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**IN THE SUPREME COURT
OF THE STATE OF NEVADA**

-----X
CHRISTOPHER THOMAS and)
CHRISTOPHER CRAIG,)
Individually and on behalf of others)
similarly situated,)
)
Petitioners,)
)
vs.)
)
NEVADA YELLOW CAB)
CORPORATION, NEVADA)
CHECKER CAB CORPORATION,)
NEVADA STAR CAB)
CORPORATION,)
)
Respondents,)
_____)

Sup. Ct. No. 61681

Dist. Ct No.:A-12-661726-C
Dept. No. XXVIII

**NOTICE OF SUPPLEMENTAL
AUTHORITY**

Pursuant to NRAP 31(e) appellants hereby notify the Court of the following supplemental authority:

Appellants filed their opening brief with the Court on November 27, 2012. On February 11, 2013, the Decision and Order of District Judge Kenneth Cory of

the Nevada Eighth Judicial District Court, in the case of *Murray v. A Cab Taxi Service*, Case No. A-12-669926-C, was entered. Ex. “A.” Such decision and order expressly acknowledged an awareness of the order at issue in this appeal and found such order to be legally erroneous. It did so by finding the holding in *Lucas v. Bell Transportation*, 2009 U.S. Dist. LEXIS 72549 (D. Nev. June 23, 2009), upon which the order under appeal in this case was based, was in error. Its basis for making that finding was the failure of the district court in this case, and in *Lucas*, to properly recognize and respect the “clear language and primacy” of Nevada’s Constitution.

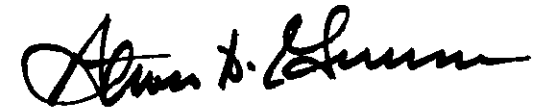
The decision and order in *Murray* provides supplemental authority for the following points in Appellant’s Opening Brief:

Page 6, line 2 through page 10, line 4 (asserting that the language of Nevada’s Constitution is clear, unambiguous, and imposes the independent legal obligation asserted by Appellants which obligation cannot be limited by any statute).

Dated this 21ST day of February, 2013.

/s/ Leon Greenberg
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EXHIBIT "A"



CLERK OF THE COURT

1 **DECN**

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7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9	MICHAEL MURRAY, and MICHAEL)	Case No.: A-12-669926-C
10	RENO, Individually and on)	
11	behalf of others similarly)	Dept.: I
	situated,)	
)	
12	Plaintiffs,)	
)	DECISION AND ORDER
13	vs.)	
)	
14	A CAB TAXI SERVICE LLC, and A)	
15	CAB, LLC,)	
)	
16	Defendants.)	

17
18 This matter having come before the Court on the defendants'
19 motion to dismiss plaintiffs' complaint¹ pursuant to NRCP Rules
20 12(b)(1) and 12(b)(5), such motion having come before the Court for
21 oral argument on January 17, 2012, with Esther C. Rodriguez, Esq.,
22 arguing on behalf of the defendants and Leon Greenberg, Esq.,
23 arguing on behalf of the plaintiffs, and after due consideration of
24 the arguments, briefs and papers submitted by counsel for the
25 parties, and the record of these proceedings;

26
27
28 ¹ The Complaint served in this case indicated the first named
plaintiff as Michael Murphy although the Court's docket indicates
his name is Michael Murray which is such person's correct name.
Defendants do not concede that the caption of this order is proper.

1 **THE COURT FINDS:**

2 **Summary of Plaintiffs' Claims and the Parties' Dispute**

3 Plaintiffs allege they were formerly employed by defendants as
4 taxi cab drivers. They allege when they were so employed the
5 defendants were obligated to pay them a minimum wage as provided for
6 under Nevada's Constitution Article 15, Section 16 ("Section 16").
7 They further allege they were not paid such minimum wage. As a
8 result, they allege they are entitled to damages and other
9 relief as provided for by Section 16 and certain penalties
10 pursuant to NRS § 608.040. Defendants claim Section 16 does not
11 confer any right to a minimum wage upon taxi drivers and moves
12 to dismiss on that basis.

13 **Discussion**

14 The Court's decision ultimately rests upon the supremacy
15 of Nevada's Constitution in all matters of law not otherwise
16 controlled by federal law or the United States Constitution.
17 The very first sentence of Section 16, in paragraph "A,"
18 provides:

19 Each employer shall pay a wage to each employee of not
20 less than the hourly rates set forth in this section.

21 This language is clear, direct and unambiguous.

22 Accordingly, the Court's inquiry is limited to determining
23 whether the parties are "employer" and "employee" for the
24 purposes of Section 16. Defendants assert Section 16 was
25 intended only to raise the minimum wage and not disturb the
26 exemptions to Nevada's minimum wage requirements in Nevada
27 Revised Statutes 608.250(2). In resolving such assertion the
28 starting point for the Court must, of course, be the language

1 of Section 16 itself. In Section 16, paragraph "C," the
2 following definition of "employee" is provided:

3 As used in this section, "employee" means any person who
4 is employed by an employer as defined herein but does not
5 include an employee who is under eighteen (18) years of
6 age, employed by a nonprofit organization for after school
7 or summer employment or as a trainee for a period not
8 longer than ninety (90) days.

9 Again, this language is clear, direct and unambiguous.
10 Through such language Section 16 extends its minimum wage
11 requirements to all employees except those set forth in paragraph
12 "C." Such paragraph "C" does not include taxi drivers among the
13 employees excluded from the reach of Section 16.

14 Defendants argue that Section 16 makes no mention of the
15 exemptions in Nevada Revised Statutes 608.250(2) and implied repeal
16 occurs only when there is irreconcilable repugnancy between the two
17 laws compelling the conclusion that the later enactment necessarily
18 repeals the earlier. They further argue where express terms of
19 repeal are not used, the presumption is always against an intention
20 to impliedly repeal an earlier statute. In support of these
21 contentions they cite *Washington v. State*, 30 P.3d 1134, 1170 (Sup
22 Ct. Nev. 2001), *Mengelkamp v. List*, 501 P.2d 1032, 1034 (Sup. Ct.
23 Nev. 1972), and the authorities discussed therein. Accordingly, in
24 defendants' view, this Court must find that the two laws can exist
25 and be read in harmony; and Section 16 did not supplant the
26 exemptions specified in Nevada Revised Statute 608.250(2).

27 Unfortunately for defendants, the foregoing clear and
28 unambiguous language of Section 16, paragraph "A," and the clear and
unambiguous language of paragraph "C" setting forth who is an
"employee" for the purposes of Section 16, renders the Court unable

1 to conduct the intent analysis urged by defendants and reach the
2 disposition they desire.

3 . An examination of the intent or purpose behind a constitutional
4 provision is only proper when ambiguity exists in the language of
5 the provision. If there is no ambiguity the provision must be
6 applied in accordance with its plain meaning. See, *Halverson v.*
7 *Miller* 186 P.3d 893, 897 (Nev. Sup. Ct. 2008); *Nevadans for Nevada*
8 *v. Beers*, 142 P.3d 339, 347 (Nev. Sup. Ct. 2006); and *Rogers v.*
9 *Heller*, 18 P.3d 1034, 1038, n. 17 (Nev. Sup. Ct. 2001). The Court
10 discerns no ambiguity in the language of Section 16 and none has
11 been brought to its attention by defendants. Under such
12 circumstances, for the Court to engage in an analysis of the intent
13 behind Section 16, and by doing so override its express, clear, and
14 unambiguous language, would be antithetical to our system of
15 constitutional law. The people of the State of Nevada, through the
16 democratic process, have made Section 16 the supreme law of the
17 State of Nevada by placing its provisions in Nevada's Constitution.
18 This Court is duty bound to enforce Section 16 and its clear
19 language.

20 The provisions of NRS 608.250(2) make no mention of Section 16
21 and speak only of providing an exemption to the requirements set
22 forth in NRS 608.250(1). Nor does Section 16 grant the legislature
23 the power to modify any of its requirements. Section 16, being a
24 constitutional provision not subject to legislative modification,
25 must displace any conflicting statute. Accordingly, the provisions
26 of NRS 608.250 are not controlling upon plaintiffs' claims brought
27 under Section 16.

28 In reaching its decision, the Court acknowledges it has been

1 advised of the contrary conclusion rendered in the opinion issued by
2 United States District Court Judge Jones in *Lucas v. Bell*
3 *Transportation*, 2009 U.S. Dist. LEXIS 72549, (D. Nev. June 23, 2009).
4 It has also been made aware that the holding of *Lucas* has been
5 adopted by two of the judges of this Court.² With all due respect
6 to its judicial brethren, this Court must decline to follow *Lucas*
7 which this Court believes has not appropriately recognized, and
8 respected, the clear language and primacy of Section 16.

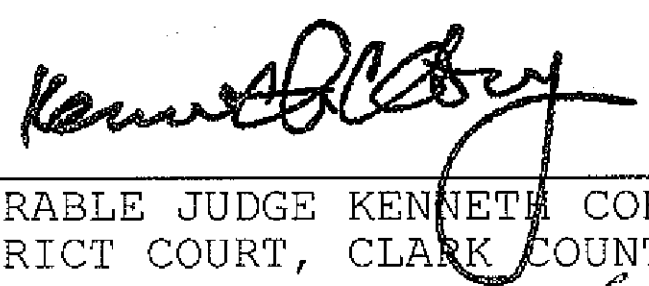
9 The Court realizes application of Section 16 to the defendants,
10 and its industry, represents a significant change for how such
11 employers must conduct business. The Court is effectuating such
12 change because it is required to do so, it passes no judgment on the
13 wisdom of such change. [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 **Conclusion**

19 Defendants' motion to dismiss pursuant to NRCP Rules 12(b)(1)
20 and 12(b)(5) is denied.

22 IT IS SO ORDERED this 8 day of Jul, 2013

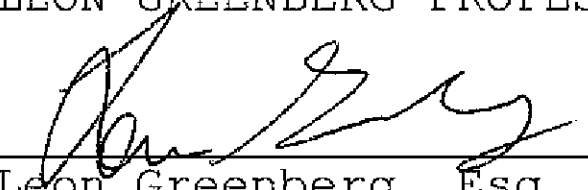
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24
25 HONORABLE JUDGE KENNETH CORY
26 DISTRICT COURT, CLARK COUNTY
27 ER

28 ² See, *Thomas v. Nevada Yellow Cab*, A-12-661726-C, August 30,
2012 and *Gilmore v. Desert Cab*, A-12-668502-C.

1 Submitted by:

2 LEON GREENBERG PROFESSIONAL CORP.

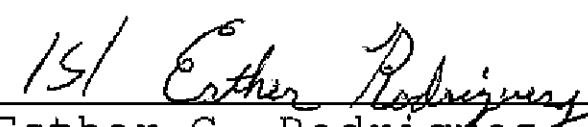
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