

IN THE SUPREME COURT OF NEVADA

NEVADA YELLOW CAB)
CORPORATION, NEVADA)
CHECKER CAB CORPORATION, and)
NEVADA STAR CAB)
CORPORATION')
Petitioners,)
vs.)
THE EIGHTH JUDICIAL DISTRICT)
COURT of the State of Nevada, in and)
For the County of Clark, and THE)
HONORABLE RONALD J. ISRAEL)
District Judge,)
Respondents,)
and)
CHRISTOPHER THOMAS, and)
CHRISTOPHER CRAIG,)
Real Parties in Interest.)

Sup. Ct. No. 74166 Electronically Filed
Case No.: A0266172617 Oct 18 2017 03:58 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Dept. No.: XXVIII

PETITIONERS' SUPPLEMENTAL APPENDIX

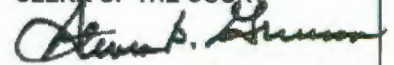
MARC C. GORDON, ESQ.
GENERAL COUNSEL
Nevada Bar No. 001866
TAMER B. BOTROS, ESQ.
SENIOR LITIGATION COUNSEL
Nevada Bar No. 012183
**YELLOW CHECKER STAR
TRANSPORTATION CO. LEGAL DEPT.**
5225 W. Post Road
Las Vegas, Nevada 89118
T: 702-873-6531
F: 702-251-3460
tbotros@ycstrans.com
Attorneys for Petitioners
NEVADA YELLOW CAB CORPORATION
NEVADA CHECKER CAB CORPORATION
NEVADA STAR CAB CORPORATION

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**NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION TO
STRIKE AFFIRMATIVE
DEFENSESPA0162-0167**



1 **NOTC**
2 LEON GREENBERG, ESQ., SBN 8094
3 DANA SNIEGOCKI, ESQ., SBN 11715
4 Leon Greenberg Professional Corporation
5 2965 South Jones Blvd- Suite E3
6 Las Vegas, Nevada 89146
7 (702) 383-6085
8 (702) 385-1827(fax)
9 leongreenberg@overtimelaw.com
10 dana@overtimelaw.com

11 Attorneys for Plaintiffs

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

14 CHRISTOPHER THOMAS, and
15 CHRISTOPHER CRAIG, Individually
16 and on behalf of others similarly
17 situated,

18 Plaintiffs,

19 vs.

20 NEVADA YELLOW CAB
21 CORPORATION, NEVADA
22 CHECKER CAB CORPORATION, and
23 NEVADA STAR CAB
24 CORPORATION,

25 Defendants.

Case No.: A-12-661726-C

Dept.: XXVIII

NOTICE OF ENTRY OF ORDER
GRANTING PLAINTIFFS'
MOTION TO STRIKE
AFFIRMATIVE DEFENSES

26 PLEASE TAKE NOTICE that the attached order was entered on October 12,
27 2017.

28 Dated: Clark County, Nevada
October 16, 2017

Leon Greenberg Professional Corporation

By: /s/ Leon Greenberg
Leon Greenberg, Esq.
Nevada Bar No.: 8094
2965 South Jones Boulevard - Suite E3
Las Vegas, Nevada 89146
Tel (702) 383-6085
Attorney for Plaintiff

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PROOF OF SERVICE

The undersigned certifies that on October 16, 2017, she served the within:

ORDER GRANTING PLAINTIFFS' MOTION TO
STRIKE AFFIRMATIVE DEFENSES

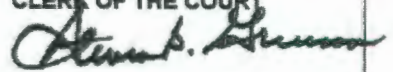
by court electronic service to:

TO:

Marc C. Gordon, Esq.
Tamer Botros, Esq.
General Counsel
Yellow Checker Star Transportation Co.
Legal Dept.
5225 W. Post Road
Las Vegas, NV 89118

/s/Sydney Saucier

SydneySaucier



1 **ORDER**
2 LEON GREENBERG, ESQ. (SBN 8094)
3 DANA SNEGOCKI, ESQ. (SBN 11715)
4 **LEON GREENBERG PROFESSIONAL CORPORATION**
5 2965 South Jones Boulevard, Suite E3
6 Las Vegas, Nevada 89146
7 Tel: (702) 383-6085 / Fax (702) 385-1827
8 Email: leongreenberg@overtimelaw.com
9 Email: dana@overtimelaw.com

10 DON SPRINGMEYER, ESQ. (SBN 1021)
11 BRADLEY SCHRAGER, ESQ. (SBN 10217)
12 ROYI MOAS, ESQ. (SBN 10686)
13 **WOLF, RIFKIN, SHAPIRO,**
14 **SCHULMAN & RABKIN, LLP**
15 3556 E. Russell Road, Second Floor
16 Las Vegas, Nevada 89120
17 Tel.: (702) 341-5200 / Fax: (702) 341-5300
18 Email: dspringmeyer@wrslawyers.com
19 Email: bschrager@wrslawyers.com
20 Email: rmoas@wrslawyers.com

21 *Attorneys for Plaintiffs*

22 **EIGHTH JUDICIAL DISTRICT COURT**

23 **IN AND FOR CLARK COUNTY, STATE OF NEVADA**

24 CHRISTOPHER THOMAS, an individual, and
25 CHRISTOPHER CRAIG, an individual; all on
26 behalf of themselves and all similarly-situated
27 individuals,

28 Plaintiffs,

vs.

NEVADA YELLOW CAB CORPORATION;
NEVADA CHECKER CAB CORPORATION;
and STAR CAB CORPORATION,

Defendants.

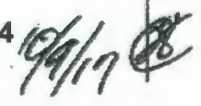
Case No. A-12-661726-C

Dept. No.: XXVIII

**ORDER GRANTING PLAINTIFFS'
MOTION TO STRIKE AFFIRMATIVE
DEFENSES**

Plaintiffs filed their Motion on an Order Shortening Time to Strike Affirmative Defenses on September 20, 2017, with Defendants filing an opposition on September 25, 2017 and Plaintiffs filing a reply on September 26, 2017. Said motion was heard on October 3, 2017 with Leon Greenberg, Esq., arguing on behalf of all plaintiffs and Tamer B. Botros, Esq. on behalf of

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3556 E. RUSSELL ROAD, SECOND FLOOR
LAS VEGAS, NEVADA 89120
Tel (702) 341-5200 • Fax (702) 341-5300



1 Defendants. Following the arguments of counsel, and after due consideration of the parties'
2 respective briefs, and all pleadings and papers on file herein, and good cause appearing, therefore:

3 **THE COURT FINDS**

4 The Defendants' Twenty-Seventh Affirmative Defense asserted in Defendants' Answer to
5 Plaintiffs' Second Amended Complaint filed on December 22, 2015, alleging that Defendants
6 should be relieved of all liability under Article 15, Section 16, of the Nevada Constitution, the
7 Minimum Wage Act (the "MWA"), if it pleads and proves that it "followed the law [in respect to
8 the MWA] that was being enforced by the Nevada Labor Commissioner" is stricken. An
9 employer's liability for unpaid minimum wages owed pursuant to the terms of the MWA is not
10 excused by their compliance, in good faith or otherwise, with the policies or practices of the
11 Nevada Labor Commissioner or any other government agency or officer. Nor is an employer's
12 liability for unpaid minimum wages owed pursuant to the terms of the MWA subject to any other
13 defense based upon a good faith belief they had complied with the MWA's minimum wage
14 payment requirements or their knowledge or lack of knowledge of those minimum wage payment
15 requirements. As the Nevada Supreme Court has made clear in the appeal of this very case, the
16 MWA imposes a liability that supersedes the requirements of Nevada's statutes and is only subject
17 to the limitations expressly set forth in the MWA itself. The MWA, contains no language
18 recognizing the sort of defense set forth in the Twenty-Seventh Affirmative Defense and
19 accordingly it is stricken.

20 The Defendants' Tenth-Affirmative Defense asserted in Defendants' Answer to Plaintiffs'
21 Second Amended Complaint filed on December 22, 2015, alleging that Defendants should be
22 relieved of all possible liability for punitive damages under the MWA, if they plead and prove that
23 they "at all times had a good faith and reasonable belief that they had compensated the Plaintiffs
24 in accordance with Nevada law" will be stricken if Defendants do not provide discovery on the
25 legal advice and information they received about the requirements of "Nevada law" and their
26 efforts to obtain an understanding about such requirements. Defendants in raising this affirmative
27 defense are relying upon their alleged "good faith and reasonable belief" about what Nevada's law
28 (the MWA) required of them. By raising that defense Defendants are placing at issue the basis for

1 their alleged "good faith and reasonable belief" about their legal duties. Having placed at issue
2 their beliefs about Nevada law, and their knowledge and efforts to secure knowledge of Nevada
3 law, Defendants must either provide discovery about such knowledge and efforts or this
4 affirmative defense will be stricken. Defendants, if they maintain this affirmative defense,
5 cannot, under the cloak of attorney-client privilege, deny plaintiffs "access to the very
6 information," the advice Defendants actually received or sought to receive about their legal
7 obligations, needed to refute such defense. *See, Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156,
8 1162-63 (9th Cir. 1992), *citing United States v. Bilzerian*, 926 F.2d 1285, 1292 (2nd Cir. 1991).

9 The Defendants' Sixth Affirmative Defense asserted in Defendants' Answer to Plaintiffs'
10 Second Amended Complaint filed on December 22, 2015, alleging that the MWA only applies
11 prospectively to taxi drivers; the Defendants' Thirteenth Affirmative Defense, that the Plaintiffs
12 have no right to minimum wages under the MWA; and the Defendants' Fourteenth Affirmative
13 Defense, that the "Plaintiffs were employed in a position that was exempt from minimum wages
14 under Nevada law" have all been resolved by the Nevada Supreme Court's decisions in this case.
15 Defendants do not assert otherwise. Accordingly, the Sixth, Thirteenth and Fourteenth
16 Affirmative Defenses are also stricken.

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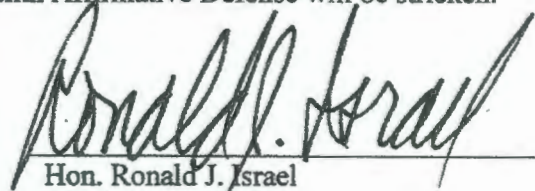
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1 **IT IS HEREBY ORDERED:**


2 Plaintiffs' Motion is GRANTED for the reasons stated. The Defendants' Sixth, Thirteenth,
3 Fourteenth and Twenty-Seventh Affirmative Defenses are hereby stricken. The Defendants' Tenth
4 Affirmative Defense, as it applies solely to punitive damages, will be stricken unless Defendants
5 provide discovery about their knowledge of the law and efforts to obtain such knowledge, as
6 alleged in that affirmative defense, if Defendants choose to invoke the attorney-client privilege to
7 shield such information from disclosure, the Tenth Affirmative Defense will be stricken.

8 IT IS SO ORDERED.

9 Dated this 10 day of October 2017.



Hon. Ronald J. Israel
District Court Judge

10
11  Case No. A-12-661726-C
12 Document Title: ORDER GRANTING
13 PLAINTIFFS' MOTION TO STRIKE
14 AFFIRMATIVE DEFENSES

15 Submitted:

16 By: 

17 LEON GREENBERG, ESQ. (SBN 8094)
18 DANA SNIEMOCKI, ESQ. (SBN 11715)
19 **LEON GREENBERG**
20 **PROFESSIONAL CORPORATION**
21 2965 South Jones Boulevard, Suite E-3
22 Las Vegas, Nevada 89146
23 Tel: (702) 383-6085 / Fax (702) 385-1827
24 Email: leongreenberg@overtimelaw.com
25 Email: dana@overtimelaw.com

Attorneys for Plaintiffs

26 Reviewed:

27 By: 

28 **TAMER B. BOTROS, ESQ.**
MARC C. GORDON, ESQ.
YELLOW CHECKER STAR
5225 W. Post Road
Las Vegas, Nevada 89118
Email: TBotros@ycstrans.com
Email: MGordon@ycstrans.com
Attorneys for Defendants