IN THE SUPREME COURT OF NEVADA

PAUL LAGUDI, an individual; and WILLIAM TODD PONDER, an individual, Appellants, vs. FRESH MIX, LLC, a Delaware limited liability company; and GET FRESH SALES, INC., A Nevada corporation, Respondents.	Electronically Filed Sep 22 2023 03:07 PM Elizabeth A. Brown Clerk of Supreme Court Supreme Court No. 86162 District Court Case No. A-18-785391-B **REPLY IN SUPPORT OF RENEWED MOTION TO DISMISS APPEAL**

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the foregoing are persons or entities as described in NRAP 26.1(a) and must be disclosed.

Get Fresh Sales, Inc. has no parent companies, and no public companies own 10% or more of its stock.

Get Fresh Sales, Inc. has been represented by the following law firms in this matter:

Greenberg Traurig, LLP

Brownstein Hyatt Farber Schreck, LLP/Las Vegas)

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DATED this 22nd day of September, 2023

Respectfully submitted,

GREENBERG TRAURIG LLP

/s/ Jason Hicks

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I. INTRODUCTION

This Court should dismiss the appeal, as Appellants have failed to demonstrate that this Court has jurisdiction over this appeal. Notwithstanding their reliance on dictum, Appellants have not pointed to a single case wherein this Court has exercised jurisdiction over an appeal of a sanction issued against a party to the proceeding, prior to the entry of a judgment resolving all claims by or against that party. Accordingly, the appeal should be dismissed.

II. LEGAL ARGUMENT

A. The Sanction Order at Issue here is Not a Final Judgment, and therefore, this Court Has No Jurisdiction to Hear this Appeal.

Appellants do not contend that the Sanction Order, as modified, falls within the description of an appealable order NRAP 3A or NRS 38.247.[1] Instead, Appellants contend that appellate jurisdiction is conferred here by virtue of dictum in the decision of *Mona v. Eighth Judicial Dist. Court*, wherein this Court stated: "A sanctions order is final and appealable." 380 P.3d 836, 840 (Nov. 2016). Appellants place an authoritative meaning on this statement that this Court clearly could not have intended.

[1] Appellants' discussion of the potential appealability of the original order is irrelevant, as any ruling that might arguably have fallen within NRS 38.247 is no longer a part of the order that has been appealed.

In *Mona*, this Court partially granted a petition for writ of prohibition. That petition had challenged an order that had required the co-trustees of a debtor trust to appear for debtor's examinations, and to each provide their personal financial information. Significantly, one of the co-trustees had not been a party to the underlying proceeding. In explaining its basis for exercising jurisdiction, this Court first noted the improper exercise of jurisdiction over a nonparty in post-judgment proceedings, and then noted that the "post-judgment sanction order" in question could not have been appealed by the non-party co-trustee. 380 P.3d 836, 840. Ultimately, the petition was granted only as to the nonparty co-trustee. *Id.* at 844.

This Court cited to *Bahena v. Goodyear Tire & Rubber Co.,* 126 Nev. 243, 248–49, 235 P.3d 592, 596 (2010) as support for the statement regarding the finality and appealability of sanctions orders. The *Bahena* decision concerned the post-judgment appeal of a pre-judgment sanctions order that had stricken the answer to the complaint. While the question of appealability of a sanction order was not expressly discussed in *Bahena*, the fact that this Court addressed the merits of the appeal indicates that a sanction order is subject to review by appeal. However, there is nothing in *Bahena* that addresses whether a sanction order may be deemed final prior to the entry of a final judgment of the underlying dispute, and therefore, this case could not be deemed as authority for that proposition.

Similarly, while the *appealability* of a sanctions order was a potentially material question in *Mona*, nothing in the opinion suggests that the *finality* of that post-judgment order was in dispute. Accordingly, the assertion that a "sanctions order is final" was not necessary to the decision of the case, and therefore, must be deemed dictum. *See St. James Village v. Cunningham, 125 Nev. Adv. Op. No. 21, 49398 (2009)*, 210 P.3d 190, 8 (Nev. 2009) ("A statement in a case is dictum when it is unnecessary to a determination of the questions involved.") (internal quotations omitted). "Dicta is not controlling." *Kaldi v. Farmers Ins. Exch.,* 117 Nev. 273, 282, 21 P.3d 16, 22 (2001). Therefore, Appellants cannot rely on this statement as justifying the exercise of jurisdiction over this appeal.

In contrast to the sanctions orders addressed in *Mona* and *Bahena*, there is no question that the Sanctions Order here, as modified, is not yet final. *See* NRCP 54(b) (". . . any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."). No final judgment has issued in the proceedings below, and therefore, the sanctions order remains subject to further revision or modification.

This court may only consider appeals that are authorized by a statute or court rule. *Brown v. MHC Stagecoach*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013). If

Appellants' theory that the language in *Mona* is sufficient to render the sanction order here final for purposes of appeal, then every sanctions order, including sanctions orders imposed for discovery violations, issued against any party to a case, would be immediately appealable, resulting in the possibility of a multitude of interlocutory appeals arising during the course of any single case. There is no statute or court rule to authorize such appeals, and there is no basis for assuming that this Court intended its statement in *Mona* to override this well settled jurisdictional standard.

B. There Is No Basis for "Converting" This Appeal to a Petition for Writ Of Mandamus and/or Prohibition

In apparent recognition that there is no jurisdiction for an appeal, Appellants ask the Court to "convert" this appeal to a petition for writ of mandamus and/or prohibition. Appellants do not explain precisely how such a conversion could occur. However, no document filed with the Court in this matter appears to satisfy the content and service requirements for a petition for writ relief set forth in NRAP 21. Accordingly, "converting" this appeal to writ proceedings would be futile. If Appellants seek writ relief, then they should file the appropriate request. Their request for alternative relief contained in an Opposition should be denied.

III. CONCLUSION

An appellant has the burden to establish that the reviewing court has jurisdiction over the appeal. *Moran v. Bonneville Square Assocs.,* 117 Nev. 525, 527, 25 P.3d 898, 899 (2001). Appellants failed to satisfy this burden. Therefore, this Court should dismiss the appeal.

Dated this 22nd day of September 2023

GREENBERG TRAURIG LLP

/s/ Jason Hicks

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of Greenberg Traurig, LLP, that in accordance therewith, I caused a true and correct copy of the foregoing *Reply in Support of Renewed Motion to Dismiss Appeal* to be served via this Court's e-filing system, on counsel of record for all parties to this matter on September 22, 2023.

/s/ Andrea Lee Rosehill
An employee of Greenberg Traurig, LLP.