

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

MICHAEL SARGEANT, individually and on
behalf of others similarly situated

vs.

HENDERSON TAXI

No. 69773

DOCKETING STATEMENT

CIVIL APPEALS

Electronically Filed
Mar 08 2016 11:33 a.m.
Tara K. Lindeman
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XVII
County Clark Judge Hon. Michael Villani
District Ct. Case No. A-15-714136-C

2. Attorney filing this docketing statement:

Attorney Leon Greenberg and Dana Sniegocki Telephone 702-383-6085
Firm Leon Greenberg Professional Corporation
Address 2965 S. Jones Boulevard,
Suite E-3
Las Vegas, NV 89146

Client(s) Michael Sargeant

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Anthony L. Hall, R. Calder Huntington Telephone 702-669-4650
Firm HOLLAND & HART, LLP
Address 9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Client(s) Henderson Taxi

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

There are no such appeals or proceedings presently before this Court. There have been no prior appeals or other proceedings before this Court.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

There are no such pending or prior proceedings before any other courts that are related to this appeal.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Putative class action for defendant's taxi driver employees for unpaid minimum wages and related damages and relief pursuant to Nevada's Constitution.

The District Court, in its Order entered February 3, 2016, directed the entry of summary judgment in favor of the defendant based upon its prior Order entered on October 8, 2015, finding that the plaintiff's claims had been fully resolved by a collective bargaining agreement grievance between the defendant and the labor union representing taxi driver employees of the defendant.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The district court erred as Art. 15, Sec. 16 of Nevada's Constitution states the right it confers to bring suit in Nevada's courts can only be limited by a written collective bargaining agreement that contains "clear and unambiguous terms" setting forth such limitations. The collective bargaining agreement relied upon by the district court contains no such terms.

The district court erred in finding that the grievance procedure in the defendant and the taxi drivers' union's collective bargaining agreement could resolve the plaintiff's minimum wage claim arising under Nevada's Constitution as that collective bargaining agreement expressly denied its grievance procedure jurisdiction over such a claim.

The district court erred in that federal labor law does not allow a union to waive the state labor law rights of employees, *Allis Chalmers v. Lueck*, 471 U.S. 202, 212 (1985).

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None of which counsel is aware.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter should presumptively be retained by the Supreme Court pursuant to NRAP 17 (a)(13) as it involves an issue arising under Nevada's Constitution that has never previously been ruled upon (a question of first impression). Specifically, it concerns the scope of Article 15, Section 16, of the Nevada Constitution setting forth the rights of Nevada employees to seek relief in the courts of Nevada to collect the minimum wage specified therein and the ability of labor unions to enter into agreements with employers to waive, in full or in part, those rights.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Feb 3, 2016

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Feb 15, 2016

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed February 9, 2016

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The district court's order of February 3, 2016 granting summary judgment resulted in the entry of a final judgment in respect to the claims of all of the parties.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Michael Sargeant, Plaintiff

Henderson Taxi, Defendant.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Claim by plaintiff under Art. 15, Sec. 16 of Nevada's Constitution for minimum wages.

Claim by plaintiff under NRS 608.040 for thirty days penalty wages.

All claims were disposed of by the district court's order of February 3, 2016.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Michael Sargeant
Name of appellant

Leon Greenberg
Name of counsel of record

Mar 7, 2016
Date

/s/ Leon Greenberg
Signature of counsel of record

Nevada, Clark County
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 7th day of March, 2016, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

By electronic court service:

Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

by mail:

Lansford W. Levitt
4747 Caughlin Parkway #6
Reno, NV 89519

Dated this 7th day of March, 2016

/s/ Sydney Saucier
Signature

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 <i>(select case type and estate value)</i> <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 <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 <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters

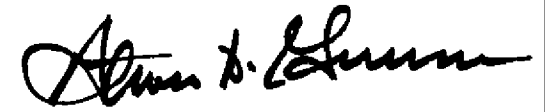
Business Court filings should be filed using the Business Court civil coversheet.

February 18, 2015

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

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

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 - 1 5 - 7 1 4 1 3 6 - C
Dept.: X V I I

COMPLAINT

**ARBITRATION EXEMPTION
CLAIMED BECAUSE THIS IS
A CLASS ACTION CASE**

MICHAEL SARGEANT, individually and on behalf of others similarly situated,
by and through his attorney, Leon Greenberg Professional Corporation, as and for a
Complaint against the defendant, states and alleges, as follows:

JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

1. The plaintiff, MICHAEL SARGEANT, (the “individual plaintiff” or the
“named plaintiff”) is a resident of Clark County in the State of Nevada and is a former
employee of the defendant.

2. The defendant, HENDERSON TAXI, (hereinafter referred to as
“Henderson Taxi” or “defendant”) is a corporation existing and established pursuant to
the laws of the State of Nevada with its principal place of business in the County of

1 Clark, State of Nevada and conducts business in Nevada.

2 **CLASS ACTION ALLEGATIONS**

3 3. The plaintiff brings this action as a class action pursuant to Nev. R. Civ.
4 P. §23 on behalf of himself and a class of all similarly situated persons employed by
5 the defendant in the State of Nevada.

6 4. The class of similarly situated persons consists of all persons employed
7 by defendant in the State of Nevada since November 28, 2006 continuing until date of
8 judgment, such persons being employed as taxi cab drivers (hereinafter referred to as
9 “cab drivers” or “drivers”) such employment involving the driving of taxi cabs for the
10 defendant in the State of Nevada.

11 5. The common circumstance of the cab drivers giving rise to this suit is that
12 while they were employed by defendant they were not paid the minimum wage
13 required by Nevada’s Constitution, Article 15, Section 16 for many or most of the days
14 that they worked in that their hourly compensation, when calculated pursuant to the
15 requirements of said Nevada Constitutional provision, did not equal at least the
16 minimum hourly wage provided for therein.

17 6. The named plaintiff is informed and believes, and based thereon alleges
18 that there are at least 200 putative class action members. The actual number of class
19 members is readily ascertainable by a review of the defendant’s records through
20 appropriate discovery.

21 7. There is a well-defined community of interest in the questions of law and
22 fact affecting the class as a whole.

23 8. Proof of a common or single set of facts will establish the right of each
24 member of the class to recover. These common questions of law and fact predominate
25 over questions that affect only individual class members. The individual plaintiff’s
26 claims are typical of those of the class.

27 9. A class action is superior to other available methods for the fair and
28 efficient adjudication of the controversy. Due to the typicality of the class members’

1 claims, the interests of judicial economy will be best served by adjudication of this
2 lawsuit as a class action. This type of case is uniquely well-suited for class treatment
3 since the employer's practices were uniform and the burden is on the employer to
4 establish that its method for compensating the class members complies with the
5 requirements of Nevada law.

6 10. The individual plaintiff will fairly and adequately represent the interests
7 of the class and has no interests that conflict with or are antagonistic to the interests of
8 the class and has retained to represent him competent counsel experienced in the
9 prosecution of class action cases and will thus be able to appropriately prosecute this
10 case on behalf of the class.

11 11. The individual plaintiff and his counsel are aware of their fiduciary
12 responsibilities to the members of the proposed class and are determined to diligently
13 discharge those duties by vigorously seeking the maximum possible recovery for all
14 members of the proposed class.

15 12. There is no plain, speedy, or adequate remedy other than by maintenance
16 of this class action. The prosecution of individual remedies by members of the class
17 will tend to establish inconsistent standards of conduct for the defendant and result in
18 the impairment of class members' rights and the disposition of their interests through
19 actions to which they were not parties. In addition, the class members' individual
20 claims are small in amount and they have no substantial ability to vindicate their
21 rights, and secure the assistance of competent counsel to do so, except by the
22 prosecution of a class action case.

23 **AS AND FOR A FIRST CLAIM FOR RELIEF ON BEHALF OF THE NAMED**
24 **PLAINTIFF AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO**
NEVADA'S CONSTITUTION

25 13. The named plaintiff repeats all of the allegations previously made and
26 brings this First Claim for Relief pursuant to Article 15, Section 16, of the Nevada
27 Constitution.

28 14. Pursuant to Article 15, Section 16, of the Nevada Constitution the named

1 plaintiff and the class members were entitled to an hourly minimum wage for every
2 hour that they worked for defendant and the named plaintiff and the class members
3 were often not paid such required minimum wages.

4 15. The defendant's violation of Article 15, Section 16, of the Nevada
5 Constitution involved malicious and/or fraudulent and/or oppressive conduct by the
6 defendant sufficient to warrant an award of punitive damages for the following,
7 amongst other reasons:

8 (a) Defendant despite having, and being aware of, an express obligation
9 under Article 15, Section 16, of the Nevada Constitution, such obligation
10 commencing no later than July 1, 2007, to advise the plaintiff and the
11 class members, in writing, of their entitlement to the minimum hourly
12 wage specified in such constitutional provision, failed to provide such
13 written advisement;

14
15 (b) Defendant was aware that the highest law enforcement officer of the
16 State of Nevada, the Nevada Attorney General, had issued a public
17 opinion in 2005 that Article 15, Section 16, of the Nevada Constitution,
18 upon its effective date, would require defendant and other employers of
19 taxi cab drivers to compensate such employees with the minimum hourly
20 wage specified in such constitutional provision. Defendant consciously
21 elected to ignore that opinion and not pay the minimum wage required by
22 Article 15, Section 16, of the Nevada Constitution to its taxi driver
23 employees in the hope that it would be successful, if legal action was
24 brought against it, in avoiding paying some or all of such minimum
25 wages;

26
27 (c) Defendant, to the extent it believed it had a colorable basis to
28 legitimately contest the applicability of Article 15, Section 16, of the

1 Nevada Constitution to its taxi driver employees, made no effort to seek
2 any judicial declaration of its obligation, or lack of obligation, under such
3 constitutional provision and to pay into an escrow fund any amounts it
4 disputed were so owed under that constitutional provision until such a
5 final judicial determination was made.

6 16. Defendant engaged in the acts and/or omissions detailed in
7 paragraph 15 in an intentional scheme to maliciously, oppressively and fraudulently
8 deprive its taxi driver employees of the hourly minimum wages that were guaranteed
9 to those employees by Article 15, Section 16, of the Nevada Constitution. Defendant
10 so acted in the hope that by the passage of time whatever rights such taxi driver
11 employees had to such minimum hourly wages owed to them by the defendant would
12 expire, in whole or in part, by operation of law. Defendant so acted consciously,
13 willfully, and intentionally to deprive such taxi driver employees of any knowledge
14 that they might be entitled to such minimum hourly wages, despite the defendant's
15 obligation under Article 15, Section 16, of the Nevada Constitution to advise such
16 taxi driver employees of their right to those minimum hourly wages. Defendant's
17 malicious, oppressive and fraudulent conduct is also demonstrated by its failure to
18 make any allowance to pay such minimum hourly wages if they were found to be due,
19 such as through an escrow account, while seeking any judicial determination of its
20 obligation to make those payments.

21 17. The named plaintiff seeks all relief available to him and the alleged class
22 under Nevada's Constitution, Article 15, Section 16 including appropriate injunctive
23 and equitable relief to make the defendant cease its violations of Nevada's
24 Constitution and a suitable award of punitive damages.

25 18. The named plaintiff on behalf of himself and the proposed plaintiff class
26 members, seeks, on this First Claim for Relief, a judgment against the defendant for
27 minimum wages owed since November 28, 2006 and continuing into the future, such
28 sums to be determined based upon an accounting of the hours worked by, and wages

1 actually paid to, the plaintiff and the class members along a suitable injunction and
2 other equitable relief barring the defendant from continuing to violate Nevada's
3 Constitution, a suitable award of punitive damages, and an award of attorneys' fees,
4 interest and costs, as provided for by Nevada's Constitution and other applicable laws.

5 **AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT TO NEVADA**
6 **REVISED STATUTES § 608.040 ON BEHALF OF THE NAMED PLAINTIFF**
AND THE PUTATIVE CLASS

7 19. Plaintiff repeats and reiterates each and every allegation previously made
8 herein.

9 20. The named plaintiff brings this Second Claim for Relief against the
10 defendant pursuant to Nevada Revised Statutes § 608.040 on behalf of himself and the
11 alleged class of all similarly situated employees of the defendant.

12 21. The named plaintiff has been separated from his employment with the
13 defendant since in or about July 2013, and at the time of such separation was owed
14 unpaid wages by the defendant.

15 22. The defendant has failed and refused to pay the named plaintiff and
16 numerous members of the putative plaintiff class who are the defendant's former
17 employees their earned but unpaid wages, such conduct by such defendant constituting
18 a violation of Nevada Revised Statutes § 608.020, or § 608.030 and giving such
19 named plaintiff and similarly situated members of the putative class of plaintiffs a
20 claim against the defendant for a continuation after the termination of their
21 employment with the defendant of the normal daily wages defendant would pay them,
22 until such earned but unpaid wages are actually paid or for 30 days, whichever is less,
23 pursuant to Nevada Revised Statutes § 608.040.

24 23. As a result of the foregoing, the named plaintiff seeks on behalf of himself
25 and the similarly situated putative plaintiff class members a judgment against the
26 defendant for the wages owed to him and such class members as prescribed by Nevada
27 Revised Statutes § 608.040, to wit, for a sum equal to up to thirty days wages, along
28 with interest, costs and attorneys' fees.

1 WHEREFORE, plaintiff demands the relief on each cause of action as alleged
2 aforesaid.

3
4 Plaintiff demands a trial by jury on all issues so triable.

5
6 Dated this 18th day of February, 2015.

7
8 Leon Greenberg Professional Corporation

9
10 By: /s/ Leon Greenberg

11 LEON GREENBERG, Esq.
12 Nevada Bar No.: 8094
13 2965 South Jones Blvd- Suite E3
14 Las Vegas, Nevada 89146
15 Tel (702) 383-6085
16 Fax (702) 385-1827

17 Attorney for Plaintiff
18
19
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21
22
23
24
25
26
27
28

1 IAFD

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 Michael Sargeant

6
7 Plaintiff(s),

8 -vs-

9 Henderson Taxi

10 Defendant(s).

A-15-714136-C

CASE NO. _____

DEPT. NO. XVII

11
12
13 INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)

14 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are
15 submitted for parties appearing in the above entitled action as indicated below:

16 New Complaint Fee

17 ☐ \$1530 ☐ \$520 ☐ \$299 ☒ \$270.00

1st Appearance Fee

18 ☐ \$1483.00 ☐ \$473.00 ☐ \$223.00

19 Name:

20 ☐ \$30

21 ☐ \$30

22 ☐ \$30

23 ☐ \$30

24 ☐ Total of Continuation Sheet Attached

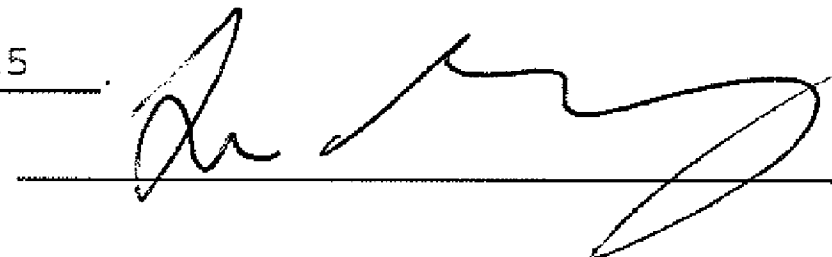
☐ \$ _____

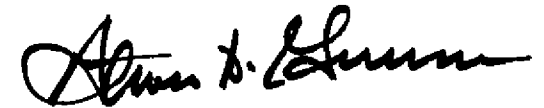
25 TOTAL REMITTED: (Required)

Total Paid

\$ _____

26 DATED this 18th day of Feb, 20015.

27 
28



CLERK OF THE COURT

1 NEOJ
Anthony L. Hall, Esq.
2 Nevada Bar No. 5977
ahall@hollandhart.com
3 R. Calder Huntington, Esq.
Nevada Bar No. 11996
4 rchuntington@hollandhart.com
HOLLAND & HART LLP
5 9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
6 (702) 669-4600
(702) 669-4650 --fax

7 *Attorneys for Defendant Henderson Taxi*

8
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

12 Plaintiff,

13 v.

14 HENDERSON TAXI,

15 Defendant.

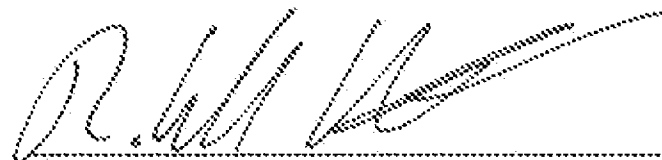
CASE NO.: A-15-714136-C
DEPT. NO.: XVII

16 **NOTICE OF ENTRY OF ORDER**

17 PLEASE TAKE NOTICE that the attached *FINDINGS OF FACT AND*
18 *CONCLUSIONS OF LAW AND ORDER GRANTING MOTION FOR SUMMARY*
19 *JUDGMENT* was entered by the Court on February 3, 2016.

20 DATED this 15th day of February, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2016, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** was served by the following method(s):

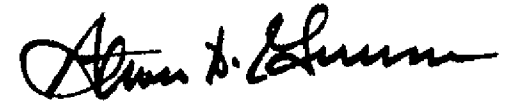
☒ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

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9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

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

12 Plaintiff,

13 v.

14 HENDERSON TAXI,

15 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

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

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

24 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

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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.

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

1 1031 (quoting *Matsushita*, 475 U.S. at 586); *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev.
2 598, 602, 172 P.3d 131, 134 (2007). To survive summary judgment, the nonmoving party “must, by
3 affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial
4 or have summary judgment entered against him.” *Bulbman, Inc v. Nev. Bell*, 108 Nev. 105, 110,
5 825 P.2d 588, 591 (1992). However, the nonmoving party “is not entitled to build a case on the
6 gossamer threads of whimsy, speculation, and conjecture.” *Id.* (quoting *Collins v. Union Fed. Sav.*
7 *& Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)).

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

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

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

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

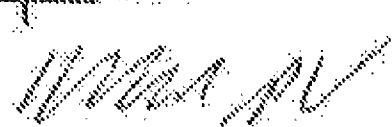
26 Having entered the foregoing Findings of Fact and Conclusions of Law, and good cause
27 appearing,
28

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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.
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7 DATED this 28 day of January 2016.

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9 
DISTRICT COURT JUDGE 10

11 Respectfully submitted by:

12 HOLLAND & HART LLP

13 By 

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