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12 *Attorneys for Western Range Association*

13 IN THE SUPREME COURT OF THE STATE OF NEVADA

14 ABEL CANTARO CASTILLO,
15 Appellant,

No. 85926

16 vs.

17 WESTERN RANGE ASSOCIATION,
18 Respondent.

19 _____ /
20 **WESTERN RANGE ASSOCIATION'S STATUS REPORT**
21 **IN RESPONSE TO FEBRUARY 12, 2024 ORDER**

22 Following the January 4, 2024 Supreme Court Oral Argument, Defendant/
23 Respondent Western Range Association became aware of Plaintiff/Appellant Abel
24 Cántaro Castillo's death dating back to July 11, 2023.

25 Defendant/Respondent filed a Suggestion of Death Upon the Record pertaining
26 to sole Plaintiff/Appellant Abel Cántaro Castillo on February 5, 2024. Therein,
27 Western Range informed this Court and the Federal District Court that Plaintiff/
28

1 Appellant had died on July 11, 2023, 6 months before the Supreme Court Oral
2 Argument occurred. On February 12, 2024, this Court issued an Order holding the
3 legal certified question before the Court in Abeyance until the Federal District Court
4 determines the underlying action. The Court further Ordered the parties file a Status
5 Report within 30 days of the February 12, 2024 Order.

6 Several pleadings were filed by Plaintiff/Appellant's Counsel since
7 Plaintiff/Appellant's July 11, 2023 death.¹

8 The following pleadings have been filed in the Federal District Court [Case No.
9 3:16-CV-00237-RCJ-CLB] and in this Court since this Court's February 12, 2024
10 Order.

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23 ¹ Pertinent post death, pre-argument events were as follows:

24 07/12/23 Joint Stipulation for Extension of Time to File
25 Reply Brief

26 08/29/23 Appellant's Reply Brief


27 12/07/23 Order Scheduling Supreme Court Oral Argument

28 01/04/24 Nevada Supreme Court Oral Argument

1
2 03/01/2024 Plaintiff's Response to Suggestion of Death
3 Upon the Record (Attached hereto as Exhibit 1)²
4 03/04/2024 Defendant's Motion to Dissolve Stay (Attached
5 hereto as Exhibit 2)
6 03/11/2024 Plaintiff/Appellant's Status Report

7 DATED this 12 day of March, 2024.

8 WOODBURN and WEDGE

9 By: 
10 Ellen Jean Winograd, Esq.
11 Jose Tafoya, Esq.

12 &

13 SIMONS HALL JOHNSTON, P.C.
14 Anthony Hall, Esq.

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21 ² On March 1, 2024, Appellant's Counsel filed "Plaintiff's Response to Suggestion of Death Upon
22 the Record" in the Federal District Court Action, *Abel Càntaro Castillo v. Western Range Association*, Case No. 3:16-cv-00237-RCJ-CLB.

23 Plaintiff's Counsel stated:

24 Counsel for Abel Càntaro Castillo have spoken with his family and confirmed
25 that he has passed away. Counsel also confirmed that his surviving wife and
26 son are aware of this pending litigation, but the undersigned do not represent
27 Mr. Càntaro Castillo's family. Fed. R. Civ. P. 25 should govern further
28 proceedings.

See, Plaintiff's Response to Suggestion of Death, attached hereto as Exhibit 1.

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Alexander Hood
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1535 High Street, Ste. 300
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DATED this 12th day of March, 2024.

Employee of Woodburn and Wedge

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EXHIBIT 1

EXHIBIT 1

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ABEL CANTARO CASTILLO on behalf of himself
and those similarly situated,

Plaintiff,

vs.

WESTERN RANGE ASSOCIATION
Defendant.

CASE NO. 3:16-cv-00237-RCJ-CLB

**RESPONSE TO SUGGESTION
OF DEATH**

RESPONSE TO SUGGESTION OF DEATH

On February 5, 2024, Western Range Association filed a Suggestion of Death Upon the Record. ECF 328. Counsel for Abel Cantaro Castillo have spoken with his family and confirmed that he has passed away. Counsel also confirmed that his surviving wife and son are aware of this

1 pending litigation, but the undersigned do not represent Mr. Cantaro Castillo's family. Fed. R. Civ.
2 P. 25 should govern further proceedings.

3
4 Dated: March 1, 2024

Respectfully Submitted,

COHEN MILSTEIN SELLERS & TOLL PLLC

/s/Christine E. Webber

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Denver, CO 80218

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2024, a true and correct copy of the foregoing was served via the United States District Court CM/ECF system on all parties or persons requiring notice.

By: /s/ Christine E. Webber
Christine E. Webber

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EXHIBIT 2

EXHIBIT 2

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

ABEL CÁNTARO CASTILLO,

Plaintiff,

vs.

WESTERN RANGE ASSOCIATION,

Defendant.

Case No. 3:16-cv-00237-RCJ-CLB

**MOTION TO DISSOLVE STAY IMPOSED
BY THIS COURT'S SEPTEMBER 26, 2022
ORDER CERTIFYING QUESTION TO THE
NEVADA SUPREME COURT**

Defendant, WESTERN RANGE ASSOCIATION ("Western Range"), by and through its counsel, ELLEN JEAN WINOGRAD, ESQ., and JOSE TAFOYA, ESQ., of WOODBURN AND WEDGE and ANTHONY HALL, ESQ. of SIMONS, HALL, JOHNSTON, P.C., hereby move this Court to Dissolve the Stay Imposed by this Court's September 26, 2022 Order Certifying Question to the Nevada Supreme Court.

This Motion is based upon the following Memorandum of Points and Authorities, all pleadings and papers on file, and such oral arguments as the Court may request or desire.

I CASE OVERVIEW

This is a wage-and-hour lawsuit originally and unsuccessfully filed as an FRCP 23 Class Action matter,¹ regarding H-2A Visa non-immigrant worker Abel Cántaro Castillo, Plaintiff herein alleged he was underpaid wages pursuant to Nevada's Minimum Wage Amendment ("MWA") (Article 15 § 16 of the Nevada Constitution). Plaintiff Castillo claims that he "worked" 24 hours every day, seven days a week, even when he was eating, sleeping, using his Facebook account, and otherwise not actually tending sheep. [ECF #270].

¹ FRCP 23 Class Certification was denied by this Court on September 26, 2022. [ECF #318].

Following lengthy written, expert and percipient witness discovery, this Court denied FRCP 23 Class Certification, making Abel Cántaro Castillo the sole plaintiff herein [ECF #318]. In the same Order that denied Class status, the Federal District Court certified a legal question to the Nevada Supreme Court, this Court observed that the matter is unclear in its interpretation as to Nevada law and an issue of both first impression and public policy [ECF #318].

II PROCEDURAL BACKGROUND

On May 3, 2016 Plaintiff Castillo filed suit against Western Range Association (Western Range), El Tejon Sheep Company (El Tejon) and Melchor Gragirena (Gragirena) stating causes of action for violations of the Fair Labor Standards Act (FLSA). On October 13, 2016, Plaintiff Castillo plus newly named Plaintiff Ramos filed a First Amended Complaint ("FAC") wherein additional Defendants Mountain Plains Agricultural Service (MPAS), Estill Ranches, LLC and John Estill were added and 17 new causes of action were also alleged. [ECF #45].² The FAC omitted the previously asserted FLSA cause of action. The Federal District Court dismissed the FAC as to all parties on April 13, 2017. On May 15, 2017, the three Plaintiffs then filed a Second Amended Complaint (SAC) against Defendants El Tejon Sheep Company, Melchor Gragirena, MPAS, Estill Ranches, LLC and Western Range Association, again with jurisdiction based upon under 28 USC § 1331 (d) referred to as the Class Action Fairness Act ("CAFA"). [ECF #111]. The SAC was dismissed by the Federal District Court on February 13, 2018 again on jurisdictional grounds. [ECF #140]. Following Plaintiff's Appeal to the 9th Circuit Court of Appeals, this action was remanded back to Federal District Court for Discovery and Litigation.

As stated above, this Court denied FRCP 23 Class Certification Court finding in part:

[A]s Defendant points out, the prospective class members worked in different areas of Nevada, causing them to endure different conditions for sheep tending, resulting in different hours worked. . . . For example, one prospective class member claimed that the heat caused his sheep to sleep more often, which helped him worry less about the sheep and get better rest. . . . Another shepherd stated that the time of year allowed him to work 35 hours a week because his sheep did not need much attention. In sum, some prospective class members allegedly got sleep . . . some barely worked. . . . The stark contrast in experiences makes it difficult for each prospective class member to allege that they were adversely affected by the same sheep herding conditions, which caused them to work more hours than they were paid.

² Only Counts I, III, IV, V and IX of Plaintiff/Appellant Castillo's Second Amended Complaint were alleged against Western Range Association. [ECF #45]

* * *

The prospective class members do not share typicality. As mentioned previously, some prospective class members worked many hours, and some worked very few hours. Just based on these factual circumstances alone, the prospective class members' claims are not typical.

[ECF #318, pp. 15-17, (emphasis added)].

Following certification to the Nevada Supreme Court and extensive briefing including Amicus Curiae Briefing supporting Western Range Association's position³, Plaintiff's counsel moved for leave to file a Reply Brief in the Nevada Supreme Court, which leave was granted. The timing of this was significant. It occurred on July 12, 2023, the day after the Plaintiff's death. Between July 12, 2023 and January 4, 2024, 19 pleadings were filed by parties and the Nevada Supreme Court and appear on the Supreme Court Docket, all of which involved Plaintiff Abel Cántaro Castillo. Yet, Plaintiff was deceased during the 6 months of ongoing Supreme Court proceedings. Plaintiff's counsel failed to notify either the Nevada Supreme Court or this Federal District Court of Mr. Castillo's death. In fact, on January 4, 2024, Plaintiff's counsel traveled from Washington, D.C. to Carson City, Nevada and argued the Certified Question on behalf of Abel Cántaro Castillo, before the Nevada Supreme Court, though Plaintiff had been deceased for over 6 months.

At the time the Supreme Court Argument occurred, Plaintiff's counsel had no client and there was no longer a Plaintiff to pursue the action. Yet, that did not stop Plaintiff's counsel from preceding or even notifying the Nevada Supreme Court and this Court that Abel Cántaro Castillo had died of cancer. [See, *February 5, 2024 Suggestion of Death Upon the Record* [ECF #328].

On or about February 2, 2024 Defendant Western Range Association serendipitously became aware that Abel Cántaro Castillo had passed away on July 11, 2023. Western Range Association then obtained the Death Certificate from Peru verifying that Abel Cántaro Castillo had died of cancer and filed a Suggestion of Death on the record in the Nevada Supreme Court [See, *February 5, 2024 Suggestion of Death Upon the Record, attached hereto as Exhibit A*, [ECF #328].

Western Range Association now brings this motion to extinguish the stay imposed by this Court September 26, 2022 Order wherein the Court certified a question of law to the Nevada Supreme Court [ECF

³ The Amicus Brief was filed by 2 entities American Sheep Industry Association, Inc., and Nevada Wool Growers Association, both of which supported Western Range Association's position and emphasized the historical, cultural and economic impact of Sheep herding in Nevada.

1 #318] and stated:

2 The Court will defer on Defendant's summary judgment motion and stay all further
3 proceedings until the Nevada Supreme Court answers the certified question. [ECF
#318].

4 In this same Order, this Court denied Class Certification, thus making (Now) deceased
5 Plaintiff Abel Cántaro Castillo the sole Plaintiff in this matter. [ECF #318, pp. 15-17].

6 **III BASED UPON THE NEVADA SUPREME COURT'S FEBRUARY 12, 2024 ORDER**
7 **HOLDING THE SUPREME COURT PROCEEDING IN ABEYANCE, THIS COURT'S**
8 **SEPTEMBER 26, 2022 STAY IMPOSED MUST NOW BE DISSOLVED.**

9 As is evident from the chronology of events recited above, the Nevada Supreme Court, in
10 addressing the certified question stated:

11 On February 5, 2024, respondent filed a notice of suggestion of death informing this
12 court that appellant had died on July 11, 2023. Respondent indicates that a notice of
13 suggestion of death has also been filed in federal District Court in Abel Cantaro
14 Castillo v. Western Range Association, Docket No. 3:16-cv-00237-RCJ-CLB.
Because the underlying action in this matter is pending in the federal District Court,
we will hold this original proceeding in abeyance until the federal District Court
determines whether the underlying action will proceed.


15 *February 12, 2024, Nevada Supreme Court Order, attached hereto as Exhibit B.*

16 As the certified question has been essentially stayed while this Federal District Court
17 determines whether the underlying action will proceed, Defendant Western Range Association
18 respectfully requests that this Court dissolve the stay imposed by this Court on September 26, 2022
19 when the question was certified to the Nevada Supreme Court.

20 Based upon the Nevada Supreme Court's February 12, 2024 Order Holding the Proceeding In
21 Abeyance and Remanding the matter back to the U.S. District Court of Nevada, the September 26, 2022 Stay
22 imposed by this Court must be dissolved. RESPECTFULLY submitted.

23 DATED this 4 day of March, 2024.

24 WOODBURN and WEDGE

25 By: 
26 ELLEN JEAN WINOGRAD, ESQ.
27 JOSE TAFOYA, ESQ.
28 and
SIMONS HALL JOHNSTON, P.C.
ANTHONY HALL, ESQ

CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing Motion to Dissolve Stay Imposed by this Court's September 26, 2022 Order Certifying Question to Nevada Supreme Court was made through the Court's electronic filing and notification or, as appropriate by sending a copy thereof by first-class mail from Reno, NV addressed as follows:

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Washington, DC 20005
cwebber@cohenmilstein.com

Mark R. Thierman
Joshua D. Buck
Leah L. Jones
THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89501

Alexander Hood
Towards Justice
1535 High Street, Ste. 300
Denver, CO 80218

DATED this 4th day of March, 2024.


Denise Eardley
Employee of Woodburn and Wedge

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Exhibit A

Exhibit A

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8 Nevada State Bar No. 5977
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11 *Attorneys for Western Range Association*

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF NEVADA
14

15 ABEL CÁNTARO CASTILLO,

16 Plaintiff,

17 vs.

18 WESTERN RANGE ASSOCIATION,

19 Defendant.
20

Case No. 3:16-cv-00237-RCJ-CLB

**SUGGESTION OF DEATH UPON THE
RECORD**

21 Although Defendant Western Range Association respectfully submits that the death of sole Plaintiff
22 Abel Cántaro Castillo extinguished his alleged wage underpayment claim, should this Court find that it does
23 not, Defendant files the following.

24 Counsel for Defendant in the above-referenced action was advised on February 1, 2024 that Plaintiff
25 died in July of 2023. Pursuant FRCP 25, Defendant suggests upon the record that Plaintiff Abel Cántaro
26 Castillo died on July 11, 2023. A copy of his Death Certificate is attached as Exhibit A. An official copy of the
27 Death Certificate will be filed under separate cover.
28

1 As is evident from Exhibit A, Plaintiff has been deceased since July 11, 2023, yet approximately 18
2 written pleadings and Orders have been filed in the Nevada Supreme Court, since then Plaintiff's counsel
3 proceeded with Oral Argument in the Nevada Supreme Court on January 4, 2024 without Informing the Court
4 or Defense counsel.

5 A Suggestion of Death on the Record will also be filed in the Nevada Supreme Court, *Abel Cántaro*
6 *Castillo v. Western Range Association*, Case No. 85936.

7 Respectfully submitted.

8
9 The undersigned does hereby affirm that the preceding document does not contain the social security
10 number of any person.

11 DATED this 5 day of February, 2024.

12
13 Respectfully submitted.

14 WOODBURN and WEDGE

15
16 By: *Ellen Jean Winograd*
17 Ellen Jean Winograd, Esq.
18 Jose Tafoya, Esq.

19 and

20 SIMONS HALL JOHNSTON, P.C.
21 Anthony Hall, Esq.

22 Counsel for Respondent

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INDEX OF EXHIBITS

Exhibit	Number of Pages
Exhibit A- Death Certificate of Abel Cántaro Castillo	1

CERTIFICATE OF SERVICE

Pursuant to FRCP 5, I hereby certify that on 2/5/24, a true and correct copy of Suggestion of Death Upon the Record, was served by electronic transmission through the Court's electronic filing program on the following:

Christine E. Webber
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Mark R. Thierman, Esq.
Joshua D. Buck, Esq.
Leah L. Jones, Esq.
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DENISE EARDLEY
Employee of Woodburn and Wedge

EXHIBIT A

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EXHIBIT A

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DECLARANTE / DECLARANTE	JOSE MARIA CANTARO CANTARO																				
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Exhibit B

Exhibit B

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABEL CANTARO CASTILLO,
Appellant,
vs.
WESTERN RANGE ASSOCIATION,
Respondent.

No. 85926

FILED

FEB 12 2024

ORDER

ELIZABETH A. CROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

This matter involves a legal question certified to this court, under NRAP 5, by the United States District Court for the District of Nevada. We accepted the certified question on February 10, 2023. On February 5, 2024, respondent filed a notice of suggestion of death informing this court that appellant had died on July 11, 2023. Respondent indicates that a notice of suggestion of death has also been filed in federal District Court in *Abel Cantaro Castillo v. Western Range Association*, Docket No. 3:16-cv-00237-RCJ-CLB. Because the underlying action in this matter is pending in the federal District Court, we will hold this original proceeding in abeyance until the federal District Court determines whether the underlying action will proceed. The parties shall have 30 days from the date of this order to file a status report regarding the proceedings pending in federal District Court.

It is so ORDERED.

 C.J.
Cadish

cc: Alexander Neville Hood
Brian Corman
Christine E Webber
Woodburn & Wedge
Thierman Buck LLP
Megan Reif
Simons Hall Johnston PC/Reno
Smith, Gambrell & Russell, LLP
Law Offices of Mark Wray