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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF NEVADA

Sup. Ct. No. 71521

Dist. Ct No.: A-15-714136-C

MICHAEL SARGEANT, Appellant,

vs.

HENDERSON TAXI, Respondents

RESPONSE TO ORDER TO SHOW CAUSE

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RESPONSE TO ORDER TO SHOW CAUSE

Appellant Michael Sargeant files this response to the Court's Order to Show Cause of November 17, 2016.

ARGUMENT

I. APPELLANT'S APPEAL WAS FILED TO PRESERVE HIS RIGHTS AND CONCERNS A "POST JUDGMENT" ORDER FOR WHICH IT IS UNCLEAR A RIGHT OF APPEAL EXISTS OR NEEDS TO BE EXERCISED TO PROTECT APPELLANT'S INTERESTS

As this Court's Order to Show Cause notes, there is no express provision for a right to appeal a district court's denial of a stay of proceedings. *See, Brunzell Const. Co. v. Harrah's Club*, 404 P.2d 902, 905 (1965). Appellant's ("Sargent's") situation differs because this case, unlike in *Brunzell*, has already proceeded to a final judgment in the district court. Such final judgment has resulted in the fully briefed appeal under Case No. 69773. As a result, Sargent is not sure whether the district court's post-judgment order denying a stay of certain judgment enforcement proceedings is a "special order entered after final judgment" within the meaning of NRAP 3A(b)(8). Sargent's notice of appeal was filed to ensure he was not waiving any right to review the district court's determinations in respect to post-judgment enforcement of judgment matters.

The underlying reason for Sargeant's notice of appeal, and request for a stay

in the district court, was to ensure that his fully briefed appeal in case Case No. 69773 proceeds to a resolution on the merits. Respondent, Henderson Taxi, is attempting to “attach” Sargeant’s appeal in that case as a “chose of action” through a judgment execution issued in the same district court case. If it is successful in doing so it will then seek to terminate that appeal as the rightful owner of the same and deprive Sargeant of any determination by this Court of the merits of such final judgment appeal. These circumstances are fully detailed in Sargeant’s pending motion to stay judgment fully briefed to this Court on October 5, 2016 under Appeal No. 70837 and which is currently awaiting a decision. Ex. “A” copy of Sargeant’s moving papers and exhibits thereto in connection with that motion. A grant of that motion would render this appeal superfluous.

Sargeant also filed this appeal because of his concern he may waive his right to contest the validity of any possible “attachment” by the district court of his final judgment appeal under Appeal No. 69773 if he does *not* file an appeal of the district court’s order denying a stay of judgment enforcement. *See, RMA Ventures California v. SunAmerica Life Ins. Co.*, 576 F.3d 1070, 1076 (10th Cir. 2009) (Appeal attachment by judgment creditor, and termination of appeal as a result without a ruling on the appeal’s merits, permitted because, among other things, the appellant had waived their right to contest the attachment by “failing to appeal the

district court's denial of the motion to stay" the judgment enforcement).

CONCLUSION

Wherefore, appellant requests that the Court's Order to Show Cause be denied and this appeal be allowed to proceed. Alternatively, appellant requests that the Court find appellant has not waived any right to contest any judgment enforcement actions taken by the district court by failing to pursue an appeal of the district court's order denying a stay of judgment enforcement.

Dated: December 19, 2016

Leon Greenberg Prof. Corp.

/s/ Leon Greenberg

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CERTIFICATE OF MAILING

The undersigned certifies that on December 19, 2016, she served the
within:

RESPONSE TO ORDER TO SHOW CAUSE

by Electronic Court filing to:

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Attorneys for Respondents

/s/ Sydney Saucier
Sydney Saucier

EXHIBIT "A"

Electronically Filed
Sep 16 2016 09:43 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

IN THE SUPREME COURT OF NEVADA

Sup. Ct. No. 70837

Dist. Ct No.: A-15-714136-C

MICHAEL SARGEANT, Petitioner,

vs.

HENDERSON TAXI, Respondents

**MOTION TO STAY THE JUDGEMENT
OF THE DISTRICT COURT PENDING THE
OUTCOME OF THIS APPEAL**

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Appellant, pursuant to Nev. R. App. P. 8(a), presents this motion to stay the judgment of the district court pending the resolution of this appeal.

SUMMARY

Appellee Henderson Taxi (“Henderson”) is attempting to use a post judgment attorney’s fee award (the “sanction award” of \$26,715) in this case to prevent appellate review of important matters of first impression involving Article 15, Section 16, of the Nevada Constitution (the Minimum Wage Amendment or “MWA”). Appellant Michael Sargeant (“Sargeant”) alleges Henderson violated the MWA rights of a class of its taxi driver employees. The district court found Sargeant’s MWA rights had been rendered non-justiciable by an agreement between Henderson and its union and dismissed his case. Ex. “A” district court order entered February 3, 2016. That judgment is appealed to this Court in number 69773, appellant’s opening brief filed on July 27, 2016. Neither this Court nor the Nevada Court of Appeals have ever opined on when an agreement between a union and an employer will terminate an employee’s MWA rights.

Sargeant has no assets and his sole source of income is social security disability payments and he cannot pay any portion of the sanctions award or post a *supersedes* bond and his counsel is forbidden from doing so. Ex. “B,” Sargeant Declaration *and see*, Nevada Rules of Professional Conduct Rule 1.8(l).

Henderson has served a judgment execution under NRS 21.080 seeking to take

possession of Sargeant's appeals to this Court in this case as "choses of action" that it can attach (and then terminate) to satisfy the sanctions award. Ex. "C," writ of execution served by Henderson on August 29, 2016, doing so in disregard of *Butwinick v. Hepner*, 291 P.3d 119, 122 (Nev. Sup. Ct. 2012) (Party's right to appeal judgment in the same case not subject to NRS 21.080 execution). The foregoing circumstances render a stay of the district court's judgment necessary to ensure that Sargeant's appellate rights are preserved.

COMPLIANCE WITH NRAP RULE 8(a)(2)(A)(ii)

Sargeant's motion to the district court to stay judgment enforcement without the posting of a *supersedes* bond was heard on August 24, 2016 and denied by an order entered on September 12, 2016. Ex. "D," order. The district court found Sargeant failed to demonstrate that any of the factors discussed in *Nelson v. Herr*, 122 P.3d 1252, 1254 (Nev. Sup. Ct. 2005) weigh in favor of granting such a stay and that he failed to demonstrate that the status quo might be maintained without a *supersedes* bond posting. Ex. "D," page 1, lines 25 to page 2, line 2.

THE HISTORY AND PROCEDURAL POSTURE OF THIS CASE

This appeal is of the district court's post-judgment order granting Henderson \$26,715 in attorney's fees under NRS § 18.010(2)(b) because Sargeant's litigation conduct was without "reasonable grounds or to harass." Ex. "E," district court order entered July 8, 2016. The district court found Sargeant

had improperly made a motion for partial reconsideration of the district court's prior order of October 8, 2015 and failed to properly oppose Henderson's simultaneous motion for summary judgment based upon such prior order. *See*, Ex. "E" ¶¶ 8-11. Yet that October 8, 2015 order, while finding an "accord and satisfaction" of Sargeant's MWA claim resulted from the union's settlement with Henderson, did not state this case was concluded or whether Sargeant could enforce the terms of that settlement in the district court. Ex. "F," district court order of October 8, 2015. Sargeant advised the district court, in his motion for partial reconsideration and his opposition to Henderson's summary judgment motion, that he was unclear on whether any issues remained to be litigated after the October 8, 2015 order and, alternatively, requested entry of final judgment so the October 8, 2015 order could be appealed. *See*, Ex. "G," Sargeant's motion for partial reconsideration or alternatively for entry of final judgment (without exhibits thereto), page 2, line 27 to page 28, line 5 and page 9, line 25 to page 10, line 3 and Ex. "H," Sargeant's opposition to defendant's motion for summary judgment (without exhibits thereto), page 2, line 14 to page 3, line 17.

The district court, by an order entered on February 3, 2016, granted summary judgment to Henderson and entered a final judgment in favor Henderson. Ex. "A." The correctness of that decision is to be reviewed in appeal number 69773.

On August 29, 2016 Henderson served a judgment execution to take possession of Sargeant's appeals to this Court as "choses of action" subject to attachment. Ex. "C." Sargeant's counsel has filed a timely claim that such appeals and legal rights possessed by Sargeant are exempt from judgment execution. Ex. "I." Henderson's time to object to Sargeant's exemption claim, and secure a hearing from the district court on whether the exemption claim should be upheld, has not yet expired as of the date of this motion.

ARGUMENT

I. A STAY OF JUDGMENT ENFORCEMENT IS NEEDED TO SAFEGUARD SARGEANT'S APPELLATE RIGHTS

Henderson's judgment execution seeks to secure control over Sargeant's appeals in this case so those appeals can be terminated and never decided by this Court. Alternatively, Henderson seeks to harass Sargeant, whom it knows cannot pay any portion of the judgment, and his counsel, in an attempt to coerce them into abandoning his appeals in this case.

This Court should safeguard Sargeant's appellate rights by staying Henderson's judgment enforcement efforts, at least to the extent of barring Henderson from using its judgment to obtain possession or control of Sargeant's pending legal claims and appeals. This Court held in *Butwinick* that "defensive appellate rights" are not subject to judgment execution. *Id.* 291 P.3d at 221. This appeal by Sargeant is purely "defensive" as it seeks to reverse the district court's

post-judgment sanctions award to Henderson, the exact award that Henderson is using as the basis for its judgment execution. Sargeant's separate appeal of the district court's final judgment is also "defensive" because a reversal of that judgment will mean he could not have violated NRS § 18.010(2)(b) and Henderson's post-judgment sanctions award will also have to be reversed.

The analogous precedents from other jurisdictions also support granting a stay of judgment pending appeal. *MP Medical Inc. v. Wegman*, 213 P.3d 931 (Wash. Ct. App. 2009) involved the same fact pattern as this case. The plaintiff in *MP Medical* had a judgment entered against it and in favor of the defendant; it was subject to a post judgment award of attorney's fees; and it appealed both decisions, just like Sargeant. 213 P.3d at 934. The defendant in *MP Medical*, just like Henderson, served a writ of execution on the plaintiff's appeals. *Id.*

The Washington Court of Appeals, after recognizing that prior precedent of the Washington Supreme Court did not completely or generally prohibit such a judgment levy on a legal claim, refused to allow it on a pending appeal, stating:

While MP Medical has no constitutional right to appeal in this case, allowing one party to destroy the opposing party's appeal by becoming its owner through enforcement of the very judgment under review is fundamentally unjust. The trial court erred when it failed to exercise its inherent power to prevent this from happening. 213 P.3d at 936

The Florida Court of Appeals has ruled in a similar fashion. *See, Donan v. Dolce Vita Sa, Inc.*, 992 So. 2d 859, 861 (Florida Ct. App., 4th Dist. 2008)

(Quashing levy on pending legal claim when levy arose from an attorney's fee award the defendant had secured in a prior related case). Nor is the outcome in *Applied Medical Technologies v. Earnes*, 44 P.3d 699, 700 (Ut. Sup. Ct. 2002) germane to this case. In *Applied Medical* a defendant had a prior judgment against the plaintiff from an earlier unrelated action, which was not appealed. It served a levy on the plaintiff's later filed action and a constable's auction was held at which it purchased the plaintiff's rights in that later filed action and proceeded to dismiss that case against itself. *Id.* The plaintiff knew of the constable's sale but made no attempt to stop the levy or the sale. *Id.*

Applied Medical rejected the plaintiff's challenge to the dismissal of its case through the defendant's judgment levy and purchase of its legal rights, but does not state if the result would have been different if the plaintiff attempted to stop the levy and constable sale. Nor did the judgment used to seize the plaintiff's legal claim in *Applied Medical* arise from the same legal dispute. Nor was it used to prevent appellate review of the correctness of *that same judgment*.

The limited scope of *Applied Medical* was emphasized in *RMA Ventures California v. SunAmerica Life Ins. Co.*, 576 F.3d 1070, 1071, 1076 (10th Cir. 2009) (Citing *Applied Medical* and Utah law and refusing to hear appeal because the plaintiff, having failed to appeal the district court's denial of the plaintiff's motion to stay or quash the execution sale, lacked standing to contest the

defendant's acquisition of the plaintiff's litigation rights; plaintiff also did not assert it was unable to post a *supersedes* bond or pay the judgment). 576 F.3d at 1076. Judge Lucero, in his concurrence, expressed grave doubts about the appropriateness of Utah law on this issue, as might be construed from *Applied Medical*. 576 F.3d at 1076-77. He concurred based upon the plaintiff's waiver of its rights by failing to contest the judgment sale or stay the judgment. *Id.*

II. A STAY OF JUDGEMENT SHOULD BE GRANTED BECAUSE SARGEANT'S CLAIMS ARE CONSTITUTIONAL IN NATURE

The MWA grants Sargeant a right to enforce his MWA claims in Nevada's Courts and secure "all remedies" appropriately available "under the law or in equity." That broad conferral of rights to Sargeant under Nevada's Constitution are superior to whatever rights Henderson may hold, as a matter of statute, as a judgment creditor. Such rights should include a right to appellate review of those minimum wage claims that cannot be impaired or limited by an adverse judgment held by an employer (here Henderson) against an employee (Sargeant).

III. A STAY OF JUDGEMENT ENFORCEMENT SHOULD BE GRANTED BECAUSE IT WILL MAINTAIN THE STATUS QUO

This Court, in *Nelson*, 122 P.3d at 1254, held the need to preserve the status quo is the paramount concern if a stay without a *supercedes* bond is to issue:

The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay. However, a supersedeas bond should not be the judgment debtor's sole

remedy, particularly where other appropriate, reliable alternatives exist. Thus, the focus is properly on what security will maintain the status quo and protect the judgment creditor pending an appeal, not how "unusual" the circumstances of a given case may be.

The district court, without explanation, that such a stay of execution would not maintain the status quo. “Ex. “D,” page 1, lines 27 to page 2, line 2. Yet the “status quo” in this case is that Henderson cannot collect any money from Sargeant to satisfy its judgment. Nor would the requested stay of judgment have to prohibit such a collection, it need only bar Henderson’s attempts to use the judgment to take possession of Sargeant’s legal claims and appellate rights.

The district court also ignored another very important “status quo:” Henderson’s exposure to a liability in excess of its \$26,715 award against Sargeant if this Court reverses the district court’s judgment. Henderson’s use of the sanctions award to avoid appellate review of that judgment does not maintain the current “status quo” of this case.

Nelson discusses five factors to be considered on a request to stay a judgment pending an appeal without the posting of a *supercedes* bond. Four of those factors deal with the judgment creditor’s interest in collecting a judgment with the other addressing the interests of the judgment debtor’s other creditors. *Id.* While none of those factors weigh in Sargeant’s favor, *Nelson* also recognized that this Court in *McCulloh v. Jeakins*, 659 P.2d 302, 303 (Nev. Sup. Ct. 1983) found that various “unusual circumstances” can warrant the granting of a stay of judgment without

the posting of a *supercedes* bond. That include when a judgment is so large the posting of a bond is impracticable or when a stay will inflict “no material damage” on the judgment creditor. *Nelson*, 122 P.3d at 1253, fn 6, cases cited therein.

In this case it is both impracticable for Sargeant to post a bond and Henderson will suffer no material damage from a stay since its judgment is not collectible.

IV. OTHER RELEVANT CONSIDERATIONS SUPPORT A STAY

Hilton v. Braunskill, 481 U.S. 770, 775-76 (1987) opined that four relevant considerations bearing on whether to grant a stay of judgment pending an appeal are (1) whether the stay applicant has made a strong showing they are likely to prevail on the appeal; (2) whether the applicant will be irreparably injured without a stay; (3) the interests of the other parties; and (4) the public’s interest. *Hilton* was based on FRAP Rule 8 but it has been found applicable to stay requests under Hawaii Rules of Appellate Procedure Rule 8(a) which is, in both language and substance, the same as NRAP Rule 8(a). *See, County of Hawaii v. UniDev LLC*, 2012 Haw. App. LEXIS 189 (Haw. Intermediate Ct. App. 2012). The *Hilton* factors support the granting of a stay of judgment pending appeal in this case.

The probability that Sargeant will prevail in his appeals is strong. He was sanctioned for making a motion for *reargument* of a prior order that did *not* state it was a final judgment and in such motion he requested entry of a final judgment if no basis existed to grant reargument. Sargeant’s rights under the MWA can only

be waived by Henderson's employees' labor union in "clear and unambiguous" language in a collective bargaining agreement ("CBA"). *See*, Nev. Const. Art. 15, Sec. 16 (B). Yet the district court found, without explanation, that Sargeant's MWA rights were waived by a union grievance resolution that contained no such "clear and unambiguous" language and that was not a CBA. *See*, Ex. "J," grievance resolution. It also made that finding despite language in the CBA prohibiting the resolution of any legal claims (as opposed to claims arising under the CBA) through the grievance process. Ex. "K," ¶ 18.1. Sargeant will be irreparably harmed if he is denied an opportunity to prosecute his appeals. Henderson's interests will not be impaired by a stay prohibiting it from attaching Sargeant's appeals or legal claims. The public's interest in having appeals involving MWA disputes resolved on their merits, is substantial.

CONCLUSION

Wherefore, appellant's motion for stay of judgment should be granted.

Dated: Clark County, Nevada
September 14, 2016

Submitted by
Leon Greenberg Professional Corporation

/s/ Leon Greenberg
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CERTIFICATE OF MAILING

The undersigned certifies that on September 15, 2016, she
served the within:

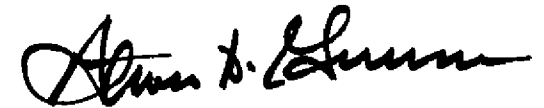
MOTION TO STAY THE JUDGEMENT
OF THE DISTRICT COURT PENDING THE
OUTCOME OF THIS APPEAL

by Electronic Court filing to:

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EXHIBIT "A"



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8
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

12 Plaintiff,

13 v.

14 HENDERSON TAXI,

15 Defendant.

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

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

16 **AND**

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

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

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

24 **FINDINGS OF FACT**

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

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DEPT 17 ON
JAN 27 2016

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

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

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

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

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

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

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

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

11 CONCLUSIONS OF LAW

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

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

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

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

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

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

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

26 7. Here, a *bona fide* dispute existed. Exhibits 8, 9, and 10 to Mot.; *see also* Order filed
27 October 8, 2015. Further, the National Labor Relations Act gives the Union authority to resolve
28

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

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

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

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

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

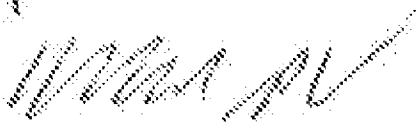
25 **JUDGMENT**

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

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

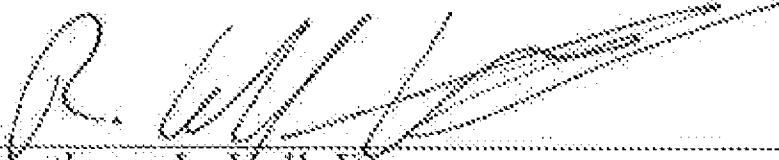
3 IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be
4 entered in favor of Henderson Taxi and against Mr. Sargeant and the putative class as to all claims
5 asserted against Henderson Taxi.
6

7 DATED this 28 day of January 2016.

8
9 
DISTRICT COURT JUDGE 8V

10 Respectfully submitted by:

11 HOLLAND & HART LLP

12
13 By 
14 Anthony L. Hall, Esq.
15 Nevada Bar No. 5977
16 R. Calder Huntington, Esq.
17 Nevada Bar No. 11996
18 9555 Hillwood Drive, 2nd Floor
19 Las Vegas, Nevada 89134
20 Attorneys for Defendant Henderson Taxi

21 Approved as to form:

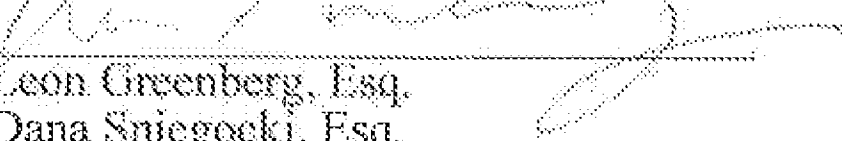
22 By 
23 Leon Greenberg, Esq.
24 Dana Sniegocki, Esq.
25 LEON GREENBERG PROFESSIONAL CORPORATION
26 2965 South Jones Blvd., Suite E3
27 Las Vegas, Nevada 89146
28 Attorney for Plaintiff

EXHIBIT “B”

1 **DECL**
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2 DANA SNIEGOCKI, ESQ., SBN 11715
Leon Greenberg Professional Corporation
3 2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
4 Tel (702) 383-6085
Fax (702) 385-1827
5 leongreenberg@overtimelaw.com
dana@overtimelaw.com

6 Attorneys for Plaintiff
7
8

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

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

13 Plaintiff,

14 vs.

15 HENDERSON TAXI,

16 Defendant.

Case No.: A-15-714136-C

Dept.: XVII

**DECLARATION OF
MICHAEL SARGEANT**

17
18
19 Michael Sargeant hereby affirms and declares under penalty of perjury the
20 following:
21

22 1. I am the plaintiff in this case and a former taxi driver employee of
23 Henderson Taxi, the defendant in this case. I offer this declaration to the Court to
24 explain my personal financial situation and my request for a stay of any enforcement
25 of the judgment rendered against me in this case.
26

27 2. I am currently unemployed and live on a fixed income consisting solely
28

1 of social security disability payments that are less than \$1,300 a month. I receive those
2 payments because the social security administration has correctly determined that my
3 medical condition prevents me from working. I do not own my home but rent the
4 place where I live. I have no other source of income except those social security
5 disability payments and I do not have any savings. I pay (with difficulty) my rent and
6 other expenses, month to month, solely from the social security disability payments
7 that I receive.

8
9 3. I understand that the district court has entered judgments against me, and
10 in favor of Henderson Taxi, that total \$28,904.00, of which \$26,715 was an attorney's
11 fee award and the rest a costs award to Henderson Taxi because the district court
12 dismissed my lawsuit. My attorney is currently pursuing appeals of both the dismissal
13 of my lawsuit and the \$26,715 award of attorney's fees to Henderson Taxi.

14
15 4. Given my financial situation it is impossible for me to pay any judgment
16 in this matter. I do not, and cannot, work, and I understand that legally Henderson
17 Taxi cannot seize my social security disability payments (my only source of income
18 and the only money that I have) to satisfy this judgment. But as long as this judgment
19 remains enforceable, Henderson can still, if it wishes, harass me, by among other
20 things, trying to force me to testify at a judgment debtor examination or by sending
21 writs of judgment execution (that cannot be legally honored since I do not have any
22 money or property subject to such a judgment execution) to other people or
23 companies. I understand the legal process and respect the court's decision in this
24 case, but I am asking that given my circumstances the court issue a stay of any
25 enforcement of this judgment until my appeal is concluded. If that appeal is successful
26 the judgment will be removed. If it is unsuccessful, Henderson Taxi will be fully
27 entitled to pursue its legal rights against me in respect to the judgment. It will not
28 suffer any injury if a stay of judgment enforcement is issued as I cannot pay anything

1 towards this judgment in any event.

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

4

5 Michael L Sargeant

6 Michael Sargeant

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7-18-14

Date

EXHIBIT "C"

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WTEX

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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

WRIT OF EXECUTION

☐ Earnings ☒ Other Property
☐ Earnings, Order of Support

TO THE STATE OF NEVADA - TO THE CLARK COUNTY SHERIFF- GREETINGS:

This Writ of Execution is in furtherance of collection of a judgment, for the recovery of money for Defendant HENDERSON TAXI (the "Judgment Creditor").

On July 8, 2016, an Order Granting Motion for Attorneys' Fees (the "Judgment") was entered by the above-entitled court in the above entitled action in favor of Judgment Creditor and against Plaintiff MICHAEL SARGEANT (the "Judgment Debtor"), as follows:

///

///

///

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CLARK COUNTY SHERIFF
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JUDGMENT BALANCE		AMOUNTS TO BE COLLECTED BY LEVY	
Principal	(\$ 0.00)	NET BALANCE	\$26,715.00
Awarded Attorneys' Fees	\$26,715.00	For this Writ	
		Garnishment Fee	
Post-Judgment Interest	(\$ 0.00)	Mileage	12.00
		Levy Fee	15.00
Final Judgment	\$26,715.00	Advertising	2.00
		Storage	
Less Any Satisfaction Received to Date	(\$ 0.00)	Interest from Date of 03/10/2016	
		Issuance	
Sub-Total	\$26,715.00	SUB-TOTAL	26,744.00
		Commission	
NET BALANCE	\$26,715.00	TOTAL LEVY	\$

NOW THEREFORE, you are commanded to satisfy the Judgment for the total amount due out of the following described personal property (choses in action) of Judgment Debtor to wit:

All claims for relief, causes of action, things in action, and choses in action in any lawsuit pending in Nevada, including, but not limited to, Eighth Judicial District Court Case No. A-15-714136-C and the rights of Appellant Michael Sargeant, in the appeal of actions filed in the Supreme Court of the State of Nevada, Case Numbers 69773 and 70837.

EXEMPTIONS WHICH APPLY TO THIS LEVY

Except that for any workweek, 75 percent of the disposable earnings of the debtor during that week or 50 times the minimum hourly wage prescribed by section 6(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1), and in effect at the time the earnings are payable, whichever is greater, is exempt from any levy of execution pursuant to this writ, and if sufficient personal property cannot be found, then out of the real property belonging to the debtor in the aforesaid county, and make return to this writ within not less than 10 days or more than 60 days endorsed.

 X Property Other Than Wages. The exemption set forth in NRS 21.090 or in other applicable Federal Statutes may apply. Consult an attorney.
 Earnings
 The amount subject to garnishment and this writ shall not exceed for any one pay period the lessor of:

- A. 25% of the disposable earnings due the judgment debtor for the pay period, or
B. the difference between the disposable earnings for the period and \$100.50 per week for each week of the pay period.

Earnings (Judgment or Order for Support)

A Judgment was entered for amounts due under a decree or order entered on _____ day of _____, 20____, by the _____, for the support of _____ for the period from _____, 20____, through _____, 20____, in _____ installments of \$_____.


The amount if disposable earnings subject to Garnishment and this writ shall not exceed for any one pay period: (check appropriate box)

- ☐ A maximum of 50 percent of the disposable earnings of such judgment debtor who is supporting a spouse or dependent child other than the dependent named above;
☐ A maximum of 60 percent of the disposable earnings of such judgment debtor who is not supporting a spouse or dependent child other than the dependent named above;
☐ Plus an additional 5 percent of the disposable earnings of such judgment debtor if an to extent that the judgment is for support due for a period of time more than 12 weeks prior to the beginning of the work period of the judgment debtor during which the levy is made upon the disposable earnings.

NOTE: Disposable earnings are defined as gross earnings less deductions for Federal Income Tax Withholding, Federal Social Security Tax and Withholding for any State, County or City Taxes.

You are required to return this Writ from date of issuance not less than 10 days or more than 60 days with the results of your levy endorsed thereon.

Issued at the direction of:
HOLLAND & HART LLP


Anthony L. Hall, Esq. (Bar No. 5977)
R. Calder Huntington, Esq. (Bar No. 11996)
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Attorneys for Defendant Henderson Taxi

STEVEN D. GRIERSON,
CLERK OF COURT

AUG 19 2016

WALTER ABREGO-BONILLA

DEPUTY CLERK

DATE

RETURN

I hereby certify that I have this date returned the foregoing Writ of Execution with the results of the levy endorsed thereon.

CLARK COUNTY SHERIFF

SHERIFF

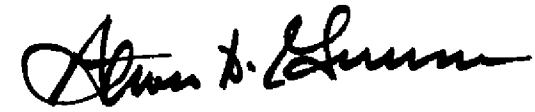
DATE

Not satisfied \$ _____
Satisfied in _____
the sum of \$ _____
Costs retained \$ _____
Commission _____
Retained \$ _____
Costs incurred \$ _____
Commission _____
Incurred \$ _____
Costs received \$ _____

REMITTED TO

JUDGMENT CREDITOR \$ _____

EXHIBIT “D”



CLERK OF THE COURT

1 **ORDR**

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

13 *Attorneys for Defendant Henderson Taxi*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 v.

20 HENDERSON TAXI,

21 Defendant.

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

**PROPOSED ORDER DENYING
PLAINTIFF'S MOTION TO STAY
JUDGMENT ENFORCEMENT
PENDING APPEAL**

22 This matter came before the Court for hearing on August 24, 2016 at 8:30 AM on Plaintiff
23 Michael Sargeant's ("Sargeant") *Motion to Stay Judgment Enforcement Pending Appeal* (the
24 "Motion"). Leon Greenberg, Esq., appeared on behalf of Sargeant and R. Calder Huntington, Esq.
25 appeared on behalf of Defendant Henderson Taxi.

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

Plaintiff failed to demonstrate that any of the factors the Court is to consider in determining
whether to grant a stay pending appeal absent a full supersedeas bond set forth in *Nelson v. Heer*,
121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005) weigh in favor of granting a stay. As Sargeant has
failed to demonstrate that any of the *Nelson* factors weigh in favor of a stay and has otherwise

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AUG 31 2016

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1 failed to demonstrate that the status quo might be maintained absent the posting of a full
2 supersedeas bond, Sargeant's motion is denied.

3 IT IS HEREBY ORDERED that Plaintiff's Motion to Stay Judgment Enforcement Pending
4 Appeal is DENIED.

5 DATED this 6 day of Sept, 2016.

6
7 
DISTRICT COURT JUDGE

JB

8 Respectfully submitted by:

9
10 By 

11 Anthony L. Hall, Esq.
12 R. Calder Huntington, Esq.
13 HOLLAND & HART LLP
14 9555 Hillwood Drive, 2nd Floor
15 Las Vegas, Nevada 89134
16 Attorneys for Defendant Henderson Taxi

17 Approved as to form:

18 By 

19 Leon Greenberg, Esq.
20 Dana Sniegocki, Esq.
21 LEON GREENBERG PROFESSIONAL CORPORATION
22 2965 South Jones Blvd., Suite E3
23 Las Vegas, Nevada 89146
24 Attorney for Plaintiff

25
26
27
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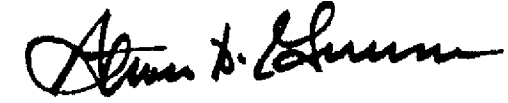
EXHIBIT "E"

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ORDR

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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

**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").

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

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

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

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

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

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

21 CONCLUSIONS OF LAW

22 **I. Recoverability of Attorneys' Fees**

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

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

1 parties' collective-bargaining agreement, unless the evidence sufficiently establishes that the parties
2 intended otherwise."); *see also Certified Corp. v. Hawaii Teamsters and Allied Workers, Local 996,*
3 *IBT*, 597 F.2d 1269, 1272 (9th Cir. 1979) (approving a union's and an employer's oral modification
4 of a CBA); *International Union v. ZF Boge Elastmetall LLC*, 649 F.3d 641 (7th Cir. 2011)
5 (recognizing mid-term modification to a CBA by a union and an employer).

6 ~~Plaintiff's issues~~
7 8. ~~Further, even had those issues been novel (which they were not), they~~ were settled
8 by the Court's October 8, 2015 Order holding that Sargeant had no cognizable claim based on the
9 Union's settlement thereof.

10 9. Sargeant's Motion for Reconsideration was made without reasonable ground. A
11 motion for reconsideration seeking judgment on an unpleaded claim and certification of an
12 unpleaded class is not a motion for reconsideration and inherently has no merit.

13 10. Sargeant's Opposition to Motion for Summary Judgment was also made without
14 ground. In his Opposition, Sargeant failed to even attempt to present facts that might stave off
15 summary judgment, but rather sought to re-litigate the accord and satisfaction issue previously
16 decided.

17 11. For these reasons, the Court finds that Sargeant's claim was maintained without
18 reasonable ground after October 8, 2015.

19 II. Reasonableness of Fees

20 12. When awarding attorney's fees, the Court must consider the following factors: (1)
21 the qualities of the advocate; (2) the character of the work to be done; (3) the work actually
22 performed by the advocate; and (4) the result achieved. *Brunzell v. Golden Gate Nat'l Bank*, 85
23 Nev. 345, 349, 455 P.2d 31, 33 (1969). While the Court need not make explicit findings for each
24 factor, the Court must demonstrate that it considered the required factors and an award of attorneys'
25 fees must be supported by substantial evidence. *Logan v. Abe*, 131 Nev. Adv. Op. 31, 350 P.3d
26 1139 (2015).

27 13. Henderson Taxi's attorneys' fees are reasonable and justified under *Brunzell*.
28

1 14. First, Holland & Hart LLP and the attorneys involved in this case possess extensive
2 experience in commercial, labor, and employment litigation and provided high-quality work for
3 Henderson Taxi.

4 15. Second, Plaintiff brought this lawsuit as a putative class action and raised contractual
5 and other issues under the Nevada Constitution which Henderson Taxi (and, thereby, Holland &
6 Hart) had to defend.

7 16. Third, the work performed by Holland & Hart and Holland & Hart's hourly rates
8 were reasonable in light of all the circumstances and as demonstrated by their submissions to the
9 Court.

10 17. Fourth, and finally, Henderson Taxi was ultimately successful defending this matter
11 with the aid of Holland & Hart.

12 18. Accordingly, Henderson Taxi is entitled to an award of attorneys' fees for the time
13 after this Court issued its October 8, 2015, Order holding that Plaintiff and the putative class had no
14 viable claim in the amount of \$26,715.¹

15 19. Plaintiff's claim became frivolous at this time and any maintenance of the claim after
16 this date was unreasonable as a matter of law.

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27 ¹ Henderson Taxi sought fees either from the date it filed its Opposition to Plaintiff's Motion to
28 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.

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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 J B Bonaventura
DISTRICT COURT JUDGE

Sr J Bonaventura BV

Respectfully submitted by:

HOLLAND & HART LLP

By *[Signature]*

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

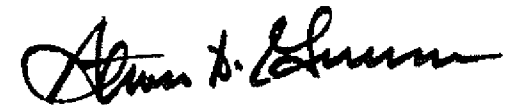
Attorney for Plaintiff

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EXHIBIT “F”

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CLERK OF THE COURT

ORDD

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ahall@hollandhart.com
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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:

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

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

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

27
28 ///

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

2 In addition, and in part based on the preceding findings, the Court further finds that
3 Plaintiff has not established the factors necessary to maintain a class action under NRCP 23(a). A
4 class action “may only be certified if the trial court is satisfied, after a rigorous analysis, that the
5 prerequisites of Rule 23(a) have been satisfied.” *General Tel. Co., of the S.W. v. Falcon*, 457 U.S.
6 147, 161 (1982); accord *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 847, 124 P.3d
7 530, 538 (2005). This rigorous analysis will generally overlap with the merits of the underlying
8 case. *Wal-Mart Stores, Inc. v. Dukes*, 546 U.S. ___, 131 S.Ct. 2541, 2551 (2011). “If a court is not
9 fully satisfied [after conducting the rigorous analysis], certification should be refused.” *Kenny v.*
10 *Supercuts, Inc.*, 252 F.R.D. 641, 643 (N.D. Cal. 2008) (citing *Falcon*, 457 U.S. at 161).

11 The burden rests with plaintiff to establish that the case is fit for class treatment. *Shuette*,
12 121 Nev. at 846, 124 P.3d at 537. Thus, for the Court to certify this case as a class action, Sargeant
13 must satisfy all requirements of NRCP 23(a), which provides in full:

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

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

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

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

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

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

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

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


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

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

16 DATED this 8th day of October 2015.

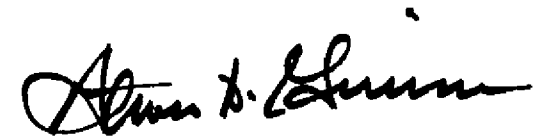
17 
18 DISTRICT COURT JUDGE
19 *ds*

20 Respectfully submitted by:

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24 R. Calder Huntington, Esq.
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28 Attorneys for Defendant Henderson Taxi

8034842_1

EXHIBIT "G"



CLERK OF THE COURT

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11 Attorneys for Plaintiff

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

14 MICHAEL SARGEANT, Individually
15 and on behalf of others similarly
16 situated,
17
18 Plaintiff,
19
20 vs.
21
22 HENDERSON TAXI,
23
24 Defendant.

Case No.: A-15-714136-C

Dept.: XVII

**MOTION FOR PARTIAL
RECONSIDERATION OR
ALTERNATIVELY FOR
ENTRY OF FINAL
JUDGMENT**

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

27 (1) Granting partial reconsideration of this Court's Order entered on October 8,
28 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")

1 between defendant Henderson Taxi and the ITPEU/OPEIU Local 4873,
2 AFL-CIO (the “Union”). Such class would be limited to such persons
3 who have not actually received the payment they are entitled to receive
4 pursuant to such Grievance and have not executed the Acknowledgment
5 form provided for by that Grievance. Such class is to be so certified to
6 have such unpaid funds placed under the jurisdiction of the Court for the
7 purpose of having appropriate efforts made to have those funds actually
8 paid to such class members or a suitable *cy pres* beneficiary.
9

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

17 Granting leave to have the Court rehear, with full briefing, on another
18 date, the branch of its October 8, 2015 Order finding that class
19 certification would not be proper for such proposed class members
20 because “individual analysis” would be necessary “to determine which
21 minimum wage tier applied to each driver through an analysis of his
22 income (including potentially unreported tips under NAC 608.102-
23 608.104) and the cost of insuring his or her dependents, including an
24 analysis of the number of dependents each driver actually had.”
25
26

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

1 \$107.23, the amount it is asserted by counsel for Henderson Taxi that he is entitled to
2 pursuant to the settlement agreement for the Grievance and/or for such other relief the
3 Court deems he should be awarded and/or entering an appropriate Order specifying
4 whatever other and different relief he remains entitled to seek in this case pursuant to
5 the Court's Order entered on October 8, 2015.

6 PURPOSE OF THIS MOTION

7 THIS MOTION SEEKS RELIEF CONSISTENT WITH WHATEVER 8 ISSUES THE COURT DEEMS REMAIN PENDING IN 9 LIGHT OF ITS ORDER OF OCTOBER 8, 2015

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

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

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

25 As discussed, *infra*, plaintiff's counsel understands the Court's Order as holding
26 that *all claims* for all minimum wages under Article 15, Section 16, of the Nevada
27 Constitution owed to *all members* of the alleged class (defendants' taxi drivers) have
28 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

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

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

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

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

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

25 In the event that the Court both denies the requested partial class action
26 certification and all requested rehearing relief plaintiff's counsel is unsure what further
27 relief remains to be secured to the plaintiff and the putative class by this litigation. If
28 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

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

8 ARGUMENT

9 I. A GROUP OF UNPAID "NON-ACKNOWLEDGMENT" SIGNERS 10 EXIST WHO SHOULD BE GRANTED CLASS WIDE RELIEF UNDER THE COURT'S OCTOBER 8, 2015 ORDER

11 The understanding that plaintiffs' counsel has garnered from the Court's October
12 8, 2015 Order, which was drafted by defendant's counsel, is that:

13
14 (A) The claims at issue in this case have been fully resolved by the
15 company/union grievance referenced in the Order. Such Order recites:
16 "This settlement agreement for the Grievance acted as a complete accord
17 and satisfaction of the grievance and any claims to minimum wage
18 Henderson Taxi's cab drivers may have had."

19
20 (B) To the extent any "live" legal dispute exists between the named plaintiff
21 and the putative class alleged in this Complaint on the one hand, and the
22 defendant on the other hand, it is limited to the enforcement of the
23 "settlement agreement for the Grievance" referred to in the Order.
24

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

1 agreement” but have not yet received those amounts. The named plaintiff Michael
2 Sargeant is one such person. Ex. “B.” Information produced by the defendants
3 indicates there are approximately 336 other such persons, “non-Acknowledgment”
4 signers, all of whom are former taxi drivers who have not received the settlement
5 payment they are entitled to under the settlement agreement. Ex. “C,” ¶ 2. It appears
6 100% of defendants’ current taxi driver employees have signed Acknowledgment
7 forms expressly agreeing that they have received all of the unpaid minimum wages
8 they are owed by defendants. *Id.*, ¶ 3.

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

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

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

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

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

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

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

1 **II. IN THE EVENT THE UNPAID “NON-ACKNOWLEDGMENT”**
2 **SIGNERS CAN PURSUE MINIMUM WAGE AWARDS BEYOND**
3 **THOSE PROVIDED BY THE GRIEVANCE SETTLEMENT**
4 **LEAVE SHOULD BE GRANTED TO REHEAR WHETHER CLASS**
5 **CERTIFICATION IS POTENTIALLY PROPER**

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

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

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

27 Further, the determination of the minimum wage issue, had it not already
28 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

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

7
8 **CONCLUSION**

9
10 Wherefore, the motion should be granted.

11
12 Dated this 30th day of October, 2015.

13
14 Leon Greenberg Professional Corporation

15 By: /s/ Leon Greenberg
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

HENDERSON TAXI,

Defendant.

Case No.: A-15-714136-C
Dept.: XVII

PROOF OF SERVICE

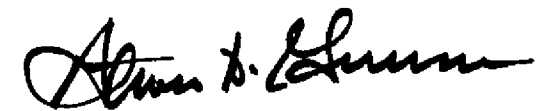
The undersigned certifies that on October 30, 2015, she served the
within:

**MOTION FOR PARTIAL RECONSIDERATION OR
ALTERNATIVELY FOR ENTRY OF FINAL JUDGMENT**
by court electronic service to:

Anthony L. Hall, Esq.
R. Calder Huntington, Esq.
HOLLAND & HARD LLP
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/s/ Dana Sniegocki
DANA SNIEGOCKI

EXHIBIT “H”



CLERK OF THE COURT

OPP

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DISTRICT COURT

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MICHAEL SARGEANT, Individually
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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 motion¹ 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

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.

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

7 **ARGUMENT**

8 **I. DEFENDANT'S ARGUMENT THAT NO ISSUES REMAIN TO BE** 9 **LITIGATED WILL BE FULLY ADDRESSED IN PLAINTIFF'S** 10 **REPLY IN SUPPORT OF THEIR PENDING MOTION**

11 Defendant's 15 page motion is entirely consumed with arguing that nothing
12 remains to be determined in this case, all issues are resolved by the Court's October 8,
13 2015 Order, and a final judgment should be entered. Most of such motion also argues
14 that the findings of the October 8, 2015 Order are legally correct.

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

24 **II. DEFENDANT CONCEALED THE EXISTENCE OF THE** 25 **HENDERSON TAXI/UNION GRIEVANCE FORCING THE** 26 **PROSECUTION OF THIS CASE AND AS A RESULT PLAINTIFF** 27 **SHOULD BE THE PARTY PREVAILING AT JUDGMENT**

28 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

1 that plaintiff, under the terms of that grievance resolution, entered into on July 16,
2 2014, has a legal right to receive \$107.23.

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

- 11
12 ● This case is commenced on February 19, 2015, service is promptly
13 effectuated, and defendant answers on March 19, 2015 (Ex. "C"). That
14 answer contains no reference to the grievance resolution or the union, only
15 boilerplate non-specific and undetailed affirmative defenses.
16
- 17 ● Defendant's counsel conducts a meeting with plaintiff's counsel on April 16,
18 2015. At that meeting defendant's counsel advises that defendant has
19 decided to make settlement payments to putative class members without
20 judicial oversight and irrespective of the status of this litigation. Ex. "A." No
21 mention is made at that meeting of the grievance resolution or that such
22 settlement payments are pursuant to any understanding with the union.
23
- 24 ● Plaintiff's counsel independently receives advisement on April 17, 2015 that
25 defendant has begun making payments to putative class members in exchange
26

27
28 ² The Ex. "B" declaration is being signed by the plaintiff and a signed copy will
be filed with the Court shortly.

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

- 7
8 ● Plaintiff's counsel continued to proceed with the understanding, intentionally
9 maintained by defendant's counsel, that defendant is making unilateral
10 settlement payments, without any involvement by the union, to the putative
11 class members. In response to plaintiff's counsel's further concerns about
12 such payments defendant's counsel again corresponds on May 5, 2015. Ex.
13 "E." Once again, defendant's counsel makes no mention of the grievance or
14 that the settlement payments were being made pursuant to an understanding
15 with the union. Such correspondence (Ex "E" Ex. "1" and "2" thereto)
16 furnished to plaintiff's counsel copies of the actual communications to the
17 Henderson taxi drivers about those payments. Those communications,
18 although mentioning Henderson Taxi had "discussed" the minimum wage
19 issue with the union, also does not mention the grievance resolution.
20 Henderson Taxi was not only concealing the grievance resolution from
21 plaintiff's counsel, it was concealing it from the taxi drivers as well.
22
- 23 ● Without knowledge of the grievance resolution plaintiff files his motion on
24 May 27, 2015 seeking class certification and to void any unilateral waivers of
25 minimum wage rights defendant secured from its drivers. Such motion was
26 predicated upon there being *no* union involvement with defendant's
27 "settlement" payment conduct. Defendant's counsel only discloses the
28 existence of the grievance resolution, and defendant's claim its conduct was

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

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

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

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

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

26 On or about May 1, 2015, Henderson Taxi's counsel, Mr. Anthony Hall,
27 sent to Plaintiff's counsel, Mr. Leon Greenberg, a letter regarding the
28 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).

1 Defendant's *Id* in the foregoing is completely false. The referenced letter of
2 May 1, 2015 made no mention of any "settlement with the union." As discussed,
3 *supra*, defendant's counsel labored with great diligence to *conceal* any such
4 "settlement" until raising that issue in their July 15, 2015 motion opposition.
5

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

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

22 In light of Henderson Taxi's improper and bad faith conduct, in both concealing
23 the existence of the grievance and attempting to avoid compliance with its legal
24 obligations under the grievance (both to the plaintiff and hundreds of other "non-
25 claiming" class members), if this case is now resolved plaintiff should be the prevailing
26

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

1 judgment holder in the amount of \$107.23.

2
3 **III. IF JUDGMENT IS DENIED TO THE PLAINTIFF ANY**
4 **JUDGMENT THAT IS ENTERED SHOULD DENY ANY**
5 **AWARD OF COSTS OR FEES TO DEFENDANT**

6 In the event the Court believes the circumstances of this case should result in the
7 entry of a judgment in favor of the defendant such judgment should expressly deny
8 defendant any award of costs or fees. Presumably any such judgment would constitute
9 a judicial determination that the plaintiff, as asserted by defendant, is only owed
10 \$107.23 and could, at the time this action was commenced, only seek relief for \$107.23
11 from defendant as a matter a law. Pursuant to NRS 18.020, which generally governs
12 the award of costs under Nevada law, no costs or attorney's fee award is available to
13 defendant as a matter of right, as such sum of \$107.23 is too small an amount in
14 controversy to justify such an award. Pursuant to NRS 18.040 the Court also has
15 discretion to otherwise deny or allow costs and fees. It is submitted defendant's
16 concealment of the grievance resolution prolonged and aggravated this litigation for no
17 constructive purpose and all costs and fees should be denied to the defendant as a
18 result.

19 **CONCLUSION**

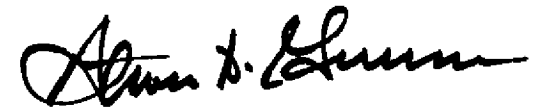
20 Wherefore, defendant's motion for summary judgment should be denied in all
21 respects.

22 Dated this 14th day of December, 2015.

23 Leon Greenberg Professional Corporation

24 By: /s/ Leon Greenberg
25 LEON GREENBERG, Esq.
26 Nevada Bar No.: 8094
27 2965 South Jones Blvd- Suite E3
28 Las Vegas, Nevada 89146
Tel (702) 383-6085
Fax (702) 385-1827
Attorney for Plaintiff

EXHIBIT "I"



CLERK OF THE COURT

DOC

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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

HENDERSON TAXI,

Defendant.

Case No.: A-15-714136-C

Dept.: XVII

**CLAIM OF EXEMPTION
FROM EXECUTION**

Plaintiff, Michael Sargeant, through his attorneys, Leon Greenberg Professional Corporation, hereby submits this claim of Exemption from Execution pursuant to NRS 21.112.

**DECLARATION OF LEON GREENBERG ATTORNEY
FOR MICHAEL SARGEANT AS TO THE CLAIMED EXEMPTION**

Leon Greenberg hereby affirms, under the penalties of perjury, the following:

1. I am an attorney duly licensed to practice law in the State of Nevada and am the attorney for the plaintiff/judgment debtor Michael Sargeant. This declaration is submitted pursuant to NRS 21.112 to make claims of exemption from a judgment

1 execution of the property of my client, Michael Sargeant, as described herein.

2 2. The execution served in this matter, and to which exemptions are claimed,
3 is annexed hereto at Ex. "A."

4 3. The Exhibit "A" execution claims to seek satisfaction of a \$26,715.00
5 judgment rendered in favor of defendant Henderson Taxi in this matter (increased to
6 \$26,744.00) with the addition of certain fees) out of: "All claims for relief, causes of
7 action, things in action and choses in action in any lawsuit pending in Nevada,
8 including but not limited to Eighth Judicial District Court Case No. A-15-714136-C
9 and the rights of Appellant Michael Sargeant, in the appeal of actions filed in the
10 Supreme Court of the State of Nevada, Case Numbers 69773 and 70837."

11 4. Michael Sargeant hereby asserts his claims in Eighth Judicial District
12 Court Case No. A-15-714136-C, (**which is this same case**) and the appeals connected
13 with that case filed in the Supreme Court of the State of Nevada, Case Numbers 69773
14 and 70837, are exempt from the Exhibit "A" execution pursuant to NRS § 21.090(1)(z)
15 in that such claim, according to the defendant Henderson, is for an amount of no more
16 than \$107.23, meaning such claim is an item of personal property of the judgment
17 debtor Michael Sargeant valued at less than \$1,000 that he can exempt from execution
18 by his selection. He is so selecting that claim from exemption from execution and
19 Henderson Taxi is precluded from now asserting, for the purposes of this exemption
20 claim, that such claim has a value of more than \$107.23. Alternatively, Michael
21 Sargeant asserts an exemption from execution for a portion of that claim for a value of
22 less than \$1,000.

23 5. Michael Sargeant hereby asserts his claims in Eighth Judicial District
24 Court Case No. A-15-714136-C (**which is this same case**), and the appeals connected
25 with that case filed in the Supreme Court of the State of Nevada, Case Numbers 69773
26 and 70837, are exempt from the Exhibit "A" execution in that (a) Such District Court
27 case no longer constitutes a "choses in action" in the District Court since it has been
28 concluded by a final judgment and (b) Such connected appeals filed in the Nevada

1 Supreme Court, since they both challenge (assert a defense to) the \$26,715.00 District
2 Court judgment upon which the writ of execution is based are not a “thing in action”
3 subject to execution under NRS 21.080, as held by the Nevada Supreme Court in
4 *Butwinick v. Hepner*, 291 P.3d 119, 122 (2012).

5 6. Michael Sargeant hereby asserts his claims in Eighth Judicial District
6 Court Case No. A-15-714136-C (**which is this same case**), and the appeals connected
7 with that case filed in the Supreme Court of the State of Nevada, Case Numbers 69773
8 and 70837, are exempt from the Exhibit “A” execution in that they arise under
9 Nevada’s Constitution Article 15, Section 16, for unpaid minimum wages and his right
10 to pursue those claims, and be afforded appellate review of those claims, are superior
11 to the statutory rights granted to defendant and judgment creditor, Henderson Taxi,
12 which was his employer. Specifically, the rights granted to Sargeant under such
13 provision of Nevada’s Constitution require, absolutely, the payment to him of
14 minimum wages by his employer, whether by defendant and judgment creditor
15 Henderson Taxi or any other employer, and also afford him the right to all remedies
16 available from the Courts of the State of Nevada to enforce those rights, including the
17 right of appeal and to have such appeal heard on the merits in respect to any denial of
18 his claim he is owed such unpaid minimum wages. Accordingly, such right to
19 appellate review of his claims arising under the Nevada Constitution cannot be
20 attached, impaired or limited, as Henderson Taxi is seeking, via the statutory rights it
21 has acquired under NRS 21.080. In addition, the right possessed by Michael Sargeant
22 to seek the payment of those unpaid minimum wages in Nevada’s Courts under
23 Nevada’s Constitution remains a superior right possessed by Michael Sargeant not
24 subject to execution under NRS 21.080 even if all or some portion of those unpaid
25 minimum wages are, themselves, subject to such an execution either when paid to him
26 or determined to be owing to him under a final judgment after the exhaustion of all
27 rights to appellate review of such judgment.

28 7. Michael Sargeant hereby asserts his claims in Eighth Judicial District

1 Court Case No. A-15-714136-C (**which is this same case**), and the appeals connected
2 with that case filed in the Supreme Court of the State of Nevada, Case Numbers 69773
3 and 70837, are exempt from the Exhibit "A" execution in that they arise under
4 Nevada's Constitution Article 15, Section 16, for unpaid minimum wages and his right
5 to pursue those claims, and be afforded appellate review of those claims, are superior
6 to the statutory rights granted under NRS 21.080 to defendant and judgment creditor,
7 Henderson Taxi, which is his employer and such constitutional right of Michael
8 Sargeant cannot be impaired by that statute. He also asserts that his right to appellate
9 review is exempt from execution under the Nevada Constitution's guarantee of due
10 process of law, in that a party's right to appellate review of an adverse judgment
11 cannot be attached by the party possessing such judgment and NRS 21.080 does not
12 grant a judgment creditor the ability to use the judgment execution provisions
13 contained therein to avoid appellate review of a judgment when a judgment debtor
14 cannot post a *supersedes* bond.

15 8. Michael Sargent claims an exemption from the Exhibit "A" execution for his
16 claims asserted in Eighth Judicial District Court Cases No. A-14-707425-C against
17 Western Cab Company and No. A-12-669926-C against A-Cab and Creighton J. Nady.
18 Such claims are exempt from execution in that they arise under Nevada's Constitution
19 Article 15, Section 16, for unpaid minimum wages and his right to pursue those claims
20 are superior to the statutory rights granted to defendant and judgment creditor,
21 Henderson Taxi. Specifically, the rights granted to Sargeant under such provision of
22 Nevada's Constitution require, absolutely, the payment to him of minimum wages by
23 his employer, whether by defendant and judgment creditor Henderson Taxi or any
24 other employer, and his right to pursue collection of those minimum wages is superior
25 to the statutory rights granted under NRS 21.080 to defendant and judgment creditor,
26 Henderson Taxi and such constitutional right of Michael Sargeant cannot be impaired
27 by that statute. Such right possessed by Michael Sargeant to seek the payment of
28 those unpaid minimum wages in Nevada's Courts under Nevada's Constitution

1 remains a superior right possessed by Michael Sargeant not subject to execution under
2 NRS 21.080 even if all or some portion of those unpaid minimum wages are,
3 themselves, subject to such an execution either when paid to him or determined to be
4 owing to him under a final judgment after the exhaustion of all rights to appellate
5 review of such judgment.

6 9. Michael Sargeant claims an exemption from the Exhibit "A" execution for
7 his claims asserted in Eighth Judicial District Court Case No. A-12-669926-C against
8 A-Cab and Creighton J. Nady on the basis he has been appointed a class representative
9 and fiduciary of the certified class of plaintiffs in that case pursuant to NRCP Rule 23
10 such class of plaintiffs also asserting class claims for equitable relief that are incapable
11 of assignment, disposition by Sargeant, or attachment. As a result, his claim in that
12 case is not subject to disposition by him but is subject to disposition only upon
13 approval of the Court in that case in which he is serving in a fiduciary capacity and is
14 not a chose of action subject to execution under NRS 21.080.

15 10. Michael Sargeant claims an exemption from the Exhibit "A" execution for
16 his claims asserted in Eighth Judicial District Court Case No. A-12-669926-C against
17 A-Cab and Creighton J. Nady and No. A-14-707425-C against Western Cab Company
18 pursuant to NRS § 21.090(1)(z) in that such claims, even combined with the value of
19 his claim against defendant Henderson, are for a total amount of less than \$1,000 in
20 unpaid minimum wages. Alternatively, Michael Sargeant elects to exempt from the
21 Exhibit "A" execution pursuant to NRS § 21.090(1)(z) his right to seek recovery of
22 \$333.33 in unpaid minimum wages in each of such three cases.

23 11. Michael Sargeant claims an exemption from the Exhibit "A" execution for
24 his claims asserted in Eighth Judicial District Court Case No. A-14-707425-C against
25 Western Cab Company on the basis a fully briefed motion is pending in that case,
26 which has been stayed by Order of the Nevada Supreme Court, seeking the
27 appointment of Michael Sargeant as a class representative involving claims for both
28 damages and equitable relief for the class and fiduciary of such class pursuant to

1 NRCF Rule 23. As a result, his claim in that case is not subject to disposition or
2 assignment by him but is subject to disposition only upon approval of the Court in that
3 case and/or the Court declining to grant his request for class certification under NRCF
4 Rule 23 and such claim is not, at least at this time, a chose of action subject to
5 execution under NRS 21.080.

6 13. Michael Sargeant hereby asserts his claims in Eighth Judicial District
7 Court Case No. A-15-714136-C (**which is this same case**), and the appeals connected
8 with that case filed in the Supreme Court of the State of Nevada, Case Numbers 69773
9 and 70837, and Eighth Judicial District Court Case No. A-12-669926-C against A-Cab
10 and Creighton J. Nady and No. A-14-707425-C against Western Cab Company are
11 exempt from the Exhibit "A" execution pursuant to NRS 21.090(1)(g) in that each
12 such claim seeks to collect unpaid wages owed to Michael Sargeant and are thus
13 exempt to the extent of the value of 75% of the disposable earnings that are part of
14 those claims and/or 50 times the minimum hourly wages, whichever is greater, as
15 provided for in such statute.

16 I have read the foregoing and declare, under penalty of perjury, that the
17 foregoing is true and correct.

18 Affirmed this 7th Day of September, 2016.

19 
20 _____
21 Leon Greenberg
22 Attorney for Michael Sargeant

23 Dated this 7th day of September, 2016.

24 Leon Greenberg Professional Corporation

25 By: /s/ Leon Greenberg
26 LEON GREENBERG, Esq.
27 Nevada Bar No.: 8094
28 2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
Tel (702) 383-6085
Fax (702) 385-1827
Attorney for Plaintiff

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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

PROOF OF SERVICE

The undersigned certifies that on August 16, 2016, she served the within:

Claim of Exemption from Execution

by court electronic service and first class mail to:

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

by first class mail to:

Clark County Sheriff
Civil Process Section
Box 553220
Las Vegas, NB 89155

1 By personal service:

2 Leon Greenberg
3 2965 S. Jones Boulevard, Suite E-3
4 Las Vegas, NV 89146

5

6

/s/ Sydney Saucier
Sydney Saucier

7

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EXHIBIT “J”

Henderson Taxi

1910 Industrial Road • Las Vegas, Nevada 89102

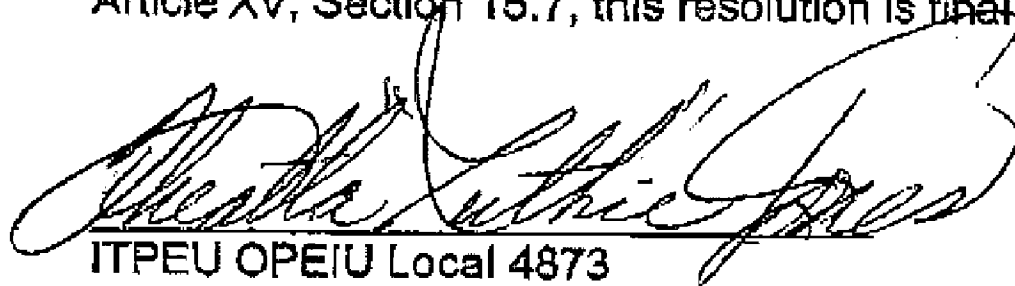
(702) 384-2322

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 “K”

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**

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:

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.