ARTICLE X

QUALIFICATION OF EMPLOYEES

10.1 At any time an employee fails to maintain all the qualifications described herein, his employment shall automatically terminate.

10.2 Every employee must remain capable of satisfying the physical requirements of any regulatory authority which from time to time has jurisdiction over such matters, but in any event every employee must remain capable of satisfying physical requirements no less stringent than those pursuant to Chapter 706 of Nevada Revised Statutes as effective on the date in question.

10.3 At any time, the Company may require any employee to submit to examination to determine his physical qualifications. If such action is not more often than once when hired and thereafter as required by regulatory authority, such examinations shall be at the expense of the employee. Examinations required by the Company at other times shall be at the expense of the Company, and the Company shall specify the doctor who shall conduct the examination. When, after examination, the doctor will not certify that the employee can perform the essential function of the position with or without reasonable accommodation, the matter shall be considered closed unless the Union submits a written objection within five (5) days (excluding Saturday, Sunday, and legal holidays), and in which event final disposition shall be made by a doctor chosen by mutual agreement of the Company and the Union (and compensated by the employee).

10.4 Any other provision of this Agreement notwithstanding, every employee must maintain a minimum work record, which for the purpose of this article is deemed to be at least one hundred fifty (150) full shifts during the period described in Section 19.2(a), if he was employed on or before the first day of that period. An absence for one hundred twenty (120) consecutive days for any purpose or purposes whatsoever constitutes a failure to satisfy a minimum work record; continuous work on a regular full time basis ends such absence. The Company may make exceptions to the application of this section on a case by case basis.

10.5 Every employee must become and remain possessed of a valid Nevada Motor Vehicle Operators License of the class required by the laws of the state, neither suspended nor revoked nor against which nine (9) or more points have been assessed in any twelve (12) month period. Employees who lose their license or allow their license to expire are subject to disciplinary action under Section 14.3b of this Agreement.

10.6 Every employee must become and remain possessed of a valid Taxicab Driver's permit as now issued by the Taxicab Authority, and as may from time to time be issued, under whatever designation, by such regulatory authorities as may at the time have jurisdiction over such matters, neither suspended nor revoked. Employees who lose their permit or allow their permit to expire are subject to disciplinary action under Section 14.3b of this Agreement.

10.7 (a) At any time the Company may adopt and require any employee to participate in a Drug and Alcohol Screening Program (hereinafter referred to as "The Program"). The Program may require testing for the following reasons: before or at the time of hire, following an accident or injury, random or upon suspicion by a supervisor. The expense of testing before or at the time of hire shall be paid by the employee. The expense of testing at the time of an accident or injury, for random or when requested by a supervisor, shall be paid by the Company. The expense of a retest, requested by the employee to challenge the results of the Company test, shall be paid by the employee.

(b) Every employee must remain medically qualified to operate a commercial motor vehicle. A person who tests positive for the use of controlled substances, except as provided in The Program is medically unqualified to operate a commercial motor vehicle.

ARTICLE XI

LEAVE OF ABSENCE

11.1 After the completion of each full year of employment, each employee shall be entitled to a leave of absence, which may or may not be taken at the same time as vacation leave. Such leave shall be unpaid leave.

11.2 Any leave of absence shall be one unbroken period, and only one such leave may be taken any year.

11.3 Each employee shall be entitled to a leave of absence of a maximum length of thirty five (35) days.

11.4 Leaves of absence are not cumulative.

11.5 Before taking his leave of absence, each employee must obtain the Company's approval of the particular time selected. Approval may not be withheld unreasonably. Where two or more employees desire leaves of absence at the same time, and the Company is unwilling to approve all applications, preference shall be given in order of seniority, except that no employee may exercise his seniority in this manner where the employee who would be denied the leave of absence obtained earlier approval and the beginning of the proposed leave is less than 90 days distant.

11.6 Where one or more employees desire vacation leave at the same time that one or more employees desire leave of absence, and the Company is unwilling to approve all applications, preference shall be given to requests for vacation leave.

11.7 The employment of any employee who, while absent on leave of absence engages in activity which constitutes the sale of his services, shall automatically terminate.

11.8 The employment of any employee who fails to report for work punctually following his leave of absence shall automatically terminate, unless the leave is extended by the Company in writing.

11.9 A leave of absence without pay shall be granted for a death in the driver's immediate family (spouse, child, parent, grandparent, brother or sister). As soon as possible, the driver shall provide suitable proof as to the need for such leave. A driver shall receive up to seven (7) full shift credits for shifts ordinarily worked while absent in accordance with this section for the purposes of Article VII.

11.10 If an employee is called for jury duty, he shall be granted such period of unpaid leave as may be required. This leave shall not be considered a "Leave of Absence". For the purposes of Section 10.4, an employee will be considered to have completed shifts he would ordinarily have worked while absent on jury duty. The employee will provide suitable proof for the length of absence upon request. Pursuant to NRS 6.190 a driver must notify the Personnel Manager no later than three (3) business days prior to the scheduled reporting date. Failure to do so may result in disciplinary action.

ARTICLE XII

MEDICAL LEAVE

12.1 Any employee who requires medical services for which the employee is entitled to benefits as a patient under worker's compensation and/or the current Family Medical Leave Act (FMLA) shall be eligible for a medical leave.

12.2 It is the employee's responsibility to provide the required documentation to substantiate the need for any medical leave to the Vice President Human Resources within the required time. Failure to do so is considered a resignation of employment.

12.3 An employee who fails to return to work immediately following the expiration of FMLA or conclusion of medical leave as determined by the physician's reports shall be considered to have resigned his position with the Company.

ARTICLE XIII

NO STRIKE, NO LOCKOUT

13.1 The Company and the Union agree that the grievance and arbitration procedures set forth in this Agreement shall be the sole and exclusive means of resolving all grievances arising under this Agreement, and further, that administrative and judicial remedies and procedures provided by law shall be the sole and exclusive means of settling all other disputes between the Union and the Employer. Accordingly, neither the Union nor any employee in the bargaining unit covered by this Agreement will instigate, promote, sponsor, engage in or condone any sympathy strike, picketing, slowdown, work stoppage, or any other interruptions of work or interference with the

punishment, in one or more cases may not serve to estop the Company from assessing maximum punishment in other similar cases, nor serve as evidence of discrimination.

14.3 The maximum disciplinary action which may be taken shall be:

(a) for Minor Offenses - a warning for the first offense, five days disciplinary layoff for a second like offense in any six month period, and discharge for a third like offense in any six month period;

(b) for Major Offenses - ten days disciplinary layoff for the first offense, and discharge for a second like offense in any six month period; and

(c) for Intolerable Offenses - discharge for the first offense.

14.4 Minor Offenses are those which individually do not constitute either a Major Offense or an Intolerable Offense.

14.5 Major Offenses are those of a very serious nature, but which do not constitute Intolerable Offenses, and by way of exemplification rather than limitation, include the following:

(a) insubordination;

(b) offensive actions or speech on Company premises or offensive speech on the radio;

(c) careless or reckless action causing damage to Company property;

(d) failure to report for work;

(e) conviction in a court of law for a gross misdemeanor;

(f) offensive actions or speech in a public place, while on duty;

(g) driving in an unsafe manner;

(h) inability to work and/or complete shift due to expiration of Taxicab Driver's Permit as issued by the Taxicab Authority or any such regulatory authority having jurisdiction over such matters;

(i) inability to work and/or complete shift due to expiration of Nevada Motor Vehicle Operator's License of the class required by the laws of the state.

14.6 Intolerable Offenses are those which would be considered such by a prudent man, and by way of exemplification rather than limitation, include the following:

(a) gross insubordination;

(b) gambling while on duty;

(c) dishonesty;

(d) driving in a reckless manner;

(e) driving in an unsafe manner resulting in an accident;

(f) consumption of alcohol or controlled substances while on duty, or within a reasonable time before coming on duty;

(g) fighting while on duty, except in self-defense;

(h) abuse of a customer;

(I) abuse of Company equipment;

(j) disloyalty;

(k) refusal to transport sober and orderly patrons;

(l) failure to report an accident immediately, or any other material deviation from the Company's prescribed accident procedures, including moving a cab from the scene of an accident without Company permission, or at the direction of police, fire department, Taxicab Authority, or hotel security;

(m) failure to report loss of or damage to passengers' possessions, immediately as he becomes aware of such loss or damage;

(n) conviction for a felony;

(o) diverting trade from one business establishment to another;

(p) three (3) like or unlike Major Offenses within any twelve-month period; or

(q) six (6) like or unlike Minor Offenses within any twelve-month period.

14.7 By way of exemplification rather than limitation, gross insubordination is deemed to include:

(a) verbal or physical abuse of a Company official; and/or

(b) action which jeopardizes the Company or its rights, privileges, or goodwill, done deliberately to injure the Company or in reckless disregard of the

possible effect on the Company.

14.8 In addition to other acts which might constitute dishonesty, the following are deemed to be dishonesty:

(a) failure to remit to the Company, immediately following the end of the shift all fares and the trip sheet;

(b) the making of any false or misleading statement on employment application, trip sheet, or accident report, or otherwise giving false information to the Company; and/or

(c) failure, while the taxicab is engaged, to activate the meter properly in every respect.

As used in Section 14.8(a) above, "all fares" excludes any fare which the customer refuses to pay when the driver provides evidence that the police have been notified.

14.9 As used in this article, "while on duty" includes lunch breaks and other breaks.

14.10 Any employee arrested for a felony or any sex-related crime may be suspended by the Company pending disposition of the charges against him. If found innocent by the Court, he shall be reinstated by the Company with no loss of seniority, but shall not be entitled to any wages or benefits for the period of his suspension.

14.11 If a driver fails to report for work or obtain permission to be absent, each day of such failure constitutes a separate offense under Section 14.5(d).

14.12 In the event of the refusal by an employee to sign a written disciplinary notice, only acknowledging delivery of the notice to him, the employee may be denied work until he so signs. Written disciplinary notices shall plainly state that signing of the notice is not an admission of guilt.

ARTICLE XV

GRIEVANCE

15.1 A grievance is defined as a claim or dispute by an employee, or the Union, concerning the interpretation or the application of this Agreement, except those relating to the no strike/no lockout provisions.

15.2 A grievance involving discharge of any employee shall be brought directly to Step 2 and must be filed within five (5) days of discharge.

15.3 A grievance not involving discharge shall be without effect unless filed within ten (10) days from the date the complaining party discovered the facts or should have

discovered the facts giving rise to the grievance.

15.4 All grievances taken beyond Step 1 must be presented in writing. At Step 2, the written grievance may be in memorandum form, to provide a record. For Step 3, the written grievance must state clearly, fully, and unambiguously:

(a) the exact nature of the grievance;

(b) the act or acts complained of and when they occurred;

(c) the identity of the employee or employees who claim to have been aggrieved;

(d) the provisions of this Agreement claimed to have been violated; and

(e) the remedy sought, specific in every detail.

Satisfaction of these specifications shall be judged by the highest standards. The written grievance should be easily understood in every respect, and if the Company does not easily understand the written grievance, it shall request in writing and receive written clarification from the Union. Unless otherwise agreed, grievances not brought within the time and manner prescribed, or processed within the time and manner prescribed, shall be invalid and there shall be no right of appeal by any party involved.

15.5 Step 1. The employee who has a grievance shall discuss it with the appropriate Company representative. If the grievance is not settled at the Step 1 meeting, it may be appealed by the Union in writing to Step 2 within five (5) days of the Step 1 meeting.

15.6 Step 2. The Union representative and the Company representative shall meet within ten (10) days of the written notice demanding the Step 2 procedure, and will discuss the grievance. If the grievance is not disposed of to the satisfaction of the Union at Step 2, the grievance may be appealed to Step 3 by the Union filing a written appeal to the Company within five (5) days after the Step 2 meeting.

15.7 Step 3. Within five (5) days after delivery of the appeal from Step 2, the parties (the Company represented by the Company President or his designee and the Union represented by the Nevada representative or his designee) will meet to attempt to settle the grievance. If the grievance is not disposed of to the satisfaction of the Union, the grievance may be appealed to arbitration by the Union lodging a written appeal with the Company within five (5) days of the Step 3 meeting. If the Union does not appeal the Company's action to arbitration, it will be deemed to have concurred in that action, and this disposition shall be final and binding upon all parties.

15.8 The resolution of a grievance shall not be precedential, nor have retroactive effect in any other case.

15.9 As used in this article, "days" does not include Saturday, Sunday, or legal holidays.

15.10 The parties may, by mutual agreement, waive any time limits provided herein, on a case by case basis.

15.11 The Employer may require employees and employee applicants, as a condition of employment or of continued employment, to execute in partial consideration for his employment or continued employment, an agreement that during his probation period his employment shall be "at will," and that after his probation period he shall be limited for redress of all grievances to the grievance machinery contained herein, and shall not under any circumstance seek any other remedy, including action at law, except for alleged violation of statute law.

ARTICLE XVI

ARBITRATION

16.1 The parties shall endeavor to select an arbitrator by mutual agreement. However, if they are unable, the arbitrator shall be selected in the following manner. The Federal Mediation and Conciliation Service ("F.M.C.S.") shall be called upon to supply a panel of five names. If either party is not satisfied with the panel, a second panel shall be obtained from the F.M.C.S., from which the parties shall make a selection in the manner provided herein. The F.M.C.S. shall be required to include in every list provided only those arbitrators who are members of the National Academy of Arbitrators and whose principal domicile is in Southern California or Nevada. The parties shall strike names in turn until one name remains. Determination of who shall strike the first name shall be by lot. When one remains, this shall be the arbitrator. A letter requesting a panel from the F.M.C.S. shall be mailed within fourteen (14) days of delivery of the demand for arbitration. An arbitrator shall be selected from the panel and the F.M.C.S. advised of the selection within fifteen (15) days of receipt of the list from the F.M.C.S.

16.2 Within ten (10) days after the selection of the arbitrator, the parties shall enter into a submission agreement which shall clearly state the arbitrable issue or issues to be decided. If the parties are unable to agree on a joint statement of the arbitrable issue or issues to be decided by the arbitrator, the submission shall contain the written grievance and the disposition of the same with the notation that the parties could not agree upon a submission agreement.

16.3 The arbitration hearing shall be held with all possible dispatch permitted by the arbitrator's schedule. The arbitrator's decision shall be rendered within ten (10) days of the hearing, or if post-hearing briefs are submitted, within ten (10) days of receipt by the arbitrator of the post-hearing briefs. Said briefs, if called for, shall be delivered to the arbitrator by the parties within fifteen (15) days of the hearing, or within fifteen (15) days of receipt of the hearing transcript, if the hearing is transcribed.

16.4 The arbitrator shall be empowered, except as his powers are limited below, to make a decision in cases of alleged violations of rights expressly accorded by this Agreement. No decision of an arbitrator shall create a basis for retroactive adjustment in any other case. The limitations of the powers of the arbitrator are as follows:

(a) He may hear only one matter.

(b) He shall have no power to arbitrate the terms of any contract or agreement to be entered into upon termination of this Agreement.

(c) He shall have no power to add to, subtract from or modify the express terms or conditions of this Agreement, nor shall he be empowered to base his award upon any alleged practice or oral understanding.

(d) He shall have no power to establish wage scales or change any wage.

(e) He shall have no power to substitute his judgment for that of the Company on any matter with respect to which the Company has retained discretion or is given discretion by this Agreement.

(f) He shall have no power to decide any question which, under this Agreement, is within the right of the Company to decide, and in rendering his decision he shall have due regard for the rights and responsibilities of the Company and shall so construe this Agreement that there will be no interference with the exercise of such rights and responsibilities, except as those rights may be expressly conditioned by this Agreement.

(g) He shall have no power to require the payment of back wages for a period longer than twenty (20) weeks in an amount calculated in the same manner as vacation pay, less any unemployment insurance compensation, and less any employment or other compensation for personal services that the grievant may have received from any source during the period. This is the sole and entire economic remedy he may direct in the case of discharge or disciplinary layoff.

(h) He shall have no power to decide the arbitrability of the issue where either party claims the matter is not subject to the arbitration provisions of this Agreement. In that event, the matter of arbitrability shall first be decided by a court of law of competent jurisdiction.

16.5 The fees and expenses of the arbitrator including stenographic expenses, if any, shall be borne equally by the Company and the Union. All other expenses shall be borne by the party incurring them, and neither party shall be responsible for the expenses of witnesses called by the other.

16.6 The decision of the arbitrator shall be final and binding upon the parties.

16.7 As used in this article, "days" does not include Saturday, Sunday, or legal holidays.

16.8 Notices required to be given in writing shall be deemed delivered when:

(a) hand delivered, if receipted by administrative personnel or officer; or

(b) deposited in the U.S. mail, certified, return receipt requested; or

(c) received at the business office via facsimile during regular business hours.

ARTICLE XVII

EQUIPMENT RESPONSIBILITY

17.1 The Company shall be solely responsible for the mechanical condition of its vehicles, and no driver shall be required to perform any mechanical work on any of the Company's vehicles. No driver shall be required to polish, fuel, or lubricate any vehicle, except that on trips beyond a ten (10) mile radius of the Company Station the driver is responsible for maintaining all fluid levels in the vehicle.

17.2 Each driver shall be responsible for the cleanliness of his taxicab, both exterior and interior, but he is not required to personally wash the exterior.

17.3 The driver shall not be responsible for the repair or changing of any tire within a ten (10) mile radius of the Company garage. If a tire is to be changed, a spare tire and the necessary tools shall be made available to the driver. The driver shall be responsible for the spare tire and tools while in his possession.

17.4 Each driver shall check tires, lights, horn, brakes, seats, seat belts, and medallion, and make an inspection of the interior and exterior of the cab to determine any previous unreported damages or accident evidence to the interior or exterior of the vehicle; any irregularities or inadequacies must be immediately reported to the Company, or the driver shall be deemed responsible. If a vehicle is in unsafe mechanical condition, the employee may not take it into service. If the vehicle becomes unsafe during his shift, the driver must immediately notify the dispatcher and proceed as directed by the driver-supervisor or other management official.

17.5 In the event of any accident to which, in the opinion of the Company, an employee contributed significantly, and in the event of any incident involving damage to Company equipment, including mechanical damage, and including damage to tires, which, in the opinion of the Company, was done deliberately by the employee, or resulted from his negligence or recklessness, the employee shall be liable to the Company for the lesser of:

(a) the sum of the dollar value loss resulting from damage to Company property, and all third party claims; or

(b) an amount equal to the employee's Responsibility Category.

The Responsibility Category shall be:

(i) for each employee who has worked sixty (60) months or longer since being last hired or since having a chargeable accident or incident, whichever occurred last One Hundred and 00/100 Dollars ($100.00)

(ii) for each employee who has worked twenty-four (24) months but less than sixty (60) months since being last hired or since having a chargeable accident or incident, whichever occurred last Five Hundred and 00/100 Dollars ($500.00);

(iii) for each employee who has worked eighteen (18) months but less than twenty four (24) months since being last hired or since having a chargeable accident or incident, whichever occurred last, Seven Hundred Fifty and 00/100 Dollars ($750.00);

(iv) for each employee who has worked twelve (12) months but less than eighteen (18) months since being last hired or since having a chargeable accident or incident, whichever occurred last, One Thousand and 00/100 Dollars ($1,000.00);

(v) for each employee who has worked for the Company less than twelve (12) months since being last hired or since having a chargeable accident or incident, whichever occurred last, One Thousand Two Hundred and 00/100 Dollars ($1,200.00).

17.6 The Company may recover such monies due by deducting from the employee's wages One Hundred and 00/100 Dollars ($100.00) each payday until the full amount is recovered.

17.7 The Company shall be provided with all necessary authorizations for making such payroll deductions, unless the employee elects, in the alternative, to terminate his employment. This section shall not operate so as to deprive the employee of any grievance rights.

17.8 In forming its opinion, the Company may apply at its unlimited discretion, in each accident case any standard in the measurement of significant contribution to the accident, and in each incident case any standard in the determination of deliberateness, negligence or recklessness.

17.9 In the event of a dispute, an employee shall be afforded a reasonable opportunity to have an independent appraisal made, at the Company terminal, of damage to Company property.

17.10 Sections 17.5 through 17.7 shall not be construed as alternatives to disciplinary action by the Company.

17.11 In addition to training as a new hire:

(a) every driver must attend annually, in the month of his anniversary, safe driving instruction of approximately two hours, administered by the Company; and

(b) every driver involved in an accident to which, in the opinion of the Company, he contributed significantly, must attend remedial safe driving instruction administered by the Company, at the next remedial safe driving class following the accident.

Drivers shall be compensated at the minimum wage rate of pay for attending the aforementioned safe driving instruction classes.

Drivers due to attend the annual safety class, whose work week conflicts with that of the class will be provided a permit allowing them to attend class while on duty and park the taxicab at the northern most parking area at 2000 Industrial Road.

ARTICLE XVIII

MISCELLANEOUS

18.1 SEVERABILITY. If a provision of this Agreement is held invalid, by any Court or regulatory authority of competent jurisdiction, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Agreement is held invalid in one or more of its applications, the provision remains in effect in all valid provisions that are severable from the invalid application or applications. The parties shall endeavor to mutually agree upon modifications to this Agreement which might cure the invalidity while maintaining the parties' intent. Any failure by the parties to agree upon any such modifications, shall not invalidate the no strike/no lockout provisions of this Agreement, nor shall the unresolved matter be subject to arbitration on any ground.

18.2 COMPANY RULES. Company rules shall not be in conflict with the express terms of this Agreement. The Union shall be provided with all written Company rules. Failure at any time of the Company to provide this information shall not invalidate the rule in question except in that particular instance where the failure effectively denies a grieving employee of adequate grievance opportunities.

18.3 COMPLIANCE WITH LAW. The parties shall comply with all laws which properly

apply to the employer-employee relationship, including, but not limited to, laws prohibiting discrimination on the basis of race, creed, color, religion, sex, national origin or age. Any alleged violations of such laws, and any dispute over the meaning and interpretation of such laws, shall not be subject to resolution through the Articles XV and XVI of this Agreement, but shall be decided only by a court of law of competent jurisdiction.

18.4 UNIFORMS. If any employee is required to wear a uniform, such uniform shall be furnished by the Company, without cost to the employee. If such uniform requires a special cleaning process and cannot be easily laundered by the employee, it shall be cleaned without cost to the employee. "Uniform" does not include clothing worn in compliance with a Company rule specifying color and general style.

18.5 GENDER. Any reference to gender in this Agreement shall apply equally to both sexes.

18.6 TRANSITION: Rights and benefits which accrued pursuant to Articles:

VI VACATION PAY, VACATION LEAVE,
VII HEALTH & WELFARE,
VIII SENIORITY,
IX PROBATION,
XI LEAVE OF ABSENCE,
XVII EQUIPMENT RESPONSIBILITY, and
XIX ANNUAL BONUS

in the agreement which this Agreement succeeds, shall be deemed to have accrued under this Agreement, except that when the terms of this Agreement conflict with the terms of the succeeded agreement, the terms of this Agreement shall govern.

18.7 INDIVIDUAL CONTRACTS. No employee shall be compelled or allowed to enter into any individual contract or agreement with his employer concerning the conditions of employment contained herein, inconsistent with the terms of this Agreement.

18.8 REFERENCES. When used herein, the term "Section" refers to the material included within the paragraph(s) designated by the Arabic numeral (this "section is Section 18.9). The term "Article" means all of the material designated by the Roman numeral, including all sections bearing an Arabic numeral corresponding to the Roman numeral designation of the Article (this "Section" is in "Article" XVIII). The term "this Agreement" refers to the entire document.

18.9 UNEXCUSED SICK DAYS. Drivers will be permitted four (4) unexcused sick days per calendar year. No more than two (2) consecutive days may be used and unexcused sick days are not available on New Year's Eve, New Year's Day, Independence Day, Thanksgiving Day or Christmas Day.

18.10 LOST AND DAMAGED LUGGAGE. Drivers shall be responsible for costs resulting from loss or damage to luggage, to which, in the opinion of the Company resulted from the drivers carelessness, recklessness or negligence.

18.11 BIRTHDAY: In order for a driver to be eligible for his birthday off it must fall on his regular scheduled workday and he must have been a full time employee for one year and must submit a request in writing thirty (30) days in advance.

XIX

ANNUAL BONUS

19.1 The Company shall pay annually, to qualified employees, a bonus of 3% of qualified wages.

19.2 An employee is qualified if he completed the required number of shifts during the period commencing with the day following the last day for which wages are paid on the last regular payday falling before December 20 in the preceding year, and ending with the last day for which wages are paid on the last regular payday falling before December 20 in the current year and he continues to be a regular full time employee through the ending day of the qualifying period.

19.3 Qualified wages are all gross wages, as defined in Article V (Wages) paid (regardless of when earned) to the employee between January 1 of the current year and the last regular payday in December preceding December 20.

19.4 The bonus shall be paid not later than in the week following the last regular payday in December preceding December 20.

19.5 (a) An employee is qualified if he completed at least one hundred eighty five (185) full shifts and successfully bid a four day workweek during the period described in Section 19.2 and continues to be a regular full time employee through the ending day of that period.

(b) Any other employee is qualified if he completed at least two hundred fifteen (215) full shifts during the period described in Section 19.2 and continues to be a regular full time employee through the ending day of that period.

19.6 An employee taking unpaid leave in accordance with Section 1.11 shall be credited for shifts lost for that reason, to a maximum of ten (10) full shifts during the period described in Section 19.2.

19.7 An employee shall be credited for full shifts earned working for Whittlesea Blue Cab Company during the period described in Section 19.2

ARTICLE XX

SAFETY ACHIEVEMENT AWARD

20.1 After the completion of each full year of employment (measured for each employee from the anniversary date of his employment), each employee who, during the year, did not have an accident, incident, or injury to which, in the opinion of the Company, he contributed significantly, and the costs associated with same did not exceed Two Hundred Fifty 00/100 Dollars ($250.00) shall receive, in recognition of his safety achievement, a cash award. The cash award shall be two percent (2%) of the employee's earnings upon which his vacation pay is based. An employee will receive, upon his fifth and through his ninth year of receiving safety awards two and one half percent (2.5%) of his earnings upon which his vacation pay is based if during his fifth and through his ninth year the employee did not have an accident, incident or injury to which, in the opinion of the Company, he contributed significantly. An employee will receive, upon his tenth and each subsequent year of receiving safety awards three and one half percent (3.5%) of his earnings upon which his vacation pay is based if during his tenth and each subsequent year the employee did not have an accident, incident or injury to which, in the opinion of the Company, he contributed significantly. As used in this section, "incident" has the meaning given in Article XVII.

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ARTICLE XXI

TERMINATION AND MODIFICATION

21.1 This Agreement shall be effective as of October 1, 2013 except as otherwise indicated in Section 18.7, and shall terminate upon completion of shifts commenced prior to midnight on September 30, 2018. Except for wages earned pursuant to Article V, any other provisions of this Agreement notwithstanding, all rights and benefits of every nature whatsoever accruing under this Agreement shall expire with termination of this Agreement, and no employee shall be entitled to such benefits after expiration.

21.2 By mutual agreement, the parties may make additions to or deletions from, modify, or terminate this Agreement at any time.

21.3 Executed this 8 day of October, 2013 at Las Vegas, Nevada.

ITPEU / OPEIU

By: _____
Paul Huertas
OPEIU
International Representative

By: _____
Theatla "Ruthie" Jones
ITPEU Representative

By: _____
Andrew Turonib
Committee Member

By: _____
Mike Jones
Committee Member

By: _____
Richard Gray
Committee Member

HENDERSON TAXI

By: _____
Cheryl D. Knapp
Chief Negotiator
Vice President Human Resources

By: _____
Brent Bell
President

By: _____
JJ Bell
Vice President

By: _____
Jim Lysengen
Operations Manager

EXHIBIT 8

EXHIBIT 8

* * * Communication Result Report (Jul. 30. 2014 10:30AM) * * *

1)
2)

Date/Time: Jul. 30. 2014 10:29AM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
1851	Memory TX	97023844939	P. 1	OK	

Reason for error
E. 1) Hang up or line fail
E. 2) Busy
E. 3) No answer
E. 4) No facsimile connection
E. 5) Exceeded max. E-mail size

Henderson Taxi

1910 Industrial Road • Las Vegas, Nevada 89102
(702) 384-2322
FAX (702) 382-4601

VIA FAX
July 30, 2014

Theatla "Ruthie" Jones
Industrial, Technical & Professional Employees, OPEIU, AFL-CIO
3271 So. Highland Avenue, Suite #716
Las Vegas, NV 89109

Re: Grievance dated and received July 16, 2014

Dear Ms. Jones,

This letter will serve as the Company's written response to the aforementioned grievance.

The Nevada Supreme Court reversed and remanded a prior court order dismissing a complaint in the minimum wage matter heard in the Eighth Judicial District Court, Ronald J. Israel, Judge.

The Supreme Court decision was file stamped July 26, 2014. Upon receipt of this knowledge the Company took the necessary steps to modify its payroll calculation to not apply the tip credit which was permitted prior to this new decision.

Minimum wage calculations not applying the tip credit were in effect July 29, 2014. Consequently this grievance is denied as the company is currently paying its drivers in accordance with the Supreme Court decision.

Sincerely,
HENDERSON TAXI

Cheryl D. Knapp
Vice President Human Resources
General Manager

Henderson Taxi

1910 Industrial Road • Las Vegas, Nevada 89102
(702) 384-2322
FAX (702) 382-4601

VIA FAX
July 30, 2014

Theatla "Ruthie" Jones
Industrial, Technical & Professional Employees, OPEIU, AFL-CIO
3271 So. Highland Avenue, Suite #716
Las Vegas, NV 89109

Re: Grievance dated and received July 16, 2014

Dear Ms. Jones,

This letter will serve as the Company's written response to the aforementioned grievance.

The Nevada Supreme Court reversed and remanded a prior court order dismissing a complaint in the minimum wage matter heard in the Eighth Judicial District Court, Ronald J. Israel, Judge.

The Supreme Court decision was file stamped July 26, 2014. Upon receipt of this knowledge the Company took the necessary steps to modify its payroll calculation to not apply the tip credit which was permitted prior to this new decision.

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Cheryl D. Knapp
Vice President Human Resources
General Manager

EXHIBIT 9

EXHIBIT 9

* * * Communication Result Report (Aug. 21. 2014 12:34PM) * * *

1)
2)

Date/Time: Aug. 21. 2014 12:33PM Sent @ 10:33am

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
1881	Memory TX	97023844939	P. 1	OK	

Reason for error
E. 1) Hang up or line fail
E. 2) Busy
E. 3) No answer
E. 4) No facsimile connection
E. 5) Exceeded max. E-mail size

Henderson Taxi

1910 Industrial Road • Las Vegas, Nevada 89102
(702) 384-2322
FAX (702) 382-4601

August 21, 2014

Theatia "Ruthie" Jones, Representative
ITPEU, OPEIU Local 4873
3271 So. Highland Drive, Suite #716
Las Vegas, NV 89109

Re: Your letter of July 31, 2014

Dear Ms. Jones,

Henderson Taxi acknowledges a question exists as to whether or not the Nevada Supreme Court's decision filed stamped July 26, 2014 applies retroactively.

Regardless, as previously discussed with you, the Company is working on a program which will recalculate minimum wage rates without applying the tip credit on a weekly basis for the two years prior to the decision. The next step is to then apply against those calculations actual earnings (to include commissions, training, vacation, bonus and other forms of earnings) and minimum wage adjustments previously paid for each week. The difference, if any, would be the alleged arrears owed.

I am sure you are aware that a Motion to Reconsider was filed with the Nevada Supreme Court. At this time the Court has requested the opposing party to respond to the Motion. As such, the question as to whether or not the exemptions contained in NRS 608.250 were abolished at the passing of the constitutional amendment has not been answered with finality.

Considering the administrative costs involved in paying drivers these alleged arrears then possibly having to recover the funds through payroll deduction and wage adjustments, I respectfully request the Union hold this matter in abeyance pending the upcoming Nevada Supreme Court's decision.

Sincerely,
HENDERSON TAXI

Cheryl D. Knapp
General Manager

Henderson Taxi

1910 Industrial Road • Las Vegas, Nevada 89102
(702) 384-2322
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August 21, 2014

Theatla "Ruthie" Jones, Representative
ITPEU, OPEIU Local 4873
3271 So. Highland Drive, Suite #716
Las Vegas, NV 89109

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Considering the administrative costs involved in paying drivers these alleged arrears then possibly having to recover the funds through payroll deduction and wage adjustments, I respectfully request the Union hold this matter in abeyance pending the upcoming Nevada Supreme Court's decision.

Sincerely,
HENDERSON TAXI

Cheryl D. Knapp
General Manager

EXHIBIT 10

EXHIBIT 10

Henderson Taxi

1910 Industrial Road • Las Vegas, Nevada 89102
(702) 384-2322
FAX (702) 382-4601

On July 16, 2014, pursuant to Sections V (Wages) and XV (Grievance) of the collective bargaining agreement between the ITPEU/OPEIU Local 487 AFL-CIO and Henderson Taxi, the ITPEU/OPEIU grieved the issue of Henderson Taxi's failure to pay at least the state minimum wage under the amendments to the Nevada Constitution on behalf of the Bargaining Unit. After discussion with the Company, the ITPEU/OPEIU agree that the following actions by Henderson Taxi resolve the grievance pursuant to Section XV of the CBA:

- Henderson Taxi shall pay at least the state minimum wage on a going forward basis, and;
- Henderson Taxi shall compensate all of its current taxi drivers, and make reasonable efforts to compensate all former taxi drivers employed during the prior two year period, the difference between wages paid and the state minimum wage going back two years. Henderson Taxi shall also make reasonable efforts to obtain acknowledgements of the payments to employees and former employees and give them an opportunity to review records if the individual driver questions the amount calculated by Henderson Taxi.

Accordingly, the ITPEU/OPEIU considers this matter formally settled under the collective bargaining agreement between Henderson Taxi and the ITPEU/ OPEIU and state law as implemented through such collective bargaining agreement. Pursuant to Article XV, Section 15.7, this resolution is final and binding on all parties.

ITPEU OPEIU Local 4873
Theatla "Ruthie" Jones

Henderson Taxi
Cheryl D. Knapp

EXHIBIT 11

EXHIBIT 11

ACKNOWLEDGMENT AND AGREEMENT REGARDING MINIMUM WAGE PAYMENT

This Acknowledgment and Agreement regarding minimum wage payment ("Acknowledgement") is being provided and executed by Henderson Taxi ("Company") and I, _____ (referred to hereinafter as "Employee" or "I"), for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged.

1. Payment. Employee hereby acknowledges receipt of [**INSERT AMOUNT**] ($_____), less withholdings, for any underpayment of minimum wage due to Employee.

2. No admission of liability. Neither this Acknowledgment nor the payment provided hereunder shall be construed as an admission by Company of any liability whatsoever, or as an admission by Company of any violation of law, statute, duty, or contract whatsoever against Employee or any person. Company specifically disclaims any liability to Employee.

3. Affirmations. Company and Employee affirm that they have entered into this Acknowledgment knowingly and voluntarily. Further, Employee understands that his/her receipt of the aforementioned Payment is **not** conditioned on the execution of this Acknowledgment. In addition, employee acknowledges his/her understanding that Nevada law generally provides that an employer must pay a minimum wage to employees, which minimum wage changes from time to time as provided by the Nevada Labor Commissioner. For the years 2013-2015, the minimum wage in Nevada has been $7.25 for employees qualifying for certain employer provided health benefits and $8.25 for all other employees. Employee affirms that he/she has had an opportunity to review the accuracy of his/her time and payroll records, and the amount and calculation of the Payment as it relates to these requirements. Based upon the foregoing, and Employee's recollection, Employee concurs with Employer's corrected calculation of his/her wages (including minimum wage). Employee further affirms that he/she reported all hours worked as of the date of this Acknowledgment and, including this payment, has been paid, all compensation, including wages (including minimum wage), overtime, bonuses, commissions, tips, penalties, fines, and/or other benefits and compensation to which Employee may have been entitled. Employee agrees that the Payment, along with any final wages paid to Employee, includes and exceeds all and other compensation due and payable to him/her through his/her employment with Company.

Employee Acknowledgment

I hereby acknowledge that I have read and understand the provisions of this Acknowledgment, that I have been given an opportunity to seek legal counsel before signing this Acknowledgment, and that I have freely and voluntarily agreed to this Acknowledgment, and not as the result of any threat, promise or undue influence made or exercised by Employer or any other party.

_____
Employee Name

_____ _____
Signature Date

EXHIBIT 12

EXHIBIT 12

ACKNOWLEDGMENT REGARDING MINIMUM WAGE PAYMENT

This Acknowledgment regarding minimum wage payment ("Acknowledgement") is being provided by _____ (referred to hereinafter as "Employee" or "I"). Employee hereby acknowledges receipt of $_____, less withholdings. Neither this Acknowledgment nor the payment provided hereunder shall be construed as an admission by Company of any liability whatsoever.

Employee affirms that he/she has been given an opportunity to review the accuracy of his/her time and payroll records, and the amount and calculation of the payment as it relates to Nevada minimum wage. Employee further affirms that he/she was given an opportunity to ensure that he/she reported all hours worked as of the date of this Acknowledgment. Employee declined to review such documents or to provide an alternative amount he/she believes to be due.

_____

Employee Name

_____ _____

Signature Date

Electronically Filed
08/05/2015 07:25:33 PM

CLERK OF THE COURT

RPLY

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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **REPLY TO OPPOSITION TO 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**

Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation, hereby submit this reply to defendant's opposition to plaintiffs' motion to certify this case as a class action and for other relief.

OVERVIEW

The Court may wish to defer ruling on numerous issues raised by defendant <u>until after it certifies the class and grants the relief sought by plaintiff.</u>

Part One, *infra*, addresses defendant's response to the plaintiff's request for relief. About 30% of defendant's opposition concerns issues that need not be decided by the Court at this time (and one issue that cannot be properly decided at this time). Those other issues are addressed in Part Two of plaintiff's argument.

Defendant fails to advise the Court of crucial facts that render its proposed " arbitration preemption" finding impossible as a <u>matter of law and its other arguments are factually and legally erroneous.</u>

Defendant's 64 (!) page opposition is rife with factual misstatements and

omissions, and plainly erroneous assertions of law, as discussed in detail, *infra*:

SUMMARY OF REPLY ON PART ONE ISSUES

- **The Court cannot make the "preemption" finding urged by the defendant.**

While a colorable argument exists that a collective bargaining agreement ("CBA") *may waive* state law rights any such waiver *must be* "clear and unmistakable." Defendant never mentions that the CBA expressly provides that claims arising under "all laws" that "apply to the employer-employee relationship" cannot be resolved by the CBA's grievance procedure "but shall be decided only by a court of law of competent jurisdiction." There was no "clear and unmistakable" waiver of the plaintiffs' minimum wage rights and claims in the CBA and those claims must be resolved by a Court. Defendant ignores this controlling CBA provision and vacuously insists a non-existent (and wholly unwritten) "modification" to the CBA took place that created a waiver and resolution of such rights.

- **No interpretation of the CBA, creating federal preemption, will be required to resolve any part of the plaintiffs' minimum wage claims.** Defendant's claim that the CBA must be interpreted to determine which hourly minimum wage "tier" (the $8.25 "no qualifying health insurance provided" or $7.25 "qualifying health insurance provided") applies to the class members, or their actual hours of work, is untrue. The minimum wage "tier" issue concerns whether the employee had to pay more than 10% of his wages to secure family health insurance coverage. The issue is not what the CBA requires, or its interpretation, but what *wages defendant paid* the employee per month and what *amount defendant required* during that month as an employee insurance premium contribution, and what hours *the class members actually worked*. The insurance contributions actually required are known. In addition, even if such a CBA "interpretation" issue existed, which it does not, the plaintiffs' claims for the "lower tier" ($7.25 an hour) minimum wage have nothing to do with their health insurance, they were irrefutably entitled to that lower tier minimum wage.

- **The existence of common issues, numerosity, superiority of class**

resolution, and the other relevant circumstances for class certification are overwhelmingly established. Defendant reasons that because the over 900 class members could bring individual actions class certification should be denied, meaning class certification should never be granted in any case. That subclasses of the class members may need different or more involved determinations of their health insurance coverage status is irrelevant to the certification issue. Indeed, that argument just presents yet *another* common issue for resolution involving whether the Labor Commissioner regulations defendant relies upon, and would require those more involved determinations, are valid. The record overwhelmingly establishes that conditional class certification, as per NRCP Rule 23(c)(1) is required at this time, with the Court determining later, prior to trial, the exact issues to be determined and subclasses to be used to resolve those issues. Nor is any "fraud" claim made in this case that would bar class certification, the plaintiff's claims are of a strict liability nature that require no proof of intent, misrepresentation or reliance.

- **No decision, from any jurisdiction, supports defendant's claim that it acted properly by soliciting waivers from class members and should not be sanctioned.** Every relevant precedent makes clear that defendant, and their counsel, acted improperly and should be sanctioned for soliciting uninformed and coercive releases from the class members. The authorities cited by defendant, to the extent they are germane, actually *support* that conclusion.

- **Defendant cannot use the class member "acknowledgments" to limit liability in this case to amounts defendant *conceded* it owed the class members.** Even if the class members could unilaterally, without judicial supervision, settle or release their Nevada Constitutional Minimum Wage rights (a highly dubious proposition) they could only do so to resolve a *bona fide* dispute. Defendant *concedes* under its own records and accounting (which it has yet to disclose) the class members *were owed* the amounts it paid. It was improper for defendant to then coerce "Acknowledgments" from the class members that such "conceded by defendant"

amounts that defendant had already acknowledge it had to pay was *all* each class member was owed.

SUMMARY OF REPLY ON PART TWO ISSUES

- **The idea *Yellow Cab* has no bearing on conduct pre-dating its publication on June 24, 2014, or that defendant is "equitably excused" from its liability, is absurd.** Defendant ignores the fundamental nature of precedent under the common law by arguing *Thomas v. Nevada Yellow Cab*, 372 P.3d 518 (Nev. Sup. Ct. 2014) ("*Yellow Cab*") was "prospective only" and recognizes a liability only for conduct taking place after its publication. Such absurd argument was rejected upon remand in *Yellow Cab* by Judge Israel of this Court, by the Nevada Supreme Court in a subsequent case, and by the Ninth Circuit. Defendant's assertion it is entitled to an "equitable excuse" from its liability that pre-dates *Yellow Cab* is equally absurd.

- **The statute of limitations should be treated as four years until the Nevada Supreme Court determines otherwise.** The Nevada Supreme Court will hear argument on October 6, 2015, *en banc*, on a mandamus petition seeking to overturn the "two year" statute of limitations analysis upon which defendant relies. The majority of writ petitions for which answers are directed are resolved by a grant of relief. It would be senseless to adopt a two year statute of limitations when it is probable that the two year period will be rejected by the Supreme Court. The class should be certified for four years (the more probable outcome of the pending mandamus petition) and, if the two year statute of limitations is found, reduced in size. This can also be done with a *single* notice far more efficiently than a "two year" notice and possible later "second" notice being needed for the "four year" class.

- **The Court cannot resolve any statute of limitations toll at this time.** The Nevada Supreme Court has held an evidentiary hearing is required to resolve any claim of a statute of limitations toll. There is no record in this case upon which to hold such a hearing, only the defendant's insistence via declaration that it posted a notice required by the Nevada Labor Commissioner. Nor can that alleged notice, even if it

was posted, resolve the statute of limitations tolling issue.

ARGUMENT

PART ONE

I. NO WAIVER OR RESOLUTION OF THE CLASS CLAIMS FOR MINIMUM WAGES TOOK PLACE OR COULD HAVE TAKEN PLACE THROUGH THE UNION GRIEVANCE PROCESS

A. Unions may waive the state law rights held by employees only by including "clear and unmistakable" language in their CBA waiving those rights.

It can be colorably argued that the individual rights granted by state law to an employee may be entirely waived by a union negotiated collective bargaining agreement, as a matter of federal labor law supremacy ("LMRDA preemption"). *See, Metropolitan Edison Co. v. NLRB,* 460 U.S. 693, 705, fn 11 (1985) ("...the National Labor Relations Act contemplates that individual rights may be waived by the union...."). But the Supreme Court has also suggested the contrary. *See, Allis-Chalmers v. Lueck,* 471 U.S. 202, 212 (1985) (Federal labor law does not allow "...unions and unionized employers the power to exempt themselves from whatever state labor standards they disfavored...") and *Lingle v. Norge,* 486 U.S. 399, 409, fn 9 (1988) ("Whether a union may *waive* its members' individual, nonpre-empted state-law rights, is, likewise, a question distinct from that of whether a claim is pre-empted under § 301, and is another issue we need not resolve today," citing *Metro Edison*).

Article 15, § 16 of the Nevada Constitution states its minimum wage requirements "....may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms." Assuming, *arguendo,* that a union CBA *may* waive Nevada's minimum wage protections, the Supreme Court's decisions are unanimous in holding that any sucn waiver by a union must be "explicitly stated" and "clear[ly] and unmistakab[ly]" set forth in the CBA. *Metro Edison*, 460 U.S. at 708, *Lingle*, 486 U.S. at 409, fn 9 and *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 272 (2009) (Rejecting argument "...that the particular CBA at issue here does not clearly require them [plaintiff individual

employee] to arbitrate their ADEA claim" and enforcing CBA waiver of right to a judicial forum for that claim). Such a waiver will not be inferred "from a general contractual provision." *Metro Edison, Id.* As the Ninth Circuit has observed:

> "The standard for waiving statutory rights, however, is high. Proof of a contractual waiver [by a union] is an affirmative defense and it is the employer's burden to show that the contractual waiver is " 'explicitly stated, clear and unmistakable.' **Equivocal, ambiguous language in a bargaining agreement, without more, is insufficient to demonstrate waiver.** " *Local Joint Executive Board of Las Vegas v. NLRB*, 540 F.3d 1072, 1079 (9th Cir. 2008), citing *Metro Edison* and other cases. (emphasis provided).

B. The union CBA contains no "clear and unmistakable" waiver of state law minimum wage rights and expressly provides that all of the state law rights of its members are outside of its scope.

Article XVII, § 18.3 of the union CBA states:

> COMPLIANCE WITH LAW: The parties shall comply with **all laws which properly apply to the employer-employee relationship, including but not limited to**, laws prohibiting discrimination on the basis of race, creed, color, religion, sex, national origin or age. **Any violation of such laws, and any dispute over the meaning and interpretation of such laws, shall not be subject to resolution through articles XV and XVI of this Agreement, but shall be decided only by a court of law of competent jurisdiction.**

Articles XV and XVI of the CBA provide the grievance and arbitration procedures that the union and employer must use to resolve disputes subject to the CBA. (Ex. "A", relevant CBA excerpts).

There is no language even arguably waiving Nevada's minimum wage rights in the union/employer CBA (Ex. 6 and 7 of opposition), much less language providing for such a waiver "in clear and unambiguous terms." In fact, the exact opposite exists, as the CBA expressly puts beyond its grievance and arbitration procedures claims made under "all laws which properly apply to the employer-employee relationship."

While the union and the defendant could have crafted a CBA term, or a written CBA addendum, that "in clear and unambiguous terms" waived the union members' rights to Nevada's minimum wage, they did not. *See,* Ex. "B," an express CBA waiver, as an addendum to an existing CBA, negotiated by a different taxi driver's union and a different taxi driver employer.

C. Defendant's argument that the union negotiated a grievance resolution "which amended the CBA" and waived its members minimum wage rights is specious.

1. The "grievance" supposedly adjusted by the defendant with the union was *ultra vires* to the CBA

The CBA expressly prohibits the resolution of any disputes over the obligations imposed by law on the employer-employee relationship, including Nevada's minimum wage law, through its grievance and arbitration provisions. Absent an amendment to the CBA "clearly and unambiguously" changing the CBA's language, as in Ex. "B," the union and the employer could not resolve individual employee claims for minimum wages arising under Nevada law.

2. The was no amendment to the CBA effectuating a waiver of the class members' Nevada minimum wage rights, and certainly none "clearly and unambiguously" effectuating such a waiver.

The one page union/employer grievance resolution document that defendant asserts "amended" the CBA and constituted a full "resolution" of all minimum wage claims of the class members, states in its first sentence:

> On July 16, 2014, pursuant to Sections V (Wages) and XV (Grievance} of the collective bargaining agreement between the ITPEU/OPEIU Local 487 AFL-CIO and Henderson Taxi, the ITPEU/OPEIU grieved the issue of Henderson Taxi's failure to pay at least the state minimum wage under the amendments to the Nevada Constitution on behalf of the Bargaining Unit.

This sentence recites that the parties handled a grievance under Section XV of the CBA involving CBA Section V, governing wages, and more specifically "the state minimum wage under the amendments to the Nevada Constitution." Yet this "grievance" could not, under the "clear and unambiguous" language of the CBA, resolve claims for minimum wages by individual Henderson Taxi employees because:

> (1) As discussed, *supra*, the CBA specifically states that all claims arising under law, which includes claims under Nevada's Constitution for minimum wages, cannot be resolved under a Article XV grievance of the CBA;
>
> (2) CBA Section V, governing wages, makes no mention of any obligation to pay minimum wages under Nevada's Constitution or any other wages

required by law. Any grievance involving its terms cannot override the CBA's express exemption from its grievance resolution process of minimum wage claims arising under law.

That the union and the employer engaged in what they characterized as a "grievance" over an issue outside the CBA, and which absent an amendment to the CBA could not resolve such issue, is irrelevant. Defendant, by arguing the "grievance" resolution amended the CBA, concedes that the "grievance" resolution is meaningless unless it also effectuated such an "amendment." But there is no reason to conclude any "amendment" of the CBA was intended or effectuated by the grievance resolution, much less one that in "clear and unambiguous" language waived or resolved all minimum wage claims held by the class members. Indeed, the language in the grievance resolution document relied upon by defendant **makes no mention whatsoever of a CBA modification or amendment:**

> Accordingly, the ITPEU/OPEIU considers this matter formally settled under the collective bargaining agreement between Henderson Taxi and the ITPEU/OPEIU and state law as implemented through such collective bargaining agreement. Pursuant to Article XV, Section 15.7, this resolution is and binding on all parties.

This language refers to the CBA "and state law as implemented through such collective bargaining agreement." Yet as discussed, *supra*, the CBA expressly states that obligations imposed by law are *not* implemented by the CBA and disputes involving the same *cannot* be resolved by Article XV of the CBA. The "binding" resolution the document recites the parties achieved under Article XV, Section 15.7, of the CBA does *not* resolve the legal claims of individual employees, it just forbids the union from asserting the same grievance again.

Defendant argues that the grievance resolution modified the CBA to now require Henderson "to pay at least the state minimum wage on a going forward basis" and make certain back payments of minimum wages as well. Even if the grievance resolution can be considered a CBA "amendment" adding such terms to the CBA (despite its complete omission of any such "amendment" language) **there is nothing in**

the grievance resolution waiving, limiting, or resolving the minimum wage rights of individual employees. The mere "amendment" of the CBA to now include an obligation to pay the minimum wage did not relieve employees of their right to also sue in Court to collect those minimum wages. Indeed, the CBA itself, Ex. "A," expressly guaranteed that right.

Defendant cites *St. Vincent Hospital*, 320 NLRB 42, 44-45 (1995), *Certified Corp. v. Hawaii Teamsters*, 597 F.2d 1269, 1272 (9th Cir. 1979) and *International Union v. ZF Boge Elastmetall*, 649 F.3d 641 (7th Cir. 2011) in support of its claim the CBA was "modified" by the grievance resolution. These decisions **are irrelevant as they were not determined under the very high "clear and unambiguous" waiver standard required in this case.** None discussed establishing waivers of employees' independent legal rights from a CBA modification, much less what is required to "clearly and unambiguously" establish a CBA modification waiving such rights. *St. Vincent* involved a National Labor Relations Board ("NLRB") finding that a contract modification occurred in an NLRB proceedings where proof is only required by a preponderance of the evidence. *See,* 29 U.S.C. § 160(c) and *NLRB v. Transportation Management Corp*, 462 U.S. 393, 401 (1983). Similarly, *Certified Corp* and *International Union* either relied upon NLRB decisions or general contract law principles in finding CBA modifications occurred that had no impact on the independent legal rights of individual employees. Defendant's citation to *Burnside v. Kiewit Pacific*, 491 F.3d 1053, 1060 (9th Cir. 2007) on this point is completely nonsensical, as it only recites the "clear and unmistakable" waiver requirement and did not concern a CBA modification waiving any state law right.

II. THE CLASS MEMBERS HAVE NOT "ELECTED THEIR REMEDIES" AS A RESULT OF THE UNION GRIEVANCE OR PARTICIPATED IN AN "ACCORD AND SATISFACTION"

A. There is no "double recovery" issue as defendant is entitled to a full credit towards its minimum wage liability for the payments it already made to the class members .

Defendant baselessly insists that an "election of remedies" finding, based upon

the union grievance, is needed to prevent the injustice of a "double recovery" of unpaid minimum wages. To the extent the defendant, as a result of the grievance, has made payments towards its minimum wage liabilities, it will receive a 100% credit for those payments. No unjust or improper double recovery will result from this case.

B. The class members have not "elected any remedy" as there has been no waiver of their rights under the Nevada Constitution and Federal Labor Law does not impose any such election of remedies.

As discussed, *supra*, the class members' rights to minimum wages under the Nevada Constitution are not modified, in any fashion (except to the extent their damages may be diminished by defendant's payments) by the grievance resolution. Nor can the CBA grievance resolution process be an "election of remedies" by the class members for claims the CBA expressly *excludes from resolution by that process*!

Federal labor law also forbids any "election of remedies" finding because a CBA grievance concerns the subject matter of an independent state law claim. In *Hawaiian Airlines v. Norris*, 512 U.S. 246, 249 (1994) and *Lingle*, 486 U.S. 401-402 (1988) the plaintiffs *both* grieved their discharge from employment under their union CBA as being without good cause *and* also sought remedies in court under state law for wrongful discharge. The Supreme Court found this was perfectly proper in both cases and no LMRA preemption would be found under such circumstances.

Defendant's citation to the worker's compensation cases of *Arteaga v. Ibarra*, 858 P.2d 387 (Nev. Sup. Ct. 1993) and *Advanced Countertop Design v. Second Judicial Dist. Ct.,* 984 P.2d 756, 758 (Nev. Sup. Ct. 1999) is specious, as statute renders acceptance of worker's compensation benefits an exclusive remedy relieving employers of all common law liabilities. *See,* NRS 617.017 and NRS 616A.020. The Nevada Constitution does not provide a CBA grievance benefits constitutes an exclusive remedy for a Nevada constitutional minimum wage claim.

C. No "accord and satisfaction" has taken place because the union had no authority to resolve the class members' claims through the grievance process.

The class members' Nevada constitutional minimum wage claims could only be

resolved through the CBA grievance procedure by "clear and unambiguous" language in the CBA conferring such authority upon the union. No such authority was ever granted to the union and the CBA expressly *denied* the union any such power. As a result whatever the union secured through the CBA grievance procedure could not act as an "accord and satisfaction" of the class members' claims. The citation relied upon by defendant on this issue, *May v. Anderson*, 119 P.3d 1254, 1259 (Nev. Sup. Ct. 2005), mandates a finding that no accord and satisfaction took place. The accord and satisfaction in *May* rested upon the fact that "Schwartz had authority to negotiate on behalf of the Mays and accepted the offer in writing." *Id.* In this case the union had no such authority and could effectuate no such accord and satisfaction.

III. NO INTERPRETATION OF THE CBA, OR REFERENCE TO THE CBA, IS NEEDED TO RESOLVE THIS CASE

What the CBA *required*, in terms of payment of wages, benefits, or hours of work, is wholly irrelevant to this case. The determination of the minimum wage obligations of the defendant, and the extent of the defendant's violations of those obligations, depends upon whether the defendant paid the class members, for every hour worked, at least the required minimum hourly wage. That determination, in turn, requires the examination of three things, none of which involves the CBA:

(1) What the defendant *actually paid* to the class members:

(2) What hours the class members *actually worked*;

(3) And in respect to whether the "higher" minimum wage rate applies, what insurance premium amounts the *defendant actually required* the class members pay to secure "family coverage" insurance.

While defendant insists that item (3), the amount of insurance premium payments that the class members were required to pay, would require some sort of convoluted interpretation of the CBA, defendant is well aware that is untrue. The defendant published rates to its employees advising them, precisely, of the required insurance premiums. Ex. "C" showing "Henderson Dependent Coverage" premium

contributions were between $215.98 and $414.98 per month. The sheer sophistry of defendant's claim the CBA must be "interpreted" to answer the "required health insurance premium contribution" issue is not only demonstrated by Ex. "C" but by the complete absence of any actual declaration from defendant on that issue.

Even if an interpretation of the CBA was required to address the health insurance premium issue, the class members are entitled to the lower tier minimum wage irrespective of the health insurance issue. The conditional class certification under NRCP Rule 23(c)(1) can later be amended, prior to a merits determination, to limit the class determination to the defendant's "lower tier" compliance, if needed.

Nor will the CBA, as defendant claims, have to be interpreted to determine the plaintiff's "working time." The Court will determine what constitutes "work time" requiring minimum wage compensation based upon the actual facts of what plaintiff did or did not do, as in any other case, not on any interpretation of the CBA.

IV. THE REQUIREMENTS FOR CLASS CERTIFICATION ARE IRREFUTABLY ESTABLISHED

A. Defendant cites no relevant case law in its opposition and furnishes no evidence supporting its assertions that this case requires factual determinations unsuitable for class resolution.

This is, factually, an incredibly simple, strict liability, litigation in the nature of an "audit." What hours did the class members work? Did the compensation they were paid for those hours exceed the minimum hourly wage rate? Were they entitled to the higher or lower tier minimum wage rate? Once those questions are answered the amounts owed, if any, to each class member is found by a simple arithmetical formula, as there are no affirmative defenses, the parties' state of mind, contributory negligence, etc., are irrelevant. While there are a number of unresolved *legal* issues presented by this case, those legal questions will be answered *in an identical fashion for all class members*. In addition, the *facts* to be determined in this case are quite narrow and the same for all class members, which also renders class treatment ideal.

Defendant argues, solely through its counsel, that it is either undesirable or

impractical to determine in this case, on a class basis, the wages paid, hours worked, and applicable minimum wage rate, of the class members. Yet defendant presents no declarations, or any evidence whatsoever, supporting those assertions. To the extent that defendant's counsel pretends to proffer support for those assertions, it does so by citing cases without explaining how they are germane to this case, and often citing them for propositions that are the exact opposite of what such cases hold.

Defendant's citation to *Espenschied v. DirectSat USA, LLC*, 705 F.3d 770, 774, (7th Cir. 2013), well illustrates the irrelevancy and gross inaccuracy of defendant's case citations. *Espenschied* initially *granted* class certification to a class and subclasses of over 2000 employees seeking minimum wages and overtime pay. 705 F.3d at 772. It later decertified the class action and the case was resolved for only three plaintiffs. Id. Such decertification was granted, and upheld on appeal, because it became apparent the claims of 2,341 class members, all seeking damages relief, could not be decided on a class basis as there was no common record upon which to adjudicate those claims:

> And to determine damages would, it turns out, require 2341 separate evidentiary hearings, which might swamp the Western District of Wisconsin with its two district judges. For it's not as if each technician worked from 8 a.m. to 5 p.m. and was forbidden to take a lunch break and so worked a 45–hour week (unless he missed one or more days because of illness or some other reason) but was paid no overtime. Then each technician's damages could be computed effortlessly, mechanically, from the number of days he worked each week and his hourly wage. And when "it appear[s] that the calculation of monetary relief will be mechanical, formulaic, a task not for a trier of fact but for a computer program, so that there is no need for notice ..., the district court can award that relief without terminating the class action and leaving the class members to their own devices." Johnson v. Meriter Health Services Employee Retirement Plan, 702 F.3d 364, 372 (7th Cir.2012). Nothing like that is possible here.

There is no reason to conclude that this case will, as in *Espenschied*, require individual evidentiary hearings for each class member. Just the opposite. Wages paid and hours worked records exist for all class members. The defendant has already performed calculations, based upon those hours worked and wages paid records, and made determinations of what they claim are the proper amount of minimum wages owed, for a two year period, which are set forth in letters to 986 current and former

employees. This case is precisely the sort of case that *Espenschied* recognized *would* be appropriate for class disposition, where relief can be granted "mechanically" and in a "formulaic" fashion, as defendant claims it has already done for a two year period.[1]

B. Defendant's assertions that the particular class certification requirements have not been met are specious.

1. Defendant's "numerosity" objections are specious.

Defendant points to, and distorts, *dicta* in *Shuette v. Beazer Homes*, 124 P.3d 530, 538 (Nev. Sup. Ct. 2005) that joinder of 200 plaintiffs "might" not be impracticable if such persons lived in a geographically compact area. There are over 900 class members in this case and this is not a home construction defect case like *Shuette* where control by the individual plaintiffs over their claims is likely to be important. Defendant also ignores *Shuette's* finding that "...a putative class of forty or more generally will be found 'numerous.' " 124 P.3d at 537.

Defendant incorrectly asserts that *Shuette,* 124 P.3d at 542, held it is proper to deny class certification in cases where individual claims are small and plaintiff attorney fee awards are available. *Shuette* made no such holding and found the superiority of class resolution in construction defect cases under NRS Chapter 40 is often questionable. That was because of such chapter's requirements, coupled with other considerations, one of which was the availability of attorney fee awards to individuals plaintiffs under Chapter 40. It held that the class numerosity examination should consider the factors set forth in plaintiff's moving papers, including "the ability of claimants to institute individual lawsuits," an ability the individual class members in this case lack given their situations. 124 P.3d at 538.

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[1] Class certification must also be granted to test the validity of defendant's calculations. For example, it is unknown if defendant included its required 15 minutes of pre shift "show up" time in its calculations. See, Ex. "D," defendant's instruction to its drivers requiring them to perform such work. There are also subclass claims for what appear to be over 300 former drivers under NRS 608.040 for 30 days wages which defendant has never paid any amounts towards. Ex. "F" ¶ 2.

2. <u>Defendant's "lack of common issues" objections are specious.</u>

(i) Defendant's claim its letters no longer demonstrate common <u>issues because class members have waived claims is specious.</u>

As discussed in plaintiff's moving papers, and *infra* and *supra*, there has been no waiver or accord and satisfaction of any class members' claims. And to the extent that defendant insists there has, that, too, is a *common issue* that should be decided for all class members. Even if the Court were to agree with the defendant's argument on this point, there are **over 300 former employees of defendant who, just like the plaintiff, have *not* executed "Acknowledgments."** Ex. "F", ¶ 2.

(ii) Defendant's claim the "wage tier" issue requires <u>individualized determinations is specious and irrelevant.</u>

As discussed, *infra*, the conditional class certification must be granted under NRCP Rule 23 (c) (1) as even if the "wage tier" issue later proves unsuitable for class resolution the class claims can *still* be adjudicated under the "lower tier" $7.25 minimum hourly wage. The final class certification can be for a merits determination solely on the "lower tier" issue, avoiding entirely the supposedly too individualized "higher tier" wage issue, with the class members free to pursue that issue via individual lawsuits. This issue is irrelevant at this stage of these proceedings.

Defendant's assertions that resolving the "higher tier" wage issue will require individualized determinations is also specious. The insurance premiums required of the class members are set and known in amount. Ex. "B." Whether the 10% of wages calculation includes customer tips received (defendant insists it does and including tips will require a too individualized determination) rests entirely upon a Labor Commissioner regulation. Yet the Labor Commissioner is given no authority in the Nevada Constitution to issue regulations regarding Nevada's constitutional minimum wage and such regulation contradicts the express language of Nevada's Constitution (which specifies the 10% is calculated based upon "gross taxable income from the employer"). The invalidity of that regulation *presents yet another common issue for resolution*. If the "actual family dependents" status of class members is germane that

status is easily determined (and whether the "family coverage" cost standard applies to all workers, even those without families, is *yet another common issue*). There is no reason to conclude the "higher tier" wage issue is unsuitable for class resolution.

3. <u>Defendant's "lack of typicality" objection is specious.</u>

Defendant insists the named plaintiff's claim is no longer typical of most class members' claims because those class members have released their claims. There are no valid releases and this objection is specious. In addition, over 300 former employee class members have *not* executed releases. Ex. "F" ¶ 2.

4. <u>Defendant's "representative inadequacy" objection is specious.</u>

(i) There is no "conflict" between the named plaintiff and the class members executing releases and the named plaintiff <u>does not seek a forfeiture of the settlement amounts paid.</u>

Defendant's assertion the named plaintiff, by prosecuting this case, is placing at risk the settlement amounts defendant paid to the class members executing releases is specious. The defendant admits it owed such sums to those class members, it has no legal basis to recoup those sums and it asserts no basis to recoup them. The defendant is entitled to a set off for those payments and the class members risk, and lose, nothing from having the named plaintiff prosecute the class claims.

Defendant makes an equally absurd claim that the named plaintiff is in "direct contradiction" with the class members by alleging he did not take recorded breaks when the class members executing "Acknowledgments" admit they never "worked through breaks times." The "Acknowledgments" are invalid. More importantly, at this stage it is unknown if the "worked through recorded break time" claims will actually be resolved, on the merits, on a class wide basis. The Court will only be granting conditional NRCP Rule 23(c)(1) certification at this time.

(ii) Defendant has no right to a deposition in advance of class certification to determine if <u>it believes the representative plaintiff is "credible."</u>

Defendant speciously insists it has a right to depose the plaintiff prior to class certification so it can "ascertain whether his testimony is or is not credible," citing *CE*

Design v. King Architectural Metals, Inc., 637 F.3d 721, 728 (7th Cir. 2011) and *Akousugi v. Benihana Nat'l Corp.*, 282 F.R.D. 241, 257 (N.D. Cal. 2013). Actually the opposite is true. As *CE Design* recites the need for a class representative to demonstrate adequate credibility is not "...an invitation to defendants to derail legitimate class actions by conjuring up trivial credibility problems or insubstantial defenses unique to the class representative." 637 F.3d at 729.

The need for a class representative to be free of "credibility problems" is an issue of concern *to the class members* and *not the defendant.* It is the Court, not the defendant, that is charged with protecting the class members' interests in that regard. *See, Eggleston v. Chicago Journeyman Plumbers*, 657 F.2d 890, 895 (7th Cir.1981). (Allowing a defendant, "preferring not to be successfully sued by anyone," to assist a court in determining class representative adequacy "...is a bit like permitting a fox, although with a pious countenance, to take charge of the chicken house.")

Defendant does not, as in *Akousugi*, present any actual evidence that the named plaintiff Sargeant (or any of the three proposed additional/standby class representatives) is inadequate. Conditional class certification should be granted under NRCP Rule 23(c)(1) and if the Court later determines Sargeant is not a suitable class representative it should, as was done in *Adkousugi*, appoint a different class representative. 282 F.R.D. at 257.

C. Defendant's assertions that the "predominance" and "superiority" requirements for class certification have not been met are specious.

This branch of defendant's opposition rehashes all of their prior specious arguments: That class members have released their claims; that the minimum wage "tier determination" issue is too individualized for class treatment; and that a resolution of the "working during recorded break time" claim will require individual determinations. As discussed, *supra,* there is no reason to find that the "wage tier" or "working during recorded break time" claims will require individualized determinations. More importantly, the class certification requested under NRCP Rule

23(c)(1) is conditional and subject to amendment prior to any merits determinations. The Court will review the "wage tier" and "working during recorded break time" issues prior to trial. If it finds, upon a fully developed record, that those issues are unsuitable for class resolution the solution is simple: The class claims will be narrowed and proceed to a merits determination only for the "lower tier" $7.25 an hour rate and will not include any claims for "working during recorded break time."

Defendant's assertion that the "alternative remedy" of having the Nevada Labor Commissioner take action on the class claims is superior is wholly specious and unsupported. The Nevada Constitution grants plaintiff the broadest possible right to relief in *this Court* for all violations of the Nevada constitutional minimum wage. The Court cannot abdicate its duty to provide that relief to an administrative agency.

D. Defendant's assertion "plaintiff's allegations are based in fraud" is untrue and no "fraud" claim bars class certification in this case.

Nowhere does plaintiff allege "fraud" in his complaint, which is defined in Black's Law Dictionary (9th Ed.) as "a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Plaintiff's complaint alleges, in support of its claim for punitive damages, in three places that defendant engaged in "malicious, oppressive and fraudulent conduct", *e.g.,* dishonest acts warranting punitive damages, in the same manner that Black's defines "fraudulent act:" "Conduct involving bad faith, dishonesty, a lack of integrity or moral turpitude. — Also termed *dishonest act; fraudulent or dishonest act.*"

The word "fraud" is not in plaintiff's complaint and no "fraud" involving "reliance" is presented by any claim in this case. It is that necessity of proving reliance in a common law fraud case, an issue requiring an individual determination of the understanding of each putative class member, that barred class certification in *Johnson v. Travelers Ins. Co.*, 515 P.2d 68 (Nev. Sup. Ct. 1973). Neither plaintiffs' claims for unpaid minimum wages, nor their claims for punitive damages (the latter dependent upon proof of defendants' dishonest and bad faith acts), involve any "reliance" by any

class members on defendants' representations. The plaintiff's allegations of "fraudulent acts" by defendant supporting punitive damages is akin to the statutory "fraudulent conveyance" plaintiff who, of course, need not establish common law "fraud" and "reliance" to recover on such a claim. *See, Sportsco Enterprises v. Morris*, 917 P.2d 934, 938 (Nev. Sup. Ct. 1996) (Plaintiff's fraud claim fails, but fraudulent conveyance claims successful).

Plaintiffs make no claims for fraud. The Court's conditional class certification order can also make clear no class claims for fraud are made in this case.

E. Plaintiff has standing to seek equitable relief.

As discussed in plaintiff's moving papers, Nevada has not adopted the federal court, Article III, standing requirements, but broadly confers standing. Defendant, in asserting that the standing holdings of *Hantes v. City of Henderson*, 113 P.3d 848 (Nev. 2005) and *Stockmeier v. Nev. Dept. of Corrections*, 135 P.3d 220 (Nev. 2002) are "unpersuasive," is seeking to have this Court ignore the law. In *Hantes*, the claim for standing was actually far weaker than in this case, as the statute at issue was silent on who could raise zoning challenges. 135 P.3d at 850. The Nevada Constitution expressly grants standing to an "employee" to seek a "remedy" for "violations" of the Nevada constitutional minimum wage, including equitable relief and not just redress for their own individual injury. Indeed, the sort of public policy considerations that guided *Hantes* are even more forcefully present in this case. Imposing a requirement that only current employees have standing to seek equitable relief would completely subvert the broad language of the Nevada Constitution and its public purpose. No current employee is ever likely to seek injunctive relief out of fear of losing their employment, which is precisely why defendant is urging such a standing requirement.

Plaintiff's complaint expressly seeks equitable and injunctive relief (Ex. "E", ¶ 18) and defendant's assertion it does not is specious.

V. THE "ACKNOWLEDGMENTS" ARE VOID IN THIS CASE

Defendant's argument that the "Acknowledgments" should be not be found void

is entirely without substance and is nonsensical. It argues that a "release validity" analysis is irrelevant since the "Acknowledgments" it coerced were not "releases." It insists that because the "acknowledgments were arrived at by agreement between the Union and Henderson Taxi pursuant to the Union/CBA grievance process" plaintiff is requesting the Court "invalidate an agreement between Union and Henderson Taxi," something the Court cannot do. Nothing of the sort is requested of the Court. Whatever significance the union and the defendant attach to the Acknowledgments, for the purpose of their dealings between themselves or the CBA, is of no concern to this case. This Court is within its authority to deem the "Acknowledgments" void *for the purposes of this case.*

VI. DEFENDANT ENGAGED IN MISLEADING AND WRONGFUL COMMUNICATIONS WITH THE CLASS MEMBERS AND APPROPRIATE CORRECTIVE MEASURES ARE NEEDED

A. The issue is misconduct in communication, not communication *per se* with the unrepresented class members.

The issue is not whether there is some absolute ban upon a defendant engaging in pre-class certification communication with putative class members or appropriately and fairly settling claims with those persons. The issue, as explained in plaintiff's moving papers, is the defendant's improper conduct in (1) Making misleading and untrue representations to the class members about this litigation being a vehicle for plaintiff's counsel to "line their own pockets" at the class members' expense and (2) In soliciting knowingly void "Acknowledgments" from the unrepresented and uninformed class members which would lead them to believe they had released all of their legal rights, presumably at a substantially discounted cost to the defendant.

B. Defendant provides no basis to find its conduct was proper or should not be sanctioned.

Defendant, if it had acted properly, would have simply made payments to the class members, either as part of the payroll of its existing employees or by sending checks to former employees, for the minimum wage amounts it acknowledged they were owed. It could have also made a completely proper one sentence statement: "Henderson taxi is

providing this payment to you as it has determined these are unpaid minimum wages you earned, but were not paid, while working at Henderson taxi after June 24, 2012." If it had done so there would be no basis for sanctions. Indeed, this was **precisely what was done in one of the cases defendant insists demonstrates its conduct was not wrongful!** *See, Craft v. North Seattle Community College Foundation,* 2009 Westlaw 424266, p. 2 (M.D. Geo. 2009) ("In its letters to potential class members, AFS did not make any reference to this lawsuit, did not make a lopsided presentation of the facts, did not explain the basis for the refund (or even call the check a "refund"), and did not elicit a release of any claims.") Plaintiff wholeheartedly agrees that if defendant had acted as in *Craft* there would be no basis for a sanctions finding. But it did not so act.

Defendant was not content to do the right thing and pay its conceded, and undisputed, debt to its hard working taxi drivers. It was well aware at the time of the *Yellow Cab* decision it was the only remaining taxi company in Las Vegas that could be, but had not yet, been subject to a minimum wage lawsuit by plaintiff's counsel. Ex. "F, "¶ 3. Anticipating that such a lawsuit was a certainty after *Yellow Cab*, it elected, upon the advice of counsel, to accept the clearly *ultra vires* "grievance" of its union and use that grievance to pro-actively limit, through improper means, its potential liability in that certain to be filed lawsuit. As a condition to making its limited (and quite possibly substantially incomplete) "two year" minimum wage payments, it got the union's acquiescence to its securing of coercive and void "Acknowledgments" from the class members. Defendant was well aware that those "Acknowledgments" although void would be considered releases by the uniformed and unsophisticated class members and would likely deter participation in any future class action minimum wage litigation.

Defendant presents no evidence to rebut the foregoing conclusion of wrongful conduct. There was no need for the "Acknowledgments" it coerced from the class members. Indeed, if it really believed it had achieved a "final, binding and complete" resolution of the class members claims, as it insists to the Court, why did it want those "Acknowledgments"? And why did it need "Acknowledgments" at all, it certainly knew

when its check to a class member was cashed. And why did it have to send class members letters containing falsehoods about the nature of this litigation? Defendant offers no explanation of its conduct. Not a declaration. Nothing at all.

That the union acceded to the defendant's conduct did not justify such conduct. The union's judgment about what course of action it should undertake is irrelevant. It certainly does not provide any legal excuse for defendant's conduct and defendant cites no authority supporting its insistence that it does.

Rather than explain its conduct (which it cannot justify) , or excuse it as being negligent or legally uninformed (which presumably it was not since defendant provides no declaration making those claims), or show any contrition, defendant simply insists it did not engage in "actual misrepresentations and bad conduct." That is untrue and it falsely claims the circumstances of this case are distinguishable from all of the cases dealing with improper "pre-class certification" misconduct by defendants: *Belt v. Emcare, Inc.*, 299 F. Supp. 2d 664 (E.D. Tex. 2003) ; *Hampton Hardware Inc. v. Cotter & Co., Inc.*, 156 F.R.D. 630, 633-34 (1994); and *Keystone Tobacco Co., Inc v. U.S. Tobacco Co.*, 238 F.Supp. 2d 151, 154 (D.D.C. 2002).

Central to the finding of misconduct in *Belt* was a communication by defendant stating that the class members' recovery (in that case for overtime wages) would be reduced by the payment of attorney fees, 299 F.Supp 2d 666-669, even though an additional statutory award of attorney's fees was available. That was the exact sort of class counsel is acting to "line their own pocket" communication made by defendant in this case. *Hampton Hardware* involved the same sort of "this class action case is not in your interest and you should not participate in it" communication that defendant made in this case, such communication being wrongful and future communications were restrained. 156 F.R.D. at 631-32, 635. That no corrective notice was issued in *Hampton Hardware* is understandable as no "Acknowledgements" or settlements were actually sought by such improper communications, as in this case.

Defendant's most outrageous misrepresentation on this point is its discussion of

Keystone Tobacco as not acting to "prohibit settlement discussions between the Defendant and putative class members" and its citation to cases such as *Weight Watchers of Philadelphia v. Weight Watchers Int'l*, 455 F.2d 770, 773 (2nd Cir. 1972) as authorizing defendants to negotiate settlements with the members of uncertified classes. Defendant entirely ignores what was explained in plaintiff's moving papers, which is that *Weight Watchers,* 455 F.2d at 772, and **every other case that has allowed such settlements have made sure they were negotiated with judicial oversight.** Defendant in this case could have, as was done in *Weight Watchers*, come to this Court and sought approval for its course of action and settlement efforts. It intentionally failed to do so because it feared such a fair, and properly supervised judicial process, would impair its efforts to misled the class members and limit its liability by doing so.

In *Keystone Tobacco* the pre-certification settlement letters of defendant were far more "above board" and proper than those of the defendant in this case and were found to contain no inaccurate or misleading statements. 238 F.Supp.2d at 157. The *Keystone Tobacco* settlement letters also expressly advised the putative class members "to consult with their own lawyers before deciding to settle the case or sign releases," *Id.*, something defendant in this case did not do. Nonetheless, and despite the fact the *Keystone Tobacco* class members were independent business owners and presumably far more sophisticated than the class members in this case, the communications were found improper. The improper settlements already garnered were subject, at the class members' option, to being stricken and defendant was required to so advise those class members. 238 F.Supp.2d at 159

Defendant asserts no facts that would justify their conduct or make it proper and asserts no extenuating circumstances that would mitigate the wrongful nature of such conduct. Nor does any decision, of any Court, suggest in any fashion that such conduct may have been proper. Every decision cited by defendant, where pre-certification settlement or other communications by a defendant were found proper, involved circumstances where no wrongful conduct was present. Allowing defendant to escape

meaningful sanctions would serve to reward them for their improper conduct.

PART TWO

VII. DEFENDANT'S CLAIM IT CANNOT BE HELD LIABLE FOR ITS CONDUCT PRIOR TO JUNE 24, 2014 IS SPECIOUS

A. The idea *Yellow Cab* has no application to conduct taking place prior its publication is absurd and has been rejected.

Upon remand in *Yellow Cab* it was argued that the Nevada Supreme Court's *Yellow Cab* Opinion only governed conduct taking place after its publication on June 26, 2014. Judge Israel rejected that argument and declined to stay *Yellow Cab* pending the disposition by the Nevada Supreme Court of the taxi driver minimum wage case of *Gilmore v. Desert Cab*. Ex. "G." The defendants in *Yellow Cab* subsequently filed a petition for a writ of mandamus seeking to overturn that decision. Ex. "H." That petition was denied as moot as a result of the disposition in *Gilmore*. Ex. "I." The Nevada Supreme Court reversed and remanded *Gilmore* based upon the decision in *Yellow Cab* and in doing so declined to embrace the argument raised in the *Gilmore* appeal that *Yellow Cab* had no application to conduct taking place prior to June 26, 2014. Ex. "J", *Gilmore* appeal disposition order, Ex. "K" Respondent's Brief in *Gilmore* appeal, pages 17-27, arguing *Yellow Cab* was not applicable to conduct taking place prior to June 26, 2014.

The Ninth Circuit Court of Appeals has also expressly rejected this argument and found *Yellow Cab* applies to all taxi and limousine drivers employed in Nevada after the Nevada Minimum Wage Amendment's enactment in 2006. *See, Greene v. Executive Coach & Carriage*, 591 Fed Appx. 550 (9th Cir. 2015):

> The district court erred in dismissing Greene's claim under the Nevada Minimum Wage Amendment, embodied in Article 15, § 16 of the Nevada Constitution. *See Thomas v. Nevada Yellow Cab Corp.*, 327 P.3d 518, 522 (Nev. 2014) (holding that the Nevada Minimum Wage Amendment, which contains no taxicab and limousine exception, "supersedes and supplants the taxicab driver exception set out in [Nevada Revised Statutes §] 608.250(2)"). Because the repeal of § 608.250(2) occurred in 2006 when the amendment was ratified, we reject Executive Coach and Carriage's ("Executive") retroactivity argument. Greene does not allege that he is owed wages for hours worked prior to 2006. We therefore reverse the district court's dismissal of the minimum wage claim. Adopting defendants' arguments, and failing to apply *Yellow Cab's* ruling to this

case, would contravene the fundamental principles of our system of justice and close to a millennium of common law. Courts are required to make substantive, and not merely future conduct, rulings about the civil legal rights of the parties. "The general rule that judicial decisions are given retroactive effect is basic in our legal tradition." *See, Newman v. Emerson Radio Corp.,* 48 Cal. 3d 973, 978 (Cal. Sup. Ct. 1989) citing *Linkletter v. Walker*, 381 U.S. 618, 622 (1965) ("At common law there was no authority for the proposition that judicial decisions made law only for the future", citing 1 Blackstone, Commentaries 69 (15th ed. 1809)). *Yellow Cab*, a final decision from the Nevada Supreme Court on an issue of Nevada law, ***is the law*** and is binding upon this Court in respect to all legal claims that have yet to reach final judgment.

Defendant speciously claims that under *Breithaupt v. USAA Prop. & Ca. Ins. Co.*, 867 P.2d 402, 405 (Nev. Sup. Ct. 1994), the Court must determine if defendant can be liable for conduct pre-dating the June 26, 2014 decision in *Yellow Cab*. *Briethaupt* concerned whether an insurer's conduct taking place *prior* to a 1990 amendment to NRS 687B.145(2) was governed by the standards imposed in that 1990 statutory revision. 867 P.2d 403-404. The issue in *Briethaupt* was whether a statute imposes liability or a standard of conduct for events or transactions taking place *prior* to its enactment and effective date. *Briethaupt,* and its outcome, are irrelevant to this case, which only concerns conduct taking place *after* the November 28, 2006 effective date of the Nevada constitutional minimum wage amendment.

Diligent research by plaintiff's counsel has failed to find a reported case from any jurisdiction where a "future conduct only" ruling was issued in respect to conduct taking place *after* the effective date of a newly enacted constitutional provision or statute. Nor do defendants cite any such precedent and the sole Nevada precedent upon which they rely, *Briethaupt,* as discussed, *supra,* also only addresses the issue of "pre-effective date" conduct.

B. This Court does *not* have discretion to engage in some sort of "equitable weighing" of various factors to determine whether it is bound by *Yellow Cab.*

Defendant's assertion that *Passarello v. Grumbine,* 87 A.3d 285, 307 (Pa. 2014), supports its claim that this Court has "discretion" to determine whether *Yellow Cab* should be applied to this case is specious. *Passarello* involved, as in *Linkletter* and similar cases, the overturning of prior *judicially created rules of law and precedents* (in *Passarello* the correct form of civil jury instructions). Nowhere does it opine on how or when to give effect to a rule of law created by the language of a newly enacted statute or constitutional amendment.

C. Defendant's claim it is excused from liability in this case based upon its relationship to a party in a different case is specious

The idea that defendant, because its "management team" was involved in *Lucas v. Bell Trans*, 2009 Westlaw 2424557, was "reasonably entitled" to rely upon the wrongly decided *Lucas* case, and thus escape liability in this case, is absurd. Defendant cites no authority supporting its novel claim that this Court should grant it an excuse from the law, as it applies to this case, as a matter of "equity" based upon its management's experience in *Lucas*. The parties to *Lucas* are bound by the decision in that case, and the law, as it was applied to that case. The parties to this case, who are completely different, must litigate their dispute in this case as the law applies, at this point in time and to this case, under the correct holding of *Yellow Cab* and not the erroneous decision arrived at in *Lucas*.

VIII. THE COURT SHOULD DEFER RULING ON THE STATUTE OF LIMITATIONS ISSUE OR FIND THAT IT IS FOUR YEARS

A. The Court should not rule on the statute of limitations issue and await the Nevada Supreme Court's ruling.

The Court should not expend its resources trying to determine the appropriate statute of limitations. The Nevada Supreme Court has scheduled *en banc* argument on October 6, 2015, on a writ petition in *Williams v. Claim Jumper* seeking to overturn the District Court's finding that the statute of limitations is only two years. It is probable

that the *Williams* decision will be found in error, as the Nevada Supreme Court's website indicates that in 2014 of the petitions that were filed and resolved after an answer was ordered over 62% were granted in full or in part.

The Court should grant the conditional class certification under NRCP Rule 23(c)(1) and specify, at this time, that the class period will be from July 1, 2007 through December 31, 2014. The July 1, 2007 date is the earliest possible date for liability to be imposed if the plaintiff's statute of limitations tolling theory is successful. The class period will be precisely defined later, based upon a resolution of the tolling issue and the result of the *Williams* writ.

B. <u>The proper statute of limitations is four years.</u>

1. Every well reasoned decision has held <u>the statute of limitations is four years.</u>

Judge Williams, in *Diaz v. MDC Restaurants, LLC* (Ex. "17" of opposition), Judge Bell in a detailed decision in *Perera v. Western Cab Co.* (Ex. "18" of opposition) and most recently Judge Israel in *Thomas v. Yellow Cab*, Ex. "F," recognize that NRS 608.260 by its very language is limited to claims brought under NRS 608.250, as discussed *supra*, and found the four year statute of limitations of NRS 11.220 applies to Nevada constitutional minimum wage claims. As Judge Bell states in *Perera*, "Therefore, when a taxicab driver brings a minimum wage claim, the taxicab driver brings that claim under the provisions of the Minimum Wage Amendment, not Chapter 608."

Judge Jones in *Sheffer v. US Airways, Inc.,* 2015 WL 345192 (D. Nev. 2015, 15-CV-204, 6/1/15) also agreed that NRS 608.260 cannot govern the statute of limitations for Nevada constitutional minimum wage claims:

> NRS 608.260 creates a private right of action to enforce the minimum wages administratively set by the Labor Commissioner under NRS 608.250, and the limitations period for such a claim is two years. *See* Nev.Rev.Stat. § 608.260. Plaintiff has brought no claim under NRS 608.250, but under Section 16 [of Nevada's Constitution]. Indeed, Section 16 supersedes NRS 608.250 as to any inconsistency, and the specific minimum wages provided by Section 16 are inconsistent with NRS 608.250's grant of power to the Labor Commissioner to establish the minimum wage. *See, Thomas v. Nev. Yellow Cab Corp.*, 327 P.3d

518, 520–22 (Nev.2014).

Judge Jones, based upon the inapplicability of NRS 608.260 to Nevada constitutional minimum wage claims, found the default three year statute of limitations applied to all claims arising under a statute, NRS 11.190(3)(a), applies to such claims. He does not discuss why the four year NRS 11.220 "catch all" statute of limitations is not applicable to constitutional claims and that point was not raised to him in *Sheffer*.

The view the four year "catch all" statute of limitations should apply to Nevada constitutional claims is supported by Nevada precedent. In *White Pine Lumber Co. v. City of Reno*, 801 P.2d 1370, 1371-72 (Nev. Sup. Ct. 1990), the Court held that, by default, a claim under the Nevada Constitution against a municipality for inverse condemnation would have, absent other considerations, been subject to the four year "catch all" statute of limitations provided for in NRS 11.220. It found other considerations compelled it to apply the 15 year statute of limitations for inverse condemnation, as constitutional claims against governmental actors should not be subject to a statute of limitations shorter than that applicable to private parties (the adverse possession limitations period of NRS 40.090) who commit the same conduct. 801 P.2d at 1371. In the earlier case of *Alper v. Clark County*, 571 P.2d 810, 813 (1977), the Nevada Supreme Court recited, without dispute, the logic of applying the four year NRS 11.220 statute of limitations to claims generally arising under Nevada's Constitution, although it decided *Alper* on other grounds.

Every analogous case that plaintiffs' counsel has located has adopted a jurisdiction's "catch-all" statute of limitations for constitutional claims when the jurisdiction has not otherwise expressly provided a statute of limitations for such claims. *See, Ho v. University of Texas,* 984 S.W.2d 672, 687 (Tex. Court of App. 1998) (Applying Texas "catch all" statute of limitations to claim originating directly from state constitution when no other statute of limitations was expressly applicable); *Linder v. Kindig*, 285 Neb. 386, 393 (Neb. Sup. Ct. 2013) (Applying Nebraska "catch all" statute of limitations); *Pauk v. Board of Trustees of City University of New York*,

1983, 119 Misc.2d 663, affirmed as modified on other grounds 111 A.D.2d 17, affirmed 68 N.Y.2d 702 (N.Y. Ct. Appeals 1986) (Applying New York "catch all" statute of limitations) and *Marshall v. Kleppe*, 637 F.2d 1217, 1223-24 (9th Cir. 1980) (Applying California's four year "catch all" statute of limitations to a constitutional claim and not California's general three year "action pursuant to a statute" statute of limitations period).

2. Defendants' argument that the two year statute of limitations of NRS 608.260 applies to the plaintiff's claims ignores the language of NRS 608.260 and is illogical.

In *Yellow Cab*, 327 P.3d at 522, the Nevada Supreme Court, in rejecting claims that taxi cab drivers were exempt from Nevada's constitutionally proscribed minimum wage by virtue of NRS 608.250(2)(e), held that:

> In this case, the principle of constitutional supremacy prevents the Nevada Legislature from creating exceptions to the rights and privileges protected by Nevada's Constitution.

Yellow Cab makes clear that whatever exception was created by Nevada's Legislature in NRS 608.250 to Nevada's statutorily imposed minimum wage could not limit the "rights and privileges protected by Nevada's Constitution." Accordingly, the statute of limitations applicable to the plaintiffs' claims is not determined by undertaking defendants' convoluted examination of whether there has been an "implicit repeal" of NRS 608.250 and 608.260. The rights asserted by the plaintiffs in this case do not arise under statute or from the "repeal" (implicit or otherwise) of any statute. They are constitutional and that affords them at least the four year statute of limitations provided by NRS 11.220. *See, White Pine Lumber Co.* 801 P.2d at 1371-72.

Defendant's assertion that *White Pine Lumber* held that NRS 11.220 does not apply to claims brought directly under Nevada's Constitution is untrue. It did *not* direct that the statute of limitations "applicable to a similar statutory claim" be applied to constitutional claims instead of NRS 11.220. Rather it held that the City of Reno, a government actor taking real property wrongfully through inverse condemnation, should not benefit from a shorter statute of limitations, which would have been NRS

11.220, than a private party committing the same conduct, as "...the identity of the party doing the 'taking' should not change this analysis [of the applicable statute of limitations]." 801 P.2d at 1371.

Defendant's argument on this point is also grossly illogical, as NRS 608.260, by its express language, only applies to claims arising under NRS 608.250 and no other claims, much less to claims arising under Nevada's Constitution. The relevant language from NRS 608.260 states it is applicable only:

> If any employer pays any employee a lesser amount than the minimum wage prescribed by regulation of the Labor Commissioner **pursuant to the provisions of NRS 608.250**...,(emphasis added).

The two year statute of limitations period of NRS 608.260 applies to claims that an employee has been paid (1) Less than the amount of "minimum wage prescribed by regulation of the Labor Commissioner" and (2) which amount has been so prescribed in a regulation issued by them "pursuant to the provisions of NRS 608.250." Plaintiffs' claims are not pursuant to any "regulation" of the Labor Commissioner and have nothing to do with NRS 608.250. The plaintiff has no claim under NRS 608.250 and asserts no such claim. Accordingly, NRS 608.260 is irrelevant to this case.

While defendant is correct, in that certain trial court judges have ignored the foregoing, and found NRS 608.260 governs claims for minimum wages under Nevada's constitution despite the express limiting language of NRS 608.260, such decisions are wrong. The Court should not make such a wrong decision in this case.

IX. THE COURT CANNOT RULE ON THE STATUTE OF LIMITATIONS TOLLING ISSUE AT THIS TIME

Defendant insists the statute of limitations toll issue must be resolved in its favor, at this time, because it provides a sworn declaration from its manager that at all relevant times the Nevada Labor Commissioner's notice was posted in its workplace. This is akin to dismissing a strict product liability lawsuit against a defendant on the basis of nothing more than a sworn declaration the defendant did not handle or sell the defective product, without any discovery or factual record.

The Court must hold an evidentiary hearing on the plaintiff's claim of a statute of limitations toll, it cannot summarily dispose of that claim in the fashion demanded by defendant. *See*, *Copeland v. Desert Inn Hotel*, 637 P.2d 490, 493 (Nev. Sup. Ct. 1983). There is no record in this case upon which to hold such an evidentiary hearing. The Court cannot simply accept defendant's assertion the indicated poster was always present in the workplace. Nor is that posting sufficient, as a matter of law, to comply with the Nevada Constitution's requirement that a written notice of the minimum wage adjustment first occurring on July 1, 2007 be given to "*each* employee." The mere posting of a general notice is not the giving of a written notice to "each employee." Defendant's assertion such an "in hand" notice requirement to "each employee" would be unduly burdensome is specious, it could easily enclose such notices with its normal paycheck distributions (and it certainly had no problem mailing out over 900 of its coercive settlement letters).

CONCLUSION

Wherefore, plaintiff's motion should be granted in all respects.

Dated this 5th day of August, 2015.

Leon Greenberg Professional Corporation

By: /s/ *Leon Greenberg*
LEON GREENBERG, Esq.
Nevada Bar No.: 8094
2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
Tel (702) 383-6085
Fax (702) 385-1827
Attorney for Plaintiff

EXHIBIT "B"

MEMORANDUM OF AGREEMENT

This Memorandum Of Agreement is made and entered into by and between **ABC Union Cab Company, Inc., Ace Cab, Inc., Vegas-Western Cab, Inc. A-N.L.V. Cab Company** and Virgin Valley Cab Company, hereinafter collectively referred to as the Employers, and the **United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial And Service Workers International Union (USW) AFL-CIO, CLC**, hereinafter referred to as the Union.

WHEREAS, the Employers and the Union are parties to and bound by a collective bargaining agreement for the period September 11, 2006 to September 11, 2009 covering all taxicab drivers of the Employers who are represented by the Union; and

WHEREAS, during the course of the 2006 negotiations which resulted in the collective bargaining agreement referenced above, , the Employers and the Union engaged in good faith bargaining regarding, in addition to other articles, Article 34 – Compensation For Services and Article 30 – Health and Welfare, which negotiations resulted in an increase in wages and benefits for the taxicab drivers employed by the Employers; and

WHEREAS, at the time of the referenced negotiations, all taxicab drivers of the Employers were specifically exempt from the minimum wage laws of the State of Nevada, pursuant to the provisions of Nevada Revised Statutes (N.R.S.) 608.250(2)(e); and

WHEREAS, the Employers and the Union, in negotiating the 2006 provisions of Article 34 – Compensation For Services and Article 30 – Health and Welfare and other relevant provisions of their collective bargaining agreement, contemplated and intended that any Nevada minimum wage law would not be applicable to the taxicab drivers covered by the collective bargaining agreement;

NOW, THEREFORE, the Employers and the Union hereby agree

1. That, pursuant to the terms of their current collective bargaining agreement covering the period September 11, 2006 to September 11, 2009, all taxicab drivers of the Employers covered by that Agreement are to be compensated for all hours of work performed in accordance with the provisions of Article 34 – Compensation For Services, Article 31 – Annual Bonus, Article 17 – Vacations, and Article 30 – Health

and Welfare and any other relevant specific provisions of their collective bargaining agreement and the level of compensation is not to be affected or modified in any way by any law of the State of Nevada establishing a minimum wage.

2. In accordance with the terms of the 2006-2009 collective bargaining agreement, the Employers and the Union agree to and do explicitly waive all of the provisions of Section 16 of Article 15 of the Nevada Constitution, pursuant to and in accordance with the provisions of Section 16(B) of Article 15 of the Nevada Constitution.

3. The provisions of this Memorandum Of Agreement are part of and hereby incorporated into the collective bargaining agreement between the Employers and the Union as though they were set forth therein.

DATED: April 23, 2008

AGREED:

ABC UNION CAB COMPANY, INC., ACE CAB, INC., VEGAS-WESTERN CAB, INC., A-N.L.V. CAB COMPANY

By: _____

Its: _____

Date: _____

AGREED:

UNITED STEEL, PAPER AND FORESTRY, RUBBER MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION AFL-CIO, CLC,

By: _____

Its: Int. Staff Rep.

Date: 4/23/08

EXHIBIT "C"

NEW RATES EFFECTIVE OCTOBER 1, 2013

EMPLOYER PAID:
HPN: $329.84 MUST ADD $5.85 FOR (Life Insurance)=$335.69
SHL: $370.46 MUST ADD $5.85 FOR (Life Insurance)=$376.31

HPN: EMP + 1 $726.67
HPN: EMP + FAM $872.82
SHL: EMP + 1 $812.98
SHL: EMP + FAM $966.29

BELL TRANS DEPENDENT COVERAGE

HPN: EMP + 1 $390.98
SHL: EMP + 1 $436.67
HPN: EMP + FAM $537.13
SHL: EMP + FAM $589.98

BLUE CAB DEPENDENT COVERAGE
(Rate is less $150.00)

HPN: EMP + 1 $240.98
SHL: EMP + 1 $286.67
HPN: EMP + FAM $387.13
SHL: EMP + FAM $439.98

HENDERSON DEPENDENT COVERAGE
(Rate is Less $175.00)

HPN: EMP + 1 $215.98
SHL: EMP + 1 $261.67
HPN: EMP + FAM $362.13
SHL: EMP + FAM $414.98

EXHIBIT "D"

HENDERSON TAXI
SHIFT DATA SHEET
EFFECTIVE 07/08/12

DRIVERS MUST REPORT "MORE THAN" 15 MINUTES

"BEFORE" START OF THE SHIFT!

	DAY SHIFTS	SHIFT NUMBER	START TIMES	FINISH TIMES
	42 CABS	105	4:00 AM	3:30 PM
	17 CABS Su,M,Fri,Sat	110	3:00 AM	1:00 PM
	5 Geo+2W/C+1 SOS	115	4:00 AM	3:30 PM
	43 CABS	125	5:00 AM	4:30 PM
	7 Geo+2W/C+2 SOS	127	5:00 AM	4:30 PM
	SWING SHIFT	SHIFT NUMBER	START TIMES	FINISH TIMES
	17 cabs	205	1:00PM	1:00AM
	17 cabs Su,Th,Fri,Sat	210	1:30PM	1:30 AM
	17 cabs	215	2:00 PM	2:00 AM
	NIGHT SHIFTS	SHIFT NUMBER	START TIMES	FINISH TIMES
	42 CABS	305	4:00 PM	3:30 AM
	5 Geo+2W/C+1 SOS	315	4:00 PM	3:30AM
	43 CABS	325	5:00 PM	4:30 AM
	7 Geo+2W/C+2 SOS	327	5:00 PM	4:30 AM

THE ELAPSED TIME YOU ARE IN SERVICE, INDICATED BY YOUR TIME STAMP, MAY NOT EXCEED TWELVE (12) HOURS

EXHIBIT "F"

DECL
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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **DECLARATION OF LEON GREENBERG, ESQ.**

Leon Greenberg, an attorney duly licensed to practice law in the State of Nevada, hereby affirms, under the penalty of perjury, that:

1. I am one of the attorneys representing the plaintiffs in this matter.

2. My office has received certain discovery from the defendant in this case, including copies of executed "Acknowledgements" from class members and copies of all letters sent by the defendant to class members soliciting those "Acknowledgments." A diligent analysis by my office of those materials has determined the following:

(A) Defendant has sent letters to 487 former taxi driver employees stating it had determined they were owed a specific amount of unpaid minimum wages for a two year period preceding June of 2014 and requesting they

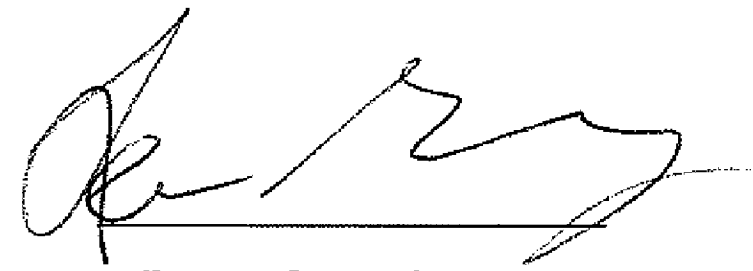
execute "Acknowledgments."

(B) Defendant has actually received signed "Acknowledgments" from 144 of those 487 former employees from whom it requested the same.

Based upon the foregoing, there are 343 persons who are former taxi driver employees of defendant and to whom defendant sent the foregoing letters but from whom the defendant has not received signed "Acknowledgments."

3. I am representing plaintiffs in eight different class action lawsuits seeking minimum wages from Las Vegas, Nevada, taxi companies. In June of 2014 the only one of those eight taxi companies I had not yet filed such a lawsuit against was Henderson Taxi and this lawsuit was not filed until 2015. The only other Nevada taxi companies I have not instituted such lawsuits against are parties to union negotiated collective bargaining agreements that waive Nevada's constitutional minimum wage protections.

Affirmed this 5th day of August, 2015



Leon Greenberg

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CLERK OF THE COURT

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

Attorneys for Defendant Henderson Taxi

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

HENDERSON TAXI,

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

This matter came before the Court for hearing on August 12, 2015 on Plaintiff Michael Sargeant'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* (the "Motion"). Leon Greenberg and Dana Sniegocki of Leon Greenberg Professional Corporation appeared on behalf of Plaintiff. Anthony L. Hall and R. 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:

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

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

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

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

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

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

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

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

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

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

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

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.
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

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

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MRCN

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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **MOTION FOR PARTIAL RECONSIDERATION OR ALTERNATIVELY FOR ENTRY OF FINAL JUDGMENT**

Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation, hereby move this Court for an Order:

(1) Granting partial reconsideration of this Court's Order entered on October 8, 2015 (Ex. "A") but only to the extent of certifying this case as a partial class action pursuant to NRCP Rule 23(b)(3) and/or NRCP 23(b)(2) for:

> A portion of defendants' former taxi drivers that the Court's Order of October 8, 2015 found had their claims for unpaid minimum wages under Article 15, Section 16, of the Nevada Constitution completely resolved through the settlement agreement for the Grievance (the "Grievance")

between defendant Henderson Taxi and the ITPEU/OPEIU Local 4873, AFL-CIO (the "Union"). Such class would be limited to such persons who have not actually received the payment they are entitled to receive pursuant to such Grievance and have not executed the Acknowledgment form provided for by that Grievance. Such class is to be so certified to have such unpaid funds placed under the jurisdiction of the Court for the purpose of having appropriate efforts made to have those funds actually paid to such class members or a suitable *cy pres* beneficiary.

(2) In the alternative, in the event that the Court holds that the foregoing requested partial class certification should not be granted because the Court's Order of October 8, 2015 does not prohibit the proposed class members specified in (1) from collecting unpaid minimum wages under Article 15, Section 16, of the Nevada Constitution in a lawsuit against defendant in an amount greater than that provided to them under Grievance, *i.e.,* that the Grievance does not fully settle such persons' claims for unpaid minimum wages owed to them by the defendant prior to July 15, 2014:

> Granting leave to have the Court rehear, with full briefing, on another date, the branch of its October 8, 2015 Order finding that class certification would not be proper for such proposed class members because "individual analysis" would be necessary "to determine which minimum wage tier applied to each driver through an analysis of his income (including potentially unreported tips under NAC 608.102-608.104) and the cost of insuring his or her dependents, including an analysis of the number of dependents each driver actually had."

(3) In the alternative, if the Court declines to grant rehearing as requested in (1) or (2), entering a final judgment in this case for plaintiff Michael Sargeant for

$107.23, the amount it is asserted by counsel for Henderson Taxi that he is entitled to pursuant to the settlement agreement for the Grievance and/or for such other relief the Court deems he should be awarded and/or entering an appropriate Order specifying whatever other and different relief he remains entitled to seek in this case pursuant to the Court's Order entered on October 8, 2015.

PURPOSE OF THIS MOTION

THIS MOTION SEEKS RELIEF CONSISTENT WITH WHATEVER ISSUES THE COURT DEEMS REMAIN PENDING IN LIGHT OF ITS ORDER OF OCTOBER 8, 2015

Rehearing is not sought on the October 8, 2015 Order's denial to the plaintiff of relief in the form plaintiff previously requested.

Plaintiffs' motion that resulted in the Court's October 8, 2015 Order sought broad relief, including, among other things, class certification of a class consisting of *all* of defendant's taxi drivers for unpaid minimum wages owed under Article 15, Section 16, of the Nevada Constitution. It also sought a determination that the "Acknowledgments" that defendant had gathered from a large number of those taxi drivers were void. The Court denied those two items of relief to plaintiff and all other relief requested by plaintiff at that time. Plaintiff does *not* seek rehearing on the Courts' denial of the relief plaintiff previously requested, as the Court has clearly decided not to grant such relief.

Rehearing is sought to effectuate the October 8, 2015 Order's apparent finding, as best understood by plaintiff's counsel, that the only relief the alleged class members are entitled to is a payment specified in the Grievance resolution.

As discussed, *infra*, plaintiff's counsel understands the Court's Order as holding that *all claims* for all minimum wages under Article 15, Section 16, of the Nevada Constitution owed to *all members* of the alleged class (defendants' taxi drivers) have been fully settled by the Grievance through an "accord and satisfaction." This would include such persons who have *not* signed Acknowledgments as provided for under the Grievance. Yet, as discussed, *infra*, it can colorably be argued that the "non-Acknowledgment" signers under the Order's language retain a legal right to prosecute

claims for something *besides* the payment provided for under the Grievance resolution. Plaintiff's counsel advocates for no specific interpretation of the Court's Order on this point, seeking only clarification.

In the event there is nothing for the "non-Acknowledgment" signers to litigate, and all they are entitled to is the amount provided to them by the Grievance resolution, plaintiff seeks to have such amounts paid. Partial class certification is sought *just* for those "non-Acknowledgment" signers, *only* for the amounts they are owed under the Grievance resolution but never paid, and *only* for the purpose of locating and paying such persons such monies or directing them to a suitable *cy pres* beneficiary. Such funds should not be retained by the defendant.

Rehearing is sought in the event the October 8, 2015 Order did *not* fully resolve the minimum wage rights of the "non-Acknowledgment" signers, with further briefing, on the portion of the Order finding class certification would be improper because of issues requiring individual analysis.

In the event that plaintiffs' counsel's understanding of the Court's Order is in error, and the "non-Acknowledgment" signers do retain a legal right to litigate minimum wage claims for something *besides* what is provided for them under the Grievance, rehearing with further briefing is sought. Such rehearing would be limited solely to the Order's findings, discussed *infra*, that the prosecution of such "non-Acknowledgment" signers claims "would require individual analysis not proper for class certification."

The Court is also asked to enter final judgment or direct the pursuit of whatever relief remains available to the plaintiff if it denies all requested rehearing relief.

In the event that the Court both denies the requested partial class action certification and all requested rehearing relief plaintiff's counsel is unsure what further relief remains to be secured to the plaintiff and the putative class by this litigation. If the Court holds that the named plaintiff's claim has been fully resolved by the Grievance, that he possesses no rights to sue for any other relief as alleged in the complaint, and has made a final ruling that no class certification of any form is

warranted, it would appear that the plaintiff is only entitled to a judgment of $107.23. That is the amount asserted by counsel for Henderson Taxi that he is entitled to pursuant to the Grievance resolution. If such is the case plaintiff requests entry of a suitable final judgment in such amount along with an award (if the Court will grant it) of attorney's fees, interest and costs. Or, alternatively, direction from the Court as to what other relief remains to be sought in this case and/or such other final judgment that the Court deems appropriate.

ARGUMENT

I. A GROUP OF UNPAID "NON-ACKNOWLEDGMENT" SIGNERS EXIST WHO SHOULD BE GRANTED CLASS WIDE RELIEF UNDER THE COURT'S OCTOBER 8, 2015 ORDER

The understanding that plaintiffs' counsel has garnered from the Court's October 8, 2015 Order, which was drafted by defendant's counsel, is that:

(A) The claims at issue in this case have been fully resolved by the company/union grievance referenced in the Order. Such Order recites: "This settlement agreement for the Grievance acted as a complete accord and satisfaction of the grievance and any claims to minimum wage Henderson Taxi's cab drivers may have had."

(B) To the extent any "live" legal dispute exists between the named plaintiff and the putative class alleged in this Complaint on the one hand, and the defendant on the other hand, it is limited to the enforcement of the "settlement agreement for the Grievance" referred to in the Order.

In congruence with the foregoing understanding, plaintiff's counsel asks that the Court enforce the remaining legal rights existing under the "settlement agreement for the Grievance." This would be limited to certifying a class of *just* those Henderson Taxi Cab drivers who are entitled to settlement amounts pursuant to that "settlement

agreement" but have not yet received those amounts. The named plaintiff Michael Sargeant is one such person. Ex. "B." Information produced by the defendants indicates there are approximately 336 other such persons, "non-Acknowledgment" signers, all of whom are former taxi drivers who have not received the settlement payment they are entitled to under the settlement agreement. Ex. "C," ¶ 2. It appears 100% of defendants' current taxi driver employees have signed Acknowledgment forms expressly agreeing that they have received all of the unpaid minimum wages they are owed by defendants. *Id.*, ¶ 3.

Assuming, *arguendo*, that plaintiffs' counsel's understanding of the Court's Order is correct, the partial class certification of the "Non-Acknowledgment" signers should be granted under NRCP Rule 23(b)(2) and/or 23(b)(3). Such class certification would be for the purposes of effectuating the findings of the Court's Order and the settlement agreement it has recognized. Defendant concedes that these over 300 persons are owed money pursuant to such settlement agreement. Defendant, having secured an "accord and satisfaction" (the term repeatedly used in the Court's Order that they drafted) of the dispute giving rise to this litigation, should have to fulfill the "satisfaction" (payment obligation) of that "accord" (settlement agreement) they secured. It would be unjust and inappropriate to allow the defendant to retain any portion of the funds, the "satisfaction," it is obligated to pay under such "accord" it having received, through this Court's Order, the benefit of such "accord."

Accordingly, it is requested that the funds promised by the defendant under the settlement agreement, but not paid, be deposited with the Court. The Court should then direct a suitable process (perhaps through the appointment of a Special Master) whereby appropriate efforts will be made to locate the persons owed such funds and pay them such funds. After some passage of time the Court may also, in the interests of justice, direct that unclaimed and unpaid funds be paid over to a suitable *cy pres* beneficiary.

Such proposed class certification is appropriate and just because, again,

defendant should not be allowed to retain any portion of the funds it promised to pay, the "satisfaction" it gave for the "accord" it received. In addition, while defendant may not be refusing to actually pay such funds to such persons, it has no incentive to locate such persons and pay them those monies if it is allowed to otherwise retain such funds. Nor can defendant pay those funds to such persons who cannot be located or who may no longer be reachable.

In respect to the prerequisites for class certification under NRCP Rule (b)(2) and/or Rule (b)(3) it is readily apparent that they are satisfied. While the purpose of the class certification would be to collect and pay over money damages to the proposed class of approximately 336 "Non-Acknowledgment" signers, such certification is not a true "damages" class under NRCP Rule 23(b)(3). That is because, as plaintiff's counsel understands the Court's Order, there remains no "damages" to determine or award. There is only a settlement agreement specifying "satisfaction" amounts to *enforce*, rendering class certification more appropriate in this case per NRCP Rule (b)(2) for equitable relief.

Numerosity is satisfied, as there are over 300 class members. Commonality, indeed a complete identity, of issues exists, since the class is certified solely to enforce the settlement agreement recognized by the Court's Order. Plaintiff Sargeant's claim is typical, as he has not signed an Acknowledgment form and not received any settlement payment under such settlement. *See,* Ex. "B." He is an adequate representative and will represent the class appropriately. *Id.* Class counsel is experienced and adequate. *See*, Ex. "C." Superiority of class resolution is apparent as what is sought is equitable relief equally applicable to all of the class members.

Class certification under NRCP Rule 23(b)(2) does not require notice to the class, but if the Court believes certification under NRCP Rule 23(b)(3) is more appropriate it can direct such certification and notice to the class.

II. IN THE EVENT THE UNPAID "NON-ACKNOWLEDGMENT" SIGNERS CAN PURSUE MINIMUM WAGE AWARDS BEYOND THOSE PROVIDED BY THE GRIEVANCE SETTLEMENT LEAVE SHOULD BE GRANTED TO REHEAR WHETHER CLASS CERTIFICATION IS POTENTIALLY PROPER

The partial class action certification requested in Part I is based upon the understanding that the non-Acknowledgment signers cannot litigate minimum wage claims against the defendant that predate July 14, 2014, the date of the Grievance settlement. Plaintiff's counsel is concerned whether that understanding is correct.

The Court's Order (Ex. "A") finds that the defendant and its union's Grievance resolution "acted as a complete accord and satisfaction of the grievance and any claims to minimum wages Henderson Taxi' cab drivers may have had." It also goes on to find that "the settlement of the Grievance resolved a bona fide dispute regarding wages and did not necessarily act as a waiver of minimum wage rights." The conclusion of plaintiffs' counsel is that the Order finds that there are no disputed issues remaining to be litigated in this case with only enforcement of the Grievance resolution (settlement) remaining at issue. But the foregoing language, reciting that "the settlement of the Grievance" has not "necessarily" acted "as a waiver of minimum wage rights," makes plaintiffs' counsel concerned about the accuracy of their foregoing conclusion.

In the event the 336 "non-Acknowledgment" signers retain rights to pursue claims in this Court for minimum wages predating the July 14, 2014 Grievance resolution, in amounts greater than provided for by that Grievance resolution, class certification of such claims should be considered by the Court. No request is made that the Court grant such class certification at this time. All that is sought under such circumstance is an opportunity, upon full briefing, to have the Court rehear that portion of its Order stating the following:

> Further, the determination of the minimum wage issue, had it not already been resolved, would require individual analysis not proper for a class action. For example, the Court would need to determine which minimum wage tier applied to each driver through an analysis of his income (including potentially unreported tips under NAC 608.102-608.104) and the cost of insuring his or her dependents, including an analysis of the number of dependents each driver actually had during different time

> frames because the cost of insurance changes based on the number of dependents a driver has. Ex. "A" page 4.

This finding is in error, as the foregoing individual analysis of income and dependent status and insurance cost would be irrelevant to a partial class certification of a class of "non-Acknowledgment" signing former employees under only the lower, $7.25, "health insurance provided" minimum wage. In addition, the regulations referred to in the Order have, in relevant part, been ruled invalid. *See*, Ex. "D." Nor has any factual record been developed supporting these conclusions.

Plaintiff does not burden the Court with further arguments as to why the Court should strike these findings from its Order since plaintiff's counsel understands the Order's as rendering such findings moot and irrelevant. Such mootness arises from the Order's holding a complete settlement of the class claims has occurred through the union Grievance resolution. If there are no contested claims to litigate in this case (only claims for enforcement of the Grievance settlement) then the Court should not consider this issue. But otherwise, it should grant plaintiff an opportunity have these findings reviewed at rehearing, with full briefing, at a date specified by the Court.

III. IN THE EVENT THE OTHER RELIEF REQUESTED IS DENIED THE COURT SHOULD ADVISE PLAINTIFF WHAT RELIEF IS STILL AVAILABLE IN THIS CASE AND, IF APPROPRIATE, ENTER A FINAL JUDGMENT

It is plaintiffs' counsel's understanding that the Court has held the only rights still possessed by the plaintiff, and over which he brought this lawsuit, are confined to whatever relief ("satisfaction") he is entitled to from the Grievance resolution. Based upon that understanding, plaintiff's counsel has requested the partial class certification relief specified in Part I. Alternatively, plaintiff's counsel has requested the relief specified in Part II if that understanding is incorrect.

In the event that the Court declines to grant plaintiff the relief specified in either Part I or Part II, plaintiff requests that the Court clarify what relief the plaintiff can still pursue in this litigation. If the Court believes the only such available relief is an award of the $107.23 that defendant's counsel has represented the plaintiff is owed in unpaid

minimum wages pursuant to the Grievance settlement, a request is made for entry of a final judgment, along with an award of attorney's fees, interest and costs (or a determination that the plaintiff is not entitled to such things), in such an amount. If the Court believes some other form or item of relief remains available to plaintiff in this litigation, plaintiff requests an Order so specifying the same along with an opportunity to pursue an award of such relief.

CONCLUSION

Wherefore, the motion should be granted.

Dated this 30th day of October, 2015.

Leon Greenberg Professional Corporation

By: /s/ *Leon Greenberg*
LEON GREENBERG, Esq.
Nevada Bar No.: 8094
2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
Tel (702) 383-6085
Fax (702) 385-1827
Attorney for Plaintiff

EXHIBIT “B”

DECL
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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **DECLARATION OF MICHAEL SARGEANT**

Michael Sargeant hereby affirms and declares under penalty of perjury the following:

1. I am a former taxi driver employee of Henderson Taxi, the defendant in this case. I was employed by Henderson Taxi as a cab driver from 2003 until July of 2013. I understand that this lawsuit is seeking unpaid minimum wages from the defendant that are owed to its current and former taxi driver employees. I offer this declaration in support of my attorney's request to have this court certify this case as a partial class action.

2. It has been explained to me that the Court entered an Order on October 8, 2015 finding that the claims I have attempted to make in this case were resolved by a Grievance between the union representing the Henderson Taxi drivers and Henderson Taxi. I understand that pursuant to such Order I may have no right to have the Court in this case grant me a judgment against Henderson Taxi for an amount of money greater than what it agreed, as part of the settlement of that Grievance, to pay me.

3. I have never received the amount of money Henderson Taxi agreed it should pay me as part of its settlement of the Grievance with the Henderson Taxi drivers' union. I have also not signed any "Acknowledgment" form that Henderson Taxi requested or required its taxi drivers sign to receive the payments it agreed to make as part of its settlement of the Grievance with the Henderson Taxi drivers' union.

4. I understand that my attorneys are requesting the Court partially certify this case as a class action, in the event its Order of October 8, 2015 means the other Henderson Taxi drivers and I have no right to have the Court grant us a judgment against Henderson Taxi for any amount of money greater than what it agreed, as part of the settlement of the Grievance with the union, to pay us. While I would disagree with the Court's ruling we have no right to collect any larger amounts of money from Henderson Taxi, I do believe the Court should at least order Henderson Taxi to pay us the amount of money it has found we are owed and have not yet been paid.

5. I understand that if my attorney's request to have this case partially certified as a class action is granted I would serve as a class representative in this case. My attorney has explained to me that by serving as a class representative I will be pursuing this case not just for myself but on behalf of all of the defendant's taxicab drivers who are members of that class. I understand that if this case is certified as a class action I will have a responsibility to represent those other Henderson Taxi taxicab drivers and act in their interests and not just my own personal interest. I understand that if this case is certified as a class action I will not be able to settle my claim against the defendant without approval from the Court. I am comfortable with

serving as a class representative and support the partial class action certification of this case.

6. I am over 21 years of age and I make this statement, which I have read and declare to be true, of my own free will. I have not received any compensation or any promise of any compensation for making this statement.

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

Michael C. Sargeant

Michael Sargeant

10-22-2015

Date

EXHIBIT "C"

DECL
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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **DECLARATION OF LEON GREENBERG, ESQ.**

Leon Greenberg, an attorney duly licensed to practice law in the State of Nevada, hereby affirms, under the penalty of perjury, that:

1. I am one of the attorneys representing the plaintiffs in this matter.

2. My office has received certain discovery from the defendant in this case, including copies of executed "Acknowledgments" from class members and copies of all letters sent by the defendant to class members soliciting those "Acknowledgments." A diligent analysis by my office of those materials has determined the following:

(A) Defendant has sent letters to 487 former taxi driver employees stating it had determined they were owed a specific amount of unpaid minimum

wages for a two year period preceding June of 2014 and requesting they execute "Acknowledgments" that they are receiving such "settlement payments."

(B) Defendant has actually received signed "Acknowledgments" from 151 of those 487 former employees from whom it requested the same. This would mean there are 336 persons who are former taxi driver employees of defendant and to whom defendant sent the foregoing letters but from whom the defendant has not received signed "Acknowledgments."

3. My office's review of the foregoing signed "Acknowledgment" forms also indicates, as best as can be determined:

(A) That every one (100%) of the defendants' current taxi driver employees signed Acknowledgment forms specifying they were agreeing the settlement payment they had received (discussed above) was for the full amount of their unpaid minimum wages; and

(B) Defendants have not produced in discovery any signed Acknowledgment form, for any current or former taxi driver, in the form they annexed as Exhibit '12' to their filing of July 15, 2015, opposing plaintiff's prior motion seeking class certification and other relief. That form of Acknowledgment (a copy is annexed to this declaration) contained no language whereby the signing taxi driver agreed they had received a payment for the full amount of their unpaid minimum wages. Allegedly all current and former taxi drivers receiving a settlement payment from defendant were eligible to receive that payment without signing *any* Acknowledgment, or only the attached form of Acknowledgment containing no statement they had received full payment of their unpaid minimum wages. Yet, again, the discovery produced by defendants in this case indicates that every single current or former taxi

driver of defendant receiving one of the afore discussed "minimum wage settlement payments" signed an Acknowledgment averring that such payment was for the full amount of any unpaid minimum wages that they were owed by the defendant.

4. I have extensive experience in class actions and wage and hour litigation and am qualified to be appointed class counsel in this case. I am a magna cum laude graduate of New York Law School and graduated in 1992. I was first admitted to practice law in 1993. I am a member of the Bars of the States of New York, New Jersey, Nevada, California and Pennsylvania. I have substantial experience in litigating class actions, in particular wage and hour class action claims, and have been appointed class counsel in a significant number of litigations in various jurisdictions. These cases include *Flores v. Vassallo*, Docket 01 Civ. 9225 (JSM), United States District Court, Southern District of New York; *Menjivar v. Sharin West et al.*, Index # 101424/96, Supreme Court of the State of New York, County of New York; *Rivera v. Kedmi*, Index # 14172/99, Supreme Court of the State of New York, County of Kings; *Burke v. Chiusano*, Docket 01 Civ. 3509 (KW), United States District Court, Southern District of New York; *Kalvin v. Santorelli*, Docket 01 Civ. 5356 (VM), United States District Court, Southern District of New York. In all of the foregoing matters I was appointed sole counsel for the respective plaintiff classes. All of these litigations involved unpaid wage claims. I was also appointed class counsel in *Maraffa v. NCS Inc.*, Eighth Judicial District Court, State of Nevada, Case No. A504053 (2005), Dept. III. I was appointed sole plaintiffs' class counsel in that case for a class of plaintiffs seeking damages for improper wage garnishments. I was also appointed class co-counsel in the following cases: *Klemme v. Shaw,* Docket CV-S-05-1263 (PMP-LRL), United States District Court, District of Nevada, in that case representing a class of persons making claims for unpaid health fund benefits under ERISA; *Williams v. Trendwest,* Docket CV-S-05-0605 (RCJ/LRL); *Westerfield v. Fairfield Resorts,*

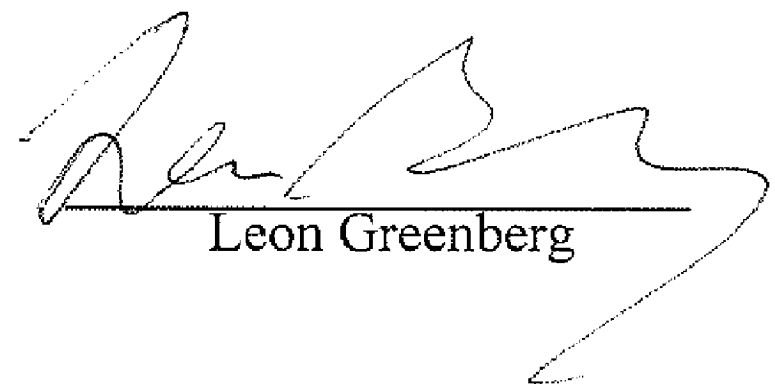
Docket CV-S-05-1264 (JCM/PAL); *Leber v. Starpoint*, Docket CV-S-09-01101 (RLH/PAL); and *Brunton v. Berkeley Group,* Docket CV-S-08-1752 (PMP/PAL), United States District Court, District of Nevada, on behalf of classes of salespersons denied overtime wages, minimum wages, and commissions; *Allerton v. Sprint Nextel*, Docket CV-S-09-1325 (RLH/GWF), United States District Court, District of Nevada, on behalf of classes of telephone call center workers denied overtime wages and other wages; *Jankowski v. Castle Construction*, Docket CV-01-164, United States District Court, Eastern District of New York, on behalf of a class of construction workers denied overtime wages; *Levinson v. Primedia*, Docket 02 Civ. 2222 (DAB), United States District Court, Southern District of New York, on behalf of a class of Internet website guides for unpaid commissions due under contract; *Hallissey v. America Online,* Docket 99-CV-03785 (KTD), United States District Court, Southern District of New York, on behalf of a class of Internet "volunteers" for unpaid minimum wages; and *Elliott v. Leatherstocking Corporation*, 3:10-cv-00934-MAD-DEP, Northern District of New York, on behalf of a class of hospitality and banquet workers for improperly withheld "service charges" and unpaid overtime wages; *Phelps v. MC Communications, Inc.*, Eighth Judicial District Court, A-11-634965-C and *Kiser v. Pride Communications, Inc.*, United States District Court, District of Nevada, 2:11-CV-00165 on behalf of two separate classes of cable, phone, and internet installation technicians for unpaid overtime wages; *Socarras v. Tormar Cleaning Services Nevada, Inc.*, Eighth Judicial District Court, A-13-675189 on behalf of a class of janitorial workers for unpaid overtime wages; *Girgis v. Wolfgang Puck Catering and Events LLC*, Eighth Judicial District Court, A-13-674853 on behalf of a group of restaurant servers for unpaid minimum wages and overtime wages; and most recently in *Gemma v. Boyd Gaming Corporation*, Eighth Judicial District Court, A-14-703790-C on behalf of a class of casino workers for unpaid minimum wages under the Nevada Constitution.

5. I am also requesting that my co-counsel, Dana Sniegocki, be appointed

with me as co-class counsel. Dana Sniegocki is a *cum laude* graduate of Thomas Jefferson Law School and has been licensed to practice law for over six years, is admitted to the State Bars of Nevada and California, has been an associate attorney at my office for more than five years, and has experience in litigating class action cases, specifically wage and hour class action litigations. To date, Dana Sniegocki has been appointed co-class counsel in the following cases: *Phelps v. MC Communications, Inc.*, Eighth Judicial District Court, A-11-634965-C and *Kiser v. Pride Communications, Inc.*, United States District Court, District of Nevada, 2:11-CV-00165 on behalf of two separate classes of cable, phone, and internet installation technicians for unpaid overtime wages; *Socarras v. Tormar Cleaning Services Nevada, Inc.*, Eighth Judicial District Court, A-13-675189 on behalf of a class of janitorial workers for unpaid overtime wages; *Girgis v. Wolfgang Puck Catering and Events LLC*, Eighth Judicial District Court, A-13-674853 on behalf of a group of restaurant servers for unpaid minimum wages and overtime wages; and most recently in *Gemma v. Boyd Gaming Corporation*, Eighth Judicial District Court, A-14-703790-C on behalf of a class of casino workers for unpaid minimum wages under the Nevada Constitution.

6. I am aware of my duty as counsel to adequately represent the interests of the class members in this case. I believe that my co-counsel, Dana Sniegocki, and I, are competent to do so.

Affirmed this 30th day of October, 2015



Leon Greenberg

ACKNOWLEDGMENT REGARDING MINIMUM WAGE PAYMENT

This Acknowledgment regarding minimum wage payment ("Acknowledgement") is being provided by _____ (referred to hereinafter as "Employee" or "I"). Employee hereby acknowledges receipt of $_____, less withholdings. Neither this Acknowledgment nor the payment provided hereunder shall be construed as an admission by Company of any liability whatsoever.

Employee affirms that he/she has been given an opportunity to review the accuracy of his/her time and payroll records, and the amount and calculation of the payment as it relates to Nevada minimum wage. Employee further affirms that he/she was given an opportunity to ensure that he/she reported all hours worked as of the date of this Acknowledgment. Employee declined to review such documents or to provide an alternative amount he/she believes to be due.

_____

Employee Name

_____ _____

Signature Date

EXHIBIT “D”

THE FIRST JUDICIAL DISTRICT COURT

IN AND FOR CARSON CITY, NEVADA

CODY C. HANCOCK, an individual and resident of Nevada,

Plaintiff,

vs.

THE STATE OF NEVADA ex rel. THE OFFICE OF THE NEVADA LABOR COMMISSIONER; THE OFFICE OF THE NEVADA LABOR COMMISSIONER; and SHANNON CHAMBERS, Nevada Labor Commissioner, in her official capacity,

Defendants.

CASE NO.: 14 OC 00080 1B
DEPT. NO.: II

DECISION AND ORDER, COMPRISING FINDINGS OF FACT AND CONCLUSIONS OF LAW[1]

On April 30, 2015, Plaintiff Cody C. Hancock ("Plaintiff"), pursuant to N.R.S. 233B.110, filed a complaint for declaratory relief against Defendants the State of Nevada *ex rel.* Office of the Nevada Labor Commissioner, the Office Of The Nevada Labor Commissioner, and Shannon Chambers, in her official capacity as the Nevada Labor Commissioner (collectively, "Defendants"), seeking to invalidate two administrative regulations—N.A.C. 608.100(1) and N.A.C. 608.104(2)—purporting to implement article XV, section 16 of the Nevada Constitution (the

[1] If any finding herein is in truth a conclusion of law, or if any conclusion stated is in truth a finding of fact, it shall be deemed so.

seeking to invalidate two administrative regulations—N.A.C. 608.100(1) and N.A.C. 608.104(2)—purporting to implement article XV, section 16 of the Nevada Constitution (the "Minimum Wage Amendment" or the "Amendment"). Plaintiff also sought to enjoin the Defendants from enforcing the challenged regulations.

On or about June 25, 2014, Defendants filed a motion to dismiss. After a brief stay of proceedings for the parties to consider resolution through a renewed rulemaking process, Defendants' motion to dismiss was withdrawn by stipulation of the parties, entered March 30, 2015, in which the parties also agreed to permit Plaintiff to amend the complaint, and to seek to resolve this action by respective motions for summary judgment. The parties agreed that no discovery was necessary in this case, and that the determinative issues were matters of law.

On or about June 11, 2015, Defendants filed their Motion for Summary Judgment on Plaintiff's claims for declaratory relief. On or about June 12, 2015, Plaintiff filed his Motion for Summary Judgment on Plaintiff's claims for declaratory relief. Subsequently, each party responded in opposition to the other parties' motion, and replied in support of their own. Plaintiff had previously asked the Nevada Labor Commissioner to pass upon the validity of the challenged regulations, and the Court finds that all prerequisites under N.R.S. 233B.110 have been satisfied sufficient for the Court to enter orders resolving this matter.

The Court, having considered the pleadings and being fully advised, now finds and orders as follows:

As an initial matter, summary judgment under N.R.C.P. 56(a) is "appropriate and shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law." *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (internal quotations omitted). Further, in deciding a challenge to administrative regulations pursuant to N.R.S. 233B.110, "[t]he court shall declare the [challenged] regulation invalid if it finds that it violates constitutional or statutory provisions or exceeds the statutory authority of the agency." N.R.S. 223B.110. The burden is upon Plaintiff to demonstrate that the challenged regulations violate the Minimum Wage Amendment.

The Minimum Wage Amendment was enacted by a vote of the people by ballot initiative at the 2006 General Election, and became effective on November 28, 2006. It is a remedial act, and will be liberally construed to ensure the intended benefit for the intended beneficiaries. *See, e.g., Washoe Med. Ctr., Inc. v. Reliance Ins. Co.*, 112 Nev. 494, 496, 915 P.2d 288, 289 (1996); *see also Terry v. Sapphire Gentlemen's Club*, __ Nev. __, 336 P.2d 951, 954 (2014).

Here, in order to determine whether the challenged regulations conflict with or violate the Minimum Wage Amendment, the Court will first determine the meaning of the pertinent textual portions of the Amendment. Courts review an administrative agency's interpretation of a statute of constitutional provision *de novo*, and may do so with no deference to the agency's interpretations. *United States v. State Engineer*, 117 Nev. 585, 589, 27 P.3d 51, 53 (2001) ("An administrative agency's interpretation of a regulation or statute does not control if an alternate reading is compelled by the plain language of the provision."); *Bacher v. State Engineer*, 122 Nev. 1110, 1118, 146 P.3d 793, 798 (2006) ("The district court may decide purely legal questions without deference to an agency's determination.").

The Minimum Wage Amendment raised the minimum hourly wage in Nevada, but also established a two-tier wage system by which an employer may pay employees, currently, $8.25 per hour, or pay down to $7.25 per hour if the employer provides qualifying health insurance benefits, to the employee and all of his or her dependents, at a certain capped premium cost to employee.

Section A of the Minimum Wage Amendment provides:

> A. Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents ($5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents ($6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. These rates of wages shall be adjusted by the amount of increases in the federal minimum wage over $5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the

following July 1. Such bulletin will be made available to all employers and to any other person who has filed with the Governor or the designated agency a request to receive such notice but lack of notice shall not excuse noncompliance with this section. An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin. Tips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section.

Nev. Const. art. XV, § 16(A).

N.A.C. 608.104(2) states, in pertinent part:

2. As used in this section, "gross taxable income of the employee attributable to the employer" means the amount specified on the Form W-2 issued by the employer to the employee and includes, without limitation, tips, bonuses or other compensation as required for purposes of federal individual income tax.

N.A.C. 608.100(1) states, in pertinent part:

1. Except as otherwise provided in subsections 2 and 3, the minimum wage for an employee in the State of Nevada is the same whether the employee is a full-time, permanent, part-time, probationary or temporary employee, and:

(a) If an employee is offered qualified health insurance, is $5.15 per hour; or

(b) If an employee is not offered qualified health insurance, is $6.15 per hour.

N.A.C. 608.104(2) Is Invalid

Plaintiff contends that N.A.C. 608.104(2) unlawfully permits employers to figure in tips and gratuities furnished by customers and the general public when establishing the maximum allowable premium cost to the employee of qualifying health insurance. He argues that "10% of the employee's gross taxable income from the employer" can only mean compensation and wages paid by the employer to the employee, and excludes tips earned by the employee.

Defendants argue that the term "gross taxable income" directed the Labor Commissioner to interpret the entire provision as meaning all income derived from working for the employer, whether as direct wages or as tips and gratuities, because Nevada has no state income tax and state law contains no definition of "gross taxable income." Therefore, the State argues, resort to federal tax law is appropriate, and because tips and gratuities earned by the employee constitute, for him or her, gross taxable income upon which federal taxes must be paid. In that regard, Defendants contend that N.A.C. 608.104(2)'s definition of "income attributable to the employer" best

implements the language of the Amendment.

The Court finds the text of the Minimum Wage Amendment which N.A.C. 608.104(2) purports to implement—"10% of the employee's gross taxable income from the employer"—to be unambiguous. As the Court reads the plain language of the constitutional provision, it indicates that the term "10% of the employee's gross taxable income" is limited to such income that comes "from the employer," as opposed to gross taxable income that emanates from any other source, including from tips and gratuities provided by an employer's customers. "[T]he language of a statute should be given its plain meaning unless doing so violates the spirit of the act … [thus] when a statute is clear on its face, a court may not go beyond the language of the statute in determining the legislature's intent." *University and Community College System of Nevada v. Nevadans for Sound Government,* 120 Nev. 712, 731, 100 P.3d 179, 193 (2004).

There are no particular difficulties in determining an employee's gross taxable income that comes *from the employer*, as this figure must be reported to the United States Internal Revenue Service as part of the employee's tax information, including on his or her annual W-2 form, along with the employee's income from tips and gratuities. The Court further presumes that employers are aware of, or can easily compute, how much they pay out of their business revenue to each employee, this being a major portion of the business's expenses for which records are surely maintained by the employer.

The Court does note that N.A.C. 608.104(2)'s inclusion of "bonuses or other compensation" presents no constitutional problem under the Amendment, as long as the income in question comes "from the employer."

The Court understands Defendants' interpretation of this portion of the Amendment, and in support of the administrative regulation purporting to implement and enforce it, to emphasize the phrase "gross taxable income" in isolation, at the expense of a full reading giving meaning to the qualifying term "from the employer." As Defendants note in their briefing, "[i]n expounding a constitutional provision, such constructions should be employed as will prevent any clause, sentence or word from being superfluous, void or insignificant." *Youngs v. Hall,* 9 Nev. 212 (1874). To arrive at Defendants' preferred interpretation of the Amendment, however, the Court

would have to first find the provision ambiguous, and then engage in an act of interpretation in order to agree that the phrase "gross taxable income" modifies the term "from the employer," rather than the other way around. In that formulation, "gross taxable income from the employer" is rendered as "gross taxable income earned but for employment by the employer," or, "gross taxable income earned as a result of having worked for the employer," and "from the employer" is rendered more or less insignificant to the provision. This is, indeed, what N.A.C. 608.104(2) attempts to indicate when it designates "gross taxable income attributable to the employer" as the measure of the Amendment's ten-percent employee premium cost cap calculation. The Court disagrees, and instead finds the constitutional language plain on its face.

But even if the Court were to find the pertinent portion of the Amendment to be ambiguous, its context, reason, and public policy would still support the conclusion that tips and gratuities should not be included in the calculation of allowable employee premium costs when an employer seeks to qualify to pay below the upper-tier minimum hourly wage. The drafters of the Amendment expressly excluded tips and gratuities from the calculation of the minimum hourly wage ("Tips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section."), and gave no other indication that tips and gratuities should be allowed as a form of credit against the cost of the health insurance benefits the Minimum Wage Amendment was designed to encourage employers to provide employees in exchange for the privilege of paying a lower hourly wage rate. Further, as Plaintiff points out, the effect of permitting inclusion of tips and gratuities is to increase, in some cases precipitously, the cost of health insurance benefits to employees, a result that is not supported by the policy and function of the Amendment generally.

Defendants argue that permitting tips and gratuities in the premium calculations for tipped employees eliminates an advantage for those employees that non-tipped employees do not enjoy. It is not strictly within the province of the Nevada Labor Commissioner, however, to make such policy choices in place of the Legislature, or the people acting in their legislative capacity. Her charge is to enforce and implement the labor laws of this State as written. N.R.S. 607.160(1). In any event, and apart from the Amendment's express treatment of the issue, Nevada has prohibited

administrative regulation. *See* N.R.S. 608.160.

The Court finds that N.A.C. 608.104(2), insofar as it permits employers to include tips and gratuities furnished by the customers of the employer in the calculation of income against which in measured the Minimum Wage Amendment's ten percent income cap on allowable health insurance premium costs, violates the Nevada Constitution and therefore exceeds the Nevada Labor Commissioner's authority to promulgate administrative regulations. The Court determines the regulation in question to be invalid, and will further enjoin Defendants from enforcing N.A.C. 608.104(2) for the reasons stated herein.

N.A.C. 608.100(1) Is Invalid

Plaintiff argues that, in order to qualify for the privilege of paying less than the upper-tier hourly minimum wage, an employer must actually provide qualifying health insurance, rather than merely offer it. He contends that, read as a whole and giving all parts of the Amendment meaning and function, the basic scheme of the provision is to propose for both employers and employees a set of choices, a bargain: an employer can pay down to $7.25 per hour, currently, but the employee must receive something in return, qualified health insurance. A mere offer of health insurance—which the employee has not played a role in selecting and may not meet the needs of an employee and his or her family for any number of reasons—permits the employer to receive the benefit of the Minimum Wage Amendment, but can leave the employee with less pay and no insurance provided by the employer.

In support of this interpretation, Plaintiff suggests that "provide" and "offering," as used in the Amendment, are not synonyms, but rather that the basic command of the constitutional provision (in order to pay less than the upper-tier wage level) is to *provide* health benefits, and that the succeeding sentence that begins with the term "offering" only dictates certain requirements of the benefits that must be offered as a step in their provision to employees paid at the lower wage rate.

Defendants argue that "provide" and "offering" are synonymous, and that an employer need only make available qualified health insurance in order to pay below the upper-tier wage level, whether the employee accepts the benefit or not. Defendants argue that the usage, by the

Amendment's drafters, of "offering" and "making available" in the sentence succeeding those employing "provide" modifies and defines "provide" to mean merely "offering" of health insurance.

A further argument by Defendants is that the benefit of the bargain inherent in the Amendment is the offer itself, having employer-selected health insurance made available to the employee, and that interpreting the Amendment to require that employees accept the benefit in order for an employer to pay below the upper-tier minimum wage denies the value of the Minimum Wage Amendment to the employer. They deny that "provide" is the command, or mandate, of the Minimum Wage Amendment where qualification for paying the lesser wage amount is concerned.

The Court finds that the Minimum Wage Amendment requires that employees actually receive qualified health insurance in order for the employer to pay, currently, down to $7.25 per hour to those employees. Otherwise, the purposes and benefits of the Amendment are thwarted, and employees (the obvious beneficiaries of the Amendment) who reject insurance plans offered by their employer would receive neither the low-cost health insurance envisioned by the Minimum Wage Amendment, nor the raise in wages its passaged promised, $7.25 per hour already being the federal minimum wage rate that every employer in Nevada must pay their employees anyway. The amendment language does not support this interpretation.

The Court agrees with Plaintiff's argument that "provide" and "offering" are not synonymous, and that the drafters included both terms, intentionally, to signify different concepts. "[W]here the document has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea." Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 170 (2012). It is also instructive that the drafters used "provide," a verb, and "offering," a gerund, ostensibly to make a distinction between their functions as parts of speech within the text of the Amendment. The Amendment easily could have stated that "[t]he rate shall be X dollars per hour worked, if the employer **offers** health benefits as described herein, or X dollars per hour if the employer does not **offer** such benefits." It did not so state. Instead, it required that the employer "provide" qualified health insurance if it wished to take advantage of the lower wage rate. The Court agrees with Plaintiff, furthermore, that

the overall definitional weight of the verb phrase "to provide" lends credence to his interpretation that it means to furnish, or to supply, rather than merely to make available, especially when the overall context and scheme of the Minimum Wage Amendment is taken into consideration.

The distinction the parties here draw between "provide" and "offering" is no small matter. Allowing employers merely to offer health insurance plans rather than provide, furnish, and supply them, alters significantly the function of this remedial constitutional provision. The fundamental operation of the Minimum Wage Amendment, fairly construed, demands that employees not be left with none of the benefits of its enactment, whether they be the higher wage rate or the promised low-cost health insurance for themselves and their families.

Because N.A.C. 608.100(1) impermissibly allows employers only to offer health insurance benefits, but does not take into account whether the employee accepts those benefits when determining how and when the employer may pay below the upper-tier minimum wage rate, it violates the Nevada Constitution and therefore exceeds the Nevada Labor Commissioner's authority to promulgate administrative regulations. The Court determines the regulation in question to be invalid, and will further enjoin Defendants from enforcing N.A.C. 608.104(2) for the reasons stated herein.

IT IS HEREBY ORDERED, therefore, and for good cause appearing, that Plaintiff's Motion for Summary Judgment is **GRANTED** and the Defendant's Motion for Summary Judgment is DENIED.

IT IS FURTHER ORDERED that N.A.C. 608.104(2) is declared invalid and of no effect, for the reasons stated herein;.

IT IS FURTHER ORDERED that N.A.C. 608.100(1) is declared invalid and of no effect, for the reasons stated herein;

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IT IS FURTHER ORDERED that Defendants are enjoined from enforcing the challenged regulations.

IT IS SO ORDERED this 12 day of August, 2015.

James Ellsworth
DISTRICT COURT JUDGE

Submitted by:

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
DON SPRINGMEYER, ESQ.
Nevada State Bar No. 1021
BRADLEY SCHRAGER, ESQ.
Nevada State Bar No. 10217
3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89120
Attorneys for Plaintiffs

/s/ Bradley S. Schrager
Bradley S. Schrager, Esq.

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

Attorneys for Defendant Henderson Taxi

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL SARGEANT, individually and on behalf of others similarly situated, Plaintiff, v. HENDERSON TAXI, Defendant.	CASE NO.: A-15-714136-C DEPT. NO.: XVII **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Defendant HENDERSON TAXI ("Defendant" or "Henderson Taxi"), by and through its counsel of record, Holland & Hart, LLP, and pursuant to NRCP 56, hereby submits this Motion for Summary Judgment ("Motion") requesting summary judgment in its favor on all claims.

This Motion is supported by the following Memorandum of Points and Authorities, the papers and pleadings on file herein, the Declaration of Brent J. Bell ("Bell Decl.") attached hereto

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

as **Exhibit 1**,[1] the Declaration of Cheryl Knapp ("Knapp Decl.") attached hereto as **Exhibit 2**, and any oral argument the Court may allow at any hearing of this matter.

Dated this 11 day of November, 2015.

HOLLAND & HART LLP

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

NOTICE OF HEARING

TO: ALL INTERESTED PARTIES AND/OR THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE the undersigned will bring the foregoing **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** for hearing before the above-entitled court on the 16 day of Dec, 2015, at the hour of 8:30a a.m./p.m., or as soon thereafter as may be heard.

Dated this ___ day of November, 2015.

HOLLAND & HART LLP

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

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

[1] The Bell Decl. was originally submitted in support of Henderson Taxi's Opposition to Plaintiffs' 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 ("Motion to Certify").

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION[2]

In June 2014, the Nevada Supreme Court issued its decision in *Thomas v. Nev. Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (Nev. 2014) ("*Yellow Cab*"). By a 4-3 vote, the Court decided that taxi cab drivers were no longer exempt from state minimum wage as provided by statute. The ITPEU/OPEIU Local 4873, AFL-CIO (the "Union"), which is the exclusive representative of Henderson Taxi cab drivers, quickly grieved the issue of minimum wage to Henderson Taxi (the "Grievance"). Through negotiation, Henderson Taxi and the Union resolved the Grievance by agreeing to a settlement. The settlement was a formal agreement between the Union and Henderson Taxi which both settled the grievance and amended the CBA. Substantively, the Union and Henderson Taxi agreed that Henderson Taxi would change its pay practices going forward and that Henderson Taxi would give drivers an opportunity to review Henderson Taxi's time and pay calculations and would pay its current and former cab drivers the difference between what they had been paid and Nevada minimum wage over the two years prior to the *Yellow Cab* decision. During this time period, Plaintiff's counsel recognized that many companies had long relied on these statutory exemptions which were now gone and tore through the Las Vegas transportation industry suing every cab and limousine company for which he could find a (purportedly) representative plaintiff, including Henderson Taxi, without regard to what individual companies had done to rectify any theoretical wrongdoing.[3]

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[2] The following introduction and statement of facts are very similar to the introduction and statement of facts provided to the Court in Defendant's Opposition to Plaintiff's Motion to Certify. This is because the factual and thematic background is similar. However, this introduction and statement of facts is not a verbatim recitation of Henderson Taxi's prior statements because different issues are important here and certain issues addressed previously are no longer important.

[3] Henderson Taxi and many other companies contend that the *Yellow Cab* decision cannot be applied retroactively. Thus, there were no violations of the Minimum Wage Amendment (Section 16 of Article 15 of the Nevada State Constitution) for not paying cab drivers minimum wage until after *Yellow Cab* was issued. This issue is currently pending before the Nevada Supreme Court. However, this case can be resolved without reference to the eventual Nevada Supreme Court decision.

As this Court recognized in its Order denying Plaintiff's Motion to Certify, the Union acted within its capacity as the exclusive bargaining representative of Henderson Taxi cab drivers as regards their employment with Henderson Taxi when it grieved the issue of minimum wage. *See*, Order, filed October 8, 2015; Minute Order, filed August 19, 2015. Further, the Union acted in this representative capacity when it settled the Grievance and the issue of minimum wage with Henderson Taxi and there was no imbalance of power between Henderson Taxi and the Union. As such, "the settlement of the Grievance resolved a bona fide dispute" between Henderson Taxi and the Union and Henderson Taxi cab drivers and neither Plaintiff or any other Henderson Taxi cab drivers have minimum wage or related claims covered by the Grievance for the period prior to the settlement of the Grievance, assuming they ever did. As such, Henderson Taxi is entitled to judgment as a matter of law on each of Plaintiff's claims. If Plaintiff contends that the Union acted wrongfully, he has a remedy: bring a claim directly against the Union.[4] However he has no claim remaining against Henderson Taxi as the Union settled any claim he may have had.

II. BACKGROUND

Historically, Nevada exempted limousine and taxicab drivers from state law minimum wage and overtime requirements. *See* NRS 608.018(3)(j); NRS 608.250(2)(e). Nevada voters, however, have amended the Nevada State Constitution to add Section 16 of Article 15 (the "Minimum Wage Amendment"). The Minimum Wage Amendment does not mention—either positively or negatively—the exemption from minimum wage for taxicab and limousine drivers in NRS 608.250(2)(e). *See*, Nev. Const. Art. 15, s. 16. More to the point, the Minimum Wage Amendment did not expressly repudiate the minimum wage exemptions provided by NRS 608.250. *Compare*, *id.* and NRS 608.250(2). Given the historic exemption, the failure to explicitly amend NRS 608.250(2), and failure to mention its exemptions, Nevada state and federal district courts repeatedly held that limousine and cab drivers remained exempt from minimum wage

[4] Henderson Taxi contends that such a claim would be specious because the Union acted in good faith, but this is the only claim left to Plaintiff.

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

requirements under Nevada law. *See, e.g.*, *Lucas v. Bell Trans*, 2009 WL 2424557 (D. Nev. June 24, 2009); **Exhibit 3**, *Greene v. Executive Coach & Carriage*, 2:09-cv-00466-GMN-RJJ, Dkt. # 16 (D. Nev. Nov. 10, 2009); **Exhibit 4**, *Gilmore v. Desert Cab, Inc.*, Case No. A-12-668502-C (Nev. Dist. Ct. Feb. 26, 2013). Specifically, the *Lucas* court held that the Minimum Wage Amendment "did not repeal NRS 608.250 or its exceptions. Because the [Nevada Wage and Hour Law] expressly states that it does not apply to taxicab and limousine drivers, the Limousine Plaintiffs cannot sue for a violation of unpaid minimum wages under Nevada law." *Id.* at *8 (citing NRS 608.250(2)(e)). Other courts followed this analysis. *See, e.g.*, Exhibit 3; Exhibit 4. Given the experience of Henderson Taxi's executives with *Lucas*,[5] the pay methodology negotiated directly in the CBA (which may override state minimum wage), and general knowledge of cases following *Lucas*, Henderson Taxi maintained its policy of paying federal minimum wage, which includes the ability to take a "tip credit", but not Nevada minimum wage. Exhibit 1, Bell Decl., ¶¶ 2-3.

On June 26, 2014, the Nevada Supreme Court changed the state of the law when it issued its decision in *Yellow Cab*. The *Yellow Cab* decision addressed one of the same issues that the *Lucas* court had previously decided: whether the NRS 608.250(2)(e) exemption from minimum wage for limousine and taxicab drivers continued in effect after the Minimum Wage Amendment became effective. *See generally*, *Yellow Cab*, 130 Nev. Adv. Op. 52, 327 P.3d 518. Four of the seven Nevada Supreme Court justices found and held that the Minimum Wage Amendment had *impliedly* repealed any minimum wage exemptions set forth in NRS 608.250(2) that were not also present in the Minimum Wage Amendment. *Id.*, 327 P.3d at 522. Three of the justices dissented,

[5] Brent Bell, the president of Henderson Taxi, is also the president of Presidential Limousine and Bell Trans, the defendants in the *Lucas* case. Exhibit 1, Bell Decl., ¶ 1. As president of the defendants in the *Lucas* case, Mr. Bell became intimately familiar with those legal proceedings and Judge Jones' ruling that taxicab and limousine drivers remained exempt from state minimum wage. *Id.*, ¶ 2.

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

arguing that the Minimum Wage Amendment was only meant to raise the minimum wage for those already entitled to it—similar to *Lucas*. *Id.*, at 523.[6]

After the Nevada Supreme Court issued the *Yellow Cab* decision, the Union filed a grievance with Henderson Taxi regarding payment of minimum wage under Nevada state law in accordance with *Yellow Cab*. **Exhibit 5**, Union Grievance (the "Grievance").[7] This Grievance was filed pursuant to the relevant collective bargaining agreements between Henderson Taxi and the Union, which specifically cover the wages to be paid to Henderson Taxi cab drivers. *See* **Exhibit 6**, CBA for November 24, 2009 – September 30, 2013 (the "2009 CBA"); **Exhibit 7**, CBA for October 1, 2013 – September 30, 2018 (the "2013 CBA") (jointly, the "CBAs"). Specifically, the grievance sought "back pay and an adjustment of wages going forward." Exhibit 5.

The Union and Henderson Taxi discussed the Grievance over a period of time, including potential remedies. *See* **Exhibits 8, 9, and 10**. As part of these discussions, Henderson Taxi explained that it had revamped its pay practices on a going forward basis to make sure that it paid Nevada minimum wage to all taxi drivers. Exhibit 8. Henderson Taxi had hoped that paying minimum wage on a going forward basis after the *Yellow Cab* decision would resolve the grievance. *See* Exhibit 8. The Union, however, did not accept this. After further discussion and negotiation with the Union regarding its pending Grievance, Henderson Taxi and the Union agreed that payment of minimum wage is covered by the CBAs and that Henderson Taxi would pay its current and former taxi drivers any wage differential between what the drivers earned and the Nevada minimum wage going back two years to resolve the Grievance and any claims Henderson Taxi cab drivers may have had. Exhibit 10; Exhibit 2, Knapp Decl., ¶¶ 6-7. Henderson Taxi and the Union formally memorialized this agreement. Exhibit 10 ("Accordingly, the ITPEU/OPEIU considers this matter formally settled under the collective bargaining agreement

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

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[6] The ballot petition's title was "Raise the Minimum Wage for Working Nevadans". *Yellow Cab Corp.*, 327 P.3d at 523 (Parraguirre, J., dissenting).

[7] All exhibits requiring authentication are authenticated in the Knapp Decl.

between Henderson Taxi and the ITPEU/OPEIU and state law as implemented through such collective bargaining agreement. Pursuant to Article XV, Section 15.7 [of the 2013 CBA], this resolution is **final and binding** on all parties.") (emphasis added).[8]

After beginning to make these payments, Plaintiff filed his Motion to Certify on or about May 27, 2015. Defendant opposed the Motion to Certify on or about July 15, 2015, and Plaintiff filed a Reply on or about August 5, 2015. The Court issued a decision in a Minute Order (the "Minute Order") on or about August 19, 2015, finding that the Union was the exclusive representative of Henderson Taxi cab drivers (the class Plaintiff previously sought to represent) and that the settlement was a complete accord and satisfaction of the grievance—resolving any minimum wage claims Henderson Taxi cab drivers may have had. *See also*, Order, dated October 8, 2015 ("This settlement agreement for the Grievance **acted as a complete accord and satisfaction of the grievance and any claims to minimum wage Henderson Taxi's cab drivers may have had**.") (emphasis added).

More recently, Plaintiff filed an untimely[9] Motion for Partial Reconsideration or Alternatively for Entry of Final Judgment on October 30, 2015. ("Motion for Reconsideration").

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

[8] On or about May 1, 2015, Henderson Taxi's counsel, Mr. Anthony Hall, sent to Plaintiff's counsel, Mr. Leon Greenberg, a letter regarding the settlement payments Henderson Taxi was making to its current and former taxi drivers. **Exhibit 11**. Mr. Hall informed Mr. Greenberg that Henderson Taxi had not directly contacted Plaintiff because he was a represented party and requested information regarding how Plaintiff wished to receive the $107.23 he was owed under the settlement with the Union. *Id.* Henderson Taxi did not request any type of waiver for this payment. *Id.* To date, Plaintiff has not responded to this request but Henderson Taxi stands ready and willing to provide him the funds upon request. Plaintiff now seeks the payment of this amount in his Motion for Partial Reconsideration or Alternatively for Entry of Final Judgment on October 30, 2015 by a final judgment—which motion Defendant will separately oppose. Such a judgment, of course, would be entirely inappropriate as a party is not entitled to a judgment of a settlement amount (notwithstanding offers of judgment) unless and until they bring a claim for breach of a settlement agreement and prevail thereon. Here, Plaintiff has done no such thing. All Plaintiff needs to do to receive the $107.23 Henderson Taxi has agreed to pay him and has offered to pay him is provide his counsel authorization to take payment or otherwise inform Henderson Taxi of how to pay him. Only Plaintiff and his counsel stand in the way of this payment being made.

[9] EDCR 2.24 provides that a "party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, ***must*** file a motion for such relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order." (Emphasis added.) The notice of entry of order was filed and served on October 13, 2015. Yet, Plaintiff did not file his Motion for Reconsideration until October 30, making it untimely.

Plaintiff's counsel admits in this Motion for Consideration that he "understands the Court's Order [of October 8, 2015] as holding that *all claims* for all minimum wages under Article 15, Section 16, of the Nevada Constitution owed to *all members* of the alleged class (defendant's taxi drivers) have been fully settled by the Grievance through an accord 'accord and satisfaction.'" Mot. for Reconsideration at 3:22-25 (emphasis in original). Plaintiff's counsel further admits that he "is unsure what further relief remains to be secured to the plaintiff and the putative class by this litigation." *Id.* at 4:22-24. As even Plaintiff's counsel acknowledges that no relief remains available, Defendant brings this Motion for Summary Judgment.

III. LEGAL ANALYSIS

A. Legal Standard

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

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

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

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

"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)).

B. Legal Argument

1. Wage Claims May Be Settled without Court Supervision

As an initial matter, 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 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"). Here, there is no question that there was a bona fide dispute as to whether Henderson Taxi's cab drivers were owed minimum wage for any period of time prior to the issuance of the *Yellow Cab* decision and what the statute of limitations period was when the Union filed its Grievance.[10] *See* Opposition to Motion to Certify, Section III(B)(1)-(2) (regarding disputes as to the retroactive application of *Yellow Cab* and the appropriate statute of limitations); Exhibits 5, 8-10 (communications with the Union acknowledging and resolving this bona fide dispute). As

[10] The Grievance and subsequent negotiations and this lawsuit all demonstrate that the dispute was bona fide.

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Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

such, the law allowed the Union, in its representative capacity for Henderson Taxi cab drivers, to negotiate a settlement with Henderson Taxi regarding minimum wage claims. However, even if parties were generally unable to settle wage claims under Nevada law without court supervision,[11] Nevada law could not prohibit this Union action under the Labor Management Relations Act and the National Labor Relations Act which establish that pay is expressly within the jurisdiction of the Union. *See* 29 U.S.C. § 158(d).

2. The Settlement between Henderson Taxi and the Union Settled and Bars Plaintiff's Claims

The Union is "the exclusive representative for all taxicab drivers employed by the Company in accordance with the certification of the National Labor Relations Board Case # 31-RC-5197." Exhibits 6 and 7, § 1.1; *see also* Order, filed October 8, 2015 (finding that the Union is "the exclusive representative of Henderson Taxi cab drivers as regards their employment with Henderson Taxi"). When *Yellow Cab* was issued, the Union exercised the right granted to it by the CBA and the NLRA to negotiate and resolve "matters of wages, hours, and other conditions of employment".[12] Exhibits 6 and 7, § 2.1. Through the grievance process provided for in the CBA, Article XV, the Union and Henderson Taxi resolved the Grievance through a settlement, which "formally settled" and resolved the Grievance and any minimum wage issues arising from *Yellow Cab*. Exhibit 10; *see also*, Order, filed October 8, 2015; *see also* Plf.'s Mot. for Reconsideration at 3:22-25 (acknowledging the settlement of all relevant claims stating: "plaintiff's counsel understands the Court's Order [of October 8, 2015] as holding that *all claims* for all minimum wages under Article 15, Section 16, of the Nevada Constitution owed to *all members* of the alleged class (defendant's taxi drivers) have been fully settled by the Grievance through an accord

[11] Plaintiff can point to no case stating that individuals and entities are unable to settle wage disputes under Nevada law. This concept is also antithetical to the general public policy encouraging the settlement of disputes and avoiding undue burden on the judicial system.

[12] Wages are a mandatory subject of union bargaining. *See* 29 U.S.C. § 158(d), also known as Section 8(d) of the Labor Management Relations Act.

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Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

'accord and satisfaction.") (Emphasis in original). As the exclusive bargaining agent, the Union was and is fully authorized to negotiate settlements on behalf of Henderson Taxi cab drivers. *See May v. Anderson*, 121 Nev. 668, 674-75, 119 P.3d 1254, 1259-60 (2005) ("**Schwartz had authority to negotiate on behalf of the Mays and accepted the offer in writing**. ... The fact that the Mays refused to sign the proposed draft release document is inconsequential to the enforcement of the documented settlement agreement. **The district court ... properly compelled compliance by dismissing the Mays' action**.") (emphasis added); *see also* Order, filed October 8, 2015 ("This settlement agreement for the Grievance acted as a complete accord and satisfaction of the grievance **and any claims to minimum wage Henderson Taxi's drivers may have had**.") Because the Union settled the cab drivers claims for minimum wage against Henderson Taxi, Plaintiff lacks any current claim related to minimum wages. Accordingly, Henderson Taxi is entitled to judgment as a matter of law on Plaintiff's claims. *See May*, 121 Nev. 68, 674-75, 119 P.3d 1254, 1259-60; *see also* Plf.'s Mot. for Reconsideration at 4:23-24 (acknowledging that no claims remain, stating: "plaintiff's counsel is unsure what further relief remains to be secured to the plaintiff and the putative class by this litigation.").

To the extent Plaintiff wishes to challenge the settlement, this is not the proper forum to do so. Any suit to invalidate the settlement and the accord and satisfaction effect it had on all of Plaintiff's claims, would necessarily consist of a breach of contract claim based on the CBAs, which claim is preempted by the Labor Management Relations Act. *See* Opp. to Mot. to Certify, Section III(A)(2). If Plaintiff believes the Union acted against his interests or the interests of its members, he can bring a duty of fair representation claim against the Union. *See, e.g., 14 Penn Plaza LL v. Pyett*, 556 U.S. 247, 249 (2009). Plaintiff has begun a similar effort by challenging Henderson Taxi and the Union's actions with National Labor Relations Board. ***See* Exhibit 12.** While Henderson Taxi contends that a claim directly against the Union would be frivolous and that Plaintiff's complaint against Henderson Taxi with the NLRB is frivolous because the Union and Henderson Taxi acted appropriately, these are the types of remedies remaining to Plaintiff, not his Complaint against Henderson Taxi. *See id.*

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

C. Plaintiff Does Not Have Standing to Seek Equitable Relief

As a side and additional matter, Plaintiff seeks equitable relief in his Complaint, but he lacks standing to request equitable relief as a prior employee.[13] Further, equitable relief in this case would be improper given the changes Henderson Taxi implemented over half of a year prior to the instigation of this litigation.

1. Plaintiff's Equitable Relief Requests Are Moot

In his Complaint, Plaintiff refers to injunctive and other equitable relief twice: First, he states that the Minimum Wage Amendment provides for injunctive and equitable relief in ¶ 17. Second, he states that he seeks an "injunction and other equitable relief barring the defendant from continuing to violate Nevada's Constitution" and other relief in ¶ 18. The *Yellow Cab* decision was issued on June 26, 2014. 120 Nev. Adv. Op. 52, 327 P.3d 518. The Union grieved the issue on July 16. Exhibit 5. Soon thereafter, Henderson Taxi revised its pay policies to comply with the *Yellow Cab* decision. Exhibit 8 ("Minimum wage calculations not applying the tip credit were in effect July 29, 2014."); Exhibit 2, Knapp Decl., ¶ 4. Ever since that change, Henderson Taxi has complied with the Minimum Wage Amendment and is under a binding settlement between it and the Union to pay the state minimum wage. Exhibit 10; Exhibit 2, Knapp Decl., ¶¶ 4-7. As such, Plaintiff's request for a declaration or injunction requiring Henderson Taxi to properly pay its employees is moot and should be denied. *NCAA v. Univ. of Nev. Reno*, 97 Nev 56, 57, 624 P.2d 10, 10 (1981) ("the duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions ….")

2. Plaintiff Lacks Standing to Request Equitable Relief

Ex-employees lack standing to request equitable relief. *Dukes*, 131 S.Ct. at 2559-60 (holding that ex Wal-Mart employees "lack standing to seek injunctive or declaratory relief

[13] Notably, in Plaintiff's Motion for Reconsideration, which Defendant will separately oppose, Plaintiff has abandoned any request for equitable relief.

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9555 Hillwood Drive, 2nd Floor
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Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

against its employment practices."). In his Motion to Certify, Plaintiff referenced *Stockmeier v. Nev. Dept. of Corrections Psychological Review Panel*, 121 Nev. 319, 135 P.3d 220 (2006) and *Hantges v. City of Henderson*, 113 P.3d 848 (Nev. 2005) as support for allowing a past employ to request equitable relief. These references are unpersuasive. The statutes at issue in both cases provided for broad standing, which was necessary for the statutes to be effective in a way that is not true of the Minimum Wage Amendment, which can be enforced by any current employee. In *Hantges*, the Nevada Supreme Court read the statute to confer broad standing so as to "avoid meaningless or unreasonable results …." 121 Nev. at 322, 113 P.3d at 850 (internal quotation omitted). In other words, had the Court not determined that the statute conferred standing broadly, the statute would have been ineffective in its purpose to allow challenges to agency determinations by the public. *See id.*

In *Stockmeier*, the Court stated: "This court has a 'long history of requiring an actual justiciable controversy as a predicate to judicial relief.' In cases for declaratory relief and where constitutional matters arise, this court has required plaintiffs to meet increased jurisdictional standing requirements." 122 Nev. at 393, 135 P.3d at 225-26. But "where the Legislature has provided the people of Nevada with certain statutory rights, [the Court has] not required constitutional standing to assert such rights" if the statute provides standing to sue. *Id.* Here, the Minimum Wage Amendment provides that an employee bringing a claim under the Minimum Wage Amendment "shall be entitled to all remedies available under the law or in equity ***appropriate*** to remedy any violation of this section, including … injunctive relief." Nev. Const. Art. 15, s. 16. Thus, to obtain an injunction or equitable relief under the Minimum Wage Amendment, that relief must otherwise be appropriate. Here, there is no reason not to require the "actual justiciable controversy" the Nevada Supreme Court generally requires. *Stockmeier*, 122 Nev. at 393, 135 P.3d at 225-26. The Minimum Wage Amendment does not require the extraordinarily broad standing Plaintiff seeks to be affective and does not provide for it explicitly within its text. Nev. Const. Art. 15, s. 16. Rather, any current employee who claims their employer is violating the Minimum Wage Amendment can seek an injunction or other equitable relief. But as a prior employee, Plaintiff lacks standing to do so. *Dukes*, 131 S.Ct. at 2559-60.

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

Accordingly, Plaintiff's claim for injunctive or declaratory relief should be dismissed as a matter of law.

IV. CONCLUSION

In sum, each of Plaintiff's claim necessarily fail because they have been resolved by the Union and are otherwise preempted by federal law. Plaintiff even admits that, barring reconsideration (which he has sought untimely), no claims remain because the Court has determined they were legitimately and validly settled by the Union. Further, Plaintiff lacks standing to request equitable relief as a past employee and the request for equitable relief is moot as Henderson Taxi long ago revised its pay practices. Accordingly, summary judgment is appropriate in favor of Henderson Taxi and Plaintiff's Complaint should be dismissed as a matter of law.

DATED this 11 day of November 2015.

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

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

EXHIBIT 8

EXHIBIT 8

* * * Communication Result Report (Jul. 30. 2014 10:30AM) * * *

1)
2)

Date/Time: Jul. 30. 2014 10:29AM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
1851	Memory TX	97023844939	P. 1	OK	

Reason for error
E. 1) Hang up or line fail
E. 2) Busy
E. 3) No answer
E. 4) No facsimile connection
E. 5) Exceeded max. E-mail size

Henderson Taxi

1910 Industrial Road • Las Vegas, Nevada 89102
(702) 384-2322
FAX (702) 382-4601

VIA FAX
July 30, 2014

Theatla "Ruthie" Jones
Industrial, Technical & Professional Employees, OPEIU, AFL-CIO
3271 So. Highland Avenue, Suite #716
Las Vegas, NV 89109

Re: Grievance dated and received July 16, 2014

Dear Ms. Jones,

This letter will serve as the Company's written response to the aforementioned grievance.

The Nevada Supreme Court reversed and remanded a prior court order dismissing a complaint in the minimum wage matter heard in the Eighth Judicial District Court, Ronald J. Israel, Judge.

The Supreme Court decision was file stamped July 26, 2014. Upon receipt of this knowledge the Company took the necessary steps to modify its payroll calculation to not apply the tip credit which was permitted prior to this new decision.

Minimum wage calculations not applying the tip credit were in effect July 29, 2014. Consequently this grievance is denied as the company is currently paying its drivers in accordance with the Supreme Court decision.

Sincerely,
HENDERSON TAXI

Cheryl D. Knapp
Vice President Human Resources
General Manager

Henderson Taxi

1910 Industrial Road • Las Vegas, Nevada 89102
(702) 384-2322
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Sincerely,
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Cheryl D. Knapp
Vice President Human Resources
General Manager

EXHIBIT 9

EXHIBIT 9

* * * Communication Result Report (Aug. 21. 2014 12:34PM) * * *

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Date/Time: Aug. 21. 2014 12:33PM Sent @ 10:33am

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Reason for error
E. 1) Hang up or line fail
E. 2) Busy
E. 3) No answer
E. 4) No facsimile connection
E. 5) Exceeded max. E-mail size

Henderson Taxi

1910 Industrial Road • Las Vegas, Nevada 89102
(702) 384-2322
FAX (702) 382-4601

August 21, 2014

Theatia "Ruthie" Jones, Representative
ITPEU, OPEIU Local 4873
3271 So. Highland Drive, Suite #716
Las Vegas, NV 89109

Re: Your letter of July 31, 2014

Dear Ms. Jones,

Henderson Taxi acknowledges a question exists as to whether or not the Nevada Supreme Court's decision filed stamped July 26, 2014 applies retroactively.

Regardless, as previously discussed with you, the Company is working on a program which will recalculate minimum wage rates without applying the tip credit on a weekly basis for the two years prior to the decision. The next step is to then apply against those calculations actual earnings (to include commissions, training, vacation, bonus and other forms of earnings) and minimum wage adjustments previously paid for each week. The difference, if any, would be the alleged arrears owed.

I am sure you are aware that a Motion to Reconsider was filed with the Nevada Supreme Court. At this time the Court has requested the opposing party to respond to the Motion. As such, the question as to whether or not the exemptions contained in NRS 608.250 were abolished at the passing of the constitutional amendment has not been answered with finality.

Considering the administrative costs involved in paying drivers these alleged arrears then possibly having to recover the funds through payroll deduction and wage adjustments, I respectfully request the Union hold this matter in abeyance pending the upcoming Nevada Supreme Court's decision.

Sincerely,
HENDERSON TAXI

Cheryl D. Knapp
General Manager

Henderson Taxi

1910 Industrial Road • Las Vegas, Nevada 89102
(702) 384-2322
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Sincerely,
HENDERSON TAXI

Cheryl D. Knapp
General Manager

EXHIBIT 10

EXHIBIT 10

Henderson Taxi

1910 Industrial Road • Las Vegas, Nevada 89102
(702) 384-2322
FAX (702) 382-4601

On July 16, 2014, pursuant to Sections V (Wages) and XV (Grievance) of the collective bargaining agreement between the ITPEU/OPEIU Local 487 AFL-CIO and Henderson Taxi, the ITPEU/OPEIU grieved the issue of Henderson Taxi's failure to pay at least the state minimum wage under the amendments to the Nevada Constitution on behalf of the Bargaining Unit. After discussion with the Company, the ITPEU/OPEIU agree that the following actions by Henderson Taxi resolve the grievance pursuant to Section XV of the CBA:

- Henderson Taxi shall pay at least the state minimum wage on a going forward basis, and;
- Henderson Taxi shall compensate all of its current taxi drivers, and make reasonable efforts to compensate all former taxi drivers employed during the prior two year period, the difference between wages paid and the state minimum wage going back two years. Henderson Taxi shall also make reasonable efforts to obtain acknowledgements of the payments to employees and former employees and give them an opportunity to review records if the individual driver questions the amount calculated by Henderson Taxi.

Accordingly, the ITPEU/OPEIU considers this matter formally settled under the collective bargaining agreement between Henderson Taxi and the ITPEU/ OPEIU and state law as implemented through such collective bargaining agreement. Pursuant to Article XV, Section 15.7, this resolution is final and binding on all parties.

ITPEU OPEIU Local 4873
Theatla "Ruthie" Jones

Henderson Taxi
Cheryl D. Knapp

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

Attorneys for Defendant Henderson Taxi

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL SARGEANT, individually and on behalf of others similarly situated, Plaintiff, v. HENDERSON TAXI, Defendant.	CASE NO.: A-15-714136-C DEPT. NO.: XVII **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL RECONSIDERATION OR ALTERNATIVELY FOR ENTRY OF FINAL JUDGMENT**

Defendant Henderson Taxi ("Defendant" or "Henderson Taxi"), by and through its counsel of record, Holland & Hart, LLP, hereby submits its Opposition ("Opposition") to Plaintiff's Motion for Partial Reconsideration or Alternatively for Entry of Final Judgment ("Motion").

This Opposition is supported by the following Memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral argument the Court may allow at any hearing of this matter.

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/ / /

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION[1]

In June 2014, the Nevada Supreme Court issued its decision in *Thomas v. Nev. Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (Nev. 2014) ("*Yellow Cab*") holding that taxi cab drivers were no longer exempt from state minimum wage as provided by statute. Based on this decision, the ITPEU/OPEIU Local 4873, AFL-CIO (the "Union"), which is the exclusive representative of Henderson Taxi cab drivers, quickly grieved the issue of minimum wage to Henderson Taxi (the "Grievance"). *See* Order, dated October 8, 2015. Through negotiation, Henderson Taxi and the Union resolved the Grievance by agreeing to a settlement. *Id.* The settlement was a formal agreement between the Union and Henderson Taxi which both settled the grievance and amended the CBA. *Id.* Substantively, the Union and Henderson Taxi agreed that Henderson Taxi would change its pay practices going forward and that Henderson Taxi would give drivers an opportunity to review Henderson Taxi's time and pay calculations and would pay its current and former cab drivers the difference between what they had been paid and Nevada minimum wage over the two years prior to the *Yellow Cab* decision. *Id.* During this time period, Plaintiff's counsel recognized that many companies had long relied on these statutory exemptions which were now gone and tore through the Las Vegas transportation industry suing every cab and limousine company for which he could find a (purportedly) representative plaintiff, including Henderson Taxi, without regard to what individual companies had done to rectify any theoretical wrongdoing.

After filing this litigation and after discovering that Henderson Taxi had resolved any minimum wage issues with the Union through a settlement agreement, Plaintiff's counsel filed a motion to certify and for other relief against Defendant on May 27, 2015 ("Motion to Certify").

---

[1] The following introduction and statement of facts are very similar to the introduction and statement of facts provided to the Court in Defendant's Motion for Summary Judgment. This is because the factual and thematic background is similar between this Opposition and Defendant's Motion for Summary Judgment.

After full briefing and a hearing, the Court issued a Decision on August 19, 2015, and a signed written Order on October 8, 2015 ("October 8 Order") recognizing that the Union acted within its capacity as the exclusive bargaining representative of Henderson Taxi cab drivers as regards their employment with Henderson Taxi when it grieved the issue of minimum wage and validly settled any minimum wage claims Henderson Taxi's cab drivers may have had. *See*, Order, filed October 8, 2015; Minute Order, filed August 19, 2015. As such, the Court denied Plaintiff's Motion to Certify. *Id.* Plaintiff now brings what he has labeled as a Motion for Partial Reconsideration. However, Plaintiff's Motion is only a motion for reconsideration to a very limited extent. Rather, the majority of the Motion is a motion for new and distinct relief improperly made part of a motion for reconsideration. For this reason alone it is improper and should be denied. Notwithstanding the procedural impropriety of the Motion, Plaintiff's specific requests are also improper and the Motion should be denied.

Specifically, Plaintiff requests one of three alternatives in his purported Motion for Reconsideration, requests never previously made and not proper on reconsideration:

1. Certification of a new and distinct class previously unaddressed in any motion;
2. Reconsideration of the portion of the Court's October 8 Order determining that even if the settlement agreement with the Union had not resolved all potential minimum wage claims of the putative class, class certification would be improper because each individual putative class member's claim would have required individual analysis to determine which minimum wage rate he qualified for; and, alternatively; and
3. For entry of final judgment in favor of Plaintiff Michael Sargeant in the amount of $107.23 plus attorney's fees and costs.

A thorough review of the Motion and these alternative requests demonstrates that the Motion would be more accurately considered a motion for attorney's fees as the true purpose of the Motion is to hopefully allow Plaintiff's counsel to collect fees and costs from Henderson Taxi. In reality, Plaintiff's requests for certification of a newly proposed class, reconsideration of the "individual analysis" portion of the Court's October 8 Order, and for final judgment are all simply

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

attempts to create some hook for attorney's fees. As this Court has already determined that all of Henderson Taxi's past and present cab drivers' minimum wage claims have been settled and there is no breach of contract claim (the settlement being the contract) in the Complaint, there is no class to be certified. There is certainly no basis to certify a class for the enforcement of a private settlement agreement that has not been breached. Further, as Plaintiff admits in his Motion, his only actual request for reconsideration regarding whether individual analysis would be required for minimum wage claims is moot because those claims have been settled. Thus, this request should be denied. Finally, Plaintiff is not entitled to any judgment from this litigation regardless of amount. Henderson Taxi settled all minimum wage claims with the Union and has specifically offered to make payment to Plaintiff and each member of the putative class. All Plaintiff needs to do to obtain the money he requests from the court is inform Henderson Taxi of how he would like to receive payment and it will be provided. Accordingly, Plaintiff's Motion should be denied in its entirety. To resolve this matter, the Court should grant Henderson Taxi's currently pending Motion for Summary Judgment as the Court's October 8 Order makes clear that no claims remain to be litigated.

II. BACKGROUND[2]

On June 26, 2014, the Nevada Supreme Court changed the state of the law when it issued its decision in *Yellow Cab* providing that taxi cab drivers are no longer exempt from state law minimum wage under the Nevada Constitution. After the Nevada Supreme Court issued the *Yellow Cab* decision, the Union filed a grievance with Henderson Taxi regarding payment of minimum wage under Nevada state law in accordance with *Yellow Cab*. **Exhibit 1**, Union Grievance (the "Grievance").[3] This grievance was filed pursuant to the relevant collective bargaining agreements between Henderson Taxi and the Union, which specifically cover the

[2] For further background information, Henderson Taxi directs the Court to its currently pending Motion for Summary Judgment and its prior Opposition to Motion for Certification.

[3] All exhibits requiring authentication have been authenticated in Defendant's Motion for Summary Judgment and Opposition to the Motion for Certification.

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

wages to be paid to Henderson Taxi cab drivers. *See* **Exhibit 2** CBA for November 24, 2009 – September 30, 2013) (the "2009 CBA"); **Exhibit 3** (CBA for October 1, 2013 – September 30, 2018) (the "2013 CBA") (jointly, the "CBAs"). Specifically, the Union stated the following in its grievance: "On behalf of ***all affected drivers***, the ITPEU hereby grieves the Company's [Henderson Taxi's] failure to pay at least the minimum wage …." Exhibit 1 (emphasis added). Further, the grievance sought "back pay and an adjustment of wages going forward." *Id.*

After negotiation thoroughly described in Defendant's Motion for Summary Judgment and discussed in the Court's October 8 Order, Henderson Taxi and the Union agreed that, in addition to paying at least minimum wage on a going forward basis, Henderson Taxi would pay its current taxi drivers any wage differential between what the drivers earned and the Nevada minimum wage going back two years and that it would "make reasonable efforts to compensate all former taxi drivers employed" by Henderson Taxi during the prior two year period to resolve the Grievance. **Exhibit 4**. Henderson Taxi and the Union then formally memorialized this agreement and made it final and binding on all parties. Exhibit 4 ("Accordingly, the ITPEU/OPEIU considers this matter formally settled under the collective bargaining agreement between Henderson Taxi and the ITPEU/OPEIU and state law as implemented through such collective bargaining agreement. Pursuant to Article XV, Section 15.7 [of the 2013 CBA], this resolution is **final and binding** on all parties.") (emphasis added).

During the time period in which Henderson Taxi was negotiating the Grievance with the Union, Plaintiff filed the instant case. *See* Compl., dated Feb. 18, 2015. After discovering that Henderson Taxi had resolved any minimum wage claims with the Union and that his potential fees were in jeopardy, Plaintiff's counsel filed his Motion to Certify. By the Motion to Certify, Plaintiff requested certification of a class of all of Henderson Taxi's current and former cab drivers amongst other relief (including an early award of fees). *See* Mot. to Certify. The parties fully briefed and argued the Motion to Certify, after which the Court issued a Decision on August 19, 2015, and a written Order on October 8, 2015. In the October 8 Order, the Court found and held that the Union is "the exclusive representative of Henderson Taxi cab drivers as regards their employment with Henderson Taxi" and that the Union settled all of Henderson Taxi's cab drivers'

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

minimum wage claims. Order, filed October 8, 2015 at 2:3-15 ("This settlement agreement for the Grievance acted as a complete accord and satisfaction of the grievance and any claims to minimum wage Henderson Taxi's cab drivers may have had."). Further, the October 8 Order found and held that Plaintiff had failed to present the necessary evidence to support class certification. *Id.* at Section B. Plaintiff now brings this Motion for Partial Reconsideration, purporting to seek reconsideration of the Court's October 8 Order but generally seeking new relief not previously requested.

III. LEGAL ANALYSIS

A. Legal Standard

Under Nevada law, a party may timely seek reconsideration of a court's decision. *See Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (citing *Little Earth of United Tribes v. Department of Housing*, 807 F.2d 1433, 1441 (8th Cir. 1986)); *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). However, "[p]oints or contentions not raised in the original hearing cannot be maintained or considered on rehearing." *Achrem v. Expressway Plaza Ltd. Partnership*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996) (citing *Chowdhry v. NLVH, Inc.*, 111 Nev. 560, 562-63, 893 P.2d 385, 387 (1995) and *Cannon v. Taylor*, 88 Nev. 89, 92, 493 P.2d 1313, 1314-15 (1972)). In other words, a motion for reconsideration is not the time to raise new arguments or present evidence that was available at the time the motion was made.

B. Legal Argument

1. The Court Should Reject Certification of Plaintiff's Newly Proposed Class

a) Plaintiff's Request Is an Improper Reconsideration Request

By this Motion, Plaintiff is seeking, for the first time, class certification of all prior Henderson Taxi cab drivers "who have not actually received the payment they are entitled to receive pursuant" to Henderson Taxi's settlement agreement with the Union of the Grievance. Mot. at 2: 2-4. Plaintiff claims that the purpose of this requested certification is to have the Court manage the payment of settlement funds. *Id.* at 2:5-8. As such, Plaintiff admits that he is seeking

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

certification of a class that was never previously requested for a purpose that was never previously addressed and which is not proposed in the Complaint. As certification of this new and limited class was not previously addressed in Plaintiff's Motion for Certification, certification of this putative class is improper in a motion for reconsideration. *Achrem*, 112 Nev. at 742, 917 P.2d at 450 ("Points or contentions not raised in the original hearing cannot be maintained or considered on rehearing."). Rather, Plaintiff should have sought leave to file an Amended Complaint with a new proposed class definition and then filed a new motion for class certification if he wished to certify a newly described class (though such effort would ultimately have been fruitless). As such, Plaintiff's request for certification of a new class should be denied.

b) No Certifiable Class Exists

Regardless of the procedural impropriety of Plaintiff's request to certify this newly proposed class, no certifiable class exists. Plaintiff's counsel explains in the Motion that he understands the Court's October 8 Order to hold that the "claims at issue in this case have been fully resolved" through Henderson Taxi's settlement of the Grievance with the Union. Mot. at 5:14-18. Plaintiff's counsel's understanding is 100% correct.[4] The October 8 Order is clear on its face: "Th[e] settlement agreement for the Grievance acted as a ***complete accord and satisfaction*** of the grievance and any claims to minimum wage Henderson Taxi's cab drivers may have had." Order, dated October 8, 2015 at 2:14-15. Accordingly, no claims to minimum wage remain and the proper resolution of this litigation is through summary judgment as provided in Defendant's Motion for Summary Judgment, filed on November 11, 2015. *As no viable claims remain in this litigation, there is no class to certify.* Rather, it is merely a question of time before the Court rules on Defendant's Motion for Summary Judgment, which fully explains that summary judgment is proper and that this case should be dismissed.

[4] Generally, counsel would not refer to opposing counsel in this way. However, the Motion expressly refers to Plaintiff's counsel's understanding of the Court's October 8 Order on various occasions. Thus, in this case, it is appropriate to refer to Plaintiff's counsel's understanding of certain issues.

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

Further, Plaintiff's Motion fails to actually address the elements of class certification. *See generally*, Mot. Rather, Plaintiff simply claims that it is "readily apparent that they [the elements of class certification] are satisfied" for both NRCP 23(b)(2) and 23(b)(3) without any support beyond the claim that there would be over 300 past employee class members. Though Plaintiff has provided no analysis for Henderson Taxi to oppose, placing Henderson Taxi at an unfair disadvantage, Henderson Taxi notes that it has not acted or failed to act in any way as to its prior drivers that would make injunctive or declaratory relief proper as required by NRCP 23(b)(2). Rather, it settled claims with the Union and made payment offers to its prior employees as provided in the settlement agreement. Thus, certification under NRCP 23(b)(2) makes no sense. Further, as the Court has determined that the minimum wage claims Henderson Taxi's former drivers may have had have been settled, there is no claim to assert as part of a Rule 23(b)(3) damages class action—which Plaintiff tacitly admits. Mot. at 7:10-11 ("such certification is not a true 'damages' class under NRCP 23 (b)(3). That is because, … there remains no 'damages' to determine or award."). As there exists no claim to litigate or damages to determine, there is no class or claim to certify. Accordingly, Plaintiff's request should be denied and no new class should be certified.

c) The Settlement Agreement Does Not Provide for Court Management and No Court Management Is Necessary

Despite recognizing that no claims or damages remain for this Court to address, Plaintiff's counsel futilely attempts to keep this case alive (so he can later seek fees) by seeking to have the Court improperly administer the private settlement between the Union and Henderson Taxi using the class action mechanism. Specifically, Plaintiff's counsel also contends that he understands the Court's October 8 Order as holding: "To the extent any 'live' legal dispute exists between the named plaintiff and the putative class alleged in this Complaint on the one hand, and the defendant on the other hand, it is limited to the enforcement of the 'settlement agreement for the Grievance' referred to in the [October 8] Order." Mot. at 5:20-23. The key problem for Plaintiff (and his counsel) is that no live legal dispute between him and Henderson Taxi remains. The Complaint does not assert any breach of the settlement agreement or a corresponding claim. *See generally*, *id.*

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

Without such a claim in the Complaint, there is no *live* dispute in this case regarding fulfillment of the settlement agreement.[5] Without an actual claim regarding Henderson Taxi failing to abide the terms of the settlement agreement, Plaintiff's request that the Court certify a class of prior Henderson Taxi cab drivers for enforcement of the settlement agreement between the Union and Henderson Taxi is improper and this request should be rejected.[6]

In addition, Plaintiff contends that the Court needs to oversee the settlement agreement because it would be unjust for Henderson Taxi to retain any funds agreed to be paid under the settlement agreement. Not only is this simply procedurally improper (this request was never previously made), Plaintiff is incorrect as to what the settlement agreement provides and what would be "fair." The settlement agreement expressly provides as follows: "Henderson Taxi shall … ***make reasonable efforts*** to compensate …." Exhibit 4 (emphasis added). This language shows that Henderson Taxi did not agree to make sure that every single past driver was compensated under the settlement agreement or that any undistributed funds should be paid to some third party. *See id.* Rather, Henderson Taxi and the Union came to an agreement that Henderson Taxi would make a *reasonable effort* to contact and compensate past employees as provided in the settlement agreement. *Id.* It has done so, paying a significant proportion of its prior employees, and Plaintiff does not contend otherwise. Plaintiff is simply unhappy with the terms of the settlement agreement and Plaintiff's counsel is upset that a settlement with the Union does not allow him to get fees from this lawsuit. But these are not reasons for the Court to re-write the settlement agreement between Henderson Taxi and the Union.[7] Without a claim that Henderson Taxi has breached the

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Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

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[5] Further, it is unclear (and not currently at issue) whether this would be the appropriate forum for such a dispute. While Henderson Taxi has not examined this issue, it appears that if Plaintiff were to contend that Henderson Taxi has breached the settlement agreement, it would be the Union that would have a claim and the proper forum would be before the National Labor Relations Board. Of course, this hasn't stopped Plaintiff from filing a claim against Henderson Taxi with the National Labor Relations Board regarding the settlement agreement between Henderson Taxi and the Union. **Exhibit 5**.

[6] Henderson Taxi has abided the settlement agreement's terms. Thus, any such claim would fail.

[7] If the Court chooses to do so, the Parties would likely have to brief the issue of whether the Court even has authority to revise and agreement between a union and an employer under the National Labor Relations Act or other federal labor laws.

settlement agreement, there is no authority to have a class certified for the administration of the Union's settlement agreement. As such, Plaintiff's new request for certification and court administration of the settlement agreement should be denied.[8]

Additionally, the settlement agreement between Henderson Taxi and the Union was a private agreement between two entities (with third-party beneficiaries). It was not the settlement of a class action lawsuit. Thus, the cy pres doctrine does not apply and the Court lacks jurisdiction to oversee the private agreement between Henderson Taxi and the Union—particularly when the Union is not even a party to this litigation. Rather, the Court should see this request for what it is: a blatant attempt by Plaintiff's counsel to have the court determine that he was successful in some minor way so that he can move for an award of attorney's fees which he does not deserve. The claims at issue were settled without his involvement and he deserves no compensation related to it. As such, Plaintiff's request to have the Court administer the distribution of settlement funds should be denied in full.

2. The Court Should Inform Plaintiff and His Counsel That Their Understanding of the Court's Order Is Correct and that No Viable Claims Remain

Plaintiff also requests that if the Court does not grant his request for certification of a newly proposed class but determines that past employees retain some viable minimum wage claim in direct contradiction to the October 8 Order, that Plaintiff be permitted to brief the issue of whether individual analysis of any remaining claims would be necessary at a later date. Mot. at 8:18-9:2. Plaintiff bases this request on his counsel's feigned confusion regarding one of the Court's statements in the October 8 Order. Plaintiff's counsel contends that he generally understands the October 8 Order as having held that any minimum wage claims that may have been possessed by Henderson Taxi cab drivers that predated the settlement agreement between Henderson Taxi and the Union have been settled. Mot. at 8:8-15. But, Plaintiff's counsel contends

[8] It is astounding that such a clear, new request would be submitted as part of a motion for "reconsideration" and signed under Rule 11.

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Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

that he is confused by the Court's statement that the settlement agreement did not necessarily act as a waiver of minimum wage rights and that this statement makes him doubt his understanding of the Court's October 8 Order. *See* Order, filed October 8, 2015 at 2:14-15; *see also* Mot. at 8:15-17.

Plaintiff's counsel's doubt regarding the October 8 Order is unfounded. The Court plainly determined that the Union settled any and all minimum wage claims any current or former Henderson Taxi cab driver may have had prior to the signing of the settlement agreement. *See* Order, filed October 8, 2015 at 2:14-15 ("This settlement agreement for the Grievance acted as a complete accord and satisfaction of the grievance and any claims to minimum wage Henderson Taxi's cab drivers may have had."). In addition to determining that the settlement agreement settled all minimum wage claims, however, the Court explained the reason why the Henderson Taxi and the Union were able to settle such claims. Specifically, the Court explained that it was unclear whether *Yellow Cab* would be applied retroactively and whether Henderson Taxi's cab drivers would be entitled to minimum wage for any time period predating *Yellow Cab*. *Id.* at 2:21-26. As Henderson Taxi's cab driver's entitled to minimum wage prior to *Yellow Cab* was disputed, there was a bona fide dispute regarding cab drivers' right to minimum wage prior to the *Yellow Cab* decision. As there was a bona fide dispute as to cab drivers' entitled to minimum wage for the time period covered by the settlement, settlement of the claims did not constitute a "waiver" of clearly established rights, but a settlement of a bona fide dispute. *Id.* at 2:21-26; *see also 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.") (emphasis added); *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") (emphasis added). As such, Plaintiff's claim that the court's statement that the settlement agreement "did not necessarily act as a waiver of minimum wage rights" might mean that not all minimum wage claims were settled is baseless. Thus, the Court should either deny the Motion or inform Plaintiff that his understanding that all minimum wage claims have been settled is correct.

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

3. Plaintiff's Argument Regarding Individual Analysis Is Incorrect

Plaintiff also requests that if the Court determines that past drivers who have not yet been paid under the settlement agreement retain some right to pursue past minimum wage claims, that the Court rehear (at some later date) argument regarding whether Plaintiff's putative class minimum wage claims would require individual analysis regarding what minimum wage rate would apply to each putative class member. *See* NAC 608.102-608.106. As the October 8 Order makes clear that past drivers retain no rights to pursue past minimum wage claims, there is no need to address this request. Nonetheless, and in an abundance of caution, Defendant will briefly explain why this new request should be denied.[9]

Plaintiff contends that his putative class minimum wage claim would not require individual analysis for two reasons: 1) because the Court could just accept that all class members would be entitled to the lower of the two possible minimum wages; and 2) because the regulations requiring this individualized analysis have been invalidated. Both contentions are incorrect.

a) The Court Could Not Just Assume the Lower Minimum Wage

It is truly galling for putative class counsel to both contend that he has the putative class's best interest in mind and also have him be so willing to cast aside the possibility that certain individuals would be entitled to the higher minimum wage provided by Nevada law just so that he could obtain class certification and the related attorney's fees. Putative class counsel cannot ethically waive the rights of certain putative class members to a higher minimum wage just to avoid the individualized wage determination and obtain class certification. The only reason to waive these individual's potential rights to a higher minimum wage is so that Plaintiff's counsel might be entitled to a greater fees award through a class action than he would be in an individual action. There is no individual benefit to a class member to have their potential right to a higher

[9] Defendant reiterates that it is astounding that such a clear, new request would be submitted as part of a motion for "reconsideration" and signed under Rule 11

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

minimum wage waived. As such, the Court should reject this new argument and deny Plaintiff's request that the Court reconsider its decision regarding the individualized analysis necessary to determine whether putative class members are entitled to the higher or lower minimum wage.

b) The Decision Invalidating the Labor Commissioner's Regulations to Which Plaintiff Refers Has Been Stayed Pending Appeal and Is Incorrect

Plaintiff also claims that no individualized analysis regarding what minimum wage each putative class member might have been entitled to is required because the regulations regarding health insurance costs (the issue determinative of which minimum wage tier applies) have been invalidated. While it is true that a district court in Carson City issued an order invalidating the Nevada Labor Commissioner's regulations regarding minimum wage health insurance requirements under the constitutional Minimum Wage Amendment, that Court also stayed its decision pending appeal. **Exhibit 6**. As the order invalidating the regulations has been stayed pending appeal, it is of no current force and effect. As this order has been stayed, it cannot be used as a basis for this Court to reconsider its prior decision.[10] As such, Plaintiff's request for reconsideration of the individualized analysis issue should be denied.

Not only is the Carson City district court's decision currently invalidating the regulations inapplicable because it had been stayed, it is simply wrong on the law as the Nevada Attorney General's office has thoroughly explained in its appeal. *See* **Exhibit 7**. For example, the district court's opinion ignores the plain and simple language of the Minimum Wage Amendment. *Id.* For example, the Minimum Wage Amendment expressly provides that an employer may pay the lower of the two minimum wage tiers "if the employer provides health benefits as described herein …." Nevada Constitution, Art. 15 s. 16(A). The Minimum Wage Amendment continues: "Offering health benefits within the meaning of this section shall consist of *making health insurance available* to the employee for the employee and the employee's dependents at a total cost to the

[10] Notably, the court stayed its decision on October 12, 2015, well in advance of Plaintiff filing this Motion on October 30, 2015. However, Plaintiff's counsel failed to acknowledge that the order had been stayed.

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

employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer." *Id.* (emphasis added). Choosing to ignore the plain meaning of these words, the Carson City district court decided that 'providing,' 'offering,' or "making health insurance available" actually mean that an employee must take advantage of an employer's health plan for the employer to permissibly pay the lower tier minimum wage, contrary to both the Minimum Wage Amendment and the Labor Commissioner's regulations. *See* Exhibit 7. This reading is entirely untenable. *Id.* As the Carson City district court's decision ignores express language of the Minimum Wage Amendment, it is incorrect and will not withstand appeal and should be ignored here. *See id.* Accordingly, reconsideration is not warranted and Plaintiff's Motion should be denied.

4. The Court Should Advise Plaintiff that No Further Relief is Available in this Case By Awarding Summary Judgment in Favor of Defendant

In "Part III" of Plaintiff's Motion he requests, if his first two requests are denied, that the Court enter judgment in his favor for $107.23, the amount he is entitled to pursuant to the settlement agreement with the Union. The problem with this is that the settlement agreement with the Union does not provide authority or reason for Plaintiff to obtain a judgment in any amount. *See* Exhibit 4. Entitlement to a settlement payment pursuant to a private agreement is not the same as a judgement. Further, Plaintiff does not allege that Henderson Taxi has somehow breached the settlement agreement, whether in his complaint or in his Motion. *See generally*, Compl.; Mot. for Partial Reconsideration. Thus, there is no basis for Plaintiff to be awarded a judgment in any amount as if he had prevailed on some asserted claim—which he has not.

At the same time, Plaintiff is correct that pursuant to the settlement agreement he is owed $107.23, which Henderson Taxi has offered to pay him and he has previously refused to take. *See* **Exhibit 8**, Letter from Anthony Hall to Leon Greenberg dated May 1, 2015 ("please contact your client and ask if he would like us to send this check [for $107.23] to you and, if not, how he would like to receive it."). Henderson Taxi is still willing to provide the funds provided by the settlement agreement with the Union to Mr. Sargeant as soon as he authorizes Henderson Taxi to contact him directly or to provide payment through his counsel. This is also true of any other

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

prior Henderson Taxi cab driver Plaintiff's counsel represents. However, Mr. Sargeant (and his counsel) cannot use his refusal to accept payment under the settlement agreement as a sword against Henderson Taxi to manufacture a judgment a potential attorney's fees and costs award. Simply stated, Henderson Taxi has demonstrated a willingness to abide each of its obligations and Mr. Sargeant cannot claim that Henderson Taxi has breached the settlement agreement. As Henderson Taxi is ready and willing to comply with its obligations and Mr. Sargeant has no breach claim, judgment against Henderson Taxi in any amount would be improper. Accordingly, the Court should deny Plaintiff's Motion in this regard.[11]

IV. CONCLUSION

For all the forgoing reasons, Plaintiff's Motion for Partial Reconsideration or Alternatively for Entry of Final Judgment should be denied in its entirety.

DATED this 14th day of December 2015.

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

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

[11] Henderson Taxi does not mean to imply that Mr. Sargeant would have a breach of contract claim under any particular circumstances, it just wishes to make clear that he has no breach of contract claim currently. Further, Henderson Taxi reemphasizes that Mr. Sargeant has exercised his right to file a charge against Henderson Taxi with the National Labor Relations Board.

OPP

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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff, through his attorney, Leon Greenberg Professional Corporation, hereby submits this opposition to defendant's motion for summary judgment.

SUMMARY

Defendant concealed the existence of the union grievance resolution and as a result defendant's motion should be denied and judgment entered in favor of the plaintiff

Defendant insists nothing remains to be litigated in this case under the Court's October 8, 2015 Order and the union grievance resolution that forms the basis of that Order. Assuming, *arguendo*, defendant is correct, the only issue before the Court is whether the plaintiff should be deemed a prevailing party and receive a final judgment in his favor for $107.23 (with attendant legal rights as a prevailing judgment holder) or defendant should receive a judgment in its favor (with defendant receiving those rights as a prevailing judgment holder). What is at stake for the parties is not $107.23 (which defendant concedes it owes the plaintiff under the grievance resolution as enforced by the October 8, 2015 Order) but which party will have the status of prevailing judgment

holder, in the event a final judgment is entered.

The Court should resolve this "who is the prevailing judgment holder" issue based upon defendant's willful concealment of the union grievance resolution until it opposed plaintiff's motion seeking class certification and other relief. Plaintiff made that motion without knowledge of defendant's claim that his legal rights were limited, as defendant urges and the Court's October 8, 2015 Order may be deemed to hold, to a payment of $107.23 by that grievance resolution. It is appropriate that judgment be entered against defendant in response to such conduct, as such concealment by the defendant compelled the unnecessary litigation of this case by a plaintiff kept in the dark by the defendant of his true legal rights. If the Court declines to enter judgment in such fashion in favor of the plaintiff, any judgment that is entered should deny any award of costs or fees to defendant as a result of such conduct by defendant.

PROCEDURAL POSTURE OF DEFENDANT'S MOTION

As recognized in plaintiff's timely motion[1] filed on October 30, 2015 for partial reconsideration or alternatively for entry of a final judgment ("plaintiff's pending motion"), and by defendant in its motion for summary judgment, this Court's Order entered on October 8, 2015 has not resulted in a final judgment. Plaintiff's pending motion urges the Court to hear and determine issues not expressly addressed by the October 8, 2015 Order's language. Defendant opposes any such action by the Court, arguing that the October 8, 2015 Order leaves no issues properly before the Court for determination. Plaintiff's pending motion alternatively seeks judgment in favor of the plaintiff and against defendant for $107.23 in the event the Court finds no issues remain to be litigated. Defendant concedes $107.23 is owed to the plaintiff under the October 8, 2015 Order and the grievance resolution upon which such Order is based.

Defendant's motion is made for two reasons. The first is to serve as a vehicle to

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[1] As will be explained in plaintiff's reply in support of that motion such motion was made in a timely fashion as per EDCR 2.24 and defendant is ignoring the proper rules for determining timely service of the same.

argue that nothing remains to be litigated in this case, *i.e.,* to raise arguments properly presented as an opposition to the portion of plaintiff's pending motion urging this Court to hear and determine issues plaintiff asserts are still before this Court. The second is to serve as a vehicle to have the Court award judgment to the defendant, and not the plaintiff, if the Court agrees with defendant's claim the plaintiff's only legal right is to a payment of $107.23 and no issues remain in this case to be determined.

ARGUMENT

I. DEFENDANT'S ARGUMENT THAT NO ISSUES REMAIN TO BE LITIGATED WILL BE FULLY ADDRESSED IN PLAINTIFF'S REPLY IN SUPPORT OF THEIR PENDING MOTION

Defendant's 15 page motion is entirely consumed with arguing that nothing remains to be determined in this case, all issues are resolved by the Court's October 8, 2015 Order, and a final judgment should be entered. Most of such motion also argues that the findings of the October 8, 2015 Order are legally correct.

Plaintiff's pending motion, in the first instance, seeks clarification as to whether *any* issues remain to be litigated in this case pursuant to the October 8, 2015 Order. If the Court finds no such issues remain to be litigated plaintiff does not challenge the correctness of any portion of that Order. The Court has made its decision and its time should not be frittered away with hearing, again, arguments on issues it has already considered, addressed, and resolved. Similarly, it is highly inefficient and burdensome to the Court to address, piecemeal, defendant's arguments that no issues remain to be litigated in this case. Plaintiffs will fully address all such arguments by defendant in their reply in support of their pending motion.

II. DEFENDANT CONCEALED THE EXISTENCE OF THE HENDERSON TAXI/UNION GRIEVANCE FORCING THE PROSECUTION OF THIS CASE AND AS A RESULT PLAINTIFF SHOULD BE THE PARTY PREVAILING AT JUDGMENT

Assuming, *arguendo,* that nothing remains to be litigated in this case it is because the Henderson Taxi/Union grievance resolution, as argued by defendant, has been found by the Court to extinguish all of plaintiff's claims. Defendant concedes

that plaintiff, under the terms of that grievance resolution, entered into on July 16, 2014, has a legal right to receive $107.23.

Plaintiff, and his counsel, had no knowledge of the Henderson Taxi/Union grievance resolution when this case was filed on February 19, 2015. They only secured that knowledge on July 15, 2015 in response to defendant's opposition to plaintiff's motion seeking class certification and other relief. Ex. "A" declaration of Leon Greenberg, attorney for plaintiff, Ex. "B" declaration of plaintiff.[2] Defendant went to great lengths to conceal the existence of that grievance resolution from plaintiff's counsel until such motion opposition was filed. The following chronology of events amply demonstrates such willful concealment:

- This case is commenced on February 19, 2015, service is promptly effectuated, and defendant answers on March 19, 2015 (Ex. "C"). That answer contains no reference to the grievance resolution or the union, only boilerplate non-specific and undetailed affirmative defenses.

- Defendant's counsel conducts a meeting with plaintiff's counsel on April 16, 2015. At that meeting defendant's counsel advises that defendant has decided to make settlement payments to putative class members without judicial oversight and irrespective of the status of this litigation. Ex. "A." No mention is made at that meeting of the grievance resolution or that such settlement payments are pursuant to any understanding with the union.

- Plaintiff's counsel independently receives advisement on April 17, 2015 that defendant has begun making payments to putative class members in exchange

[2] The Ex. "B" declaration is being signed by the plaintiff and a signed copy will be filed with the Court shortly.

for releases, as threatened by defendant's counsel on April 16, 2015. It corresponds with defendant's counsel about its concerns in respect to the same. Defendant's counsel replies via a letter on May 1, 2015 confirming that such payments have been made, pledging to provide certain information about the same, **but again scrupulously avoiding any mention of the grievance resolution.** Ex. "D."

- Plaintiff's counsel continued to proceed with the understanding, intentionally maintained by defendant's counsel, that defendant is making unilateral settlement payments, without any involvement by the union, to the putative class members. In response to plaintiff's counsel's further concerns about such payments defendant's counsel again corresponds on May 5, 2015. Ex. "E." Once again, defendant's counsel makes no mention of the grievance or that the settlement payments were being made pursuant to an understanding with the union. Such correspondence (Ex "E" Ex. "1" and "2" thereto) furnished to plaintiff's counsel copies of the actual communications to the Henderson taxi drivers about those payments. Those communications, although mentioning Henderson Taxi had "discussed" the minimum wage issue with the union, also does not mention the grievance resolution. Henderson Taxi was not only concealing the grievance resolution from plaintiff's counsel, it was concealing it from the taxi drivers as well.

- Without knowledge of the grievance resolution plaintiff files his motion on May 27, 2015 seeking class certification and to void any unilateral waivers of minimum wage rights defendant secured from its drivers. Such motion was predicated upon there being *no* union involvement with defendant's "settlement" payment conduct. Defendant's counsel only discloses the existence of the grievance resolution, and defendant's claim its conduct was

justified by its understanding with the union, in its motion opposition, filed on July 15, 2015.

Perhaps defendant will claim in response to the foregoing course of events that plaintiff should have, himself, inquired with the union about the grievance resolution. Such assertion by defendant would be specious. Plaintiff was expressly afforded a legal right under Nevada's Constitution to bring a civil action for minimum wages in this Court. He did not need the union's approval to do so. Defendant, knowing of the existence of the grievance resolution, should have disclosed it to the plaintiff once this litigation was commenced. Indeed, the only beneficiary of the defendant's conduct was not the defendant, but their counsel, who generated many hours of unnecessary and highly priced legal work from such conduct.

In sum, defendants have compelled the maintenance and continuance of this litigation by concealing the existence of the grievance resolution. Plaintiff was compelled by such conduct to litigate this case to vindicate his legal rights, as limited as they may be to $107.23 by the grievance resolution. Accordingly, if this case is now resolved plaintiff should be the prevailing judgment holder in the amount of $107.23.

II. DEFENDANT NEVER SOUGHT INTERPLEADER RELIEF FOR THE UNCLAIMED FUNDS OWED TO THE PLAINTIFF AND AS A RESULT PLAINTIFF SHOULD BE THE PARTY PREVAILING AT JUDGMENT

Defendant's only attempt to discuss what party should be the prevailing judgment holder if this case is concluded is set forth at footnote 8 of its motion. That footnote falsely states plaintiff was advised of "...the $107.23 he was owed under the settlement with the union" and that he declined to accept such full settlement. The relevant part of that footnotes states:

> On or about May 1, 2015, Henderson Taxi's counsel, Mr. Anthony Hall, sent to Plaintiff's counsel, Mr. Leon Greenberg, a letter regarding the settlement payments Henderson Taxi was making to its current and former taxi drivers. **Exhibit 11.** Mr. Hall informed Mr. Greenberg that Henderson Taxi had not directly contacted Plaintiff because he was a represented party and requested information regarding how Plaintiff wished to receive the $107.23 **he was owed under the settlement with the Union**. *Id.* (emphasis provided).

Defendant's *Id* in the foregoing is completely false. The referenced letter of May 1, 2015 made no mention of any "settlement with the union." As discussed, *supra*, defendant's counsel labored with great diligence to *conceal* any such "settlement" until raising that issue in their July 15, 2015 motion opposition.

In footnote 8 of their motion defendant is trying to convince the Court that plaintiff, being fully informed of his legal rights, persisted in litigating this case instead of accepting the full amount due, and tendered, to him by defendant. That is completely untrue. Plaintiff had no prompt knowledge of how his legal rights were limited by the grievance as defendant never disclosed the existence of the grievance resolution with the union until *after* the plaintiff sought class certification and other relief by motion. Nor did defendant, as it should have, promptly seek interpleader relief to deposit with the Court the unclaimed funds due to the plaintiff ($107.23) and for a determination that its legal obligation was discharged.[3]

Defendant never sought interpleader relief because doing so would raise the attendant issue of what should be done with the unclaimed funds owed to hundreds of *other* Henderson Taxi drivers pursuant to the grievance resolution. Indeed, plaintiff's pending motion seeks, via a partial class certification, the exact same sort of interpleader relief and proper disposition of those unclaimed funds. Henderson Taxi seeks to avoid any such relief being effectuated by this Court because it wants to improperly retain those funds which are not its legal property.

In light of Henderson Taxi's improper and bad faith conduct, in both concealing the existence of the grievance and attempting to avoid compliance with its legal obligations under the grievance (both to the plaintiff and hundreds of other "non-claiming" class members), if this case is now resolved plaintiff should be the prevailing

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[3] Such an interpleader action would not excuse defendant (and defendant's counsel) from failing to honor their obligation to immediately advise plaintiff's counsel about the grievance resolution.

judgment holder in the amount of $107.23.

III. IF JUDGMENT IS DENIED TO THE PLAINTIFF ANY JUDGMENT THAT IS ENTERED SHOULD DENY ANY AWARD OF COSTS OR FEES TO DEFENDANT

In the event the Court believes the circumstances of this case should result in the entry of a judgment in favor of the defendant such judgment should expressly deny defendant any award of costs or fees. Presumably any such judgment would constitute a judicial determination that the plaintiff, as asserted by defendant, is only owed $107.23 and could, at the time this action was commenced, only seek relief for $107.23 from defendant as a matter a law. Pursuant to NRS 18.020, which generally governs the award of costs under Nevada law, no costs or attorney's fee award is available to defendant as a matter of right, as such sum of $107.23 is too small an amount in controversy to justify such an award. Pursuant to NRS 18.040 the Court also has discretion to otherwise deny or allow costs and fees. It is submitted defendant's concealment of the grievance resolution prolonged and aggravated this litigation for no constructive purpose and all costs and fees should be denied to the defendant as a result.

CONCLUSION

Wherefore, defendant's motion for summary judgment should be denied in all respects.

Dated this 14th day of December, 2015.

Leon Greenberg Professional Corporation

By: */s/ Leon Greenberg*
LEON GREENBERG, Esq.
Nevada Bar No.: 8094
2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
Tel (702) 383-6085
Fax (702) 385-1827
Attorney for Plaintiff

EXHIBIT “A”

DECL
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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **DECLARATION OF LEON GREENBERG, ESQ.**

Leon Greenberg, an attorney duly licensed to practice law in the State of Nevada, hereby affirms, under the penalty of perjury, that:

1. I am one of the attorneys representing the plaintiff in this matter.

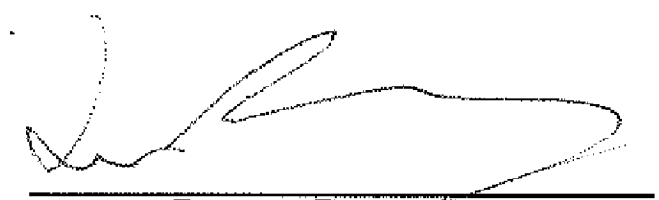
2. I offer this declaration to document to the Court that plaintiff and his counsel had no knowledge of the Henderson Taxi/Union grievance resolution discussed in this Court's Order of October 8, 2015 until July 15, 2015 when defendant's counsel served and filed their opposition to the plaintiff's motion seeking class certification and other relief.

3. Footnote 8 of defendant's motion for summary judgment references a May 1,

2015 letter from defendant's counsel and then states: "Mr. Hall informed Mr. Greenberg that Henderson Taxi had not directly contacted Plaintiff because he was a represented party and requested information regarding how Plaintiff wished to receive the $107.23 **he was owed under the settlement with the Union**" (emphasis provided). The foregoing bolded words are untrue. Neither in that May 1, 2015 letter (being provided to the Court) nor in any other communication prior to July 15, 2015, did Mr. Hall, or any other representative of the defendant, communicate to plaintiff or his counsel *anything* about the existence of any claimed "settlement with the Union." Nothing was communicated about that assertion until July 15, 2015 when defendant filed its motion opposition.

4. Plaintiff's counsel proceeded in this case, until July 15, 2015, with the understanding that there was no asserted "settlement with the Union" since defendant's counsel never communicated any such assertion until that date. Counsel for the parties engaged in several communications prior to July 15, 2015 about the claims in this case and defendant's election to make certain purported "settlement" payments to the putative class members. Those communications included an in person meeting of counsel on April 16, 2015 that lasted over 40 minutes. All of those communications concerned plaintiff's counsel's view that such activities by defendant, without judicial supervision, were improper and defendants' counsel's assertions such activities were proper. Never during any of those communications did defendant's counsel disclose defendant's "settlement with the Union" claim.

Affirmed this 14th of December, 2015



Leon Greenberg

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CLERK OF THE COURT

RPLY
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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL RECONSIDERATION OR ALTERNATIVELY FOR ENTRY OF FINAL JUDGMENT**

Plaintiff, through his attorneys, Leon Greenberg Professional Corporation, hereby submit this reply to defendant's opposition to the plaintiff's motion for partial reconsideration or alternatively for entry of final judgment.

SUMMARY

Reconsideration is only sought to clarify the Court's decision and secure relief consistent with such clarification.

Plaintiff's counsel does not seek to have the Court reexamine or change its prior determinations. They only seek the Court's guidance as to the scope of the Court's prior holding and further relief, if any is available, consistent with that guidance.

The contemplated class type relief proposed by plaintiff is consistent with an "accord and satisfaction" but not a "complete waiver" of legal claims.

Plaintiff's proposed further class type relief is based upon the Court having found an "accord and satisfaction" to have been effectuated in respect to the legal

rights of the putative class alleged in this case for minimum wages under Article 15, Section 16, of Nevada's Constitution. Such an "accord" and "satisfaction" would be properly construed as imposing an "accord" (meaning agreed legal duty) to "satisfy" (meaning actually pay consideration) and limit (or partially waive) those minimum wage claims within the parameters of such "accord and satisfaction." If those are the operative circumstances it is completely proper for the Court to certify a class action for equitable relief, under NRCP Rule 23(b)(2), to force defendant to comply with its remaining legal duty (as limited by that accord and satisfaction) to pay the minimum wages required by Article 15, Section 16, of Nevada's Constitution.

Plaintiff does not dispute that the proposed class relief is unavailable if the Court's prior decision found that the class members' rights against the defendant for minimum wages under Article 15, Section 16, of Nevada's Constitution had been **completely waived** by their labor union. Yet, as discussed in plaintiff's moving papers, the Court's Order (drafted by defendant) states both that the union entered into a grievance resolution that "acted as a complete accord and satisfaction of the grievance and any claims to minimum wages Henderson Taxi' cab drivers may have had" ***and*** "the settlement of the Grievance resolved a bona fide dispute regarding wages and did not necessarily act as a waiver of minimum wage rights." The Court is being requested, most respectfully, to clarify its Order (the defendant's counsel's drafting of the Order causing such lack of clarity) and proceed accordingly.

IN REPLY TO DEFENDANT'S STATEMENT OF FACTS

Defendant's counsel incorrectly advises the Court that plaintiff was made aware of the union/employer grievance resolution prior to filing his motion for class certification. That is untrue, such advisement was only furnished by defendant's counsel (which very scrupulously avoided disclosing that information at an earlier date) in their opposition to the class certification motion. This is discussed in plaintiffs' opposition to defendant's motion for summary judgment, see also Ex. "A," plaintiffs' counsel's declaration submitted as part of that opposition.

ARGUMENT

I. THE COURT MAY PROPERLY GRANT CLASS RELIEF ON THE MINIMUM WAGE CLAIMS POSSESSED BY THE PUTATIVE CLASS MEMBERS, AS LIMITED BY THE "ACCORD AND SATISFACTION" FOUND BY THE COURT

A. The proposed class members' rights are *legal rights* still existing directly under Nevada's Constitution, not mere "contract rights" arising under the union grievance.

The parties do not dispute that the minimum wage requirements of Article 15, Section 16 of Nevada's Constitution ("Section 16") applies to taxi drivers. Nor do the parties dispute that an employee's labor union may, through a collective bargaining agreement, completely waive those minimum wage rights. Defendants do not, and cannot, dispute that those protections **can be waived in part.** Indeed, Section 16, subpart B, expressly recognizes the *potential partial waiver* or modification of those legal rights: "All of the provisions of this section [16], **or any part thereof**, may be waived in a bona fide collective bargaining agreement..."

The Court's prior ruling is properly deemed to recognize an "accord and satisfaction" by the union that **has partially waived** the legal rights granted by Section 16 by **limiting those legal rights to a recovery of money within the parameters of such accord and satisfaction.** The union grievance does not, in any of its language, state it is acting as a complete waiver of the taxi drivers' rights under Section 16 and substituting some sort of contract right in its place. Nor does this Court's prior decision so hold.

B. If the proposed class members' rights are *legal rights* still existing directly under Nevada's Constitution the plaintiff has standing to secure equitable relief to enforce those rights.

The grant of potential relief to an aggrieved employee under Section 16, Subpart B, could not be broader:

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

If possessed of any partial, residual, legal rights under Section 16 the plaintiff has standing to seek enforcement of those rights, via an suitable injunction, on behalf of the putative class.

C. Defendant's assertions *Cy Pres* relief is not proper are wholly unsupported and irrelevant to class certification.

Defendant asserts the *Cy Pres* doctrine, to be invoked so as to not allow the defendant to retain the unpaid monies it owes to the class members, cannot be applied to the proposed class claims and therefore class certification must be denied. Such assertion is not logically explained. No citation to any authority is presented in support of that assertion. While defendant claims such *Cy Pres* type relief is not appropriate or possible in a "breach of contract" action it does not explain why that is so. The proposed class certification is sought pursuant to the legal rights granted under Nevada's Constitution, not for breach of any contract. In any event the issue of *Cy Pres* relief is to be evaluated *after* class certification is granted under NRCP Rule 23(b)(2). Such class certification will *not* actually entitle the class to any relief, in any form. It will merely establish that the Court will, after such certification, hear and determine what equitable relief, if any, is appropriately awarded to the class. Defendant's claim that no *Cy Pres* type relief should be issued to the class is properly heard and determined after class certification.

D. Defendant's assertion the class certification request is not adequately supported is specious.

As plaintiff has documented in his moving papers, and as defendant does not dispute, over 300 persons, including the named plaintiff, were entitled to minimum wage payments from the defendant and have never received those payments. Defendant provides no explanation for its assertion the proposed class certification of those persons' claims for those as yet unpaid amounts is inadequately supported by the record before the Court. Such assertion by the defendant is wholly specious.

II. IF BROADER LEGAL RIGHTS ARE POSSESSED BY THE

"NON-ACKNOWLEDGMENT" SIGNERS THE CERTIFICATION OF A "$7.25 AN HOUR MINIMUM WAGE RATE" CLASS IS COMPLETELY PROPER

Plaintiff's moving papers recognized the possibility that the 300 or so "non-acknowledgment" signers (including the named plaintiff) who had received no payment under the grievance resolution *might* be deemed under the Court's Order to have retained their full legal rights under Section 16. If so (plaintiff was not stating that they, in fact, did retain such full rights, only that the Order's language left open a colorable argument that they still possessed such full panoply of rights) plaintiff asked for leave to address whether class certification of such "full" claims under Section 16 would be proper, given certain other findings in the Order about class certification. Those findings, as plaintiff's counsel recognized, were irrelevant unless such a "full retention of rights" finding was made first by the Court.

At pages 12 and 13 of its Opposition defendant argues that the potential certification of a "$7.25 an hour minimum wage class," which would remove the obstacles to class certification supposedly presented by the "health insurance" coverage issue, would be improper. Defendant insists, without explanation or citation to any authority whatsoever, that such a class certification would result in a waiver of the class members' rights to the higher, $8.25 an hour, health insurance involved, minimum wage. No such waiver would occur or is proposed. This Court would have the authority to certify such a "$7.25 an hour minimum wage class" and *not* impair the class members' rights to pursue their "$8.25 an hour minimum wage claims" in separate, individual, litigation. *See*, NRCP Rule 23(c)(4) authorizing the certification of class actions as to only "particular issues."

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CONCLUSION

Wherefore, the motion should be granted.

Dated this 6th day of January, 2016.

Leon Greenberg Professional Corporation

By: /s/ *Leon Greenberg*
LEON GREENBERG, Esq.
Nevada Bar No.: 8094
2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
Tel (702) 383-6085
Fax (702) 385-1827
Attorney for Plaintiff

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

Attorneys for Defendant Henderson Taxi

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL SARGEANT, individually and on behalf of others similarly situated, Plaintiff, v. HENDERSON TAXI, Defendant.	CASE NO.: A-15-714136-C DEPT. NO.: XVII **PROPOSED ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL RECONSIDERATION OR ALTERNATIVELY FOR ENTRY OF FINAL JUDGMENT**

This matter came before the Court for hearing on January 13, 2016 in chambers on Plaintiff Michael Sargeant's *Motion for Partial Reconsideration or Alternatively for Entry of Final Order* (the "Motion").

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 presented at the hearing on Henderson Taxi's Motion for Summary Judgment, and good cause appearing, the Court finds that Plaintiff has not met the standard for reconsideration and that reconsideration is not warranted in this instance. Therefore, good cause appearing,

///

///

IT IS HEREBY ORDERED that Plaintiff's Motion for Partial Reconsideration or Alternatively for Entry of Final Judgment is DENIED.

DATED this 28 day of January, 2016.

DISTRICT COURT JUDGE

Respectfully submitted by:

By
Anthony L. Hall, Esq.
R. Calder Huntington, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Attorneys for Defendant Henderson Taxi

Approved as to form and content:

By
Leon Greenberg, Esq.
Dana Sniegocki, Esq.
LEON GREENBERG PROFESSIONAL CORPORATION
2965 South Jones Blvd., Suite E3
Las Vegas, Nevada 89146
Attorney for Plaintiff

8402238_1

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

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

Attorneys for Defendant Henderson Taxi

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL SARGEANT, individually and on behalf of others similarly situated, Plaintiff, v. HENDERSON TAXI, Defendant.	CASE NO.: A-15-714136-C DEPT. NO.: XVII **NOTICE OF ENTRY OF ORDER**

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

DATED this 15th day of February, 2016.

HOLLAND & HART LLP

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

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

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:

Leon Greenberg, Esq.
Dana Sniegocki, Esq.
Leon Greenberg Professional Corporation
2965 South Jones Blvd., Suite E3
Las Vegas, Nevada 89146

Leon Greenberg: leongreenberg@overtimelaw.com
Dana Sniegocki: dana@overtimelaw.com

An Employee of Holland & Hart LLP

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

8475375_1

FFCL
Anthony L. Hall, Esq.
Nevada Bar No. 5977
ahall@hollandhart.com
R. Calder Huntington, Esq.
Nevada Bar No. 11996
rchuntington@hollandhart.com
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
(702) 669-4600
(702) 669-4650 –fax
Attorneys for Defendant Henderson Taxi

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL SARGEANT, individually and on behalf of others similarly situated, Plaintiff, v. HENDERSON TAXI, 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**

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

JUDGMENT

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

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

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

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

DATED this 28 day of January 2016.

DISTRICT COURT JUDGE

Respectfully submitted by:

HOLLAND & HART LLP

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

Approved as to form:

By
Leon Greenberg, Esq.
Dana Sniegocki, Esq.
LEON GREENBERG PROFESSIONAL CORPORATION
2965 South Jones Blvd., Suite E3
Las Vegas, Nevada 89146
Attorney for Plaintiff

8396349_1

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

ORDR
Anthony L. Hall, Esq.
Nevada Bar No. 5977
ahall@hollandhart.com
R. Calder Huntington, Esq.
Nevada Bar No. 11996
rchuntington@hollandhart.com
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
(702) 669-4600
(702) 669-4650 –fax
Attorneys for Defendant Henderson Taxi

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL SARGEANT, individually and on behalf of others similarly situated, Plaintiff, v. HENDERSON TAXI, Defendant.	CASE NO.: A-15-714136-C DEPT. NO.: XVII **ORDER GRANTING MOTION FOR ATTORNEYS' FEES**

Defendant Henderson Taxi's ("Defendant" or "Henderson Taxi") Motion for Attorneys' Fees (the "Motion") came before the Court on Chamber's Calendar on May 4, 2016.

The Court, having read and considered Henderson Taxi's Motion, Plaintiff Michael Sargeant's ("Plaintiff" or "Sargeant") Opposition, Henderson Taxi's Reply, all exhibits attached thereto, and good cause appearing, hereby grants Henderson Taxi's Motion in the amount of $26,715.00 for the reasons set forth below:

FINDINGS OF FACT

1. Sargeant filed this action on February 18, 2015, alleging that Henderson Taxi failed to pay its taxicab drivers the minimum wage required by the Nevada Constitution.

2. On May 27, 2015, Sargeant filed a motion seeking to certify this case as a class action ("Motion to Certify").

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

3. On or about July 8, 2015, Henderson Taxi produced correspondence and a settlement agreement between it and the ITPEU/OPEIU Local 4873, AFL-CIO (the "Union"), the Union representing Henderson Taxi's taxicab drivers. This settlement agreement with the Union extinguished any claim by Sargeant and the putative class for unpaid minimum wages.

4. Shortly thereafter, Henderson Taxi filed its opposition to Sargeant's Motion to Certify, wherein it fully explained how it had settled Mr. Sargeant's claim with the Union.

5. On October 8, 2015, this Court found that the agreement between Henderson Taxi and the Union "acted as a complete accord and satisfaction of the [Union's minimum wage] grievance and any claims to minimum wage Henderson Taxi's cab drivers may have had."

6. On October 30, 2015, Sargeant filed a Motion for Partial Reconsideration or Alternatively for Entry of Final Judgment ("Motion for Reconsideration"). This Motion for Reconsideration sought certification of a class that was not pleaded in Plaintiff's Complaint and judgment on a claim that was both unsupported and had not been pleaded in Plaintiff's Complaint.

7. On November 11, 2015, Henderson Taxi filed a Motion for Summary Judgment. Sargeant opposed this Motion for Summary Judgment by again attempting to relitigate the accord and satisfaction and settlement issue the Court had already clearly decided. Sargeant failed to even attempt to present facts that might have contradicted the granting of summary judgment in this opposition.

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

CONCLUSIONS OF LAW

I. Recoverability of Attorneys' Fees

1. "[A]ttorney's fees are not recoverable absent a statute, rule or contractual provision to the contrary." *Rowland v. Lepire*, 99 Nev. 308, 315, 662 P.2d 1332, 1336 (1983).

2. NRS 18.010(2)(b) provides that attorneys' fees should be awarded to a prevailing party "when the court finds that the claim ... was brought **or maintained** without reasonable ground or to harass the prevailing party." (Emphasis added.)

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Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

3. Furthermore, "it is the intent of the Legislature that the court award attorney's fees pursuant to [NRS 18.010(2)(b)] … in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public." NRS 18.010(2)(b).

4. Here, the Court held on October 8, 2015, that Sargeant lacked any cognizable claim for minimum wage against Henderson Taxi because such claim had been settled by the Union. This order made clear that Sargeant lacked any claim against Henderson Taxi for unpaid minimum wages.

5. After receipt of this Order, Sargeant and his counsel were on notice that Sargeant's claim had no factual or legal basis.

6. Sargeant's continued litigation of this case after October 8, 2015, including filing an entirely unsupported Motion for Reconsideration (seeking judgment on an unpleaded claim and certification of an unpleaded class) and Opposition to Motion for Summary Judgment, demonstrate that he maintained this action "without reasonable ground" because the Court had ruled he had no cognizable claim. This is the exact type of situation wherein the Legislature intended a fee award under NRS 18.010(2)(b): where a plaintiff will not let go of their alleged claim regardless of the evidence, law, and prior judicial orders stacked against them.

7. ~~This case did not present novel issues of law.~~ It is well-settled that unions may act on behalf of their members and that agents may settle claims for their principals. *See, e.g., May v. Anderson*, 121 Nev. 668, 674-75, 119 P.3d 1254, 1259-60 (2005) ("Schwartz had authority to negotiate on behalf of the Mays and accepted the offer in writing. … The fact that the Mays refused to sign the proposed draft release document is inconsequential to the enforcement of the documented settlement agreement. The district court … properly compelled compliance by dismissing the Mays' action."); *see also, e.g., St. Vincent Hospital*, 320 NLRB 42, 44-45 (1995) ("as a matter of law, when the parties by mutual consent have modified at midterm a provision contained in their collective-bargaining agreement, that lawful modification becomes part of the

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

parties' collective-bargaining agreement, unless the evidence sufficiently establishes that the parties intended otherwise."); *see also Certified Corp. v. Hawaii Teamsters and Allied Workers, Local 996, IBT*, 597 F.2d 1269, 1272 (9th Cir. 1979) (approving a union's and an employer's oral modification of a CBA); *International Union v. ZF Boge Elastmetall LLC*, 649 F.3d 641 (7th Cir. 2011) (recognizing mid-term modification to a CBA by a union and an employer).

8. Plaintiff's issues ~~Further, even had those issues been novel (which they were not), they~~ were settled by the Court's October 8, 2015 Order holding that Sargeant had no cognizable claim based on the Union's settlement thereof.

9. Sargeant's Motion for Reconsideration was made without reasonable ground. A motion for reconsideration seeking judgment on an unpleaded claim and certification of an unpleaded class is not a motion for reconsideration and inherently has no merit.

10. Sargeant's Opposition to Motion for Summary Judgment was also made without ground. In his Opposition, Sargeant failed to even attempt to present facts that might stave off summary judgment, but rather sought to re-litigate the accord and satisfaction issue previously decided.

11. For these reasons, the Court finds that Sargeant's claim was maintained without reasonable ground after October 8, 2015.

II. Reasonableness of Fees

12. When awarding attorney's fees, the Court must consider the following factors: (1) the qualities of the advocate; (2) the character of the work to be done; (3) the work actually performed by the advocate; and (4) the result achieved. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). While the Court need not make explicit findings for each factor, the Court must demonstrate that it considered the required factors and an award of attorneys' fees must be supported by substantial evidence. *Logan v. Abe*, 131 Nev. Adv. Op. 31, 350 P.3d 1139 (2015).

13. Henderson Taxi's attorneys' fees are reasonable and justified under *Brunzell*.

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

14. First, Holland & Hart LLP and the attorneys involved in this case possess extensive experience in commercial, labor, and employment litigation and provided high-quality work for Henderson Taxi.

15. Second, Plaintiff brought this lawsuit as a putative class action and raised contractual and other issues under the Nevada Constitution which Henderson Taxi (and, thereby, Holland & Hart) had to defend.

16. Third, the work performed by Holland & Hart and Holland & Hart's hourly rates were reasonable in light of all the circumstances and as demonstrated by their submissions to the Court.

17. Fourth, and finally, Henderson Taxi was ultimately successful defending this matter with the aid of Holland & Hart.

18. Accordingly, Henderson Taxi is entitled to an award of attorneys' fees for the time after this Court issued its October 8, 2015, Order holding that Plaintiff and the putative class had no viable claim in the amount of $26,715.[1]

19. Plaintiff's claim became frivolous at this time and any maintenance of the claim after this date was unreasonable as a matter of law.

/ / /

/ / /

[1] Henderson Taxi sought fees either from the date it filed its Opposition to Plaintiff's Motion to Certify in the amount of $47,739.50 or after the issuance of the October 8, 2015, Order holding that Plaintiff and the putative class had no viable claim in the amount of $26,715.

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

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

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Henderson Taxi's Motion for Attorneys' Fees is GRANTED in the amount of $26,715.00.

DATED this 21 day of June 2016.

for _____
DISTRICT COURT JUDGE
Sr J Bonaventure BV

Respectfully submitted by:

HOLLAND & HART LLP

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

Approved as to form:

By Refused to Sign
Leon Greenberg, Esq.
Dana Sniegocki, Esq.
LEON GREENBERG PROFESSIONAL CORPORATION
2965 South Jones Blvd., Suite E3
Las Vegas, Nevada 89146
Attorney for Plaintiff

8396349_1

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

REGISTER OF ACTIONS

CASE NO. A-15-714136-C

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

Case Type: **Other Civil Matters**
Date Filed: **02/19/2015**
Location: **Department 17**
Cross-Reference Case Number: **A714136**
Supreme Court No.: **69773**

PARTY INFORMATION

Defendant	**Henderson Taxi**	**Lead Attorneys** **Anthony L. Hall** *Retained* 702-669-4650(W)
Plaintiff	**Sargeant, Michael**	**Leon Greenberg** *Retained* 7023836085(W)

EVENTS & ORDERS OF THE COURT

05/04/2016 **Motion for Attorney Fees** (3:00 AM) (Judicial Officer Villani, Michael)
Defendant Henderson Taxi's Motion for Attorneys' Fees

Minutes

04/13/2016 3:00 AM

05/04/2016 3:00 AM

- Defendant Henderson Taxi's Motion for Attorneys' Fees came before this Court on the May 4, 2016, Chamber Calendar. Defendant requests attorneys' fees for either the time (a) after Henderson Taxi filed its Opposition to Plaintiff's Motion to Certify in the amount of $47,739.50; or (b) after this Court issued its October 8, 2015 Order holding that Plaintiff and the punitive class had no viable claim in the amount of $26,715. "[A]ttorney's fees are not recoverable absent a statute, rule or contractual provision to the contrary." Rowland v. Lepire, 99 Nev. 308, 315, 662 P.2d 1332, 1336 (1983). NRS 18.010 provides that attorneys' fees should be awarded to a prevailing party when the court finds that the claim was "brought or maintained without reasonable ground or to harass the prevailing party." Furthermore, "it is the intent of the Legislature that the court award attorneys' fees pursuant to [NRS 18.010 (b)] . . . in all appropriate situations to punish and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public." NRS 18.010(2)(b). When awarding attorney's fees, the court may consider the following factors: (1) the qualities of the advocate; (2) the character of the work to be done; (3) the work actually performed by the advocate; and (4) the result. Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Explicit findings for each factor are not required, but the court must demonstrate that it considered the required factors and the award must be supported by substantial evidence. Logan v. Abe, 131 Nev. Adv. Op. 31, 350 P.3d 1139 (2015). The COURT FINDS that on or about July 8, 2015, Henderson Taxi produced correspondence with the Union of the Union settlement that extinguished any claim by Plaintiff. Shortly thereafter in Defendant's Opposition to Plaintiff's Motion to Certify Class, Defendant fully explained how Defendant had settled Mr. Sergeant's claim. In its October 8, 2015 Order, this Court found that the agreement between Henderson Taxi and the Union

"acted as a complete accord and satisfaction of the grievance and any claims to minimum wage Henderson Taxi's cab drivers may have had." Plaintiff subsequently filed a Motion for Partial Reconsideration or Alternatively for Entry of Final Judgment on October 30, 2015, which this Court denied, and Defendant filed a Motion for Summary Judgment on November 11, 2015, which Plaintiff opposed and this Court granted. Plaintiff's Motion for Partial Reconsideration or Alternatively for Entry of Final Judgment sought certification of unpled class and judgment for an unpled and unsupported claim. Plaintiff s Opposition to Defendant s Motion for Summary Judgment similarly sought to relitigate the accord and satisfaction of the grievance and settlement with Henderson Taxi and the Union. For these reasons, Plaintiff's claim was maintained without reasonable ground. The COURT ALSO FINDS that Henderson Taxi's attorneys' fees are reasonable and justified under Brunzell. First, Holland & Hart LLP possesses extensive experience in commercial, labor, and employment litigation and provided a high quality of work for Defendant. Second, Plaintiff brought the lawsuit as a putative class action and raised contractual issues and other issues under the Nevada Constitution. Third, the work performed by Holland & Hart LLP for Defendant and Holland & Hart LLP's hourly rates were reasonable. Lastly, Defendant was ultimately successful defending this matter. Therefore, COURT ORDERED Motion for Attorneys' Fees is GRANTED. Defendant is entitled to attorney's fees for the time after this Court issued its October 8, 2015, Order holding that Plaintiff and the punitive class had no viable claim in the amount of $26,715. Plaintiff's claim became frivolous at this time. 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 Anthony Hall, Esq., (Holland & Hart, LLP).

Return to Register of Actions

4. Should the Acknowledgements Be Voided: No, The Nevada Constitution Does Not Bar Acknowledgements of Payments or, For That Matter, Settlement of Wage Claims

As an initial matter, Plaintiff is simply wrong in his assertion that people cannot settle state minimum wage claims or that they may only do so with judicial or administrative review, as demonstrated by his failure to cite any authority regarding Nevada state wage claims. Rather, the public policy against waiver of wage claims "is not violated by a settlement of a bona fide dispute over wages already earned." *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796, 803 (Cal. Ct. App. 2009). Thus, where only past claims are at issue, and where there is a bona fide dispute as to liability, parties are free to settle or release 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 violates. … 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"). Plaintiff's reliance on inapplicable federal law is unavailing regarding his state law claim and he lacks a federal claim.

Here, there is no question that there was and is a bona fide dispute (evidenced by the Union Grievance and this lawsuit) as to whether Henderson Taxi's cab drivers were owed minimum wage for any period of time prior to the issuance of the *Yellow Cab* decision and what the statute of limitations period is. *See* Section III(B)(1)-(2), *supra* (regarding disputes as to the retroactive application of *Yellow Cab* and the appropriate statute of limitations); Exhibits 5, 8-10 (communications with the Union acknowledging and resolving this bona fide dispute). As such, Nevada law would not have prohibited the settlement of any past due minimum wage claims with the putative class members Plaintiff seeks to represent or Henderson Taxi's resolution and settlement with the Union—nor could Nevada law prohibit this Union action under the LMRA and the NLRA because pay is expressly with the jurisdiction of the Union.

However, this discussion is irrelevant because the individual acknowledgments signed by the vast majority of the putative class Plaintiff seeks to represent are not settlement agreements.

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

They are voluntary acknowledgements that the employees reported their hours correctly and that, after the related payment, the employee had been paid all minimum wage going back two years and were not owed anything further from Henderson Taxi. As such, the acknowledgments merely acknowledged receipt of the funds paid and particular facts and opinions of the drivers. Further, the payment associated with the acknowledgment was expressly not conditioned on the execution of the acknowledgement. Exhibit 11 ("Employee understands that his/her receipt of the aforementioned Payment is **not** conditioned on the execution of this Acknowledgement.") (Emphasis in original.)

Additionally, the acknowledgements were arrived at by agreement between the Union and Henderson Taxi pursuant to the Union/CBA grievance process. Exhibit 10. Thus, what Plaintiff is actually requesting is that the Court invalidate a contractual agreement between the Union and Henderson Taxi. *See St. Vincent Hospital*, 320 NLRB 42, 44-45 (1995) (if parties to a collective bargaining agreement reach an agreement to modify or supplement the agreement, the change becomes part of the existing agreement). In other words, Plaintiff seeks to challenge a union agreement regarding the terms and conditions of employment with Henderson Taxi. State courts do not have authority to invalidate or decide contractual issues between unions and employers. *Burnside*, 491 F.3d at 1059 ("preemptive force of section 301 is so powerful as to displace entirely any state cause of action for violation of contracts between an employer and a labor organization.") Thus, this Court has no authority to invalidate the decisions and results of the Union Resolution, including the acknowledgements.

C. Plaintiff Has Not Presented Evidence to Satisfy the Requirements of Rule 23 for Class Action Status

Beyond there being legal issues to decide prior to a proper motion for class certification, Sargeant has not presented evidence to satisfy the requirements of Rule 23 for class action status. Rather, Plaintiff, is seeking class action status as a sanction for what Plaintiff's counsel considers Defendant's wrongful conduct—actually paying the putative class what the Union contends they were owed. Not only did Defendant not engage in any wrongful conduct, class certification is not

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

a proper sanction. Plaintiff must still demonstrate the requirements of Rule 23 with evidence, not allegations, which he has failed to do.

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 n.13 (2005). This rigorous analysis will generally overlap with the merits of the underlying case.[18] *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, 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.

As evidence purportedly supporting class certification, Plaintiff only attaches to his Motion copies of letters Henderson Taxi sent to cab drivers pursuant to its resolution with the Union, the acknowledgement that went with those letters, four short declarations of hand-picked witnesses, and some earnings statements. This amount of evidence makes a mockery of the class certification process and is grossly insufficient. *See e.g., Espenscheid v. DirectSat USA, LLC*, 705 F.3d 770, 774 (7th Cir. 2013) (affirming decertification of wage and hour class where plaintiffs

[18] By bringing this motion prior to conducting substantive discovery, Plaintiff essentially asks the Court to ignore the merits of the case for purposes of this Motion. The United States Supreme Court's recent *Wal-Mart v. Dukes* makes clear that a merits analysis will often overlap with the class certification analysis.

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

offered to present testimony from 42 "representative" class members out of 2,341, because "[c]lass counsel has not explained … how these 'representatives' were chosen–whether for example they were volunteers, or perhaps selected by class counsel after extensive interviews and hand picked to magnify the damages sought by the class."); *Hall v. Guardsmark, LLC*, 2012 WL 3580086, *9 (W.D.Pa., Aug. 17, 2012) ("Many courts finding insufficient evidence of other potential class members at the first step were presented with a nominal number of affidavits that made broad allegations about the treatment of other employees."); *Ross v. Nikko Sec. Co. Int'l, Inc.*, 133 F.R.D. 96, 97 (S.D.N.Y. 1990) (affidavits from three named plaintiffs and one additional putative class members insufficient to establish commonality for potential class of approximately 200 employees). Rather than present mere assertions by a few individuals and counsel, Sargeant must demonstrate through admissible evidence that "the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." NRCP 23(b)(3); *see also, e.g., Sobel v. Hertz Corp.*, 291 F.R.D. 525, 541 n.23 (D. Nev. 2013) ("Factual determinations supporting a Rule 23 finding must be made by a preponderance of *admissible* evidence") (citing *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 322-23 (3d Cir. 2008) (emphasis in original)); *Khadera v. ABM Indus. Inc.*, 701 F.Supp.2d 1190, 1196-97 (W.D.Wash. 2010) (rejecting argument that evidentiary rules did not apply to motion for class certification, and striking exhibits that were not properly authenticated); *Lujan v. Cabana Mgmt., Inc.*, 284 F.R.D. 50, 64 (E.D.N.Y. 2010) ("recent dictum by the Supreme Court concerning the standards for evaluating expert opinions on a class certification motion further suggests that evidence offered in connection with such a motion must satisfy admissibility requirements.").

1. Plaintiff Has Not Demonstrated Numerosity, Commonality, Typicality, or Adequacy

In support of this three-paragraph argument that all of the requirements of Rule 23(a) are met, Plaintiff simply points to the letters Henderson Taxi sent to its current and former taxi drivers. *See* Exhibit 21 (sample letters); *see also* Mot. Exhibits C and D. Plaintiff contends that

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

these letters, by themselves, establish numerosity, commonality, typicality, and (amazingly) adequacy of representation.

a) Plaintiff Has Not Demonstrated Numerosity

The Nevada Supreme Court has made it clear that "impracticability of joinder cannot be speculatively based on merely the number of class members, but must be positively demonstrated in an examination of the specific facts of each case." *Shuette*, 121 Nev. at 847, 124 P.3d at 538. The Court has established the following criteria to decide whether joinder is practical: "judicial economy arising from the avoidance of a multiplicity of actions, geographic dispersion of class members, financial resources of class members, the ability of claimants to institute individual suits, and requests for prospective injunctive relief which would involve future class members." *Id.* Here, Plaintiff relies solely on the number of letters Henderson Taxi sent to its current and former drivers pursuant to Henderson Taxi's agreement with the Union to argue that the numerosity requirement is satisfied. Mot. at 6:18-28. This is insufficient given the factors to be considered.

For example, Plaintiff has presented no evidence that the putative class members are geographically dispersed. Further, considering that Henderson Taxi only operates in Clark County, Nevada, it is highly unlikely that putative class members are geographically dispersed. Exhibit 2, Knapp Decl., ¶ 2; *Shuette*, 121 Nev. at 847, 124 P.3d at 538 ("the joinder of two hundred plaintiffs might not prove impracticable, when they live in geographical proximity with one another and are asserting claims for which, if proven, they may statutorily recover attorney fees.").

Also, the Union has resolved the minimum wage issue for the putative class and obtained a result which the vast majority of Henderson Taxi drivers agree with: the payment of any minimum wage disparity over the two-year period prior to the *Yellow Cab* decision. *See* Exhibit 10; *see, e.g.*, Exhibit 11; Exhibit 2, Knapp Decl. ¶¶ 6-7. As these acknowledgements are perfectly valid, acknowledge full payment, and were not obtained wrongfully, but rather in conjunction with negotiations with the Union, Plaintiff cannot demonstrate that there are numerous

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

individuals that share his claim to unpaid minimum wage. Rather, he can at most show three individuals, which cannot be considered numerous.

Finally, "[w]here a statute provides attorney's fees to a prevailing plaintiff, there is less incentive to protect by class certification individuals with small claims." *Shuette*, 121 Nev. at 854, 124 P.3d at 542 (quoting *Maguire v. Sandy Mac, Inc.*, 145 F.R.D. 50, 53 (D.N.J. 1992)); *see also Johnson v. W. Suburban Bank*, 225 F.3d 366, 374 (3d Cir. 2000) (where attorneys' fees were available under statute, enforcement of class action waiver was not unconscionable because it would not eliminate incentive for counsel to take on case); *Ratner v. Chem. Bank N.Y. Trust Co.*, 54 F.R.D. 412, 416 (S.D.N.Y. 1972) (because Truth in Lending Act provides for recovery of attorneys' fees, the incentive of class action benefits is unnecessary). The provision of attorneys' fees to a successful plaintiff also tends to demonstrate that there is no reason individual plaintiffs cannot bring their own suits. In *Shuette*, the Court noted that joinder of 200 plaintiffs might not be impracticable, in part because the plaintiffs asserted claims which, if proven, would entitle them to recover their attorneys' fees statutorily. 121 Nev. at 845, 124 P.3d at 538. Here, Plaintiff's claims, if proven, include statutory entitlement for attorneys' fees. Nev. Const. Art. 15, s. 16. Thus, joinder is not impracticable and Plaintiff has failed to demonstrate numerosity.[19]

b) Plaintiff Has Not Demonstrated Commonality or Typicality

Under NRCP 23(a)(2), Plaintiff must show that there are common questions of law or fact common to each individual within the propose 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 Falcon*, 457 U.S. at 155 (questions

[19] Moreover, NRS 608.180 provides that the Labor Commissioner "shall cause the provisions of NRS 608.005 to 608.195, inclusive, to be enforced." NRS 608.180 mandates that, upon notice from the Labor Commissioner or his representative, the a legal representative "shall prosecute the action for enforcement according to law." Thus, NRS 608.180 specifically delegates the responsibility of enforcing Plaintiff's NRS 608.040 to the Labor Commissioner and other public officials, thus providing an avenue for allegedly unpaid employees to pursue their claims without cost.

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

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

i. The Union Negotiated Letters Do Not Show Commonality

Here, Plaintiff claims that the letters sent to Henderson Taxi cab drivers pursuant to Henderson Taxi's resolution with the Union demonstrate that there is a common factual and legal issues: how much minimum wage is owed to each cab driver. Mot. 628-7:1. In fact, these letters help demonstrate that there is no common question of fact or law that holds true to *all* class members as required by *Shuette*. Here, the Union negotiated payments to the putative class members. Exhibits 5, 8-10. The vast majority of putative class members have accepted those payments and voluntarily acknowledged that they have no further claim against Henderson Taxi for unpaid minimum or other wages. Exhibit 2, Knapp Decl., ¶ 8. Thus, because the vast majority of the putative class does not claim to assert the same claims as Plaintiff and **have affirmatively stated that they do not share such claims**, Plaintiff's claims cannot be common to the putative class.

ii. The Wage Tier Applicable to a Cab Driver Requires Individual Analysis

The "two-tiered" minimum wage provided by the Minimum Wage Amendment does not require the Court to only consider family coverage as Plaintiff contends. Rather, it will require an individualized inquiry into putative class members' earnings (**including tips**) and family/dependent situations. The Minimum Wage Amendment states:

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

> The rate shall be five dollars and fifteen cents ($5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents ($6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's **gross taxable income** from the employer.

Nev. Const. Art. 15 s. 16(A) (emphasis added).

(a) Applicable Coverage Depends on Actual Number Dependents

Plaintiff contends that the only relevant insurance cost figure is the cost of family coverage. There is no basis for this in the Minimum Wage Amendment or its implementing regulations. NAC 608.102 and 608.104 provide that to qualify for the lower tier wage rate, a "health insurance plan must be made available to the employee and ***any*** dependents of the employee" that costs no more than 10% of the gross taxable income attributable to the employer, which includes tips earned. (Emphasis added.) Thus, pursuant to the Minimum Wage Amendment and its implementing regulations, the cost of family coverage is only relevant if a taxi driver has a family of dependents. *See* Nev. Const. Art. 15 s. 16(A); NAC 608.102. If a driver has no dependents, the cost of family coverage is irrelevant as he or she has no dependents to cover. The only relevant figure to individuals without dependents is the cost of insuring themselves, *see* NAC 608.102, which is substantially less under Henderson Taxi's health plans than insuring a family, *see, e.g.* Exhibit 13 (2014 health insurance rates, demonstrating different rates for self-insurance, employee+1 insurance, and family coverage). Further, if an employee only has a single dependent, the relevant cost of insurance is the cost to insure the employee and his or her one dependent. *Id.*

(b) A Driver's Amount of Income Requires Individualized Inquiry

After determining which insurance rate is relevant to an individual employee, another individual determination is also necessary: What is the drivers' "gross taxable income". Plaintiff will likely contend that this is an easily retrievable number as it is expressed on their IRS Form W-2s. This is incorrect. Gross income is defined as "all income from whatever source derived"

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Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

and includes tips, whether or not they are reported to an employer. *See* 26 U.S.C. § 61; *see also* IRS Pub. 531, Reporting Tip Income. It is common knowledge that not all individuals who receive tips report all of their tips either to their employer or to the IRS. *See, e.g.*, Bouree Lam, *How Much Do Waiters Really Earn in Tips*, The Atlantic (Feb. 18, 2015), http://www.theatlantic.com/business/archive/2015/02/how-much-do-waiters-really-earn-in-tips/385515/ (last visited July 15, 2015) ("the IRS estimates that as much as 40 percent of tips go unreported.") Here, because the Minimum Wage Amendment incorporates the IRS definition of income by referring to "gross taxable income", the actual amount of tips a driver receives, not just what he reports, determines what his gross taxable income is.[20] This will require Henderson Taxi to inquire as to each individual driver's actual tip income, not what he reported. This will also include an individualized determination of each drivers credibility: Does the jury believe that they reported all tips or not. Thus, as the Court can be sure a substantial portion of drivers do not report all tip income, the W-2 is merely a starting point and an individualized inquiry for each driver regarding whether they reported all tips (individual credibility) and how much of their tips were not reported will be necessary.

Further, Henderson Taxi does not compensate drivers on a flat basis. Each driver is compensated by a formula set forth in the CBA.[21] For example, employees who earn less under the rubric in the CBA and who make fewer tips (reported and unreported) may be entitled to the higher-tier minimum wage because they do not make sufficient money such that the insurance relevant to them (self, self+1, or family coverage, depending on the number of dependents they have) does not exceed 10% of their gross taxable income from Henderson Taxi. *See* NAC 608.102-608.104. Thus, to determine "gross taxable income" (not just reported income) Henderson Taxi must engage in an individualized inquiry for each employee as to whether they

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

[20] Again, income includes tips to determine the minimum wage tier, even though those tips cannot be used to offset an employer's state minimum wage responsibility. *See* 26 U.S.C. § 61; *see also* IRS Pub. 531, Reporting Tip Income.
[21] When necessary, this was previously augmented to meet federal minimum wage. Exhibit 1, Bell Decl., ¶ 3. It is now also augmented, when necessary, to meet state minimum wage (which excludes tips). *Id.*

have dependents, how many, and how much money they make (including unreported tips). Specifically, for each putative class member, the Court would have to: 1) determine the number of dependents the driver has; 2) calculate the average rate of pay over a preceding year or less as provided in NAC 608.104, including tips (both reported and unreported), which calculation method changes depending on length of tenure;[22] and 3) determine whether the applicable type of insurance relevant to that employee (self, self+1, or family) costs more than 10% of the rate of pay calculated under NAC 608.104.[23] This necessarily individualized inquiry demonstrates that no class should be certified.

iii. Generic Legal Questions Are Not "Common" Legal Questions

Defendant does not contend that there are not some common legal questions, such as those addressed above, e.g., what is the proper statute of limitations and whether the

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

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[22] **NAC 608.104 Minimum wage: Determination of whether employee share of premium of qualified health insurance exceeds 10 percent of gross taxable income.** (Nev. Const. Art. 15, § 16; NRS 607.160, 608.250)

1. To determine whether the share of the cost of the premium of the qualified health insurance paid by the employee does not exceed 10 percent of the gross taxable income of the employee attributable to the employer, an employer may:

(a) For an employee for whom the employer has issued a Form W-2 for the immediately preceding year, divide the gross taxable income of the employee paid by the employer into the projected share of the premiums to be paid by the employee for the health insurance plan for the current year;

(b) For an employee for whom the employer has not issued a Form W-2, but for whom the employer has payroll information for the four previous quarters, divide the combined total of gross taxable income normally calculated from the payroll information from the four previous quarters into the projected share of the premiums to be paid by the employee for qualified health insurance for the current year;

(c) For an employee for whom there is less than 1 aggregate year of payroll information:

(1) Determine the combined total gross taxable income normally calculated from the total payroll information available for the employee and divide that number by the number of weeks the total payroll information represents;

(2) Multiply the amount determined pursuant to subparagraph (1) by 52; and

(3) Divide the amount calculated pursuant to subparagraph (2) into the projected share of the premiums to be paid by the employee for qualified health insurance for the current year; and

(d) For a new employee, promoted employee or an employee who turns 18 years of age during employment, use the payroll information for the first two normal payroll periods completed by the employee and calculate the gross taxable income using the formula set forth in paragraph (c).

2. As used in this section, "gross taxable income of the employee attributable to the employer" means the amount specified on the Form W-2 issued by the employer to the employee and includes, without limitation, tips, bonuses or other compensation as required for purposes of federal individual income tax.

[23] This is even more complicated for new employees, for which the regulations allow an employer project out what they will likely make. Thus, even if they do not make minimum wage at the end of the year, they may not be entitled to the higher wage rate because of lawful projections.

acknowledgements should be voided. However, each of these legal issues may be determined prior to certification and do not directly relate to the ultimate question of liability for Plaintiff's claims. Rather, these are ancillary questions that are not sufficient to support class certification. *Dukes*, 131 S.Ct. at 2551 ("What matters to class certification … is not the raising of common questions—even in droves—but, rather the capacity of a classwide proceeding to generate common answers ***apt to drive the resolution of the litigation***.") (emphasis added).

c) Plaintiff Has Not Demonstrated Typicality

"'Typicality' demands that the claims or defenses of the representative parties be typical of those of the class." *Shuette*, 121 Nev. at 848, 124 P3d at 538. Here, the claims and defenses of the representative parties are not typical. The acknowledgements the vast majority of the putative class signed act as defenses to any claim for minimum wage from those who signed them. *See, e.g.*, Exhibit 11; Exhibit 2, Knapp Decl. ¶ 8. Further, the same acknowledgements act as a defense to any claim that these drivers did not accurately report time worked. *See id.* As these acknowledgements are entirely valid and were not obtained through any improper act, but rather through negotiation with the Union, they demonstrate defenses that are unique to the hundreds of current and former taxi drivers who signed them. Thus, Plaintiff's claims and the defenses against them are not typical of the putative class. Further, because these other drivers have acknowledged that they have no longer have a claim, Plaintiff's claim is not typical of the putative class. While Defendant argues that *Yellow Cab* should not be applied retroactively, Plaintiff at least has a claim until that issue is decided whereas the vast majority of other putative class members do not.

d) Plaintiff Has Not Demonstrated that He Is an Adequate Class Representative

Plaintiff contends that the adequacy element is met solely because "plaintiff's counsel is competent to represent the class." Mot. at 7:10-12. While a plaintiff must retain adequate council to adequately represent the interests of the class, there is more to it than that.

"[M]embers of a class may sue or be sued as representative parties on behalf of all only if … the claims or defenses of the representative parties are typical of the claims or defenses of the class." NRCP 23(a). Further, a class representative must generally have the same interests and

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

have suffered the same injuries as other class members. *Shuette*, 121 Nev. at 849, 124 P.3d at 539. Here, Plaintiff seeks to forgo the resolution of any minimum wage claims the putative class may have that was negotiated by the putative classes elected representative, the Union. *See* Exhibit 10. Thus, Plaintiff's interests are at odds with the interests of the class as demonstrated both by the Union's resolution with Henderson Taxi, Exhibit 10, and the individual acknowledgements executed by a substantial majority of the putative class, which Plaintiff seeks to have voided, *see* Exhibit 11; Exhibit 2, Knapp Decl. ¶ 8. Thus, Plaintiff is not an adequate class representative because interests are distinct from a large majority of the putative class. Indeed, Plaintiff's issues are distinct from the issues of the majority of the majority of those he seeks to represent.

Further, a party may be an inadequate class representative where his testimony about the claims lacks credibility. *CE Design Ltd. v. King Architectural Metals, Inc.*, 637 F.3d 721, 728 (7th Cir. 2011); *Akaosugi v. Benihana Nat'l Corp.*, 282 F.R.D. 241, 257 (N.D.Cal. 2012). Here, Plaintiff has filed his motion for class certification prior to providing any time for Defendant to depose him and ascertain whether his testimony is or is not credible. Nonetheless, Plaintiff has submitted a declaration in which he claims that he did not take the one hour break he was supposed to take and that he believes many other drivers also did not take their breaks without presenting any admissible evidence to support this belief. Mot. Exhibit J, ¶ 4. This is in direct contradiction to the acknowledgments signed by Henderson Taxi cab drivers wherein they state that they accurately reported their time to Henderson Taxi, signed by a substantial majority of the putative class. *See* Exhibit 11; Exhibit 2, Knapp Decl., ¶ 8. Given that literally hundreds of Henderson Taxi current and form taxi drivers disagree with Plaintiff's claim, his testimony is not credible and he is not an adequate class representative. *See also 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.").

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In addition, to the extent that any other drivers share Plaintiff's claim that they did not take their breaks, this will require substantial individual analysis and credibility determinations. If it is true that Plaintiff, or any other driver, did not take their breaks, it means that they lied on their time reports. Further, this would require individualized inquiry into how often each particular driver did not take his break and a cross-analysis to their pay records to those specific weeks to see if they did or did not otherwise earn the minimum wage. Given that driver's pay is fluid, *see* Exhibit 7, Article V, whether a driver did or did not take a break in any given week is only relevant if, accounting for those hours, he did not otherwise make minimum wage. If he did, then this "fact" does not affect the minimum wage claim and would be irrelevant. Also, each driver would have to testify and have his credibility determined or present other evidence regarding the frequency or specific dates wherein he did not take breaks. This credibility determination is inherently individualized. As most putative class members do not share these allegations, and those that do require individualized inquiry, Plaintiff is not an adequate class representative.

Further, Defendant should actually be given the opportunity to conduct discovery and depose Plaintiff to discovery if he is otherwise an inadequate class representative. Regardless of the limited information available, Plaintiff has not satisfied his duty of demonstrating that he is an adequate class representative and should be prohibited from attempting to do so on reply.

2. Plaintiff Has Not Demonstrated Predominance or Superiority under Rule 23(b)(3)

a) Plaintiff Has Not Demonstrated Predominance

"[C]ommon questions predominate over individual questions if they significantly and directly impact each class member's effort ***to establish liability and entitlement to relief***, and their resolution 'can be achieved through generalized proof.'" *Shuette*, 121 Nev. at 851, 124 P.3d at 540 (quoting *Moore v. PaineWebber, Inc.*, 306 F.3d 1247, 1252 (2d Cir. 2002)) (emphasis added). "Where, after adjudication of the classwide issues, plaintiffs must still introduce a great deal of individualized proof or argue a number of individualized legal points to establish most or all of the elements of their individual claims, such claims are not suitable for class certification

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Las Vegas, NV 89134
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under Rule 23(b)(3)." *Klay v. Humana, Inc.*, 382 F.3d 1241, 1255 (11th Cir. 2004) (*abrogated in part on other grounds by Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008)). The predominance requirement is "far more demanding" than the commonality requirement. *Gene & Gene LLC v. BioPay LLC*, 541 F.3d 318, 326 (5th Cir. 2008); *see also Shuette*, 121 Nev. at 850, 124 P.3d at 540. Further, "[t]he predominance requirement is intended to prevent class action litigation when the sheer complexity and diversity of the individual issues would overwhelm or confuse a jury or severely compromise a party's ability to present viable claims or defenses. *Shuette*, 121 Nev. at 851, 124 P.3d at 540 n.39.

Here, for the reasons set forth in Sections III(B) and III(C)(1)(b)-(c), *supra*, Plaintiff cannot show common questions of law or fact regarding ultimate liability and entitlement to relief, *Shuette*, 121 Nev. at 851, 124 P.3d at 540, much less satisfy the heightened standard that common questions ***predominate*** over individualized questions under Rule 23(b)(3). Rather, Plaintiff presents legal issues that are either able to be resolved without class certification or which are common to all potential minimum wage plaintiffs, e.g., what is the proper statute of limitations and what remedies are available under the Minimum Wage Amendment. These generally applicable questions are insufficient for class certifications. *See Shuette*, 121 Nev. at 851, 124 P.3d at 540.[24]

Further, Plaintiff contends that the formula to determine liability will be the same for each putative class member, presumably based on the belief that only one of the two minimum wage tiers will apply to each putative class member. As described in Section III(A)(2)(a), *supra*, this is incorrect. The applicable minimum wage tier will have to be determined for each putative class member through analysis of the CBA. their hours worked (including alleged missed breaks), their income, their tips, their family status for cost of healthcare, etc. Thus, not only does this analysis

[24] While the question of whether the statute of limitations should be equitably tolled is not general like the statute of limitations question, it can be simply resolved without class certification. Because Defendant provided the requisite notices, tolling is not proper. *See* Section III(B)(3), *supra*.

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make the claim preempted, it also demonstrates the lack of predominance. Similarly, Plaintiff contends that determining the hours of work is a common legal or factual question. However, as demonstrated above, determining the hours of work requires analysis of the CBA, which only shows preemption, not predominance. *See* Section III(A)(2)(b), *supra*.

Additionally, a substantial majority of putative class members have confirmed that they have reported and been paid for all hours worked. Exhibit 2, Knapp Decl., ¶ 8. Thus, off-the-clock work allegations are not widespread and do not demonstrate predominance. In fact, these allegations appear to be unique to Plaintiff and his cohort who seek to be additional class representatives.

Finally, Defendant intends to raise issues of credibility and defenses particularized to each cab driver who claims that they were not provided rest breaks as provide by policy and in the CBA. Thus, if Defendant is not allowed to defend each cab driver's claim separately, it will be significantly prejudiced in its defense, especially considering that the majority have confirmed that they reported time correctly. *See* Exhibit 2, Knapp Decl., ¶ 8.

b) Plaintiff Has Not Demonstrated Superiority

Plaintiff contends he has established superiority for three reasons: 1) the small size of individual claims; 2) the vulnerability of the putative class members; and 3) the need for effective enforcement of Minimum Wage Amendment. These three things do not demonstrate that a class action is superior under these circumstances.

"A class action is the superior method for managing litigation if no realistic alternative exists." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234-35 (9th Cir. 1996). Thus, certification may be denied where class members have alternative remedies, sthat may be superior to a class action. *See e.g., Espenscheid*, 705 F.3d at 776 ("The plaintiffs, or rather (to be realistic) class counsel, have overlooked a promising alternative to class action treatment in a case such as this [alleging unpaid overtime for piece-rate workers claiming employer told them to underreport hours]. That is to complain to the Department of Labor, which enforces the Fair Labor Standards Act and can obtain in a suit under the Act the same monetary relief for the class members that they could obtain in a class action suit were one feasible."); *Rowden v. Pac.*

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Parking Sys., Inc., 282 F.R.D. 581, 586 (C.D.Cal. 2012) (class action not superior method of resolving dispute because individual litigation was available under Fair and Accurate Credit Transactions Act ("FACTA"), administrative claim was available under California Government Claims Act, and attorneys' fees were available under FACTA to counteract concern that small damages award might dissuade potential challenges, and noting "[t]hese remedies give individuals truly harmed by a FACTA violation a more than sufficient incentive to bring an action even if the amount of recovery is difficult to quantify or relatively small."); *Ostrof v. State Farm Mut. Auto. Ins. Co.*, 200 F.R.D. 521, 532 (D.Md. 2001) ("Finally, there is the matter of the availability of alternative remedies, particularly in a case such as this where a remedy is available from an administrative agency which has expertise in a relevant field, such as the insurance industry. In such cases, allowing for pursuit of claims in the administrative forum is often deemed superior to aggregating all the claims into a class action suit."). Indeed, in *Shuette*, the Court noted that under NRS Chapter 40, before commencing an action, claimants must first provide notice to the contractor of any alleged defects or damages. 121 Nev. at 853, 124 P.3d at 541. The Court found this "reveal[ed] that the Legislature intended to provide contractors with an opportunity to repair defects in homes, a goal that should not be inhibited by class action certification" and thus "when class actions make detailed notice of all defects impractical or would tend to deprive a contractor of the opportunity to repair the defects, instead forcing it into class damages settlement or trial, the class action method of adjudication is not superior". *Id.* at 853-54, 542.

Here not only could the putative class members have asserted any claims for minimum wage through the Labor Commissioner for free, *see* fn. 19, *supra*; NRS 608.180, the putative class members actually already brought their claim against Henderson Taxi through a different process: a grievance pursuant to the CBA. Exhibit 5. Here, the grievance process resulted in a recovery for each of the putative class members. Exhibit 10. Thus, it has demonstrated that it was an efficient and consist form for adjudicating this dispute that allowed the putative class members to obtain relief. *See Shuette*, 121 Nev. at 851-52; 124 P.3d at 540.

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The Nevada Supreme Court has also stated that a "proper class action prevents identical issues from being 'litigated over and over, thus avoiding duplicative proceedings and inconsistent results.'" *Id.* at 852, 124 P.3d at 540-41 (quoting *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 701 (N.D. Ga. 2001)) (alterations omitted). Here, it is actually Plaintiff's proposed class action that risks duplicative proceedings and inconsistent result. The grievance process has already resolved this dispute for a substantial majority of putative class members. Exhibit 10; Exhibit 11; Exhibit 2, Knapp Decl., ¶¶ 5-8. Because the putative classes' alleged claims have already been resolved through the grievance process and because a substantial majority of the putative classes alleged membership has acknowledged full and complete payment for all hours worked, a class action is not only not necessary, but has been demonstrated to be a less efficient method of resolution than that already conducted by the putative class members' elected representative.[25]

3. Fraud Allegations Negate Class Certification

In *Johnson v. Travelers Inc. Co.*, the Nevada Supreme Court explained:

> As a general proposition, it is fair to state that a class suit to recover damages for fraud allegedly practiced upon numerous persons is not warranted. The inherent uniqueness of misrepresentation action makes it difficult to find central facts susceptible of proof on a common basis. What was the form of the misrepresentation; were the identical false representations made to each member of the class; did each member participate in the group insurance plan in reliance upon those misrepresentations, and was each damaged thereby? These, and perhaps other factors, serve to explain the difficulty inherent in finding a common question of fact or law when the charge is fraudulent misrepresentation.

89 Nev. 467, 472, 515 P.2d 68, 72 (1973) (internal citation omitted); *see also Cummings v. Charter Hosp. of Las Vegas, Inc.*, 111 Nev. 639, 644, 896 P.2d 1137, 1140 (1995) (quoting *Johnson*). As part of Plaintiff's allegations are based in fraud, Compl. ¶¶ 15-16, common proof is unlikely and class certification is unwarranted. At the very least, Plaintiff must be required to

[25] The Union's resolution also negates Plaintiff's argument regarding effective enforcement of the Minimum Wage Amendment. The Union sought to enforce the Minimum Wage Amendment, and successfully did so.

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demonstrate actual evidence of fraud that can be presented on a common basis prior to seeking certification.

D. Henderson Taxi Was Not Required to Seek a Declaratory Judgment

Plaintiff asserts that Henderson Taxi had some sort of duty to seek a judicial declaration regarding any obligation to pay or not pay minimum wage without providing the Court with any basis for this supposed duty. Not only was Henderson Taxi not required to independently seek a declaration regarding its rights and obligations, it did so in practical effect. Henderson Taxi shares substantial management with the separate and distinct companies Bell Trans and Henderson Taxi. *Compare* **Exhibit 22**, Secretary of State Details for Henderson Taxi, *with* **Exhibit 23**, Secretary of State Details for Bell Trans, *and* **Exhibit 24**, Secretary of State Details for Presidential Limousine. In fact, Brent Bell, the individual defendant in this case, is President of all three of these companies. *Id.* Unlike Henderson Taxi, however, Bell Trans and Presidential Limousine were sued for, among other things, violation of the Minimum Wage Amendment before the Nevada Supreme Court's decision in *Yellow Cab. Lucas v. Bell Trans*, 2009 WL 2424557 (D. Nev. June 24, 2009). In that case, defendants argued that the exemption from minimum wage under Nevada law remained in place after the Minimum Wage Amendment too effect and the court agreed. Henderson Taxi could reasonably rely on this decision without seeking its own declaration.

E. Plaintiff Does Not Have Standing to Seek Equitable Relief

In addition to a Rule 23(b)(3) class, Plaintiff seeks to certify a Rule 23(b)(2) class seeking declaratory and injunctive relief. Plaintiff, however, lacks standing to assert equitable relief as a prior employee. Further, equitable relief in this case would be improper given the changes Henderson Taxi implemented over half of a year prior to the instigation of this litigation.

1. Plaintiff's Equitable Relief Requests Are Moot

In his complaint, Plaintiff refers to injunctive and other equitable relief twice: First, he states that the Minimum Wage Amendment provides for injunctive and equitable relief in ¶ 17. Second, he states that he seeks an "injunction and other equitable relief barring the defendant from continuing to violate Nevada's Constitution" and other relief in ¶ 18. The *Yellow Cab*

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Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

decision was issued on June 26, 2014. 120 Nev. Adv. Op. 52, 327 P.3d 518. The Union grieved the issue on July 16. Exhibit 5. Soon thereafter, Henderson Taxi revised its pay policies to comply with the *Yellow Cab* decision. Exhibit 8 ("Minimum wage calculations not applying the tip credit were in effect July 29, 2014."); Exhibit 2, Knapp Decl., ¶ 4. Ever since that change, Henderson Taxi has complied with the Minimum Wage Amendment and is under a binding resolution between it and the Union to pay the state minimum wage. Exhibit 10; Exhibit 2, Knapp Decl., ¶¶ 4-7. As such, Plaintiff's request for a declaration or injunction requiring Henderson Taxi to properly pay its employees is moot.

2. Plaintiff Lacks Standing to Request Equitable Relief

Ex-employees lack standing to request equitable relief. *Dukes*, 131 S.Ct. at 2559-60 (holding that ex Wal-Mart employees "lack standing to seek injunctive or declaratory relief against its employment practices."). Plaintiff's references to *Stockmeier v. Nev. Dept. of Corrections Psychological Review Panel*, 121 Nev. 319, 135 P.3d 220 (2006) and *Hantges v. City of Henderson*, 113 P.3d 848 (Nev. 2005) are unpersuasive. The statutes at issue in both cases provided broad standing necessary for their effectiveness which the Minimum Wage Amendment does not. In *Hantges*, the Nevada Supreme Court read the statute to confer broad standing so as to "avoid meaningless or unreasonable results …." 121 Nev. at 322, 113 P.3d at 850 (internal quotation omitted). In other words, had the Court not conferred this broad standing, the statute would have been ineffective in its purpose to allow challenges to agency determinations by the public. *See id.*

In *Stockmeier*, the stated: "This court has a 'long history of requiring an actual justiciable controversy as a predicate to judicial relief.' In cases for declaratory relief and where constitutional matters arise, this court has required plaintiffs to meet increased jurisdictional standing requirements." 122 Nev. at 393, 135 P.3d at 225-26. But "where the Legislature has provided the people of Nevada with Certain statutory rights, [the Court has] not required constitutional standing to assert such rights" if the statute provides standing to sue. *Id.* Here, the Minimum Wage Amendment provides that an employee bringing a claim under the Minimum Wage Amendment "shall be entitled to all remedies available under the law or in equity

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Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

appropriate to remedy any violation of this section, including … injunctive relief." Nev. Const. Art. 15, s. 16. Thus, to obtain an injunction or equitable relief under the Minimum Wage Amendment, that relief must otherwise be appropriate. Here, there is no reason not to require the "actual justiciable controversy" the Nevada Supreme Court generally requires. *Stockmeier*, 122 Nev. at 393, 135 P.3d at 225-26. The Minimum Wage Amendment does not require broader standing to be affective and does not provide for it explicitly. Nev. Const. Art. 15, s. 16. Rather, any current employee who claims the pay practices should be enjoined may bring a claim. But as a prior employee, Plaintiff lacks standing to do so. *Dukes*, 131 S.Ct. at 2559-60.

3. Plaintiff's Request for an Injunction Is Moot

In his Complaint, Plaintiff requests "a suitable injunction and other equitable relief barring the defendant from continuing to violate Nevada's Constitution …." Compl. ¶ 18. Henderson Taxi began paying Nevada minimum wage as of July 29, 2014, and is required to continue to pay Nevada minimum wage pursuant to the Resolution with the Union. Exhibit 8; Exhibit 10; Exhibit 2, Knapp Decl. ¶¶ 4-7. As such, Plaintiff's request for an injunction is moot and not only may it not proceed as a class claim, it should be dismissed. *NCAA v. Univ. of Nev. Reno*, 97 Nev 56, 57, 624 P.2d 10, 10 (1981) ("the duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions ….") Further, as Defendant is required to pay Nevada minimum wage pursuant to the Resolution, this is not a situation capable of repetition while evading judicial review. *See id.*

4. Plaintiff's Requests for Equitable Relief in this Motion Are Not Part of His Complaint

Further, in his Motion, Plaintiff makes disingenuous claims regarding the equitable relief sought in the Complaint. Plaintiff now contends that the equitable relief he seeks is a declaration that the acknowledgements obtained pursuant to the Union Resolution are void and an injunction prohibiting Defendant from further contact with unrepresented putative class members related to this case. While Plaintiff can certainly make these (pointless) requests of the Court, they are not relief for the claims asserted in his Complaint. Thus, they are not proper subjects for class certification.

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Nonetheless, such relief would be improper even if Plaintiff amended his Complaint to assert claims for such relief. As explained above in Sections II and III(B)(4), the acknowledgements were obtained pursuant to negotiations and a Resolution with the Union and are proper. Further, there is no prohibition against an individual settling a state law minimum wage claim under Nevada law. *See* Section III(B)(4), *infra*. Rather, Plaintiff seeks to have his cake and eat it to arguing that case law applying the Federal Fair Labor Standards Act ("FLSA") applies to state minimum wage claims, except when it doesn't. Nevada's minimum wage law is fundamentally different and distinct from the FLSA and there is no bar to settling disputed claims. *See, e.g.*, *Nordstrom*, 186 Cal.App.4th at 590 (applying similar California law: "Employees may release claims for disputed wages and may negotiate the consideration they are willing to accept in exchange").

As to Plaintiff's request that Defendant be barred from communicating with unrepresented putative class members regarding this case, Defendant addresses that argument immediately below in Section III(F).

F. Henderson Taxi and its Counsel Should Not Be Sanctioned

1. Standard for Limiting Communication Between Parties and Between Parties and Putative Parties

In *Gulf Oil Co. v. Bernard*, the United States Supreme Court held that a "an order limiting communications between parties and potential class members should be based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties." 452 U.S. 89, 100 (1981). By implication, communications between parties and potential class members prior to such an order are not prohibited. *Id.* Further, "such a weighing—identifying the potential abuses being addressed—should result in a carefully drawn order that limits speech as little as possible, consistent with the rights of the parties under the circumstances." *Id.* at 101-102. The Court must also give "explicit consideration to the narrowest possible relief which would protect the respective parties." *Id.* at 102.

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Las Vegas, NV 89134
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Further, prior to certification, Plaintiffs' counsel does not have an attorney-client relationship with anybody he does not expressly represent by individual agreement. ABA Formal Op. 07-445 ("Before the class has been certified by a court, the lawyer for plaintiff will represent one or more persons with whom a client-lawyer relationship clearly has been established. As to persons who are potential members of a class if it is certified, however, no client-lawyer relationship has been established.") Simply filing a "class" complaint creates no attorney-client relationship with potential class members. *Id.*; *see also Parks v. Eastwood Ins. Services, Inc.*, 235 F. Supp. 2d 1082, 1084 (C.D. Cal. 2002) ("pre-certification communication is permissible because no attorney-client relationship yet exists.").

2. Defendant's Conduct Was Not Wrongful

Plaintiff spends approximately one third of his Motion, in various sections, arguing that Defendant acted wrongfully by communicating with unrepresented putative class members and offering to pay them any difference between Nevada's minimum wage and what they were paid over the two year period prior to the *Yellow Cab* decision and requesting an acknowledgment of payment. Plaintiff also requests various forms of relief to "rectify" Defendant's communications, including class certification, requiring Defendant to pay for class notice and having that class notice include "corrective" language, an order barring Defendant from further communications with the class regarding Plaintiff's allegations, an interim award of $20,000 in attorneys' fees, an interim class representative award of $5,000 to Sargeant, other monetary sanctions against and Defendant and its counsel, and the voiding of all acknowledgements received from putative class members. Not once in all of this discussion does Plaintiff acknowledge that at the time of the communications he did **not** represent them or that the communications were pursuant to an agreement with the Union—the putative class members' elected representative.

Even had Defendant not sent the letters pursuant to an agreement with the Union, Defendant's communication with the unrepresented putative class members would not have been wrongful. Specifically, prior to class certification, there is no rule preventing Henderson Taxi from communicating with or seeking out settlements, much less acknowledgements of payment, with ***putative*** class members. *See* ABA Formal Opinion 07-445; *see also Christensen v. Kiewit-*

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

Murdock Inv. Corp., 815 F.2d 206, 213 (2d Cir. 1987) ("**[D]efendants do not violate Rule 23(e) [of the Federal Rules of Civil Procedure] by negotiating settlements with potential members of a class.**"); *Weight Watchers of Philadelphia, Inc. v. Weight Watchers Int'l, Inc.*, 455 F.2d 770, 773 (2d Cir. 1972) (allowing defendant to negotiate settlements with potential class members); *Soto v. Castlerock Farming and Transport, Inc.*, 2013 WL 6844398 (2013) (denying motion to strike class member declarations: "Defendant did not misrepresent issues in the action. Each declarant reported the declaration was given voluntarily and reported: 'I have not been threatened in any way or provided with any benefit for discussing the lawsuit with Castlerock.' … Therefore, it does not appear declarations were obtained through a coercive or misleading procedure, and *Belt* is not instructive."); *Austen v. Catterton Partners V, LP*, 831 F. Supp. 2d 559, 567 (D. Conn. 2011) ("Both parties need to be able to communicate with putative class members—if only to engage in discovery regarding issues relevant to class certification—from the earliest stages of class litigation. Furthermore, named plaintiffs and their counsel do not always act in the best interests of absent class members, and not all defendants and defense counsel engage in abusive tactics. District courts thus must not interfere with any party's ability to communicate freely with putative class members, unless there is a specific reason to believe that such interference is necessary."); *Wu v. Pearson Educ. Inc.*, 2011 WL 2314778, *6 (S.D. N.Y. 2011) ("defendants can even negotiate settlement of the claims of potential class members"); *Craft v. North Seattle Community College Foundation*, 2009 WL 424266, *2 (M.D. Ga. 2009) (in case challenging charges for debt adjusting services, declining to bar defendant from communications with putative class members based on defendant's sending checks to putative class members where communication "did not make any reference to this lawsuit, did not make a lopsided presentation of the facts, did not explain the basis for the refund (or even call the check a 'refund'), and did not elicit a release of any claims"); *Bayshore Ford Truck v. Ford Motor Co.*, 2009 WL 3817930, *10 (D.N.J. 2009) ("before a class action is certified, it will ordinarily not be deemed inappropriate for a defendant to seek to settle individual claims") (*rev'd in part on other grounds* 540 Fed.Appx. 113 (3d Cir. 2013)); *Jones v. Jeld-Wen, Inc.*, 250 F.R.D. 554 (S.D. Fla. 2008) ("a defendant has a right to communicate settlement offers directly to

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

putative class members"); *In re Baycol Products*, 2004 WL 1058105, *3 (D. Minn. 2004) (same); *Cox Nuclear Medicine v. Gold Cup Coffee Services, Inc.*, 214 F.R.D. 696, 699 (S.D. Ala. 2003); *Parks v. Eastwood Ins. Services, Inc.*, 235 F. Supp. 2d 1082, 1084 (C.D. Cal. 2002) ("the majority view seems to be against a ban on pre-certification communication between Defendant and potential class members. The Second Circuit, state and federal district courts in California, and a leading treatise conclude Rule 23 pre-certification communication is permissible because no attorney-client relationship yet exists."); *Hammond v. Junction City*, 167 F. Supp. 2d 1271, 1286 (D. Kan. 2001) ("It is fairly well-settled that *prior to* class certification, no attorney-client relationship exists between class counsel and putative class members") (emphasis in original); *Bublitz v. E.I. duPont de Nemours and Co.*, 196 F.R.D. 545 (S.D. Iowa 2000); *Ralph Oldsmobile, Inc. v. General Motors Corp.*, 2001 WL 1035132, *6 (S.D. N.Y. 2001) (court rejected challenge to releases obtained from putative class members because although "[t]here is no way to completely eliminate the potential for coercion in the relationship between GM and its dealers. . . [c]ourts cannot simply interpose themselves in the business relationship between a franchisor and its franchisees each time a franchisee files a putative class action against the franchisor"); Manual for Complex Litigation, § 21.12, at 249 ("Defendants and their counsel generally may communicate with potential class members in the ordinary course of business, including discussing settlement before certification ….").

In fact, some courts expressly encourage pre-certification settlement attempts between employers and individual employees because the only negative of such a settlement is that class counsel will receive less than he desires. *McLaughlin v. Liberty Mut. Ins. Co.*, 224 F.R.D. 295, 299, n.11 (D. Mass. 2004) (Denying motion precluding ex parte interviews with putative class members and stating that if "during the course of frank and non-coercive interviews, the employer and employee resolve their potential disputes, all the better. One can hardly gainsay the notion that there is nothing inherently wrong - and, indeed, it is inherently better - that putative litigants resolve their beefs and disputes short of full-scale litigation and all that litigation entails. Apart from the fact that the coffers of class action counsel receives less than expected, a de

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

minimum matter in this court's view, informal resolution of such disputes is a win-win proposition.")

Of course, as stated above, courts do have the authority to sanction bad contact and to limit communication with class members or even putative class members where specific facts demonstrate that such orders are warranted. *See Gulf Oil*, 452 U.S. at 100-102; *see also* Fed. R. Civ. P. 23(d)(1) (authorizing courts to "issue orders that: … (C) impose conditions on the representative parties or on intervenors … [and] (5) deal with similar procedural matters"). However, the cases Plaintiff cites in support of his arguments are not persuasive given the facts of this case.

First, none of the plaintiffs, classes, or putative classes in the cases cited by Plaintiff were represented by a union. Here, the Union adequately represented the putative classes interest through the grievance process and the communications Henderson Taxi sent out were sent by agreement with the Union. *See* Exhibits 5, 8-10. Indeed, by agreement with the Union, drivers received 100% of the potential money owed to them over a two-year period and were given the opportunity to review Henderson Taxi's records and calculations to make sure they were correct.

Second, the cases where the courts issued sanctions or strict orders limiting communication involved actual misrepresentations and bad conduct—which is not present here. For example, in *Belt v. Emcare Inc.*, the "letter suggested that the current action was an attack on the potential plaintiffs' status as professionals," misrepresented potential damages and attorneys' fees, equated the wage and hour action to a medical malpractice suit (feared by the medical community), and "suggested that this suit could endanger the potential class members' job stability when … it declared that 'it is unclear how the Court's rulings may impact clinical operations on a going forward basis.'" 299 F.Supp.2d 664, 666-667 (E.D. Tex. 2003). Unlike in *Belt*, Defendant's communication did not threaten retaliation, mischaracterize the case, or contain other material worthy of sanctions or demonstrating a need to limit Defendant's ability to communicate with putative class members. *Talamantes v. PPG Industries, Inc.*, 2014 WL 4145405, *5-6 (Aug. 21, 2014) (noting that the communications in that case did not raise issues like those in *Belt* and other cases, and thus refusing to issues sanctions or a corrective notice).

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

Further, here, the putative class members are represented by a Union, meaning that they have and know that they have representation, alleviating any power disparity between individual putative class members and Defendant.

In *Haffer v. Temple Univ. of Com. System of Higher Educ.*, some of the communications at issue discouraged putative plaintiffs from meeting with counsel and "constituted a bad faith violation of [the court's] November 7, 1986 order and the Code of Professional Responsibility." 115 F.R.D. 506, 512 (E.D. Pa. 1987). Here, no order existed that Henderson Taxi could have violated and its actions did not violate any code of professional responsibility, *see* ABA Formal Opinion 07-445, nor does Plaintiff contend that they did. Further, Defendant notified the putative class members of this suit and informed them of who class counsel was. *See* **Exhibit 21**[26]; *see also Urtubua v. B.A. Victory Corp.* 857 F.Supp.2d 476, 484-85 (S.D.N.Y. 2012) (involving allegations of threats and forced signing of affidavits).

In *Kleiner v. First Nat. Bank of Atlanta*, the court dealt with a certified and represented class and communications with that class ***after*** the district court had ordered the Defendant not to communicate with the class. 751 F.2d 1193, 1196-97, 1207 (11th Cir. 1985). Additionally, the defendant expressly chose to conduct its communications at a time coinciding with the district judge's vacation. *Id.* at 1197. This underhanded conduct and disobedience of express court orders is a fundamentally different factual situation than that present here, where no court order prohibited contact with putative class members and Defendant made the contact by agreement with the Union. Thus, *Kleiner* is entirely irrelevant to this Court's analysis.

The remaining cases Plaintiff cites do not support his request. In *Hampton Hardware Inc. v. Cotter and Co. Inc.*, the Court limited further litigation-related communications between the Defendant and potential class members, but refused to issue a corrective notice or issue sanctions because there was no evidence of actual harm. 156 F.R.D. 630, 634-35 (N.D. Tex. 1994).

[26] These letters also demonstrate the disparity between the necessary payments to cab drivers. Some cab drivers frequently missed Nevada minimum wage (which excludes tips) while others rarely did.

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

Similarly, in *Keystone Tobacco Co. Inc. v. U.S. Tobacco Co.*, while the Court prohibited any party or its representative from making "misleading or inaccurate statements" or "attempt to coerce class members through threats or misrepresentations," the Court refused to prohibit settlement discussions between the Defendant and putative class members. 238 F.Supp.2d 151, 157, 159-60 (D.D.C. 2002) ("After examining the written settlement materials, the Court concludes that while the Kessler Letter, the Memorandum and the Kessler Complaint Letter contain some self-servicing advocacy for defendants' position, it cannot find that the statements therein are inaccurate or misleading. The correspondence itself does not appear to contain any incorrect assertions of fact regarding the current class action or the terms of the settlement agreement").

Thus, despite the vast amount of case law allowing a defendant to communicate with putative class members and even encouraged settlement, there are situations where communications with actual class members that may warrant sanctions. This is not one of them. Plaintiff is only able to contest two things in Defendant's letters to putative class members: 1) the statement that attorneys generally seek to "line their own pockets rather than truly benefit individuals like you"; and 2) the request for an acknowledgment of payment and accurate time records. *See generally*, Mot. However, even here, Plaintiff has to misconstrue the statements in order to claim that they are misleading. Specifically, Plaintiff states that the statements regarding attorneys seeking to "line their own pockets" is a statement that the attorneys would "benefit at the employee's expense". Mot. at 25:11-14. Nowhere does Defendant claim that Mr. Greenberg would benefit at the cab drivers' expense—though it may be a true statement. *See* Exhibit 21. Plaintiff had to fabricate it for the Court. *Kalani v. Oracle Corp.*, 2007 WL 1793774 (N.D. Cal. June 19, 2007) (rejecting a claims-made settlement in a wage and hour action as unfair to class members and demonstrating that class counsel does not always have the best interests of the class at heart).

Plaintiff knows and understands that the case law is vastly against him on this issue but chose to request sanctions anyway in an attempt to coerce Defendant into an unwarranted settlement. In fact, Plaintiff's counsel, without any basis, has chosen to assume that all of

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

Henderson Taxi's actions were taken at the advice of counsel. Whether it was or not is not relevant unless and until Henderson Taxi asserts "advice of counsel" as a defense to these specific actions. As Henderson Taxi has not done so, Plaintiff's attempt to invade the attorney-client relationship is thoroughly improper, as he well knows. Given this bad faith conduct, Plaintiff's counsel should be either verbally sanctioned or required to attend an ethics course at the University of Nevada Las Vegas Boyd School of Law or attend extra ethics CLE courses (i.e., at least one course beyond that normally required in a given year).

3. There is No Basis for an Interim Enhancement Payment

Whether an enhancement payment is ever warranted is not an issue presently before the Court. Rather, the question is whether Plaintiff should receive an interim enhancement payment for simply not accepting a settlement offer. Plaintiff presents no support for the concept that a putative class representative deserves an enhancement payment merely for not accepting a settlement offer. Further, Plaintiff undercuts his own argument that he should be commended for turning down a $5,000 settlement offer that would benefit him to the detriment of the class by requesting that he be provided $5,000 from Defendant anyway.

Further, Plaintiff's argument is based on a settlement communication provided to him and his counsel which is being used for an improper purpose. In Nevada, an offer to compromise may not be used as evidence to prove liability. NRS 48.105. Here, Plaintiff is improperly using Defendant's offer of settlement to show liability for damages and allegedly wrongful "buy off" conduct. Under the plain terms of NRS 48.105, this is improper.

If Plaintiff is successful in obtaining class certification and on his claims, then he may seek an enhancement payment at that point in time. Any enhancement payment now, prior to any determination of liability, would be improper.

4. Mr. Greenberg Motive for Making this Filing Is Improper and He Has Conflict of Interest with the Putative Class and There is No Basis for an Interim Award of Fees to Mr. Greenberg

On pages 21-22 of the Motion, Mr. Greenberg lets slip his true motivation in bringing this Motion (putting money in his own pocket) and demonstrates that there is a conflict of interest between him and the putative class. Mr. Greenberg contends that by making the payments

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

negotiated with the Union, Defendant has created a common fund to benefit the putative class in the approximate amount of $150,000, and thus he believes he is entitled to 30% of that money, which would be $45,000, and that he should be paid $20,000 of that now simply for seeking certification and sanctions. *See* Mot. at 22. Further, Mr. Greenberg contends that because Defendant (supposedly wrongfully) dissipated the so-called common fund by providing it to the putative class pursuant to Henderson Taxi's Resolution with the Union,[27] his award of attorneys' fees (interim or otherwise) should be paid by Henderson Taxi on top of the common fund, a notion which violates the very concept of a common fund.

In common fund cases, when an attorney or class representative creates a common fund for the benefit of a class, that attorney may be compensated directly out of the common fund. *See State, Dept. of Human Resources, Welfare Div. v. Elcano*, 106 Nev. 449, 452, 794 P.2d 725, 726-27 (1990) (awarding attorneys' fees directly out of the common fund); *US Airways, Inc. v. McCutchen*, 133 S.Ct. 1537, 1545 (2013) (""a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee ***from the fund as a whole***."") (emphasis added) (quoting *Boeing Co. v. Ban Gemert*, 444 U.S. 472, 478 (1980)). Common fund awards are based on the concept that those who benefit from a lawsuit without contributing to its costs are unjustly enriched. *McCutchen*, 133 S.Ct. at 1545 n.4. In other words, the common fund doctrine "is designed to prevent freeloading" by absent class members. *Id.* at 1545.

Plaintiff and Mr. Greenberg are seeking to freeload on the Union's efforts rather than the other way around. *See* Exhibit 10. This reality is inconvenient to Mr. Greenberg and so he ignores it. He refuses to admit that it was the Union which obtained the so called "common fund" on behalf of Henderson Taxi cab drivers, not him. The Union obtained 100% of what Henderson Taxi

[27] Again, Mr. Greenberg expressly ignores the Union's involvement.

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

cab drivers could potentially have been owed over a two year period[28] without those cab drivers incurring any attorney fees (including reductions from a common fund), having to participate in litigation and discovery, or risking an adverse decision in court. *See* Exhibit 10. Nonetheless, Mr. Greenberg wishes to be compensated for the Union's efforts, which were only paid for through Union dues, including a sizeable interim award because he knows that he will not have anything to recover at the end of this litigation. By Henderson Taxi abiding the Resolution and paying the putative class, there is no more common fund to be had, eliminating Mr. Greenberg's personal ability to benefit in this case. Thus, any recovery for Mr. Greenberg under his common fund theory is directly contradictory to the interests of the putative class. Mr. Greenberg's demonstrated desire to take from putative class members demonstrates that he has a conflict of interest with them and cannot adequately act on their behalf.

The simple fact is that Mr. Greenberg is personally upset that he is being cut out of potential attorney's fees and is seeking to worm his way back in, which thoroughly supports Henderson Taxi's belief that he is trying to "line [his] own pockets" rather than truly looking out for the benefit of his client or potential clients, is meaningless. Mr. Greenberg's greed is also demonstrated by his assertion that he should be entitled to a $20,000 interim award of fees for bringing his Motion seeking class certification and sanctions. Mr. Greenberg supports this $20,000 request claiming that his lodestar fee will exceed that amount without presenting the court with any evidence of this.[29] Regardless of this failure, if Plaintiff had a claim, Plaintiff would need to move to certify the class eventually regardless of Defendant's supposed "bad conduct". Thus, any effort expended on seeking certification cannot support an interim award of fees even if Plaintiff's motion had any merit. Further, if Plaintiff's counsel spent anything

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

[28] Plaintiff implies a challenge to Henderson Taxi's calculations in his Motion. However, any contention that what Henderson Taxi agreed with the Union to pay was not paid would be a Section 301 breach of contract claim that this Court cannot consider. *Burnside*, 491 F.3d at 1059.

[29] Plaintiff's claimed fees for a single motion are likely unreasonable considering he had limited evidence to review and it is mostly bluster, conjecture, and throwing spaghetti at a wall to see what sticks, forcing Defendant to brief meritless issues.

approaching $20,000 on this Motion, the issues are thoroughly more complex than he purports to the Court. If anything, Defendant should be awarded its costs to defend against this meritless motion from Mr. Greenberg personally.

In the event Plaintiff is successful on his claim, which he will not be, he can seek reasonable attorneys' fees at the end of this case. Thus, his current request for fees is unreasonable as he has yet to be successful. There is no basis to provide counsel attorney's fees when Plaintiff has not yet succeeded on the merits of his claims.

5. There Is No Basis for Defendant to Pay for Notice

In the event the Court determines that certification is proper and that a "corrective" notice is warranted, Defendant should not be required to pay for that notice. As previously described, Defendant communicated with the putative class members through an agreement with their Union. Thus, even if the Court believes the putative class needs to be informed that their acknowledgements are not settlement agreements (which is obvious from their text, contrary to Plaintiff's assertions[30]), the actual communication was not wrongful. Further, if the class is certified, Plaintiff would otherwise have to provide notice. Thus, this additional sentence or two could be added without additional cost to Plaintiff.

In addition, in the event the Court certifies this class even though Plaintiff has not established the necessary elements for class certification, the Court should require the parties to meet and confer regarding any notice that is to be issued. Plaintiff's proposed Notice, Mot. Exhibit A, is entirely one-sided and improper. The Court need not determine that Henderson Taxi acted "illegally in having its taxi drivers sign" acknowledgements even if it certifies the class. In fact, since no order was in place preventing those communications and they were arrived at through negotiation with the Union, any finding that they were illegal would be error. *See id.*

[30] Truly, the idea that a putative class member would refuse a separate payment because he signed one of these acknowledgements does not take reality into account. If someone is mailed a second check, they will almost certainly accept it regardless of whether they feel they previously settled any

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

Further, Plaintiff's proposed notice puts opinions into the Court's mouth. For example, it states regarding Henderson Taxi's claim that Mr. Greenberg is seeking to line his own pocket: "That statement by Henderson Taxi is untrue." Regardless of whether it is or is not, it is opinion which the Court should not dismiss as untrue in a class notice. As such, the Court should either craft its own notice, in the event of certification, or require the parties to meet and confer and/or separately brief the issue of what notice should be provided.

IV. CONCLUSION

In sum, Plaintiff's claims will necessarily fail on summary judgment because they are preempted by federal law. Thus, they should not be certified. However, beyond that, Plaintiff has failed to establish the elements requisite to class certification (either under Rule 23(b)(3) or Rule 23(b)(2)), and neither Henderson Taxi nor its counsel should be sanctioned for sending letters to putative class members offering payment as agreed between Henderson Taxi and the putative class members' elected Union. Rather, Plaintiff's counsel should be sanctioned for his bad faith requests and required to pay Henderson Taxi's attorneys' fees in defending this meritless Motion.

DATED this 15 day of July 2015.

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

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

EXHIBIT 1

EXHIBIT 1

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

Attorneys for Defendant Henderson Taxi

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL SARGEANT, individually and on behalf of others similarly situated, Plaintiff, v. HENDERSON TAXI, Defendant.	CASE NO.: A-15-714136-C DEPT. NO.: XVII **DECLARATION OF BRENT J. BELL IN SUPPORT OF 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, Brent J. Bell, declare as follows:

1. I am the President of Henderson Taxi. I am also the President of Presidential Limousine and Bell Trans, the defendants in Lucas v. Bell Trans, Case No. 2:08-cv-1792-JAD-NJK (D. Nev.). I have personal knowledge of the matters set forth in this declaration, except as to those matters stated upon information and belief, and I believe those matters to be true.

2. As president of Bell Trans and Presidential Limousine, I became intimately familiar with those proceedings and the court's decision that the exemption from state minimum wage for taxicab and limousine drivers remained in full force and effect and was not impliedly or otherwise repealed by the Minimum Wage Amendment. I have also become aware over time that

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

other courts followed the reasoning of the *Lucas* court regarding the minimum wage exemptions. We relied on this decision in making our pay decisions at Henderson Taxi.

3. Prior to the Nevada Supreme Court's decision in *Thomas v. Nevada Yellow Cab*, Henderson Taxi complied with federal minimum wage, which allows it to take a tip credit. When drivers did not earn sufficient tips to meet federal minimum wage, Henderson Taxi would augment their wages so that they made at least federal minimum wage with the tip credit. Henderson Taxi began to comply with Nevada state minimum wage after the *Yellow Cab* decision was released. If a driver's pay under the standard collective bargaining agreement calculation does not reach state minimum wage, Henderson Taxi augments their wages so that they earn at least state minimum wage without any tip credit.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 15th day of July, 2015.

BRENT J. BELL

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

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EXHIBIT 2

EXHIBIT 2

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

Attorneys for Defendant Henderson Taxi

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL SARGEANT, individually and on behalf of others similarly situated, Plaintiff, v. HENDERSON TAXI, Defendant.	CASE NO.: A-15-714136-C DEPT. NO.: XVII **DECLARATION OF CHERYL KNAPP IN SUPPORT OF 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, Cheryl Knapp, declare as follows:

1. I am the General Manager of Henderson Taxi. I have personal knowledge of the matters set forth in this declaration, except as to those matters stated upon information and belief, and I believe those matters to be true.

2. Henderson Taxi only operates cabs in Clark County, Nevada.

3. On or about July 16, 2014, I received a grievance (the "Grievance") from the ITPEU/OPEIU Local 4873, AFL-CIO (the "Union") grieving the issue of state minimum wage based on the Supreme Court's decision in *Thomas v. Nev. Yellow Cab*. Exhibit 5 to the Opposition is a true and correct copy of the "Grievance" filed by the Union regarding minimum wage

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

payments to Henderson Taxi's cab drivers which the Union submitted to Henderson Taxi after the *Thomas v. Nev. Yellow Cab* decision.

4. In response to the *Thomas* decision, Henderson Taxi began paying state minimum wage as of July 29, 2014. Henderson Taxi has continued to pay at least state minimum wage even since. Henderson Taxi had previously complied with federal minimum wage, augmenting wages when necessary for compliance.

5. The Union is the exclusive bargaining agent of Henderson Taxi's cab drivers pursuant to various collective bargaining agreements that have been and are currently in effect. Exhibits 6 and 7 are true and correct copies of the collective bargaining agreements ("CBA" or "CBAs") entered and effective as of the dates provided therein between Henderson Taxi and the Union.

6. I exchanged multiple letters and engaged in other communications with the Union in an attempt to resolve the Grievance. Exhibits 8 and 9 are a true and correct copies of correspondence I sent to Theatla "Ruthie" Jones, one of the Union's representatives, regarding the Grievance. During this process, Henderson Taxi and the Union agreed that Henderson Taxi would pay to its cab drivers the difference between what they were actually paid and the state minimum wage over the prior two years to resolve the Grievance and the Union members' claims.

7. Exhibit 10 is a true and correct copy of the "Resolution" entered into by and between the Union and Henderson Taxi wherein the Union and Henderson Taxi resolved the Grievance. By the Resolution, Henderson Taxi agreed to pay Nevada minimum wage on a going forward basis, a practice it had previously implemented but was now made part of the CBA, and agreed to pay the difference between state minimum wage and what drivers were actually paid going back two years and to obtain acknowledgements of these payments. Henderson Taxi also agreed to provide drivers an opportunity to review their pay and hour records to confirm the amount of the payments and to receive acknowledgements of this. This was a binding resolution between the Union and Henderson Taxi.

8. Of the drivers, a substantial majority have signed and returned to Henderson Taxi acknowledgements stating that, with this payment, they have been paid all amounts due and

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

reported all hours worked. Other than as part of Plaintiff's Motion, only one driver has disagreed with the amount owed.

9. Henderson Taxi has posted all legally required notifications in poster form in the drivers' check-in and check-out room since well before the Minimum Wage Amendment became effective. These include notifications regarding minimum wage. Exhibits 19 and 20 are true and correct copies of pictures taken of the currently posted posters in the Henderson Taxi check-in and check-out room, which are clearly visible to all Henderson Taxi drivers.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 15th day of July, 2015.

CHERYL KNAPP

7917243_2

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

EXHIBIT 5

EXHIBIT 5

4/22/14

INDUSTRIAL, TECHNICAL AND PROFESSIONAL EMPLOYEES

Affiliated with OPEIU, AFL-CIO as Local 4873

Grievance Form

AGGRIEVED EMPLOYEE

Name: All Affected Drivers

Payroll No.: C/O ITPEU/OPEIU Local 4873 AFL-CIO

Address: 3271 S. Highland Drive, # 716

City: Las Vegas, Nevada 89109

Phone No.: 702-384-7171 Cell:

Job Title: Drivers

Company: Henderson Taxi Cab Company

Supervisor: Ms. Cheryl Knapp, General Manager

One Copy Each To:

Management

Shop Steward

Employee

NATURE OF GRIEVANCE: (State briefly)

On behalf of all affected drivers , the ITPEU hereby grieves the Company's failure to pay at least the minimum wage under the amendments to the Nevada Constitution, as recently found by the Nevada Supreme Court to be applicable to all taxi drivers.

SETTLEMENT DESIRED:

All back pay and an adjustment of wages going forward.

Employee's Signature: On behalf of all affected Henderson drivers Date: 7/16/2014

Union Representative
Or Steward's Signature: [signature] Date: 7/16/2014

ACTION TAKEN: (Summarize or attach Management's reply.)

[signature] Received 7/16/14 Date: fax
Manager's Signature

EXHIBIT 6

EXHIBIT 6

HENDERSON TAXI

INDUSTRIAL, TECHNICAL AND PROFESSIONAL EMPLOYEES UNION (AFL-CIO)

& OPEIU LOCAL 4873 (AFL-CIO)

COLLECTIVE BARGAINING AGREEMENT

November 24, 2009 - September 30, 2013

Provided For Its Drivers
By
Henderson Taxi

HENDERSON TAXI

INDUSTRIAL TECHNICAL AND PROFESSIONAL EMPLOYEES UNION (AFL-CIO)

COLLECTIVE BARGAINING AGREEMENT

Index

COLLECTIVE BARGAINING AGREEMENT

HENDERSON TAXI, of Las Vegas, Nevada (hereinafter referred to as the "Company" or the "Employer") and Industrial, Technical and Professional Employees Union (AFL-CIO and OPEIU Local 4873 (AFL-CIO), (hereinafter referred to as the "Union") hereby agree as follows:

ARTICLE I

UNION

1.1 The Company recognizes the Union as the exclusive representative for all taxicab drivers employed by the Company in accordance with the certification of the National Labor Relations Board Case # 31-RC-5197.

1.2 The recognition of the Union as the exclusive representative for employees in the unit applies to employees and not to work. Nothing in this Agreement shall preclude the Company, at its unlimited discretion, from subcontracting with individuals to provide taxicab service as independent contractors under arrangements known generally in the taxicab industry as "leasing" if legally permitted. In the event "leasing" is engaged in by the Company, drivers then engaged as employees shall be given preference, based on seniority, in the process of selection of independent contractors.

1.3 The Company may not interfere with, restrain or coerce employees because of membership or lawful activity in the Union, nor may it, by discrimination with respect to hire, tenure of employment, or any term or condition of employment, attempt to discourage membership in the Union.

1.4 The Union may not intimidate or coerce any employee with respect to his right to work or with respect to Union activity or membership. There shall be no solicitation of employees for Union membership or dues on Company premises or Company time.

1.5 The Union may not discourage high productivity and may not take any action against an employee which might serve to lessen the productivity of that or any other employee, nor shall Union officers and/or representatives otherwise interfere with employees in the performance of their work.

1.6 (a) The Union may designate employees as stewards and may select them in any manner it desires. Stewards shall be identified to the Company in writing.

(b) While not on duty as drivers, stewards shall be entitled to investigate grievances, while at all times observing the provisions of Section 1.5, above. Stewards may represent the Union in grievance procedures, to the extent of the authorities delegated to them by the Union.

1.7 Upon presentation of proper credentials to management, officers of the Union shall be permitted to visit the Company during office business hours for the purpose of determining if this Agreement is being observed.

1.8 The Union shall be liable for the actions of its officers and representatives in violation of this Agreement while acting within the scope of their apparent authority.

1.9 (a) The Company will make available to the Union a list of newly hired employees covered by this Agreement. Such lists will be prepared monthly and will show the name, social security number, address, telephone number, and last hire date of such employees who were hired during the month for which the list is prepared. The Company will inform each newly hired employee that he is represented by the Union and provide him with a copy of this Agreement and with the address of the Union office and the name of the Union's Nevada representative.

(b) Monthly lists of terminations, as provided to the Taxicab Authority at the time of execution of this Agreement, shall be delivered to the Union monthly.

1.10 The Company will make available to the Union seniority lists prepared for the purposes of Article III.

1.11 Officers or members of the Union, required for service in the Union, may take unpaid leave for that purpose, without loss of seniority. All such leave may not exceed sixty (60) calendar days annually, unless otherwise agreed. Any such leave may not be taken unless the Company has received, at least one week prior to the leave, a written request from the Union's Nevada representative

1.12 In accordance with written authorization on a form approved by the Company. , the Company will withhold from employees' wages monthly Union dues. Dues will be withheld on the first payday of the month only, and not more than one month's dues will be withheld at any one time. Dues withheld will be remitted to the Union within ten (10) days.

1.13 The Union will have a glass enclosed bulletin board installed at the Union's expense at 2000 Industrial Road. The location, style and dimensions of the bulletin board will be by mutual agreement of the Union and the Company. Only official business of the Union shall be posted. Before any such notice may be posted, approval from the Company must be obtained and the General Manager must initial the back of the notice. Both the Union and the Company will have access to the bulletin board. This is the only location on the Company property where such notices may be posted.

ARTICLE II

MANAGEMENT

2.1 Except for the application of certain laws and ordinances, all matters pertaining to the employer-employee relationship are within the exclusive jurisdiction of management, unlimited except as provided herein. By this Agreement, certain specific matters of wages, hours and other conditions of employment are fixed for the term of this Agreement. In all other respects, all of the rights, duties and prerogatives of the Company to manage, control and direct its business and activities are vested in and retained by the Company, including, but not limited to, the assignment and direction of its employees.

2.2 The parties acknowledge that, during negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of said rights, are set forth in this Agreement. Each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively or submit to arbitration with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

2.3 This Agreement constitutes the sole and entire existing agreement between the parties, and completely and correctly expresses all of the rights and obligations of the parties. All prior agreements, conditions, practices, customs, usages, and obligations are completely superseded and revoked insofar as any such prior agreement, condition, practice, custom, usage, or obligation might have given rise to any enforceable right.

2.4 The Company shall be the sole judge of the competence and of the efficiency of all employees and of the number of employees required. The Company may apply in each case, at its unlimited discretion, any standards in the measurement of competence and efficiency.

2.5 All books, records, documents and other information prepared by and/or for the Company are the exclusive property of the Company, and access thereto by any person shall be had only with the express permission of the Company. The Company may not unreasonably withhold permission where the desired information is relevant to a particular case under consideration pursuant to the grievance-arbitration provisions of this Agreement.

ARTICLE III

BIDDING

3.1 A regular shift bid shall be held two times each year. Notice of bid, along with the seniority list, shifts, cabs, and days off shall be posted at least two business days prior to the time set for the bidding. The results of the bid will be effective ordinarily on the second Sunday following the bid.

3.2 Regular full time employees, except probationary employees shall bid in the order of their seniority. Except as provided below, every employee must be present and enter his bid personally. If an employee is not present when his turn to bid comes, a bid shall be entered for him, at the unlimited discretion of the Company. An employee who is unable to attend because of sickness or an authorized absence shall be permitted to have a written bid recognized, provided such written bid is delivered to the Company's office at least twenty-four (24) hours prior to the scheduled bid time. To the extent that a written bid cannot be accepted exactly as requested without deviation from ordinary bidding procedures, the Company shall consult with the Union representative (if one is present) and modify the written bid to that acceptable bid which, in the unlimited judgment of the Company, most closely conforms to the wishes of the employee.

3.3 A "regular shift" is the individual workweek of an employee which consists of four, five, or six days, ordinarily with the same cab, and scheduled to commence at the same time every day. The respective employee is entitled to select, from those remaining available when he bids, the cab he will drive, the shift time he will work, and the specific days off he will have.

3.4 A "relief shift" is the individual workweek of an employee, which, if bid at a regular bid, consists of four, five or six days, with cabs and shift times as are available from the days off bid by drivers with regular shifts. The respective employee is entitled to bid one or two or three days off.

3.5 The Company may deny any driver the right to bid his cab, or the right to continue use of it, and shall instead assign him a cab, when the Company has determined that the driver has failed to adequately care for his cab after receiving a written warning.

3.6 Employees who do not work a regular or relief shift are “extras” and collectively constitute the “extra board”. There will be a day, swing and night extra board. Employees bidding the extra board are entitled to bid one of the extra board shifts. Two (2) drivers on the day and night extra boards shall be entitled to bid, in order of seniority, two (2) days off from those available. The remaining day and night extra board drivers shall be entitled to bid one (1) day off from those available. Swing shift extra board drivers shall be entitled to bid, in order of seniority, two (2) days off from those available.

3.7 For purposes which the Company deems relevant to testing or experimentation activities and/or with respect to equipment to be utilized to provide service to the City of Henderson, the Company may designate vehicles with respect to which this article shall not apply.

3.8 At any regular bid, the Union is entitled to have a representative present to observe the bid and ensure compliance with the terms of this Agreement.

3.9 In the event a regular or relief shift is vacated by a non-probationary driver, it shall be posted for bid within a reasonable time. Employees will have five (5) calendar days from the date of posting to submit bids. Preference will be given first to non-probationary extras in order of seniority, and second to all other drivers in order of seniority. Any such shifts for which no bid is submitted may be assigned by the Company to a probationary employee. The shifts vacated by the successful bidder may be assigned by management to a probationary employee. For purposes of this section, a "non-probationary extra" is one who has completed his probation on or before the Saturday preceding the posting of the bid notice.

ARTICLE IV

WORKDAY, WORKWEEK

4.1 The Company may establish the number of four and/or five and/or six day workweeks. The number of four day workweeks available for bid will not be less than a number equal to twenty five percent (25%) of the regular day shifts, twenty five percent (25%) of the regular swing shifts and twenty five percent (25%) of the regular night shifts. The Company will not require more than twenty-five percent (25%) of the regular shifts be in excess of 11-1/2 hours.

4.2 (a) Any employee who has bid or been assigned a regular shift or a relief shift is a "regular driver" for purposes of this article, and shall be entitled to work the days bid or assigned. This is not to be interpreted as a guarantee of work. In the event of change in State or Federal Wage/Hour laws, the workday and/or workweek of an employee may be shortened by the Company in order to avoid the necessity of paying any "overtime" rate of pay.

(b) At any time the Company is authorized to use temporary medallions for a special event, any employee may be required to work days other than, and/or in addition to those bid or assigned. Immediately upon approval from the Taxicab Authority, the Company shall first seek volunteers. If enough volunteers are not available within ten (10) days of the start of the special event, additional days of work shall be assigned in the following order, in each case in reverse seniority order within the group described:

(I) to "four day" drivers, one additional shift, unless the driver has volunteered for one or more extra shifts;

(ii) to "five day" drivers, one additional shift, unless the driver has volunteered for one or more extra shifts;

(iii) to "four day" drivers, one more additional shift, unless the driver has volunteered for and/or been required to work two or more extra shifts;

(iv) to "six day" drivers, one additional shift, unless the driver has volunteered for one or more extra shifts;

(v) to "five day" drivers, one more additional shift, unless the driver has volunteered for and/or been required to work two or more extra shifts; and

(vi) to "four day" drivers, one more additional shift, unless the driver has volunteered for and/or been required to work three or more extra shifts.

4.3 Regular, relief and extra board drivers may work on their days off. No driver working his day off may exercise seniority over ay regular full time driver reporting to work on his scheduled workday.

4.4 The Company may require employees to report for work not more than fifteen minutes prior to the shift time of each, and an employee who fails to report by the required time forfeits any right to work on that day, although the Company shall be entitled to utilize him as an extra.

4.5 During the course of his shift, a driver is entitled to take meal and rest breaks, not to exceed one (1) hour in the aggregate. A driver must obtain permission from the dispatcher before taking meal and break periods.

4.6 (a) The Company shall provide a time clock for the employee to utilize to establish the time his shift commenced and ended. A full shift has been worked only when the time clock stamps show the employee has been in service for not less than the scheduled length of his shift (starting not later than the scheduled starting time of his shift and ending not earlier than the scheduled ending time of his shift); however, the fact that an employee's time clock stamps reflect the scheduled elapsed hours does not conclusively establish that a full shift has been worked. Employees may be permitted to remain in service not longer than twelve (12) hours unless on a charter that commenced before completion of the tenth hour of the shift.

(b) If the Company calls a driver in to work under circumstances where the time available to him will not qualify as a full shift, the driver shall be credited with a full

shift if he works the entire time so available, subject to the same evidence requirements and qualification as provided in Section 4.6(a) above.

4.7 In the event of a robbery, the driver shall not remain in service. If he fully satisfies the requirements of Section 5.3, he shall be credited with working a full shift.

4.8 In the event of an accident the driver may be permitted by the Company to remain in service, but may not be required to so do. If not permitted to remain in service, he shall be credited with working a full shift if, in the opinion of the Company, he did not contribute significantly to the accident.

4.9 If sufficient regular full time employees or Retirees are not available from time to time, the Company may utilize other individuals as drivers. Such employees shall exercise no seniority or other preferential rights over those of regular full-time employees or Retirees and shall be eligible for no benefits under this Agreement except those provided under Article V " Wages".

ARTICLE V

WAGES

5.1 Each driver's daily compensation is equal to fifty percent (50%) of the "payroll book" less:

(a) until the end of the payroll period which includes the anniversary of his first full year of his employment, an amount equal to the number of gallons of fuel pumped into his cab from the Company pumps multiplied by the price paid by the Company for the fuel; or

(b) after the last day of the payroll period which includes the anniversary of his first full year of employment, an amount as computed in (a), reduced by twenty five percent (25%).

Unless acting at the specific direction of the Company, a driver purchasing fuel away from Company pumps is personally responsible for the cost of such fuel. Every driver must, at the end of his shift, have his cab "topped off" from the Company pumps.

5.2 "Payroll Book" means total book, reduced by:

(a) taxes and fees assessed by any government agency, including the Taxicab Authority, and based upon business activity, including but not limited to revenue and/or trips (except that any amount of such taxes and fees first applied after the effective date of this Agreement shall not reduce Total Book to determine Payroll Book until approved taxi rates are increased in recognition of such taxes and fees);

(b) ninety one cents (91¢) per trip; and

(c) amounts determined under 7.1.

"Total Book" means the total fares collected and supposed to be collected during a driver's shift, based on the rate schedule in effect from time to time. (Airport use fees are not part of the "book.")

5.3 In the event of robbery, properly reported by the employee to the appropriate law enforcement agency, the book shall be reduced by the amount of which the employee was robbed, not exceeding the total amount of the employee's book, provided the employee cooperates fully in the investigation and any subsequent prosecution.

5.4 In the event of a customer's refusal to pay a fare, when the driver provides evidence that the police have been notified and cooperates fully in any prosecution of the customer, the "book" shall be reduced by the amount of the unpaid fare, or $30.00 whichever is the lesser. The benefit of this provision is available to an employee no more often than once in any twelve month period.

5.5 All shortages occurring in the remittance of the employee's book to the Company shall be considered an advance payment of wages. This provision is not to be construed as condonation of any shortage; it is intended solely to permit recovery of shortages. The fact and amount of any shortage shall be determined by the Company in accordance with its usual practices and procedures, and shortages may arise through error in cash remittance or through clerical error.

5.6 (a) Section 5.1 notwithstanding, a driver stationed in the City of Henderson having less than one (1) year seniority shall not be compensated less than Seventy Dollars ($70.00) for a full shift.

(b) Section 5.1 notwithstanding, a driver stationed in the City of Henderson having more than one (1) year seniority shall not be compensated less than Eighty Dollars ($80.00) for a full shift.

c) In computing daily compensation under Section 5.1, in the case of a driver stationed in the City of Henderson for the first fifteen gallons pumped, and in the case of a "backup" driver for the City of Henderson for the first ten gallons pumped, the price of gasoline shall be deemed to be zero. The Company will identify those shifts which are worked by drivers "stationed" in the City of Henderson, and those which are worked by "backup" drivers for the City of Henderson.

(d) In computing daily compensation under Section 5.1, in the case of a driver who operates a wheelchair accessible (handicap) taxicab, the price of gasoline shall be deemed to be zero for the first seven (7) gallons of fuel, providing the driver responded to and transported at least three radio dispatched calls requesting such accommodations.

ARTICLE VI

VACATION PAY, VACATION LEAVE

6.1 (a) After the completion of his first full year of employment, each regular full time employee shall be entitled to a vacation leave, and to vacation pay equal to a fraction of his earnings from the Company, during his employment year.

(b) After completion of his second and each subsequent full year of employment, each regular full time employee shall be entitled to a vacation leave. He shall be entitled to vacation pay if he qualified for and received a bonus pursuant to Article XIX, during the immediately preceding calendar year. If payable, vacation pay shall be equal to a fraction of his earnings from the Company, during his employment year.

6.2 After the 1st year, the vacation leave shall be seven (7) days, and the vacation pay shall be 1/52 of his earnings.

6.3 After the 2nd, 3rd and 4th years, the vacation leave shall be fourteen (14) days and the vacation pay shall be 2/52 of his earnings.

6.4 After the 5th and through the 9th years, the vacation leave shall be twenty-one (21) days, and the vacation pay shall be 3/52 of his earnings.

6.5 After the 10th and through the 14th years, the vacation leave shall be twenty-eight (28) days and the vacation pay shall be 3/52 of his earnings.

6.6 After the 15th and subsequent years, the vacation leave shall be twenty-eight (28) days and the vacation pay shall be 4/52 of his earnings.

6.7 Vacation leave is not cumulative.

6.8 Any partial week vacation leave shall be counted as a full week.

6.9 A vacation bid shall be held on or about the first week of December each year. Employees shall bid in seniority order. The first one hundred (100) regular full time employees, as shown on the seniority list published three business days prior to the date of bidding shall be eligible to bid. Employees other than those unable to attend due to sickness or authorized absence, must be present to bid their vacation preferences. Employees not present by reason of approved absence or illness shall be permitted to submit a written request provided such request is delivered to the Personnel Manager at least one week prior to the date set for bid. If a written request for vacation preference cannot be accepted exactly as written, the Company shall deny said request and the employee may re-submit a written bid in accordance with Section 6.9b.

Preference as to dates of vacation leave during the calendar year shall be determined as follows:

(a) with respect to those employees eligible to bid, preference as to vacation days during the vacation bid shall be determined by seniority;

(b) with respect to all employees who are eligible for vacation leave in accordance with this Article, preference as to all written vacation requests received on or before January 31, by order of seniority;

(c) with respect to all employees who are eligible for vacation leave in accordance with this Article, preference as to all written vacation requests received after January 31, by order of receipt of the request.

The Company may establish any limitations on the number of employees allowed off for purposes of vacation on any given date. Any such limitation will be so noted on the date in question. The Company will not withhold approval for vacation leave unreasonably. However, it is understood that denial of a particular time selected does not, by itself, constitute unreasonable denial.

6.10 Each employee who is entitled to vacation pay shall receive his vacation pay on the payday following the payroll period which includes his anniversary date.

6.11 For the purpose of computing vacation pay, earnings during the period are gross wages paid in the period, without consideration of when actually earned. Earnings during a period do not include vacation pay.

6.12 Pro-rated vacation pay shall be paid upon the death of an employee if qualified or if an employee elects to and qualifies for retirement according to Section 8.3. In the event of an employee's death, the pro-rated vacation shall be paid to a person(s) who the employee has listed as his beneficiary for the group life provided under this Agreement. If no beneficiary has been designated by the employee, benefits will then be made payable to the employee's estate.

ARTICLE VII

HEALTH & WELFARE

7.1 (a) On behalf of each eligible employee, the Company shall pay a maximum of Three Hundred Ten and 28/100 Dollars, ($310.28) per month for employee coverage, for such life, AD&D, health, dental and vision benefits as agreed to by the parties, to such provider as the parties may, from time to time, agree upon. If the cost to maintain existing benefits for employees under such plan increases, for any reason whatsoever, including any requirements by any level of government, the Company shall not be responsible for any such cost increase. The Company agrees to pay such

increases and recover the amount from the employees through a trip charge adjustment provided for in Section 5.2(c).

(b) On behalf of each eligible employee, the Company shall pay a maximum of One Hundred Fifty Five and 00/100 Dollars ($155.00) per month for dependent coverage, for such life, AD&D, health, dental and vision benefits as agreed to by the parties, to such provider as the parties may, from time to time, agree upon. If the cost to maintain existing benefits for employees under such plan increases, for any reason whatsoever, including any requirements by any level of government, the Company shall not be responsible for any such cost increase.

7.2 The Company will withhold from employees' wages the cost of any elective coverage, including dependent coverage in excess of the benefit provided in Section 7.1(b) and remit such amounts to the appropriate provider.

7.3 Every employee who bids a four day workweek, and who fails to complete fifteen (15) full shifts during a calendar month, shall reimburse the Company one hundred percent (100%) of the cost of employee coverage.

7.4 Every employee other than one described in Section 7.3 above, who fails to complete eighteen (18) full shifts during a calendar month shall reimburse the Company a percentage of the cost of employee coverage, as follows:

	Reimbursement
Completed 17 full shifts only	60%
" 16 " " "	70%
" 15 " " "	80%
" 14 " " "	90%
" 13 " " "	100%

7.5 The minimum work requirement for paid coverage described in Section 7.3 (15 shifts) and Section 7.4 (18 shifts) shall be reduced by two shifts (to 13 shifts and 16 shifts, respectively) for the month of February in each year.

7.6 An employee who does not have a four day workweek scheduled for the entire month shall not be considered an employee described under Section 7.3 above, under any circumstances.

7.7 For the purpose of Sections 7.3 and 7.4, an employee will be credited for full shifts earned working for Whittlesea Blue Cab Company and will be considered to have completed shifts he would ordinarily have worked, while absent under the following circumstances:

(a) while absent on approved earned vacation leave;

(b) while absent on a Medical Leave (Article XII), but only when the absence exceeds seven (7) calendar days, and only if, prior to the end of every affected month, the employee delivers to the business office appropriate notification; if a Medical Leave exceeds ninety (90) days, the part which exceeds ninety (90) days will not qualify for this exception; in that event the employee may continue coverage by paying the full cost in advance to the Company;

(c) while absent on unpaid leave in accordance with Section 1.11, to a maximum of ten (10) full shifts annually, but only if, prior to taking the leave, he delivers to the business office the appropriate form, notifying the business office of the pending absence; and

(d) while absent on unpaid leave in accordance with Section 11.9 to a maximum of (five) full shifts, but only if, prior to taking the leave, he delivers to the business office the appropriate form, notifying the business office of the pending absence.

7.8 Every employee shall provide the Company with appropriate authorization to withhold from his wages any amounts due to the Company under this Agreement. If, by the 10th of the next following month, wages are not available to fully reimburse the Company, the employee must make the payment in cash to the Company, within ten (10) days (the employee may prepay amounts owed, not more than one month in advance).

7.9 An employee shall become eligible for these benefits only when he:

(a) is a regular full time employee;

(b) has completed six (6) full months as a full time employee since last being hired;

(c) has completed required enrollment forms, and supplied any medical and health information required; and

(d) has provided the Company with authorization to withhold from his wages amounts due to the Company under Sections 7.3 and 7.4, above;

and coverage shall be effective on the first of the month following the month in which eligibility is first satisfied.

7.10 An employee shall cease to be eligible for these benefits, and coverage shall terminate, immediately, when:

(a) his employment as a regular full time employee terminates; or

(b) he fails to satisfy the requirements of Section 7.8 above. In that event the employee shall again become eligible when he re-qualifies under the terms of Section 7.9, and for that purpose only shall be considered to have been last hired on the latest of the following dates: (1) the day following the date his coverage terminated under this section or (2) the day following the date on which he paid the Company all arrears owing by him under this article.

7.11 The parties may, by mutual agreement, amend this article in any respect.

ARTICLE VIII

SENIORITY

8.1 Seniority means continuous employment by the Company, beginning with the date and hour on which the employee began to work after last being hired.

8.2 An employee's seniority shall terminate when his employment within the unit terminates either:

(a) by his resignation;

(b) by his discharge including job abandonment; or

c) by operation of Article X.

8.3 An employee who is not a regular full time employee shall not accrue seniority for any purpose whatsoever, except Retirees to the extent provided.

8.4 (a) A driver may elect Retiree status any time he has not less than ten (10) years seniority, and is eligible for Social Security benefits. The election must be submitted in writing to the Company. The election may be revoked only by reapplying as a new employee.

(b) Within their group, Retirees shall exercise seniority as measured in accordance with Section 8.1 of this Agreement.

(c) To retain his employment as a Retiree, the driver must give the Company prior notice of periods of time when he will not be available for work; at all other times he must be available. Failure, on three occasions in any twelve-month period, to work when requested will terminate Retiree status.

8.5 A employee who is not a regular full time employee shall not accrue seniority for any purpose whatsoever, except Retirees to the extent provided in this Agreement.

8.6 Seniority has application only in those circumstances specifically provided elsewhere in this Agreement and under no circumstances may applicability of seniority be inferred.

ARTICLE IX

PROBATION

9.1 Every employee shall be a probationary employee until he has completed one hundred twenty (120) full shifts since last being hired.

9.2 During his probationary period, each employee is employed "at will." During that period, the employment relationship may be terminated by either party at any time.

9.3 An employee shall be credited for full shifts earned working for Whittlesea Blue Cab Company during the period described in Section 9.1.

ARTICLE X

QUALIFICATION OF EMPLOYEES

10.1 At any time an employee fails to maintain all the qualifications described herein, his employment shall automatically terminate.

10.2 Every employee must remain capable of satisfying the physical requirements of any regulatory authority which from time to time has jurisdiction over such matters, but in any event every employee must remain capable of satisfying physical requirements no less stringent than those pursuant to Chapter 706 of Nevada Revised Statutes as effective on the date in question.

10.3 At any time, the Company may require any employee to submit to examination to determine his physical qualifications. If such action is not more often than once when hired and thereafter as required by regulatory authority, such examinations shall be at the expense of the employee. Examinations required by the Company at other times shall be at the expense of the Company, and the Company shall specify the doctor who shall conduct the examination. When, after examination, the doctor will not certify that the employee satisfies the physical requirements, the matter shall be considered closed unless the Union submits a written objection within five (5) days (excluding Saturday, Sunday, and legal holidays), and in which event final disposition shall be made by a doctor chosen by mutual agreement of the Company and the Union (and compensated by the employee).

10.4 Any other provision of this Agreement notwithstanding, every employee must maintain a minimum work record, which for the purpose of this article is deemed to be

at least one hundred fifty (150) full shifts during the period described in Section 19.2(a), if he was employed on or before the first day of that period. An absence for one hundred twenty (120) consecutive days for any purpose or purposes whatsoever constitutes a failure to satisfy a minimum work record; continuous work on a regular full time basis ends such absence. The Company may make exceptions to the application of this section on a case by case basis. If this section operates so as to terminate the employment of an individual, and his absence is for a Workers' Compensation injury occurring while employed by the Company, upon his medical release as able to perform his usual duties the Company shall reinstate the employee's last date of hire for seniority purposes. The employee will be required to satisfy the eligibility requirements for health and welfare based on his actual date of return to work.

10.5 Every employee must become and remain possessed of a valid Nevada Motor Vehicle Operators License of the class required by the laws of the state, neither suspended nor revoked nor against which nine (9) or more points have been assessed in any twelve (12) month period. Employees who lose their license or allow their license to expire are subject to disciplinary action under Section 14.3b of this Agreement.

10.6 Every employee must become and remain possessed of a valid Taxicab Driver's permit as now issued by the Taxicab Authority, and as may from time to time be issued, under whatever designation, by such regulatory authorities as may at the time have jurisdiction over such matters, neither suspended nor revoked. Employees who lose their permit or allow their permit to expire are subject to disciplinary action under Section 14.3b of this Agreement.

10.7 (a) At any time the Company may adopt and require any employee to participate in a Drug and Alcohol Screening Program (hereinafter referred to as "The Program"). The Program may require testing for the following reasons: before or at the time of hire, following an accident or injury, random or upon suspicion by a supervisor. The expense of testing before or at the time of hire shall be paid by the employee. The expense of testing at the time of an accident or injury, for random or when requested by a supervisor, shall be paid by the Company. The expense of a retest, requested by the employee to challenge the results of the Company test, shall be paid by the employee.

(b) Every employee must remain medically qualified to operate a commercial motor vehicle. A person who tests positive for the use of controlled substances, except as provided in The Program is medically unqualified to operate a commercial motor vehicle.

ARTICLE XI

LEAVE OF ABSENCE

11.1 After the completion of each full year of employment, each employee shall be entitled to a leave of absence, which may or may not be taken at the same time as vacation leave. Such leave shall be unpaid leave.

11.2 Any leave of absence shall be one unbroken period, and only one such leave may be taken any year.

11.3 Each employee shall be entitled to a leave of absence of a maximum length of thirty (30) days.

11.4 Leaves of absence are not cumulative.

11.5 Before taking his leave of absence, each employee must obtain the Company's approval of the particular time selected. Approval may not be withheld unreasonably. Where two or more employees desire leaves of absence at the same time, and the Company is unwilling to approve all applications, preference shall be given in order of seniority, except that no employee may exercise his seniority in this manner where the employee who would be denied the leave of absence obtained earlier approval and the beginning of the proposed leave is less than 90 days distant.

11.6 Where one or more employees desire vacation leave at the same time that one or more employees desire leave of absence, and the Company is unwilling to approve all applications, preference shall be given to requests for vacation leave.

11.7 The employment of any employee who, while absent on leave of absence engages in activity which constitutes the sale of his services, shall automatically terminate.

11.8 The employment of any employee who fails to report for work punctually following his leave of absence shall automatically terminate, unless the leave is extended by the Company in writing.

11.9 A leave of absence without pay shall be granted for a death in the driver's immediate family (spouse, child, parent, grandparent, brother or sister). As soon as possible, the driver shall provide suitable proof as to the need for such leave.

11.10 If an employee is called for jury duty, he shall be granted such period of unpaid leave as may be required. This leave shall not be considered a "Leave of Absence". For the purposes of Section 10.4, an employee will be considered to have completed shifts he would ordinarily have worked while absent on jury duty. The employee will provide suitable proof for the length of absence upon request.

ARTICLE XII

MEDICAL LEAVE

12.1 Any employee who requires medical services for which the employee is entitled to benefits as a patient under worker's compensation or Article VII, Health & Welfare, shall be entitled to a medical leave.

12.2 The medical leave shall commence when the employee's physical condition shall materially interfere with the performance of the employee's duties, or endanger the employee's health or safety. The leave shall terminate when the employee has reasonable ability to return to work.

12.3 The Company may require written reports from the employee's doctor, or require physical examinations at its expense, to determine whether or not the employee is able to continue to work or to return to work.

12.4 Any employee on medical leave must report in person to the personnel manager once each week. If medically unable to appear in person, the report may be by phone. Failure to report as required shall result in immediate termination.

12.5 It is the employee's responsibility to provide the requested documentation to substantiate the need for such medical leave to the personnel manager within a reasonable time.

ARTICLE XIII

NO STRIKE, NO LOCKOUT

13.1 The Company and the Union agree that the grievance and arbitration procedures set forth in this Agreement shall be the sole and exclusive means of resolving all grievances arising under this Agreement, and further, that administrative and judicial remedies and procedures provided by law shall be the sole and exclusive means of settling all other disputes between the Union and the Employer. Accordingly, neither the Union nor any employee in the bargaining unit covered by this Agreement will instigate, promote, sponsor, engage in or condone any sympathy strike, picketing, slowdown, work stoppage, or any other interruptions of work or interference with the operations of the Company (all of which are hereinafter referred to as "strikes").

13.2 Failure or refusal on the part of any employee to comply with any provision of this Article shall be cause for whatever disciplinary action, including suspension or discharge, deemed necessary by the Company.

13.3 In the event of a wildcat strike, the Union shall make every possible effort to end the strike. If the Union shall fail to make every possible effort to end a wildcat strike, or in the case of any strike should the Union or any official or representative thereof authorize, encourage, tolerate, condone, sanction, support, or cause the strike, the Union shall be liable for damages.

13.4 In consideration of this no-strike pledge by the Union and the employees, the Company shall not lockout employees for the duration of this Agreement.

13.5 Neither the violation of any provision of this Agreement nor the commission of any act constituting an unfair labor practice or otherwise made unlawful by any federal,

state or local law shall excuse employees, the Union or the Company from their obligations under the provisions of this article. The provisions of this Article shall not be appealable to arbitration either for the purpose of assessing damages or securing specific performance, such matters of law being determinable and enforceable in the Courts.

13.6 If any employee becomes subject to discipline because of his refusal to provide service to or from any point merely because of the presence of any picket line, it may be a defense that a real and substantial threat of violence existed, or that the employee had a well founded and reasonable fear for the safety of himself and/or his passengers. Such a defense is available only if the employee summons the police, makes every effort to identify the individual(s) offering the threat of violence and/or causing his fear, and offers testimony in any resulting criminal action.

ARTICLE XIV

DISCIPLINE

14.1 Unless and until the employee has completed his probationary period, he shall be subject to discipline and discharge as the Company, at its unlimited discretion, deems proper and grievance on his behalf may not be instituted. When the employee has completed his probationary period, he may be disciplined only in accordance with this Agreement and the grievance on his behalf may be instituted and processed only in accordance with this Agreement.

14.2 The disciplinary measures permitted are maximum penalties, and the Company shall exercise unlimited discretion in assessing discipline within the prescribed limits. Clemency on the Company's part in exercising this discretion may not be discouraged. Therefore, the failure of the Company to assess the maximum punishment, or any punishment, in one or more cases may not serve to estop the Company from assessing maximum punishment in other similar cases, nor serve as evidence of discrimination.

14.3 The maximum disciplinary action which may be taken shall be:

(a) for Minor Offenses - a warning for the first offense, five days disciplinary layoff for a second like offense in any six month period, and discharge for a third like offense in any six month period;

(b) for Major Offenses - ten days disciplinary layoff for the first offense, and discharge for a second like offense in any six month period; and

c) for Intolerable Offenses - discharge for the first offense.

14.4 Minor Offenses are those which individually do not constitute either a Major Offense or an Intolerable Offense.

14.5 Major Offenses are those of a very serious nature, but which do not constitute Intolerable Offenses, and by way of exemplification rather than limitation, include the following:

(a) insubordination;

(b) offensive actions or speech on Company premises or offensive speech on the radio;

(c) careless or reckless action causing damage to Company property;

(d) failure to report for work;

(e) conviction in a court of law for a gross misdemeanor;

(f) offensive actions or speech in a public place, while on duty;

(g) driving in an unsafe manner;

(h) inability to work and/or complete shift due to expiration of Taxicab Driver's Permit as issued by the Taxicab Authority or any such regulatory authority having jurisdiction over such matters;

(i) inability to work and/or complete shift due to expiration of Nevada Motor Vehicle Operator's License of the class required by the laws of the state.

14.6 Intolerable Offenses are those which would be considered such by a prudent man, and by way of exemplification rather than limitation, include the following:

(a) gross insubordination;

(b) gambling while on duty;

(c) dishonesty;

(d) driving in a reckless manner;

(e) driving in an unsafe manner resulting in an accident;

(f) consumption of alcohol or controlled substances while on duty, or within a reasonable time before coming on duty;

(g) fighting while on duty, except in self-defense;

(h) abuse of a customer;

(l) abuse of Company equipment;

(j) disloyalty;

(k) refusal to transport sober and orderly patrons;

(l) failure to report an accident immediately, or any other material deviation from the Company's prescribed accident procedures, including moving a cab from the scene of an accident without Company permission, or at the direction of police, fire department, Taxicab Authority, or hotel security;

(m) failure to report loss of or damage to passengers' possessions, immediately as he becomes aware of such loss or damage;

(n) conviction for a felony;

(o) diverting trade from one business establishment to another;

(p) three (3) like or unlike Major Offenses within any twelve-month period; or

(q) six (6) like or unlike Minor Offenses within any twelve-month period.

14.7 By way of exemplification rather than limitation, gross insubordination is deemed to include:

(a) verbal or physical abuse of a Company official; and/or

(b) action which jeopardizes the Company or its rights, privileges, or goodwill, done deliberately to injure the Company or in reckless disregard of the possible effect on the Company.

14.8 In addition to other acts which might constitute dishonesty, the following are deemed to be dishonesty:

(a) failure to remit to the Company, immediately following the end of the shift all fares and the trip sheet;

(b) the making of any false or misleading statement on employment application, trip sheet, or accident report, or otherwise giving false information to the Company; and/or

(c) failure, while the taxicab is engaged, to activate the meter properly in every respect.

As used in Section 14.8(a) above, "all fares" excludes any fare which the customer refuses to pay when the driver provides evidence that the police have been notified.

14.9 As used in this article, "while on duty" includes lunch breaks and other breaks.

14.10 Any employee arrested for a felony or any sex-related crime may be suspended by the Company pending disposition of the charges against him. If found innocent by the Court, he shall be reinstated by the Company with no loss of seniority, but shall not be entitled to any wages or benefits for the period of his suspension.

14.11 If a driver fails to report for work or obtain permission to be absent, each day of such failure constitutes a separate offense under Section 14.5(d).

14.12 In the event of the refusal by an employee to sign a written disciplinary notice, only acknowledging delivery of the notice to him, the employee may be denied work until he so signs. Written disciplinary notices shall plainly state that signing of the notice is not an admission of guilt.

ARTICLE XV

GRIEVANCE

15.1 A grievance is defined as a claim or dispute by an employee, or the Union, concerning the interpretation or the application of this Agreement, except those relating to the no strike/no lockout provisions.

15.2 A grievance involving discharge of any employee shall be brought directly to Step 2 and must be filed within five (5) days of discharge.

15.3 A grievance not involving discharge shall be without effect unless filed within five (5) days from the date the complaining party discovered the facts or should have discovered the facts giving rise to the grievance.

15.4 All grievances taken beyond Step 1 must be presented in writing. At Step 2, the written grievance may be in memorandum form, to provide a record. For Step 3, the written grievance must state clearly, fully, and unambiguously:

(a) the exact nature of the grievance;

(b) the act or acts complained of and when they occurred;

(c) the identity of the employee or employees who claim to have been aggrieved;

(d) the provisions of this Agreement claimed to have been violated; and

(e) the remedy sought, specific in every detail.

Satisfaction of these specifications shall be judged by the highest standards. The written grievance should be easily understood in every respect, and if the Company does not easily understand the written grievance, it shall request in writing and receive written clarification from the Union. Unless otherwise agreed, grievances not brought within the time and manner prescribed, or processed within the time and manner prescribed, shall be invalid and there shall be no right of appeal by any party involved.

15.5 Step 1. The employee who has a grievance shall discuss it with the appropriate Company representative. If the grievance is not settled at the Step 1 meeting, it may be appealed by the Union in writing to Step 2 within five (5) days of the Step 1 meeting.

15.6 Step 2. The Union representative and the Company representative shall meet within five (5) days of the written notice demanding the Step 2 procedure, and will discuss the grievance. If the grievance is not disposed of to the satisfaction of the Union at Step 2, the grievance may be appealed to Step 3 by the Union filing a written appeal to the Company within five (5) days after the Step 2 meeting.

15.7 Step 3. Within three (3) days after delivery of the appeal from Step 2, the parties (the Company represented by the Company President or his designee and the Union represented by the Nevada representative or his designee) will meet to attempt to settle the grievance. If the grievance is not disposed of to the satisfaction of the Union, the grievance may be appealed to arbitration by the Union lodging a written appeal with the Company within three (3) days of the Step 3 meeting. If the Union does not appeal the Company's action to arbitration, it will be deemed to have concurred in that action, and this disposition shall be final and binding upon all parties.

15.8 The resolution of a grievance shall not be precedential, nor have retroactive effect in any other case.

15.9 As used in this article, "days" does not include Saturday, Sunday, or legal holidays.

15.10 The parties may, by mutual agreement, waive any time limits provided herein, on a case by case basis.

15.11 The Employer may require employees and employee applicants, as a condition of employment or of continued employment, to execute in partial consideration for his employment or continued employment, an agreement that during his probation period his employment shall be "at will," and that after his probation period he shall be limited for redress of all grievances to the grievance machinery contained herein, and shall not under any circumstance seek any other remedy, including action at law, except for alleged violation of statute law.

ARTICLE XVI

ARBITRATION

16.1 The parties shall endeavor to select an arbitrator by mutual agreement. However, if they are unable, the arbitrator shall be selected in the following manner. The Federal Mediation and Conciliation Service ("F.M.C.S.") shall be called upon to supply a panel of five names. If either party is not satisfied with the panel, a second panel shall be obtained from the F.M.C.S., from which the parties shall make a selection in the manner provided herein. The F.M.C.S. shall be required to include in every list provided only those arbitrators who are members of the National Academy of Arbitrators and whose principal domicile is in Southern California or Nevada. The parties shall strike names in turn until one name remains. Determination of who shall strike the first name shall be by lot. When one remains, this shall be the arbitrator. A letter requesting a panel from the F.M.C.S. shall be mailed within fourteen (14) days of delivery of the demand for arbitration. An arbitrator shall be selected from the panel and the F.M.C.S. advised of the selection within fifteen (15) days of receipt of the list from the F.M.C.S.

16.2 Within ten (10) days after the selection of the arbitrator, the parties shall enter into a submission agreement which shall clearly state the arbitrable issue or issues to be decided. If the parties are unable to agree on a joint statement of the arbitrable issue or issues to be decided by the arbitrator, the submission shall contain the written grievance and the disposition of the same with the notation that the parties could not agree upon a submission agreement.

16.3 The arbitration hearing shall be held with all possible dispatch permitted by the arbitrator's schedule. The arbitrator's decision shall be rendered within ten (10) days of the hearing, or if post-hearing briefs are submitted, within ten (10) days of receipt by the arbitrator of the post-hearing briefs. Said briefs, if called for, shall be delivered to the arbitrator by the parties within fifteen (15) days of the hearing, or within fifteen (15) days of receipt of the hearing transcript, if the hearing is transcribed.

16.4 The arbitrator shall be empowered, except as his powers are limited below, to make a decision in cases of alleged violations of rights expressly accorded by this Agreement. No decision of an arbitrator shall create a basis for retroactive adjustment in any other case. The limitations of the powers of the arbitrator are as follows:

(a) He may hear only one matter.

(b) He shall have no power to arbitrate the terms of any contract or agreement to be entered into upon termination of this Agreement.

(c) He shall have no power to add to, subtract from or modify the express terms or conditions of this Agreement, nor shall he be empowered to base his award upon any alleged practice or oral understanding.

(d) He shall have no power to establish wage scales or change any wage.

(e) He shall have no power to substitute his judgment for that of the Company on any matter with respect to which the Company has retained discretion or is given discretion by this Agreement.

(f) He shall have no power to decide any question which, under this Agreement, is within the right of the Company to decide, and in rendering his decision he shall have due regard for the rights and responsibilities of the Company and shall so construe this Agreement that there will be no interference with the exercise of such rights and responsibilities, except as those rights may be expressly conditioned by this Agreement.

(g) He shall have no power to require the payment of back wages for a period longer than twenty (20) weeks in an amount calculated in the same manner as vacation pay, less any unemployment insurance compensation, and less any employment or other compensation for personal services that the grievant may have received from any source during the period. This is the sole and entire economic remedy he may direct in the case of discharge or disciplinary layoff.

(h) He shall have no power to decide the arbitrability of the issue where either party claims the matter is not subject to the arbitration provisions of this Agreement. In that event, the matter of arbitrability shall first be decided by a court of law of competent jurisdiction.

16.5 The fees and expenses of the arbitrator including stenographic expenses, if any, shall be borne equally by the Company and the Union. All other expenses shall be borne by the party incurring them, and neither party shall be responsible for the expenses of witnesses called by the other.

16.6 The decision of the arbitrator shall be final and binding upon the parties.

16.7 As used in this article, "days" does not include Saturday, Sunday, or legal holidays.

16.8 Notices required to be given in writing shall be deemed delivered when:

(a) hand delivered, if receipted by administrative personnel or officer; or

(b) deposited in the U.S. mail, certified, return receipt requested; or

(c) received at the business office via facsimile during regular business hours.

ARTICLE XVII

EQUIPMENT RESPONSIBILITY

17.1 The Company shall be solely responsible for the mechanical condition of its vehicles, and no driver shall be required to perform any mechanical work on any of the Company's vehicles. No driver shall be required to polish, fuel, or lubricate any vehicle, except that on trips beyond a ten (10) mile radius of the Company Station the driver is responsible for maintaining all fluid levels in the vehicle.

17.2 Each driver shall be responsible for the cleanliness of his taxicab, both exterior and interior, but he is not required to personally wash the exterior.

17.3 The driver shall not be responsible for the repair or changing of any tire within a ten (10) mile radius of the Company garage. If a tire is to be changed, a spare tire and the necessary tools shall be made available to the driver. The driver shall be responsible for the spare tire and tools while in his possession.

17.4 Each driver shall check tires, lights, horn, brakes, seats, seat belts, and medallion, and make an inspection of the interior and exterior of the cab to determine any previous unreported damages or accident evidence to the interior or exterior of the vehicle; any irregularities or inadequacies must be immediately reported to the Company, or the driver shall be deemed responsible. If a vehicle is in unsafe mechanical condition, the employee may not take it into service. If the vehicle becomes unsafe during his shift, the driver must immediately notify the dispatcher and proceed as directed by the driver-supervisor or other management official.

17.5 In the event of any accident to which, in the opinion of the Company, an employee contributed significantly, and in the event of any incident involving damage to Company equipment, including mechanical damage, and including damage to tires, which, in the opinion of the Company, was done deliberately by the employee, or resulted from his negligence or recklessness, the employee shall be liable to the Company for the lesser of:

(a) the sum of the dollar value loss resulting from damage to Company property, and all third party claims; or

(b) an amount equal to the employee's Responsibility Category.

The Responsibility Category shall be:

(i) for each employee who has worked sixty (60) months or longer since being last hired or since having a chargeable accident or incident, whichever occurred last One Hundred and 00/100 Dollars ($100.00)

(ii) for each employee who has worked twenty-four (24) months but less than sixty (60) months since being last hired or since having a chargeable accident or incident, whichever occurred last Five Hundred and 00/100 Dollars ($500.00);

(iii) for each employee who has worked eighteen (18) months but less than twenty four (24) months since being last hired or since having a chargeable accident or incident, whichever occurred last, Seven Hundred Fifty and 00/100 Dollars ($750.00);

(iv) for each employee who has worked twelve (12) months but less than eighteen (18) months since being last hired or since having a chargeable accident or incident, whichever occurred last, One Thousand and 00/100 Dollars ($1,000.00);

(v) for each employee who has worked for the Company less than twelve (12) months since being last hired or since having a chargeable accident or incident, whichever occurred last, One Thousand Two Hundred and 00/100 Dollars ($1,200.00).

17.6 The Company may recover such monies due by deducting from the employee's wages One Hundred and 00/100 Dollars ($100.00) each payday until the full amount is recovered.

17.7 The Company shall be provided with all necessary authorizations for making such payroll deductions, unless the employee elects, in the alternative, to terminate his employment. This section shall not operate so as to deprive the employee of any grievance rights.

17.8 In forming its opinion, the Company may apply at its unlimited discretion, in each accident case any standard in the measurement of significant contribution to the accident, and in each incident case any standard in the determination of deliberateness, negligence or recklessness.

17.9 In the event of a dispute, an employee shall be afforded a reasonable opportunity to have an independent appraisal made, at the Company terminal, of damage to Company property.

17.10 Sections 17.5 through 17.7 shall not be construed as alternatives to disciplinary action by the Company.

17.11 In addition to training as a new hire:

(a) every driver must attend annually, in the month of his anniversary, safe driving instruction of approximately two hours, administered by the Company; and

(b) every driver involved in an accident to which, in the opinion of the Company, he contributed significantly, must attend remedial safe driving instruction administered by the Company, at the next remedial safe driving class following the accident.

Drivers due to attend the annual safety class, whose work week conflicts with that of the class will be provided a permit allowing them to attend class while on duty and park the taxicab at the northern most parking area at 2000 Industrial Road.

ARTICLE XVIII

MISCELLANEOUS

18.1 SEVERABILITY. If a provision of this Agreement is held invalid, by any Court or regulatory authority of competent jurisdiction, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Agreement is held invalid in one or more of its applications, the provision remains in effect in all valid provisions that are severable from the invalid application or applications. The parties shall endeavor to mutually agree upon modifications to this Agreement which might cure the invalidity while maintaining the parties' intent. Any failure by the parties to agree upon any such modifications, shall not invalidate the no strike/no lockout provisions of this Agreement, nor shall the unresolved matter be subject to arbitration on any ground.

18.2 COMPANY RULES. Company rules shall not be in conflict with the express terms of this Agreement. The Union shall be provided with all written Company rules. Failure at any time of the Company to provide this information shall not invalidate the rule in question except in that particular instance where the failure effectively denies a grieving employee of adequate grievance opportunities.

18.3 COMPLIANCE WITH LAW. The parties shall comply with all laws which properly apply to the employer-employee relationship, including, but not limited to, laws prohibiting discrimination on the basis of race, creed, color, religion, sex, national origin or age. Any alleged violations of such laws, and any dispute over the meaning and interpretation of such laws, shall not be subject to resolution through the Articles XV and XVI of this Agreement, but shall be decided only by a court of law of competent jurisdiction.

18.4 UNIFORMS. If any employee is required to wear a uniform, such uniform shall be furnished by the Company, without cost to the employee. If such uniform requires a

special cleaning process and cannot be easily laundered by the employee, it shall be cleaned without cost to the employee. "Uniform" does not include clothing worn in compliance with a Company rule specifying color and general style.

18.5 GENDER. Any reference to gender in this Agreement shall apply equally to both sexes.

18.6 TRANSITION: Rights and benefits which accrued pursuant to Articles:

VI VACATION PAY, VACATION LEAVE,
VII HEALTH & WELFARE,
VIII SENIORITY,
IX PROBATION,
XI LEAVE OF ABSENCE,
XVII EQUIPMENT RESPONSIBILITY, and
XIX ANNUAL BONUS

in the agreement which this Agreement succeeds, shall be deemed to have accrued under this Agreement, except that when the terms of this Agreement conflict with the terms of the succeeded agreement, the terms of this Agreement shall govern.

18.7 INDIVIDUAL CONTRACTS. No employee shall be compelled or allowed to enter into any individual contract or agreement with his employer concerning the conditions of employment contained herein, inconsistent with the terms of this Agreement.

18.8 REFERENCES. When used herein, the term "Section" refers to the material included within the paragraph(s) designated by the Arabic numeral (this "section is Section 18.9). The term "Article" means all of the material designated by the Roman numeral, including all sections bearing an Arabic numeral corresponding to the Roman numeral designation of the Article (this "Section" is in "Article" XVIII). The term "this Agreement" refers to the entire document.

18.9 SAVINGS PLAN. Upon written request and signed authorization of the employee, the Company will withhold money from the employee's wages, and forward it to a single financial institution for all such employees. An employee may commence or change such withholding only once in each calendar year; the Company may make exceptions to this on a case-by-case basis.

18.10 LOST AND DAMAGED LUGGAGE. Drivers shall be responsible for costs resulting from loss or damage to luggage, to which, in the opinion of the Company resulted from the drivers carelessness, recklessness or negligence.

18.11 BIRTHDAY: In order for a driver to be eligible for his birthday off it must fall on his regular scheduled workday and he must have been a full time employee for one year and must submit a request in writing thirty (30) days in advance.

XIX

ANNUAL BONUS

19.1 The Company shall pay annually, to qualified employees, a bonus of 3% of qualified wages.

19.2 An employee is qualified if he completed the required number of shifts during the period commencing with the day following the last day for which wages are paid on the last regular payday falling before December 20 in the preceding year, and ending with the last day for which wages are paid on the last regular payday falling before December 20 in the current year and he continues to be a regular full time employee through the ending day of the qualifying period.

19.3 Qualified wages are all gross wages paid (regardless of when earned) to the employee between January 1 of the current year and the last regular payday in December preceding December 20.

19.4 The bonus shall be paid not later than in the week following the last regular payday in December preceding December 20.

19.5 (a) An employee is qualified if he completed at least one hundred eighty (180) full shifts and successfully bid a four day workweek during the period described in Section 19.2 and continues to be a regular full time employee through the ending day of that period.

(b) Any other employee is qualified if he completed at least two hundred ten (210) full shifts during the period described in Section 19.2 and continues to be a regular full time employee through the ending day of that period.

19.6 An employee taking unpaid leave in accordance with Section 1.11 shall be credited for shifts lost for that reason, to a maximum of ten (10) full shifts during the period described in Section 19.2.

19.7 An employee shall be credited for full shifts earned working for Whittlesea Blue Cab Company during the period described in Section 19.2

ARTICLE XX

SAFETY ACHIEVEMENT AWARD

20.1 After the completion of each full year of employment (measured for each employee from the anniversary date of his employment), each employee who, during the year, did not have an accident, incident, or injury to which, in the opinion of the Company, he contributed significantly, shall receive, in recognition of his safety

achievement, a cash award. The cash award shall be one and one half percent (1.5%) of the employee's earnings upon which his vacation pay is based. An employee will receive, upon his fifth and through his ninth year of receiving safety awards two percent (2%) of his earnings upon which his vacation pay is based if during his fifth and through his ninth year the employee did not have an accident, incident or injury to which, in the opinion of the Company, he contributed significantly. An employee will receive, upon his tenth and each subsequent year of receiving safety awards three percent (3%) of his earnings upon which his vacation pay is based if during his tenth and each subsequent year the employee did not have an accident, incident or injury to which, in the opinion of the Company, he contributed significantly. As used in this section, "incident" has the meaning given in Article XVII.

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ARTICLE XXI

TERMINATION AND MODIFICATION

21.1 This Agreement shall be effective as of November 24, 2009 except as otherwise indicated in Section 18.7, and shall terminate upon completion of shifts commenced prior to midnight on September 30, 2013. Except for wages earned pursuant to Article V, any other provisions of this Agreement notwithstanding, all rights and benefits of every nature whatsoever accruing under this Agreement shall expire with termination of this Agreement, and no employee shall be entitled to such benefits after expiration.

21.2 By mutual agreement, the parties may make additions to or deletions from, modify, or terminate this Agreement at any time.

21.3 Executed this 24th day of November, 2009 at Las Vegas, Nevada.

ITPEU / OPEIU

By: _____
Kevin Kistler
Director of Organization
and Field Services

By: _____
Theatla "Ruthie" Jones
Representative

By: _____
Michael Warzlow
Committee Member

By: _____
Andrew Turonie
Committee Member

HENDERSON TAXI

By: _____
Cheryl D. Knapp
Chief Negotiator
Vice President Human Resources
General Manager

By: _____
Brent Bell
President

By: _____
JJ Bell
Vice President

By: _____
Jim Lysengen
Operations Manager

EXHIBIT 7

EXHIBIT 7

COLLECTIVE BARGAINING AGREEMENT

HENDERSON TAXI, of Las Vegas, Nevada (hereinafter referred to as the "Company" or the "Employer") and Industrial, Technical and Professional Employees Union (AFL-CIO and OPEIU Local 4873 (AFL-CIO), (hereinafter referred to as the "Union") hereby agree as follows:

ARTICLE I

UNION

1.1 The Company recognizes the Union as the exclusive representative for all taxicab drivers employed by the Company in accordance with the certification of the National Labor Relations Board Case # 31-RC-5197.

1.2 The recognition of the Union as the exclusive representative for employees in the unit applies to employees and not to work. Nothing in this Agreement shall preclude the Company, at its unlimited discretion, from subcontracting with individuals to provide taxicab service as independent contractors under arrangements known generally in the taxicab industry as "leasing" if legally permitted. In the event "leasing" is engaged in by the Company, drivers then engaged as employees shall be given preference, based on seniority, in the process of selection of independent contractors.

1.3 The Company may not interfere with, restrain or coerce employees because of membership or lawful activity in the Union, nor may it, by discrimination with respect to hire, tenure of employment, or any term or condition of employment, attempt to discourage membership in the Union.

1.4 The Union may not intimidate or coerce any employee with respect to his right to work or with respect to Union activity or membership. There shall be no solicitation of employees for Union membership or dues on Company premises or Company time.

1.5 The Union may not discourage high productivity and may not take any action against an employee which might serve to lessen the productivity of that or any other employee, nor shall Union officers and/or representatives otherwise interfere with employees in the performance of their work.

1.6 (a) The Union may designate employees as stewards and may select them in any manner it desires. Stewards shall be identified to the Company in writing.

(b) While not on duty as drivers, stewards shall be entitled to investigate grievances, while at all times observing the provisions of Section 1.5, above. Stewards may represent the Union in grievance procedures, to the extent of the authorities delegated to them by the Union.

1.7 Upon presentation of proper credentials to management, officers of the Union shall be permitted to visit the Company during office business hours for the purpose of determining if this Agreement is being observed.

1.8 The Union shall be liable for the actions of its officers and representatives in violation of this Agreement while acting within the scope of their apparent authority.

1.9 (a) The Company will make available to the Union a list of newly hired employees covered by this Agreement. Such lists will be prepared monthly and will show the name, social security number, address, telephone number, and last hire date of such employees who were hired during the month for which the list is prepared. The Company will inform each newly hired employee that he is represented by the Union and provide him with a copy of this Agreement. The Company will afford time for a Union representative to speak to new drivers at the time of their initial training not to exceed thirty (30) minutes without a Company representative present. The Union's materials will be provided to the Company for review prior to implementation. If the Company determines the Union's materials and/or presentation is inaccurate or unlawful, it shall be permitted to have a Company representative in attendance until such time as the Union's materials and/or presentation is accurate and legal.

(b) Monthly lists of terminations, as provided to the Taxicab Authority at the time of execution of this Agreement, shall be delivered to the Union monthly.

1.10 The Company will make available to the Union seniority lists prepared for the purposes of Article III.

1.11 Officers or members of the Union, required for service in the Union, may take unpaid leave for that purpose, without loss of seniority. All such leave may not exceed sixty (60) calendar days annually, unless otherwise agreed. Any such leave may not be taken unless the Company has received, at least one week prior to the leave, a written request from the Union's Nevada representative

1.12 In accordance with written authorization on a form approved by the Company. , the Company will withhold from employees' wages bi-weekly Union dues. Dues will be withheld on the first and second paydays of the month only, and not more than one month's dues will be withheld in any given month. Dues withheld will be remitted to the Union within ten (10) days.

1.13 The Union will have a glass enclosed bulletin board installed at the Union's expense at 2000 Industrial Road. The location, style and dimensions of the bulletin board will be by mutual agreement of the Union and the Company. Only official business of the Union shall be posted. Before any such notice may be posted, approval from the Company must be obtained and the General Manager must initial the back of the notice. Both the Union and the Company will have access to the bulletin board. This is the only location on the Company property where such notices may be posted.

ARTICLE II

MANAGEMENT

2.1 Except for the application of certain laws and ordinances, all matters pertaining to the employer-employee relationship are within the exclusive jurisdiction of management, unlimited except as provided herein. By this Agreement, certain specific matters of wages, hours and other conditions of employment are fixed for the term of this Agreement. In all other respects, all of the rights, duties and prerogatives of the Company to manage, control and direct its business and activities are vested in and retained by the Company, including, but not limited to, the assignment and direction of its employees.

2.2 The parties acknowledge that, during negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of said rights, are set forth in this Agreement. Each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively or submit to arbitration with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

2.3 This Agreement constitutes the sole and entire existing agreement between the parties, and completely and correctly expresses all of the rights and obligations of the parties. All prior agreements, conditions, practices, customs, usages, and obligations are completely superseded and revoked insofar as any such prior agreement, condition, practice, custom, usage, or obligation might have given rise to any enforceable right.

2.4 The Company shall be the sole judge of the competence and of the efficiency of all employees and of the number of employees required. The Company may apply in each case, at its unlimited discretion, any standards in the measurement of competence and efficiency.

2.5 All books, records, documents and other information prepared by and/or for the Company are the exclusive property of the Company, and access thereto by any person shall be had only with the express permission of the Company. The Company may not unreasonably withhold permission where the desired information is relevant to a particular case under consideration pursuant to the grievance-arbitration provisions of this Agreement.

HENDERSON TAXI

INDUSTRIAL, TECHNICAL AND PROFESSIONAL EMPLOYEES UNION (AFL-CIO)

& OPEIU LOCAL 4873 (AFL-CIO)

COLLECTIVE BARGAINING AGREEMENT

October 1, 2013 - September 30, 2018

Provided For Its Drivers
By
Henderson Taxi

HENDERSON TAXI

INDUSTRIAL TECHNICAL AND PROFESSIONAL EMPLOYEES UNION (AFL-CIO)

COLLECTIVE BARGAINING AGREEMENT

Index

COLLECTIVE BARGAINING AGREEMENT

HENDERSON TAXI, of Las Vegas, Nevada (hereinafter referred to as the "Company" or the "Employer") and Industrial, Technical and Professional Employees Union (AFL-CIO and OPEIU Local 4873 (AFL-CIO), (hereinafter referred to as the "Union") hereby agree as follows:

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ARTICLE III

BIDDING

3.1 A regular shift bid shall be held two times each year. Notice of bid, along with the seniority list, shifts, cabs, and days off shall be posted at least two business days prior to the time set for the bidding. The results of the bid will be effective ordinarily on the second Sunday following the bid.

3.2 Regular full time employees, except probationary employees shall bid in the order of their seniority. Except as provided below, every employee must be present and enter his bid personally. If an employee is not present when his turn to bid comes, a bid shall be entered for him, at the unlimited discretion of the Company. An employee who is unable to attend because of sickness or an authorized absence shall be permitted to have a written bid recognized, provided such written bid is delivered to the Company's office at least twenty-four (24) hours prior to the scheduled bid time. To the extent that a written bid cannot be accepted exactly as requested without deviation from ordinary bidding procedures, the Company shall consult with the Union representative (if one is present) and modify the written bid to that acceptable bid which, in the unlimited judgment of the Company, most closely conforms to the wishes of the employee.

3.3 A "regular shift" is the individual workweek of an employee which consists of four, five, or six days, ordinarily with the same cab, and scheduled to commence at the same time every day. The respective employee is entitled to select, from those remaining available when he bids, the cab he will drive, the shift time he will work, and the specific days off he will have.

3.4 A "relief shift" is the individual workweek of an employee, which, if bid at a regular bid, consists of four, five or six days, with cabs and shift times as are available from the days off bid by drivers with regular shifts. The respective employee is entitled to bid one or two or three days off.

3.5 The Company may deny any driver the right to bid his cab, or the right to continue use of it, and shall instead assign him a cab, when the Company has determined that the driver has failed to adequately care for his cab after receiving a written warning.

3.6 Employees who do not work a regular or relief shift are "extras" and collectively constitute the "extra board". There will be a day, swing and night extra board. Employees bidding the extra board are entitled to bid one of the extra board shifts. Two (2) drivers on the day and night extra boards shall be entitled to bid, in order of seniority, two (2) days off from those available. The remaining day and night extra board drivers shall be entitled to bid one (1) day off from those available. Swing shift extra board drivers shall be entitled to bid, in order of seniority, two (2) days off from those available.

3.7 For purposes which the Company deems relevant to testing or experimentation activities and/or with respect to equipment to be utilized to provide service to geographically restricted areas and/or persons requiring a wheelchair accessible vehicle the Company may designate vehicles with respect to which this article shall not apply.

3.8 At any regular bid, the Union is entitled to have a representative present to observe the bid and ensure compliance with the terms of this Agreement.

3.9 In the event a regular or relief shift is vacated by a non-probationary driver, it shall be posted for bid within a reasonable time. Employees will have five (5) calendar days from the date of posting to submit bids. Preference will be given first to non-probationary extras in order of seniority, and second to all other drivers in order of seniority. Any such shifts for which no bid is submitted may be assigned by the Company to a probationary employee. The shifts vacated by the successful bidder may be assigned by management to a probationary employee. For purposes of this section, a "non-probationary extra" is one who has completed his probation on or before the Saturday preceding the posting of the bid notice.

ARTICLE IV

WORKDAY, WORKWEEK

4.1 The Company may establish the number of four and/or five and/or six day workweeks. The number of four day workweeks available for bid will not be less than a number equal to twenty five percent (25%) of the regular shifts. The number of shifts operating at a maximum of ten (10) hours will not be less than a number equal to five (5) percent of the regular shifts. All shifts that are a maximum of ten (10) hours will be required to be bid for a five (5) day work week. The Company will not require more than twenty-five percent (25%) of the regular shifts be in excess of 11-1/2 hours.

4.2 (a) Any employee who has bid or been assigned a regular shift or a relief shift is a "regular driver" for purposes of this article, and shall be entitled to work the days bid or assigned. This is not to be interpreted as a guarantee of work. The workday and/or workweek of an employee may be shortened by the Company in order to avoid the necessity of paying any "overtime" rate of pay and/or minimum wage.

(b) At any time the Company is authorized to use temporary medallions any employee may be required to work days other than, and/or in addition to those bid or assigned. Immediately upon approval from the Taxicab Authority, the Company shall first seek volunteers. If enough volunteers are not available within ten (10) days of the start of the temporary medallion allocation additional days of work shall be assigned in reverse seniority order, excluding those drivers who have volunteered to work one or more extra shifts and drivers who have a six day work week:

4.3 Regular, relief and extra board drivers may work on their days off. No driver working his day off may exercise seniority over any regular full time driver reporting to work on his scheduled workday.

4.4 The Company may require employees to report for work not more than fifteen minutes prior to the shift time of each, and an employee who fails to report by the required time forfeits any right to work on that day, although the Company shall be entitled to utilize him as an extra.

4.5 During the course of his shift, a driver is entitled to take meal and rest breaks, not to exceed one (1) hour in the aggregate. A driver operating a wheelchair accessible or geographically restricted vehicle must obtain permission from the dispatcher before taking meal and break periods.

4.6 (a) The Company shall provide a time clock for the employee to utilize to establish the time his shift commenced and ended. A full shift has been worked only when the time clock stamps show the employee has been in service for not less than the scheduled length of his shift (starting not later than the scheduled starting time of his shift and ending not earlier than the scheduled ending time of his shift); however, the fact that an employee's time clock stamps reflect the scheduled elapsed hours does not conclusively establish that a full shift has been worked. Employees may be permitted to remain in service not longer than twelve (12) hours unless on a charter that commenced before completion of the tenth hour of the shift.

(b) If the Company calls a driver in to work under circumstances where the time available to him will not qualify as a full shift, the driver shall be credited with a full shift if he works the entire time so available, subject to the same evidence requirements and qualification as provided in Section 4.6(a) above.

4.7 In the event of a robbery, the driver shall not remain in service. If he fully satisfies the requirements of Section 5.3, he shall be credited with working a full shift.

4.8 In the event of an accident the driver may be permitted by the Company to remain in service, but may not be required to so do. If not permitted to remain in service, he shall be credited with working a full shift if, in the opinion of the Company, he did not contribute significantly to the accident.

4.9 If sufficient regular full time employees or Retirees are not available from time to time, the Company may utilize other individuals as drivers. Such employees shall exercise no seniority or other preferential rights over those of regular full-time employees or Retirees and shall be eligible for no benefits under this Agreement except those provided under Article V " Wages".

ARTICLE V

WAGES

5.1 Each driver's daily compensation is equal to fifty percent (50%) of the "payroll book" less:

(a) until the end of the payroll period which includes the anniversary of his first full year of his employment, an amount equal to the number of unleaded gallons of fuel pumped into his cab from the Company pumps multiplied by the price paid by the Company for the fuel; or

(b) after the last day of the payroll period which includes the anniversary of his first full year of employment, an amount as computed in (a), reduced by twenty five percent (25%).

(c) until the end of the payroll period which includes the anniversary of his first full year of employment, an amount equal to the number of gallons of CNG fuel pumped into his cab multiplied by the pump price, and

(d) after the last day of the payroll period which includes the anniversary of the first full year of his employment, an amount as computed in ©, reduced by twenty five percent (25%)

Drivers who operate a CNG fueled vehicle will pay a daily rate of $1.65 to be deducted from their net wages.

Unless acting at the specific direction of the Company, a driver purchasing unleaded fuel away from Company pumps is personally responsible for the cost of such fuel. Every driver must, at the end of his shift, have his cab "topped off" from the Company pumps.

5.2 "Payroll Book" means total book, reduced by:

(a) taxes and fees assessed by any government agency, including the Taxicab Authority, and based upon business activity, including but not limited to revenue and/or trips;

(b) One and 09/100 Dollars ($1.09) per trip; and

(c) amounts determined under 7.1.

"Total Book" means the total fares collected and supposed to be collected during a driver's shift, based on the rate schedule in effect from time to time. (Airport use fees are not part of the "book.")

5.3 In the event of robbery, properly reported by the employee to the appropriate law enforcement agency, the book shall be reduced by the amount of which the employee was robbed, not exceeding the total amount of the employee's book, provided the employee cooperates fully in the investigation and any subsequent prosecution.

5.4 In the event of a customer's refusal to pay a fare, when the driver provides evidence that the police have been notified and cooperates fully in any prosecution of the customer, the "book" shall be reduced by the amount of the unpaid fare, or $30.00 whichever is the lesser. The benefit of this provision is available to an employee no more often than twice in the twelve month period between his anniversary dates.

5.5 All shortages occurring in the remittance of the employee's book to the Company shall be considered an advance payment of wages. This provision is not to be construed as condonation of any shortage; it is intended solely to permit recovery of shortages. The fact and amount of any shortage shall be determined by the Company in accordance with its usual practices and procedures, and shortages may arise through error in cash remittance or through clerical error.

5.6 In computing daily compensation under Section 5.1, in the case of a driver who operates a wheelchair accessible (handicap) taxicab, the price of gasoline shall be deemed to be zero for the first nine (9) gallons of fuel, providing the driver responded to and transported at least five (5) radio dispatched calls, two of which request wheelchair accommodations.

ARTICLE VI

VACATION PAY, VACATION LEAVE

6.1 (a) After the completion of his first full year of employment, each regular full time employee shall be entitled to a vacation leave, and to vacation pay equal to a fraction of his earnings, as defined in Article V (Wages) from the Company, during his employment year.

(b) After completion of his second and each subsequent full year of employment, each regular full time employee shall be entitled to a vacation leave. He shall be entitled to vacation pay if he qualified for and received a bonus pursuant to Article XIX, during the immediately preceding calendar year. If payable, vacation pay shall be equal to a fraction of his earnings, as defined in Article V (Wages) from the Company, during his employment year.

6.2 After the 1st year, the vacation leave shall be seven (7) days, and the vacation pay shall be 1/52 of his earnings, as defined in Article V (Wages).

6.3 After the 2nd, 3rd and 4th years, the vacation leave shall be fourteen (14) days and the vacation pay shall be 2/52 of his earnings, as defined in Article V (Wages).

6.4 After the 5th and through the 9th years, the vacation leave shall be twenty-one (21) days, and the vacation pay shall be 3/52 of his earnings, as defined in Article V (Wages).

6.5 After the 10th and through the 14th years, the vacation leave shall be twenty-eight (28) days and the vacation pay shall be 3/52 of his earnings, as defined in Article V (Wages).

6.6 After the 15th and subsequent years, the vacation leave shall be twenty-eight (28) days and the vacation pay shall be 4/52 of his earnings, as defined in Article V (Wages).

6.7 Vacation leave is not cumulative.

6.8 Any partial week vacation leave shall be counted as a full week.

6.9 A vacation bid shall be held on or about the first week of December each year. Employees shall bid in seniority order. The first one hundred fifty (150) regular full time employees, as shown on the seniority list published three business days prior to the date of bidding shall be eligible to bid. Employees other than those unable to attend due to sickness or authorized absence, must be present to bid their vacation preferences. Employees not present by reason of approved absence or illness shall be permitted to submit a written request provided such request is delivered to the Personnel Manager at least one week prior to the date set for bid. If a written request for vacation preference cannot be accepted exactly as written, the Company shall deny said request and the employee may re-submit a written bid in accordance with Section 6.9b.

Preference as to dates of vacation leave during the calendar year shall be determined as follows:

(a) with respect to those employees eligible to bid, preference as to vacation days during the vacation bid shall be determined by seniority;

(b) with respect to all employees who are eligible for vacation leave in accordance with this Article, preference as to all written vacation requests received on or before January 31, by order of seniority;

(c) with respect to all employees who are eligible for vacation leave in accordance with this Article, preference as to all written vacation requests received after January 31, by order of receipt of the request.

The Company may establish any limitations on the number of employees allowed off for purposes of vacation on any given date. Any such limitation will be so noted on the date in question. The Company will not withhold approval for vacation leave unreasonably. However, it is understood that denial of a particular time selected does

not, by itself, constitute unreasonable denial.

6.10 Each employee who is entitled to vacation pay shall receive his vacation pay on the payday following the payroll period which includes his anniversary date.

6.11 For the purpose of computing vacation pay, earnings during the period are earnings paid in the period, as defined in Article V (Wages) without consideration of when actually earned. Earnings during a period do not include vacation pay.

6.12 Pro-rated vacation pay shall be paid upon the death of an employee if qualified or if an employee elects to and qualifies for retirement according to Section 8.3. In the event of an employee's death, the pro-rated vacation shall be paid to a person(s) who the employee has listed as his beneficiary for the group life provided under this Agreement. If no beneficiary has been designated by the employee, benefits will then be made payable to the employee's estate.

ARTICLE VII

HEALTH & WELFARE

7.1 (a) On behalf of each eligible employee, the Company shall pay a maximum of Three Hundred Fifty Eight and 37/100 Dollars ($358.37) per month for employee coverage, for such life, AD&D, health, dental and vision benefits as agreed to by the parties, to such provider as the parties may, from time to time, agree upon. If the cost to maintain existing benefits for employees under such plan increases, for any reason whatsoever, including any requirements by any level of government, the Company shall not be responsible for any such cost increase. The Company agrees to pay such increases and recover the amount from the employees through a trip charge adjustment provided for in Section 5.2(c).

(b) On behalf of each eligible employee, the Company shall pay a maximum of One Hundred Seventy Five and 00/100 Dollars ($175.00) per month for dependent coverage, for such life, AD&D, health, dental and vision benefits as agreed to by the parties, to such provider as the parties may, from time to time, agree upon. If the cost to maintain existing benefits for employees under such plan increases, for any reason whatsoever, including any requirements by any level of government, the Company shall not be responsible for any such cost increase.

7.2 The Company will withhold from employees' wages the cost of any elective coverage, including dependent coverage in excess of the benefit provided in Section 7.1(b) and remit such amounts to the appropriate provider.

7.3 Every employee who bids a four day workweek, and who fails to complete fifteen (15) full shifts during a calendar month, shall reimburse the Company eighty percent (80%) of the cost of employee coverage.

7.4 Every employee other than one described in Section 7.3 above, who fails to complete eighteen (18) full shifts during a calendar month shall reimburse the Company a percentage of the cost of employee coverage, as follows:

	Reimbursement
Completed 17 full shifts only	50%
" 16 " " "	60%
" 15 " " "	70%
" 14 " " "	80%
" 13 " " "	100%

7.5 The minimum work requirement for paid coverage described in Section 7.3 (15 shifts) and Section 7.4 (18 shifts) shall be reduced by two shifts (to 13 shifts and 16 shifts, respectively) for the month of February in each year.

7.6 An employee who does not have a four day workweek scheduled for the entire month shall not be considered an employee described under Section 7.3 above, under any circumstances.

7.7 For the purpose of Sections 7.3 and 7.4, an employee will be credited for full shifts earned working for Whittlesea Blue Cab Company and will be considered to have completed shifts he would ordinarily have worked, while absent under the following circumstances:

(a) while absent on approved earned vacation leave;

(b) while absent on a Medical Leave (Article XII), but only when the absence exceeds seven (7) calendar days, and only if, prior to the end of every affected month, the employee delivers to the business office appropriate notification; if a Medical Leave exceeds ninety (90) days, the part which exceeds ninety (90) days will not qualify for this exception; in that event the employee may continue coverage by paying the full cost in advance to the Company;

(c) while absent on unpaid leave in accordance with Section 1.11, to a maximum of ten (10) full shifts annually, but only if, prior to taking the leave, he delivers to the business office the appropriate form, notifying the business office of the pending absence; and

(d) while absent on unpaid leave in accordance with Section 11.9 to a maximum of (five) full shifts, but only if, prior to taking the leave, he delivers to the business office the appropriate form, notifying the business office of the pending absence.

7.8 Every employee shall provide the Company with appropriate authorization to withhold from his wages any amounts due to the Company under this Agreement. If, by the 10th of the next following month, wages are not available to fully reimburse the Company, the employee must make the payment in cash to the Company, within ten (10) days (the employee may prepay amounts owed, not more than one month in advance).

7.9 An employee shall become eligible for these benefits only when he:

(a) is a regular full time employee;

(b) has completed six (6) full months as a full time employee since last being hired or has met the qualifications required pursuant to federal law;

(c) has completed required enrollment forms, and supplied any medical and health information required; and

(d) has provided the Company with authorization to withhold from his wages amounts due to the Company under Sections 7.3 and 7.4, above;

and coverage shall be effective on the first of the month following the month in which eligibility is first satisfied.

7.10 An employee shall cease to be eligible for these benefits, and coverage shall terminate, immediately, when:

(a) his employment as a regular full time employee terminates; or

(b) he fails to satisfy the requirements of Section 7.8 above. In that event the employee shall again become eligible when he re-qualifies under the terms of Section 7.9, and for that purpose only shall be considered to have been last hired on the latest of the following dates: (1) the day following the date his coverage terminated under this section or (2) the day following the date on which he paid the Company all arrears owing by him under this article.

7.11 The parties may, by mutual agreement, amend this article in any respect.

ARTICLE VIII

SENIORITY

8.1 Seniority means continuous employment by the Company, beginning with the date and hour on which the employee began to work after last being hired.

8.2 An employee's seniority shall terminate when his employment within the unit terminates either:

(a) by his resignation;

(b) by his discharge including job abandonment; or

(c) by operation of Article X.

8.3 An employee who is not a regular full time employee shall not accrue seniority for any purpose whatsoever, except Retirees to the extent provided.

8.4 (a) A driver may elect Retiree status any time he has not less than ten (10) years seniority, and is eligible for Social Security benefits. The election must be submitted in writing to the Company. The election may be revoked only by reapplying as a new employee.

(b) Within their group, Retirees shall exercise seniority as measured in accordance with Section 8.1 of this Agreement.

(c) To retain his employment as a Retiree, the driver must give the Company prior notice of periods of time when he will not be available for work; at all other times he must be available. If a Retiree fails to work when available and requested six (6) times within his anniversary year, he shall lose Retiree status.

8.5 A employee who is not a regular full time employee shall not accrue seniority for any purpose whatsoever, except Retirees to the extent provided in this Agreement.

8.6 Seniority has application only in those circumstances specifically provided elsewhere in this Agreement and under no circumstances may applicability of seniority be inferred.

ARTICLE IX

PROBATION

9.1 Every employee shall be a probationary employee until he has completed six (6) month of continuous uninterrupted full time employment since last being hired.

9.2 During his probationary period, each employee is employed "at will." During that period, the employment relationship may be terminated by either party at any time.

9.3 An employee shall be credited for full shifts earned working for Whittlesea Blue Cab Company during the period described in Section 9.1.

EXHIBIT “C”

Electronically Filed
Jul 27 2016 10:18 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

IN THE SUPREME COURT OF NEVADA

Sup. Ct. No. 69773

MICHAEL SARGEANT, , Individually and on behalf of others similarly situated, Petitioners, vs. HENDERSON TAXI, Respondents,	Dist. Ct No.: A-15-714136-C

APPELLANT'S APPENDIX

Leon Greenberg, NSB 8094
A Professional Corporation
2965 S. Jones Boulevard - Suite E-3
Las Vegas, Nevada 89146
Telephone (702) 383-6085
Fax: 702-385-1827

Attorney for Appellants

Index

CERTIFICATE OF MAILING

The undersigned certifies that on July 26, 2016, she served the within:

APPELLANTS' APPENDIX

by Electronic Court filing to:

Anthony L. Hall, Esq.
R. Calder Huntington, Esq.
HOLLAND & HARD LLP
9555 Hillwood Drive, 2nd Fl.
Las Vegas, NV 89134

/s/ Sydney Saucier
Sydney Saucier

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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **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

Clark, State of Nevada and conducts business in Nevada.

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 18th day of February, 2015.

Leon Greenberg Professional Corporation

By: /s/ *Leon Greenberg*

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

Attorney for Plaintiff

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

Attorneys for Defendant Henderson Taxi

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL SARGEANT, individually and on behalf of others similarly situated, Plaintiff, v. HENDERSON TAXI, Defendant.	CASE NO.: A-15-714136-C DEPT. NO.: XVII **ANSWER TO COMPLAINT**

Defendant HENDERSON TAXI ("Defendant" or "HT"), by and through his counsel of record, Holland & Hart, LLP, hereby admits, denies, or otherwise responds to the allegations set forth in the Complaint filed by Plaintiff MICHAEL SARGEANT ("Plaintiff") as follows:

JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

1. Answering paragraph 1 of the Complaint, Defendant lacks sufficient information to admit or deny whether Plaintiff is a resident of Clark County in the state of Nevada, and thus denies the same. Defendant admits that it previously employed Plaintiff.

2. Answering paragraph 2 of the Complaint, Defendant admits the allegations therein.

CLASS ALLEGATIONS

3. Answering paragraph 3 of the Complaint, Defendant alleges that this paragraph contains legal conclusions to which no response is required. Defendant acknowledges that Plaintiff

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

purports to bring this action as a putative class action, but denies that class treatment is proper. To the extent that any further response is required, Defendant denies the allegations therein.

4. Answering paragraph 4 of the Complaint, Defendant alleges that this paragraph contains legal conclusions to which no response is required. Defendant acknowledges that Plaintiff purports to bring this action as a putative class action and that Plaintiff purports to represent all persons employed by Defendant in the State of Nevada since November 28, 2006 until the date of judgment as taxicab drivers, however Defendant denies the propriety of such representation or the propriety of class certification. To the extent that any further response is required, Defendant denies the allegations therein.

5. Answering paragraph 5 of the Complaint, Defendant denies the allegations therein.

6. Answering paragraph 6 of the Complaint, Defendant lacks sufficient information to admit or deny whether any putative class would have at least 200 members, and thus denies the same. Plaintiff admits that the number of potential class members may be ascertainable through a review of Defendant's records through discovery.

7. Answering paragraph 7 of the Complaint, Defendant alleges that this paragraph contains legal conclusions to which no response is required. To the extent that any further response is required, defendant states that it is without sufficient knowledge as to any facts alleged, and thus denies the allegations therein. Further, to the extent any further response is required, Defendant denies the allegations contained in paragraph 7 of the Complaint.

8. Answering paragraph 8 of the Complaint, Defendant alleges that this paragraph contains legal conclusions to which no response is required. To the extent that any further response is required, Defendant denies the allegations therein.

9. Answering paragraph 9 of the Complaint, Defendant alleges that this paragraph contains legal conclusions to which no response is required. To the extent that any further response is required, Defendant denies the allegations therein.

10. Answering paragraph 10 of the Complaint, Defendant alleges that this paragraph contains legal conclusions to which no response is required. To the extent that any further response is

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Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

required, Defendant states that it lacks sufficient information to admit or deny the allegations therein, and thus denies the same.

11. Answering paragraph 11 of the Complaint, Defendant alleges that this paragraph contains legal conclusions to which no response is required. To the extent that any further response is required, Defendant states that it lacks sufficient information to admit or deny the allegations therein, and thus denies the same.

12. Answering paragraph 12 of the Complaint, Defendant alleges that this paragraph contains legal conclusions to which no response is required. To the extent that any further response is required, Defendant states that it lacks sufficient information to admit or deny the allegations therein, and thus denies the same.

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

13. Defendant incorporates its prior admissions, averments, or denials of the allegations contained in the preceding paragraphs as though these answers were fully alleged herein.

14. Answering paragraph 14 of the Complaint, Defendant alleges that this paragraph contains legal conclusions to which no response is required.

15. Answering paragraph 15 of the Complaint, Defendant alleges that this paragraph contains legal conclusions to which no response is required. To the extent that any further response is required, Defendant denies the allegations therein.

a. Answering subparagraph (a) of paragraph 15 of the Complaint, Defendant alleges that this paragraph contains legal conclusions to which no response is required. To the extent that any further response is required, Defendant denies the allegations therein.

b. Answering subparagraph (b) of paragraph 15 of the Complaint, Defendant alleges that this paragraph contains legal conclusions to which no response is required. To the extent that any further response is required, Defendant denies the allegations

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Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

therein. Further, Defendant denies that the public opinions of the Nevada Attorney General are of any legal force.

c. Answering subparagraph (c) of paragraph 15 of the Complaint, Defendant admits that it did not place funds into escrow. Defendant denies all remaining allegations in subparagraph (c) of paragraph 15 of the Complaint.

16. Answering paragraph 16 of the Complaint, Defendant alleges that this paragraph contains legal conclusions to which no response is required. To the extent that any further response is required, Defendant denies the allegations therein.

17. Answering paragraph 17 of the Complaint, Defendant acknowledges that Plaintiff claims to seek all relief available to him, including injunctive and equitable relief and punitive damages. Defendant denies that Plaintiff or the putative class is entitled to such relief.

18. Answering paragraph 18 of the Complaint, Defendant acknowledges that Plaintiff, by his first cause of action, asserts a claim for unpaid minimum wages owed since November 28, 2006, including for interest, punitive damages, attorneys' fees, and costs of suit. Defendant denies that Plaintiff or the putative class is entitled to such relief.

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

19. Defendant incorporates its prior admissions, averments, or denials of the allegations contained in the preceding paragraphs as though these answers were fully alleged herein

20. Answering paragraph 20 of the Complaint, Defendant acknowledges that Plaintiff brings a second claim for relief against Defendant pursuant to NRS 608.040, on behalf of himself and the alleged class. Defendant denies that Plaintiff and the alleged class are entitled to any relief pursuant to this claim.

21. Answering paragraph 21 of the Complaint, Defendant admits that Plaintiff has not been employed by Defendant since 2013, but states that Defendant was terminated in May 2013, not July 2013 as stated in the Complaint. Defendant denies all remaining allegations contained in paragraph 21 of the Complaint.

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22. Answering paragraph 22 of the Complaint, Defendant alleges that this paragraph contains legal conclusions and assumptions to which no response is required. To the extent that any further response is required, Defendant denies the allegations therein.

23. Answering paragraph 23 of the Complaint, Defendant acknowledges that Plaintiffs seeks a judgment against Defendant for wages allegedly owed to him and the putative class pursuant to his second claim for relief. Defendant denies that Plaintiff or the putative class are entitled to such relief.

PRAYER FOR RELIEF

Defendant is not required to respond to Plaintiff's prayer for relief. However, to the extent Plaintiff's prayer for relief asserts allegations, Defendant denies each and every allegation in Plaintiff's prayer for relief.

Defendant generally denies each and every allegation of Plaintiff's Complaint not specifically admitted herein.

WHEREFORE, Defendant respectfully requests asks this Court:

1. That Plaintiff receive nothing by way of his Complaint, and that his claims be dismissed with prejudice and be forever barred;

2. For recovery of Defendant's costs and attorneys' fees incurred herein;

3. For such other and further relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint and each cause of action asserted therein are barred by the affirmative defenses set forth in FRCP 8(c) and any other applicable affirmative defenses not specifically set forth herein.

2. The Complaint fails to state a claim upon which relief may be granted.

3. If the actions of former or current employees are found to be wrongful in any way, then those actions cannot be attributed to Defendant, that Defendant is not liable under concepts of Respondeat Superior, nor is Defendant vicariously liable.

4. Plaintiff failed to exhaust his administrative, statutory, arbitration and/or contractual remedies.

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Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

5. Defendant alleges that Plaintiff's Complaint and each cause of action asserted therein, are subject to the doctrine of accord and satisfaction and therefore, any remedy or recovery to which Plaintiff might have been entitled must be denied or reduced accordingly.

6. Assuming *arguendo* there is an unpaid wage violation, Defendant at all times had a good faith and reasonable belief that it had compensated Plaintiff in accordance with Nevada law and, therefore, no liquidated or punitive damages are due Plaintiff.

7. Plaintiff has already been fully compensated.

8. Defendant alleges that if Plaintiff is adjudged to be entitled to any recovery, then Defendant is entitled to a set-off for any compensation, including without limitation to, unemployment compensation, wages, salaries, and/or social security payments, received by Plaintiff.

9. Defendant alleges that the Plaintiff's claims are precluded and/or limited by the statute of limitations and/or laches.

10. There exists a *bona fide* dispute as to whether any further compensation is actually due to Plaintiff, and if so, the amount thereof.

11. Defendant alleges that Plaintiff was never entitled to the monies to which he asserts a right in the Complaint.

12. Defendant alleges that at all or some of the times relevant hereto Plaintiff was employed in a position that was exempt from minimum wage under Nevada law.

13. Defendant alleges that the requirements for a class action cannot be satisfied in this matter for reasons, including, but not limited to, impracticability, lack of common interest, lack of typicality, lack of numerosity and/or inadequate representation.

14. Defendant alleges that it is entitled to a set off for any amounts overpaid to Plaintiffs in the course of their employment. This credit or setoff includes, but is not limited to, amounts erroneously overpaid to Plaintiffs.

15. Defendant alleges that this action may be barred because Plaintiff's claims are subject to final and binding neutral arbitration pursuant to contract, the National Labor Relations Act, and/or applicable state law.

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

16. Defendant alleges that Plaintiff's Complaint fails to state facts sufficient to justify an award of punitive damages.

17. Defendant alleges that punitive damages are unconstitutional in general and as applied to Defendant.

18. Defendant alleges that punitive damages constitute excessive fines prohibited by the United States and the Nevada Constitutions. The relevant statutes do not provide adequate standards or safeguards for their application and they are void for vagueness under the due process clause of the Fourteenth Amendment of the United States Constitution and in accordance with Article I, Section 8 of the Nevada Constitution.

19. Defendant alleges that Plaintiff is not entitled to punitive damages because Defendant did not engage in any conduct warranting punitive damages.

20. Defendant alleges that Plaintiff's claims are barred by discharge in bankruptcy.

21. It has been necessary for the Defendant to employ the services of an attorney to defend this action and a reasonable sum should be allowed Defendant as and for attorney's fees, together with its costs expended in this action.

22. Plaintiff has failed to state his claim for special damages with the requisite specificity.

23. Plaintiff fails to state a claim against Defendant upon which attorneys' fees and costs can be awarded.

24. Plaintiff has an adequate remedy at law; thus, injunctive relief is inappropriate.

25. Plaintiff fails to state a claim against Defendant upon which declaratory or injunctive relief can be awarded.

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

26. Because the Complaint is couched in conclusory and vague terms, Defendant cannot fully anticipate all affirmative defenses that may be applicable to this case. Accordingly, Defendant hereby reserves the right to assert additional affirmative defenses.

DATED this 19 day of March, 2015.

HOLLAND & HART LLP

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

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

MCCL

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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **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**

Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation, hereby move this Court for an Order:

(1) Certifying this case as a class action pursuant to NRCP Rule 23(b)(3) for all taxi cab drivers employed by defendant from November 28, 2016 through the date of such Order for unpaid minimum wages owed under Nevada's Constitution, and certifying a subclass of such taxi drivers who have terminated their employment with the defendant on or after February 19, 2013 on the plaintiff's claims under NRS 608.040;

(2) Appointing the named plaintiff MICHAEL SARGEANT as class

representative and, if the Court deems it appropriate, class members Jimmy Alba, Merih Samuel Woldemicael and Michael Zeccarias as either additional or "standby" class representatives;

(3) Appointing Leon Greenberg and Dana Sniegocki of Leon Greenberg Professional Corporation as attorneys for the plaintiff class members;

(4) Certifying this case as a class action for all of defendant's taxi drivers pursuant to NRCP Rule 23(b)(2); declaring all "Acknowledgment and Agreement Regarding Minimum Wage Payment" obtained by defendant from class members void and prohibiting further communications by the defendant with the class members about the class claims;

(5) Directing notice by mail to the members of the certified class, as required by NRCP Rule 23(c)(2), in substantially the form set forth as Ex. "A" with defendant having to pay for the cost of that notice;

(6) Awarding interim fees and costs to class counsel to be paid by defendant;

(7) Granting class representative plaintiff MICHAEL SARGEANT an interim award of $5,000, to be paid by Henderson Taxi, for his service as a class representative, in response to defendant's improper attempt to "buy off" his claim and terminate this class litigation without judicial oversight;

(8) Directing the imposition of a monetary award of sanctions against defendant and/or their counsel to be paid to Clark County Legal Services or as directed by the Court.

Plaintiff's motion is made and based upon the declarations and the memorandum

of points and authorities submitted with this motion, the attached exhibits, and the other papers and pleadings in this action.

MEMORANDUM OF POINTS AND AUTHORITIES

SUMMARY OF THIS CASE AND ITS HISTORY AND WHY THE RELIEF REQUESTED SHOULD BE GRANTED

Nature of this Case

This is a class action for unpaid minimum wages owed to current and former taxi drivers of the defendant and for equitable relief under Article 15, Section 16 of the Nevada Constitution. Complaint, Ex. "B." Claims are also made for a subclass who, like the plaintiff Michael Sargeant, were not paid the full wages owed to them at the termination of their employment, as required by NRS 608.030 or 608.020 and who as a result have a claim for up to 30 days unpaid continuing wages under NRS 608.040 (the "unpaid wage waiting time penalties" or "NRS 608.040" subclass) .

The Nature of the Constitutional Right to Minimum Wages And the Broad Remedies for Violations of that Right

Article 15, Section 16 of the Nevada Constitution sets forth broad minimum wage rights and at subpart "B" states such rights cannot be waived by an employee:

> The provisions of this section may not be waived by agreement between an individual employee and an employer.

It also confers broad remedies for violations of those minimum wage rights it provides using the broadest possible language:

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

It is clear that (a) An individual employee cannot enter into a valid agreement to waive their minimum wage rights and (b) Employers who violate the Nevada Constitution's minimum wage requirements are subject to "all remedies available under the law or in equity appropriate to remedy any violation" of those requirements.

The Defendant's Efforts to Secure Illegal Waivers From Class Members of their Minimum Wage Rights and "Pay Off" the Named Plaintiff and Terminate this Case without Judicial Supervision

This case was filed on February 19, 2015 with defendant filing an answer on March 19, 2015. On April 8, 2015 defendant, under the advice of their counsel but without notice to plaintiff's counsel or the Court, distributed over 1000 letters to class members, both current and former taxi drivers of defendant. Such letters stated that one of its "past drivers unfortunately decided to file a lawsuit against us" for unpaid minimum wages. It further advised the class members that:

> "In these types of lawsuits, the attorneys are the ones who win, not employees or companies, and they bring case after case trying to get settlements and line their own pockets rather than to truly benefit individuals like you." Ex. "C" and Ex "D."

Those letters offered each class member a check, *not* enclosed in the letter, if they executed an "Acknowledgment and Agreement Regarding Minimum Wage Payment" form. Ex. "E." Former employee class members were told they would be mailed their check if they signed and returned the "Acknowledgment." Ex. "C." Current employee class members were *not* issued the payment set forth in their letters with their normal payroll. They were told they could "pick up" their check at which time "we will request you to acknowledge receipt of payment for any wages which may have been underpaid." Ex. "F."

The "Acknowledgment" form coerced from the class members was crafted as an admission that the signing class member had received everything owed to them from defendant. It includes the statement that "Employee further affirms that he/she reported all hours worked as of the date of this Acknowledgment and including this payment, has been paid, all compensation, including wages (including minimum wage), overtime, bonuses, commissions, tips, penalties, fines, and/or other benefits and compensation to which Employee may have been entitled." Ex. "E."

In response to the foregoing plaintiff's counsel sent defendant's counsel a letter on April 17, 2015 stating it would be commendable for defendant to voluntarily

remedy their illegal conduct by paying the class members the full compensation they are owed. Ex. "F." It advised defendant's counsel that making payments in exchange for "Acknowledgments" from class members was improper without judicial supervision. *Id.* That letter outlined a process by which the parties could cooperatively resolve this case and the class claims and avoid the need for the motion now being presented to the Court. *Id.*

Defendant declined to participate in the cooperative class-wide resolution process proposed in plaintiff's counsel's letter of April 17, 2015. Instead, on May 5, 2015 defendant sent a uninvited letter to plaintiff's counsel offering to pay the named plaintiff Michael Sargeant $5,000 plus a payment to his counsel of $20,000 in attorney's fees for "a dismissal with prejudice of the pending action and a full and general release." Ex. "G." Such settlement would not involve any notice to the class members or determination by the Court as to whether the class members' interests were appropriately protected by such dismissal with prejudice of this class action. *Id.*

Summary of Why the Relief Requested Should be Granted

The relief requested should be granted because:

(a) The Nevada Constitution prevents the defendant from using the "Acknowledgments" they coerced from class members to bar claims for any additional monies they owe such employees; and;

(b) Defendant, in its letters to the class members, has conceded a class of similarly situated persons exists who are owed unpaid minimum wages and that the requisite elements needed to certify the class, including commonality, numerosity, and typicality of claims, is met; and;

(c) Defendant's letters were intended to make class members believe the only compensation they were entitled to was the amount offered by the

defendant. There are substantial reasons to believe those letters understated the true amounts the class members are owed. Nor was there any reason for the defendant to make non-judicially supervised payments to class members executing "Acknowledgments" *except* to mislead the class members into believing they were giving up their right to any additional payment they were properly owed from the defendant; and

(d) The paramount importance of the legal rights granted by Nevada's Constitution, and the broad and sweeping remedial powers granted to the class members under Nevada's Constitution, requires that defendant and their counsel be severely rebuked, and punished, for improperly seeking to secure void waivers of the class members' constitutional rights and make a "pay off" or "bribe" type payment to the named plaintiff.

ARGUMENT

I. THE REQUESTED CLASS CERTIFICATION UNDER NRCP RULE 23(B)(3) SHOULD BE GRANTED

A. The necessary NRCP 23 (a)(1) conditions for class certification, which are common issues, numerosity and typicality of claims, and adequacy of representation, have been established.

Defendant has sent identical letters to the class members stating that defendant "has determined to make sure that all its drivers were paid the minimum wage for all hours worked for the preceding two years" and "based upon its calculations" it has determined the driver is owed a specific minimum wage payment for the time period after February 13, 2013. Ex. "C" and "D."

Defendant's letters to over 1000 current and former drivers establish the numerosity requirement of class certification. *See, Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 847 (2005) ("Although courts agree that numerosity prerequisites mandate no minimum number of individual members, a putative class of forty or more generally will be found numerous"). Each letter concedes the existence of a common

factual and legal issue, the minimum wages owed to each driver. That each is owed a different amount is irrelevant. "Our court long ago observed that 'the amount of damages is invariably an individual question and does not defeat class action treatment.'" *Yokoyama v. Midland National Life Insurance Co.*, 594 F. 3d 1087, 1089 (9th Cir. 2010) citing *Blackie v. Barrack*, 524 F.2d 891, 905 (9th Cir. 1975).

The typicality of claims requirement has been met, as defendant also concedes the named plaintiff, and the three proposed additional or standby class representatives, possess a claim for unpaid minimum wages. *See*, Ex. "H" copies of letters to Jimmy Alba, Merih Samuel Woldemicael and Michael Zeccarias and Ex. "G" letter to Michael Sargeant, all conceding they too are owed unpaid minimum wages. The adequacy of representation requirement is also met, as plaintiff's counsel is competent to represent the class. Ex. "I" declaration of Leon Greenberg, Esq.

B. The predominance of common questions requirement of NRCP 23 (b)(3) is satisfied.

(1) Questions of fact or of mixed fact and law common to all class members predominate.

The issue common to all class members is whether the compensation paid by the defendant complied with Nevada's Constitution. Such issue will be resolved for each class member by examining the number of hours they worked in each applicable pay period, the compensation they were paid, and the applicable minimum wage rate. That each class member's damages under such an examination will differ is irrelevant to the predominance of common issues finding. *See*, *Yokoyama* and *Newberg on Class Actions*, *Fifth Ed.*, § 4:54 (Reviewing FRCP Rule 23 advisory committee notes and observing "Courts in every circuit have therefore uniformly held that the 23(b)(3) predominance requirement is satisfied despite the need to make individualized damages determinations.") Except for mass tort or personal injury claims, cases where individualized damages issues will predominate and bar class certification "rarely, if ever, come along." *See*, *Klay v. Humana, Inc.*, 382 F.3d 1241, 1260 (11th Cir. 2004)

The formula used to determine defendant's liability for unpaid minimum wages

will be identical for every class members. Presumably there will be no dispute about the compensation the defendant paid the class members as those amounts are in the defendant's payroll records. But two other common factual questions, or mixed law and fact questions, will need to be answered for all of the class members.

(i) Common factual inquiries must be made to determine the class members' applicable minimum wage rate.

Nevada's "two tiered" minimum wage rate currently allows employees who receive "qualified health insurance" to be paid $1.00 an hour less (currently $7.25 instead of $8.25 an hour). Under the Nevada Constitution "qualifying health insurance" is family coverage with a maximum employee premium contribution of 10% of the employee's compensation paid by the employer. This means the health insurance provided to the class members, and the premium contribution class members had to pay to secure family coverage, will have to be examined to determine the applicable minimum wage rate.

(ii) Common factual inquiries must be made to determine the class members' hours of work.

Defendant has never provided its taxi drivers with statements of their hours of work. Ex. "J" ¶ 3, Sargeant Dec., Ex. "K," payroll period statement from May of 2013 including no information on hours worked. Defendant's letter to each class member sets forth the amount of unpaid minimum wages it has determined they are owed for each pay period but do not set forth the hours the class member worked during the pay period. This means the class members' work time records need to be produced and at least two common factual issues need to be determined:

- What records has the defendant maintained recording the class members' hours of work? Have they maintained "time clock" records through an electronic punch card type system? Do other records exist indicating the time the class members were working? For example, defendant may maintain records of the time each taxi cab, being driven by

a particular driver, was put into service and taken out of service each day. Such record, even though not intended for use as a working time record, may indicate the time the class members were working.

● Do the records maintained by the defendant accurately record the time the class members were working? As attested to by Sargeant and class members Alba, Woldemicael and Zeccarias defendant had "show up" policies requiring class members report for work at least 15 minutes before their assigned shift. Ex. "J" ¶ 3, "L" and "M" ¶ 3(b), "N" ¶ 3(b)(ii). They also had a "standby work" policy for "probationary" class members who were required to report for work and could be kept waiting one hour, or more, to be given a taxi to drive. Ex. "N" ¶ 3(b)(I). On some days those employees would be sent home after waiting that time and earning nothing for the day. *Id.* It is unknown if defendant's work time records or unpaid minimum wage calculations include these pre-shift "show-up" or probationary employee "standby" time periods.

(2) <u>Questions of law common to all class members predominate.</u>

There are also at least three common questions of law that predominate.

(i) A common question of law exists as <u>to the applicable statute of limitations.</u>

All of the class members' claims for unpaid minimum wages are subject to the same, but yet to be determined, statute of limitations. Defendant claims the applicable statute of limitations is two years. Judge Williams of this court has held a four year statute of limitation applies because a claim under Nevada's Constitution is a claim "not otherwise provided for" by Nevada's statute of limitations regimen and is covered by the "catchall" statute of limitations of NRS 11.220. Ex. "O." Judge Tao held a two year statute of limitations applies in *Williams v. Claim Jumper*, A702048, but the Nevada Supreme Court directed a mandamus writ of that decision be answered.

(ii) A common question of law exists as to whether the class members should be granted an equitable toll of the statute of limitations.

Nevada's Courts will equitably estop the statute of limitations in appropriate cases. *See*, *Copeland v. Desert Inn Hotel*, 637 P.2d 490, 493 (Nev. Sup. Ct. 1983). Such estoppel need not be pleaded in the complaint. *See, Harrison v. Rodriguez*, 701 P.2d 1015, 1017 (Nev. Sup. Ct. 1985). A strong basis exists to apply such an estoppel in this case and that issue should be determined for all of the class members.

The minimum wage requirements of Nevada's Constitution became effective on November 28, 2006, which is the earliest date on which any class members' claim may have accrued. Nevada's Constitution also provides for a yearly adjustment to its minimum wage rate and imposes a mandatory duty upon employers to advise employees about the minimum wage rate:

> An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin. Art. 15, Sec. 16 (A).

Defendant never provided any such written notification of any rate adjustment to the class members. The first such rate adjustment bulletin was issued by the Nevada Labor Commissioner on April 1, 2007, effectuating an increase of the Nevada Constitution's minimum hourly wage from $5.15 or $6.15 an hour to $5.30 or $6.33 per hour depending upon whether qualifying health insurance was provided. Ex. "P."

Defendant was required to both pay the minimum hourly wage specified by the Constitution *and* provide to "each" class member "written notification" of any change in that minimum hourly wage. Defendant's violation of their written notification obligation should be subject to the most severe, and adverse to the defendant, consequences, as such written notice was constitutionally commanded. If defendant had complied with that obligation this lawsuit would have been initiated years earlier. Such violation, either by itself or in conjunction with defendant's knowing violation of Nevada's Constitutional requirement to pay a minimum hourly wage, should toll the statute of limitations in this case from July 1, 2007, the date defendant was first

compelled to give such notice, until such time as they actually give that notice.

The defendant's "non-advisement" of the class member's minimum wage rights has been found to create an equitable statute of limitations toll in analogous cases under federal law. *See, Bonham v. Dresser Industries, Inc.,* 569 F.2d 187, 193 (3rd Cir. 1977) (Holding, and finding support for the conclusion in other authorities, that employer who fails to post statutorily required notice in workplace of employee rights under Age Discrimination in Employment Act is subject to equitable statute of limitations toll); *Kamens v. Summit Stainless, Inc.*, 586 F. Supp. 324, 328 (E.D.Pa 1984) (Citing *Bonham* and recognizing such "notice violation" provides a basis to impose equitable estoppel on the statute of limitations of a Fair Labor Standards Act ("FLSA") claim, such act also being the federal minimum wage statute); *Henchy v. City of Absecon*, 148 F. Supp. 2d 435, 439 (Dist. N.J. 2001)(Citing *Kamens* and reaching same conclusion) and numerous other cases.

The need to determine whether equitable tolling of the statute of limitations is an appropriate remedy for defendant's violation of the Nevada's Constitution's minimum wage "notice" requirement supports a finding that common issues predominate warranting class certification. *See*, *In Re Linerboard Antitrust Litigation*, 305 F.3d 145, 163 (3rd Cir. 2002) (Observing that a defendant's concealment of a conspiracy poses a common, predominant, issue for class certification in respect to whether a toll of the statute of limitations should be imposed).

(iii) Common questions of law exist as to what damages, besides minimum wage deficiencies, can be recovered and the proof needed to award such other damages.

Defendants concede class members paid less than the minimum wage are entitled to the difference between the compensation actually paid and the minimum wage. But they do not concede any other damages are recoverable by the plaintiffs. This means there are at least two questions of law common to all of the class members.

- It must be decided if punitive damages are recoverable in actions brought

over violations of Article 15, Section 16 of Nevada's Constitution. *See*, *Carlson v. Green*, 446 U.S. 14, 21-22 (1980) (Punitive damages are available to successful plaintiffs in actions brought directly under the United States Constitution, if appropriate circumstances are present). If punitive damages are potentially recoverable the Court will also have to decide what showing must be made to allow their award. *See*, *Carlson*, *Id.*

- The Court will have to decide if class members no longer employed by defendant, who are also members of the NRS 608.040 subclass, can receive the 30 days of continuing wages provided for in NRS 608.040. Defendant denies they have any such legal right. Judge Cory of this Court has held otherwise and found all terminated employees owed unpaid wages, for whatever reason, have a right to the "late payment of wages" 30 day wage penalty specified by NRS 608.040. *See*, *Valdez v. Cox Communications Las Vegas,* A-09-597433-C, Ex. "Q."

C. The superiority of class resolution requirement of NRCP Rule 23 (b)(3) is satisfied.

The superiority of class resolution requirement of NRCP Rule 23 (b)(3) is satisfied for three reasons, although any one of those reasons would suffice.

1. The superiority of class resolution is established by the small size of the individual claims.

The class members received some pay and are only owed a portion of the very modest minimum wage. Even if this Court were to impose an equitable statute of limitations toll to November 28, 2006, when Article 15, Section 16 became effective, there is no reason to conclude many, if any, of the individual class members' claims are sufficiently large to make individual lawsuits by the class members sensible.

The central purpose of the class action lawsuit is to afford justice to persons holding claims too small to be sensibly sued upon individually. *See*, *Amchem Prod. Inc. v. Windsor*, 521 U.S. 591, 617 (1997) ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the

incentive for any individual to bring a solo action prosecuting his or her rights.") The class action procedure allows for the "vindication of the rights of groups of people who individually would be without effective strength to bring their opponents into court at all." *Id.* The small size of the claim of each class member establishes the superiority of class resolution in this case. *See, also*, *Leyva v. Medline Industries Inc.,* 716 F.3d 510, 515 (9th Cir. 2013) (Abuse of discretion to find class certification was not superior for class of approximately 500 workers owed wages "[i]n light of the small size of the putative class members' potential individual monetary recovery, class certification may be the only feasible means for them to adjudicate their claims.")

2. The superiority of class resolution is established by the vulnerable class population of current employees fearful of retaliation by the defendant.

The vulnerable status of the class members also establishes the superiority of class resolution. Class resolution has been found superior for groups of persons with a limited understanding of the law, or limited English skills, such as migrant workers or prisoners, on the basis such persons are not likely or able to pursue legal action individually. *See*, Newburg, 5th Ed., § 4.65 and cases cited therein. The inherent difficulty employees face in vindicating their legal rights against their employer, who may terminate their employment in response,, is also a reason to find the class resolution of claims to be superior. *See*, *Scott v. Aetna Services, Inc.*, 210 F.R.D. 261, 268 (D. Conn 2002) (Class resolution superior for minimum wage and overtime claims as "class members may fear reprisal and would not be inclined to pursue individual claims.") and *Noble v. 93 University Place Corp.*, 224 F.R.D. 330, 346 (S.D.N.Y. 2004) (Class resolution of employee overtime pay claims superior given their fear of reprisal and lack of familiarity with the legal system).

As discussed in the declaration of Leon Greenberg, no current employees of defendant have contacted him about pursuing the claims at issue in this case. Ex. "R." ¶ 2. It is extremely rare for current employees of an employer to bring litigation for unpaid wages of any form because they fear loss of their employment. *Id.* ¶ 3. Such

lawsuits are almost exclusively brought by former employees because of that fear. *Id.*

The vulnerable nature of the class, consisting of many current employees of defendant who are too fearful of reprisal to pursue their individual legal claims, and who also have little ability to navigate the legal system or even any awareness of their legal claims, supports a finding that a class resolution is superior in this case.

3. The superiority of class resolution is established by the need to have effective enforcement of the Nevada Constitution's minimum wage provisions.

Government agencies are often unable to fully enforce substantive legal protections and the class action lawsuit has long been recognized as a means to fill that void. *See*, *Deposit Guaranty National Bank v. Roper*, 445 U.S. 326, 339 (1980) (Class actions are "...an evolutionary response to the existence of injuries unremedied by the regulatory action of government."). *See, also* Newburg, 5th Ed., § 4:66, and cases cited therein, noting that courts, particularly in contexts like antitrust and securities law, "regularly invoke the importance of class actions in enforcing the substantive law as one of the reasons that a class action is a superior method of adjudication."

Article 15, Section 16, of the Nevada Constitution creates paramount legal rights and bars any waiver of those rights by individual employees. It grants civil remedies for violations of those rights, including equitable relief and attorney's fees, to the full extent of this Court's power. There is, indisputably, an overwhelming public interest in having those rights vigorously enforced that renders superior the class resolution, whenever possible, of claims brought under Article 15, Section 16.

II. THE DEFENDANT'S PAYMENTS TO CLASS MEMBERS WHO EXECUTED "ACKNOWLEDGMENTS" ARE IRRELEVANT

A. Defendant cannot "extinguish" the common claims by making unexamined payments to the class members, at most they now create a common issue of whether those payments were sufficient.

Defendant may argue class certification is inappropriate because they have now made full minimum wage payments to the class members and no class claims remain. Or at least no such claims remain that are numerous enough to warrant certification.

Such an argument is baseless and illogical.

Whether defendant's "Acknowledgment" payments fully compensated any class members for their unpaid minimum wages, as defendant claims, is unknown. They certainly did not compensate the NRS 608.040 subclass members with 30 days wages. This Court does not dismiss a lawsuit based upon a defendant's unexamined insistence that after service of the complaint they gave the plaintiff a check for the full amount of their claim. It is no different in this case. Defendant has, at most, created another common issue requiring certification: Have the payments they now made to the class members actually compensated them in full for the minimum wages they are owed?

B. The "Acknowledgments" defendant secured from class members do not bar class certification and create an additional common issue requiring class certification.

As discussed, *infra*, this Court should declare that the "Acknowledgments" defendant has secured from class members are void. But even if it were to disagree with that conclusion, and was inclined to hold those Acknowledgments are valid, that is a decision involving an identical issue for each class member. The Court should either uphold *or* void those agreements on a class basis so the parties can seek appellate review of that issue for *all* of the class members. Indeed, the Court, even if it believes no other issues merit class certification, can still certify just that single issue for class disposition. *See*, NRCP Rule 23(c)(4)(A) providing that a class action may be maintained in respect to particular issues and not for a whole case.

III. CLASS CERTIFICATION UNDER NRCP RULE 23(B)(2) SHOULD BE GRANTED, THE ACKNOWLEDGMENTS DECLARED VOID AND DEFENDANT PROHIBITED FROM COMMUNICATING WITH THE CLASS ABOUT THE CLASS CLAIMS

A. The requested NRCP Rule 23(b)(2) class certification is proper as it seeks common declaratory and injunctive relief for each member of the class.

An equitable relief class under Rule 23(b)(2) is properly certified "....when a single injunction or declaratory judgment would provide relief to each member of the class. It does not authorize class certification when each individual class member

would be entitled to a different injunction or declaratory relief against the defendant." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2557 (2011). The proposed class wide equitable relief would command the defendant to take certain actions and make a declaratory finding applicable to all of the class members. Accordingly, the proposed equitable class certification is proper under Rule 23(b)(2).

B. Plaintiffs have standing to seek class certification for equitable relief under NRCP Rule 23(b)(2) and Nevada's Constitution.

Defendant, citing *Wal-Mart*, may argue the named plaintiff lacks standing to seek equitable relief class certification. *Wal-Mart*, a case alleging sex discrimination in employment under federal law, held former employees lacked standing to seek equitable relief under FRCP Rule 23(b)(2). 131 S. Ct. at 2559-60. Such holding and similar federal court cases are inapplicable to this state court case.

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

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

Employees are empowered to bring civil actions to "enforce the provisions" of Article 15, Section 16 of Nevada's Constitution and this Court must grant them all remedies appropriate to correct "any violation" of that section including injunctive relief. Plaintiff is not merely granted a right, individually, to damages or remedies for the injuries they have suffered but a right, *e.g.,* standing, to "enforce" the Nevada Constitution's provisions and remedy defendant's "violations" of those provisions.

Wal-Mart and similar cases holding past victims of a defendant's conduct or former employees of an employer lack standing to seek FRCP Rule 23(b)(2) class certification are grounded in the "case or controversy" limitations on federal jurisdiction found in Article III of the United States Constitution. *See*, *Smook v. Minnehaha County* 457 F.3d 806, 816 (8th Cir. 2006) (Reviewing federal decisions and finding Article III deprives class of former juvenile facility inmates of standing to

secure injunctive relief against future actions by facility towards inmates).

This Court's jurisdiction is not restricted by Article III standing limitations. Standing in this Court exists whenever rights are conferred in written language that is broader than the standing conferred under a general constitutional standing analysis. *See, Stockmeier v. Nevada Dept. of Corrections Psychological Review Panel*, 135 P.3d 220, 226 (Nev. Sup. Ct. 2006) (Inmate need not meet Article III constitutional standing requirements of injury, causation, redressability, to have standing to seek remedy for violation of Nevada's Open Meeting law as such law confers standing more broadly by its own language) and *Hantges v. City of Henderson*, 113 P.3d 848, 850 (Nev. Sup. Ct. 2005) (The provisions of NRS 279.609, by expressly authorizing challenges to agency decisions grants standing to make such challenges to all citizens, not just landowners who might otherwise meet traditional constitutional standing limitations, despite statute's silence on who has standing). Accordingly, the FRCP Rule 23(b)(2) class action standing limitations under federal law are inapplicable.

C. <u>The equitable relief sought for the class should be granted.</u>

The equitable relief sought on behalf of the proposed NRCP Rule 23(b)(2) class would (a) Declare the "Acknowledgments" solicited improperly from the class by defendant void; and (b) Require defendant to cease any communication with the class about the claims in this case.

(1) <u>The Acknowledgments are void.</u>

It is settled law that a release of minimum wage rights, obtained by an employer directly from an unrepresented employee, without any judicial approval, is *void ab initio*. *See*, *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697 (1945) and *D.A. Shulte, Inc. v. Gangi*, 328 U.S. 108 (1945) (Voiding such releases, even when made to resolve a bona fide dispute over whether any wages were owed, as against public policy). Enforcing such releases would result in impermissible waivers of minimum wage rights, given the overwhelming difference in bargaining power between employees and employers. Article 15, Section 16 addresses this problem by specifically prohibiting

any waiver by an individual employee of the minimum wage specified in Nevada's Constitution.

Defendant's counsel, being well aware of the Nevada Constitution's "no waiver of rights" provision and the holdings in *Brooklyn Savings Bank* and *D.A. Shulte*, did not get class members to sign technically worded "releases" of claims. Instead they gave defendant "Acknowledgments" to secure from the class members affirming that in exchange for the payment tendered by defendant they had "been paid, all compensation, including wages (including minimum wage), overtime, bonuses, commissions, tips, penalties, fines, and/or other benefits and compensation" to which they were entitled. Ex. "A." Presumably defendant's counsel will argue because this "Acknowledgment," does not recite any "release" or "waiver" of the employee's minimum wage rights it can be considered by the Court as an admission or to impeach the class member's claim they are owed additional monies. This would allow the "Acknowledgment" to have the same effect as a constitutionally prohibited waiver. *Cf.*, *Cord v. Neuhoff*, 573 P.23 1170, 1172 (Nev. Sup. Ct. 1978) (Postnuptial agreement incorporating illegal waiver of support rights was void in its entirety).

(2) Defendant should be barred from communicating in the future with the class about the class claims.

Defendant, and their counsel, have demonstrated their determination to evade this Court's jurisdiction and subvert the orderly, and fair, disposition of the claims made in this case. Pursuant to NRCP Rule 23(d) this Court has broad power to ensure the "fair conduct" of this action. It should use such power to restrain all future communications by defendant, and their counsel, with class members about the subject matter of this case, except those that are expressly authorized by this Court.

Presumably defendant will argue this Court cannot abridge its rights, under the First Amendment and as a party to this litigation, to communicate directly with their adverse party, the individual class members, citing *Gulf Oil Co. v. Bernard*, 452 U.S. 89 (1981). Such argument would be in error, as *Gulf Oil* only banned, on First Amendment grounds, the issuance of orders prohibiting communications with class

members without any showing of need. It affirmed that the district courts had the power under Rule 23 to limit communications with class members "...based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties." 452 U.S. at 101.

Orders barring defendants in class cases from communicating with class members are proper and permitted by *Gulf Oil* and the First Amendment. *See, Kleiner v. First National Bank*, 751 F.2d 1193 (11th Cir. 1985) . In *Kleiner* the defendant was a bank that had allegedly defrauded the class members, its customers, many or most of whom had ongoing and important business relationships with the defendant. The district court properly prohibited any communications from the defendant with its customers about the class claims. 751 F.2d at 1206-7. Such restraint was justified to ensure communications about participating in the class lawsuit were "....through the impartial and open medium of court-supervised notice." *Id.* The exact sort of "no communication" order requested in this case, between an employer and employee class members possessing unpaid wage claims, was issued in *Urtubia v. B.A. Victory Corp.*, 857 F. Supp. 2d 476, 484-85 (S.D.N.Y. 2012), owing to defendant being "...in a position to exercise strong coercion in connection with potential class members' decisions regarding participation in this litigation." *citing Kleiner*.

Even if this Court were to deny plaintiff's request for class certification at this time, it still has the authority to forbid future communications by the defendant with the class members about the class claims. *See, Keystone Tobacco Co., Inc v. U.S. Tobacco Co.*, 238 F.Supp. 2d 151, 154 (D.D.C.2002) ("[T]he Court rejects defendants' position that it has no authority to limit communications between litigants and putative class members prior to class certification."); *Hampton Hardware Inc. v. Cotter & Co., Inc.*, 156 F.R.D. 630, 633-34 (1994) (Prior to class certification prohibiting defendant cooperative from communicating about case with cooperative's members who were the class members) ; *Belt v. Emcare, Inc.*, 299 F. Supp. 2d 664 (E.D. Tex. 2003) (Barring future communications from employer to employees in overtime wage class action

brought under the Fair Labor Standards Act in response to employer's misleading communications with members of uncertified class) and other cases.

IV. THE REQUESTED CLASS CERTIFICATIONS ARE NOT MERITS DETERMINATIONS AND ARE CONDITIONAL AND CAN BE AMENDED IN THE FUTURE

It is expected that defendant will object to class certification by insisting they have done no wrong; by insisting there is no proof that illegal actions have taken place on a scale meriting resolution on a class basis; and by insisting that a class resolution is unworkable and the proposed class certification is overbroad and over-inclusive. All of such objections are baseless.

The extent of defendant's violations of the Nevada Constitution's minimum wage requirements, and the appropriate remedies for those violations, remain to be determined. The merits of such matters are not currently before the Court, only the class certification issue. As discussed, *supra*, there are common issues that should be resolved on a class basis and the other applicable requirements of class certification have been met. The class certification sought is especially appropriate in light of defendant's admission that it owes over 1000 of its drivers unpaid minimum wages and its attempt to "buy off" those claims at a massive discount free of judicial scrutiny. The Order granting class certification can also be amended in the future to modify the class composition and exclude initially included class members, if any, who are later determined to not possess any colorable minimum wage claims. *See*, NRCP Rule 23(c)(1) ("An order [granting class certification] under this subdivision may be conditional, and may be altered or amended before the decision on the merits.")

V. NOTICE MUST BE DISPATCHED TO THE CLASS MEMBERS AND THE DEFENDANT SHOULD PAY FOR THE COST OF THAT NOTICE WHICH IS ALSO NEEDED TO REMEDY ITS IMPROPER COMMUNICATIONS WITH THE CLASS MEMBERS

A. Notice to the class members is required by NRCP Rule (c)(2).

Whenever a case is certified as a class action under NRCP Rule 23(b)(3) notice to the class must be provided. *See*, NRCP Rule 23(c)(2). Such notice must advise the class members of the nature of the class claims, of their right to exclude themselves

from the class by a specified date, that all class members who do not exclude themselves from the class will be bound by the judgment in this case whether favorable or unfavorable to the class, and that class members who do not exclude themselves from the class may also enter an appearance through individual counsel.

A proposed form of notice to the class is annexed at Ex. "A."

B. Defendant should pay for the cost of printing and mailing the notice to the class as the notice must also remedy the harm caused by defendant's improper communications with the class.

In most cases it is plaintiff's counsel who will bear the cost of notifying the class in compliance with NRCP Rule 23(c)(2). But in this case the defendant's improper communications with the class members must be corrected. The class members must be advised that the "Acknowledgments" defendant had them sign are void and they can seek to collect additional damages even though they agreed to accept defendant's purported "payment in full for unpaid minimum wages" check. Unless that corrective advisement is given class members will believe they have no right to seek additional compensation from this lawsuit and will be deterred from assisting in the prosecution of, or making claims in, this case. The Ex. "A" proposed NRCP Rule 23(c)(2) notice includes such a corrective advisement to the class.

Requiring defendant to pay for the cost of having the class notice printed and mailed is appropriate, as it is their misconduct that must be remedied and they should bear the cost of such remedy *See*, *Belt*, 299 F. Supp. 2d at 670 (Ordering defendant to pay for cost of corrective notice to class); *Haffer v. Temple University*, 115 F.R.D. 506, 512 (E.D. Pa. 1987) (same) and other cases. Alternatively, the Court can utilize the approach in *Belt* and require a corrective letter on defendant's own letterhead.

V. DEFENDANT SHOULD BE ORDERED TO MAKE AN INTERIM PAYMENT OF FEES TO CLASS COUNSEL AND A PAYMENT TO MICHAEL SARGEANT FOR HIS SERVICE TO THE CLASS

A. Defendant should be Ordered to pay an interim award of attorney's fees to class counsel of at least $20,000.

Awards of attorney's fees to employees prevailing on minimum wage claims under Nevada's Constitution are mandatory. Defendant, by engaging in improper

communications with the class members and soliciting void Acknowledgments from the class members, has also caused class counsel to expend considerable time in the making of this motion. Accordingly, defendant should be directed to make an immediate interim payment of attorney's fees to class counsel of $20,000. *See*, *Belt* 289 F. Supp. 2d 670 (Awarding plaintiffs' counsel attorney's fees in connection with all time spent bringing motion to correct defendant's improper class communications and in having corrective notice distributed). Such $20,000 award is justified in that:

(a) Plaintiff's counsel's hourly lodestar fee, which can be documented to the Court, for the time expended in connection with this motion and remedying defendant's improper conduct, will equal or exceed that $20,000 amount;

(b) Defendant already tried to bribe plaintiff's counsel with a $20,000 payment in exchange for an improper dismissal of this case without judicial notice;

(c) Plaintiff's counsel secured a "common fund" of approximately $150,000, the defendant disbursed to class members for void Acknowledgments. A typical class counsel common fund percentage fee would be 30% or $45,000.

B. Defendant should be Ordered to pay an interim class representative award of $5,000 to Michael Sargeant for his service to the class, especially in light of his refusal to be "bought off" by defendant to the detriment of the class.

A court ordered "enhancement" payment to a class representative compensates for the risks they undertake to prosecute the class claims and rewards them for the benefit they secured for the class. See, *Staton v. Boeing,* 327 F.3d 938, 977 (9th Cir. 2003). Typically such payments are awarded from the common fund recovered for the class at the conclusion of the litigation. In this case the representative plaintiff created a common fund (approximately $150,000 paid post-suit by defendant towards its minimum wage liabilities) which defendant dissipated without judicial approval by disbursing those funds to class members executing void acknowledgments.

The proposed $5,000 interim enhancement payment to Michael Sargeant (interim because this case is not yet concluded) is overwhelmingly justified. He has already secured, by bringing this lawsuit, a substantial common fund for the class of

approximately $150,000. That, alone, justifies such an award. *See*, *Valdez v. Cox Communications*, A-09-597433-C, Order entered March 4, 2014, granting $4,000 enhancement payment to one class representative and $1,000 each to two other class representatives where total common fund secured for the class was $99,000 (Ex. "S") and other cases. That there is currently no "common fund" in trust from which to pay that $5,000 sum is of no moment, as defendant dissipated such fund and must now pay such amount personally, just like any other trust fund custodian.

The most compelling reason to award Michael Sargeant the $5,000 enhancement payment is his refusal to be "paid off" by defendant to abandon the class. Defendant asserts in their letter offering him $5,000 that such sum is many times in excess of the amount Sargeant is actually owed. It is indisputably a substantial sum in the context of this case and it might well have been in Sargeant's individual interest to have accepted the $5,000. Such offer was made to separate Sargeant's interest from that of the class. It was also made to cause a schism between Sargeant, as an individual claimant wanting to "cash in" and receive such $5,000, and his counsel, as an attorney also obligated to represent the interests of the class. Sargeant's decision to reject the offer and not instruct his counsel to pursue individual settlement negotiations with defendants, in the hope of securing a bigger "payoff" than defendant's "opening bid" of $5,000, cannot be sufficiently commended. Such a manifest devotion to the class interests, quite probably to his own individual, personal, detriment, overwhelmingly justifies a $5,000 award which equals the amount defendant tried to "buy" him off for.

VI. DEFENDANT AND THEIR COUNSEL SHOULD BE REPRIMANDED AND APPROPRIATELY SANCTIONED BY THIS COURT

A. Sanctions may be more appropriately issued <u>against defendant's counsel and not defendant itself.</u>

A strong argument exists that it is defendant's counsel, and not defendant, that is the primary bad actor at issue. Defendant is not an attorney or versed in the law and relied upon the advice of their litigation counsel. Defendant's lead litigation counsel is Anthony Hall who is described on his firm's website as possessing "substantial

litigation experience in labor matters." He has been licensed to practice law since at least June of 1997 and cannot claim ignorance or inexperience led him to give defendant improper counsel. Accordingly, the Court may find that sanctions are more appropriately directed against defendant's counsel and not defendant. Such was the result in *Kleiner*, where the defendant's improper communication campaign with the class members was orchestrated by their counsel, such counsel being sanctioned $50,000 and disqualified from further representation of the defendant.

B. Defendant's counsel's orchestration of defendant's campaign to secure void Acknowledgments from the class members should result in sanctions.

Defendant's counsel crafted an improper and unethical campaign to aid defendant in evading the class liability asserted in the plaintiff's complaint. That campaign did not involve vigorous advocacy on behalf of the defendant before this Court. It was a campaign to *mislead* the class members and *evade* this Court's jurisdiction and *knowingly violate* Nevada's Constitution by securing void waivers from class members worded as "Acknowledgments." Defendant's counsel knew the class members would view those void waivers as valid settlements of the class claims asserted in this case and specifically intended to cause that misleading understanding.

1. Defendant had no right to engage in misleading communication with the members of the putative class about the class claims.

Defendant's counsel will insist that the parties to a litigation are always free to communicate directly; the class members were not actually parties because there was no order granting class certification; and the class members were not represented by counsel since their was no certified class. They will then insist they correctly advised the defendant that it could properly communicate directly with the class members, who were unrepresented persons who were not even parties to this litigation.

Such assertions by defendant's counsel are without merit. No reported court decision has held defendants possess an unfettered right to communicate with members of a "yet to be certified" class. Every decision dealing with such "pre-certification"

communications finds they must not be misleading and are subject to restrictions by the court to protect the interests of the putative class members.

Defendant's letters, among other things, falsely communicated that "[i]n these types of lawsuits the attorneys are the ones who win, not employees or companies, and they bring case after case trying to get settlements and line their own pockets rather than to truly benefit individuals like you." This statement fails to advise the class member that (1) Any class settlement must be approved by this Court and found to be in the interests of the class and (2) Nevada's Constitution imposes an *additional* liability upon defendant for employee's attorney's fees, meaning the defendant will be required to pay those fees *in addition* to any minimum wages the Court finds is owed to the class members. This misrepresentation about how class counsel would financially benefit at the employee's expense, or "line their own pocket" in defendant's words, was a reason that sanctions were imposed and corrective notice ordered in *Belt*, 299 F. Supp 2d. at 668, 676.

Defendant's counsel is sure to point to the sanctimonious disclosures in their letter that a lawsuit was pending; that class members could contact defendant if they had any "reason to disagree" with defendant's calculation and "review" their time records (which had never been previously provided to them); and the providing of the name, but not the contact information, of the attorney handling the lawsuit. Such statements were designed to provide defendant with "cover" for their knowingly improper conduct. The Court should not be misled by such sugar coating. Defendant knowingly communicated false information. It told class members that plaintiff's counsel could "line their own pocket" at their expense. It advised class members receiving checks they were acknowledging full satisfaction of minimum wage claims, and all penalty claims including those under NRS 608.040, even though minimum wage claims cannot be waived by individual employees and their letter mentioned nothing about NRS 608.040 or other penalty claims. Far more detailed "pre-class certification" settlement letters directed to sophisticated business owner class members, which included the actual phone number of plaintiff's counsel and urged class

members to consult with their own counsel before signing releases, have been found inadequate to cause the creation of binding settlements. *See*, *Keystone Tobacco*, 238 F. Supp.2d at 157, 160 (While settlement letters not *per se* misleading under the circumstances, incomplete information required corrective notice to the class and an opportunity for the class members to withdraw their releases).

2. Defendant had no right to engage in false and void "settlement" communications without Court approval that were designed to secure *de facto* and illegal waivers of the Nevada Constitution's minimum wage protections.

Defendant's counsel will insist defendant properly engaged in settlement activities with the class members. It will presumably rely upon *Weight Watchers of Philadelphia, Inc. v. Weight Watchers International*, 455 F.2d 770, 774-75 (2nd Cir. 1972) and the strong public policy favoring settlements. Such assertions are incorrect. Defendant did not engage in proper or permissible settlement activities.

Defendant's counsel, knowing full well they could not secure binding releases of minimum wage claims from employees, assisted defendant in creating a "false impression of settlement" with the class members. Instead of giving their client facially illegal "releases" or "waivers" of minimum wage rights they crafted the equally invalid, and illegal, "acknowledgment" form to serve the same purpose. They did so because even though such "acknowledgments" were *void ab initio*, they would *make the signing class member think he had fully settled his claim and had no right to any other recovery from this lawsuit.* That "false impression of settlement" would deter class members from making claims in, or offering any support for, this litigation.

Weight Watchers, and similar cases, are inapplicable because minimum wage claims cannot be settled by an unrepresented employee in a legally binding fashion without judicial supervision. Nor does *Weight Watchers* offer any support for defendant's counsel's claim that defendant has a *carte blanche* to communicate with "uncertified class" member about settlement without any judicial oversight. Quite the contrary, as the "pre-class certification" communications, and settlements, secured by the defendant in *Weight Watchers* were conducted under specific conditions, approved

of in advance, by the Court. 455 F.2d at 772. Those conditions included a requirement that plaintiff's counsel be given an opportunity to be involved in all settlement negotiations and offer advice to the uncertified class member *prior* to them executing any release. *Id. See, also, Keystone Tobacco*, 238 F. Supp. 2d at 157, 160.

If defendant wanted to engage in a proper and fair communication with the class members, and a settlement of claims, as in *Weight Watchers*, it was well aware all it had to do was come to this Court. But it did not want to actually engage in such proper and fair communications and resolution of claims.

VII. SIGNIFICANT MONETARY SANCTIONS SHOULD ISSUE IN A MANNER DEEMED MOST APPROPRIATE TO THE COURT

The exact amount of monetary sanctions properly imposed upon defendant and/or their counsel, and the disposition of those sanctions, must be determined by the Court. Those sanctions should be substantial in amount, as the damage rendered by the defendant's improper conduct very likely cannot be completely remedied. That is because irrespective of any corrective notice issued, certain class members will remain deceived by defendant's "false settlement and release" campaign and very likely refuse in the future to make any settlement claims or cash any settlement checks.

One appropriate measure of such sanctions might be the entire fee defendant's counsel has been paid by defendant, to date, to provide representation in this matter. It would be just to force defendant's counsel to disgorge such ill gotten monies and have them directed to a public legal services entity, such as Clark County Legal Services.

The Court can also, if it believes it to be more appropriate, direct sanctions be paid in some form to the direct benefit of the plaintiff class members. No request is made for sanctions to be paid in that fashion as the appropriate monetary relief to be granted to the class remains to be determined and will be granted in the future.

VIII. NAMED PLAINTIFF SARGEANT SHOULD BE APPOINTED CLASS REPRESENTATIVE WITH CLASS MEMBERS ALBA, WOLDEMICAEL AND ZECCARIAS AS STANDBY OR ADDITIONAL CLASS REPRESENTATIVES.

In addition to the named plaintiff, three class members, Jimmy Alba, Merih Samuel Woldemicael and Michael Zeccarias, have provided declarations supporting

class certification. These three persons are also available to be appointed as class representatives or standby class representatives if the Court believes it would be helpful for them to be so appointed. Plaintiff's counsel takes no position on whether they should be so appointed in addition to the named plaintiff.

CONCLUSION

Wherefore, plaintiff's motion should be granted in all respects.

Dated this 27th day of May, 2015.

Leon Greenberg Professional Corporation

By: */s/ Leon Greenberg*
LEON GREENBERG, Esq.
Nevada Bar No.: 8094
2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
Tel (702) 383-6085
Fax (702) 385-1827
Attorney for Plaintiff

EXHIBIT “A”

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 CLASS CERTIFICATION NOTICE THAT AGREEMENTS STATING HENDERSON TAXI HAS PAID ALL MINIMUM WAGES OWED ARE UNENFORCEABLE

NOTICE THAT ANY AGREEMENT YOU SIGNED WITH HENDERSON TAXI STATING YOU HAVE BEEN PAID ALL OF YOUR MINIMUM WAGES IS NOT EFFECTIVE AND YOU MAY BE ABLE TO COLLECT AN ADDITIONAL AMOUNT OF UNPAID MINIMUM WAGES OWED TO YOU BY HENDERSON TAXI

You are being sent this notice because you are a member of the class of current and former taxi drivers employed by Henderson Taxi that has been certified by the Court. Your rights as a class member are discussed on pages 2 to 6 of this notice.

You are also advised that any agreement you signed with Henderson Taxi stating you have received all of your unpaid minimum wages, and any additional penalties you are owed by Henderson Taxi, has been found ineffective. This Court has found that Henderson Taxi acted illegally in having its taxi drivers sign those agreements and those agreements will not be enforced. You should proceed in this case or in

any case you may wish to bring as if you never signed any such agreement. You are fully entitled to receive an additional minimum wage payment, and possibly other payments, from Henderson Taxi if a Court determines you are owed any such payments.

NOTICE OF CLASS ACTION CERTIFICATION

On [date] this Court issued an Order certifying this case as a class action for all taxi driver employees of Henderson Taxi (the "class members") who were employed at anytime from November 28, 2006 to [date of order]. The purpose of such class action certification is to resolve the following questions:

(1) Does Henderson Taxi owe class members any unpaid minimum wages pursuant to Nevada's Constitution?

(2) If it does owe class members minimum wages, what is the amount each is owed and must now be paid by Henderson Taxi?

(3) What additional money, if any, should Henderson Taxi pay to the class members besides unpaid minimum wages?

(4) For those class members who have terminated their employment with Henderson Taxi since February 13, 2013, what, if any, additional money, up to 30 days unpaid wages, are owed to them by Henderson Taxi under Nevada Revised Statutes 608.040?

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

THE ATTORNEYS REPRESENTING THE TAXI DRIVERS OF HENDERSON TAXI WILL NOT BE ALLOWED TO PROFIT AT YOUR EXPENSE

In a letter sent to some of its taxi drivers Henderson Taxi stated that the attorneys who brought this lawsuit, and who are trying to represent the taxi drivers, are bringing this case to "line their own pocket rather than truly benefit individuals like you." That statement by Henderson Taxi is untrue. This Court will have to approve any payment to those attorneys as a result of this case. Those attorneys cannot settle this case without the approval of the Court and the Court will be sure any settlement of this case is fair to the taxi drivers and will **not** allow those attorneys to "line their own pocket" or profit at your expense. Henderson Taxi is also responsible for paying the fee of those attorneys **in addition to the amount of minimum wages that the Court finds that Henderson Taxi owes its taxi drivers.** You should not be deterred from participating as a class member in this case based upon Henderson Taxi's untruthful claim that the attorneys bringing this lawsuit will benefit at your expense.

NOTICE OF YOUR RIGHTS AS A CLASS MEMBER

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

You are not required to have your claim for unpaid minimum wages and other possible monies owed to you by Henderson Taxi decided as part of this case. If you wish to exclude yourself from the class you may do so by filing a

written and signed statement with the Court no later than [insert date 45 days after mailing] setting forth your name and address and stating that you are excluding yourself from this case. If you do not exclude yourself from the class you will be bound by any judgment rendered in this case, whether favorable or unfavorable to the class. If you remain a member of the class you may enter an appearance with the Court through an attorney of your own selection. You do need not get an attorney to represent you in this case and if you fail to do so you will be represented by class counsel.

THE COURT IS NEUTRAL

No determination has been made that Henderson Taxi owes any class members any money. The Court is neutral in this case and is not advising you to take any particular course of action. If you have questions about this notice or your legal rights against Henderson Taxi you should contact class counsel at 702-383-6085 or another attorney. The Court cannot advise you about what you should do.

NO RETALIATION IS PERMITTED
AND HENDERSON TAXI CANNOT SPEAK
WITH YOU ABOUT THIS LAWSUIT

Nevada's Constitution protects you from any retaliation or discharge from your employment for participating in this case or remaining a member of the class. You cannot be punished by Henderson Taxi or fired from your employment with them for being a class member. Henderson Taxi cannot fire you or punish you if this case is successful in collecting money for the class members and you receive a share of that money. The Court has also Ordered that Henderson Taxi is not to communicate with any class member about this

case. If it does so, or you believe you are being retaliated against by Henderson Taxi as a result of this case, you should contact class counsel at 702-383-6085.

IT IS SO ORDERED

Date:

/s/ District Court Judge

EXHIBIT “C”

Henderson Taxi

1900 Industrial Road, Las Vegas, NV 89102
TEL: (702)386-7424

Seife Woldearegay
7488 Wine Creek Street
N Las Vegas, NV 89139

April 8, 2015

Dear Seife Woldearegay,

As you are likely aware, taxi drivers have historically been exempt from overtime and minimum wage under Nevada and federal law and Henderson Taxi (also referred to as "we" or "us") has set its payment practices, in negotiation with the union, understanding this. In 2006, the Constitution of the State of Nevada was amended to provide a minimum wage within its text. The constitutional provision did not expressly exempt taxi drivers from minimum wage, but neither did it eliminate the statute exempting taxi drivers from the minimum wage. As such, Henderson Taxi and many other employers continued to operate as they previously had, understanding that taxi drivers (and various other employees) were exempt from minimum wage under Nevada law. In fact, in 2008, a number of companies related to Henderson Taxi were sued for, amongst other things, unpaid minimum wage on this basis. However, during that litigation, the United States District Court for the District of Nevada determined that the Nevada minimum wage constitutional amendment did not impact the taxi driver exemption from overtime, just as Henderson Taxi believed. Given this judicial decision, Henderson Taxi proceeded, as it previously had, with the union regarding how it pays its drivers, you.

Circumstances, however, changed recently when the Nevada Supreme Court issued a decision interpreting the law differently. Because of this decision, Henderson Taxi promptly began to consider how to change the way it pays its employees and how to compensate them in accordance with the new declaration of the law. We have discussed this issue with your union and were on the verge of a policy change when one of our past drivers unfortunately decided to file a lawsuit against us. In our opinion, a lawsuit will best serve attorneys, not drivers or Henderson Taxi. In fact, we encourage you look up the attorneys who have brought this lawsuit, Leon Greenberg Professional Corporation. In these types of lawsuits, the attorneys are the ones who win, not employees or companies, and they bring case after case trying to get settlements and line their own pockets rather than to truly benefit individuals like you.

As stated above, Henderson Taxi has been reviewing its pay practices and has

determined to make sure that all its drivers were paid the minimum wage for all hours worked for the preceding two years—though Henderson Taxi believes it is only legally required to do so from June 26, 2014 forward, the date of the Supreme Court decision that changed the law. As such, based upon our calculations, Henderson Taxi is paying you $51.55 for the time from February 19, 2013. We have prepared a check to you for this amount. If you wish to receive the check via mail, please sign and date the enclosed acknowledgment and return it to us using the self-addressed, postage-prepaid envelope (also enclosed).

We have enclosed a document which explains how your check amount was calculated. Please carefully review the attached document. Please also review your own records and your memory in order to make sure that you have no reason to disagree with our corrected calculation. If you have any concerns with our corrected calculation, please contact human resources, and we will investigate the issue and correct any miscalculations. Further, if you have any questions, would like to review any of your time or payroll records, or if you disagree with the calculated payment amount, please feel free to contact me.

Sincerely

Cheryl Knapp

	Week Ending	Calc Using New Rule	Calc Using Old Rule	Di erence
10191	02-Mar-13	$14.42	$0.00	$14.42
10191	30-Mar-13	$8.12	$0.00	$8.12
10191	04-May-13	$11.29	$0.00	$11.29
10191	18-May-13	$1.80	$0.00	$1.80
10191	01-Jun-13	$0.74	$0.00	$0.74
10191	08-Jun-13	$15.18	$0.00	$15.18
				$51.55

EXHIBIT “D”

Henderson Taxi

1900 Industrial Road, Las Vegas, NV 89102
TEL: (702)386-7424

April 8, 2015

Dear Lee Lewis,

This letter concerns your compensation. Henderson Taxi (also referred to as "we" or "us") has paid you at least minimum wage pursuant to Federal law, and until recently, we believed you were exempt from state minimum wage.

Specifically, taxi drivers have historically been exempt from overtime and minimum wage under Nevada law and we have set payment practices, in negotiation with the union, understanding this. In 2006, the Constitution of the State of Nevada was amended to provide a minimum wage within its text. The constitutional provision did not expressly exempt taxi drivers from minimum wage, but neither did it eliminate the statute exempting taxi drivers from the minimum wage. As such, Henderson Taxi and many other employers continued to operate as they previously had, understanding that taxi drivers (and various other employees) were exempt from minimum wage under Nevada law. In fact, in 2008, a number of companies related to Henderson Taxi were sued for, amongst other things, unpaid minimum wage on this basis. However, during that litigation, the United States District Court for the District of Nevada determined that the Nevada minimum wage constitutional amendment did not impact the taxi driver exemption from overtime, just as Henderson Taxi believed. Given this judicial decision, Henderson Taxi proceeded, as it previously had, with the union regarding how it pays its drivers, you.

Circumstances, however, changed recently when the Nevada Supreme Court issued a decision interpreting the law differently. Because of this decision, (and immediately after the decision was rendered by the Supreme Court) Henderson Taxi promptly began to consider how to change the way it pays its employees and how to compensate them in accordance with the new declaration of the law. We have discussed this issue with your union and were on the verge of a policy change when one of our past drivers unfortunately decided to file a lawsuit against us. In our opinion, a lawsuit will best serve attorneys, not drivers or Henderson Taxi. In fact, we encourage you look up the attorneys who have brought this lawsuit, Leon Greenberg Professional Corporation. In these types of lawsuits, the attorneys are the ones who win, not employees or companies, and they bring case after case trying to get settlements and line their own pockets rather than to truly benefit individuals like you.

As stated above, Henderson Taxi has been reviewing its pay practices and has determined to make sure that all its drivers were paid the minimum wage for all hours worked for the preceding two years—though Henderson Taxi believes it is legally required to do so from June 26, 2014 forward, the date of the Supreme Court decision that changed

the law. As such, based upon our calculations, Henderson Taxi is paying you $10.54 for the time from February 19, 2013. We have issued a check to you for this amount, which you can pick up at your convenience.

Please note that at the time you receive your check, we will request you to acknowledge your receipt of payment for any wages which may have been underpaid. We have enclosed a document which explains how your check amount was calculated. Please carefully review the attached document. Please also review your own records and your memory in order to make sure that you have no reason to disagree with our corrected calculation. If you have any concerns with our corrected calculation, please contact human resources, and we will investigate the issue and correct any miscalculations. Further, if you have any questions, would like to review any of your time or payroll records, or if you disagree with the calculated payment amount, please feel free to contact the payroll office.

Sincerely

Cheryl Knapp

	Week Ending	Calc Using New Rule	Calc Using Old Rule	Di erence
003494	19-Apr-14	$13.23	$2.69	$10.54
				$10.54

EXHIBIT “E”

ACKNOWLEDGMENT AND AGREEMENT REGARDING MINIMUM WAGE PAYMENT

This Acknowledgment and Agreement regarding minimum wage payment ("Acknowledgement") is being provided and executed by Henderson Taxi ("Company") and I, _____ (referred to hereinafter as "Employee" or "I"), for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged.

1. Payment. Employee hereby acknowledges receipt of [**INSERT AMOUNT**] ($_____), less withholdings, for any underpayment of minimum wage due to Employee.

2. No admission of liability. Neither this Acknowledgment nor the payment provided hereunder shall be construed as an admission by Company of any liability whatsoever, or as an admission by Company of any violation of law, statute, duty, or contract whatsoever against Employee or any person. Company specifically disclaims any liability to Employee.

3. Affirmations. Company and Employee affirm that they have entered into this Acknowledgment knowingly and voluntarily. Further, Employee understands that his/her receipt of the aforementioned Payment is **not** conditioned on the execution of this Acknowledgment. In addition, employee acknowledges his/her understanding that Nevada law generally provides that an employer must pay a minimum wage to employees, which minimum wage changes from time to time as provided by the Nevada Labor Commissioner. For the years 2013-2015, the minimum wage in Nevada has been $7.25 for employees qualifying for certain employer provided health benefits and $8.25 for all other employees. Employee affirms that he/she has had an opportunity to review the accuracy of his/her time and payroll records, and the amount and calculation of the Payment as it relates to these requirements. Based upon the foregoing, and Employee's recollection, Employee concurs with Employer's corrected calculation of his/her wages (including minimum wage). Employee further affirms that he/she reported all hours worked as of the date of this Acknowledgment and, including this payment, has been paid, all compensation, including wages (including minimum wage), overtime, bonuses, commissions, tips, penalties, fines, and/or other benefits and compensation to which Employee may have been entitled. Employee agrees that the Payment, along with any final wages paid to Employee, includes and exceeds all and other compensation due and payable to him/her through his/her employment with Company.

Employee Acknowledgment

I hereby acknowledge that I have read and understand the provisions of this Acknowledgment, that I have been given an opportunity to seek legal counsel before signing this Acknowledgment, and that I have freely and voluntarily agreed to this Acknowledgment, and not as the result of any threat, promise or undue influence made or exercised by Employer or any other party.

_____
Employee Name

_____ _____
Signature Date

EXHIBIT “F”

LEON GREENBERG
Attorney at Law
2965 South Jones Boulevard • Suite E-4
Las Vegas, Nevada 89146
(702) 383-6085

Leon Greenberg
Member Nevada, California
New York, Pennsylvania and New Jersey Bars
Admitted to the United States District Court of Colorado

Dana Sniegocki
Member Nevada and California Bars

Fax: (702) 385-1827

April 17, 2015

Holland & Hart LLP
9555 Hillwood Drive, 2nd Fl.
Las Vegas, Nevada 89134
Attention: Anthony Hall, Esq.
R. Calder Huntington, Esq.

Via E-Mail and First Class Mail

Re: Sargeant v. Henderson Taxi

Dear Counsel:

I was advised today that your client has made individually calculated payments to its taxi driver employees and is advising such employees those payments are for the unpaid minimum wages owed to them, as alleged in this lawsuit.

It would be commendable for your client to voluntarily and fully remedy its violations of the law and pay its hard working taxi drivers the full measure of unpaid minimum wages and other damages they are owed. Unfortunately, the process you have had your client initiate in making the aforesaid payments impedes the effectuation of such a full and appropriate remedy for your client's violations of the law. It is apparent your client is proceeding in the foregoing fashion, without any transparency, without any review by the Court, or any consultation with me, in an attempt to *evade* the burden of fully remediating its prior illegal conduct.

Ultimately what does, or does not, constitute a full and adequate remedy for your client's illegal conduct is a question for the Court to determine. My

obligation as counsel in this case is to advocate to the Court for such a full and complete remedy. Such advocacy can involve a cooperative process between this office, your office, and your client. Or it can be through a wholly adversarial process. It is up to you and your client to choose the process.

Your client still has an opportunity to cooperatively secure an appropriate determination from the Court about a full, fair, and final resolution of the claims made in this case. If your client wishes to avail itself of that opportunity it needs, as a first step, to do the following:

1. Disclose the amount it paid to each of its taxi drivers;

2. Disclose all information it relied upon to determine what amounts it was paying to each of its taxi drivers. Presumably it relied upon some formula it applied to certain earnings and hours worked records for the drivers. If so, I will need to have those records fully produced to me;

3. Disclose the names and addresses of all taxi drivers, including those that are no longer employed by your client, to whom it either gave checks for such payments at its office or mailed such payments;

4. Disclose copies of all communications made to your client's taxi drivers in connection with these payments. This would include all "releases" or "acknowledgments" or "receipts" or similar documents your client had taxi drivers sign upon being given such payments. If such communications were in a universal form I do not need a copy of each such communication, only the form(s) used.

5. Pay for the cost of a mailing to all of its taxi drivers advising them that the payments they received do not, absent a further order of the Court, constitute a release of their claims as alleged in this lawsuit. Such letter shall also assure those taxi drivers that your client will not retaliate or take any action against any drivers who seek to give evidence in this case or assert claims for money in excess of the payments they have received. The purpose of such a letter would be to advise the taxi drivers about their rights and correct the improper impressions your client communicated about the payments it made by making those payments in a surreptitious manner. I will work with you to craft the language of such a communication to make it as harmonious, and non-confrontational, as possible.

Undertaking the foregoing steps voluntarily will preclude the presentation of a motion seeking a Court Order mandating such actions by your client. Such motion shall also seek the imposition of sanctions, attorney's fees, costs, and the class certification of this case along with other appropriate equitable and injunctive relief. If we are unable to formulate a plan for moving forward cooperatively in this case, along the lines I am proposing, I anticipate presenting such a motion to the Court during the week of May 4, 2015.

Whether the sanctions the Court would issue in response to a motion over your client's conduct should extend to you personally, as counsel for your client, is something the Court may well choose to consider. For example, in *Kleiner v. First National Bank*, 751 F.2d 1193 (11th Cir. 1985) sanctions of $50,000 were imposed against defendants' counsel who was also disqualified from representing their client. Such counsel had assisted their client in making improper communications with, and secretly securing class action exclusions from, class members.

Nor should you view your client's conduct as permissible, and beyond reproach by the Court, because a class certification order has not yet been issued in this case. NRCP Rule 23(d) grants the district court broad powers to ensure the "fair conduct" of this action, such power not being limited to "post" certification periods of time. In *Pollar v. Judson Steel Corp.*, 1984 WL 161273 (N. Dist. Cal. 1984), the sort of corrective notice and action I am proposing was ordered for what was essentially the exact same sort of "pre-certification" and "feigned settlement" conduct your client has engaged in towards "uncertified" class members. The defendant in *Pollar* was also ordered to show cause why sanctions should not be imposed.

Please be kind enough to furnish me with a response to this letter by close of business on April 21, 2015. Such response can be informal or tentative, but at a minimum I would like an acknowledgment by that date that you have received this communication and your client is still considering in good faith my above request for their cooperation. Of course if your client has by such time completely ruled out any such cooperation, please also advise of the same.

Very truly yours,

Leon Greenberg

EXHIBIT “G”

HOLLAND&HART LLP

Anthony L. Hall
Phone (775) 327-3000
Fax (775) 786-6179
ahall@hollandhart.com

May 5, 2015

VIA E-MAIL AND U.S. MAIL (wagelaw@hotmail.com; dana@overtimelaw.com)

Leon Greenberg, Esq.
Dana Sniegocki, Esq.
Leon Greenberg Professional Corporation
2965 South Jones Boulevard- Suite E3
Las Vegas, NV 89146

Re: Sargeant v. Henderson Taxi

***REVISED* CONFIDENTIAL SETTLEMENT COMMUNICATION PROTECTED BY NRS 48.105 AND FEDERAL RULE OF EVIDENCE 408**

Dear Counsel:

As we discussed on April 16, 2015, Henderson Taxi is interested in settling this matter in an efficient and timely manner. As such, it is making an offer to Mr. Sargeant in the amount of $5,000 in damages and $20,000 in attorneys' fees. As we have informed you in another letter, for the two year period preceding the filing of this action, Mr. Sargeant would have been "underpaid" $107.23 *if* a court were to determine that the *Thomas v. Nevada Yellow Cab Corp.* decision should be retroactively applied against Henderson Taxi for a two year period. Thus, while we have not made these calculations, it is likely that even if Mr. Sargeant were to succeed on your argument that a four year statute of limitations should apply, he would not be owed more than approximately $250 (simply a rough estimate). Further, in the almost impossible event a court were to determine that there is no limitations for Nevada minimum wage claims, Mr. Sargeant would likely receive less than $1,000. Thus, the $5,000 offer to him is more than generous. All of the normal provisions would apply, including a dismissal with prejudice of the pending action, and a full and general release. Please communicate this offer to your client and let us know his response by the close of business on Friday, May 8, 2015. I recall that you were planning on being out of town in late April, but I do not remember the specific dates. Thus, if May 8 does not work for you, please let us know and we can agree on a different date.

Sincerely,

Anthony L. Hall
of Holland & Hart LLP

ALH:RCH/mf
7739020_1

EXHIBIT “H”

Henderson Taxi

1900 Industrial Road, Las Vegas, NV 89102
TEL: (702)386-7424

Michael Zeccarias
3051 Kishner Dr #305
Las Vegas, NV 89109

April 8, 2015

Dear Michael Zeccarias,

As you are likely aware, taxi drivers have historically been exempt from overtime and minimum wage under Nevada and federal law and Henderson Taxi (also referred to as "we" or "us") has set its payment practices, in negotiation with the union, understanding this. In 2006, the Constitution of the State of Nevada was amended to provide a minimum wage within its text. The constitutional provision did not expressly exempt taxi drivers from minimum wage, but neither did it eliminate the statute exempting taxi drivers from the minimum wage. As such, Henderson Taxi and many other employers continued to operate as they previously had, understanding that taxi drivers (and various other employees) were exempt from minimum wage under Nevada law. In fact, in 2008, a number of companies related to Henderson Taxi were sued for, amongst other things, unpaid minimum wage on this basis. However, during that litigation, the United States District Court for the District of Nevada determined that the Nevada minimum wage constitutional amendment did not impact the taxi driver exemption from overtime, just as Henderson Taxi believed. Given this judicial decision, Henderson Taxi proceeded, as it previously had, with the union regarding how it pays its drivers, you.

Circumstances, however, changed recently when the Nevada Supreme Court issued a decision interpreting the law differently. Because of this decision, Henderson Taxi promptly began to consider how to change the way it pays its employees and how to compensate them in accordance with the new declaration of the law. We have discussed this issue with your union and were on the verge of a policy change when one of our past drivers unfortunately decided to file a lawsuit against us. In our opinion, a lawsuit will best serve attorneys, not drivers or Henderson Taxi. In fact, we encourage you look up the attorneys who have brought this lawsuit, Leon Greenberg Professional Corporation. In these types of lawsuits, the attorneys are the ones who win, not employees or companies, and they bring case after case trying to get settlements and line their own pockets rather than to truly benefit individuals like you.

As stated above, Henderson Taxi has been reviewing its pay practices and has

determined to make sure that all its drivers were paid the minimum wage for all hours worked for the preceding two years—though Henderson Taxi believes it is only legally required to do so from June 26, 2014 forward, the date of the Supreme Court decision that changed the law. As such, based upon our calculations, Henderson Taxi is paying you $476.81 for the time from February 19, 2013. We have prepared a check to you for this amount. If you wish to receive the check via mail, please sign and date the enclosed acknowledgment and return it to us using the self-addressed, postage-prepaid envelope (also enclosed).

We have enclosed a document which explains how your check amount was calculated. Please carefully review the attached document. Please also review your own records and your memory in order to make sure that you have no reason to disagree with our corrected calculation. If you have any concerns with our corrected calculation, please contact human resources, and we will investigate the issue and correct any miscalculations. Further, if you have any questions, would like to review any of your time or payroll records, or if you disagree with the calculated payment amount, please feel free to contact me.

Sincerely

Cheryl Knapp

	Week Ending	Calc Using New Rule	Calc Using Old Rule	Di erence
111596	31-Aug-13	$134.76	$60.75	$74.01
111596	07-Sep-13	$28.62	$0.00	$28.62
111596	05-Oct-13	$41.97	$0.00	$41.97
111596	02-Nov-13	$61.79	$0.00	$61.79
111596	30-Nov-13	$108.08	$19.53	$88.55
111596	07-Dec-13	$168.66	$84.33	$84.33
111596	14-Dec-13	$51.96	$0.00	$51.96
111596	01-Feb-14	$11.84	$0.00	$11.84
111596	14-Jun-14	$34.40	$0.66	$33.74
				$476.81

ACKNOWLEDGMENT AND AGREEMENT REGARDING MINIMUM WAGE PAYMENT

This Acknowledgment and Agreement regarding minimum wage payment ("Acknowledgement") is being provided and executed by Henderson Taxi ("Company") and I, _____ (referred to hereinafter as "Employee" or "I"), for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged.

1. Payment. Employee hereby acknowledges receipt of **[INSERT AMOUNT]** ($_____), less withholdings, for any underpayment of minimum wage due to Employee.

2. No admission of liability. Neither this Acknowledgment nor the payment provided hereunder shall be construed as an admission by Company of any liability whatsoever, or as an admission by Company of any violation of law, statute, duty, or contract whatsoever against Employee or any person. Company specifically disclaims any liability to Employee.

3. Affirmations. Company and Employee affirm that they have entered into this Acknowledgment knowingly and voluntarily. Further, Employee understands that his/her receipt of the aforementioned Payment is **not** conditioned on the execution of this Acknowledgment. In addition, employee acknowledges his/her understanding that Nevada law generally provides that an employer must pay a minimum wage to employees, which minimum wage changes from time to time as provided by the Nevada Labor Commissioner. For the years 2013-2015, the minimum wage in Nevada has been $7.25 for employees qualifying for certain employer provided health benefits and $8.25 for all other employees. Employee affirms that he/she has had an opportunity to review the accuracy of his/her time and payroll records, and the amount and calculation of the Payment as it relates to these requirements. Based upon the foregoing, and Employee's recollection, Employee concurs with Employer's corrected calculation of his/her wages (including minimum wage). Employee further affirms that he/she reported all hours worked as of the date of this Acknowledgment and, including this payment, has been paid, all compensation, including wages (including minimum wage), overtime, bonuses, commissions, tips, penalties, fines, and/or other benefits and compensation to which Employee may have been entitled. Employee agrees that the Payment, along with any final wages paid to Employee, includes and exceeds all and other compensation due and payable to him/her through his/her employment with Company.

Employee Acknowledgment

I hereby acknowledge that I have read and understand the provisions of this Acknowledgment, that I have been given an opportunity to seek legal counsel before signing this Acknowledgment, and that I have freely and voluntarily agreed to this Acknowledgment, and not as the result of any threat, promise or undue influence made or exercised by Employer or any other party.

_____
Employee Name

_____ _____
Signature Date

Henderson Taxi

1900 Industrial Road, Las Vegas, NV 89102
TEL: (702)386-7424

Merih Woldemicael
214 W. Chicago Ave. #5
Las Vegas, NV 89102

April 8, 2015

Dear Merih Woldemicael,

As you are likely aware, taxi drivers have historically been exempt from overtime and minimum wage under Nevada and federal law and Henderson Taxi (also referred to as "we" or "us") has set its payment practices, in negotiation with the union, understanding this. In 2006, the Constitution of the State of Nevada was amended to provide a minimum wage within its text. The constitutional provision did not expressly exempt taxi drivers from minimum wage, but neither did it eliminate the statute exempting taxi drivers from the minimum wage. As such, Henderson Taxi and many other employers continued to operate as they previously had, understanding that taxi drivers (and various other employees) were exempt from minimum wage under Nevada law. In fact, in 2008, a number of companies related to Henderson Taxi were sued for, amongst other things, unpaid minimum wage on this basis. However, during that litigation, the United States District Court for the District of Nevada determined that the Nevada minimum wage constitutional amendment did not impact the taxi driver exemption from overtime, just as Henderson Taxi believed. Given this judicial decision, Henderson Taxi proceeded, as it previously had, with the union regarding how it pays its drivers, you.

Circumstances, however, changed recently when the Nevada Supreme Court issued a decision interpreting the law differently. Because of this decision, Henderson Taxi promptly began to consider how to change the way it pays its employees and how to compensate them in accordance with the new declaration of the law. We have discussed this issue with your union and were on the verge of a policy change when one of our past drivers unfortunately decided to file a lawsuit against us. In our opinion, a lawsuit will best serve attorneys, not drivers or Henderson Taxi. In fact, we encourage you look up the attorneys who have brought this lawsuit, Leon Greenberg Professional Corporation. In these types of lawsuits, the attorneys are the ones who win, not employees or companies, and they bring case after case trying to get settlements and line their own pockets rather than to truly benefit individuals like you.

As stated above, Henderson Taxi has been reviewing its pay practices and has

determined to make sure that all its drivers were paid the minimum wage for all hours worked for the preceding two years—though Henderson Taxi believes it is only legally required to do so from June 26, 2014 forward, the date of the Supreme Court decision that changed the law. As such, based upon our calculations, Henderson Taxi is paying you $340.39 for the time from February 19, 2013. We have prepared a check to you for this amount. If you wish to receive the check via mail, please sign and date the enclosed acknowledgment and return it to us using the self-addressed, postage-prepaid envelope (also enclosed).

We have enclosed a document which explains how your check amount was calculated. Please carefully review the attached document. Please also review your own records and your memory in order to make sure that you have no reason to disagree with our corrected calculation. If you have any concerns with our corrected calculation, please contact human resources, and we will investigate the issue and correct any miscalculations. Further, if you have any questions, would like to review any of your time or payroll records, or if you disagree with the calculated payment amount, please feel free to contact me.

Sincerely

Cheryl Knapp

	Week Ending	Calc Using New Rule	Calc Using Old Rule	Di erence
111411	02-Nov-13	$33.67	$0.00	$33.67
111411	30-Nov-13	$61.87	$0.00	$61.87
111411	07-Dec-13	$3.27	$0.00	$3.27
111411	21-Dec-13	$122.46	$92.87	$29.59
111411	01-Feb-14	$96.91	$20.26	$76.65
111411	15-Feb-14	$122.77	$50.00	$72.77
111411	01-Mar-14	$58.91	$0.00	$58.91
111411	21-Jun-14	$3.66	$0.00	$3.66
				$340.39

ACKNOWLEDGMENT AND AGREEMENT REGARDING MINIMUM WAGE PAYMENT

This Acknowledgment and Agreement regarding minimum wage payment ("Acknowledgement") is being provided and executed by Henderson Taxi ("Company") and I, _____ (referred to hereinafter as "Employee" or "I"), for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged.

1. Payment. Employee hereby acknowledges receipt of **[INSERT AMOUNT]** ($_____), less withholdings, for any underpayment of minimum wage due to Employee.

2. No admission of liability. Neither this Acknowledgment nor the payment provided hereunder shall be construed as an admission by Company of any liability whatsoever, or as an admission by Company of any violation of law, statute, duty, or contract whatsoever against Employee or any person. Company specifically disclaims any liability to Employee.

3. Affirmations. Company and Employee affirm that they have entered into this Acknowledgment knowingly and voluntarily. Further, Employee understands that his/her receipt of the aforementioned Payment is **not** conditioned on the execution of this Acknowledgment. In addition, employee acknowledges his/her understanding that Nevada law generally provides that an employer must pay a minimum wage to employees, which minimum wage changes from time to time as provided by the Nevada Labor Commissioner. For the years 2013-2015, the minimum wage in Nevada has been $7.25 for employees qualifying for certain employer provided health benefits and $8.25 for all other employees. Employee affirms that he/she has had an opportunity to review the accuracy of his/her time and payroll records, and the amount and calculation of the Payment as it relates to these requirements. Based upon the foregoing, and Employee's recollection, Employee concurs with Employer's corrected calculation of his/her wages (including minimum wage). Employee further affirms that he/she reported all hours worked as of the date of this Acknowledgment and, including this payment, has been paid, all compensation, including wages (including minimum wage), overtime, bonuses, commissions, tips, penalties, fines, and/or other benefits and compensation to which Employee may have been entitled. Employee agrees that the Payment, along with any final wages paid to Employee, includes and exceeds all and other compensation due and payable to him/her through his/her employment with Company.

Employee Acknowledgment

I hereby acknowledge that I have read and understand the provisions of this Acknowledgment, that I have been given an opportunity to seek legal counsel before signing this Acknowledgment, and that I have freely and voluntarily agreed to this Acknowledgment, and not as the result of any threat, promise or undue influence made or exercised by Employer or any other party.

_____
Employee Name

_____ _____
Signature Date

1/3

To: Miss Dana

2

Henderson Taxi

1900 Industrial Road, Las Vegas, NV 89102
TEL: (702)386-7424

Jimmy Alba
2200 S. Las Vegas Blvd #113
Las Vegas, NV 89104

April 8, 2015

Dear Jimmy Alba,

As you are likely aware, taxi drivers have historically been exempt from overtime and minimum wage under Nevada and federal law and Henderson Taxi (also referred to as "we" or "us") has set its payment practices, in negotiation with the union, understanding this. In 2006, the Constitution of the State of Nevada was amended to provide a minimum wage within its text. The constitutional provision did not expressly exempt taxi drivers from minimum wage, but neither did it eliminate the statute exempting taxi drivers from the minimum wage. As such, Henderson Taxi and many other employers continued to operate as they previously had, understanding that taxi drivers (and various other employees) were exempt from minimum wage under Nevada law. In fact, in 2008, a number of companies related to Henderson Taxi were sued for, amongst other things, unpaid minimum wage on this basis. However, during that litigation, the United States District Court for the District of Nevada determined that the Nevada minimum wage constitutional amendment did not impact the taxi driver exemption from overtime, just as Henderson Taxi believed. Given this judicial decision, Henderson Taxi proceeded, as it previously had, with the union regarding how it pays its drivers, you.

Circumstances, however, changed recently when the Nevada Supreme Court issued a decision interpreting the law differently. Because of this decision, Henderson Taxi promptly began to consider how to change the way it pays its employees and how to compensate them in accordance with the new declaration of the law. We have discussed this issue with your union and were on the verge of a policy change when one of our past drivers unfortunately decided to file a lawsuit against us. In our opinion, a lawsuit will best serve attorneys, not drivers or Henderson Taxi. In fact, we encourage you look up the attorneys who have brought this lawsuit, Leon Greenberg Professional Corporation. In these types of lawsuits, the attorneys are the ones who win, not employees or companies, and they bring case after case trying to get settlements and line their own pockets rather than to truly benefit individuals like you.

As stated above, Henderson Taxi has been reviewing its pay practices and has

2/3

determined to make sure that all its drivers were paid the minimum wage for all hours worked for the preceding two years—though Henderson Taxi believes it is only legally required to do so from June 26, 2014 forward, the date of the Supreme Court decision that changed the law. As such, based upon our calculations, Henderson Taxi is paying you $114.07 for the time from February 19, 2013. We have prepared a check to you for this amount. If you wish to receive the check via mail, please sign and date the enclosed acknowledgment and return it to us using the self-addressed, postage-prepaid envelope (also enclosed).

We have enclosed a document which explains how your check amount was calculated. Please carefully review the attached document. Please also review your own records and your memory in order to make sure that you have no reason to disagree with our corrected calculation. If you have any concerns with our corrected calculation, please contact human resources, and we will investigate the issue and correct any miscalculations. Further, if you have any questions, would like to review any of your time or payroll records, or if you disagree with the calculated payment amount, please feel free to contact me.

Sincerely

Cheryl Knapp

	Week Ending	Calc Using New Rule	Calc Using Old Rule	Di erence
110868	06-Apr-13	$7.24	$0.00	$7.24
110868	08-Jun-13	$27.00	$0.00	$27.00
110868	15-Jun-13	$44.42	$0.00	$44.42
110868	13-Jul-13	$7.16	$0.00	$7.16
110868	17-Aug-13	$8.80	$0.00	$8.80
110868	31-Aug-13	$4.22	$0.00	$4.22
110868	26-Oct-13	$20.48	$5.25	$15.23
				$114.07

3/3

ACKNOWLEDGMENT AND AGREEMENT REGARDING MINIMUM WAGE PAYMENT

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1. Payment. Employee hereby acknowledges receipt of [**INSERT AMOUNT**] ($_____), less withholdings, for any underpayment of minimum wage due to Employee.

2. No admission of liability. Neither this Acknowledgment nor the payment provided hereunder shall be construed as an admission by Company of any liability whatsoever, or as an admission by Company of any violation of law, statute, duty, or contract whatsoever against Employee or any person. Company specifically disclaims any liability to Employee.

3. Affirmations. Company and Employee affirm that they have entered into this Acknowledgment knowingly and voluntarily. Further, Employee understands that his/her receipt of the aforementioned Payment is **not** conditioned on the execution of this Acknowledgment. In addition, employee acknowledges his/her understanding that Nevada law generally provides that an employer must pay a minimum wage to employees, which minimum wage changes from time to time as provided by the Nevada Labor Commissioner. For the years 2013-2015, the minimum wage in Nevada has been $7.25 for employees qualifying for certain employer provided health benefits and $8.25 for all other employees. Employee affirms that he/she has had an opportunity to review the accuracy of his/her time and payroll records, and the amount and calculation of the Payment as it relates to these requirements. Based upon the foregoing, and Employee's recollection, Employee concurs with Employer's corrected calculation of his/her wages (including minimum wage). Employee further affirms that he/she reported all hours worked as of the date of this Acknowledgment and, including this payment, has been paid, all compensation, including wages (including minimum wage), overtime, bonuses, commissions, tips, penalties, fines, and/or other benefits and compensation to which Employee may have been entitled. Employee agrees that the Payment, along with any final wages paid to Employee, includes and exceeds all and other compensation due and payable to him/her through his/her employment with Company.

Employee Acknowledgment

I hereby acknowledge that I have read and understand the provisions of this Acknowledgment, that I have been given an opportunity to seek legal counsel before signing this Acknowledgment, and that I have freely and voluntarily agreed to this Acknowledgment, and not as the result of any threat, promise or undue influence made or exercised by Employer or any other party.

_____
Employee Name

_____ _____
Signature Date

EXHIBIT “I”

DECL
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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **DECLARATION OF LEON GREENBERG, ESQ.**

Leon Greenberg, an attorney duly licensed to practice law in the State of Nevada, hereby affirms, under the penalty of perjury, that:

1. I am one of the attorneys representing the plaintiff in this matter. I am requesting that I, along with my co-counsel, Dana Sniegocki, Esq., be appointed class counsel for the plaintiff class in this matter. I am familiar with the plaintiffs' claims in this case, those claims involving a failure by the plaintiffs and the plaintiff class members to receive the minimum wage for each hour they worked as required by Article 15, Section 16 of the Nevada Constitution. I am confident that I can adequately and properly represent the plaintiffs and the plaintiff class in this litigation and am thus requesting appointment as plaintiffs' class counsel in this case along with my co-counsel, Dana Sniegocki.

2. I have extensive experience in class actions and wage and hour litigation

and am qualified to be appointed class counsel in this case. I am a magna cum laude graduate of New York Law School and graduated in 1992. I was first admitted to practice law in 1993. I am a member of the Bars of the States of New York, New Jersey, Nevada, California and Pennsylvania. I have substantial experience in litigating class actions, in particular wage and hour class action claims, and have been appointed class counsel in a significant number of litigations in various jurisdictions. These cases include *Flores v. Vassallo*, Docket 01 Civ. 9225 (JSM), United States District Court, Southern District of New York; *Menjivar v. Sharin West et al.*, Index # 101424/96, Supreme Court of the State of New York, County of New York; *Rivera v. Kedmi*, Index # 14172/99, Supreme Court of the State of New York, County of Kings; *Burke v. Chiusano*, Docket 01 Civ. 3509 (KW), United States District Court, Southern District of New York; *Kalvin v. Santorelli*, Docket 01 Civ. 5356 (VM), United States District Court, Southern District of New York. In all of the foregoing matters I was appointed sole counsel for the respective plaintiff classes. All of these litigations involved unpaid wage claims. I was also appointed class counsel in *Maraffa v. NCS Inc.*, Eighth Judicial District Court, State of Nevada, Case No. A504053 (2005), Dept. III. I was appointed sole plaintiffs' class counsel in that case for a class of plaintiffs seeking damages for improper wage garnishments. I was also appointed class co-counsel in the following cases: *Klemme v. Shaw,* Docket CV-S-05-1263 (PMP-LRL), United States District Court, District of Nevada, in that case representing a class of persons making claims for unpaid health fund benefits under ERISA; *Williams v. Trendwest,* Docket CV-S-05-0605 (RCJ/LRL); *Westerfield v. Fairfield Resorts,* Docket CV-S-05-1264 (JCM/PAL); *Leber v. Starpoint*, Docket CV-S-09-01101 (RLH/PAL); and *Brunton v. Berkeley Group,* Docket CV-S-08-1752 (PMP/PAL), United States District Court, District of Nevada, on behalf of classes of salespersons denied overtime wages, minimum wages, and commissions; *Allerton v. Sprint Nextel*, Docket CV-S-09-1325 (RLH/GWF), United States District Court, District of Nevada, on behalf of classes of telephone call center workers denied overtime wages and other

wages; *Jankowski v. Castle Construction*, Docket CV-01-164, United States District Court, Eastern District of New York, on behalf of a class of construction workers denied overtime wages; *Levinson v. Primedia*, Docket 02 Civ. 2222 (DAB), United States District Court, Southern District of New York, on behalf of a class of Internet website guides for unpaid commissions due under contract; *Hallissey v. America Online,* Docket 99-CV-03785 (KTD), United States District Court, Southern District of New York, on behalf of a class of Internet "volunteers" for unpaid minimum wages; and *Elliott v. Leatherstocking Corporation*, 3:10-cv-00934-MAD-DEP, Northern District of New York, on behalf of a class of hospitality and banquet workers for improperly withheld "service charges" and unpaid overtime wages; *Phelps v. MC Communications, Inc.*, Eighth Judicial District Court, A-11-634965-C and *Kiser v. Pride Communications, Inc.*, United States District Court, District of Nevada, 2:11-CV-00165 on behalf of two separate classes of cable, phone, and internet installation technicians for unpaid overtime wages; *Socarras v. Tormar Cleaning Services Nevada, Inc.*, Eighth Judicial District Court, A-13-675189 on behalf of a class of janitorial workers for unpaid overtime wages; *Girgis v. Wolfgang Puck Catering and Events LLC*, Eighth Judicial District Court, A-13-674853 on behalf of a group of restaurant servers for unpaid minimum wages and overtime wages; and most recently in *Gemma v. Boyd Gaming Corporation*, Eighth Judicial District Court, A-14-703790-C on behalf of a class of casino workers for unpaid minimum wages under the Nevada Constitution.

3. I am also requesting that my co-counsel, Dana Sniegocki, be appointed with me as co-class counsel. Dana Sniegocki is a *cum laude* graduate of Thomas Jefferson Law School and has been licensed to practice law for over six years, is admitted to the State Bars of Nevada and California, has been an associate attorney at my office for more than five years, and has experience in litigating class action cases, specifically wage and hour class action litigations. To date, Dana Sniegocki has been appointed co-class counsel in the following cases: *Phelps v. MC Communications,*

Inc., Eighth Judicial District Court, A-11-634965-C and *Kiser v. Pride Communications, Inc.*, United States District Court, District of Nevada, 2:11-CV-00165 on behalf of two separate classes of cable, phone, and internet installation technicians for unpaid overtime wages; *Socarras v. Tormar Cleaning Services Nevada, Inc.*, Eighth Judicial District Court, A-13-675189 on behalf of a class of janitorial workers for unpaid overtime wages; *Girgis v. Wolfgang Puck Catering and Events LLC*, Eighth Judicial District Court, A-13-674853 on behalf of a group of restaurant servers for unpaid minimum wages and overtime wages; and most recently in *Gemma v. Boyd Gaming Corporation*, Eighth Judicial District Court, A-14-703790-C on behalf of a class of casino workers for unpaid minimum wages under the Nevada Constitution.

4. I am aware of my duty as counsel to adequately represent the interests of the class members in this case. I believe that my co-counsel, Dana Sniegocki, and I, are competent to do so.

Affirmed this 27th day of May, 2015

Leon Greenberg

EXHIBIT "J"

DECL
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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **DECLARATION OF MICHAEL SARGEANT**

Michael Sargeant hereby affirms and declares under penalty of perjury the following:

1. I am a former taxi driver employee of Henderson Taxi, the defendant in this case. I was employed by Henderson Taxi as a cab driver from 2003 until July of 2013. I understand that this lawsuit is seeking unpaid minimum wages from the defendant that are owed to its current and former taxi driver employees. I offer this declaration in support of my attorney's request to have this court certify this case as a class action.

2. During the last two years I was employed by defendants I often was paid less

than $7.25 an hour for my work as a taxi driver for defendant if I do not include the tips I received. I know that based upon the paychecks I received and the hours that I worked.

3. When I worked at Henderson Taxi the company never gave taxi drivers any statements setting forth the hours they worked. Most Henderson Taxi drivers worked 12 hour shifts, as I did, although some worked 10 hour shifts. If you wanted to qualify for the company's health insurance, and not have to pay any premium for the health insurance, you needed to work a certain number of qualified shifts each month. A "qualified shift" for someone like myself, who worked a 12 hour shift, meant you could not clock out, and end your shift, until the full 12 hours of your shift was up. Henderson Taxi also had a rule that all taxi drivers had to report for their shifts at least 15 minutes prior to the scheduled shift start and if you failed to do that you might not be able to work that day. This meant the real working shift time for myself and other drivers who were assigned 12 hour shifts was really a minimum of 12 and one-quarter hours. Or at least it would be if the driver wanted to be sure they qualified for their health insurance.

4. The other Henderson Taxi drivers and I were also under a great deal of pressure to avoid a "low book." A low book happened when the driver collected what Henderson Taxi felt was a too small amount of fares during the driver's shift. If we had too many "low book" shifts we would be suspended or fired by Henderson Taxi. As a result of this pressure, even though the "official" rule at Henderson Taxi was that a driver was required to take a one hour break each shift, myself and many of the other Henderson Taxi drivers would take much less than a one hour break in an attempt to earn more fares and avoid a "low book." I know this is true for many of the other drivers at Henderson Taxi because I recall have conversations with other drivers who confirmed that none of them were actually taking the "official" one hour break per

shift because they did not want to be in jeopardy of having a "low book."

5. I understand Henderson Taxi has offered to make payments to certain of its current and former taxi drivers as a result of this lawsuit. Henderson Taxi claims those payments are for the unpaid minimum wages it owes its taxi drivers but I believe that is untrue since Henderson Taxi never gave its taxi drivers accurate statements of the hours that they were working. Nor is there any reason to believe Henderson Taxi has now accurately calculated the hours its taxi drivers worked and the amounts of unpaid minimum wages they are owed. As I explained, Henderson Taxi would require its drivers to work additional time by showing up before their shifts and also had a "default" one hour break requirement, but most of its drivers often did not actually take the "official" one hour break Henderson Taxi said they were to take each shift. Whether Henderson Taxi has accurately calculated the minimum wage payments it owes its taxi drivers based upon their true hours of work should be determined by the Court.

6. I understand that my attorney is seeking to have this case certified as a class action, meaning that I would serve as a class representative in this case. My attorney has explained to me that by serving as a class representative I will be pursuing this case not just for myself but on behalf of all of the defendant's taxicab drivers who were not paid minimum wage under Nevada law for the applicable time period. I understand that if this case is certified as a class action I will have a responsibility to represent the other former and current Henderson Taxi taxicab drivers and act in their interests and not just my own personal interest. I understand that if this case is certified as a class action I will not be able to settle my claim against the defendant without approval from the Court. I am comfortable with serving as a class representative and support the class action certification of this case.

7. I am over 21 years of age and I make this statement, which I have read and declare to be true, of my own free will. I have not received any compensation or any promise of any compensation for making this statement.

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

Michael Sargeant

Michael Sargeant

4-22-15

Date

EXHIBIT “K”

Employee No.	Department	Employee Name	Social Security No.	Check Date	Check Number
30792	No Sub-Div	Michael C. Sargeant	[redacted]	05/02/2013	0193249

EARNINGS	HOURS/ UNITS	BASE/ UNIT	CURRENT AMOUNT	YEAR TO DATE (YTD)	DEDUCTIONS	CURRENT AMOUNT	YEAR TO DATE (YTD)
Adjustment				-5.00	FEDERAL INCOME TAX	127.92	893.97
Commission			1,073.71	7,279.74	FEDERAL MEDICARE TAX	19.42	156.96
EE Neg Adv			44.00	62.00	FEDERAL SOCIAL	83.04	671.16
Pay Inc To Adj				6.86	Acc Insurance	14.30	71.50
Safe Driving				443.41	AD&D Unum	3.15	15.75
Tips-Reported			265.64	1,816.11	Emp Adv Payback	0.00	15.70
Vacation				1,279.08	Union Dues - BA	23.00	115.00

Current Earnings	Current Deductions	Net Pay	YTD Earnings	YTD Deductions	YTD Net Pay
1,383.35	40.45	846.88	10,882.20	217.95	8,942.16

Henderson Taxi
2000 Industrial Road
Las Vegas, NV 89102-

Michael C. Sargeant

Employee Number	30792
Date of Hire	04/04/2003
Taxable Marital Status	Single
Federal Exemptions	2
Qualified Shifts	92
Non-Qualified Shifts	9
Driver Type	2

Form Version 6.01.463

Period 04/14/2013 - 04/27/2013

AA 85

EXHIBIT "L"

DECL
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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **DECLARATION OF MICHAEL ZECCARIAS**

Michael Zeccarias, hereby affirms and declares under penalty of perjury the following:

1. I am a former taxi driver employee of Henderson Taxi, the defendant in this case. I was employed by Henderson Taxi as a taxi driver from approximately August 25, 2013 until February 18, 2015. I understand that this lawsuit is seeking unpaid minimum wages from the defendant that are owed to its current and former taxi driver employees. I offer this declaration in support of my attorney's request to have this court certify this case as a class action.

2. During the time I was employed by defendant Henderson Taxi I believe I was often paid less than the minimum hourly wage required by Nevada Law. My belief about that has been confirmed by Henderson Taxi which on April 8, 2015, mailed me a letter, which I attach to this statement, confirming I am owed unpaid minimum wages by Henderson Taxi.

3. I do not believe the April 8, 2015 letter is correct in stating that I am only owed $476.81 in unpaid minimum wages by Henderson Taxi. I believe I am owed more than that amount because:

(a) Henderson Taxi does not explain in their letter how they calculated the unpaid minimum wages I am owed. I am not sure what minimum wage rate they are claiming I was entitled to. I have been advised by my attorney that the proper minimum wage rate would be $8.25 an hour if Henderson Taxi did not offer "qualifying health insurance" coverage to its taxicab drivers.

(b) Henderson Taxi does not explain in their letter how many hours of work they credited me with to determine the amount of minimum wages I am owed. I believe they have not included my full and true hours of work in making their calculations. I believe that because Henderson Taxi required me to report for work 15 minutes before my shift started. Because there were many drivers reporting for the start of the same shift, typically I had to report approximately 30 minutes prior to my shift to wait in line to check in with a supervisor at a window. If I failed to check in at that window 15 minutes prior to my shift, I could be sent home and denied an opportunity to work. I do not believe Henderson Taxi has included this forced additional 15-30 minutes of time that they required of

me before each shift in calculating the unpaid minimum wages they claim I am owed.

4. I support the class certification of this case. I am also willing, if it would assist the Court, to be appointed as a representative for the class. I understand that if the Court appoints me as a class representative I would have an obligation to represent the interests of all of the class members in this case, meaning all of the Henderson Taxi drivers, and not just my own, personal, interests. I also understand that if this case is certified as a class action, and I am appointed as a representative of the class, I will not be free to settle my individual claim against Henderson Taxi without approval from the Court. I am comfortable with being a class representative and am willing to do so.

5. I also understand another issue in this case is whether Henderson Taxi owes former taxi drivers, such as myself, certain penalties of up to 30 days wages for not paying us our full wages at the time of our employment termination. As Henderson Taxi admits in their April 8, 2015 letter to me, I am such an employee, as they admit they owe me at least $476.81 that they did not pay me when my employment terminated. I would like the Court to award me the 30 day penalty provided under Nevada's law (I am told by my attorney that law is NRS 608.040). I am also willing to serve as a class representative on just the issue of whether Henderson Taxi must pay that penalty under NRS 608.040 to its former taxi drivers.

6. I am over 21 years of age and I make this statement, which I have read and declare to be true, of my own free will. I have not received any compensation or any promise of any compensation for making this statement.

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

Michael Zeccarias

Michael Zeccarias

05/12/2015

Date

EXHIBIT “M”

DECL
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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **DECLARATION OF MERIH SAMUEL WOLDEMICAEL**

Merih Samuel Woldemicael, hereby affirms and declares under penalty of perjury the following:

1. I am a former taxi driver employee of Henderson Taxi, the defendant in this case. I was employed by Henderson Taxi as a taxi driver from approximately July 2013 until January 2015. I understand that this lawsuit is seeking unpaid minimum wages from the defendant that are owed to its current and former taxi driver employees. I offer this declaration in support of my attorney's request to have this court certify this case as a class action.

2. During the time I was employed by defendant Henderson Taxi I believe I was often paid less than the minimum hourly wage required by Nevada Law. My belief about that has been confirmed by Henderson Taxi which on April 8, 2015, mailed me a letter, which I attach to this statement, confirming I am owed unpaid minimum wages by Henderson Taxi.

3. I do not believe the April 8, 2015 letter is correct in stating that I am only owed $340.39 in unpaid minimum wages by Henderson Taxi. I believe I am owed more than that amount because:

(a) Henderson Taxi does not explain in their letter how they calculated the unpaid minimum wages I am owed. I am not sure what minimum wage rate they are claiming I was entitled to. I have been advised by my attorney that the proper minimum wage rate would be $8.25 an hour if Henderson Taxi did not offer "qualifying health insurance" coverage to its taxicab drivers.

(b) Henderson Taxi does not explain in their letter how many hours of work they credited me with to determine the amount of minimum wages I am owed. I believe they have not included my full and true hours of work in making their calculations. I believe that because Henderson Taxi required me to report for work 15 minutes before my shift started. Because there were many drivers reporting for the start of the same shift, typically I had to report approximately 30 minutes prior to my shift to wait in line to check in with a supervisor at a window. If I failed to check at that window 15 minutes prior to my shift, I could be sent home and denied an opportunity to work. I do not believe Henderson Taxi has included this forced additional 15-30 minutes of time that they required of

me before each shift in calculating the unpaid minimum wages they claim I am owed.

4. I support the class certification of this case. I am also willing, if it would assist the Court, to be appointed as a representative for the class. I understand that if the Court appoints me as a class representative I would have an obligation to represent the interests of all of the class members in this case, meaning all of the Henderson Taxi drivers, and not just my own, personal, interests. I also understand that if this case is certified as a class action, and I am appointed as a representative of the class, I will not be free to settle my individual claim against Henderson Taxi without approval from the Court. I am comfortable with being a class representative and am willing to do so.

5. I also understand another issue in this case is whether Henderson Taxi owes former taxi drivers, such as myself, certain penalties of up to 30 days wages for not paying us our full wages at the time of our employment termination. As Henderson Taxi admits in their April 8, 2015 letter to me, I am such an employee, as they admit they owe me at least $340.39 that they did not pay me when my employment terminated. I would like the Court to award me the 30 day penalty provided under Nevada's law (I am told by my attorney that law is NRS 608.040). I am also willing to serve as a class representative on just the issue of whether Henderson Taxi must pay that penalty under NRS 608.040 to its former taxi drivers.

6. I am over 21 years of age and I make this statement, which I have read and declare to be true, of my own free will. I have not received any compensation or any promise of any compensation for making this statement.

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

MERIH SAMUEL

Merih Samuel Woldemicael

5-12-2015

Date

EXHIBIT “N”

DECL
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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **DECLARATION OF JIMMY ALBA**

Jimmy Alba hereby affirms and declares under penalty of perjury the following:

1. I am a former taxi driver employee of Henderson Taxi, the defendant in this case. I was employed by Henderson Taxi as a taxi driver from approximately March of 2013 until approximately December of 2014. I understand that this lawsuit is seeking unpaid minimum wages from the defendant that are owed to its current and former taxi driver employees. I offer this declaration in support of my attorney's request to have this court certify this case as a class action.

2. During the time I was employed by defendant Henderson Taxi I believe I was

often paid less than the minimum hourly wage required by Nevada Law. My belief about that has been confirmed by Henderson Taxi which on April 8, 2015, mailed me a letter, which I attach to this statement, confirming I am owed unpaid minimum wages by Henderson Taxi.

3. I do not believe the April 8, 2015 letter is correct in stating that I am only owed $114.07 in unpaid minimum wages by Henderson Taxi. I believe I am owed more than that amount because:

(a) Henderson Taxi does not explain in their letter how they calculated the unpaid minimum wages I am owed. I am not sure what minimum wage rate they are claiming I was entitled to. I have been advised by my attorney that the proper minimum wage rate would be $8.25 an hour if I was not offered "qualifying health insurance" by Henderson Taxi. It is my understanding that for a taxi driver to receive family health insurance coverage from Henderson Taxi while I was employed there required a payment from a taxi driver of $300 or more a month. Such a $300 payment would have been more than 10% of my earnings, not counting my tips, from my work at Henderson Taxi.

(b) Henderson Taxi does not explain in their letter how many hours of work they credited me with to determine the amount of minimum wages I am owed. I believe they have not included my full and true hours of work in making their calculations. I believe that for two reasons:

(i) During the approximately 6 months I was on "probationary" or "extra board" status at Henderson Taxi I was required to show up for work at a specified time each

work day. But I often was not given a taxi to drive, and did not start my "work shift" until significantly after the time I was required to show up. For example, on certain days I was required to show up at 3 a.m. and then waited one-half hour or one hour or more before being given a taxi to drive and starting my work shift. Sometimes, after being kept waiting for at least 1 or 2 hours I was sent home and not allowed to drive a taxi at all or earn anything on those days. I was paid nothing by Henderson Taxi for the days I showed up and never got to drive a taxi. I also believe Henderson Taxi has not included this wait time, which was sometimes 1 hour or more, that I was required to spend waiting to begin these "extra board" shifts in calculating my unpaid minimum hourly wages.

(ii) Once I was removed from the "extra board" and got a regular shift I was required to show up at Henderson Taxi and report for work 15 minutes before my shift started. If I failed to do so I could be sent home and denied an opportunity to work. I do not believe Henderson Taxi has included this forced additional 15 minutes of time that they required of me before each shift in calculating the unpaid minimum wages they claim I am owed.

4. I support the class certification of this case. I am also willing, if it would assist the Court, to be appointed as a representative for the class. I understand that if the Court appoints me as a class representative I would have an obligation to represent the interests of all of the class members in this case, meaning all of the Henderson Taxi

drivers, and not just my own, personal, interests. I also understand that if this case is certified as a class action, and I am appointed as a representative of the class, I will not be free to settle my individual claim against Henderson Taxi without approval from the Court. I am comfortable with being a class representative and am willing to do so.

5. I also understand another issue in this case is whether Henderson Taxi owes former taxi drivers, such as myself, certain penalties of up to 30 days wages for not paying us our full wages at the time of our employment termination. As Henderson Taxi admits in their April 8, 2015 letter to me, I am such an employee, as they admit they owe me at least $114.07 that they did not pay me when my employment terminated. I would like the Court to award me the 30 day penalty provided under Nevada's law (I am told by my attorney that law is NRS 608.040). I am also willing to serve as a class representative on just the issue of whether Henderson Taxi must pay that penalty under NRS 608.040 to its former taxi drivers.

6. I am over 21 years of age and I make this statement, which I have read and declare to be true, of my own free will. I have not received any compensation or any promise of any compensation for making this statement.

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

Jimmy Alba

5/07/15

Date

EXHIBIT “O”

FFCL
DON SPRINGMEYER, ESQ.
Nevada State Bar No. 1021
BRADLEY SCHRAGER, ESQ.
Nevada State Bar No. 10217
DANIEL BRAVO, ESQ.
Nevada State Bar No. 13078
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3556 E. Russell Road, 2nd Floor
Las Vegas, Nevada 89120-2234
Telephone: (702) 341-5200/Fax: (702) 341-5300
Email: dspringmeyer@wrslawyers.com
Email: bschrager@wrslawyers.com
Email: dbravo@wrslawyers.com
Attorneys for Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT

IN AND FOR CLARK COUNTY, STATE OF NEVADA

PAULETTE DIAZ, an individual; AWANDA GAIL WILBANKS, an individual; SHANNON OLSZYNSKI, an individual; and CHARITY FITZLAFF, an individual, on behalf of themselves and all similarly-situated individuals,

Plaintiffs,

vs.

MDC RESTAURANTS, LLC, a Nevada limited liability company; LAGUNA RESTAURANTS, LLC, a Nevada limited liability company; INKA, LLC, a Nevada limited liability company; and DOES 1 through 100, Inclusive,

Defendants.

Case No: A701633
Dept. No.: XVI

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Date of Hearing: December 4, 2014
Time of Hearing: 9:00 a.m.

On October 1, 2014, Defendants filed their Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) with Respect to All Claims for Damages Outside the Two-Year Statute of Limitations. On October 20, 2014, Plaintiffs filed their Opposition to Defendants' Motion and a Countermotion for Partial Summary Judgment Re: Limitation of the Action. On December 4, 2014, the Court held a hearing on the competing motions on the applicable statute of limitations.

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After a review and consideration of the record, the points and authorities on file herein, and the oral arguments of counsel, the Court finds the following facts and states the following conclusions of law:[1]

FINDINGS OF FACT

The District Court FINDS as follows:

1. The civil claims and remedies for violations of minimum wage laws under NRS 608.260 and article XV, section 16 of the Nevada Constitution differ significantly in both character and nature.

2. Pursuant to NRS 608.260, an employee may, at any time within 2 years, bring a civil action to recover the difference between the amount paid to the employee and the minimum wage amount. Thus, under the Nevada statutory scheme, the employee is solely limited to back pay, i.e., the difference between the amount paid and the amount of the minimum wage. *See* NRS 608.260.

3. In contrast, article XV, section 16(B) of the Nevada Constitution provides that "[a]n employee claiming a violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of the section and shall be entitled to all of the remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action under this section shall be awarded his or her attorney fees and costs." Nev. Const. art. XV, § 16(B).

4. The claims for relief and remedies afforded to Nevada employees under the Nevada Constitutional Amendment are expanded and not merely limited to back pay.

5. By its very nature, the Nevada Constitutional Amendment grants Nevada employees expansive rights, relief and legal remedies available in law or in equity. *Id.* In addition, the Nevada Constitutional Amendment expands employee rights even further, providing for an entitlement to attorney fees and costs should an employee prevail in the prosecution of his or her action. *Id.*

6. It is of paramount importance to distinguish the limited remedy of back pay available to

---

[1] If any finding herein is in truth a conclusion of law, or if any conclusion stated is in truth a finding of fact, it shall be deemed so.

Nevada employees under NRS 608.260 versus the Constitutional rights, claims, and remedies available to Nevada employees under the Nevada Constitutional Amendment, which could include, but are not limited to, back pay, damages, and injunctive relief.

7. Pursuant to the language of NRS 608.260, the two-year limitations period applies only to claims for back pay. *See* NRS 608.260. Consequently, this statutory limitation does not affect or apply to the constitutionally mandated claims, rights, and remedies afforded to claimants under the Constitutional Amendment.

8. It is also important to note that the Nevada Constitutional Amendment is much more expansive in the rights, claims, relief, and remedies available to claimants. As a result, it would be problematic to apply a two year statute of limitations to a claim for back pay and a different limitations period for claims for damages and/or injunctive relief not covered by the statute (NRS 608.260).

9. Clearly, the implication of the expansive Nevada Constitutional Amendment effectively supplants, supersedes, and/or repeals the two-year limitations period and the limited civil remedy provisions of NRS 608.260.

10. Lastly, with respect to the applicable statute of limitations period, this determination is based largely on the allegations and claims for relief asserted in Plaintiffs Complaint. A review of Plaintiffs' Amended Complaint clearly indicates that Plaintiffs' action is primarily based on Defendants' alleged violations of Nev. Const. art. XV, 16. Furthermore, Plaintiffs Prayer For Relief is not limited to an award of back pay; rather, Plaintiffs request declaratory relief, unpaid wages, damages, interest, attorneys' fees and costs, and other relief necessary and just in law and in equity.

11. Therefore, the Court finds that in this action, the most plausible applicable limitations provision shall be the four-year catch-all limitations period for civil actions pursuant to NRS 11.220.

CONCLUSIONS OF LAW

Based upon these Findings of Fact, the District Court CONCLUDES AND ORDERS as follows:

1. In this action, for alleged violations of article XV, section 16 of the Nevada Constitution, the applicable limitations provision shall be the four-year catch-all limitations period for civil actions pursuant to NRS 11.220.

2. Defendants' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) with Respect to All Claims for Damages Outside the Two-Year Statute of Limitations is DENIED.

3. Plaintiffs' Countermotion for Summary Judgment Re: Limitation of the Action is GRANTED.

IT IS SO ORDERED this 19th day of February, 2015.

DISTRICT COURT JUDGE

Submitted by:

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
DON SPRINGMEYER, ESQ.
Nevada State Bar No. 1021
BRADLEY SCHRAGER, ESQ.
Nevada State Bar No. 10217
DANIEL BRAVO, ESQ.
Nevada State Bar No. 13078
3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89120
Attorneys for Plaintiffs

Bradley Schrager, Esq.

Approved as to form and content by:

LITTLER MENDELSON, P.C.
RICK D. ROSKELLEY, ESQ.
Nevada State Bar No. 3192
ROGER GRANDGENNET, ESQ.
Nevada State Bar No. 6323
MONTGOMERY Y. PAEK, ESQ.
Nevada State Bar No. 10176
KATHRYN BLAKEY, ESQ.
Nevada State Bar No. 12701
3960 Howard Hughes Parkway, Suite 300
Las Vegas, Nevada 89169
Attorneys for Defendants

EXHIBIT “P”

JIM GIBBONS
Governor

MENDY ELLIOTT
Director

MICHAEL TANCHEK
Labor Commissioner

STATE OF NEVADA
Department of Business & Industry
OFFICE OF THE LABOR COMMISSIONER
675 Fairview Drive Suite 226
Carson City, Nevada 89701
Telephone (775) 687-4850 Fax (775) 687-6409

STATE OF NEVADA
MINIMUM WAGE
2007 ANNUAL BULLETIN

APRIL 1, 2007

PURSUANT TO ARTICLE 15, SECTION 16(A) OF THE CONSTITUTION OF THE STATE OF NEVADA, THE GOVERNOR HEREBY ANNOUNCES THAT THE FOLLOWING MINIMUM WAGE RATES SHALL APPLY TO ALL EMPLOYEES IN THE STATE OF NEVADA UNLESS OTHERWISE EXEMPTED. THESE RATES SHALL BECOME EFFECTIVE ON JULY 1, 2007.

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

NO LESS THAN $5.30 PER HOUR

FOR ALL OTHER EMPLOYEES:

NO LESS THAN $6.33 PER HOUR

Copies of this bulletin may obtained on the internet at
{http://www.laborcommissioner.com/docs/4-1-07%20ANNUAL%20BULLETIN%20for%20site.doc}

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

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

or

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

EXHIBIT "Q"

EXHIBIT "Q"

ORDR
LEON GREENBERG, SBN 8094
DANA SNIEGOCKI, SBN 11715
Leon Greenberg Professional Corporation
2965 S. Jones Blvd. - Suite E-4
Las Vegas, Nevada 89146
Tel (702) 383-6085
Fax (702) 385-1827
leongreenberg@overtimelaw.com
dana@overtimelaw.com

CHRISTIAN GABROY, SBN 8805
Gabroy Law Offices
170 S. Green Valley Parkway - Suite 280
Henderson, Nevada 89012
Tel(702) 259-7777
Fax(702) 259-7704
Christian@gabroy.com

Attorney for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

JOE VALDEZ, individually and on behalf of all others similarly situated, Plaintiff, v. VIDEO INTERNET PHONE INSTALLS, INC., Defendant.	Case No. A-09-597433-C Dept. No. I **ORDER**

THIS MATTER having come before the Court for hearing on September 3, 2013 on plaintiff's Motion for Summary Judgment and defendant's Countermotion for Summary Judgment, after due consideration of all supporting and opposing briefs submitted by counsel

for the parties, the oral argument by counsel, and the record of these proceedings, and good cause appearing, now therefore:

THE COURT FINDS:

Plaintiff sought an Order granting summary judgment on his remaining claim for 30 days of continuing wages under N.R.S. 608.040 for defendant's failure to pay him all wages owed and due at the time of his separation from employment and for his claim under N.R.S. 99.040 for prejudgment interest. Plaintiff's unpaid wages for purposes of his N.R.S. 608.040 claim concerned defendant's failure to pay him overtime wages calculated at time and one-half his "regular rate" of pay. The parties do not dispute that Plaintiff received no waiting-time penalties under NRS 608.040 at the time of his separation from the Defendant.

In the parties' companion federal litigation, the parties entered into a Settlement and Release of Claims in March 2013. Through such Settlement and Release, defendant satisfied a payment of $20,000.00 to plaintiff, which was inclusive of all "taxable costs, attorneys' fees, and prejudgment interest" in the companion federal litigation. Prior to such Settlement and Release, the plaintiff had also accepted an Offer of Judgment in the amount of $4194.20 which was entered on November 14, 2012 in the federal litigation. Thus, plaintiff's only remaining claims concerned his entitlement to damages under N.R.S. 608.040 and prejudgment interest on his unpaid wages claims.

Conclusions of Law

The Court accepts both parties' position that no triable issues of material fact exist and only questions of law remain before the Court. The Court finds that it is undisputed that plaintiff has accepted an offer of judgment for the unpaid overtime wages owed to him at the time of his separation of employment from the defendant and that such offer of judgment

acceptance establishes, for the purposes of NRS 608.040, that the plaintiff was owed unpaid overtime at the time of his employment termination. Thus, plaintiff's entitlement to the requested 30 days of continuing wages as a penalty under N.R.S. 608.040 rests on a pure issues of law concerning whether unpaid overtime wages, due under a piece rate payment system, constitute the unpaid "compensation" or "wages" contemplated by the legislature under N.R.S. 608.040 and whether N.R.S. 608.040 contains a private right of action. The Court finds that in both instances it does.

In so finding, the Court disagrees with the federal district court decisions that the later complications by statute obliterate the earlier meaning. The Court reaches its conclusion regardless of whether the Court would construe this statute the way the Supreme Court has indicated in *General Motors v. Jackson*, saying that giving meaning to their parts and language read each sentence, phrase and word to render it meaningful within the context of the purpose of the legislation. *General Motors v. Jackson*, 99 Nev. 739, 670 P.2d 102 (Nev. 1983). Thus, the Court would arrive at the same conclusion it arrived at if it did go to the secondary method, which is where the statutory language does not speak to the issue before the Court, the Court should construe it according to that which reason and public policy would indicate the legislature intended, and the Court finds they intended employees to be paid the agreed-upon contractual rate, which was, in this case, the average of the piecemeal rate.

The Court further finds that plaintiff is entitled to thirty days of continuing wages under N.R.S. 608.040 for defendant's failure to pay plaintiff all overtime wages owed and due at the time of his separation from employment. Because plaintiff was employed under a piecework payment system, such "continuing wages" are to be calculated based upon his

average earnings while employed by defendant, which the Court finds to be at a rate of $115.20 per day for a total award of $3,456.00 for a period of 30 days.

In respect to plaintiffs' request for prejudgment interest on his unpaid overtime wages, the Court finds that such prejudgment interest was satisfied and foreclosed as a result of the parties' Settlement and Release in the companion federal district court case in March 2013. The Court concludes that nothing in the settlement could be read to have parceled out, or excluded out, some later consideration by this Court as to prejudgment interest.

Conclusion

Based on the foregoing, it is hereby ORDERED that plaintiffs' Motion for Summary Judgment is **GRANTED** in part and **DENIED** in part. Plaintiff is entitled to thirty days of continuing wages under N.R.S. 608.040. Summary judgment on such claim is **GRANTED** and plaintiff is entitled to a judgment in the amount of $3,456.00. Plaintiff's Motion for Summary Judgment under N.R.S. 99.040 for prejudgment interest is **DENIED** for the reasons stated above.

It is hereby further ORDERED that defendant's Counter Motion for Summary Judgment is **GRANTED** in part and **DENIED** in part. Defendant's Motion for Summary Judgment on plaintiff's claim under N.R.S. 99.040 for prejudgment interest is **GRANTED** pursuant to the parties' Settlement and Release satisfied in the companion federal district court litigations. Defendant's Motion for Summary Judgment on plaintiff's claim under N.R.S. 608.040 is **DENIED** for the reasons stated above.

Dated this 16 day of Oct, 2013.

DISTRICT COURT JUDGE
THE HONORABLE KENNETH CORY

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Submitted:

By: _____

Leon Greenberg, Esq.
Dana Sniegocki, Esq.
LEON GREENBERG PROF. CORP.
2965 s. Jones Blvd., Ste. E-4
Las Vegas, NV 89146

Attorney for Plaintiffs

Approved as to form and content:

By: _____

Rick Roskelley
Montgomery Paek
Littler Mendelson
3960 Howard Hughes Parkway
Suite 300
Las Vegas, NV 89169-5937

Attorney for Defendant
VIP Installs

EXHIBIT "R"

EXHIBIT "R"

DECL
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
Fax (702) 385-1827
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-15-714136-C Dept.: XVII **DECLARATION OF LEON GREENBERG, ESQ.**

Leon Greenberg, an attorney duly licensed to practice law in the State of Nevada, hereby affirms, under the penalty of perjury, that:

1. I am one of the attorneys representing the plaintiffs in this matter. I am offering this declaration to explain to the Court the extreme rarity of current employees of an employer bringing a legal action against their employer for unpaid wages.

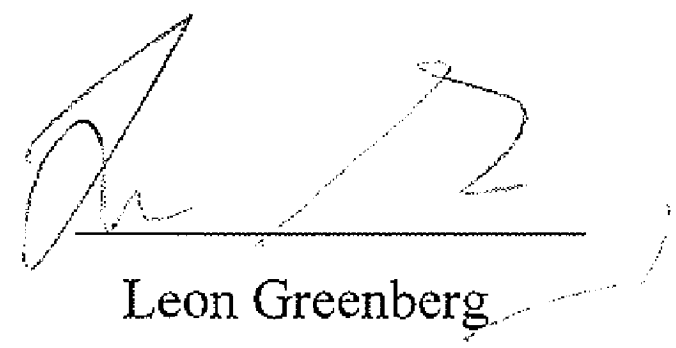
2. I have represented employees with wage claims for over 22 years. During that time period I have been plaintiff's counsel in over 200 such lawsuits and perhaps as many as 400 or more such lawsuits. Since 2003 my law practice has, except for one or two cases, been limited to representing plaintiffs seeking unpaid wages.

3. In my 22 years of practice as plaintiff's counsel in hundreds of cases seeking

unpaid wages, I can only recall three such cases where I represented a current employee of an employer. One of those cases is the currently pending case of *Thomas v. Nevada Yellow Cab*, Nevada Eighth Judicial District Court, A-12-661726-C, where one of my two clients is a current employee of the defendant. While there may be more than three such cases, there are certainly not 10 such cases in my entire career. It is not an exaggeration to state that at least 95%, and perhaps over 99%, of the litigations I have brought seeking unpaid wages were initiated by former, and not current, employees.

4. Current employees of employers will not initiate litigations to collect unpaid wages, or assist in prosecuting such claims, because they are fearful of being fired in retaliation by their employer. Even among unionized workers, who typically have some additional measure of protection against a "no cause" discharge from employment, such fear is virtually universal. Employees depending upon a regular paycheck for survival, and without any significant financial resources, cannot risk the hardship that a discharge from employment would cause them, even if they secured a reinstatement in their job and a back pay award within a few months from a union initiated arbitration (and that process can take considerably longer). That no current employees of Henderson Taxi have contacted me about this lawsuit or are willing to come forward to dispute defendant's claim they have now been paid all past due minimum wages they are owed is to be expected. Such current employees are, quite understandably, unwilling and unable to come forward and try to enforce their minimum wage rights given the "real world" circumstances that they face.

Affirmed this 27th day of May, 2015



Leon Greenberg

EXHIBIT "S"

EXHIBIT "S"

DISTRICT COURT
CLARK COUNTY, NEVADA

JOE VALDEZ, GARY BRACEY, and KEVIN FLAMER, individually and on behalf of all others similarly situated, Plaintiff, v. COX COMMUNICATIONS LAS VEGAS, INC., VIDEO INTERNET PHONE INSTALLS, INC., QUALITY COMMUNICATIONS, INC., and SIERRA COMMUNICATIONS SERVICES, INC., Defendants.	**Case No.: A-09-597433-C** **Dept. No. I** **ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT, APPROVING AWARD OF ATTORNEY'S FEES, EXPENSES, ADMINISTRATION COSTS, AND NAMED PLAINTIFF AWARDS, AND DIRECTING ENTRY OF FINAL JUDGMENT**

CLERK OF THE COURT

On March 4, 2014, the Court heard the parties' joint motion for final approval of the class action settlement, as set forth in the Stipulation and Settlement Agreement of Claims ("Stipulation"), in the above-captioned action, the Court also hearing at that time the Plaintiffs' unopposed motion for an award of Named Plaintiff payments and for a Fee and Expense Award for Plaintiffs' Counsel as provided for in the Stipulation. The Court finds and orders as follows:

1. For the purposes of this Order, the Court adopts all defined terms as set forth in the Stipulation, previously filed with this Court.

2. This Court has jurisdiction over the subject matter of this litigation and over all parties and Class Members in this litigation.

3. The Court finds that the distribution of the Notice of Class Action Settlement, which was carried out pursuant to the Stipulation, constituted the best notice practicable under the circumstances and fully met the requirements of due process.

4. The Court finds that no Class Members have objected to the Settlement and no Class Members have requested exclusion from the Settlement. A total of 18 class members, constituting 24% of the Class have filed timely and valid claims. These 18 individuals have claimed, and will be paid, $31,097 from the Settlement Fund pursuant to the parties' Stipulation.

5. The Court finds that the Stipulation was the product of protracted, arm's length negotiations between experienced counsel. After considering Defendant's potential exposure, the likelihood of success on the class claims, the risk, expense, complexity and delay associated with further litigation, the risk of maintaining class certification through trial, the experience and views of Plaintiffs' Counsel, and the reaction of the Class to the Settlement, as well as other relevant factors, the Court finds that the settlement, as set forth in the Stipulation, is fair, reasonable, and in the best interests of the Class, and hereby grants final approval of the settlement. The parties are ordered to carry out the settlement as provided in the Stipulation.

6. As counsel for the Class, Leon Greenberg and Dana Sniegocki of Leon Greenberg Professional Corporation and Christian Gabroy of the Gabroy Law Office, shall collectively be paid a fees payment of $33,000 and a costs payment of $2,436.15 from the Settlement Fund for their services on behalf of the Plaintiffs and the Class.

7. As the Settlement Administrator, Rust Consulting shall be paid from the Settlement Fund for its services rendered in administering the Settlement, in accordance with the Stipulation and as provided in this paragraph. Pursuant to the declaration of its Senior Project Administrator, Stacy Roe, submitted to this Court at Ex. "A" of the parties' motion for final approval, its estimated maximum costs for administration of the settlement of this matter is $8,000. Its payment of costs in that amount from the Settlement Fund is approved, provided that it shall receive a lesser amount, if any, that is equal to the actual charges properly paid to it for the services it

provides in completing the administration of the Settlement.

8. Enhancement payments to each of the representative plaintiffs are approved as follows: $4,000 to plaintiff, Joe Valdez; $1,000 to plaintiff, Gary Bracey; and $1,000 to plaintiff, Kevin Flamer.

9. Except as stated in this Order, all other terms of the Settlement will remain as stated in the Stipulation and Settlement Agreement of Claims and all accompanying documents and the Orders of this Court.

10. The Clerk of the Court is directed to enter a Final Judgment of dismissal in this case as to all claims of all plaintiffs against all defendants and the Complaint is dismissed with prejudice.

11. The Court will retain jurisdiction for purposes of enforcing this Settlement, addressing settlement administration matters, and addressing such post-judgment matters as may be appropriate under court rules or applicable law.

IT IS SO ORDERED

Kenneth Cory

HONORABLE KENNETH CORY
DISTRICT COURT JUDGE

3-4-14
DATE

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

Attorneys for Defendant Henderson Taxi

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL SARGEANT, individually and on behalf of others similarly situated, Plaintiff, v. HENDERSON TAXI, Defendant.	CASE NO.: A-15-714136-C DEPT. NO.: XVII **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**

Defendant HENDERSON TAXI ("Defendant" or "Henderson Taxi"), by and through its counsel of record, Holland & Hart, LLP, hereby submits Defendant's Opposition ("Opposition") to 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 ("Motion").

This Opposition is supported by the following Memorandum of Points and Authorities, the papers and pleadings on file herein, the Declaration of Brent J. Bell ("Bell Decl.") attached hereto as **Exhibit 1**, the Declaration of Cheryl Knapp ("Knapp Decl.") attached hereto as **Exhibit 2**, and any oral argument the Court may allow at any hearing of this matter.

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In June 2014, the Nevada Supreme Court issued its decision in *Thomas v. Nev. Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (Nev. 2014) ("*Yellow Cab*"). By a 4-3 vote, the Court decided that taxi cab drivers were no longer exempt from state minimum wage as provided by statute. Henderson Taxi immediately began revising its pay policies to comply with this ruling as previously cab drivers had been exempt. The ITPEU/OPEIU Local 4873, AFL-CIO (the "Union"), which is the exclusive representative of Henderson Taxi cab drivers, grieved the issue of minimum wage to Henderson Taxi. Through negotiation, Henderson Taxi and the Union resolved the Grievance by agreeing that in addition to changing pay practices going forward, Henderson Taxi would give drivers an opportunity to review its time and pay calculations and pay its current and former cab drivers the difference between what they had been paid and Nevada minimum wage over the two years prior to the *Yellow Cab* decision. During this time period, Plaintiff's counsel recognized that many companies had long relied on these statutory exemptions which were now gone and tore through the Las Vegas transportation industry suing every cab and limousine company for which he could find a (purportedly) representative plaintiff, including Henderson Taxi.

After discovering that Defendant was beginning to pay its current and former cab drivers for minimum wage payments over the two years prior to *Yellow Cab* (pursuant to the agreement with the Union), Plaintiff's counsel became angered at the idea of losing out on potential attorneys' fees and verbally admitted this during a meeting between counsel. Thus, Plaintiff's counsel chose to bypass discovery and normal litigation to bring this early and completely inappropriate motion to certify a class the day after having provided his initial disclosures. In essence, rather than taking the time to conduct discovery and seek certification with evidence, Plaintiff seeks to obtain certification as a type of sanction against Defendant based on frivolous allegations of wrongdoing. Regardless, class certification is improper. First, Plaintiff's claims are preempted by the Labor Management Relations Act. Thus, Plaintiff's claims will be resolved on summary judgment and no class should proceed. Second, even if Plaintiff's claims did not fail as a

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

matter of law, Plaintiff has failed to present evidence supporting the requirements of Rule 23, in part because he had not conducted discovery prior to filing his absurd Motion. Third, even had Plaintiff satisfied Rule 23's requirements, there are multiple legal issues that could and should be decided prior to class certification, such as whether the Nevada Supreme Court's *Yellow Cab* decision applies retroactively to Henderson Taxi (no), what the appropriate statute of limitations for minimum wage claims is (two years), and whether the putative class members' acknowledgments of payment should be voided (no). While Plaintiff contends that these are legal questions common to the class supporting class certification, these are actually legal questions that define the possible scope of the claims and do not establish or support class certification. As to the acknowledgements, if the Court agrees with Defendant's arguments provided below, this would weigh heavily against a finding of numerosity, commonality, typicality, predominance, and superiority. Thus, these "common" questions do not support class certification but either limit it or show that the class certification is inappropriate. Fourth, Plaintiff's request for an injunction is moot based on the resolution with the Union and Plaintiff does not have standing as a prior employee to seek equitable relief against Defendant. Thus, class certification would be improper.

In addition to certification by sanction, Plaintiff seeks monetary and other sanctions against Defendant for having made Union-negotiated payments to its current and former cab drivers. Plaintiff claims that through these payments, negotiated by the Union through the grievance process, Defendant has coerced putative class members into "waiving" their claims. This is a brazen misrepresentation to this Court. Further Plaintiff simply and misleadingly ignores the Union's part in this resolution—not mentioning the Union a single time. The Union, as the exclusive representative of the taxi drivers under the National Labor Relations Act ("NLRA"), was fully authorized by federal law to negotiate a resolution of this dispute. Indeed, Henderson Taxi was required to process and negotiate the Union's minimum wage Grievance pursuant to the CBA or else face claims of unfair labor practices under federal law.

Further, while Defendant did ask for acknowledgements—not waivers or releases—from cab drivers accepting the payments, these acknowledgments expressly stated that payment was not conditioned on signing the acknowledgement and did not waive any claims—though they did act

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

as an accord and satisfaction. Plaintiff's arguments ignore the substantial difference between a waiver and an accord and satisfaction. Thus, because these acknowledgements were obtained pursuant to a Union negotiated agreement pursuant to a binding CBA, they were not improper. Defendant does not claim that it has an unfettered right to lie, cheat, or steal from putative class members as Plaintiff claims. But Defendant does have a right to simple and honest communication, whether in the form of settlement negotiations or otherwise. Thus, here, where Defendant communicated with putative class members in accordance with its negotiations with the Union, Defendant's communications were completely proper and should not be sanctioned. Rather, Plaintiff's bad faith efforts in this regard should result in sanctions against his counsel.

II. BACKGROUND

Historically, Nevada exempted limousine and taxicab drivers from state law minimum wage and overtime requirements. *See* NRS 608.018(3)(j); NRS 608.250(2)(e). Nevada voters, however, amended the state constitution to add Section 16 of Article 15 of the Nevada State Constitution (the "Minimum Wage Amendment").[1] The Minimum Wage Amendment does not mention—either positively or negatively—the exemption from minimum wage for taxicab and limousine drivers in NRS 608.250(2)(e). *See*, Nev. Const. Art. 15, s. 16. More to the point, the Minimum Wage Amendment did not expressly repudiate the minimum wage exemptions provided by NRS 608.250. *Compare*, *id.* and NRS 608.250(2). Given the historic exemption, the failure to explicitly amend NRS 608.250(2), and failure to mention its exemptions, Nevada state and federal district courts repeatedly held that limousine and cab drivers remained exempt from minimum wage requirements under Nevada law. *See, e.g.*, *Lucas v. Bell Trans*, 2009 WL 2424557 (D. Nev. June 24, 2009); **Exhibit 3**, *Greene v. Executive Coach & Carriage*, 2:09-cv-00466-GMN-RJJ, Dkt. # 16 (D. Nev. Nov. 10, 2009); **Exhibit 4**, *Gilmore v. Desert Cab, Inc.*, Case No. A-12-668502-C (Nev. Dist. Ct. Feb. 26, 2013). Specifically, the *Lucas* court held that the Minimum

[1] The ballot petition's title was "Raise the Minimum Wage for Working Nevadans". *Thomas v. Nev. Yellow Cab Corp.*, 327 P.3d 518, 523 (2014) (Parraguirre, J., dissenting).

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

Wage Amendment "did not repeal NRS 608.250 or its exceptions. Because the [Nevada Wage and Hour Law] expressly states that it does not apply to taxicab and limousine drivers, the Limousine Plaintiffs cannot sue for a violation of unpaid minimum wages under Nevada law." *Id.* at *8 (citing NRS 608.250(2)(e)). Other courts followed this analysis. *See, e.g.*, Exhibit 3; Exhibit 4. Given the experience of Henderson Taxi's executives with *Lucas*,[2] the pay methodology negotiated directly in the CBA (which may override state minimum wage), and general knowledge of cases following *Lucas*, Henderson Taxi maintained its policy of paying federal minimum wage, which includes the ability to take a "tip credit", but not Nevada minimum wage. Exhibit 1, Bell Decl., ¶¶ 2-3.

On June 26, 2014, the Nevada Supreme Court changed the state of the law when it issued its decision in *Yellow Cab*. The *Yellow Cab* decision addressed one of the same issues that the *Lucas* court had previously decided: whether the NRS 608.250(2)(e) exemption from minimum wage for limousine and taxicab drivers continued in effect after the Minimum Wage Amendment became effective. *See generally*, *Yellow Cab*, 130 Nev. Adv. Op. 52, 327 P.3d 518. Four of the seven Nevada Supreme Court justices found and held that the Minimum Wage Amendment had *impliedly* repealed any minimum wage exemptions set forth in NRS 608.250(2) that were not also present in the Minimum Wage Amendment. *Id.*, 327 P.3d at 522. Three of the justices dissented, arguing that the Minimum Wage Amendment was only meant to raise the minimum wage for those already entitled to it—similar to *Lucas*. *Id.*, at 523.

After the Nevada Supreme Court issued the *Yellow Cab* decision, the Union filed a grievance with Henderson Taxi regarding payment of minimum wage under Nevada state law in accordance with *Yellow Cab*. **Exhibit 5**, Union Grievance (the "Grievance").[3] This grievance was

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

[2] Brent Bell, the president of Henderson Taxi, is also the president of Presidential Limousine and Bell Trans, the defendants in the *Lucas* case. Exhibit 1, Bell Decl., ¶ 1. As president of the defendants in the *Lucas* case, Mr. Bell became intimately familiar with those legal proceedings and Judge Jones' ruling that the taxicab and limousine driver remained exempt from state minimum wage. *Id.*, ¶ 2.

[3] All exhibits requiring authentication are authenticated in the Knapp Decl.

filed pursuant to the relevant collective bargaining agreements between Henderson Taxi and the Union, which specifically cover the wages to be paid to Henderson Taxi cab drivers. *See* **Exhibit 6** CBA for November 24, 2009 – September 30, 2013) (the "2009 CBA"); **Exhibit 7** (CBA for October 1, 2013 – September 30, 2018) (the "2013 CBA") (jointly, the "CBAs"). Specifically, the Union stated the following in its grievance: "On behalf of all affected drivers, the ITPEU hereby grieves the Company's [Henderson Taxi's] failure to pay at least the minimum wage under the amendments to the Nevada Constitution, as recently found by the Nevada Supreme Court to be applicable to all taxi drivers." Exhibit 5. Further, the grievance sought "back pay and an adjustment of wages going forward." *Id.*

The Union and Henderson Taxi discussed the Grievance over a period of time, including potential remedies. *See* **Exhibits 8, 9, and 10**. As part of these discussions, Henderson Taxi explained that it had revamped its pay practices on a going forward basis to make sure that it paid Nevada minimum wage to all taxi drivers. Exhibit 8. Henderson Taxi had hoped that paying minimum wage on a going forward basis after the *Yellow Cab* decision would resolve the grievance. *See* Exhibit 8. The Union, however, did not accept this. After further discussion and negotiation with the Union regarding its pending Grievance, Henderson Taxi and the Union agreed that payment of minimum wage is covered by the CBAs and that Henderson Taxi would pay its current and former taxi drivers any wage differential between what the drivers earned and the Nevada minimum wage going back two years to resolve the Grievance and the Union members' claims. Exhibit 10; Exhibit 2, Knapp Decl., ¶¶ 6-7. Henderson Taxi and the Union memorialized this agreement in the "Resolution". Exhibit 10 ("Accordingly, the ITPEU/OPEIU considers this matter formally settled under the collective bargaining agreement between Henderson Taxi and the ITPEU/OPEIU and state law as implemented through such collective bargaining agreement. Pursuant to Article XV, Section 15.7 [of the 2013 CBA], this resolution is **final and binding** on all parties.") (emphasis added).

As a part of its agreement with the Union, Henderson Taxi was also to provide acknowledgements to the Taxi Drivers to confirm that they had received the offered money. *See* Exhibit 10; Exhibit 2, Knapp Decl., ¶ 8. Henderson Taxi had two acknowledgements the cab

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

drivers could sign: one for if the driver agreed that Henderson Taxi's calculation regarding minimum wage was correct and one for if the driver disagreed with the calculation and amount offered. *See, e.g.*, **Exhibits 11** and **12**. The acknowledgement that the calculation was correct expressly stated: "Employee understands that his/her receipt of the aforementioned Payment is **not** conditioned on the execution of this Acknowledgement." Exhibit 11 (emphasis in original); *see also* Exhibit E to Mot. for Certification. A substantial majority of cab drivers (the putative class) have accepted these payments and have acknowledged that they had reported all hours worked and that, including this payment, they had been paid minimum wage for all hours worked for two years. *See, e.g.*, Exhibit 11; Exhibit 2, Knapp Decl., ¶ 8.

During the time period in which Henderson Taxi was negotiating the Grievance with the Union and long after it had already begun "working on a program [to] recalculate minimum wage rates without applying the tip credit on a weekly basis for the two years prior to the [*Yellow Cab*] decision" and to potentially pay that amount to its current and former employees, Exhibit 9 (dated Aug. 21, 2014), Plaintiff filed the instant case, *see* Compl. (dated Feb. 18, 2015). Notwithstanding this suit, Henderson Taxi had a duty to continue its negotiations with the Union, which (unlike Plaintiff's counsel) represents Henderson Taxi's taxi drivers.[4] Thus, based on its discussions and agreement with an actual representative of its taxi drivers (the Union), Henderson Taxi was under an obligation to make these payments.

Notwithstanding these payments, counsel for both parties met on April 16, 2015, for an early case conference. During this meeting, counsel for Defendant (Anthony Hall) informed counsel for Sargeant (Leon Greenberg) that Henderson Taxi had or would be making these payments. Mr. Greenberg appeared exceedingly upset at this information and claimed that while it would be great if Henderson Taxi paid what it owed Henderson Taxi should only work through

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

[4] Failure to address the Grievance could have been an unfair labor practice under the National Labor Relations Act and/or the Labor Management Relations Act and a violation of the CBA, which details the steps that Henderson Taxi must follow, including three separate steps at which it is required to attempt to settle or resolve the Grievance. Exhibit 7, §§ 15.5-15.7

him, despite the fact that Mr. Greenberg did not yet represent any class of individuals related to Henderson Taxi—unlike the Union.

III. LEGAL ARGUMENT

A. Plaintiff's Claims Are Preempted and Not Properly Before the Court

CBAs between Henderson Taxi and the Union existed throughout the period of Plaintiff's employment and the potential liability period. *See, e.g.*, Exhibits 6 and 7. As a Henderson Taxi cab driver, Plaintiff and those he seeks to represent were members of the collective bargaining unit represented by the Union. *See* Exhibits 6 and 7, Article I. The applicable CBAs govern the payment of wages and set forth a detailed explanation of how wages are to be calculated. *Id.*, Section V. In addition, the CBAs contain detailed grievance procedures. *Id.*, Art. XV. As explained below, to resolve Plaintiff's claim for minimum wage, this Court would have to interpret multiple provisions of the CBAs. For example, determining how and to what extent the Resolution is incorporated into and modifies the CBA and how claims are affected by that incorporation, determining the correct minimum wage tier, what constitutes hours worked, and whether the Resolution between Henderson Taxi and the Union settled past claims for minimum wage all require CBA analysis and interpretation. As such, Plaintiff's minimum wage claim is already resolved pursuant to a binding contractual agreement between Henderson Taxi and the Union (the exclusive representative of the Taxi Drivers) that bars this action, is subject to an accord and satisfaction, the drivers and Union have already elected and received their remedy, and the claim is preempted by the LMRA and cannot proceed by this action.

1. The Union Resolution Is Part of the CBA

The Union is "the exclusive representative for all taxicab drivers employed by the Company in accordance with the certification of the National Labor Relations Board Case # 31-RC-5197." Exhibits 6 and 7, § 1.1. The CBAs between the Union and Henderson Taxi completely govern "matters of wages, hours, and other conditions of employment" provided therein. *Id.* at § 2.1. The Union, is thus obligated to negotiate wages with Henderson Taxi for Henderson Taxi's cab drivers. When *Yellow Cab* was issued, the Union exercised the right granted to it by the CBA and the NLRA. After *Yellow Cab* was issued, the Union undertook its duty regarding Henderson

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

Taxi cab driver pay and filed a Grievance arguing that Henderson Taxi needed to revise its pay practices[5] to comply with *Yellow Cab*. Exhibit 5. Through the grievance process provided for in the CBA, Article XV, the Union and Henderson Taxi eventually came to a fair and equitable Resolution which "formally settled" and resolved the Grievance and any minimum wage issues arising from *Yellow Cab*, Exhibit 10. As the exclusive bargaining agent, the Union was and is fully authorized to negotiate settlement and CBA modifications. *See St. Vincent Hospital*, 320 NLRB 42, 44-45 (1995) ("as a matter of law, when the parties by mutual consent have modified at midterm a provision contained in their collective-bargaining agreement, that lawful modification becomes part of the parties' collective-bargaining agreement, unless the evidence sufficiently establishes that the parties intended otherwise."); *see also Certified Corp. v. Hawaii Teamsters and Allied Workers, Local 996, IBT*, 597 F.2d 1269, 1272 (9th Cir. 1979) (approving an oral modification of a CBA); *International Union v. ZF Boge Elastmetall LLC*, 649 F.3d 641 (7th Cir. 2011) (recognizing mid-term modification to a CBA). Thus, the Resolution between Henderson Taxi and the Union modified the CBA and the Resolution is part of the CBA. *St. Vincent Hospital*, 320 NLRB at 44-45. As the Resolution expressly resolves any minimum wage claim Henderson Taxi's drivers may have had, the minimum wage claims have been settled by a binding agreement between the cab driver's authorized and exclusive bargaining agent and Henderson Taxi. Exhibit 10 ("Accordingly, the ITPEU/OPEIU considers this matter formally settled under the collective bargaining agreement between Henderson Taxi and the ITPEU/OPEIU and state law **as implemented** through such collective bargaining agreement. Pursuant to Article XV, Section 15.7 [of the 2013 CBA], this resolution is **final and binding** on all parties.") (emphasis added); *see also* Exhibits 6 and 7, § 1.1.

[5] Wages are a mandatory subject of union bargaining. *See* 29 U.S.C. § 158(d), also known as Section 8(d) of the Labor Management Relations Act.

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
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a) The Resolution Is A Binding Contract Prohibiting This Action

A valid contract requires an offer and acceptance, meeting of the minds, and consideration. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). Here, all of the elements of a valid contract exist: Henderson Taxi offered a resolution to resolve the Grievance, the Union accepted it, and Henderson Taxi provided consideration. *See* Exhibits 8-10. As the Resolution was a binding contract executed between the putative class's lawful representative and fully and formally settled and resolved the Grievance regarding minimum wage claims, *see* Exhibit 10, Plaintiff's claim is barred. *See May*, 121 Nev. at 674-75, 119 P.3d at 1259-60 ("**Schwartz had authority to negotiate on behalf of the Mays and accepted the offer in writing**. … The fact that the Mays refused to sign the proposed draft release document is inconsequential to the enforcement of the documented settlement agreement. **The district court … properly compelled compliance by dismissing the Mays' action**.") (emphasis added). As such, it cannot proceed at all, much less as a class action.

b) The Resolution and CBA Modification Acts as an Accord and Satisfaction

An "accord and satisfaction" is an agreement whereby one party to a dispute performs or provides something to the other party to a dispute in satisfaction of a claim. *Walden v. Backus*, 81 Nev. 634, 636-37, 408 P.2d 712, 713 (1965); *Advanced Countertop Design, Inc. v. Second Judicial Dist. Court*, 115 Nev. 268, 270, 984 P.2d 756, 758 (1999) (stating in the context of workers' compensation, a remedial statutory scheme: "We have consistently held that an injured employee's acceptance of a final SIIS award acts as an accord and satisfaction of common law rights, thereby extinguishing *any* common law right the employee may have had against his employer.") (emphasis in original) (citing *Arteaga v. Ibarra*, 109 Nev. 722, 776, 858 P.2d 387, 390 (1993)).

"A finding of an accord and satisfaction requires a 'meeting of the minds' of the parties on the terms of the agreement." *Morris DeLee Family Trust v. Cost Reduction Engineering, Inc.*, 101 Nev. 484, 486, 705 P.2d 161, 163 (1985) (citing *Pederson v. First Nat'l Bank of Nevada*, 93 Nev. 388, 392, 566 P.2d 90 (1977)). Here, the Resolution shows a clear meeting of the minds between

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Henderson Taxi and the Union: "Accordingly, the [Union] considers this matter formally settled under the collective bargaining agreement between Henderson Taxi and the [Union] **and state law** as implemented through such collective bargaining agreement. Pursuant to [the CBA], this resolution is final and binding on all parties." Exhibit 10 (emphasis added). As the authorized representative of Henderson Taxi cab drivers, the Union was able to execute contracts on their behalf. *See May*, 121 Nev. at 674-75, 119 P.3d at 1259-60. Thus, there is no reasonable dispute that the Resolution combined with the payments made to the putative class members acts as a complete accord and satisfaction of any minimum wage claim that might have existed. Thus, Plaintiffs claim necessarily fails based on the Union's accord and satisfaction implemented through the Resolution. Further, any suit to invalidate the Resolution and the accord and satisfaction, would necessarily consist of a breach of contract claim based on the CBAs, which claim is preempted by the Labor Management Relations Act. *See* Section III(A)(2), below. In fact, if the Union acts against the interests of their members, members can bring a duty of fair representation claim against the Union. *See, e.g., 14 Penn Plaza LL v. Pyett*, 556 U.S. 247, 249 (2009).

c) The Union and Drivers Have Elected Their Remedy

The Union's and the cab driver's acceptance of the resolution and payment of two years of the differential between Nevada minimum wage (which excludes any credit for tips actually received) and what drivers were actually paid also acts as an election of remedies which bars Plaintiff's claim, at least as to those drivers who have accepted payment. The doctrine of election of remedies is meant to prohibit double recovery or inconsistent recovery on claims. 25 Am. Jur.2d Election of Remedies, § 3 ("The purpose of the doctrine of election of remedies is not to prevent recourse to any remedy, or to alternative remedies, but to prevent double recoveries or redress for a single wrong."); *see also Taylor v. Burlington N. R.R.*, 787 F.2d 1309, 1317 (9th Cir. 1986) ("A plaintiff may prosecute actions on the same set of facts against the same defendant in different courts …. But as soon as one of those actions reaches judgment, the other cases must be dismissed.") For example, in the context of workers' compensation, once a claimant has received a final award of workers' compensation benefits, he or she is estopped and barred from seeking a

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second recovery in tort. *Arteaga v. Ibarra*, 109 Nev. 772, 858 P.2d 387 (1993) ("Acceptance of a final SIIS award extinguishes any common law right an injured person might have had against his employer."); *Advanced Countertop Design*, 115 Nev. at 271-72, 984 P.2d at 758-59 (explaining that injured employees are "permitted only one recovery" whether that be through tort or through workers' compensation: "Although Tenney could have filed an intentional tort action instead of accepting a workers' compensation award for his injury, no law supports the district court's decision that he could to both.")

Here, the Union filed the Grievance with Henderson Taxi and negotiated the Resolution, which included both a modification of pay on a going forward basis and payment to all cab drivers the difference between what they were actually paid and the minimum wage over the prior two years. Exhibit 10. This agreement was memorialized in the final and binding Resolution, which acted to modify the CBA between Henderson Taxi and the Union. *Id.* Thus, the Union, the exclusive bargaining representative of Henderson Taxi cab drivers elected the grievance process and the resolution as the remedy for Henderson Taxi cab drivers. Thus, all drivers are estopped and barred from seeking a distinct remedy from Henderson Taxi and attempting to obtain a double recovery. Further, each cab driver who has actually accepted payment from Henderson Taxi, which is a substantial majority of the purported class, has elected his or her remedy for any allegedly owed past due minimum wage payments.[6]

d) Whether the CBAs Waived Any Minimum Wage Rights

Further, the Minimum Wage Amendment allows a union to waive its provisions if the waiver is clear and unmistakable. Nev. Const. Art. 15 s. 16(B). In general, "in cases presenting the question of whether the plaintiff's union 'bargained away the state law right at issue .... a court may look to the CBA to determine whether it contains a clear and unmistakable waiver of

[6] This is not a situation where an employee fails to obtain an award through CBA-arbitration where the collective bargaining agreement did not authorize arbitration and is, thus, permitted to pursue a remedy in court. *See 14 Penn Placa LLC v. Pyett*, 556 U.S. 247, 261-64 (2009). Here, the Union was authorized to grieve this issue and did obtain a remedy. Thus, it, and every cab driver accepting payment, has elected a remedy and is estopped from seeking another.

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state law rights without triggering [section] 301 preemption." *Burnside v. Kiewit Pac. Corp.*, 491 F.3d 1053, 1060 (9th Cir. 2007) (quoting *Cramer v. Consol. Freightways, Inc.*, 255 F.3d 683, 692 (9th Cir. 2001) (alterations in original)).[7] This case presents a clear and unmistakable waiver contained in the CBA and the Resolution entered between Henderson Taxi and the Union, which modified the CBA, *see* Exhibit 10; *St. Vincent Hospital*, 320 NLRB at 44-45.

Again, the Union is the exclusive bargaining agent of Henderson Taxi cab drivers and the Union has been empowered to negotiate terms and conditions of employment, including pay, with Henderson Taxi by the NLRB and the CBAs. Exhibits 6 and 7, § 1.1. As the putative class members' exclusive bargaining agent, the Union negotiated the "final and binding" Resolution which amended the CBA, *St. Vincent Hospital*, 320 NLRB at 44-45, and settles any further right to past due minimum wage payments after Henderson Taxi made the payments agreed to between it and the Union. *See* Exhibit 10 ("Accordingly, the ITPEU/OPEIU considers this matter formally settled under the collective bargaining agreement between Henderson Taxi and the ITPEU/OPEIU and **state law as implemented through** such collective bargaining agreement. Pursuant to Article XV, Section 15.7 [of the CBA], this resolution is **final and binding** on all parties.") (emphasis added). The Resolution between the Union and Henderson Taxi expressly modifies the CBA (i.e., it changes the pay negotiated under the CBA to be at least state minimum wage for the remaining duration of the agreement) and expressly waives past rights through modification of the CBA as allowed under federal labor law and the Minimum Wage Amendment itself. *See St. Vincent Hospital*, 320 NLRB at 44-45; *Burnside*, 491 F.3d at 1060; Section III(A)(2), below. As such, Sargeant's claims are preempted by the LMRA and may not be reviewed by this Court. *Id.*

Further, this resolution of the minimum wage issue demonstrates that the cab drivers who accepted payment were not coerced into anything. *See id.* Rather, they were represented by an

[7] For the limits of the "look to" doctrine and a state court's authority to interpret a CBA, see Section III(A)(2), below.

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experienced and zealous advocate—the AFL-CIO Union—they elected to represent them in their dealings with Henderson Taxi and which obtained a resolution for them pursuant to the CBA, which they also voted to approve and signed. *See* Exhibits 5, 8-10. The fact that this representative was the Union rather than Mr. Greenberg is only relevant to Mr. Greenberg's bottom line, not the law. As such, Plaintiff's claim is preempted.

2. Plaintiff's Claims Are Preempted By Federal Labor Law Because They Require Interpretation of the CBAs

As discussed above, the LMRA preempts these claims because of the express provisions of the modified CBA and the Resolution. In addition, the LMRA preempts wage and hour claims where the plaintiff's claims "rest on interpretations of the underlying collective bargaining agreement". *Vadino v. A. Valey Engineers*, 903 F.2d 253, 266 (3d Cir. 1990) (FLSA overtime claim was preempted by LMRA where it was dependent on interpretation of the correct wage rate under CBA); *Martin v. Lake Cty. Sewer Co., Inc.*, 269 F.3d 673, 679 (6th Cir. 2001) (affirming dismissal of FLSA claim based on LMRA preemption where plaintiff claimed employer did not pay him the hourly wage set forth in CBA).

Here, Plaintiff's claim for unpaid minimum wage is preempted by the LMRA because the claims require interpretation of the operative CBA and how the CBA language, including the Resolution's modification thereof, interacts with the Minimum Wage Amendment.

The Minimum Wage Amendment expressly states:

> The rate shall be five dollars and fifteen cents ($5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents ($6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer.
>
> The provisions of this section may not be waived by agreement between an individual employee and an employer. All of the provisions of this section, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section.

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Id. at s. 16(A)-(B). Both of these sections of the Minimum Wage Amendment require interpretation of the CBAs in the circumstances of this case.

a) The Tier of Minimum Wage to Which Any Individual Driver Is Entitled Is Dependent on Interpretation of the CBAs

The Minimum Wage Amendment provides a unique two-tier minimum wage structure. What minimum wage an employee is entitled to depends on whether they receive health insurance benefits from their employer, the type of health insurance benefits they receive from their employer, and the cost of those benefits to the employee. Nev. Const. Art. 15 s. 16(A); *see also* NAC 608.102-608.104. Pursuant to the operative CBA, Henderson Taxi provides its taxi drivers health insurance benefits. *See* Exhibit 6, Article VII; Exhibit 7, Article VII. Specifically, Henderson Taxi provides employee only coverage to its cab drivers and pays a certain amount towards dependent care coverage. Exhibit 7, Section 7.1; *see also* **Exhibit 13**, (2014 health insurance rates, demonstrating different rates for self-insurance, employee+1 insurance, and family coverage). However, if the cost of insurance changes, those costs are covered through increased "trip charges" as provided in Section 5.2(c) of the CBAs.[8] The CBA further provides that for employees who do not work a full 18 shifts for five-day workweek schedules or 15 full shifts for four-day workweek schedules, the situation is more complicated. Under the CBA, these employees have to reimburse Henderson Taxi various percentage amounts of the cost of Henderson Taxi-paid coverage depending on how many shifts they work. Exhibit 7, Sections 7.3-7.4. Further, what qualifies as a shift is entirely dependent on other provisions in the CBA, e.g., vacation, medical leave, etc. *See id.*, Section 7.7; Section 4.6(b)—Section 4.8. Thus, what insurance costs Henderson Taxi cab drivers in any month is dependent on an analysis of the CBA and how changing health care costs affect the minimum wage analysis will require more than a casual glance at the CBA. Rather, the claim is inextricably intertwined with the CBA and

[8] How this trip charge impacts a driver's book, upon which wages are based, is also a matter requiring analysis of the CBA. *See* Exhibit 7, Article V, cross-referencing Section 7.1.

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"'substantially dependent on analysis of'" the CBA. *Adkins v. Mireles*, 526 F.3d 531, 539 (9th Cir. 2008) (quoting *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985)). Thus, Plaintiff's minimum wage claim is preempted by the LMRA. *Vadino*, 903 F.2d at 266 (FLSA overtime claim was preempted by LMRA where it was dependent on interpretation of the correct wage rate under CBA).

In this regard, the Court should also consider the fact that the Minimum Wage Amendment allows unions and employers to completely opt-out of the Minimum Wage Amendment. Given a CBA's ability to entirely avoid the application of the Minimum Wage Amendment, a CBA preempting a minimum wage claim under particular factual circumstances, such as those present here, is utterly unsurprising. *See* Nev. Const. Art. 15 s. 16(B); *see also Atchley v. Heritage Cable Vision Assoc.,* 101 F.3d 495, 500–02 (7th Cir. 1996) (holding that claims for unpaid wages under the Indiana Wage Payment Act were preempted by § 301 because interpretation of a collective bargaining agreement was necessary to determine the regularity and frequency of wage payments); *Gelb v. Air Con Refrigeration & Heating,* 356 Ill.App.3d 686, 292 Ill.Dec. 250, 826 N.E.2d 391, 399 (Ill.App.Ct.2005) (holding a state wage law claim preempted by § 301 of the LMRA because adjudication would require the court to interpret terms of a collective bargaining agreement "to determine the pay scale for each plaintiff, ... and the amount of overtime each plaintiff worked in the relevant time period, and calculate those figures using the formula prescribed by the collective bargaining agreement"). Here, analysis of Plaintiff's entitlement to state law rights under that state law (the particular minimum wage rate) *requires* interpretation of the CBA, including how the Resolution amended the CBA and resolved past claims. Thus, Plaintiff's claims are preempted and cannot proceed.

b) Determining a Driver's Hours of Work Requires Interpretation of the CBA

Sargeant claims that the issue of whether all putative class members were paid the compensation required by the Minimum Wage Amendment can be resolved by a simple review of the "number of hours they worked in each applicable pay period, the compensation they were paid, and the applicable minimum wage rate." Mot. at 7:18-19. Defendant has already established

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that the applicable minimum wage rate is entirely dependent on interpretation of the CBA above. In addition, however, the number of hours putative class members worked is also dependent on interpretation of the CBA. For example, pursuant to Section 4.5 of the CBA, drivers are to take meal and rest breaks, not to exceed one hour in the aggregate. Exhibit 6; Exhibit 7. However, Plaintiff contends that he and some other drivers would not take their breaks in violation of the CBA. Mot., Exhibit J, ¶ 4. In addition, pursuant to Section 4.4, Henderson Taxi may require drivers to "report for work not more than fifteen minutes prior to the shift time of each, and an employee who fails to report by the required time forfeits any right to work on that day, although the Company shall be entitled to utilize him as an extra." Exhibit 6; Exhibit 7. Whether this time constitutes hours worked or whether an employee had any hours worked if he waited around to be used as an extra requires interpretation of the CBA. This necessary interpretation requires Plaintiff's claim be preempted.

B. Certain Legal Issues Can and Should Be Determined Prior to Certification

1. Should *Yellow Cab* Be Applied Retroactively to Henderson Taxi: No, It Reasonably Relied on Then-Existing Case Law

In determining whether a judicial decision should only be applied prospectively or whether it may be applied retrospectively, the Nevada Supreme Court has stated:

> In determining whether a new rule of law should be limited to prospective application, courts have considered three factors: (1) "the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed;" (2) the court must "weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation;" and (3) courts consider whether retroactive application "could produce substantial inequitable results."

Breithaupt v. USAA Prop. & Cas. Ins. Co., 867 P.2d 402, 405 (Nev. 1994) (internal quotations omitted). More specifically, the Nevada Supreme Court stated that "[t]he overruling of a judicial construction of a statute generally will not be given retroactive effect." *Id.* at 406 (citing *United States v. Estate of Donnelly*, 397 U.S. 286, 295 (1970)); *see also* 20 Am. Jur. 2d *Courts* § 148 (1965) ("A decision that overrules the judicial interpretation of a statute, generally, has only prospective effect equal to the effect ordinarily inherent in a legislative change of a statutory rule,

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9555 Hillwood Drive, 2nd Floor
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Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

except where the overruling decision declares the statute unconstitutional,[9] in which case the decision may be applied retroactively, to the statute's effective date."). Thus, the *Estate of Donnelly* case makes clear that where the issue of retroactivity arises because of a new decision that overturns a prior judicial decision, the presumption is against retroactive application of the new decision.

Further, "[w]hether a judicial decision should apply retroactively is a matter of judicial discretion to be decided on a case-by-case basis." *Passarello v. Grumbine*, 87 A.3d 285, 307 (Pa. 2014) (applying similar factors to those stated in *Breithaupt*, but determining the factors weighed in favor of retroactive application in that case). In this case and as against Henderson Taxi, all three of the above factors weigh against retroactive application of the *Yellow Cab* decision and the Court should exercise its discretion in this case against retroactivity and not apply *Yellow Cab* retroactively against Henderson Taxi.

a) Retrospective Application of the *Yellow Cab* Decision to Henderson Taxi Would Produce Inequitable Results

Henderson Taxi will first address the third factor courts consider regarding whether a decision should be applied retroactively because the understanding of this factor affects the understanding of the two remaining factors in this particular case and its unique circumstances.

In this case, the retrospective application of the *Yellow Cab* decision would be extremely inequitable as to Henderson Taxi. As discussed above, Henderson Taxi's primary management team was previously involved in litigation that involved *this exact issue*: whether the taxicab and limousine driver exemption from minimum wage was affected by the Minimum Wage Amendment. *See generally*, *Lucas v. Bell Trans*, 2009 WL 2424557; Exhibit 1, Bell Decl., ¶ 2. In that litigation, the court expressly found that the Minimum Wage Amendment had not impliedly

[9] *Thomas* did not declare any portion of NRS Chapter 608 to be unconstitutional. Rather, *Thomas* declared that certain provisions of NRS Chapter 608, specifically the exemptions under NRS 608.250(2)(e), had been impliedly repealed. The Nevada Supreme Court has since clarified that the Constitutional Minimum Wage Amendment only supplants NRS Chapter 608 "to some extent" and there is "overlap between the Minimum Wage Amendment and NRS Chapter 608". *Terry v. Sapphire Gentlemen's Club*, 336 P.3d 951, 955 (Nev. 2014).

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or otherwise repealed the limousine driver exemption from minimum wage under Nevada law. *Id.*, at *8 (holding that the Minimum Wage Amendment "did not repeal NRS 608.250 or its exceptions. Because the [Nevada Wage and Hour Law] expressly states that it does not apply to taxicab and limousine drivers, the Limousine Plaintiffs cannot sue for a violation of unpaid minimum wages under Nevada law.") (citing NRS 608.250(2)(e)). As the president of Bell Trans and Presidential Limousine, the defendants in the *Lucas* case, Brent Bell was well aware of the Court's decision that the minimum wage exemptions for taxi and limousine drivers had not been impliedly repealed by the Minimum Wage Amendment and was governed by it in other business dealings.

Thus, there was a judicial decision on which Henderson Taxi was *reasonably entitled to and did reasonably rely* which held that the Minimum Wage Amendment had not eliminated the exemption for taxicab drivers set forth in NRS 608.250. While Plaintiff attempt to allege that Henderson Taxi acted wrongfully by not seeking a judicial determination regarding its obligation to pay or not pay minimum wages under the Minimum Wage Amendment, the *Lucas* case was express in its decision. As Henderson Taxi relied on a judicial decision holding that the Minimum Wage Amendment did not eliminate the exemptions in NRS 608.250(2)(e), retrospective application of the *Yellow Cab* decision would be unjust and inequitable. Thus, the third factor weighs heavily in favor of this Court refusing to apply the *Yellow Cab* decision retroactively.

b) The *Yellow Cab* Decision Established a New Rule of Law by Overruling Clear Past Precedent on which Litigants May Have and Did Rely and Deciding an Issue of First Impression

"A decision announces a new rule of law if it *overrules prior law*, *expresses a fundamental break from precedent* that litigants *may have relied on*, or *decides an issue of first impression not clearly foreshadowed by precedent*." *Passarello*, 87 A.3d at 308 (emphasis added) (citing *Fiore v. White*, 757 A.2d 842, 847 (Pa. 2000)). The *Yellow Cab* decision did exactly this by determining that exemptions from minimum wage that had been part of Nevada law for decades had been "impliedly repealed" by the Nevada Minimum Wage Amendment despite multiple courts holding to the contrary. Because these exemptions had been long relied upon by the entire

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limousine and taxicab industry and had stayed on the books as Nevada law up through the *Yellow Cab* decision, *Yellow Cab* plainly overrules prior law relied upon by numerous companies throughout the state of Nevada. Further, in *Lucas v. Bell Trans*, discussed above, the court analyzed the effect of the Minimum Wage Amendment on the limousine and taxicab driver exemption from minimum wage in NRS 608.250(2)(e). The *Lucas* court considered the language of the Minimum Wage Amendment, the language of NRS 608.250(2)(e), and substantial other authority before holding "that the [Minimum Wage] Amendment did not repeal NRS 608.250 or its exceptions" and that "[b]ecause the [Nevada Wage and Hour Law] expressly states that it does not apply to taxicab and limousine drivers, the Limousine Plaintiffs cannot sue for a violation of unpaid minimum wages under Nevada law." *Lucas*, 2009 WL 2424557, *8. As Henderson Taxi's management was involved in the *Lucas* case, Henderson Taxi's management reasonably relied on it. Exhibit 1, Bell Decl. ¶ 2. Further, state courts and companies routinely look to and rely on decisions from the United States District Court for the District of Nevada, demonstrated by the fact that various state district courts cited *Lucas* for this exact proposition and that companies beyond Henderson Taxi looked to this decision and relied thereon. *See, e.g.*, Exhibit 3, *Greene v. Executive Coach & Carriage*, 2:09-cv-00466-GMN-RJJ, Dkt. # 16 (D. Nev. Nov. 10, 2009); Exhibit 4, *Gilmore v. Desert Cab, Inc.*, Case No. A-12-668502-C.

Finally, this change in law was not clearly foreshadowed by precedent. The fact that the *Lucas* court expressly analyzed the Minimum Wage Amendment's effect on the NRS 608.250 exemptions and held that they were not repealed thereby, but rather continued in full force and effect, demonstrates that there was no clear precedent foreshadowing the *Yellow Cab* decision's change in the law. Further, after the *Lucas* decision was issued, multiple other courts followed *Lucas* and found similarly. *See, e.g.*, *Green v. Executive Coach & Carriage*, 2:09-cv-00466-GMN-RJJ, Dkt. # 16 (D. Nev. Nov. 10, 2009); Exhibit 4, *Gilmore v. Desert Cab, Inc.*, Case No. A-12-668502-C. Finally, three of the seven justices of the Nevada Supreme Court dissented from the *Yellow Cab* decision and argued that Nevada precedent required that the exemptions not be impliedly repealed and that they should remain in full force and effect. *Yellow Cab*, 327 P.3d at 522-524 (Parraguirre, J. dissenting). While a 4-3 decision is clearly binding on all future conduct

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(unless otherwise overturned), the substantial dissent at even the Nevada Supreme Court level demonstrates that precedent did not clearly demand a decision one way or the other, but that the issue was not clearly foreshadowed by precedent. Thus, the first element for non-retroactive application is met and strongly argues for this Court to exercise its discretion in favor of non-retroactivity.

c) Retrospective Operation of the *Yellow Cab* Decision Will Not Further Its Operation

Cab drivers were exempt from Nevada's minimum wage law for decades. The Nevada Supreme Court only recently decided that the 2006 Minimum Wage Amendment *impliedly* repealed this exemption. *See generally*, *Yellow Cab*, 327 P.3d 518. This is and will be the case going forward barring further amendment to the Nevada Constitution. The *Yellow Cab* decision needs no assistance in furthering its operation as it clearly dictates Nevada minimum wage requirements going forward regarding who is and who is not exempt in the taxicab and limousine industries. Thus, whether this Court applies the *Yellow Cab* decision retrospectively will in no way further the operation of the *Yellow Cab* decision and will in no way assist cab drivers who are now earning the minimum wage (and whose Union obtained a Resolution for them). In fact, retrospective application of the *Yellow Cab* decision against Henderson Taxi will fundamentally and necessarily degrade litigants' ability to trust in the finality of judicial decisions. Further, refusal to retrospectively apply *Yellow Cab* does not deny the putative class a recovery because the Union has already obtained it for them. Thus, this element leans in favor of non-retrospective application of the *Yellow Cab* decision.

This case presents a situation where the Court must decide how to use its discretion and either apply *Yellow Cab* retroactively or not. Given that all three of the factors set forth by the Nevada Supreme Court in *Breithaupt* weigh against retrospective application of the *Yellow Cab* decision and the specific unjustness of applying a decision retrospectively to a defendant whose management had been a party to and relied on a contrary judicial decision for years, this Court should exercise its discretion and not apply *Yellow Cab* retroactively to Henderson Taxi.

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2. What Is the Appropriate Statute of Limitations: Two Years

Resolution of this issue significantly changes the number of people who may be part of the action and who would receive notice. It makes no sense to send out notice now to some group of people when the actual potential class is likely to be much smaller.

Plaintiff filed his Complaint on February 18, 2015, in part claiming to seek "minimum wages owed since November 28, 2006 and continuing into the future …" under the Minimum Wage Amendment. Compl. ¶ 18. As such Plaintiff seeks to assert claims going back approximately **nine years**. However, NRS 608.260 provides a two-year statute of limitations for minimum wage claims. NRS 608.260. Thus, Plaintiffs' claims beyond February 18, 2013, are statutorily barred. As a majority of courts to have considered this precise issue have decided, the two-year statute of limitations set forth in NRS 608.260 continues to apply along with the Minimum Wage Amendment and continues to limit Plaintiff's state law claims to the two years prior to the filing of Plaintiff's Complaint. Specifically, and as discussed in more detail below, the text and history of the Minimum Wage Amendment clearly establish that its reference to "all available" and "appropriate" remedies requires it to be harmonized with NRS 608.260 and its two-year statute of limitations. Indeed, it is the only way to construe the Minimum Wage Amendment in a way that is both consistent with its plain meaning and the Court's decisions in *Yellow Cab* and *Terry v. Sapphire Gentlemen's Club*, 336 P.3d 951 (2014) ("*Sapphire*") and which avoids absurd results. Plaintiffs, in contrast, appear to urge something radically different. By their allegations, Plaintiffs propose that the Court find that the Amendment's statute of limitations has somehow been expanded. This is entirely illogical and clashes with the Minimum Wage Amendment's plain meaning and narrow purpose. This would expand the scope of liability beyond the two-year period of time that employers are obligated to maintain wage records, contravening the due process protections in Article 1, Sections 1 and 8 of the Nevada Constitution and the United State Constitution. For these reasons, Plaintiffs' construction of the Minimum Wage Amendment is illogical and cannot be the law.

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a) NRS 608.260 Has Not Been Impliedly Repealed

The Nevada Supreme Court addressed implied repeal of a statute or portions thereof in *Yellow Cab*. In that decision, the Nevada Supreme Court clarified: "The presumption is against implied repeal unless the enactment conflicts with existing law to the extent that both cannot logically coexist." *Yellow Cab*, 327 P.3d at 521 (*citing W. Realty Co. v. City of Reno*, 172 P.2d 158, 165 (1946)). However, courts must construe statutes, "so as to be in harmony with the constitution" if reasonably possible. *Id.* (citing *State v. Glusman*, 98 Nev. 412, 651 P.2d 639 (1982)). As such, the Minimum Wage Amendment impliedly repealed a statute, or subpart thereof, if it is "irreconcilably repugnant" therewith and conflicts with the Minimum Wage Amendment to the extent that "both cannot logistically coexist." *Id.* Because it is reasonably possible to do so, NRS 608.260 must be construed in harmony with the Minimum Wage Amendment.

In *Yellow Cab*, cab drivers brought a class action against Yellow Cab arguing that they had not been paid pursuant to the constitution's minimum wage requirements during the course of their employment. *Id.*, at 519. The taxicab drivers argued that the Minimum Wage Amendment limited the exemptions from minimum wage by setting forth particular exemptions and not others, and thus repealing the exceptions listed in NRS 608.250(2). *Id.*, at 520. The Nevada Supreme Court, compared the Minimum Wage Amendment with NRS 608.250(2) and stated:

> the Amendment imposes a mandatory minimum wage pertaining to all employees, who are defined for purposes of the Amendment as any persons who are employed by an employer, except for those employees under the age of 18, employees employed by nonprofits for after-school or summer work, and trainees working for no longer than 90 days. Nev. Const. art. 15, § 16(C). In contrast, NRS 608.250(2), which was enacted prior to the Minimum Wage Amendment, excludes six classes of employees from its minimum wage mandate, including taxicab drivers.

Yellow Cab, at 521.

The *Yellow Cab* Court then reasoned that because the Amendment created a "broad definition of employee and listed very specific exemptions necessarily and directly in conflict with the legislative exception for taxicab drivers established by NRS 608.250(2)(e)," the two were "*irreconcilably repugnant*," such that both could not stand together. *Id.*, at 521 (emphasis added)

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

(quotations and citations omitted). Thus, the *Yellow Cab* court determined that NRS 608.250(2) is impliedly repealed by the Minimum Wage Amendment. *Id.*, at 521.

The Nevada Supreme Court reaffirmed its *Yellow Cab* reasoning in *Sapphire* and held that the Minimum Wage Amendment only supplants the statutory minimum wage laws in NRS 608 "to some extent." *Sapphire*, 336 P.3d at 955. That "extent" is limited to the exemptions that were previously set forth in NRS 608.250(2). It does not extend to statutes which are easily harmonized with the Minimum Wage Amendment, including the remainder of NRS 608. *See*, *Yellow Cab*, 327 P.3d at 521 ("The presumption is against implied repeal unless the enactment conflicts with existing law to the extent that both cannot logically coexist.") For example, in *Sapphire*, the Court noted that the Minimum Wage Amendment contained a definition of "employer" which overlapped to some extent with the definition set forth in NRS 608.011. 336 P.3d at 955. Nonetheless, the *Sapphire* court implicitly approved of the "Department of Labor continu[ing] to use the definition of "employer" found in NRS 608.011, not that in the Minimum Wage Amendment." *Id.* Thus, despite providing a definition for employer, because it was not irreconcilably repugnant to NRS 608.011, the Supreme Court did not find that NRS 608.011 had been impliedly repealed. *See id.*

Applying *Yellow Cab* and *Sapphire*, it is clear that NRS 608.260 can and therefore must be read in harmony with the Minimum Wage Amendment. NRS 608.260 and the Minimum Wage Amendment address entirely different aspects of Nevada's minimum wage scheme. The Minimum Wage Amendment establishes the minimum wage now applicable and who is entitled to receive it. NRS 608.260 provides the limitations period for minimum wage violation claims. Therefore, unlike the statute at issue in *Yellow Cab*, NRS 608.260 does not provide for "very specific" regulations "directly in conflict" with the Amendment. *See id.* at 521. Accordingly, NRS 608.260 must be construed in harmony with the Amendment.

b) The Minimum Wage Amendment Largely Embraces NRS Chapter 608's Existing Scheme

The Minimum Wage Amendment contains a private right of action, but does not contain an independent statute of limitations. Nonetheless, the Minimum Wage Amendment limits its

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

private cause of action to remedies already "available" and "appropriate" under the law, impliedly adopting those aspects of NRS Chapter 608 that are not contrary to its own text. *See* Const. Article 15, Sec. 16(B). In interpreting the constitution, courts seek "to determine the public understanding of [the] legal text" leading up to and "in the period after its enactment or ratification." *Strickland v. Waymire*, 235 P.3d 605, 608 (Nev. 2010) (citations omitted). The text itself is the starting point of this analysis and "must . . . not be read in a way that would render words or phrases superfluous[.]" *Blackburn v. State*, 294 P.3d 422, 426 (Nev. 2013). Because the "Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary, as distinguished from technical meaning." *Id.* (citing *District of Columbia v. Heller*, 554 U.S. 570 (2008)). If a provision's "language is clear on its face," the analysis is at an end. *Strickland*, 235 P.3d at 608 (internal quotation omitted).[10] If, however, the language requires further interpretation, the Court looks to "history, public policy, and reason for the provision." *Landreth v. Malik*, 251 P.3d 163, 167 (Nev. 2011) (citation omitted).

While the Minimum Wage Amendment does not expressly include a statute of limitations within its text, it is incorrect to believe it is entirely silent on this matter. Article 15, Section 16(B) provides, in part: "An employee . . . may bring an action . . . and shall be entitled to ***all remedies available under the law or in equity appropriate*** to remedy any violation of this section …." (Emphasis added.) Thus, statutes of limitations and the time-period in which a party may recover are issues covered by the Minimum Wage Amendment by reference and incorporation. Accordingly, the critical issue is determining what voters meant when they limited claims under the Minimum Wage Amendment to "available" and "appropriate" remedies under the law or in equity.

The meaning of the Minimum Wage Amendment's reference to "remedies *available* under the law or in equity *appropriate* to remedy" a violation is plain. The meaning of the words

[10] "Rules of statutory construction apply to constitutional interpretation." *Stickland*, 235 P.3d at 611 n. 2 (citation omitted).

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

"available" and "appropriate" are determined by their "normal and ordinary" meaning. *Strickland*, 235 P.3d at 608. The meaning can be further interpreted in light of the fact that the Minimum Wage Amendment amends the state's wage laws. *See, e.g., State v. Fallon*, 685 P.2d 1385, 1389-91 (Nev. 1984) (provisions in a common statutory scheme should be interpreted harmoniously). Looking to its normal and common meaning, "available," means "suitable or ready for use," "readily obtainable," etc.[11] "Appropriate", in turn, means "suitable or fitting for a particular purpose, person, occasion, etc."[12] Here, the remedies that are and were suitable and ready for use at the time of the Minimum Wage Amendment's passage are NRS Chapter 608's existing provisions that do not expressly conflict with the Minimum Wage Amendment. These include, among other provisions: 1) NRS 608.115's requirement that employers maintain wage records for two years; and 2) NRS 608.260's two-year statute of limitations period for minimum wage claims that mirrors the statutory recordkeeping requirement. Further, the two-year statute of limitations is the appropriate time period because it fits with the purpose of the statutory requirement that employers maintain wage records for a period of two years. Any statute of limitations beyond two years cannot reasonably be considered appropriate given this statutory framework and the limited requirement for employers to maintain wage records for only two years.

Any attempt to expand the statute of limitations period for minimum wage claims under the auspices of the Minimum Wage Amendment would, in actuality, remove the words "available" and "appropriate" from the Minimum Wage Amendment or strip them of all meaning. *See Albios v. Horizon Cmtys., Inc.*, 132 P.3d 1022, 1028 (Nev. 2006) ("[W]e construe statutes such that no part of the statute is rendered nugatory or turned to mere surplusage."). Any lengthened statute of limitations period would not be consistent with the Minimum Wage Amendment, nor would it be appropriate. Rather, courts must harmonize the Minimum Wage Amendment with NRS 608.115

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

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[11] *Available at*: http://www.dictionary.com, accessed June 5; *see also* Merriam-Webster's Collegiate Dictionary (11th ed. 2007).

[12] *Available at*: http://www.dictionary.com, accessed June 5; *see also* Merriam-Webster's Collegiate Dictionary (11th ed. 2007).

and NRS 608.260, and continue to limit minimum wage claims to the two-year period in which an employer must maintain wage records. Harmonizing these provisions is the only way to give effect to Article 15, Section 16's language concerning "all remedies available" and "appropriate." *See Blackburn*, 294 P.3d at 426.

c) NRS 608.260's Reference to NRS 608.250 Does Not Create Conflict between NRS 608.260 and the Minimum Wage Amendment

Plaintiffs may assert that NRS 608.260's reference to NRS 608.250(1) somehow requires that NRS 608.260 be considered impliedly repealed in total because the procedure set forth in NRS 608.250(1) to set the minimum wage no longer exists. This argument is incorrect. NRS 608.250(1) states in pertinent part: "the Labor Commissioner shall, in accordance with federal law, establish by regulation the minimum wage which may be paid to employees in private employment within the State." Thus, every year, the Labor Commissioner issues a bulletin and announces the state's minimum wage. NRS 607.100. This procedure is precisely that which is contemplated by NRS 608.260 which references, "the minimum wage prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250." *See* NRS 608.260. The Minimum Wage Amendment simply substitutes one procedure for producing the bulletin/publication of minimum wage for another procedure.

Moreover, the Labor Commissioner enforces Nevada's minimum wage pursuant to NRS 608.270. Like NRS 608.260, NRS 608.270 specifically references NRS 608.250. Therefore, if NRS 608.260 is voided due to its reference to NRS608.250, then NRS 608.270 is also voided and the Labor Commissioner has *no authority to enforce the minimum wage*. This, of course, is not the law. The Labor Commissioner is designated with the authority to set the minimum wage rate under NRS 607.100 and to enforce the minimum wage under NRS 608.270.[13] The fact that the Labor Commissioner's regulations must also comply with the Nevada Constitution is not

[13] The Labor Commissioner prescribes the minimum wage pursuant to NAC 608.100.

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

something new only required by the Minimum Wage Amendment. The Labor Commissioner's pronouncements have always had to comply with the constitution. Now, there is simply one more element to that: the Minimum Wage Amendment now provides specific minimum wage requirements and the Labor Commissioner's regulations must additionally comply with those requirements. Accordingly, NRS 608.260's reference to NRS 608.250 and the Labor Commissioner is not improper and in no way renders NRS 608.260 in conflict with the Minimum Wage Amendment any more than renders NRS 608.270 in conflict.

In sum: the Minimum Wage Amendment provides for how the minimum wage shall be set and for damages in minimum wage violation claims based on NRS Chapter 608. NRS 608.260 sets forth the statute of limitations for the damages in minimum wage violation claims. Thus, there is no conflict between the two.

d) When the Constitution Does Not Provide a Statute of Limitations, the Nevada Supreme Court Looks to the Most Analogous Statute of Limitations

Where a constitutional provision provides a right of action but does not set forth a statute of limitations, the Nevada Supreme Court has avoided looking to NRS 11.220's catchall provision to limit the cause of action. Rather, the Nevada Supreme Court has identified and applied the limitations period applicable to a similar statutory claim to the constitutional claim. For example, in *White Pine Lumber Co. v. City of Reno*, 801 P.2d 1370, 1371 (Nev. 1990), the Nevada Supreme Court considered the statute of limitations that would apply to a constitutional takings claims. The *White Pine* court held that the statute of limitations for Nevada's civil adverse possession statute also applied to wrongful takings claims. *Id.* The *White Pine* court specifically rejected the use of the state's "catch all" statute of limitations because it was inconsistent with the nature of the claims before the court. This approach is consistent with federal law and is how this court should proceed here. *See, e.g., Wilson v. Garcia,* 471 U.S. 261, 279-80 (1985) (the appropriate statute of limitations for a constitutional tort is the most analogous statute of limitations). Thus, this Court should apply the statute of limitations set forth in NRS 608.260.

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

e) Public Policy and Due Process Concerns Mandate Harmonization

Harmonization of the Minimum Wage Amendment and the existing provisions in NRS Chapter 608 is also required by public policy concerns. Statutes of limitations exist to limit the ability to bring stale claims and to allow parties to be free of fear of stale claims for which they no longer have evidence to defend themselves. *See State Indus. Ins. Sys. v. Jesch*, 709 P.2d 172, 175 (Nev. 1985). This constraint is directly tied to due process considerations. For example, limitations periods serve an express evidentiary purpose in that they reduce "the likelihood of error or fraud that may occur when evaluating factual matters occurring many years before. Memories fade, witnesses disappear, and evidence may be lost." *Id.* In addition, statutes of limitations "assure a potential defendant that he will not be liable under the law for an indefinite period of time." *Id.*; *see also American Pipe & Const. Co. v. Utah*, 414 U.S. 538, 554 (1974) (the "right to be free of stale claims in time comes to prevail over the right to prosecute them").

That the Minimum Wage Amendment and NRS 608.260 concern wage and hour claims only increases the importance of the statutory limitations period. Claimants are unlikely to remember the specific hours worked in a given workweek several years after having done the work. Turnover, heavy turnover in many industries, affects witness availability and limits a defendant's ability to defend itself. In Nevada, NRS 608.115(3) only requires employers to maintain wage records "for a 2-year period following the entry of information in the record." If any limitations period applied to minimum wage violation claims other than a two-year period, the Amendment would create due process concerns as well as a gaping, irrational hole in the statutory scheme. Such a conclusion would establish a system in which an employer's compliance with statutory record keeping obligations would be entirely insufficient to defend against potential minimum wage claims outside of the two-year period and may expose the employer to claims of spoliation or a burden shifting argument. *See generally Anderson v. Mt. Clemens*, 328 U.S. 680, 686-87 (1946). Such a result is irrational and conflicts with due process.

Employers cannot be required to operate under the perpetual risk that they may be subjected to state wage and hour class actions brought by employees employed long ago. These

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

considerations underpin NRS Chapter 608 and the laws of Nevada's neighboring states, all of which apply shorter limitations periods for minimum wage violations than Plaintiffs contend should apply in Nevada. *See, e.g.,* Utah Code Ann. § 34-40-205 (two year statute of limitations on wage claims); Cal. Code Civ. P. § 338(a) (three year limitations period applicable to most claims for unpaid wages).

f) Application of Any Other Limitations Period Is Absurd

When analyzing language the Court "seeks to avoid interpretations that yield unreasonable or absurd results." *J.E. Dunn Northwest, Inc. v. Corus Construction Venture, LLC*, 249 P.3d 501, 505 (2011) (citation omitted). In seeking to avoid unreasonable results, laws addressing the same subject should be construed harmoniously unless there is an express conflict. *Presson v. Presson*, 147 P. 1081, 1082 (Nev. 1915) ("Being *in pari materia*, the two acts must be read and construed together, and so harmonized as to give effect to them both, unless the latter act expressly repeals the former, or is so repugnant to it that the former should be held repealed by implication.").[14]

As regards the Minimum Wage Amendment, adopting anything other than the two-year statute of limitations in NRS 608.260 is unreasonable and absurd because it renders the terms "available" and "appropriate" nugatory. Such a rule would ignore the fact that causes of action which can be brought without regard to a limitations period exist only when the Legislature has specifically and expressly provided for an unlimited period that the claim is not subject to a limitations period. *Cf.* NRS 11.290 ("in actions brought to recover money or other property deposited with any bank . . . there is no limitation").

[14] The Minimum Wage Amendment and NRS 608, in particular NRS Sections 608.250-.290, address the same subject matter—minimum wage. As a consequence, the provisions must be read and construed together, and harmonized in a way that gives effect to them both, unless there is an express conflict. *Sapphire* recognizes this principle by noting, "Still, because of the overlap between the Minimum Wage Amendment and NRS 608, the Minimum Wage Amendment's definition of employer could be instructive …." 336 P.3d at 955.

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If the Minimum Wage Amendment's supposed silence on a subject were considered authoritative and sufficient to require the implied repeal of NRS 608.260, the Minimum Wage Amendment's silence regarding the other enforcement provisions in NRS Chapter 608 would require their repeal as well. For example, NRS 608.270 and other administrative enforcement mechanisms would necessarily be repealed. There is no way to meaningfully distinguish NRS 608.260 from provisions such as NRS 608.270, which allows the Labor Commissioner to enforce the minimum wage. The fact that these statutes speak to a broad class of defined or inchoate remedies creates the same "conflict" that allegedly exists between NRS 608.260 and Minimum Wage Amendment. Such reasoning is unsustainable.

g) The Majority of Other Courts to Consider this Issue Have Held that the NRS 608.260 Limitations Period Applies

This issue has already been addressed by multiple lower courts. Of these, Henderson Taxi is only aware of one decision wherein the Court determined that anything other than the two-year statute of limitations set forth in NRS 608.260 applies, and in that case, the court still limited the statutory period to four-years rather than the plaintiff's request for an unlimited statutory period. The following cases have held that the statute of limitations period for minimum wage claims remains two years:

- *McDonagh v. Harrah's Las Vegas, Inc.*, Case No. 2:13-cv-1744 JCM-CWH, 2014 U.S. Dist. Lexis 82290, *11-12 (June 17, 2014)
- *Rivera v. Peri & Sons Farms, Inc.*, 805 F. Supp. 2d 1042, 1046 (D. Nev. 2011) (*aff'd* at 735 F.3d 892, 902 n.7 (9th Cir. 2013))
- *Williams v. Claim Jumper Acquisition Co., LLC*, Eighth Judicial Dist. Ct. Case No. A-702048 (**Exhibit 14**)[15]
- *Tyus v. Wendy's of Las Vegas, Inc.*, Case No. 2:14-cv-00729-GMN-VCF, 2015 WL 1137734, *3 (D. Nev. March 13, 2015) ("Unlike the statutory provision in *Thomas*, the Court finds that the two-year statute of limitations period found in NRS 608.260 does not necessarily and directly conflict with the Minimum Wage Amendment, which would make it irreconcilably repugnant. Rather, the statutory provision can be construed in harmony with the constitution.")

[15] As matters of public record and judicial decisions, the Court may take judicial notice of these decisions.

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Las Vegas, NV 89134
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

- *Perry v. Terrible Herbst, Inc.*, Eighth Judicial Dist. Ct. Case No. A-704428 (**Exhibit 15**)
- *Franklin v. Russel Road Food & Beverage, LLC*, Eighth Judicial Dist. Ct. Case No. A-709372 (**Exhibit 16**)[16]

The following cases are, to Defendant's counsel's knowledge, the cases that have applied anything other than a two-year statute of limitations:

- *Diaz v. MDC Restaurants, LLC*, Eighth Judicial Dist. Ct., Case No. A-701633 (four-year statutes of limitations) (**Exhibit 17**)
- *Perera v. Western Cab Co.*, Eighth Judicial Dist. Ct. Case No. A-707425 Bell Case (four-year statute of limitations) (**Exhibit 18**)
- *Sheffer v. US Airways, Inc.*, 2015 WL 345192 (D. Nev. June 1, 2015) (finding a three-year statute of limitations)

It is telling that the majority of courts to examine this issue have determined that a two-year limitations period applies. However, the fact that there is no consensus also demonstrates that this is a complex legal issue that will need to be resolved by the Nevada Supreme Court. As the Nevada Supreme Court is set to rule on this issue in *Williams*, Supreme Court Case No. 66629, the Court may stay this case pending the resolution of this issue.[17] This decision will dictate what amount of discovery is appropriate and prevent the parties from engaging in unneeded and costly discovery battles and obviate the need to send out amended notices in the future—a costly endeavor.

3. Should the Court Equitably Toll the Statute of Limitations: No, Henderson Taxi Provided the Constitutionally Required Notice

Henderson Taxi has always abided by its duty to provide legally required notices to its employees. In this instance, Plaintiff contends that Henderson Taxi cab drivers were entitled to written notification of minimum wage rights and rates and that the question of whether Henderson Taxi provided such notices is a common question or law applicable to each member of the putative class. *See* Mot. at 10-11. In addition, Plaintiff argues that if Henderson Taxi did not provide such notice, the statute of limitations on Plaintiff's claim should be tolled. The simple

[16] Defendant contends that this is the most thorough and well-reasoned analysis yet on this subject.
[17] The Supreme Court has ordered oral argument be set for the next available calendar in *Williams*.

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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

fact is that, contrary to Plaintiff's baseless assertion, Henderson Taxi has complied with this duty. To do so, Henderson Taxi has posted all required notifications in poster form in the drivers' check-in and check-out room since well before the Minimum Wage Amendment became effective. *See* NRS 608.013; *see also* Exhibit 2, Knapp Decl., ¶ 9; **Exhibits 19-20**, photographs of the posters posted at Henderson Taxi and demonstrating their location.

The posting of this information in written form as provided by the Labor Commissioner satisfies Henderson Taxi's duty to provide notice as a matter of law and renders Plaintiff's cited case law (regarding failure to post) irrelevant. *See* Exhibit 2, Knapp Decl., ¶ 9; Exhibits 19-20. Any contrary decision would diminish employer's ability to rely on the Federal Department of Labor and the Nevada Labor Commissioner's Office and would create much stricter and more difficult notification requirements than actually exist. *See generally*, NRS Chapter 608; NAC Chapter 608; Nev. Const. Art. 15, s. 16(A). If the putative plaintiffs were unable to determine from these notices that they may have been entitled to minimum wage, that is the fault of the law having been confusing and, as the Nevada Supreme Court recently determined in *Yellow Cab*, contradictory. Rather than simply arguing for notice, it seems that Plaintiff's counsel seeks to imply a duty on Henderson Taxi to have interpreted and explained the law to its drivers. This would have been improper and unlawful. Henderson Taxi could not have been required to provide its drivers with legal advice regarding the continued applicability of the NRS 608.250 exemptions. For example, such advice likely would have constituted the unauthorized practice of law, NRS 7.285, and, had Henderson Taxi provided its drivers the advice it believed to be accurate, *i.e.*, that the Minimum Wage Amendment did not impliedly repeal the NRS 608.250 exemptions, Plaintiff's counsel would now be accusing it of having lied to and defrauded its employees. As such, Henderson Taxi could only have been required to post written notice of the minimum wage and it complied with the Minimum Wage Amendment's mandate regarding notice by having presented the legally required notices and posters. Thus, there is no basis to toll the statute of limitations based on Plaintiff's incorrect assertion that Henderson Taxi did not provide notice of the minimum wage to its employees.

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

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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF NEVADA

Sup. Ct. No. 69773

MICHAEL SARGEANT, , Individually and on behalf of others similarly situated, Petitioners, vs. HENDERSON TAXI, Respondents,	Dist. Ct No.: A-15-714136-C

APPELLANTS' MOTION TO REHEAR AND REVISE
THE COURT'S ORDER OF NOVEMBER 3, 2016

Leon Greenberg, NSB 8094
A Professional Corporation
2965 S. Jones Boulevard - Suite E-3
Las Vegas, Nevada 89146
Telephone (702) 383-6085
Fax: 702-385-1827

Attorney for Appellants

Appellant, pursuant to Nev. R. App. P. 27(a) presents this motion to rehear and revise the Court's Order of November 3, 2016 (Ex. "A") denying what the Court construed as a motion for leave to intervene by Michael Zeccarias and Tracy Cheatham. Upon such rehearing, it is requested that the Court either grant that motion to intervene or expressly confer jurisdiction upon the district court to grant that motion. Alternatively, as explained *infra*, it is requested that this motion be construed as a petition for rehearing pursuant to Nev. R. App. P. 40(a) and upon such rehearing the Court grant the petition of Michael Zeccarias and Tracy Cheatham to intervene as appellants in this case.

THE COURT'S NOVEMBER 3, 2016 ORDER CONTEMPLATES A MOTION FOR POST-JUDGMENT INTERVENTION FOR THE PURPOSES OF THIS APPEAL BEING FILED IN THE DISTRICT COURT EVEN THOUGH THE DISTRICT COURT LACKS JURISDICTION TO GRANT THAT MOTION

The Court's Order of November 3, 2016 does not comply with, or address, established precedent going to very heart of the matter. The Petition filed by Michael Zeccarias and Tracy Cheatham (Ex. "B" Petition and "C" Petition Appendix), treated by this Court as a motion, sought intervention solely for the purpose of prosecuting this appeal and *after* the district court had granted final judgment. As held by the authority cited in their Petition at page 4, *Olsen v. Olsen Family Trust,* 858 P.2d 385, 387 (Nev. Sup. Ct. 1993), Nevada's district courts

have no jurisdiction to grant post-judgment intervention for appeal purposes. *Id.*, citing *Lopez v. Merit Ins. Co.*, 853 P.2d 1266 (Nev. Sup. Ct. 1993); *Aetna Life & Casualty v. Rowan*, 812 P.2d 350 (Nev. Sup. Ct. 1991) and *Albany v. Arcata Associates*, 799 P.2d 566 (Nev. Sup. Ct. 1990). In *Olsen* this Court dismissed an appeal of a final judgment by a putative appellant/interested party who secured an order granting post-judgment intervention from the district court. *Id.* It instead directed such interested party to seek intervention by writ. *Id.*

In light of *Olsen's* clear holding that the district court could not grant them post-judgment intervention for appeal purposes, Zeccarias and Cheatham filed their Petition to intervene. Ex. "B." That this Court elected to treat that Petition as a motion in this case is not material to their interests or their right to have their request for intervention determined on its merits. Their problem is that the Court's Order of November 3, 2016, Ex. "A," stating they "should seek to intervene in the district court pursuant to NRCP 24," and that they may seek writ relief in this Court if aggrieved by the district court's decision, contravenes this Court's jurisprudence, solidly established by *Olsen,* that the district court has no power to grant such intervention.

While the Court's Order of November 3, 2016, Ex. "A," cites *Hairr v. First Jud. Dist. Ct.*, 132 Nev. Adv. Op. 16 (March 10, 2016), that Opinion does not mention or question the holding of *Olsen.* Nor did *Hairr* involve a request for

post-judgment intervention or discuss that issue. It did establish that when the district court denies a motion for intervention, prior to judgment, the proposed intervenor can seek review of such denial by writ.

If Zeccarias and Cheatham filed a motion for post-judgment intervention before the district court they would, under *Hairr*, be entitled to seek review of a denial of that motion via a writ petition to this Court. But under *Olsen*, the district court would have to deny that motion for lack of jurisdiction without addressing its merits and *Hairr* does not alter the district court's obligation to so rule. While conceivably such a process could be utilized by this Court to overrule *Olsen*, it seems doubtful that the Court intended to create such an inefficient process.

In light of the foregoing, Zeccarias and Cheatham and seek rehearing of the Court's November 3, 2016 Order and a revision of that Order that either grants them intervention or otherwise sets forth a process, consistent with *Olsen*, for this Court to consider their request for intervention on the merits. They take no position whether that process should be through a motion in this appeal or as a separate writ Petition proceeding as was done in *Olsen*.[1] Alternatively, they ask the Court to amend the November 3, 2016 Order to make clear that *Olsen* is being

[1] If this Court were to follow the *Olsen* approach and require a writ Petition proceeding Zeccarias and Cheatham ask that this motion be construed as a Petition for Rehearing of their originally filed petition pursuant to NRAP 40(a). It is filed in a sufficiently timely fashion to accommodate such treatment.

overruled and the district court has the jurisdiction to grant a motion by Zeccarias and Cheatham for post-judgment appeal intervention.

CONCLUSION

Wherefore, proposed intervenors Michael Zeccarias and Tracy Cheatham motion for rehearing should be granted.

Dated: Clark County, Nevada
November 21, 2016

Submitted by
Leon Greenberg Professional Corporation

/s/ *Leon Greenberg*
Leon Greenberg, Esq.
Attorney for the Appellant
2965 South Jones Boulevard - Suite E3
Las Vegas, Nevada 89146
(702) 383-6085

EXHIBIT “A”

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL SARGEANT, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED
Appellant,
vs.
HENDERSON TAXI,
Respondent.

No. 69773

FILED

NOV 03 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING MOTION

This is an appeal from an order granting summary judgment in an action brought by appellant, a taxi driver challenging the application of Nevada's Minimum Wage Act. The district court denied appellant's motion to certify a class of similarly situated taxi drivers and granted summary judgment. Michael Zeccarias and Tracy Cheatham have submitted a petition for an extraordinary writ seeking to intervene as appellants in this appeal. We direct the clerk of this court to file the petition received on September 29, 2016, and we construe it as a motion for leave to intervene.

Having considered petitioners' request, we deny it. Petitioners should seek to intervene in the district court pursuant to NRCP 24. Petitioners may seek writ relief from this court if the district court denies their motion. *Hairr v. First Jud. Dist. Ct.*, 132 Nev. Adv. Op. 16, 373 P.3d 98 (2016).

It is so ORDERED.

_____, C.J.

cc: Leon Greenberg Professional Corporation
Holland & Hart LLP/Las Vegas

EXHIBIT “B”

IN THE SUPREME COURT OF NEVADA

Sup. Ct. No.

MICHAEL ZECCARIAS and TRACY CHEATHAM individually on and behalf of others similarly situated as proposed intervenors in *Sargeant v. Henderson Taxi,* Nevada Supreme Court appeal no. 69773,	)
Petitioners,	)
vs.	)
HENDERSON TAXI,	)
Respondent and Real Party in Interest,	)
and	)
MICHAEL SARGEANT,	)
Respondent.	)

PETITION FOR EXTRAORDINARY WRIT GRANTING INTERVENTION

Leon Greenberg, NSB 8094
A Professional Corporation
2965 S. Jones Boulevard - Suite E-3
Las Vegas, Nevada 89146
Telephone (702) 383-6085
Fax: 702-385-1827

Attorney for Petitioners Zeccarias and Cheatham and Respondent Sargent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities

PETITION FOR EXTRAORDINARY WRIT GRANTING INTERVENTION

Petitioners, Michael Zeccarias and Tracy Cheatham, individually and on behalf of others similarly situated ("Zeccarias" and "Cheatham"), by and through their attorney, LEON GREENBERG PROFESSIONAL CORPORATION, petitions this Court to issue an extraordinary writ granting Zeccarias and Cheatham intervenor status as appellants in the pending appeal before this Court in *Sargeant v. Henderson Taxi*, appeal no. 69773.

Dated: September 28, 2016

/s/ *Leon Greenberg*
Nevada Bar No. 8094
2965 South Jones Boulevard - Suite E3
Las Vegas, Nevada 89146
(702) 383-6085
Attorney for Petitioners Zeccarias and Cheatham and Respondent Sargeant

STATEMENT PURSUANT TO NRAP 21(a)(1) AND NRAP 17(b)

Pursuant to NRAP 21(a)(1) this petition is not properly or presumptively assigned to the Court of Appeals pursuant to NRAP 17(b). This petition seeks an extraordinary writ granting petitioners intervention as appellants, as discussed *infra*, in an appeal already pending before this Court. The Court of Appeals would

be without jurisdiction to grant such a petition.

REASON FOR PETITION AND STATUS OF PETITIONERS

Pending before this Court under appeal number 69773 is the appeal from final judgment of Michael Sargeant, appellant before this Court and plaintiff in the appealed from final judgment entered by the Eighth Judicial District Court in *Sargeant v. Henderson Taxi,* case number A-15-714136-C. The Sargeant case was brought as a putative class action on behalf of an alleged class of taxi driver employees of Henderson Taxi for unpaid minimum wages pursuant to Article 15, Section 16, of the Nevada Constitution (the Minimum Wage Amendment or "MWA"). PA 1-7.[1] The district court, prior to entering final judgment dismissing, on the merits, Sargeant's case, also issued an order denying Sargeant's motion for class certification pursuant to NRCP Rule 23 and finding that class certification would be improper for multiple reasons. PA 43-45. Based on the findings contained in that prior order denying class certification, the district court issued an order granting summary judgment to Henderson Taxi. PA 46-51.

The Eighth Judicial District Court in the *Sargeant v. Henderson Taxi* case also granted the post-judgment motion of Henderson Taxi for an award of attorney's fees of $26,715 against Sargeant under NRS § 18.010(2)(b) finding

[1] References to Petitioners' Appendix are denominated as PA.

Sargeant had improperly prosecuted his case in the district court. PA 52-57. That post judgment order is also separately appealed to this Court under appeal number 70837. Petitioners are not seeking to intervene in that separate appeal.

Currently pending before the district court is a motion by Henderson Taxi to enforce a judgment execution, issued in connection with its $26,715 judgment against Sargeant. That judgment execution seeks to take possession of Sargeant's legal claims including his two pending appeals to this Court arising from the *Sargeant v. Henderson Taxi* district court litigation. PA 84-86. The district court has denied Sargeant's request to stay enforcement of the judgment pending the resolution of Sargeant's appeals to this Court. PA 58-59. As a result, Henderson's motion to attach Sargeant's appeals, and by doing so take possession of and terminate those appeals, is currently scheduled to be before the district court for hearing on October 19, 2016 and, if the district court so chooses, may be granted at that time.

Petitioners are members of the putative class on whose behalf Sargeant commenced his case in the district court. PA 1-7. Zeccarias was not made a party to the district court proceedings, but did participate in those proceedings by supporting Sargeant's request for class certification and advising the district court of his willingness to serve as a class representative. PA 37-40. Petitioners now

seek to intervene as additional appellants in *Sargeant v. Henderson Taxi* appeal number 69773 to ensure that this Court has a proper party before it to prosecute that appeal, in which they and the other putative class members have a significant personal stake. By the petitioners obtaining the status of appellants and intervenors in that case, this Court will be able to reach the merits of that appeal irrespective of whether Henderson is successful in attaching Sargeant's appeal rights and terminating Sargeant's status as an appellant before this Court.

MEMORANDUM OF POINTS AND AUTHORITIES

I. AN EXTRAORDINARY WRIT SEEKING INTERVENTION IS PROPERLY BROUGHT BY PETITIONERS WHO ARE NON-PARTIES AGGRIEVED BY THE DISTRICT COURT'S JUDGMENT

This Court, in *Olsen v. Olsen Family Trust,* 858 P.2d 385, 387 (Nev. Sup. Ct. 1993) found that a non-party in the district court who was aggrieved by a final judgment of that court could seek intervention by an extraordinary writ in this Court for the purpose of appealing such district court order. Accordingly, petitioners are now seeking such intervention.

II. PETITIONERS ARE AGGRIEVED PARTIES BY VIRTUE OF THEIR STATUS AS PUTATIVE CLASS MEMBERS, THEIR INTERESTS WILL BE HARMED IF INTERVENTION IS DENIED, AND GRANTING INTERVENTION WILL ADVANCE THE INTERESTS OF JUSTICE

A. Putative class members, such as petitioners, are aggrieved parties who are properly granted intervention to pursue an appeal of an order denying class action certification.

United Airlines, Inc. v. McDonald, 432 U.S. 385, 392-96 (1977), found that when a district court denies class certification a member of the putative class may properly intervene, after entry of final judgment, to seek appellate review of such decision. *Olsen* discussed *United Airlines* and did not question the propriety of allowing intervention to appeal a denial of class certification but only the procedure by which such an intervention is to be secured. 858 P.2d at 386.

No sound reason exists to find that petitioners lack a sufficient personal stake in the *Sargeant v. Henderson Taxi* appeal to be denied intervention. Zeccarias even advised the district court of his willingness to be a class representative in that case, the district court instead finding that class certification was improper (and ultimately granting Henderson Taxi summary judgment based upon the same findings).

B. Petitioners will be harmed if their petition for intervention is denied.

In response to this petition Henderson Taxi may assert that the petitioners will sustain no injury if this petition is denied, as they can seek independent relief by filing their own, separate, action or actions. That is untrue. If the *Sargeant v. Henderson Taxi* appeal number 69773 is terminated, as Henderson Taxi is attempting through its judgment execution, the petitioners, and the putative class members, will have their MWA claims diminished by operation of the statute of limitations.

NRCP Rule 23 effectuated a toll of the statute of limitations for all of the putative class members in the *Sargeant v. Henderson Taxi* case upon its filing on February 19, 2015. *See*, *Jane Roe Dancer v. Golden Coin, Inc.,* 176 P.3d 271, 275 (Nev. Sup. Ct. 2008). But, unless the district court's denial of class certification is reversed upon appeal, that statute of limitations toll ceased 235 days later on October 12, 2015, when the district court entered its order denying class certification. *See*, *American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 561 (1974).

Petitioner Cheatham will be personally, and materially, harmed by a non-merits termination of the *Sargeant v. Henderson Taxi* appeal number 69773.

Without a toll of the statute of limitations, as he would secure from a successful appeal in that case, a portion of his MWA claim will be non-actionable in an individual lawsuit, under even the most expansive (four year) view of the MWA's statute of limitations.[2] Cheatham commenced his employment with Henderson Taxi in 2009 and may be owed unpaid minimum wages by Henderson Taxi going back to 2009. PA 138-139. If the *Sargeant* appeal is successful he will be able to seek a possible "four year" recovery of minimum wages owed to him from February 19, 2011 forward as a class member in the *Sargeant* action. Yet if he was to file an independent lawsuit today, September 28, 2016, his "four year" recovery would only be for the time period from September 28, 2012 plus 235 days prior to that date, or from February 6, 2012. Denying Cheatham intervention, and an opportunity to seek reversal upon appeal of the district court decision in *Sargeant*, will render almost one year of his potential MWA claim "non-actionable" and beyond the statute of limitations.

Even if Zeccarias could now commence a MWA lawsuit against Henderson

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[2] Whether the applicable statute of limitations for MWA claims is four years or two years is the subject of a consolidated proceeding which has been fully argued before this Court *en banc* and is currently awaiting decision. *See*, *MDC Restaurants, LLC vs. Dist. Ct.,* Appeal No. 68523.

Taxi and bring his individual claim fully within the statute of limitations,[3] he would not be able to seek class wide relief for the same period of time as he would if the *Sargeant v. Henderson Taxi* appeal number 69773 is heard by this Court and results in a reversal of the district court's judgment. Such a limitation on his ability to seek class relief is properly viewed as an injury to his legal rights if intervention is denied. That is because the MWA, at subparagraph B, gives aggrieved employees the right to seek "appropriate" equitable (injunctive)[4] and all other remedies available in Nevada's Courts for any "violation" of its protections. Zeccarias's legal right to seek those remedies for Henderson Taxi's violations of the MWA will be negatively impacted even if he could still, individually in a separate action, recover the same measure of unpaid minimum wages owed to him personally under the MWA.

C. Granting intervention will promote the interests of justice and judicial efficiency.

The interests of justice, in respect to the vindication of the interests of the putative class members, will be advanced by having the *Sargeant v. Henderson*

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[3] That would be possible if the applicable statute of limitations under the MWA is four years but not if it was two years. PA 37.

[4] Sargeant's complaint seeks equitable and injunctive relief. PA 5-6.

Taxi appeal number 69773 proceed to a decision on the merits. Only by securing such a decision on the merits, and the reversal of the district court's order denying class certification, will the full measure of class relief intended in that case be secured. Any subsequently commenced class action case, even if successful, will not secure the same measure of relief because of the continuing running of the statute of limitations (now for almost one year) since the denial of class certification in *Sargeant* by the district court.

The interests of justice, and judicial efficiency, will also be advanced by granting intervention to the petitioners and ensuring the *Sargeant v. Henderson Taxi* appeal number 69773 is resolved on its merits. If that appeal is terminated without a decision, as Henderson Taxi is attempting, the decisions made by the district court in *Sargeant v. Henderson Taxi* will be argued by Henderson Taxi to be correct and persuasive in any subsequently filed class or individual case. That will be the circumstance whether such a case is brought by petitioners or any another putative class member. While the district court decisions in *Sargeant v. Henderson Taxi* would not be binding on any subsequent plaintiff it would be highly inefficient for this Court to *not* review those decisions when directly interested parties, such as petitioners, are willing to intervene and prosecute that appeal.

III. RESPONDENT MICHAEL SARGEANT SUPPORTS THE GRANTING OF THE PETITION FOR INTERVENTION

As certified to by his attorney, respondent to the petition, Michael Sargeant, supports the granting of the petition for intervention. PA 140-141. Sargeant's interests and those of the petitioners are identical, at least in respect to the *Sargeant v. Henderson Taxi* appeal number 69773 and they are also represented by the same counsel. No additional burden will be placed upon this Court, nor will any conflict arise, by the granting of the petition.

CONCLUSION

Wherefore, for all of the foregoing reasons, the petition should be granted.

Dated: September 28, 2016

Respectfully submitted,

/s/ Leon Greenberg

Leon Greenberg, NSB 8094
Attorney for Petitioners and
Respondent Sargeant
2965 S. Jones Boulevard - Suite E-3
Las Vegas, Nevada 89146
Telephone (702) 383-6085
Fax: 702-385-1827

Proof of Service

The undersigned certifies that on September 29, 2016, she served the within:

PETITION FOR EXTRAORDINARY
WRIT GRANTING INTERVENTION

by Electronic Court filing to:

Anthony L. Hall, Esq.
R. Calder Huntington, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Fl.
Las Vegas, NV 89134

Attorneys for Real Party in Interest and Respondent
Henderson Taxi

/s/ Sydney Saucier
Sydney Saucier

AFFIDAVIT OF VERIFICATION

Leon Greenberg, being first duly sworn, deposes and states that:

1. I am a member of the law firm of Leon Greenberg Professional Corporation, counsel of record for petitioners Michael Zeccarias and Tracy Cheatham.

2. This affidavit is made by me pursuant to N.R.A.P. Rule 21 (a)(5) in that I am fully and personally familiar with the fact presented by this petition based upon my handling of this litigation on behalf of my clients, the petitioners.

3. I know the contents of the foregoing petition and the facts stated therein are true of my own knowledge, or I believe them to be true based on the proceedings, documents, and papers filed in this case either in the proceedings taken before this court in *Sargeant v. Henderson Taxi*, appeal no. 69773 and the Eighth Judicial District Court of the State of Nevada, *Sargeant v. Henderson Taxi,* case number A-15-714136-C

4. True and correct copies of orders, opinions, proceedings and papers served and filed by the parties to this case prior to the date of this petition and that may be essential to an understanding of the matters set forth in this petition are

contained in the Appendix to this petition.

Leon Greenberg, Attorney for Petitioner
Nevada Bar No.: 8094

SUBSCRIBED AND SWORN to before me, September 28, 2016

County of Clark

State of Nevada

This instrument was acknowledged before me on this 28th day of September, 2016 by Leon Greenberg

Dana Sniegocki

EXHIBIT “C”