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Elizabeth A. Brown  
Clerk of Supreme Court

**IN THE SUPREME COURT OF NEVADA**

**Sup. Ct. No.**

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MICHAEL ZECCARIAS and TRACY )  
CHEATHAM individually on and behalf )  
of others similarly situated as proposed )  
intervenor 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. )  
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**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

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**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.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup> 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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<sup>2</sup> 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,<sup>3</sup> 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)<sup>4</sup> 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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<sup>3</sup> 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.

<sup>4</sup> 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, 2<sup>nd</sup> 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.

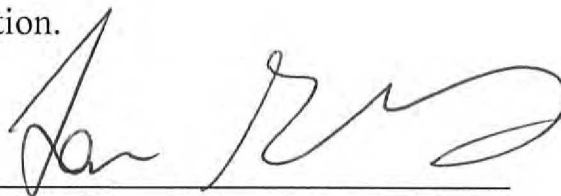
2. This affidavit is made by me pursuant to N.R.A.P. Rule 21 (a)(5) in that I am fully and personally familiar with the fact presented by this petition based upon my handling of this litigation on behalf of my clients, the petitioners.

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.



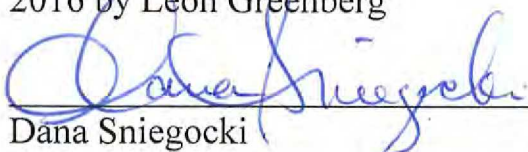
Leon Greenberg, Attorney for Petitioner  
Nevada Bar No.: 8094

SUBSCRIBED AND SWORN to before me, September 28, 2016

County of Clark

State of Nevada

This instrument was acknowledged before me on this 28<sup>th</sup> day of September, 2016 by Leon Greenberg

  
Dana Sniegocki