IN THE UTAH COURT OF APPEALS

LABOR COMMISSION,	:	
	:	
Appellant/Cross-Appellee,	:	
	:	Case No. 20170734-CA
vs.	:	
	:	
DEREK PRICE,	:	
	:	
Appellee/Cross-Appellant.	:	

BRIEF OF APPELLEE / CROSS-APPELLANT DEREK PRICE

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH,
THE HONORABLE SU CHON
CASE NO. 126918635

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INTRODUCTION

This action arises from the Labor Commission's enforcement of a default order entered against Derek Price. Over seven years ago, Marc Cummings filed a wage claim against Mad Cow Productions, LLC, his employer, with the Utah Labor Commission. Consistent with its practice at the time, the Labor Commission identified Mr. Price as a respondent in this wage claim proceeding because he was listed as a manager of Mad Cow Productions, LLC in papers on file with the Utah Department of Commerce. Unbeknownst to Derek Price, the principals of the company had identified Mr. Price as the managing member of Mad Cow Production, LLC without his knowledge or consent.

The Labor Commission sent all papers relating to the wage claim matter, including the notice of claim, to Mr. Price by first class mail. Mr. Price never received this mail, as the addresses on file with the Utah Department of Commerce, which were relied upon by the Labor Commission, were incorrect. At the time the Labor Commission mailed notice to Mr. Price, Mr. Price was living in California. Because Mr. Price did not receive notice of this wage claim, he did not respond to it and a default was entered against him.

After the Labor Commission obtained a default order, it filed a civil enforcement action in the Third Judicial District Court of Salt Lake County. By 2017, Mr. Price had returned to Utah and obtained employment. Thereafter, the Labor Commission started collecting on the judgment and a writ of garnishment was served on Mr. Price's employer. Mr. Price learned about the Labor Commission's judgment against him when his employer told him about the writ of garnishment. Mr. Price promptly raised defenses to the enforcement of the default order and subsequent judgment. He then moved to vacate the judgment.

The judgment against Mr. Price is unenforceable because Mr. Price was not afforded due process. Therefore, the Labor Commission lacked jurisdiction to enter the default order. This renders the judgment void under Rule 60(b)(4) of the Utah Rules of Civil Procedure.

Further, the Labor Commission seeks to enforce a judgment that is invalid under *Heaps v. Nuriche, LLC*, 2015 UT 26, 345 P.3d 655. In *Heaps*, the Supreme Court interpreted the Utah Payment of Wages Act and held that a managing member of a LLC is not the "employer" under the Act and has no personal liability for unpaid wages. Accordingly,

Mr. Price is not an "employer" and cannot be held liable for the payment of wages.

This court should affirm the district court's exercise of jurisdiction over Mr. Price's defenses to the Labor Commission's enforcement of the default order and judgment; affirm the district court's substantive rulings on the issues of service by first class mail and that the judgment is invalid under *Heaps*; and reverse the district court's denial of his request for attorney fees.

STATEMENT OF THE ISSUES

1. Did the district court have jurisdiction over Mr. Price's defenses to the Labor Commission's civil enforcement of the judgment?

Mr. Price raised two defenses to the Labor Commission's enforcement of the judgment in his motion to set aside the judgment under Rule 60(b) of the Utah Rules of Civil Procedure.

Motions to vacate a judgment under Rule 60(b) are ordinarily reversed only for an abuse of discretion. *Dep't of Social Services v. Vijil*, 784 P.2d 1130, 1132 (Utah 1989). However, when the claim or defense is based on a lack of jurisdiction, no discretion is given to the trial court. *Id*. ("[I]f jurisdiction is lacking, the judgment cannot stand without denying

due process to the one against whom it runs."). A jurisdictional determination is a question of law, subject to a correction-of-error standard. *Bonneville Billing v. Whatley*, 949 P.2d 768, 771 (Utah Ct. App. 1997). The district court is given no deference. *Vijil*, 784 P.2d at 1134.

This issue was raised by Mr. Price in his reply memorandum in support of Defendant Derek Price's Motion to Set Aside Judgment Against Him; For Order re: Return of Garnished Funds; and For Sanctions ("Motion to Vacate"). R. 240-244.

2. Did the district court err by ruling that the res judicata doctrine did not bar Mr. Price from challenging the Judgment?

The application of the res judicata doctrine is a question of law. *Marcris & Assocs. v. Neways*, 2000 UT 93, ¶ 17, 16 P.3d 1214. The district court is given no deference, and its ruling is reviewed for correctness. *Id*.

This issue was preserved for review in Mr. Price's reply memorandum in support of the Motion to Vacate. R. 248-250.

3. Did the district court err by holding that first class mail was insufficient to afford Mr. Price with due process of law?

"Due process challenges are questions of law . . . [subject to] a correction of error standard." *West Valley City v. Roberts*, 1999 UT App

358, ¶ 6, 993 P.2d 252 (citing *Tolman v. Salt Lake County Attorney*, 818 P.2d 23, 28 (Utah Ct. App. 1991)). This issue was preserved for review in Mr. Price's Motion to Vacate and reply memorandum. R. 88-91, 244-247.

4. Did the district court err by holding that *Heaps v. Nuriche* applies retroactively?

Assuming Mr. Price was a manager per the Labor Commission's decision,[1] the district court's ruling that *Heaps* applies retroactively, a question of statutory interpretation, was a conclusion of law. *Monarrez v. Utah Dept. of Trans.*, 2016 UT 10, ¶ 7, 368 P.3d 846. As a conclusion of law, the trial court is given no deference and its ruling is subject to a correction of error standard. *Id.*

This issue was preserved for review in Mr. Price's reply to the Motion to Vacate. R. 250-251.

5. Did the district court err by not awarding Mr. Price attorney fees?

[1] Mr. Price disputes that he was ever the managing member of Mad Cow Productions, LLC or Level 11 Mentoring, LLC, but even assuming he was, he cannot be held liable under the Utah Payment of Wages Act under *Heaps v. Nuriche, LLC*, 2015 UT 26, 345 P.3d 655.

Under Utah Code Ann. § 78B-5-825, the court can award attorney fees if the prevailing party asserts that the opposing party's claim or defense is meritless and brought in bad faith. *Childs v. Callahan*, 1999 UT App 359, ¶ 16, 993 P.2d 244. "Whether a claim is meritorious is a question of law that [the appellate court] review[s] for correctness." *Bresee v. Barton*, 2016 UT App 220, ¶ 48, 387 P.3d 536 (citing *Jeschke v. Willis*, 811 P.2d 202, 203 (Utah Ct. App 1991)). "A finding of bad faith is a question of fact and is reviewed [on appeal] under the 'clearly erroneous standard.'" *Bresee*, 2016 UT App 220, ¶ 54 (citing *Jeschke*, 811 P.2d at 204).

This issue was preserved for review. R. 93, 251-252; *see also* Docketing Statement, filed October 5, 2017.

STATEMENT OF THE CASE

The Labor Commission Obtains Judgment Against Mr. Price

1. Marc Cummings filed a claim for unpaid wages on May 25, 2010 against Mad Cow Productions, LLC with the Utah Labor Commission, commencing Wage Claim No. 10-02240. R. 96, 198.

2. The Labor Commission identified Mr. Price as a respondent. *See, e.g.,* R. 96.

3. The Labor Commission claims it mailed to Mr. Price a notice of Wage Claim No. 10-02240 and a document titled Preliminary Finding in Wage Claim No. 10-02240 to the following addresses:

553 E 1050 N
Orem UT 84057

3068 S 1000 E
Salt Lake City UT 84106

R. 182, 198, 200-201. The foregoing addresses shall be referred to hereafter as the "Addresses."

4. Mr. Price has not lived at 553 East 1050 North, Orem, Utah 84057 since the early 1990s. R. 102.

5. Mr. Price has never lived at 3068 South 1000 East, Salt Lake City, Utah 84106, and he does not recognize this address. R. 102.

6. There is no evidence that the Labor Commission did any due diligence or minimal research to try and learn whether the Addresses on file with the Utah Department of Commerce were correct addresses for Mr. Price.

7. In any event, Mr. Price did not receive the papers that the Labor Commission sent him at the foregoing Addresses. Mr. Price had previously quit working for Mad Cow when his paychecks bounced in

September 2010 and he lost confidence in Mad Cow's ability to continue to pay him for the work he was doing. R. 101. At the time he was living at 21272 Forest Meadow, Lake Forest, California 92630. R. 101. And, prior to moving to California, Mr. Price was living at 1756 E. Portal Way, Sandy, Utah 84093. R. 101.

8. On January 27, 2011, the Utah Labor Commission entered an Order on Default and Order to Pay (the "Default Order") in Wage Claim No. 10-02240, in favor of Mr. Cummings and against Level 11 Mentoring, LLC, Aaron Christner, Mad Cow Productions, LLC ("Mad Cow"), Ryan Jensen, and Derek Price (the "Defendants"). R. 96-98, 203-206.

9. The Certificate of Mailing attached to the Default Order shows that a copy of the Order to Pay was mailed to Mr. Price at the Addresses. R. 98, 206. Mr. Price did not receive the Default Order because he did not live at the Addresses.

10. On June 6, 2012, the Utah Labor Commission commenced this action in the Third Judicial District Court of Salt Lake County, State of Utah, by filing an Abstract of Final Award (the "Judgment") against the Defendants. The Judgment is in the amount of $12,590.03, plus interest and costs incurred in enforcing the judgment. R. 1-2.

11. The Judgment identifies two addresses for Mr. Price, which are the same Addresses listed in the Certificate of Mailing attached to the Order to Pay. R. 1-2.[2]

12. There is nothing on file with the district court showing that the Judgment was ever mailed to Mr. Price or served on him (or any of the other Defendants).[3]

The Labor Commission's Garnishment of Funds

13. On January 5, 2017, an administrative writ of garnishment was issued, pursuant to Utah Code Ann. § 63A-3-507. R. 111-113.[4] The writ was subsequently served on Mr. Price's employer, garnishee MasterControl, Inc. ("MasterControl").

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[2] The Judgment Information Statement that was filed together with the Abstract of Final Award or Judgment, on June 6, 2012, states that the last known address of Derek Price is 1487 Arthur Drive, Provo, Utah 84601. In any event, Mr. Price was living in California at this time. R. 101. Further, there is no evidence or proof of service on file with the district court that the Judgment was ever mailed to Mr. Price at this Provo address or any other address.

[3] *See* Utah Code Ann. § 78B-5-303 (requiring that the clerk of the district court record the date that notice of the action is mailed to the judgment debtor).

[4] The writ of garnishment, titled "Administrative Garnishment Order" in the pleading caption, misidentifies Derek Price. It identifies him as "Derek J. Price" but his middle initial is "R" for "Ronald." R. 111.

14. Mr. Price was informed by a co-worker at MasterControl that MasterControl had been served with the writ of garnishment pertaining to a judgment that had been entered against him. R. 101.

15. Thereafter, and for the first time, Mr. Price learned that, according to the Utah Department of Commerce, he is identified as the registered agent and manager for Mad Cow. R. 102; *see* R. 186-188. Mr. Price was unaware of this until MasterControl informed him of the writ of garnishment. R. 102. Aaron Christner and Ryan Jensen, the owners of Mad Cow, never told Mr. Price that they had listed him as the manager and/or registered agent for Mad Cow. R. 102.

16. On February 9, 2017, Mr. Price filed a Reply and Request for Hearing and challenged the writ of garnishment. R. 54-57. Mr. Price stated, among other things, that Aaron Christner and Ryan Jensen fraudulently used his personal information to put the Mad Cow business under his name:

> I was an employee of Mad Cow. After several of my paychecks bounced I quit. The owners (Aaron Christner + Ryan Jensen) used my ID provided for employment to put their business under my name. They even got my address and middle initial wrong. They didn't pay any taxes either . . . .

R. 55.

17. Mr. Price was named as a defendant in Wage Claim No. 10-02240 because someone else (presumably Aaron Christner or Ryan Jensen) had listed him as a manager of Mad Cow.[5] R. 106, 181.

18. As explained by Heather Gunnarson, prior to the *Heaps* decision in 2015, the Director of the Utah Anti-Discrimination and Labor Division as of June 2011, the Labor Commission had a practice of listing officers of a company as defendants in a case for unpaid wages:

> When we process wage claims under the Act, we always refer to the Utah Department of Commerce records to identify the officers of the respondent business entity and name them as parties in our actions because of our understanding and interpretation of the code.

R. 115-116.

[5] Aaron Christner and Ryan Jensen appear to have a history of scamming consumers and employees. In a Media Alert announcement by the Utah Department of Commerce, dated September 18, 2014, a notification was issued that Aaron Christner and Ryan Jensen were fined for numerous violations of the Utah Consumer Sales Practices Act and the Telephone Fraud Prevention Act. Judgment had been entered against them, in the Third Judicial District Court of Salt Lake County, for $425,993, and they were permanently barred from selling assisted marketing plans or operating a telemarketing business. R. 108-109.

The District Court Gave the Labor Commission the Opportunity to Correct the Issue of Mr. Price Being Improperly Named as a Defendant with the Labor Commission

19. At the hearing held before the district court on February 17, 2017 on Mr. Price's request for a hearing on the writ of garnishment issued to MasterControl, the Court stayed the writ of garnishment for 30 days to give Mr. Price the opportunity to attempt to correct the issue with the Labor Commission. R. 62 ("THE COURT WILL NOT ENFORCE GARNISHMENT FOR 30 DAYS TO ALLOW DEFENDANT TO SEEK CORRECTION TO ISSUE.").

20. The district court requested that the Labor Commission notify the court of any status change within the stay-period. R. 62.

21. Thereafter, Mr. Price promptly contacted the Labor Commission and requested that it withdraw his name from the Judgment. R. 101. Specifically, on or about March 6, 2017, Mr. Price sent several papers via certified mail to the Labor Commission, with a letter explaining that he was never a manager at Mad Cow and was similarly not paid wages. R. 145-146, 241.

22. After receiving no response, Mr. Price made several phone calls to the Labor Commission and tried to get in touch with someone

that knew something about his case. R. 146, 242. When no one responded to his phone calls, Mr. Price went to visit the Labor Commission in person. At that visit, Mr. Price was told that he needed to get in touch with Eric Larsen, the Wage Claim Unit Manager. R. 146, 242.

23. Mr. Price emailed Mr. Larsen on March 28, 2017 and, again, explained that the correct business owner was not him; it was Aaron Christner. R. 146, 151-152. Mr. Larsen responded the next day and asked for the wage claim number. R. 146, 151. Mr. Price emailed Mr. Larsen again on March 29, 2017, provided the wage claim number, and gave the same explanation given in his letter and papers that were previously mailed to the Labor Commission. R. 146, 150-151.

24. After receiving no substantive response from Mr. Larsen, Mr. Price went to the Labor Commission again, on March 31, 2017, to request a meeting with Mr. Larsen. R. 146. Mr. Larsen, after first stating that Mr. Price had "ruined his day," told Mr. Price that notice and time to respond had passed. R. 146. As explained by Mr. Price:

> On March 31st, I went to the Labor Commission's office and asked to speak with Eric Larsen. Mr. Larsen came out of his office and spoke to me in the lobby area. I reiterated that I was never an owner of Mad Cow and that it was extremely stressful for me to have my paychecks garnished. Mr. Larsen said that I had "ruined his day" because he had to miss

> meetings and that he had no "update" to give me. Mr. Larsen told me that "this is an old case" and that he didn't have time to "waste" to get the issue fixed. He told me to leave the office and that he would have an update early next week.

R. 147.

25. After this discussion in person, Mr. Larsen sent an email stating that "[p]roper notice of this claim, and its process, was sent to numerous addresses of all principles of business, including yourself . . . . Numerous opportunities were given to appeal or dispute the claim . . . ." R. 104, 147. The email further stated that "no amendments will be made by our office, nor the Office of State Debt Collection regarding collection procedures of this claim." R. 104, 147.

26. In an email exchange between Eric Larsen and Assistant Attorney General Jacob H.B. Franklin on April 3, 2017, Mr. Franklin told Mr. Larsen "You have [the Office of State Debt Collection's ("OSDC")] blessing to go ahead and tell them that no changes will be made—except that OSDC *might* be willing to enter into a Voluntary Wage Assignment

. . . for a reduced monthly amount (but not a reduced total balance amount)." R. 156.[6]

27. Up until April 6, 2017, Mr. Price had represented himself *pro se*, but beginning on April 6, 2017, Mr. Price was represented by above-captioned counsel at Jones Waldo Holbrook & McDonough, PC. R. 79-81.

28. Mr. Price filed his Motion to Vacate the Judgment on April 14, 2017. R. 84-127.

29. Shortly after Mr. Price filed his Motion to Vacate, the Labor Commission appears to have made its best attempt to get a quick ruling from the district court that the writ of garnishment could be enforced. Rather than file a motion, giving Mr. Price the opportunity to respond, the Labor Commission filed on April 19, 2017 a proposed Order Re Garnishment and in this order, the Labor Commission had included "findings" of the district court (with no supporting evidence), which stated, among other things, that: "Derek Price's objection [to the writ of garnishment] dealt with the merits of the underlying claim and administrative order issued against him by the Labor Commission";

[6] Mr. Price's counsel asked the Labor Commission for a copy of the file for Wage Claim No. 10-02240, and this email exchange was contained in the documents provided to Mr. Price's counsel. *See* R. 156.

"[t]he underlying administrative order issued by the Labor Commission is not properly before this Court for review at this time" and "[a]s such, this Court cannot address Defendant Derek Price's objections"; and finally, "[t]he status of the underlying order in this matter has not changed, and the 30-day stay period has not passed." R. 132-135.[7]

30. The Labor Commission filed its memorandum in opposition to the Motion to Vacate on April 28, 2017. R. 165-179.

31. Mr. Price filed his reply memorandum in further support of the Motion to Vacate on May 10, 2017. R. 238-253.

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[7] Mr. Price quickly responded to the Labor Commission's proposed Order Re Garnishment by objecting to it on April 20, 2017. R. 138-156. In that objection, Mr. Price made the same arguments that he had made in his Motion to Vacate. R. 138-156. The Labor Commission then filed a motion to strike Mr. Price's objection for being untimely. R. 159-162. Mr. Price felt that in order to ensure that he did not waive his position that the Labor Commission is not entitled to enforce the Judgment, Mr. Price opposed the Labor Commission's motion to strike. R. 220-223. The Labor Commission filed a reply to the motion to strike. R. 230-235. Ultimately, the district court signed the Order Re Garnishment on May 17, 2017, after Mr. Price's Motion to Vacate had been fully briefed but before the Motion had been decided. R. 283-286. The Order Re Garnishment permitted the Labor Commission to proceed to enforce the writ of garnishment. R. 283-286. There was no comment by the district court in the Order Re Garnishment as to the merits of the Labor Commission's motion to strike or the arguments made by Mr. Price in his objection to the proposed Order Re Garnishment.

32. A hearing was held on Mr. Price's Motion to Vacate on June 19, 2017. R. 291-294. While the district court took the matter under advisement, the district court ordered a stay on any further collection of the Judgment. The district court ordered the Labor Commission to hold in its possession any funds that had been garnished until further order of the court. R. 293.

33. The district court issued a Memorandum Decision and Order on August 2, 2017. R. 295-308. The district court ruled that (1) service by first class mail was insufficient to afford Mr. Price due process, R. 301; (2) res judicata does not apply, R. 303; and (3) *Heaps* applies retroactively, rendering the Judgment invalid, R. 303.

34. Although the district court ruled in Mr. Price's favor on the merits, the district court did not order the Judgment vacated. Rather, the district court quashed the writ of garnishment and ordered Mr. Price to file a motion to set aside in the administrative proceeding, and to give Marc Cummings notice. R. 304 ("The Court is concerned that setting aside the abstract at this point would require notice to the wage claimant."); R. 306 ("Accordingly, the Court orders that the writ of

garnishment be quashed and that Mr. Price pursue a motion to set aside in the administrative proceeding with notice to all interested parties.").[8]

35. Mr. Price's request for attorney fees was denied. R. 305.

36. Mr. Price has not received a return of the funds that the Labor Commission already garnished from his employer, MasterControl.

[8] Mr. Price followed the district court's order and filed a motion to set aside before the Labor Commission. Claimant Marc Cummings was notified (a copy was sent via certified mail) and he did not respond to the motion. The Labor Commission entered a stay on the motion pending this appeal.

SUMMARY OF THE ARGUMENT

The Court should affirm the district court's Memorandum Decision and Order, holding that the Judgment cannot be enforced and quashing the writ of garnishment. The Labor Commission did not have jurisdiction over Derek Price when the underlying Default Order was entered. Service by first class mail, even in an administrative action, does not afford a respondent with sufficient due process.

Further, the Judgment cannot be enforced against Mr. Price because he is not liable for unpaid wages, under the Utah Payment of Wages Act, because he is not an "employer." *Heaps v. Nuriche, LLC*, 2015 UT 26, 345 P.3d 665. It is well-settled that interpretation of a statute applies retroactively because there has been no change in the law. Accordingly, the Supreme Court's interpretation of the Utah Payment of Wages Act in *Heaps* is retroactive and invalidates the Judgment against Mr. Price.

The district court correctly decided these two issues and the court's exercise of jurisdiction was correct under the plain language of the Utah Administrative Procedure Act ("UAPA"). This Court should affirm the district court on these issues.

The res judicata doctrine is inapplicable here. Res judicata bars a claim that was already litigated in a prior action. Here, there is no new claim being asserted. Mr. Price asserts defenses now that he has otherwise been unable to raise previously, because he lacked notice. Moreover, the Labor Commission's claim that Mr. Price is liable for Mr. Cummings' unpaid wages was never adjudicated on the merits. Res judicata does not apply.

Finally, attorney fees should be awarded because the Labor Commission's arguments to the district court lacked merit and were made in bad faith. The Labor Commission's position that it is too late to challenge the Default Order and Judgment, even though the Commission does not dispute that Mr. Price never received notice of the underlying wage claim, and even though the Judgment is clearly contrary to *Heaps*, demonstrates the Labor Commission's bad faith. Given that the Labor Commission did not appear to do any due diligence to find correct addresses for Mr. Price (prior to the entry of the Default Order); the Labor Commission's refusal to provide any meaningful response to Mr. Price once the district court gave him the opportunity to try and correct the issue (during the 30-day stay); the Commission's filing of the proposed

Order Re Garnishment after Mr. Price had filed his Motion to Vacate; and most importantly, the Labor Commission's attempts to enforce a Judgment that is clearly erroneous, invalid, and contrary to Supreme Court precedent in *Heaps*, are sufficient grounds to conclude that the Labor Commission has acted in bad faith. Accordingly, Mr. Price should be awarded his attorney fees.

ARGUMENT

I. THE DISTRICT COURT HAD JURISDICTION OVER DEREK PRICE'S DEFENSES TO THE LABOR COMMISSION'S ENFORCEMENT OF THE JUDGMENT.

The Utah Administrative Procedures Act ("UAPA") provides the district court jurisdiction to hear Mr. Price's defenses to the enforcement of the Judgment.

In order to seek judicial review under Part 4 of the UAPA, Section 63G-4-401, a challenger to an agency's decision must first exhaust all administrative remedies, *see* Utah Code Ann. § 63G-4-301. However, Mr. Price did not seek judicial review of an agency decision under Part 4 of the UAPA

Instead, Mr. Price challenged the Labor Commission's civil enforcement of its Default Order and subsequent Judgment under Part 5 of UAPA, Utah Code Ann. § 63G-4-501. Part 5 of the UAPA confers jurisdiction on a district court when an agency seeks to *enforce* an order in Utah district court. Utah Code Ann. § 63G-4-501. Consistent with this chapter of the UAPA, Mr. Price challenged the Labor Commission's enforcement action on the ground that its Default Order was obtained without due process and the Default Order against him is invalid because

it runs against the clear holding of *Heaps* that managers are not personally liable for unpaid wage claims. Thus, Part 4 of the UAPA does not apply and Mr. Price was not required to exhaust administrative remedies. However, as explained below, even if Part 4 of the UAPA applied, the district court would still have possessed jurisdiction because exhaustion of administrative remedies is futile in this case.

A. The District Court's Exercise of Jurisdiction was Proper under Part 5 of the UAPA, Utah Code Ann. § 63G-4-501.

Under Part 5 of the UAPA, Utah Code Ann. § 63G-4-501(3), district courts have jurisdiction to hear a defendant's defenses to a state agency's enforcement of an administrative order:

> (3) In a proceeding for civil enforcement of an agency's order, in addition to any other defenses allowed by law, a defendant may defend on the ground that:
>
> (a) the order sought to be enforced was issued by an agency without jurisdiction to issue the order;
>
> (b) the order does not apply to the defendant; . . . .

This section of the UAPA applies here because the district court proceeding below was a "proceeding for civil enforcement" of the Labor Commission's Default Order and Mr. Price defended against such enforcement on the grounds available to him under subsections 3(a) and 3(b). Namely, as explained more fully below, that (1) the Labor

Commission did not have jurisdiction for lack of due process, rendering the Default Order void under Rule 60(b)(4) of the Utah Rules of Civil Procedure (an argument that falls squarely within subsection (3)(a)) and (2) the Default Order is invalid and unenforceable as applied to him under *Heaps v. Nuriche, LLC*, 2015 UT 26, 345 P.3d 665, because Mr. Price is not an "employer" subject to liability under the Utah Payment of Wages Act (an argument that falls squarely within subsection 3(b)). Under the plain language of Utah Code Ann. § 63G-4-501, the district court had jurisdiction to hear these defenses to the Labor Commission's civil enforcement of its final decision against Mr. Price. Moreover, the UAPA's grant of jurisdiction to district court's is broad—district court may consider "any other defenses allowed by law." Utah Code Ann. § 63G-4-501(3).

The statutory grant of judicial review under Utah Code Ann. § 63G-4-501 does not require a defendant in a civil enforcement action to exhaust administrative remedies, *i.e.,* by first appealing to the Labor Commission Appeals Board under Utah Code Ann. § 34-28-9, before petitioning for judicial review. *See* Utah Code Ann. § 63G-4-403 (a petition for judicial review is filed with the Utah Court of Appeals). The

requirement to exhaust all administrative remedies only applies to judicial review provided in Utah Code Ann. § 63G-4-401, a section of the UAPA that does not apply in this case.

Accordingly, because the Labor Commission sought to enforce the Default Order in civil enforcement proceeding in district court, exhaustion of administrative remedies was not required and Mr. Price was entitled to defend the Default Order and resulting Judgment in district court by raising "any other defenses allowed by law." Utah Code Ann. § 63G-4-501(3).

B. In the Alternative, the District Court Had Jurisdiction Under Part 4 of the UAPA, Utah Code Ann. § 63G-4-401(2)(b).

Even if the Labor Commission's civil enforcement proceeding in the district court below was governed by Part 4 of the UAPA (which it was not), the district court would still have had jurisdiction to adjudicate Mr. Price's objections to the Judgment because exhaustion of administrative remedies is futile in this case. Part 4 of the UAPA provides:

> (2) A party may seek judicial review only after exhausting all administrative remedies available, except that:
>
> …
>
> (b) the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:

(i) the administrative remedies are inadequate; or

(ii) exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

Utah Code Ann. § 63G-4-401(2)(b). Accordingly, even if this section of the UAPA applies, it was proper for the district court to adjudicate Mr. Price's defenses to the Judgment because Mr. Price's administrative remedies are inadequate and there is no public benefit in allowing the Labor Commission to enforce judgments the Labor Commission obtained based on its erroneous understanding of the Utah Payment of Wages Act.

First, the Labor Commission's conduct demonstrates that administrative remedies are inadequate for Mr. Price. The Labor Commission was already given the opportunity to consider Mr. Price's objection its Default Order, and it took the position that such arguments were a "waste" of time. The Labor Commission has consistently taken the position that Mr. Price was properly served and that it is too late to address the underlying merits of Mr. Price's defenses. R. 104, 147, 156. Thus, any argument that Mr. Price exhaust administrative remedies is futile.

Second, there is no public benefit derived from requiring Mr. Price to exhaust his administrative remedies. The public has an interest in the

Labor Commission, a state agency, adjudicating wage claims in a fair manner. Further, the public has an interest in the Labor Commission following the law. Enforcing an invalid judgment against Mr. Price (and enforcing presumably dozens, if not hundreds, of invalid judgments against other individuals) that runs afoul of *Heaps* is not in the public's interest.

The public derives no benefit from exhaustion in this case. To the contrary, the public derives an immediate benefit from an order that stops the Labor Commission from enforcing a Judgment that it obtained pre-*Heaps* based on its erroneous reading of the Utah Payment of Wages Act and attempted to enforce post-*Heaps* knowing that the Judgment is contrary to Utah law. Indeed, because it was the Labor Commission's regular practice to name non-employer managers as respondents in wage claims prior to the *Heaps* decision (R 115-116), a decision in this case has potentially a sweeping public benefit, particularly to those like Mr. Price who the Labor Commission were erroneously charged with wage debt prior to the *Heaps* decision. Accordingly, because there is no public benefit derived from exhaustion of administrative remedies in this case, and requiring exhaustion would harm Mr. Price (by permitting the Labor

Commission to deprive him of his property pending exhaustion), the UAPA excuses any requirement that Mr. Price exhaust administrative remedies.

Thus, in the event that the Court finds that jurisdiction is not conferred by Part 5 of the UAPA, Utah Code Ann. § 63G-4-501, the Court should rule, alternatively, that Part 4 of the UAPA conferred the district court with jurisdiction under the exhaustion exception in Utah Code Ann. § 63G-4-401(2)(b).

II. THE JUDGMENT IS VOID UNDER RULE 60(4)(B) BECAUSE FIRST CLASS MAIL IS INSUFFICIENT TO AFFORD DUE PROCESS.

Under Rule 60(4)(b)(4) of the Utah Rules of Civil Procedure, a litigant can seek relief from a judgment or order when the judgment is void for lack of due process. *See, e.g., State v. Speed*, 2017 UT App 76, ¶ 19, 397 P.3d 824 ("A successful rule 60(b)(4) request for relief provides relief from judgments entered without constitutionally required due process as well as those entered without jurisdiction."). In *C504750P LLC v. Baker*, 2017 UT App 36, 397 P.3d 599, this Court explained that "[i]f a 'judgment [is] entered without the notice required by due process,' it is void and rule 60(b)(4) provides a basis for relief.'" *Id.* ¶ 9. The reason for

this is because the "district court lacks personal jurisdiction when there has not been effective service of process . . . ." *Cooper v. Dressel*, 2016 UT App 246, ¶ 3, 391 P.3d 338. "And judgments entered by a district court lacking personal jurisdiction over the defendant are void." *Id.* "Consequently, a judgment entered against [a] party that was never properly served is void." *Id.*

As explained above, the Labor Commission served Mr. Price by first class mail and all of the papers related to the wage claim were sent to the wrong address. The Labor Commission does not dispute this, nor do they dispute that Mr. Price never received the Labor Commission's notice of wage claim, proposed Preliminary Finding, and Default Order. Rather, the Labor Commission stands by its rules of procedure and argues that there was no offense to due process here.

The Labor Commission's rules of procedure provide that the Commission may serve a respondent by first class mail. Specifically, pursuant to R610-3-4.F, once a wage claim is filed, the Labor Commission shall "mail to the Defendant a copy of the claim and a blank answer form

together with an accompany agency cover letter." R. 119.[9] "Mail" means first class mail. R610-3-2.I.; R. 118; *see* App. Br. at 12.[10]

The Labor Commission rule permitting service by first class mail is unconstitutional. First class mail is insufficient to afford due process over a wage claim respondent such as Derek Price.

The United States Constitution and the Utah Constitution require due process of law before a State can deprive a person of life, liberty or property. U.S. CONST. amend. XIV, § 1 ("No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."); UTAH CONST. art. I, § 7 ("No person shall be deprived of life, liberty or

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[9] "The Defendant shall have ten working days from the date of the letter to submit an answer to the claim." R. 119 (R610-3-4.G). If a defendant does not file an answer the Division may "[a]ttempt to obtain from the Defendant an answer and statement." R. 119 (R610-3-5.B). When no response is filed with the Labor Commission, a default order may be entered. R. 120 (R610-3-7) (stating when a hearing officer may issue an Order on Default and Order to Pay).

[10] In its brief, the Labor Commission states that the district court held that certified mail is required "even though the ***legislature*** did not see fit to do so. App. Brief at 12 (emphasis added). Similarly, the Commission states in its brief, without citing any authority, that the "***UAPA*** requires only that notice be mailed." App. Brief at 13 (emphasis added). But the rule authorizing service by first class mail was not a decision by the legislature; it was a rule promulgated by the Labor Commission itself. Utah Code Ann. § 34-28-9 grants the Labor Commission authority to "make rules consistent with this chapter governing wage claims and payment of wages."

property, without due process of law."). The minimum requirements of due process require "[t]imely and adequate notice and an opportunity to be heard in a meaningful way . . . ." *In re Worthen*, 926 P.2d 853, 876 (Utah 1996). Due process "prevents the state from extinguishing a citizen's property rights without notice and an opportunity to be heard." *Jordan v. Jensen*, 2017 UT 1, ¶ 20, 391 P.3d 183.

In the United States Supreme Court's seminal case on proper notice, the Court declared that constitutionally adequate notice depends on "all the circumstances" and "peculiarities of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). A particular method of service is of course subject to challenge by the courts. Personal service is not always required and courts, when deciding whether the method service is adequate, must balance the interests of the agency and affected individual.

The Utah Supreme Court explained, in *Anderson v. Public Service Com'n of Utah*, 839 P.2d 822 (Utah 1992), that:

> To determine whether the agency has acted reasonably in choosing a method of notice, we balance the interest sought to be protected against the interest of the agency. *Tulsa Professional Collection Servs. Inc. v. Pope*, 485 U.S. 478, 484, 108 S. Ct. 1340, 1344, 99 L. Ed. 2d 565 (1988); *Carlson v. Bos*, 740 P.2d 1269, 1273-74 (Utah 1987). In undertaking this

> analysis, we focus on whether the method of service strikes a ***reasonable balance between the interests of the agency and the affected individual***, *see Tulsa*, 485 U.S. at 484, 108 S. Ct. at 1344, while keeping in mind that the state's burden is less onerous in administrative proceedings.

Id. at 825 (emphasis added). After evaluating the competing interests of the Public Service Commission and the plaintiff, the Court in *Anderson* held that the Motor Carrier Act, requiring service by certified mail, was sufficient to afford due process. *Id.* at 825-26.

The Court explained that certified mail "does not place an undue burden on the [state administrative agency]." *Id.* at 825. "[C]ertified mail is far less costly and less personnel-intensive [than personal service] . . . it is a reliable method of notice." *Id.* Because Anderson's interest was significant and the administrative burden of certified mail was not significant, the Court held that the balancing of interests required the Commission to provide notice via certified mail. *Id.* at 823, 825.

The Labor Commission cites to a recent case, *John Kuhni & Sons Inc. v. Labor Commission*, 2018 UT App 6, 414 P.3d 952. App. Brief at 13. At issue in this was the notice requirement in the Utah Occupational Safety and Health Act, *see* Utah Code Ann. § 34A-6-303(1), which provided that notice should be sent via "certified mail." Notice of a

citation issued to John Kuhni & Sons was sent by the Utah Occupational Safety and Health Division of the Labor Commission via FedEx. 2018 UT App 6, ¶ 3. Kuhni argued that the notice was invalid because it was sent by FedEx and, according to Kuhni, the statute required that the certified mail be sent by the United States Postal Service. *Id.* ¶¶ 6-8. This Court agreed with Kuhni and held that the Labor Commission Appeals Board had incorrectly determined that Kuhni was property served. *Id.* ¶¶ 9-22.

Kuhni does not support the Labor Commission's position, nor does the *Anderson* case. While neither of these cases address service by first class mail, they at least lend support for Mr. Price's position that service by certified mail would have been a more reliable way to notify him than first class mail.

The Labor Commission cites no case supporting its position that first class mail affords due process. It argues that it is "not aware of any Utah appellate decision that requires agencies to use certified mail when the applicable statute requires only service by mail." App. Brief at 14.[11]

[11] There is no "statute" permitting service by first class mail. Rather, it is the Labor Commission's own rules that allow for service by first class mail, which Mr. Price challenges.

But this argument doesn't address whether first class mail affords an individual due process.

While the Labor Commission has an interest in minimizing its administrative burden and performing its role efficiently, its efforts to properly notify respondents in a wage claim, including Mr. Price, falls well below any reasonable standard. There is no evidence that the Labor Commission did anything to try and find a current address for Mr. Price before mailing the notice of wage claim or after no response was received. In fact, the Labor Commission's rules support not performing *any* due diligence; R610-3-2.I. provides that "mail" means first class mail sent to "the last known address on the Commission's record." R. 118.

The Labor Commission defends its position, arguing that "none of the Commission's notices mailed to Mr. Price were returned as undeliverable." App. Brief at 14. But the fact that the mail was not returned does not in any way suggest that the Mr. Price received the mail. Moreover, the Labor Commission's reasoning in its brief is telling: "If the addresses on file for Mr. Price were erroneous, the notices would not have reached him whether mailed first class or certified." App. Brief at 14. But that is the point: If the Labor Commission had sent him notice

by certified mail, it would have been alerted to the fact that the Addresses were wrong and prompted it to look into his Mr. Price's actual whereabouts.

In balancing the interests of the Labor Commission and the affected individual, *see Anderson*, 839 P.2d at 825, the Court should rule that serving an individual by first class mail is insufficient to afford an individual with due process. The district court's ruling that the Labor Commission should amend its rules and serve individuals via certified mail is sound. As stated by the district court:

> The burden on the Commission to alter its service requirement to certified mail would be minimal for its outgoing mail. Certified mail would have avoided the situation where Mr. Price was blindsided with the judgment against him. Simply sending notices by certified mail would be almost as effective at reaching the correct person than personally serving the parties but without the burden and expense of paying a process server. The Court notes that certified mail would meet the notice burden under Rule 4 for service of a civil complaint, and the burden is "less onerous in administrative proceedings." *Anderson*, 839 P.2d at 825.

R. 301.[12]

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[12] The district court commented that this case is "a reminder that the Department of Commerce's business directory is open to fraud when people can register a business in the name of another without their knowledge or consent." R. 301. In its brief, the Labor Commission focuses on the district court's statement that "'[n]either party has presented

III. THE JUDGMENT IS INVALID AND UNENFORCEABLE UNDER *HEAPS*.

The Utah Payment of Wages Act provides that an "employer" is responsible for the payment of wages. Utah Code Ann. § 34-28-5(1)(a). In *Heaps*, a case decided in 2015, the Utah Supreme Court interpreted the definition of "employer" and expressly held that managers of an employer cannot be held personally liable for unpaid wages, because they are not the "employer." 2015 UT 26, ¶ 16. The Court's decision rested upon the longstanding principle that a business officer or manager can only be exposed to personal liability in limited contexts. *Id.* Absent express language in the statute, the *Heaps* Court held that the legislature did not intend to impose personal liability against a managing member "in contravention of long-standing principles of corporate law." *Id.*

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evidence of whether this sort of situation has occurred in the past and how often'", App. Brief at 14 (citing R. 301), suggesting that the lack of evidence on this point weakens Mr. Price's argument. Yet from Mr. Price's perspective, this is not the pinnacle reason why first class mail is insufficient. People move and relocate and an address on file with the Utah Department of Commerce, while it provides some evidence of where an individual lives, is by no means conclusive evidence. For example, an address on file with the Utah Department of Commerce may be a business address or an address other than the place where an individual lives. Someone may have moved but not changed his or her address with the Utah Department of Commerce.

Heaps is retroactive and invalidates the Default Order and Judgment. It is well-settled that "[t]he general rule from time immemorial is that the ruling of a court is deemed to state the true nature of the law both retrospectively and prospectively." *Malan v. Lewis*, 693 P.2d 661, 676 (Utah 1984). In *Monarrez v. Utah Dept. of Transp.*, 2016 UT 10, 368 P.3d 846, the Court interpreted a section of the Utah Governmental Immunity Act, *see* Utah Code Ann. § 63G-7-403. Mr. Monarrez, a party to the action who would be impacted by the Court's interpretation, argued that the decision could apply only prospectively. *Id.* ¶ 27. The Court rejected his argument, as follows:

> The general rule of retroactivity is that "the ruling of a court is deemed to state the true nature of the law both retrospectively and prospectively." *Malan v. Lewis*, 693 P.3d 661, 676 (Utah 1984). This is a rule of "judicial policy rather than judicial power," as "[c]onstitutional law neither requires nor prohibits retroactive application of [a] . . . decision." *Loyal Order of Moose, #259 v. City Bd. of Equalization*, 657 P.2d 257, 264 (Utah 1982). Generally, prospectively-only application of a decision is a result of a change in the law.

Id. ¶ 28.

Relying on *Malan v. Lewis*, 693 P.2d 661 (Utah 1984), and *Monarrez v. Utah Dept. of Transp.*, 2016 UT 10, 368 P.3d 846, the district court held that *Heaps* applies retroactively, and Mr. Price was not a proper

defendant in the Labor Commission's adjudication of the wage claim. R. 302-303.

In its brief, the Labor Commission does not dispute the holding in *Heaps* or even that it applies retroactively. *See* App. Brief at 11-12. The Labor Commission skirts around this issue (and the fact that it seeks enforcement of an invalid judgment) by arguing that res judicata bars consideration of whether *Heaps* applies retroactively. *Id.* at 12 ("Because res judicata applies, this Court does not need to determine whether *[Heaps]* should be applied retroactively."). However, as explained below, res judicata does not apply here.

IV. RES JUDICATA DOES NOT APPLY.

In order for res judicata to bar a cause of action, three requirements must be satisfied:

> First, both cases must involve the same parties or their privies. Second, the claim that is alleged to be barred must have been presented in the first suit or must be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits.

Macris & Assoc., Inc. v. Neways, Inc., 2000 UT 93, ¶ 20, 16 P.3d 1214. To be a final judgment on the merits, "the issue in the first case [must be] competently, fully, and fairly litigated." *Swainston v. Intermountain Health Care, Inc.*, 766 P.2d 1059, 1061 (Utah 1988).

The Labor Commission's argument that all three elements are met here, *see* App. Brief at 9-12, should be rejected. First, there is no new "claim" being asserted. Rather, the Labor Commission seeks to enforce a judgment. Similarly, there are not "two cases" at issue here; there is only one case at issue. Mr. Price has never asserted a "claim." He merely defends the Labor Commission's enforcement of an invalid and void judgment, which he is statutorily-permitted to do under Utah Code Ann. § 63G-4-501(3).

Next, the Order to Pay and subsequent Judgment were not "competently, fully, and fairly litigated." *Swainston*, 766 P.2d at 1061. Mr. Price did not receive a notice from the Labor Commission about its wage claim and, as a result, he was unaware of the wage claim. Mr. Price's undisputed lack of knowledge of the wage claim renders res judicata moot—for the doctrine of res judicata to apply, the plaintiff must have been aware of the cause of action at the time the first lawsuit commenced. *Macris*, 2000 UT 93, ¶ 28.

There was also no fair adjudication on the merits. The Order to Pay was entered after the respondents defaulted by failing to respond to the

complaint. Although res judicata may sometimes apply in an administrative proceeding, it cannot be given under these circumstances:

> In determining when res judicata applies to administrative proceedings, the focus is on the judicial nature of the proceedings:
>
> > When an agency conducts a trial-type hearing, makes findings, and applies the law, the reasons for treating its decision as res judicata are the same as the reasons for applying res judicata to a decision of a court that has used the same procedure. But the formality may be diminished in any degree, and when it is sufficiently diminished, the administrative decision may not be res judicata. ***The starting point in drawing the line is the observation that res judicata applies when what the agency does resembles what a trial court does.***

Kirk v. Occupational & Professional Licensing, 815 P.2d 242, 243-44 (Utah Ct. App. 1991) (citing 4 K. Davis, *Administrative Law Treatise* § 21:3 (2d ed. 1983)). Res judicata, even if all other obstacles to its application were alleviated, cannot apply here in light of Derek Price being entirely unaware of the claim against him and the absence of any "trial-type hearing."

Finally, there is no "final judgment" that can be given preclusive effect; the Judgment is *void*, as explained herein.

The district court agreed, ruling that the Judgment is "not a separate cause of action" and that the Default Order "was not made on

the merits but was a default judgment based on his failure to respond to the charges." R. 303-304.

The case cited by the Labor Commission, *Career Service Review Bd. v. Utah Dep't of Corrections*, 942 P.2d 933 (Utah 1997), is distinguishable because there was a ruling on the merits before the administrative agency and the Department of Corrections could have raised all of its arguments pertaining to the merits of the decision before the Career Service Review Board. *Id.* at 938-40. Moreover, in *Career Service*, the Court analyzed whether the doctrine of issues preclusion barred the issues raised by the Department of Corrections – and *not* whether claim preclusion applied.

V. THE LABOR COMMISSION ACTED IN BAD FAITH AND THE COURT SHOULD AWARD DEREK PRICE HIS ATTORNEY FEES.

Derek Price appeals the district court's denial of his motion for attorney fees pursuant to Utah Code Ann. § 78B-5-825. R. 305. Under Utah Code Ann. § 78B-5-825, the district court can award attorney fees if the prevailing party asserts that the opposing party's claim or defense is meritless and brought in bad faith. *Childs v. Callahan*, 1999 UT App 359, ¶ 16, 993 P.2d 244. A claim or defense is meritless when it is

frivolous, is of little weight or importance having no basis in law or fact, or clearly lacks a legal basis for recovery. *Bresee v. Barton*, 2016 UT App 220, ¶ 45, 387 P.3d 536. On the other hand, "[b]ad faith . . . is a factual determination of a party's subjective intent and requires the district court to find that one or more of the following factors is lacking: (1) an honest belief in the propriety of the activities in question; (2) no intent to take unconscionable advantage of others; and (3) no intent to, or knowledge of the fact that the activities in question will hinder, delay, or defraud others." *Bresee*, 2016 UT App 220, ¶ 45. The Labor Commission's actions in this case, and its knowing attempt to enforce an invalid Judgment, provide sufficient grounds for a finding of bad faith.

In addition to litigants' obligation to pursue claims and defenses in good faith and which are "warranted by existing law," *see* Rule 11(b)(2), Utah Rules of Civil Procedure, the legislature has imposed the same obligation on the Labor Commission to make a "reasonable inquiry that the order [it seeks to enforce] is well grounded in fact and is warranted by existing law." Utah Code Ann. § 34A-5-108(1)(b) (emphasis added). The Labor Commission wholly failed to do this.

After the Utah Supreme Court decision in *Heaps*, the Labor Commission should have ceased its efforts to collect on the Judgment against Mr. Price, knowing that it had taken an erroneous reading of the Utah Payment of Wages Act. Instead, and with full knowledge of the meaning and import of *Heaps*, the Labor Commission seeks to enforce a Judgment that it knows, or should know, is contrary to Utah law.[13] Once again, the Labor Commission did not make a "reasonable inquiry" here. It has sought to enforce the Judgment (and presumably many other invalid judgments) that is contrary to law.

As detailed in paragraphs 21-26 above, after the February 17, 2017 hearing held on Mr. Price's objection when the court imposed a 30-day of the writ so that Mr. Price could try and correct the issues with the Labor Commission, Mr. Price made several attempts to try and discuss the matter with someone at the Labor Commission. When Mr. Price was finally able to get the attention of the Labor Commission's representative he was told that his efforts had "ruined [the representative's] day"; that the Labor Commission didn't have time to "waste" to get the issue fixed;

[13] Again, the Labor Commission does not dispute in its brief that *Heaps* is retroactive.

and that the time to respond to its wage claim had passed (even though it never provided actual notice of this wage claim to Mr. Price). R. 146-147.

The Labor Commission had another opportunity to correct its error when Mr. Price filed his Motion to Vacate, which outlined why the Labor Commission's Judgment was void and contrary to Utah law. Instead, in an apparent attempt to avoid the district court's consideration of Mr. Price's Motion to Vacate, the Labor Commission filed a proposed Order Re Garnishment. R. 132-135. The filing of this proposed Order invited district court error and, in fact, resulted in district court error when the court signed the order. R. 283-286.[14]

Further, the Labor Commission has never returned the funds it wrongfully seized from Mr. Price. The Labor Commission did all of this with full knowledge that it obtained its Judgment against Mr. Price based on its misreading of the Utah Payment of Wages Act, in violation of Utah law, and without verifying that Mr. Price ever received actual

[14] The Memorandum Decision and Order superseded and mooted the Order Re Garnishment.

notice of its underlying wage claim. This conduct establishes bad faith and warrants an award of attorney fees to Mr. Price.

CLAIM FOR ATTORNEY FEES ON APPEAL

For the same reasons discussed above, and given that the Court may affirm the ruling of the district court on any independent grounds, *Bailey v. Bayles*, 2002 UT 58, ¶ 10, 18 P.3d 1129, Mr. Price should be awarded his attorney fees under Rule 33 of the Appellate Rules of Civil Procedure.

CONCLUSION

The Court should affirm the district court's exercise of jurisdiction under the UAPA. The Labor Commission's Default Order which it sought to enforce in the district court is unenforceable because Mr. Price was not afforded due process and the Labor Commission therefore lacked jurisdiction to enter the Default Order, rendering the Judgment void under Rule 60(b)(4) of the Utah Rules of Civil Procedure. Additionally, the Labor Commission cannot enforce a judgment against Mr. Price that is invalid under the Utah Supreme Court's decision in *Heaps v. Nuriche, LLC*, 2015 UT 26, 345 P.3d 655. The Court may uphold the district court's ruling on either or both of these grounds. Finally, the Court should reverse the district court's decision denying fees, and award Derek Price

his attorney fees under Utah Code Ann. § 78B-5-825, because the Labor Commission acted in bad faith when its knowingly attempted to enforce a void and invalid Judgment.

DATED this 22nd day of June, 2018.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing Brief contains 9,478 words, based on the word count of the word processing system used to prepare this brief, exclusive of table of contents, table of authorities, and any addendum containing statutes, rules, regulations or portions of the record, and therefore complies with the type-volume limitation provided in Rule 24(g), Utah Rules of Appellate Procedure.

DATED this 22nd day of June, 2018.

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