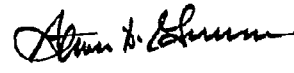


APPENDIX 20

APPENDIX 20



CLERK OF THE COURT

1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 LAKSIRI PERERA,

6 Plaintiff,

7 vs.

8 WESTERN CAB COMPANY,

9 Defendant.
10
11
12

CASE NO: A14-707425-C

DEPT. VII

13 BEFORE THE HONORABLE LINDA M. BELL, DISTRICT COURT JUDGE
14 THURSDAY, OCTOBER 8, 2015

15 **RECORDER'S TRANSCRIPT OF**
16 **ALL PENDING MOTIONS**
17

18 APPEARANCES:

19 For the Plaintiff:

LEE GREENBERG, ESQ.

20
21 For the Defendant:

MALANI L. KOTCHKA, ESQ.
JOHN MORAN, JR., ESQ.

22
23
24
25 RECORDED BY: RENEE VINCENT, COURT RECORDER

1 Thursday, October 8, 2015 - 10:17 a.m.

2
3 MS. KOTCHKA: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MS. KOTCHKA: Melani Kotchka for Western Cab.

6 MR. GREENBERG: Good morning, Your Honor. Leon Greenberg for
7 Plaintiffs.

8 MR. MORAN: John Moran present, Your Honor.

9 THE COURT: Good morning. All right. Let me see here.

10 [Pause]

11 THE COURT: All right. So this is on for the -- it's actually not on for
12 this, but it's supposed to be on for the motion to amend the complaint. I don't
13 know why it didn't get calendared, but it's on for a status check and a motion
14 to amend. So, Mr. Greenberg, whenever you're ready.

15 MR. GREENBERG: Good morning, Your Honor.

16 THE COURT: Good morning.

17 MR. GREENBERG: This is on for Plaintiff's motion to amend the
18 complaint. I would begin by stating that it's really almost in a posture of a
19 further motion to dismiss, Your Honor, in respect to the opposition. The
20 opposition doesn't address, you know, timeliness of the amendment, for
21 example, or anything of that sort. It goes to these ascertains that there are
22 fatal errors in the legal posture of the case or the way the claims are alleged,
23 which I'm happy to address directly to the Court right now.

24 THE COURT: Sure. That would be great.

25 MR. GREENBERG: They were discussed in a reply that was filed --

1 THE COURT: Right. I have that, too.

2 MR. GREENBERG: Okay. Thank you, Your Honor. In respect to the
3 additional Plaintiffs, Mr. Sargeant and Mr. Ahmed, there's an allegation raised
4 that these individuals, in fact, possess no claim based upon Defendant's
5 records. Your Honor dealt with this issue in the first motion to dismiss, which,
6 I believe, was argued back around January or February of this year, and you
7 issued an order on that, which is that Exhibit A of the reply. It's the same
8 circumstance here.

9 There are disputed factual issues. There was an imposition that
10 these individuals paid for fuel for cabs out of their own pocket, which had the
11 effect of reducing their hourly rate below the applicable minimum wage. We
12 have their declarations, which I've annexed to my reply, along with
13 calculations, verifying that based on their sworn statements and Defendant's
14 records, if we do those calculations, we are going to come up with a
15 deficiency.

16 So there is clearly an issue of fact that's presented in the record
17 here in respect to that issue, and, again, this is identical to the issue Your
18 Honor considered in the first motion to dismiss Mr. Perera has claimed and
19 which Your Honor objected in your prior order at Exhibit A of the reply.

20 Defendant is now asserting that there's a lack of jurisdiction by
21 this Court over the class action claims because there's no clear indication that
22 any of the named Plaintiffs are individually asserting damages in excess of the
23 \$10,000 amount. That is most simply disposed of by the fact that there are
24 equable relief claims in this case for injunctive relief.

25 For example, the amended complaint specifically wants the

1 Court's assistance in remedying this issue of the gasoline charges because
2 that has an effect of inflating falsely the earnings of the Plaintiffs and resulting
3 in false reporting to the IRS and tax consequences, as well as continuing
4 equitable relief to terminate that policy or to enforce the minimum wage
5 requirements against the Defendants.

6 So under the *Edwards* case -- this is from 2000 -- *Edwards v.*
7 *Emperor's Gardens* is the most recent one. That was 2013. That claim for
8 equable relief has to be before this Court. The Justice Court wouldn't have
9 jurisdiction over that, and so that clearly vests jurisdiction in this Court.

10 In addition, Defendants are relying on a line of authority in
11 making that argument dealing with the status of diversity jurisdiction in the
12 federal courts. To the extent that Nevada has looked at this question of
13 jurisdictional limitations in terms of damage claims, it appears to have actually
14 adapted the aggregation standard, meaning that you would aggregate the
15 claims, all of the claims, if you're examining the individual -- you know, if
16 you're examining the sufficiency of the damages for jurisdiction purposes. On
17 the class case you would actually aggregate all of the individual claims
18 together as a group, not require that each individual in the class meet the
19 damages threshold.

20 If I may make a further argument, the National Labor Relations
21 Act renders the minimum wage amendment entirely inoperative. That claim is
22 not cognizable because we have this decision in *Fort Halifax Packing*, which
23 comes about a year after the authority in *Golden* -- I think it's *Golden Bay* or
24 *Golden State Cab* case, which Defendants relied upon --

25 THE COURT: *Golden State Transit*?

1 MR. GREENBERG: Excuse me?

2 THE COURT: Golden State Transit?

3 MR. GREENBERG: *Golden State Transit*, right. Defendants do not
4 discuss *Fort Halifax*, which came out a year after *Golden State*, *Fort Halifax*
5 actually discusses *Golden State Transit*. And what *Fort Halifax* tells us is that
6 it's completely proper for a state to impose an across-the-board minimum labor
7 standard. In this case it's minimum wages. In *Fort Halifax* it was a
8 requirement that all employers provide a certain minimum amount of severance
9 pay in the event of a plant closing. It only applied to employers of a certain
10 size, but it was an across-the-board requirement.

11 The fact that that would interfere allegedly or interact with
12 negotiations or collective bargaining between an employer and their union was
13 found by the Supreme Court simply to not be within the scope of the National
14 Labor -- National Labor Relations Act's preemption because the act doesn't
15 preempt all state regulation of labor standards or working conditions.

16 If it did, for example, Your Honor, essentially, the states would
17 have no power whatsoever to regulate any aspect of a workplace because
18 even things like unemployment compensation or workers' compensation for
19 on-the-job injuries or health and safety standards in the workplace would all be
20 preempted automatically under Defendant's theory because they intrude upon
21 the free market, and they impair the freedom on employers and labor unions to
22 negotiate standards. Because those are all subjects, you know, on-the-job
23 injury compensation, worker safety, severance pay as in *Fort Halifax Packing*,
24 whatever it might be, or minimum wages as in this case. Those are all
25 subjects that employers and unions can negotiate and agree upon standards,

1 standards that exceed whatever standard the state may impose as well, but
2 they don't preempt the state's regulation of those traditional areas, but state
3 concern, and that's what *Fort Halifax* tells us.

4 Now, to the extent that there's a way to distinguish our
5 situation from *Fort Halifax* -- and there is a distinction here in this case, which
6 Defendants do point out -- which is that the Minimum Wage Amendment does
7 allow the union and an employer to waive the Minimum Wage Amendment's
8 requirements. So, essentially, there is a carve-out in the Minimum Wage
9 Amendment that gives the employer and the union, if they both agree in a
10 collective bargaining agreement, to not have to follow the standard that the
11 state is imposing upon every non-union employer in the State of Nevada.

12 Now, whether that carve-out -- because that is different than
13 *Fort Halifax*, and whether that carve-out provision actually is meaningful is an
14 interesting academic question, Your Honor, because under the National Labor
15 Relations Act, since it is federal law and it governs the collective bargaining
16 relationship between employees and employers, it preempts any contrary or
17 intruding federal reg -- you know, state regulation.

18 So, for example, there's a good argument that under the
19 National Labor Relations Act, even if that provision was not present in the
20 Minimum Wage Act, the Minimum Wage Act is completely silent and said
21 simply you must pay the standard to everybody in the State of Nevada, if the
22 union and employer got together, entered into a collective bargaining
23 agreement under federal law waiving that state protection, there is significant
24 support for the proposition that that waiver would be valid and would actually
25 preempt the state law in that situation.

1 And this is discussed -- I believe it's at page 10 of my brief.
2 This is suggested in the *Livadas v. Bradshaw* case by the United States
3 Supreme Court. But, again, this is an academic issue, Your Honor, because if
4 that provision of the Minimum Wage Act -- excuse me, the minimum wage
5 constitutional amendment in Nevada actually is improper, the Court is simply
6 going to have to sever it, and the courts could declare that -- as part of its
7 decision in this case that that provision, that opt-out provision or carve-out,
8 whatever you wish to call it, is not effective.

9 And under the constitutional amendment, the rest of the -- the
10 rest of the amendment would remain in effect. This was an issue we brought
11 before your Court's attention in the last argument on this case, which touched
12 on a similar preemption issue involving ERISA that was alleged, but we're not
13 here to reargue that, Your Honor. I'm just reminding Your Honor that the
14 severance issue was raised --

15 THE COURT: I didn't forget it yet.

16 MR. GREENBERG: Yeah. So Your Honor may be familiar with that.
17 So my point is, that that argument, to the extent that it has any actual
18 relevance or concern to the Court, is not dispositive of this case, and I -- and
19 it's not dispositive of these individuals' claims. They're not subject to a
20 collective bargaining agreement that was ever entered into by the employer
21 and the employee.

22 There's an assertion now that the Plaintiffs' lack standing to
23 seek equitable relief. That assertion is not actually detailed by citation to any
24 authority by Defendants. As explained in my brief, there is a -- how does one
25 say, a basis within federal jurisprudence and federal jurisdictional doctrine

1 under Article 3 to support that claim, but this Court doesn't operate under the
2 case in controversy, standards or pecuniary state standards that have
3 developed under Article 3 of the United States Constitution and that limit the
4 jurisdiction in federal district courts.

5 And, again, this is discussed in my brief, the *Stockmeier* case
6 from the Nevada Supreme Court, and there's an additional important case that
7 I cite where they make quite clear that standing in Nevada is broadly
8 construed, it is not limited in that fashion, and, clearly, given the language of
9 the constitutional amendment which grants the employee the right to seek any
10 relief to cure a violation, it's not the question of actually curing an injury to the
11 Plaintiffs.

12 So to the extent that the lack of standing argument revolves this
13 theory that, well, the current employee has no standing to seek equitable relief
14 in the present -- excuse me, former employee has no standing to seek
15 equitable relief for present problems or future problems because they will
16 sustain no personal injury from those alleged problems or violations of the law,
17 the Minimum Wage Amendment itself confers that standing by saying that you
18 can bring an action to cure the violation of the Minimum Wage Amendment.
19 So it's not a question of curing a damage or an injury to the individual.

20 There are arguments presented, which I'm not going to get into,
21 which were already submitted and argued to the Court. Defendants raise a
22 second --

23 THE COURT: Mr. Greenberg, do you think that an individual employee,
24 though, would have standing to bring that type of action?

25 MR. GREENBERG: Well, the issue -- and, again, to discuss this in

1 terms of the background of the federal jurisprudence on this, looking at it in
2 the Article 3 context, we have the *Wal-Mart v. Dukes* case. This is discussed
3 at page 10 of my brief. And illustrative of this is the *Smook v. Minnehaha*
4 *County*.

5 In *Smook v. Minnehaha County*, for example, a bunch of former
6 juvenile detainees in a facility, who had been released from the facility,
7 brought a 1993 type action of seeking equitable relief to cure ongoing
8 constitutional violations of the treatments of the detainees in the facility, and
9 the federal district court said, no, you do not have standing to seek that kind
10 of equitable relief because you're not actually current in the facility, and
11 there's no -- there's no personal injury to you that is accruing. You have no
12 personal stake. There is no case in controversy before the Court within the
13 meaning of Article 3 of the Constitution.

14 So that is essentially the position that -- again, Defendants do
15 not articulate the basis in their brief for their no standing argument. They
16 simply assert we don't have standing to seek this relief or discuss any of this
17 jurisprudence, but the Court may well wish to look at it.

18 So in that situation that I just outlined, no, there is no federal
19 jurisdiction in the federal court, but as I discussed just after that on page 10 of
20 my brief, in *Stockmeier and Hantges v. City of Henderson*, the Nevada
21 Supreme Court has expressly rejected Article 3 standing analysis for this Court
22 and for jurisdiction of the courts in the State of Nevada because you don't
23 have to show as -- as it was in *Stockmeier*, they don't have to show
24 redressability, injury, causation to have standing to seek a remedy. It's a
25 question of what the purpose or the intent is of the law, and there's a general

1 presumption of broad standing to enforce the rights and public interests that
2 are set forth in the law.

3 And, certainly, given the language of the Nevada constitutional
4 amendment, as I was discussing with Your Honor, these individuals have
5 standing to cure violations of the law that have occurred. The only
6 requirement is that they actually be an employee or had been an employee of
7 the employer. So, anyway, they do have a personal stake in this litigation.
8 Obviously, they have a personal stake. They're also claiming damages for past
9 conduct by the employer, but they also have standing to seek continuing relief,
10 future relief.

11 Your Honor, the standing analysis that I'm communicating to the
12 Court was rejected. The fact of leaving injunctive relief provisions of the
13 constitutional amendment would be rendered virtually nil because whenever
14 any employee would bring a claim against the employer saying, look, they're
15 violating the law here, they're not paying minimum wage, enjoin them, they
16 get fired, and then they lack standing, and then the employer essentially has a
17 get-out-of-jail-free card. And that's what it would amount to if we were to
18 adopt the Article 3 standing analysis the Defendant is essentially urging upon
19 this Court as discussed in *Smook* that I was just going over with the Court.

20 In respect to the other issues that are raised, as I said, there are
21 arguments that are resubmitted regarding these other issues that the Court
22 reviewed and had submitted at the last hearing. I don't want to address any
23 of that.

24 THE COURT: Right. Thank you.

25 MR. GREENBERG: There's an argument made that these labor

1 commissioner regulations without the constitutional amendment are invalid. I
2 don't know understand how that has anything with the case currently before
3 the Court. If Defendants are -- and there's also a separation of powers
4 argument that is made that I do not understand in Defendant's submission. If
5 Defendants are going to elaborate on that further or somehow explain that
6 more, I'd like an opportunity to --

7 THE COURT: Absolutely.

8 MR. GREENBERG: -- just rebut on that. And the only other thing I just
9 want to bring to the Court's attention is there's an allegation here that Mr.
10 Sargeant, who's one of the proposed additional Plaintiffs in this case, is a
11 serial plaintiff and somehow that renders him inadequate as a class
12 representative on page 11 and 12, concluding part of my reply papers.

13 I discussed that the case law on this issue does not support the
14 Court making any distinction on the basis that this individual has been involved
15 in other class action litigations against other taxi companies over these sort of
16 issues. In fact, it may make him a better representative because it shows his
17 commitment to the vindication of the class' interest.

18 THE COURT: Okay.

19 MR. GREENBERG: I really just repeated what's in my submission,
20 Your Honor.. Tried to answer the Court's questions or inquiries. If there's
21 nothing else, I don't want to repeat myself further.

22 THE COURT: Nothing else right now. Thank you.

23 MR. GREENBERG: Thank you.

24 THE COURT: All right. How are you?

25 MS. KOTCHKA: I'm fine. Thank you. All right. According to the

1 declaration of Danny Thompson, which is Exhibits 1 through 3, which we
2 furnished the Court, the Nevada AFL-CIO drafted the Minimum Wage
3 Amendment to the Nevada Constitution. Thompson states this law helped
4 increase the compensation of AFL-CIO members in Nevada and helps level the
5 playing field between non-union employers and unionized employers.

6 He goes on to say that most unionized employers provide health
7 benefits, regularly meeting the Minimum Wage Amendment standard of not
8 costing employees more than 10 percent of their gross income, while a
9 number of non-union plans are reported to be failing such standards inside
10 Nevada. It's our contention that this law is within a zone protected and
11 reserved for market freedom.

12 We brought your attention to the *Chamber of Commerce of*
13 *U.S. v. Brown* case, decided in 2008, in which the Supreme Court addressed a
14 California statute which prohibited several classes of employers who received
15 state funds from using the funds to assess, promote or deter union organizing.
16 The U.S. Supreme Court held that California's law was preempted under the
17 Machinists Preemption because it regulated within a zone protected and
18 reserved for market freedom.

19 Here the Minimum Wage Amendment does exactly the same
20 thing. Thompson states: "Members of some Nevada AFL-CIO affiliates
21 receive wages below 8.25 per hour, but also receive health benefits from their
22 employer which qualified their employer to the lower minimum rate under the
23 state constitution." He continues and states: "That unionized employers in
24 the state compete constantly with non-union employers paying only the state
25 minimum wage, particularly in the restaurant industry."

1 He states that: "If non-union employers were allowed to lower
2 wages to pay only the lower federal minimum wage, there would be large
3 amounts of business loss by unionized employers and losses to union members
4 of paid hours worked, tips and jobs and losses and dues income to AFL-CIO
5 affiliates." And that's contained in Exhibit 2.

6 Here the Minimum Wage Amendment, which help increased the
7 compensation of AFL-CIO members in Nevada and helps level the playing field
8 between non-union employees and unionized employers, it's a law within a
9 zone protected and reserved for market freedom. The Supreme Court in
10 *Brown* found that the legislative purpose of California's law was not the
11 efficient procurement of goods and services, but was in furtherance of a labor
12 policy. Here, according to Thompson, where this Minimum Wage Amendment
13 is meant to increase the compensation of AFL-CIO members, is in furtherance
14 of a labor policy.

15 In *Chamber of Commerce of U.S. v. Bragdon*, 64 F.3d 497, the
16 Ninth Circuit decided in 1995 that an ordinance passed by a county in
17 California, which required all employers to pay prevailing wages to their
18 employees on certain types of private industrial construction projects costing
19 over 500,000 also violated federal labor policy.

20 THE COURT: Ms. Kotchka, I'm sorry to interrupt you. I just want to
21 make sure we're not getting too far afield of -- this is a motion to amend the
22 complaint, so I'm not sure how --

23 MS. KOTCHKA: An argument that the amendment is unconstitutional
24 goes to the futility of allowing the amendment.

25 THE COURT: All right. Thank you.

1 MS. KOTCHKA: Okay. So in the *Bragdon* case, the ordinance
2 provided that employees could sue for unpaid wages if they had not been paid
3 a prevailing wage. The Ninth Circuit found that the ordinance was preempted
4 because it frustrated the purposes of the National Labor Relations Act.

5 The Ninth Circuit analyzed the hourly wages and hourly benefits
6 and concluded that the ordinance affected the bargaining process in a much
7 more evasive and detailed fashion than the isolated statutory provision of *Fort*
8 *Halifax*. *Fort Halifax* is the case that Mr. Greenberg just addressed, and I'm
9 going to address it very shortly.

10 The *Bragdon* court said that the ordinance there like the
11 Minimum Wage Amendment here was more properly characterized as an
12 example of an interest group deal in public interest clothing. Here the AFL-
13 CIO, which is an interest group, drafted a constitutional amendment whose
14 purpose was a prohibited one under federal labor law.

15 *Fort Halifax*, *Fort Halifax* was decided by the Supreme Court in
16 1987. It concerned a statute out of the State of Maine, which provided for a
17 one time severance whenever an employer closed its business. In addressing
18 the issue, the court pointed out that that particular provision provided the
19 same protection to individual union and non-union workers alike and thus
20 neither encouraged nor discouraged the collective bargaining processes that
21 were the subject of the National Labor Relations Act.

22 Here we have a two-tier minimum wage floor that was designed
23 by the AFL-CIO to level the playing field between union and non-union
24 companies. This is not a minimal employment standard. The main statute
25 applied equally to union and non-union employees. Here the AFL-CIO states

1 that the minimum wage does not apply equally to union and non-union
2 workers and that the entire purpose of the two-tier floor is to favor union
3 employees and union companies, and, therefore, the Minimum Wage
4 Amendment is preempted by federal labor law. The Nevada Supreme Court
5 has held on -- I think I count four or five occasions, that federal law
6 preemption controls in other areas. They have not dealt specifically with this
7 one.

8 We draw the Court's attention to the *Rolf Jensen & Associates,*
9 *Inc.*, case. It's cited in our brief. It's 282 P.3d 743, in which the court found
10 that a state law claim for contractual indemnity against a consultant was
11 preempted by the Americans With Disabilities Act. In *NanoPierce*
12 *Technologies, Inc.*, be depository trust in *Clearing Corporation*, 168 P.3d 73,
13 the Nevada Supreme Court held that claims for misrepresentation were
14 preempted by the Securities Exchange Act.

15 In *Marcoz v. Summa Corporation*, 801 P.3d 1346, the Supreme
16 Court held that an employer's allegation of bad faith termination for the
17 purpose of saving or reducing an employer's obligation for future contributions
18 to an employee's retirement plan was preempted by ERISA, And *Union Pacific*
19 *Railroad Company v. Harding*, 958 P.2d 87, the Nevada Supreme Court held
20 that the Federal Railway Labor Act preempted the railway's indemnity in
21 contribution claims.

22 We would also ask the Court to review the *Standard Oil*
23 *Company v. Agsalud* decision. It's 633 Nev. 2nd 760, decided by the Ninth
24 Circuit in 1980 and *520 South Michigan Avenue Associates*, which is at 549
25 F.3d 1119, decided by the Seventh Circuit in 2009.

1 Then I'd like to move on to the Court's jurisdictional limit, which
2 Mr. Greenberg addressed. You notice that nowhere in the discussion did
3 Perera really dispute that he does not have a claim for \$10,000, nor does he
4 allege that either Ahmed or Sargeant have such a claim. In Nevada, he says
5 that the Nevada courts aggregate the claims, but he did not cite any case to
6 you, and we could not find any case where Nevada had specifically addressed
7 this. There's a slew of federal law that requires that each class member meet
8 the jurisdictional limit for federal court jurisdiction, and we believe that when
9 the Nevada Supreme Court finally gets to this issue, that it will decide
10 similarly.

11 At the end of his pleading, which we've now deemed the
12 third amended complaint, even though it says second amended complaint on
13 it, Perera and Ahmed and Sargeant just have a very abbreviated and
14 uninformed -- uninformative prayer for relief, simply stating that they demand
15 relief in a jury trial wherever appropriate. Of course, a jury trial is not
16 appropriate as to equitable relief. They have two claims. We've been over the
17 claims. The one is the Minimum Wage Amendment; the second one is the
18 severance pay or 608.040 cause of action. Both of them demand money
19 damages.

20 And buried within paragraph 19, there is -- it begins with the
21 named Plaintiffs on behalf of themselves and the proposed Plaintiff class
22 members seek a judgment, and he describes what the judgment is, and then
23 right in the middle it says, "A suitable injunction and other equitable relief
24 barring the Defendant from continuing to violate Nevada's Constitution." And
25 that is the only reference in this third amended complaint to equitable relief.

1 Normally, when people seek equitable relief, they ask for the
2 elements of equitable relief, including an irreparable harm allegation, and there
3 are no words like that in this third amended complaint. In the *Great-West Life*
4 *& Annuity Insurance Company v. Knudson* case at 534 US 204210 in 2002,
5 the United States Supreme Court said almost invariably suits seeking, whether
6 by judgment, injunction or declaration to compel the defendant to pay a sum
7 of money to the plaintiff, are suits for money damages as that phrase has
8 traditionally been applied since they seek no more than compensation for a
9 loss resulting from the defendant's breach of a legal duty, and money damages
10 are, of course, the classic form of legal relief.

11 *Edwards v. Direct Access*, which is relied upon by Mr. Perera,
12 does not fall within the injunctive relief exception to the \$10,000 monetary
13 threshold for District Court jurisdiction. In that case the plaintiffs were seeking
14 statutory damages and injunctive relief for past and potential future uninvited
15 invasions of their privacy by defendant's repeated violations of the Federal
16 Telephone Consumer Protection Act of 1991.

17 That particular act created a private right of action to pursue
18 multiple remedies, including injunctive relief barring additional unwanted
19 contacts, actual damages or \$500 per violations and treble damages if the
20 Court determined the statutory violations to be willful or knowing violations of
21 the law.

22 So when the court went through that particular case, they
23 added up all of the allegations that were made in the complaint and analyzed it
24 as follows: "Under the TCPA's damages provision, Edwards can claim
25 damages for actual monetary loss or \$500 in damages for each violation, plus

1 treble damages for willful and knowing violations. Edwards did not claim any
2 actual monetary damages as a result of Direct Access's facsimiles. There's a
3 computation under the alternative method is required. Edwards claimed
4 damages for six unauthorized facsimiles.

5 Six TCPA violations multiplied by \$500 for each violation equals
6 \$3,000. Assuming that the District Court finds that Direct Access willfully
7 and knowingly violated the TCPA, Edwards could recover 9,000 under the
8 treble damages provision. This amount exceeds a \$7500 jurisdictional
9 threshold for the District Courts when the complaint was filed in 2003. The
10 District Court incorrectly concluded that to a legal certainty, Edwards'
11 damages claims were worth less than the then applicable jurisdictional
12 amount.

13 The Supreme Court then concluded that since Edwards
14 separately can claim that he was entitled to an injunction, he also had an
15 independent basis for the District Court's jurisdiction as well. Here, however,
16 the only injunctive relief that is requested is an injunction to require the
17 employer to follow the law. That's not -- that's not a true request for
18 injunctive relief. Everybody -- I mean, the employer already knows after
19 *Thomas* was decided that it has to comply with the law. And, moreover, none
20 of the people here have standing to allege injunctive relief because they are all
21 past employees and not current employees.

22 THE COURT: What about Mr. Greenberg's point that then no one could
23 ever sue because if you don't want someone to sue you, then you just fire
24 them and they don't have standing?

25 MS. KOTCHKA: Well, I think -- I think that's a ridiculous contention.

1 He hasn't shown that we've ever fired anyone for --

2 THE COURT: Well, I don't think he was suggesting that. I think we
3 were talking hypothetically. If the rule is you only have standing to bring a
4 claim for equitable relief if you're a current employee, doesn't that put the
5 employer -- and absolutely no suggestion that your client was doing anything
6 inappropriate, but just in general, put the employer in a position where if they
7 don't want somebody to sue them, they just have to fire them?

8 MS. KOTCHKA: Well, I suppose if you think that the injunction is the
9 only way to enforce the act, that that might be possible, but the Minimum
10 Wage Amendment within its own contours provides a remedy for people who
11 assert a claim under minimum wage and then are fired, and it specifically
12 prohibits it, and it gives remedies for it. So, I mean, the remedy could be an
13 injunction that puts the employee back to work, but it would have to be an
14 employee that actually suffers a tangible injury.

15 We have a long-standing history of requiring an actual judicial
16 controversy as a predicate to judicial relief, and I'm relying on the *Roe v. Bryan*
17 case at 728 P.2d 443 at 1986. In that case the Supreme Court said that
18 homosexuals who had never been arrested for violating a sodomy statute did
19 not have standing to seek declaratory relief, and so, therefore, I still -- I think
20 you have to suffer some sort of injury before you'd be able to come forward
21 and seek injunctive relief. And these employees who -- the only ones involved
22 in our action so far, Perera, and then Ahmed and Sargeant are seeking to be
23 added, but they are all past employees who voluntarily quit. I mean, none of
24 them alleged that they were -- that they were terminated and --

25 THE COURT: Well, no, but I don't think that was the point. I think the

1 point was just in general, if you lack standing -- because you're not a current
2 employee, if you lack standing to bring any sort of injunctive relief because
3 you're not a current employee just creates kind of a strange situation in terms
4 of what the employer can do to manipulate that, if they chose to do that. Not
5 that it happened in this case.

6 MS. KOTCHKA: Okay.

7 THE COURT: I'm just talking about sort of what the rule is in general.

8 MS. KOTCHKA: Well, unless you allege irreparable harm, you're not
9 going to be entitled to injunctive relief, and I think since you have a law that
10 applies to the employer, and it's going to continue to apply to the employer, I
11 don't know how you can show irreparable harm to get an injunction to say,
12 employer, you shall comply with the law in the future.

13 I mean, he's asking for an injunction for prospective relief, you
14 know, for something in the future, not for something that's happened in the
15 past, so I still don't -- I think it would have to meet all the requirements of an
16 injunctive remedy, and I don't think he's even alleged the basis of it in this
17 case.

18 He very briefly says that -- at the end of the brief anyway, that
19 there's no jurisdiction in the Justice Court, but that's not true, Your Honor.
20 Article 6, Section 6 of the Nevada Constitution says: "The District Courts
21 have original jurisdiction in cases excluded by law from the original jurisdiction
22 of the Justice Courts." Then NRS 4.370(S) gives Justice Courts jurisdiction in
23 actions transferred from the District Court, and Subsection O provides for
24 jurisdiction of the Justice Court over small claims actions under Chapter 73.
25 And if you go to Chapter 73, it's now been amended to provide for claims for

1 recovery of money up to \$10,000.

2 And, finally, Your Honor, to just address the specific
3 declarations, neither Ahmad nor Sargeant states what their gas charge was
4 per day. Neither one of them says that they can -- they spent the exact cost
5 for gas on any specific days, and, therefore, there's no evidentiary support for
6 Exhibit G, which is really not described anywhere as to how they got -- how
7 they got to that chart.

8 Moreover, Your Honor, then Minimum Wage Amendment does
9 not require that Western Cab pay for gas. The only prohibited offset in the
10 Minimum Wage Amendment is tips or gratuities. The amendment specifically
11 states: "Tips or gratuities received by employees shall not be credited as
12 being any part or offset against the wage rates required by this section. There
13 is no prohibition against any other sort of offset."

14 The affidavit of Martha Sarber, Exhibit 5, shows that she did not
15 consider tips when computing Ahmed's and Sargeant's hourly wage.
16 Moreover, Ahmad was offered health insurance, and he declined; therefore, he
17 met the condition of NAC 608.106 and was only entitled to the lower of the
18 two-tier minimum wage.

19 Ahmad admits in his declaration that the cost of gasoline he
20 purchased varied every day. Sargeant estimates his gasoline costs, but cannot
21 specific within any certainty what they were on any given day. Moreover, his
22 affidavit relies on his belief, and belief is not personal knowledge and is not
23 adequate to repute his timesheet.

24 THE COURT: All right. Which would be great for a motion for
25 summary judgment, but we're on a motion to amend the complaint. So I

1 understand that you disagree with their assertions, but I'm not sure that that is
2 really too helpful to me at this point in deciding whether I allow the
3 amendment or no.

4 MS. KOTCHKA: Well, if it's -- if it's futile -- again, Your Honor, I mean,
5 if they haven't suffered -- if they haven't shown that they haven't been paid
6 minimum wage under any sort of construction, then it's futile to grant them an
7 amendment to join in this suit, and our point is that they were paid much more
8 than Perera was paid.

9 We've shown that they were paid minimum wage. They have
10 not adequately shown that they were -- that they were not or that there's
11 even a material fact that there's even a good faith basis to argue with it, and
12 so that's why we believe that they have not -- that their burden under Rule 15
13 to be added to the complaint. We don't think they're similarly situated to
14 Perera or to anybody else who would be a member of the class.

15 Your Honor said, I think, on the first day that we argued over
16 here in March, that if someone, you know, didn't suffer a minimum wage loss,
17 they simply wouldn't be a member of the class. So that's the basis of our
18 argument on the addition of those two people.

19 THE COURT: Okay. Anything else? No? Mr. Greenberg.

20 MR. GREENBERG: Your Honor, if the Court is inclined to grant the
21 amendment, I don't want to take up the Court's time rebutting to some of the
22 assertions made.

23 THE COURT: Go ahead and rebut.

24 MR. GREENBERG: Okay. Thank you, Your Honor.

25 THE COURT: May as well.

1 MR. GREENBERG: Briefly, Your Honor, there's a -- there's an issue
2 raised here, an allegation, that these individuals named -- proposed named
3 Plaintiffs' representatives are not personally seeking any equitable relief that
4 would apply to them. Okay. This is really not true, Your Honor, because in
5 Exhibit A of the cross-motion to amend, at paragraph 19, which is where the
6 first claim for relief is discussed, it says: "A suitable injunction and other
7 equitable relief barring Defendant from continuing to violate Nevada's
8 Constitution and requiring the Defendant to remedy at its expense the injury to
9 the class members, it is caused by falsely reporting to the United States
10 Internal Revenue Service and the Social Security Administration the income of
11 the class members."

12 Now, the only way that remedy could be effective for these
13 three individuals would be through some action by them because they would
14 have to cooperate in providing information to the IRS or the Social Security
15 Administration. It's not just a question of the cost of damages or filing an
16 amended tax report or getting a tax professional to straighten this out for
17 these individuals. They actually need to cooperate. At least that's what we're
18 asking the Court to compel is their cooperation on that respect.

19 I'm not saying that this is a relevant standard, by the way, Your
20 Honor, for these individuals to bring the claim for equitable relief before the
21 Court. I completely disagree with that. But I'm just saying, if the Court were
22 to adopt the view that -- to have standing to make the equitable claim, it can't
23 be purely for, you know, future relief. It has to involve some past conduct
24 that you're seeking to remedy through the Court's injunctive equitable power.
25 The claim is clearly asserted in the amended complaint, Your Honor.

1 There was discussion, Your Honor, about, you know, this
2 offset. We went through this on the first motion to dismiss. I don't want to
3 take up the Court's time, that somehow it's okay for them to charge for gas
4 because it's not explicitly stated in the constitutional amendment that you
5 can't have an offset for that. I mean, could there be an offset then for the
6 janitor for the cost of the soap and the mop that he has to use to clean the
7 floor when he's only paid the minimum wage? They make him pay for that,
8 too, and, therefore, again, reduce his pay below the minimum wage effectively
9 as happened to these taxi drivers or -- maybe they can charge the employees
10 for management oversight by the employer because they need to have
11 somebody come there to inspect the work.

12 I mean, Your Honor, I think the Court understands that we can't
13 have this sort of sleight of hand be engaged in by employers to put these
14 charges on employees that have this effect of reducing earnings below the
15 minimum wage. It's really a very simple concept.

16 There was an issue raised about the sufficiency of these
17 allegations regarding the payment of the gas and so forth. What I want to
18 point out, Your Honor, is that we have records that Defendants have actually
19 introduced here which show the miles from, which we can know the miles
20 that they drove a particular cab on a particular day. If we know the vehicle,
21 make and model, we know what the cost was for gasoline in the vicinity, in
22 Clark County during that period of time, I think Your Honor can understand,
23 you know, a very intelligent discussion or presentation of the facts of what the
24 actual costs were to the drivers on particular days could be formulated and
25 presented to a jury to consider because, you know, a car gets so many miles

1 to a gallon, they drove it so many miles on the day. The Defendants have the
2 actual records showing that. It costs approximately that much. So these --
3 these are issues of fact that clearly are capable of a sufficiency of how would
4 one say substantive in presentation to the Court. They're not beyond proof,
5 Your Honor.

6 And, finally, Your Honor, I would just urge the Court -- because
7 Your Honor mentioned that some of these allegations, for example, regarding
8 the gas charges, would be something more appropriate for summary judgment
9 presentation, and, obviously, Defendant needs to be assured of their
10 procedural rights to present those arguments to the Court in proper process, I
11 would just urge the Court upon granting the amendment of the complaint to
12 expressly direct an answer and not invite then another motion for summary
13 judgment attempting to address that issue or anything else.

14 This case has been pending for over one year now. Defendants
15 were given an extension of time to answer until December of last year, but,
16 essentially, we have now been ten months without an answer in this litigation.
17 As Your Honor can understand, we really do need an answer. We need to
18 move this litigation forward. And I'm not trying to impair Defendant's rights to
19 bring any of their arguments --

20 THE COURT: All right.

21 MR. GREENBERG: -- before the Court. Thank you, Your Honor.

22 THE COURT: I understand. Thank you. Ms. Kotchka, anything else?

23 MS. KOTCHKA: I only have two very brief comments, Your Honor.

24 The first is that, there's nothing in the law in Nevada that requires a cab
25 company to pay for gas. It would be one thing if Mr. Greenberg were relying

1 on something, but there's simply nothing there. There's also nothing in the
2 law that requires -- that when somebody drives to their job that their employer
3 pay for their gas or requires the employer to pay for appropriate clothing and
4 that kind of thing. So that's our answer on the gas, and there's nothing
5 requiring it in the amendment, and the amendment, this Court has ruled, is
6 what controls this minimum wage claim in this case.

7 And, finally, the last thing I wanted to address, Mr. Greenberg's
8 frustrated with the posture -- the procedural posture of the course of this case,
9 Your Honor, but we're here on their motion to amend a complaint. This is for
10 the third time now. And so if you're debating between who -- who's doing
11 what and who has slowed this down, I think Mr. Greenberg and his client
12 certainly bear some of the blame for not having --

13 THE COURT: All right.

14 MS. KOTCHKA: -- gotten their complaint together.

15 THE COURT: Lucky for me, I don't think that's relevant at all to any
16 decision that I'm making.

17 MS. KOTCHKA: All right.

18 THE COURT: So I don't really have to figure it out.

19 MS. KOTCHKA: Okay. Thank you, Your Honor.

20 THE COURT: All right. All right. Thank you. I'm just going to add
21 the -- the order on the other stuff is drafted. I'm just going to put this in, and
22 I'll get it all to you very shortly, hopefully, within a few days.

23 MS. KOTCHKA: Okay.

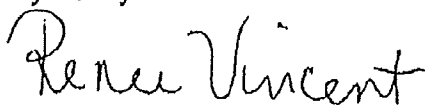
24 THE COURT: Thank you.

25 ///

1 MR. GREENBERG: Thank Your Honor.

2 [Proceedings concluded at 9:49 a.m.]
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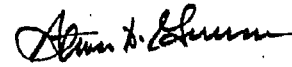
17 ATTEST: I do hereby certify that I have truly and correctly transcribed the
18 audio-visual recording of the proceeding in the above entitled case to the
19 best of my ability.

20 

21 _____
22 Renee Vincent, Court Recorder/Transcriber
23
24
25

APPENDIX 19

APPENDIX 19


CLERK OF THE COURT

RPLY
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

LAKSIRI PERERA, Individually and on)
behalf of others similarly situated,)

Plaintiff,)

vs.)

WESTERN CAB COMPANY,)

Defendant.)

Case No.: A-14-707425-C

Dept.: XIV

**PLAINTIFF'S REPLY TO
DEFENDANT'S OPPOSITION
TO PLAINTIFF'S COUNTER-
MOTION TO AMEND THE
COMPLAINT**

Plaintiff, by and through his attorney, Leon Greenberg Professional Corporation, submits this memorandum of points and authorities in reply to defendant's opposition to plaintiff's counter-motion to amend the complaint.

MEMORANDUM OF POINTS AND AUTHORITIES

SUMMARY OF RESPONSE

Plaintiff's counter-motion should be granted for the following reasons:

- Defendant incorrectly asserts the proposed additional plaintiffs Sargeant and Ahmed, based upon defendant's records, were always paid in excess of the applicable minimum wage. This is the exact same argument made in defendant's previous motion to dismiss (or alternatively for summary judgment) and that was rejected by the Court in respect to plaintiff Perera. Ex. "A." As discussed, *infra*, and in the declarations of Sargeant and Ahmed, Ex. "B" and "C," the Court cannot

1 resolve the parties' dispute based upon what defendant's records represent are the
2 hours worked, and wages paid, to Sargeant and Ahmed. This is because defendant
3 required Sargeant and Ahmed to buy the gasoline used in defendants' taxi cabs, thus
4 reducing their true hourly earnings below the required minimum wage rate. Ex. ¶¶
5 Defendant's attempt to rely upon their disputed records, and bar the proposed claims
6 of Sargeant and Ahmed on that basis, must be rejected, as the Court did previously
7 in respect to plaintiff Perrera, as the record before the Court demonstrates genuine
8 issues of material fact exist in respect to such claims. Ex. "A," p. 11, l. 3-10.

9 • Defendant incorrectly asserts the Court lacks jurisdiction over the claims
10 asserted by the three plaintiffs (and jurisdiction would only properly lie with the
11 Justice Court). Plaintiffs seek not only damages, but class wide equitable relief in
12 the form of an injunction, properly placing jurisdiction in this Court, and not the
13 Justice Court, irrespective of the amount of the individual plaintiffs' damages. *See,*
14 *Edwards v. Direct Access, LLC* 124 P.3d 1158, 1161 (Nev. Sup. Ct. 2005). As also
15 discussed, *infra*, defendants' assertion that a damages only class action must seek
16 damages in excess of the Justice Court's jurisdiction for each class member to
17 invoke this Court's jurisdiction is not supported by, and is contradicted by, the
18 relevant Nevada Supreme Court precedents.

19 • Defendant incorrectly asserts the National Labor Relations Act
20 preempts, in its entirety, the Minimum Wage Amendment of Nevada's Constitution.
21 The absolutely controlling case of *Fort Halifax Packing Co. Inc., v. Coyne*, 482 U.S.
22 1 (1987), which defendant does not cite, holds that state minimum compensation
23 standards are not preempted by the National Labor Relations Act (the "NLRA").
24 Even if the Court were to adopt defendants' erroneous argument, and find the
25 minimum wage amendment (MWA) violates the NLRA by coercing employers into
26 recognizing unions to secure MWA waivers, the severance provision of the MWA
27 would require invalidity of only its union collective bargaining agreement waiver
28 provision.

1 ● Defendant incorrectly asserts plaintiffs lack standing to seek equitable
2 relief. This argument is limited to four sentences, with no citation to authority or
3 explanation, except for the perfunctory assertion that because the plaintiffs are
4 former employees they lack standing to seek injunctive relief benefitting current
5 employees. Such argument is grounded in the limitations imposed upon a *federal*
6 *court's jurisdiction* under the U.S. Constitution's Article III "case or controversy"
7 and "personal stake" jurisprudence. Those jurisdictional principles are *not*
8 *operative* in this Court and have been expressly rejected by the Nevada Supreme
9 Court and Nevada's precedents grant plaintiffs standing to seek the injunctive relief
10 they are requesting *See, Stockmeier v. Nevada Dept. of Corrections Psychological*
11 *Review Panel*, 135 P.3d 220, 226 (Nev. Sup. Ct. 2006) (Rejecting application of
12 Article III constitutional standing requirements of injury, causation, redressability
13 for Nevada's Courts and imposing much broader standing).

14 ● Defendant repeats its argument on issues the Court already deemed
15 fully argued and submitted for a ruling. The Court ruled at the August 27, 2015
16 hearing that it had heard all the argument it wished to consider on all of the issues
17 raised by defendants' then-argued motion to dismiss, including whether claims
18 under NRS 680.040 (which defendant calls a "severance damages" claim) or for
19 punitive damages could proceed and the defendants' assertions ERISA and the ACA
20 preempted the plaintiffs' MWA claim. Ex. "D," hearing transcript, p. 25, l. 10-22.
21 Defendants' repeated arguments on those issues are improper.

22 ● Defendant makes an incomprehensible and irrelevant "separation of
23 powers" violation argument. Defendant argues certain regulations issued by the
24 Nevada Labor Commissioner are invalid and void because they violate the
25 separation of powers. Plaintiffs make no claims in their proposed amended
26 complaint under those regulations (or under any regulations). The invalidity of
27 those regulations is irrelevant and defendant offers no explanation of why this
28 alleged invalidity is material to the sufficiency of the proposed amended complaint.

1
2 **ARGUMENT**

3 **I. PROPOSED PLAINTIFFS SARGEANT AND AHMED'S**
4 **CLAIMS PRESENT DISPUTED MATERIAL FACTUAL**
5 **ISSUES AND CANNOT BE RESOLVED BASED UPON THE**
6 **RECORD BEFORE THE COURT**

7 The argument made by defendants, that their records demonstrate the
8 proposed new plaintiffs Ahmed and Sargeant were, at all times, compensated in
9 excess of the \$8.25 an hour required by the MWA, was raised by the defendant in
10 their original motion to dismiss filed on December 11, 2014. Ex. "E," relevant
11 excerpts of defendant's prior motion to dismiss. It was summarily rejected by the
12 Court as the then lone plaintiff Perera explained the defendants' records were
13 inaccurate as they did not include the deductions for the cash amounts he was forced
14 to pay for gasoline for defendant's taxi cab. Ex. "F" and Ex. "A," p. 11, l. 3-10.

15 Just like plaintiff Perera, the proposed additional plaintiffs submit sworn
16 declarations explaining what their "true" paid wages were, after they were forced to
17 use their personal funds to pay for the gasoline used in defendant's taxi cabs, a
18 minimum or average of \$22.00 or \$28.00 per shift. Ex. "B" and "C." After
19 deducting those costs from the wages earned and hours worked shown on
20 defendants' records, the additional plaintiffs, on certain occasions, were paid
21 between \$6.01 and \$7.50 an hour, less than the applicable \$8.25 an hour minimum
22 wage. Ex. "G." Accordingly, consistent with this Court's prior Order, this
23 argument by defendant is without merit and must be rejected.

24 **II. THIS COURT HAS JURISDICTION OVER THE**
25 **CLASS ACTION AND INDIVIDUAL CLAIMS ASSERTED**

26 **A. Jurisdiction is properly vested in this Court based upon**
27 **the presence of claims for equitable and injunctive relief.**

28 In *Edwards v. Direct Access, LLC* 124 P.3d 1158, 1161 (Nev. Sup. Ct. 2005) the Supreme Court reversed Jude Adair's ruling that an individual plaintiff alleging less than \$10,000 in statutory damages could not invoke this Court's

1 jurisdiction. While the Supreme Court found error with the manner in which this
2 Court calculated the plaintiff's damages, and its application of the damages
3 threshold, it also saliently observed: "We note that his [plaintiff's] request for
4 injunctive relief provided an independent basis for the district court's jurisdiction as
5 well."

6 Any uncertainty as to whether this Court has mandatory jurisdiction to hear
7 all claims made by a plaintiff who includes a legitimate claim for equitable relief
8 with claims for damages within the jurisdiction of the Justice Court, was resolved in
9 *Edwards v. Emperor's Garden Restaurant*, 130 P.3d 1280, 1284 (Nev. Sup. Ct.
10 2013) rehearing denied. "Thus, as Edwards' [the plaintiff's] requests for monetary
11 damages and his request for injunctive relief arose out of the same two facsimile
12 events, the district court properly acquired jurisdiction over the entirety of Edwards'
13 complaint, regardless of whether the monetary threshold was met." citing
14 *Parascandolo v. Christensen*, 199 P.2d 629, 631 (1948) (recognizing " '[t]he
15 general rule ... that, if a court of equity obtain[s] jurisdiction of a controversy on any
16 ground and for any purpose, it will retain jurisdiction for the purpose of
17 administering complete relief' " (quoting *Seaborn v. District Court*, 29 P.2d 500,
18 505 (1934).

19 **B. Even if this lawsuit was a "pure damages" case without**
20 **a request for injunctive relief this Court would have**
jurisdiction as defendant's jurisdictional analysis is in error.

21 Defendant's assertion that this case fails the jurisdictional damages
22 threshold of this Court is based upon a "non-aggregation" argument, e.g., that each
23 member of the proposed plaintiff class's individual claim must exceed that threshold
24 amount and such threshold cannot be met by "aggregating" together the value of the
25 claims of all the class members. Defendant cites not a single Nevada precedent
26 adopting such an analysis or rule, whether in the class action context or otherwise.
27 In fact, the Nevada Supreme Court precedents strongly support a conclusion that
28 aggregation of claims is the means by which to evaluate whether this Court's

1 jurisdictional damages threshold is met. See, *El Rancho, Inc. v. New York Meat &*
2 *Provision Co.*, 493 P.2d 1318, 1322 (Nev. Sup. Ct. 1972) citing *Hartford Min. Co.*
3 *v. Home Lumber & Coal Co.*, 114 P.2d 1093, 1094 (Nev. Sup. Ct. 1941) (Both
4 holding that plaintiffs may aggregate the value of their separate claims in an action
5 to invoke District Court damages jurisdiction). The only Nevada Supreme Court
6 case even considering the propriety of an “aggregation of class member damages” in
7 the Rule 23 context is squarely contrary to defendant’s “no aggregation” assertion.
8 See, *Schouweiler v. Yancy Co.*, 712 P.2d 786, 788 (Nev. Sup. Ct. 1985) (Rejecting
9 contention class action recovery for 38 class members in total amount of
10 \$192,289.22 should be divided equally, to \$5,168.14 per class member, for purposes
11 of applying the prevailing plaintiff attorney’s fee rule of NRS 18.010(2)(a)).

12 Rather than discuss the relevant Nevada precedents that control this Court,
13 defendants mislead by basing their “non-aggregation” argument on the
14 jurisprudence developed by the federal courts for class actions seeking to invoke
15 federal diversity jurisdiction. See, *Zahn v. International Paper Co.*, 414 U.S. 291
16 (1973), *superceded by statute as recognized in Exxon Mobil Corp. v. Allapattah*
17 *Services, Inc.*, 545 U.S. 546 (2005). Such precedents are irrelevant to this Court’s
18 exercise of jurisdiction and defendant offers no explanation of their relevancy.

19 C. **Justice Court does not have jurisdiction over smaller**
20 **damages claims arising under Nevada’s Constitution.**

21 The Justice Court is *not* granted jurisdiction over *all claims* for damages
22 that do not exceed \$10,000. Rather, it is granted jurisdiction over such smaller
23 damages claims for *only specific types of actions*. See, NRS 4.370. There is no
24 grant of jurisdiction for the Justice Court to hear and determine claims arising under
25 Nevada’s Constitution or for unpaid minimum wages owed pursuant to Nevada’s
26 statutes. Accordingly, there is no basis to conclude Nevada’s statutory scheme
27 confers jurisdiction upon the Justice Court for any such claims, irrespective of the
28 modesty of their amount.

1 **III. THE NATIONAL LABOR RELATIONS ACT DOES NOT**
2 **PREEMPT THE NEVADA CONSTITUTION'S MINIMUM**
3 **WAGE AMENDMENT**

4 **A. The NLRA cannot completely preempt the MWA.**

5 Defendant's argument that the MWA is completely preempted by the NLRA
6 rests upon a wholly unsupported assertion that through the MWA Nevada has
7 "destroyed the balance of power designed by Congress" in the area of industrial
8 relations regulated by the NLRA and is impermissibly "interfering with free
9 collective bargaining." Nothing of the sort is true. Nor is there a scintilla of
10 support for such a conclusion in the relevant jurisprudence discussing the scope of
11 NLRA preemption or federal preemption generally.

12 As the United States Supreme Court has repeatedly held "where 'federal law
13 is said to bar state action in fields of traditional state regulation, we have worked
14 on the 'assumption that the historic police powers of the States were not be
15 superseded by the Federal Act unless that was the clear and manifest purpose of
16 Congress.'" *California Div. Of Labor Standards Enforcement v. Dillingham*
17 *Construction*, 519 U.S. 316, 325 (1997), quoting and citing *New York State*
18 *Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645,
19 655 (1995) and *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

20 Contrary to defendant's assertions, the NLRA does not preempt every state
21 regulation that intrudes upon "market freedom" and influences what employers and
22 employees may choose to negotiate through the NLRA's collective bargaining
23 process. If it did so every single subject involving employment that a State might
24 seek to regulate, whether minimum wages, maximum hours of work, workplace
25 safety, worker's compensation or unemployment insurance requirements, would be
26 preempted by the NLRA since they would interfere with "market freedom."
27 Defendant also, clearly intentionally, fails to advise the Court about the definitive
28 United States Supreme Court precedent on the specific scope of NLRA preemption
of State wage and hour laws, *Fort Halifax Packing Co. Inc., v. Coyne*, 482 U.S. 1

1 (1987), instead relying upon *Golden State Transit Corp. v. City of Los Angeles*, 475
2 U.S. 608 (1986) which *Fort Halifax Packing* considered and found wholly
3 inapplicable to the same.

4 *Fort Halifax Packing* controls this issue and disposes, conclusively, of
5 defendant's NLRA preemption argument. In that case the State of Maine had
6 passed a law requiring employers to pay all employees of certain sized businesses a
7 specified amount of severance pay in the event of a plant closing. 482 U.S. 3-4, 26
8 MRSA 625-B. Employers were also free to negotiate contracts with their
9 employees, either non-union or union, that provided for at least those minimum
10 severance benefits. In rejecting the employer's claim such State law improperly
11 intruded upon the NLRA's regulation of the collective bargaining process, the
12 Supreme Court concluded that such regulation of labor standards was within the
13 traditional and proper police powers of the States and "...the law is not pre-empted
14 by the NLRA, since its establishment of a minimum labor standard does not
15 impermissibly intrude upon the collective-bargaining process." 482 U.S. at 22.

16 The MWA's establishment of a minimum labor standard for all Nevada
17 employees is not preempted by the NLRA, as per *Fort Halifax Packing*.

18 **B. The severance and saving provision of the MWA renders**
19 **the validity of its union collective bargaining agreement**
waiver term irrelevant to this case.

20 The only possible distinction between the MWA and NLRA preemption
21 argument raised by defendant and *Fort Halifax Packing* is that the latter involved a
22 fully "non-waivable" State law standard. No employee, union or non-union, either
23 through an individual contract or a collective bargaining agreement, could be
24 exempted from the Maine statute's severance pay protections pursuant to its terms.
25 The MWA, by contrast, expressly provides for a waiver of its protections, but only
26 through a union collective bargaining agreement and only when such "waiver is
27 explicitly set forth in such agreement in clear and unambiguous terms." Nev. Const.
28 Art. 15., Sec. 16 (B).

1 Perhaps defendant would argue it is this "waiver" provision, conferring an
2 arguably different power upon a labor union, that interferes with the NLRA and
3 creates NLRA preemption. While it is true this precise issue is, at least arguably,
4 not resolved by *Fort Halifax Packing*, the severance provision of the MWA, Nev.
5 Const. Art. 15., Sec. 16 (D), renders such argument irrelevant. Under that portion of
6 the MWA any of the MWA's terms that are "declared illegal, invalid or inoperative"
7 will not act to invalidate any other portions of the MWA. If the only term of the
8 MWA creating NLRA preemption is its union collective bargaining agreement
9 waiver term¹ such term would be stricken, the structure of the MWA would then be
10 identical to that in *Fort Halifax Packing*, and the remainder of the MWA would
11 remain in force.

12 IV. PLAINTIFFS HAVE STANDING TO SEEK 13 EQUITABLE AND INJUNCTIVE RELIEF

14 Article 15, Section 16, Subsection "B" of Nevada's Constitution provides
15 that:

16 "An employee claiming violation of this section may bring an action
17 against his or her employer in the courts of this State *to enforce the*
18 *provisions of this section and shall be entitled to all remedies available*
under the law or in equity appropriate to remedy any violation of this
section, including but not limited to back pay, damages, reinstatement or
injunctive relief. (emphasis provided)

19 Employees are empowered to bring civil actions to "enforce the provisions"
20 of Article 15, Section 16 of Nevada's Constitution and this Court must grant them
21 all remedies appropriate to correct "any violation" of that section including
22 injunctive relief. Plaintiffs are not merely granted rights, individually, to damages

23
24 ¹ A serious argument exists that not only is such term *not* preempted by the
25 NLRA but that the NLRA, through its preemptive force, would allow a union
26 collective bargaining agreement to waive MWA protections even in the absence of
27 such a waiver allowance in the MWA's language. *See, Livadas v. Bradshaw*, 512
28 U.S. 107, 125 (1994) (Suggesting, relying upon other Supreme Court precedents,
that labor union can bargain away the state law protections conferred upon
individual employees if it does so in a "clear and unmistakable" fashion).

1 or remedies for the injuries they have suffered but a right to “enforce” the Nevada
2 Constitution’s provisions against defendants and remedy all “violations” of those
3 provisions committed by defendants. Such language grants plaintiffs standing to
4 enforce those constitutional protections and have those violations remedied.

5 Defendant gives no clue as to the basis for their “no standing to seek
6 equitable class relief” argument, except to insist the plaintiffs’ status as former, and
7 not current, employees bars them from seeking such equitable relief for current
8 employees. Such argument would have a basis, if this case was in federal court, in
9 *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2557 (2011). *Wal-Mart* and
10 similar cases hold past victims of a defendant’s conduct or former employees of an
11 employer lack standing to seek FRCP Rule 23(b)(2) class certification based upon
12 the “case or controversy” limitations on federal jurisdiction found in Article III of
13 the United States Constitution. *See, Smook v. Minnehaha County* 457 F.3d 806,
14 816 (8th Cir. 2006) (Reviewing federal decisions and finding Article III deprives
15 class of former juvenile facility inmates of standing to secure injunctive relief
16 against future actions by facility towards inmates).

17 This Court’s jurisdiction is not restricted by Article III standing limitations.
18 The Nevada Supreme Court has held standing in this Court exists whenever rights
19 are conferred with language that is broader than the standing conferred under a
20 general constitutional standing analysis. *See, Stockmeier v. Nevada Dept. of*
21 *Corrections Psychological Review Panel*, 135 P.3d 220, 226 (Nev. Sup. Ct. 2006)
22 (Inmate need not meet Article III constitutional standing requirements of injury,
23 causation, redressability, to have standing to seek remedy for violation of Nevada’s
24 Open Meeting law as such law confers standing more broadly by its own language)
25 and *Hantges v. City of Henderson*, 113 P.3d 848, 850 (Nev. Sup. Ct. 2005) (The
26 provisions of NRS 279.609, by expressly authorizing challenges to agency decisions
27 grants standing to make such challenges to all citizens, not just landowners who
28 might otherwise meet traditional constitutional standing limitations, despite statute’s

1 silence on who has standing). Accordingly, cases dealing with FRCP Rule 23(b)(2)
2 class action standing limitations under federal law, such *Wal-Mart*, are inapplicable.

3 **V. DEFENDANT'S OTHER ARGUMENTS**
4 **ARE IMPROPER, SPECIOUS AND IRRELEVANT**

5 **A. Defendant's arguments on the impropriety of the proposed**
6 **NRS 608.040 ("severance damages") and punitive damages**
7 **claims, and ERISA and ACA preemption, are not properly**
8 **made to the Court.**

9 Defendants' arguments on these points were previously briefed and orally
10 argued before the Court on August 27, 2015. At that point the Court indicated it did
11 not want to take further argument on those issues. Ex. "D," hearing transcript, p.
12 25, l. 10-22. Defendants' repeated arguments on those issues are improper.

13 **B. The invalidity of the Labor Commissioner's regulations has**
14 **no relevancy to the sufficiency of the plaintiffs' Complaint.**

15 Defendant's arguments that certain regulations issued by the Nevada Labor
16 Commissioner are invalid and void because they violate the separation of powers
17 raises an irrelevancy. Plaintiffs make no claims in their proposed amended
18 complaint under those regulations (or under any regulations). Defendants offer no
19 explanation of how the invalidity of those regulations, and their alleged violation of
20 the separation of powers, renders the MWA unenforceable. This argument by
21 defendant is incomprehensible.

22 **C. Defendant's assertion additional plaintiff Sargeant cannot be**
23 **a class action representative because he is a "serial plaintiff"**
24 **is baseless.**

25 Defendant cites no support for its assertion the proposed additional plaintiff
26 Sargeant cannot represent the class because he is a "serial plaintiff" and a putative
27 class representative in one or more other class action lawsuits. It cites no support
28 for that assertion because the relevant precedents actually hold the opposite. A
plaintiff's history as a class representative plaintiff in other actions is irrelevant to
their fitness as a class representative in any particular lawsuit and, indeed, may even
furnish proof of their commitment and willingness to "fairly and adequately protect

1 the interest of the class.” *See, Levie v. Sears, Roebuck & Co.*, 496 F.Supp 2d. 944,
2 950 (N.D. Ill 2007) citing *Murray v. GMAC Mtg. Corp.*, 434 F.3d 948, 954 (7th
3 Cir.2006) (Plaintiff’s history of filing numerous class action lawsuits with the same
4 counsel does not impair their ability to be a class representative, there is no case law
5 supporting such a conclusion, and such a “professional plaintiff” may even better
6 serve the interests of the class.)

7 **CONCLUSION**

8 Wherefore, for all the foregoing reasons, the plaintiff’s counter-motion to
9 amend the complaint should be granted it its entirety.

10 Dated: October 1, 2015

11 Respectfully submitted,

12 /s/ Leon Greenberg
13 Leon Greenberg, Esq. (Bar # 8094)
14 A Professional Corporation
2965 S. Jones Blvd., Suite E-3
15 Las Vegas, Nevada 89146
(702) 383-6085
16 Attorney for Plaintiffs
17
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CERTIFICATE OF SERVICE

The undersigned certifies that on October 1, 2015, she served the within:

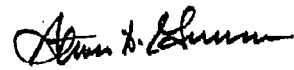
PLAINTIFF'S REPLY TO DEFENDANT'S
OPPOSITION TO PLAINTIFF'S
COUNTERMOTION TO AMEND THE
COMPLAINT

by court electronic service:

TO:
Malani Kotchka
HEJMANOWSKI & MCCREA LLC
520 S. 4th St., Suite 320
Las Vegas, NV 89101

/s/ Dana Sniegocki
Dana Sniegocki

EXHIBIT "A"



1 ORDR

2 **EIGHTH JUDICIAL DISTRICT COURT** CLERK OF THE COURT
3 **CLARK COUNTY, NEVADA**

4
5 LAKSIRI PERERA, individually and on behalf of
6 others similarly situated,

7 Plaintiff,

Case No. A-14-707425-C
Dept No. VII

8 vs.

9 WESTERN CAB COMPANY,

10 Defendant.

11 **DECISION AND ORDER**

12
13 This case is an individual and proposed class action brought by a taxicab driver
14 against his former employer-taxi company to recover unpaid hourly minimum wage. On
15 December 8, 2014, Defendant Western Cab Company filed a Motion to Dismiss Plaintiff
16 Laksiri Perera's First Amended Complaint for failure to state a claim upon which relief can
17 be granted. Western Cab argues that dismissal is appropriate because Thomas v. Nevada
18 Yellow Cab Corporation applies prospectively only. 130 Nev. Adv. Op. 52, 327 P.3d 518,
19 519-21 (2014), reh'g denied (Sept. 24, 2014). Mr. Perera's claims involve the time after
20 passage of the Minimum Wage Amendment but prior to Thomas. Western Cab also argues
21 that, under a two-year statute of limitations, Mr. Perera was always paid minimum wage.
22 In the alternative, Western Cab moves to preemptively decertify the class and obtain
23 summary judgment in its favor.

24 Mr. Perera filed an Opposition and Countermotion on January 26, 2015. Mr.
25 Perera's Countermotion moves to amend his Complaint, adding an additional ground for
26 relief. Mr. Perera also seeks leave to conduct Nevada Rule of Civil Procedure 56(f)

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1 discovery regarding the appropriateness of class certification and tolling of the statute of
2 limitations. Western Cab filed a Reply and Opposition on February 10, 2015.

3 The Court heard these motions on March 12, 2015. The Court finds taxicab drivers'
4 right to bring an action to enforce the provisions of the Minimum Wage Amendment arose
5 on November 28, 2006, when the Amendment was ratified; claims for violations of the
6 provisions of the Amendment must be brought within four years of the cause of action
7 having accrued; genuine issues of material fact regarding Mr. Perera's wages and wage rate
8 preclude summary judgment of this case; and preemptive decertification of the class would
9 be premature because discovery has not commenced. The Court therefore denies
10 Defendant Western Cab Company's Motion to Dismiss First Amended Complaint in its
11 entirety, and grants Plaintiff Laksiri Perera's Countermotion only as to his request for leave
12 to amend his complaint to add a claim related to cab drivers being required to pay for fuel
13 costs.

14 I. Discussion

15 A. Defendant's Motion to Dismiss

16 Nevada Rule of Civil Procedure 12(b)(5) authorizes dismissal of a claim if it fails to
17 state a claim upon which relief can be granted. When considering an NRCP 12(b)(5)
18 motion, a court must accept the allegations of the complaint as true, and draw all inferences
19 in favor of the non-moving party. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224,
20 228, 181 P.3d 670, 672 (2008). "Dismissal is proper where the allegations are insufficient
21 to establish the elements of a claim for relief." Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d
22 438, 439 (2002). "When the defense of the statute of limitations appears from the
23 complaint itself, a motion to dismiss is proper." Kellar v. Snowden, 87 Nev. 488, 491, 489
24 P.2d 90, 92 (1971).

25 The primary question presented is whether the Nevada Supreme Court's decision in
26 Thomas v. Nevada Yellow Cab Corporation applies the full force and effect of Article 15,
27 Section 16 of the Nevada Constitution (the Minimum Wage Amendment) from the date of
28 the Amendment's enactment or from the date of the Court's decision. Thomas held that the

1 Minimum Wage Amendment "revised Nevada's then-statutory minimum wage scheme"
2 and repealed the statutory minimum wage exemptions enumerated in NRS 608.250(2),
3 including the exemption for taxicab drivers. Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at
4 519-21; see also NRS 608.250(2)(b). In reaching this question, the Court examines the
5 relationship between statutory minimum wage and constitutional minimum wage, the
6 effect of Thomas, and the claims limitation period applicable to this case.

7 **1. Minimum Wage in Nevada**

8 Prior to enactment of the Minimum Wage Amendment, minimum wage in Nevada
9 was purely a creature of statutory authority and administrative regulation; born from
10 Chapter 608 of the Nevada Revised Statutes, minimum wage was set and regulated within
11 the Nevada Administrative Code. See NRS §§ 608.250-.290; see also Nev. Admin. Code §§
12 608.050-.160. Chapter 608 vested the power to establish the minimum wage in the Labor
13 Commissioner, who was required to prescribe the minimum wage by administrative
14 regulation. See NRS 680.250(1).

15 Chapter 608 did not offer all employees the right to receive minimum wage.
16 Specifically, NRS 608.250(2) denied the protections of minimum wage regulations to
17 certain kinds of employees. Those employees not entitled to minimum wage under Chapter
18 608 included (a) "casual babysitters;" (b) "domestic service employees who reside in the
19 household where they work;" (c) "outside salespersons whose earnings are based on
20 commissions;" (d) some agricultural workers; (e) "taxicab and limousine drivers;" and (f)
21 certain "persons with severe disabilities [that] have diminished their productive capacity."
22 NRS 608.250(2)(a)-(f).

23 The Minimum Wage Amendment was proposed by initiative petition, approved and
24 ratified by the people, and became effective on November 28, 2006. The Amendment
25 provided a new formula for setting minimum wage and extended minimum wage
26 protections to nearly all employees in the State. "The Minimum Wage Amendment
27 expressly and broadly defines employee, exempting only certain groups." Thomas, 130
28 Nev. Adv. Op. 52, 327 P.3d at 521. The only employees exempted by the Minimum Wage

1 Amendment are employees who are "under eighteen (18) years of age, employed by a
2 nonprofit organization for after school or summer employment or as a trainee for a period
3 not longer than ninety (90) days." Nev. Const. art. 15, § 16(C).

4 On June 26, 2014, the Nevada Supreme Court held that the Minimum Wage
5 Amendment "supersedes and supplants" Chapter 608's exceptions. Thomas, 130 Nev. Adv.
6 Op. 52, 327 P.3d at 522. The Court reasoned that, because the "expression of one thing is
7 the exclusion of another . . . the text [of the Amendment] necessarily implies that all
8 employees not exempted by the Amendment, including taxicab drivers, must be paid the
9 minimum wage set out in the Amendment." Id., 130 Nev. Adv. Op. 52, 327 P.3d at 521. The
10 Court ultimately held that "the legislative exception for taxicab drivers established by NRS
11 608.250(2)(e) . . . is impliedly repealed by the constitutional amendment." Id.

12 **2. Application of Thomas**

13 After Thomas, the question becomes when the cause of action for violations of the
14 Minimum Wage Amendment came into existence for taxicab drivers. If the enactment of
15 the Minimum Wage Amendment alone gave birth to the cause of action, the cause of action
16 has been available since the Amendment's effective date of November 28, 2006. On the
17 other hand, if Thomas created a new, otherwise unrecognized constitutional rule, Mr.
18 Perera's claims did not become available until June 26, 2014.

19 The inquiry begins with whether Thomas announced a new rule or merely clarified
20 the law. See Mitchell v. State, 122 Nev. 1269, 1276, 149 P.3d 33, 37-38 (2006) (vacating
21 habeas corpus petitioner's attempted murder conviction in light of the Court's decision
22 clarifying the mens rea required for aiding and abetting attempted murder).

23 There is no bright-line rule for determining whether a rule is new, but
24 there are basic guidelines to follow . . . "When a decision merely
25 interprets and clarifies an existing rule . . . and does not announce an
26 altogether new rule of law, the court's interpretation is merely a
27 restatement of existing law." Similarly, a decision is not new if "it has
28 simply applied a well-established constitutional principle to govern a
case which is closely analogous to those which have been previously
considered in the prior case law." . . . However, a rule is new, for
example, when the decision announcing it overrules precedent, "or

disapprove[s] a practice this Court had arguably sanctioned in prior cases, or overturn[s] a longstanding practice that lower courts had uniformly approved."

Id., 122 Nev. at 1276, 149 P.3d at 37-38 (quoting Colwell v. State, 118 Nev. 807, 819-20, 59 P.3d 463, 472 (2002)); Cf. Bridgewater v. Warden, Nevada State Prison, 109 Nev. 1159, 1161, 865 P.2d 1166, 1167 (1993) (holding that Court's recent decision created a new "unforeseeable definition" of deadly weapon which was not of "constitutional moment," so the new definition did not apply retroactively).

Thomas did not espouse a new constitutional principle; it squared the readily apparent definition of "employee" contained in the Minimum Wage Amendment with the exemption contained in NRS 608.250(2). In clarifying the Minimum Wage Amendment, Thomas simply applied a well-established constitutional principle. "The principle of constitutional supremacy prevents the Nevada Legislature from creating exceptions to the rights and privileges protected by Nevada's Constitution." Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at 522. "Statutes are construed to accord with constitutions, not vice versa." Id., 130 Nev. Adv. Op. 52, 327 P.3d at 521 (citing Foley v. Kennedy, 110 Nev. 1295, 1300, 885 P.2d 583, 586 (1994)). The Nevada Supreme Court determined the broad definition of employee in the Minimum Wage Amendment augmented the statutory definition: "The Amendment's broad definition of employee and very specific exemptions necessarily and directly conflict with the legislative exception for taxicab drivers established by NRS 608.250(2)(e)." Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at 521. Moreover, Thomas did not overrule precedent or overturn a longstanding practice that lower courts had uniformly approved. Thomas merely interpreted and clarified existing law.

Western Cab argues that the Nevada Supreme Court intended to limit Thomas based upon the Court's use of present tense language instead of, presumably, using strictly past tense language. But this Court is not persuaded that the Nevada Supreme Court was seeking to limit the application of Thomas by its use of present-tense language. In fact, in the first sentence of the Thomas decision, the Nevada Supreme Court described "Article 15, Section 16 of the Nevada Constitution, [as] a constitutional amendment that revised

1 Nevada's then-statutory minimum wage scheme." Thomas, 130 Nev. Adv. Op. 52, 327 P.3d
2 at 519 (emphasis added). The Nevada Supreme Court's use of the word "revised" in the first
3 sentence of Thomas suggests the Court had no intention of limiting the decision.

4 Furthermore, the Ninth Circuit Court of Appeals has rejected the argument that
5 Thomas applies only retroactively. See Greene v. Executive Coach & Carriage, 591 F. App'x
6 550 (9th Cir. 2015); see also CTA9 Rule 36-3 (unpublished decisions of the Ninth Circuit
7 are not precedent, but may be cited). In Executive Coach & Carriage, the Ninth Circuit held
8 "[t]he district court erred in dismissing Greene's claim under the Nevada Minimum Wage
9 Amendment . . . [b]ecause the repeal of § 608.250(2) occurred in 2006 when the
10 amendment was ratified." Executive Coach & Carriage, 591 F. App'x 550.

11 The Minimum Wage Amendment announced a new, straightforward constitutional
12 right. Thomas simply clarified that nothing in Chapter 608 diminished that right. The
13 Minimum Wage Amendment became law on November 28, 2006, and required nothing
14 more to establish the rights contained within it. Therefore, taxicab drivers' right to bring an
15 action to enforce the provisions of the Minimum Wage Amendment arose on November 28,
16 2006.

17 **3. Statute of Limitations**

18 The next issue the Court must address is the applicable statute of limitations. Mr.
19 Perera argues the four-year "catch all" statute of limitations of NRS 11.220 applies; Western
20 Cab argues the two-year statute of limitations of Chapter 608 applies. The Minimum Wage
21 Amendment provided taxicab drivers the constitutional right to receive minimum wage, a
22 right previously denied under the Chapter 608 statutory framework. "Our constitution can
23 be amended only after a long time and much labor. When an amendment is made it is
24 reasonable to conclude that, in the minds of the people, there is good reason for the change;
25 that it is wise to avoid a possible recurrence of evils borne in the past, or the happening of
26 those which threaten them in the future, or, it may be, both." State v. Hallock, 16 Nev. 373,
27 379 (1882). Therefore, when a taxicab driver brings a minimum wage claim, the taxicab
28

1 driver brings that claim under the provisions of the Minimum Wage Amendment, not
2 Chapter 608.

3 The Minimum Wage Amendment expressly provides a private right of action for an
4 employee claiming violation of the Minimum Wage Amendment. Specifically, the
5 Minimum Wage Amendment provides:

6 An employee claiming violation of this section may bring an action
7 against his or her employer in the courts of this State to enforce the
8 provisions of this section and shall be entitled to all remedies available
9 under the law or in equity appropriate to remedy any violation of this
10 section, including but not limited to back pay, damages, reinstatement
or injunctive relief. An employee who prevails in any action to enforce
this section shall be awarded his or her reasonable attorney's fees and
costs.

11 Nev. Const. art. 15, § 16(B) (emphasis added).

12 On the contrary, Chapter 608 provides a private right of action only for an employee
13 claiming violation of regulations promulgated under NRS 608.250:

14 If any employer pays any employee a lesser amount than the minimum
15 wage prescribed by regulation of the Labor Commissioner pursuant to
16 the provisions of NRS 608.250, the employee may, at any time within 2
years, bring a civil action to recover the difference between the amount
paid to the employee and the amount of the minimum wage.

17 NRS 608.260 (emphasis added).

18 The distinction between minimum wage prescribed by regulation of the Labor
19 Commissioner pursuant to the provisions of NRS 608.250 and minimum wage established
20 by the Minimum Wage Amendment is the method by which the minimum wage is
21 established: Chapter 608 grants the Labor Commissioner authority to set and discretion to
22 raise the minimum wage through administrative regulation; while the Minimum Wage
23 Amendment establishes a two-tiered minimum wage floor that is automatically adjusted
24 upward without administrative discretion. See NRS 680.250(1); but cf. Nev. Const. art. 15,
25 § 16(A).

26 Under Chapter 608's statutory framework, "the Labor Commissioner shall prescribe
27 increases in the minimum wage in accordance with those prescribed by federal law, unless
28

1 the Labor Commissioner determines that those increases are contrary to the public
2 interest." NRS 608.250(1). Chapter 608 affords the Labor Commissioner discretion to
3 refuse minimum wage increases prescribed by federal law if the Labor Commissioner
4 determines such minimum wage increases are "contrary to the public interest." Id.

5 In contrast, under the Minimum Wage Amendment's formula, the minimum wage
6 floor is to be adjusted upward by "the amount of increases in the federal minimum wage
7 over \$5.15 per hour, or, if greater, by the cumulative increase in the cost of living." Nev.
8 Const. art. 15, § 16(A). Any cost of living increase is "measured by the [annual] percentage
9 increase . . . of the Consumer Price Index . . . as published by the Bureau of Labor Statistics,
10 U.S. Department of Labor or the successor index or federal agency." The only involvement
11 the State's executive branch has in establishing the minimum wage set by the Minimum
12 Wage Amendment is that "[t]he Governor or the State agency designated by the Governor
13 shall publish a bulletin . . . each year announcing the adjusted rates." Id.

14 The Minimum Wage Amendment and Chapter 608 prescribe different methods for
15 establishing the minimum wage, and so too, for privately enforcing the minimum wage.
16 Thus, an action brought to enforce an employee's right to minimum wage established by the
17 Minimum Wage Amendment is wholly different than an action brought to recover
18 minimum wage as prescribed by regulation of the Labor Commissioner pursuant to the
19 provisions of NRS 608.250. This is not a new notion; in fact, the Attorney General of
20 Nevada issued an official opinion declaring as much before the Minimum Wage
21 Amendment had been ratified. Then Attorney General Brian Sandoval opined:

22 Each competing minimum wage scheme provides a complete civil
23 court remedy for evasion of its requirements . . . As the proposed
24 amendment has completely covered the topic of a civil court remedy,
providing for even greater relief, its remedy would supplant and repeal
by implication the existing civil remedy provision at NRS 608.260.

25 2005 Nev. Op. Att'y Gen. No. 04 (Mar. 2, 2005); see also Blackjack Bonding v. City of Las
26 Vegas Municipal Court, 116 Nev. 1213, 1218, 14 P.3d 1275, 1279 (2000) ("Opinions of the
27 Attorney General are not binding legal authority or precedent").
28

1 Here, Mr. Perera was expressly prohibited from receiving minimum wage under the
2 provisions of NRS 608.250, therefore Mr. Perera was also expressly prohibited from
3 exercising the private right of action made available in NRS 608.260. So too is Mr. Perera
4 prohibited from exercise an implied private right of action under NRS 608.260. Even in
5 light of the repeal of the NRS 680.250 exceptions, an implied private right of action is not
6 available to taxicab drivers under NRS 608.260 because the legislature did not intend to
7 extend a private right of action to individuals who were expressly excluded from the
8 protections of the statute. See Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 571, 170 P.3d 989,
9 993 (2007) ("We look to legislative intent when the statute does not expressly create a
10 cause of action"). Moreover, the Labor Commissioner's statutory authority to establish
11 regulations related to the enforcement of the minimum wage does not create a private right
12 of action for taxicab drivers. Though the intent displayed in regulations may determine
13 whether the regulation is privately enforceable, the language of a regulation cannot conjure
14 up a private right of action that has not been authorized by the legislature. See Alexander v.
15 Sandoval, 532 U.S. 275, 291, 121 S. Ct. 1511, 1522, 149 L. Ed. 2d 517 (2001) ("Agencies may
16 play the sorcerer's apprentice but not the sorcerer himself"). Therefore, Mr. Perera does
17 not have a private right of action under the provisions of Chapter 608.

18 The Minimum Wage Amendment provides the exclusive private right of action for
19 taxicab drivers to enforce Nevada's minimum wage law. Accordingly, the limitation on a
20 taxicab driver's right to enforce the minimum wage law is defined by the limitations on the
21 Minimum Wage Amendment itself. Although the Minimum Wage Amendment does not
22 provide a claims limitation period for an employee claiming violation of the Amendment,
23 Nevada Revised Statute section 11.220 provides that "[a]n action for relief, not hereinbefore
24 provided for, must be commenced within 4 years after the cause of action shall have
25 accrued." NRS 11.220. So without specific statutory prescription stating otherwise, claims
26 for violations of the provisions of the Minimum Wage Amendment must be brought within
27 four years of the cause of action having accrued. Therefore, Mr. Perera's action to enforce
28

1 Nevada minimum wage law pursuant to the Minimum Wage Amendment is subject to the
2 four-year claims limitation period provided under NRS 11.220.

3 **B. Defendant's Alternative Motion for Summary Judgment and to**
4 **Preemptively Decertify the Class**

5 Western Cab moves for summary judgment in its favor premised on its argument
6 that Mr. Perera was always paid over \$7.25 per hour worked, the wage rate for employees
7 receiving qualifying health insurance at the time. Western Cab further argues that Mr.
8 Perera is not a proper class representative because Mr. Perera has no individual claim and
9 issues of commonality exist.

10 **1. Plaintiff's Claims**

11 Summary judgment is appropriate "if the pleadings, depositions, answers to
12 interrogatories, and admissions on file, together with the affidavits, if any, show that there
13 is no genuine issue as to any material fact and that the moving party is entitled to a
14 judgment as a matter of law." NRCP 56(c). An issue is "genuine" if sufficient evidence
15 exists such that a reasonable fact finder could find for the non-moving party. Wood v.
16 Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The underlying substantive
17 law of the cause of action controls which factual disputes are material. Id.

18 The Minimum Wage Amendment established minimum wage as a two-tiered floor;
19 employees with access to certain health insurance benefits are entitled to a lower minimum
20 wage than employees without access to such benefits. Nev. Const. art. 15, § 16(A). Only
21 certain health insurance benefits qualify under the Amendment: "health insurance [made]
22 available . . . for the employee and the employee's dependents at a total cost . . . for
23 premiums of not more than 10 percent of the employee's gross taxable income from the
24 employer." Id. During the time period covered by Mr. Perera's claims, the minimum wage
25 floor was seven dollars and twenty-five cents (\$7.25) per hour worked if the employer made
26 qualified health insurance available; otherwise, the minimum wage floor was eight dollars
27 and twenty-five cents (\$8.25) per hour worked. Regardless of the minimum wage tier,
28

1 "[t]ips or gratuities received by employees shall not be credited as being any part of or
2 offset against the wage rates required by this section." Id.

3 Here, summary judgment is inappropriate in light of the genuine issues of material
4 fact that exist. A genuine issue of material fact exists as to whether Western Cab provided
5 Mr. Perera and his dependents access to health insurance at a total cost for premiums of
6 not more than ten percent of the Mr. Perera's gross taxable income. If not, Mr. Perera
7 would have a right to the higher tier of minimum wage. Additionally, a genuine issue of
8 material fact exists as to whether Mr. Perera's earnings were overstated due to his tips or
9 expenses being accounted for incorrectly. Therefore, summary judgment shall not be
10 granted at this time, and so, Mr. Perera's individual claims survive.

11 **2. Class Certification**

12 Seeing as summary judgment is not appropriate and Mr. Perera's claims survive,
13 Western Cab has a remaining argument for preemptive decertification of the class.
14 Western Cab argues the Court should preemptively decertify the class because this case is
15 unsuitable for class certification based upon issues of commonality that exist between Mr.
16 Perera, the class representative, and other prospective members of the class.

17 Nevada Rule of Civil Procedure 23(c)(1) provides that "[a]s soon as practicable after
18 the commencement of an action brought as a class action, the court shall determine by
19 order whether it is to be so maintained."

20 [C]lass allegations may be stricken at the pleading stage, [but] the
21 granting of motions to dismiss class allegations before discovery has
22 commenced is rare. Indeed, while there is little authority on this issue
23 within the Ninth Circuit, decisions from courts in other jurisdictions
24 have made clear that "dismissal of class allegations at the pleading
stage should be done rarely and that the better course is to deny such a
motion because 'the shape and form of a class action evolves only
through the process of discovery.'"

25 In re Wal-Mart Stores, Inc. Wage & Hour Litig., 505 F. Supp. 2d 609, 615 (N.D. Cal. 2007)
26 (quoting Myers v. MedQuist, Inc., No. 05-4608, 2006 WL 3751210, *4 (D.N.J.2006) (also
27 citing Abdallah v. Coca-Cola Co., No. Civ.A. 1:98CV3679-RW, 1999 WL 527835
28 (N.D.Ga.1999) (dismissal of class allegations prior to discovery is premature); 7AA Charles

1 Alan Wright, Arthur R. Miller & Mary K. Kane, Federal Practice and Procedure Civil §
2 1785.3 (3d 2005) (the practice employed in the overwhelming majority of class actions is to
3 resolve class certification only after an appropriate period of discovery)).

4 Here, where discovery has not commenced, preemptive decertification of the class
5 would be premature. Decertification of the class should be left for the Court to consider
6 after discovery has sufficiently commenced. Therefore, Defendant Western Cab Company's
7 Motion to decertify the class is denied without prejudice.

8 **C. Plaintiff's Countermotions for Leave to Amend Complaint and Conduct**
9 **Discovery**

10 Mr. Perera seeks leave to file a Second Amended Complaint. Mr. Perera also seeks
11 leave to conduct discovery under Nevada Rule of Civil Procedure 56(f) regarding class
12 certification and tolling of the statute of limitations.

13 **1. Leave to Amend Complaint**

14 Leave to amend shall be freely given when justice so requires. NRCP 15(a). Mr.
15 Perera seeks to add a ground for relief alleging that Western Cab required Mr. Perera to pay
16 for fuel costs, causing Mr. Perera's hourly wage to drop below the minimum wage. Finding
17 no grounds to justify denial, Mr. Perera shall be freely granted leave to amend his
18 Complaint. Therefore, Mr. Perera's Countermotion is granted as to his request for leave to
19 amend his Complaint.

20 **2. Leave to Conduct NRCP 56(f) Discovery**

21 Mr. Perera further seeks to conduct discovery pursuant to NRCP 56(f). Specifically,
22 Mr. Perera seeks to conduct discovery relevant to the Western Cabs summary judgment
23 motion regarding certification of the class and whether the two-year statute of limitations
24 that Western Cab argued for should be equitably tolled.

25 Nevada Rule of Civil Procedure 56(f) provides,

26 Should it appear from the affidavits of a party opposing the motion [for summary
27 judgment] that the party cannot for reasons stated present by affidavit facts essential
28 to justify the party's opposition, the court may refuse the application for judgment or
may order a continuance to permit affidavits to be obtained or depositions to be
taken or discovery to be had or may make such other order as is just.

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1 NRCP 56(f). In light of the Court's denial of Western Cab's motion for summary judgment,
2 Mr. Perera's request to conduct NRCP 56(f) discovery is moot. Therefore, Mr. Perera's
3 Countermotion is denied.

4 **Conclusion**

5 The Court finds the Nevada Supreme Court's decision in Thomas v. Nevada Yellow
6 Cab Corp., 130 Nev. Adv. Op. 52, 327 P.3d 518, 519-21 (2014), reh'g denied (Sept. 24, 2014),
7 did not introduce a new rule of law and the Minimum Wage Amendment to the Nevada
8 Constitution became effective November 28, 2006. The Court further finds that Mr. Perera
9 brings his claims under the provisions of the Minimum Wage Amendment and, as such,
10 Mr. Perera's claims are subject to the four-year statute of limitations period provided in
11 Nevada Revised Statute section 11.220. At this point, genuine issues of fact exist regarding
12 the presence of a legitimate class. Consequently, decertification of the class prior to
13 discovery would be premature. Mr. Perera's request for NRCP 56(f) discovery is therefore
14 moot. The Court grants Mr. Perera leave to amend his Complaint. Therefore, Defendant
15 Western Cab Company's Motion to Dismiss First Amended Complaint is denied in its
16 entirety, and Plaintiff Laksiri Perera's Countermotion is granted only as to his request for
17 leave to amend his complaint.

18
19 DATED this 15th day of June, 2015.

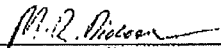
20
21 
22 _____
23 LINDA MARIE BELL
24 DISTRICT COURT JUDGE
25
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28

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th of June, 2015, he caused to be served the foregoing Decision and Order by faxing, mailing, or electronically serving a copy to counsel as listed below:

Name	Party	Phone	Service Method
Leon Greenberg, Esq. Dana Sniegocki, Esq.	Attorneys for Plaintiff Laksiri Perera		E-Service -or- leongreenberg@overtimelaw.com dana@overtimelaw.com
Malani Kotechka, Esq. John Moran, Jr., Esq.	Attorneys for Defendant Western Cab Co.		E-Service -or- mlk@hmlawlv.com


MICHAEL R. DICKERSON
LAW CLERK, DEPARTMENT VII

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A707425 **DOES NOT** contain the social security number of any person.

/s/ Linda Marie Bell Date 6/15/2015
District Court Judge

EXHIBIT "B"

1 **DECL**

2 **LEON GREENBERG, ESQ., NSB 8094**
3 **DANA SNIEGOCKI, ESQ., NSB 11715**
4 **Leon Greenberg Professional Corporation**
5 **2965 South Jones Blvd- Suite E4**
6 **Las Vegas, Nevada 89146**
7 **Tel (702) 383-6085**
8 **Fax (702) 385-1827**
9 **leongreenberg@overtimelaw.com**
10 **dana@overtimelaw.com**

11 **Attorneys for Plaintiff**

12
13 **DISTRICT COURT**
14
15 **CLARK COUNTY, NEVADA**

16 **LAKSIRI PERERA, Individually and on)**
17 **behalf of others similarly situated,)**

18 **Plaintiff,**

19 **vs.**

20 **WESTERN CAB COMPANY,**

21 **Defendant.**

Case No.: A-14-707425-C

Dept.: V

DECLARATION OF
MICHAEL SARGEANT

22 **Michael Sargeant, hereby affirms and declares under penalty of perjury the**
23 **following:**

24 **1. I am a former taxicab driver for the defendant, Western Cab Company. I am**
25 **offering this declaration in support of the plaintiff's motion to amend the complaint to**
26 **add me as a named plaintiff and to explain the nature of my work for the defendant.**

27 **2. I was employed by Western Cab Company for approximately 3 or 4 months,**
28 **until approximately June 2014 when my employment ended.**

3. Taxicab drivers did not receive an "hourly wage" from defendant at any time
during the time I was employed. My method of compensation as a taxicab driver for
defendant consisted of a 50% "split" of the fares I collected each day, minus certain

1 deductions known as "trip charges." Often, that commission split would result in my
2 receiving less than the required minimum wage of \$8.25 per hour for each hour I
3 worked. During my entire period of employment, defendant never furnished me with
4 any written document stating I was entitled to any Nevada mandated minimum hourly
5 wage for my work for defendant. Nor did defendant ever orally advise me that I was
6 entitled to any Nevada mandated minimum hourly wage.

7 4. Myself and all of defendant's taxicab drivers were required to work a 12
8 shift. During most of my employment with defendant, I was typically required to work
9 6 days per week all though some weeks I worked fewer days per week.

10 5. During the entire time I was employed by the defendant, defendant mandated
11 that all taxicab drivers purchase and pay for gasoline from their own personal funds
12 for use in the taxicab. At no point did Western Cab Company pay for the gasoline, or
13 reimburse taxicab drivers for the cost of gasoline. All drivers were required to return
14 the taxicabs back to defendant's yard with a full tank of gas that was purchased from
15 the taxicab drivers' own personal funds. I would estimate that during a typical shift,
16 the cost of gasoline I paid from my own personal funds was anywhere from \$28.00 to
17 \$35.00 for each shift I worked.

18 6. Throughout the entirety of my 12 hour shift, I was never allowed to be "off
19 duty" and was instead required to work a continuous shift. By that I mean, I remained
20 "on call" throughout the entirety of my shift and remained eligible to pick up a fare
21 should one be assigned to me. The only regular "break time" I had throughout my 12
22 hour shift was for a few minutes to use the restroom or to pick up fast food. I always
23 ate my food in my cab while waiting for a fare, and I did not turn off my radio (which
24 dispatch used to get a hold of taxicab drivers) at any time.

25 7. While Western Cab gave me a paystub that included a statement of the hours
26 I worked, I believe that statement of hours worked may not be accurate. I believe that
27 statement of hours worked may not include time I was working that Western Cab
28 treated as non-working break time. I also believe that Western Cab may have failed to

1 credit to me as "working time" the "show up" time I spent on same days. "Show up"
2 time would occur when I was required to "show up" to possibly work at 2:00 p.m. but
3 there was no taxi available for me to drive. I was required to wait until 4:00 p.m. and
4 then was sent away for the day without driving a taxi or earning any commissions. I
5 believe defendant Western Cab may not have recorded these 2 hour periods as
6 "working time" on my paychecks.

7 8. I understand that this case was commenced by the plaintiff as a class action
8 for the purpose of collecting unpaid minimum wages owed to all of the taxicab drivers
9 employed by the defendant who did not receive at least the constitutionally required
10 minimum wage for each hour they worked. I understand that if this case is certified as
11 a class action, and I am appointed as a representative plaintiff for the class, I will have
12 a responsibility to take action in this case that is in the best interest of all the class
13 members, meaning all of the taxicab drivers who are part of the class. I understand
14 that as a class representative I cannot act just in my own interests. I understand that
15 responsibility and am comfortable performing that duty.

16
17 I have read the foregoing and affirm under penalty of perjury that the same is
18 true and correct.

19
20 
21 Michael Sargeant

7-15-2015
Date

EXHIBIT "C"

1 **DECL**

2 **LEON GREENBERG, ESQ., NSB 8094**
3 **DANA SNIEGOCKI, ESQ., NSB 11715.**
4 **Leon Greenberg Professional Corporation**
5 **2965 South Jones Blvd- Suite E4**
6 **Las Vegas, Nevada 89146**
7 **Tel (702) 383-6085**
8 **Fax (702) 385-1827**
9 **leongreenberg@overtimelaw.com**
10 **dana@overtimelaw.com**

11 **Attorneys for Plaintiff**

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **LAKSIRI PERERA, Individually and on)**
15 **behalf of others similarly situated,)**

16 **Plaintiff,**

17 **vs.**

18 **WESTERN CAB COMPANY,**

19 **Defendant.)**

20 **Case No.: A-14-707425-C**

21 **Dept.: V**

22 **DECLARATION OF IRSHAD**
23 **AHMED**

24 **Irshad Ahmed hereby affirms and declares under penalty of perjury the**
25 **following:**

26 **1. I am a former taxicab driver for the defendant, Western Cab Company. I am**
27 **offering this declaration in support of the plaintiff's motion to amend the complaint to**
28 **add me as a named plaintiff.**

29 **2. I previously provided my attorneys with a sworn declaration concerning the**
30 **nature of my work for the defendant. That statement was given to my attorneys on**
31 **January 27, 2015.**

32 **3. In paragraph 6 of that January 27, 2015 declaration, I stated that during my**
33 **employment with Western Cab, myself and all of Western Cab's other taxicab drivers**

1 were required to pay for gasoline from our own personal funds.

2 4. The cost of the gasoline I purchased each day varied. On average, that cost
3 for each 12 hour shift I worked for Western cab was approximately \$22.00, 100% of
4 which I paid from my own personal funds.

5
6 I have read the foregoing and affirm under penalty of perjury that the same is
7 true and correct.

8
9 Mr. Irshad Ahmed
10 Irshad Ahmed

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28
Date Sep/25/2015

1 **DECL**

2 **LEON GREENBERG, ESQ., NSB 8094**
3 **DANA SNIEGOCKI, ESQ., NSB 11715**
4 **Leon Greenberg Professional Corporation**
5 **2965 South Jones Blvd- Suite E4**
6 **Las Vegas, Nevada 89146**
7 **Tel (702) 383-6085**
8 **Fax (702) 385-1827**
9 **leongreenberg@overtimelaw.com**
10 **dana@overtimelaw.com**

11 Attorneys for Plaintiff

12
13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 **LAKSIRI PERERA, Individually and on)**
16 **behalf of others similarly situated,)**

17 **Plaintiff,**

18 **vs.**

19 **WESTERN CAB COMPANY,**

20 **Defendant.**

Case No.: A-14-707425-C

Dept.: V

DECLARATION OF IRSHAD
AHMED

21 Irshad Ahmed hereby affirms and declares under penalty of perjury the
22 following:

23 1. I am a former taxicab driver for the defendant, Western Cab Company. I am
24 offering this declaration in support of the plaintiff's motion to amend the complaint to
25 add me as a named plaintiff and to explain the nature of my work for the defendant.

26 2. I was employed by Western Cab Company for more than one year, until
27 approximately July of 2013 when my employment ended.

28 3. Taxicab drivers did not receive an "hourly wage" from defendant at any time
during the time I was employed. My method of compensation as a taxicab driver for
defendant consisted of a 50% "split" of the fares I collected each day, minus certain

1 deductions known as "trip charges." Often, that commission split would result in my
2 receiving less than the required minimum wage of \$8.25 per hour for each hour I
3 worked. During my entire period of employment, defendant never furnished me with
4 any written document stating I was entitled to any Nevada mandated minimum hourly
5 wage for my work for defendant. Nor did defendant ever orally advise me that I was
6 entitled to any Nevada mandated minimum hourly wage.

7 4. Myself and all of defendant's taxicab drivers were required to work a 12
8 shift. During most of my employment with defendant, I was required to work (7) days
9 per week. Towards the end of my employment, I would sometimes only work (6) days
10 per week.

11 5. Throughout the entirety of my 12 hour shift, I was never allowed to be "off
12 duty" and was instead required to work a continuous shift. By that I mean, I remained
13 "on call" throughout the entirety of my shift and remained eligible to pick up a fare
14 should one be assigned to me. The only regular "break time" I had throughout my 12
15 hour shift was for a few minutes to use the restroom or to pick up fast food. I always
16 ate my food in my cab while waiting for a fare, and I did not turn off my radio (which
17 dispatch used to get a hold of taxicab drivers) at any time. There were many occasions
18 during which I was sitting in my cab eating my food when I was required to stop
19 eating and pick up a fare that was assigned to me by dispatch.

20 6. During the entire time I was employed by the defendant, defendant mandated
21 that all taxicab drivers purchase and pay for gasoline from their own personal funds
22 for use in the taxicab. At no point did Western Cab Company pay for the gasoline, or
23 reimburse taxicab drivers for the cost of gasoline. All drivers were required to return
24 the taxicabs back to defendant's yard with a full tank of gas that was purchased from
25 the taxicab drivers' own personal funds.

26 7. I understand that this case was commenced by the plaintiff as a class action
27 for the purpose of collecting unpaid minimum wages owed to all of the taxicab drivers
28 employed by the defendant who did not receive at least the constitutionally required

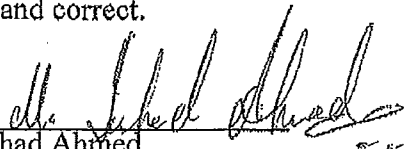
1 minimum wage for each hour they worked. I understand that if this case is certified as
2 a class action, and I am appointed as a representative plaintiff for the class, I will have
3 a responsibility to take action in this case that is in the best interest of all the class
4 members, meaning all of the taxicab drivers who are part of the class. I cannot act
5 only in what I believe is my best interest. I understand that responsibility and am
6 comfortable performing that duty.

7

8 I have read the foregoing and affirm under penalty of perjury that the same is
9 true and correct.

10

11


Irshad Ahmed

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Jan/22th/2015
Date

EXHIBIT "D"


CLERK OF THE COURT

1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 LAKSIRI PERERA,

6 Plaintiff,

7 vs.

CASE NO: A14-707425-G

DEPT. VII

8 WESTERN CAB COMPANY,

9 Defendant.

10
11
12
13 BEFORE THE HONORABLE LINDA M. BELL, DISTRICT COURT JUDGE
14 THURSDAY, AUGUST 27, 2015

15 **RECORDER'S TRANSCRIPT OF**
16 **ALL PENDING MOTIONS**

17
18 APPEARANCES:

19 For the Plaintiff:

DANA SNIEGOCKI, ESQ.

20
21 For the Defendant:

MALANI L. KOTCHKA
JOHN MORAN, JR.

22
23
24
25 RECORDED BY: RENEE VINCENT, COURT RECORDER

1 MS. SNIEGOCKI: Okay. Well, I'm just a bit confused because the
2 second amended complaint that we're seeking to file, I mean, would also
3 include the first claim for relief and then the wage, which -- I mean, maybe I'm
4 confused. Is -- are you going to be issuing a ruling on that today or in
5 conjunction with the 608.040 ruling?

6 THE COURT: I'm going to rule on the issues that were raised in the
7 motion to dismiss because I think that they will impact whatever complaint
8 that you file.

9 MS. SNIEGOCKI: Sure.

10 THE COURT: So we may as well just deal with them now. With
11 respect to adding plaintiffs or anything else, I need to look at that and see
12 what the basis is. They need the opportunity to respond to that. So what I'd
13 like to do is just make a ruling on the motion to dismiss on the issues -- I
14 mean, primarily, it's the 608.040 claim and that, all right, and then we'll deal
15 with the countermotion to amend, and then that way you'll know what to
16 include in the third -- the third amended complaint to keep things straight.

17 But then you can file a third amended complaint that complies
18 with all of the Court orders up till then, and then we should be back on track.
19 I think that will just make things easier than withdrawing something and -- but
20 we're just going to move forward, and then you can file a third amended
21 complaint after they have an opportunity to respond with respect to any
22 additional claims.

23 MS. SNIEGOCKI: Okay. Just one thing I do want to point out as it
24 relates to the countermotion to amend the complaint. We don't -- I mean,
25 there's no issue with them even wanting additional time to respond to the

1 THE COURT: Okay. So --

2 MS. KOTCHKA: -- raise it, but the Court didn't address it, so --

3 THE COURT: All right. But it was --

4 MS. KOTCHKA: So I just wanted to point out that that was one of the
5 bases.

6 THE COURT: It wouldn't have made a difference -- if we would've had
7 a long conversation about it, it would not have made a difference, but thank
8 you.

9 MS. KOTCHKA: All right. Okay.

10 THE COURT: So all right.

11 MS. SNIEGOCKI: So then is there no further argument that you --

12 THE COURT: Nothing now.

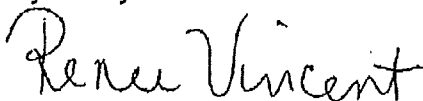
13 MS. SNIEGOCKI: Perfect.

14 THE COURT: We'll talk again. Thank you.

15 MS. SNIEGOCKI: Thank you.

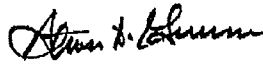
16 [Proceedings concluded at 10:03 a.m.]

17
18 ATTEST: I do hereby certify that I have truly and correctly transcribed the
19 audio-visual recording of the proceeding in the above entitled case to the
20 best of my ability.

21 

22 Renee Vincent, Court Recorder/Transcriber
23 District Court 7, 702-671-4339
24
25

EXHIBIT "E"


CLERK OF THE COURT

1 MDSM
2 Malani L. Kotchka
3 Nevada Bar No. 0283
4 LIONEL SAWYER & COLLINS
5 300 South Fourth Street
6 Suite 1700
7 Las Vegas, Nevada 89101
8 (702) 383-8888 (Telephone)
9 (702) 383-8845 (Fax)
10
11 Attorneys for Defendant

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DISTRICT COURT
CLARK COUNTY, NEVADA

11 LAKSIRI PERERA, Individually and on
12 behalf of others similarly situated,

13 Plaintiff,

14 v.

15 WESTERN CAB COMPANY,

16 Defendants.

Case No.: A-14-707425-C

Dept. No.: V

**DEFENDANT'S MOTION TO DISMISS
FIRST AMENDED COMPLAINT**

Date of Hearing: January 16, 2015

Time of Hearing: 9:00 a.m.

18 Pursuant to NRCP 12(b)(5), 23 and 56(b), defendant Western Cab Company ("Western
19 Cab") moves this Court to dismiss plaintiff Laksiri Perera's ("Perera's") First Amended
20 Complaint for failure to state a claim upon which relief can be granted, for decertification of the

21 ///

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23 ///

1 class and for summary judgment as a matter of law. This motion is based upon the First
2 Amended Complaint and all exhibits attached hereto and incorporated herein.

3 Respectfully submitted,

4
5 LIONEL SAWYER & COLLINS

6
7 By: /s/ Malani L. Kotchka

8 Malani L. Kotchka
9 Nevada Bar No. 0283
300 South Fourth Street
Suite 1700
Las Vegas, Nevada 89101

10 Attorneys for Defendant

11
12 NOTICE OF HEARING

13 TO: Plaintiff Laksiri Perera, and his attorney of record, Leon Greenberg,

14 PLEASE TAKE NOTICE that the hearing on **DEFENDANT'S MOTION TO**
15 **DISMISS FIRST AMENDED COMPLAINT** will be brought before Department V of the
16 Eighth Judicial District Court of the State of Nevada in and for the County of Clark, on the
17 **16** day of **JANUARY**, 2015, at **9:00AM** a.m./p.m.

18
19
20 Respectfully submitted,

21 LIONEL SAWYER & COLLINS

22
23 By: /s/ Malani L. Kotchka

24 Malani L. Kotchka
25 Nevada Bar No. 0283
300 South Fourth Street
Suite 1700
Las Vegas, Nevada 89101

26 Attorneys for Defendant

1 Exhibit 4, p. 9. If a two-year statute of limitations is applied to Perera's minimum wage claim,
2 he can seek unpaid minimum wages only from September 23, 2012 until he quit on October 16,
3 2012. Exhibit 5.

4
5 **V. Perera's Hourly Wage Rate**

6 In 2012 the minimum wage for Nevada employees to whom qualifying health benefits
7 had been made available by the employer was \$7.25 per hour. Exhibit 6. According to Perera's
8 trip sheets which reflect the hours he worked and the non-tipped wages he received on a work
9 week basis, Perera was always paid more than minimum wage. Exhibit 5. Perera started
10 receiving health insurance from Western Cab on February 1, 2011. Western Cab paid the entire
11 premium for Perera's coverage. Exhibit 5. Therefore, the minimum wage due him was \$7.25 an
12 hour. From September 23, 2012 through October 15, 2012, Perera was always paid a minimum
13 hourly wage (which did not include tips) of amounts exceeding \$7.25 an hour, the applicable
14 minimum wage for this time period. Exhibits 5 and 6. Therefore, he fails to state a claim upon
15 which relief can be granted.
16

17 Moreover, Perera filed a claim for wages with the Nevada Labor Commissioner. On
18 November 13, 2012, the Labor Commissioner said, "it appears that you have been paid
19 correctly." Exhibit 5. Perera's wage claim with the Labor Commissioner was closed on
20 November 23, 2012. Exhibit 5.
21

22 **VI. The Class Representative**

23 NRCP 23(c)(1) provides, "As soon as practicable after the commencement of an action
24 brought as a class action, the court shall determine by order whether it is to be so maintained."
25 NRCP 23 substantially mimics FRCP 23. Therefore, federal court interpretations of FRCP 23
26 are relevant to this Court's interpretation of NRCP 23. *Executive Management Ltd. v. Ticor Title*
27 *Ins.*, 118 Nev. 46, 53, 38 P.3d 872, 876-77 (2002).
28

EXHIBIT "F"

1 **DECL**
2 **LEON GREENBERG, ESQ., NSB 8094**
3 **DANA SNIEGOCKI, ESQ., NSB 11715**
4 **Leon Greenberg Professional Corporation**
5 **2965 South Jones Blvd- Suite E4**
6 **Las Vegas, Nevada 89146**
7 **Tel (702) 383-6085**
8 **Fax (702) 385-1827**
9 **leongreenberg@overtimelaw.com**
10 **dana@overtimelaw.com**

11 Attorneys for Plaintiff

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **LAKSIRI PERERA, Individually and on)**
15 **behalf of others similarly situated,)**

16 **Plaintiff,**

17 **vs.**

18 **WESTERN CAB COMPANY,**

19 **Defendant.**

Case No.: A-14-707425-C

Dept.: V

**DECLARATION OF LAKSIRI
PERERA**

20 Laksiri Perera hereby affirms and declares under penalty of perjury the
21 following:

22 1. I am the named plaintiff in this lawsuit seeking unpaid minimum wages from
23 the defendant.

24 2. I was employed by defendant, Western Cab Company, as a taxi cab driver
25 from January 2010 until October 2012.

26 3. Taxicab drivers did not receive an "hourly wage" from defendant at any time
27 during the years I was employed. My method of compensation as a taxicab driver for
28 defendant consisted of a 50% "split" of the fares I collected each day. Often, that 50%
commission split would result in my receiving less than the required minimum wage of

1 \$8.25 per hour for each hour I worked. During my entire period of employment,
2 defendant never furnished me with any written document stating I was entitled to any
3 Nevada mandated minimum hourly wage for my work for defendant. Nor did
4 defendant ever orally advise me that I was entitled to any Nevada mandated minimum
5 hourly wage.

6 4. Defendant offered its taxicab driver employees health benefits, but such
7 health benefits were not "qualified" health benefits under the Nevada Constitution.
8 Defendant required drivers to wait a minimum of one year after they became employed
9 to become eligible to receive health insurance benefits. After one year, defendant
10 would provide such health insurance benefits for free to its taxi drivers. However,
11 defendant did not extend such free coverage to the family members of its taxi drivers.
12 I know this is true because after I became eligible for health insurance coverage after
13 one year of employment, I inquired with defendant's general manager, Martha, about
14 obtaining coverage for myself and my wife and children. Martha told me that while
15 the health coverage for myself was free, if I wanted to also include my wife and two
16 children in my plan, I would have to pay \$460.00 per month. Because I could not
17 afford such a great expense each month, I was forced to forego obtaining health
18 insurance coverage for my family.

19 5. Myself and all of defendant's taxicab drivers were required to work a 12
20 shift. I typically worked six (6) days per week every week. Although each shift was
21 scheduled for 12 hours, often my shifts exceeded 12 hours in length. This was because
22 at the end of the shift when drivers were required to report back to defendant's
23 premises, it could often take 15 minutes or more to return our taxicabs, as defendant's
24 procedure required the drivers to line their cabs up inside defendant's yard, and a
25 mechanic would check each individual taxicab to see whether our gasoline tanks were
26 full. If a taxicab was found to not have a full tank of gasoline, the mechanic would fill
27 the tank to capacity using defendant's gasoline. At that point, the next taxicab in line
28 would be checked by the mechanic.

1 6. Throughout the entirety of my 12 hour shift, I was never allowed to be "off
2 duty" and was instead required to work a continuous shift. By that I mean, I remained
3 "on call" throughout the entirety of my shift and remained eligible to pick up a fare
4 should one be assigned to me. The only regular break time I had throughout my 12
5 hour shift was two 10 minute breaks per day during which I would leave my cab to use
6 the restroom at a store or gas station and pick up fast food or food from a convenience
7 store. I always ate my food in my cab while waiting for a fare, and I did not turn off
8 my radio (which dispatch used to get a hold of taxicab drivers) at any time. There
9 were many occasions during which I was sitting in my cab eating my food when I was
10 required to stop eating and pick up a fare that was assigned to me by dispatch.

11 7. Prior to January 2012, the gasoline used to operate all of defendant's taxicabs
12 was provided by defendant. Drivers were not required to pay for gasoline. Beginning
13 in January 2012, defendant changed its policy and mandated that taxicab drivers
14 purchase and pay for gasoline at outside gas stations. Since defendant started
15 mandating drivers to pay for their own gasoline, I recorded the cost of such gasoline
16 on the trip sheets that I was required to fill out and utilize daily. Those trip sheets
17 contain an accurate statement of the total cost of gasoline I was required to pay out of
18 my own pocket each shift I drove since January 2012. In the event that myself or
19 another driver did not bring the taxicab back to defendant's facility with a full tank of
20 gas, the drivers were required to pay defendant to fill up the gas tank on the
21 defendant's property. I recall one occasion during which my cab broke down during
22 my shift. It was towed back to defendant's property. Because the cab had to be towed,
23 I could not fill up the gas tank prior to the cab returning to defendant's property. The
24 next day when I reported for my shift, I was approached by one of defendant's
25 supervisors, Tammy, who told me I owed defendant \$22.00 for 6 gallons of gasoline
26 which had to be put into my cab upon its return to defendant's property from the prior
27 shift. I paid that \$22.00 to Tammy, and requested a receipt from her. She gave me a
28 post-it note, which is included as Exhibit "A" hereto, which confirmed my payment to

1 her for the gasoline used to fill up the gasoline tank of my broken down cab.
2
3 I have read the foregoing and affirm under penalty of perjury that the same is
4 true and correct.

5
6 
7 Lakshmi Perera

12/16/14
Date

EXHIBIT "A"

6.99
2200

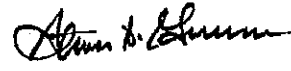
EXHIBIT "G"

Date and Shift	Hours	Wages without shift fuel expense paid by plaintiff Ahmed	Hourly Wage as calculated by defendant	True Wages minus \$22.00 per shift fuel expense paid by Ahmed	True Hourly Wage
11/18/12	12	130.65		108.65	
11/20/12	12	125.80		103.80	
11/21/12	12	85.60		63.60	
11/22/12	12	77.15		55.15	
11/23/12	12	100.00		78.00	
11/24/12	12	147.85		125.85	
TOTALS:	72	\$667.05	\$9.26	\$535.05	\$7.43
Date	Hours	Wages Dec. 2- 8, 2012			
12/2/2012	12	140.90		118.90	
12/4/2012	8	79.80		57.80	
12/5/2012	8	65.70		43.70	
12/6/2012	12	114.00		92.00	
12/7/2012	12	105.35		83.35	
12/8/2012	12	106.50		84.50	
TOTALS:	64	\$ 612.25	\$9.57	480.25	\$7.50

Date	Shift	Wages without fuel expense paid by plaintiff Sargeant	Hourly wage as calculated by defendant	True Wages minus \$28.00 per shift fuel expense paid by Sargeant	True Hourly Wage
2/20/2014	20-01	98.40		70.40	
2/21/2014	20-01	131.25		103.25	
2/23/2014	20-01	91.70		63.70	
2/24/2014	20-01	81.90		53.90	
2/25/2014	21-01	74.75		46.75	
2/26/2014	20-01	102.15		74.15	
2/27/2014	21-01	83.15		55.15	
2/28/2014	21-01	107.55		79.55	
HOURS WORKED	90.94		8.48		6.0133
Grand total pay		770.85		546.85	
4/13/2014	24-01	93.45		65.45	
4/17/2014	20-01	91.6		63.60	
4/18/2014	21-01	108.65		80.65	
4/20/2014	20-01	103.45		75.45	
4/21/2014	20-01	91.85		63.85	
4/22/2014	20-01	108.95		80.95	
4/23/2014	20-01	101.6		73.60	
4/24/2014	21-01	96		68.00	
4/25/2014	21-01	107.15		79.15	
HOURS WORKED	105.36		8.57		6.176
Grand Total Pay		902.7		650.70	

APPENDIX 18

APPENDIX 18



CLERK OF THE COURT

OPPS
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*Attorneys for Defendant
Western Cab Company*

DISTRICT COURT

CLARK COUNTY, NEVADA

LAKSIRI PERERA, individually and on
behalf of others similarly situated,

Plaintiffs,

v.

WESTERN CAB COMPANY,

Defendant.

Case No.: A-14-707425-C

Dept.: VII

DEFENDANT'S OPPOSITION TO
PLAINTIFF'S COUNTERMOTION TO
AMEND THE COMPLAINT

Date of Hearing: October 8, 2015

Time of Hearing: 9:00 a.m.

MEMORANDUM OF POINTS & AUTHORITIES

I. Facts

Perera's Countermotion to Amend the Complaint seeks to add two additional plaintiffs, Irshad Ahmed and Michael Sargeant. Perera cites no rule or case in support of his Countermotion. The Countermotion consists of three conclusionary sentences. See page 22 of Perera's Countermotion to Amend the Complaint (filed August 14, 2015).

Exhibit A to the Countermotion should be captioned "Third Amended Complaint." The proposed Third Amended Complaint simply states that Ahmed and Sargeant are former employees of Western Cab, nothing more.

Moreover, the proposed Third Amended Complaint continues to violate this Court's June

1 16, 2015 order by requesting a judgment for minimum wage owed since November 28, 2006.
2 This Court ruled that a four-year statute of limitations applied.

3 II. Futility

4 In *Halcrew, Inc. v. Eighth Judicial District Court of the State of Nevada*, 129 Nev. Adv. Op.
5 42, 302 P.3d 1148, 1152 (2013), the Nevada Supreme Court held that leave to amend a pleading
6 should not be granted if the proposed amendment would be futile. The Court specifically said that a
7 proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to
8 plead an impermissible claim. *Id. Accord Allum v. Valley Bank of Nevada*, 109 Nev. 280, 287, 849
9 P.2d 297, 302 (1993).

10
11 Perera's proposed amendment to add Ahmed and Sargeant as plaintiffs is futile because
12 neither has a claim for minimum wage. Exhibit 5. Both were paid above the second-tier \$8.25 an
13 hour. Exhibit 5. Therefore, neither can serve as a class representative for others who may not have
14 been paid minimum wage.

15
16 Moreover, Sargeant is a serial plaintiff. He is the named plaintiff in *Sargeant v. Henderson*
17 *Taxi*, Case No. A714136, and he is a proposed class representative in *Murray v. A Cab Taxi Service*,
18 Case No. A669926. He is represented in both cases by Leon Greenberg. Sargeant was paid above
19 minimum wage at Western Cab. Exhibit 5; Exhibit 5-3. Therefore, this Court should deny the
20 Counter-motion to Amend because it would be futile.

21 III. Court's Jurisdictional Limit

22 Perera's proposed Third Amended Complaint does not allege the existence of the
23 \$10,000 in controversy necessary to invoke this Court's subject matter jurisdiction. As his
24 prayer for relief, Perera simply states: "WHEREFORE, plaintiffs demand the relief on each
25 cause of action as alleged aforesaid." This does not comport with NRCP 8(a) which directs in
26 pertinent part:
27
28

1 A pleading which sets forth a claim for relief... shall
2 contain (1) a short and plain statement of the claim showing that
3 the pleader is entitled to relief, and (2) a demand for judgment for
4 the relief the pleader seeks. Relief in the alternative or of several
5 different types may be demanded. Where a claimant seeks
6 damages of more than \$10,000, the demand shall be for damages
7 'in excess of \$10,000' without further specification of the amount.

8 In addition, the Appendix of Forms located at the end of NRCP with reference to NRCP 84,
9 provides sample prayers for relief, each stating that the plaintiff is demanding judgment "for the
10 sum of ten thousand dollars."

11 There is an obvious reason for Perera's deliberate omission of the standard prayer for
12 relief in excess of \$10,000. He does not and cannot meet this Court's jurisdictional threshold
13 even if his class is recognized since each individual member of the class must meet the
14 jurisdictional limit on his or her own. In addition, a plaintiff is not entitled to include a possible
15 award of fees and costs in valuing the amount in controversy for purposes of the jurisdictional
16 threshold. Moreover, Perera's Second Claim does not even state a private right of action and is a
17 mere artifice to bulk up the pleading as it is clear that individual employees lack standing to
18 pursue claims for alleged severance pay under NRS 608.040, since NRS 608.108 defines such a
19 claim as one which must be pursued exclusively by Nevada's Labor Commissioner on an
20 employee's behalf.

21 Once challenged, the plaintiff bears the burden of proving that the jurisdictional limit is
22 met. *Morrison v. Beach City, LLC*, 116 Nev. 34, 37-38, 991 P.2d 982, 983 (2000) ("The burden
23 of proving the jurisdictional requirement is properly placed on the plaintiff"); *Basic Food*
24 *Industries, Inc. v. Eighth Judicial District Court*, 94 Nev. 111, 113, 575 P.2d 934, 936 (1989)
25 (plaintiff "had the burden to establish jurisdiction once it was challenged"); *Christensen v.*
26 *Northwest Airlines, Inc.*, 455 F. Supp. 492, 495 (D. Haw. 1978) ("The burden is on the plaintiff
27 to satisfy the court that the jurisdictional amount is really and substantially involved"). Perera,
28

1 Ahmed and Sargeant cannot meet that burden here – their remedy, if any, is not in this forum but
2 rests, if anywhere, in the Justice Court as Nevada authorizes individual claims and class actions
3 pursuant to Justice Court Rule 23, which mirrors NRCP 23 and provides class relief for plaintiffs
4 who cannot meet the District Court's \$10,000 jurisdictional limit.

5 According to Article 6, §6 of the Nevada Constitution, the District Courts lack
6 jurisdiction over actions that fall within the Justice Courts' original jurisdiction. Under NRS
7 4.370(1)(b), the Justice Courts have original jurisdiction over civil actions for damages where the
8 amount in controversy does not exceed \$10,000. As a result, Nevada's District Courts have
9 jurisdiction over civil actions if the amount in controversy exceeds \$10,000. According to
10 NRCP 12(h)(3), "[w]henever it appears by suggestion of the parties or otherwise that the court
11 lacks jurisdiction of the subject matter, the court shall dismiss the action." See also NRCP
12 12(b)(1), authorizing dismissal for "lack of jurisdiction over the subject matter."

13 Perera's attempt to plead a class action does not change the requirement that each
14 plaintiff must satisfy the \$10,000 jurisdictional limit to invoke the District Court's jurisdiction.
15 *Zahn v. International Paper Co.*, 414 U.S. 291, 301 (1973) (to meet jurisdiction requirements in
16 a Rule 23 class action, each plaintiff's claim must satisfy the jurisdiction amount); *Troy Bank of*
17 *Troy, Indiana v. G.A. Whitehead & Co.*, 222 U.S. 39, 40 (1911) ("When two or more plaintiffs,
18 having separate and distinct demands, unite for convenience and economy in a single suit, it is
19 essential that the demand of each be of the adequate jurisdictional amount"); *Snyder v. Harris*,
20 394 U.S. 332, 340 (1969) (in the context of a class action, individual plaintiffs' damages claims
21 may not be aggregated to satisfy the jurisdictional amount requirement unless the individual
22 plaintiffs have a common and undivided interest in a claim for damages); *In re Ford Motor*
23 *Co./Citibank (South Dakota), N.A.*, 264 F.3d 952, 963 (9th Cir. 2001) (as with compensatory
24 damages, punitive damages asserted on behalf of a putative class may not be aggregated for
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1 purposes of satisfying jurisdictional requirements of the amount in controversy). Were the rule
2 against aggregating claims to reach the requisite jurisdictional dollar limit otherwise, there would
3 be no reason why the Nevada Justice Courts would also have their own version of Rule 23,
4 authorizing the filing of class actions. See JCRCP 23, enacted in 1982, virtually identical to
5 NRCP 23 and according class action plaintiffs a forum for claims that do not meet the \$10,000
6 jurisdictional limit of the District Courts.
7

8 Rule 23, either in the Nevada Rules of Civil Procedure or the Justice Court Rules of Civil
9 Procedure, provides only a procedural right, ancillary to the litigation of the substantive claims,
10 not a cause of action or claim in itself. *Deposit Guar. Nat'l Bank of Jackson, Miss. v. Roper*, 445
11 U.S. 326, 327 (1980) (analogous FRCP 23 does not establish a substantive claim or right);
12 *Vanguard Piping Sys., Inc. v. Eighth Judicial District Court*, 129 Nev. Adv. Op. 53, 309 P.3d
13 1017, 1020 (2013) ("federal cases interpreting [an analogous rule] are strong persuasive
14 authority" (internal citations omitted)). Thus, a party's choice of a procedural device does not
15 afford a court subject matter jurisdiction and this Court has no jurisdiction over Perera's
16 minimum wage claim (or Ahmed's or Sargeant's proposed claims) which, if at all, must be
17 brought in the Justice Court.
18

19 The amount in controversy must be determined by the complaint itself, without
20 consideration of any possible fees and costs award. *Morrison*, 116 Nev. at 36, 991 P.2d at 983,
21 citing *Royal Insurance v. Eagle Valley Construction, Inc.*, 110 Nev. 119, 120, 867 P.2d 1146,
22 1147 (1994) ("Because appellants only claim \$4,308.74 in damages, the district court properly
23 dismissed appellants' complaint for lack of jurisdiction"). This Court may inquire into possible
24 bad faith pleading to meet the District Court's jurisdictional limit. *Morrison, supra*, 116 Nev. at
25 39, 991 P.2d at 985 ("The district court may conduct a hearing to determine whether the potential
26 damages in a case fall below the jurisdictional threshold....")
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1 When a defendant challenges the Court's jurisdiction, the Court is required to "look
2 beyond the damages claimed, and evaluate whether those damages were claimed in good faith."
3 *Morrison*, 116 Nev. at 37-38, 991 P.2d at 984. Fees and costs must be excluded in the
4 jurisdictional threshold analysis. 116 Nev. at 37, 991 P.2d at 984. And, if a plaintiff is relying
5 on punitive damages to meet a jurisdictional threshold, "a judge should exercise more discretion
6 in determining whether exemplary damages can be recovered than when actual damages are at
7 issue." *Hupp v. Port Brownsville Shipyard, Inc.*, 515 F. Supp. 546, 549 (S.D. Tex. 1981)
8 (dismissing where the court was not convinced to a legal certainty that plaintiff had demonstrated
9 that combined compensatory and punitive damages would exceed \$10,000); *see also Brown v.*
10 *Bank of America Nat'l Trust and Savings Ass'n*, 281 F. Supp. 82, 84 (N.D. Ill. 1968) (where
11 jurisdictional amount could not be reached without adding exemplary damages, it became "the
12 duty of th[e] court to determine whether it is 'legally certain' that approximately \$7,000 in
13 punitive damages could not be recovered"); *Onepoint Solutions, LLC v. Borchert*, 486 F.3d 342,
14 348 (8th Cir. 2007), quoting *Larkin v. Brown*, 41 F.3d 387, 388-89 (8th Cir. 1994) ("While
15 'punitive damages are included in the amount in controversy, the existence of the requirement
16 amount must be supported by competent proof'" and "when determining the amount in
17 controversy, a claim for punitive damages is to be given closer scrutiny, and the trial judge
18 accorded greater discretion than a claim for actual damages"); *Zahn v. International Paper Co.*,
19 469 F.2d 1033, 1034, n. 1 (2d Cir. 1972) ("[T]he trial court is plainly not compelled to accept a
20 claim of punitive damages, however unwarranted, made for the purpose of conferring federal
21 jurisdiction" and "In computing jurisdictional amount, a claim for punitive damages is to be
22 given closer scrutiny, and the trial judge accorded greater discretion, than a claim for actual
23 damages"); *Christensen, supra*, 435 F. Supp. at 495, to the same effect, quoting *Zahn* and
24 dismissing suit for compensatory and punitive damages of airline passenger who was bumped
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26
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1 from flight and suffered a 1 hour and 38 minute delay in arrival.

2 Nevada has adopted the federal courts' standard, which requires cautious review for
3 jurisdiction, including inquiry "into an attorney's possible bad faith in claiming damages to meet
4 the jurisdictional limit of the district court." *Morrison*, 116 Nev. at 39, 991 P.2d at 985
5 ("According to NRCP 11, a party is required to have a reasonable basis for alleging damages in a
6 complaint that is 'well grounded in fact and is warranted by existing law or a good faith
7 argument for extension, modification, or reversal of existing law'"). In determining whether
8 Rule 11's standards for filing have been met, it is within the District Court's discretion to
9 "conduct a hearing to determine whether potential damages ... fall below the jurisdictional
10 threshold, although it may not rely on statements made in settlement negotiations in making that
11 determination," *Morrison, id.*, at n. 3 (concluding settlement offers are inadmissible as irrelevant
12 in this process).

13
14 By filing in this Court, Perera and his counsel implicitly represent that his claims and
15 now Ahmed's and Sargeant's each meet the Court's jurisdictional limit of \$10,000. *Morrison*,
16 116 Nev. at 39, 991 P.2d at 985 ("According to NRCP 11, a party is required to have a
17 reasonable basis for alleging damages in a complaint that is 'well grounded in fact and is
18 warranted by existing law or a good faith argument for the extension, modification, or reversal of
19 existing law.' The signature of the attorney constitutes certification that to the best of his or her
20 knowledge the pleading adheres to these guidelines."). NRCP 11 "applies to a jurisdictional
21 allegation and/or a claim of damages which furnishes the basis for subject matter jurisdiction in
22 district court." *Id.* As a result, the district court has the authority to "conduct a hearing to
23 determine whether the potential damages in a case fall below the jurisdictional threshold,"
24 although in so doing, the court "may not rely on statements made in settlement negotiations...."
25 *Id.* Perera has not met his burden of demonstrating good grounds for filing in this Court, his
26
27
28

1 Countermotion to Amend the Complaint should be denied and his Second Amended Complaint
2 should be dismissed for lack of subject matter jurisdiction.

3 **IV. Preemption – Federal Labor Law**

4 Free collective bargaining is a cornerstone of the structure of labor-management relations
5 carefully designed by Congress when it enacted the National Labor Relations Act. Even though
6 an agreement is sometimes impossible, government may not step in and become a party to the
7 negotiations. *Golden State Transit Corp. v. City of Los Angeles*, 475 U.S. 608, 619 (1986).
8

9 This Court lacks subject matter jurisdiction because the Minimum Wage Amendment is
10 preempted by federal labor policy. Article 15, § 16(A) provides that if an employer provides
11 health benefits, the minimum wage is \$5.15 an hour. If an employer does not provide health
12 benefits, the rate is \$6.15 an hour. According to the Declaration of Danny Thompson, attached
13 hereto as Exhibit 1, the Nevada AFL-CIO drafted the Minimum Wage Amendment to the
14 Nevada Constitution. Thompson states, "This law helped increase the compensation of AFL-
15 CIO members in Nevada and helps level the playing field between non-union employers and
16 unionized employers (who generally have been paying their employees better than non-union
17 employers). Most unionized employers provide health benefits readily meeting the MWA's
18 standard of not costing employees more than 10 percent of their gross income, while a number of
19 nonunion plans are reported to be failing such standard inside Nevada, and we understand many
20 outside Nevada fail such standard." Exhibit 1.
21
22

23 The U.S. Constitution, art. IV, cl. 2, provides, "This Constitution and the laws of the
24 United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the
25 Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or
26 Laws of any State to the Contrary notwithstanding." In *Chamber of Commerce of U.S. v. Brown*,
27 554 U.S. 60 (2008), the United States Supreme Court addressed a California statute which
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1 prohibited several classes of employers who receive state funds from using the funds "to assist,
2 promote, or deter union organizing." *Id.* at 62. The issue was whether this law was preempted
3 by federal law mandating that certain zones of labor activity be unregulated. The Court found
4 that although the National Labor Relations Act ("NLRA") contained no express preemption
5 provision, Congress implicitly mandated two types of preemption as necessary to implement
6 federal labor policy. *Id.* at 65. The first, *Garmon* preemption, was intended "to preclude state
7 interference with the National Labor Relations Board's interpretation and active enforcement of
8 the 'integrated scheme of regulation' established by the NLRA." *Id.* at 65 (citation omitted).
9 *Garmon* preemption forbids the states to regulate activity that the NLRA protects, prohibits, or
10 arguably protects or prohibits. *Id.*

11
12 According to the Nevada AFL-CIO, the Minimum Wage Amendment is intended to
13 change the market system between unionized and non-unionized companies. The MWA violates
14 the supremacy clause of the United States Constitution because the National Labor Relations Act
15 completely preempts this area of the law. Thompson states, "[M]embers of some Nevada AFL-
16 CIO affiliates receive wages below \$8.25 per hour but also receive health benefits from their
17 employer which qualify their employer to the lower minimum rate under the State Constitution.
18 They work as cab drivers and casino dealers." Exhibit 2. Thompson added:
19

20
21 Unionized employers in this State compete constantly with non-
22 union employers paying only the state minimum wage, particularly
23 in the restaurant industry. If those non-union employers were
24 allowed to lower wages to pay only the lower federal minimum
25 wage, there would be large amounts of business lost by unionized
26 employers, and hence losses to union members of paid hours
27 worked, tips, and jobs, and losses in dues income to AFL-CIO
28 affiliates.

25 Exhibit 2. Clearly, the Minimum Wage Amendment regulates activity that the NLRA protects,
26 prohibits, or arguably protects or prohibits.

27 The second type of preemption, known as *Machinists* preemption, forbids both the
28

1 National Labor Relations Board and the states to regulate conduct that Congress intended be
2 unregulated because the conduct should be controlled by the free play of economic forces.
3 *Brown*, 554 U.S. at 65. *Machinists* preemption is based on the premise that "Congress struck a
4 balance of protection, prohibition and laissez-faire in respect to union organization, collective
5 bargaining, and labor disputes." *Id.* (citation omitted). The *Brown* Court held that California's
6 law was preempted under *Machinists* because it regulated within a zone protected and reserved
7 for market freedom. *Id.* Here, the Minimum Wage Amendment which "helped increase the
8 compensation of AFL-CIO members in Nevada and helps level the playing field between non-
9 union employers and unionized employers" is a law within a zone protected and reserved for
10 market freedom.

11
12 The *Brown* court found that the legislative purpose of California's law was not the
13 efficient procurement of goods and services but the furtherance of a labor policy. *Id.* at 70. The
14 Court further found that the law permitted use of state funds for select employer advocacy
15 activities that promoted unions. *Id.* at 71. Here, the purpose of the Minimum Wage Amendment
16 is the furtherance of a labor policy. According to Thompson, the Nevada AFL-CIO drafted the
17 Minimum Wage Amendment to help increase the compensation of AFL-CIO members in
18 Nevada and to help level the playing field between non-union employers and unionized
19 employers. Thus, the State of Nevada, through the Minimum Wage Amendment, is engaged in
20 furtherance of a labor policy which violates federal preemption.

21
22
23 The *Brown* Court found:

24 The statute also imposes deterrent litigation risks. Significantly,
25 AB 1889 authorizes not only the California Attorney General but
26 also any private taxpayer—including, of course, a union in a
27 dispute with an employer—to bring a civil action against suspected
28 violators for "injunctive relief, damages, civil penalties, and other
appropriate equitable relief." § 16645.8. Violators are liable to the
State for three times the amount of state funds deemed spent on
union organizing, §§ 16645.2(d), 16645.7(d), 16645.8(a).
Prevailing plaintiffs, and certain prevailing taxpayer intervenors,

1 are entitled to recover attorney's fees and costs, § 16645.8(d),
2 which may well dwarf the treble damages award. Consequently, a
3 trivial violation of the statute could give rise to substantial liability.
4 Finally, even if an employer were confident that it had satisfied the
recordkeeping and segregation requirements, it would still bear the
costs of defending itself against unions in court, as well as the risk
of a mistaken adverse finding by the factfinder.

5 *Id.* at 72. Here, the MWA also imposes deterrent litigation risks. A trivial violation could give
6 rise to substantial liability because although a back pay award may be miniscule, "an employee
7 who prevails in any action to enforce this section shall be awarded his or her reasonable
8 attorney's fees and costs." Article 15, § 16(B). The MWA is preempted by federal labor policy.

9 In *Golden State Transit Corp. v. City of Los Angeles*, 475 U.S. 608, 609 (1986), Golden
10 State Transit sought to renew its franchise to operate taxicabs in the City of Los Angeles. While
11 the franchise renewal application was pending, Golden State's labor contract with its drivers
12 expired and the drivers went on strike. *Id.* at 609-610. After Teamster representatives argued
13 against renewal of Golden State's franchise because of the pendency of the labor dispute, the
14 City decided not to extend the franchise. The United States Supreme Court found that
15 *Machinists* preemption precluded state and municipal regulation "concerning conduct that
16 Congress intended to be unregulated." *Id.* at 614. The Court said:

17
18
19 The Court recognized in *Machinists* that "Congress has been
20 rather specific when it has come to outlaw particular economic
21 weapons." 427 U.S., at 143, 96 S. Ct. at 2555, quoting *NLRB v.*
22 *Insurance Agents*, 361 U.S. 477, 498, 80 S. Ct. 419, 421, 4 L. Ed.
23 2nd 454 (1960), and that Congress' decision to prohibit certain
forms of economic pressure while leaving others unregulated
represents an intentional balance "between the uncontrolled power
of management and labor to further their respective interests."
(Citations omitted.)

24 *Id.* at 614. Relying on *Machinists*, the Court found that the City's insistence on a labor
25 settlement was preempted if the City entered into the substantive aspects of the bargaining
26 process to an extent Congress had not countenanced. *Id.* at 615-16. The Court said, "The NLRA
27 requires an employer and a union to bargain in good faith, but it does not require them to reach
28

1 agreement." *Id.* at 616. The Court concluded that a city cannot condition a franchise renewal in
2 a way that intrudes into the collective bargaining process. *Id.* at 619.

3 The Court said:

4 A local government, as well as the National Labor Relations
5 Board, lacks the authority to "introduce some standard of properly
6 "balanced" bargaining power" . . . or to define "what economic
7 sanctions might be permitted negotiating parties in an "ideal" or
8 "balanced" state of collective bargaining." . . . The settlement
9 condition imposed by the Los Angeles City Council, as we read the
10 summary - judgment record before us, destroyed the balance of
11 power designed by Congress, and frustrated Congress' decision to
12 leave open the use of economic weapons.

13 *Id.* The same is true in regard to the Minimum Wage Amendment. Danny Thompson clearly
14 states that the Minimum Wage Amendment "helped increase the compensation of AFL-CIO
15 members in Nevada and helps level the playing field between non-union employers and
16 unionized employers (who generally have been paying their employees better than non-union
17 employers). Most unionized employers provide health benefits readily meeting the MWA
18 standard and not costing employees more than 10 percent of their gross income, while a number
19 of nonunion plans are reported to be failing such standard inside Nevada, and we understand
20 many outside Nevada fail such standard." Exhibit 1. Nevada's leveling of the playing field
21 through the MWA destroyed the balance of power designed by Congress. The Minimum Wage
22 Amendment is preempted by federal labor law.

23 In *Wisconsin Department of Industry, Labor and Human Relations v. Gould Inc.*, 475
24 U.S. 282, 283 (1986), Wisconsin maintained a list of every person or firm found by judicially
25 enforced orders of the National Labor Relations Board to have violated the National Labor
26 Relations Act in three separate cases within a five-year period. State procurement agents were
27 statutorily forbidden to purchase any product known to be manufactured or sold by any person or
28 firm included on the list of labor law violators. *Id.* at 283-84. In 1982, Wisconsin placed Gould
on its list of labor law violators and told Gould that it would enter into no new contracts with the

1 company for three years, until 1985. *Id.* at 285.

2 The United States Supreme Court found that through the NLRA, Congress largely
3 displaced state regulation of industrial relations. *Id.* at 286. The Court said:

4 Because "conflict is imminent" whenever "two separate remedies
5 are brought to bear on the same activity," . . . the *Garmon* rule
6 prevents States not only from setting forth standards of conduct
7 inconsistent with the substantive requirements of the NLRA, but
8 also from providing their own regulatory or judicial remedies for
9 conduct prohibited or arguably prohibited by the Act.

10 *Id.* (Emphasis added.) Here, the MWA provides a judicial remedy for conduct "leveling the
11 playing field between non-union employers and unionized employers" which is prohibited or
12 arguably prohibited by the National Labor Relations Act. The MWA adds a remedy to those
13 prescribed by the NLRA.

14 The *Gould* Court found that judicial concern had necessarily focused on the nature of the
15 activities which States have sought to regulate rather than on the method of regulation. *Id.* at
16 287. The Court held to allow a State to grant a remedy, which has been withheld from the
17 National Labor Relations Board, only accentuates the danger of conflict because the range and
18 nature of those remedies that are or are not available is a fundamental part of the comprehensive
19 system established by Congress. *Id.* Here, through the MWA, Nevada is granting a remedy to
20 level the playing field between non-union and union companies which has been withheld from
21 the National Labor Relations Board.

22 Wisconsin argued that it was exercising its spending power rather than its regulatory
23 power but the Supreme Court found that was a distinction without a difference because a
24 debarment statute served plainly as a means of enforcing the National Labor Relations Act. *Id.*
25 Here, the Minimum Wage Amendment by requiring a higher minimum wage if health benefits at
26 a certain cost are not provided serves plainly as a means of adding a remedy in organized labor's
27 quiver which the National Labor Relations Act does not grant.
28

Moreover, subsection (B) of the Minimum Wage Amendment provides:

The provisions of this section [section 16] may not be waived by agreement between an individual employee and an employer. All of the provisions of this section, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section.

(Emphasis added.) Nevada is clearly interfering with free collective bargaining in this provision of the Minimum Wage Amendment. A State's defining of collective bargaining waivers and "unilateral implementation" is a clear conflict with the economic tools allowed and defined by the NLRA.

In *St. Thomas-St. John Hotel & Tourism Association, Inc. v. Government of the United States Virgin Islands* by and through the Virgin Islands Department of Labor, 357 F.3d 297, 298 (3rd Cir. 2004), the issue was whether the application of the Virgin Islands' Wrongful Discharge Act to supervisors was preempted by the National Labor Relations Act. In 1996, the Virgin Islands legislature amended the Wrongful Discharge Act to state "[u]nless modified by union contract" *Id.* at 300. The amended provision had been interpreted to apply to all employees in the Virgin Islands absent a collective bargaining agreement setting discharge terms to the contrary. *Id.*

The Associations argued that the Wrongful Discharge Act as it applied to supervisors was preempted by the National Labor Relations Act. *Id.* The Third Circuit began by recognizing the supremacy clause of the United States Constitution which it held applied to the laws of the Virgin Islands. *Id.* at 302. The court then found that a state or territorial law conflicted with the National Labor Relations Act if it stood as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Id.* The court concluded that the Wrongful

1 Discharge Act indirectly compelled an employer to bargain collectively with supervisors by
2 requiring that an employer who wished to alter the Wrongful Discharge Act's grounds for
3 terminating a supervisor enter into a collective bargaining agreement. *Id.* at 304. Since the
4 Wrongful Discharge Act would exert a significant degree of compulsion upon employers to
5 bargain with supervisors as employees, it violated Section 14(a) of the National Labor Relations
6 Act. *Id.* The same is true here. The minimum wage can be waived only in a collective
7 bargaining agreement. Thus, the Minimum Wage Amendment exerts significant pressure to
8 bargain with a union and to actually reach a collective bargaining agreement. It therefore
9 violates the National Labor Relations Act. Exhibit 4.

11 In *Rolf Jensen & Associates, Inc. v. Eighth Judicial District Court*, 128 Nev. Adv. Op.
12 42, 282 P. 3d 743, 745 (2012), the Nevada Supreme Court held that Mandalay Resorts' state law
13 contractual indemnity claim against a consultant was preempted by the Americans with
14 Disabilities Act of 1990. The Court said:

16 The preemption doctrine emanates from the Supremacy Clause of
17 the United States Constitution, pursuant to which state law must
18 yield when it frustrates or conflicts with federal law The
19 doctrine is comprised of two broad branches: express and implied
20 preemption. . . . Express preemption occurs, as its name suggests,
21 when Congress "explicitly states that intent in a statute's
22 language." . . . Implied preemption arises, in contrast, "[w]hen
23 Congress does not include statutory language expressly preempting
24 state law." . . .

25 Implied preemption contains two sub-branches: field and
26 conflict preemption. . . . Field preemption applies "when
27 congressional enactments so thoroughly occupy a legislative field,
28 or touch a field in which the federal interest is so dominant, that
Congress effectively leaves no room for states to regulate conduct
in that field." . . . Conflict preemption, or obstacle preemption, as
it is often times called, occurs when "federal law actually conflicts
with any state law." . . .

As we have explained:

Conflict preemption analysis examines the federal

1 statute as a whole to determine whether a party's
2 compliance with both federal and state requirements
3 is impossible or whether, in light of the federal
4 statute's purpose and intended effects, state law
poses an obstacle to the accomplishment of
Congress' objectives.

5 . . . This petition involves conflict preemption. More precisely,
6 this petition concerns whether, in view of the ADA's purpose and
intended effects, Mandalay's state law claims pose an obstacle to
the accomplishment of Congress's objectives in enacting the ADA.

7 282 P.2d at 746 (citations omitted). The Court concluded that the ADA intended to prevent
8 discrimination stemming from neglect and indifference. Thus, Mandalay's indemnification
9 claim against the consultant was deemed to weaken owners' incentive to prevent violations of
10 the ADA and therefore would conflict with the ADA's purpose and intended effects. *Id.* at 748.
11 *Accord Painter's Local Union No. 567 v. Tom Joyce Floors, Inc.*, 81 Nev. 1, 4-5, 398 P.2d 245,
12 246-47 (1965).

13
14 Here, the Minimum Wage Amendment is preempted by federal labor law in several
15 ways. According to the AFL-CIO who drafted the Amendment, it is intended to level the
16 playing field between union and non-union employers. Thus, it interferes with the free market
17 which the National Labor Relations Act permits. It also interferes with the NLRA because it
18 defines and allows a waiver through a collective bargaining agreement and changes the
19 definition of unilateral implementation which the National Labor Relations Board defines and
20 enforces. Exhibit 4. Like the Nevada Supreme Court found in *Rolf Jensen*, Congress intended to
21 preempt State regulation of labor relations through the NLRA.
22

23 In *Airport Casino v. Jones*, 103 Nev. 387, 741 P.2d 814, 819 (1987), the Nevada
24 Supreme Court reaffirmed the State's policy "of maintaining strict neutrality in cases of
25 industrial strife." The Minimum Wage Amendment does not maintain strict neutrality. It was
26 designed to alter the balance of industrial strife. Exhibits 1-3. Because the Minimum Wage
27 Amendment is preempted by federal labor policy, this Court lacks subject matter jurisdiction
28

1 over Perera's Second Amended Complaint and proposed Third Amended Complaint.

2 **V. Severance Damages**

3 NRS 608.180 precludes Perera's, Ahmed's or Sargeant's prosecution and recovery of
4 damages on the second claim for damages under NRS 608.040, stating:

5 **Enforcement of NRS 608.005 to 608.195, inclusive;**
6 **prosecution.** The Labor Commissioner or the representative of the
7 Labor Commissioner shall cause the provisions of NRS 608.005 to
8 608.195, inclusive, to be enforced, and upon notice from the Labor
Commissioner or the representative:

9 1. The district attorney of any county in which a
violation of these sections has occurred;

10 2. The Deputy Labor Commissioner, as provided in
NRS 607.050;

11 3. The Attorney General, as provided in NRS 607.160
or 607.220; or

12 4. The special counsel, as provided in NRS 607.065,
shall prosecute the action for enforcement according to law.

13
14 The Court has no jurisdiction over the proposed Second Cause of Action and what, if anything,
15 might be recovered or have been recovered as a result of a claim by the Labor Commissioner
16 cannot be counted toward Perera's jurisdictional threshold. *McDonagh v. Harrah's Las Vegas*,
17 2014 WL 2742874, *3 (D. Nev. 2014), citing *Descutner v. Newmont USA Ltd.*, 2012 WL
18 5387703, *2 (D. Nev. 2012) (holding that NRS 608.140 "'does not imply a private remedy to
19 enforce labor statutes, which impose external standards for wages and hours,' but only provides
20 private rights of action for contractual claims"); *Malecon Tobacco, LLC v. State ex rel.*
21 *Department of Taxation*, 118 Nev. 837, 841-42, 59 P.3d 474, 475-76 (2002) (dismissing
22 taxpayers' class action suit for failure to follow requisite administrative remedy).

23
24 **VI. Punitive Damages**

25 Minimum wage claims arise from an underlying contractual employer-employee
26 relationship and therefore punitive damages cannot be pled or recovered. NRS 42.005; *Hanks v.*
27 *Briad Restaurant Group, LLC*, 2015 WL 4562755 (D. Nev. Jul. 27, 2015); *Franklin v. Russell*

1 *Road Food and Beverage, LLC*, Case No. A-14-709372-C. (Order, June 25, 2015, Judge
2 Kishner); *Gilmore v. Desert Cab, Inc.*, Case No. A668502 (Order, August 24, 2015, Judge
3 Herndon). Moreover, a constitutional tort involves state action, not private employers. *Muldrow*
4 *v. Carabetta Bros.*, 2015 WL 3606344, at *2 (D. Ct. 2015); *Cunningham v. Bank of New York*
5 *Mellon, N.A.*, 2015 WL 4104839 (E.D.N.Y. 2015). The request for punitive damages should be
6 stricken.
7

8 VII. Injunction

9 Neither Perera, Ahmed nor Sargeant are current employees of Western Cab. Therefore,
10 none of them have a claim for themselves or anyone to whom they are similarly situated for
11 injunctive relief. They lack standing to seek this relief. This request should also be stricken.
12

13 VIII. Preemption - ERISA

14 The Minimum Wage Amendment conflicts with ERISA and is preempted. 29 U.S.C. §
15 1144(a); *Concerned Home Care Providers, Inc. v. Cuomo*, 979 F. Supp. 2d 288 (N.D.N.Y.
16 2013); *Cervantes v. Health Plan of Nevada*, 263 P.3d 261 (2012).

17 Removal of the lower wage would be contrary to the AFL-CIO's and the voters' intent.
18 Exhibits 1-3. The MWA creates co-equal rates with no preference for one rate over the other.
19 Therefore, the lower rate whose purpose was to favor union employers cannot be severed from
20 the higher rate. *See Sierra Pacific Power Company v. State*, 338 P.3d 1244 (2014). The entire
21 scheme is preempted and falls.
22

23 IX. Separation of Powers

24 By enacting regulations defining health benefits, the executive department through the
25 Labor Commissioner has violated the separation of powers. Interpreting the Minimum Wage
26 Amendment is left to the judiciary branch separate from the executive department through the
27 resolution of the individual's claims. In *Tate v. State of Nevada Board of Medical Examiners*,
28

1 131 Nev. Adv. Op. 67 (Sept. 10, 2015), the Nevada Supreme Court found that the legislature
2 provided physicians with the right to seek judicial review of board decisions, thereby
3 empowering the district courts with the ability to determine whether an aggrieved party is
4 entitled to the relief sought on review and if so, to shape that relief accordingly. The Court found
5 that to bar a district court's ability to grant injunctive relief while judicial review was pending
6 effectively rendered the appeal a meaningless and merely ritualistic process. Because the
7 statute's prohibition against stays rendered meaningless the legislative grant of authority to the
8 district courts to judicially review board decisions and encroached on a district court's inherent
9 power to do all things reasonably necessary to administer justice including issuing injunctions,
10 the Nevada Supreme Court concluded that this statute violated the separation of powers doctrine.
11 Here, the Labor Commissioner's regulations on the meaning of health benefits in the Minimum
12 Wage Amendment encroaches on the court's power to interpret what health benefits means.
13 Therefore, the regulations violate the separation of powers.
14

15
16 **X. Conclusion**

17 Perera's Countermotion to Amend the Complaint should be denied. The Minimum Wage
18 Amendment is preempted by federal labor law and ERISA. None of the proposed plaintiffs has a
19 claim which meets this Court's jurisdictional threshold of \$10,000.00. None of the proposed
20 plaintiffs has standing to allege a claim for relief under NRS 608.040 because the Labor
21 Commissioner has exclusive jurisdiction over these claims. None of the proposed plaintiffs has a
22 right to punitive damages or injunctive relief.
23

24 The Labor Commissioner's regulations on qualified health care benefits violate the
25 separation of powers under the State Constitution. Finally, it would be futile to grant Ahmed's
26 and Sargeant's leave to join Perera because neither of them has a claim for minimum wage
27 pursuant to the Minimum Wage Amendment. Exhibit 5. Therefore, Defendant Western Cab
28

1 Company respectfully requests that this Court deny Perera's Countermotion to Amend the
2 Complaint and dismiss the Second Amended Complaint.

3 Respectfully submitted,

4 HEJMANOWSKI & McCREA LLC

5
6
7 By: /s/ Malani L. Kotchka
8 Malani L. Kotchka
9 Nevada Bar No. 283
520 South Fourth Street, Suite 320
Las Vegas, NV 89101

10 *Attorneys for Defendant*
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CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, the undersigned hereby certifies that a true and correct copy of **DEFENDANT'S OPPOSITION TO PLAINTIFF'S COUNTERMOTION TO AMEND THE COMPLAINT** was electronically served via the Eighth Judicial District Court's ECF System on this 21st day of September, 2015, to the following:

Leon Greenberg, Esq.
2965 S. Jones Blvd.
Suite E4
Las Vegas, NV 89146

Attorney for Plaintiff

/s/ Rosalie Garcia
An Employee of Hejmanowski & McCrea LLC

EXHIBIT 1

EXHIBIT 1

Richard McCracken, SBN 2748
Andrew J. Kahn, SBN 3751
McCRACKEN, STEMERMAN & HOLSBERRY
1630 S. Commerce Street, Suite A-1
Las Vegas, NV 89102
Telephone: (702) 386-5107
Facsimile: (702) 386-9848
Email: rmccracken@dcbsf.com
ajk@dcbsf.com

Attorneys for Proposed Intervenor Nevada AFL-CIO

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA – SOUTHERN DIVISION

LANDRYS, INC., a Delaware corporation; BUBBA GUMP SHRIMP CO., RESTAURANTS, INC., a Delaware corporation; NEVADA RESTAURANT SERVICES, INC. d/b/a DOTTY'S GAMING AND SPIRITS, a Nevada Corporation; NEVADA RESTAURANT SERVICES, INC. d/b/a LAUGHLIN RIVER LODGE, a Nevada corporation; NEVADA RESTAURANT SERVICES, INC. d/b/a/ HOOVER DAM LODGE, a Nevada Corporation,

Plaintiffs,

vs.

BRIAN SANDOVAL, in his official capacity as Governor of the State of Nevada; SHANNON CHAMBERS, in her official capacity as Labor Commissioner in the State of Nevada ex rel,

Defendants.

NEVADA AFL-CIO.

Proposed Intervenor-Defendant

DECLARATION OF DANNY THOMPSON
IN SUPPORT OF NEVADA AFL-CIO's
MOTION TO INTERVENE

I, Danny Thompson, declare:

I, I am the Executive Secretary-Treasurer of the Nevada AFL-CIO and have held that position since 1999, and am competent to testify to the following: the Nevada AFL-CIO is comprised of over 120 local unions with over 200,000 members in Nevada. The Nevada AFL-CIO and its affiliates actively

1 adoption by voters in 2004 and 2006 of the Minimum Wage Amendment to the Nevada Constitution
2 ("MWA") which we drafted in conjunction with our lawyers at the law firm of McCracken, Stenerman
3 & Holsberry. This law helped increase the compensation of AFL-CIO members in Nevada and helps level
4 the playing field between non-union employers and unionized employers (who generally have been paying
5 their employees better than non-union employers). Most unionized employers provide health benefits
6 readily meeting the MWA's standard of not costing employees more than 10 percent of their gross income,
7 while a number of nonunion plans are reported to be falling such standard inside Nevada, and we
8 understand many outside Nevada fail such standard.

10 2. We are unaware of any MWA enforcement efforts by the Labor Commissioner. We have had serious
11 differences with the Office of the Labor Commissioner and their counsel in recent years, and we recently
12 submitted comments to that office in a rulemaking process over their minimum wage regulations in which
13 we objected to a number of these regulations.

15 3. We are very active in the health benefits arena within Nevada and have developed expertise in this
16 arena as many unionized employers provide health benefits through plans which are jointly administered
17 by union and employer trustees. Even where the plan does not have union trustees, our unions are still
18 involved in negotiating over and monitoring the employer plans.

20 I declare under penalty of perjury of the laws of the United States and Nevada that the foregoing is true
21 and correct. Executed this ___ day of _____, 2015.

22 
23 DANNY THOMPSON

EXHIBIT 2

EXHIBIT 2

Richard McCracken, SBN 2748
Andrew J. Kahn, SBN 3751
McCRACKEN, STEMERMAN & HOLSBERRY
1630 S. Commerce Street, Suite A-1
Las Vegas, NV 89102
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ajk@dcbsf.com
Attorneys for Proposed Intervenor Nevada AFL-CIO

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA – SOUTHERN DIVISION

LANDRYS, INC., a Delaware corporation; BUBBA
GUMP SHRIMP CO., RESTAURANTS, INC., a
Delaware corporation; NEVADA RESTAURANT
SERVICES, INC. d/b/a DOTTY'S GAMING AND
SPIRITS, a Nevada Corporation; NEVADA
RESTAURANT SERVICES, INC. d/b/a
LAUGHLIN RIVER LODGE, a Nevada
corporation; NEVADA RESTAURANT
SERVICES, INC. d/b/a/ HOOVER DAM LODGE, a
Nevada Corporation,

Plaintiffs,

vs.

BRIAN SANDOVAL, in his official capacity as
Governor of the State of Nevada; SHANNON
CHAMBERS, in her official capacity as Labor
Commissioner in the State of Nevada ex rel,

Defendants.

NEVADA AFL-CIO.

Proposed Intervenor-Defendant

Case No. 2:15-cv-01160-GMN-PAL

**SUPPLEMENTAL DECLARATION OF
DANNY THOMPSON IN SUPPORT OF
NEVADA AFL-CIO's MOTION TO
INTERVENE**

I, Danny Thompson, declare:

I, I am the Executive Secretary-Treasurer of the Nevada AFL-CIO and am competent to testify to the
following: members of some Nevada AFL-CIO affiliates receive wages below \$8.25 per hour but also

1 receive health benefits from their employer which qualify their employer to the lower minimum rate under
2 the State Constitution. They work as cab drivers and casino dealers.

3 2. Unionized employers in this State compete constantly with non-union employers paying only the state
4 minimum wage, particularly in the restaurant industry. If those non-union employers were allowed to
5 lower wages to pay only the lower federal minimum wage, there would be large amounts of business lost
6 by unionized employers, and hence losses to union members of paid hours worked, tips, and jobs, and
7 losses in dues income to AFL-CIO affiliates.
8

9 I declare under penalty of perjury of the laws of the United States and Nevada that the foregoing
10 is true and correct. Executed this ___ day of August 2015.

11 
12 DANNY THOMPSON

EXHIBIT 3

EXHIBIT 3

1 Richard McCracken, SBN 2748
2 Andrew J. Kahn, SBN 3751
3 McCracken, STEMERMAN & HOLSBERRY
4 1630 S. Commerce Street, Suite A-1
5 Las Vegas, NV 89102
6 Telephone: (702) 386-5107
7 Facsimile: (702) 386-9848
8 Email: rmcCracken@dcbsf.com
9 ajk@dcbsf.com
10 *Attorneys for Proposed Intervenor Nevada AFL-CIO*

11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA -- SOUTHERN DIVISION

13 LANDRYS, INC., a Delaware corporation; BUBBA
14 GUMP SHRIMP CO., RESTAURANTS, INC., a
15 Delaware corporation; NEVADA RESTAURANT
16 SERVICES, INC. d/b/a DOTTY'S GAMING AND
17 SPIRITS, a Nevada Corporation; NEVADA
18 RESTAURANT SERVICES, INC. d/b/a
19 LAUGHLIN RIVER LODGE, a Nevada
20 corporation; NEVADA RESTAURANT
21 SERVICES, INC. d/b/a/ HOOVER DAM LODGE, a
22 Nevada Corporation,

23 Plaintiffs,

24 vs.

25 BRIAN SANDOVAL, in his official capacity as
26 Governor of the State of Nevada; SHANNON
27 CHAMBERS, in her official capacity as Labor
28 Commissioner in the State of Nevada ex rel,

Defendants.

NEVADA AFL-CIO.

Proposed Intervenor-Defendant

Case No. 2:15-cv-01160-GMN-PAL

SECOND SUPPLEMENTAL
DECLARATION OF DANNY
THOMPSON IN SUPPORT OF NEVADA
AFL-CIO's MOTION TO INTERVENE

I, Danny Thompson, declare:

I. I am the Executive Secretary-Treasurer of the Nevada AFL-CIO and am competent to testify to the following: members of some Nevada AFL-CIO affiliates receive wages below \$8.25 per hour but also receive health benefits from their employer which qualify their employer to the lower minimum rate under

1 the State Constitution. These include those working as new hires at a number of Las Vegas downtown
2 casinos belonging to Culinary Workers Union Local 226, as its contracts at eight facilities call for such
3 rates for certain benefitted workers hired recently: Binions, Four Queens, Fremont, Main Street, Plaza,
4 Las Vegas Club, Dupars and Golden Gate.

5 2. Unionized employers in this State compete constantly with non-union employers paying only the state
6 minimum wage, particularly in the restaurant industry. If those non-union employers were allowed to
7 lower wages to pay only the lower federal minimum wage, there would be large amounts of business lost
8 by unionized employers, and hence losses to union members of paid hours worked, tips, and jobs, and
9 losses in dues income to AFL-CIO affiliates.
10

11 I declare under penalty of perjury of the laws of the United States and Nevada that the foregoing
12 is true and correct. Executed this __ day of August 2015.
13

14 
15 DANNY THOMPSON
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CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2015, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal and a Notice of Electronic Filing was electronically transmitted from the court to the e-mail addresses on file.

/s/ Joyce Archain

EXHIBIT 4

EXHIBIT 4

AFFIDAVIT OF GREGORY E. SMITH

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Gregory E. Smith, being duly sworn upon his oath, deposes and says that:

1. I am a member of the law firm of Hejmanowski & McCrea LLC. I previously was employed by the National Labor Relations Board and have spent the past 37 years working as a labor lawyer. I have represented Western Cab Company in union negotiations since approximately August 2013. I was retained to represent Western Cab after it had already entered into a recognition agreement under which it officially "recognized" the United Steel Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union (AFL-CIO/CLC) (herein "Union" or "Steelworkers' Union") as the exclusive bargaining representative of Western Cab's employee cab drivers.

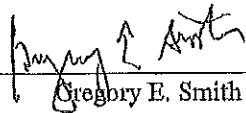
2. The effect of that recognition was to require Western Cab to "bargain in good faith" with the Union for a collective bargaining agreement to cover Western Cab's drivers. The phrase "bargaining in good faith" also includes the duty to not unilaterally change any material term or condition of employment of employees without first bargaining with the Union. Western Cab did not realize that its bargaining obligation might require it to bargain with the Union about a change in health insurance coverage even when that change, reducing the waiting period from 1 year to 90 days, was mandated by the federal government in the form of the Affordable Care Act ("ACA") and even though the change was clearly in favor of the employees.

3. The Union filed unfair labor practice charges against Western Cab, alleging that such compliance with the federal law giving the employees more benefits than they had before,

EXHIBIT 4

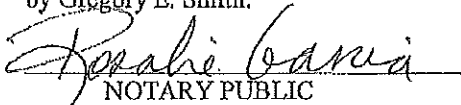
was a matter that had to be bargained about with the Union first. In my experience as a labor lawyer over the past 37 years, I am aware that this is a recurring problem that many employers face not realizing that changes of employment terms, even if in the employee's favor, still must be subject to bargaining with the Union first. Indeed, in this case the NLRB's Administrative Law Judge recently found that Western Cab violated its bargaining obligation by not giving the Union a chance to bargain about the waiting period for health insurance coverage before the change was made. The Minimum Wage Amendment exerts pressure on Western Cab, that it otherwise would not have had, to reach a collective bargaining agreement with the Union on wages and health benefits.

4. In addition the Minimum Wage Amendment allows waiver of the minimum wage only in a collective bargaining agreement. This fact further exerts pressure to reach a collective bargaining agreement with the Union. Moreover, unilateral implementation under the National Labor Relations Act allows for wages to be unilaterally implemented after an impasse in bargaining. The definition of unilateral implementation in the Minimum Wage Amendment is different from the term defined in cases by the National Labor Relations Board and thus interferes with the implementation of federal labor policy.



Gregory E. Smith

SUBSCRIBED and SWORN to before
me this 21st day of September, 2015
by Gregory E. Smith.



NOTARY PUBLIC

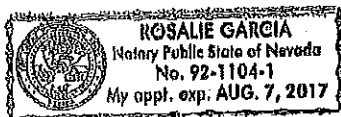


EXHIBIT 5

EXHIBIT 5

AFFIDAVIT OF MARTHA SARVER

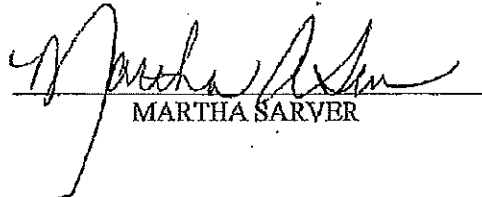
STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Martha Sarver, being duly sworn upon her oath, deposes and says that:

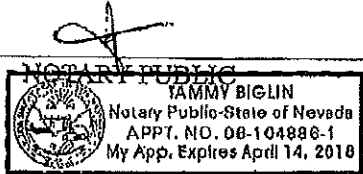
1. I am the General Manager for Western Cab Company ("Western Cab") and have held this position since 2006.
2. Irshad Ahmed worked for Western Cab from February 23, 2012 through June 28, 2013. Attached as Exhibit 5-1 is a true and correct copy of Ahmed's Payroll Detail Report for that time period. Ahmed was paid wages of \$52,302.34 for that time period. This did not include his tips of \$9,869.57. Ahmed often worked between eight and ten hours a shift. Ahmed averaged \$10.87 per hour without tips. This is far above the upper tier minimum wage.
3. Although Ahmed was offered health insurance at Western Cab, Ahmed said on June 7, 2012, that he wanted to be on his wife's medical insurance. Ahmed never enrolled in or paid anything for health insurance while employed by Western Cab.
4. Attached as Exhibit 5-2 are my calculations of Ahmed's hourly wage from September 23, 2012 to June 28, 2013. Ahmed always made over \$8.25 an hour, the upper tier minimum wage.
5. Michael Sargeant worked for Western Cab for three months in 2014. Attached as Exhibit 5-3 is a copy of Sargeant's Payroll Detail Report from February 20, 2014 to May 10, 2014. During these dates Sargeant always made over \$8.25 an hour, the upper tier of the minimum wage rate.
6. Neither Ahmed nor Sargeant ever attempted to collect any wages allegedly due from Western Cab.

EXHIBIT 5

7. Attached hereto as Exhibit 5-4 is a true and correct copy of the Nevada 2015 poster which Western Cab currently has posted. We have always posted a Nevada poster containing similar provisions for over ten years.


MARTHA SARVER

SUBSCRIBED and SWORN to before
me this 18 day of September, 2015
by Martha Sarver.



Tuesday, February 03, 2015

Payroll Detail Report

Pay period of: 2/23/2012 through 4/17/2012

Page 2-1

Date	Shift	Cab	Trips	Paid Miles	Paid Mile%	Book	Trip Chrg	Book	Wage	O/S
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Ahmed, Irshad

Western Cab

Pay: **\$52,302.34**Tips: **9869.57**O/S: **.00**Time: **364.20**

2/23/2012	10-01	133	15	109	66.9 %	365.50	15.00	350.50	175.25	0.00
2/24/2012	10-01	133	18	126	69.2 %	418.80	18.00	400.80	200.40	0.00
2/25/2012	10-01	141	13	70	61.4 %	249.90	13.00	236.90	118.45	0.00
2/26/2012	10-01	87	17	116	73.0 %	351.10	17.00	334.10	167.05	0.00
2/27/2012	10-01	184	12	66	61.7 %	229.80	12.00	217.80	108.90	0.00
2/28/2012	10-01	24	10	56	58.9 %	196.00	10.00	186.00	93.00	0.00
2/29/2012	10-01	24	13	104	68.9 %	338.10	13.00	325.10	162.55	0.00
3/1/2012	10-01	204	16	97	66.9 %	327.20	16.00	311.20	155.60	0.00
3/2/2012	10-01	205	19	107	71.8 %	375.90	19.00	356.90	178.45	0.00
3/3/2012	10-01	33	13	56	61.5 %	209.70	13.00	196.70	98.35	0.00
3/4/2012	10-01	33	19	99	66.0 %	346.50	19.00	327.50	163.75	0.00
3/6/2012	10-01	75	14	79	67.5 %	269.40	14.00	255.40	127.70	0.00
3/7/2012	10-01	222	17	110	73.8 %	366.90	17.00	349.90	174.95	0.00
3/8/2012	10-01	75	14	68	59.6 %	251.70	14.00	237.70	118.85	0.00
3/9/2012	10-01	161	14	65	66.3 %	240.00	14.00	226.00	113.00	0.00
3/10/2012	10-01	75	12	62	60.2 %	219.90	12.00	207.90	103.95	0.00
3/11/2012	13-01	189	18	113	73.9 %	383.00	18.00	365.00	182.50	0.00
3/13/2012	10-01	150	14	56	58.9 %	219.60	14.00	205.60	102.80	0.00
3/14/2012	10-01	142	13	120	61.5 %	358.60	13.00	345.60	172.80	0.00
3/15/2012	10-01	136	22	93	61.6 %	343.80	22.00	321.80	160.80	0.00
3/16/2012	10-01	100	18	101	71.1 %	354.40	18.00	336.40	168.20	0.00
3/17/2012	10-01	52	17	132	66.7 %	445.70	17.00	428.70	214.35	0.00
3/18/2012	10-01	74	18	132	66.7 %	445.20	18.00	427.20	213.60	0.00
3/20/2012	10-01	150	12	61	62.9 %	224.00	12.00	212.00	106.00	0.00
3/21/2012	10-01	142	11	71	62.3 %	242.90	11.00	231.90	115.95	0.00
3/22/2012	10-01	210	13	76	71.0 %	251.10	13.00	238.10	119.05	0.00
3/23/2012	10-01	100	13	91	70.0 %	302.10	13.00	289.10	144.55	0.00
3/24/2012	10-01	98	16	65	65.0 %	249.60	16.00	233.60	116.80	0.00
3/25/2012	10-01	102	19	112	70.9 %	381.90	19.00	362.90	181.45	0.00
3/27/2012	10-01	148	16	104	69.3 %	351.60	16.00	335.60	167.80	0.00
3/28/2012	10-01	142	13	91	63.6 %	303.90	13.00	290.90	145.45	0.00
3/29/2012	10-01	136	13	89	61.0 %	300.10	13.00	287.10	143.55	0.00
3/30/2012	10-01	100	12	90	64.7 %	302.40	12.00	290.40	145.20	0.00
3/31/2012	10-01	98	14	105	67.3 %	347.60	14.00	333.60	166.80	0.00
4/1/2012	10-01	98	21	119	68.0 %	418.90	21.00	397.90	198.95	0.00
4/3/2012	10-01	150	11	81	71.1 %	263.70	11.00	252.70	126.35	0.00
4/4/2012	10-01	142	11	56	63.6 %	205.10	11.00	194.10	97.05	0.00
4/5/2012	10-01	136	13	90	68.7 %	292.30	13.00	279.30	139.65	0.00
4/6/2012	10-01	100	10	75	69.4 %	256.20	10.00	246.20	123.10	0.00
4/7/2012	10-01	98	11	59	58.4 %	205.50	11.00	194.50	97.25	0.00
4/8/2012	10-01	98	14	70	61.4 %	250.80	14.00	236.80	118.40	0.00
4/10/2012	10-01	150	11	92	71.3 %	259.70	11.00	248.70	124.35	0.00
4/11/2012	10-01	142	10	71	58.7 %	226.20	10.00	216.20	108.10	0.00
4/12/2012	10-01	138	15	90	69.2 %	312.10	15.00	297.10	148.55	0.00
4/13/2012	10-01	100	16	100	70.9 %	333.60	16.00	317.60	158.80	0.00
4/14/2012	10-01	98	15	73	68.9 %	263.10	15.00	248.10	124.05	0.00
4/15/2012	10-01	98	19	112	72.3 %	379.90	19.00	360.90	180.45	0.00
4/17/2012	10-01	150	18	94	69.1 %	339.20	18.00	321.20	160.60	0.00

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Payroll Detail Report

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Pay period of: 4/18/2012 through 6/13/2012

Date	Shift	Cab	Trips	Paid Miles	Paid Mile%	Book	Trips Chrg	Book	Wage	O/S
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Ahmed, Irshad

Western Cab

4/18/2012	10-01	142	15	106	73.1 %	346.30	15.00	331.30	165.65	0.00
4/19/2012	10-01	136	16	51	41.1 %	283.70	16.00	267.70	133.85	0.00
4/20/2012	10-01	100	14	93	58.5 %	311.60	14.00	297.60	148.80	0.00
4/21/2012	10-01	98	16	113	75.8 %	375.40	16.00	359.40	179.70	0.00
4/22/2012	10-01	71	17	92	68.1 %	344.90	17.00	327.90	163.95	0.00
4/24/2012	10-01	150	11	78	65.5 %	251.50	11.00	240.50	120.25	0.00
4/25/2012	10-01	142	14	66	60.6 %	238.00	14.00	224.00	112.00	0.00
4/26/2012	10-01	53	14	110	71.0 %	356.00	14.00	342.00	171.00	0.00
4/27/2012	10-01	115	14	86	68.8 %	290.20	14.00	276.20	138.10	0.00
4/28/2012	10-01	115	17	80	70.8 %	296.70	17.00	279.70	139.85	0.00
4/29/2012	10-01	115	16	123	74.1 %	405.80	16.00	389.80	194.90	0.00
5/1/2012	10-01	101	12	69	65.1 %	241.20	12.00	229.20	114.60	0.00
5/3/2012	11-01	151	18	111	68.5 %	378.00	18.00	360.00	180.00	0.00
5/4/2012	10-01	63	17	83	66.4 %	299.50	17.00	282.50	141.25	0.00
5/5/2012	10-01	100	15	88	72.1 %	303.10	15.00	288.10	144.05	0.00
5/6/2012	10-01	115	21	130	77.8 %	453.50	21.00	432.50	216.25	0.00
5/8/2012	10-01	115	13	82	72.6 %	274.70	13.00	261.70	130.85	0.00
5/9/2012	10-01	115	15	76	65.0 %	280.00	15.00	265.00	132.50	0.00
5/10/2012	10-01	60	13	102	76.1 %	341.30	13.00	328.30	164.15	0.00
5/11/2012	10-01	115	14	82	72.6 %	286.40	14.00	272.40	136.20	0.00
5/12/2012	10-01	163	15	74	62.7 %	262.30	15.00	247.30	123.65	0.00
5/13/2012	10-01	115	16	99	70.2 %	346.60	16.00	330.60	165.30	0.00
5/15/2012	10-01	115	15	88	80.0 %	301.90	15.00	286.90	143.45	0.00
5/16/2012	10-01	115	11	83	62.9 %	278.30	11.00	267.30	133.65	0.00
5/17/2012	10-01	115	14	100	72.5 %	339.60	14.00	325.60	162.80	0.00
5/18/2012	10-01	115	16	79	71.8 %	301.80	16.00	285.80	142.90	0.00
5/19/2012	10-01	115	17	109	69.0 %	373.50	17.00	356.50	178.25	0.00
5/20/2012	10-01	115	22	126	73.3 %	433.80	22.00	411.80	205.90	0.00
5/22/2012	10-01	115	18	75	68.2 %	284.60	18.00	266.60	133.30	0.00
5/23/2012	10-01	115	16	94	65.7 %	326.00	16.00	310.00	155.00	0.00
5/24/2012	10-01	115	12	132	66.9 %	405.00	12.00	393.00	196.50	0.00
5/25/2012	10-01	115	13	77	70.0 %	273.10	13.00	260.10	130.05	0.00
5/26/2012	10-01	115	17	75	64.1 %	291.30	17.00	274.30	137.15	0.00
5/27/2012	10-01	100	19	94	70.1 %	346.90	19.00	327.90	163.95	0.00
5/29/2012	10-01	75	13	79	68.7 %	272.30	13.00	259.30	129.65	0.00
5/30/2012	10-01	115	12	56	57.7 %	198.20	12.00	186.20	93.10	0.00
5/31/2012	10-01	115	12	76	65.5 %	269.20	12.00	257.20	128.60	0.00
6/1/2012	10-01	115	13	70	64.8 %	246.10	13.00	233.10	116.55	0.00
6/2/2012	10-01	115	12	63	63.6 %	227.00	12.00	215.00	107.50	0.00
6/3/2012	10-01	115	16	99	62.3 %	352.00	16.00	336.00	168.00	0.00
6/5/2012	10-01	115	10	61	60.4 %	204.60	10.00	194.60	97.30	0.00
6/6/2012	10-01	115	10	54	63.5 %	190.00	10.00	180.00	90.00	0.00
6/7/2012	10-01	115	14	81	66.4 %	273.00	14.00	259.00	129.50	0.00
6/8/2012	10-01	115	17	118	72.8 %	396.50	17.00	379.50	189.75	0.00
6/9/2012	10-01	115	22	84	67.7 %	337.40	22.00	315.40	157.70	0.00
6/10/2012	10-01	115	27	107	65.6 %	398.60	27.00	371.60	185.80	0.00
6/12/2012	10-01	115	20	95	66.4 %	343.00	20.00	323.00	161.50	0.00
6/13/2012	10-01	115	13	115	64.6 %	367.70	13.00	354.70	177.35	0.00

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Payroll Detail Report

Pay period of: 6/14/2012 through 8/8/2012

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Date	Shift	Cab	Trips	Paid Miles	Paid Mile%	Book	Trip Chrg	Book	Wage	O/S
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Ahmed, Irshad

Western Cab

6/14/2012	10-01	115	16	97	69.8 %	331.20	16.00	315.20	157.60	0.00
6/15/2012	10-01	115	15	80	67.8 %	286.30	15.00	271.30	135.65	0.00
6/16/2012	10-01	115	11	58	65.2 %	209.30	11.00	198.30	99.15	0.00
6/17/2012	10-01	115	19	85	64.4 %	314.90	19.00	295.90	147.95	0.00
6/19/2012	10-01	115	11	62	66.7 %	215.90	11.00	204.90	102.45	0.00
6/20/2012	10-01	115	10	54	62.1 %	191.20	10.00	181.20	90.60	0.00
6/21/2012	10-01	115	12	48	61.5 %	187.60	12.00	175.60	87.80	0.00
6/22/2012	10-01	115	13	108	68.8 %	344.10	13.00	331.10	165.55	0.00
6/23/2012	10-01	115	10	67	65.7 %	227.20	10.00	217.20	108.60	0.00
6/24/2012	10-01	115	16	118	67.8 %	377.60	16.00	361.60	180.80	0.00
6/26/2012	10-01	72	9	61	59.8 %	215.90	9.00	206.90	103.45	0.00
		115								
6/28/2012	10-01	115	15	105	67.3 %	347.90	15.00	332.90	166.45	0.00
6/29/2012	10-01	115	11	66	58.9 %	229.50	11.00	218.50	109.25	0.00
6/30/2012	10-01	115	13	58	63.0 %	223.30	13.00	210.30	105.15	0.00
7/1/2012	10-01	115	16	102	69.4 %	345.40	16.00	329.40	164.70	0.00
7/3/2012	10-01	115	12	60	66.7 %	215.20	12.00	203.20	101.60	0.00
7/4/2012	10-01	115	11	60	63.8 %	207.90	11.00	196.90	98.45	0.00
7/5/2012	10-01	115	14	69	61.6 %	257.40	14.00	243.40	121.70	0.00
7/6/2012	10-01	115	12	77	68.8 %	270.00	12.00	258.00	129.00	0.00
7/7/2012	10-01	115	11	51	69.9 %	186.10	11.00	175.10	87.55	0.00
7/10/2012	10-01	135	10	57	66.3 %	195.40	10.00	185.40	92.70	0.00
7/11/2012	10-01	115	9	62	70.5 %	210.30	9.00	201.30	100.65	0.00
7/12/2012	10-01	115	12	78	67.8 %	265.60	12.00	253.60	126.80	0.00
7/13/2012	10-01	115	13	57	65.5 %	215.70	13.00	202.70	101.35	0.00
7/14/2012	10-01	115	13	77	62.1 %	264.90	13.00	251.90	125.95	0.00
7/15/2012	10-01	64	14	77	65.3 %	272.40	14.00	258.40	129.20	0.00
7/17/2012	10-01	115	10	66	68.0 %	225.20	10.00	215.20	107.60	0.00
7/18/2012	10-01	63	10	39	54.2 %	150.20	10.00	140.20	70.10	0.00
		115								
7/19/2012	10-01	115	8	62	63.3 %	212.60	8.00	204.60	102.30	0.00
7/20/2012	10-01	115	9	54	61.4 %	195.50	9.00	186.50	93.25	0.00
7/21/2012	10-01	115	11	60	58.3 %	213.50	11.00	202.50	101.25	0.00
7/22/2012	10-01	115	18	108	70.1 %	375.00	18.00	357.00	178.50	0.00
7/24/2012	10-01	5	8	37	56.9 %	134.00	8.00	126.00	63.00	0.00
7/25/2012	10-01	188	12	66	62.9 %	230.60	12.00	218.60	109.30	0.00
7/26/2012	10-01	197	10	87	66.9 %	287.20	10.00	277.20	138.60	0.00
7/27/2012	10-01	209	10	47	58.0 %	173.80	10.00	163.80	81.90	0.00
7/28/2012	10-01	115	12	74	67.3 %	248.80	12.00	236.80	118.40	0.00
7/29/2012	10-01	115	17	107	73.8 %	385.50	17.00	368.50	184.25	0.00
7/31/2012	10-01	115	12	74	58.3 %	277.80	12.00	265.80	132.90	0.00
8/1/2012	10-01	115	11	76	77.6 %	234.90	11.00	223.90	111.95	0.00
8/2/2012	10-01	115	11	68	64.8 %	232.70	11.00	221.70	110.85	0.00
8/3/2012	10-01	115	10	51	59.3 %	190.80	10.00	180.80	90.40	0.00
8/4/2012	10-01	115	9	47	52.2 %	164.90	9.00	155.90	77.95	0.00
8/5/2012	10-01	115	12	70	62.5 %	259.00	12.00	247.00	123.50	0.00
8/7/2012	10-01	115	9	46	57.5 %	167.70	9.00	158.70	79.35	0.00
8/8/2012	10-01	115	8	55	59.1 %	180.20	8.00	172.20	86.10	0.00

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Pay period of: 8/9/2012 through 10/4/2012

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Date	Shift	Cab	Trips	Paid Miles	Paid Mile%	Book	Trip Chrg	Book	Wage	O/S
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Ahmed, Irshad

Western Cab

8/9/2012	10-01	115	11	62	62.6 %	215.30	11.00	204.30	102.15	0.00
8/10/2012	10-01	115	11	75	65.2 %	247.50	11.00	236.50	118.25	0.00
8/11/2012	10-01	115	10	53	58.9 %	195.80	10.00	185.80	92.90	0.00
8/12/2012	10-01	115	17	112	70.4 %	372.30	17.00	355.30	177.65	0.00
8/14/2012	10-01	115	13	87	71.3 %	289.70	13.00	276.70	138.35	0.00
8/15/2012	10-01	115	13	46	56.8 %	185.30	13.00	172.30	86.15	0.00
8/16/2012	10-01	110	7	35	55.6 %	127.90	7.00	120.90	60.45	0.00
		115								
8/17/2012	10-01	116	10	67	72.8 %	230.80	10.00	220.80	110.40	0.00
8/18/2012	10-01	116	11	68	62.4 %	234.70	11.00	223.70	111.85	0.00
8/19/2012	10-01	116	9	86	67.2 %	288.70	9.00	279.70	139.85	0.00
8/21/2012	10-01	116	15	91	61.9 %	318.70	15.00	303.70	151.85	0.00
8/22/2012	10-01	116	13	83	81.4 %	231.70	13.00	218.70	109.35	0.00
8/23/2012	10-01	116	14	82	70.1 %	287.80	14.00	273.80	136.90	0.00
8/24/2012	10-01	116	12	75	71.4 %	245.40	12.00	233.40	116.70	0.00
8/25/2012	10-01	116	11	60	62.5 %	211.30	11.00	200.30	100.15	0.00
8/26/2012	10-01	116	15	103	64.0 %	336.10	15.00	321.10	160.55	0.00
8/28/2012	10-01	116	7	36	61.0 %	130.90	7.00	123.90	61.95	0.00
8/29/2012	10-01	116	8	54	65.9 %	180.80	8.00	172.80	86.40	0.00
8/30/2012	10-01	116	7	37	49.3 %	134.30	7.00	127.30	63.65	0.00
8/31/2012	10-01	116	8	44	71.0 %	173.80	8.00	165.80	82.90	0.00
9/1/2012	10-01	116	11	60	69.0 %	217.30	11.00	206.30	103.15	0.00
9/2/2012	10-01	116	14	83	65.9 %	284.60	14.00	270.60	135.30	0.00
9/4/2012	10-01	116	13	62	60.2 %	220.10	13.00	207.10	103.55	0.00
9/5/2012	10-01	116	9	62	66.0 %	204.70	9.00	195.70	97.85	0.00
9/6/2012	10-01	116	10	80	65.0 %	253.60	10.00	243.60	121.80	0.00
9/7/2012	10-01	116	9	80	69.6 %	274.10	9.00	265.10	132.55	0.00
9/8/2012	10-01	116	11	87	69.0 %	277.70	11.00	266.70	133.35	0.00
9/9/2012	10-01	116	14	100	66.2 %	339.00	14.00	325.00	162.50	0.00
9/11/2012	10-01	116	11	82	66.1 %	262.90	11.00	251.90	125.95	0.00
9/12/2012	10-01	116	13	75	65.8 %	268.10	13.00	255.10	127.55	0.00
9/13/2012	10-01	116	12	101	71.6 %	325.80	12.00	313.80	156.90	0.00
9/14/2012	10-01	116	14	76	69.1 %	263.00	14.00	249.00	124.50	0.00
9/15/2012	10-01	116	11	79	59.4 %	259.30	11.00	248.30	124.15	0.00
9/16/2012	10-01	116	14	78	67.8 %	282.60	14.00	268.60	134.30	0.00
9/20/2012	10-01	116	11	68	65.4 %	231.70	11.00	220.70	110.35	0.00
9/21/2012	10-01	116	14	82	68.3 %	295.80	14.00	281.80	140.90	0.00
9/22/2012	10-01	116	11	70	63.1 %	238.50	11.00	227.50	113.75	0.00
9/23/2012	10-01	116	14	104	68.0 %	334.40	14.00	320.40	160.20	0.00
9/25/2012	10-01	116	2	72	66.1 %	260.90	2.00	258.90	129.45	0.00
9/26/2012	10-01	116	15	107	75.9 %	345.90	15.00	330.90	165.45	0.00
9/27/2012	10-01	116	15	95	65.1 %	329.10	15.00	314.10	157.05	0.00
9/28/2012	10-01	116	13	76	66.1 %	260.90	13.00	247.90	123.95	0.00
9/29/2012	10-01	116	13	105	64.8 %	330.70	13.00	317.70	158.85	0.00
9/30/2012	10-01	116	15	96	69.6 %	331.90	15.00	316.90	158.45	0.00
10/2/2012	10-01	116	9	64	71.1 %	213.10	9.00	204.10	102.05	0.00
10/3/2012	10-01	116	10	84	73.0 %	267.80	10.00	257.80	128.90	0.00
10/4/2012	10-01	116	12	91	70.5 %	296.00	12.00	284.00	142.00	0.00

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Payroll Detail Report

Pay period of: 10/5/2012 through 12/4/2012

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Date	Shift	Cab	Trips	Paid Miles	Paid Mile%	Book	Trip Chrg	Book	Wage	O/S
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Ahmed, Irshad

Western Cab

10/5/2012	10-01	116	13	88	69.3 %	293.30	13.00	280.30	140.15	0.00
10/6/2012	10-01	116	13	60	66.7 %	248.30	13.00	235.30	117.65	0.00
10/7/2012	10-01	116	16	100	74.6 %	339.80	16.00	323.80	161.90	0.00
10/9/2012	10-01	116	12	74	67.3 %	258.80	12.00	246.80	123.40	0.00
10/10/2012	10-01	116	14	100	76.9 %	329.80	14.00	315.80	157.90	0.00
10/11/2012	10-01	73	16	60	65.9 %	237.80	16.00	221.80	110.90	0.00
10/12/2012	10-01	116	12	88	73.3 %	294.20	12.00	282.20	141.10	0.00
10/13/2012	10-01	116	12	80	76.9 %	268.80	12.00	256.80	128.40	0.00
10/14/2012	10-01	116	15	107	67.7 %	355.30	15.00	340.30	170.15	0.00
10/16/2012	10-01	116	10	71	67.0 %	231.60	10.00	221.60	110.80	0.00
10/17/2012	10-01	116	13	80	70.2 %	270.10	13.00	257.10	128.55	0.00
10/18/2012	10-01	116	13	110	73.3 %	355.50	13.00	342.50	171.25	0.00
10/19/2012	10-01	116	13	84	70.6 %	289.30	13.00	276.30	138.15	0.00
10/20/2012	10-01	116	12	104	68.0 %	332.40	12.00	320.40	160.20	0.00
10/21/2012	10-01	116	17	117	71.8 %	379.50	17.00	362.50	181.25	0.00
10/23/2012	10-01	116	9	79	62.7 %	252.90	9.00	243.90	121.95	0.00
10/24/2012	10-01	116	11	62	60.2 %	215.70	11.00	204.70	102.35	0.00
10/25/2012	10-01	116	15	91	72.2 %	312.30	15.00	297.30	148.65	0.00
10/26/2012	10-01	116	9	56	52.3 %	219.50	9.00	210.50	105.25	0.00
10/27/2012	10-01	116	10	78	74.3 %	254.00	10.00	244.00	122.00	0.00
10/28/2012	10-01	116	13	88	68.8 %	307.10	13.00	294.10	147.05	0.00
10/30/2012	10-01	116	12	86	61.0 %	287.00	12.00	275.00	137.50	0.00
10/31/2012	10-01	116	3	28	45.9 %	86.70	3.00	83.70	41.85	0.00
11/1/2012	10-01	116	22	127	73.0 %	444.80	22.00	422.80	211.40	0.00
11/2/2012	10-01	116	16	91	72.8 %	317.00	16.00	301.00	150.50	0.00
11/4/2012	10-01	116	11	99	75.6 %	312.80	11.00	301.80	150.95	0.00
11/9/2012	10-01	146	11	71	71.7 %	251.30	11.00	240.30	120.15	0.00
11/10/2012	10-01	116	12	80	74.8 %	275.40	12.00	263.40	131.70	0.00
11/11/2012	10-01	142	17	121	70.3 %	394.10	17.00	377.10	188.55	0.00
11/13/2012	10-01	116	10	77	67.0 %	253.20	10.00	243.20	121.60	0.00
11/14/2012	10-01	116	10	66	71.7 %	225.80	10.00	215.80	107.90	0.00
11/15/2012	10-01	116	12	85	71.4 %	282.20	12.00	270.20	135.10	0.00
11/16/2012	10-01	116	9	61	70.9 %	210.50	9.00	201.50	100.75	0.00
11/17/2012	10-01	116	11	52	69.3 %	194.30	11.00	183.30	91.65	0.00
11/18/2012	10-01	116	11	84	63.6 %	272.30	11.00	261.30	130.65	0.00
11/20/2012	10-01	116	8	81	75.0 %	259.60	8.00	251.60	125.80	0.00
11/21/2012	10-01	116	6	55	70.5 %	177.20	6.00	171.20	85.60	0.00
11/22/2012	10-01	116	7	48	69.6 %	161.30	7.00	154.30	77.15	0.00
11/23/2012	10-01	116	8	65	69.1 %	208.00	8.00	200.00	100.00	0.00
11/24/2012	10-01	116	7	102	80.3 %	302.70	7.00	295.70	147.85	0.00
11/25/2012	10-01	116	8	61	58.7 %	195.80	8.00	187.80	93.90	0.00
11/27/2012	10-01	116	7	52	59.8 %	168.90	7.00	161.90	80.95	0.00
11/28/2012	10-01	116	4	34	50.7 %	106.80	4.00	102.80	51.40	0.00
11/29/2012	10-01	116	8	65	69.1 %	215.20	8.00	207.20	103.60	0.00
		201								
12/1/2012	10-01	116	11	73	65.8 %	248.90	11.00	237.90	118.95	0.00
12/2/2012	10-01	116	10	94	61.0 %	291.80	10.00	281.80	140.90	0.00
12/4/2012	10-01	116	8	51	65.4 %	167.60	8.00	159.60	79.80	0.00

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Tuesday, February 03, 2015

Payroll Detail Report

Pay period of: 12/5/2012 through 1/30/2013

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Date	Shift	Cab	Trips	Paid Miles	Paid Mile%	Book	Trip Chrg	Book	Wage	O/S
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Ahmed, Irshad

Western Cab

12/5/2012	10-01	116	8	37	55.2 %	139.40	8.00	131.40	65.70	0.00
12/6/2012	10-01	116	10	72	58.1 %	238.00	10.00	228.00	114.00	0.00
12/7/2012	10-01	116	11	63	70.0 %	221.70	11.00	210.70	105.35	0.00
12/8/2012	10-01	116	10	65	69.9 %	223.00	10.00	213.00	106.50	0.00
12/9/2012	10-01	116	11	91	71.1 %	296.30	11.00	285.30	142.65	0.00
2/12/2012	10-01	116	8	76	75.2 %	238.80	8.00	230.80	115.40	0.00
2/13/2012	10-01	116	10	70	72.9 %	222.00	10.00	212.00	106.00	0.00
2/14/2012	10-01	116	9	50	63.3 %	173.50	9.00	164.50	82.25	0.00
2/16/2012	10-01	116	10	69	67.6 %	227.80	10.00	217.80	108.90	0.00
2/16/2012	10-01	116	11	89	62.7 %	279.70	11.00	268.70	134.35	0.00
2/18/2012	10-01	116	5	44	74.6 %	153.30	5.00	148.30	74.15	0.00
2/19/2012	10-01	116	6	41	62.1 %	134.60	6.00	128.60	64.30	0.00
2/20/2012	10-01	116	5	36	63.2 %	118.10	5.00	113.10	56.55	0.00
2/21/2012	10-01	116	4	29	61.7 %	98.60	4.00	94.60	47.30	0.00
2/22/2012	10-01	116	5	37	68.6 %	128.10	5.00	123.10	61.55	0.00
2/23/2012	10-01	116	5	39	63.9 %	134.60	5.00	129.60	64.75	0.00
2/25/2012	10-01	116	9	40	63.6 %	155.60	9.00	146.60	73.25	0.00
2/26/2012	10-01	116	10	69	76.7 %	228.60	10.00	218.60	109.30	0.00
2/27/2012	10-01	116	6	41	61.2 %	141.00	6.00	135.00	67.50	0.00
2/28/2012	10-01	116	9	71	74.0 %	230.50	9.00	221.50	110.75	0.00
2/29/2012	10-01	116	9	54	65.1 %	188.50	9.00	179.50	89.75	0.00
2/30/2012	10-01	116	12	59	63.4 %	213.00	12.00	201.00	100.50	0.00
1/1/2013	10-01	116	15	108	66.3 %	381.70	15.00	366.70	183.35	0.00
1/2/2013	10-01	116	11	79	65.3 %	261.70	11.00	250.70	125.35	0.00
1/3/2013	10-01	116	7	26	52.0 %	107.10	7.00	100.10	50.05	0.00
1/4/2013	10-01	116	8	53	66.2 %	182.80	8.00	174.80	87.40	0.00
1/5/2013	10-01	116	11	69	65.7 %	230.70	11.00	219.70	109.85	0.00
1/6/2013	10-01	116	10	94	67.1 %	293.00	10.00	283.00	141.50	0.00
1/8/2013	10-01	116	15	92	67.6 %	335.30	15.00	320.30	160.15	0.00
1/9/2013	10-01	116	17	103	77.4 %	352.90	17.00	335.90	167.95	0.00
1/10/2013	10-01	116	18	111	77.6 %	387.00	18.00	369.00	184.50	0.00
1/11/2013	10-01	116	19	106	71.1 %	373.90	19.00	354.90	177.45	0.00
1/12/2013	10-01	116	9	79	64.2 %	248.10	9.00	239.10	119.55	0.00
1/13/2013	10-01	116	11	90	73.8 %	286.50	11.00	275.50	137.75	0.00
1/15/2013	10-01	116	16	76	65.0 %	243.60	16.00	227.60	113.80	0.00
1/16/2013	10-01	116	5	76	67.3 %	251.90	5.00	246.90	123.45	0.00
1/17/2013	10-01	116	11	97	68.3 %	310.70	11.00	299.70	149.85	0.00
1/18/2013	10-01	116	12	100	80.0 %	317.20	12.00	305.20	152.60	0.00
1/19/2013	10-01	116	14	103	74.6 %	338.20	14.00	324.20	162.10	0.00
1/20/2013	10-01	116	15	91	71.1 %	316.40	15.00	301.40	150.70	0.00
1/22/2013	10-01	116	10	53	66.2 %	214.80	10.00	204.80	102.40	0.00
1/23/2013	10-01	116	9	63	70.8 %	211.10	9.00	202.10	101.05	0.00
1/24/2013	10-01	116	11	73	71.6 %	240.90	11.00	229.90	114.95	0.00
1/25/2013	10-01	116	9	69	71.9 %	226.10	9.00	217.10	108.55	0.00
1/26/2013	10-01	116	5	50	58.1 %	176.80	5.00	171.80	85.90	0.00
1/27/2013	10-01	116	13	107	72.8 %	335.30	13.00	322.30	161.15	0.00
1/29/2013	10-01	116	11	65	66.3 %	227.90	11.00	216.90	108.45	0.00
1/30/2013	10-01	154	13	105	78.9 %	333.90	13.00	320.90	160.45	0.00

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Payroll Detail Report

Pay period of: 1/31/2013 through 4/4/2013

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Date	Shift	Cab	Trips	Paid Miles	Paid Mile%	Book	Trip Chrg	Book	Wage	O/S
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Ahmed, Irshad

Western Cab

1/31/2013	10-01	116	9	69	62.2 %	231.90	9.00	222.90	111.45	0.00
2/1/2013	10-01	116	8	58	71.6 %	201.20	8.00	193.20	96.60	0.00
2/2/2013	10-01	116	9	64	68.1 %	209.90	9.00	200.90	100.45	0.00
2/3/2013	10-01	116	8	49	62.8 %	165.00	8.00	157.00	78.50	0.00
2/6/2013	11-01	182	14	56	56.0 %	221.60	14.00	207.60	103.80	0.00
2/6/2013	11-01	182	19	66	58.4 %	274.90	19.00	255.90	127.95	0.00
2/7/2013	10-01	116	14	78	60.0 %	265.20	14.00	251.20	125.60	0.00
2/8/2013	10-01	116	13	89	73.6 %	309.30	13.00	296.30	148.15	0.00
2/9/2013	10-01	116	15	65	72.2 %	248.30	15.00	233.30	116.65	0.00
2/10/2013	10-01	116	12	100	66.2 %	321.00	12.00	309.00	154.50	0.00
2/12/2013	10-01	116	8	66	66.7 %	207.00	8.00	199.00	99.50	0.00
2/13/2013	10-01	116	9	58	65.2 %	195.50	9.00	186.50	93.25	0.00
2/14/2013	10-01	116	12	93	71.0 %	313.60	12.00	301.60	150.80	0.00
2/16/2013	10-01	116	8	34	63.0 %	134.20	8.00	126.20	63.10	0.00
2/16/2013	10-01	116	12	64	63.4 %	230.20	12.00	218.20	109.10	0.00
2/17/2013	10-01	116	11	103	73.0 %	317.90	11.00	306.90	153.45	0.00
2/19/2013	10-01	116	17	70	66.7 %	269.30	17.00	252.30	126.15	0.00
2/20/2013	10-01	116	12	102	97.1 %	266.60	12.00	254.60	127.30	0.00
2/21/2013	10-01	116	28	101	78.9 %	357.00	28.00	329.00	164.50	0.00
2/22/2013	10-01	116	10	74	71.2 %	249.40	10.00	239.40	119.70	0.00
2/23/2013	10-01	116	10	68	73.9 %	228.40	10.00	218.40	109.20	0.00
2/24/2013	10-01	116	13	88	70.4 %	290.50	13.00	277.50	138.75	0.00
2/26/2013	10-01	116	10	60	75.0 %	204.00	10.00	194.00	97.00	0.00
2/27/2013	10-01	116	10	69	61.6 %	231.40	10.00	221.40	110.70	0.00
2/28/2013	10-01	116	14	79	76.7 %	275.00	14.00	261.00	130.50	0.00
3/1/2013	10-01	116	14	99	68.3 %	328.80	14.00	314.80	157.40	0.00
3/2/2013	10-01	116	13	81	71.1 %	271.50	13.00	258.50	129.25	0.00
3/3/2013	10-01	116	14	94	74.6 %	315.80	14.00	301.80	150.90	0.00
3/5/2013	10-01	73	11	66	69.5 %	228.50	11.00	217.50	108.75	0.00
3/6/2013	10-01	116	11	60	67.4 %	214.10	11.00	203.10	101.55	0.00
3/7/2013	10-01	116	13	87	68.0 %	294.90	13.00	281.90	140.95	0.00
3/8/2013	10-01	116	11	67	60.9 %	236.30	11.00	225.30	112.65	0.00
3/9/2013	10-01	116	8	63	51.2 %	202.00	8.00	194.00	97.00	0.00
3/10/2013	10-01	116	14	83	64.3 %	285.60	14.00	271.60	135.80	0.00
3/12/2013	10-01	116	13	71	68.9 %	251.30	13.00	238.30	119.15	0.00
3/13/2013	10-01	116	11	62	53.0 %	222.90	11.00	211.90	105.95	0.00
3/14/2013	10-01	116	14	72	68.6 %	266.20	14.00	252.20	126.10	0.00
3/15/2013	10-01	116	11	69	69.0 %	247.50	11.00	236.50	118.25	0.00
3/16/2013	10-01	116	15	78	78.0 %	287.10	15.00	272.10	136.05	0.00
3/17/2013	10-01	116	16	112	74.2 %	377.20	16.00	361.20	180.60	0.00
3/19/2013	10-01	116	15	64	65.3 %	245.90	15.00	230.90	115.45	0.00
3/20/2013	10-01	116	17	110	71.4 %	380.70	17.00	363.70	181.85	0.00
3/21/2013	10-01	116	18	157	73.7 %	499.40	18.00	481.40	240.70	0.00
3/22/2013	10-01	149	16	78	73.6 %	295.20	16.00	279.20	139.60	0.00
3/23/2013	10-01	116	12	80	69.6 %	263.60	12.00	251.60	125.80	0.00
3/24/2013	10-01	76	15	137	65.6 %	431.50	15.00	416.50	208.25	0.00
		116								
4/4/2013	10-01	116	10	51	64.6 %	204.00	10.00	194.00	97.00	0.00

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Payroll Detail Report

Pay period of: 4/5/2013 through 5/29/2013

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Date	Shift	Cab	Trips	Paid Miles	Paid Mile%	Book	Trip Chrg	Book	Wage	O/S
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Ahmed, Irshad

Western Cab

4/5/2013	10-01	116	15	87	67.4 %	303.70	15.00	288.70	144.35	0.00
4/6/2013	10-01	116	16	111	70.7 %	364.40	16.00	348.40	174.20	0.00
4/7/2013	10-01	116	24	119	78.8 %	427.60	24.00	403.60	201.80	0.00
4/9/2013	10-01	116	17	70	60.9 %	272.30	17.00	255.30	127.65	0.00
4/10/2013	10-01	116	14	74	64.9 %	260.40	14.00	246.40	123.20	0.00
4/11/2013	10-01	116	16	96	73.8 %	337.00	16.00	321.00	160.50	0.00
4/12/2013	10-01	116	16	99	69.7 %	357.00	16.00	341.00	170.50	0.00
4/13/2013	10-01	116	13	92	71.3 %	307.70	13.00	294.70	147.35	0.00
4/14/2013	10-01	116	15	131	70.8 %	416.70	15.00	401.70	200.85	0.00
4/16/2013	10-01	116	12	77	68.8 %	263.60	12.00	251.60	125.80	0.00
4/17/2013	10-01	116	7	57	50.9 %	181.70	7.00	174.70	87.35	0.00
4/18/2013	10-01	116	12	80	75.5 %	270.20	12.00	258.20	129.10	0.00
4/19/2013	10-01	116	11	58	53.7 %	215.30	11.00	204.30	102.15	0.00
4/20/2013	10-01	74	13	83	61.0 %	279.70	13.00	266.70	133.35	0.00
		116								
4/21/2013	10-01	116	17	119	66.9 %	402.10	17.00	385.10	192.55	0.00
4/23/2013	10-01	116	11	79	69.3 %	258.90	11.00	247.90	123.95	0.00
4/24/2013	10-01	116	12	78	65.0 %	267.40	12.00	255.40	127.70	0.00
4/25/2013	10-01	116	10	83	76.1 %	283.20	10.00	273.20	136.60	0.00
4/26/2013	10-01	116	11	101	75.9 %	328.30	11.00	317.30	158.65	0.00
4/27/2013	10-01	116	13	99	71.2 %	325.70	13.00	312.70	156.35	0.00
4/28/2013	10-01	116	13	97	71.3 %	316.90	13.00	303.90	151.95	0.00
4/30/2013	10-01	116	8	83	65.9 %	252.40	8.00	244.40	122.20	0.00
5/1/2013	10-01	116	10	71	64.0 %	229.80	10.00	219.80	109.90	0.00
5/2/2013	10-01	116	13	101	71.6 %	326.70	13.00	313.70	156.85	0.00
5/3/2013	10-01	116	14	102	79.7 %	338.40	14.00	324.40	162.20	0.00
5/4/2013	10-01	116	13	79	69.3 %	271.90	13.00	258.90	129.45	0.00
5/5/2013	10-01	116	19	121	77.6 %	417.30	19.00	398.30	199.15	0.00
5/7/2013	10-01	116	12	84	68.9 %	279.00	12.00	267.00	133.50	0.00
5/8/2013	10-01	116	11	76	61.3 %	259.70	11.00	248.70	124.35	0.00
5/9/2013	10-01	116	11	75	64.1 %	250.50	11.00	239.50	119.75	0.00
5/10/2013	10-01	116	11	91	82.0 %	289.30	11.00	278.30	139.15	0.00
5/11/2013	10-01	116	14	65	59.1 %	241.20	14.00	227.20	113.60	0.00
5/12/2013	10-01	116	15	97	70.8 %	324.70	15.00	309.70	154.85	0.00
5/14/2013	10-01	116	10	75	75.8 %	251.80	10.00	241.80	120.90	0.00
5/15/2013	10-01	116	11	63	64.9 %	215.10	11.00	204.10	102.05	0.00
5/16/2013	10-01	116	15	108	76.1 %	357.10	15.00	342.10	171.05	0.00
5/17/2013	10-01	116	14	90	76.3 %	302.00	14.00	288.00	144.00	0.00
5/18/2013	10-01	116	12	68	68.7 %	237.00	12.00	225.00	112.50	0.00
5/19/2013	10-01	116	22	142	75.1 %	478.20	22.00	456.20	228.10	0.00
5/21/2013	10-01	116	16	90	65.7 %	318.40	16.00	302.40	151.20	0.00
5/22/2013	10-01	116	15	93	75.6 %	324.90	15.00	309.90	154.95	0.00
5/23/2013	10-01	116	13	59	52.2 %	284.70	13.00	271.70	135.85	0.00
5/24/2013	10-01	116	10	62	65.3 %	213.60	10.00	203.60	101.80	0.00
5/25/2013	10-01	116	15	95	72.5 %	325.50	15.00	310.50	155.25	0.00
5/26/2013	10-01	116	21	123	75.9 %	434.70	21.00	413.70	206.85	0.00
5/28/2013	10-01	116	9	94	68.6 %	283.30	9.00	274.30	137.15	0.00
5/29/2013	10-01	116	12	73	65.2 %	248.20	12.00	236.20	118.10	0.00

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000685

Tuesday, February 03, 2015

Payroll Detail Re, .prt

Pay period of: 5/30/2013 through 6/28/2013

Page 2-9

Date	Shift	Cab	Trips	Paid Miles	Paid Mile%	Book	Trip Chrg	Book	Wage	O/S
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Ahmed, Irshad

Western Cab

5/30/2013	10-01	116	14	84	76.4 %	297.80	14.00	283.80	141.90	0.00
5/31/2013	10-01	116	15	88	69.3 %	312.10	15.00	297.10	148.55	0.00
6/1/2013	10-01	116	10	75	69.4 %	249.00	10.00	239.00	119.50	0.00
6/2/2013	10-01	116	13	108	77.7 %	343.50	13.00	330.50	165.25	0.00
6/4/2013	10-01	116	10	71	78.9 %	236.80	10.00	226.80	113.40	0.00
6/5/2013	10-01	116	8	48	51.6 %	162.20	8.00	154.20	77.10	0.00
6/6/2013	10-01	116	10	71	77.2 %	238.40	10.00	228.40	114.20	0.00
6/7/2013	10-01	116	12	71	67.6 %	251.20	12.00	239.20	119.60	0.00
6/8/2013	10-01	116	13	83	71.6 %	296.30	13.00	283.30	141.65	0.00
6/9/2013	10-01	116	14	107	65.6 %	354.60	14.00	340.60	170.30	0.00
6/12/2013	10-01	116	14	84	65.6 %	286.60	14.00	272.60	136.30	0.00
6/13/2013	10-01	116	11	76	61.3 %	256.70	11.00	245.70	122.85	0.00
6/14/2013	10-01	116	14	72	68.6 %	257.10	14.00	243.10	121.55	0.00
6/15/2013	10-01	116	11	63	59.4 %	218.50	11.00	207.50	103.75	0.00
6/16/2013	10-01	116	10	92	63.4 %	284.60	10.00	274.60	137.30	0.00
6/18/2013	10-01	116	8	42	56.0 %	153.80	8.00	145.80	72.90	0.00
6/19/2013	10-01	116	12	73	70.9 %	243.20	12.00	231.20	115.60	0.00
6/22/2013	10-01	116	15	82	59.4 %	302.20	15.00	287.20	143.60	0.00
6/23/2013	10-01	116	22	116	52.0 %	410.20	22.00	388.20	194.10	0.00
6/25/2013	10-01	116	14	105	70.9 %	345.80	14.00	331.80	165.90	0.00
6/26/2013	10-01	116	14	99	68.8 %	324.60	14.00	310.60	155.30	0.00
6/27/2013	10-01	116	12	81	58.7 %	276.80	12.00	264.80	132.40	0.00
6/28/2013	10-01	116	11	72	64.9 %	244.30	11.00	233.30	116.65	0.00

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IRSHAD AHMED
2012

Date	Hours	Wages	Sept. 23 - 29, 2012 Hourly Wage
09/23/12	12	160.20	
09/25/12	12	129.45	
09/26/12	12	165.45	
09/27/12	12	157.05	
09/28/12	12	123.95	
09/29/12	12	158.85	
TOTALS:	72	\$ 894.95	\$12.43

Date	Hours	Wages	Sept. 30 - Oct. 6, 2012 Hourly Wage
09/30/12	12	158.45	
10/02/12	12	102.05	
10/03/12	12	128.90	
10/04/12	12	142.00	
10/05/12	12	140.15	
10/06/12	12	117.65	
TOTALS:	72	\$ 789.20	\$10.96

Date	Hours	Wages	Oct. 7 - 12, 2012 Hourly Wage
10/07/12	12	161.90	
10/09/12	12	123.40	
10/10/12	10	157.90	
10/11/12	12	110.90	
10/12/12	12	141.10	
10/13/12	12	128.40	
TOTALS:	70	\$ 823.60	\$11.77

Date	Hours	Wages	Oct. 14 - 20, 2012 Hourly Wage
10/14/12	12	170.15	
10/16/12	12	110.80	
10/17/12	12	128.55	
10/18/12	12	171.25	
10/19/12	12	138.15	
10/20/12	12	160.00	

EXHIBIT 5-2

TOTALS:	72	\$ 878.90	\$12.21
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Date	Hours	Wages	Oct. 21 - 27, 2012 Hourly Wage
10/21/12	12	181.25	
10/23/12	12	121.95	
10/24/12	12	102.35	
10/25/12	12	148.65	
10/26/12	12	105.25	
10/27/12	12	122.00	
TOTALS:	72	\$ 781.45	\$10.85

Date	Hours	Wages	Oct. 28 - Nov. 2, 2012 Hourly Wage
10/28/12	12	147.05	
10/30/12	12	137.50	
10/31/12	3	41.85	
11/01/12	12	211.40	
11/02/12	12	150.50	
TOTALS:	51	\$ 688.30	\$13.50

Date	Hours	Wages	Nov. 4 - 10, 2012 Hourly Wage
11/04/12	12	150.95	
11/19/12	12	120.15	
11/10/12	12	131.70	
TOTALS:	36	\$ 402.80	\$11.19

Date	Hours	Wages	Nov. 11 - 17, 2012 Hourly Wage
11/11/12	12	188.55	
11/13/12	12	121.60	
11/14/12	12	107.90	
11/15/12	12	135.10	
11/16/12	12	100.75	
11/17/12	12	91.65	
TOTALS:	72	\$ 745.55	\$10.35

Date	Hours	Wages	Nov. 18 - 24, 2012 Hourly Wage
11/18/12	12	130.65	
11/20/12	12	125.80	
11/21/12	12	85.60	
11/22/12	12	77.15	
11/23/12	12	100.00	
11/24/12	12	147.85	
TOTALS:	72	\$ 667.05	\$9.26

Date	Hours	Wages	Nov. 25 - Dec. 1, 2012 Hourly Wage
11/25/12	8	93.90	
11/27/12	7	80.95	
11/28/12	4	51.40	
11/29/12	8	103.60	
12/01/12	12	118.95	
TOTALS:	39	\$ 448.80	\$11.51

Date	Hours	Wages	Dec. 2 - 8, 2012 Hourly Wage
12/02/12	12	140.90	
12/04/12	8	79.80	
12/05/12	8	65.70	
12/06/12	12	114.00	
12/07/12	12	105.35	
12/08/12	12	106.50	
TOTALS:	64	\$ 612.25	\$9.57

Date	Hours	Wages	Dec. 9 - 15, 2012 Hourly Wage
12/09/12	12	142.65	
12/12/12	8	115.40	
12/13/12	12	106.00	
12/14/12	9	82.25	
12/15/12	12	108.90	
TOTALS:	53	\$ 555.20	\$10.48

Date	Hours	Wages	Dec. 16 - 22, 2012 Hourly Wage
12/16/12	8	134.35	
12/18/12	8	74.15	
12/19/12	8	64.30	
12/20/12	8	56.55	
12/21/12	8	47.30	
12/22/12	8	61.55	
TOTALS:	48	\$ 438.20	\$9.13

Date	Hours	Wages	Dec. 23 - 29, 2012 Hourly Wage
12/23/12	8	64.75	
12/25/12	8	73.25	
12/26/12	8	109.30	
12/27/12	8	67.50	
12/28/12	12	110.75	
12/29/12	12	89.75	
TOTALS:	56	\$ 515.30	\$9.20

2013

Date	Hours	Wages	Dec. 30, 2012 - Jan. 5, 2013 Hourly Wage
12/30/12	12	100.50	
01/01/13	12	183.35	
01/02/13	12	125.35	
01/03/13	12	50.05	
01/04/13	12	87.40	
01/05/13	12	109.85	
TOTALS:	72	\$ 656.50	\$9.12

Date	Hours	Wages	Jan. 6 - 12, 2013 Hourly Wage
01/06/13	12	141.50	
01/08/13	12	160.15	
01/09/13	12	167.95	
01/10/13	12	184.50	
01/11/13	12	177.45	
01/12/13	12	119.55	
TOTALS:	72	\$ 951.10	\$13.21

Date	Hours	Wages	Jan. 13 - 19, 2013 Hourly Wage
01/13/13	12	137.75	
01/15/13	12	113.80	
01/16/13	12	123.45	
01/17/13	12	149.85	
01/18/13	12	152.60	
01/19/13	12	162.10	
TOTALS:	72	\$ 839.55	\$11.66

Date	Hours	Wages	Jan. 20 - 26, 2013 Hourly Wage
01/20/13	12	150.70	
01/22/13	12	102.40	
01/23/13	12	101.05	
01/24/13	12	114.95	
01/25/13	12	108.55	
01/26/13	12	85.90	
TOTALS:	72	\$ 663.55	\$9.22

Date	Hours	Wages	Jan. 27 - Feb. 02, 2013 Hourly Wage
01/27/13	12	161.15	
01/29/13	12	108.45	
01/30/13	12	160.45	
01/31/13	12	111.45	
02/01/13	12	96.90	
02/02/13	12	100.45	
TOTALS:	72	\$ 738.85	\$10.26

Date	Hours	Wages	Feb. 3 - 9, 2013 Hourly Wage
02/03/13	8	78.50	
02/05/13	12	103.80	
02/06/13	12	127.95	
02/07/13	12	125.60	
02/08/13	12	148.15	
02/09/13	12	116.65	
TOTALS:	68	\$ 700.65	\$10.30

Date	Hours	Wages	Feb. 10 - 16, 2013 Hourly Wage
02/10/13	12	154.50	
02/12/13	12	99.50	
02/13/13	12	93.25	
02/14/13	12	150.80	
02/15/13	12	63.10	
02/16/13	12	109.10	
TOTALS:	72	\$ 670.25	\$9.31

Date	Hours	Wages	Feb. 17 - 23, 2013 Hourly Wage
02/17/13	12	153.45	
02/19/13	12	126.15	
02/20/13	12	127.30	
02/21/13	12	164.50	
02/22/13	12	119.70	
02/23/13	12	109.20	
TOTALS:	72	\$ 800.30	\$11.12

Date	Hours	Wages	Feb. 24 - March 2, 2013 Hourly Wage
02/24/13	12	138.75	
02/26/13	12	97.00	
02/27/13	12	110.70	
02/28/13	12	130.50	
03/01/13	12	157.40	
03/02/13	12	129.25	
TOTALS:	72	\$ 763.60	\$10.61

Date	Hours	Wages	March 3 - 9, 2013 Hourly Wage
03/03/13	12	150.90	
03/05/13	12	108.75	
03/06/13	12	101.55	
03/07/13	12	140.95	
03/08/13	12	112.65	
03/09/13	12	97.00	
TOTALS:	72	\$ 711.80	\$9.89

Date	Hours	Wages	March 10 - 16, 2013 Hourly Wage
03/10/13	12	135.80	
03/12/13	12	119.15	
03/13/13	12	105.95	
03/14/13	12	126.10	
03/15/13	12	118.25	
03/16/13	12	136.05	
TOTALS:	72	\$ 741.30	\$10.30

Date	Hours	Wages	March 17 - 23, 2013 Hourly Wage
03/17/13	12	180.60	
03/19/13	12	115.45	
03/20/13	12	181.85	
03/21/13	12	240.70	
03/22/13	12	139.60	
03/23/13	12	125.80	
TOTALS:	72	\$ 984.00	\$13.67

Date	Hours	Wages	March 24, 2013 Hourly Wage
03/24/13	12	208.26	
TOTALS:	12	\$ 208.26	\$17.36

Date	Hours	Wages	April 4 - 6, 2013 Hourly Wage
04/04/13	12	97.00	
04/15/13	12	144.35	
04/06/13	12	174.20	
TOTALS:	36	\$ 415.55	\$11.54

Date	Hours	Wages	April 7 - 13, 2013 Hourly Wage
04/07/13	12	201.80	
04/09/13	12	127.65	
04/10/13	12	123.20	
04/11/13	12	160.50	
04/12/13	12	170.50	
04/13/13	12	147.35	
TOTALS:	72	\$ 931.00	\$12.93

Date	Hours	Wages	April 14 - 20, 2013 Hourly Wage
04/14/13	12	200.85	
04/16/13	12	125.80	
04/17/13	12	87.35	
04/18/13	12	129.10	
04/19/13	12	102.15	
04/20/13	12	133.36	
TOTALS:	72	\$ 778.61	\$10.81

Date	Hours	Wages	April 21 - 27, 2013 Hourly Wage
04/21/13	12	192.55	
04/23/13	12	123.95	
04/24/13	12	127.70	
04/25/13	12	136.60	
04/26/13	12	158.65	
04/27/13	12	156.35	
TOTALS:	72	\$ 895.80	\$12.44

Date	Hours	Wages	April 28 - May 4, 2013 Hourly Wage
04/28/13	12	151.95	
04/30/13	12	122.20	
05/01/13	12	109.90	
05/02/13	12	156.85	
05/03/13	12	162.20	
05/04/13	12	129.45	
TOTALS:	72	\$ 832.55	\$11.56

Date	Hours	Wages	May 5 - 11, 2013 Hourly Wage
05/05/13	12	199.15	
05/07/13	12	133.50	
05/08/13	12	124.35	
05/09/13	12	119.75	
05/10/13	12	139.15	
05/11/13	12	113.60	
TOTALS:	72	\$ 829.50	\$11.52

Date	Hours	Wages	May 12 - 18, 2013 Hourly Wage
05/12/13	12	154.85	
05/14/13	12	120.90	
05/15/13	12	102.05	
05/16/13	12	171.05	
05/17/13	12	144.00	
05/18/13	12	112.50	
TOTALS:	72	\$ 805.35	\$11.19

Date	Hours	Wages	May 19 - 25, 2013 Hourly Wage
05/19/13	12	228.10	
05/21/13	12	151.20	
05/22/13	12	154.95	
05/23/13	12	135.85	
05/24/13	12	101.80	
05/25/13	12	155.25	
TOTALS:	72	\$ 927.15	\$12.88

Date	Hours	Wages	May 26 - June 1, 2013 Hourly Wage
05/26/13	12	206.85	
05/28/13	12	137.15	
05/29/13	12	118.10	
05/30/13	12	141.90	
05/31/13	12	148.55	
06/01/13	12	119.50	
TOTALS:	72	\$ 872.05	\$12.11

Date	Hours	Wages	June 2 - 8, 2013 Hourly Wage
06/02/13	12	165.25	
06/04/13	12	113.40	
06/05/13	12	77.10	
06/06/13	12	114.20	
06/07/13	12	119.60	
06/08/13	12	141.65	
TOTALS:	72	\$ 731.20	\$10.16

Date	Hours	Wages	June 9 - 15, 2013 Hourly Wage
06/09/13	12	170.30	
06/12/13	12	136.30	
06/13/13	12	122.85	
06/14/13	12	121.55	
06/15/13	12	103.75	
TOTALS:	60	\$ 654.75	\$10.91

Date	Hours	Wages	June 16 - 22, 2013 Hourly Wage
06/16/13	12	137.30	
06/18/13	12	72.90	
06/19/13	12	115.60	
06/22/13	12	143.60	
TOTALS:	48	\$ 469.40	\$9.78

Date	Hours	Wages	June 23 - 28, 2013 Hourly Wage
06/23/13	12	194.10	
06/25/13	12	165.90	
06/26/13	12	155.30	
06/27/13	12	132.40	
06/28/13	12	116.65	
TOTALS:	60	\$ 764.35	\$12.74

Saturday, August 01, 2015

Payroll Detail

Parent Company: Western Cab

From 2/16/2014 through 3/1/20

Date	Shift	Cabs	Trips	Paid Miles	PM%	Gross Book	Trip Charge	Net Book	Wage	O/S
16687	Sargeant, Michael									
Western Cab				Hire Date: 2/19/2014				Shift Credits: 8 of 8		
2/20/2014	20-01	154	18	44.0000	51.76	214.80	18.00	196.80	98.40	0.00
2/21/2014	20-01	154	23	69.0000	44.81	285.50	23.00	262.50	131.25	0.00
2/23/2014	20-01	73	10	37.0000	44.58	193.40	10.00	183.40	91.70	0.00
2/24/2014	20-01	224	18	52.0000	72.22	181.80	18.00	163.80	81.90	0.00
2/25/2014	21-01	76	19	41.0000	53.95	168.50	19.00	149.50	74.75	0.00
2/26/2014	20-01	119	23	44.0000	55.70	227.30	23.00	204.30	102.15	0.00
2/27/2014	21-01	76	17	44.0000	60.27	183.30	17.00	166.30	83.15	0.00
2/28/2014	21-01	73	25	47.0000	51.65	240.10	25.00	215.10	107.55	0.00
Company Total:		Pay:	\$770.85	Tips:		162.54	O/S:		0.00	Time: 90.94
Grand Total:		Pay:	\$770.85	Tips:		152.54	O/S:		0.00	Time: 90.94

8.48 p/hr

EXHIBIT 5-3

000698

Saturday, August 01, 2015

Payroll Detail

Parent Company: Western Cab

From 3/2/2014 through 3/15/2014

From 3/2/2014 through 3/15/2014										
Date	Shift	Cabs	Trips	Paid Miles	PM%	Gross Book	Trip Charge	Net Book	Wage	O/S
16687	Sargeant, Michael									
Western Cab					Hire Date: 2/19/2014				Shift Credits: 9 of 10	
3/2/2014	20-01	184	23	34.0000	40.96	258.50	23.00	235.50	117.75	0.00
3/3/2014	20-01	158	24	66.0000	79.52	257.60	24.00	233.60	116.80	0.00
3/4/2014	21-01	34	18	50.0000	56.82	240.00	18.00	222.00	111.00	0.00
3/5/2014	20-01	20, 152	21	59.0000	62.77	276.50	21.00	255.50	127.75	0.00
3/7/2014	21-01	140	26	56.0000	52.83	286.00	26.00	260.00	130.00	0.00
3/10/2014	20-01	184	19	56.0000	61.54	227.90	19.00	208.90	104.45	0.00
3/11/2014	20-01	201	19	43.0000	53.09	220.30	19.00	201.30	100.65	0.00
3/12/2014	20-01	142	17	43.0000	32.33	203.10	17.00	186.10	93.05	0.00
3/13/2014	20-01	93	22	64.0000	83.12	222.40	22.00	200.40	100.20	0.00
3/14/2014	24-01	195	9	50.0000	33.11	195.70	9.00	186.70	93.35	0.00
Company Total: Pay:		\$1,095.00		Tips: 214.93				O/S: 0.00	Time: 106.90	
Grand Total: Pay:		\$1,095.00		Tips: 214.93				O/S: 0.00	Time: 106.90	

10²⁵ P/R

Saturday, August 01, 2015

Payroll Detail

Parent Company: Western Cab

From 3/16/2014 through 3/29/2014

Date	Shift	Cabs	Trips	Paid Miles	PM%	Gross Book	Trip Charge	Net Book	Wage	O/S
6687 Sargeant, Michael		Hire Date: 2/19/2014					Shift Credits: 10 of 11			
Western Cab										
3/16/2014	20-01	202	21	73.0000	60.83	271.70	21.00	250.70	125.35	0.00
3/17/2014	20-01	142	27	67.0000	59.82	311.50	27.00	284.50	142.25	0.00
3/18/2014	21-01	208	19	21.0000	23.86	204.90	19.00	185.90	92.95	0.00
3/19/2014	21-01	73	19	42.0000	43.30	201.90	19.00	182.90	91.45	0.00
3/20/2014	21-01	140	20	51.0000	53.13	228.00	20.00	208.00	104.00	0.00
3/21/2014	21-01	170	25	40.0000	43.01	256.90	25.00	231.90	115.95	0.00
3/23/2014	20-01	144	24	55.0000	51.40	274.60	24.00	250.60	125.30	0.00
3/24/2014	21-01	32	20	42.0000	44.68	212.80	20.00	192.80	96.40	0.00
3/25/2014	24-01	4	11	45.0000	38.46	182.90	11.00	171.90	85.95	0.00
3/26/2014	20-01	210	26	59.0000	60.82	293.20	26.00	267.20	133.60	0.00
3/28/2014	21-01	36	19	62.0000	57.94	236.10	19.00	217.10	108.55	0.00
Company Total: Pay:		\$1,221.75		Tips: 240.70		O/S: 0.00		Time: 125.59		
Grand Total: Pay:		\$1,221.75		Tips: 240.70		O/S: 0.00		Time: 125.59		

973 P/M

Saturday, August 01, 2015

Payroll Detail

Parent Company: Western Cab

From 3/30/2014 through 4/12/2015

Date	Shift	Cabs	Trips	Paid Miles	PM%	Gross Book	Trip Charge	Net Book	Wage	O/S
6687 Sargeant, Michael		Hire Date: 2/19/2014							Shift Credits: 11 of 12	
Western Cab										
3/30/2014	21-01	208	21	66.0000	60.00	244.10	21.00	223.10	111.55	0.00
3/31/2014	20-01	212	17	46.0000	56.10	206.70	17.00	189.70	94.85	0.00
4/1/2014	20-01	206	20	56.0000	57.73	253.40	20.00	233.40	116.70	0.00
4/2/2014	20-01	16	25	54.0000	64.29	257.10	25.00	232.10	116.05	0.00
4/3/2014	21-01	36	19	43.0000	59.72	210.50	19.00	191.50	95.75	0.00
4/4/2014	24-01	195	11	58.0000	42.96	204.30	11.00	193.30	96.65	0.00
4/6/2014	21-01	208	25	43.0000	34.13	269.90	25.00	244.90	122.45	0.00
4/7/2014	20-01	86, 96	15	65.0000	59.09	279.20	15.00	264.20	132.10	0.00
4/8/2014	20-01	68	22	59.0000	56.73	273.40	22.00	251.40	125.70	0.00
4/9/2014	20-01	207	23	54.0000	63.53	263.30	23.00	240.30	120.15	0.00
4/10/2014	20-01	122	17	42.0000	51.22	216.10	17.00	199.10	99.55	0.00
4/11/2014	21-01	74	17	54.0000	50.00	230.10	17.00	213.10	106.55	0.00
Company Total: Pay:		\$1,338.05		Tips: 261.75		O/S: 0.00		Time: 141.54		
Grand Total: Pay:		\$1,338.05		Tips: 261.75		O/S: 0.00		Time: 141.54		

946 p/mr

aturday, August 01, 2015

Payroll Detail

Parent Company: Western Cab

From 4/27/2014 through 5/10/201

Date	Shift	Cabs	Trips	Paid Miles	PM%	Gross Book	Trip Charge	Net Book	Wage	O/S
6667	Sargeant, Michael		Hire Date: 2/19/2014					Shift Credits: 11 of 11		
Western Cab										
4/27/2014	21-01	35	18	42.0000	46.15	204.20	18.00	186.20	93.10	0.00
4/28/2014	20-01	156	18	50.0000	62.50	228.80	18.00	210.80	105.40	0.00
4/29/2014	20-01	67	22	55.0000	63.95	243.20	22.00	221.20	110.60	0.00
4/30/2014	20-01	93	23	58.0000	63.74	267.30	23.00	244.30	122.15	0.00
5/1/2014	20-01	94	22	66.0000	63.46	291.80	22.00	269.80	134.90	0.00
5/2/2014	21-01	145	16	41.0000	41.41	204.40	17.00	187.40	93.70	0.00
5/4/2014	20-01	134	22	55.0000	55.56	254.20	22.00	232.20	116.10	0.00
5/6/2014	20-01	154	25	42.0000	51.85	301.10	25.00	276.10	138.05	0.00
5/7/2014	21-01	76	19	37.0000	46.25	220.30	19.00	201.30	100.65	0.00
5/8/2014	21-01	200	18	38.0000	45.24	202.40	18.00	184.40	92.20	0.00
5/9/2014	21-01	36	19	64.0000	65.31	205.90	19.00	186.90	93.45	0.00
Company Total: Pay:		\$1,200.30		Tips: 236.43				O/S: 0.00		Time: 125.99
Grand Total: Pay:		\$1,200.30		Tips: 236.43				O/S: 0.00		Time: 125.99

953 P/NL

NEVADA • 2015

EXHIBIT 5-4

Wage And Hour Law

RULES TO BE OBSERVED BY EMPLOYERS

EVERY EMPLOYER SHALL POST AND KEEP CONSPICUOUSLY POSTED IN OR ABOUT THE PREMISES WHEREIN ANY EMPLOYEE IS EMPLOYED THIS ABSTRACT OF THE NEVADA WAGE AND HOUR LAWS (NRS 608)

PLEASE NOTE: Every person, firm, association or corporation, or any agent, servant, employee or officer of any such firm, association or corporation, violating any of these provisions is guilty of a misdemeanor.

The legislature hereby finds and declares that the health and welfare of workers and the employment of persons in private enterprises in this state are of concern to the state and the health and welfare of persons required to earn their livings by their own endeavors require certain safeguards as to hours of service, working conditions and compensation therefor.

1. Discharge of employee: Whenever an employee discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately.
 2. Quitting employee: Whenever an employee resigns or quits his employment, the wages and compensation earned and unpaid at the time of his resignation or quitting must be paid no later than the day on which he would have regularly been paid or 7 days after he resigns or quits, whichever is earlier.
 3. An employer shall not employ an employee for a continuous period of 8 hours without permitting the employee to have a meal period of at least one-half hour. No period of less than 30 minutes interrupts a continuous period of work.
 4. Every employer shall authorize and permit covered employees to take rest periods, which, insofar as practicable, shall be in the middle of each work period. The duration of the rest periods shall be based on the total hours worked daily at the rate of 10 minutes for each 4 hours or major fraction thereof. Authorized rest periods shall be counted as hours worked, for which there shall be no deduction from wages.
 5. Effective July 1, 2010 each employer shall pay a wage to each employee of not less than \$7.25 per hour worked if the employer provides health benefits, or \$8.25 per hour if the employer does not provide health benefits. Offering health benefits means making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. Tips or gratuities received by employees shall not be credited as being any part of or offset against the minimum wage rates.
 6. A part of wages or compensation may, if mutually agreed upon by an employee and employer in the contract of employment, consist of meals. In no case shall the value of meals consumed by such employee be computed or valued at more than 35 cents for each breakfast actually consumed, 45 cents for each lunch actually consumed, and 70 cents for each dinner actually consumed.
 7. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee whose wage rate is less than 1 1/2 times the minimum rate prescribed pursuant to the Constitution of the State of Nevada: (a) Works more than 40 hours in any scheduled week of work; or (b) Works more than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.
- An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee whose wage rate is 1 1/2 times or more than the minimum rate prescribed pursuant to the Constitution, works more than 40 hours in any scheduled week of work.
- The above provisions do not apply to: (a) Employees who are not covered by the minimum wage provisions of the Constitution; (b) Outside buyers; (c) Employees in a retail or service business if their regular rate is more than 1 1/2 times the minimum wage, and more than half their compensation for a representative period comes from commissions on goods or services, with the representative period being, to the extent allowed pursuant to federal law, not less than one month; (d) Employees who are employed in bona fide executive, administrative or professional capacities; (e) Employees covered by collective bargaining agreements which provide otherwise for overtime; (f) Drivers, drivers' helpers, loaders and mechanics for motor carriers subject to the Motor Carrier Act of 1935, as amended; (g) Employees of a railroad; (h) Employees of a carrier by air; (i) Drivers or drivers' helpers making local deliveries and paid on a trip-rate basis or other delivery payment plan; (j) Drivers of taxicabs or limousines; (k) Agricultural employees; (l) Employees of business enterprises having a gross sales volume of less than \$250,000 per year; (m) Any salesman or mechanic primarily engaged in selling or servicing automobiles, trucks or farm equipment; and (n) A mechanic or workman for any hours to which the provisions of subsection 3 or 4 of NRS 338.020 apply.
8. Every employer shall establish and maintain records of wages for the benefit of his employees, showing for each pay period the following information for each employee: (a) Gross wage or salary; (b) Deductions; (c) Net cash wage or salary; (d) Total hours employed in the pay period by noting the number of hours per day; (e) Date of payment.
 9. Wages must be paid semi-monthly or more often.
 10. Every employer shall establish and maintain regular paydays and shall post a notice setting forth those regular paydays in 2 conspicuous places. After an employer establishes regular paydays and the place of payment, the employer shall not change a regular payday or the place of payment unless, not fewer than 7 days before the change is made, the employer provides the employees affected by the change with written notice in a manner that is calculated to provide actual notice of the change to each such employee.
 11. It is unlawful for any person to take all or part of any tips or gratuities bestowed upon his employees. Nothing contained in this section shall be construed to prevent such employees from entering into an agreement to divide such tips or gratuities among themselves.
 12. An employer may not require an employee to rebate, refund or return any part of his or her wage, salary or compensation. Also, an employer may not withhold or deduct any portion of such wages unless it is for the benefit of, and authorized by written order of the employee. Further, it is unlawful for any employer who has the legal authority to decrease the wage, salary or compensation of an employee to implement such a decrease unless: (a) Not less than 7 days before the employee performs any work at the decreased wage, salary or compensation, the employer provides the employee with written notice of the decrease; or (b) The employer complies with the requirements relating to the decrease that are imposed on the employer pursuant to the provisions of any collective bargaining agreement or any contract between the employer and the employee.
 13. All uniforms or accessories distinctive as to style, color or material shall be furnished, without cost, to employees by their employer. If a uniform or accessory requires a special cleaning process, and cannot be easily laundered by an employee, such employee's employer shall clear such uniform or accessory without cost to such employee.

For additional information or exceptions, contact the Nevada State Labor Commissioner: Carson City 775-687-4350 or Las Vegas 702-486-2650
TOLL FREE: 1-800-992-0700 Ext. 4850 Internet: www.LaborCommissioner.com

BRIAN SANDOVAL
Governor
State of Nevada

THORAN TOWLER
Nevada Labor Commissioner

BRUCE BRESLOW
Director
Nevada Department of Business & Industry

Rev. 11-13-2012

NEVADA SAFETY AND HEALTH PROTECTION ON THE JOB

The Nevada Occupational Safety and Health Act, NRS Chapter 618, provides job safety and health protection for workers through the promotion of safe and healthful working conditions throughout the State of Nevada. Requirements of the Act include the following:

EMPLOYERS:

Each employer shall furnish to each of his employees employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees; and shall comply with occupational safety and health standards adopted under the Act.

EMPLOYEES:

Each employee shall comply with all occupational safety and health standards, rules, regulations and orders issued under the Act that apply to his own actions and conduct on the job.

The Nevada Occupational Safety and Health Administration (Nevada OSHA) of the Division of Industrial Relations, Department of Business and Industry, has the primary responsibility for administering the Act. Nevada OSHA enforces occupational safety and health standards, and its Safety and Health Representatives/Industrial Hygienists conduct jobsite inspections to ensure compliance with the Act.

INSPECTION:

The Act requires that a representative of the employer and a representative authorized by the employees be given an opportunity to accompany the Nevada OSHA inspector for the purpose of aiding the inspection.

Where there is no authorized employee representative, the Nevada OSHA Safety and Health Representative/Industrial Hygienist must consult with a reasonable number of employees concerning safety and health conditions in the workplace.

COMPLAINT:

Employees, public or private, or their representatives have the right to file a complaint with the nearest Nevada OSHA office requesting an inspection if they believe unsafe or unhealthful conditions exist in their workplace. Nevada OSHA will hold confidential names of employees complaining.

The Act provides that employees may not be discharged or discriminated against in any way for filing safety and health complaints or otherwise exercising their rights under the Act.

An employee, public or private, who believes he has been discriminated against may file a complaint within thirty (30) days of the alleged discrimination with the nearest Nevada OSHA office or with U.S. Department of Labor/OSHA, Region IX, San Francisco Federal Building, 90 - 7th Street, Suite 18100, San Francisco, CA 94103.

CITATIONS:

If upon inspection Nevada OSHA believes an employer has violated the Act, a citation alleging such violations will be issued to the employer. Each citation will specify a time period within which the alleged violation must be corrected.

The Nevada OSHA citation must be prominently displayed at or near the place of alleged violation for three days, or until it is corrected, whichever is later, to warn employees of dangers that may exist there.

PROPOSED PENALTY:

The Act provides for mandatory penalties against employers of up to \$7,000 for each serious violation and for optional penalties of up to \$7,000 for each nonserious violation. Penalties of up to \$7,000 per day may be proposed for failure to correct violations within the proposed time period. Also, any employer who willfully or repeatedly violates the Act may be assessed penalties of up to \$70,000 for each such violation.

Criminal penalties are also provided for in the Act. Any willful violation resulting in death of an employee, upon conviction, is punishable by a fine of not more than \$20,000 or by imprisonment for not more than six months, or by both. Conviction of any employer after a first conviction doubles these maximum penalties. Penalties may be proposed for public employers.

VOLUNTARY ACTIVITY:

While providing penalties for violations, the Act also encourages efforts by labor and management, before a Nevada OSHA inspection, to reduce injuries and illnesses arising out of employment.

The Nevada Occupational Safety and Health Administration of the Division of Industrial Relations, Department of Business and Industry, encourages employers and employees to reduce workplace hazards voluntarily and to develop and improve safety and health programs in all workplaces and industries.

Such cooperative action would initially focus on the identification and elimination of hazards that could cause death, injury, or illness to employees and supervisors.

Further information and assistance will be provided by Nevada OSHA to employees and employers upon request.

MORE INFORMATION:

Additional information and copies of the Act, specific Nevada OSHA safety and health standards, and other applicable regulations may be obtained by calling or writing the nearest Nevada OSHA district office in the following locations:

Southern Nevada
1901 N. Green Valley Pkwy., Suite 200
Henderson, Nevada 89074
Telephone: (702) 466-9020
Fax: (702) 680-0358

Northern Nevada
4600 Kleitzke Lane, Suite F-153
Reno, Nevada 89502
Telephone: (775) 824-4600
Fax: (775) 688-1378

NOTE:

Persons wishing to register a complaint alleging inadequacy in the administration of the Nevada Occupational Safety and Health Plan may do so at the following address:

U.S. Department of Labor/OSHA, Region IX
San Francisco Federal Building
90 - 7th Street, Suite 18100
San Francisco, CA 94103
Telephone: (415) 625-2547

EMPLOYERS: This poster must be displayed prominently in the workplace.

(Rev. 12-09)

State of Nevada
DEPARTMENT OF BUSINESS & INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS

ATTENTION

Brief Description of Your Rights and Benefits If You Are Injured on the Job or have an Occupational Disease

Notice of Injury or Occupational Disease (Incident Report Form C-1): If an injury or occupational disease (OD) arises out of and in the course of employment, you must provide written notice to your employer as soon as practicable, but no later than 7 days after the accident or OD. Your employer shall maintain a sufficient supply of the forms.

Claim for Compensation (Form C-4): If medical treatment is sought, the form C-4 is available at the place of initial treatment. A completed "Claim for Compensation" (Form C-4) must be filed within 90 days after an accident or OD. The treating physician or chiropractor must, within 3 working days after treatment, complete and mail to the employer, the employer's insurer and third-party administrator, the Claim for Compensation.

Medical Treatment: If you require medical treatment for your on-the-job injury or OD, you may be required to select a physician or chiropractor from a list provided by your workers' compensation insurer. If it has contracted with an Organization for Managed Care (MCO) or Preferred Provider Organization (PPO) or providers of health care, if your employer has not entered into a contract with an MCO or PPO, you may select a physician or chiropractor from the Panel of Physicians and Chiropractors. Any medical costs related to your industrial injury or OD will be paid by your insurer.

Temporary Total Disability (TTD): If your doctor has certified that you are unable to work for a period of at least 5 consecutive days, or 5 cumulative days in a 20-day period, or places restrictions on you that your employer does not accommodate, you may be entitled to TTD compensation.

Temporary Partial Disability (TPD): If the wage you receive upon reemployment is less than the compensation for TTD to which you are entitled, the insurer may be required to pay you TPD compensation to make up the difference. TPD can only be paid for a maximum of 24 months.

Permanent Partial Disability (PPD): When your medical condition is stable and there is an indication of a PPD as a result of your injury or OD, within 30 days, your insurer must arrange for an evaluation by a rating physician or chiropractor to determine the degree of your PPD. The amount of your PPD award depends on the date of injury, the results of the PPD evaluation and your age and wage.

Permanent Total Disability (PTD): If you are medically certified by a treating physician or chiropractor as permanently and totally disabled and have been granted a PTD status by your insurer, you are entitled to receive monthly benefits not to exceed 66 2/3% of your average monthly wage. The amount of your PTD payments is subject to reduction if you previously received a PPD award.

Vocational Rehabilitation Services: You may be eligible for vocational rehabilitation services if you are unable to return to the job due to a permanent physical impairment or permanent restrictions as a result of your injury or occupational disease.

Transportation and Per Diem Reimbursement: You may be eligible for travel expenses and per diem associated with medical treatment.

Reopening: You may be able to reopen your claim if your condition worsens after claim closure.

Appeal Process: If you disagree with a written determination issued by the insurer or the insurer does not respond to your request, you may appeal to the Department of Administration, Hearing Officer, by following the instructions contained in your determination letter. You must appeal the determination within 70 days from the date of the determination letter at 1050 E. William Street, Suite 400, Carson City, Nevada 89701, or 2200 S. Rancho Drive, Suite 210, Las Vegas, Nevada 89102. If you disagree with the Hearing Officer decision, you may appeal to the Department of Administration, Appeals Officer. You must file your appeal within 30 days from the date of the Hearing Officer decision letter at 1050 E. William Street, Suite 450, Carson City, Nevada 89701, or 2200 S. Rancho Drive, Suite 220, Las Vegas, Nevada 89102. If you disagree with a decision of an Appeals Officer, you may file a petition for judicial review with the District Court. You must do so within 30 days of the Appeal Officer's decision. You may be represented by an attorney at your own expense or you may contact the NAW for possible representation.

Nevada Attorney for Injured Workers (NAIW): If you disagree with a hearing officer decision, you may request that NAIW represent you without charge at an Appeals Officer hearing. NAIW is an independent state agency and is not affiliated with any insurer. For information regarding denial of benefits, you may contact the NAIW at 1000 E. William Street, Suite 208, Carson City, NV 89701, (775) 684-7555, or 2200 S. Rancho Drive, Suite 230, Las Vegas, NV 89102, (702) 486-2830.

To File a Complaint with the Division: If you wish to file a complaint with the Administrator of the Division of Industrial Relations (DIR), please contact Workers' Compensation Section, 400 West King Street, Suite 400, Carson City, Nevada 89703, telephone (775) 684-7270, or 1301 North Green Valley Parkway, Suite 200, Henderson, Nevada 89074, telephone (702) 486-9080.

For Assistance with Workers' Compensation Issues: You may contact the Office of the Governor Consumer Health Assistance, 555 E. Washington Avenue, Suite 4800, Las Vegas, Nevada 89101, Toll Free 1-888-333-1597, Web site: <http://govcha.state.nv.us> E-mail: cha@govcha.state.nv.us

Insurer/Administrator: _____
Address: _____
City State Zip

Contact Person: _____
Telephone Number: _____

MCO/Health Care Provider: _____
Address: _____

Contact Person: _____
Telephone Number: _____



Minimum Wage Bulletin

Brian Sandoval
Governor
Bruce Breslow
Director
Thoran Towler
Labor Commissioner

STATE OF NEVADA



Department of Business & Industry
OFFICE OF THE LABOR
COMMISSIONER
www.LaborCommissioner.com

OFFICE OF THE LABOR COMMISSIONER
555 E. WASHINGTON AVENUE, SUITE 4100
LAS VEGAS, NEVADA 89101
PHONE: (702) 486-2650
FAX: (702) 486-2650

OFFICE OF THE LABOR COMMISSIONER
875 FAIRVIEW DRIVE, SUITE 226
CARSON CITY, NV 89701
PHONE: (775) 687-4850
FAX: (775) 887-6409

STATE OF NEVADA MINIMUM WAGE 2014 ANNUAL BULLETIN POSTED APRIL 1, 2014

PURSUANT TO ARTICLE 15, SECTION 16(A) OF THE CONSTITUTION OF THE STATE OF NEVADA, THE GOVERNOR HEREBY ANNOUNCES THAT THE FOLLOWING MINIMUM WAGE RATES SHALL APPLY TO ALL EMPLOYEES IN THE STATE OF NEVADA UNLESS OTHERWISE EXEMPTED. THESE RATES ARE EFFECTIVE AS OF JULY 1, 2014.

FOR EMPLOYEES TO WHOM QUALIFYING HEALTH BENEFITS HAVE BEEN MADE AVAILABLE BY THE EMPLOYER:

NO LESS THAN \$7.25 PER HOUR

FOR ALL OTHER EMPLOYEES:

NO LESS THAN \$8.25 PER HOUR

Copies may also be obtained from the Labor Commissioner's Offices at:

875 Fairview Drive, Suite 226
Carson City, Nevada 89701
(775) 687-4850

or

555 East Washington, Suite 4100
Las Vegas, Nevada 89101
(702) 486-2650

Daily Overtime Bulletin

BRIAN SANDOVAL
GOVERNOR
BRUCE BRESLOW
DIRECTOR
THORAN TOWLER
LABOR COMMISSIONER

STATE OF NEVADA



Department of Business & Industry
OFFICE OF THE LABOR
COMMISSIONER

www.LaborCommissioner.com

STATE OF NEVADA DAILY OVERTIME 2014 ANNUAL BULLETIN POSTED APRIL 1, 2014

OFFICE OF THE LABOR COMMISSIONER
555 E. WASHINGTON AVENUE, SUITE 4100
LAS VEGAS, NEVADA 89101
PHONE (702) 486-2650
FAX (702) 486-2660

OFFICE OF THE LABOR COMMISSIONER
675 FAIRVIEW DRIVE, SUITE 226
CARSON CITY, NV 89701
PHONE (775) 687-4850
FAX (775) 687-8409

EMPLOYERS MUST PAY 1-1/2 TIMES AN EMPLOYEE'S REGULAR WAGE RATE WHENEVER AN EMPLOYEE WHO IS PAID LESS THAN 1-1/2 TIMES THE APPLICABLE MINIMUM WAGE RATE WORKS MORE THAN 40 HOURS IN ANY WORKWEEK OR MORE THAN 8 HOURS IN ANY WORKDAY, UNLESS OTHERWISE EXEMPTED. EMPLOYERS SHOULD REFER TO NRS 608.018 FOR FURTHER DETAILS ON OVERTIME REQUIREMENTS.

THE FOLLOWING AMOUNTS ARE THE WAGE RATES BELOW WHICH DAILY OVERTIME MAY BE APPLICABLE. THESE RATES ARE EFFECTIVE AS OF JULY 1, 2014.

FOR EMPLOYEES TO WHOM QUALIFYING HEALTH BENEFITS HAVE BEEN MADE AVAILABLE BY THE EMPLOYER:

IF THE EMPLOYEE IS PAID LESS THAN \$10.875 PER HOUR

FOR ALL OTHER EMPLOYEES:

IF THE EMPLOYEE IS PAID LESS THAN \$12.375 PER HOUR

Copies may also be obtained from the Labor Commissioner's Offices at:

675 Fairview Drive, Suite 226
Carson City, Nevada 89701
(775) 687-4850

or

555 East Washington, Suite 4100
Las Vegas, Nevada 89101
(702) 486-2650

Lie Detector Test



STATE OF NEVADA **Office of the Labor Commissioner**



NOTICE OF LIMITATIONS AFFECTING THE APPLICATION OF LIE DETECTOR TESTS

NRS 613.460(2) requires that each employer shall post and maintain this notice in a conspicuous location at the place of employment where notices to employees and applicants for employment are customarily posted and read.

Pursuant to NRS 613.440(2), "Lie detector" means polygraph, voice stress analyzers, psychological stress evaluator or any other similar device, whether mechanical or electrical, which are designed to determine the honesty or dishonesty of an individual.

NRS 613.480(1) prohibits employers or anyone acting in the employer's behalf from requiring or requesting that an employee or prospective employee take or submit to any lie detector test except as provided in NRS 613.510.

NRS 613.510 contains several exceptions which permit an employer to request polygraph examinations. An employer may request that an employee or prospective employee take a polygraph examination administered by a qualified person as part of an investigation of theft or similar wrongdoing affecting the employer's business which appears to involve the employee.

The employer may also request a polygraph examination administered by a qualified person with regard to prospective employees who would be employed to protect certain kinds of sensitive or valuable property or facilities. The use of a polygraph examination is also permitted to employers in businesses that handle controlled substances. Such permission exists only in situations where job applicants or employees have direct access to the controlled substances or where suspected abuse or theft is involved.

NRS 613.480(3&4) prohibit an employer from taking adverse action against any employee or prospective employee based on the results of any lie detector test or refusal to take any lie detector test.

Employers who violate the provisions in NRS 613.440 to 613.510 are subject to civil liability in court, as well as fines imposed by the Nevada Labor Commissioner.

*For additional information contact our offices at
702-486-2650 in Las Vegas or 775-687-4850 in Carson City
or via Email at mail1@laborcommissioner.com*

Unemployment Insurance

EMPLOYER: THIS NOTICE IS TO BE POSTED AT EACH WORK PLACE (NRS 612.455)

State of Nevada
Department of Employment, Training &
Rehabilitation
EMPLOYMENT SECURITY DIVISION

NOTICE TO EMPLOYEES

The employees of this establishment are protected by Unemployment Insurance. This employer is required by law to contribute to the Nevada Unemployment Compensation Fund. No part of the contribution is deducted from the wages of employees.

If you are separated from your job or if your hours have been substantially reduced, immediately:

- File an unemployment insurance claim online or by calling the nearest Nevada Telephone Claim Center, as shown below, for full or partial unemployment benefits.
- Request employment services from the nearest Nevada JobConnect Career Center or find employment information online at www.NevadaJobConnect.com. If you are disabled and require assistance, contact the Nevada JobConnect Career Center prior to your visit to arrange special accommodations.

To be eligible for unemployment benefits an unemployed person must:

1. Be unemployed through no fault of your own and meet all other conditions of the law regarding unemployment benefits.
2. File a claim online or with the Nevada Telephone Claim Center.
3. Be physically able to work.
4. Be available and willing to accept suitable employment if offered.
5. Make a reasonable and sincere effort to find a job.

Reasons an unemployed person may not be eligible for unemployment benefits are:

1. Separation from employment due to quitting without good cause.
2. Being discharged for misconduct in connection with your work.
3. Refusal of an offer of suitable work without good cause.
4. Giving misinformation or withholding information about the reason for separation from your job.
5. Failure to properly report wages.



DETR
Nevada Department of Employment,
Training & Rehabilitation

NEVADA
JobConnect

- An equal opportunity employer/program
- Auxiliary aids and services available upon request for individuals with disabilities
- Relay Nevada 711 or (800) 326-6868 (TTY)

NUCS-4324 (Rev 04/14)

To file a claim for unemployment benefits call
the Telephone Claim Center:
In Southern Nevada call (702) 486-0350
In Northern Nevada call (775) 684-0350
In Rural Nevada call toll-free (888) 890-8211
OR File online at <http://ui.nv.gov/>

To report suspected fraud, go to:
<https://ulfraud.nvdelc.org>
OR call (775) 684-0475



Discrimination



a division of the Nevada Department of Employment,
Training and Rehabilitation

1820 East Sahara Avenue
Suite 314
Las Vegas, NV 89104
(702) 486-7161

1675 E. Prater Way
Suite 103
Sparks, NV 89434
(775) 823-6690

☐ Northern Nevada Location
☒ Is Moving Soon
Please Call for New Address

Nevada Equal Rights Commission

NEVADA LAW PROHIBITS DISCRIMINATION

- Employers may not discriminate based on race, color, national origin, age (40+), sex (including pregnancy), religion, disability, sexual orientation, genetic information, or gender identity or expression.
- Housing discrimination is prohibited based on race, color, national origin, sex, religion, disability, ancestry, familial status, sexual orientation, or gender identity or expression.
- Businesses offering services to the public may not discriminate based on race, color, national origin, sex, religion, disability, sexual orientation or gender identity or expression.

Persons who believe they have been discriminated against in employment, public accommodation or housing, may file a complaint with the Nevada Equal Rights Commission

An equal opportunity employer/program
Auxiliary aids and services are available upon request for
individuals with disabilities.

Relay 711 or 800.326.6868

Rev 1.14



www.nvdeir.org

*by Additional Required
For More Information,*



Emergency Phone Numbers

For: _____
(Please Give Exact Address of This Worksite Location)

PHYSICIAN : _____

HOSPITAL : _____

AMBULANCE : 911 or _____

FIRE-DEPARTMENT : 911 or _____

POLICE : 911 or _____

PLEASE POST IN A CONSPICUOUS LOCATION, IN ACCORDANCE WITH
THE NEVADA OCCUPATIONAL SAFETY AND HEALTH ACT
(Nevada Revised Statutes 618.295; 29 CFR 1926.50)

Nevada OSHA Enforcement • Division of Industrial Relations • Nevada Department of Business and Industry

Payday Notice

STATE OF NEVADA OFFICE OF NEVADA LABOR COMMISSIONER

REGULAR PAYDAYS FOR EMPLOYEES OF

(Firm Name)

SHALL BE AS FOLLOWS:

☐ WEEKLY ☐ BI-WEEKLY ☐ SEMI-MONTHLY ☐ MONTHLY

PAY CHECKS WILL BE DISTRIBUTED AT

(Place of Distribution)

THIS IS IN ACCORDANCE WITH NEVADA STATUTE NRS 608.080

BY _____ TITLE _____



1-888-306-7377 OSHA4LESS.com

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESTERN CAB COMPANY,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, in and for the COUNTY
OF CLARK; and THE HONORABLE
LINDA MARIE BELL, District Judge,

Respondents,

and

LAKSIRI PERERA, IRSHAD
AHMED, MICHAEL SARGEANT
Individually and on behalf of others
similarly situated,

Real Parties in Interest.

Case No.: _____ Electronically Filed
Dec 18 2015 03:07 p.m.
Tracie K. Lindeman
District Court Case No. A-14-707425-C
Clerk of Supreme Court

PETITIONER'S APPENDIX IN SUPPORT OF PETITION FOR WRIT OF
MANDAMUS OR PROHIBITION
Volume 3 of 3

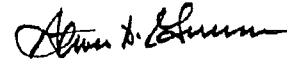
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APPENDIX 16

APPENDIX 16



CLERK OF THE COURT

RPLY

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Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LAKSIRI PERERA, Individually and on)
behalf of others similarly situated,)

Plaintiff,

vs.

WESTERN CAB COMPANY,

Defendant.

Case No.: A-14-707425-C

Dept.: XIV

PLAINTIFF'S REPLY IN
SUPPORT OF COUNTER-
MOTION TO AMEND THE
COMPLAINT AND FOR
SANCTIONS

Date of Hearing: Aug. 27, 2015
Time of Hearing: 9:00 a.m.

Plaintiff, by and through his attorney, Leon Greenberg Professional Corporation, submits this reply in partial opposition to defendant's request (raised in opposition to plaintiff's counter-motion to amend the complaint) that the Court defer hearing and determining the plaintiff's counter-motion until a date after September 3, 2015.

**THE COURT SHOULD ACT TO STOP DEFENDANT
FROM ABUSIVELY DELAYING THIS CASE AND
BURDENING PLAINTIFF AND THE COURT**

Parties to litigation have a right to be heard. But they do not have a right to vacuously hide behind non-existent "procedural" structures of this Court solely to delay these proceedings. Yet that is precisely what defendant's counsel is doing.

Defendant does not dispute plaintiff's counsel has consented to the absolute, unconditional, withdrawal of the filed and served Second Amended Complaint which defendant asserts is null and void based upon its allegedly improper filing

1 and service. (Ex. "5" of defendant's opposition) Yet it still insists it is allowed to
2 treat the Second Amended Complaint as before this Court solely so it can engage in
3 the fiction of making a motion to dismiss against that pleading (which plaintiff
4 agrees should be stricken) and delay the interposition of *any* answer in this case.

5 Defendant's conduct is undertaken solely for the purpose of delay. It also
6 has the collateral effect of needlessly burdening this Court. Despite such improper
7 conduct, the Court may choose to afford defendant additional time to oppose the
8 plaintiff's counter motion by continuing until after September 3, 2015 its
9 consideration of the same. Setting aside that defendant has no basis to oppose the
10 counter-motion (it offers none, or even an explanation of why it needs more time to
11 file its opposition), the Court should only grant such a continuance if:

- 12 (1) Defendant answers the existing First Amended Complaint
13 immediately; and
- 14 (2) The Court determines the counter-motion on its chambers'
15 calendar without further oral argument so that plaintiff's counsel is
16 not burdened with a second appearance in connection with the same.

17 CONCLUSION

18 Wherefore, for all the foregoing reasons, the plaintiff's counter-motion
19 should be granted in its entirety or continued for determination subject to the
20 foregoing conditions.

21 Dated: August 21, 2015

22 Respectfully submitted,

23 /s/ Leon Greenberg
24 Leon Greenberg, Esq. (Bar # 8094)
25 A Professional Corporation
26 2965 S. Jones Blvd., Suite E-3
27 Las Vegas, Nevada 89146
28 (702) 383-6085
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that on August 21, 2015, she served the within:

PLAINTIFF'S REPLY IN
SUPPORT OF COUNTERMOTION
TO AMEND THE
COMPLAINT AND FOR
SANCTIONS

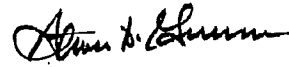
by court electronic service:

TO:
Malani Kotchka
HEJMANOWSKI & MCCREA LLC
520 S. 4th St., Suite 320
Las Vegas, NV 89101

/s/ Dana Sniegocki
Dana Sniegocki

APPENDIX 17

APPENDIX 17



CLERK OF THE COURT

1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 LAKSIRI PERERA,

6 Plaintiff,

7 vs.

8 WESTERN CAB COMPANY,

9 Defendant.
10
11
12

CASE NO: A14-707425-C
DEPT. VII

13 BEFORE THE HONORABLE LINDA M. BELL, DISTRICT COURT JUDGE
14 THURSDAY, AUGUST 27, 2015

15 **RECORDER'S TRANSCRIPT OF**
16 **ALL PENDING MOTIONS**

17 APPEARANCES:
18

19 For the Plaintiff:

DANA SNIEGOCKI, ESQ.

20
21 For the Defendant:

MALANI L. KOTCHKA
JOHN MORAN, JR.

22
23
24
25 RECORDED BY: RENEE VINCENT, COURT RECORDER

1 Thursday, August 27, 2015 9:18 a.m.

2
3 THE COURT: Page 7, Perera versus Western Cab. This is a motion for
4 reconsideration and a countermotion to amend and for sanctions. All right.

5 MS. SNIEGOCKI: And, right, and then there's a separate --

6 THE COURT: Motion.

7 MS. SNIEGOCKI: -- Defense motion to dismiss the second amended
8 complaint.

9 THE COURT: Yes, there is.

10 MS. SNIEGOCKI: This is a lengthy one.

11 THE COURT: Okay.

12 MS. SNIEGOCKI: Good morning. Dana Sniegocki for the Plaintiff.

13 MS. KOTCHKA: Malani Kotchka for the Defendant Western Cab, and
14 with me I have --

15 MR. MORAN: Good morning, Your Honor. John Moran, Jr., appearing
16 with the owners of Western Cab, my wife and her two sisters. And it's a
17 pleasure to be in front of you, and I thank you.

18 THE COURT: Thank you. I'm going to start first with the motion to
19 reconsider because I don't really need argument on that. I'm going to deny
20 that. There isn't any basis for reconsideration.

21 I'm aware that other judges have looked at this issue differently.
22 They've also had some different facts in front of them. I don't think that that
23 is a basis for reconsideration, and we'll figure out what -- what the Nevada
24 Supreme Court decide, I guess, who came down on -- correctly on this one, so
25 that will be denied. Let's go ahead and go to the motion to dismiss then.

1 MS. KOTCHKA: Okay, Your Honor. We have several -- several things
2 are involved with the motion to dismiss. The first thing is that the second
3 amended complaint when it was filed, it did not comply with this Court's
4 June 16th, 2015, decision and order.

5 You held in that order, Your Honor, that Perera could amend his
6 complaint only as to his request for leave to amend --

7 THE COURT: Right.

8 MS. KOTCHKA: -- to add a claim related to cab drivers being required
9 to pay for fuel costs. Perera ignored the order and filed a second amended
10 complaint and added Irshad Ahmad as a named plaintiff.

11 THE COURT: Right.

12 MS. KOTCHKA: In addition, despite the Court's ruling on the four-year
13 statute of limitations, Perera in his second amended complaint sought a
14 judgment against the Defendant for minimum wages owed since November
15 28th, 2006, and that should be amended to since September 23rd, 2010. So
16 for those reasons the second amended complaint should be dismissed because
17 of non-compliance with the Court's order.

18 THE COURT: Right. Those are the easy ones. Let's get to the
19 complicated thing.

20 MS. KOTCHKA: Yes. Okay. Now for the more complicated things.
21 Okay. The first -- the first ground concerns the NRS 608.040 claim, and that
22 particular claim provides for a 30-day penalty if an employee isn't paid when
23 they quit or when they're terminated. This statute does not apply to the
24 Minimum Wage Amendment or the minimum wage at all. According to this
25 statute, NRS 608.012, Perera was paid the wages Western Cab agreed to pay

1 him, computed in proportion to time and the commissions owed to him at the
2 time that he quit. Therefore, under the terms of this statute, we complied.

3 THE COURT: So as I understand their argument, though, what they're
4 saying is, because he wasn't paid the minimum wage, that the check that he
5 got at the termination of his employment was not the full amount owed.

6 MS. KOTCHKA: That's his argument, but what we're saying, Your
7 Honor, is under the terms of 040, you have to look at the definition of wages
8 under 012. If you look at that definition, it does not refer to minimum wage.
9 It refers to the agreed-upon amount of wages paid in proportion to time and
10 the commissions owed. And because it doesn't have a definition that includes
11 minimum wage for saying on its face, it's not applicable.

12 But also, before an employee can file a claim for unpaid wages,
13 the employee has to make a good faith attempt to collect any wages due from
14 the employer at the normal place and in the normal method the payment is
15 made to employees of the employer pursuant to NAC 608.155(1), and we're
16 saying prayer never made such a good faith attempt.

17 But most critically, Your Honor, you lack subject matter
18 jurisdiction over the 040 claim because 608.180 provides that the labor
19 commissioner shall cause the provisions of NRS 608.005 to 608.195 inclusive
20 to be enforced. Therefore, the enforcement of NRS 608.040 is within the
21 jurisdiction of the labor commissioner and not this Court.

22 THE COURT: Not entirely, though, right? Because there's definitely
23 some indication from the Nevada Supreme Court that 608.140, there's some
24 enforceable private right of action, right?

25 MS. KOTCHKA: There -- there --

1 THE COURT: I mean, not -- I understand this is a different statute, this
2 is a different circumstance, but that isn't true all the time.

3 MS. KOTCHKA: Well, the Nevada Supreme Court has never hit the
4 issue head on. What it did was drop a footnote in the *Baldonado* case and
5 indicated that 140 indicates that there must be a private action because it
6 allows for the recovery of attorney's fees --

7 THE COURT: Right.

8 MS. KOTCHKA: -- if a demand is made five days before the wages are
9 due. However, that statute was enacted in 1925 before the other statutes
10 such as 608.040 were enacted by the legislature, and the legislature expressly
11 said this is within the purview, the 608.040 penalty, the 30-day penalty, is
12 within the enforcement mechanism of the labor commissioner.

13 Back in 1990 -- or 2009 -- I'm sorry -- we have furnished you
14 with the legislative history on SB 189, which would have provided a private
15 cause of action for any of those sections enforced by the labor commissioner.
16 It was considered by the Nevada Legislature, and it was rejected. So,
17 therefore, the legislature by not enacting it affirmed its prior interpretation of
18 608.040 and the other statutes within the enforcement of the labor
19 commissioner by saying first people have to go to the labor commissioner, give
20 them a chance to see if there's any merit to the claim and to see if they'll
21 jurisdiction over it. And that was not done in this case.

22 You will recall that Perera himself filed the claim with the labor
23 commissioner for minimum wage, but he never filed a 608.040 claim, and he
24 is outside the 24 months within the labor commissioner's jurisdiction.

25 So the federal court case as we have referred you to have done

1 a lengthy, lengthy analysis of 608.140 and recovery of the penalty under
2 608.040. They're all set out in our brief, and they come to the --

3 THE COURT: So some of this was actually my case, not Judge
4 Walsh's, so --

5 MS. KOTCHKA: Oh, was it really?

6 THE COURT: -- I'm very familiar with that case.

7 MS. KOTCHKA: Okay. Well, that case, too, is unreported, I mean,
8 and is not supposed to be --

9 THE COURT: Right.

10 MS. KOTCHKA: -- precedential, so --

11 THE COURT: It's not precedential, but I just wanted someone to know
12 that it's actually my case, so I'm grateful --

13 MS. KOTCHKA: It's reported as Judge Walsh.

14 THE COURT: No, it was mine.

15 MS. KOTCHKA: Okay. Well, anyway, the federal cases, you know,
16 go through the analysis, the lengthy history of 140 and say that that entire
17 cause of action is really contract based. It's based on trying to recover
18 attorney's fees -- or based on recovering wages that just have not been paid.
19 608.040 is a penalty statute. It says you haven't paid everything, wages and
20 compensation, then you do this 30-day penalty.

21 THE COURT: Right.

22 MS. KOTCHKA: Of course, we contend that we did pay that and that
23 minimum wage isn't included in that statute at all.

24 THE COURT: I think the footnote where they suggested that the court
25 could ignore that analysis, so it was just intended to be humorous, so --

1 MS. KOTCHKA: Okay.

2 THE COURT: Somewhat.

3 MS. KOTCHKA: Would you like to take this issue by issue and have
4 her respond to that --

5 THE COURT: No.

6 MS. KOTCHKA: -- or do you want me just to go on to the others?

7 THE COURT: Just keep going.

8 MS. KOTCHKA: Okay. The next issue, Your Honor, is the punitive
9 damages. Perera seeks punitive damages, but does not allege any cause of
10 action which does not arise from contract; therefore --

11 THE COURT: Actually, we have the next issue being the federal
12 preemption.

13 MS. KOTCHKA: Okay. Then we'll go to the federal preemption.

14 THE COURT: All right.

15 MS. KOTCHKA: All right. The term health benefits is not defined
16 under the constitutional amendment, that they are now a component of the
17 calculation of minimum wage in Nevada. The Minimum Wage Amendment
18 conflicts with ERISA and the Affordable Care Act --

19 THE COURT: All right. So my note here was be careful what you ask
20 for on this one. So if -- let's say -- because I don't think anything about the
21 Minimum Wage Amendment requires an employer to have health benefits. I
22 don't think it's -- sets out how they have to run their health benefits or
23 anything like that.

24 But if you assume that ERISA or ACA are implied here, isn't the
25 thing that would happen would be simply to strike the benefit given the

1 employer in the Minimum Wage Amendment to strike that language altogether
2 because the statute could otherwise stand?

3 MS. KOTCHKA: Okay. So you're asking me if you could just strike
4 the first tier, the 7.25 plus health benefits?

5 THE COURT: Wouldn't that be -- wouldn't that be what would be
6 natural consequence of your argument?

7 MS. KOTCHKA: No.

8 THE COURT: No.

9 MS. KOTCHKA: And the reason I say that is because they're
10 inextricably tied together. When the ballot issue went to voters, it went as a
11 joint -- as a joint issue. You get 7.25 if you provide health benefits. You can
12 pay 8.25 if you don't provide health benefits. They're actually in the same
13 sentence as the Minimum Wage Amendment, and there's no way to sever one
14 part of it without the other part of it and still meet the voters' intent in the
15 Minimum Wage Amendment.

16 THE COURT: Well, their intent was to give employers some credit for
17 providing health insurance to their employees, but if the employers are saying
18 we think there's a problem with giving us credit under federal law because it
19 says health benefits, then isn't the answer to that to just say the minimum
20 wage is 8.25?

21 MS. KOTCHKA: I don't --

22 THE COURT: I don't -- I don't know why you couldn't just strike that.

23 MS. KOTCHKA: Well, because the Nevada Supreme Court's decision
24 in *Sierra Pacific Power Company v. State* located at 338 Pacific 3rd 1244 .
25 where the Nevada Supreme Court concluded that the offending matter had to

¹ be stricken in its entirety and could not be remedied by severance.

2 Because the Court has to consider the effect of severance on the
3 purpose of a vaguely inactive statute, the Minimum Wage Amendment is
4 meaningless without the distinction of two rates of minimum wage. The
5 distinction of wage rates based on an undefined provision of health benefits or
6 health insurance is obviously central to the amendment. So that's why we
7 believe that it cannot be severed in the manner that you're suggesting.

8 THE COURT: I just -- I guess I'm a little confused by that argument, I
9 think, from an employer because I think that definitely could backfire if the -- if
10 I or the Supreme Court did not see it that way. I mean, you understand the
11 result of that is that provision of the statute would be stricken, and the
12 employers would be stuck paying everybody the 8.25 regardless of health
13 benefits provided.

14 MS. KOTCHKA: I understand that that could be a result, but I'm
15 saying that I don't think it's the result here because I think the two rates are
16 inextricably tied together, and that's what was put before the voters.

17 (Defense counsel confer)

18 MS. KOTCHKA: Yes, and we would still have -- I mean, we would still
19 have federal minimum wage because we have the federal law that is relied
20 upon by the labor commissioner.

21 THE COURT: Well, and we have state law for minimum wage as well,
22 right?

23 MS. KOTCHKA: Yes.

24 THE COURT: I mean, it's not --

25 MS. KOTCHKA: Which is the federal law.

1 THE COURT: There wouldn't be any minimum wage if the statute was
2 stricken -- or if the constitutional amendment was stricken entirely, but I think
3 you could -- if there's a problem with federal preemption, I think that the
4 solution to that is just to strike that portion of the amendment.

5 MS. KOTCHKA: Should I address the federal preemption or --

6 THE COURT: Sure.

7 MS. KOTCHKA: Okay. ERISA's objective is to maintain a uniform
8 regulatory scheme over employer sponsored pension and health benefit plans;
9 thus ERISA expressly preempts any and all state laws that relate to any
10 employee benefit plan, and that's found in 29 USC 1144(a). The United
11 States Supreme Court has determined this language to preempt state laws that
12 have a connection with or a reference to employee benefit plans, and *Travelers*
13 and *Dillingham* rely on the same analysis.

14 The Minimum Wage Amendment requires employers to have
15 health plans if the employer wants to pay the lower minimum wage, and the
16 labor commissioner's regulations dictate some specific benefits that must be
17 provided. NAC 608.1 --

18 THE COURT: Right. So is the problem there then the amendment or
19 the NAC really?

20 MS. KOTCHKA: Well, the problem is both. The problem with the
21 amendment itself, it's said it's vague. It uses health benefits twice, and then
22 it talks about a health insurance premium, and it doesn't tell you what has to
23 be covered within those health benefits or the health insurance premium.

24 The labor commissioner tried to fix it to some extent by enacting
25 this regulation, this 608.102, but in the very definitions it uses, it refers to

1 ERISA plans. It refers to Taft-Hartley trusts, which are ERISA plans, it
2 expressly names ERISA in it, and then it provides for a few substantive things.
3 For example, they provide that you don't have to provide the -- or offer the
4 health insurance until the employee's been employed for six months. We
5 pointed out under the Affordable Care Act, you can only do 90 days. So
6 you've got a conflict between a federal law specifically to address health
7 benefits and then the state law -- or state regulation which says you can wait
8 for six months.

9 THE COURT: Well, but a state can always provide its -- I mean, they're
10 not talking about the employer having to provide healthcare, and they're
11 providing a broader time that's more favorable to the employer than the ACA.
12 I mean, I don't see how that -- I don't see how that works the employer or
13 how -- I mean, if the employer has to do it in 90 days under ACA, then they're
14 in compliance with the NAC that gives them six months. I mean, it's just -- it's
15 more flexible.

16 MS. KOTCHKA: Yes, but it's a direct conflict that an employer could
17 not rely on state law and do the six months. If the employer did, they'd be in
18 violation of the ACA which requires the 90 days. And that's the whole thing
19 about ERISA and the ACA. They have taken over, really, the regulation of
20 healthcare and health benefits in the United States.

21 ERISA's a very broad preemptive statute that says that when
22 you try -- when the legislature or the constitution or, you know, any sort of
23 regulatory body in a state imposes a requirement that refers to or has a
24 connection with the way ERISA plans are governed, that that entire law is
25 preempted.

1 THE COURT: But this isn't really governing the ERISA plan. This is
2 saying under what circumstances an employer will get a benefit of a reduction
3 in minimum wage. So if they offer certain benefits, then they get the dollar an
4 hour credit, right?

5 MS. KOTCHKA: Right.

6 THE COURT: So --

7 MS. KOTCHKA: So what are the health benefits that an employer is
8 supposed to offer? How do we figure out what it is?

9 THE COURT: Right. So that's why the NAC, but that doesn't --

10 MS. KOTCHKA: But the NAC doesn't even tell us what subjects we
11 have to have. Do you have to offer well baby care? Do you have to offer
12 physician visits, you know, just as a physical checkup? Do you only have to
13 offer health benefits for actual injuries or illnesses? I mean, there is -- that is
14 not present in the Minimum Wage Amendment. That's not present in the
15 regulations.

16 I don't know how an employer decides -- assuming they want to
17 get the lower wage and they offer some form of health benefits, I mean, does
18 any kind of health benefit entitle them to the lower minimum wage?

19 THE COURT: As long as they --

20 MS. KOTCHKA: What?

21 THE COURT: -- comply with the NAC regulations, I think it would. It
22 seems it would, right?

23 MS. KOTCHKA: So any level would be okay.

24 THE COURT: Anything that complies with the NAC requirements, I
25 think so.

1 MS. KOTCHKA: But the NAC requirements expressly refer to ERISA
2 and the Taft-Hartley trusts. So if you have an ERISA plan of any kind, then
3 you provided the health benefits? I mean --

4 THE COURT: It seems like that would be beneficial to the employer.

5 MS. KOTCHKA: It would be beneficial to the employer if they could
6 offer a very low level of health benefits and then get the additional dollar per
7 hour on minimum wage.

8 [Defense Counsel confer]

9 MS. KOTCHKA: Okay. So I'd like to bring Your Honor's attention to
10 the concern, *Home Care Providers, Inc. v. Cuomo case*, 979 Fed Sub 2d 288,
11 in the context of a wage parody statute, with a referral to Taft-Hartley trusts.
12 The New York federal court held that it was preempted and then our own
13 Nevada Supreme Court in *Cervantes v. the Health Plan of Nevada*, 263 P.3d
14 261 in 2012.

15 The Nevada Supreme Court concluded that a plaintiff's claim for
16 negligence against a managed care organization under a state statute was
17 preempted by ERISA because a reference to prohibition reach laws that they
18 have an impermissible connection within the ERISA plan, even if the
19 challenged law does not itself reference ERISA or an ERISA plan as where
20 statutes mandate employee benefit structures.

21 And, certainly, the regulations in this case mandate an employee
22 benefits structure because they specifically refer to health insurance, which is
23 different than a self-insured plan. They reference ERISA. They reference
24 Taft-Hartley.

25 (Defense counsel confer)

1 MS. KOTCHKA: Yes, and we've cited cases in our brief for the Court
2 to review, including the Ninth Circuit where they also found some ERISA
3 preemption. And now are we ready for the punitive damages?

4 THE COURT: I think you have a due process argument, too.

5 MS. KOTCHKA: Huh?

6 THE COURT: Due process?

7 MS. KOTCHKA: Yes. Well, the due process argument is -- is obvious,
8 I guess. It's -- the due process argument is that nobody knows what health
9 benefits means, and nobody knows what health insurance premium means in
10 the sense that you don't know what kind of health insurance you have to -- an
11 employer has to get, and this can provide for arbitrary enforcement when an
12 employer doesn't know exactly what it's supposed to have.

13 And the enforcement that would be affected here would be the
14 enforcement by the courts because the Minimum Wage Amendment gives
15 employees the right to file civil actions in the courts of the State of Nevada.
16 And different -- I mean --

17 THE COURT: I was a little curious why you cited to criminal cases
18 because, obviously, that's a really different analysis.

19 MS. KOTCHKA: Well, it -- the police are the enforcement mechanism
20 in criminal cases, but courts are the enforcement mechanism under the
21 Minimum Wage Amendment. And our point is, that whenever you have
22 something that's so open ended that you just can't understand, it doesn't give
23 you fair notice of what you're supposed to do, it leaves a way for arbitrary and
24 discriminatory enforcement. Different departments of this court. Justice
25 courts could differ from -- you know, those departments could differ from

1 different departments of this court, and an employer doesn't have fair notice
2 of what kind of health benefits it's supposed to provide to get that -- that
3 minimum wage.

4 And that is the fundamental essence of due process, due process
5 under both the State Constitution and the Federal Constitution. We're
6 supposed to have notice of what kind of conduct we need to enter into in
7 order to get the lower rate for the minimum wage, and it simply doesn't give
8 us that.

9 THE COURT: Okay.

10 MS. KOTCHKA: Okay. Now --

11 THE COURT: Now punitive damages.

12 MS. KOTCHKA: Huh?

13 THE COURT: Punitive damages.

14 MS. KOTCHKA: Punitive damages. Okay. Perera seeks punitive
15 damages, but he does not allege any cause of action which does not arise
16 from a contract; therefore, pursuant to NRS 42.005, he has no punitive
17 damages claim.

18 THE COURT: What about his argument that this is a constitutional
19 claim, not a contract claim?

20 MS. KOTCHKA: Okay. If it's -- he uses the words constitutional tort,
21 and our response to that is that a constitutional tort is against a government
22 for a state actor, someone acting under color of state law. Constitutional tort
23 is not used against private employers, and so his constitutional tort analysis
24 simply doesn't stand up. And the --

25 THE COURT: Let me ask you a question. How do you have a due

1 process issue if there's no state action? Aren't those arguments a little bit
2 inconsistent to you're saying we have state actions sufficient to bring a due
3 process claim, but there's not really state action if they want to call it a
4 constitutional tort?

5 MS. KOTCHKA: No, and I'll explain why, Your Honor. The state action
6 in the due process claim are the courts. The courts are a branch of the
7 government, and if courts do not enforce a statute or constitutional
8 amendment in the same way, apply the law in the same way, that's what
9 leads to the due process violation in the administration of the Minimum Wage
10 Amendment.

11 He's not saying that, I'm entitled to punitive damages because
12 of anything the court does or because of any other branch of the government
13 does something. He's saying, I'm entitled to punitive damages because you,
14 employer, didn't follow the Minimum Wage Amendment; didn't pay me the
15 correct amount of minimum wage. And our point is, that is not -- it involves
16 no governmental action, it's a private employer, and the Doctrine of
17 Constitutional Torts simply doesn't apply. He's trying to use cases that were
18 decided under one theory and apply them to private employers, and he doesn't
19 have that.

20 And the reason we say that even though he says it's a
21 constitutional amendment issue, the basic relationship between an employer
22 and an employee is contractual. You agree to hire someone. They work for
23 you. You then pay a wage. And so because the amendment itself is based
24 on the contractual relationship between the employer and the employee, the
25 42.005 simply wouldn't be applicable.

1 that's possible. I was, frankly, a little bit confused about what is going on
2 with the complaint then, but that's really a question for you, so --

3 MS. KOTCHKA: Okay.

4 THE COURT: So let me see if I feel like I need anything after I've had a
5 chance to talk to Plaintiff's counsel --

6 MS. KOTCHKA: Thank you.

7 THE COURT: -- and then I'll let you know. But I'll tell you right now,
8 there's really no need to respond to the motion for sanctions because I'm not
9 going to impose sanctions.

10 MS. KOTCHKA: Okay.

11 THE COURT: All right.

12 MS. SNIEGOCKI: Good morning, Your Honor. As Your Honor is
13 aware, everything is pretty fully briefed. I'd ask if -- I mean, if you had any
14 specific questions that you want me to discuss --

15 THE COURT: I do have a specific question. Why did you file a
16 complaint if you needed really mean to file a complaint? I am incredibly
17 confused by that argument.

18 MS. SNIEGOCKI: Okay. How I'll explain is that, the complaint that
19 was filed was, from our point of view, pursuant to Your Honor's order. We
20 were given, you know, right to file an amended complaint.

21 THE COURT: Right.

22 MS. SNIEGOCKI: If you can recall, and perhaps you don't, there was
23 some supplemental briefing back in the first round of the motion to dismiss.

24 THE COURT: Uh-huh.

25 MS. SNIEGOCKI: Apparently, Your Honor, I guess, struck the

1 supplemental briefs, including our addition of Plaintiff. So when we filed the
2 amended complaint that we were granted leave to do, it included -- and
3 Defendant's counsel is right -- and we agreed to wholly withdraw that -- that
4 complaint. It included additional plaintiffs that apparently we do not have
5 leave to file. So there is an agreement that the Plaintiff has withdrawn.

6 THE COURT: I mean, I think the order was pretty clear.

7 MS. SNIEGOCKI: I believe it was honestly just a mistake on the part
8 of our office because --

9 THE COURT: All right.

10 MS. SNIEGOCKI: -- we had prepared -- prior to this we had prepared a
11 proposed complaint, and the wrong one was just filed. I think that's how it
12 went, honestly. So we've agreed to withdraw it. We don't agree that there is
13 this, you know sort of second amended complaint even technically in front of
14 the Court at this point because we've agreed to withdraw. We've answered,
15 obviously, the argument as to why it should be dismissed.

16 THE COURT: So you haven't withdrawn it. There was no --

17 MS. SNIEGOCKI: Well, we tried to -- to sort of work out with
18 Defendant's counsel. You know, we said it seemed withdrawn. You know,
19 you're not required to respond to it. Just please file an answer to the first
20 amended complaint that's properly before the Court, and I think that --

21 THE COURT: Well, except until you formally withdraw the complaint
22 from the Court's record, that's the complaint they're obligated to respond to.
23 They can't -- that doesn't make any sense to me. I understand what you're
24 saying, but until you take some action to formally -- I mean, you could've sent
25 a stipulation and order over to withdraw the second amended complaint, I

1 would have signed it, you would've had it back in a couple of days, and that
2 would've taken care of that, but they can't --

3 I mean, that -- while there is a second amended complaint filed
4 on the record, that first amended complaint doesn't really exist anymore. I
5 mean, it's not -- they can't respond to that. That would be inappropriate.

6 MS. SNIEGOCKI: I'm -- to be honest with you, I know that Ms.
7 Kotchka's communications were with Mr. Greenberg, who's the other attorney
8 representing. I -- I don't want to represent that I know entirely what their
9 discussions were about, but I believe it was something along the lines that,
10 we'll agree that it's withdrawn. Will you at least file an answer to the first
11 amended complaint? And the response we were given was, we won't file an
12 answer to any first amended complaint. We're only filing a motion to dismiss
13 the second amended complaint.

14 THE COURT: Well, I mean, it doesn't -- because -- that doesn't really
15 make sense either to make them answer a first amended complaint. The
16 Court's already ordered a second amended complaint to be filed. Why would
17 they do that?

18 MS. SNIEGOCKI: Because it was -- it was the improper form. So the
19 second amended complaint that Your Honor allowed was never the one that
20 was actually ever filed. I think that -- that was sort of where we got
21 confused, is that --

22 THE COURT: Okay. Well, I mean, that doesn't really make any sense
23 either because they can't -- I mean, why would they waste their time and their
24 clients' money to file an answer to something that the Court had already
25 ordered, wasn't going to be the operative pleading in the case? There was

1 supposed to be a second amended complaint, and your client had a certain
2 amount of time to get that filed, and then they needed to answer that
3 complaint. I mean, I don't know that that's a reasonable request.

4 MS. SNIEGOCKI: No. I believe that the first amended complaint that
5 is on file is in accordance with the Court's order, so I -- I think, and my
6 understanding is is that one is --

7 MR. MORAN: No, it's not. No, it isn't.

8 THE COURT: I don't think so. Anyway, I'm just letting you know
9 where I am with it. I think that, you know, they're -- which is why I said I am
10 not going to impose sanctions because I think their motion under the
11 circumstances was a reasonable motion because they're entitled to have the
12 operative pleading be the thing that they answer, and clearly what was filed in
13 the second amended complaint is -- is not what was contemplated by the
14 Court. So let's just -- let's -- and as I understand it from the countermotion to
15 amend, I mean, it really doesn't change anything anyway, right?

16 MS. SNIEGOCKI: We're just -- right. We're seeking to add --

17 MS. KOTCHKA: They're supposed to have --

18 THE COURT: They're seeking to add additional Plaintiffs.

19 MS. KOTCHKA: Right.

20 THE COURT: And I suppose that's something that we need to talk
21 about. It wasn't really addressed other than it wasn't in the Court's order, so I
22 don't know what -- I don't even know what the basis of that is, so I can't
23 make them. But then -- and the issue with the statute of limitations, those are
24 the easy issues, right? But the claim under 601.040, that is not something
25 that's going to change, right? That is a claim that you still attempt to pursue?

1 MS. SNIEGOCKI: Correct. That claim over me.

2 THE COURT: I got that.

3 MS. SNIEGOCKI: Okay. Well, you know, we heard the argument from
4 Defendant's counsel regarding this sort of last paycheck theory, and it sounds
5 like to me what they're saying is, look, the employer can agree with the
6 employee to pay him one cent an hour, right, in violation of the law -- the
7 minimum law. Their agreement is he pays them one penny an hour. The last
8 paycheck comes, the guy works one hour, gives him a check for a penny.
9 Does that mean then that he's paid him all his wages that he's owed? And
10 the position here is no. I mean, unless what they're arguing is that minimum
11 wage is not really a wage --

12 THE COURT: Why wasn't that claim raised in front of the labor
13 commissioner?

14 MS. SNIEGOCKI: By our client?

15 THE COURT: Right.

16 MS. SNIEGOCKI: Well, he -- when he went to the labor commissioner,
17 he was unrepresented. He went, I think, immediately after he left the
18 Defendant's employ. I don't know why he raised something or did not raise
19 something in front of the labor commissioner.

20 THE COURT: Do you think it needs to be raised in front of the labor
21 commissioner?

22 MS. SNIEGOCKI: No, I do not believe that there is a requirement that
23 he, you know, exhaust an administration remedy. Prior to that -- and Your
24 Honor did point out a decision of *Baldonado* which references this 608.14.
25 And what it says here is that there's -- there's a -- we'll allow this claim for

1 attorney's fees for a claim that is otherwise brought to the Court. So how
2 can -- how can 608.140 provide for an additional benefit to the employee for
3 the attorney's fees if the original claim for the unpaid wage or the unpaid
4 penalty, which is specifically referenced in *Baldonado*, is not allowed in the
5 first place? I mean, that's what the issue is.

6 And we've given you copies of -- I believe it's Judge Cory and
7 Barker's order of this Court, and I understand Your Honor's position on the
8 other judges of this court and how that could affect Your Honor's position,
9 but I think it's pretty well laid out in --

10 THE COURT: Well, I'm not saying, you know, I don't consider it. In
11 fact, I've had conversations with Judge Kischner about this issue. I mean,
12 we're, you know, permitted under the ethical rules to discuss things as long as
13 it doesn't interfere with our independent ability to decide. We can talk to
14 other judges, and I've had more than one conversation with her about this.
15 We just -- you know, I think reasonable minds differ. People see things
16 differently.

17 So it's not that I don't consider or respect the decisions of my
18 colleagues. It's just -- if I have a difference of opinion, I have, you know, an
19 obligation to decide the cases independently as well, so --

20 MS. SNIEGOCKI: Sure. Yeah, I --

21 THE COURT: It means I just want to -- I didn't mean to suggest that I
22 don't care what my colleagues say. I just -- I don't think that that's a basis to
23 reconsider. That's -- that's all I meant by that.

24 MS. SNIEGOCKI: Understood. So, again, I mean, I think it's pretty
25 well pointed out in our brief, Your Honor. It begins on page ten. We talk

1 about this manifests -- you know, it's illogical here. If you can allow the same
2 plaintiff to ask for attorney's fees and have this private right of action, how
3 can he ask for attorney's fee if he doesn't necessarily already possess the
4 right to bring the claim before the Court? I mean, it just doesn't make sense,
5 and that's essentially what we're resting on here.

6 THE COURT: This is what I'd like to do. I'd like to set -- when is the
7 countermotion to amend set? The 29th of September? The 28th?

8 MS. KOTCHKA: We get to file our opposition September 3rd.

9 THE COURT: Oh, it's set today but --

10 MS. KOTCHKA: So it's not set, the countermotion isn't set except for
11 today, but we haven't had a chance to file our opposition and complete the
12 briefing schedule.

13 THE COURT: What I'd like to do is just set this towards the end of
14 September, give you the opportunity to respond to the countermotion to
15 amend. In the meantime, I'll make a decision on the 608.040 issue, and then I
16 think with the countermotion to amend, then we can figure out how to go
17 forward from there because it's a little bit of a -- things have gotten a little bit
18 tangled up here.

19 MS. KOTCHKA: Okay.

20 THE COURT: So I'd like to try to get everything back on track. I can
21 get you that decision before, so you can proceed with the 608.040 claim, and
22 then we can figure out about the additional two plaintiffs and any other issue
23 that is raised with the countermotion to amend. All right? So they need the
24 opportunity to respond to that, and then we can sort it all out then.

25 MS. KOTCHKA: Okay.

1 MS. SNIEGOCKI: Okay. Well, I'm just a bit confused because the
2 second amended complaint that we're seeking to file, I mean, would also
3 include the first claim for relief and then the wage, which -- I mean, maybe I'm
4 confused. Is -- are you going to be issuing a ruling on that today or in
5 conjunction with the 608.040 ruling?

6 THE COURT: I'm going to rule on the issues that were raised in the
7 motion to dismiss because I think that they will impact whatever complaint
8 that you file.

9 MS. SNIEGOCKI: Sure.

10 THE COURT: So we may as well just deal with them now. With
11 respect to adding plaintiffs or anything else, I need to look at that and see
12 what the basis is. They need the opportunity to respond to that. So what I'd
13 like to do is just make a ruling on the motion to dismiss on the issues -- I
14 mean, primarily, it's the 608.040 claim and that, all right, and then we'll deal
15 with the countermotion to amend, and then that way you'll know what to
16 include in the third -- the third amended complaint to keep things straight.

17 But then you can file a third amended complaint that complies
18 with all of the Court orders up till then, and then we should be back on track.
19 I think that will just make things easier than withdrawing something and -- but
20 we're just going to move forward, and then you can file a third amended
21 complaint after they have an opportunity to respond with respect to any
22 additional claims.

23 MS. SNIEGOCKI: Okay. Just one thing I do want to point out as it
24 relates to the countermotion to amend the complaint. We don't -- I mean,
25 there's no issue with them even wanting additional time to respond to the

1 countermotion. You know, if they want till October, it doesn't matter.

2 One request made is that this be decided whether or not
3 Plaintiffs have leave to file this next, I guess, third at this point amended
4 complaint. Something -- that would be set on the chambers calendar, and I
5 don't know, are you -- because there is no hearing set for -- it was filed as a
6 countermotion, which means technically it all gets heard today.

7 THE COURT: Right, but I'm setting it for --

8 MS. SNIEGOCKI: So we're going to set it up. That's fine.

9 THE COURT: I'm going to set it out --

10 MS. SNIEGOCKI: For a hearing.

11 THE COURT: If I don't feel like I need to hear from you, I'll tell you not
12 to come, but I -- this is -- this is complicated, and it's gotten procedurally -- I
13 mean, the legal issues are complicated here, and it's gotten procedurally just a
14 hair complicated. I think I would prefer to meet with you again. Not with the
15 intention of wasting anybody's time, but just to make sure that we're all on
16 the same page because I think it will help the case go forward more smoothly.
17 And that way if anybody has any questions, we can sort it all out at that time.
18 All right?

19 MS. SNIEGOCKI: Okay.

20 THE COURT: So I'm going to set it for the -- the 29th, right?
21 Actually, let's put it on the -- I'm going to put it on October 1st. Our Thursday
22 calendars are usually just a little bit -- not today, but normally our Thursday's
23 calendar are real small.

24 MS. KOTCHKA: October 1st at 9?

25 THE COURT: October 1st at 9:00. And then that way we can just

1 have one additional conversation about what the third amended complaint is
2 going to look like, and, hopefully, that will avoid any additional motion to
3 dismiss, and then they'll file an answer, and we'll just get on with everything.
4 All right? I try to make things straight out.

5 MS. KOTCHKA: Okay. Oh, Your Honor, could --

6 THE COURT: Is that a bad date?

7 MS. KOTCHKA: Is that a bad date?

8 MR. MORAN: That's a bad date. Can I have the --

9 THE COURT: We can put it another --

10 MS. KOTCHKA: Can we do it the following week, October the 8th?

11 THE COURT: October 6th? The 8th? That's fine.

12 THE CLERK: The 8th?

13 MS. KOTCHKA: October 8th.

14 MR. MORAN: Perfect.

15 MS. KOTCHKA: Perfect. Thank you. And one other issue before we
16 leave, Your Honor, and that is on the motion for reconsideration. I know you
17 denied it --

18 THE COURT: I'll take care of the order when I do the other order.

19 MS. KOTCHKA: Okay. But I just wanted to say that in addition to the
20 decisions by the other courts, we also raised the issue of the records, the
21 retention --

22 THE COURT: Which obviously it could've been raised in the motion in
23 the first place, so --

24 MS. KOTCHKA: Well, it was cited. It was cited in our brief. We
25 did --

1 THE COURT: Okay. So --

2 MS. KOTCHKA: -- raise it, but the Court didn't address it, so --

3 THE COURT: All right. But it was --

4 MS. KOTCHKA: So I just wanted to point out that that was one of the
5 bases.

6 THE COURT: It wouldn't have made a difference -- if we would've had
7 a long conversation about it, it would not have made a difference, but thank
8 you.

9 MS. KOTCHKA: All right. Okay.

10 THE COURT: So all right.

11 MS. SNIEGOCKI: So then is there no further argument that you --

12 THE COURT: Nothing now.

13 MS. SNIEGOCKI: Perfect.

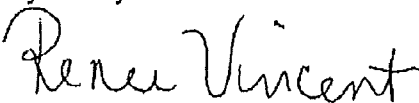
14 THE COURT: We'll talk again. Thank you.

15 MS. SNIEGOCKI: Thank you.

16 [Proceedings concluded at 10:03 a.m.]

17

18 ATTEST: I do hereby certify that I have truly and correctly transcribed the
19 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

20 
21

22 Renee Vincent, Court Recorder/Transcriber
23 District Court 7, 702-671-4339
24
25