App. Nos. _____

IN THE SUPREME COURT OF THE UNITED STATES

AARON EVEN,

Petitioner,

vs.

ROBERT DEAN HEBEL,

Respondents

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI PURSUANT TO RULE 13(5)

Directed to the Honorable Elena Kagan, Circuit Justice for the United States Court of Appeals for the Ninth Circuit

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October 7, 2025

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Petitioner respectfully requests a 60-day extension of time to file his petition for writ of certiorari. The Ninth Circuit entered its opinion in this case on May 15, 2025 and that opinion is attached as Appendix A. The Ninth Circuit denied en banc rehearing on July 9, 2025, and that order is attached as Appendix A. The request, if granted, would extend the deadline to file from October 6, 2025, to November 6, 2025.[1] This Court has jurisdiction over the judgment of the United States Court of Appeals for the Ninth Circuit entered in this matter on May 15, 2025, pursuant to 28 U.S.C. § 1254(1). Petitioner is filing this Application less than ten (10) days before the date the petition is due. See S. Ct. R. 13.5. Petitioner requests this extension of time for the following reasons:

1. Petitioner's lead counsel brings this matter via his small general practice firm that has only one attorney that handles litigation and appellate matters and is capable of drafting this complex petition. In the preceding months prior to filing this application Petitioner's counsel

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[1] https://supremecourtpress.com/supremecourtfilingdeadline/supremecourtfilingdeadline.php

has had the following significant appeal briefing obligations that have prevented him from devoting time to this petition:

a. Even v. Hebel, No. 24-3726 - Petition for Rehearing 6/12/2025

b. Lall v. Corner Investment Strategies, Inc., No. 23-16210, No. 23-15489 – Petition for Rehearing 5/30/2025

c. Dayton v. State, C-25-390979-1 – Pre-trial Petition for Habeas Corpus – 6/30/2025

d. Lee v. State. No. 85004 Oral Argument – 6/27/2025

e. War Machine v. State, No. 90318 – Opening brief on direct appeal of judgment of conviction – 8/18/2025 ;

2. Petitioner's lead counsel is also his firm's only litigation and trial attorney and had the following litigation, discovery and trial obligations that have prevented him from devoting time to the petition:

a. Delaney v. State, C-25-390979-1 – preparing for trial set for September 2025, recently moved to November 2025

b. Gazlay v. State, C-21-358879-1 – preparing for trial for September 2025, recently moved to February 2026

c. Counsel also has around 25 civil cases presently in discovery that require significant attention;

3. Extraordinary circumstance warrant granting a sixty day extension of the time to file the petition. Petitioner's counsel had been dealing with a significant family emergency in Texas. Counsel's father had a stroke in 2023. Counsel's stepmother died in 2024 leaving him without care. Counsel and family initially believed he might be able to care for himself. However, on a recent visit in mid-September to assist with management of the estate, counsel found that his father had been living in his home that was infested with toxic mold on virtually every surface. What was intended to be a four day trip required counsel to extend his stay two weeks. Counsel had not brought a computer with him on the trip, given that his father had a desktop at the home that he would often use when visiting. However, due to the mold, and subsequent mold test, all property was mandated to remain in the home and no one enter until the toxic mold could be remediated. This also caused counsel and his father to be displaced during his extended stay in Texas. Count also had to facilitate placing his father into assisted living. Counsel did not return until September 27, 2025, after the 10 day deadline to extend had already expired. Counsel attempted to draft the petition within the

deadline, but ultimately has been unable to do so in time to produce the required booklets to file the petition in time.

4. This case presents substantial and important question of law, subject matter jurisdiction regarding whether a party's failure to challenge facts supporting removal before the District Court constitute and admission that diversity subject matter jurisdiction exists or otherwise waive challenging subject matter jurisdiction on appeal. There is presently a circuit split on the issue. The Sixth Circuit holds that unchallenged facts alleged in a removal petition do not arise to the level of an admission of facts because "unlike an original complaint, a removal petition does not require responsive pleading. Failure to contest facts alleged in such a petition cannot be considered an admission." *Franzel v. Kerr Mfg. Co.*, 959 F.2d 628, 629-30 (6th Cir. 1992). Similarly, the Second Circuit holds that facts affecting jurisdiction must be affirmatively admitted in the pleadings, such as the complaint, and answer or other formal pleading. *City of N.Y. v. Fleet Gen. Ins. Grp., Inc.*, No. 22-2867-cv, 2024 U.S. App. LEXIS 18189, at *5-7 (2d Cir. July 24, 2024). The Ninth Circuit's position in this case extends the rule regarding affirmative admissions and extends it to a party's failure to contest facts alleged in

the petition for removal, even when the Complaint alleges that the parties reside in the same State, and the District Court finds that the parties reside in the same State at the time the Complaint was filed. *See* Appdx. A, Order of Affirmance, 5/15/2025, at 2; *see also* Appdx. B, Order Granting Motion to Dismiss, 5/24/2024, at 5:18-19. A significant prospect exists that this Court will grant certiorari and reverse the Ninth Circuit on this issue. The lower court's decision is also in direct conflict with prior binding decisions of this Court holding that challenges to subject matter jurisdiction cannot be waived and thus subject to review under Supreme Court Rule 10(c).

5. In accordance with Supreme Court Rule 13.5, this Application is submitted less than ten (10) days prior to the present due date. Extraordinary circumstances exist to grant the requested sixty (60) day extension. Further, the requested extension is made in good faith and not for the purposes of delay. It is respectfully submitted that counsel's duty to present all authorized claims of constitutional error with care is of equal import. Thus, it is important that counsel be granted additional time to prepare this petition.

For these reasons, Petitioner respectfully requests an extension of time to file its certiorari petition, up to and including December 8, 2025.

Respectfully submitted
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CERTIFICATE OF SERVICE

I certify that a copy of this document has been has been sent by e-mail and U.S. Mail on October 7, 2025, to:

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APPENDIX A

NOT FOR PUBLICATION

FILED

MAY 15 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AARON EVEN, Plaintiff - Appellant, v. ROBERT DEAN HEBEL, Defendant - Appellee.	No. 24-3726 D.C. No. 2:23-cv-01360-GMN-EJY MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Gloria M. Navarro, District Judge, Presiding

Submitted May 13, 2025**
Phoenix, Arizona

Before: RAWLINSON, BUMATAY, and SANCHEZ, Circuit Judges.

Plaintiff Aaron Even appeals the district court's grant of Defendant Robert Hebel's motion to dismiss for failure to timely serve. The parties were involved in an auto collision in Nevada. Plaintiff's state court cause of action was removed to

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

federal court based on complete diversity of the parties. After Plaintiff moved for an extension of time in which to serve his complaint, the district court found no good cause for an extension and dismissed Plaintiff's complaint for failure to timely serve. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. For the first time on appeal, Plaintiff alleges that the district court lacked subject matter jurisdiction because both parties were Nevada residents when Plaintiff filed his state court complaint. This court reviews questions of subject matter jurisdiction de novo, "despite any failure to object to the removal in the trial court." *Schnabel v. Lui*, 302 F.3d 1023, 1029 (9th Cir. 2002). Although Plaintiff's complaint alleged that both parties were Nevada residents, Defendant's notice of removal asserted that "Defendant resides in Iowa." Plaintiff neither challenged this factual assertion below, nor moved to remand the case to state court. The "failure to contest facts alleged on removal constitutes an admission of those facts." *Id.* at 1032 (citing *Albrecht v. Lund*, 845 F.2d 193, 194 (9th Cir. 1988)). Defendant was not required to allege anything further to establish complete diversity for purposes of removal. *See NewGen, LLC v. Safe Cig LLC*, 840 F.3d 606, 613–14 (9th Cir. 2016). The district court had jurisdiction over this dispute.[1]

2. Plaintiff contends that the district court abused its discretion by

[1] Because the court finds that subject matter jurisdiction was properly alleged, Defendant's motion for judicial notice is denied as moot.

finding that the factors articulated in *Scrimer v. Eighth Judicial District Court ex rel. County of Clark*, 998 P.2d 1190 (Nev. 2000), used by Nevada courts to assess whether extensions for time to serve should be granted, supported denying an extension. We review for abuse of discretion the district court's decision not to extend the service period. *Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir. 2007) (citations omitted).

Under Nevada law, Plaintiff was required to serve Defendant with the summons and complaint "no later than 120 days" after the complaint was filed, unless the court granted an extension of time. Nev. R. Civ. P. 4(e)(1). Because Plaintiff moved for an extension before the 120-day service deadline, he was required to show good cause. Nev. R. Civ. P. 4(e)(3). The district court properly applied the *Scrimer* factors and denied Plaintiff's motion because it found he had not been diligent in litigating his case. *See Moroney v. Young*, 520 P.3d 358, 361–62 (Nev. 2022) (quoting *Scrimer*, 998 P.2d at 1196). We find no abuse of discretion in the district court's determination.

After Plaintiff filed a non-conforming complaint, the state court clerk's office issued a notice of non-conforming document. Plaintiff did not correct the error until the day before the service deadline and did not serve Defendant until after the deadline had passed. Failure by counsel to promptly litigate a case and adhere to deadlines does not constitute good cause. *See id.* at 362 (holding

plaintiff unreasonably delayed service attempt by waiting until statute of limitations deadline to file and until the service deadline to file a motion to extend service period); *Wei v. State of Hawaii*, 763 F.2d 370, 371–72 (9th Cir. 1985) (per curiam) (finding no good cause for an extension when counsel failed to calendar the 120-day service deadline). The district court also noted that although Defendant had moved from Nevada, Plaintiff had little difficulty in finding and serving Defendant three weeks after the service deadline had passed. The district court did not abuse its discretion in finding that the *Scrimer* factors supported denial of Plaintiff's motion.

3. Plaintiff argues that Defendant waived his service of process challenge by filing in state court a combined motion to dismiss for lack of service and opposition to Plaintiff's motion for an extension of time to serve. The district court was correct in finding that under federal law, a party does not waive service of process objections by removing to federal court. *See Gen. Inv. Co. v. Lake Shore & M.S. Ry. Co.*, 260 U.S. 261, 268–69 (1922) (stating as "well settled" that a removal petition is a special appearance enabling removing party to challenge sufficiency of "prior service"); *see also Benny v. Pipes*, 799 F.2d 489, 492–93 (9th Cir. 1986) (concluding that defendant's three motions to enlarge time to respond to complaint did not constitute general appearance where third motion reserved affirmative defense for insufficiency of service).

Even if Nevada law applied to the question of waiver, the outcome would be the same. The Nevada Supreme Court abrogated the doctrine of special and general appearances. Revisions to Nevada Rule of Civil Procedure 12(b) now allow a defendant, before they file a "responsive pleading such as an answer . . . [to] move to dismiss for . . . insufficiency of process, and/or insufficiency of service of process, and such a defense is not waived by being joined with . . . other defenses." *Hansen v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 6 P.3d 982, 986 (Nev. 2000). The district court correctly found Defendant had not waived its service of process challenge.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

AARON EVEN, Plaintiff, vs. ROBERT DEAN HEBEL, Defendant.	Case No.: 2:23-cv-01360-GMN-EJY **ORDER GRANTING MOTION TO DISMISS**

Pending before the Court is Defendant Robert Dean Hebel's Motion to Dismiss, (ECF No. 10). Plaintiff Aaron Even filed a Response, (ECF No. 14), to which Defendant filed a Reply, (ECF No. 17).

For the reasons discussed below, the Court **GRANTS** Defendant's Motion to Dismiss.

I. BACKGROUND

This case arises from a car accident between Plaintiff and Defendant on April 3, 2021. (*See generally* Compl., ECF No. 1-1). Plaintiff filed this action in state court on March 16, 2023, after which the clerk's office filed a notice of non-conforming document. (Michael J. McAvoy-Amaya ("McAvoy-Amaya") Decl. ¶ 4, Ex. 1 to Mot. Order Extend Time, ECF No. 6-1). Because Plaintiff's filing was non-conforming, no summons was issued. (Mot. Order Extend Time 2:7–8, ECF No. 6). Plaintiff's counsel explains he was in the process of moving offices and missed the notice and lack of summons. (McAvoy-Amaya Decl. ¶¶ 3–4, Ex. 1 to Mot. Order Extend Time).

Under Nevada Rule of Civil Procedure ("Nev. R. Civ. P.") 4(e)(1), Plaintiff had 120 days from the date he filed his complaint in state court, or until July 14, 2023, to serve Defendant. On July 13th, one day before the deadline elapsed, Plaintiff's counsel discovered the notice of

non-conforming document and corrected the error. (*Id.* ¶ 5). The summons was then issued the next day—the date of the deadline (*Id.* ¶ 6). Plaintiff simultaneously filed a motion to extend time to serve Defendant and attempted service that same day, but Defendant had moved out of state and service did not occur. (*Id.* ¶¶ 7–9). Three weeks later, Plaintiff successfully served Defendant while his motion to extend time was pending in state court. (*Id.* ¶ 9). Defendant then removed this matter based on diversity jurisdiction, (Pet. Removal), after which the parties met and conferred regarding Plaintiff's late service of Defendant—an issue Defendant refused to waive. (McAvoy-Amaya Decl. ¶ 12, Ex. 1 to Mot. Order Extend Time).

Plaintiff filed a motion for order extending time to service the summons and complaint, arguing that good cause exists to extend the service deadline because he attempted to serve Defendant and filed a motion to extend the service deadline in state court before the deadline elapsed. (*See generally* Mot. Order Extend Time). In response, Defendant advanced that good cause did not exist for two reasons. First, Defendant averred that because Plaintiff did not attempt personal service until the date of the service deadline, he did not exercise due diligence. (Resp. Mot. Order Extend Time 1:10–18, ECF No. 6). Second, Defendant argued that Plaintiff's counsel oversight did not constitute excusable neglect warranting an extension. (*Id.* 1:19–23). The Magistrate Judge agreed with Defendant and denied Plaintiff's motion. (*See generally* Order, ECF No. 21). Now before the Court is Defendant's Motion to Dismiss for Failure to Serve, (ECF No. 10), which again contends that good cause does not exist to grant Plaintiff an extension of time to complete service, and that the Court should dismiss Plaintiff's Complaint without prejudice for failure to timely serve.

II. LEGAL STANDARD

Because Plaintiff originally filed his complaint in state court and Defendant was ultimately served in state court, Defendant's argument regarding service of process is examined under Nevada law. *See e,.g., Dillon v. W. Pub. Corp.*, 409 Fed. App'x 152, 154 (9th Cir. 2011).

Under Nevada law, "[t]he summons and complaint must be served upon a defendant no later than 120 days after the complaint is filed, unless the court grants an extension of time. Nev. R. Civ. P. 4(e)(1). "If a plaintiff files a motion for an extension before the 120-day service period—or any extension thereof—expires and shows that good cause exists for granting an extension of the service period, the court must extend the service period and set a reasonable date by which service should be made." Nev. R. Civ. P. 4(e)(3). Where a plaintiff timely moves for an extension of the service period under Nev. R. Civ. P. 4(e)(3), as Plaintiff did here, "the district court must consider . . . factors that relate to the plaintiff's diligence in attempting service, and to any circumstances beyond the plaintiff's control that may have resulted in the failure to timely serve the defendant." *Moroney v. Young*, 520 P.3d 358, 361–62 (Nev. 2022).

These factors include: "(1) difficulties in locating the defendant, (2) the defendant's efforts at evading service or concealment of improper service until after the 120-day period has lapsed, (3) the plaintiff's diligence in attempting to serve the defendant, . . . and (10) any [previous] extensions of time for service granted by the district court." *Id.* at 362 (citing *Scrimer v. Eighth Judicial Dist. Court*, 998 P.2d 1190, 1196 (Nev. 2000)). "[T]his list is not exhaustive, but any additional factors the district court considers should similarly focus on the Plaintiff's diligence in attempting to serve defendants and/or whether the failure to effectuate service was due to reasons beyond the plaintiff's control." *Moroney*, 520 P.3d at 362 (citing *Saavedra-Sandoval v. Wal-mart Stores, Inc.*, 245 P.3d 1198, 1201 (2010)). Moreover, consideration of the "statute of limitation is not a relevant factor" because "unlike after the service deadline expires, where prejudice to both parties are relevant factors, the focal point before the service deadline expires is whether the plaintiff has promptly prosecuted his or her case by attempting to timely serve the opposing party." *Id.*

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III. DISCUSSION

Defendant's Motion to Dismiss again contends that Plaintiff should not be given an extension of time to complete service of process, and requests the Court dismiss this action. (*See generally* Mot. Dismiss). In response, Plaintiff avers that his counsel's changing offices and Defendant's move out of state constitute good cause for an extension of time to complete service.[1] (Resp. Mot. Dismiss 10:2–12:24). Like in *Moroney*, the Court finds that an extension of time is not warranted, so it GRANTS Defendant's Motion and dismisses Plaintiff's Complaint without prejudice.

In *Moroney*, the plaintiff waited until day 105 out of the 120-day service period to retain a process server. *Moroney*, 520 P.3d at 362. The process server made only one unsuccessful attempt. *Id.* at 360–62. On day 120, the plaintiff then moved to enlarge the time to serve the defendant, which the district court denied. *Id.* Applying the applicable factors listed above, the *Moroney* court found that the record supported the district court's finding that the plaintiff unreasonably delayed his service attempt. *Id.* It found there was no support in the record showing the defendant unreasonably delayed his service attempt. *Id.* Significantly, the *Moroney* court also acknowledged the plaintiff's argument that denying an extension would

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[1] In the alternative, Plaintiff contends that Defendant waived his service of process claim. Specifically, Plaintiff advances that by removing to this Court, Defendant submitted to this Court's jurisdiction, rendering any service of process argument moot. (Resp. Mot. Dismiss 4:18–6:11). The Court disagrees. Contrary to Plaintiff's position, it is well-established that a defendant's removal from state to federal court does not constitute a waiver of a defendant's right to challenge sufficiency of service. *See Tribank Cap. Invs., Inc. v. Orient Paper, Inc.*, No. 11-cv-3708, 2013 WL 4200898, at *4 (C.D. Cal. Aug. 14, 2013) ("In removing a case, a [d]efendant does not waive challenges to personal jurisdiction, subject matter jurisdiction, venue, service of process, etc.; removal merely places the resolution of those questions in the hands of a federal judge in the first instance."); *Maplebrook Townhomes LLC v. Greenbank*, No. 10-cv-03688, 2010 WL 4704472, at *4 (N.D. Cal. Nov. 12, 2010) ("[T]he United States Supreme Court has held that a removal to federal court counts as a special appearance and does not waive the right to object to personal jurisdiction. Therefore, [a defendant] is within its rights to object to personal jurisdiction although it removed this case to federal court." (citing *Wabash W. Ry. v. Brow*, 164 U.S. 271, 278–79 (1896))). Moreover, Defendant moved concurrently, in the same document, to both dismiss this action based on failure to serve in its first responsive pleading and responded in opposition to Plaintiff's Motion for Order to Extend Time. (*See* ECF No. 8, Resp. Mot. Order Extend Time 1:11–16, 8:12–22) (styled as an opposition to Plaintiff's Motion for Order Extend Time and Countermotion to Dismiss for Failure to Serve).

effectively preclude refiling his action under the applicable statute of limitation but explained that the statute of limitations is not a relevant factor for a timely motion to extend the service period. *Id.* at 362.

Like *Moroney*, Plaintiff was not diligent in attempting to serve Defendant. Because of the technical error in Plaintiff's state court filing, which was not detected by Plaintiff's counsel due to moving offices, there was no attempt to serve Defendant until the last day of the service period. Plaintiff's delay fell squarely within his, or more specifically, his counsel's control. An error by counsel, even if made in good faith, does not constitute good cause or excusable neglect. *See, e.g., Selph v. Council of City of Los Angeles*, 593 F.2d 881, 883 (9th Cir.1979) ("The reasons given by counsel for his neglect are that . . . the confusion of moving his office disrupted his normal calendaring practices. This does not constitute excusable neglect"), *overruled on other grounds, United Artists Corp. v. La Cage Aux Folles, Inc.*, 771 F.2d 1265 (9th Cir. 1985); *Smith v. Stone*, 308 F.2d 15, 18 (9th Cir. 1962) (noting that counsel "has made a showing of carelessness and lack of proper regard for his duty as an attorney and an officer of the court, and no showing of inadvertence, excusable neglect, mistake, [or] surprise"). Plaintiff's lack of justification for his delay militates against a finding of diligence. *Moroney*, 520 P.3d at 362.

Moreover, as in *Moroney*, there was little difficulty in locating Defendant. The Court acknowledges that Defendant moved out of state after Plaintiff filed this lawsuit. However, Plaintiff did not attempt to serve Defendant until the last day of the service period. After Plaintiff discovered Defendant moved, he located and serviced Defendant only three weeks later. "These facts demonstrate there was little if any difficulty in locating Defendant who did not evade service." (Order 4:10–11). If Plaintiff had been diligent, and timely rectified the

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error within his counsel's control, he would have had ample time to serve Defendant within Nev. R. Civ. P. 4(e)(1)'s 120-day period.[2]

The Court acknowledges that Plaintiff's claim was filed "only days before the statute of limitations ran in this matter[,]" (Mot. Dismiss 3:28–4:1), and that granting Defendant's Motion would "effectively [be a dismissal] with prejudice, since the statute of limitations ha[s] run." *Scrimer*, 998 P.2d at 1195. Nevertheless, the *Moroney* court held that the running of the statute of the limitation is not an applicable factor where, as here, the Plaintiff filed a timely motion to extend the service period. *Moroney*, 52 P.3d at 362. Instead, the "focal point" of the Court's inquiry is whether Plaintiff "has promptly prosecuted his . . . case by attempting to timely serve the opposing party." *Id.* In this case, he has not.

To recap, Plaintiff waited until the statute of limitations was about to elapse before filing this action. He then waited until the service period nearly elapsed to attempt to service Defendant because of an error firmly within his counsel's control. On the final day of the service period, he made his first and only attempt to serve Defendant. That is, Plaintiff made 1 attempt at service over the course of 120 days or 4 months. This is not a case where Plaintiff diligently attempted service or that circumstances beyond his control resulted in a failure to timely serve. *Moroney*, 420 P.3d at 363. In short, Plaintiff has not presented good cause warranting an extension. Because the Court finds an extension of time is not warranted, it GRANTS Defendant's Countermotion to Dismiss for failure to serve and dismisses this action without prejudice.

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[2] Finally, the Court notes that "[t]here is no evidence that any requests for an extension to serve were requested prior to Plaintiff filing his motion to extend in the state court on July 14, 2023." (Order 4:21–23).

IV. CONCLUSION

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss, (ECF No. 10), is **GRANTED.**

DATED this 24 day of May, 2024.

Gloria M. Navarro, District Judge
UNITED STATES DISTRICT COURT

APPENDIX C

FILED

JUL 9 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AARON EVEN,

Plaintiff - Appellant,

v.

ROBERT DEAN HEBEL,

Defendant - Appellee.

No. 24-3726

D.C. No.
2:23-cv-01360-GMN-EJY
District of Nevada,
Las Vegas

ORDER

Before: RAWLINSON, BUMATAY, and SANCHEZ, Circuit Judges.

The panel has voted unanimously to deny the petition for panel rehearing and rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. *See* Fed. R. App. P. 40. The petition for rehearing and rehearing en banc (Dkt. 32) is therefore DENIED.