

**In the  
Supreme Court of the State of Nevada**

NEVADA YELLOW CAB  
CORPORATION; NEVADA  
CHECKER CAB CORPORATION;  
and 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.

Electronically Filed  
Nov 01 2017 08:31 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Case No.: 74166**

Eighth Judicial District Court  
Case No.: A-12-661726-C

**Real Parties In Interest's Appendix to Answering Brief**

DON SPRINGMEYER, ESQ.,  
Nevada Bar No. 1021  
BRADLEY S. SCHRAGER, ESQ.,  
Nevada Bar No. 10217  
**WOLF, RIFKIN, SHAPIRO,  
SCHULMAN & RABKIN, LLP**  
3556 E. Russell Road  
Las Vegas, Nevada 89120

LEON GREENBERG, ESQ.,  
Nevada Bar No. 8094  
DANA SNIEGOCKI, ESQ.,  
Nevada Bar No. 11715  
**LEON GREENBERG P.C.**  
2965 S. Jones Boulevard,  
Las Vegas, Nevada 89146

*Attorneys for Real Parties in Interest*

## ALPHABETICAL INDEX OF APPENDIX

<u>Document Name</u>	<u>Date</u>	<u>Volume</u>	<u>Page No.</u>
Answer to Plaintiffs' Second Amended Complaint	December 22, 2015	1	RPIA 0007 – RPIA 0014
Discovery Commissioner Minutes	October 18, 2017	1	RPIA 0043
Notice of Entry of Order Denying Defendants' Motion to Dismiss Plaintiffs' Punitive Damages Claim and Defendants' Motion to Dismiss Claims Under NRS 608020, NRS 608.030 and NRS 608.040	September 21, 2015	1	RPIA 0015 – RPIA 0019
Notice of Entry of Order Granting Plaintiffs' Motion to Strike Affirmative Defenses	October 16, 2017	1	RPIA 0001 – RPIA 0006
Order Denying Petition for Writ of Mandamus	April 16, 2015	1	RPIA 0020 – RPIA 0021
Petition for Writ of Mandamus	October 13, 2015	1	RPIA 0022 – RPIA 0042

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of October, 2017, a true and correct copy of this completed **REAL PARTIES IN INTEREST'S APPENDIX TO ANSWERING BRIEF** upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

DATED this 31st day of October, 2017.

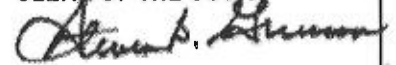
**WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
RABKIN, LLP**

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

DON SPRINGMEYER, ESQ. (NV Bar No. 1021)  
BRADLEY S. SCHRAGER, ESQ. (NV Bar No. 10217)  
3556 E. Russell Road, 2nd Floor  
Las Vegas, Nevada 89120  
(702) 341-5200 / Fax: (702) 341-5300

LEON GREENBERG, ESQ. (NV Bar No. 8094)  
DANA SNIEGOCKI, ESQ. (NV Bar No. 11715)  
**LEON GREENBERG PROFESSIONAL  
CORPORATION**  
2965 South Jones Boulevard, Suite E3  
Las Vegas, Nevada 89146  
(702) 383-6085 / Fax (702) 385-1827

*Attorneys for Real Parties in Interest*



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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PROOF OF SERVICE

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

ORDER GRANTING PLAINTIFFS' MOTION TO  
STRIKE AFFIRMATIVE DEFENSES

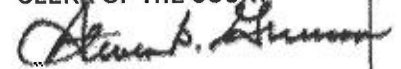
by court electronic service to:

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



**ORDR**  
LEON GREENBERG, ESQ. (SBN 8094)  
DANA SNIEGOCKI, ESQ. (SBN 11715)  
**LEON GREENBERG PROFESSIONAL CORPORATION**  
2965 South Jones Boulevard, Suite E3  
Las Vegas, Nevada 89146  
Tel: (702) 383-6085 / Fax (702) 385-1827  
Email: leongreenberg@overtimelaw.com  
Email: dana@overtimelaw.com

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

*Attorneys for Plaintiffs*

**EIGHTH JUDICIAL DISTRICT COURT  
IN AND FOR CLARK COUNTY, STATE OF NEVADA**

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

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



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.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

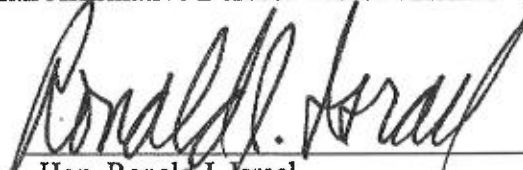



1 **IT IS HEREBY ORDERED:**

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  
Document Title: ORDER GRANTING  
12 PLAINTIFFS' MOTION TO STRIKE  
13 AFFIRMATIVE DEFENSES

14 Submitted:

15 By: 

16 LEON GREENBERG, ESQ. (SBN 8094)  
DANA SNIEGOCKI, ESQ. (SBN 11715)  
17 **LEON GREENBERG**  
**PROFESSIONAL CORPORATION**  
2965 South Jones Boulevard, Suite E-3  
Las Vegas, Nevada 89146  
Tel: (702) 383-6085 / Fax (702) 385-1827  
Email: leongreenberg@overtimelaw.com  
Email: dana@overtimelaw.com

21 *Attorneys for Plaintiffs*

22 Reviewed:

23 By: 

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



1                                   **JURISDICTION, PARTIES AND PRELIMINARY STATEMENT**

2           1.       Defendants are without sufficient knowledge or information to form a belief as to the  
3 truth or falsity of the allegations contained in Paragraph 1 of Plaintiffs' Second Amended Complaint on  
4 file herein, and therefore deny them.  
5

6           2.       Defendants admit the allegations contained in Paragraph 2 of Plaintiffs' Second  
7 Amended Complaint on file herein.

8                                   **CLASS ACTION ALLEGATIONS**

9           3.       Defendants are without sufficient knowledge or information to form a belief as to the  
10 truth or falsity of the allegations contained in Paragraphs 3, 4, 5, 6, 7, 8 and 11 of Plaintiffs' Second  
11 Amended Complaint on file herein, and therefore deny them.  
12

13          4.       Defendants deny the allegations contained in Paragraphs, 9, 10 and 12 of Plaintiffs'  
14 Second Amended Complaint on file herein.  
15

16                   **AS AND FOR A FIRST CLAIM FOR RELIEF ON BEHALF OF THE NAMED PLAINTIFFS**  
17                   **AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO NEVADA'S CONSTITUTION**

18          5.       With respect to the allegations contained in Paragraph 13, Defendants, repeat and reallege  
19 their earlier responses to the allegations contained in Paragraphs 1 through 12 of Plaintiffs' Second  
20 Amended Complaint on file herein.

21          6.       Defendants deny the allegations contained in Paragraphs 14, 15, 15 sub-paragraphs (a),  
22 (b), and (c), of Plaintiffs' Second Amended Complaint on file herein.  
23

24          7.       Defendants deny the allegations contained in Paragraphs 16 and 17 of Plaintiffs'  
25 Second Amended Complaint on file herein.

26          8.       Defendants are without sufficient knowledge or information to form a belief as to the  
27 truth or falsity of the allegations contained in Paragraphs 18 and 19 of Plaintiffs' Second Amended  
28 Complaint on file herein, and therefore deny them.

1                                   **AFFIRMATIVE DEFENSES**

2                                   **FIRST AFFIRMATIVE DEFENSE**

3                   The Second Amended Complaint fails to state a claim upon which relief can be granted.

4                                   **SECOND AFFIRMATIVE DEFENSE**

5                   All of the damages being claimed in this matter are barred by the doctrine of laches.

6                                   **THIRD AFFIRMATIVE DEFENSE**

7                   All of the damages being claimed in this matter are barred by the statute of limitations.

8                                   **FOURTH AFFIRMATIVE DEFENSE**

9                   All of the damages being claimed in this matter are subject to the two (2) years statute of  
10 limitations pursuant to NRS 608.260.

11                                  **FIFTH AFFIRMATIVE DEFENSE**

12                   Defendants performed a Fair Labor Standards Act (FLSA) minimum wage self-audit that  
13 resulted in a finding of a minimum wage underpayment for the years 2010 and 2011, which was  
14 reviewed and approved by the United States Department of Labor Wage and Hour Division. A  
15 settlement agreement was entered on May 9, 2012 between Defendants and all of Defendants' current  
16 and former drivers in the amount \$386,000.00, which Plaintiffs received payments and signed releases,  
17 thus Defendants are entitled to a set-off for said amount.

18                                  **SIXTH AFFIRMATIVE DEFENSE**

19                   The Nevada Supreme Court decision in Thomas vs. Nevada Yellow Cab, 130 Nev., Advance  
20 Opinion 52, (Nev., 2014), only applies prospectively from June 26, 2014.

21                   ///

22                   ///

23                   ///

1                                   **SEVENTH AFFIRMATIVE DEFENSE**

2           If the actions of former or current employees are found to be wrongful in any way, then those  
3 actions cannot be attributed to Defendants, that Defendants are not liable under concepts of Respondeat  
4 Superior, nor are Defendants vicariously liable.  
5

6                                   **EIGHTH AFFIRMATIVE DEFENSE**

7           Plaintiffs have failed to exhaust their administrative, statutory, arbitration and/or contractual  
8 remedies.  
9

10                                  **NINTH AFFIRMATIVE DEFENSE**

11           Plaintiffs' Second Amended Complaint and each cause of action asserted therein, are subject to  
12 the doctrine of accord and satisfaction and therefore, any remedy or recovery to which Plaintiffs might  
13 have been entitled to must be denied or reduced accordingly.  
14

15                                  **TENTH AFFIRMATIVE DEFENSE**

16           Defendants at all times had a good faith and reasonable belief that they had compensated  
17 Plaintiffs in accordance with Nevada law and, therefore, no liquidated or punitive damages are due to  
18 Plaintiffs.  
19

20                                  **ELEVENTH AFFIRMATIVE DEFENSE**

21           If Plaintiffs are adjudged to be entitled to any recovery, then Defendants are entitled to a set-off  
22 for any compensation, including without limitation to, unemployment compensation, wages, salaries,  
23 and/or social security payments, received by Plaintiffs.  
24

25                                  **TWELEVTH AFFIRMATIVE DEFENSE**

26           There exists a bona fide dispute as to whether any further compensation is actually due to  
27 Plaintiffs, and if so, the amount thereof.  
28

///

1                                   **THIRTEENTH AFFIRMATIVE DEFENSE**

2           Plaintiffs were never entitled to the monies to which they assert a right in the Second Amended  
3 Complaint.  
4

5                                   **FOURTEENTH AFFIRMATIVE DEFENSE**

6           Plaintiffs were employed in a position that was exempt from minimum wage under Nevada law.

7                                   **FIFTEENTH AFFIRMATIVE DEFENSE**

8           The requirements for a class action have not been satisfied in this matter for reasons, including,  
9 but not limited to, impracticability, lack of common interest, lack of typicality, lack of numerosity  
10 and/or inadequate representation.  
11

12                                  **SIXTEENTH AFFIRMATIVE DEFENSE**

13           Defendants are entitled to a set-off for any amounts overpaid to Plaintiffs in the course of their  
14 employment. This credit or set-off includes, but is not limited to, amounts erroneously overpaid to  
15 Plaintiffs.  
16

17                                  **SEVENTEENTH AFFIRMATIVE DEFENSE**

18           This action is barred because Plaintiffs' claims are subject to final and binding neutral arbitration  
19 pursuant to contract, the National Labor Relations Act, and/or applicable state law.  
20

21                                  **EIGHTEENTH AFFIRMATIVE DEFENSE**

22           Plaintiffs' Second Amended Complaint fails to state facts sufficient to justify an award of  
23 punitive damages.  
24

25                                  **NINETEENTH AFFIRMATIVE DEFENSE**

26           Punitive damages are unconstitutional in general and as applied to Defendants.  
27  
28

///

///

1                                    **TWENTIETH AFFIRMATIVE DEFENSE**

2            Punitive damages constitute excessive fines prohibited by the United States and Nevada  
3            Constitutions. The relevant statutes do not provide adequate standards or safeguards for their application  
4            and they are void for vagueness under the due process clause of the Fourteenth Amendment of the  
5            United States Constitution and in accordance with Article I, Section 8 of the Nevada Constitution.  
6

7                                    **TWENTY-FIRST AFFIRMATIVE DEFENSE**

8            Plaintiffs are not entitled to punitive damages because Defendants did not engage in any conduct  
9            warranting punitive damages.  
10

11                                  **TWENTY-SECOND AFFIRMATIVE DEFENSE**

12           It has been necessary for the Defendants to employ the services of attorneys to defend this action  
13           and a reasonable sum should be allowed to Defendants as and for attorneys' fees, together with their  
14           costs expended in this action.  
15

16                                  **TWENTY-THIRD AFFIRMATIVE DEFENSE**

17           Plaintiffs failed to state a claim against Defendants upon which attorneys' fees and costs can be  
18           awarded.  
19

20                                  **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

21           Plaintiffs have an adequate remedy at law; thus, injunctive relief is inappropriate.  
22

23                                  **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

24           Plaintiffs fail to state a claim against Defendants upon which declaratory or injunctive relief can  
25           be awarded.  
26

27                                  **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

28           Nevada Attorney General opinions do not constitute binding legal authority or precedent.  
///

1                                    **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

2            Defendants followed the law that was being enforced by the Nevada Labor Commissioner.

3                                    **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

4            Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses may not have been  
5  
6 alleged herein, insofar as sufficient facts were not available after reasonable inquiry. Therefore,  
7 Defendants reserve the right to allege additional affirmative defenses if subsequent investigation  
8 warrants.

9            WHEREFORE, Defendants pray that Plaintiffs take nothing by way of Plaintiffs' Second  
10 Amended Complaint on file herein, and that Defendants recover all costs and attorneys' fees incurred in  
11 defending this action.  
12

13            DATED this 22nd day of December, 2015.

14                                    **YELLOW CHECKER STAR**  
15                                    **TRANSPORTATION CO. LEGAL DEPT.**

16                                    /s/ Tamer Botros  
17                                    MARC C. GORDON, ESQ.  
18                                    GENERAL COUNSEL  
19                                    Nevada Bar No. 001866  
20                                    TAMER B. BOTROS, ESQ.  
21                                    ASSOCIATE COUNSEL  
22                                    Nevada Bar No. 012183  
23                                    5225 W. Post Road  
24                                    Las Vegas, Nevada 89118  
25                                    Attorneys for Defendants  
26                                    NEVADA YELLOW CAB CORPORATION  
27                                    NEVADA CHECKER CAB CORPORATION and  
28                                    NEVADA STAR CAB CORPORATION

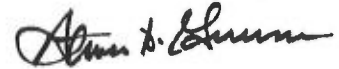


1 **CERTIFICATE OF ELECTRONIC SERVICE**

2 Pursuant to Rule 9 of Nevada Electronic Filing and Conversion Rules, I hereby certify that on  
3 the 22nd day of December, 2015, service of the foregoing **DEFENDANTS' ANSWER TO**  
4 **PLAINTIFFS' SECOND AMENDED COMPLAINT** made this date by electronic service as follows:  
5

6 Leon Greenberg, Esq.  
7 Dana Sniegocki, Esq.  
8 Leon Greenberg Professional Corporation  
9 2965 South Jones Blvd, Suite E4  
10 Las Vegas, Nevada 89146  
11 [leongreenberg@overtimelaw.com](mailto:leongreenberg@overtimelaw.com)  
12 [dana@overtimelaw.com](mailto:dana@overtimelaw.com)  
13 Attorneys for Plaintiffs  
14 CHRISTOPHER THOMAS  
15 CHRISTOPHER CRAIG  
16

17 /s/ Tamer Botros  
18 For Yellow Checker Star  
19 Transportation Co. Legal Dept.  
20  
21  
22  
23  
24  
25  
26  
27  
28



CLERK OF THE COURT

**NOTC**  
LEON GREENBERG, ESQ., SBN 8094  
DANA SNIEGOCKI, ESQ., SBN 11715  
Leon Greenberg Professional Corporation  
2965 South Jones Blvd- Suite E3  
Las Vegas, Nevada 89146  
(702) 383-6085  
(702) 385-1827(fax)  
[leongreenberg@overtimelaw.com](mailto:leongreenberg@overtimelaw.com)  
[dana@overtimelaw.com](mailto:dana@overtimelaw.com)

Attorneys for Plaintiffs

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CHRISTOPHER THOMAS, and  
CHRISTOPHER CRAIG, Individually  
and on behalf of others similarly  
situated,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-661726-C

Dept.: XXVIII

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the attached order was entered and filed on  
September 21, 2015

Dated: Clark County, Nevada  
September 21, 2015

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

PROOF OF SERVICE

The undersigned certifies that on September 21, 2015, she served the within:

NOTICE OF ENTRY OF ORDER

by court electronic service to:

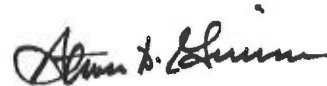
TO:

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*

---

Sydney Saucier

  
CLERK OF THE COURT

ORDR

LEON GREENBERG, ESQ., SBN 8094  
DANA SNIEGOCKI, ESQ., SBN 11715  
Leon Greenberg Professional Corporation  
2965 South Jones Blvd- Suite E4  
Las Vegas, Nevada 89146  
(702) 383-6085  
(702) 385-1827(fax)  
[leongreenberg@overtimelaw.com](mailto:leongreenberg@overtimelaw.com)  
[dana@overtimelaw.com](mailto:dana@overtimelaw.com)

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

CHRISTOPHER THOMAS, and  
CHRISTOPHER CRAIG, Individually and on  
behalf of others similarly situated,

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-12-661726

DEPT. NO. XXVIII

Hearing Date: August 25, 2015  
Hearing Time: 9:00 a.m.

**Order Denying Defendants' Motion To Dismiss Plaintiffs' Punitive Damages Claim  
And Granting Defendants' Motion To Dismiss Claims Under NRS 608.020, NRS  
608.030 and NRS 608.040**

Defendants filed their Motion to Dismiss Plaintiffs' Punitive Damages Claim and  
Claims Under NRS 608.020, NRS 608.030, and NRS 608.040 on July 24, 2015.  
Plaintiffs' Response in Opposition to Defendants' motion was filed on August 7, 2015.  
Defendants thereafter filed their Reply to Plaintiffs' Response in Opposition to

Defendants' motion on August 18, 2015. This matter, having come before the Court for hearing on August 25, 2015, with appearances by Leon Greenberg, Esq. on behalf of all plaintiffs, and Tamer B. Botros, Esq., on behalf of all defendants, and following the arguments of such counsel, and after due consideration of the parties' respective briefs, and all pleadings and papers on file herein, and good cause appearing, therefore

**THE COURT FINDS:**

Upon review of the papers and pleadings on file in this Matter, the Court finds the Nevada Constitution refers to "damages," which normally would include all damages, including the possibility of punitive damages. While the sufficiency of evidence regarding punitive damages in this specific matter has not been developed at this time, the Court finds it is more appropriate to address the issue of sufficiency of evidence in a dispositive motion when discovery has concluded. Therefore,

**IT IS HEREBY ORDERED:**

Defendants' motion To Dismiss Punitive Damages Claim is **DENIED**.

**THE COURT FURTHER FINDS:**

Upon review of the papers and pleadings on file in this Matter, the Court further finds that claims under NRS 608.040 do not apply in this matter since Plaintiff, Christopher Craig, received his final paycheck in a timely manner and Defendants did not violate NRS 608.040. Therefore, Plaintiff, Christopher Craig's claim under NRS 608.040 is hereby dismissed.

///

///

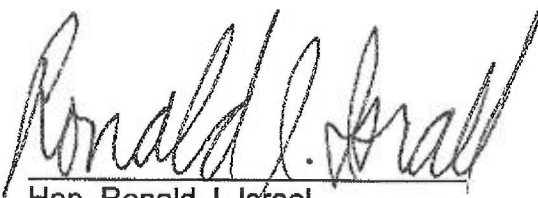
///

**IT IS HEREBY ORDERED:**

Defendants' Motion to Dismiss Claims Under NRS 608.020, NRS 608.030 and  
NRS 608.040 is hereby **GRANTED**.

**IT IS SO ORDERED.**

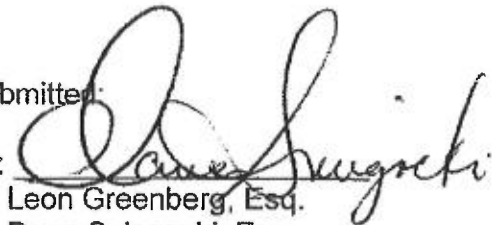
Dated this 18 day of September, 2015.



Hon. Ronald J. Israel  
District Court Judge

Submitted:

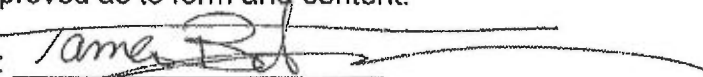
By:



Leon Greenberg, Esq.  
Dana Sniegocki, Esq.  
LEON GREENBERG PROF. CORP.  
2965 s. Jones Blvd., Ste. E-4  
Las Vegas, NV 89146  
Attorneys for Plaintiffs

Approved as to form and content:

By:



Marc C. Gordon, Esq.  
Tamer B. Botros, Esq.  
YELLOW CHECKER STAR  
TRANSPORTATION CO. LEGAL DEPT.  
5225 W. Post Road  
Las Vegas, NV 89118  
Attorneys for Defendants

IN THE SUPREME COURT OF THE STATE 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.

No. 67664

FILED

APR 16 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER DENYING PETITION FOR WRIT OF MANDAMUS*

Having considered this original petition for a writ of mandamus, which seeks an order directing the district court to stay the proceedings below pending our decision in *Gilmore v. Desert Cab, Inc.*, Docket No. 62905, we deny the petition. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). A decision was recently entered in *Gilmore*. Thus, as it is moot, we

ORDER the petition DENIED.

*[Signature]*, J.  
Saitta

*[Signature]*, J.  
Gibbons

*[Signature]*, J.  
Pickering

cc: Hon. Ronald J. Israel, District Judge  
Marc C. Gordon  
Tamer B. Botros  
Leon Greenberg Professional Corporation  
Eighth District Court Clerk



NEVADA YELLOW CAB )  
CORPORATION, NEVADA )  
CHECKER CAB CORPORATION, and )  
NEVADA STAR CAB )  
CORPORATION' )

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,

CHRISTOPHER THOMAS, and )  
CHRISTOPHER CRAIG, )  
Real Parties in Interest. )

RPLA 0022

**TABLE OF CONTENTS**

<b>RELIEF REQUESTED BY PETITIONERS .....</b>	<b>4</b>
<b>ISSUE PRESENTED .....</b>	<b>4</b>
<b>STATEMENT OF FACTS.....</b>	<b>4</b>
<b>STATEMENT OF REASONING FOR THE ISSUANCE OF A WRIT.....</b>	<b>5</b>
<b>A. Real Parties in Interest Have No Claim For Minimum Wage Since The         Application of The Thomas Decision is Prospective, Not         Retroactive.....</b>	<b>7</b>
<b>B. There Were Two (2) Conflicting Laws Regarding The Same Subject         Matter.....</b>	<b>10</b>
<b>C. A New Rule of Law Must Be Given Prospective Application.....</b>	<b>14</b>
<b>D. This Honorable Court Denied Real Parties' in Interest "Motion to         Correct" Its Opinion.....</b>	<b>16</b>
<b>CONCLUSION.....</b>	<b>18</b>

## TABLE OF AUTHORITIES

<u>Thomas vs. Nevada Yellow Cab Corporation</u> , 130 Nev., Adv. Op. 52 (2014)...	4
<u>Int'l Game Tech., Inc. v. Second Judicial Dist. Court</u> , 124 Nev. 193, 197, 179P.3d 556, 558 (2008).....	5
NRS 34.160.....	6
<u>ANSE, Inc. v. Eighth Judicial Dist. Court</u> , 124 Nev. 862, 867, 192 P.3d 738, 742 (2008).....	6
NRS 608.250(2).....	7
<u>Landgraf v. USI Film Prods.</u> , 511 U.S. 244, 273 (1994); <i>PEBP</i> , 124 Nev. at 154, 179 P.3d at 553.....	8
<u>Cnty. of Clark v. Roosevelt Title Ins. Co.</u> , 80 Nev. 530, 535, 396 P.2d 844, 846 (1964). (Cited in <u>Sandpointe Apartments, LLC v. Eighth Judicial District Court</u> , 129 Nev. Adv. Op. 87 Nov. 14, 2013).....	8
<u>McKellar v. McKellar</u> , 110 Nev. 200, 871 P.2d 296, 298 (1994).....	9
<u>Lucas v. Bell Trans</u> , 2009 WL 2424557 (D. Nev. 2009).....	11
<u>Terry v. Sapphire Gentlemen's Club</u> , 130 Nev., Adv. Op. 87 (2014).....	13
<u>Breithaupt v. USAA Property and Casualty Insurance Company</u> , 110 Nev. 31, 867 P.2d 402 (1994).....	14
<u>Chevron Oil Co. v. Huson</u> , 404 U.S. 97, 106-07, 92 S.Ct. 349, 355, 30 L.Ed.2d 296 (1971).....	14

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I.

**RELIEF REQUESTED BY PETITIONERS**

An Order directing District Court Judge Ronald J. Israel to rule that the Thomas vs. Nevada Yellow Cab Corporation, 130 Nev., Adv. Op. 52 (2014) decision rendered on June 26, 2014 by this Honorable Court only applies prospectively.

II.

**ISSUE PRESENTED**

Does the Thomas vs. Nevada Yellow Cab Corporation, 130 Nev., Adv. Op. 52 (2014) decision rendered by this Honorable Court on June 26, 2014 only applies prospectively?

III.

**STATEMENT OF FACTS**

1. On January 6, 2015, Petitioners filed the Motion to Dismiss. See Petitioners' Appendix **PA001-041**.
2. On January 23, 2015, Real Parties in Interest filed their Opposition to the Motion to Dismiss. See Petitioners' Appendix **PA042-056**.
3. On January 27, 2015, Real Parties in Interest filed their Supplement to their Opposition. See Petitioners' Appendix **PA057-066**.

- 1 4. On February 10, 2015, the Honorable Judge Ronald J. Israel denied the  
2 Motion to Dismiss. See Petitioners' Appendix PA145-146.
- 3 5. Currently there are numerous similar cases in Clark County District Court  
4 involving allegations of violation of the 2006 Constitutional Minimum  
5 Wage Amendment prior to the Thomas decision. The names and cases  
6 numbers are the following: *Melaky Tesema vs. Lucky Cab Co.* Case No. A-  
7 12-660700-C; *Barbara Gilmore vs. Desert Cab, Inc.* Case No. A-12-  
8 668502-C; *Michael Murray vs. A Cab Taxi Service, LLC* Case No. A-12-  
9 669926-C; *Neal Golden vs. Sun Cab Inc.,* Case No. A-13-678109-C; *Dan*  
10 *Herring vs. Boulder Cab, Inc.,* Case No. A-13-691551-C; *Laksiri Perera*  
11 *vs. Western Cab Company* Case No. A-14-707425-C.
- 12 6. The case of *Michael Sargeant vs. Henderson Taxi* Case No. A-15-714136-  
13 C was filed on February 19, 2015 after the Thomas decision; however, it  
14 involves similar allegations of violation of the 2006 Constitutional  
15 Minimum Wage Amendment prior to the Thomas decision.

#### 16 IV.

#### 17 STATEMENT OF REASONING FOR THE ISSUANCE OF A WRIT

18 A Writ of Mandamus is available "to compel the performance of an act that  
19 the law requires as a duty resulting from an 'office, trust or station' or to control an  
20 arbitrary or capricious exercise of discretion." Int'l Game Tech., Inc. v. Second  
21

1 Judicial Dist. Court, 124 Nev. 193, 197, 179P.3d 556, 558 (2008); NRS 34.160.

2 There is no adequate and speedy remedy at law available. This writ poses an  
3 important issue of law requiring clarification. ANSE, Inc. v. Eighth Judicial Dist.  
4 Court, 124 Nev. 862, 867, 192 P.3d 738, 742 (2008). This is an important issue of  
5 law with statewide impact requiring clarification and because an appeal from the  
6 final judgment would not constitute an adequate and speedy legal remedy, given  
7 the urgent need for resolution, Petitioners respectfully request that this Honorable  
8 Court entertain the merits of the Petition.  
9  
10  
11

12 One of the central tenants in common law, is that individuals and entities be  
13 made aware and provided with clear and unambiguous notices of laws so they can  
14 comport their conduct to those existing laws. When two (2) conflicting laws  
15 regarding the same subject matter are in existence at the same time, it creates  
16 uncertainty and ambiguity for individuals and entities regarding which law to follow.  
17 This major problem is compounded when an enforcement agency, such as the Office  
18 of Nevada Labor Commissioner, itself is operating under the same uncertainty and  
19 ambiguity as employers. Hence, on June 26, 2014 this Honorable Court for the first  
20 time clarified the law with respect to the Minimum Wage Amendment in Nevada. It  
21 is Petitioners' strong contention that the Thomas decision was intended to only apply  
22 prospectively. There are currently numerous similar cases involving allegations of  
23 violation of the 2006 Constitutional Minimum Wage Amendment prior to the  
24  
25  
26  
27  
28

1 Thomas decision on June 26, 2014. Those cases including the instant matter will  
2 encounter long, arduous and protracted likely class action litigation which will  
3 undoubtedly and unnecessarily consume tremendous judicial resources and costs. In  
4 the instant matter, Real Parties in Interest are seeking class action certification. See  
5 Petitioners' Appendix PA166-167. Therefore this matter requires this Honorable  
6 Court to definitively rule that the Thomas decision only applies prospectively from  
7 June 26, 2014.  
8  
9

10  
11 **A. Real Parties in Interest Have No Claim For Minimum Wage Since The**  
12 **Application of The Thomas Decision is Prospective, Not Retroactive**

13 In this case, on June 26, 2014, this Honorable Court decided the  
14 Thomas case and recognized in its decision, that at the time, there were two (2)  
15 conflicting laws regarding the same subject matter, namely NRS 608.250(2) and  
16 the 2006 Constitutional Minimum Wage Amendment. The Court also recognized  
17 that employers were put in the most impossible and unenviable position in  
18 choosing between which legal provision to follow, on the same exact subject  
19 matter. Following passage of the Nevada Minimum Wage Amendment in 2006,  
20 the statutory exemption for taxicab and limousine drivers remained. There was no  
21 express or implied repeal at that time and in the years following. In addition, the  
22 Nevada Labor Commissioner comported with NRS 608.250(2). Up until June 26,  
23 2014, NRS 608.250(2) was the law that employers were following and it was  
24 reasonable to do so. Therefore, this Honorable Court decided, that from June 26,  
25  
26  
27  
28

1 2014 it would make clear to employers and employees in the State of Nevada what  
2 the current law on Minimum Wage would be moving forward. The decision is  
3 clear and speaks for itself.  
4

5 There is nothing in the Thomas decision either directly or indirectly, that  
6 supports the proposition that a taxicab or limousine driver can now go back in time  
7 and pursue minimum wage claims against individual employers prior to June 26,  
8 2014. Substantive statutes are presumed to only operate prospectively, unless it is  
9 clear that the drafters intended the statute to be applied retroactively. Landgraf v.  
10 USI Film Prods., 511 U.S. 244, 273 (1994); PEBP, 124 Nev. at 154, 179 P.3d at  
11 553; Cnty. of Clark v. Roosevelt Title Ins. Co., 80 Nev. 530, 535, 396 P.2d 844,  
12 846 (1964). (Cited in Sandpointe Apartments, LLC v. Eighth Judicial District  
13 Court, 129 Nev. Adv. Op. 87 Nov. 14, 2013). The presumption against  
14 retroactivity is typically explained by reference to fairness. Landgraf, 511 U.S. at  
15 270.  
16  
17  
18  
19  
20

21 As stated in Sandpointe Apartments, LLC Id. at page 18:

22 The United States Supreme Court has explained that "the  
23 presumption against retroactive legislation is deeply rooted in our  
24 jurisprudence, and embodies a legal doctrine centuries older than our  
25 Republic." Landgraf, 511 U.S. at 265. And, from this court's  
26 inception, it has viewed retroactive statutes with disdain, noting that  
27 such laws are "odious and tyrannical" and "have been almost  
28 uniformly discountenanced by the courts of Great Britain and the  
United States." Milliken v. Sloat, 1 Nev. 573, 577 (1865). Not  
surprisingly, once it is triggered, the presumption against retroactivity  
is given considerable force. See U.S. Fid. & Guar. Co. v. United



1           *States ex rel. Struthers Wells Co.*, 209 U.S. 306, 314 (1908) ("The  
2       presumption is very strong that a statute was not meant to act  
3       retrospectively, and it ought never to receive such a construction if it  
4       is susceptible of any other."). Thus, as we have observed, a statute  
5       will not be applied retroactively unless [(1)] the Legislature clearly  
6       manifests an intent to apply the statute retroactively, or [(2)] "it  
7       clearly, strongly, and imperatively appears from the act itself' that the  
8       Legislature's intent cannot be implemented in any other fashion. *PEBP*,  
9       124 Nev. at 154, 179 P.3d at 553 (quoting *In re Estate of Thomas*, 116 Nev.  
10       492, 495-96, 998 P.2d 560, 562 (2000)).

11           In this case, there was no intent or indication in the opinion by this  
12       Honorable Court to apply the Thomas decision retroactively. The implications of a  
13       retroactive legal effect are enormous and profound, especially considering the list  
14       of exemptions under NRS 608.250(2) that were completely eliminated by the  
15       Thomas decision which includes casual babysitters, domestic service employees,  
16       outside salespersons, agricultural employees, persons with severe disabilities and  
17       limousine and taxicab drivers.

18           Statutes are presumptively prospective only, *see McKellar v. McKellar*, 110  
19       Nev. 200, 871 P.2d 296, 298 (1994) ("[t]here is a general presumption in favor of  
20       prospective application of statutes unless the legislature clearly manifests a  
21       contrary intent or unless the intent of the legislature cannot otherwise be  
22       satisfied").

23           In this case, the Thomas decision provides affirmative support that Real  
24       Parties in Interest will not be able to go back in time and pursue minimum wage  
25       claims against Petitioners prior to June 26, 2014. This Honorable Court ruled, "The  
26

1 text of the Minimum Wage Amendment, by enumerating specific exceptions that  
2 do not include taxicab drivers, supersedes and supplants the taxicab driver  
3 exception set out in NRS 608.250(2).” (Page 9 of *Thomas* decision) From the use  
4 of the present tense, the decision never intended for Real Parties in Interest to go  
5 back in time; otherwise, the majority of this Honorable Court would have clearly  
6 stated “superseded and supplanted,” the past tense, which would have entirely  
7 different implications. Real Parties in Interest became aware of the specific use of  
8 the present tense use of “supersedes” and “supplants” and filed a motion with this  
9 Honorable Court to “correct” its opinion, which this Honorable Court denied and  
10 ruled that the opinion shall stand as issued, providing further support that this  
11 Honorable Court never intended its decision to be used to pursue actions against  
12 Petitioners retroactively prior to June 26, 2014.

13  
14  
15  
16  
17  
18 **B. There Were Two (2) Conflicting Laws Regarding The Same Subject**  
19 **Matter**

20 As stated in *Sandpointe Apartments, LLC Id.* at pages 8-9:

21 The presumption against retroactivity is typically explained by  
22 **reference to fairness.** *Landgraf*, 511 U.S. at 270. As the Supreme  
23 Court has instructed, “[e]lementary considerations of fairness dictate  
24 that individuals should have an opportunity **to know what the law is**  
25 and to conform their conduct accordingly; settled expectations should  
26 not be lightly disrupted.” *Id.* at 265. Moreover, “[in a free, dynamic  
27 society, creativity in both commercial and artistic endeavors is  
28 fostered by a rule of law that gives people confidence about the legal  
consequences of their actions.” *Id.* at 265-66.

In this case, NRS 608.250(2) was the law that employers were following

1 until the Thomas decision. Following passage of the Nevada Minimum Wage  
2 Amendment in 2006, the statutory exemption for taxicab and limousine drivers  
3 remained on the books and effective (NRS 608.250(2)). There was no express or  
4 implied repeal at that time and in the years following. In 2009, Federal Judge  
5 Clive Jones was the first jurist to weigh in on the question of “implied repeal,”  
6 interpreting Nevada law in the Lucas v. Bell Trans, 2009 WL 2424557 (D. Nev.  
7 2009) case. His decision against “implied repeal,” although not binding on this  
8 Honorable Court, was nonetheless the only statement of competent judicial  
9 authority on the Nevada law question, and remained so until Thomas. All during  
10 those years from 2006 until June 26, 2014, employers and employees followed the  
11 law as interpreted by Judge Jones, and were reasonable in doing so, since this  
12 Honorable Court had not spoken otherwise. In addition, the Nevada Labor  
13 Commissioner comported with that state of affairs, and continued to recognize  
14 NRS 608.250(2) by issuing “Rules to be Observed By Employers,” dated  
15 November 13, 2012, where it specifically listed the exceptions to minimum wage,  
16 including taxicab drivers. See Petitioners’ Appendix **PA036**. Therefore,  
17 Petitioners were following the law as it existed at the time, which was being  
18 enforced by the Office of Labor Commissioner and hence there were no violations  
19 of existing laws. This Honorable Court recognized this fact when it stated, “The  
20 Amendment’s broad definition of employee and very specific exemptions  
21  
22  
23  
24  
25  
26  
27  
28

1 necessarily and directly conflict with the legislative exception for taxicab drivers  
2 established by NRS 608.250(2)(e). Therefore, the two are “irreconcilably  
3 repugnant,”... such that “both cannot stand,”... and the statute **is impliedly**  
4 **repealed** by the constitutional amendment.” (Page 6 of *Thomas* decision) The  
5 majority did not state “the statute **was** impliedly repealed.” This means that up  
6 until the *Thomas* decision, this Honorable Court believed there was a legitimate  
7 confusion among the public and employers, in that there were two (2) conflicting  
8 laws on the same subject matter requiring a conclusive decision that would  
9 establish precedent moving forward that would only apply prospectively. Nothing  
10 from the *Thomas* decision indicates that it granted Real Parties in Interest a right to  
11 pursue claims against Petitioners retroactively after the *Thomas* decision. Since  
12 there were no violations of existing laws, Real Parties in Interest have no claims  
13 against Petitioners upon which relief can be granted prior to June 26, 2014.

14  
15 The *Thomas* decision made it clear that the exemptions under NRS  
16 608.250(2) no longer apply. NRS 608.250(2) contained exemptions in effect since  
17 1965, which employers reasonably and legitimately relied upon. The intent of the  
18 *Thomas* decision was **not to punish** Petitioners including other employers who  
19 reasonably and legitimately relied upon NRS 608.250(2) and the notices from the  
20 Office of Labor Commissioner. Rather, the intent of *Thomas* was to make one  
21 conclusive opinion on minimum wage law and to clarify the law prospectively.  
22  
23  
24  
25  
26  
27  
28

1 This Honorable Court recently took the opportunity to cite to the *Thomas*  
2 decision, by specifically using the present tense language, which provides further  
3 support that this Honorable Court's decision had **prospective effect**.  
4

5 In *Terry v. Sapphire Gentlemen's Club*, 130 Nev., Advance Opinion 87 (2014), at  
6 Page 6 this Honorable Court stated:  
7

8 ... and though this court has recognized that the text of the Minimum  
9 Wage Amendment **supplants** that of our statutory minimum wage  
10 laws to some extent, see *Thomas v. Nev. Yellow Cab Corp.*, 130 Nev.  
11 \_\_\_, \_\_\_, 327 P.3d 518, 522 (2014) (holding that "[t]he text of the  
12 Minimum Wage Amendment ... **supersedes** and **supplants** the  
13 taxicab driver exception set out in NRS 608.250(2)")

14 The Nevada Department of Business and Industry which oversees the Nevada  
15 Office of Labor Commissioner, agrees that the application of *Thomas* is  
16 prospective, not retroactive. In its recent publication, The Business Advocate, it  
17 contained an article titled, "A Minimum Wage Guide for Nevada Employers,"  
18 where it stated:  
19

20 While the constitutional amendment did not directly conflict with the  
21 exemptions outlined in NRS 608.250, its passage created some  
22 **uncertainty**. It was this uncertainty that the Nevada Supreme Court  
23 addressed this past summer in *Thomas v. Nevada Yellow Cab*, 130  
24 Nev. Adv. Op. 52 (2014). In its opinion, the Nevada Supreme Court  
25 found that exemptions outlined in the Nevada Constitution supersede  
26 the exemptions previously provided for in NRS 608.250. The only  
27 individuals who are exempt from the payment of minimum wage,  
28 according to the Nevada Supreme Court, are those specifically  
outlined in the constitutional amendment.

1           What does this decision mean for Nevada’s employers? It means that  
2           employers who have previously relied on the exemptions outlined  
3           in NRS 608.250 will be mandated to pay minimum wage to  
4           individuals not specifically exempted in the Nevada Constitution. See  
5           Page 7 of “A Minimum Wage Guide for Nevada Employers,” Winter  
6           2014 as Petitioners’ Appendix PA-038-039.

7           In the article, the department that oversees the Labor Commissioner clearly  
8           admitted and publicly announced that employers reasonably and legitimately relied  
9           on the exemptions under NRS 608.250(2) prior to the *Thomas* decision.

10          Petitioners were among those employers who reasonably and legitimately relied on  
11          the exemptions prior to the *Thomas* decision and thus should not be punished by  
12          having to defend alleged class action claims involving alleged conduct that  
13          occurred prior to the *Thomas* decision. Petitioners have been in compliance with  
14          the *Thomas* decision since June 26, 2014. See Affidavit of Gene Auffert, CEO and  
15          CFO as Petitioners’ Appendix PA041.

16  
17  
18          **C. A New Rule of Law Must Be Given Prospective Application**

19  
20          In *Breithaupt v. USAA Property and Casualty Insurance Company*, 110 Nev.  
21          31, 867 P.2d 402 (1994), at page 405 this Honorable Court followed the three part  
22          test in *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106-07, 92 S.Ct. 349, 355, 30  
23          L.Ed.2d 296 (1971) on whether a new rule of law should be limited to prospective  
24          application. In determining whether a new rule of law should be limited to  
25          prospective application, courts have considered three factors: (1) “the decision to  
26          prospective application, courts have considered three factors: (1) “the decision to  
27  
28

1 be applied nonretroactively must establish a new principle of law, either by  
2 overruling clear past precedent on which litigants may have relied, or by deciding  
3 an issue of first impression whose resolution was not clearly foreshadowed,” (2)  
4 the court must “weigh the merits and demerits in each case by looking to the prior  
5 history of the rule in question, its purpose and effect, and whether retrospective  
6 operation will further or retard its operation;” and (3) courts consider whether  
7 retroactive application “could produce substantial inequitable results.”  
8  
9

10 In this case, the Thomas decision was a landmark decision which established  
11 a new principle of law that NRS 608.250(2)(e), which was in existence since 1965,  
12 was no longer to be followed. This issue was of first impression, which was not  
13 clearly foreshadowed by similar cases prior to the Thomas decision. The Thomas  
14 decision was not rendered to punish Petitioners including other employers who  
15 reasonably and legitimately relied upon NRS 608.250(2). Retroactive application  
16 would effectively punish Petitioners for alleged actions that occurred prior to the  
17 decision, which will not further the substantive nature of the Thomas decision,  
18 since the ruling is worded in present rather than in the past tense. This analysis  
19 would be entirely different had the Thomas decision been specifically worded to  
20 apply retroactively. However, the decision was worded in the present tense and  
21 meant to be applied prospectively. Furthermore, there will be substantial  
22 inequitable results of retroactively applying the Thomas decision in the numerous  
23  
24  
25  
26  
27  
28

1 referenced cases involving taxicab drivers, and by permitting casual babysitters,  
2 domestic service employees, outside salespersons, agricultural employees, persons  
3 with severe disabilities and limousine drivers to pursue likely class action litigation  
4 against their current or former employers for alleged conduct that allegedly  
5 occurred prior to the Thomas decision, when those employers had a reasonable and  
6 legitimate basis for relying on NRS 608.250(2) and the notices from the Office of  
7 Labor Commissioner.

10  
11 **D. This Honorable Court Denied Real Parties' in Interest "Motion to**  
12 **Correct" Its Opinion**

13 Counsel for Real Parties in Interest has admitted that Thomas is not  
14 retroactive by filing the "Motion to Correct" and seeking from this Honorable  
15 Court to change its written opinion to include past tense terminology so that it  
16 would be retroactive, and exclude key present tense words. See Petitioners'  
17 Appendix PA147-153. On October 17, 2014, Petitioners filed their Opposition to  
18 "Motion to Correct," and persuasively argued that the Thomas decision was meant  
19 to only apply prospectively, not retroactively. See Petitioners' Appendix PA154-  
20 163. On October 27, 2014, this Honorable Court denied Real Parties' in Interest  
21 "Motion to Correct," and ruled that the opinion "shall stand as issued." See  
22 Petitioners' Appendix PA164-165. This provides further support that this  
23 Honorable Court never intended its decision to be used to pursue actions against  
24 Petitioners or similarly situated employers, retroactively prior to June 26, 2014.



1 This was a compelling decision to deny the “Motion to Correct,” and was a clear  
2 pronouncement by this Honorable Court indicating, that its decision was to be only  
3 applied prospectively. If this Honorable Court had intended its landmark decision  
4 on minimum wage in Thomas to have a retroactive effect upon Petitioners, as  
5 argued in the “Motion to Correct,” this Honorable Court would have certainly  
6 granted the “Motion to Correct,” and changed the language from the current  
7 present tense, to past tense as specifically requested. However, this Honorable  
8 Court refused to change the wording of its opinion, which is profound and  
9 compelling. This Honorable Court’s decision to deny the “Motion to Correct,” is a  
10 clear and authoritative evidence that the Thomas decision only applies  
11 prospectively and thus Real Parties in Interest have no claim upon which relief can  
12 be granted.  
13  
14  
15  
16  
17

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 V.

2 CONCLUSION

3  
4 Based on the foregoing points and authorities, Petitioners respectfully  
5 request that this Honorable Court grant the Petition For Writ of Mandamus.  
6

7 DATED this 13th day of October, 2015.

8 YELLOW CHECKER STAR  
9 TRANSPORTATION CO. LEGAL DEPT.

10 /s/ Tamer B. Botros  
11 MARC C. GORDON, ESQ.  
12 GENERAL COUNSEL  
13 Nevada Bar No. 001866  
14 TAMER B. BOTROS, ESQ.  
15 ASSOCIATE COUNSEL  
16 Nevada Bar No. 012183  
17 5225 W. Post Road  
18 Las Vegas, Nevada 89118  
19 Attorneys for Petitioners  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Certificate of Compliance with N.R.A.P Rule 28.2**

I hereby certify that this Petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced type face using 14 point Times New Roman typeface in Microsoft Word 2013.

I further certify that this Petition complies with the page-or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 4,076 words.

Finally, I hereby certify that I have read this Petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

///

///

///

1 I understand that I may be subject to sanctions in the event that the accompanying  
2 Petition is not in conformity with the requirements of the Nevada Rules of  
3 Appellate Procedure.  
4

5 DATED this 13th day of October, 2015.

6 YELLOW CHECKER STAR  
7 TRANSPORTATION CO. LEGAL DEPT.

8  
9 /s/ Tamer B. Botros  
10 MARC C. GORDON, ESQ.  
11 GENERAL COUNSEL  
12 Nevada Bar No. 001866  
13 TAMER B. BOTROS, ESQ.  
14 ASSOCIATE COUNSEL  
15 Nevada Bar No. 012183  
16 5225 W. Post Road  
17 Las Vegas, Nevada 89118  
18 Attorneys for Petitioners  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

The undersigned certifies that on October 13th, 2015, service of the foregoing, **PETITION FOR WRIT OF MANDAMUS and PETITIONERS' APPENDIX** was made by depositing same in the U.S. mail, first class postage, prepaid, addressed as follows:

Leon Greenberg, Esq.  
Dana Sniegocki, Esq.  
Leon Greenberg Professional Corporation  
2965 South Jones Blvd, Suite E4  
Las Vegas, Nevada 89146  
[leongreenberg@overtimelaw.com](mailto:leongreenberg@overtimelaw.com)  
[dana@overtimelaw.com](mailto:dana@overtimelaw.com)  
Attorneys for Plaintiffs  
CHRISTOPHER THOMAS  
CHRISTOPHER CRAIG

The Honorable Ronald J. Israel  
Regional Justice Center  
Department 28  
200 Lewis Avenue  
Las Vegas, Nevada 89155  
(Via-Hand Delivery)

/s/ Sheila Robertson  
For **Yellow Checker Star**  
**Transportation Co. Legal Dept.**

[Skip to Main Content](#) [Logout My Account](#) [Search Menu](#) [New District Civil/Criminal Search Refine](#)  
[Search Close](#)

Location: District Court Civil/Criminal [Help](#)

## REGISTER OF ACTIONS

CASE No. A-12-661726-C

Christopher Thomas, Plaintiff(s) vs. Nevada Yellow Cab Corp,  
 Defendant(s)

§  
§  
§  
§  
§  
§  
§

Case Type: Other Civil Filing  
 Subtype: Other Civil Matters  
 Date Filed: 05/11/2012  
 Location: Department 28  
 Cross-Reference Case Number: A661726  
 Supreme Court No.: 61681

### PARTY INFORMATION

#### Lead Attorneys

Defendant Nevada Checker Cab Corporation

Tamer B. Botros  
 Retained  
 702-873-6531(W)

Defendant Nevada Star Cab Corporation

Tamer B. Botros  
 Retained  
 702-873-6531(W)

Defendant Nevada Yellow Cab Corp

Tamer B. Botros  
 Retained  
 702-873-6531(W)

Other Rhoda, Karl C

Plaintiff Craig, Christopher

Bradley S. Schrager  
 Retained  
 702-341-5200(W)

Plaintiff Thomas, Christopher

Bradley S. Schrager  
 Retained  
 702-341-5200(W)

### EVENTS & ORDERS OF THE COURT

10/18/2017 All Pending Motions (9:30 AM) (Judicial Officer Bulla, Bonnie)

#### Minutes

10/18/2017 9:30 AM

- COURT CALL - Motion on OST for Protective Order and to Quash Subpoena ..... Plaintiffs' Partial Joinder to Nevada Office of the Labor Commissioner's Motion for OST, as to Protective Order Argument by Mr. Botros. There is no reason at this point to take the Labor Commissioner's deposition as it would be focused on legal interpretation which is governed by the applicable law. Ms. Flatley stated the Labor Commissioner's office isn't opposed to all discovery, so if Deft prepared a Subpoena Duces Tecum the Labor Commissioner's office would produce responsive records if they exist. Argument by Ms. Flatley. Upon Commissioner's inquiry, Mr. Botros has not done a Subpoena Duces Tecum recently. Commissioner stated the law will be given to the Jury by the Judge. 2-5-18 Trial date. COMMISSIONER RECOMMENDED, under the facts and circumstances Commissioner reviewed, Motion and Joinder are GRANTED for current and former Labor Commissioners. Mr. Schrager to prepare the Report and Recommendations, and counsel to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution.

[Parties Present](#)  
[Return to Register of Actions](#)

RPIA 0043