

IN THE SUPREME COURT OF NEVADA

NEVADA YELLOW CAB)
CORPORATION, NEVADA)
CHECKER CAB CORPORATION, and)
NEVADA STAR CAB)
CORPORATION,)
Petitioners,)

vs.)

THE EIGHTH JUDICIAL DISTRICT)
COURT of the State of Nevada, in and)
For the County of Clark, and THE)
HONORABLE RONALD J. ISRAEL)
District Judge,)
Respondents,)

and)

CHRISTOPHER THOMAS, and)
CHRISTOPHER CRAIG,)
Real Parties in Interest.)

Electronically Filed
Jan 27 2016 01:40 p.m.
Tracie K. Lindeman
Clerk of Supreme Court
Sup. Ct. No. 68975
Case No.: A-12-661726-C

Dept. No.: XXVIII

PETITIONERS' APPENDIX

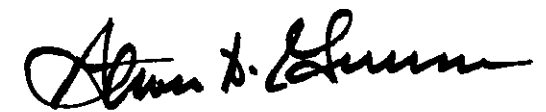
MARC C. GORDON, ESQ.
Nevada Bar No. 001866
TAMER B. BOTROS, ESQ.
Nevada Bar No. 012183
**YELLOW CHECKER STAR
TRANSPORTATION CO. LEGAL DEPT.**
5225 W. Post Road
Las Vegas, Nevada 89118
T: 702-873-6531
F: 702-251-3460
tbotros@ycstrans.com
Attorneys for Petitioners
NEVADA YELLOW CAB CORPORATION
NEVADA CHECKER CAB CORPORATION
NEVADA STAR CAB CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX

Bates No.

ORDER GRANTING PLAINTIFFS' MOTION TO CERTIFY CLASS ACTION PURSUANT TO NRCP 23(B)(3).....	PA0168-181
AFFIDAVIT OF KEITH SAKELHIDE.....	PA0182-183



CLERK OF THE COURT

LEON GREENBERG, ESQ., SBN 8094
DANA SNIEGOCKI, ESQ., SBN 11715
Leon Greenberg Professional Corporation
2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
(702) 383-6085
(702) 385-1827(fax)
leongreenberg@overtimelaw.com
dana@overtimelaw.com

Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA**

CHRISTOPHER THOMAS, and
CHRISTOPHER CRAIG, Individually
and on behalf of others similarly
situated,

Plaintiffs,

vs.

NEVADA YELLOW CAB
CORPORATION, NEVADA
CHECKER CAB CORPORATION, and
NEVADA STAR CAB
CORPORATION,

Defendants.

Case No.: A-12-661726-C

Dept.: XXVIII

Order Granting Plaintiffs' Motion
to Certify Class Action Pursuant
to NRCP 23(b)(3)

Plaintiffs filed their Motion to Certify Class Action Pursuant to NRCP 23(b)(3) on June 10, 2015. Defendants' Response in Opposition to plaintiffs' motion was filed on June 26, 2015. Plaintiffs thereafter filed their Reply to defendants' Response in Opposition to plaintiffs' motion on July 7, 2015. This matter, having come before the Court for hearing on July 14, 2015 and October 27, 2015, with appearances by Leon Greenberg, Esq. on behalf of all plaintiffs, and Tamer B. Botros, Esq., on behalf of all defendants, and following the arguments of such counsel, and after due consideration of the parties' respective briefs, and all pleadings and papers on file herein, and good cause appearing, therefore

1 THE COURT FINDS:

2 Upon review of the papers and pleadings on file in this matter, and the
3 evidentiary record currently before the Court, the Court holds that plaintiffs have
4 adequately established that the prerequisites of Nev. R. Civ. P. 23(b)(3) are met to
5 certify the requested class seeking damages under Article 15, Section 16 of the Nevada
6 Constitution (the "Minimum Wage Amendment") and grants the motion. The Court
7 makes no determinations of the merits of the claims asserted nor whether any
8 minimum wages are actually owed to any class members as such issues are not
9 properly considered on a motion for class certification. In compliance with what the
10 Court believes is required, or at least directed by the Nevada Supreme Court as
11 desirable, the Court also makes certain findings supporting its decision to grant class
12 certification under NRCP Rule 23. See, *Beazer Homes Holding Corp. v. Eighth*
13 *Judicial Dist. Court.*, 291 P.3d 128, 136 (2012) (En Banc) (Granting writ petition,
14 finding district court erred in failing to conduct an NRCP Rule 23 analysis, and
15 holding that "[u]ltimately, upon a motion to proceed as a class action, the district court
16 must 'thoroughly analyze NRCP 23's requirements and document its findings.'" Citing
17 *D.R. Horton v. Eighth Judicial Dist. Court ("First Light II")*, 215 P.3d 697, 704 (Nev.
18 Sup. Ct. 2009).

19 As an initial matter, the nature of the claims made in this case are of the sort for
20 which class action treatment would, at least presumptively, likely be available if not
21 sensible. A determination of whether an employee is owed unpaid minimum hourly
22 wages requires that three things be determined: the hours worked, the wages paid, and
23 the applicable hourly minimum wage. Once those three things are known the minimum
24 wages owed, if any, are not subject to diminution by the employee's contributory
25 negligence, any state of mind of the parties, or anything else of an individual nature
26 that has been identified to the Court. Making those same three determinations,
27 involving what is essentially a common formula, for a large group of persons, is very
28 likely to involve an efficient process and common questions. The minimum hourly

1 wage rate is set at a very modest level, meaning the amounts of unpaid minimum
2 wages likely to be owed to any putative class member are going to presumptively be
3 fairly small, an additional circumstance that would tend to weigh in favor of class
4 certification.

5 In respect to granting the motion and the record presented in this case, the
6 Court finds it persuasive that a prior United States Department of Labor review of
7 defendants' records, applying a uniform methodology, concluded that over 600 current
8 or former taxicab drivers were owed varying amounts of unpaid minimum wages
9 totaling in excess of \$300,000 under the federal Fair Labor Standards Act (the
10 "FLSA") for the two year period consisting of the calendar years 2010 and 2011.
11 While that finding does not resolve the merits of the plaintiffs' claims, since it does not
12 establish that any class members are actually owed additional minimum wages under
13 the Minimum Wage Amendment, it does, in the Court's view, clearly present at least
14 two common questions warranting class certification if the methodology used to reach
15 those conclusions is later found to be correct.

16 The first such question would be whether the class members are owed additional
17 minimum wages, beyond that concluded by the United States Department of Labor, by
18 virtue of the Minimum Wage Amendment imposing an hourly minimum wage rate that
19 is \$1.00 an hour higher than the hourly minimum wage required by the FLSA for
20 employees who do not receive "qualifying health insurance." The Court concludes
21 that resolving such "qualifying health insurance" question involves issues common to
22 all of the class members and defendants have not proffered any meaningful evidence
23 tending to contradict such conclusion. The second such question would be whether
24 the class members are owed additional minimum wages, beyond that concluded by the
25 United States Department of Labor, by virtue of the Minimum Wage Amendment not
26 allowing an employer a "tip credit" towards its minimum wage requirements,
27 something that the FLSA does grant to employers in respect to its minimum wage
28 requirements. The United States Department of Labor is indicated in that agency's

1 report as having reduced its calculation of defendants' FLSA minimum wage
2 deficiency by crediting as tips towards that deficiency 9% of the customer fares
3 collected by the class members. The Court concludes that resolving whether
4 additional amounts of minimum wages are owed to the class members under the
5 Minimum Wage Amendment, beyond the amounts concluded by the United States
6 Department of Labor, because of such agency's use of a "tip credit," involves issues
7 common to all of the class members and defendants have not proffered any meaningful
8 evidence tending to contradict such conclusion.

9 The Court makes no finding that the foregoing two identified common questions
10 are the only common questions present in this case that warrant class certification.
11 Such two identified issues are sufficient for class certification as the commonality
12 prerequisite of NRCP Rule 23(a) is satisfied when a "single common question of law
13 or fact" is identified. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 848
14 (2005).

15 The Court also finds that the other requirements for class certification under
16 NRCP Rule 23(b)(3) are adequately satisfied upon the record presented. Numerosity
17 is established as the United States Department of Labor investigation identified over
18 600 potential class members who may have claims for minimum wages under the
19 Minimum Wage Amendment. "[A] putative class of forty or more generally will be
20 found numerous." *Shuette*, 122 Nev. at 847. Similarly, adequacy of representation
21 and typicality seem appropriately satisfied upon the record presented, it being
22 undisputed that the two named plaintiffs are or have been taxi drivers employed by the
23 defendants and their counsel being experienced in the handling of class actions. The
24 Court also believes the superiority of a class resolution of these claims is established
25 by their presumptively small individual amounts, the practical difficulties that the class
26 members would encounter in attempting to litigate such claims individually and obtain
27 individual counsel, the status of many class members as current employees of
28 defendants who may be loath to pursue such claims out of fear of retaliation, and the

1 desirability of centralizing the resolution of the common questions presented by the
2 over 600 class members in a single proceeding.

3 Defendants have not proffered evidence or arguments convincing the Court that
4 it should doubt the accuracy of the foregoing findings. The Court is also mindful that
5 Shuette supports the premise that is better for the Court to initially grant class
6 certification, if appropriate, and "reevaluate the certification in light of any problems
7 that appear post-discovery or later in the proceedings." *Shuette* 124 P.3d at 544.

8 Therefore

9 IT IS HEREBY ORDERED:

10 Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(3) is
11 GRANTED. The class shall consist of the class claims of all persons employed by
12 defendants as taxi drivers in the State of Nevada at anytime from July 1, 2007 through
13 October 27, 2015, except such persons who file with the Court a written statement of
14 their election to exclude themselves from the class as provided below. The class
15 claims are all claims for damages that the class members possess against the
16 defendants under the Minimum Wage Amendment arising from unpaid minimum
17 wages that are owed to the class members for work they performed for the defendants
18 from July 1, 2007 through October 27, 2015 . Leon Greenberg and Dana Sniegocki of
19 Leon Greenberg Professional Corporation are appointed as class counsel and the
20 named plaintiffs Christopher Thomas and Christopher Craig are appointed as class
21 representatives. The Court will allow discovery pertaining to the class members and
22 the class claims.

23 IT IS FURTHER ORDERED:

24 (1) Defendants' counsel are to produce to plaintiffs' counsel, within 10 days
25 of the service of Notice of Entry of this Order, the names and last known addresses of
26 all persons employed as taxicab drivers by the defendants in the State of Nevada from
27 July 1, 2007 through October 27, 2015;


1 (2) Plaintiffs' counsel, upon receipt of the names and addresses described in
2 (1) above, shall have 40 days thereafter (and if such 40th day is a Saturday, Sunday or
3 holiday the first following business day) to mail a Notice of Class Action in the form
4 annexed hereto as Exhibit "A" to such persons to notify them of the certification of
5 this case as a class action pursuant to Nev. R. Civ. P. 23(b)(3) and shall promptly file
6 with the Court a suitable declaration confirming that such mailing has been performed;

7 (3) The class members are enjoined from the date of entry of this Order, until
8 or unless a further Order is issued by this Court, from prosecuting or compromising
9 any of the class claims except as part of this action and only as pursuant to such Order;
10 and

11 (4) Class members seeking exclusion from the class must file a written
12 statement with the Court setting forth their name, address, and election to be excluded
13 from the class, no later than 45 days after the mailing of the Notice of Class Action as
14 provided for in (2), above.

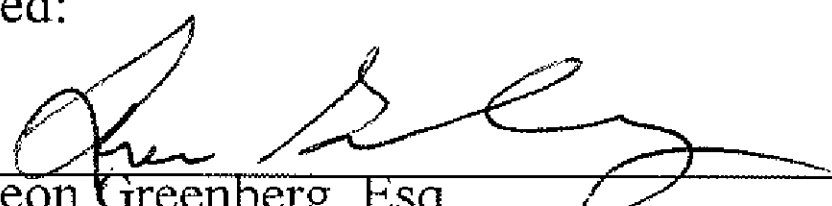
15 IT IS SO ORDERED.

16 Dated this 20 day of November, 2015.


Hon. Ronald J. Israel
District Court Judge

18 Submitted:

19 By:


Leon Greenberg, Esq.
Dana Sniegocki, Esq.
LEON GREENBERG PROF. CORP.
2965 S. Jones Blvd., Ste. E-3
Las Vegas, NV 89146
Attorneys for Plaintiffs

24 Approved as to form and content:

25 By: Not Approved
Marc C. Gordon, Esq.
Tamer B. Botros, Esq.
YELLOW CHECKER STAR
TRANSPORTATION CO. LEGAL DEPT.
5225 W. Post Road
Las Vegas, NV 89118
Attorneys for Defendants

EXHIBIT "A"

1 LEON GREENBERG, ESQ., SBN 8094
2 DANA SNIEGOCKI, ESQ., SBN 11715
3 Leon Greenberg Professional Corporation
4 2965 South Jones Blvd- Suite E3
5 Las Vegas, Nevada 89146
(702) 383-6085
(702) 385-1827(fax)
leongreenberg@overtimelaw.com
dana@overtimelaw.com

6 Attorneys for Plaintiffs

7 **DISTRICT COURT**
8 **CLARK COUNTY, STATE OF NEVADA**

9 CHRISTOPHER THOMAS, and
10 CHRISTOPHER CRAIG, Individually
and on behalf of others similarly
situated,

11 Plaintiffs,

12 vs.

13 NEVADA YELLOW CAB
14 CORPORATION, NEVADA
15 CHECKER CAB CORPORATION, and
16 NEVADA STAR CAB
CORPORATION,

17 Defendants.

Case No.: A-12-661726-C

Dept.: XXVIII

**NOTICE OF CLASS ACTION
CERTIFICATION**

18 You are being sent this notice because you are a member of the class of current
19 and former taxi drivers employed by NEVADA YELLOW CAB CORPORATION,
20 NEVADA CHECKER CAB CORPORATION, and NEVADA STAR CAB
21 CORPORATION that has been certified by the Court. Your rights as a class member
22 are discussed in this notice.

23 **NOTICE OF CLASS ACTION CERTIFICATION**

24 On November __, 2015, this Court issued an Order certifying this case as a class
25 action for all taxi driver employees of NEVADA YELLOW CAB CORPORATION,
26 NEVADA CHECKER CAB CORPORATION, and NEVADA STAR CAB
27 CORPORATION (the "class members") who were employed at anytime from July 1,
28 2007 to October 27, 2015. The purpose of such class action certification is to resolve

the following questions:

(1) Does NEVADA YELLOW CAB CORPORATION, NEVADA CHECKER CAB CORPORATION, and NEVADA STAR CAB CORPORATION owe class members any unpaid minimum wages pursuant to Nevada's Constitution?

(2) If they do owe class members minimum wages, what is the amount each is owed and must now be paid by NEVADA YELLOW CAB CORPORATION, NEVADA CHECKER CAB CORPORATION, and NEVADA STAR CAB CORPORATION ?

(3) If they do owe class members minimum wages, what additional money, if any, should NEVADA YELLOW CAB CORPORATION, NEVADA CHECKER CAB CORPORATION, and NEVADA STAR CAB CORPORATION pay to the class members besides unpaid minimum wages?

The class certification in this case may also be amended or revised in the future which means the Court may not answer all of the above questions or may answer additional questions.

NOTICE OF YOUR RIGHTS AS A CLASS MEMBER

If you wish to have your claim as a class member decided as part of this case you do not need to do anything. The class is represented by Leon Greenberg and Dana Sneigocki (the "class counsel"). Their attorney office is Leon Greenberg Professional Corporation, located at 2965 South Jones Street, Suite E-3, Las Vegas, Nevada, 89146. Their telephone number is 702-383-6085 and email can be sent to them at leongreenberg@overtimelaw.com. Communications by email instead of telephone calls are preferred.

1 You are not required to have your claim for unpaid minimum wages and other
2 possible monies owed to you by NEVADA YELLOW CAB CORPORATION,
3 NEVADA CHECKER CAB CORPORATION, and NEVADA STAR CAB
4 CORPORATION decided as part of this case. If you wish to exclude yourself from
5 the class and not participate in this case you may do so by filing a written and signed
6 statement with the Clerk of the Eighth Judicial District Court, which is located at 200
7 Lewis Avenue, Las Vegas, Nevada, 89101, no later than [insert date 45 days after
8 mailing] setting forth your name and address and stating that you are excluding
9 yourself from the class certified in this case. If you do not exclude yourself from the
10 class you will be bound by any judgment rendered in this case, whether favorable or
11 unfavorable to the class. If you remain a member of the class you may enter an
12 appearance with the Court through an attorney of your own selection. You do not
13 need to get an attorney to represent you in this case and if you fail to do so you will be
14 represented by class counsel.

15
16 **THE COURT IS NEUTRAL**
17

18 No determination has been made that NEVADA YELLOW CAB
19 CORPORATION, NEVADA CHECKER CAB CORPORATION, and NEVADA
20 STAR CAB CORPORATION owes any class members any money. The Court is
21 neutral in this case and is not advising you to take any particular course of action. If
22 you have questions about this notice or your legal rights against NEVADA YELLOW
23 CAB CORPORATION, NEVADA CHECKER CAB CORPORATION, and NEVADA
24 STAR CAB CORPORATION you should contact class counsel at 702-383-6085 or by
25 email to leongreenberg@overtimelaw.com or consult with another attorney. The
26 Court cannot advise you about what you should do.

1 **NO RETALIATION IS PERMITTED IF YOU**
2 **CHOOSE TO PARTICIPATE IN THIS LAWSUIT**

3 Nevada's Constitution protects you from any retaliation or discharge from your
4 employment for participating in this case or remaining a member of the class. You
5 cannot be punished by NEVADA YELLOW CAB CORPORATION, NEVADA
6 CHECKER CAB CORPORATION, and NEVADA STAR CAB CORPORATION or
7 fired from your employment with them for being a class member. NEVADA
8 YELLOW CAB CORPORATION, NEVADA CHECKER CAB CORPORATION, and
9 NEVADA STAR CAB CORPORATION cannot fire you or punish you if this case is
10 successful in collecting money for the class members and you receive a share of that
11 money.

12
13 IT IS SO ORDERED .

14 Date:

15
16 /s/ District Court Judge
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

I, KEITH SAKELHIDE, being duly sworn, states:

- ///

1
2 9. I declare under the penalty of perjury under the laws of the State of Nevada that the
3 foregoing is true and correct.

4 FURTHER AFFIANT SAYETH NAUGHT
5

6
7 

8 KEITH SAKELHIDE

9 SUBSCRIBED AND SWORN to before
10 me this 1st day of October, 2015





Notary Public