


CLERK OF THE COURT

1 **NOA**
2 LEON GREENBERG, ESQ., SBN 8094
3 DANA SNIEGOCKI, ESQ., SBN 11715
4 Leon Greenberg Professional
5 Corporation
6 2965 South Jones Blvd - Suite E3
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8 Tel (702) 383-6085
9 Fax (702) 385-1827
10 leongreenberg@overtimelaw.com
11 dana@overtimelaw.com

12 Attorneys for Plaintiff

Electronically Filed
Feb 17 2016 02:50 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL SARGEANT, Individually and
on behalf of others similarly situated,

Plaintiff,

vs.

HENDERSON TAXI,

Defendant.

Case No.: A-15-714136-C

Dept.: XVII

NOTICE OF APPEAL

Notice is hereby given that MICHAEL SARGEANT, plaintiff above named, by and through his counsel of record Leon Greenberg, Esq., hereby appeals to the Supreme Court of Nevada from the final judgment entered upon the Court's findings of fact and conclusions of law and order granting summary judgment entered by the Clerk of the Court on February 3, 2016 and the Court's Order entered by the Clerk of the Court on October 8, 2015 denying plaintiff's motion to certify class, invalidate

1 improperly obtained acknowledgments, issue notice to class members and make
2 interim award of attorney's fees and enhancement payment to representative plaintiff.

3
4 Dated: Clark County, Nevada
February 9, 2016

5
6 Submitted by

7
8 Leon Greenberg Professional Corporation

9 /s/ Leon Greenberg

10 Leon Greenberg, Esq.

11 LEON GREENBERG PROFESSIONAL
CORPORATION

12 Attorney for the Plaintiff

2965 South Jones Boulevard - Suite E3

Las Vegas, Nevada 89146

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leongreenberg@overtimelaw.com

1 **PSER**

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10 dana@overtimelaw.com

11 Attorneys for Plaintiff

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

15 MICHAEL SARGEANT, Individually)
16 and on behalf of others similarly)
17 situated,)
18 Plaintiff,)
19 vs.)
20 HENDERSON TAXI,)
21 Defendant.)

Case No.: A-15-714136-C

Dept.: XVII

PROOF OF SERVICE

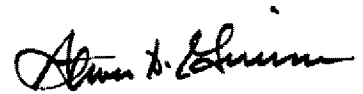
22 The undersigned certifies that on February 9, 2016, she served the within:

23 **Notice of Appeal**

24 by court electronic service to:

25 Anthony L. Hall, Esq.
26 R. Calder Huntington, Esq.
27 HOLLAND & HARD LLP
28 9555 Hillwod Drive, 2nd Fl.
Las Vegas, NV 89134

/s/ Dana Sniegocki
DANA SNIEGOCKI


CLERK OF THE COURT

ASTA
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL SARGEANT, Individually and
on behalf of others similarly situated,

Plaintiff,

vs.

HENDERSON TAXI,

Defendant.

Case No.: A-15-714136-C

Dept.: XVII

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement: MICHAEL SARGEANT
2. Identify the judge issuing the decision, judgment, or order appealed from: Hon.
Michael Villani
3. Identify each appellant and the name and address of counsel for each appellant:
Appellant: Michael Sargeant
Attorneys: Leon Greenberg, Esq. and Dana Sniegocki, Esq., attorneys for
Appellant

1 2965 S. Jones Boulevard, Suite E-3

2 Las Vegas, NV 89146

3 4. Identify each respondent and the name and address of appellate counsel, if
4 known, for each respondent (if the name of a respondent's appellate counsel is
5 unknown, indicate as much and provide the name and address of that respondent's trial
6 counsel):

7 Respondent: Henderson Taxi

8 Attorneys: Anthony L. Hall, Esq., R. Calder Huntington, Esq.

9 HOLLAND & HART, LLP

10 9555 Hillwood Drive, 2nd Floor

11 Las Vegas, NV 89134

12 5. Indicate whether any attorney identified above in response to question 3 or 4 is
13 not licensed to practice law in Nevada and, if so, whether the district court granted that
14 attorney permission to appear under SCR 42 (attach a copy of any district court order
15 granting such permission):

16 All attorneys are licensed to practice in Nevada

17 6. Indicate whether appellant was represented by appointed or retained counsel in
18 the district court:

19 Counsel was retained.

20 7. Indicate whether appellant is represented by appointed or retained counsel on
21 appeal:

22 Counsel was retained.

23 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and
24 the date of entry of the district court order granting such leave:

25 Appellant is not proceeding in forma pauperis.

26 9. Indicate the date the proceedings commenced in the district court (e.g., date
27 complaint, indictment, information, or petition was filed):

28 Complaint was filed February 19, 2015.

1 10. Provide a brief description of the nature of the action and result in the district
2 court, including the type of judgment or order being appealed and the relief granted by
3 the district court:

4 Putative class action for defendant's taxi driver employees for unpaid minimum
5 wages and related damages and relief pursuant to the provisions of Nevada's
6 Constitution. The District Court, in its Order entered February 3, 2016, directed the
7 entry of summary judgment in favor of the defendant based upon its prior Order
8 entered on October 8, 2015, finding that the plaintiff's claims had been fully resolved
9 by a grievance pursued by the labor union representing the involved employees of the
10 defendant.

11 11. Indicate whether the case has previously been the subject of an appeal to or
12 original writ proceeding in the Supreme Court and, if so, the caption and Supreme
13 Court docket number of the prior proceeding:

14 There has been no prior appeal or writ proceeding.

15 12. Indicate whether this appeal involves child custody or visitation:

16 This appeal does not involve child custody or visitation.

17 13. If this is a civil case, indicate whether this appeal involves the possibility of
18 settlement:

19 This case involves a pure issue of law and no settlement is possible.
20

21 Dated: Clark County, Nevada
22 February 9, 2016

23 Submitted by

Leon Greenberg Professional Corporation

24 /s/ Leon Greenberg

Leon Greenberg, Esq.

25 LEON GREENBERG PROFESSIONAL
26 CORPORATION

Attorney for the Plaintiff

27 2965 South Jones Boulevard - Suite E3

Las Vegas, Nevada 89146

(702) 383-6085

28 leongreenberg@overtimelaw.com

1 **PSER**

2 LEON GREENBERG, ESQ., SBN 8094
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12
13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 MICHAEL SARGEANT, Individually)
16 and on behalf of others similarly)
17 situated,)

18 Plaintiff,

19 vs.)

20 HENDERSON TAXI,)

21 Defendant.)

Case No.: A-15-714136-C

Dept.: XVII

PROOF OF SERVICE

22 The undersigned certifies that on February 9, 2016, she served the within:

23 **Case Appeal Statement**

24 by court electronic service to:

25 Anthony L. Hall, Esq.
26 R. Calder Huntington, Esq.
27 HOLLAND & HARD LLP
28 9555 Hillwod Drive, 2nd Fl.
Las Vegas, NV 89134

/s/ Dana Sniegocki
DANA SNIEGOCKI

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-15-714136-C

Michael Sargeant, Plaintiff(s)
vs.
Henderson Taxi, Defendant(s)

§
§
§
§
§

Location: **Department 17**
Judicial Officer: **Villani, Michael**
Filed on: **02/19/2015**
Cross-Reference Case Number: **A714136**

CASE INFORMATION

Case Type: **Other Civil Matters**

Case Flags: **Appealed to Supreme Court**
Jury Demand Filed
Automatically Exempt from Arbitration

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-15-714136-C
Court	Department 17
Date Assigned	02/19/2015
Judicial Officer	Villani, Michael

PARTY INFORMATION

Plaintiff **Sargeant, Michael**

Lead Attorneys

Greenberg, Leon
Retained
7023836085(W)






Defendant **Henderson Taxi**

Hall, Anthony L.
Retained
702-669-4650(W)

DATE




EVENTS & ORDERS OF THE COURT

INDEX

02/19/2015	 Complaint With Jury Demand Filed By: Plaintiff Sargeant, Michael <i>Complaint</i>	
02/19/2015	Case Opened	
03/19/2015	 Answer to Complaint Filed by: Defendant Henderson Taxi <i>Answer to Complaint</i>	
03/19/2015	 Initial Appearance Fee Disclosure Filed By: Defendant Henderson Taxi <i>Initial Appearance Fee Disclosure</i>	
05/06/2015	 Joint Case Conference Report Filed By: Plaintiff Sargeant, Michael <i>Joint Case Conference Report</i>	
05/27/2015	 Motion for Class Certification Filed By: Plaintiff Sargeant, Michael <i>Motion to Certify Class, Invalidate Improperly Obtained Acknowledgments, Issue Notice to Class Members, and Make Interim Award of Attorney's Fees and Enhancement Payment to</i>	

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-15-714136-C




Representative Plaintiff

05/27/2015	 Notice of Motion Filed By: Plaintiff Sargeant, Michael <i>Notice of Motion to Certify Class, Invalidate Improperly Obtained Acknowledgments, Issue Notice to Class Members, and Make Interim Award of Attorney's Fees and Enhancement Payment to Representative Plaintiff</i>
05/27/2015	 Proof of Service Filed by: Plaintiff Sargeant, Michael <i>Proof of Service</i>
05/28/2015	 Notice of Hearing <i>Notice of Hearing</i>
05/29/2015	 Scheduling Order <i>Scheduling Order</i>
06/03/2015	 Order Setting Civil Jury Trial <i>Order Setting Civil Jury Trial and Calendar Call</i>
06/03/2015	 Amended Joint Case Conference Report Filed By: Plaintiff Sargeant, Michael <i>Amended Joint Case Conference Report</i>
06/09/2015	 Motion for Order Extending Time Filed by: Defendant Henderson Taxi <i>Defendant Henderson Taxi Motion for Continuation of Hearing and Enlargement of Time to Oppose Plaintiff's Motion to Certify - Ex Parte Application for Order Shortening Time and Order Thereon</i>
06/15/2015	 Stipulation and Order Filed by: Defendant Henderson Taxi <i>Stipulation and Order</i>
06/15/2015	 Notice of Entry of Stipulation and Order Filed By: Defendant Henderson Taxi <i>Notice of Entry of Stipulation and Order</i>
06/17/2015	CANCELED Motion (8:30 AM) (Judicial Officer: Villani, Michael) <i>Vacated - per Stipulation and Order</i> <i>Defendant Henderson Taxi Motion for Continuation of Hearing and Enlargement of Time to Oppose Plaintiff's Motion to Certify - Ex Parte Application for Order Shortening Time and Order Thereon</i>
07/15/2015	 Certificate of Service Filed by: Defendant Henderson Taxi <i>Certificate of Service</i>
07/15/2015	 Notice of Entry of Order Filed By: Defendant Henderson Taxi <i>Notice of Entry of Order</i>
07/15/2015	 Opposition Filed By: Defendant Henderson Taxi

CASE SUMMARY

CASE NO. A-15-714136-C






Defendant's Opposition to Motion to Certify Class, Invalidate Improperly Obtained Acknowledgements, Issue Notice to Class Members, and to Make Interim Award of Attorney's Fees and Enhancement Payment to Representative Plaintiff

07/15/2015	 Appendix Filed By: Defendant Henderson Taxi <i>Appendix of Exhibits</i>
07/15/2015	 Ex Parte Filed By: Defendant Henderson Taxi <i>Ex Parte Application for Leave to Exceed Page Limit for Defendant's Opposition to Motion to Certify Class, Invalidate Improperly Obtained Acknowledgements, Issue Notice to Class Members, and to Make Interim Award of Attorney's Fees and Enhancement Payment to Representative Plaintiff</i>
07/15/2015	 Order Filed By: Defendant Henderson Taxi <i>Order Granting Ex Parte Application for Leave to Exceed Page Limit for Defendant's Opposition to Motion to Certify Class, Invalidate Improperly Obtained Acknowledgements, Issue Notice to Class Members, and to Make Interim Award of Attorney's Fees and Enhancement Payment to Representative Plaintiff</i>
07/15/2015	 Stipulated Protective Order Filed By: Defendant Henderson Taxi <i>Stipulated Protective Order</i>
07/16/2015	 Notice of Entry of Order Filed By: Defendant Henderson Taxi <i>Notice of Entry of Stipulated Protective Order</i>
08/05/2015	 Reply to Opposition Filed by: Plaintiff Sargeant, Michael <i>Reply to Opposition to Motion to Certify Class, Invalidate Improperly Obtained Acknowledgements, Issue Notice to Class Members, and Make Interim Award of Attorney's Fees and Enhancement Payment to Representative Plaintiff</i>
08/12/2015	 Motion to Certify Class (8:30 AM) (Judicial Officer: Villani, Michael) <i>Plaintiff's Motion to Certify Class, Invalidate Improperly Obtained Acknowledgements, Issue Notice to Class Members, and Make Interim Award of Attorney's Fees and Enhancement Payment to Representative Plaintiff</i>
08/19/2015	 Decision (3:00 AM) (Judicial Officer: Villani, Michael) <i>Decision: Plaintiff's Motion to Certify Class, Invalidate Acknowledgements, Issue Notice to Class Members, and Make Interim Award of Attorney's Fees and Enhancement Payment to Representative Plaintiff</i>
10/08/2015	 Order Denying Filed By: Defendant Henderson Taxi <i>Order Denying Plaintiff's Motion to Certify Class, Invalidate Improperly Obtained Acknowledgements, Issue Notice to Class Members, and to Make Interim Award of Attorney's Fees and Enhancement Payment to Representative Plaintiff</i>
10/13/2015	 Notice of Entry of Order Filed By: Defendant Henderson Taxi <i>Notice of Entry of Order</i>
10/30/2015	

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-15-714136-C

	 Motion to Reconsider Filed By: Plaintiff Sargeant, Michael <i>Motion for Partial Reconsideration or Alternatively for Entry of Final Judgment</i>
10/30/2015	 Notice of Motion Filed By: Plaintiff Sargeant, Michael <i>Notice of Motion for Partial Reconsideration or Alternatively for Entry of Final Judgment</i>
11/11/2015	 Appendix Filed By: Defendant Henderson Taxi <i>Appendix of Exhibits</i>
11/11/2015	 Motion for Summary Judgment Filed By: Defendant Henderson Taxi <i>Defendant's Motion for Summary Judgment</i>
11/19/2015	 Stipulation and Order Filed by: Defendant Henderson Taxi <i>Stipulation and Order</i>
11/20/2015	 Notice of Entry of Stipulation and Order Filed By: Defendant Henderson Taxi <i>Notice of Entry of Order</i>
12/14/2015	 Opposition Filed By: Defendant Henderson Taxi <i>Defendant's Opposition to Plaintiff's Motion for Partial Reconsideration or Alternatively for Entry of Final Judgment</i>
12/14/2015	 Appendix Filed By: Defendant Henderson Taxi <i>Appendix of Exhibits</i>
12/14/2015	 Opposition to Motion For Summary Judgment Filed By: Plaintiff Sargeant, Michael <i>Opposition to Defendant's Motion for Summary Judgment</i>
12/21/2015	 Declaration Filed By: Plaintiff Sargeant, Michael <i>Declaration of Michael Sargeant, Exhibit "B" to Plaintiff's Opposition to Motion for Summary Judgment</i>
01/06/2016	 Reply in Support Filed By: Defendant Henderson Taxi <i>Defendant's Reply in Support of Motion for Summary Judgment</i>
01/06/2016	 Reply to Opposition Filed by: Plaintiff Sargeant, Michael <i>Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Partial Reconsideration or Alternatively for Entry of Final Judgment</i>
01/13/2016	 Motion (3:00 AM) (Judicial Officer: Villani, Michael) <i>Plaintiff's Motion for Partial Reconsideration or, Alternatively, for Entry of Final Judgment</i>

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-15-714136-C

01/13/2016	 Motion for Summary Judgment (8:30 AM) (Judicial Officer: Villani, Michael) <i>Defendant's Motion for Summary Judgment</i>
02/03/2016	 Order Filed By: Defendant Henderson Taxi <i>Order Denying Plaintiff's Motion for Partial Reconsideration or Alternatively For Entry of Final Judgment</i>
02/03/2016	 Findings of Fact, Conclusions of Law and Judgment Filed by: Defendant Henderson Taxi <i>Findings of Fact and Conclusions of Law and Order Granting Motion for Summary Judgment</i>
02/03/2016	Summary Judgment (Judicial Officer: Villani, Michael) Debtors: Michael Sargeant (Plaintiff) Creditors: Henderson Taxi (Defendant) Judgment: 02/03/2016, Docketed: 02/10/2016
02/09/2016	 Notice of Appeal Filed By: Plaintiff Sargeant, Michael <i>Notice of Appeal</i>
02/09/2016	 Case Appeal Statement Filed By: Plaintiff Sargeant, Michael <i>Case Appeal Statement</i>
01/25/2017	Calendar Call (9:00 AM) (Judicial Officer: Villani, Michael)
02/06/2017	Jury Trial (9:00 AM) (Judicial Officer: Villani, Michael)

DATE	FINANCIAL INFORMATION																
	<table> <tr> <td>Defendant Henderson Taxi</td><td></td></tr> <tr> <td>Total Charges</td><td>503.50</td></tr> <tr> <td>Total Payments and Credits</td><td>503.50</td></tr> <tr> <td>Balance Due as of 2/11/2016</td><td>0.00</td></tr> <tr> <td> Plaintiff Sargeant, Michael</td><td></td></tr> <tr> <td>Total Charges</td><td>643.00</td></tr> <tr> <td>Total Payments and Credits</td><td>643.00</td></tr> <tr> <td>Balance Due as of 2/11/2016</td><td>0.00</td></tr> </table>	Defendant Henderson Taxi		Total Charges	503.50	Total Payments and Credits	503.50	Balance Due as of 2/11/2016	0.00	 Plaintiff Sargeant, Michael		Total Charges	643.00	Total Payments and Credits	643.00	Balance Due as of 2/11/2016	0.00
Defendant Henderson Taxi																	
Total Charges	503.50																
Total Payments and Credits	503.50																
Balance Due as of 2/11/2016	0.00																
 Plaintiff Sargeant, Michael																	
Total Charges	643.00																
Total Payments and Credits	643.00																
Balance Due as of 2/11/2016	0.00																

DISTRICT COURT CIVIL COVER SHEET

County, Nevada
Case No. A-15-714136-C Dept XVII
(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): Michael Sargeant, 2001 Ramrod Ave., Apt. 2215, Henderson, NV, 89014 702-809-6540	Defendant(s) (name/address/phone): Henderson Taxi 1900 Industrial Road, Las Vegas NV, 89102
Attorney (name/address/phone): Leon Greenberg, Esq. 2965 S. Jones Blvd., Suite E-3, Las Vegas, NV 89146	Attorney (name/address/phone): Unknown

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters

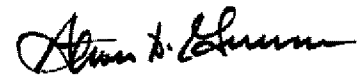
Business Court filings should be filed using the Business Court civil coversheet.

February 18, 2015

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

1 **FFCL**
2 Anthony L. Hall, Esq.
3 Nevada Bar No. 5977
4 ahall@hollandhart.com
5 R. Calder Huntington, Esq.
6 Nevada Bar No. 11996
7 rchuntington@hollandhart.com
8 **HOLLAND & HART LLP**
9 9555 Hillwood Drive, 2nd Floor
10 Las Vegas, Nevada 89134
11 (702) 669-4600
12 (702) 669-4650 -fax
13 *Attorneys for Defendant Henderson Taxi*

8
9
10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 MICHAEL SARGEANT, individually and on
13 behalf of others similarly situated,

14 Plaintiff,

15 v.

16 HENDERSON TAXI,

17 Defendant.

CASE NO.: A-15-714136-C
DEPT. NO.: XVII

**PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

AND

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

18 Defendant Henderson Taxi's ("Defendant" or "Henderson Taxi") Motion for Summary
19 Judgment (the "Motion") came before the Court for a hearing on January 13, 2016. Leon
20 Greenberg, Esq. and Dana Sniegocki, Esq. appeared on behalf of Plaintiff. Anthony L. Hall, Esq.
21 and R. Calder Huntington, Esq. appeared on behalf of Defendant.

22 The Court, having read and considered Defendant's Motion, Plaintiff's Opposition,
23 Defendant's Reply, all exhibits attached thereto, and the oral arguments of counsel, and good cause
24 appearing, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

25 1. The ITPEU/OPEIU Local 4873, AFL-CIO (the "Union") is the exclusive
26 representative of Henderson Taxi cab drivers, including Plaintiff Michael Sargeant ("Sargeant"), as
27 regards their employment with Henderson Taxi as provided in the Collective Bargaining

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 • Fax: (702) 669-4650

RECEIVED BY
DEPT 17 ON
JAN 27 2016

1 Agreements ("CBAs") submitted as Exhibits 6 and 7 to Henderson Taxi's Motion. Order, filed
2 October 8, 2015; *see also* Exhibit 6 and 7 to Mot.

3 2. After the Nevada Supreme Court issued its decision in *Thomas v. Nev. Yellow Cab*
4 *Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (Nev. 2014) ("*Yellow Cab*") finding that the minimum
5 wage exemption for taxicab drivers had been impliedly repealed, the Union filed a grievance (the
6 "Grievance") with Henderson Taxi regarding failure to pay minimum wage pursuant to the effective
7 CBA. Exhibit 5 to Mot. Specifically, the Grievance sought "back pay and an adjustment of wages
8 going forward" from Henderson Taxi. *Id.*

9 3. Through negotiation, Henderson Taxi and the Union settled the Grievance. Order,
10 filed October 8, 2015; *see also* Exhibits 8, 9, and 10 to Mot. The Grievance settlement provided
11 that, in addition to modifying the CBA by amending pay practices going forward, Henderson Taxi
12 would give drivers an opportunity to review Henderson Taxi's time and pay calculations and that
13 Henderson Taxi would make reasonable efforts to pay the cab drivers the difference between what
14 they had been paid and Nevada minimum wage over the two-year period preceding the *Yellow Cab*
15 decision. Order, filed October 8, 2015; *see also* Exhibits 8, 9, and 10 to Mot.

16 4. The Court has not been presented with any evidence that Henderson Taxi has failed
17 to comply with its obligations under the grievance settlement. Exhibits 1 and 2 to Mot.

18 5. Henderson Taxi and the Union formally memorialized this settlement agreement in
19 Exhibit 10 to the Motion, which provides: "Accordingly, the ITPEU/OPEIU considers this matter
20 formally settled under the collective bargaining agreement between Henderson Taxi and the
21 ITPEU/OPEIU and state law as implemented through such collective bargaining agreement.
22 Pursuant to Article XV, Section 15.7 [of the CBAs], this resolution is final and binding on all
23 parties."

24 6. Accordingly, the Union fully settled by the Grievance all minimum wage claims
25 Henderson Taxi's drivers may have had through the grievance process. Order, filed October 8,
26 2015; Exhibit 10 to Mot.
27
28

1 7. Mr. Sargeant failed to file a substantive opposition to Henderson Taxi's Motion for
2 Summary Judgment. Not only did the opposition not include any facts contradicting the fact that the
3 Union settled any minimum wage claims Henderson Taxi's drivers may have had prior to the
4 settlement, none were presented at oral argument either. Further, at the hearing on Henderson
5 Taxi's Motion, Plaintiff's counsel conceded that if this Court construed its prior order as holding
6 Mr. Sargeant's right to bring any legal action as alleged in his complaint was extinguished by the
7 Union's grievance settlement with Henderson Taxi, nothing would substantively remain in this case
8 to litigate as a settlement had occurred and judgment would be proper.

9 8. To the extent any of the forgoing Findings of Fact are properly construed as
10 Conclusions of Law, they will be interpreted as Conclusions of Law.

11 CONCLUSIONS OF LAW

12 1. Summary judgment must be granted, "if the pleadings, depositions, answers to
13 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
14 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of
15 law." Nevada Rule of Civil Procedure ("NRCP") 56(c). Summary judgment serves the purpose of
16 avoiding "a needless trial when an appropriate showing is made in advance that there is no genuine
17 issue of fact to be tried, and the movant is entitled to judgment as a matter of law." *McDonald v.*
18 *D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005).

19 2. In *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005), the
20 Nevada Supreme Court expressly rejected the "slightest doubt" standard, and adopted the summary
21 judgment standard set forth by the United States Supreme Court in the cases of *Anderson v. Liberty*
22 *Lobby, Inc.*, 477 U.S. 242 (1986), *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and *Matsushita*
23 *Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

24 3. Under Nevada's summary judgment standard, once the moving party demonstrates
25 that no genuine issues of material fact exist, the burden shifts to the nonmoving party to "do more
26 than simply show that there is some metaphysical doubt' as to the operative facts in order to avoid
27 summary judgment being entered in the moving party's favor." *Wood*, 121 Nev. at 732, 121 P.3d at
28

1031 (quoting *Matsushita*, 475 U.S. at 586); *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). To survive summary judgment, the nonmoving party “must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.” *Bulbman, Inc v. Nev. Bell*, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992). However, the nonmoving party “is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.” *Id.* (quoting *Collins v. Union Fed. Sav. & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)).

4. In Mr. Sargeant’s Opposition to Henderson Taxi’s Motion (the “Opposition”), Mr. Sargeant failed to abide the requirement of NRCP 56 by setting “forth specific facts demonstrating the existence of a genuine issue for trial.” *Bulbman*, 108 Nev. at 110, 825 P.2d at 591. Neither did he set forth such specific facts at the hearing on this matter.

5. Henderson Taxi has presented evidence showing that it is entitled to judgment as a matter of law and no contrary evidence has been presented by Mr. Sargeant. Accordingly, it is appropriate to “have summary judgment entered against” Mr. Sargeant for these reasons alone.

6. Additionally, individuals and groups are fully entitled to waive or settle state minimum wage claims with or without judicial or administrative review when there exists a *bona fide* dispute. *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796, 803 (Cal. Ct. App. 2009) (holding that the public policy against waiver of wage claims “is not violated by a settlement of a bona fide dispute over wages already earned.”). Thus, where only past claims are at issue, and where liability is subject to a bona fide dispute, parties are free to settle or release wage claims. *Id.* (“The releases here settled a dispute over whether Stix had violated wage and hour laws in the past; they did not purport to exonerate it from future violations. ... The trial court correctly found the releases barred the Chindarah plaintiffs from proceeding with the lawsuit against Stix.”); *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 590 (Cal. Ct. App. 2010) (“Employees may release claims for disputed wages and may negotiate the consideration they are willing to accept in exchange”).

7. Here, a *bona fide* dispute existed. Exhibits 8, 9, and 10 to Mot.; *see also* Order filed October 8, 2015. Further, the National Labor Relations Act gives the Union authority to resolve

1 disputes regarding the terms and conditions of Henderson Taxi's drivers' employment as those
2 drivers' exclusive representative.

3 8. Henderson Taxi validly settled all minimum wage claims that may have been held by
4 its drivers prior to the settlement thereof with the Union—the exclusive representative of such
5 drivers—via the Grievance settlement and no contrary evidence has been presented. Exhibit 10 to
6 Mot.; Order filed October 8, 2015; *see also May v. Anderson*, 121 Nev. 668, 674-75, 119 P.3d
7 1254, 1259-60 (2005) ("Schwartz had authority to negotiate on behalf of the Mays and accepted the
8 offer in writing. ... The fact that the Mays refused to sign the proposed draft release document is
9 inconsequential to the enforcement of the documented settlement agreement. The district court ...
10 properly compelled compliance by dismissing the Mays' action."); *see also* Order, filed October 8,
11 2015 ("This settlement agreement for the Grievance acted as a complete accord and satisfaction of
12 the grievance and any claims to minimum wage Henderson Taxi's drivers may have had.").

13 9. The settlement of the Grievance did not act as a waiver of future minimum wage
14 rights. Order, filed October 8, 2015; Exhibit 10. Rather, as is normal, the settlement settled the
15 Grievance, which alleged past violations. Exhibits 5 and 10.

16 10. Because the Union settled the cab drivers' claims for minimum wage against
17 Henderson Taxi, Plaintiff lacks any claim for minimum wages from prior to that settlement. As
18 Plaintiff (as well as all other Henderson Taxi cab drivers) lacks a viable claim for minimum wage
19 prior to the Union's Grievance settlement, the Court concludes that there are no genuine issues of
20 material fact in dispute and the Court grants summary judgment in favor of Henderson Taxi and
21 against Mr. Sargeant. *Bulbman*, 108 Nev. at 110, 825 P.2d at 591; *see also May v. Anderson*, 121
22 Nev. at 674-75, 119 P.3d at 1259-60.

23 11. To the extent any of the forgoing Conclusions of Law are properly construed as
24 Findings of Fact, they will be interpreted as Findings of Fact.

25 JUDGMENT

26 Having entered the foregoing Findings of Fact and Conclusions of Law, and good cause
27 appearing,
28

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Henderson Taxi's Motion
2 for Summary Judgment is GRANTED.

3 IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be
4 entered in favor of Henderson Taxi and against Mr. Sargeant and the putative class as to all claims
5 asserted against Henderson Taxi.
6

7 DATED this 28 day of January 2016.

8
9 
DISTRICT COURT JUDGE 10

11 Respectfully submitted by:

12 HOLLAND & HART LLP

13 By 

Anthony L. Hall, Esq.

Nevada Bar No. 5977

R. Calder Huntington, Esq.

Nevada Bar No. 11996

9555 Hillwood Drive, 2nd Floor

Las Vegas, Nevada 89134

Attorneys for Defendant Henderson Taxi

18 Approved as to form:

19
20 By 

Leon Greenberg, Esq.

Dana Sniegocki, Esq.

LEON GREENBERG PROFESSIONAL CORPORATION

2965 South Jones Blvd., Suite E3

Las Vegas, Nevada 89146

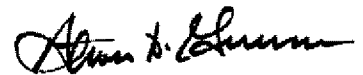
Attorney for Plaintiff

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CLERK OF THE COURT

13 *Attorneys for Defendant Henderson Taxi*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 MICHAEL SARGEANT, individually and on
17 behalf of others similarly situated,

18 Plaintiff,

19 v.

20 HENDERSON TAXI,

21 Defendant.

CASE NO.: A-15-714136-C
DEPT. NO.: XVII

**ORDER DENYING PLAINTIFF'S
MOTION TO CERTIFY CLASS,
INVALIDATE IMPROPERLY
OBTAINED ACKNOWLEDGEMENTS,
ISSUE NOTICE TO CLASS MEMBERS,
AND TO MAKE INTERIM AWARD OF
ATTORNEY'S FEES AND
ENHANCEMENT PAYMENT TO
REPRESENTATIVE PLAINTIFF**

22 This matter came before the Court for hearing on August 12, 2015 on Plaintiff Michael
23 Sargeant's *Motion to Certify Class, Invalidate Improperly Obtained Acknowledgements, Issue*
24 *Notice to Class Members, and To Make Interim Award of Attorney's Fees and Enhancement*
25 *Payment to Representative Plaintiff* (the "Motion"). Leon Greenberg and Dana Sniegocki of Leon
26 Greenberg Professional Corporation appeared on behalf of Plaintiff. Anthony L. Hall and R.
27 Calder Huntington of Holland & Hart LLP appeared on behalf of Defendant Henderson Taxi.

The Court, having considered Plaintiff's Motion, Defendant's Opposition, Plaintiff's
Reply, along with the relevant pleadings and papers on file herein, and having considered the oral
argument of counsel, and good cause appearing, the Court finds as follows:

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SEP 22 2015

1 **A. Any Minimum Wage Claims were resolved by an accord and satisfaction with**
2 **the Union**

3 In June of 2014, the Nevada Supreme Court decided the case *Thomas v. Nev. Yellow Cab*
4 *Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518, 522 (2014) and found that the Minimum Wage
5 Amendment to Nevada's Constitution, Nev. Const. Art. 15, § 16, eliminated the exemption from
6 minimum wage for taxicab drivers that had been provided by statute. Thereafter, the
7 ITPEU/OPEIU Local 4873, AFL-CIO (the "Union"), which the Court finds to be the exclusive
8 representative of Henderson Taxi cab drivers as regards their employment with Henderson Taxi,
9 grieved the issue of minimum wage to Henderson Taxi (the "Grievance"). Through negotiation,
10 Henderson Taxi and the Union settled the Grievance by agreeing that in addition to changing pay
11 practices going forward, Henderson Taxi would give drivers an opportunity to review Henderson
12 Taxi's time and pay calculations and pay its current and former cab drivers the difference between
13 what they had been paid and Nevada minimum wage over the two years prior to the *Yellow Cab*
14 decision. This settlement agreement for the Grievance acted as a complete accord and satisfaction
15 of the grievance and any claims to minimum wage Henderson Taxi's cab drivers may have had.

16 Also as part of this settlement of the Grievance, Henderson Taxi agreed to provide
17 acknowledgements to its current and former cab drivers for them to sign, though the drivers were
18 not required to do so. The Court finds that there was no imbalance in bargaining power between
19 the Union and Henderson Taxi when they negotiated a settlement of the Grievance and that there is
20 no evidence of coercion regarding any of the acknowledgements signed by Henderson Taxi cab
21 drivers. Further, the Court finds that a bona fide dispute existed as to whether the *Yellow Cab*
22 decision is to be applied retroactively. As such, it is unclear whether Henderson Taxi's cab drivers
23 were or were not entitled to back pay prior to the settlement of the Grievance or whether they
24 would be entitled to back pay absent the settlement of the Grievance. Accordingly, the settlement
25 of the Grievance resolved a bona fide dispute regarding wages and did not necessarily act as a
26 waiver of minimum wage rights.

27
28 ///

B. Plaintiff Has Failed to Present Evidence Supporting Class Certification

In addition, and in part based on the preceding findings, the Court further finds that Plaintiff has not established the factors necessary to maintain a class action under NRCP 23(a). A class action “may only be certified if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied.” *General Tel. Co., of the S.W. v. Falcon*, 457 U.S. 147, 161 (1982); accord *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 847, 124 P.3d 530, 538 (2005). This rigorous analysis will generally overlap with the merits of the underlying case. *Wal-Mart Stores, Inc. v. Dukes*, 546 U.S. ___, 131 S.Ct. 2541, 2551 (2011). “If a court is not fully satisfied [after conducting the rigorous analysis], certification should be refused.” *Kenny v. Supercuts, Inc.*, 252 F.R.D. 641, 643 (N.D. Cal. 2008) (citing *Falcon*, 457 U.S. at 161).

The burden rests with plaintiff to establish that the case is fit for class treatment. *Shuette*, 121 Nev. at 846, 124 P.3d at 537. Thus, for the Court to certify this case as a class action, Sargeant must satisfy all requirements of NRCP 23(a), which provides in full:

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Thus, under NRCP 23(a), Plaintiff must demonstrate that the proposed class is so numerous that joinder of all members is impracticable. Here, as the Union and Henderson Taxi have resolved and settled the Grievance regarding unpaid minimum wages related to the Nevada Supreme Court’s *Yellow Cab* decision, Plaintiff has not demonstrated that there is a class of individuals so numerous that joinder of all members is impracticable. Thus, Plaintiff has failed to demonstrate numerosity under NRCP 23(a)(1).

Under NRCP 23(a)(2), Plaintiff must show that there are common questions of law or fact common to each individual within the proposed class. Questions of law and fact are common to the class only if the answer to the question as to one class member holds true as to *all* class members. *Shuette*, 121 Nev. at 845, 124 P.3d at 538; see also *General Tel. Co., of the S.W. v. Falcon*, 457 U.S. 147, 155 (1982) (questions of law and fact must be applicable in the same manner as to the

1 entire class). Further, determining the common questions' "truth or falsity" must resolve "in one
2 stroke" an issue that is "central to the validity of each one of the claims in one stroke." *Dukes*, 131
3 S.Ct. at 2551. In other words, "[w]hat matters to class certification ... is not the raising of common
4 questions—even in droves—but, rather the capacity of a classwide proceeding to generate
5 common answers apt to drive the resolution of the litigation." *Id.* (internal citations omitted). "[I]f
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7 in actuality require a multitude of mini-trials (a procedure which will be tremendously time-
8 consuming and costly), then the justification for class certification is absent." *Shuette*, 121 Nev. at
9 847, 124 P.3d at 543 (internal quotation marks omitted).

10 Here, the majority of Henderson Taxi cab drivers have acknowledged that they have no
11 claim against Henderson Taxi and that they have been paid all sums owed to them. Further, the
12 Union negotiated a settlement of the minimum wage claim Plaintiff seeks to assert against
13 Henderson Taxi. Thus, Plaintiff has not demonstrated that there are common questions of law or
14 fact for the proposed class. Further, the determination of the minimum wage issue, had it not
15 already been resolved, would require individual analysis not proper for a class action. For example,
16 the Court would need to determine which minimum wage tier applied to each driver through an
17 analysis of his income (including potentially unreported tips under NAC 608.102-608.104) and the
18 cost of insuring his or her dependents, including an analysis of the number of dependents each
19 driver actually had during different time frames because the cost of insurance changes based on the
20 number of dependents a driver has.

21 Under NRCP 23(c), "'Typicality' demands that the claims or defenses of the representative
22 parties be typical of those of the class." *Shuette*, 121 Nev. at 848, 124 P3d at 538. Here, Plaintiff's
23 claims are not typical of those he seeks to represent because of the acknowledgements signed by
24 hundreds of Henderson Taxi cab drivers. As the Court has found that these acknowledgements are
25 valid and were not obtained through any improper act, but rather through negotiation with the
26 Union and voluntary action of cab drivers, the acknowledgements demonstrate defenses that are
27 unique to the hundreds of current and former taxi drivers who signed them. Further, Plaintiff's
28

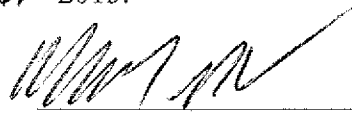
claims are not typical because his claim of hours worked is not supported by the records, including the acknowledgements signed by much of the proposed class.

Finally, under NRCP 23(d), Plaintiff has not demonstrated that he is an adequate class representative. For instance, Plaintiff's declaration contradicts the statements of hundreds of other current and former Henderson Taxi cab drivers. *See Ordonez v. Radio Shack, Inc.*, 2013 WL 210223, *11 (C.D. Cal., Jan. 17, 2013) (no predominance where there was conflicting testimony about whether employees received rest breaks: "Unlike other cases where a defendant had a purportedly illegal rest or meal break policy and courts found that common issues predominated, there is substantial evidence in this case that defendant's actual practice was to provide rest breaks in accordance with California law, as discussed previously.").

Accordingly, the Court, having considered Plaintiff's Motion, Defendant's Opposition, Plaintiff's Reply, along with the relevant pleadings and papers on file herein, and having considered the oral argument of counsel, and good cause appearing, the Court and good cause appearing,

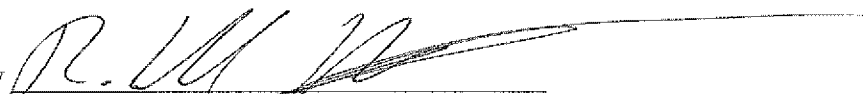
IT IS HEREBY ORDERED that Plaintiff's Motion is DENIED.

DATED this 8th day of October 2015.

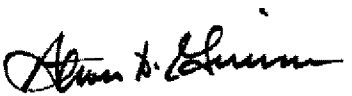


DISTRICT COURT JUDGE

Respectfully submitted by:

By 

Anthony L. Hall, Esq.
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Attorneys for Defendant Henderson Taxi


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8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 MICHAEL SARGEANT, individually and on
behalf of others similarly situated,

CASE NO.: A-15-714136-C
DEPT. NO.: XVII

12 Plaintiff,

NOTICE OF ENTRY OF ORDER

13 v.

14 HENDERSON TAXI,

15 Defendant.
16

17 PLEASE TAKE NOTICE that the attached **ORDER DENYING PLAINTIFF'S**
18 **MOTION TO CERTIFY CLASS, INVALIDATE IMPROPERLY OBTAINED**
19 **ACKNOWLEDGEMENTS, ISSUE NOTICE TO CLASS MEMBERS, AND TO MAKE**
20 **INTERIM AWARD OF ATTORNEY'S FEES AND ENHANCEMENT PAYMENT TO**
21 **REPRESENTATIVE PLAINTIFF**

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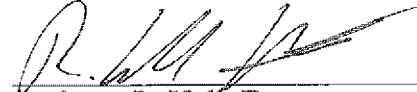
28 ///

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1 was entered by the Court on October 8, 2015.

2 DATED this 13th day of October, 2015.

3 **HOLLAND & HART LLP**

4 

5 Anthony L. Hall, Esq.
6 Nevada Bar No. 5977
7 R. Calder Huntington, Esq.
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11 *Attorneys for Defendant Henderson Taxi*

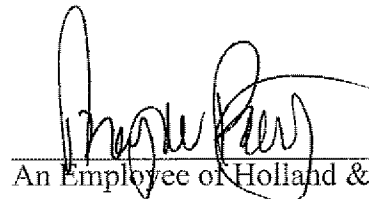
12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on the 13th day of October, 2015, a true and correct copy of the
14 foregoing **NOTICE OF ENTRY OF ORDER** was served by the following method(s):

15 ☒ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial
16 District Court's e-filing system and served on counsel electronically in accordance with
17 the E-service list to the following email addresses:

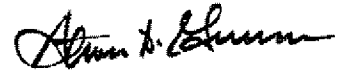
18 Leon Greenberg, Esq.
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26 An Employee of Holland & Hart LLP

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13 *Attorneys for Defendant Henderson Taxi*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 MICHAEL SARGEANT, individually and on
17 behalf of others similarly situated,

18 Plaintiff,

19 v.

20 HENDERSON TAXI,

21 Defendant.

CASE NO.: A-15-714136-C
DEPT. NO.: XVII

**ORDER DENYING PLAINTIFF'S
MOTION TO CERTIFY CLASS,
INVALIDATE IMPROPERLY
OBTAINED ACKNOWLEDGEMENTS,
ISSUE NOTICE TO CLASS MEMBERS,
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25 *Payment to Representative Plaintiff* (the "Motion"). Leon Greenberg and Dana Sniegocki of Leon
26 Greenberg Professional Corporation appeared on behalf of Plaintiff. Anthony L. Hall and R.
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The Court, having considered Plaintiff's Motion, Defendant's Opposition, Plaintiff's
Reply, along with the relevant pleadings and papers on file herein, and having considered the oral
argument of counsel, and good cause appearing, the Court finds as follows:

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1 **A. Any Minimum Wage Claims were resolved by an accord and satisfaction with**
2 **the Union**

3 In June of 2014, the Nevada Supreme Court decided the case *Thomas v. Nev. Yellow Cab*
4 *Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518, 522 (2014) and found that the Minimum Wage
5 Amendment to Nevada's Constitution, Nev. Const. Art. 15, § 16, eliminated the exemption from
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12 Taxi's time and pay calculations and pay its current and former cab drivers the difference between
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15 of the grievance and any claims to minimum wage Henderson Taxi's cab drivers may have had.

16 Also as part of this settlement of the Grievance, Henderson Taxi agreed to provide
17 acknowledgements to its current and former cab drivers for them to sign, though the drivers were
18 not required to do so. The Court finds that there was no imbalance in bargaining power between
19 the Union and Henderson Taxi when they negotiated a settlement of the Grievance and that there is
20 no evidence of coercion regarding any of the acknowledgements signed by Henderson Taxi cab
21 drivers. Further, the Court finds that a bona fide dispute existed as to whether the *Yellow Cab*
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24 would be entitled to back pay absent the settlement of the Grievance. Accordingly, the settlement
25 of the Grievance resolved a bona fide dispute regarding wages and did not necessarily act as a
26 waiver of minimum wage rights.

27
28 ///

1 **B. Plaintiff Has Failed to Present Evidence Supporting Class Certification**

2 In addition, and in part based on the preceding findings, the Court further finds that
3 Plaintiff has not established the factors necessary to maintain a class action under NRCP 23(a). A
4 class action “may only be certified if the trial court is satisfied, after a rigorous analysis, that the
5 prerequisites of Rule 23(a) have been satisfied.” *General Tel. Co., of the S.W. v. Falcon*, 457 U.S.
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20 Thus, under NRCP 23(a), Plaintiff must demonstrate that the proposed class is so numerous that
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27 unique to the hundreds of current and former taxi drivers who signed them. Further, Plaintiff's
28

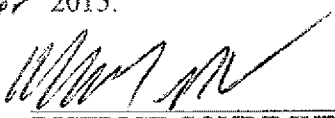

1 claims are not typical because his claim of hours worked is not supported by the records, including
2 the acknowledgements signed by much of the proposed class.

3 Finally, under NRCP 23(d), Plaintiff has not demonstrated that he is an adequate class
4 representative. For instance, Plaintiff's declaration contradicts the statements of hundreds of other
5 current and former Henderson Taxi cab drivers. *See Ordonez v. Radio Shack, Inc.*, 2013 WL
6 210223, *11 (C.D. Cal., Jan. 17, 2013) (no predominance where there was conflicting testimony
7 about whether employees received rest breaks: "Unlike other cases where a defendant had a
8 purportedly illegal rest or meal break policy and courts found that common issues predominated,
9 there is substantial evidence in this case that defendant's actual practice was to provide rest breaks
10 in accordance with California law, as discussed previously.").


11 Accordingly, the Court, having considered Plaintiff's Motion, Defendant's Opposition,
12 Plaintiff's Reply, along with the relevant pleadings and papers on file herein, and having
13 considered the oral argument of counsel, and good cause appearing, the Court and good cause
14 appearing,

15 IT IS HEREBY ORDERED that Plaintiff's Motion is DENIED.

16 DATED this 8th day of October 2015.

17 
18 DISTRICT COURT JUDGE
19 

20 Respectfully submitted by:

21 By 
22 Anthony L. Hall, Esq.
23 Nevada Bar No. 5977
24 R. Calder Huntington, Esq.
25 Nevada Bar No. 11996
26 9555 Hillwood Drive, 2nd Floor
27 Las Vegas, Nevada 89134
28 Attorneys for Defendant Henderson Taxi

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

August 12, 2015

A-15-714136-C Michael Sargeant, Plaintiff(s)
vs.
Henderson Taxi, Defendant(s)

August 12, 2015 8:30 AM Motion to Certify Class

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Nora Pena

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT: Greenberg, Leon Attorney
Hall, Anthony L. Attorney
Huntington, Robert Calder Attorney
Sniegocki, Dana Attorney

JOURNAL ENTRIES

- Argument by Mr. Greenberg in support of his motion. Colloquy. Mr. Greenberg advised payments were owed and he has no idea if the amount was correct; the issue went to the Supreme Court. Mr. Greenberg addressed the exhibit of the acknowledgement form and he believed certification is conditional. Mr. Greenberg requested attorney's fees and asked to certify class, prohibit communication with the employees and restraint Defendant of improper conduct. Colloquy. Opposition by Mr. Hall, he believed Mr. Greenberg made misrepresentations of the fact and the law. Mr. Hall advised there is no evidence of coercion as to acknowledgement and it states for employees to contact their attorney and there is no admission of liability. Mr. Hall addressed exhibit "H" and advised the time period for opting out has pass. Court noted he is not imposing sanctions on either side. Mr. Hall advised they have a binding agreement with the employees for payment with the caveat that there is no class. Mr. Hall addressed waivers and tip issue agreement and noted the two year statute of limitations is being decided 10/6/15 which would make this moot due to settlement with the union and will have an issue with discovery. Reply by Mr. Greenberg for request for certification and it is appropriate to proceed forward as the Plaintiff has not complied and there is conduct of impropriety of the Defendant. COURT ORDERED, DECISION DEFERRED. Court

advised will prepare a written decision on or before next Wednesday, 8/19th.

8/19/15 DECISION: PLAINTIFF'S MOTION TO CERTIFY CLASS, INVALIDATE IMPROPERLY
OBTAINED ACKNOWLEDGMENTS, ISSUE NOTICE TO CLASS MEMBERS, AND MAKE
INTERIM AWARD OF ATTORNEY'S FEES AND ENHANCEMENT PAYMENT TO
REPRESENTATIVE PLAINTIFF - CHAMBER CALENDAR

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

August 19, 2015

A-15-714136-C Michael Sargeant, Plaintiff(s)
vs.
Henderson Taxi, Defendant(s)

August 19, 2015	3:00 AM	Decision	Plaintiff's Motion to Certify Class, Invalidate Acknowledgements, Issue Notice to Class Members, and Make Interim Award of Attorney's Fees and Enhancement Payment to Representative Plaintiff
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HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Plaintiff's Motion to Certify Class, Invalidate Acknowledgements, Issue Notice to Class Members, and Make Interim Award of Attorney's Fees and Enhancement Payment to Representative Plaintiff came before this Court on the August 12, 2015, Oral Calendar. After hearing the arguments of counsel, the Court DEFERRED its decision to issue a written minute order, placing this matter on the Court's August 19, 2015, Chamber Calendar. The Court now rules as follows:

An action may be maintained as a class action if "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or

defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." NRCP 23(a).

After the Nevada Supreme Court decided *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518, 522 (2014), finding that "the Minimum Wage Amendment, by enumerating specific exceptions that [did] not include taxicab drivers," the Union filed a grievance with Henderson Taxi requesting back pay. Henderson Taxi entered into a settlement agreement with the Union, which provided that Henderson Taxi would pay the former and current employees back pay, acting as a complete accord and satisfaction of the grievance. The COURT FINDS, that the Union is the exclusive representation of the former and current taxicab employees of Henderson Taxi, and that there is no evidence of coercion.

Employers cannot enter into an agreement with their employees to waive minimum wages "because of inequality of bargaining power." *D.A. Schulte, Inc., v. Gangi*, 328 U.S. 108, 115, 66 S. Ct. 925, 928-29, 90 L. Ed. 1114 (1946). However, in this instance, the Union entered into negotiations with Henderson Taxi, balancing the bargaining power. Additionally, because there is a dispute as to whether Yellow Cab is to be applied retroactively, it is not clear that these employees were entitled to back pay. Thus, the settlement resolved a fee-dispute grievance and not necessarily a waiver of a minimum wage rights.

Based on the foregoing, the COURT FURTHER FINDS, that Plaintiff has not established the factors to maintain a class action under NRCP 23(a). Therefore, COURT ORDERED, Plaintiff's Motion is DENIED. Counsel for Defendant is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder of R. Calder Huntington, Esq. (Holland & Hart LLP).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

January 13, 2016

A-15-714136-C Michael Sargeant, Plaintiff(s)
vs.
Henderson Taxi, Defendant(s)

January 13, 2016	3:00 AM	Motion	Plaintiff's Motion for Partial Reconsideration or, Alternatively, for Entry of Final Judgment
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HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Plaintiff's Motion for Partial Reconsideration or, Alternatively, for Entry of Final Judgment came before this Court on the January 13, 2016, Chamber Calendar. A District Court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or if the prior decision was clearly erroneous. *Masonry & Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737 (1976); *Moore v. City of Las Vegas*, 92 Nev. 402, 404 (1976). The COURT FINDS Plaintiff has not met the standard for reconsideration nor has this Court made a mistake of fact or law. Therefore, COURT ORDERED Plaintiff's Motion for Partial Reconsideration or Alternatively for Entry of Final Judgment is DENIED. Counsel for Defendant is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order shall set forth a synopsis of the supporting reasons proffered to the Court in briefing.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder of Anthony L. Hall,

Esq., (Holland & Hart LLP).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

January 13, 2016

A-15-714136-C Michael Sargeant, Plaintiff(s)
vs.
Henderson Taxi, Defendant(s)

January 13, 2016	8:30 AM	Motion for Summary Judgment	Defendant's Motion for Summary Judgment
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HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Carol Donahoo

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT:	Greenberg, Leon	Attorney
	Hall, Anthony L.	Attorney
	Huntington, Robert Calder	Attorney
	Sniegocki, Dana	Attorney

JOURNAL ENTRIES

- Also Present: Mark Trafton, Esq., a Representative for Henderson Taxi

This is the time set for hearing on Defendant's Motion for Summary Judgment. The Court has reviewed the Defendant's Motion for Summary Judgment and the Plaintiff's Opposition to Defendant's Motion for Summary Judgment. Arguments by Mr. Hall and Mr. Greenberg.

Accord and Satisfaction applies in this case, therefore, COURT ORDERED, Motion for Summary Judgment is GRANTED. Mr. Hall to prepare the Findings of Fact and Conclusions of Law approved as to form and content by Mr. Greenberg.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

LEON GREENBERG, ESQ.
2965 S. JONES BLVD., SUITE E3
LAS VEGAS, NV 89146

DATE: February 11, 2016
CASE: A714136

RE CASE: MICHAEL SARGEANT vs. HENDERSON TAXI

NOTICE OF APPEAL FILED: February 9, 2016

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT TRANSMITTED HAVE BEEN MARKED:**

- ☒ **\$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)****
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ **\$24 – District Court Filing Fee (Make Check Payable to the District Court)****
- ☒ **\$500 – Cost Bond on Appeal (Make Check Payable to the District Court)****
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ **Case Appeal Statement**
 - NRAP 3 (a)(1), Form 2
- ☐ **Order**
- ☒ **Notice of Entry of Order *re: Order filed February 3, 2016***

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER GRANTING MOTION FOR SUMMARY JUDGMENT; ORDER DENYING PLAINTIFF'S MOTION TO CERTIFY CLASS, INVALIDATE IMPROPERLY OBTAINED ACKNOWLEDGEMENTS, ISSUE NOTICE TO CLASS MEMBERS, AND TO MAKE INTERIM AWARD OF ATTORNEY'S FEES AND ENHANCEMENT PAYMENT TO REPRESENTATIVE PLAINTIFF; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

MICHAEL SARGEANT,

Plaintiff(s),

vs.

HENDERSON TAXI,

Defendant(s),

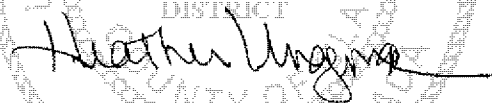
Case No: A714136

Dept No: XVII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 11 day of February 2016.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk