661 taxi drivers. Such arguments ignore what this Court has already decided by affirming the final judgment and rely upon the irrelevant *Dubric* proceedings.

A. A Cab speciously argues that the attorney fee award must be reduced because this Court vacated the final judgment.

A Cab speciously insists this Court did not affirm, as modified, the final judgment but vacated it in its entirety, denying the Taxi Drivers their prevailing plaintiff status. In doing so it cites a single case, *Wakefield v. Gov't Emps. Ins. Co.*, 260 La. 286, 255 So. 2d 771 (1972), that it claims found a judgment was not final because an appellate court's judgment had the "effect of a partial remand." AOB 18. *Wakefield* is a one-sentence Louisiana Supreme Court denial of a writ seeking review of a Louisiana Court of Appeals judgment. It was referring to the Court of Appeal's judgment and denying review because the Court of Appeals could still review the trial court's final judgment further after its remand. It was not finding the final judgment of the trial court had been vacated and the Court of

Appeals "Affirmed in Part" the same. *See,* 253 So. 667, 672 (La. Ct. App. 1971).

A Cab also supports its assertion this Court entirely vacated the final judgment with an improper cite and quote from 5 McDonald & Carlson Tex. Civ. Prac. § 30:50 (2d. ed.). That treaties does not conclude, as A Cab claims, that a partial affirmance on appeal results in a vacating of the trial court's final judgment. The issue it analyzes is whether a partial affirmance constitutes a "final appeal" decision triggering a surety's liability on a supersedeas bond.

The final judgment in this case has not been vacated. This Court affirmed it as modified. 501 P.3d at 824 and Order of February 3, 2022, "...the modification on appeal was, in effect, an affirmation of the original judgment." AA 16, 3795. The final judgment is for $685,886 on behalf of 661 taxi drivers, to the extent its amount is germane to A Cab's appeal of the attorney fee award.

B. No jurisdiction exists to consider A Cab's claim the *Dubric* settlement created a need to vastly reduce the final judgment and the attorney fee award based on it.

No jurisdiction exists for A Cab to again appeal the affirmed final judgment; it can only challenge the findings made by the district court that were within the remititur jurisdiction returned to it, *i.e.,* whether it amended the final judgment and reconsidered the separate attorney fee award as directed by this Court. *See, Budget Financial,* 511 P.2d at 1047-48; *Tomasso Bros. Inc. v. October Twenty-*

Four, Inc., 646 A.2d 133, 136 fn.3 (Conn. 1994) (refusing to consider claim because it "...exceeds the scope of our remand to the trial court and is not properly part of the current appeal."); *Hampton v. Superior Court*, 242 P.2d 1, 3 (Cal. 1952) ("The order of the appellate court, as stated in the remittitur is decisive of the character of the judgment to which the appellant is entitled" and any different judgment entered by the trial court would be void.); *Rogers v. Jack's Supper Club,* 953 N.W.2d 9, 14 (Neb. 2021) ("After receiving a mandate, a trial court is without power to affect rights and duties outside the scope of the remand from an appellate court."); *State ex rel. King v. UU Bar Ranch Ltd. Partnership*, 205 P.3d 816, 821 (N.M. 2009) ("The Court of Appeals I opinion and mandate set forth the full extent of the jurisdiction of the district court on remand."); *Morrison v. Caspersen*, 339 S.W.2d 790*,* 792 (Mo. 1960) (after remand trial court was "without power to modify, alter, amend or in any manner depart from our judgment" and "its proceedings contrary to the mandate were null and void"); *Potter v. Gilkey*, 570 P.2d 449, 454 (Wyo. 1977) (trial court did not have authority to calculate damages on remand in a fashion different than directed by Supreme Court); and cases too numerous to cite.

This Court affirmed the final judgment and confirmed the Taxi Drivers are prevailing plaintiffs. It directed a modification on remand of the final judgment

to exclude the "outside the two-year statute of limitations damages" amount and nothing else. A Cab had no right to argue after remand, or in this appeal, that there should have been a further reduction in the final judgment based upon *Dubric* or anything else. Having no right to such a further modification of the final judgment, A Cab cannot now argue the attorney fee award must be based upon such a barred modification of the final judgment.

C. A Cab's claim *Dubric* settled the final judgment is barred by *res judicata*, waiver, forfeiture, and law of the case.

The *Dubric* judgment was entered after the district court's final judgment in this case but prior to this Court's affirmance of the final judgment in this case. The principals of *res judicata* or waiver or forfeiture bar A Cab from raising the *Dubric* judgment in this appeal since A Cab could have raised it in its prior appeal. That bar is often referred to as the law of the case doctrine but that may be a misnomer. *See*, *Howe v. City of Akron*, 801 F.3d 718, 741-42 (6th Cir. 2015) (bar on considering issue in subsequent appeal that could have been raised in prior appeal is sometimes called law of the case; bar is from *res judicata*, waiver or forfeiture arising from the failure to present the issue in the prior appeal).

1. The *Dubric* judgment was issued months before this Court's affirmance of the final judgment.

The *Dubric* settlement's significance (if any) as a matter of law arose on

August 31, 2021, when the *Dubric* final judgment was entered ordering that settlement on behalf of its proposed class pursuant to NRCP Rule 23. That was four months before this Court's affirmance of the final judgment in this case on December 30, 2021. A Cab ignores this chronology and discusses this Court's subsequent affirmance of *Dubric*. But whatever force *Dubric* had arose on August 31, 2021, from its final judgment and not from later proceedings in this Court.

2. A Cab could have raised the *Dubric* judgment in its prior appeal but did not.

NRAP Rule 31(e) states "[w]hen pertinent and significant authorities come to a party's attention after the party's brief has been filed, but before a decision" a party may file a notice of supplemental authorities. A Cab needed no leave from this Court under NRAP Rule 31(e) to advise it of the *Dubric* judgment of August 31, 2021, and its belief *Dubric* supported reversal of the final judgment.

If A Cab thought NRAP Rule 31(e) was too narrow for it to properly explain to the Court the significance of the *Dubric* judgment,[4] it could have filed a motion seeking leave to submit a more expansive brief doing so. Or it could have

[4] In reply A Cab may argue NRAP Rule 31(e) barred it from introducing the *Dubric* decision because it constituted a "new" issue not raised in its briefs. That is incorrect. A Cab repeatedly asserted in its prior appeal that the district court both lacked jurisdiction to enter a final judgment and did so improperly to subvert the settlement awaiting a final judgment in *Dubric*. *See*, Supreme Court No. 77050, Appellants Opening Brief, p. 7, 21, 51.

moved pursuant to NRAP Rule 3(b), on or after September 8, 2021, when the *Dubric* notice of appeal was filed[5], to have the Court consolidate that appeal with the not yet decided final judgment appeal in this case. *See*, *O'Guinn v. State*, 59 P.3d 488, 489 (Nev. Sup. Ct. 2002) (consolidating appeals of two different cases involving same issue). It did none of those things and had this Court decide A Cab's final judgment appeal without being advised of the *Dubric* judgment.

3. The Court's affirmance of the final judgment is law of the case and cannot be reexamined.

An appellate court's decision becomes law of the case that "....must be followed throughout its subsequent progress, both in the lower court and upon subsequent appeal." *Hsu v. County of Clark*, 173 P.3d 724, 728 (Nev. Sup. Ct. 2007) (en banc). That doctrine " ...'is designed to ensure judicial consistency and to prevent the reconsideration, during the course of a single continuous lawsuit, of those decisions which are intended to put a particular matter to rest.' " *Id.* This Court's affirmance put to rest the amount and scope of the final judgment and the law of the case doctrine controls all subsequent proceedings involving the same.

While not a jurisdictional rule, the law of the case doctrine "...serves important policy considerations, including judicial consistency, finality, and

[5] Docket of Supreme Court No. 83492 confirms the same.

protection of the court's integrity." *Id.* This Court recognizes only three exceptions to its application: (1) when "subsequent proceedings produce new or different evidence"; (2) when there is "an intervening change in controlling law"; or (3) when "the prior decision was clearly erroneous and would result in manifest injustice if enforced." *Id.,* 173 P.3d at 729. None of those exceptions apply. This Court's affirmance of the final judgment was not "clearly erroneous" and did not create any "manifest injustice." Nor was the *Dubric* judgment a subsequent proceeding or change in controlling law. It was issued three months before this Court's *en banc* decision affirming the final judgment. A Cab's claim *Dubric* mandates a different understanding of the final judgment's size for purposes of its attorney fee appeal is barred by the law of the case.

A Cab may argue in reply that the district court, prior to issuing the final judgment in this case in 2018, could not have considered the *Dubric* judgment issued in 2021. It would presumably further argue the law of the case doctrine only concerns this Court's decisions on issues that could have been, or were, first decided by the trial court. But that is incorrect. As this Court observed in *Reconstruct Trust v. Zhang,* 317 P.3d 814, 819 (Nev. Sup. Ct. 2014) (en banc), it is the "....rule that a question that could have been but was not raised in one appeal cannot be resurrected on a later appeal to the same court in the same case," *citing*

and quoting Wright, Miller & Cooper, *Federal Practice and Procedure* § 4478.6 and *United States v. Parker,* 101 F.3d 527, 528 (7th Cir.1996) ("A party cannot use the accident of a remand to raise in a second appeal an issue that he could just as well have raised in the first appeal....").

Reconstruct Trust is controlling here. A Cab, having failed to advise this Court about the *Dubric* judgment before this Court affirmed the final judgment in this case, cannot argue in this subsequent appeal the final judgment in this case is impacted by *Dubric*. This Court's affirmance of the final judgment is now law of the case and not subject to re-examination.

D. A Cab's arguments regarding *Dubric* are specious as *Dubric* lacked subject matter jurisdiction over the final judgment in this case.

Dubric lacked subject matter jurisdiction over the final judgment in this case and its judgment is void in respect to that final judgment. *See, Zalyual v. State,* 520 P.3d 345, 347 (Nev. Sup. Ct. 2022) *citing Landreth v. Malik*, 251 P.3d 163, 166 (Nev. Sup. Ct. 2011) (Judgment 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)).

1. No procedure granted *Dubric* subject matter jurisdiction over the final judgment in this case.

A district court's 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).

Neither A Cab, nor the *Dubric* judgment, AA 3831-3840, explain, by reference to the NRCP or anything else, the basis for *Dubric's* subject matter jurisdiction over the final judgment in this case. The *Dubric* judgment does not mention the final judgment in this case, or assert it had subject matter jurisdiction over that final judgment, or state anything about releasing that final judgment. *Id.*

2. The district judge in *Dubric* could not release a judgment entered by another district court judge in a different case; an injunction in this case also prohibited A Cab from seeking such a release except by a further order in this case.

The *Dubric* judgment and settlement agreement do not mention the judgment in this case or a release of any judgment. A Cab argues the "settled claims" release language in the *Dubric* settlement necessarily released (vacated)

the judgment in this case for all but three of 661 class members. AOB 15. But A Cab cannot achieve through a settlement agreement's language relief that the *Dubric* district judge lacked the subject matter jurisdiction to grant.

A Nevada district court judge cannot vacate or modify an order or judgment issued by different district judge in another case or even in the same case when the prior order constituted a final appealable judgment. *Rohlfing v. Second Jud. Dist. Ct.,* 803 P.2d 659 (Nev. Sup. Ct. 1990) is completely dispositive. In *Rohlfing* Judge Guinan declared a mistrial. 803 P.2d at 660. The criminal defendant's later motion to dismiss was properly assigned to, and granted by, Judge McGee of the same district court. 803 P.2d at 660-61. The state did not appeal. *Id.* Judge Guinan then issued an order declaring Judge McGee's order void and purporting to deny the motion to dismiss. *Id.* In doing so Judge Guinan exceeded the jurisdiction granted to district judges under Nevada's Constitution and by statute; the state's remedy was to appeal Judge McGee's order. 803 P.2d at 662-63. *See, also, Lemkuil v. Lemkuil*, 551 P.2d 427, 429 (Nev. Sup. Ct. 1976) (district court judge correctly found they lacked subject matter jurisdiction over suit for arrearages under separation agreement; it was within the exclusive jurisdiction of earlier filed divorce lawsuit; "[i]n Nevada, once a court of competent jurisdiction assumes jurisdiction over a particular subject matter, no other court of coordinate

jurisdiction may interfere.")

Dubric, and all other district court judges except the one assigned this case, lacked subject matter jurisdiction to enter any order impairing A Cab's liability under the judgment entered in his case. In addition, the final judgment in this case included an injunction prohibiting A Cab from securing any satisfaction (release) of the amounts awarded to the class members in this case except pursuant to an "Order of this Court in this case."[6] That injunction was properly within the power of the district judge in this case[7] and, as in *Rohlfing* and *Lemkuil,* could be appealed to this Court but not vacated by a different district court judge in a different case. And unless reversed by this Court, that injunction limited the subject matter jurisdiction of the *Dubric* district judge. A Cab did not challenge

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[6] " Defendants, their agents, and their attorneys, are prohibited from communicating with the class member judgment creditors about their judgments granted by this Order or securing any release or satisfaction of those judgments without first securing a further Order of this Court in this case." AA 7, 1615-1616.

[7] It was consistent with NRCP Rule 23(b)(2) ((now (c)(2)), NRCP Rule 23(e) and NRCP Rule 23(f), authorizing the district court to grant class wide equitable relief and issue orders controlling the conduct of a class action case and the settlement of class action claims. It was also specifically contemplated by NRS 33.010(3), stating the district court has the power to issue an injunction when "....the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual."

that injunction in its appeal of the final judgment and it remains in place.

3. The *Dubric* judgment was issued while A Cab's final judgment appeal was pending and while *Dubric* and the district court lacked subject matter jurisdiction over that final judgment

A Cab's appeal of the final judgment in this case divested the district court, whether in *Dubric* or in this case, of subject matter jurisdiction over that judgment until remittitur issued. *See*, *Mack-Manley v. Manley,* 138 P.3d 525, 529-30 (Nev. Sup. Ct. 2006). A Cab could have filed an NRCP Rule 62.1 motion asking the district court to re-acquire subject matter jurisdiction to modify the final judgment via a *Huneycutt v. Huneycutt,* 575 P.2d 585 (Nev. Sup. Ct. 1978), remand. It did not because *Dubric* could not hear that motion and the district court in this case would have denied it. The *Dubric* final judgment was entered on August 31, 2021, prior to this Court's resolution and remittitur of A Cab's appeal of the final judgment on February 3, 2022. AA 3831-3840, AA 4594. The *Dubric* final judgment was *void ab initio* in respect to the final judgment in this case since on its date of issuance *Dubric,* and the district court, lacked subject matter jurisdiction over the final judgment in this case. *See, Dekker/Perich/Sabatini Ltd. v. Eighth Jud. Dist. Ct.*, 495 P.3d 519, 524 (Nev. Sup. Ct. 2021) ("An order is void ab initio if entered by a court in the absence of jurisdiction of the subject matter..."

citing and quoting *Singh v. Mooney*, 541 S.E.2d 549, 551 (Va. Sup. Ct. 2001).

4. A Cab has no enforceable interest in the *Dubric* settlement that can release any aspect of the final judgment in this case.

A Cab speciously argues its right to enforce its settlement agreement with Jasminka Dubric includes a right to almost entirely vacate the final judgment — even though she neither a holder of that final judgment nor empowered to settle it. A Cab's right to enforce that settlement only extends to (1) The claims of Jasminka Dubric, the only plaintiff in *Dubric*; and (2) The claims of such other persons the district court in *Dubric* had subject matter jurisdiction over and granted Jasminka Dubric, as a class action representative, the power to settle. The district court in *Dubric* lacked subject matter jurisdiction to grant Jasminka Dubric the power to settle the claims incorporated into the final judgment in this case. As a result, none of those claims were, or could have been, settled by her.

A Cab's argument its *Dubric* settlement agreement rights displace the final judgment in this case misrepresents *Step Plan Services, Inc. v. Koresko*, 12 A.3d 401, 417 (Pa. Super. Ct. 2010). *Step Plan* concerned whether an insurer (Travelers) could enforce a settlement agreement it made with a tort plaintiff on behalf of its insured. 12 A.3d 407-08. As *Step Plan* observed, jurisdiction existed over the parties to that agreement, Travelers and the tort plaintiff. 12 A.3d

420-21. Travelers, as the insurer, had the power to enter into that agreement even if its insured objected. *Id.* That subject matter jurisdiction over the underlying tort dispute might be lacking did not bar the court from enforcing a settlement agreement made by parties with the power to settle that dispute and over whom the court had jurisdiction. *Id.*

Neither *Step Plan,* nor any other authority, would grant A Cab the right to enforce a settlement agreement with Jasminka Dubric to release claims Jasminka Dubric had no power to settle on her own and that the district court in *Dubric* never gave her (nor could give her) the power to settle. A Cab can only enforce the *Dubric* settlement agreement for claims Jasminka Dubric was able to release under that agreement, which as a matter of law did not include, and could not have included, the final judgment in this case.

5. This Court in *Dubric* declined to address whether the *Dubric* district court had subject matter jurisdiction and subject matter jurisdiction cannot be established by waiver.

Contrary to A Cab's insinuations, this Court, when it affirmed the *Dubric* judgment, did not address whether the *Dubric* district court had subject matter jurisdiction over the final judgment in this case. It expressly stated it was declining to consider that issue. 2022 WL 3335982, p. 2., fn 5 ("We decline to

consider appellants' argument that the district court lacked subject matter jurisdiction..."). Since this Court did not rule on the issue, and the Taxi Drivers could not have waived it, *Dubric's* lack of subject matter jurisdiction to settle the judgment in this case remains dispositive of A Cab's arguments. *Holdaway-Foster v. Brunell*, 330 P.3d 471, 483 (Nev. Sup. Ct. 2014) (en banc) ("subject matter jurisdiction is not waivable" and "can be raised at any time").

E. A Cab, having obtained the *Dubric* judgment in violation of the injunction in this case, is barred by its unclean hands from using the *Dubric* judgment to seek relief in this case.

A Cab could not violate the district court's injunction in this case and obtain a settlement or release of the class members' judgment awards in *Dubric* — it had to secure that settlement in this case or first have that injunction set aside on appeal. A Cab is barred, by its resulting unclean hand and as a matter of law, from seeking relief against the final judgment in this case based upon the *Dubric* judgment it obtained in violation of that injunction. *See*, *Truck Ins. Exchange v. Palmer J. Swanson, Inc.*, 189 P.3d 656, 637-38 (Nev. Sup. Ct. 2008) ("The [unclean hands] doctrine bars relief to a party who has engaged in improper conduct in the matter in which that party is seeking relief"). Violating a valid injunction is "improper conduct" as a matter of law and A Cab cannot now seek relief based on the fruits (the *Dubric* judgment) of such improper conduct.

F. Even if the *Dubric* settlement could impact the final judgment, A Cab failed to establish that settlement released any class member's judgment in this case.

A Cab bears the burden of proving the existence of its claimed satisfaction of the final judgment in this case. *See, Pierce Lathing Co. v. ISEC, Inc.,* 956 P.2d 93, 96-97 (Nev. Sup. Ct. 1998) *citing and quoting Walden v. Backus*, 408 P.2d 712, 713 (Nev. Sup. Ct. 1965) (party asserting claim is discharged by satisfaction bears burden of establishing such satisfaction occurred).

Assuming, *arguendo*, *Dubric* could release the 661 Taxi Drivers' judgments in this case, A Cab had to prove those persons had their judgments released. The *Dubric* judgment and settlement do not mention the judgment in this case or identify by name any of the Taxi Driver judgment holders in this case. A Cab, relying on *Dubric's* "Class" and "Settlement Class" definitions, claims that only three Taxi Driver judgment holders are not within the *Dubric* class. AOB 5, 15. But that is untrue

The "Class" and "Settlement Class" are defined in the *Dubric* judgment as (1) all persons employed by A Cab as drivers "during the applicable statutory period prior to the filing of this Complaint continuing until date of judgment"; and (2) "More specifically, the Settlement Class is defined as all current and former hourly paid Drivers employed by A Cab...." AA 22, 5285.

If the first *Dubric* class member definition is used, only employees during the two-year[8] MWA "statutory period" prior to the filing of the *Dubric* complaint are class members. The *Dubric* complaint was filed on July 7, 2015, meaning the *Dubric* class excludes persons only employed prior to July 7, 2013. AA 22, 5262. This Court affirmed a final judgment in this case for the time period within two years of the filing of its complaint on October 8, 2012, and the class certified in this case included all A Cab taxi drivers employed from October 8, 2010, through December 31, 2015. AA 1, 23; 22, 5351-52. Taxi drivers not employed by A Cab after July 6, 2013, but who were awarded judgments in this case for minimum wages owed after October 8, 2010, are not *Dubric* class members.

If the second "more specifically" *Dubric* class member definition is used *none* of the 661 Taxi Driver judgment holders in this case are *Dubric* class members. That is because none of the Taxi Driver class members were "hourly paid Drivers" — they were all paid on a commission basis. RA 29, 58, 68-70, 72, 83, 89, 121.[9]

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[8] *See, Perry v. Terrible Herbst*, 383 P.3d 257 (Nev. Sup. Ct. 2016).

[9] These pages in Respondents' Appendix contain declarations of the Taxi Drivers, their paycheck stubs, the United States Department of Labor's investigative report, and A Cab's employee handbook, all confirming the Taxi Drivers were paid on a commission, not hourly basis, with those commissions sometimes supplemented to meet minimum wage requirements. Although not

If A Cab had a right to assert the *Dubric* settlement as a release of any of the 661 Taxi Driver judgments in this case it still had to prove that release applied to each Taxi Driver. Having failed to establish that release could apply to *any* of the Taxi Drivers, it cannot assert the attorney's fees award should be reduced because those judgments were released.

G. A Cab speciously argues the remittitur directed an evidentiary hearing on the judgment.

A Cab argues that there was no "final judgment" upon which to award prevailing party attorney's fees because "plaintiffs have not identified an appropriate defendant" and the remittitur required "the district court to hold an evidentiary hearing as to the propriety of appellant's organization." AOB 22-23. A Cab is grievously misrepresenting this Court's remittitur, the district court's judgment, and the Taxi Drivers' requests to the district court on remand.

This Court affirmed the final judgment, as modified, and authorized no other action by the district court on the judgment except an "outside of the two-year statute of limitations" damages reduction. 501 P.3d at 978. It also held the judgment in this case was properly entered against "A Cab LLC" that had changed

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explicitly stated in the Court's Opinion affirming the final judgment, the Court's extensive discussion of the hourly work records issues confirms the Taxi Drivers were not paid on an hourly basis. 501 P.3d at 972-973.

its name to "A Cab Series LLC." *Id.* It did not grant the judgment debtor and other allegedly existing related entities a right to an evidentiary hearing on the judgment, but on a motion to quash its enforcement against certain Wells Fargo accounts. *Id.* The Taxi Drivers did not seek, and the district court did not enter, any judgment against any entity besides the one this Court upheld as the proper judgment debtor in this case.

H. No basis exists to further reduce the attorney's fee award based on this Court's judgment modification.

In a footnote, A Cab argues the original attorney's fee award should have been reduced by 34% because this Court's affirmance reduced the final judgment by 34% by disallowing the "outside the two-year statute of limitations" damages. AOB 36, fn. 16. It cites no authority supporting that argument.

This argument was not raised by A Cab in the district court and should be deemed waived. AA 16, 3787-3791. *See, Old Aztec Mine, Inc., v. Brown,* 623 P.2d 981, 983 (Nev. Sup. Ct. 1981). It is also without merit. The MWA and similar laws award attorney's fees to promote their enforcement and encourage the vindication of a plaintiff's rights. As *University of Nevada v. Tarkanian*, 879 P.2d 1180, 1188-90, fn 4 (Nev. Sup. Ct. 1994), explains, they do so by awarding "lodestar" fees based on the reasonable hours expended by the plaintiffs' counsel

and a reasonable hourly rate. In appropriate cases, the district court has discretion to reduce a lodestar award based upon a plaintiffs' "limited success." *Id.*

There is no evidence, and A Cab presents no cogent argument, that the district court should have reduced the Taxi Drivers' attorney fee award from its lodestar calculation. The district court excluded from that lodestar calculation all the attorney hours on the reversed "outside the two-year statute of limitations" damages issue. No basis exists to find it abused its discretion by not imposing a further "limited success" fee reduction. A Cab cites to no authority supporting such a conclusion and a judgment awarding $685,886 in unpaid minimum wages to 661 Taxi Drivers is not a "limited success."

I. No basis exists to further reduce the attorney's fee award based on the Department of Labor settlement.

In a footnote with an apparent typographical error[10], A Cab argues the final judgment affirmed by this Court should have been further reduced, for purposes of considering the reasonableness of the fee award, by excluding "all class members who did not opt-out of A Cab's settlement with the Department of Labor..." AOB, p. 36, fn 17. It cites no authority supporting that argument and offers no

[10] The sentence at issue seems to be missing the words in brackets: "If this Court disagrees that *Dubric* settling plaintiffs should be excluded from the *Murray* class, there are additional grounds to [exclude a] large numbers of claims."

reasoning (besides its insistence) supporting such a result.

A Cab's argument is unsupported by anything in the record and ignores that the final judgment fully accounted for that Department of Labor settlement. As the district court observed, the final judgment was reduced by the amounts A Cab was able to show it has previously paid under that settlement. AA 22, 5343 (Order after remittitur). The set-off afforded to A Cab from the Department of Labor settlement was also found to be correct by the district court in the final judgment entered against A Cab on August 21, 2018. AA 13, 3093-3096. That finding was not appealed by A Cab and it was affirmed by this Court when it affirmed the final judgment. The Department of Labor settlement issue, having been conclusively resolved, is not subject to further examination.

III. No basis exists to reverse or modify the district court's award of attorney fees on appeal to the Taxi Drivers.

A. A Cab waived its argument the MWA does not authorize an award of attorney's fees on appeal by failing to raise it in the district court.

A Cab now argues the MWA does not authorize an award of appellate attorney's fees to a prevailing employee plaintiff. It did not present that argument to the district court when it opposed the Taxi Drivers' motion for an award of attorney's fees on appeal. AA 16, 3797-3802. It should be deemed waived and

not considered by this Court. *Old Aztec Mine*, 623 P.2d at 983.

B. In an indistinguishable case this Court rejected all of A Cab's arguments that the MWA's language cannot support an award of attorney's fees on appeal.

In *Las Vegas Review Journal v. Clark County Office of the Coroner/Medical Examiner,* 521 P.3d 1169, 1175-76 (Nev. Sup. 2022) (en banc), this Court considered whether NRS 239.011(2) authorized an award of attorney's fees on an appeal. Despite that statute's failure to expressly mention such awards this Court found it authorized awards of attorney fees on appeals. *Id.*

Las Vegas Review Journal rejected the argument NRS 239.011(2)'s award of attorney's fees in "a proceeding" did not include fees on appeal, relying on the definition in Black's Law Dictionary of a "proceeding" as including appeals. 521 P.3d at 1175. While the MWA authorizes attorney's fee awards in "any action" that is a linguistic difference without meaning, as Black's Law Dictionary defines "action" as "A civil or criminal judicial proceeding."[11] *Las Vegas Review Journal* also rejected the argument, based on *Bobby Berosini, Ltd., v. PETA,* 971 P.2d 383, 388 (Nev. Sup. Ct. 1998), and made by A Cab, "...that a fee statute's silence as to appellate fees signifies their exclusion." 521 P.3d at 1176.

Las Vegas Review Journal is indistinguishable from this case. As in *Las*

[11] Black's Law Dictionary (11th ed. 2019).

Vegas Review Journal, the district court in this case had the power under the language of the MWA to award attorney's fees for plaintiffs' counsel's appellate work. Nor should that conclusion differ if this Court were to follow the analogous federal law, the Fair Labor Standards Act (the "FLSA"). A Cab's suggestion courts have interpreted the FLSA as not authorizing attorney fee awards on appeal is baseless. At most some of the cases it cites, such as *Gagnon v. United Technisource, Inc.*, 607 F.3d 1036, 1045 (5th Cir. 2010), suggest those awards are discretionary and not mandatory.

C. The district court had post-remittitur jurisdiction to award attorney's fees on appeal as per this Court's Order.

A Cab's argument that only this Court, and not the district court, had jurisdiction to make any possible award of attorney's fees on appeal misrepresents this Court's Order of February 3, 2022. AA, 16, 3805-06. The Taxi Drivers filed a motion in this Court requesting those fees because it was unknown whether this Court, or the district court, had jurisdiction to award attorney's fees on appeal under the MWA. *See,* Supreme Court No. 77050, Motion Filed 2/6/22, p. 3.[12]

[12] Stating:

There is no uniform approach to the handling of appellate attorney's fee awards under fee shifting statutes such as the MWA. *Compare*, *Cummings v. Connell*, 402 F.3d 936, 947-48 (9th Cir. 2005) and Ninth Circuit Rule 39-1.8 (district court has no authority to award fees on appeal absent a transfer order from the Ninth Circuit Court of Appeals authorizing it to do so) and *Souza v.*

This Court responded by authorizing consideration of that award, in the first instance, by the district court, and stating its denial of the motion otherwise was "without prejudice" to such a motion in the district court. AA, 16, 3805-06.

IV. The district court did not abuse its discretion in denying A Cab's motions for Rule 11 Sanctions.

A. A Cab has not presented a sufficient record to review the district court's denial of A Cab's Rule 11 motions and that denial should accordingly be affirmed.

The only materials A Cab includes in its appendix regarding the district court's denial of its three Rule 11 motions is its order. AA 22, 5389-90. None of A Cab's submissions to the district court in support of that relief, or the Taxi Driver's submissions opposing that relief, are in its appendix. The district court's order should accordingly be affirmed based on A Cab's failure to provide the necessary record for review to this Court. *See, Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 172 P.3d 131, 135 (Nev. Sup. Ct. 2007) ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision.").

Southworth, 564 F.2d 608, 613-614 (1st Cir. 1977) (district court has authority to award attorney's fees on appeal). *See, also, Yaron v. Township of Northampton*, 963 F.2d 33, 36 (3rd Cir. 1992) (collected cases on conflicting holdings of the Courts of Appeal on the issue).

B. The district court acted within its discretion in denying A Cab's Rule 11 motions and finding the improper purpose or frivolous conduct requirements of Rule 11 were not met.

The district court's decision denying A Cab's Rule 11 motions for attorney's fees is reviewed for an abuse of discretion. *See*, *Simonian,* 126 P.3d at 1063. The district court concluded the Taxi Drivers' motions filed while the district court action was stayed, and triggering A Cab's Rule 11 motions, were not filed for an improper purpose or frivolously. AA 22, 5390. It also held any stay violation caused no harm since the district court would have to (and did) address those motions once the stay lifted.[13] *Id.* The district court acted well within its discretion in making those findings and denying A Cab's Rule 11 motions.

A Cab insists the district court's denial of its Rule 11 motions involved an "erroneous view of the law" and "a clearly erroneous assessment of the evidence." AOB 39. But it provides no support for those assertions (and omits from the record the evidence considered by the district court). The lone case it cites, *Washoe Cnty. Dist. Atty v. Second Jud. Dist. Ct.,* 5 P.3d 562, 566 (Nev. Sup. Ct. 2000), while recognizing a district court abuses its discretion when it bases a Rule 11 sanction on an erroneous view of the law, does not inform (nor does A Cab) on

[13] The district court also granted the Taxi Drivers the relief they sought on one of those motions. AA 22, 5399-5400.

how the district court did so in this case.

A Cab's references to the record are improperly made, since it failed to include in the record what was actually presented, and argued, on its Rule 11 motions to the district court. A Cab also materially misrepresents that record. For example, it argues there was "no justification" for the Taxi Drivers' filing of two motions for reconsideration of the same issue. AOB 40. That is untrue. In the record cited by A Cab the Taxi Drivers advised the district court the second such motion was filed because *two orders* were entered by the district court on the issue and it was unknown which order was effective. AA 17, 4204.

CONCLUSION

The Orders of the district court should be affirmed in full.

Dated: March 18, 2024

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Certificate of Compliance With N.R.A.P Rule 28.2

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using 14 point Times New Roman typeface in wordperfect.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it is proportionately spaced, has a typeface of 14 points or more and contains 9,145 words.

Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the

requirements of the Nevada Rules of Appellate Procedure.

Dated this 18th day of March, 2024.

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CERTIFICATE OF SERVICE

I certify that on March 18, 2024, I served a copy of the foregoing RESPONDENTS' ANSWERING BRIEF upon all counsel of record by the Court's ECF system which served all parties electronically.

Affirmed this 18th Day of March, 2024

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