

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

A CAB, LLC; AND A CAB SERIES,  
LLC,

Appellants,

v.

MICHAEL MURRAY; AND  
MICHAEL RENO, INDIVIDUALLY  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,

Respondents.

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) Supreme Court No. 77050

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Elizabeth A. Brown  
Clerk of Supreme Court

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**APPENDIX TO  
APPELLANTS OPENING BRIEF  
VOLUME IV of LII**

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Appeal from the Eighth Judicial District Court  
Case No. A-12-669926-C

HUTCHISON & STEFFEN, PLLC

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23	Plaintiffs' Response in Opposition to Defendants' Motion for Declaratory Order Regarding Statue of Limitations, filed 08/28/2015	IV	AA000600-AA000650
172	Plaintiffs' Response in Opposition to Defendants' Motion for Dismissal of Claims on an Order Shortening Time, filed 10/17/2018	XLVI	AA009289-AA009297
8	Plaintiffs' Response in Opposition to Defendants' Motion Seeking Reconsideration of the Court's February 8, 2013 Order Denying Defendants' Motion to Dismiss, filed 03/18/2013	I	AA000181-AA000187
154	Plaintiffs' Response to Defendants' Ex-Parte Motion to Quash Writ of Execution on an OST and Counter-Motion for Appropriate Judgment Enforcement Relief, filed 09/24/2018	XLIV	AA008919-AA008994
109	Plaintiffs' Response to Defendants' Motion in Limine to Exclude Expert Testimony, filed 01/12/2018	XXX, XXXI	AA006002-AA006117
184	Plaintiffs' Response to Special Master's	XLVII	AA009665-



	Motion for an Order for Payment of Fees and Contempt, filed 11/26/2018		AA009667
115	Plaintiffs' Supplement in Connection with Appointment of Special Master, filed 01/31/2018	XXXII	AA006239-AA006331
144	Plaintiffs' Supplement in Reply and In Support of Entry of Final Judgment Per Hearing Held June 5, 2018, filed 07/13/2018	XLI, XLII	AA008416-AA008505
146	Plaintiffs' Supplement in Reply to Defendants' Supplement Dated July 18, 2018, filed 08/03/2018	XLII	AA008576-AA008675
107	Plaintiffs' Supplement in Support of Motion for Partial Summary Judgment, filed 01/09/2018	XXX	AA005833-AA005966
75	Plaintiffs' Supplement to Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment, filed 02/23/2017	XX	AA003847-AA003888
156	Plaintiffs' Supplemental Response to Defendants' Ex-Parte Motion to Quash Writ of Execution on an OSt, filed 09/27/2018	XLIV	AA009009-AA009029
46	Reply in Support of Defendants' Motion for Reconsideration, filed 03/24/2016	VII, VIII	AA001237-AA001416
170	Reply in Support of Defendants' Motion for Reconsideration, Amendment, for New Trial, and for Dismissal of Claims, filed 10/16/2018	XLV	AA009272-AA009277
58	Reply in Support of Defendants' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) with Respect to All Claims for Damages Outside the Two-Year Statue of Limitation and Opposition to Counter Motion for Toll of Statue of Limitations and for an Evidentiary Hearing, filed 12/28/2016	XI	AA002179-AA002189

111	Reply in Support of Defendants' Motion in Limine to Exclude the Testimony of Plaintiffs' Experts, filed 01/19/2018	XXXI	AA006180-AA001695
178	Resolution Economics' Application for Order of Payment of Special Master's Fees and Motion for Contempt, filed 11/05/2018	XLVII	AA009553-AA009578
187	Resolution Economics' Reply to Defendants' Opposition and Plaintiffs' Response to its Application for an Order of Payment of Special Master's Fees and Motion for Contempt, filed 12/03/2018	XLVII	AA009690-AA009696
100	Response in Opposition to Defendant's Motion for Summary Judgment, filed 12/14/2017	XXVII, XXVIII	AA005372-AA005450
31	Response in Opposition to Defendants' Motion to Dismiss Plaintiffs' First Claim for Relief, filed 09/28/2015	V	AA000807-AA000862
3	Response in Opposition to Defendants' Motion to Dismiss, filed 12/06/2012	I	AA000016-AA000059
33	Response in Opposition to Defendants' Motion to Dismiss and for Summary Judgment Against Plaintiff Michael Murray, filed 10/08/2015	V	AA000870-AA000880
34	Response in Opposition to Defendants' Motion to Dismiss and for Summary Judgment Against Plaintiff Michael Reno, filed 10/08/2015	V	AA000881-AA000911
212	Second Amended Notice of Appeal, filed 03/06/2019	L	AA010285-AA010288
22	Second Amended Supplemental Complaint, filed 08/19/2015	III	AA000582-AA000599
130	Second Supplemental Declaration of Class Counsel, Leon Greenberg, Esq., filed	XXXIV	AA007015-AA007064

	05/18/2018		
213	Special Master Resolution Economics' Opposition to Defendants Motion for Reconsideration of Judgment and Order Granting Resolution Economics Application for Order of Payment of Special Master's Fees and Order of Contempt, filed 03/28/2019	LI	AA010289-AA010378
78	Supplement to Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment, filed 05/24/2017	XXI	AA004024-AA004048
79	Supplement to Defendants' Opposition to Plaintiffs' Motion to Bifurcate Issue of Liability of Defendant Creighton J. Nady From Liability of Corporate Defendants or Alternative Relief, filed 05/31/2017	XXI	AA004049-AA004142
72	Supplement to Order For Injunction Filed on February 16, 2017, filed 02/17/2017	XIX	AA003777-AA003780
129	Supplemental Declaration of Class Counsel, Leon Greenberg, Esq., filed 05/16/2018	XXXIV	AA006981-AA007014
38	Transcript of Proceedings, November 3, 2015	VI	AA001002-AA001170
66	Transcript of Proceedings, February 8, 2017	XVII	AA003549-AA003567
70	Transcript of Proceedings, February 14, 2017	XIX	AA003755-AA003774
77	Transcript of Proceedings, May 18, 2017	XX, XXI	AA003893-AA004023
83	Transcript of Proceedings, June 13, 2017	XXII	AA004223-AA004244
101	Transcript of Proceedings, December 14, 2017	XXVIII	AA005451-AA005509

105	Transcript of Proceedings, January 2, 2018	XXIV	AA005720- AA005782
114	Transcript of Proceedings, January 25, 2018	XXXI	AA006203- AA006238
117	Transcript of Proceedings, February 2, 2018	XXXII	AA006335- AA006355
122	Transcript of Proceedings, February 15, 2018	XXXII, XXXIII	AA006427- AA006457
137	Transcript of Proceedings, filed July 12, 2018	XXXVI, XXXVII	AA007385- AA007456
215	Transcript of Proceedings, September 26, 2018	LI	AA010385- AA010452
216	Transcript of Proceedings, September 28, 2018	LI, LII	AA010453- AA010519
175	Transcript of Proceedings, October 22, 2018	XLVI	AA009304- AA009400
189	Transcript of Proceedings, December 4, 2018	XLVIII	AA009701- AA009782
190	Transcript of Proceedings, December 11, 2018	XLVIII	AA009783- AA009800
192	Transcript of Proceedings, December 13, 2018	XLVIII	AA009813- AA009864

## **CERTIFICATE OF SERVICE**

I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this date **APPENDIX TO APPELLANTS OPENING BRIEF VOLUME IV of LII** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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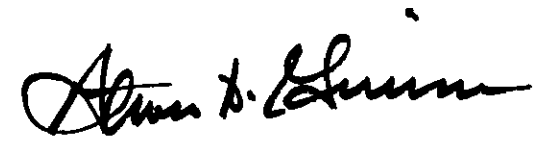
*Attorneys for Respondents*

DATED this 5<sup>th</sup> day of August, 2020.

*/s/ Kaylee Conradi*

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An employee of Hutchison & Steffen, PLLC

  
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

MICHAEL MURRAY, and MICHAEL  
RENO, Individually and on behalf of  
others similarly situated,  
  
Plaintiffs,  
  
vs.  
  
A CAB TAXI SERVICE LLC, A CAB,  
LLC, and CREIGHTON J. NADY,  
  
Defendants.

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' RESPONSE IN  
OPPOSITION TO  
DEFENDANTS' MOTION FOR  
DECLARATORY ORDER  
REGARDING STATUTE OF  
LIMITATIONS**

The plaintiffs, through their attorneys, Leon Greenberg Professional Corporation, hereby submit this response in opposition to defendants' motion for declaratory order regarding statute of limitations. This response in opposition is submitted based upon the memorandum of points and authorities below and the other pleadings and papers in this action.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**SUMMARY**

Part I of plaintiffs' argument responds to defendants' assertion that this lawsuit is not about a claim for "minimum wages" but actually "unpaid hours." That assertion seeks to transmute this lawsuit into something that it is not and that has no legal existence, a chimera of defendants' creation that it proposes to have treated under an equally non-existent two year statute of limitations.

AA000600

1 Part II of plaintiffs' argument explain why judicial economy will best served by  
2 the Court not examining the merits of the statute of limitations issue and assuming, as  
3 a "default," a four year statute of limitations in this case unless that issue is resolved  
4 differently by the Nevada Supreme Court in a *mandamus* proceeding scheduled for *en*  
5 *banc* oral argument on October 6, 2015.

6 Part III of plaintiffs' argument explains why a four year statute of limitations is  
7 proper in this case, if the Court decides to rule on the merits of that issue.

## 8 ARGUMENT

### 9 I. DEFENDANTS' ASSERTION THIS CASE INVOLVES 10 A CLAIM FOR "UNPAID HOURS" AND NOT "UNPAID MINIMUM WAGES" IS NONSENSICAL AND ABSURD

11 The plaintiffs allege that the defendants failed to pay the plaintiffs, at all times,  
12 the minimum hourly wages required by Nevada law, currently either \$7.25 or \$8.25 an  
13 hour. Defendants deny those allegations. Defendants claim they posses certain  
14 records that they assert accurately record the actual hours the plaintiffs were working  
15 and the wages they were paid. Defendants further claim that based upon the  
16 information in those records, the plaintiffs were paid at all times the minimum hourly  
17 wage required by Nevada law. Plaintiffs have disputed those factual assertions by  
18 defendants. Plaintiffs have specifically alleged that the records defendants seek to rely  
19 upon are false and that those records claim the plaintiffs were "not working" during  
20 periods of the plaintiffs were "actually working."

21 Defendants want the Court to make the novel finding that the parti' *factual*  
22 *dispute* as to the accuracy of the defendants' records has *changed the legal character*  
23 *of the plaintiffs' claims*. The plaintiffs claim that the total compensation they were  
24 paid for certain time periods that they worked (whether evaluated on a "per daily shift"  
25 or "per week" or "per pay period" basis - the proper evaluation period has not been  
26 ruled upon by the Court) was below the minimum hourly wage required by Nevada  
27 law. By way of example, assume a plaintiff claims they worked a 10 hour shift during  
28 a single day and was paid \$50.00 in total, which is only \$5.00 an hour and far below

1 Nevada's hourly minimum wage. Defendant, in respect to that exact same shift, claim  
2 that the plaintiff only worked 5 hours for that \$50.00 payment and as a result was paid  
3 \$10.00 an hour for each hour actually worked, far in excess of the minimum hourly  
4 wage. Yet the **legal nature of the plaintiff's claim is not changed by this factual**  
5 **dispute** as the plaintiff is still insisting he was not paid the full minimum hourly wage  
6 for all the hours he claims he worked.

7 It is ludicrous to allow a defendant, by disputing the hours an employee worked,  
8 to transform a claim for unpaid minimum wages into a claim for "unpaid hours"  
9 (something defendant insists is of a different legal character but cites no authority for  
10 its existence). Adopting defendants' argument would allow employers sued for  
11 minimum wages to claim, in every case, that they paid the employee "in full, above the  
12 minimum wage" for the hours that the employee actually worked (according to the  
13 employer) and the employee is not suing for unpaid minimum wages but "unpaid  
14 hours." Defendants cite no authority for this absurd argument.

15 This argument is even more absurd in this case as the parties' compensation  
16 agreement was for commission pay, not hourly pay, and as a result there is not even  
17 internally, between the parties themselves as a matter of contract, any "unpaid hours"  
18 issue. Ex. "A," employee handbook excerpt, explaining pay system as based upon  
19 42% commission of collected passenger fares and other factors. The "hours worked"  
20 issue only enters into this case because of the requirements of Nevada's Constitutional  
21 Minimum wage which imposes a minimum pay per hour worked requirement.

22 Defendants' claim that a two year statute of limitations applies to an "unpaid  
23 hours" claim is just as fictitious as the existence of a such a claim itself. No provision  
24 of the NRS imposes such a statute of limitations on such arguably identified claim.  
25 Indeed, such claim, if it existed, would clearly be akin to common law breach of  
26 contract claim and governed by Nevada's four year or six year breach of contract  
27 statute of limitations.



1 **II. THE COURT SHOULD ADOPT FOUR YEAR STATUTE OF**  
2 **LIMITATIONS IN THIS CASE AS A “DEFAULT” MEASURE**  
3 **AND OTHERWISE AWAIT THE NEVADA SUPREME COURT’S**  
4 **DECISION ON THAT ISSUE**

5 Judge Israel, Judge Williams and Judge Bell of this Court have all held that the  
6 applicable statute of limitations for minimum wage claims under Nevada’s  
7 Constitution is four years. Ex. “B” copies of orders. There are contrary decisions,  
8 including one from Judge Tao holding that a two year statute of limitations applies to  
9 those claims, with Judge Tao’s decision being subject to a *mandamus* writ review,  
10 *Williams v. Eighth Dist. Court*, Nevada Supreme Court No. 66629, currently scheduled  
11 for oral argument, *en banc*, on October 6, 2015. See, Ex. “C” Decision of Judge Tao  
12 in *Williams*.

13 This case has been pending since October 8, 2012. In light of the fact this case  
14 has been pending almost three years, the Court should err on the side of inclusiveness  
15 and proceed in this case “by default” as if a four year statute of limitations applies. If  
16 the *Williams* writ proceedings hold otherwise, the applicable claim period can easily  
17 be reduced for presentation and resolution of issues at trial. The converse is not true.

18 A four year statute of limitations would render the period from October 8, 2008  
19 through the present actionable in this case. Plaintiffs also believe a statute of  
20 limitations toll should be applied in this case extending the statute of limitations to  
21 July 1, 2007. That tolling should be imposed because subpart A of Article 15, Section  
22 16 of the Nevada Constitution states an “employer shall provide written notification of  
23 [minimum wage] rate adjustments to each of its employees” when changes are made to  
24 the minimum wage rate. The first such change and obligation to provide “written  
25 notification” of that change was on July 1, 2007. Defendants never provided that  
26 written notification. Accordingly, the appropriate “remedy” for that violation is to bar  
27 the defendants from benefitting from the running of the statute of limitations since July  
28 1, 2007. See, Subpart B of Article 15, Section 16 of the Nevada Constitution, stating  
employees are “entitled to all remedies available under the law or in equity appropriate  
to remedy any violation of this section...” See, also, *Copeland v. Desert Inn Hotel*,

1 637 P.2d 490, 493 (Nev. Sup. Ct. 1983) (Explaining operative principles in Nevada to  
2 grant an equitable toll of the statute of limitations).

3 The Court is not going to resolve the equitable tolling issue at this time, but it  
4 should direct that discovery of information from July 1, 2007 forward be allowed, until  
5 it otherwise orders, as it can easily later limit the time frame of the claims it actually  
6 adjudicates.

7 **III. THE STATUTE OF LIMITATIONS APPLICABLE TO A CLAIM**  
8 **ARISING UNDER NEVADA’S CONSTITUTION IS AT LEAST**  
9 **FOUR YEARS**

10 **A. Nevada, as does every other jurisdiction, applies its “catch all”**  
11 **statute of limitations, which is four years, to a constitutional**  
12 **claim that does not fall under a longer limitations period.**

13 In the event no specific statute of limitations is otherwise provided for a  
14 particular claim, Nevada provides for a four year statute of limitations. *See*, NRS  
15 11.220. Neither Nevada’s statutes nor its constitution set forth any expressly specified  
16 statute of limitations for civil claims arising under Nevada’s Constitution. In *White*  
17 *Pine Lumber Co. v. City of Reno*, 801 P.2d 1370, 1371-72 (Nev. Sup. Ct. 1990), the  
18 Court held that a claim under the Nevada Constitution against a municipality for  
19 inverse condemnation would have, absent other considerations, been subject to the  
20 four year “catch all” statute of limitations provided for in NRS 11.220. It found other  
21 considerations compelled it to apply the 15 year statute of limitations for inverse  
22 condemnation, as constitutional claims against governmental actors should not be  
23 subject to a statute of limitations shorter than that applicable to private parties (the  
24 adverse possession limitations period of NRS 40.090) who commit the same conduct.  
25 801 P.2d at 1371. In the earlier case of *Alper v. Clark County*, 571 P.2d 810, 813  
26 (1977), the Nevada Supreme Court recited, without dispute, the logic of applying the  
27 four year NRS 11.220 statute of limitations to claims generally arising under Nevada’s  
28 Constitution, although it decided *Alper* on other grounds.

Every analogous case that plaintiffs’ counsel has located has adopted a

jurisdiction's "catch-all" statute of limitations for constitutional claims when the jurisdiction has not otherwise expressly provided a statute of limitations for such claims. *See, Ho v. University of Texas*, 984 S.W.2d 672, 687 (Tex. Court of App. 1998) (Applying Texas "catch all" statute of limitations to claim originating directly from state constitution when no other statute of limitations was expressly applicable); *Linder v. Kindig*, 285 Neb. 386, 393 (Neb. Sup. Ct. 2013) (Applying Nebraska "catch all" statute of limitations); *Pauk v. Board of Trustees of City University of New York*, 1983, 119 Misc.2d 663, affirmed as modified on other grounds 111 A.D.2d 17, affirmed 68 N.Y.2d 702 (N.Y. Ct. Appeals 1986) (Applying New York "catch all" statute of limitations) and *Marshall v. Kleppe*, 637 F.2d 1217, 1223-24 (9<sup>th</sup> Cir. 1980) (Applying California's four year "catch all" statute of limitations to a constitutional claim and not California's general three year "action pursuant to a statute" statute of limitations period)<sup>1</sup>.

**B. The *Williams* decision ignores the Nevada Constitution's language, the language of NRS 608.260, and contravenes the opinion of the Nevada Supreme Court in *Thomas***

**1. The holding in *Williams* is illogical and erroneous.**

In *Thomas v. Nevada Yellow Cab*, 327 P.3d 518, 522 (Nev. Sup. Ct. 2014) the Nevada Supreme Court, in rejecting claims that taxi cab drivers were exempt from Nevada's constitutionally proscribed minimum wage by virtue of NRS 608.250(2)(e), held that:

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

As *Thomas* held, whatever exception was created by Nevada's Legislature in NRS

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<sup>1</sup> *Marshall* dealt with a federal constitutional claim. Its continuing applicability to federal constitutional claims, at least for cases brought in the federal courts, is questionable in light of *Wilson v. Garcia*, 471 U.S. 261 (1985) and subsequent decisions applying *Wilson*, a 42 U.S.C. § 1983 case, to direct claims under the United States Constitution. Such subsequent precedents are irrelevant to the analysis in *Marshall* in respect to claims arising under a state constitution.

1 608.250 to Nevada’s statutorily imposed minimum wage could not limit the “rights  
2 and privileges protected by Nevada’s Constitution.”

3 *Williams* ignores *Thomas* by extending the two year statute of limitations of  
4 NRS 608.260, which by its express language only applies to claims arising under NRS  
5 608.250, to claims arising under Nevada’s Constitution. The relevant language from  
6 NRS 608.260 states it is applicable only:

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

9 The two year statute of limitations period of NRS 608.260 applies to claims that an  
10 employee has been paid (1) Less than the amount of “minimum wage prescribed by  
11 regulation of the Labor Commissioner” and (2) which amount has been so prescribed  
12 in a regulation issued by “pursuant to the provisions of NRS 608.250.”

13 *Williams* arrives at this result by holding that a *legislative* structure, NRS  
14 608.260, converts, and limits, a claim under Nevada’s Constitution in a claim under  
15 NRS 608.250, with all of the attendant limitations the legislature has placed on such  
16 claims, in direct contravention of *Thomas*:

17 Accordingly, a claim alleging that an employee has been illegally paid  
18 less than the effective minimum wage rate is a claim that alleges a  
19 violation of the rates established by the Labor Commissioner, not a claim  
20 that alleges a violation of the rates set forth in the Minimum Wage  
21 Amendment. Thus, the Plaintiffs’ claim in this case, although styled as a  
violation of Article IV, Section 16, actually appears to allege a violation  
arising under NRS 608.260. Such a claim is governed by the two-year  
statutory period set forth in NRS 608.260. *Williams*, p. 10., ¶ 15.

22 This holding rests upon two clearly erroneous findings: (1) That a claim for  
23 unpaid minimum wages under Nevada’s Constitution “alleges a violation of the rates  
24 established by the Labor Commissioner” and (2) That such a claim for a “violation of  
25 the rates established by the Labor Commissioner” is within the purview of NRS  
26 608.260.

27 The two year statute of limitations imposed by NRS 608.260 only applies to  
28 wage rates set by the Labor Commissioner “**pursuant to the provisions of NRS**

1 **608.250.”** The wage rate (the Nevada Constitutional minimum hourly wage amount)  
2 that *Williams* found was “established by the Labor Commissioner” was not so  
3 “established” pursuant to NRS 608.250.<sup>2</sup> Indeed, as the *Williams* decision  
4 acknowledges, the “wage rates” it finds were “established” by the Nevada Labor  
5 Commissioner were so established “pursuant” to the express dictates of Nevada’s  
6 Constitution and not NRS 608.250.<sup>3</sup>

7 The deviations from sound logic taken by *Williams* are manifest, as it makes  
8 clear in paragraphs ¶ 11-12:

9 On its face, the Minimum Wage Amendment does not merely establish a  
10 straightforward uniform minimum wage rate to be paid to every employee in  
11 Nevada at all times. Rather, the Minimum Wage Amendment sets a specific  
floor and then expressly requires the Governor (through the state Labor  
Commissioner) to adjust the rate periodically as follows:

12 These rates of wages shall be adjusted by the amount of increases in the  
13 federal minimum wage over \$5.15 per hour, or, if greater, by the  
cumulative increase in the cost of living. The cost of living increase shall  
14 be measured by the percentage increase as of December 31 in any year  
over the level as of December 31, 2004 of the Consumer Price Index (All  
15 Urban Consumers, U.S. City Average) as published by the Bureau of  
Labor Statistics, U.S. Department of Labor or the successor index or  
16 federal agency. No CPI adjustment for any one-year period may be greater  
than 3%. The Governor or the State agency designated by the Governor

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18 <sup>2</sup> NRS 608.250(1) states: “Except as otherwise provided in this section, the  
19 Labor Commissioner shall, in accordance with federal law, establish by regulation the  
20 minimum wage which may be paid to employees in private employment within the  
21 State. The Labor Commissioner shall prescribe increases in the minimum wage in  
22 accordance with those prescribed by federal law, unless the Labor Commissioner  
determines that those increases are contrary to the public interest.” It directs the Labor  
23 Commissioner to make minimum wage determinations “in accordance with federal  
law.” It does not authorize the Labor Commissioner to make minimum wage  
24 determinations on any other basis, much less based upon Nevada’s Constitution.

25 <sup>3</sup> See, ¶ 12 of *Williams*, l. 11-15: “In other words, the ‘cause-in-fact’ of any such  
26 claim [for minimum wages imposed by Nevada’s Constitution] is not that the  
employee has not been paid the particular dollar amount set forth in the Minimum  
27 Wage Amendment, but that he has not been paid the wage rate set forth in the periodic  
bulletins issued by the Labor Commissioner **pursuant to the Minimum Wage**  
28 **Amendment.**” (Emphasis provided).

1                   shall publish a bulletin by April 1 of each year announcing the adjusted  
2                   rates, which shall take effect the following July 1.

3                   Thus, the effective minimum wage rate in Nevada is not merely what is stated in  
4                   Article XV section 16, but rather is expressly defined as a wage rate set by the  
5                   Labor Commissioner based partially upon data from the U.S. Department of  
6                   Labor.

7                   The foregoing section of *Williams* contains two remarkable, and completely  
8                   erroneous, conclusions that have no support in the excerpted text of Nevada's  
9                   Constitution: (1) That the Nevada's Constitution "requires the Governor (through the  
10                  state Labor Commissioner)" to "adjust" the minimum wage rate and (2) that the  
11                  minimum hourly wage required by the Nevada Constitution "is expressly defined as a  
12                  wage rate set by the Labor Commissioner."

13                  Nowhere does the Nevada Constitution mention the Labor Commissioner.  
14                  *Williams* offers no explanation of how the minimum wage required by the Nevada  
15                  Constitution can be "expressly defined" as one "set" by a person (the Labor  
16                  Commissioner) who is never mentioned in the Constitution. Nor does the Nevada  
17                  Constitution direct that the Governor or the Labor Commissioner "adjust" the  
18                  minimum wage rate. It commands the Governor or "the State agency designated by  
19                  the Governor" to "**publish** a bulletin by April 1 of each year **announcing** the adjusted  
20                  rates."

21                  The "adjusted rates" that the Governor or their designee must "publish" and  
22                  "announce" are specified in the Constitution. They are not "defined" or "set" by the  
23                  Governor, the Labor Commissioner, or any state official. *Williams*' finding that the  
24                  Nevada Constitution does not "establish a straightforward uniform minimum wage  
25                  rate" but "sets a specific floor and then expressly requires the Governor (through the  
26                  state Labor Commissioner) to adjust the rate periodically" is without any basis  
27                  whatsoever. Such holding ignores the Nevada Constitution's language and reads into  
28                  the Nevada Constitution non-existent text and completely absent meanings.

                  The hourly minimum wage rate established by the Nevada Constitution is,  
contrary to *Williams* finding, completely "straightforward." It is an exact wage rate

1 created by referencing the Consumer Price Index and a maximum yearly increase of  
2 3% and that automatically becomes effective on July 1<sup>st</sup> of every year as a matter of  
3 law without any action by any state official. The Governor (either personally or  
4 through his designee) is charged with the non-discretionary duty of “publishing” that  
5 rate and has no control over that rate and wholly lacks any ability to “set” or change  
6 that rate. If the Governor neglected his Constitutional obligation to publish such rate it  
7 would still be the supreme law of Nevada and easily ascertainable by any interested  
8 party or Court.

9 *Williams*’s holding is logically impossible. It determines that the minimum  
10 wage “rate” set by the Labor Commissioner is “pursuant to the Minimum Wage  
11 Amendment” which means it cannot be a rate set “pursuant to NRS 608.250” and  
12 within the scope of NRS 608.260. Yet it inexplicably also holds that such “rate” is,  
13 contrary to its own finding about its origins, within the scope of NRS 608.260.  
14 *Williams* makes no attempt to reconcile these incompatible findings and such findings  
15 are irreconcilable.

16 **2. *Williams* leads to the absurd result of an employee**  
17 **having a longer statute of limitations to prosecute a**  
18 **minimum wage retaliation or discrimination claim than**  
**to collect on a claim for unpaid minimum wages.**

19 Nevada’s Constitution, Article 15, Section 16 (B) also provides that “[a]n  
20 employer shall not discharge, reduce the compensation of or otherwise discriminate  
21 against any employee for using any civil remedies to enforce this section or otherwise  
22 asserting his or her rights under this section.” Such a discrimination claim, under  
23 *Williams*, would have nothing to do with a “rate” of wages set by the Labor  
24 Commissioner and could not be subject to NRS 608.260 and would flow solely from  
25 the Nevada Constitution’s anti-discrimination protections. Such a direct constitutional  
26 claim would have to be subject to Nevada’s “catch all” four year statute of limitations,  
27 NRS 11.220. This would mean an employee would have a longer period of time to  
28 claim they were discriminated against for seeking to collect minimum wages than to

1 actually collect those minimum wages, an absurd result that makes no sense.

2 **3. *Williams* erroneously cites to federal cases**  
3 **that do not actually support its conclusion.**

4 *Williams*, without discussing those decisions, erroneously observes that “[t]wo  
5 federal courts have concluded that the two-year limitations period of NRS 608.260  
6 applies to claims alleging a violation of the Minimum Wage Amendment,” citing  
7 *Rivera v. Peri & Sons*, 735 F3d 892 (9<sup>th</sup> Cir. 2013) and *McDonough v. Harrah’s Las*  
8 *Vegas*, 2014 WL 2742874 (D. Nev. June 17, 2014). The defendants here, in turn, rely  
9 upon such decisions. In *Rivera*, the Ninth Circuit Court of Appeals made no such  
10 holding and refused to reach the issue of whether the two year statute of limitations of  
11 608.260 applied to such claims because plaintiffs had waived such argument.<sup>4</sup> Nor  
12 did *McDonagh* consider whether the four year “catch all” statute of limitations of  
13 NRS 11.220 applies a Nevada Constitutional minimum wage claim. Rather, without  
14 discussion, it rejected the argument that the six year written contract statute of  
15 limitations of NRS 11.190(1)(b) applied to such claims and, without considering the  
16 relevancy of the constitutional nature of those claims, found the two year statute of  
17 limitations of NRS 608.260 to control.

18 **V. DEFENDANTS PROVIDE NO INDICATION THAT THEY DO NOT**  
19 **POSSESS RECORDS FOR THE FULL FOUR YEAR STATUTE OF**  
20 **LIMITATIONS PERIOD**

21 Defendants rely upon NRS 608.115(3) which governs the retention of wage  
22 records by employers in Nevada as a basis for limiting the statute of limitations for  
23 constitutional minimum wage claims in Nevada. Defendants’ provide no support for  
24 such reliance. While NRS 608.115(3) does state that records of wages must be

---

25 <sup>4</sup> 735 F.3d 902:

26 “Peri & Sons clearly argued to the district court that the two-year statute of  
27 limitations applies to the farmworkers’ state constitutional claims. Instead of arguing  
28 in favor of a four-year statute of limitations, the farmworkers merely contended that  
the issue should not be resolved on a motion to dismiss, a contention we have already  
rejected. The farmworkers’ failure to raise the argument below constitutes a waiver.”



maintained for a two year period, it does *not* prevent employers in Nevada from retaining such records for a longer period of time. Moreover, under NRS 11.190, which governs periods of limitations in Nevada, claims for various other unpaid wage violations, such as overtime wages under NRS 608.018, would be subject to a *three* year statute of limitations. *See*, NRS 11.190(3)(a) which provides for a three year statute of limitations for an action for liability created by statute.

Defendants do not actually provide a sworn statement or even an assertion of counsel that they do not possess wage records for the plaintiffs and class members beyond the two year period. Instead, they insist it would be unfair to apply a period of limitations greater than two years when the record retention statute only mandates such records be kept for two years. But, defendants offer no indication as to how they can reconcile such fairness argument with the fact that a number of other wage and hour violations are subject to a three year statute of limitations under NRS 11.190(3)(a). . Defendants also fail to advise the Court that the Fair Labor Standards Act requires that they keep payroll records for a three year period. *See*, 29 U.S.C. § 211 and 29 C.F.R. § 516.5. In this case, defendants' silence is deafening. Their failure to address NRS 11.190's impact on several wage and hour claims, their failure to produce a sworn statement that they possess no records dating back more than two years, and their failure to present even a colorable argument that they would be prejudiced by applying a four year statute of limitations, indicates that the application of the proper four year statute of limitations in this matter would present no obstacles for defendants.

**V. PLAINTIFFS DO NOT DISPUTE THEIR SECOND CLAIM FOR RELIEF UNDER NRS 608.040 IS SUBJECT TO A TWO YEAR STATUTE OF LIMITATIONS**

Plaintiffs do not oppose the portion of defendants motion (discussed in Section II, 1) which asserts that plaintiffs' second claim for relief under NRS 608.040 is subject to a two year statute of limitations period. However, plaintiffs do not agree that such two year statute of limitations applies for the reasons suggested by defendants.

1 Under NRS 11.190(4)(b), a claim is subject to a two year statute of limitations if  
2 it is “an action upon a statute for a penalty or forfeiture, where the action is given to a  
3 person or the State, or both, except when the statute imposing it prescribes a different  
4 limitation.” Plaintiffs submit that a claim for relief pursuant to NRS 608.040 is an  
5 “action upon a statute for a penalty” because such claim seeks damages in the form of  
6 “waiting time penalties.” See, NRS 608.040 titled “Penalty for failure to pay  
7 discharged or quitting employee.” Plaintiffs do not agree with defendants’ assessment  
8 that an action for the penalty prescribed by NRS 608.040 is subject to a two year  
9 statute of limitations because, as defendants assert, NRS 608.115 requires only two  
10 years of record keeping. The irrelevancy of NRS 608.115 is already discussed, *supra*,  
11 in Section IV.

## 12 13 CONCLUSION

14 Wherefore, the plaintiffs’ motion should be granted in its entirety.

15 Dated: August 28, 2015

16 LEON GREENBERG PROFESSIONAL CORP.  
17

18 /s/ Dana Sniegocki  
19 Dana Sniegocki, Esq.  
20 Nevada Bar No. 11715  
21 2965 S. Jones Boulevard - Ste. E-3  
22 Las Vegas, NV 89146  
23 Tel (702) 383-6085  
24 Attorney for the Plaintiffs  
25  
26  
27  
28

CERTIFICATE OF MAILING

The undersigned certifies that on August 28, 2015, she served the  
within:

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION  
FOR DECLARATORY ORDER REGARDING STATUTE OF  
LIMITATIONS**

by court electronic service to:

TO:

Esther C. Rodriguez, Esq.  
RODRIGUEZ LAW OFFICES, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145

*/s/ Dana Sniegocki*

---

Dana Sniegocki

AA000613

# EXHIBIT "A"

# **A-CAB, LLC**

---

## **EMPLOYEE HANDBOOK**

This document is for the sole use of clients of Kamer Zucker & Abbott who have obtained it in the course of their representation. A limited license to copy this document for internal use is granted to those clients. © 1994.

## **Calculation of Drivers Wages**

### **Commissions are calculated as follows:**

A calculation including 42% of gross book, miles per gallon, % of paid miles, total miles driven, number of trips, percentage of unpaid miles and the number of hours worked is used to figure commission. This must always be consistent with Nevada State Minimum Wage Laws of \$7.25/hour. A greater amount may be earned with a conscientious effort by the employee to raise the gross book, drive efficiently for better miles per gallon, reduce total miles driven, increase the number of trips, and lower the % of unpaid miles.

Drivers that cannot be reached by radio or cell phone (assuming that cell phone numbers have been provided to the Company) and have a prolonged period of time without meter activation indicating a passenger has hired the Taxicab, will be considered to be on "personal time" and outside the control of the Company. That time will be excluded from any minimum wage computation if such is required because of "low book" for any shift.

### **Tip Compliance Agreement**

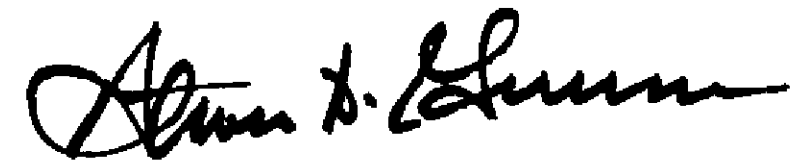
Effective March 5, 2011, this company, A Cab LLC, has entered into a

#### **TIP COMPLIANCE AGREEMENT WITH THE IRS.**

This agreement requires A Cab to report 5.5% of "total book" receipts each day by each driver to be reported as additional income for tax purposes.

A Cab employee taxi drivers are paid the greater of their appropriate commission or the Minimum Wage of \$7.25 per hour, whichever is greater. However, if the Minimum Wage is greater than the commission earned, the amount supplemented to commission to realize minimum wage hourly rate will be reduced by the amount of tips that were reported per this IRS agreement. The tip credit allowed for tipped employees will not permit wages to be less than \$5.12 per hour.

# EXHIBIT “B”



CLERK OF THE COURT

ORDR

LEON GREENBERG, ESQ., SBN 8094  
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[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: July 21, 2015  
Hearing Time: 9:00 a.m.

**ORDER DENYING DEFENDANTS' MOTION FOR A DECLARATORY ORDER TO  
LIMIT THE STATUTE OF LIMITATIONS PURSUANT TO NRS 608.260**

Defendants filed their Motion for a Declaratory Order to Limit the Statute of  
Limitations Pursuant to NRS 608.260 on June 17, 2015. Plaintiffs' Response in  
Opposition to Defendants' motion was filed on July 6, 2015. Defendants thereafter filed  
their Reply to Plaintiffs' Response in Opposition to Defendants' motion on July 16, 2015.



1 This matter, having come before the Court for hearing on July 21, 2015, with  
2 appearances by Leon Greenberg, Esq., and Dana Sniegocki, Esq. on behalf of all  
3 plaintiffs, and Tamer B. Botros, Esq., on behalf of all defendants, and following the  
4 arguments of such counsel, and after due consideration of the parties' respective briefs,  
5 and all pleadings and papers on file herein, and good cause appearing, therefore  
6

7 **IT IS HEREBY ORDERED:**

8 Defendants' Motion for a Declaratory Order to Limit the Statute of Limitations  
9 Pursuant to NRS 608.260 is **DENIED**. Since the Nevada Supreme Court's June 26,  
10 2014 decision in the appeal of this case found that Article 15, Section 16 of the Nevada  
11 Constitution conferred upon the plaintiffs a right to a minimum hourly wage, as set forth  
12 in that section, it would not make sense to rely on NRS 608.260 as the applicable  
13 statute of limitations for claims under Article 15, Section 16 of the Nevada Constitution.  
14 NRS 608.260 sets forth the statute of limitations to bring a claim for unpaid minimum  
15 wage owed pursuant to NRS 608.250 and the regulations of the Labor Commissioner  
16 issued under NRS 608.250. A claim for a violation of Article 15, Section 16 of the  
17 Nevada Constitution, which is the claim brought in this case by the plaintiffs, is neither a  
18 claim for unpaid minimum wages under NRS 608.250 nor a claim for a violation of the  
19 minimum wage prescribed by regulation of the Labor Commissioner pursuant to NRS  
20 608.250. The minimum wage, under the Nevada Constitution, is set according to the  
21 terms of the Constitution, and not by the Nevada Labor Commissioner. Accordingly, the  
22 statute of limitations referenced in NRS 608.260 does not apply to claims for unpaid  
23 minimum wages under Nevada's Constitution.  
24

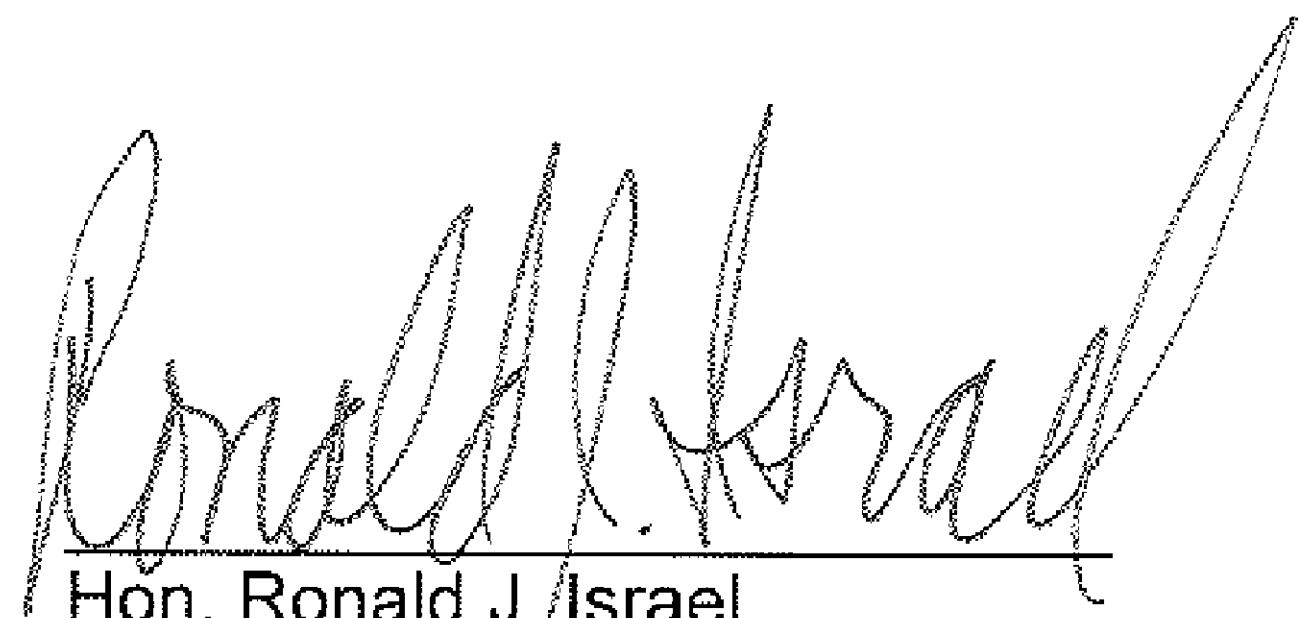
25 The more appropriate course is to apply Nevada's "catch all" statute of limitations  
26 found in NRS 11.220 which provides for a four year statute of limitations for actions for  
27  
28

1 relief not otherwise provided for. The Court finds the application of NRS 11.220's four  
2 year statute of limitations to claims for violations of the Nevada Constitution to be  
3 appropriate even where other claims are asserted by the plaintiffs (in this case, claims  
4 for 30 day waiting penalties under NRS 608.020, NRS 608.030 and NRS 608.040) are  
5 governed by the two (2) year statute of limitations period.  
6

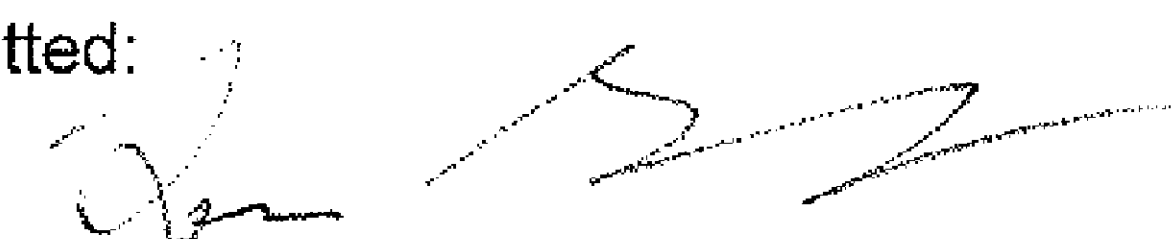
7 Accordingly, Defendants' Motion for a Declaratory Order to Limit the Statute of  
8 Limitations Pursuant to NRS 608.260 is hereby **DENIED** in its entirety and the court will  
9 apply the limitations period set forth in NRS 11.220 to plaintiffs' claims under Article 15,  
10 Section 16 of the Nevada Constitution.  
11

12 **IT IS SO ORDERED.**

13 Dated this 31 day of July, 2015.


14  
15   
16 Hon. Ronald J. Israel  
District Court Judge

17 Submitted:

18 By:   
19 Leon Greenberg, Esq.  
20 Dana Sniegocki, Esq.  
21 LEON GREENBERG PROF. CORP.  
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CLERK OF THE COURT

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15 Email: dbravo@wrslawyers.com  
16 *Attorneys for Plaintiffs*

17 EIGHTH JUDICIAL DISTRICT COURT

18 IN AND FOR CLARK COUNTY, STATE OF NEVADA

19 PAULETTE DIAZ, an individual;  
20 AWANDA GAIL WILBANKS, an  
21 individual; SHANNON OLSZYNSKI, an  
22 individual; and CHARITY FITZLAFF, an  
23 individual, on behalf of themselves and all  
24 similarly-situated individuals,

25 Plaintiffs,

26 vs.

27 MDC RESTAURANTS, LLC, a Nevada  
28 limited liability company; LAGUNA  
RESTAURANTS, LLC, a Nevada limited  
liability company; INKA, LLC, a Nevada  
limited liability company; and DOES 1  
through 100, Inclusive,

Defendants.

Case No: A701633  
Dept. No.: XVI

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER

Date of Hearing: December 4, 2014  
Time of Hearing: 9:00 a.m.

On October 1, 2014, Defendants filed their Motion for Judgment on the Pleadings Pursuant to  
NRCP 12(c) with Respect to All Claims for Damages Outside the Two-Year Statute of Limitations. On  
October 20, 2014, Plaintiffs filed their Opposition to Defendants' Motion and a Countermotion for  
Partial Summary Judgment Re: Limitation of the Action. On December 4, 2014, the Court held a  
hearing on the competing motions on the applicable statute of limitations.

///

///

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AA000621

1 After a review and consideration of the record, the points and authorities on file herein, and the  
2 oral arguments of counsel, the Court finds the following facts and states the following conclusions of  
3 law:<sup>1</sup>

4 FINDINGS OF FACT

5 The District Court FINDS as follows:

6 1. The civil claims and remedies for violations of minimum wage laws under NRS 608.260  
7 and article XV, section 16 of the Nevada Constitution differ significantly in both character and nature.

8 2. Pursuant to NRS 608.260, an employee may, at any time within 2 years, bring a civil  
9 action to recover the difference between the amount paid to the employee and the minimum wage  
10 amount. Thus, under the Nevada statutory scheme, the employee is solely limited to back pay, i.e., the  
11 difference between the amount paid and the amount of the minimum wage. See NRS 608.260.

12 3. In contrast, article XV, section 16(B) of the Nevada Constitution provides that "[a]n  
13 employee claiming a violation of this section may bring an action against his or her employer in the  
14 courts of this State to enforce the provisions of the section and shall be entitled to all of the  
15 remedies available under the law or in equity appropriate to remedy any violation of this section,  
16 including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who  
17 prevails in any action under this section shall be awarded his or her attorney fees and costs."  
18 Nev. Const. art. XV, § 16(B).

19 4. The claims for relief and remedies afforded to Nevada employees under the Nevada  
20 Constitutional Amendment are expanded and not merely limited to back pay.

21 5. By its very nature, the Nevada Constitutional Amendment grants Nevada employees  
22 expansive rights, relief and legal remedies available in law or in equity. *Id.* In addition, the Nevada  
23 Constitutional Amendment expands employee rights even further, providing for an entitlement to  
24 attorney fees and costs should an employee prevail in the prosecution of his or her action. *Id.*

25 6. It is of paramount importance to distinguish the limited remedy of back pay available to  
26

---

27 <sup>1</sup> If any finding herein is in truth a conclusion of law, or if any conclusion stated is in truth a  
28 finding of fact, it shall be deemed so.

1 Nevada employees under NRS 608.260 versus the Constitutional rights, claims, and remedies available  
2 to Nevada employees under the Nevada Constitutional Amendment, which could include, but are not  
3 limited to, back pay, damages, and injunctive relief.

4 7. Pursuant to the language of NRS 608.260, the two-year limitations period applies only  
5 to claims for back pay. *See* NRS 608.260. Consequently, this statutory limitation does not affect or  
6 apply to the constitutionally mandated claims, rights, and remedies afforded to claimants under the  
7 Constitutional Amendment.

8 8. It is also important to note that the Nevada Constitutional Amendment is much more  
9 expansive in the rights, claims, relief, and remedies available to claimants. As a result, it would be  
10 problematic to apply a two year statute of limitations to a claim for back pay and a different limitations  
11 period for claims for damages and/or injunctive relief not covered by the statute (NRS 608.260).

12 9. Clearly, the implication of the expansive Nevada Constitutional Amendment effectively  
13 supplants, supersedes, and/or repeals the two-year limitations period and the limited civil remedy  
14 provisions of NRS 608.260.

15 10. Lastly, with respect to the applicable statute of limitations period, this determination is  
16 based largely on the allegations and claims for relief asserted in Plaintiffs Complaint. A review of  
17 Plaintiffs' Amended Complaint clearly indicates that Plaintiffs' action is primarily based on  
18 Defendants' alleged violations of Nev. Const. art. XV, 16. Furthermore, Plaintiffs Prayer For Relief is  
19 not limited to an award of back pay; rather, Plaintiffs request declaratory relief, unpaid wages,  
20 damages, interest, attorneys' fees and costs, and other relief necessary and just in law and in equity.

21 11. Therefore, the Court finds that in this action, the most plausible applicable limitations  
22 provision shall be the four-year catch-all limitations period for civil actions pursuant to NRS 11.220.

### 23 CONCLUSIONS OF LAW

24 Based upon these Findings of Fact, the District Court CONCLUDES AND ORDERS as  
25 follows:

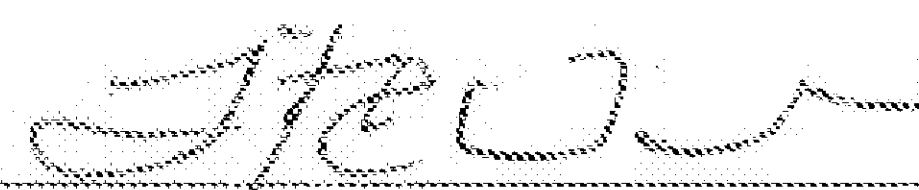
26 1. In this action, for alleged violations of article XV, section 16 of the Nevada  
27 Constitution, the applicable limitations provision shall be the four-year catch-all limitations period for  
28 civil actions pursuant to NRS 11.220.



2. Defendants' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) with  
Respect to All Claims for Damages Outside the Two-Year Statute of Limitations is DENIED.

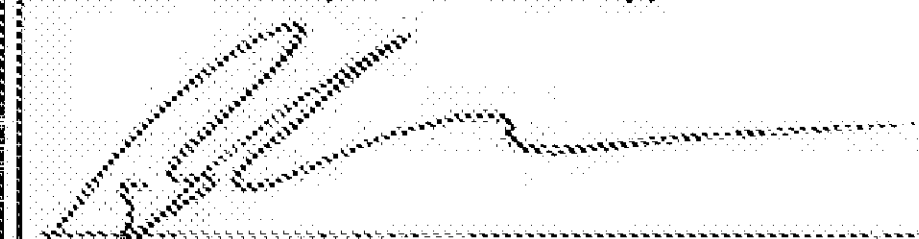
3. Plaintiffs' Countermotion for Summary Judgment Re: Limitation of the Action is  
GRANTED.

IT IS SO ORDERED this 19<sup>th</sup> day of February, 2015.

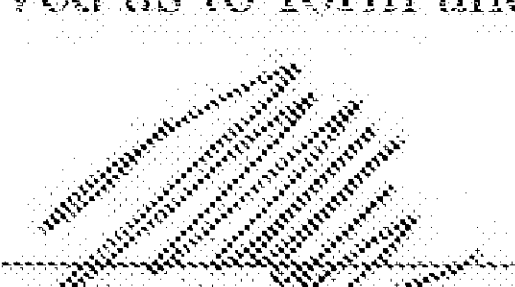
  
DISTRICT COURT JUDGE K.S.


Submitted by:

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*Attorneys for Defendants*



1 ORDR

2 **EIGHTH JUDICIAL DISTRICT COURT** CLERK OF THE COURT  
3 **CLARK COUNTY, NEVADA**

4  
5 LAKSIRI PERERA, individually and on behalf of  
6 others similarly situated,

7 Plaintiff,

Case No. A-14-707425-C  
Dept No. VII

8 vs.

9 WESTERN CAB COMPANY,

10 Defendant.

11 **DECISION AND ORDER**

12  
13 This case is an individual and proposed class action brought by a taxicab driver  
14 against his former employer-taxi company to recover unpaid hourly minimum wage. On  
15 December 8, 2014, Defendant Western Cab Company filed a Motion to Dismiss Plaintiff  
16 Laksiri Perera's First Amended Complaint for failure to state a claim upon which relief can  
17 be granted. Western Cab argues that dismissal is appropriate because Thomas v. Nevada  
18 Yellow Cab Corporation applies prospectively only. 130 Nev. Adv. Op. 52, 327 P.3d 518,  
19 519-21 (2014), reh'g denied (Sept. 24, 2014). Mr. Perera's claims involve the time after  
20 passage of the Minimum Wage Amendment but prior to Thomas. Western Cab also argues  
21 that, under a two-year statute of limitations, Mr. Perera was always paid minimum wage.  
22 In the alternative, Western Cab moves to preemptively decertify the class and obtain  
23 summary judgment in its favor.

24 Mr. Perera filed an Opposition and Countermotion on January 26, 2015. Mr.  
25 Perera's Countermotion moves to amend his Complaint, adding an additional ground for  
26 relief. Mr. Perera also seeks leave to conduct Nevada Rule of Civil Procedure 56(f)

LINDA MARIE BELL  
DISTRICT JUDGE  
DEPARTMENT VII

1 discovery regarding the appropriateness of class certification and tolling of the statute of  
2 limitations. Western Cab filed a Reply and Opposition on February 10, 2015.

3 The Court heard these motions on March 12, 2015. The Court finds taxicab drivers'  
4 right to bring an action to enforce the provisions of the Minimum Wage Amendment arose  
5 on November 28, 2006, when the Amendment was ratified; claims for violations of the  
6 provisions of the Amendment must be brought within four years of the cause of action  
7 having accrued; genuine issues of material fact regarding Mr. Perera's wages and wage rate  
8 preclude summary judgment of this case; and preemptive decertification of the class would  
9 be premature because discovery has not commenced. The Court therefore denies  
10 Defendant Western Cab Company's Motion to Dismiss First Amended Complaint in its  
11 entirety, and grants Plaintiff Laksiri Perera's Countermotion only as to his request for leave  
12 to amend his complaint to add a claim related to cab drivers being required to pay for fuel  
13 costs.

## 14 I. Discussion

### 15 A. Defendant's Motion to Dismiss

16 Nevada Rule of Civil Procedure 12(b)(5) authorizes dismissal of a claim if it fails to  
17 state a claim upon which relief can be granted. When considering an NRCP 12(b)(5)  
18 motion, a court must accept the allegations of the complaint as true, and draw all inferences  
19 in favor of the non-moving party. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224,  
20 228, 181 P.3d 670, 672 (2008). "Dismissal is proper where the allegations are insufficient  
21 to establish the elements of a claim for relief." Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d  
22 438, 439 (2002). "When the defense of the statute of limitations appears from the  
23 complaint itself, a motion to dismiss is proper." Kellar v. Snowden, 87 Nev. 488, 491, 489  
24 P.2d 90, 92 (1971).

25 The primary question presented is whether the Nevada Supreme Court's decision in  
26 Thomas v. Nevada Yellow Cab Corporation applies the full force and effect of Article 15,  
27 Section 16 of the Nevada Constitution (the Minimum Wage Amendment) from the date of  
28 the Amendment's enactment or from the date of the Court's decision. Thomas held that the



1 Minimum Wage Amendment “revised Nevada’s then-statutory minimum wage scheme”  
2 and repealed the statutory minimum wage exemptions enumerated in NRS 608.250(2),  
3 including the exemption for taxicab drivers. Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at  
4 519-21; see also NRS 608.250(2)(b). In reaching this question, the Court examines the  
5 relationship between statutory minimum wage and constitutional minimum wage, the  
6 effect of Thomas, and the claims limitation period applicable to this case.

7 **1. Minimum Wage in Nevada**

8 Prior to enactment of the Minimum Wage Amendment, minimum wage in Nevada  
9 was purely a creature of statutory authority and administrative regulation; born from  
10 Chapter 608 of the Nevada Revised Statutes, minimum wage was set and regulated within  
11 the Nevada Administrative Code. See NRS §§ 608.250-.290; see also Nev. Admin. Code §§  
12 608.050-.160. Chapter 608 vested the power to establish the minimum wage in the Labor  
13 Commissioner, who was required to prescribe the minimum wage by administrative  
14 regulation. See NRS 680.250(1).

15 Chapter 608 did not offer all employees the right to receive minimum wage.  
16 Specifically, NRS 608.250(2) denied the protections of minimum wage regulations to  
17 certain kinds of employees. Those employees not entitled to minimum wage under Chapter  
18 608 included (a) “casual babysitters;” (b) “domestic service employees who reside in the  
19 household where they work;” (c) “outside salespersons whose earnings are based on  
20 commissions;” (d) some agricultural workers; (e) “taxicab and limousine drivers;” and (f)  
21 certain “persons with severe disabilities [that] have diminished their productive capacity.”  
22 NRS 608.250(2)(a)-(f).

23 The Minimum Wage Amendment was proposed by initiative petition, approved and  
24 ratified by the people, and became effective on November 28, 2006. The Amendment  
25 provided a new formula for setting minimum wage and extended minimum wage  
26 protections to nearly all employees in the State. “The Minimum Wage Amendment  
27 expressly and broadly defines employee, exempting only certain groups.” Thomas, 130  
28 Nev. Adv. Op. 52, 327 P.3d at 521. The only employees exempted by the Minimum Wage

1 Amendment are employees who are “under eighteen (18) years of age, employed by a  
2 nonprofit organization for after school or summer employment or as a trainee for a period  
3 not longer than ninety (90) days.” Nev. Const. art. 15, § 16(C).

4 On June 26, 2014, the Nevada Supreme Court held that the Minimum Wage  
5 Amendment “supersedes and supplants” Chapter 608’s exceptions. Thomas, 130 Nev. Adv.  
6 Op. 52, 327 P.3d at 522. The Court reasoned that, because the “expression of one thing is  
7 the exclusion of another . . . the text [of the Amendment] necessarily implies that all  
8 employees not exempted by the Amendment, including taxicab drivers, must be paid the  
9 minimum wage set out in the Amendment.” Id., 130 Nev. Adv. Op. 52, 327 P.3d at 521. The  
10 Court ultimately held that “the legislative exception for taxicab drivers established by NRS  
11 608.250(2)(e) . . . is impliedly repealed by the constitutional amendment.” Id.

## 12 **2. Application of Thomas**

13 After Thomas, the question becomes when the cause of action for violations of the  
14 Minimum Wage Amendment came into existence for taxicab drivers. If the enactment of  
15 the Minimum Wage Amendment alone gave birth to the cause of action, the cause of action  
16 has been available since the Amendment’s effective date of November 28, 2006. On the  
17 other hand, if Thomas created a new, otherwise unrecognized constitutional rule, Mr.  
18 Perera’s claims did not become available until June 26, 2014.

19 The inquiry begins with whether Thomas announced a new rule or merely clarified  
20 the law. See Mitchell v. State, 122 Nev. 1269, 1276, 149 P.3d 33, 37-38 (2006) (vacating  
21 habeas corpus petitioner’s attempted murder conviction in light of the Court’s decision  
22 clarifying the mens rea required for aiding and abetting attempted murder).

23 There is no bright-line rule for determining whether a rule is new, but  
24 there are basic guidelines to follow . . . “When a decision merely  
25 interprets and clarifies an existing rule . . . and does not announce an  
26 altogether new rule of law, the court’s interpretation is merely a  
27 restatement of existing law.” Similarly, a decision is not new if “it has  
28 simply applied a well-established constitutional principle to govern a  
case which is closely analogous to those which have been previously  
considered in the prior case law.” . . . However, a rule is new, for  
example, when the decision announcing it overrules precedent, “or

1 disapprove[s] a practice this Court had arguably sanctioned in prior  
2 cases, or overturn[s] a longstanding practice that lower courts had  
uniformly approved.”

3 Id., 122 Nev. at 1276, 149 P.3d at 37-38 (quoting Colwell v. State, 118 Nev. 807, 819-20, 59  
4 P.3d 463, 472 (2002)); Cf. Bridgewater v. Warden, Nevada State Prison, 109 Nev. 1159,  
5 1161, 865 P.2d 1166, 1167 (1993) (holding that Court’s recent decision created a new  
6 “unforeseeable definition” of deadly weapon which was not of “constitutional moment,” so  
7 the new definition did not apply retroactively).

8 Thomas did not espouse a new constitutional principle; it squared the readily  
9 apparent definition of “employee” contained in the Minimum Wage Amendment with the  
10 exemption contained in NRS 608.250(2). In clarifying the Minimum Wage Amendment,  
11 Thomas simply applied a well-established constitutional principle. “The principle of  
12 constitutional supremacy prevents the Nevada Legislature from creating exceptions to the  
13 rights and privileges protected by Nevada’s Constitution.” Thomas, 130 Nev. Adv. Op. 52,  
14 327 P.3d at 522. “Statutes are construed to accord with constitutions, not vice versa.” Id.,  
15 130 Nev. Adv. Op. 52, 327 P.3d at 521 (citing Foley v. Kennedy, 110 Nev. 1295, 1300, 885  
16 P.2d 583, 586 (1994)). The Nevada Supreme Court determined the broad definition of  
17 employee in the Minimum Wage Amendment augmented the statutory definition: “The  
18 Amendment’s broad definition of employee and very specific exemptions necessarily and  
19 directly conflict with the legislative exception for taxicab drivers established by NRS  
20 608.250(2)(e).” Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at 521. Moreover, Thomas did  
21 not overrule precedent or overturn a longstanding practice that lower courts had uniformly  
22 approved. Thomas merely interpreted and clarified existing law.

23 Western Cab argues that the Nevada Supreme Court intended to limit Thomas based  
24 upon the Court’s use of present tense language instead of, presumably, using strictly past  
25 tense language. But this Court is not persuaded that the Nevada Supreme Court was  
26 seeking to limit the application of Thomas by its use of present-tense language. In fact, in  
27 the first sentence of the Thomas decision, the Nevada Supreme Court described “Article 15,  
28 Section 16 of the Nevada Constitution, [as] a constitutional amendment that revised

1 Nevada's then-statutory minimum wage scheme.” Thomas, 130 Nev. Adv. Op. 52, 327 P.3d  
2 at 519 (emphasis added). The Nevada Supreme Court’s use of the word “revised” in the first  
3 sentence of Thomas suggests the Court had no intention of limiting the decision.

4 Furthermore, the Ninth Circuit Court of Appeals has rejected the argument that  
5 Thomas applies only retroactively. See Greene v. Executive Coach & Carriage, 591 F. App'x  
6 550 (9th Cir. 2015); see also CTA9 Rule 36-3 (unpublished decisions of the Ninth Circuit  
7 are not precedent, but may be cited). In Executive Coach & Carriage, the Ninth Circuit held  
8 “[t]he district court erred in dismissing Greene's claim under the Nevada Minimum Wage  
9 Amendment . . . [b]ecause the repeal of § 608.250(2) occurred in 2006 when the  
10 amendment was ratified.” Executive Coach & Carriage, 591 F. App'x 550.

11 The Minimum Wage Amendment announced a new, straightforward constitutional  
12 right. Thomas simply clarified that nothing in Chapter 608 diminished that right. The  
13 Minimum Wage Amendment became law on November 28, 2006, and required nothing  
14 more to establish the rights contained within it. Therefore, taxicab drivers’ right to bring an  
15 action to enforce the provisions of the Minimum Wage Amendment arose on November 28,  
16 2006.

### 17 **3. Statute of Limitations**

18 The next issue the Court must address is the applicable statute of limitations. Mr.  
19 Perera argues the four-year “catch all” statute of limitations of NRS 11.220 applies; Western  
20 Cab argues the two-year statute of limitations of Chapter 608 applies. The Minimum Wage  
21 Amendment provided taxicab drivers the constitutional right to receive minimum wage, a  
22 right previously denied under the Chapter 608 statutory framework. “Our constitution can  
23 be amended only after a long time and much labor. When an amendment is made it is  
24 reasonable to conclude that, in the minds of the people, there is good reason for the change;  
25 that it is wise to avoid a possible recurrence of evils borne in the past, or the happening of  
26 those which threaten them in the future, or, it may be, both.” State v. Hallock, 16 Nev. 373,  
27 379 (1882). Therefore, when a taxicab driver brings a minimum wage claim, the taxicab  
28

1 driver brings that claim under the provisions of the Minimum Wage Amendment, not  
2 Chapter 608.

3 The Minimum Wage Amendment expressly provides a private right of action for an  
4 employee claiming violation of the Minimum Wage Amendment. Specifically, the  
5 Minimum Wage Amendment provides:

6 An employee claiming violation of this section may bring an action  
7 against his or her employer in the courts of this State to enforce the  
8 provisions of this section and shall be entitled to all remedies available  
9 under the law or in equity appropriate to remedy any violation of this  
10 section, including but not limited to back pay, damages, reinstatement  
or injunctive relief. An employee who prevails in any action to enforce  
this section shall be awarded his or her reasonable attorney's fees and  
costs.

11 Nev. Const. art. 15, § 16(B) (emphasis added).

12 On the contrary, Chapter 608 provides a private right of action only for an employee  
13 claiming violation of regulations promulgated under NRS 608.250:

14 If any employer pays any employee a lesser amount than the minimum  
15 wage prescribed by regulation of the Labor Commissioner pursuant to  
16 the provisions of NRS 608.250, the employee may, at any time within 2  
years, bring a civil action to recover the difference between the amount  
paid to the employee and the amount of the minimum wage.

17 NRS 608.260 (emphasis added).

18 The distinction between minimum wage prescribed by regulation of the Labor  
19 Commissioner pursuant to the provisions of NRS 608.250 and minimum wage established  
20 by the Minimum Wage Amendment is the method by which the minimum wage is  
21 established: Chapter 608 grants the Labor Commissioner authority to set and discretion to  
22 raise the minimum wage through administrative regulation; while the Minimum Wage  
23 Amendment establishes a two-tiered minimum wage floor that is automatically adjusted  
24 upward without administrative discretion. See NRS 680.250(1); but cf. Nev. Const. art. 15,  
25 § 16(A).

26 Under Chapter 608's statutory framework, "the Labor Commissioner shall prescribe  
27 increases in the minimum wage in accordance with those prescribed by federal law, unless  
28

1 the Labor Commissioner determines that those increases are contrary to the public  
2 interest.” NRS 608.250(1). Chapter 608 affords the Labor Commissioner discretion to  
3 refuse minimum wage increases prescribed by federal law if the Labor Commissioner  
4 determines such minimum wage increases are “contrary to the public interest.” *Id.*

5 In contrast, under the Minimum Wage Amendment’s formula, the minimum wage  
6 floor is to be adjusted upward by “the amount of increases in the federal minimum wage  
7 over \$5.15 per hour, or, if greater, by the cumulative increase in the cost of living.” Nev.  
8 Const. art. 15, § 16(A). Any cost of living increase is “measured by the [annual] percentage  
9 increase . . . of the Consumer Price Index . . . as published by the Bureau of Labor Statistics,  
10 U.S. Department of Labor or the successor index or federal agency.” The only involvement  
11 the State’s executive branch has in establishing the minimum wage set by the Minimum  
12 Wage Amendment is that “[t]he Governor or the State agency designated by the Governor  
13 shall publish a bulletin . . . each year announcing the adjusted rates.” *Id.*

14 The Minimum Wage Amendment and Chapter 608 prescribe different methods for  
15 establishing the minimum wage, and so too, for privately enforcing the minimum wage.  
16 Thus, an action brought to enforce an employee’s right to minimum wage established by the  
17 Minimum Wage Amendment is wholly different than an action brought to recover  
18 minimum wage as prescribed by regulation of the Labor Commissioner pursuant to the  
19 provisions of NRS 608.250. This is not a new notion; in fact, the Attorney General of  
20 Nevada issued an official opinion declaring as much before the Minimum Wage  
21 Amendment had been ratified. Then Attorney General Brian Sandoval opined:

22 Each competing minimum wage scheme provides a complete civil  
23 court remedy for evasion of its requirements . . . As the proposed  
24 amendment has completely covered the topic of a civil court remedy,  
providing for even greater relief, its remedy would supplant and repeal  
by implication the existing civil remedy provision at NRS 608.260.

25 2005 Nev. Op. Att’y Gen. No. 04 (Mar. 2, 2005); see also Blackjack Bonding v. City of Las  
26 Vegas Municipal Court, 116 Nev. 1213, 1218, 14 P.3d 1275, 1279 (2000) (“Opinions of the  
27 Attorney General are not binding legal authority or precedent”).  
28

1 Here, Mr. Perera was expressly prohibited from receiving minimum wage under the  
2 provisions of NRS 608.250, therefore Mr. Perera was also expressly prohibited from  
3 exercising the private right of action made available in NRS 608.260. So too is Mr. Perera  
4 prohibited from exercise an implied private right of action under NRS 608.260. Even in  
5 light of the repeal of the NRS 680.250 exceptions, an implied private right of action is not  
6 available to taxicab drivers under NRS 608.260 because the legislature did not intend to  
7 extend a private right of action to individuals who were expressly excluded from the  
8 protections of the statute. See Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 571, 170 P.3d 989,  
9 993 (2007) (“We look to legislative intent when the statute does not expressly create a  
10 cause of action”). Moreover, the Labor Commissioner’s statutory authority to establish  
11 regulations related to the enforcement of the minimum wage does not create a private right  
12 of action for taxicab drivers. Though the intent displayed in regulations may determine  
13 whether the regulation is privately enforceable, the language of a regulation cannot conjure  
14 up a private right of action that has not been authorized by the legislature. See Alexander v.  
15 Sandoval, 532 U.S. 275, 291, 121 S. Ct. 1511, 1522, 149 L. Ed. 2d 517 (2001) (“Agencies may  
16 play the sorcerer’s apprentice but not the sorcerer himself”). Therefore, Mr. Perera does  
17 not have a private right of action under the provisions of Chapter 608.

18 The Minimum Wage Amendment provides the exclusive private right of action for  
19 taxicab drivers to enforce Nevada’s minimum wage law. Accordingly, the limitation on a  
20 taxicab driver’s right to enforce the minimum wage law is defined by the limitations on the  
21 Minimum Wage Amendment itself. Although the Minimum Wage Amendment does not  
22 provide a claims limitation period for an employee claiming violation of the Amendment,  
23 Nevada Revised Statute section 11.220 provides that “[a]n action for relief, not hereinbefore  
24 provided for, must be commenced within 4 years after the cause of action shall have  
25 accrued.” NRS 11.220. So without specific statutory prescription stating otherwise, claims  
26 for violations of the provisions of the Minimum Wage Amendment must be brought within  
27 four years of the cause of action having accrued. Therefore, Mr. Perera’s action to enforce  
28

1 Nevada minimum wage law pursuant to the Minimum Wage Amendment is subject to the  
2 four-year claims limitation period provided under NRS 11.220.

3 **B. Defendant's Alternative Motion for Summary Judgment and to**  
4 **Preemptively Decertify the Class**

5 Western Cab moves for summary judgment in its favor premised on its argument  
6 that Mr. Perera was always paid over \$7.25 per hour worked, the wage rate for employees  
7 receiving qualifying health insurance at the time. Western Cab further argues that Mr.  
8 Perera is not a proper class representative because Mr. Perera has no individual claim and  
9 issues of commonality exist.

10 **1. Plaintiff's Claims**

11 Summary judgment is appropriate "if the pleadings, depositions, answers to  
12 interrogatories, and admissions on file, together with the affidavits, if any, show that there  
13 is no genuine issue as to any material fact and that the moving party is entitled to a  
14 judgment as a matter of law." NRCP 56(c). An issue is "genuine" if sufficient evidence  
15 exists such that a reasonable fact finder could find for the non-moving party. Wood v.  
16 Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The underlying substantive  
17 law of the cause of action controls which factual disputes are material. Id.

18 The Minimum Wage Amendment established minimum wage as a two-tiered floor;  
19 employees with access to certain health insurance benefits are entitled to a lower minimum  
20 wage than employees without access to such benefits. Nev. Const. art. 15, § 16(A). Only  
21 certain health insurance benefits qualify under the Amendment: "health insurance [made]  
22 available . . . for the employee and the employee's dependents at a total cost . . . for  
23 premiums of not more than 10 percent of the employee's gross taxable income from the  
24 employer." Id. During the time period covered by Mr. Perera's claims, the minimum wage  
25 floor was seven dollars and twenty-five cents (\$7.25) per hour worked if the employer made  
26 qualified health insurance available; otherwise, the minimum wage floor was eight dollars  
27 and twenty-five cents (\$8.25) per hour worked. Regardless of the minimum wage tier,  
28



1 “[t]ips or gratuities received by employees shall not be credited as being any part of or  
2 offset against the wage rates required by this section.” Id.

3 Here, summary judgment is inappropriate in light of the genuine issues of material  
4 fact that exist. A genuine issue of material fact exists as to whether Western Cab provided  
5 Mr. Perera and his dependents access to health insurance at a total cost for premiums of  
6 not more than ten percent of the Mr. Perera's gross taxable income. If not, Mr. Perera  
7 would have a right to the higher tier of minimum wage. Additionally, a genuine issue of  
8 material fact exists as to whether Mr. Perera's earnings were overstated due to his tips or  
9 expenses being accounted for incorrectly. Therefore, summary judgment shall not be  
10 granted at this time, and so, Mr. Perera's individual claims survive.

## 11 **2. Class Certification**

12 Seeing as summary judgment is not appropriate and Mr. Perera's claims survive,  
13 Western Cab has a remaining argument for preemptive decertification of the class.  
14 Western Cab argues the Court should preemptively decertify the class because this case is  
15 unsuitable for class certification based upon issues of commonality that exist between Mr.  
16 Perera, the class representative, and other prospective members of the class.

17 Nevada Rule of Civil Procedure 23(c)(1) provides that “[a]s soon as practicable after  
18 the commencement of an action brought as a class action, the court shall determine by  
19 order whether it is to be so maintained.”

20 [C]lass allegations may be stricken at the pleading stage, [but] the  
21 granting of motions to dismiss class allegations before discovery has  
22 commenced is rare. Indeed, while there is little authority on this issue  
23 within the Ninth Circuit, decisions from courts in other jurisdictions  
24 have made clear that “dismissal of class allegations at the pleading  
stage should be done rarely and that the better course is to deny such a  
motion because ‘the shape and form of a class action evolves only  
through the process of discovery.’ ”

25 In re Wal-Mart Stores, Inc. Wage & Hour Litig., 505 F. Supp. 2d 609, 615 (N.D. Cal. 2007)  
26 (quoting Myers v. MedQuist, Inc., No. 05-4608, 2006 WL 3751210, \*4 (D.N.J.2006) (also  
27 citing Abdallah v. Coca-Cola Co., No. Civ.A. 1:98CV3679-RW, 1999 WL 527835  
28 (N.D.Ga.1999) (dismissal of class allegations prior to discovery is premature); 7AA Charles

1 Alan Wright, Arthur R. Miller & Mary K. Kane, Federal Practice and Procedure Civil §  
2 1785.3 (3d 2005) (the practice employed in the overwhelming majority of class actions is to  
3 resolve class certification only after an appropriate period of discovery)).

4 Here, where discovery has not commenced, preemptive decertification of the class  
5 would be premature. Decertification of the class should be left for the Court to consider  
6 after discovery has sufficiently commenced. Therefore, Defendant Western Cab Company's  
7 Motion to decertify the class is denied without prejudice.

8 **C. Plaintiff's Countermotions for Leave to Amend Complaint and Conduct**  
9 **Discovery**

10 Mr. Perera seeks leave to file a Second Amended Complaint. Mr. Perera also seeks  
11 leave to conduct discovery under Nevada Rule of Civil Procedure 56(f) regarding class  
12 certification and tolling of the statute of limitations.

13 **1. Leave to Amend Complaint**

14 Leave to amend shall be freely given when justice so requires. NRCP 15(a). Mr.  
15 Perera seeks to add a ground for relief alleging that Western Cab required Mr. Perera to pay  
16 for fuel costs, causing Mr. Perera's hourly wage to drop below the minimum wage. Finding  
17 no grounds to justify denial, Mr. Perera shall be freely granted leave to amend his  
18 Complaint. Therefore, Mr. Perera's Countermotion is granted as to his request for leave to  
19 amend his Complaint.

20 **2. Leave to Conduct NRCP 56(f) Discovery**

21 Mr. Perera further seeks to conduct discovery pursuant to NRCP 56(f). Specifically,  
22 Mr. Perera seeks to conduct discovery relevant to the Western Cabs summary judgment  
23 motion regarding certification of the class and whether the two-year statute of limitations  
24 that Western Cab argued for should be equitably tolled.

25 Nevada Rule of Civil Procedure 56(f) provides,

26 Should it appear from the affidavits of a party opposing the motion [for summary  
27 judgment] that the party cannot for reasons stated present by affidavit facts essential  
28 to justify the party's opposition, the court may refuse the application for judgment or  
may order a continuance to permit affidavits to be obtained or depositions to be  
taken or discovery to be had or may make such other order as is just.

1 NRCP 56(f). In light of the Court's denial of Western Cab's motion for summary judgment,  
2 Mr. Perera's request to conduct NRCP 56(f) discovery is moot. Therefore, Mr. Perera's  
3 Countermotion is denied.

4 **Conclusion**

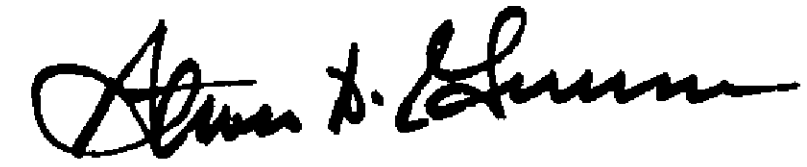
5 The Court finds the Nevada Supreme Court's decision in Thomas v. Nevada Yellow  
6 Cab Corp., 130 Nev. Adv. Op. 52, 327 P.3d 518, 519-21 (2014), reh'g denied (Sept. 24, 2014),  
7 did not introduce a new rule of law and the Minimum Wage Amendment to the Nevada  
8 Constitution became effective November 28, 2006. The Court further finds that Mr. Perera  
9 brings his claims under the provisions of the Minimum Wage Amendment and, as such,  
10 Mr. Perera's claims are subject to the four-year statute of limitations period provided in  
11 Nevada Revised Statute section 11.220. At this point, genuine issues of fact exist regarding  
12 the presence of a legitimate class. Consequently, decertification of the class prior to  
13 discovery would be premature. Mr. Perera's request for NRCP 56(f) discovery is therefore  
14 moot. The Court grants Mr. Perera leave to amend his Complaint. Therefore, Defendant  
15 Western Cab Company's Motion to Dismiss First Amended Complaint is denied in its  
16 entirety, and Plaintiff Laksiri Perera's Countermotion is granted only as to his request for  
17 leave to amend his complaint.

18  
19 DATED this 15<sup>th</sup> day of June, 2015.

20  
21   
22 \_\_\_\_\_  
23 LINDA MARIE BELL  
24 DISTRICT COURT JUDGE  
25  
26  
27  
28

# EXHIBIT “C”

1 ORDR



CLERK OF THE COURT

2  
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5  
6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8  
9 LISA WILLIAMS, et al.,

10 Plaintiffs,

CASE NO.: A-14-702048

DEPARTMENT NO. XX

11  
12 v.

13 CLAIM JUMPER ACQUISITION  
14 COMPANY, LLC,

15 Defendant.

**ORDER ON PLAINTIFFS'**  
**MOTION FOR PARTIAL**  
**SUMMARY JUDGMENT**  
**REGARDING LIMITATION OF**  
**ACTION**

16 This matter having come on for hearing on the 10<sup>th</sup> day of September, 2014;  
17 Daniel Bravo, Esq., Bradley S. Schrager, Esq., and Don Springmeyer, Esq., appearing  
18 for the Plaintiffs; Elayna J. Touchah, Esq., appearing for the Defendant; and the Court  
19 having heard arguments of counsel, and being fully advised in the premises, finds:

20 (1) This matter comes before the Court on a Motion for Partial Summary  
21 Judgment brought by the Plaintiffs. This is an individual and proposed class action  
22 which seeks relief on behalf of all employees of the Defendant, Claim Jumper  
23 Acquisition Company LLC, who have been compensated during their employment at a  
24 rate less than the minimum hourly wage allegedly required under Nevada law. The  
25 Amended Complaint filed on July 23, 2014, asserts a single cause of action based upon  
26 alleged violations of Article XV, section 16 of the Nevada Constitution (commonly  
27 called the "Minimum Wage Amendment").

28 (2) The instant Motion seeks a ruling by the Court regarding the appropriate

1 limitations period that should apply to the Plaintiffs' claim. Specifically, the parties  
2 seek clarification regarding whether the two-year limitations period set forth in NRS  
3 608.260 applies to the instant cause of action. The Plaintiffs aver that the limitations  
4 period set forth in NRS 608.260 does not apply on its face to the instant claim which is  
5 based upon a Constitutional provision enacted after NRS 608.260 was enacted, and  
6 even if it can be read as somehow applying to the Plaintiffs' claims, it has been  
7 "impliedly repealed" by the enactment of Article XV, section 16. In Opposition, the  
8 Defendant avers that this action is governed by the two-year period set forth in NRS  
9 608.260.

10 (3) The instant Motion is styled as a Motion seeking summary judgment  
11 pursuant to NRCP 56. The Defendant's Opposition argues that the instant Motion is  
12 not a proper NRCP 56 because it does not actually seek entry of judgment on any  
13 claim, but rather seeks something along the lines of an "advisory opinion" on a  
14 question of law that does not actually dispose of the claim asserted in the Amended  
15 Complaint. The Defendant is technically correct. The Plaintiffs' Motion seeks to  
16 know what limitations period governs it claims, a question whose answer would not  
17 actually result in the entry of judgment on its claim or any portion of its claim; at best,  
18 the answer to that question would only reduce the number of members of the putative  
19 class (by excluding members seeking relief solely for injuries that occurred before the  
20 expiration of the applicable limitations period) or reduce the amount of damages that  
21 the class members might be entitled to recover at trial (by limiting their recoverable  
22 damages only to injuries that occurred before the expiration of the applicable  
23 limitations period). Normally, a party cannot ask this Court to summarily enter  
24 "judgment" pursuant to NRCP 56 on something less than a claim or cause of action.  
25 *E.g., Arado v. General Fire Extinguisher Corp.*, 626 F.Supp. 506, 509 (N.D.Ill. 1985)  
26 (FRCP 56 "simply does not permit the piecemealing of a single claim or the type of  
27 issue-narrowing sought here [because] the Rule authorizes only the granting of  
28

1 appealable 'judgments' disposing of entire claims")<sup>1</sup>; *RePass v. Vreeland*, 357 F.2d  
2 801, 805 (3d Cir. 1966) ("it is clear that summary judgment cannot be invoked to  
3 dispose of [something less than a] claim"); *Westinghouse Electric Corp. v. Fidelity and*  
4 *Deposit Co.*, 63 B.R. 18, 23 (E.D.Pa. 1986) ("Partial summary judgment may not be  
5 invoked to dispose of only part of a single claim"). However, in this case, the question  
6 raised by the Plaintiffs' Motion is one that will likely recur at various points during this  
7 litigation (for example, when certifying and defining the class, during discovery, or  
8 when deciding how the jury is to be instructed on the damages that it can award) and  
9 therefore it needs to be resolved at some point during this litigation. Moreover, the  
10 question is purely one of law whose resolution does not appear to depend on any  
11 particular facts or evidence that might be uncovered during discovery, and therefore its  
12 answer is unlikely to change during the course of this litigation. Therefore, even if the  
13 instant Motion is not procedurally proper in all respects under NRCP 56 and would not  
14 result in the entry of a final judgment for any party, it raises a question that will guide  
15 the parties during this litigation and therefore for reasons of efficiency and judicial  
16 economy the Court deems it prudent to address the legal question presented by the  
17 parties, even if doing so results in an Order by this Court that may technically be  
18 somewhat premature in that it would ordinarily have been brought at a later point in the  
19 litigation.

20 (4) The question at hand is whether the two-year limitations period of NRS  
21 608.260 applies to a claim alleging a violation of Article XV, section 16 of the Nevada  
22 Constitution. The Minimum Wage Amendment (Article XV, section 16) was adopted  
23 in 2006 with an effective date of November 28, 2006, and reads in its entirety as  
24 follows:  
25  
26

27 <sup>1</sup> Where the Nevada Rules of Civil Procedure parallel the Federal Rules of Civil Procedure, rulings of federal  
28 courts interpreting and applying the federal rules are persuasive authority for this Court in applying the Nevada  
Rules. *E.g.*, *Executive Management Ltd. v. Ticor Title Ins.*, 118 Nev. 46, 53 (2002). NRCP 56 is identical to  
FRCP 56.

1           **Sec. 16. Payment of minimum compensation to employees.**

2           A. Each employer shall pay a wage to each employee of not less than  
3           the hourly rates set forth in this section. The rate shall be five dollars and  
4           fifteen cents (\$5.15) per hour worked, if the employer provides health  
5           benefits as described herein, or six dollars and fifteen cents (\$6.15) per  
6           hour if the employer does not provide such benefits. Offering health  
7           benefits within the meaning of this section shall consist of making health  
8           insurance available to the employee for the employee and the employee's  
9           dependents at a total cost to the employee for premiums of not more than  
10          10 percent of the employee's gross taxable income from the employer.  
11          These rates of wages shall be adjusted by the amount of increases in the  
12          federal minimum wage over \$5.15 per hour, or, if greater, by the  
13          cumulative increase in the cost of living. The cost of living increase shall  
14          be measured by the percentage increase as of December 31 in any year  
15          over the level as of December 31, 2004 of the Consumer Price Index (All  
16          Urban Consumers, U.S. City Average) as published by the Bureau of  
17          Labor Statistics, U.S. Department of Labor or the successor index or  
18          federal agency. No CPI adjustment for any one-year period may be  
19          greater than 3%. The Governor or the State agency designated by the  
20          Governor shall publish a bulletin by April 1 of each year announcing the  
21          adjusted rates, which shall take effect the following July 1. Such bulletin  
22          will be made available to all employers and to any other person who has  
23          filed with the Governor or the designated agency a request to receive such  
24          notice but lack of notice shall not excuse noncompliance with this section.  
25          An employer shall provide written notification of the rate adjustments to  
26          each of its employees and make the necessary payroll adjustments by July  
27          1 following the publication of the bulletin. Tips or gratuities received by  
28          employees shall not be credited as being any part of or offset against the  
            wage rates required by this section.

19          B. The provisions of this section may not be waived by agreement  
20          between an individual employee and an employer. All of the provisions of  
21          this section, or any part hereof, may be waived in a bona fide collective  
22          bargaining agreement, but only if the waiver is explicitly set forth in such  
23          agreement in clear and unambiguous terms. Unilateral implementation of  
24          terms and conditions of employment by either party to a collective  
25          bargaining relationship shall not constitute, or be permitted, as a waiver of  
26          all or any part of the provisions of this section. An employer shall not  
27          discharge, reduce the compensation of or otherwise discriminate against  
28          any employee for using any civil remedies to enforce this section or  
            otherwise asserting his or her rights under this section. An employee  
            claiming violation of this section may bring an action against his or her  
            employer in the courts of this State to enforce the provisions of this  
            section and shall be entitled to all remedies available under the law or in  
            equity appropriate to remedy any violation of this section, including but  
            not limited to back pay, damages, reinstatement or injunctive relief. An



1 employee who prevails in any action to enforce this section shall be  
2 awarded his or her reasonable attorney's fees and costs.

3 C. As used in this section, "employee" means any person who is  
4 employed by an employer as defined herein but does not include an  
5 employee who is under eighteen (18) years of age, employed by a  
6 nonprofit organization for after school or summer employment or as a  
7 trainee for a period not longer than ninety (90) days. "Employer" means  
8 any individual, proprietorship, partnership, joint venture, corporation,  
9 limited liability company, trust, association, or other entity that may  
10 employ individuals or enter into contracts of employment.

11 D. If any provision of this section is declared illegal, invalid or  
12 inoperative, in whole or in part, by the final decision of any court of  
13 competent jurisdiction, the remaining provisions and all portions not  
14 declared illegal, invalid or inoperative shall remain in full force or effect,  
15 and no such determination shall invalidate the remaining sections or  
16 portions of the sections of this section.

17  
18 (5) NRS 608.260 reads as follows:

19  
20 **NRS 608.260 Action by employee to recover difference between**  
21 **minimum wage and amount paid; limitation of action.** If any  
22 employer pays any employee a lesser amount than the minimum wage  
23 prescribed by regulation of the Labor Commissioner pursuant to the  
24 provisions of NRS 608.250, the employee may, at any time within 2  
25 years, bring a civil action to recover the difference between the amount  
26 paid to the employee and the amount of the minimum wage. A contract  
27 between the employer and the employee or any acceptance of a lesser  
28 wage by the employee is not a bar to the action.

(6) NRS 608.250 states as follows:

**NRS 608.250 Establishment by Labor Commissioner; exceptions;**  
**penalty.**

1. Except as otherwise provided in this section, the Labor  
Commissioner shall, in accordance with federal law, establish by  
regulation the minimum wage which may be paid to employees in  
private employment within the State. The Labor Commissioner shall  
prescribe increases in the minimum wage in accordance with those  
prescribed by federal law, unless the Labor Commissioner determines  
that those increases are contrary to the public interest.

2. The provisions of subsection 1 do not apply to:

(a) Casual babysitters.

1 (b) Domestic service employees who reside in the household where they  
work.

2 (c) Outside salespersons whose earnings are based on commissions.

3 (d) Employees engaged in an agricultural pursuit for an employer who  
4 did not use more than 500 days of agricultural labor in any calendar  
quarter of the preceding calendar year.

5 (e) Taxicab and limousine drivers.

6 (f) Persons with severe disabilities whose disabilities have diminished  
7 their productive capacity in a specific job and who are specified in  
certificates issued by the Rehabilitation Division of the Department of  
Employment, Training and Rehabilitation.

8 3. It is unlawful for any person to employ, cause to be employed or  
9 permit to be employed, or to contract with, cause to be contracted with or  
10 permit to be contracted with, any person for a wage less than that  
established by the Labor Commissioner pursuant to the provisions of this  
section.

11 (7) By this Motion, the Plaintiffs argue that the two-year limitations period of  
12 NRS 608.260 does not apply on its face to claims brought under the Minimum Wage  
13 Amendment because the Plaintiffs' Constitutional claim does not allege that they were  
14 paid a wage less than that "prescribed by regulation of the Labor Commissioner." The  
15 Plaintiffs also contend that, even if NRS 608.260 were construed to apply to  
16 Constitutional claims rather than violations of regulations, NRS 608.260 has been  
17 "impliedly repealed" by the enactment of the Minimum Wage Amendment because the  
18 Labor Commissioner's power to perform the duties set forth in NRS 608.250 no longer  
19 exist by operation of the Minimum Wage Amendment. The Plaintiffs cite *Thomas v.*  
20 *Yellow Cab Corp.*, 327 P.3d 518 (Nev. 2014) for the proposition that NRS 608.250 has  
21 been repealed by the Minimum Wage Amendment. Because NRS 608.250 is a major  
22 portion of NRS 608.260, the Plaintiffs contend that NRS 608.260 has been repealed as  
23 well. In *Thomas v. Yellow Cab Corp.*, 327 P.3d 518 (Nev. 2014), the Nevada Supreme  
24 Court held that the Minimum Wage Amendment operated to impliedly repeal the  
25 portions of NRS 608.250 that created any statutory "exclusions" among the class of  
26 "employees" expressly eligible to receive the minimum wage under the Minimum  
27 Wage Amendment. The Court held that a statute could not operate to carve out an  
28 exclusion to a class expressly defined in the Nevada Constitution, because "a

1 constitutional amendment, adopted subsequent to the enactment of the statute relied on  
2 by counsel for petitioner, is controlling over the statute that addresses the same issue.  
3 Statutes are construed to accord with constitutions, not vice versa.” *Id.* at 521 (internal  
4 citations omitted). Thus, when a statute and a Constitutional provision are  
5 “irreconcilably repugnant” such that “both cannot stand,” the Constitutional provision  
6 must be read to have “impliedly repealed” the statute. *Id.* (citations omitted). From  
7 this, the Plaintiffs argue that the entirety of NRS 608.250 and 608.260 have been  
8 “impliedly repealed” by the Minimum Wage Amendment. Specifically, the Plaintiffs  
9 argue that the duties of the Labor Commissioner set forth in NRS 608.250 have been  
10 entirely abolished by the Minimum Wage Amendment and therefore the entire scheme  
11 set forth in NRS 608.250 and 608.260 no longer exists.

12 (8) Two federal courts have concluded that the two-year limitations period of  
13 NRS 608.260 applies to claims alleging a violation of the Minimum Wage  
14 Amendment. *E.g., Rivera v. Peri & Sons*, 735 F.3d 892 (9th Cir. 2013); *McDonough v.*  
15 *Harrah’s Las Vegas*, 2014 WL 2742874 (D.Nev. June 17, 2014). However, federal  
16 court decisions on questions of state law, while persuasive if their reasoning is sound,  
17 are not binding either on this Court or upon the Nevada Supreme Court.

18 (9) Prior to the enactment of the Minimum Wage Amendment in 2006, any  
19 claim alleging a violation of Nevada’s minimum wage laws or regulations would have  
20 been subject to a limitations period of two years under NRS 608.260. There is no  
21 indication anywhere on the face of the Minimum Wage Amendment that it was  
22 intended to change this scheme. For this reason, federal courts have concluded that  
23 claims arising under the Minimum Wage Amendment were intended to be governed by  
24 the two-year limitations period that previously governed such claims under NRS  
25 608.260. However, the reasoning employed by those federal courts strikes this Court  
26 as somewhat superficial because it is also true that, prior to 2006, the minimum wage in  
27 Nevada was established by way of regulation issued by the state Labor Commissioner  
28 pursuant to standards set forth in NRS 608.250, and any claim based upon a failure by

1 an employer to pay the minimum wage when required to do so would have been based  
2 upon a violation of NRS 608.260 and those regulations. In contrast, in this case the  
3 Plaintiffs attempt to frame their claim as a "Constitutional tort" based directly upon a  
4 violation of a provision of the Nevada Constitution, rather than as a claim brought  
5 under NRS 608.260 alleging a violation of a regulation issued by the Labor  
6 Commissioner. If the Plaintiffs' claim is indeed a true Constitutional tort rather than a  
7 claim based upon a violation of NRS 608.260, then at least arguably the two-year  
8 limitations period of NRS 608.260 would not apply to such a Constitutional tort.

9 (10) A cause of action can be based directly upon a violation of a provision of  
10 a state Constitution or the U.S. Constitution if the plaintiff can demonstrate that a  
11 constitutional violation was a "cause-in-fact" of the injuries and the resulting damages,  
12 and the injuries were a "reasonably foreseeable consequence" of the actor's act or  
13 omission. *E.g.*, *Smith v. City of Oak Hill*, 2014 WL 4627947 (11th Cir. September 17,  
14 2014); *Gillette v. Delmore*, 979 F.2d 1342, 1346 (9th Cir. 1992). The "cause-in-fact"  
15 must arise from an action that violates a specific constitutional provision. *E.g.*,  
16 *Strehlke v. Grosse Pointe Public Schools System*, 2014 WL 4603482 (E.D.Mich.  
17 September 15, 2014) (not "every governmental decision with which one disagrees [is] a  
18 constitutional tort").

19 (11) But in this case, it is not clear that the Plaintiffs' claim is such a thing.  
20 On its face, the Minimum Wage Amendment does not merely establish a  
21 straightforward uniform minimum wage rate to be paid to every employee in Nevada at  
22 all times. Rather, the Minimum Wage Amendment sets a specific floor and then  
23 expressly requires the Governor (through the state Labor Commissioner) to adjust the  
24 rate periodically as follows:

25  
26 These rates of wages shall be adjusted by the amount of increases in the  
27 federal minimum wage over \$5.15 per hour, or, if greater, by the  
28 cumulative increase in the cost of living. The cost of living increase shall  
be measured by the percentage increase as of December 31 in any year  
over the level as of December 31, 2004 of the Consumer Price Index (All

1 Urban Consumers, U.S. City Average) as published by the Bureau of  
2 Labor Statistics, U.S. Department of Labor or the successor index or  
3 federal agency. No CPI adjustment for any one-year period may be  
4 greater than 3%. The Governor or the State agency designated by the  
5 Governor shall publish a bulletin by April 1 of each year announcing the  
6 adjusted rates, which shall take effect the following July 1.

7 (12) Thus, the effective minimum wage rate in Nevada is not merely what is  
8 stated in Article XV section 16, but rather is expressly defined as a wage rate set by the  
9 Labor Commissioner based partially upon data from the U.S. Department of Labor. It  
10 follows that any employee who claims to have been illegally paid less than the then-  
11 existing minimum wage is not necessarily alleging a Constitutional tort, but rather is  
12 alleging a violation of the wage rates established in the bulletin issued by the state  
13 Labor Commissioner in effect on the date of the alleged violation. In other words, the  
14 "cause-in-fact" of any such claim is not that the employee has not been paid the  
15 particular dollar amount set forth in the Minimum Wage Amendment, but that he has  
16 not been paid the wage rate set forth in the periodic bulletins issued by the Labor  
17 Commissioner pursuant to the Minimum Wage Amendment. Thus, the legal standard  
18 that the Plaintiffs allege was violated is the wage rate established by the Labor  
19 Commissioner, not Article XV section 16 itself. Although that wage rate is established  
20 pursuant to the methodology articulated in the Minimum Wage Amendment, the  
21 Minimum Wage Amendment does not itself define what that exact rate is at any given  
22 moment in time. Therefore, any claim that an employee has been illegally paid less  
23 than the effective minimum wage rate actually alleges a violation of wage rates  
24 established by state regulation rather than alleging a direct violation of Article XV  
25 section 16 of the Nevada Constitution. Consequently, although styled as a  
26 "Constitutional tort," the Plaintiffs' claim actually appears to be one alleging a  
27 violation arising under NRS 608:260.

28 (13) The Court notes that the Minimum Wage Amendment does, by its plain  
terms, impose duties directly upon private employers doing business in Nevada. Thus,  
the Plaintiffs' claim could plausibly be interpreted as a "Constitutional tort" based upon

1 an alleged violation of the duties imposed upon employers by the Minimum Wage  
2 Amendment to pay the minimally required wage rate. But those minimally required  
3 wage rates are nonetheless set by the Labor Commissioner, not by the Minimum Wage  
4 Amendment itself. Thus, even if the Plaintiffs' claim were construed in this manner as  
5 a "Constitutional tort" arising from the failure of an employer to pay the minimum  
6 wage as required by Article XV section 16, the genesis or "cause-in-fact" of the claim  
7 is that the employer did not pay the wage rates set by the Labor Commissioner.

8 (14) For purposes of the present Motion the Court need not definitively  
9 determine which interpretation is correct, because, under either interpretation, the  
10 Minimum Wage Amendment is not "irreconcilably repugnant" with the regulatory and  
11 statutory scheme set forth in NRS 608.250 and 608.260 (excepting that the exclusions  
12 of NRS 608.250(2) have been repealed). The Minimum Wage Amendment does not  
13 supplant or abolish the duties of the state Labor Commissioner in establishing the  
14 current minimum wage rate, but rather still requires the Labor Commissioner to issue  
15 regulations establishing minimum wage rates, albeit changing how those duties are  
16 performed. The state Labor Commissioner still sets the effective minimum wage rate  
17 in Nevada via periodic regulation, and he still does so based upon data from the federal  
18 government, and he still cannot violate federal law in doing so. Therefore, on its face,  
19 NRS 608.250 and 608.260 are not irreconcilable with the Minimum Wage Amendment,  
20 but rather are quite obviously intended to be complementary (with the exception noted  
21 in *Thomas*).

22 (15) Accordingly, a claim alleging that an employee has been illegally paid  
23 less than the effective minimum wage rate is a claim that alleges a violation of the rates  
24 established by the Labor Commissioner, not a claim that alleges a violation of the rates  
25 set forth in the Minimum Wage Amendment. Thus, the Plaintiffs' claim in this case,  
26 although styled as a violation of Article XV section 16, actually appears to allege a  
27 violation arising under NRS 608.260. Such a claim is governed by the two-year  
28 statutory period set forth in NRS 608.260.

1 (16) It is so ORDERED.

2 DATED: September 22, 2014

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5 JEROME T. TAO  
6 DISTRICT COURT JUDGE  
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**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing, by E-Service, by mailing, by placing copies in the attorney folder's in the Clerk's Office or faxing as follows:

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Attorneys for Plaintiffs

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

MICHAEL MURRAY, and MICHAEL  
RENO, Individually and on behalf of  
others similarly situated,  
  
Plaintiffs,  
  
vs.  
  
A CAB TAXI SERVICE LLC, A CAB,  
LLC, and CREIGHTON J. NADY,  
  
Defendants.

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' RESPONSE IN  
OPPOSITION TO  
DEFENDANTS' MOTION TO  
DISMISS PLAINTIFFS'  
SECOND CLAIM FOR  
RELIEF**

Plaintiffs, by and through their attorney, Leon Greenberg Professional Corporation, submit this memorandum of points and authorities in response to defendants' motion to dismiss the plaintiffs' second claim for relief.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**SUMMARY OF RESPONSE**

This Court, by District Judge Kenneth Cory, has already rejected the arguments underlying defendants' motion. It did so in *Valdez v. Video Internet Phone Installs, Inc.*, A-09-597433-C, Order entered October 18, 2013 (Ex. "A"). *See, also, Valdez v. Video Internet Phone Installs, Inc.*, A-09-597433-C, Order entered August 6, 2012 (Ex. "B"). *Valdez* establishes that the plaintiffs do have standing to prosecute their claims under NRS 608.040. *Valdez* also establishes that an employee who is owed unpaid wages, for whatever reason, that are not promptly paid upon their termination

**AA000651**

1 from employment is entitled to the 30 days of wages penalty provided by NRS  
2 608.040.

### 3 ARGUMENT

#### 4 I. PLAINTIFFS HAVE STANDING TO SUE IN 5 THIS COURT ON THEIR CLAIM UNDER NRS 608.040

##### 6 A. Prior decisions of this Court, and the language 7 of NRS Chapter 608, grant plaintiffs standing 8 to pursue their claims under NRS 608.040.

9 In addition to this Court's Orders in *Valdez*, Ex. "A" and Ex. "B," Judge Barker  
10 of this Court also found standing existed to bring claims under NRS 608.040, rejecting  
11 the assertion such claims could only be pursued administratively with the Nevada  
12 Labor Commissioner. Ex. "C," Order in *Phelps v. MC Communications*.

13 Defendants "lack of standing" argument is based upon a fundamental  
14 misreading of NRS 608.040 and NRS Chapter 608. It is apparent that Nevada's  
15 Legislature always presumed that NRS 608.040 was enforceable via a direct civil  
16 lawsuit. Indeed, the only Nevada Supreme Court case discussing NRS 608.040, in  
17 affirming a finding in favor of the plaintiff, did not even question that the statute  
18 conferred a private right of action. *See, Doolittle v. Eighth Judicial Dist. Court*, 15  
19 P.2d 684 (Nev. Sup Ct. 1932).

20 That standing to prosecute claims under NRS 608.040 has always been intended  
21 by the Nevada Legislature, despite such statute not expressly discussing that issue, is  
22 apparent from NRS 608.140. In enacting NRS 608.140 Nevada's Legislature gave  
23 employees the **additional remedy** of an attorney's fee award on their wage claims if  
24 they followed the procedures set forth in NRS 608.140, which states:

25 Whenever a mechanic, artisan, miner, laborer, servant or employee shall have  
26 cause to bring suit for wages earned and due according to the terms of his or her  
27 employment, and shall establish by decision of the court or verdict of the jury  
28 that the amount for which he or she has brought suit is justly due, and that a  
demand has been made, in writing, at least 5 days before suit was brought, for a  
sum not to exceed the amount so found due, the court before which the case  
shall be tried shall allow to the plaintiff a reasonable attorney fee, ***in addition to***  
***the amount found due for wages and penalties***, to be taxed as costs of suit.  
(Emphasis provided).

1 The attorney's fees right conferred by NRS 608.140 is *in addition to the*  
2 *amount found due for wages and penalties.* The only "penalties" that NRS 608.140  
3 could possibly be referring to are the late payment of wages penalties conferred by  
4 NRS 608.040. Accordingly, NRS 608.140, when passed by Nevada's Legislature,  
5 recognized *an already existing right to sue for the penalty provided for by NRS*  
6 *608.040* and was just *adding* a right to recover attorney's fees in a lawsuit (if NRS  
7 608.140 was complied with) in addition to those penalties. The only other conclusion  
8 would be absurd: That Nevada's Legislature was only authorizing lawsuits to collect  
9 NRS 608.040 penalties when attorney's fees were *also* sought under NRS 608.140.

10 **B. Defendants' arguments that *Baldonado*, or the**  
11 **Labor Commissioner's obligations imposed by statute,**  
12 **or its regulations, require NRS 608.040 claims be**  
13 **adjudicated by the Labor Commissioner are specious.**

14 As discussed in the annexed Orders in *Valdez* and *Phelps*, the argument that  
15 *Baldonado v. Wynn Las Vegas LLC*, 194 P.3d 96 (2008) requires the conclusion the  
16 plaintiffs have no standing to prosecute their "30 days of wages penalty claim" under  
17 NRS 608.040 is without merit.

18 In *Baldonado* the Nevada Supreme Court considered whether employees had  
19 standing to bring a civil lawsuit over an employer's tip distribution policy that was  
20 alleged to violate certain Nevada labor statutes. Those statutes were N.R.S. § 613.120,  
21 § 608.100 and § 608.160. None of the *Baldonado* plaintiffs' claims concerned the  
22 payment of wages or other compensation owed to them *from their employer* and  
23 customer tips are not within the Nevada labor law's definition of "wages." *See*, N.R.S.  
24 § 608.012. In its decision finding the *Baldonado* plaintiffs lacked standing to civilly  
25 pursue their claims for customer tips, the Nevada Supreme Court, in a lengthy  
26 footnote, explicitly recognized that its decision was limited to customer tips, not wages  
27 an employer is obligated to pay, and claims for unpaid wages can be sued upon civilly:

28 ...For instance, no statute even implicitly provides a judicial remedy  
specifically for NRS 608.160 violations. In contrast, two other statutes in  
NRS Chapter 608, otherwise enforceable by the Labor Commissioner,  
expressly recognize a civil enforcement action to recoup unpaid wages:  
NRS 608.140 (civil actions by employees to recoup unpaid wages) and

1 NRS 608.150 (civil actions by the district attorney to recoup unpaid  
2 wages from general contractors). The existence of express civil remedies  
3 within the statutory framework of a given set of laws indicates that the  
4 Legislature will expressly provide for private civil remedies when it  
5 intends that such remedies exist; thus, if the Legislature fails to expressly  
6 provide a private remedy, no such remedy should be implied. See *Hamm*  
7 *v. Carson City Nugget, Inc.*, 85 Nev. 99, 450 P.2d 358 (1969), cited in  
8 *Moen v. Las Vegas International Hotel, Inc.*, 402 F. Supp. 157, 161 (D.  
9 Nev. 1975). Moreover, a federal district court in California has  
10 determined that no private cause of action can be implied under a similar  
11 provision in the California Labor Code, § 351. *Matoff v. Brinker*  
12 *Restaurant Corp.*, 439 F. Supp. 2d 1035, 1037 (C.D. Cal. 2006)  
13 (explaining that the allegations could be brought under a different statute  
14 generally allowing claims based on unfair business practices).

15 Thus, although we have considered appellants' arguments that our  
16 holding in *U.S. Design & Construction v. I.B.E.W. Local 357*, 118 Nev.  
17 458, 50 P.3d 170 (2002), and the Labor Commissioner's general authority  
18 to pursue civil remedies for "other demands" under NRS 607.160(7) and  
19 NRS 607.170(1), as well as other considerations, compel a different  
20 conclusion, we disagree. In *U.S. Design*, we interpreted NRS 608.150 as  
21 including a private right of action to maintain consistency with NRS  
22 11.209(1), which sets limitations on the rights of employees to sue  
23 general contractors for wages, and the legislative history, which reflected  
24 a desire to expand the option employees had to recover wages, not to limit  
25 them. 118 Nev. at 462, 50 P.3d at 172. Further, a private cause of action  
26 to recover unpaid wages is entirely consistent with the express authority  
27 under NRS 608.140 to bring private actions for wages unpaid and due...  
28 194 P.3d at 104 n. 33.

16 As *Baldonado* makes clear, the significance of N.R.S. § 608.140, a statutory  
17 mechanism to collect attorney's fees as part of a civil lawsuit for the recovery of  
18 wages, is that it recognizes employees can bring such a civil lawsuit to recover unpaid  
19 wages owed pursuant to Chapter 608, as in *U.S. Design*.

20 Defendants also misrepresent the nature of NRS 607.160(1), which imposes a  
21 duty upon the Nevada Labor Commissioner to enforce "all labor laws of the state of  
22 Nevada." While such statute imposes a duty upon the Labor Commissioner to enforce  
23 Nevada's labor laws, neither it, nor any other statute, confers exclusive labor law  
24 enforcement authority upon the Labor Commissioner. Defendants' reference to NAC  
25 608.155 is even more specious: this is a regulation governing the filing of wage claims  
26 by Nevada employees with the Nevada Labor Commissioner and setting forth the  
27 administrative procedures of that office in respect to the same. It neither purports to,  
28 nor can it, require anything of any employee who seeks to proceed with a lawsuit in

1 this Court.

2 **CONCLUSION**

3  
4 WHEREFORE, defendants' motion should be denied in its entirety.

5 Dated this 28<sup>th</sup> day of August, 2015.

6 Leon Greenberg Professional Corporation

7 By: /s/ Leon Greenberg  
8 LEON GREENBERG, Esq. NSB 8094  
9 Attorney for Plaintiff  
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CERTIFICATE OF MAILING

The undersigned certifies that on August 28, 2015, she served the  
within:

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION  
TO DISMISS PLAINTIFFS' SECOND CLAIM FOR RELIEF**

by court electronic service to:

TO:

Esther C. Rodriguez, Esq.  
RODRIGUEZ LAW OFFICES, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145

*/s/ Dana Sniegocki*

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Dana Sniegocki

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# EXHIBIT "A"



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Attorney for Plaintiffs

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOE VALDEZ, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

VIDEO INTERNET PHONE INSTALLS,  
INC.,

Defendant.

Case No. A-09-597433-C

Dept. No. I

**ORDER**

THIS MATTER having come before the Court for hearing on September 3, 2013 on  
plaintiff's Motion for Summary Judgment and defendant's Countermotion for Summary  
Judgment, after due consideration of all supporting and opposing briefs submitted by counsel

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Sup Dis	<input type="checkbox"/> Sum Jdgmt	<input type="checkbox"/> FINAL DISPOSITION
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Sup Jdgmt	<input type="checkbox"/> Non-Jury Trial	<input type="checkbox"/> Time Limit Expired
<input type="checkbox"/> Jdgmt on Acft Award	<input type="checkbox"/> Default Jdgmt	<input type="checkbox"/> Jury Trial	<input type="checkbox"/> Dismissed (with or without prejudice)
<input type="checkbox"/> Min to Dis (by defn)	<input type="checkbox"/> Transferred		<input type="checkbox"/> Judgment Satisfied/Paid in Full



1 for the parties, the oral argument by counsel, and the record of these proceedings, and good  
2 cause appearing, now therefore:

3 **THE COURT FINDS:**

4 Plaintiff sought an Order granting summary judgment on his remaining claim for 30  
5 days of continuing wages under N.R.S. 608.040 for defendant's failure to pay him all wages  
6 owed and due at the time of his separation from employment and for his claim under N.R.S.  
7 99.040 for prejudgment interest. Plaintiff's unpaid wages for purposes of his N.R.S. 608.040  
8 claim concerned defendant's failure to pay him overtime wages calculated at time and one-  
9 half his "regular rate" of pay. The parties do not dispute that Plaintiff received no waiting-  
10 time penalties under NRS 608.040 at the time of his separation from the Defendant.  
11

12  
13 In the parties' companion federal litigation, the parties entered into a Settlement and  
14 Release of Claims in March 2013. Through such Settlement and Release, defendant satisfied  
15 a payment of \$20,000.00 to plaintiff, which was inclusive of all "taxable costs, attorneys'  
16 fees, and prejudgment interest" in the companion federal litigation. Prior to such Settlement  
17 and Release, the plaintiff had also accepted an Offer of Judgment in the amount of \$4194.20  
18 which was entered on November 14, 2012 in the federal litigation. Thus, plaintiff's only  
19 remaining claims concerned his entitlement to damages under N.R.S. 608.040 and  
20 prejudgment interest on his unpaid wages claims.  
21

22 **Conclusions of Law**

23  
24 The Court accepts both parties' position that no triable issues of material fact exist  
25 and only questions of law remain before the Court. The Court finds that it is undisputed that  
26 plaintiff has accepted an offer of judgment for the unpaid overtime wages owed to him at the  
27 time of his separation of employment from the defendant and that such offer of judgment  
28

1 acceptance establishes, for the purposes of NRS 608.040, that the plaintiff was owed unpaid  
2 overtime at the time of his employment termination. Thus, plaintiff's entitlement to the  
3 requested 30 days of continuing wages as a penalty under N.R.S. 608.040 rests on a pure  
4 issues of law concerning whether unpaid overtime wages, due under a piece rate payment  
5 system, constitute the unpaid "compensation" or "wages" contemplated by the legislature  
6 under N.R.S. 608.040 and whether N.R.S. 608.040 contains a private right of action. The  
7 Court finds that in both instances it does.

9 In so finding, the Court disagrees with the federal district court decisions that the  
10 later complications by statute obliterate the earlier meaning. The Court reaches its  
11 conclusion regardless of whether the Court would construe this statute the way the Supreme  
12 Court has indicated in *General Motors v. Jackson*, saying that giving meaning to their parts  
13 and language read each sentence, phrase and word to render it meaningful within the context  
14 of the purpose of the legislation. *General Motors v. Jackson*, 99 Nev. 739, 670 P.2d 102  
15 (Nev. 1983). Thus, the Court would arrive at the same conclusion it arrived at if it did go to  
16 the secondary method, which is where the statutory language does not speak to the issue  
17 before the Court, the Court should construe it according to that which reason and public  
18 policy would indicate the legislature intended, and the Court finds they intended employees  
19 to be paid the agreed-upon contractual rate, which was, in this case, the average of the  
20 piecemeal rate.

22 The Court further finds that plaintiff is entitled to thirty days of continuing wages  
23 under N.R.S. 608.040 for defendant's failure to pay plaintiff all overtime wages owed and  
24 due at the time of his separation from employment. Because plaintiff was employed under a  
25 piecework payment system, such "continuing wages" are to be calculated based upon his  
26  
27  
28

1 average earnings while employed by defendant, which the Court finds to be at a rate of  
2 \$115.20 per day for a total award of \$3,456.00 for a period of 30 days.

3 In respect to plaintiffs' request for prejudgment interest on his unpaid overtime  
4 wages, the Court finds that such prejudgment interest was satisfied and foreclosed as a result  
5 of the parties' Settlement and Release in the companion federal district court case in March  
6 2013. The Court concludes that nothing in the settlement could be read to have parceled out,  
7 or excluded out, some later consideration by this Court as to prejudgment interest.  
8

9 **Conclusion**

10 Based on the foregoing, it is hereby ORDERED that plaintiffs' Motion for Summary  
11 Judgment is **GRANTED** in part and **DENIED** in part. Plaintiff is entitled to thirty days of  
12 continuing wages under N.R.S. 608.040. Summary judgment on such claim is **GRANTED**  
13 and plaintiff is entitled to a judgment in the amount of \$3,456.00. Plaintiff's Motion for  
14 Summary Judgment under N.R.S. 99.040 for prejudgment interest is **DENIED** for the  
15 reasons stated above.  
16

17 It is hereby further ORDERED that defendant's Counter Motion for Summary  
18 Judgment is **GRANTED** in part and **DENIED** in part. Defendant's Motion for Summary  
19 Judgment on plaintiff's claim under N.R.S. 99.040 for prejudgment interest is **GRANTED**  
20 pursuant to the parties' Settlement and Release satisfied in the companion federal district  
21 court litigations. Defendant's Motion for Summary Judgment on plaintiff's claim under  
22 N.R.S. 608.040 is **DENIED** for the reasons stated above.  
23

24 Dated this 16 day of Oct, 2013.

25  
26   
27 DISTRICT COURT JUDGE  
28 THE HONORABLE KENNETH CORY

# EXHIBIT “B”

1     **ORD**

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2     Leon Greenberg, NSB 8094  
3     Dana Sniegocki, NSB 11715  
4     Leon Greenberg Professional Corporation  
5     2965 South Jones Boulevard #E-4  
6     Las Vegas, Nevada 89146  
7     Telephone (702) 383-6085  
8     Fax (702) 385-1827  
9     leongreenberg@overtimelaw.com



CLERK OF THE COURT

6     CHRISTIAN GABROY, NSB 8805  
7     Gabroy Law Offices  
8     170 S. Green Valley Parkway - Suite 280  
9     Henderson, Nevada 89012  
10    Telephone (702) 259-7777  
11    (702) 259-7704 (fax)

10   Attorneys for Plaintiffs

11                   **DISTRICT COURT**

12                   **CLARK COUNTY, NEVADA**

13     JOSEPH VALDEZ, individually and	)	<b>Case No.: A-09-597433-C</b>
14     on behalf of all others	)	<b>Dept. No. I</b>
15     similarly situated,	)	ORDER DENYING DEFENDANTS'
16                                   Plaintiff,	)	MOTION TO DISMISS
17     v.	)	
18     COX COMMUNICATIONS LAS VEGAS,	)	
19     INC., VIDEO INTERNET PHONE	)	
20     INSTALLS, INC., QUALITY	)	
21     COMMUNICATIONS, INC., and	)	
22     SIERRA COMMUNICATIONS, CO.,	)	
23                                   Defendants.	)	
24     -----X	)	

23         This matter having come before the Court on the defendant  
24     Sierra Communications Services, Inc.'s ("Sierra's") motion to  
25     dismiss under Nev. R. Civ. P. 12(c) for a failure by the  
26     plaintiff to have a private cause of action to enforce his  
27     claim for unpaid overtime wages alleged to be owed to him  
28     pursuant to N.R.S. § 608.018, and additional damages pursuant

1 to N.R.S. § 608.040, such motion having come before the Court  
2 for oral argument on July 11, 2012, with Howard E. Cole, Esq.,  
3 arguing on behalf of defendant Sierra in support of such  
4 motion, and Leon Greenberg, Esq., arguing on behalf of  
5 plaintiff in opposition to such motion, and after due  
6 consideration of the arguments, briefs and papers submitted by  
7 counsel for the parties, and the record of these proceedings;

8 **THE COURT FINDS:**

9 ~~Sierra's motion is predicated upon the argument that~~  
10 neither of the statutory claims made by the plaintiff in this  
11 case, under N.R.S. § 608.018 for unpaid overtime compensation,  
12 and under N.R.S. § 608.040 for damages arising from a failure  
13 to pay all wages due to a discharged or quitting employee, are  
14 enforceable by a private lawsuit in this Court. Sierra argues  
15 no private right of action exists to enforce such claims and  
16 they can only be heard and determined by the Nevada Labor  
17 Commissioner.

18 The Court finds that it agrees with the reasoning of  
19 Judge George in *Buenaventura v. Champion Drywall, Inc. of*  
20 *Nevada, et al.*, No. 2:10-cv-00377-LDG (RJJ), 2011 WL 1071760,  
21 at \*3 (D. Nev. March 21, 2011) and Judge Barker in *Phelps v.*  
22 *MC Communications, et al*, A-11-634965-C (Dec. 13, 2011). The  
23 provisions of N.R.S. § 608.140 providing for the recovery of  
24 attorney's fees in certain actions brought to recover unpaid  
25 wages make no sense to the Court if there is no private right  
26 of action under the circumstances presented in this case.  
27 Although plaintiff argues that *Baldonado v. Wynn Las Vegas,*  
28 *LLC*, 124 Nev. 951(2008) should be read to expressly resolve

1 this issue against Sierra, the Court declines to apply  
2 *Baldonado* in that fashion as it is not persuaded by a footnote  
3 that has no precedential effect. Accordingly, the Court  
4 determines that Sierra's motion should be denied.

5 Recognizing, as it must on a motion to dismiss, all  
6 factual allegations in the plaintiff's complaint as true and  
7 drawing all inferences in plaintiff's favor for the purpose of  
8 deciding this motion, it is hereby


9 ORDERED, that defendants' motion to dismiss is denied.

10 IT IS SO ORDERED this 3 day of August,  
11 2012.

12  
13   
14 HONORABLE JUDGE KENNETH CORY  
DISTRICT COURT, CLARK COUNTY  
15

15 Submitted by:

16 Dated: 7/30/12

17   
18 Leon Greenberg  
Dana Sniegocki  
19 Leon Greenberg Professional Corporation  
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21 Fax (702) 385-1827  
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22

23 Approved as to form and content

24 Dated: 7/30/12

25 By: /s/Howard E. Cole  
Howard E. Cole  
26 Lewis and Roca, LLP  
3993 Howard Hughes Pkwy, Suite 600  
27 Las Vegas, NV 89109

28 Attorneys for Defendant Sierra Co.

# EXHIBIT “C”



ORIGINAL



CLERK OF THE COURT

1 LEON GREENBERG, ESQ. NSB #8094  
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14 Attorneys for Plaintiffs

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DISTRICT COURT  
CLARK COUNTY, NEVADA

14 MICHAEL PHELPS, individually and  
15 on behalf of others similarly situated,

16 Plaintiffs,

17 vs.

18 MC COMMUNICATIONS, INC., JOHN  
19 WEHRMAN and ROBERT HAYES,

20 Defendants.

Case No.: A-11-634965-C

Dept No.: 18

ORDER

21 This matter having come before the Court on the defendants' motion to dismiss for a  
22 failure by the plaintiff to have a private cause of action to enforce his claim for unpaid  
23 overtime wages alleged to be owed to him pursuant to N.R.S. § 608.018, such motion  
24 having come before the Court for oral argument on October 27, 2011, with Anthony Hall,  
25 Esq., arguing on behalf of defendants in support of such motion, and Leon Greenberg, Esq.,  
26 arguing on behalf of plaintiff in opposition to such motion, and after due consideration of  
27 the arguments, briefs and papers submitted by counsel for the parties, and the record of  
28 these proceedings;

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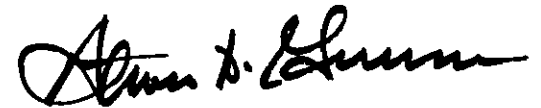
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CLERK OF THE COURT

**RIS**  
Esther C. Rodriguez, Esq.  
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[info@rodriguezlaw.com](mailto:info@rodriguezlaw.com)  
*Attorneys for Defendant A Cab, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

MICHAEL MURPHY and MICHAEL RENO,  
Individually and on behalf of others similarly  
situated,

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

Case No.: A-12-669926-C  
Dept. No. I

Hearing Date: September 15, 2015  
Hearing Time: 9:00 a.m.

**DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS**

**PLAINTIFFS' SECOND CLAIM FOR RELIEF**

Defendant A Cab, LLC, by and through its attorney of record, ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., hereby files its Reply in Support of Defendant's Motion to Dismiss the Second Claim for Relief in Plaintiffs' First Amended Complaint.

**I.**

**POINTS AND AUTHORITIES**

As this Court is aware, Plaintiffs Michael Murray and Michael Reno are former employees of Defendant A Cab, LLC ("A Cab"). Recently, the depositions of these two individuals have been taken, and it is clear from each of their testimonies, that they have no idea what they are claiming against their former employer A Cab. This is a case where "word on the street" was that there was money to be had, and all you had to do was line up to get paid. That's what these two individuals are doing. They don't even know if they are owed anything at all from A Cab; they just signed up to

1 find out if they could get some extra bucks.<sup>1</sup> In fact, as expressed by Plaintiff Michael Reno, he  
2 does not know if he is owed anything at all, and if he doesn't he will owe A Cab an apology.<sup>2</sup>  
3 Unfortunately for A Cab, thousands of dollars are being spent defending this frivolous action.  
4 **When the Plaintiffs themselves do not even know what they are claiming, how can they**  
5 **possibly proceed with a claim under NRS 608.040, which is a penalty statute to be used when**  
6 **an employer refuses to pay the employee monies he believes he is due?**

7 Plaintiffs filed their initial Complaint on October 8, 2012, and nearly 3 years later, as of  
8 August 2015, have no indication if they are owed any wages from A Cab at all. When Michael Reno  
9 was questioned, he indicated he was basing his claim on a number of factors, none of which had  
10 anything to do with a minimum wage claim, and certainly nothing to do with wages owed when he  
11 separated from A Cab:

12 Q. Do you have any idea what you believe that you are owed?

13 A. Yeah, about \$200 a month, at least, for two years, which is 4,800 plus all that \$6 crap that  
14 they added on and \$20 fees for radio calls and the interest for the money that should have  
15 been mine to begin with. Then there is aggravation, making us do stuff that wasn't legal.  
16 They wanted us to go into people's houses with groceries. They fired one girl, I can get her  
17 statement, too. That's dangerous. They fired her. They told her she was supposed to get  
18 groceries from somebody's house. Young girl goes at night to somebody's house, she gets  
19 raped. And they fired her and called her all kinds of bad names. I went in the next morning,  
20 I said what happened to the Asian girl that was real pretty, they fired her. That so-and-so. I

---

21 <sup>1</sup>I went to the labor board about three years ago. Right when that girl said she got all that  
22 money from Western -- A Cab or one of the companies. The other guy said he got his money  
23 from Western. He said the money is over there waiting. (See **Exhibit 1**, Deposition of Michael  
24 Reno, p. 97, lines 22-25; p. 98, line 1) . . . there was a lot of guys that the money is going over  
25 here, you got money coming. I never saw it. I seen two, three people had checks, but I don't  
26 know how they got them. Because it was funny because I told the guy, I said, these guys work  
27 two, three years, they got money. I have been driving for 20 straight years, and I got nothing.  
28 How can that be when they got more -- how did they get money and not me? (See **Exhibit 1**, p.  
98, lines 17-25.)

<sup>2</sup> I'm trying to get the money that I feel they owe us, and if they don't owe us, I owe them  
an apology. (See **Exhibit 1**, p. 60, lines 23-24.)

1 said what for, oh, she wouldn't do the groceries. I said, well, you don't go into somebody's  
2 house at night or whatever. She could get overpowered, they could rape her. And they fired  
3 her. If I was her, I would sue the hell out of them. But she still can. (See **Exhibit 1**, p. 55,  
4 lines 12-25; p. 56, lines 1-7)

5 **Upon further questioning Reno admitted his claim is based on the fact that he made less**  
6 **at A Cab than he did while employed at other cab companies.**

7 Q. It's your allegation that because you made less at A Cab than you were making a Yellow and  
8 Frias, by \$200 on average, that's what you are basing your claim on; is that correct?

9 A. Something like that with the other stuff they were doing. (See **Exhibit 1**, p. 61, lines 22-25;  
10 p. 62, lines 1-2.)

11 This is exactly why the Labor Commissioner has jurisdiction over these claims. Had they  
12 any idea what they were owed, Plaintiffs' recourse was to pursue any alleged claim for unpaid wages  
13 through Nevada's Labor Commissioner. NRS 608.040 provides that if an employer fails to pay on  
14 the day the wages or compensation are due to an employee who resigns or quits, the wages or  
15 compensation of the employee continues at the same rate from the day the employee resigned or quit  
16 until paid or for 30 days, whichever is less. The statute mandates a 30 day time period at the  
17 maximum to resolve any issue of outstanding wages that would be due.

18 Plaintiffs' attempt to attach a claim for penalty under NRS 608.040 to their claim for  
19 minimum wage is improper. Throughout this litigation, Plaintiffs have been arguing that the various  
20 provisions of NRS 608 no longer apply, after passage of the Amendment to the Constitution. Their  
21 argument has been that the Amendment has supplanted the statutory scheme, and we should no  
22 longer look to NRS 608 for guidance, including the exemptions, and the statute of limitations. Yet,  
23 Plaintiffs argue for this Court to enforce the penalty provision of this same chapter. As support for  
24 this argument, Plaintiffs attach cases pertaining to claims for overtime compensation which remain  
25 within the NRS 608. Plaintiffs in essence want the Court to enforce only the select provisions of  
26 NRS 608 which allow them to add penalties, fees, and interest; but exclude the provisions which  
27 limit the time for filing; require filing with the Labor Commissioner; and of course, exempt drivers  
28 altogether.

1 In their opposition, Plaintiffs argue that Defendants misrepresent the nature of NRS 607.160  
2 which allows the Labor Commissioner to enforce the laws. Plaintiffs have confused A Cab's  
3 arguments contained in its motion. A Cab had highlighted to this Court NRS 608.180 which is  
4 under the enforcement of the Labor Commissioner. "The Labor Commissioner or the representative  
5 of the Labor Commissioner shall cause the provisions of NRS 608.005 to 608.195, inclusive, to be  
6 enforced, and upon notice from the Labor Commissioner or the representative." **NRS 608.180.**  
7 These statutes under the prosecution of the Labor Commissioner are limited to two years. *See* NRS  
8 608.260 and NRS 608.115 requiring two years of record keeping of wage information.

9 Further, NAC 608.155(1) provides:

10 Before an employee may file a claim for wages unpaid when due, the employee shall make a  
11 good faith attempt to collect any wages due the employee from the employer at the normal place and  
12 in the normal method that payment is made to employees of the employer.

13 Q. And following that paycheck, did you ever tell anybody from A Cab that you believed you  
14 were owed additional moneys?

15 A. No. (*See Exhibit 1*, p. 67, lines 3-6.)

16 Neither Murray nor Reno made any such attempt, and no evidence has been produced by the  
17 Plaintiffs indicating as such. When asked if he went to the Labor Commissioner, Reno responded, "I  
18 know it was a federal place, but I didn't know it had to do with -- plus **I'm not sure what to file**  
19 **for.**" (*See Exhibit 1*, p. 99, lines 10-11.)

20 Nevertheless, Plaintiffs are seeking in their complaint a 30 day penalty as well as attorney  
21 fees and costs against the employer. This is in direct violation of NRS 608.140, which states that  
22 before attorney's fees may be recovered, the employee has to make a written demand at least 5 days  
23 before suit is brought, for a sum not to exceed the amount so found due..." No such demand has  
24 ever been made by Plaintiffs. As admitted in their depositions, Plaintiffs simply have no indication  
25 what, if anything, they think they are owed.

26 This lawsuit is, in its entirety, merely a fishing expedition to see if any former driver of A  
27 Cab can be located where an amount can be determined to be owed - whether by minimum wage or  
28 any statute that the Plaintiffs can throw in their Complaint.

1 Had the Plaintiffs followed the statutory requirements of NRS 608, they would have filed  
2 their claims with the Labor Commissioner. The Labor Commissioner requires that they complete a  
3 form in which the specific days and hours and amounts of what the Claimant is asserting they were  
4 not paid are identified. These claims would not be before this Court, as a minimal showing would  
5 not be made. Plaintiffs' have not pursued their claims through the appropriate forum, and this Court  
6 does not have jurisdiction to hear this claim.

7 **II.**

8 **CONCLUSION**

9 Based upon the foregoing points and authorities, Defendant A CAB, LLC respectfully  
10 requests this Honorable Court to enter an Order granting Defendant's Motion to Dismiss Plaintiffs'  
11 Second Claim for Relief for lack of jurisdiction, and failure to state a claim upon which relief can be  
12 granted..

13 DATED this 8<sup>th</sup> day of September, 2015.

14 **RODRIGUEZ LAW OFFICES, P.C.**

15  
16 By: /s/ Esther C. Rodriguez, Esq.  
17 Esther C. Rodriguez, Esq.  
18 Nevada Bar No. 6473  
19 10161 Park Run Drive, Suite 150  
20 Las Vegas, Nevada 89145  
21 *Attorneys for Defendant A Cab, LLC*  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 8<sup>th</sup> day of September, 2015, I electronically *filed* the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

Leon Greenberg, Esq.  
Leon Greenberg Professional Corporation  
2965 South Jones Boulevard, Suite E4  
Las Vegas, Nevada 89146  
*Counsel for Plaintiff*

/s/ Susan Dillow  
An Employee of Rodriguez Law Offices, P.C.



# EXHIBIT 1

# EXHIBIT 1

Michael Reno - 8/25/2015  
Michael Murray, et al. vs. A Cab Taxi Service LLC, et al.

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DISTRICT COURT  
CLARK COUNTY, NEVADA  
  
MICHAEL MURRAY and )  
MICHAEL RENO, )  
Individually and on )  
behalf of others ) Case No. A-12-669926-C  
similarly situated, )  
Plaintiffs, )  
vs. )  
A CAB TAXI SERVICE LLC )  
and A CAB, LLC, )  
Defendants. )

DEPOSITION of MICHAEL RENO  
Taken on Tuesday, August 25, 2015  
At 1:58 p.m.  
At 703 South Eighth Street  
Las Vegas, Nevada

Reported by: Lori-Ann Landers, CCR 792, RPR

1 testimony. You can answer.

2 A. That's exactly right.

3 Q. Because it was your intention to just go to  
4 court, right?

5 A. Yeah. I went once and she said, no, you're  
6 wrong. So I didn't push it. If I pushed it, I'm fired.  
7 So I said I will let it work itself out. And then when  
8 it does, I will come back.

9 Like I said, it's confusing, all of these guys  
10 do confusing accounting with the payroll. And if I am  
11 wrong, I will owe an apology.

12 Q. Do you have any idea what you believe that you  
13 are owed?

14 A. Yeah, about \$200 a month, at least, for two  
15 years, which is 4,800 plus all that \$6 crap that they  
16 added on and \$20 fees for radio calls and the interest  
17 for the money that should have been mine to begin with.

18 Then there is aggravation, making us do stuff  
19 that wasn't legal. They wanted us to go into people's  
20 houses with groceries. They fired one girl, I can get  
21 her statement, too. That's dangerous. They fired her.

22 They told her she was supposed to get groceries  
23 from somebody's house. Young girl goes at night to  
24 somebody's house, she gets raped. And they fired her and  
25 called her all kinds of bad names.

1 I went in the next morning, I said what happened  
2 to the Asian girl that was real pretty, they fired her.  
3 That so-and-so. I said what for, oh, she wouldn't do the  
4 groceries. I said, well, you don't go into somebody's  
5 house at night or whatever. She could get overpowered,  
6 they could rape her. And they fired her. If I was her,  
7 I would sue the hell out of them. But she still can.

8 Q. Are you categorizing what you are telling me  
9 under your claim for aggravation?

10 A. I'm saying at Western we all talk about what A  
11 Cab did to us, and it goes on every day. I was there  
12 when they did this to me, so I listened to all of this  
13 stuff because they did it to me, too.

14 Q. This is what I'm asking, sir: When you are  
15 making statements like we are all talking --

16 A. We are going to get all --

17 Q. -- so-and-so was saying this --

18 A. We are going to get all the names.

19 MS. SNIEGOCKI: You can't talk at the same time.

20 Q. That's what I'm asking you. You can't make  
21 these general statements without me following up and  
22 saying who is telling you this.

23 A. Right. I will have the names and the  
24 statements.

25 Q. But right now, this is the second time that I'm

1 Q. Sir, I get to ask the questions.

2 A. I'm answering. Common sense. Common sense.

3 Q. Did anyone ever tell you they were illegal?

4 A. Common sense. Common sense. We can go to the  
5 T.A. tomorrow and say is this legal for them to charge  
6 \$20.

7 Q. Did you ever report A Cab to anyone as engaging  
8 in illegal activities?

9 A. I just did to you, and I waited until I was done  
10 with them so there was no repercussion. I keep  
11 telling -- I didn't want the repercussions of going to  
12 the office and start trouble.

13 Q. Sir, you haven't worked there since September  
14 2012.

15 A. I filed three years ago, four years ago.

16 Q. So by filing your --

17 A. I'm waiting to go to court to get them to go  
18 through this. And I'm working -- besides, what's the  
19 deal?

20 Q. I would say no less than three times you have  
21 said I'm going to court to get them. What does that  
22 mean?

23 A. I'm trying to get the money that I feel they owe  
24 us, and if they don't owe us, I owe them an apology. I'm  
25 just trying to get the money that's owed. Everybody in

1 America they feel like they are shorted on a check, they  
2 go to a bookkeeper, or whatever, they say I think I got  
3 the wrong amount of money, you got a right to do that.  
4 That's all I'm doing.

5 And I think it went on for a two year period.  
6 That's all I'm saying. I'm just trying to get my money  
7 that's owed to me if I am right, and I think I'm right.

8 Q. And I'm asking you what money you think you are  
9 owed --

10 A. I just told you, around \$200 a month --

11 Q. And how are you --

12 A. -- for a two year period which is 4,800, and  
13 other stuff was aggravating, too.

14 Q. How are you coming up with \$200 a month for two  
15 years?

16 A. Because I usually made 6- or 700 at A Cab -- I  
17 mean at Western and everybody else. There I made, what,  
18 4-, 500. So there is 300 right there right off the top.  
19 How you figure it, it's \$300 less.

20 Q. Okay.

21 A. And I did the same amount of money.

22 Q. It's your allegation that because you made less  
23 at A Cab than you were making a Yellow and Frias, by \$200  
24 on average, that's what you are basing your claim on; is  
25 that correct?

1           A.     Something like that with the other stuff they  
2     were doing.

3           Q.     Okay. And then you mentioned the \$6 crap to  
4     quote you --

5           A.     The \$6 charges that I feel are illegal.

6           Q.     Tell me what that is.

7           A.     I just showed you right there. You make a  
8     mistake on the accounting, they charge you for the amount  
9     that you were wrong, plus the \$6 fee.

10          Q.     Do you know how many \$6 charges you received?

11          A.     At least 20 over a two year period. It wasn't  
12     just me, it was the whole company.

13          Q.     I'm just asking about you, sir. I don't need  
14     you to testify about any other driver right now. I'm  
15     just asking you specifically.

16          A.     I probably had 10. Of course I'm guessing. It  
17     was years ago.

18                 MS. SNIEGOCKI: We don't want you to guess.

19          Q.     I don't want you to guess. I do not want you to  
20     guess.

21          A.     It's pretty hard to remember 10 years.

22          Q.     Hold on. Listen to the very important  
23     instruction, okay? Do you understand the difference  
24     between a guess and an estimate?

25          A.     Estimate, maybe seven.

1 two week period when it came around again or whatever and  
2 then they paid me.

3 Q. And following that paycheck, did you ever tell  
4 anybody from A Cab that you believed you were owed  
5 additional moneys?

6 A. No.

7 Q. Your attorneys have -- in some of the motions  
8 that have been going back and forth have attached as one  
9 of the exhibits a federal lawsuit that was filed in the  
10 courts against A Cab.

11 Have you seen a copy of that?

12 A. No.

13 Q. Are you aware of that?

14 A. No.

15 Q. Are you aware of a Department of Labor audit  
16 that occurred at A Cab at any point where they came in to  
17 look at employees' pay stubs and things like that?

18 A. Somebody said something, but I don't know if  
19 that was the same thing.

20 Q. Okay. Are you aware that the federal government  
21 has come up with a preliminary calculation of wages on  
22 your behalf?

23 A. I don't know. I haven't heard anything.

24 Q. Would it surprise you to learn that they have  
25 calculated wages for you at \$1,048.94?



1 to ride that ride.

2 And they are not saying beforehand you are  
3 fired, but you know if you don't sign it, you are gone.  
4 So you did what they told you, and then you said, well, I  
5 don't agree with it to yourself, although I could write  
6 stuff down, but they know people never took those breaks  
7 because they would do half the money.

8 Q. So this would have been time that you were not  
9 paid for? This is two hours that you are saying I really  
10 worked --

11 A. Yeah, I --

12 Q. Hold on, let me ask the question. These are two  
13 hours that you are saying for every shift I worked, but I  
14 was forced to write down that I didn't work?

15 A. Right, that I was at lunch and I didn't have the  
16 thing of sitting down, eating. Right. I would say an  
17 hour. I wouldn't say two, I'd say an hour.

18 Q. Did you ever go to the Labor Commissioner to ask  
19 for this extra hour per shift that you were not paid?

20 A. No.

21 Q. You never filed a complaint or anything?

22 A. No. I went to the labor board about three years  
23 ago. Right when that girl said she got all that money  
24 from Western -- A Cab or one of the companies. The other  
25 guy said he got his money from Western. He said the

1 money is over there waiting.

2 So I went down to -- I thought it was -- it was  
3 Alan Bible, and I talked to them, they said, no, we don't  
4 know what you are talking about. I said the guys said  
5 that the labor board fined them so much money for not  
6 paying us enough money, and they got checks. We don't  
7 know anything about it and he threw me out of the office.  
8 So I didn't say anything.

9 I see one of their ads in the flyer, they said  
10 are you not paid at least minimum wage, a lot of people  
11 are underpaid. I said that's me, at least I think that  
12 way. So that's when I contacted their office through a  
13 flyer that was in the newspaper. It was in one of those  
14 Nifty Nickel or one of those employment freebies when you  
15 get in the ARCO station, those little flyers, left-hand  
16 side was a big thing inside.

17 But at first I went to the -- there was a lot of  
18 guys that the money is going over here, you got money  
19 coming. I never saw it. I seen two, three people had  
20 checks, but I don't know how they got them.

21 Because it was funny because I told the guy, I  
22 said, these guys work two, three years, they got money.  
23 I have been driving for 20 straight years, and I got  
24 nothing. How can that be when they got more -- how did  
25 they get money and not me?

1 Q. Other than going over to the Alan Bible  
2 building, did you ever go to any other federal or state  
3 agency?

4 A. No, didn't know who to see.

5 Q. The Labor Commissioner, I think they have been  
6 there awhile, they are over across from Cashman, I think  
7 at that Grant Sawyer building.

8 Do you ever remember going to the Grant Sawyer  
9 building?

10 A. I know it was a federal place, but I didn't know  
11 it had to do with -- plus I'm not sure what to file for.

12 Q. Okay.

13 A. See, that's why I got an attorney. I went to  
14 college, took accounting and stuff, and I couldn't figure  
15 it out.

16 Q. I'm glad you brought that up. I forgot to ask  
17 you about your education. Tell me about that.

18 A. I went to Richland Community College in Dallas  
19 off of Abrams, and I was taking accounting. And I was  
20 telling my dad, they really don't pay anything for an  
21 Associate's degree. He goes, well, you got to be a CPA  
22 and certified public accountant. He goes, if you mix it  
23 in with law, you can write your own ticket. I said, but  
24 that takes forever. I said I don't got that patience.  
25 You know, I was a meat cutter, too; I was a butcher by

REPORTER'S CERTIFICATE

STATE OF NEVADA     )  
                                  ) SS  
COUNTY OF CLARK    )

I, Lori-Ann Landers, a duly commissioned  
Notary Public, Clark County, State of Nevada, do hereby  
certify:

That I reported the taking of the deposition  
of the witness, MICHAEL RENO, at the time and place  
aforesaid;

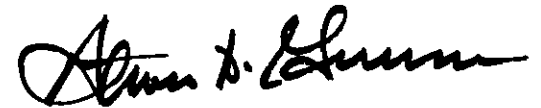
That prior to being examined, the witness  
was by me duly sworn to testify to the truth, the whole  
truth, and nothing but the truth;

That I thereafter transcribed my shorthand  
notes into typewriting and that the typewritten  
transcript of said deposition is a complete, true and  
accurate transcription of my said shorthand notes taken  
down at said time to the best of my ability.

I further certify that I am not a relative  
or employee of an attorney or counsel of any of the  
parties, nor a relative or employee of any attorney or  
counsel involved in said action, nor a person financially  
interested in the action; and that transcript review NRCP  
30(e) was requested.

IN WITNESS WHEREOF, I have hereunto set my  
hand in the County of Clark, State of Nevada, this 25th  
day of August 2015.

LORI-ANN LANDERS, CCR 792, RPR



CLERK OF THE COURT

**RIS**  
Esther C. Rodriguez, Esq.  
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*Attorneys for Defendant A Cab, LLC*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

MICHAEL MURPHY and MICHAEL RENO,  
Individually and on behalf of others similarly  
situated,

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

Case No.: A-12-669926-C  
Dept. No. I

Hearing Date: September 14, 2015  
Hearing Time: In Chambers

**DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR DECLARATORY**

**ORDER REGARDING STATUTE OF LIMITATIONS**

Defendant A Cab, LLC, by and through its attorney of record, ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRCP 7(b), hereby submits its Reply in Support of Motion for Declaratory Order Regarding a two-year Statute of Limitations for Plaintiffs' claims. This Reply is based upon the pleadings and papers on file, the attached Memorandum of Points and Authorities, and any oral argument that may be entertained at the hearing of this Motion.

**POINTS AND AUTHORITIES**

Defendant asserts that a two (2) year statute of limitations is appropriate based upon the Plaintiffs' claims themselves, and their underlying basis for the claims. Plaintiffs already concede in their response that their Second Claim for Relief under NRS 608.040 is in fact subject to the two year statute of limitations<sup>1</sup>, if it is not dismissed altogether by this Court for lack of jurisdiction and

<sup>1</sup> Response, page 12, 22-23.

1 failure to state a claim upon which relief can be granted. Plaintiffs' remaining claim against A Cab  
2 is the unpaid hours/minimum wage claim.

3 **1. By their Complaint and all supporting documentation, Plaintiffs have established this**  
4 **as a claim for unpaid hours, not minimum wage.**

5 Plaintiffs argue in their response that it is ludicrous to allow a defendant "by disputing the  
6 hours an employee worked, to transform a claim for unpaid minimum wages into a claim for unpaid  
7 hours." *Response*, 3:7-9. However, it is not Defendant who has transformed the claim; rather,  
8 Plaintiffs have indicated in all supporting papers that the basis of their claim is unpaid hours. All  
9 declarations and arguments are based upon the allegation of fraudulent breaks, and false tripsheets.  
10 The Complaint itself states: "Defendants fostered such inaccurate and untrue recording by their taxi  
11 drivers of their work activities by refusing to allow taxi drivers to submit accurate daily taxi driver  
12 trip sheets that did not have such excessive, and untrue, recordings of break time." *Second*  
13 *Amended Complaint*, §17.

14 This unpaid hours issue against A Cab, indeed differentiates this claim from the ongoing  
15 minimum wage claims against the other cab companies. In this instance against A Cab, Plaintiffs  
16 have sought to inflate the number of hours worked in a shift, in order to characterize a claim against  
17 A Cab as one for minimum wage. It is Plaintiffs who have sought to manipulate what is truly a  
18 claim for unpaid hours, in order to fall under the Constitutional Amendment, and to proceed against  
19 A Cab, as they are doing against the other cab companies.

20 This makes this case different in that the relevant statute for unpaid work hours would be  
21 NRS 608.016, under the enforcement of the Labor Commissioner. NRS 608.180. These statutes  
22 under the prosecution of the Labor Commissioner are limited to two years. *See* NRS 608.260 and  
23 NRS 608.115 requiring two years of record keeping of wage information. Plaintiffs try to salvage  
24 their claim for hours by arguing it should be treated as a breach of contract. There is no authority  
25 nor support to treat such a claim as a breach of contract. Neither did Plaintiffs file as a breach of  
26 contract against A Cab.

27 ...

28 ...

2. **Plaintiffs' request for this Court to impose a "default" and statute of limitations toll to 2007 is not supportable in this instance.**

As the close of discovery nears, it is evident that Plaintiffs have altogether failed to make any prima facie case for the proposed representative Plaintiffs - Michael Reno and Michael Murray.

At this stage, Plaintiffs' counsel is merely seeking to have the Court force A Cab to do their work for them in searching its own company books back to 2007 to see if any 1 driver was ever not paid appropriately. There is no other word for this tactic, than "fishing expedition."

Plaintiffs make unsupported arguments that A Cab never gave written notification of minimum wage - on what basis? It is Plaintiffs who have altogether failed to conduct appropriate discovery, and have no evidence for this assertion. They simply fling assertions such as this one out to the Court as if they are proven facts – not so. This is their support for seeking this Court's order for a default statute back to 2007.

This Court should bear in mind that in its history, no federal or state violation has ever been issued to A Cab for unpaid wages. Plaintiffs' counsel has sought to rewrite this history in his presentation to the Court, but the fact is that A Cab was found to be in complete compliance in its audit through 2009. When it was re-audited, there was also no finding of liability by the Department of Labor. It was resolved between the parties that if there was any liability at all, it would be satisfied by A Cab agreeing to pay its total driver force approximately \$139,000. That payment has been made, and is being issued to the drivers - former and current. Therefore, if Plaintiffs want to argue that the DOL settlement was a finding of liability, that liability has been satisfied in full, and no further payment is owed. Why would Defendant have to re-open its books back to 2007 when the federal government has already been satisfied that there were no minimum wage violations?

Plaintiffs' request is an example of abuse of process, and merely seeks to harass the employer. There is no evidence that *any* driver has been underpaid at A Cab. Plaintiffs' counsel has made no secret of his intent to bankrupt the owner and his company with this litigation. Plaintiffs' argument is simply for the District Court to give them everything, and then when the Supreme Court limits the period to 2 years, everything can be stricken. Frankly, the bell cannot be

1 unrun. It is of no expense to Plaintiffs, as they simultaneously are asking the Court to order the  
2 Defendant to fund a Special Master to do what they themselves refuse to do – namely prove their  
3 case.

4 **3. The Supreme Court's invalidation of NRS 608.250(2)'s exception for certain categories**  
5 **of workers only expands the category of Nevada workers entitled to minimum wages,**  
6 **and does not affect a two-year scheme for minimum wage claims and wage retention**  
7 **obligations.**

8 Claims for minimum wage are limited in enforcement under NRS 608.260. If any employer  
9 pays any employee a lesser amount than the minimum wage prescribed by regulation of the Labor  
10 Commissioner pursuant to the provisions of NRS 608.250, the employee may, at any time within 2  
11 years, bring a civil action to recover the difference between the amount paid to the employee and  
12 the amount of the minimum wage. **NRS 608.260.**

13 The Court's invalidation in *Thomas v. Nevada Yellow Cab Corporation*, 130 Nev., Ad Op  
14 52 (2014) of the exceptions from the minimum wage in NRS 608.250(2) recognized the voters'  
15 intent to bring additional Nevada employees into the minimum wage scheme. There was no  
16 indication to change the limitations for back-wage claims with two applicable periods - two years  
17 for workers previously covered by NRS 608.250 and four years for workers covered as a result of  
18 NRS 608.250(2)'s invalidation by *Thomas*. It is more rational that *Thomas*, the Minimum Wage  
19 Amendment and NRS Chapter 608 be construed consistently as applying a two-year statute of  
20 limitations in *all* actions for back minimum wages, whether or not instituted by persons previously  
21 excluded by NRS 608.250(2) from the minimum wage. It is also more rational that the limitation of  
22 actions match the record retention period for employment records

23 Time limits for employee suits to recover back minimum wages is not mentioned in the  
24 Minimum Wage Amendment, and NRS 608.260's two-year limitation is fair and rational,  
25 particularly in light of NRS 608.115(3)'s direction that employers retain employment records for  
26 two years. *Thomas*'s analysis does not determine this issue. It is irrational to impose the four-year  
27 catch-all statute of limitations on claims for back minimum wages, when there is a two-year statute  
28 applicable to that claim.



As stated in Defendant's Motion, this issue is currently before the Nevada Supreme Court in a different matter, *Williams v. Claims Jumper Acquisition Company, LLC*, Case No. A702048. Until the Supreme Court rules otherwise, Defendant respectfully requests that if this Court is allowing a retroactive application of a minimum wage claim, that the two (2) year statute of limitations be applied in this instance.

**CONCLUSION**

Based on the foregoing points and authorities, Defendant respectfully requests that this Honorable Court grant Defendant's Motion for Declaratory Order to limit the statute of limitations to two (2) years in this case pursuant to NRS 608.260.

DATED this 8<sup>th</sup> day of September, 2015.

**RODRIGUEZ LAW OFFICES, P.C.**

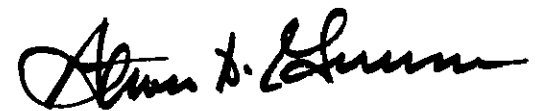
By: /s/ Esther C. Rodriguez, Esq.  
Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
*Attorneys for Defendant A Cab, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 8th day of September, 2015, I electronically *filed* the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

Leon Greenberg, Esq.  
Leon Greenberg Professional Corporation  
2965 South Jones Boulevard, Suite E4  
Las Vegas, Nevada 89146  
*Counsel for Plaintiff*

/s/ Susan Dillow  
An Employee of Rodriguez Law Offices, P.C.



CLERK OF THE COURT

**MDSM**  
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*Attorneys for Defendant A Cab, LLC*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

MICHAEL MURPHY and MICHAEL RENO,  
Individually and on behalf of others similarly  
situated,

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

Case No.: A-12-669926-C  
Dept. No. I

**DEFENDANT'S MOTION TO  
DISMISS PLAINTIFFS' FIRST  
CLAIM FOR RELIEF**

Defendant A Cab, LLC, by and through its attorney of record, ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRCP 12(b)(5), hereby respectfully moves this Honorable Court to dismiss the First Claim for Relief in Plaintiffs' Second Amended Complaint. This Motion is based upon the pleadings and papers on file, the attached Memorandum of Points and Authorities, and any oral argument that may be entertained at the hearing of this Motion.

DATED this 11th day of September, 2015.

**RODRIGUEZ LAW OFFICES, P.C.**

By: /s/ Esther C. Rodriguez, Esq.  
Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
*Attorneys for Defendant A Cab, LLC*

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that Defendant will bring the foregoing Motion on for hearing before this Court on the 19 day of October, 2015, or as soon thereafter as counsel may be heard.  
In Chambers

DATED this 11<sup>th</sup> day of September, 2015.

**RODRIGUEZ LAW OFFICES, P.C.**

By: /s/ Esther C. Rodriguez, Esq.  
Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
*Attorneys for Defendant A Cab, LLC*

**POINTS AND AUTHORITIES**

**I.**

**FACTUAL BACKGROUND**

Plaintiffs Michael Murray and Michael Reno are former employees of Defendant A Cab, LLC ("A Cab"). Michael Murray worked for A Cab from September 6, 2008 to April 6, 2011 as a road supervisor and taxicab driver. Michael Reno worked for A Cab from June 16, 2010 to September 26, 2012 as a taxicab driver. These two former employees allege a claim for an hourly minimum wage.

Plaintiffs filed their initial Complaint on October 8, 2012. Plaintiffs filed their Second Amended Complaint on August 19, 2015. Defendants assert that Plaintiffs' Second Amended Complaint fails to state a claim upon which relief can be granted.

**II.**

**LEGAL ARGUMENT**

**A. Legal Standard.**

Pursuant to NRCP 12(b)(5), a defendant may move to dismiss a Complaint on the basis that it fails to state a claim upon which relief can be granted. The Court is to treat all well-pled factual allegations as true for purposes of the Motion to Dismiss. Conclusory allegations, or those that

depend upon “information and belief” are not, however, entitled to the same treatment. *See Hale v. Burkhardt*, 104 Nev. 632, 764 P.2d 866 (1988).

**B. Plaintiffs’ First Claim for Relief Must be Dismissed for Failure to State a Claim upon which Relief can be Granted.**

Plaintiffs have no claim for minimum wage since the application of the *Thomas* decision is prospective, not retroactive. *Thomas vs. Nevada Yellow Cab Corporation*, 130 Nev., Adv. Op. 52 (2014). As this Court is aware, on June 26, 2014, the Nevada Supreme Court decided the *Thomas v. Yellow Cab* case and recognized in its decision, that at the time, there were two (2) conflicting laws regarding the same subject matter, namely NRS 608.250(2) and the 2006 Constitutional Minimum Wage Amendment. The Court also recognized that employers were put in the most impossible and unenviable position in choosing between which legal provision to follow, on the same exact subject matter. Following passage of the Nevada Minimum Wage Amendment in 2006, the statutory exemption for taxi and limousine drivers remained. There was no express or implied repeal at that time and in the years following. In addition, the Nevada Labor Commissioner comported with NRS 608.250(2). Up until June 26, 2014, NRS 605.250(2) was the law that employers were following and it was reasonable to do so. Therefore, the Supreme Court decided, that from June 26, 2014 it would make clear to employers and employees in the State of Nevada what the current law on Minimum Wage would be moving forward.

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

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

1 The United States Supreme Court has explained that "the presumption against retroactive  
2 legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than  
3 our  
4 Republic." *Landgraf*, 511 U.S. at 265. And, from this court's inception, it has viewed retroactive  
5 statutes with disdain, noting that such laws are "odious and tyrannical" and "have been almost  
6 uniformly discountenanced by the courts of Great Britain and the United States." *Milliken v. Sloat*,  
7 1 Nev. 573, 577 (1865). Not surprisingly, once it is triggered, the presumption against retroactivity  
8 is given considerable force. See *U.S. Fid. & Guar. Co. v. United States ex rel. Struthers Wells Co.*,  
9 209 U.S. 306, 314 (1908) ("The presumption is very strong that a statute was not meant to act  
10 retrospectively, and it ought never to receive such a construction if it is susceptible of any other.").  
11 Thus, as we have observed, a statute will not be applied retroactively unless [(1)] the Legislature  
12 clearly manifests an intent to apply the statute retroactively, or [(2)] "it clearly, strongly, and  
13 imperatively appears from the act itself' that the Legislature's intent cannot be implemented in any  
14 other fashion. *PEBP*, 124 Nev. at 154, 179 P.3d at 553 (quoting *In re Estate of Thomas*, 116 Nev.  
15 492, 495-96, 998 P.2d 560, 562 (2000)).

16 In this case, there was no intent or indication in the opinion by the Supreme Court to apply  
17 the *Thomas* decision retroactively. The implications of a retroactive legal effect are enormous and  
18 profound, especially considering the list of exemptions under NRS 608.250(2) that were completely  
19 wiped away by the *Thomas* decision.

20 In cases of Constitutional amendments, the case against retroactive application is even  
21 stronger. For example, when the Supreme Court decided the case of *Miranda v. Arizona*, 384 U.S.  
22 436 (1966), Courts did not retroactively apply this decision to nullify all prior criminal confessions.  
23 Similarly, in the Supreme Court's decision as to the Constitutional Amendment now applying to  
24 taxicab drivers, it makes no sense to apply it retroactively, but henceforth.

25 **C. There Were Two (2) Conflicting Laws Regarding The Same Subject Matter**

26 The presumption against retroactivity is typically explained by reference to fairness.  
27 *Landgraf*, 511 U.S. at 270. As the Supreme Court has instructed, "[e]lementary considerations of  
28 fairness dictate that individuals should have an opportunity to know what the law is and to conform

1 their conduct accordingly; settled expectations should not be lightly disrupted." *Id.* at 265.

2 Moreover, "[in a free, dynamic society, creativity in both commercial and artistic endeavors is  
3 fostered by a rule of law that gives people confidence about the legal consequences of their  
4 actions." *Id.* at 265-66.

5 In this case, NRS 608.250(2) was the law that employers were following until the *Thomas*  
6 decision. Following passage of the Nevada Minimum Wage Amendment in 2006, the statutory  
7 exemption for taxi and limousine drivers remained on the books and effective (NRS 608.250(2)).  
8 There was no express or implied repeal at that time and in the years following. In 2009, Federal  
9 Judge Clive Jones was the first jurist to weigh in on the question of "implied repeal," interpreting  
10 Nevada law in the Lucas case. His decision against "implied repeal," although not binding on this  
11 Court, was nonetheless the only statement of competent judicial authority on the Nevada law  
12 question, and remained so until *Thomas*. All during those years from 2006 until June 26, 2014,  
13 employers and employees followed the law as interpreted by Judge Jones, and were reasonable in  
14 doing so, since the Supreme Court had not spoken otherwise.

15 In fact, this is supported by Plaintiffs' counsel actions in filing its "Motion to Correct" the  
16 *Thomas* decision with the Supreme Court, and seeking for the Court to change its written opinion to  
17 include past tense terminology so that it would be retroactive, rather than prospective, as it  
18 currently is. See **Exhibit 1**. The Supreme Court denied Plaintiffs' "Motion to Correct," and ruled  
19 that the opinion "shall stand as issued." See **Exhibit 2**. This provides further support that the  
20 Supreme Court never intended its decision to be used to pursue actions against Defendants or  
21 similarly situated employers, retroactively prior to June 26, 2014.

22 This was a compelling decision by the Supreme Court to deny Plaintiffs' "Motion to  
23 Correct," and was a clear pronouncement by the Court indicating, that its decision was to be only  
24 applied prospectively. If the Supreme Court had intended its landmark decision on minimum wage  
25 in *Thomas*, to have a retroactive effect as argued by Plaintiffs' Counsel in his "Motion to Correct,"  
26 the Court would have certainly granted Plaintiffs' "Motion to Correct," and changed the language  
27 from the current present tense, to past tense as specifically requested by Plaintiffs' Counsel.  
28 However, the Supreme Court refused to change the wording of its opinion, which is profound and

1 compelling. The Supreme Court's decision to deny Plaintiffs' "Motion to Correct," is a clear and  
2 authoritative evidence that the *Thomas* decision only applies prospectively and thus Plaintiffs have  
3 no claim upon which relief can be granted.

4 In this instance, both Murray and Reno worked for A Cab years before the *Thomas* decision,  
5 and therefore their claims have no basis and should be dismissed as a matter of law.

6 **III.**

7 **CONCLUSION**

8 Based upon the foregoing points and authorities, Defendant A CAB, LLC respectfully  
9 requests this Honorable Court to enter an Order granting Defendant's Motion to Dismiss Plaintiffs'  
10 First Claim for Relief for failure to state a claim upon which relief can be granted..

11 DATED this 11<sup>th</sup> day of September, 2015.

12 **RODRIGUEZ LAW OFFICES, P.C.**

13  
14 By: /s/ Esther C. Rodriguez, Esq.  
15 Esther C. Rodriguez, Esq.  
16 Nevada Bar No. 6473  
17 10161 Park Run Drive, Suite 150  
18 Las Vegas, Nevada 89145  
19 *Attorneys for Defendant A Cab, LLC*

20 **CERTIFICATE OF SERVICE**

21 I HEREBY CERTIFY on this 11th day of September, 2015, I electronically *filed* the  
22 foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System  
23 which will send a notice of electronic service to the following:

24 Leon Greenberg, Esq.  
Leon Greenberg Professional Corporation  
2965 South Jones Boulevard, Suite E4  
Las Vegas, Nevada 89146  
*Counsel for Plaintiff*

25 /s/ Susan Dillow  
26 An Employee of Rodriguez Law Offices, P.C.

# EXHIBIT 1

# EXHIBIT 1



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IN THE SUPREME COURT OF THE STATE OF NEVADA  
Electronically Filed  
Oct 14 2014 03:39 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

CHRISTOPHER THOMAS and  
CHRISTOPHER CRAIG,  
Individually and on behalf of others  
similarly situated,  
  
Appellants,  
  
vs.  
  
NEVADA YELLOW CAB  
CORPORATION, NEVADA  
CHECKER CAB CORPORATION,  
NEVADA STAR CAB  
CORPORATION,  
  
Respondents,

Sup. Ct. No. 61681  
Dist. Ct No.:A-12-661726-C  
Dept. No. XXVIII

APPELLANTS' MOTION TO CORRECT  
OPINION OF JUNE 26, 2014 AND STAY  
REMITTITUR

Leon Greenberg, Esq. (Bar # 8094)  
A Professional Corporation  
2965 S. Jones Blvd., Suite E-3  
Las Vegas, Nevada 89146  
(702) 383-6085  
Attorney for Appellants

1 Appellants, Christopher Thomas and Christopher Craig, hereby  
2 file this motion seeking to correct this Court's Opinion of June 26, 2014, by  
3 removing any present tense language that can be interpreted as directing such  
4 Opinion is only to be applied prospectively.

## 5 6 NATURE OF RELIEF SOUGHT

7  
8 The holding of the Court's Opinion of June 26, 2014 is not in  
9 dispute. What is sought by this motion is a correction to the present tense  
10 language of two sentences, and three words, of the Opinion which, if  
11 uncorrected, will be the subject of further litigation, and a further appeal to this  
12 Court, over whether such Opinion's application is only prospective. These two  
13 sentences, with the requested corrected language in brackets and removed  
14 words struck through, are set forth below:

15  
16 We hold that the district court erred because the text of the  
17 Minimum Wage Amendment, by clearly setting out some  
18 exceptions to the minimum wage law and not others, ~~supplants~~  
19 [supplanted] the exceptions listed in NRS 608.250(2). Opinion,  
20 page 2; 327 P.3d at 520.

21  
22 The text of the Minimum Wage Amendment, by enumerating  
23 specific exceptions that do not include taxicab drivers, ~~supersedes~~  
24 [superceded] and ~~supplants~~ [supplanted] the taxicab driver  
25 exception set out in NRS 608.250(2). Opinion, page 9; 327 P.3d  
26 at 522.

1                   **WHY THE RELIEF REQUESTED SHOULD BE GRANTED**

2           The relief requested is sought to conserve judicial resources and  
3 promptly secure for the appellants, and many thousands of other employees in  
4 the Nevada taxicab industry, the relief afforded to them by the Court's Opinion  
5 of June 26, 2014. Appellants' counsel is aware of six other pending litigations  
6 involving taxi driver plaintiffs seeking minimum hourly wages, including one  
7 currently on appeal to this Court, *Gilmore v. Desert Cab, Inc.* No. 62905. *See*,  
8 Ex. "A" ¶ 1. This case, the *Gilmore* appeal, and all of those other cases,  
9 involve the identical issue resolved by this appeal, the entitlement of taxi  
10 drivers to the minimum hourly wage specified by Nevada's Constitution.

11           This litigation has been most vigorously contested, as evidenced by  
12 respondents' recently denied, and wholly specious, Petition for Rehearing. *See*,  
13 Order of September 24, 2014. Despite the speciousness of any claim that the  
14 Court's Opinion of June 26, 2014 only has prospective application, it seems  
15 virtually certain that respondents in this case, and one or more defendants in the  
16 other taxi driver minimum wage cases, will insist on litigating that issue. They  
17 will do so based upon the foregoing enumerated language. If that language is  
18 not modified as requested they will insist it establishes that, under the Court's  
19 June 26, 2014 Opinion, the Minimum Wage Amendment has not "superceded"  
20 and "supplanted" the exceptions set out in NRS 608.250(2) as of the  
21 Amendment's effective date but only "supercedes" and "supplants" them as of  
22 the date of such Opinion. *See*, Ex. "A" ¶ 2.

23                   **THE COURT SHOULD STAY REMITTITUR**  
24                   **TO CORRECT ITS OPINION**

25           Pursuant to NRAP Rule 41(a)(1) this Court is to issue remittitur of this  
26 case on October 20, 2014, unless it enlarges the time for it to do so by  
27 appropriate Order. It is submitted that the Court should suitably enlarge the  
28 time for its remittitur to issue so it can consider and rule upon this motion

1 before it relinquishes jurisdiction over this appeal.

2  
3 Dated this 14th day of October, 2014.

4  
5  
6 /s/ Leon Greenberg  
7 Leon Greenberg, Esq. (Bar # 8094)  
8 A Professional Corporation  
9 2965 S. Jones Blvd., Suite E-3  
10 Las Vegas, Nevada 89146  
11 (702) 383-6085  
12 Attorney for Appellant  
13  
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# EXHIBIT "A"

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4 IN THE SUPREME COURT OF THE STATE OF NEVADA

5 CHRISTOPHER THOMAS and  
6 CHRISTOPHER CRAIG,  
7 Individually and on behalf of others  
8 similarly situated,

9 Appellants,

10 vs.

11 NEVADA YELLOW CAB  
12 CORPORATION, NEVADA  
13 CHECKER CAB CORPORATION,  
14 NEVADA STAR CAB  
15 CORPORATION,

16 Respondents,

Sup. Ct. No. 61681

Dist. Ct No.:A-12-661726-C

Dept. No. XXVIII

Declaration

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

19 1. I am counsel for the appellants in this case. I am also counsel for the  
20 plaintiffs in the following six other cases that also involve claims for unpaid  
21 minimum hourly wages allegedly owed to taxi cab driver employees pursuant  
22 to the Nevada Constitution: *Murray v. A Cab Taxi Service LLC*, Eighth Judicial  
23 District Court, Case No. A-12-669926-C; *Herring v. Boulder Cab, Inc.*, Eighth  
24 Judicial District Court, Case No. A-13-691551-C; *Tesema v. Lucky Cab Co.*,  
25 Eighth Judicial District Court, Case No. A-12-660700-C; *Golden v. Sun Cab,*  
26 *Inc.*, Eighth Judicial District Court, Case No. A-13-678109-C; *Perera v.*  
27 *Western Cab Company*, Eighth Judicial District Court, Case No. A-14-707425-  
28 C and *Gilmore v. Desert Cab, Inc.*, appeal pending, Nevada Supreme Court No.  
62905. In all of these cases, except *Perera* which has yet to be served,

1 defendants have asserted that taxi cab drivers are not subject to the minimum  
2 wage protections of Nevada's Constitution, an issue resolved by this appeal.

3 2. I have engaged in discussions about the Court's Opinion of June 26,  
4 2014 with several of the counsel representing defendants in the cases  
5 enumerated in paragraph 1. Such counsel have advised me that defendants in  
6 those cases believe that the Court's Opinion of June 26, 2014 has only  
7 prospective application. They claim to base that belief upon the Opinion's use  
8 of the present tense "supercede" and "supplant," and not the past tense of those  
9 words, in its discussion of how the Nevada Constitution has overridden the  
10 exceptions set out in NRS 608.250(2). Based upon those conversations it is my  
11 belief that defendants in some, or all, of such cases, and in this case as well,  
12 intend to argue that the Court's Opinion of June 26, 2014 found the Nevada  
13 Constitution "supercedes" and "supplants" the exceptions set out in NRS  
14 608.250(2) only as of the date of such Opinion and not as of its enactment date.

15  
16  
17 Dated this 14th day of October, 2014.

18  
19  
20 /s/ Leon Greenberg  
21 Leon Greenberg, Esq. (Bar # 8094)  
22 A Professional Corporation  
23 2965 S. Jones Blvd., Suite E-3  
24 Las Vegas, Nevada 89146  
25 (702) 383-6085  
26 Attorney for Appellant  
27  
28

# EXHIBIT 2

# EXHIBIT 2



IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER THOMAS; AND  
CHRISTOPHER CRAIG,  
INDIVIDUALLY AND ON BEHALF OF  
OTHERS SIMILARLY SITUATED,  
Appellants,

vs.

NEVADA YELLOW CAB  
CORPORATION; NEVADA CHECKER  
CAB CORPORATION; AND NEVADA  
STAR CAB CORPORATION,  
Respondents.

No. 61681

**FILED**

**OCT 27 2014**

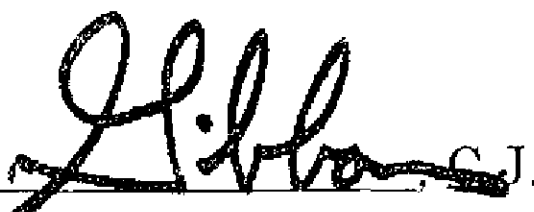
TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

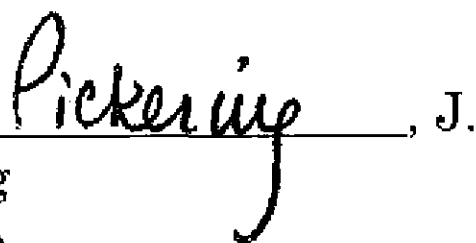
*ORDER*

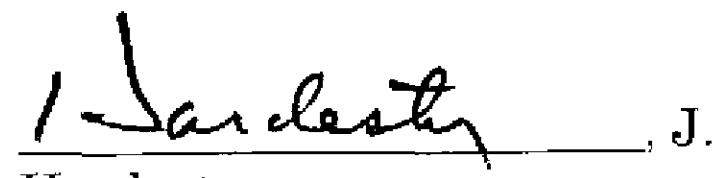
This court issued an opinion in this matter on June 26, 2014. Appellants have filed a motion to correct the opinion by changing three words from present tense to past tense, and also request that this court stay issuance of the remittitur, which was due to issue October 20, 2014. Respondents have filed an opposition to the motion, and appellants have filed a reply. No good cause appearing, we deny the motion to the extent it requests changes to the wording of the opinion; the opinion shall stand as issued. We grant the motion to the extent that the remittitur was not

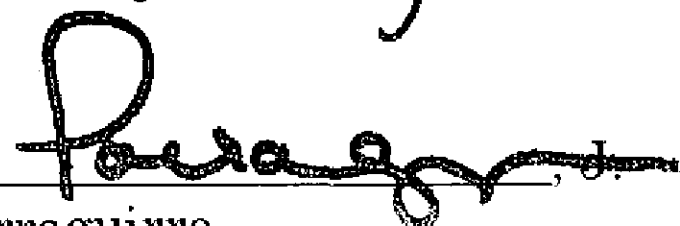
issued while this court considered the motion. As we have now ruled on the motion, we direct the clerk to issue the remittitur forthwith.

It is so ORDERED.

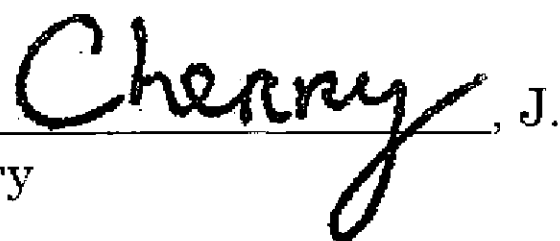
  
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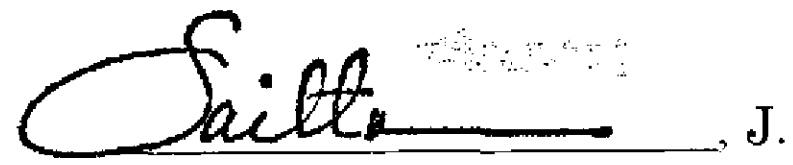
  
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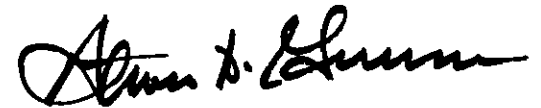
  
Parraguirre

  
Douglas

  
Cherry

  
Saitta

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



CLERK OF THE COURT

1 ANAC  
2 Esther C. Rodriguez, Esq.  
3 Nevada Bar No. 6473  
4 RODRIGUEZ LAW OFFICES, P.C.  
5 10161 Park Run Drive, Suite 150  
6 Las Vegas, Nevada 89145  
7 702-320-8400  
8 [info@rodriguezlaw.com](mailto:info@rodriguezlaw.com)  
9 *Attorneys for Defendant A Cab, LLC*

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 MICHAEL MURRAY and MICHAEL RENO,  
10 Individually and on behalf of others similarly  
11 situated,

Case No.: A-12-669926-C  
Dept. No. I

11 Plaintiffs,

12 vs.

13 A CAB TAXI SERVICE LLC and A CAB, LLC,

14 Defendants.  
15

16 **DEFENDANT A CAB, LLC'S ANSWER TO SECOND AMENDED COMPLAINT**

17 Defendant A Cab, LLC ("Defendant"), by and through its attorney of record, ESTHER C.  
18 RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., pursuant to NRCP Rule 12, and as its  
19 Answer to Plaintiffs' Second Amended Complaint on file herein ("Complaint"), admits, denies and  
20 alleges as follows:

21 **JURISDICTION, PARTIES AND PRELIMINARY STATEMENT**

- 22 1. Answering Paragraph 1 of the Complaint, Defendant is without sufficient  
23 information or knowledge to form a belief as to the truth of such allegations, and therefore denies  
24 the same. Defendant denies the allegation that Plaintiffs are current employees.
- 25 2. Answering Paragraph 2 of the Complaint, Defendant admits it is a Nevada Limited  
26 Liability Company doing business in the County of Clark, State of Nevada, as a taxicab company.
- 27 3. Answering Paragraphs 3 and 4 of the Complaint, Defendant admits Nady is the sole  
28 and managing member of A Cab, LLC. To the extent these paragraphs contain any other factual

allegations requiring a response, Defendant denies same.

**CLASS ACTION ALLEGATIONS**

4. Answering Paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of the Complaint, Defendant asserts that the allegations contained therein are a legal conclusion to which no response is required. To the extent these Paragraphs contain any factual allegations requiring a response, Defendant denies same.

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

5. Answering Paragraph 15 of the Complaint, Defendant repeats and realleges its answers to the allegations contained in Paragraphs 1 through 14 as though fully set forth herein.

6. Answering Paragraph 16 of the Complaint, Defendant asserts that the allegations contained therein are a legal conclusion to which no response is required. To the extent this Paragraph contains any factual allegations requiring a response, Defendant denies same.

7. Answering Paragraphs 17 and 18 of the Complaint, Defendant denies each and every allegation contained therein, including all sub-parts.

8. Answering Paragraphs 19, 20, and 21 of the Complaint, Defendant asserts that the allegations contained therein are a legal conclusion to which no response is required. To the extent these Paragraphs contain any factual allegations requiring a response, Defendant denies same.

**AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT TO NEVADA REVISED STATUTES § 608.040 ON BEHALF OF THE NAMED PLAINTIFFS AND THE PUTATIVE CLASS**

9. Answering Paragraph 22 of the Complaint, Defendant repeats and realleges its answers to the allegations contained in Paragraphs 1 through 21 as though fully set forth herein.

10. Answering Paragraphs 23, 24, 25, and 26 of the Complaint, Defendant asserts that the allegations contained therein are a legal conclusion to which no response is required. To the extent these Paragraphs contain any factual allegations requiring a response, Defendant denies same.

...

...

**AS AND FOR A THIRD CLAIM AGAINST DEFENDANT  
NADY FOR CIVIL CONSPIRACY, AIDING AND ABETTING,  
CONCERT OF ACTION AND AS THE ALTER EGO  
OF THE CORPORATE DEFENDANTS**

11. Answering Paragraph 27 of the Complaint, Defendant repeats and realleges its answers to the allegations contained in Paragraphs 1 through 26 as though fully set forth herein.

12. Answering Paragraphs 28, 30, 31, 32, 33, 34, 35, 36, 37 and 38 of the Complaint, Defendant denies each and every allegation contained therein, including all sub-parts.

13. Answering Paragraph 29 of the Complaint, Defendant asserts that the allegations contained therein are a legal conclusion to which no response is required. To the extent this Paragraph contains any factual allegations requiring a response, Defendant denies same.

**AS AND FOR A FOURTH CLAIM AGAINST  
DEFENDANT NADY FOR UNJUST ENRICHMENT**

14. Answering Paragraph 39 of the Complaint, Defendant repeats and realleges its answers to the allegations contained in Paragraphs 1 through 38 as though fully set forth herein.

15. Answering Paragraphs 40, 41, 42, 43, 44 and 45 of the Complaint, Defendant denies each and every allegation contained therein.

**PRAYER FOR RELIEF**

Plaintiffs' prayer for relief requires no response. However, to the extent Plaintiffs' prayer asserts allegations, Defendant denies each and every allegation in the prayer for relief.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

As a first separate and affirmative defense, Defendant alleges Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

As a second separate and affirmative defense, Defendant alleges Plaintiffs have failed to mitigate their alleged damages, if any.

**THIRD AFFIRMATIVE DEFENSE**

As a third separate and affirmative defense, Defendant alleges that Plaintiffs' damages, if

any, were caused solely by the conduct of others and are not the result of any conduct of Defendant A Cab, LLC.

#### **FOURTH AFFIRMATIVE DEFENSE**

As a fourth separate and affirmative defense, Defendant alleges that Plaintiffs' claims are not ripe in this forum.

#### **FIFTH AFFIRMATIVE DEFENSE**

As a fifth separate and affirmative defense, Defendant alleges that Plaintiffs' claims are barred because Plaintiffs' own actions were the proximate cause of their damages, if any.

#### **SIXTH AFFIRMATIVE DEFENSE**

As a sixth separate and affirmative defense, Defendant alleges that this Court does not have jurisdiction because Plaintiffs have failed to exhaust their administrative remedies as required by Nevada law.

#### **SEVENTH AFFIRMATIVE DEFENSE**

As a seventh separate and affirmative defense, Defendant alleges that Plaintiffs' Complaint is barred by the doctrine of res judicata.

#### **EIGHTH AFFIRMATIVE DEFENSE**

As an eighth separate and affirmative defense, Defendant alleges that Plaintiffs' Complaint is barred by the doctrine of collateral estoppel.

#### **NINTH AFFIRMATIVE DEFENSE**

As a ninth separate and affirmative defense, Defendant alleges that Plaintiffs have failed to maintain their claims pursuant to Nevada Rule of Civil Procedure 23 governing class actions.

#### **TENTH AFFIRMATIVE DEFENSE**

As a tenth separate and affirmative defense, and pursuant to N.R.C.P. 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's answer to the Complaint, and therefore, this answering Defendant reserves the right to amend its answer to allege additional affirmative defenses if subsequent investigation so warrants.

...

**ELEVENTH AFFIRMATIVE DEFENSE**

As an eleventh separate and affirmative defense, Defendant denies each and every allegation of Plaintiffs' Complaint not specifically admitted or otherwise pled to herein.

**TWELFTH AFFIRMATIVE DEFENSE**

As a twelfth separate and affirmative defense, it has been necessary for this answering Defendant to retain the services of an attorney to defend this action, and Defendant A Cab, LLC is entitled to a reasonable sum as and for attorney's fees.

**THIRTEENTH AFFIRMATIVE DEFENSE**

As a thirteenth separate and affirmative defense, Plaintiffs' claims are barred by statute of limitations / laches.

**FOURTEENTH AFFIRMATIVE DEFENSE**

As a fourteenth separate and affirmative defense, Plaintiffs' claims are barred by unclean hands / in pari delicto/ illegality.

**FIFTEENTH AFFIRMATIVE DEFENSE**

As a fifteenth separate and affirmative defense, Plaintiffs' claims are barred by fraud / theft.

**SIXTEENTH AFFIRMATIVE DEFENSE**

As a sixteenth separate and affirmative defense, Plaintiffs' claims are barred by equitable estoppel.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

As a seventeenth separate and affirmative defense, Plaintiffs' claims are barred or otherwise limited by offset / setoff / or payments that have already been made to the amounts in question.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

As a eighteenth separate and affirmative defense, Plaintiffs' demand for attorney fees is barred by the lack of any legal basis for Plaintiff attorney fees.

**NINETEENTH AFFIRMATIVE DEFENSE**

As a nineteenth separate and affirmative defense, Plaintiffs, through knowledge of all facts relating to the acts alleged in their Complaint, ratified through their respective acts, omissions and/or failure(s) to act, any act alleged to have been done or committed by the Defendants.

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**TWENTIETH AFFIRMATIVE DEFENSE**

As a twentieth separate and affirmative defense, Defendant hereby incorporates by reference those affirmative defenses enumerated in NRCP 8 for the specific reason of not waiving the same.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

As a twenty-first separate and affirmative defense, at all times, Defendant acted reasonably and in good faith in its dealings with Plaintiffs.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

As a twenty-second separate and affirmative defense, Defendant acted in good faith and did not directly or indirectly perform any acts whatsoever which would constitute a breach of any duty owed to Plaintiffs.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

As a twenty-third separate and affirmative defense, Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

As a twenty-fourth separate and affirmative defense, Plaintiffs unreasonably and unjustifiably delayed the assertion of their purported claims, all to Defendant's substantial detriment.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

As a twenty-fifth separate and affirmative defense, Plaintiffs' claims are barred as Plaintiffs have received payment in full.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

As a twenty-sixth separate and affirmative defense, Plaintiffs' claims are barred as Defendant based its actions upon information provided by the pertinent state and/or federal agencies, and not in ignorance/violation of the law.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

As a twenty-seventh separate and affirmative defense, Plaintiffs' claims are barred as punitive damages are not permissible.

...



WHEREFORE, Defendant prays as follow:

1. That Plaintiffs take nothing by way of their Complaint;

2. That Plaintiffs' Complaint be dismissed with prejudice in its entirety and Judgment entered in favor of Defendant;

3. That Defendant be awarded its attorneys' fees, costs, and interest; and

4. For such other and further relief as this Court deems just and proper.

DATED this 11<sup>th</sup> day of September, 2015.

**RODRIGUEZ LAW OFFICES, P.C.**

/s/ Esther C. Rodriguez, Esq.

Esther C. Rodriguez, Esq.

Nevada Bar No. 6473

10161 Park Run Drive, Suite 150

Las Vegas, Nevada 89145

*Attorneys for Defendant A Cab, LLC*

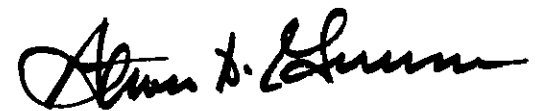
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 11<sup>th</sup> day of September, 2015, I electronically *filed* the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

Leon Greenberg, Esq.  
Leon Greenberg Professional Corporation  
2965 South Jones Boulevard, Suite E4  
Las Vegas, Nevada 89146  
*Counsel for Plaintiff*

/s/ Susan Dillow

An Employee of Rodriguez Law Offices, P.C.



CLERK OF THE COURT

**MDSM**  
Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
RODRIGUEZ LAW OFFICES, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
702-320-8400  
[info@rodriguezlaw.com](mailto:info@rodriguezlaw.com)  
*Attorneys for Defendant A Cab, LLC*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

MICHAEL MURPHY and MICHAEL RENO,  
Individually and on behalf of others similarly  
situated,

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

Case No.: A-12-669926-C  
Dept. No. I

**DEFENDANT'S MOTION TO**  
**DISMISS AND FOR SUMMARY**  
**JUDGMENT AGAINST PLAINTIFF**  
**MICHAEL MURRAY**

Defendant A Cab, LLC, by and through its attorney of record, ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRCP 12(b)(1), NRCP 12(b)(5) and NRCP 56(c) hereby respectfully moves this Honorable Court to dismiss the Claims for Relief of Plaintiff Michael Murray, and for summary judgment against Michael Murray. This Motion is based upon the pleadings and papers on file, the attached Memorandum of Points and Authorities, and any oral argument that may be entertained at the hearing of this Motion.

DATED this 21st day of September, 2015.

**RODRIGUEZ LAW OFFICES, P.C.**

By: /s/ Esther C. Rodriguez, Esq.  
Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
*Attorneys for Defendant A Cab, LLC*

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that Defendant will bring the foregoing Motion on for hearing before this Court on the 27 day of Oct, 2015, or as soon thereafter as counsel may be heard. @ 9 : 0 0 a m

DATED this 21st day of September, 2015.

**RODRIGUEZ LAW OFFICES, P.C.**

By: /s/ Esther C. Rodriguez, Esq.  
Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
*Attorneys for Defendant A Cab, LLC*

**POINTS AND AUTHORITIES**

**I.**

**FACTUAL BACKGROUND**

Plaintiff Michael Murray ("Murray") is a former employee of Defendant A Cab, LLC ("A Cab"), who was terminated on April 6, 2011 for poor performance, continued low book and drop shorts/company theft. **Exhibit 1.** Michael Murray worked for A Cab from September 6, 2008 to April 6, 2011 as a road supervisor, dispatcher, and taxicab driver.

On August 26, 2015, Murray gave sworn deposition testimony indicating that was suing A Cab for hours worked and not paid. **Exhibit 2, Deposition of Michael Murray, 133:5-8.**

As this Court is aware, a primary purpose of a deposition is to allow an adverse party to ascertain the basis of a claim. At no time during the deposition of Michael Murray was he able to demonstrate a knowledge of his claim, or to support any type of claim of minimum wage or even if he is owed anything at all.<sup>1</sup> Rather, he outright refused to answer the questions by pleading the

---

<sup>1</sup> Q: So have you put a pencil to it? Have you figured out what you believe you're owed?  
A: No. Q: Do you have a best estimate of -- or you just have no idea what -- A: I have no idea if I'm owed money because they didn't pay the minimum wage -- or they *were* paying minimum wage, but it was labeled as something else. (Emphasis added.) **Exhibit 2, 52:18-25.**

1 Fifth Amendment Right Against Self-Incrimination, or just outright refused to answer. When  
2 reminded that he was under oath to tell the truth, Murray pled the Fifth Amendment under threat of  
3 perjury during his deposition.

4 Moreover, as the Plaintiff has no indication as to value of his claim, a Department of Labor  
5 determination was reviewed as valuing any underpayment to Murray as **\$130.70. Exhibit 3.**  
6 Defendant made an offer to resolve this claim months ago to the Plaintiff in a formal pleading in an  
7 amount 57 times the value of the case at **\$7,500.00. Exhibit 4.** Contrary to the Nevada Rules of  
8 Professional Conduct, this information was not timely conveyed to Plaintiff Reno by his counsel.  
9 **Nevada Rules of Professional Conduct Rule 1.2 and Rule 1.4.**

10 There are 7 days left in which to conclude discovery, as the discovery deadline is October 1,  
11 2015. To date, Plaintiff Murray has not produced any evidence to support his claims for relief, and  
12 thus A Cab is entitled to judgment as a matter of law.

## 13 II.

### 14 LEGAL ARGUMENT

#### 15 A. Legal Standard.

16 Summary judgment shall be granted when there are no genuine issues of material fact and  
17 the moving party is entitled to judgment as a matter of law. NRCP 56(c). The moving party  
18 initially bears the burden of proving the absence of genuine issues of fact. *Butler v. Bogdanovich*,  
19 101 Nev. 449, 705 P.2d 662 (1985). Once that burden has been carried, the responding party must  
20 come forward with evidence creating genuine and triable issues of fact. *Bird v. Casa Royale*, 97  
21 Nev. 67, 624 P.2d 269 (1981).

22 Seven (7) days remain in the discovery period; and to date, Plaintiff Murray has not  
23 produced any evidence to support his claims for relief. Accordingly, A Cab is entitled to judgment  
24 as a matter of law. “Although the party opposing a motion for summary judgment is entitled to all  
25 favorable inferences from the pleadings and documentary evidence, the opposing party ‘is not  
26 entitled to build a case on the gossamer threads of whimsy, speculation and conjecture.’” *Collins v.*  
27 *Union Fed.Sav. & Loan Ass’n.*, 99 Nev. 284, 302; 662 P.2d 610, 621 (1983) (citing *Mullis v.*  
28 *Nevada National Bank*, 98 Nev. 510, 654 P.2d 533 (1982), and *Hahn v. Sargent*, 523 F.2d 461, 468

(1<sup>st</sup> Cir. 1975), *cert. denied*, 425 U.S. 904 (1976)). In order to avoid the requested relief, Plaintiff must come forward with specific facts on which this Court could rule in its favor on the issues addressed in this motion. *Hickman v. Meadow Wood Reno*, 96 Nev. 782, 617 P.2d 871 (1980). Here, the motion must be granted because there are no genuine issues of fact which remain for trial and Defendant A Cab is entitled to judgment as a matter of law.

**B. Dismissal.**

A motion to dismiss under Rule 12(b)(1) of the Nevada Rules of Civil Procedure may be utilized when a lack of subject matter jurisdiction is apparent on the face of the complaint.<sup>2</sup> Under Nevada law, the failure of a party to exhaust its administrative remedies prior to commencing an action in the district court divests the court of jurisdiction and mandates dismissal of the action.<sup>3</sup> Similarly, a defendant is entitled to dismissal of a claim when a plaintiff fails to state a claim upon which relief can be granted.<sup>4</sup>

**C. Plaintiff Murray Does Not Have an Actionable Claim Sufficient to Give Rise to a Justiciable Controversy.**

If this Court grants Defendant's currently pending "Motion to Dismiss Plaintiff's First Claim for Relief" based on the prospective application of the *Thomas v. Yellow Cab* decision<sup>5</sup>, Michael Murray will be barred by the statute of limitations in this matter. The Supreme Court decision was issued and became effective on June 26, 2014. Murray's last date of employment at A Cab was over three years earlier on April 7, 2011.

Secondly, Murray testified in his deposition that the basis for his claim was for hours worked for which he was not paid. Such is not a claim for minimum wage, but rather clearly a complaint that should be submitted to the Labor Commissioner for unpaid hours.

Q. ...sir, basically, your claim is for hours that you worked and were not paid

---

<sup>2</sup>*Girolla v. Rousille*, 81 Nev. 661,663, 408 P.2d 918, 919 (1965).

<sup>3</sup>*Nevada v. Scotsman Manufacturing Co.*, 109 Nev. 252, 255, 849 P.2d 317, 319 (1993).

<sup>4</sup>*See* NRCP 12(b)(5)

<sup>5</sup> *Thomas vs. Nevada Yellow Cab Corporation*, 130 Nev., Adv. Op. 52 (2014).

1 for; is that correct?

2 A. Correct. **Exhibit 2, Deposition of Michael Murray**, 133:5-9. See Also,  
3 **Exhibit 2, Deposition of Murray**, 82:17-20; 86:24-87:7; 89:15-90:11.

4 The remainder of his time in which Murray worked for A Cab, he worked as a Dispatcher in  
5 which he was paid \$10 per hour. **Exhibit 2, Deposition of Murray**, 32:1-33:10. He was also  
6 promoted to Road Supervisor in which he was paid \$15 per hour. **Exhibit 2, Deposition of**  
7 **Murray**, 34:15-16. These rates are clearly above the State minimum wage, and supports A Cab's  
8 request for summary judgment, as his claim is not actionable.

9 **D. Plaintiff's claim has been extinguished by an Offer that exceeds the value of any**  
10 **legitimate claim.**

11 The value of any alleged underpayment to Murray has already been resolved by the U.S.  
12 Department of Labor in the amount of **\$130.70**. Not only is he receiving a check directly from the  
13 U.S. government for that amount, his attorney received the additional offer to resolve the matter in  
14 full. An offer of judgment was submitted to Plaintiff Murray on March 10, 2015, in the amount of  
15 **\$7,500.00**, but was not timely communicated to him by his counsel, per Murray.

16 Plaintiff Murray confirmed he had never seen the offer of judgment from A Cab until the  
17 day of his deposition on August 26, 2015. He confirmed he learned of the offer two months later in  
18 June 2015. **Exhibit 2, Deposition of Murray**, 56:20-59:5. As this Court is aware, an Offer of  
19 Judgment must be accepted within ten (10) of service, and it was served on March 10, 2015.

20 Murray indicated he has no idea of what he is claiming from A Cab, and when pressed for  
21 any details refused to answer further. When asked why he did not accept the offer from A Cab, and  
22 after being cautioned by his own counsel, he pled the Fifth Amendment against Self Incrimination,  
23 under threat of perjuring himself in his deposition.

24 Q: So in answer to why you didn't accept that, is it your testimony that you didn't think it was  
25 enough?

26 Plaintiff's Counsel: I'm going to object. That has been asked and answered. I'm also going to just  
27 caution you that you're not going to discuss or you're not going to testify as to any of the contents of  
28 the communications you may have had with myself or your other counsel, Mr. Greenberg.

1 THE WITNESS: Okay.

2 MS. RODRIGUEZ: Can we have the question read back to the deponent, please. I thought there  
3 was a question.

4 (Record read by reporter.)

5 MS. SNIEGOCKI: I'm going to assert the same objection. It's already in the record. And I'll again  
6 caution you that you're not going to testify as to any communications you've had with myself or Mr.  
7 Greenberg during the course of representation. You can answer the question.

8 **A: I'm going to cite the Fifth on that.**

9 Q: You're going to cite the Fifth on that?

10 A: Um-hmm.

11 Q: Is that a "yes"?

12 A: No.

13 Q: You have to say your answers verbally. I know you're nodding your head to me, but...

14 A: Yes.

15 Q: . . . when I asked you earlier if you didn't accept -- why you didn't accept this, and I  
16 understood your testimony to say that you thought it wasn't enough, and I was trying to find  
17 out if that's, indeed, what you said. And I know we got objections, and I will accept your  
18 objections on the record. But now I'm asking you to confirm that. Is that what you said?

19 A: Yes.

20 Q: And you're asserting the Fifth?

21 A: Yes. That was my answer. **Exhibit 2, Deposition of Murray**, 61:4-63:3.

22 The purpose of this rule [NRCPP 68] is to encourage settlement of lawsuits before trial.

23 *Morgan v. Demille*, 106 Nev. 671, 799 P.2d 561 (1990). This rule and NRS 17.115 are designed to  
24 facilitate and encourage settlement. *Matthews v. Collman*, 110 Nev. 940, 878 P.2d 971 (1994).

25 In this instance, there was a complete failure on the part of Plaintiff's counsel to relay  
26 Defendant's good faith offer to the client.

27 "A lawyer shall abide by a client's decision whether to settle a matter." **Nevada Rules of**  
28 **Professional Conduct Rule 1.2(a)**. "A lawyer shall promptly inform the client of any decision or

1 circumstance with respect to which the client's informed consent is required by these Rules."

2 **Nevada Rules of Professional Conduct Rule 1.4(a)(1).**

3 It would go beyond the bounds of decency to allow a lawsuit to continue when a Defendant  
4 has offered far *in excess* of that which is being claimed by the Plaintiff to resolve the claim.  
5 Further, Defendant's offer to compensate Murray in an amount exceeding the independent  
6 valuation of his claim extinguishes and satisfies the claim altogether.

7 **E. Murray's claim is moot, as it has been satisfied and he cannot delineate any**  
8 **claim.**

9 Murray's claim is moot. This Court lacks jurisdiction over a claim which has been satisfied.  
10 In this instance, Plaintiff's counsel is merely prolonging litigation in an effort to continue to run up  
11 attorney fees and costs in the hopes of passing these to the Defendant.

12 Q: So as we sit here today, we're at the end of August, and is it your testimony that you  
13 declined this offer --

14 A: Yes.

15 Q: -- in the June time frame?

16 A: Yes.

17 Q: Okay. If you didn't believe that the \$7,500 was enough, do you have a figure in your mind  
18 as to what you're expecting from this case?

19 A: No.

20 Q: Well, when you file a complaint, you have to make a complaint for damages. Do you  
21 understand that?

22 A: Yes.

23 \* \* \*

24 Q: When you file a complaint against somebody, you normally ask for damages. You  
25 understand that; right?

26 A: Yeah.

27 Q: And in this case, do you know what your damages are?

28 MS. SNIEGOCKI: Objection: Asked and answered. You can answer.



THE WITNESS: **I don't want to answer. Exhibit 2, Deposition of Murray, 63:7-64:10**

When questioned about any details of a claim for minimum wage on an 8 hour shift, he simply again refused to answer:

Q: Okay. And is it your understanding, then, that at that point, the eight hours that are reflected on the trip sheet and your pay stub, you would have been paid at least the minimum wage for those eight hours?

MS. SNIEGOCKI: I'm going to object again and assert the same objection as the prior objection. You can answer.

A: I think I've answered the question more than adequately, **and that's all I'm going to say on that. Exhibit 2, Deposition of Murray, 92:12-23.**

### III.

### CONCLUSION

Based upon the foregoing points and authorities, Defendant A CAB, LLC respectfully requests this Honorable Court to enter an Order granting Defendant's Motion to Dismiss Plaintiff Michael Murray's Claims for Relief for failure to state a claim upon which relief can be granted.

DATED this 21st day of September, 2015.

**RODRIGUEZ LAW OFFICES, P.C.**

By: /s/ Esther C. Rodriguez, Esq.  
Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
*Attorneys for Defendant A Cab, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 21st day of September, 2015, I electronically *filed* the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

Leon Greenberg, Esq.  
Leon Greenberg Professional Corporation  
2965 South Jones Boulevard, Suite E4  
Las Vegas, Nevada 89146  
*Counsel for Plaintiff*

/s/ Susan Dillow  
An Employee of Rodriguez Law Offices, P.C.

# EXHIBIT 1

# EXHIBIT 1



**This is a notice of Termination from A Cab Taxi Service LLC.**

Employee Name Michael P. Murray

Employee Number 2018

Date of Notice 4/7/11

Hire Date 9/6/08

Date of Termination 4/7/11

Last Day Worked 4/6/11

Reason(s) for Termination:  
Poor performance.  
Low book.

Voluntary \_\_\_\_\_

Involuntary X

Eligible for re-hire? NO

Employee Signature \_\_\_\_\_

Supervisor \_\_\_\_\_

Final Check Due 4/11/11

Operations Manager Bob McCullough

General Manager Jim Hargis



## NOTICE OF UNSATISFACTORY PERFORMANCE

Date: 3-18-2010

Employee Name: Michael Murray

Employee Number: 2018

Performance Related Problem: (Be Specific)

On 3-17-10 Mr. Murray failed to write up an incident report when a rock was thrown at cab 1301. The rock made damages severe enough that the windshield of cab 1301 had to be replaced.

Corrective Action:

It is an A Cab policy for road supervisors to write up all incidents in a report. In the future Mr. Murray must follow these procedures.

Disciplinary Action Taken:

Mr. Murray will receive a written warning. Any further problems of this type may result in a demotion from the road supervisor position.

Assistant General Manager:

Operations Manager:

Employee Signature:

Warning

Your level of productivity is unacceptable. On 9-28  
you worked \$ 9/5. You are suspended until you  
see Sam Wood about this matter. Monday thru Friday  
9:00am to 5:00pm  
Employee Signature: Mike Murray

Warning

## Warning

Your level of productivity is unacceptable. On 11-23  
you booked \$ 123. You are suspended until you  
see Sam Wood about this matter. Monday thru Friday  
9:00am to 5:00pm

Employee Signatures: *Mike Wilson*



**This is a notice of an infraction of company policy.**

Employee Name Michael Murray Date 2-10-11  
Employee Number 24453  
Date of Infraction 2-9-11

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

**7. Cash, Coupons and Charges:**

...

G. Drivers are required to turn their entire book at the end of every shift. Failure to do so may result in immediate termination.

Amount Due: \$ 129.00  
Amount Dropped: \$ 127.00  
➤ Difference \$ 2.00  
➤ \$5.00 +10% \$ 6.00  
➤ Total \$ 8.00 Amount to be deducted from paycheck.

Employee Signature

Mike Murray

Verifier Signature

Nancy D.

Notified General Manager on

2-10-11 at 4:00pm

(date)

(time)

General Manager

John Hought





**This is a notice of an infraction of company policy.**

Date

1-5-11

Employee Name

Michael MURRAY

Employee Number

24453

Date of Infraction

1-4-11

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

**7. Cash, Coupons and Charges:**

...  
G. Drivers are required to turn their entire book at the end of every shift.  
Failure to do so may result in immediate termination.

Amount Due:

\$ 112.00

Amount Dropped:

\$ 111.00

➤ Difference

\$ 1.00

➤ \$5.00 +10%

\$ 6.00

➤ Total

\$ 7.00

Amount to be deducted from paycheck.

Employee Signature

Nancy D.

Verifier Signature

Notified General Manager on

1-5-11

(date)

at

4:30pm

(time)

General Manager

[Signature]



**This is a notice of an infraction of company policy.**

Employee Name Michael Murray Date 1-1-11  
Employee Number 24453  
Date of Infraction 12-31-10

**Infraction:**

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

**7. Cash, Coupons and Charges:**

...  
G. Drivers are required to turn their entire book at the end of every shift.  
Failure to do so may result in immediate termination.

Amount Due: \$ 179.00  
Amount Dropped: \$ 170.00  
➤ Difference \$ 9.00  
➤ ~~\$0.00~~ +10% \$ 6.00  
➤ Total \$ 10.00 Amount to be deducted from paycheck.

Employee Signature

Verifier Signature

Notified General Manager on

1-1-11 at 4:00pm  
(date) (time)

General Manager

A Cab 00227

AA000732



This is a notice of an infraction of company policy.

Employee Name Michael Murray Date 10-28-10  
Employee Number 24453  
Date of Infraction 10-27-10

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

**7. Cash, Coupons and Charges:**

G. Drivers are required to turn their entire book at the end of every shift. Failure to do so may result in immediate termination.

Amount Due: \$ 133.00

Amount Dropped: \$ 132.00

➤ Difference \$ 1.00

➤ +10% \$ 1.00

➤ Total \$ 2.00 Amount to be deducted from paycheck.

Employee Signature

Verifier Signature

Notified General Manager on 10-28-10 at \_\_\_\_\_  
(date) (time)

General Manager



**This is a notice of an infraction of company policy.**

Date 8-14-10

Employee Name Michael MURRAY  
Employee Number 24453  
Date of Infraction 8-13-10

**Infraction:**

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

**7. Cash, Coupons and Charges:**

- ...
- G. Drivers are required to turn their entire book at the end of every shift. Failure to do so may result in immediate termination.

Amount Due: \$ 154.00

Amount Dropped: \$ 106.00

➤ Difference \$ 48.00

➤ +10% \$ 5.00

➤ Total \$ 53.00

Amount to be deducted from paycheck.

Employee Signature \_\_\_\_\_

Verifier Signature

Nancy D.

Notified General Manager on 8-14-10 at \_\_\_\_\_  
(date) (time)

General Manager

John H.

# EXHIBIT 2

# EXHIBIT 2

DISTRICT COURT  
CLARK COUNTY, NEVADA

MICHAEL MURRAY and MICHAEL RENO,  
Individually and on behalf of  
others similarly situated,

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and  
A CAB, LLC,

Defendants.

CASE NO: A-12-669926-C

DEPT NO: I

DEPOSITION OF MICHAEL MURRAY

Taken at Depo International  
703 South Eighth Street  
Las Vegas, Nevada

on Wednesday, August 26, 2015  
1:59 p.m.

Job No. 17723

Depo International - Las Vegas

Reported by: Andrea Martin, CSR, RPR, NV CCR 887

Certified Realtime Reporter

1 A No.

2 Q Have you ever made any kind of written  
3 demand to A Cab, other than filing the lawsuit, to  
4 ask for any unpaid wages?

5 A No.

6 Q Do you know specifically what you are  
7 claiming against A Cab?

8 MS. SNIEGOCKI: Objection: Vague.  
9 You can answer.

10 THE WITNESS: Pardon?

11 MS. SNIEGOCKI: You can answer.

12 A Basically, like I explained earlier, to my  
13 knowledge, that -- there was supposed to be a  
14 difference made up from low book to 220 --  
15 BY MS. RODRIGUEZ:

16 Q Okay.

17 A -- and minimum wage.

18 Q So have you put a pencil to it? Have you  
19 figured out what you believe you're owed?

20 A No.

21 Q Do you have a best estimate of -- or you  
22 just have no idea what --

23 A I have no idea if I'm owed money because  
24 they didn't pay the minimum wage -- or they were  
25 paying minimum wage, but it was labeled as something

1 letter from the next year, August 15th, 2006, from  
2 Jon Gathright.

3 Have you ever seen that letter before?

4 A Yes. I do recall this.

5 Q And there's an identification there that  
6 says "Michael P. Murray, No. 2018."

7 A Um-hmm.

8 Q Does that -- is that associated with you?

9 A Yes.

10 Q What is that?

11 A That was my -- when you join the company,  
12 you have a certain number issued to you, and you use  
13 that for refueling at different places or -- it  
14 designates an employee with an employee number.  
15 That was my employee number.

16 Q Was that your employee number at all times  
17 that you were working for A Cab, to your  
18 recollection?

19 A Yes.

20 Q And this letter states that your pay rate  
21 was increased from \$13, effective August 5th of  
22 2006.

23 Do you have a recollection of your pay  
24 rate being increased to that amount?

25 A Yes, because the other one at \$10 an hour,



1 right?

2 A No, no.

3 Q And not during the time that you were a  
4 road supervisor either; correct?

5 A Well, that's a fine line, because as a  
6 road supervisor, you're a driver also.

7 Q Okay. But as a road supervisor, weren't  
8 you also being paid the \$10 an hour?

9 A No.

10 Q Okay. Can you explain to me -- I thought  
11 you just said that you were being paid \$10 an hour  
12 when --

13 A That was as a dispatcher.

14 Q Okay.

15 A As a road supervisor, I was paid \$15 an  
16 hour --

17 Q Okay.

18 A -- but only if I was working an accident  
19 or a breakdown. The rest of the time, I was being a  
20 driver.

21 Q And have you, in any way, figured out what  
22 time period you were working at \$15 an hour while  
23 you were employed with A Cab?

24 A No. You can't figure something like that  
25 because on a 12-hour shift, you might have one hour

1 Q Well, I'll represent to you that the  
2 Department of Labor did an audit of A Cab and made a  
3 determination to settle your claim for \$130.70.

4 Did anybody ever communicate that to you?

5 A No.

6 Q Okay. Have you received a check in that  
7 amount --

8 A No.

9 Q -- from the Department of Labor?

10 A I haven't heard anything from the  
11 Department of Labor. In fact, I'm enlightened to  
12 know that I have money coming to me.

13 Q Well, that's my next question, if you get  
14 that check, if you're intending to accept that, if  
15 you know.

16 MS. SNIEGOCKI: Objection: Calls for  
17 spec- --

18 A I'd have to discuss that with my attorney.  
19 BY MS. RODRIGUEZ:

20 Q Are you aware that A Cab tried to resolve  
21 your outstanding wages with you?

22 A No.

23 Q Were you aware that they had offered you  
24 \$7,500 for your wages?

25 A Oh, yes, I'm aware of that.

1 Q When did you become aware of that?

2 THE WITNESS: When was that; do you know?

3 MS. SNIEGOCKI: Don't ask me.

4 A It wasn't that long ago. I believe it was  
5 just a couple of months ago I was made aware that  
6 A Cab had made an offer of 7,500, but I was also  
7 counseled by my attorney, Leon Greenberg --

8 MS. SNIEGOCKI: Hang on. We're not going  
9 to discuss what you were counseled by your attorney.

10 THE WITNESS: Okay.

11 MS. SNIEGOCKI: The question is just  
12 whether or not you were informed that there was an  
13 offer of --

14 THE WITNESS: Yes, I was.

15 BY MS. RODRIGUEZ:

16 Q Well, the question was: When you were  
17 made aware of that offer.

18 MS. SNIEGOCKI: I'm sorry. You're right.

19 A Two months ago.

20 BY MS. RODRIGUEZ:

21 Q I'm going to hand you this. I'm not  
22 marking it as an exhibit.

23 MS. SNIEGOCKI: I'm just going to object  
24 to the not marking it as an exhibit. I mean, he can  
25 go ahead and review it, but it would be my position

1 that it should be marked if he's going to be  
2 examined on the document.

3 A I've never seen this document.

4 MS. SNIEGOCKI: Hang on. Let a question  
5 be asked.

6 MS. RODRIGUEZ: Well, then, I'll go ahead  
7 and have it marked as Exhibit 2.

8 MS. SNIEGOCKI: Okay.

9 MS. RODRIGUEZ: And I'm going to go off  
10 the record for just a quick break while the court  
11 reporter marks it.

12 (Deposition Exhibit 2 was marked for  
13 identification.)

14 (Recess taken.)

15 BY MS. RODRIGUEZ:

16 Q Mr. Murray, you ready?

17 A Yes.

18 Q I'll remind you you're under oath. We  
19 took a little, short break, but you're still under  
20 oath to tell the truth this afternoon.

21 Do you understand that?

22 A Yes.

23 Q And at the request of your counsel, I've  
24 gone ahead and marked Exhibit No. 2, which you have  
25 in front of you.

1 A Yes.

2 Q And I think you were saying that you had  
3 not seen this document.

4 Have you seen this document before?

5 A No, not until today.

6 Q Okay. And do you understand this to be an  
7 offer to resolve your case for \$7,500?

8 A Yes.

9 Q And when did you learn of that offer?

10 MS. SNIEGOCKI: Objection: Asked and  
11 answered.

12 You can answer.

13 A Approximately two months ago.

14 BY MS. RODRIGUEZ:

15 Q And how did you learn about the offer,  
16 then?

17 A A telephone conversation with my attorney.

18 Q Okay. And did you choose not to accept  
19 that?

20 A Yes, I did.

21 Q And why not?

22 A I didn't think it was enough.

23 Q Okay. Well, I asked you earlier if -- if  
24 you had any idea how much -- what you were claiming,  
25 and I think your statement was you didn't know what

1 last question and answer was, please.

2 (Record read by reporter.)

3 BY MS. RODRIGUEZ:

4 Q So in answer to why you didn't accept  
5 that, is it your testimony that you didn't think it  
6 was enough?

7 MS. SNIEGOCKI: I'm going to object. That  
8 has been asked and answered.

9 I'm also going to just caution you that  
10 you're not going to discuss or you're not going to  
11 testify as to any of the contents of the  
12 communications you may have had with myself or your  
13 other counsel, Mr. Greenberg.

14 THE WITNESS: Okay.

15 MS. RODRIGUEZ: Can we have the question  
16 read back to the deponent, please. I thought there  
17 was a question.

18 (Record read by reporter.)

19 MS. SNIEGOCKI: I'm going to assert the  
20 same objection. It's already in the record.

21 And I'll again caution you that you're not  
22 going to testify as to any communications you've had  
23 with myself or Mr. Greenberg during the course of  
24 representation. You can answer the question.

25 A I'm going to cite the Fifth on that.

1 BY MS. RODRIGUEZ:

2 Q You're going to cite the Fifth on that?

3 A Um-hmm.

4 Q Is that a "yes"?

5 A No.

6 Q You have to say your answers verbally. I  
7 know you're nodding your head to me, but...

8 A Yes.

9 Q Okay. I'm not accusing you of anything  
10 criminal in this. I'm just asking you -- and I know  
11 we got a little confused with people coming in and  
12 out of the office, so I may have repeated my  
13 question, but I just wanted to make sure I  
14 understood you right.

15 And I think you said that -- when I asked  
16 you earlier if you didn't accept -- why you didn't  
17 accept this, and I understood your testimony to say  
18 that you thought it wasn't enough, and I was trying  
19 to find out if that's, indeed, what you said.

20 MS. RODRIGUEZ: And I know we got  
21 objections, and I will accept your objections on the  
22 record.

23 BY MS. RODRIGUEZ:

24 Q But now I'm asking you to confirm that.  
25 Is that what you said?

1 A Yes.

2 Q And you're asserting the Fifth?

3 A Yes. That was my answer.

4 Q All right. And you made that  
5 determination approximately two months ago?

6 A Yes.

7 Q So as we sit here today, we're at the end  
8 of August, and is it your testimony that you  
9 declined this offer --

10 A Yes.

11 Q -- in the June time frame?

12 A Yes.

13 Q Okay. If you didn't believe that the  
14 \$7,500 was enough, do you have a figure in your mind  
15 as to what you're expecting from this case?

16 A No.

17 Q Well, when you file a complaint, you have  
18 to make a complaint for damages. Do you understand  
19 that?

20 A Yes.

21 MS. SNIEGOCKI: Objection. I think you're  
22 sort of misstating the law to him, but he can answer  
23 the question.

24 A I'm sorry. What was the question?

25 BY MS. RODRIGUEZ:



1 Q When you file a complaint against  
2 somebody, you normally ask for damages. You  
3 understand that; right?

4 A Yeah.

5 Q And in this case, do you know what your  
6 damages are?

7 MS. SNIEGOCKI: Objection: Asked and  
8 answered.

9 You can answer.

10 THE WITNESS: I don't want to answer.

11 MS. SNIEGOCKI: Well, you have to answer  
12 the question, if you know.

13 A Okay. I don't know.

14 BY MS. RODRIGUEZ:

15 Q Do you believe them to exceed \$7,500?

16 A Yes, I do.

17 Q But you're not able to tell me, as we sit  
18 here today, what you believe them to be?

19 A No.

20 Q Have you based that on anything, your  
21 figure that you have in your mind?

22 MS. SNIEGOCKI: Objection: Vague and  
23 assumes facts not in evidence.

24 You can answer.

25 A I believe it's not enough because of the

1 you're not going to get a good shift. You're not  
2 going to get the same shift, or you could even be  
3 terminated. I'm not saying I'm going to terminate  
4 you, because I don't have that authority; right?  
5 But if you don't do what's required of you, then  
6 you're not being a team player," is the way I  
7 explained it to them.

8 Q So were you telling the other drivers to  
9 write down four hours of break time?

10 A No, I wasn't, because I wasn't in the  
11 shack. That was his responsibility. If they didn't  
12 do it, he would call them off to the side and say,  
13 "Listen, you've got to fill in more break times.  
14 You can't just have one break. You need three more  
15 breaks, and spread them out so they don't conflict  
16 with your rides."

17 Q Um-hmm. So is it your testimony, then, in  
18 a 12-hour shift, you were writing down four hours of  
19 break time in which you were actually working?

20 A Yes.

21 Q And you were instructed by the supervisor  
22 at the shack to do this?

23 A Yes.

24 Q And you don't recall that person's name?

25 A I wish I could, but I don't.

1 MS. SNIEGOCKI: Right. She can't take  
2 down "um-hmm," so you've got to say "yes."

3 BY MS. RODRIGUEZ:

4 Q So in that circumstance, out of your  
5 12-hour shift, you would have five hours reflected  
6 as a break time?

7 MS. SNIEGOCKI: I'm going to object again,  
8 just that it calls for speculation and it's an  
9 improper hypothetical.

10 But you can answer.

11 A It was basically just four hours.

12 BY MS. RODRIGUEZ:

13 Q Okay.

14 A I wouldn't put down an extra hour of break  
15 if I didn't take that extra hour, and I very seldom  
16 ever took an hour break, except to use the restroom  
17 or grab a quick hamburger through the drive-through,  
18 especially if there was a convention in town.

19 I mean, you'd have to be a moron to ignore  
20 rides and say, "Well, it's time for my break, and  
21 I'm going to be gone an hour. Come back and check  
22 with me in an hour. If I'm still here, I'll give  
23 you a ride."

24 Q So when you went to the Labor Commissioner  
25 to file your complaint against A Cab --

1 ambiguous.

2 You can answer.

3 BY MS. RODRIGUEZ:

4 Q Let me clarify that question. I'll ask it  
5 better.

6 A Okay.

7 Q I'll try.

8 Throughout your employment with A Cab, did  
9 you receive that instruction, that you were supposed  
10 to write down four hours of break time?

11 A I don't recall. I don't think it was  
12 throughout my entire employment with A Cab, but -- I  
13 would say the last two years, but I'm not positive  
14 of the time frame.

15 Q Is it your contention, then, that A Cab  
16 owes you money for those hours that you worked and  
17 were not paid?

18 MS. SNIEGOCKI: Objection: Calls for a  
19 legal conclusion; speculation.

20 But you can answer.

21 A Reask the question again.

22 BY MS. RODRIGUEZ:

23 Q I'll have the court reporter read it back  
24 to you. Okay?

25 A Okay.

1 (Record read by reporter.)

2 A I don't understand it.

3 BY MS. RODRIGUEZ:

4 Q Do you think that you worked hours that  
5 you have not been paid for?

6 A Yes.

7 Q Is it your understanding that by writing  
8 in the break times on the trip sheet, that that  
9 would give you a shorter number of hours reflected  
10 on the trip sheet as worked?

11 A Yes.

12 Q Okay. So with that shorter amount of  
13 hours, say 12 minus four, would reflect eight hours  
14 of work; right?

15 A Correct.

16 Q Okay. So is it your understanding, then,  
17 if the trip sheet reflected eight hours of work,  
18 your pay stub would reflect that you were paid  
19 appropriately for those eight hours?

20 MS. SNIEGOCKI: I'm going to object to the  
21 form of the question: Calls for speculation; it's  
22 hypothetical; it's vague and ambiguous.

23 Now you can answer.

24 A Now I'm becoming confused, because you're  
25 asking, basically, the same question in a different

1 Q So that leaves -- so your trip sheet is  
2 going to reflect that you're working eight hours?

3 A Correct.

4 Q Okay. So then you see what you're getting  
5 paid for that particular day?

6 A Um-hmm.

7 Q Correct?

8 A Yes.

9 Q And at the end of the day, it's going to  
10 say he got \$200 for working an 8-hour shift; right?

11 A Correct.

12 Q Okay. And is it your understanding, then,  
13 that at that point, the eight hours that are  
14 reflected on the trip sheet and your pay stub, you  
15 would have been paid at least the minimum wage for  
16 those eight hours?

17 MS. SNIEGOCKI: I'm going to object again  
18 and assert the same objection as the prior  
19 objection.

20 You can answer.

21 A I think I've answered the question more  
22 than adequately, and that's all I'm going to say on  
23 that.

24 BY MS. RODRIGUEZ:

25 Q Okay. Well, I'm not asking you to -- I

1 A I don't know it for a fact, no.

2 MS. SNIEGOCKI: Okay. That's all.

3 CONTINUED EXAMINATION

4 BY MS. RODRIGUEZ:

5 Q Well, as a follow-up to Ms. Sniegocki's  
6 questions to you, then, sir, basically, your claim  
7 is for hours that you worked and were not paid for;  
8 is that correct?

9 A Correct.

10 MS. SNIEGOCKI: Objection: That exceeds  
11 the scope of my examination.

12 BY MS. RODRIGUEZ:

13 Q You can answer the question.

14 A Correct.

15 MS. RODRIGUEZ: Okay. Thank you. I  
16 appreciate your testimony today.

17 THE WITNESS: Thank you.

18 MS. RODRIGUEZ: All done.

19 THE REPORTER: As far as your copy?

20 MS. SNIEGOCKI: We're going to read and  
21 sign, please, and PDF searchable by e-mail.

22 THE REPORTER: Thank you. No exhibits?

23 MS. SNIEGOCKI: No exhibits.

24 THE REPORTER: Thank you.

25 (Proceedings concluded at 4:36 p.m.)

1 STATE OF NEVADA )  
2 COUNTY OF CLARK )

3 CERTIFICATE OF REPORTER

4 I, Andrea N. Martin, a duly commissioned and  
5 licensed court reporter, Clark County, State of  
6 Nevada, do hereby certify:

7 That I reported the taking of the deposition of  
8 Michael Murray, commencing on Wednesday, August 26,  
9 2015, at the hour of 1:59 p.m.; that the witness  
10 was, by me, duly sworn to testify to the truth and  
11 that I thereafter transcribed my said shorthand  
12 notes into typewriting, and that the typewritten  
13 transcript of said deposition is a complete, true,  
14 and accurate transcription of said shorthand notes;  
15 that I am not a relative or employee of any of the  
16 parties involved in said action, nor a relative or  
17 employee of an attorney involved in nor a person  
18 financially interested in said action; further, that  
19 the reading and signing of the transcript was  
20 requested.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 in my office in the County of Clark, State of  
23 Nevada, this 3rd day of September, 2015.

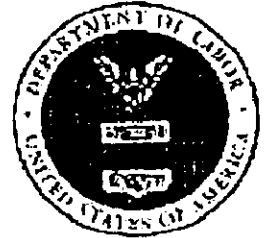
24  
25 ANDREA N. MARTIN, CRR, CCR NO. 887



# EXHIBIT 3

# EXHIBIT 3

## Summary of Unpaid Wages

U.S. Department of Labor  
Wage and Hour Division

Office Address: Las Vegas District Office  
600 Las Vegas Blvd., S.  
Suite 550  
Las Vegas, NV 89101-6654  
702-388-6001

Investigator:  
Richard Quezada

Date:  
08/13/2015

Employer Fed Tax ID Number:

1. Name	2. Address	3. Period Covered by Work Week Ending Dates	4. Act(s)	5. BWs Due	Total
289. Murray, Michael	5986 Yorba Ct. Las Vegas, NV 89103	10/08/2010 to 10/05/2012	FLSA	\$130.70	\$130.70
29C		10/08/2010 to 10/05/2012	FLSA		
		10/08/2010 to 10/05/2012	FLSA		
		10/08/2010 to 10/05/2012	FLSA		
		10/08/2010 to 10/05/2012	FLSA		
		10/08/2010 to 10/05/2012	FLSA		
		10/08/2010 to 10/05/2012	FLSA		
		10/08/2010 to 10/05/2012	FLSA		
		10/08/2010 to 10/05/2012	FLSA		
		10/08/2010 to 10/05/2012	FLSA		

I agree to pay the listed employees the  
amount due shown above by 12/30/2015

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Employer Name and Address:  
A Cab, LLC  
A Cab, LLC  
1500 Searles Ave  
Las Vegas NV 89101

Subtotal:

Total:

Form WH-56

Date: 08/13/2015 2:59:10 PM

Case ID: 1611567

AA000756

# EXHIBIT 4

# EXHIBIT 4

**OFFER**

Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
RODRIGUEZ LAW OFFICES, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
702-320-8400  
[info@rodriguezlaw.com](mailto:info@rodriguezlaw.com)  
*Attorneys for Defendant A Cab, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

MICHAEL MURRAY and MICHAEL RENO,  
Individually and on behalf of others similarly  
situated,

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

Case No.: A-12-669926-C  
Dept. No. I

**A CAB, LLC'S OFFER OF JUDGMENT TO PLAINTIFF MICHAEL MURRAY**

Defendant A Cab, LLC, by and through its attorney of record, ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRS 17.115, hereby offers to accept judgment against it and in favor of Plaintiff Michael Murray in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00) as full and final settlement of this matter. Said offer is inclusive of interest, costs and attorney's fees.

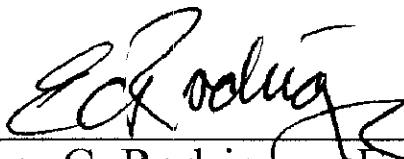
This offer shall not be construed as a waiver of any of Defendant's rights in this matter. This offer of judgment is made solely for the purposes specified in NRCP 68 and NRS 17.115 as a compromise offer of settlement only and shall not be deemed as an admission or introduced into evidence at the time of trial.

Pursuant to NRS 17.115 and NRCP Rule 68, if this offer is not accepted within ten (10) days after service, it will be deemed withdrawn. If this action is thereafter tried or arbitrated and Plaintiff fails to obtain a judgment in excess of this offer, Defendant will seek an award of costs, attorneys'

1 fees, and interest that have been incurred from the time of this offer.

2 DATED this 9 day of March, 2015.

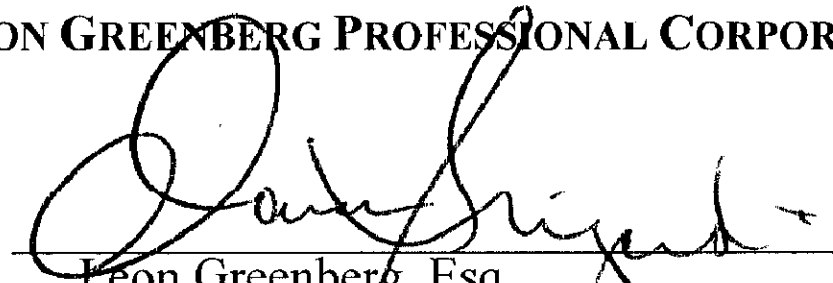
3 **RODRIGUEZ LAW OFFICES, P.C.**

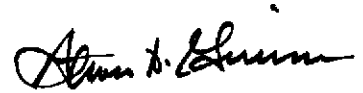
4  
5 By:   
6 Esther C. Rodriguez, Esq.  
7 Nevada Bar No. 6473  
8 10161 Park Run Drive, Suite 150  
9 Las Vegas, Nevada 89145  
10 *Attorneys for Defendant A Cab, LLC*

11 **RECEIPT OF COPY**

12 **RECEIPT OF COPY of A Cab, LLC'S Offer of Judgment to Plaintiff Michael Murray**  
13 is hereby acknowledged this 10<sup>th</sup> day of March, 2015 by:

14 **LEON GREENBERG PROFESSIONAL CORPORATION**

15 By:   
16 Leon Greenberg, Esq.  
17 2965 South Jones Boulevard, Suite E4  
18 Las Vegas, Nevada 89146  
19 *Counsel for Plaintiff*



CLERK OF THE COURT

**MDSM**  
Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
RODRIGUEZ LAW OFFICES, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
702-320-8400  
[info@rodriguezlaw.com](mailto:info@rodriguezlaw.com)  
*Attorneys for Defendant A Cab, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

MICHAEL MURPHY and MICHAEL RENO,  
Individually and on behalf of others similarly  
situated,

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

Case No.: A-12-669926-C  
Dept. No. 1

**DEFENDANT'S MOTION TO  
DISMISS AND FOR SUMMARY  
JUDGMENT AGAINST PLAINTIFF  
MICHAEL RENO**

Defendant A Cab, LLC, by and through its attorney of record, ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRCP 12(b)(1), NRCP 12(b)(5) and NRCP 56(c) hereby respectfully moves this Honorable Court to dismiss the Claims for Relief of Plaintiff Michael Reno, and for summary judgment against Michael Reno. This Motion is based upon the pleadings and papers on file, the attached Memorandum of Points and Authorities, and any oral argument that may be entertained at the hearing of this Motion.

DATED this 21st day of September, 2015.

**RODRIGUEZ LAW OFFICES, P.C.**

By: /s/ Esther C. Rodriguez, Esq.  
Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
*Attorneys for Defendant A Cab, LLC*

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that Defendant will bring the foregoing Motion on for hearing before this Court on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, or as soon thereafter as counsel may be heard.

DATED this 21st day of September, 2015.

**RODRIGUEZ LAW OFFICES, P.C.**

By: /s/ Esther C. Rodriguez, Esq.  
Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
*Attorneys for Defendant A Cab, LLC*

**POINTS AND AUTHORITIES**

**I.**

**FACTUAL BACKGROUND**

Plaintiff Michael Reno ("Reno") is a former employee of Defendant A Cab, LLC ("A Cab"), who was terminated on September 26, 2012 for violation of company policy, insubordination, repeated company theft/drop shorts, and low productivity. **Exhibit 1.** Reno worked for A Cab for approximately 18 months from June 16, 2010 to September 26, 2012 as a taxicab driver. Prior to working for A Cab, Reno worked for various cab companies including the larger conglomerate, Frias Companies.

On August 25, 2015, Reno gave sworn deposition testimony indicating that was suing A Cab for various items including gas charges, penalties for not accepting radio calls, and other "illegal" activities such as the company forcing the driver to carry groceries into the customer's house. **Exhibit 2, Reno deposition**, 55:12-20; 58:3-6; 61:14 - 62:2. Reno said the basis of his claim is that he had determined that he was making less money at A Cab than he previously made at

1 Frias.<sup>1</sup>

2 As this Court is aware, a primary purpose of a deposition is to allow an adverse party to  
3 ascertain the basis of a claim. At no time during the deposition of Michael Reno, was there any  
4 indication that he is either pursuing a minimum wage claim, nor that he has any basis to support  
5 such a claim. In fact, from his testimony, Reno has very little concept of what he is suing for, or  
6 even who he is suing.<sup>2</sup> Instead, Reno made clear in several pages of testimony that he believed and  
7 he was told that the company was “stealing” from him, and that his proof was in the fact that he was  
8 making less money than he had in the past. **Exhibit 2, Reno deposition**, 21:15-24; 27:14-19; 39:5-  
9 40:20.

10 Moreover, as the Plaintiff has never indicated a value of his claim, a Department of Labor  
11 determination was reviewed as valuing any possible underpayment to Reno as **\$1048.94. Exhibit**  
12 **3.** Defendant made an offer to resolve this claim months ago to the Plaintiff in a formal pleading in  
13 an amount 15 times the value of the case at **\$15,000.00. Exhibit 4.** Contrary to the Nevada Rules  
14 of Professional Conduct, this information was never conveyed to Plaintiff Reno by his counsel.  
15 Plaintiff was never informed of the offer on the table.<sup>3</sup> **Nevada Rules of Professional Conduct**  
16 **Rule 1.2 and Rule 1.4.**

17 There are 7 days left in which to conclude discovery, as the discovery deadline is October 1,  
18

---

19 <sup>1</sup> “I’m doing this 20 years, and I was with Frias for seven, Yellow for eight, A Cab for  
20 two, Western for three. I’ve used all my trip sheets and I did almost the same amount of money  
21 15 years ago as I do now, so I know how much the pay should be. You know, when one person  
22 is paying you 800, another person is paying you 400, even though you can say they kept a little  
23 bit of gas, a little bit of tips, it’s still not the same thing. You know they are taking something.”  
**Exhibit 2, Reno deposition**, 12:2-11.

24 <sup>2</sup> Q. Do you understand that you filed a complaint against A Cab?  
25 A. Well, that’s -- that’s kind of a thing like the president, you sign a deal to get something, the  
26 book has you giving up everything else. I went against A Cab. They got something going on  
27 with Western because they are in, what, collusion you call it? That’s not my idea, but if their  
28 shortness, too, and I’m working for them, of course I want that money, too. I just want fairness.  
If another person is shorting them, another person is shorting them, then they are all in it. All of  
their hands are dirty. **Exhibit 2, Reno deposition**, 25:7-18.

<sup>3</sup> **Exhibit 2, Reno deposition**, 68:10-23



2015. To date, Plaintiff Reno has not produced any evidence to support his claims for relief as  
pled, and thus A Cab is entitled to judgment as a matter of law. Reno's Complaint is one for  
minimum wage underpayment, but the substance of his claims, per Reno himself, is for company  
charges (which he believes are illegal), and company policies on customer service (which he asserts  
are illegal).

## II.

### LEGAL ARGUMENT

#### A. Legal Standard.

Summary judgment shall be granted when there are no genuine issues of material fact and  
the moving party is entitled to judgment as a matter of law. NRCP 56(c). The moving party  
initially bears the burden of proving the absence of genuine issues of fact. *Butler v. Bogdanovich*,  
101 Nev. 449, 705 P.2d 662 (1985). Once that burden has been carried, the responding party must  
come forward with evidence creating genuine and triable issues of fact. *Bird v. Casa Royale*, 97  
Nev. 67, 624 P.2d 269 (1981).

Seven (7) days remain in the discovery period; and to date, Plaintiff Reno has not produced  
any evidence to support his claims for relief. Accordingly, A Cab is entitled to judgment as a  
matter of law. "Although the party opposing a motion for summary judgment is entitled to all  
favorable inferences from the pleadings and documentary evidence, the opposing party 'is not  
entitled to build a case on the gossamer threads of whimsy, speculation and conjecture.'" *Collins v.*  
*Union Fed.Sav. & Loan Ass'n.*, 99 Nev. 284, 302; 662 P.2d 610, 621 (1983) (citing *Mullis v.*  
*Nevada National Bank*, 98 Nev. 510, 654 P.2d 533 (1982), and *Hahn v. Sargent*, 523 F.2d 461, 468  
(1<sup>st</sup> Cir. 1975), *cert. denied*, 425 U.S. 904 (1976)). In order to avoid the requested relief, Plaintiff  
must come forward with specific facts on which this Court could rule in its favor on the issues  
addressed in this motion. *Hickman v. Meadow Wood Reno*, 96 Nev. 782, 617 P.2d 871 (1980).  
Here, the motion must be granted because there are no genuine issues of fact which remain for trial  
and Defendant A Cab is entitled to judgment as a matter of law.

#### B. Dismissal

A motion to dismiss under Rule 12(b)(1) of the Nevada Rules of Civil Procedure may be

utilized when a lack of subject matter jurisdiction is apparent on the face of the complaint.<sup>4</sup> Under Nevada law, the failure of a party to exhaust its administrative remedies prior to commencing an action in the district court divests the court of jurisdiction and mandates dismissal of the action.<sup>5</sup> Similarly, a defendant is entitled to dismissal of a claim when a plaintiff fails to state a claim upon which relief can be granted.<sup>6</sup>

**C. Plaintiff Reno Does Not Have an Actionable Claim Sufficient to Give Rise to a Justiciable Controversy.**

If this Court grants Defendant's currently pending "Motion to Dismiss Plaintiff's First Claim for Relief" based on the prospective application of the *Thomas v. Yellow Cab* decision<sup>7</sup>, Michael Reno will be barred by the statute of limitations in this matter. The Supreme Court decision was issued and became effective on June 26, 2014. Reno's last date of employment at A Cab was nearly two years earlier on September 26, 2012.

Secondly, Reno testified in his deposition that the basis for his claim was that he was making less money at A Cab than he was at his prior employment with Frias Companies. He said on average he made about \$200 less per month, and therefore felt he was "owed" something from A Cab.<sup>8</sup> Upon further reflection, he voluntarily conceded that other factors explain his smaller paycheck. The other factors included that he was now older, and wasn't as productive as in his youth; as well as the fact that there are more taxicabs on the road now yielding more competition for paying customers. **Exhibit 2, Reno deposition**, 105:1-25 - 106:1-4; 106:15-18; 106:24-107:1.

---

<sup>4</sup>*Girolla v. Rousille*, 81 Nev. 661,663, 408 P.2d 918, 919 (1965).

<sup>5</sup>*Nevada v. Scotsman Manufacturing Co.*, 109 Nev. 252, 255, 849 P.2d 317, 319 (1993).

<sup>6</sup>*See* NRCP 12(b)(5)

<sup>7</sup> *Thomas vs. Nevada Yellow Cab Corporation*, 130 Nev., Adv. Op. 52 (2014).

<sup>8</sup> Q. Do you have any idea what you believe that you are owed?

A. Yeah, about \$200 a month, at least, for two years, which is 4,800 plus all that \$6 crap that they added on and \$20 fees for radio calls and the interest for the money that should have been mine to begin with. Then there is aggravation, making us do stuff that wasn't legal. They wanted us to go into people's houses with groceries. **Exhibit 2, Reno deposition**, 55:12-20. *See Also*, 58:3-6; 61:14 - 62:2.

1           Whatever the reasons that explain Reno's smaller paycheck, this simply is not grounds for a  
2 lawsuit. You don't sue a company simply because you make less money there. It is apparent from  
3 the Plaintiff's own sworn testimony that this is his grounds for this frivolous claim.

4           Throughout his deposition testimony, Reno testified about multiple complaints he had about  
5 his past employment with at A Cab. None of these had anything to with a claim for minimum  
6 wage. Contrarily, his complaints were about penalties for his "drop shorts" (when he dropped less  
7 money that he was supposed to based upon the documentation of his fares); penalties for not taking  
8 radio calls (he said he was away from his cab and couldn't hear the radio call). **Exhibit 2, Reno**  
9 **deposition**, 110:11-111:11. His testimony never mentioned minimum wage until after a prolonged  
10 break during the deposition, which he took with his attorney. After which, he came back and  
11 simply gave 1 word confirming answers to her questions that he was claiming a minimum wage.  
12 **Exhibit 2, Reno deposition**, 115:3-14.

13 **D.     Plaintiff's claim has been extinguished by an Offer that exceeds the value of any**  
14 **legitimate claim.**

15           An offer of judgment was submitted to Plaintiff Reno in the amount of **\$15,000.00**, but was  
16 never communicated to him by his counsel, per Reno. The value of any alleged underpayment to  
17 Reno has already been resolved by the U.S. Department of Labor in the amount of **\$1,048.94**.  
18 However, even by Plaintiff Reno's own extreme "guestimates" of what he is claiming (\$200 per  
19 month for 24 months (despite that he only worked there 18 months)), his total demand is **\$4,800**,  
20 and the offer to him by A Cab was **\$15,000.00**.

21           The purpose of this rule [NRCP 68] is to encourage settlement of lawsuits before trial.  
22 *Morgan v. Demille*, 106 Nev. 671, 799 P.2d 561 (1990). This rule and NRS 17.115 are designed to  
23 facilitate and encourage settlement. *Matthews v. Collman*, 110 Nev. 940, 878 P.2d 971 (1994).

24           In this instance, there was a complete failure on the part of Plaintiff's counsel to relay  
25 Defendant's good faith offer to the client.

26 Q.     Are you aware that A Cab offered you \$15,000 as an attempt to resolve any amounts that  
27 you were owed?

28 A.     I never heard anything. Nobody ever told me anything.

1 Q. Take a look at that document that I have just handed you, Mr. Reno.

2 A. I wonder why they wouldn't --

3 Q. Have you ever seen this document before, it's entitled A Cab LLC's Offer Of Judgment To  
4 Plaintiff, Michael Reno?

5 A. No, ma'am.

6 Q. So you were unaware that there was a \$15,000 offer to you?

7 A. Yep. **Exhibit 2, Reno deposition**, 68:10-23.

8 "A lawyer shall abide by a client's decision whether to settle a matter." **Nevada Rules of**  
9 **Professional Conduct Rule 1.2(a)**. "A lawyer shall promptly inform the client of any decision or  
10 circumstance with respect to which the client's informed consent is required by these Rules."

11 **Nevada Rules of Professional Conduct Rule 1.4(a)(1)**.

12 It would go beyond the bounds of decency to allow a lawsuit to continue when a Defendant  
13 has offered far *in excess* of that which is being claimed by the Plaintiff to resolve the claim.  
14 Further, Defendant's offer to compensate Reno in an amount exceeding the independent valuation  
15 of his claim (and more than that which Reno is even claiming) extinguishes and satisfies the claim  
16 altogether. This Court lacks jurisdiction over a claim which has been satisfied. In this instance,  
17 Plaintiff's counsel is merely prolonging litigation in an effort to continue to run up attorney fees  
18 and costs in the hopes of passing these to the Defendant.

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28

III.

**CONCLUSION**

Based upon the foregoing points and authorities, Defendant A CAB, LLC respectfully requests this Honorable Court to enter an Order granting Defendant's Motion to Dismiss Plaintiff Michael Reno's Claims for Relief for failure to state a claim upon which relief can be granted.

DATED this 21st day of September, 2015.

**RODRIGUEZ LAW OFFICES, P.C.**

By: /s/ Esther C. Rodriguez, Esq.  
Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
*Attorneys for Defendant A Cab, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 21st day of September, 2015, I electronically *filed* the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

Leon Greenberg, Esq.  
Leon Greenberg Professional Corporation  
2965 South Jones Boulevard, Suite E4  
Las Vegas, Nevada 89146  
*Counsel for Plaintiff*

/s/ Susan Dillow  
An Employee of Rodriguez Law Offices, P.C.

# EXHIBIT 1

# EXHIBIT 1



This is a notice of Termination from A Cab Taxi Service LLC.

Employee Name Michael A. Reno

Employee Number 3544

Date of Notice 9/28/12

Hire Date 6/16/10

Date of Termination 9/26/12

Last Day Worked 9/26/12

Reason(s) for Termination:

*Violation of company policy.*

*Employee handbook: pg13 B 2.*

*Insubordination. Countermanding or neglecting a supervisor's orders.*

Voluntary \_\_\_\_\_

Involuntary X

Eligible for re-hire? NO

Employee Signature \_\_\_\_\_

Supervisor \_\_\_\_\_

Final Check Due 10/1/12

Operations Manager Bob McCullough

General Manager Jim Bant

## Taxicab Companies

Taxi Company Contact  
Information

## TAXI DRIVER TERMINATION FORM

Las Vegas Rated Best Taxi  
City

Date: Friday, September 28, 2012 12:13 PM

Company Name: A Cab Taxi LLC

Certificate Application  
Process

Name of Driver: Michael A. Reno

T.A.#: 17799

Governing Laws &  
Regulations

Date of Termination: Wednesday, September 26, 2012 12:13 PM

Last Day Worked: Wednesday, September 26, 2012 12:13 PM

Medallions

Reason for Termination:

Taxi Wraps

Violation of company policy.  
Employee handbook: pg 13 B2.  
Insubordination, Countermanding or neglecting a supervisor's orders.

Taxi Driver Termination  
Form

Cab Company Complaint

Submit Form

Reset

## ADMIN

Letter from the Administrator  
(pdf)

Mission Statement

Board Members

Board Meetings

Administrative Court

Statistics

Contact

## COMPLIANCE

Letter from Chief Investigator  
Investigations

Vehicle Inspections

Citation Bail Schedule

Administrative Court

Governing Laws &amp; Regulations

## PASSENGERS

Taxi Rider Information Program

Approximate Fare Information

Complaints

Contact Information and Office

Hours

Governing Laws &amp; Regulations

Lost &amp; Found

Senior Ride Program

Taxicab Company Contact

Information

Upcoming Events

Medallions

Taxi Wraps

## DRIVERS

Driver Permit Requirements

Driver Permit Study Guide

Driver Testing

Driver's Awareness Training &amp;

Driver Safety Training

Forms of Payment Accepted  
(pdf)

Taxicab Authority Contact

Information and Office Hours

Medallions

Taxi Wraps

Administrative Court

## COMPLAINTS

Complaint/Incident Affidavit

Lost &amp; Found

Long Route Voluntary Witness

Statement (pdf)

Cab Company Complaint

Taxicab Contact Information

## RESOURCES

Forms

Links

Statistics

## TAXICAB COMPANIES

Taxi Company Contact

Information

Las Vegas Rated Best Taxi City

Certificate Application Process

Governing Laws &amp; Regulations

Medallions

Taxi Wraps

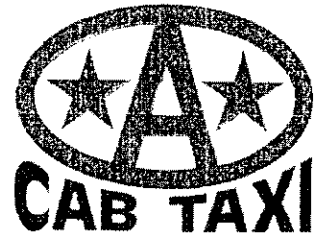
Taxi Driver Termination Form

Cab Company Complaint

## CONTACT



Date: 1-5-2012



A Cab Taxi Company, LLC

**NOTICE OF UNSATISFACTORY PERFORMANCE: LOW BOOK**

Name: Michael Reno

T.A. # 17799

On 1-3-2012 your shift average book was \$159.23. Your book for the day was \$123.10. You were 22.7% below the average.

This level of productivity is unacceptable and immediate improvement is required. Continued performance at this level may result in further disciplinary action including but not limited to suspension and or termination of your employment. This letter will be kept in your personnel file. If I can be of any assistance in solving this problem please don't hesitate to make an appointment to see me.

Sam Wood

This letter will be kept in your personnel file.

Employee Signature: Michael Reno Date: 1/6/2012

Assistant General Manager: Sam Wood Date: 1-5-12

Operations Manager:

Or

General Manager: [Signature] Date: 1-6-12



This is a notice of an infraction of company policy.

Employee Name Michael Reno Date 9-12-12  
Employee Number 17799  
Date of Infraction 9-11-12

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

**Standards of conduct:**

V. Failure to turn in entire book at the end of your shift.  
Failure to do so may result in immediate termination.

Amount Due: \$ 175.00  
Amount Dropped: \$ 174.00  
➤ Difference \$ 1.00  
➤ \$5.00 +10% \$ 1.00  
➤ Total \$ 2.00 Amount to be deducted from paycheck.

Employee Signature

Mike Reno

Verifier Signature

Nancy

General Manager

[Signature]



This is a notice of an infraction of company policy.

Employee Name Michael Renc Date 3-17-12  
Employee Number 17799  
Date of Infraction 3-16-12

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

**7. Cash, Coupons and Charges:**

- ...
- G. Drivers are required to turn their entire book at the end of every shift.  
Failure to do so may result in immediate termination.

Amount Due: \$ 234.00  
Amount Dropped: \$ 214.00  
➤ Difference \$ 20.00  
➤ \$5.00 + 10% \$ N/A  
➤ Total \$ 20.00 Amount to be deducted from paycheck.

Employee Signature Michael Renc  
Verifier Signature Larry D.  
General Manager Jim Hengst



This is a notice of an infraction of company policy.

Date 11/23/12  
Employee Name RENC, Michael  
Employee Number 17799  
Date of Infraction 11/22/12

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

**7. Cash, Coupons and Charges:**

- ...  
G. Drivers are required to turn their entire book at the end of every shift. Failure to do so may result in immediate termination.

Amount Due: \$ 144.00  
Amount Dropped: \$ 140.00  
➤ Difference \$ 4.00  
➤ \$5.00 +10% \$ 5.00  
➤ Total \$ 9.00 Amount to be deducted from paycheck.

Employee Signature Michael Renc

Verifier Signature [Signature]

General Manager [Signature]



**This is a notice of an infraction of company policy.**

Employee Name Michael Renc Date 9-24-11  
Employee Number 17799  
Date of Infraction 9-23-11

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

**7. Cash, Coupons and Charges:**

G. Drivers are required to turn their entire book at the end of every shift. Failure to do so may result in immediate termination.

Amount Due: \$ 229.00  
Amount Dropped: \$ 158.00  
➤ Difference \$ 71.00  
➤ \$5.00 +10% \$ 12.00  
➤ Total \$ 83.00 Amount to be deducted from paycheck.

Employee Signature

Michael Renc

Verifier Signature

Nancy De

General Manager

J. Hight



This is a notice of an infraction of company policy.

Employee Name Michael Reno Date 9-4-11  
Employee Number 17799  
Date of Infraction 9-3-11

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

**7. Cash, Coupons and Charges:**

- ...  
G. Drivers are required to turn their entire book at the end of every shift.  
Failure to do so may result in immediate termination.

Amount Due: \$ 197.00  
Amount Dropped: \$ 191.00  
➤ Difference \$ 6.00  
➤ \$5.00 + 10% \$ 6.00  
➤ Total \$ 12.00 Amount to be deducted from paycheck.

Employee Signature

Michael Reno

Verifier Signature

Nancy Di

General Manager

for Gault



This is a notice of an infraction of company policy.

Date 7-30-11  
Employee Name Michael Reno  
Employee Number 17799  
Date of Infraction 7-29-11

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

**7. Cash, Coupons and Charges:**

- ...  
G. Drivers are required to turn their *entire* book at the end of every shift.  
Failure to do so may result in immediate termination.

Amount Due: \$ 168.00  
Amount Dropped: \$ 166.00  
➤ Difference \$ 2.00  
➤ \$5.00 +10% \$ 1.00  
➤ Total \$ 3.00 Amount to be deducted from paycheck.

Employee Signature \_\_\_\_\_

Verifier Signature

General Manager



This is a notice of an infraction of company policy.

Employee Name Michael Reno Date 6-18-11  
Employee Number 17799  
Date of Infraction 6-17-11

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

**7. Cash, Coupons and Charges:**

- ...  
G. Drivers are required to turn their entire book at the end of every shift.  
Failure to do so may result in immediate termination.

Amount Due: \$ 180.00  
Amount Dropped: \$ 170.00  
➤ Difference \$ 10.00  
➤ \$5.00 + 10% \$ 6.00  
➤ Total \$ 16.00 Amount to be deducted from paycheck.

Employee Signature Michael Reno  
Verifier Signature Nancy Di  
General Manager for Hays





This is a notice of an infraction of company policy.

Employee Name Michael Reno Date 2-26-11  
Employee Number 17799  
Date of Infraction 2-25-11

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

**7. Cash, Coupons and Charges:**

- ...  
G. Drivers are required to turn their entire book at the end of every shift.  
Failure to do so may result in immediate termination.

Amount Due: \$ 125.00  
Amount Dropped: \$ 124.00  
➤ Difference \$ 1.00  
➤ \$5.00 +10% \$ 6.00  
➤ Total \$ 7.00 Amount to be deducted from paycheck.

Employee Signature \_\_\_\_\_

Verifier Signature Nancy Di

Notified General Manager on 2-26-11 at 3:00pm  
(date) (time)

General Manager John Hanger

# A-CAB, LLC

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## EMPLOYEE HANDBOOK

This document is for the sole use of clients of Kamen Zucker & Abbott who have obtained it in the course of their representation. A limited license to copy this document for internal use is granted to those clients. © 1994.

## STANDARDS OF CONDUCT/DISCIPLINARY PROCEDURES

### Standards of Conduct

In any organization certain rules and regulations must be observed by each employee for the benefit of everyone in the organization. We feel you will find our guidelines to be reasonable as well as necessary.

Commission of any one of the following acts may result in remedial actions which range from a verbal to a written reprimand, suspension from work without pay or immediate dismissal:

- A. Unlawful conduct which adversely affects the employee's relationship to his job, fellow employees, supervisor and/or damages A-CAB, LLC property, interests, reputation or goodwill in the community.
- B. Insubordination, including but not limited to:
  - 1. Refusing to carry out a reasonable work assignment given by a supervisor or other person in proper authority.
  - 2. Countermanding or neglecting a supervisor's orders.
  - 3. Using abusive, obscene or unprofessional language to another employee, customer or guest.
  - 4. Fighting, threatening or striking another person.
- C. Immoral or indecent conduct including but not limited to unwelcome sexual advances, requests for sexual favors, harassment or other verbal or physical conduct of a sexual nature.
- D. Unauthorized introduction, possession, sale, purchase or use of illegal or controlled substances.

# EXHIBIT 2

# EXHIBIT 2

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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY and )  
MICHAEL RENO, )  
Individually and on )  
behalf of others ) Case No. A-12-669926-C  
similarly situated, )  
Plaintiffs, )  
vs. )  
A CAB TAXI SERVICE LLC )  
and A CAB, LLC, )  
Defendants. )

DEPOSITION of MICHAEL RENO  
Taken on Tuesday, August 25, 2015  
At 1:58 p.m.  
At 703 South Eighth Street  
Las Vegas, Nevada

Reported by: Lori-Ann Landers, CCR 792, RPR

1 pay. I can always tell what was -- because I did the  
2 same amount for all -- I'm doing this 20 years, and I was  
3 with Frias for seven, Yellow for eight, A Cab for two,  
4 Western for three. I've used all my trip sheets and I  
5 did almost the same amount of money 15 years ago as I do  
6 now, so I know how much the pay should be.

7           You know, when one person is paying you 800,  
8 another person is paying you 400, even though you can say  
9 they kept a little bit of gas, a little bit of tips, it's  
10 still not the same thing. You know they are taking  
11 something.

12       Q.    Okay.

13       A.    The supervisors at the company said they were  
14 stealing from us, I said why didn't you help me. I was  
15 in the office saying that they were taking from us, Tim,  
16 the supervisor, and he didn't back me. He goes, well, I  
17 will lose my job, but I never steal from you. What do  
18 you want, the supervisor says they're stealing, too. He  
19 was with Western. He came over after.

20       Q.    Okay. Let me kind of figure out what you are  
21 talking about here.

22       A.    No, I'm just saying that we are here for -- they  
23 are paying minimum wage or taking stuff out of the check,  
24 I said I got the supervisor -- I didn't have him on tape,  
25 I wish I did, but even he came in after he left A Cab,

1 us, and he agreed. I didn't show him anything.

2 Q. Okay.

3 A. I said I had the paperwork one time where I went  
4 in, I showed the lady how many hours and she said, oh,  
5 no. I said, you know, why didn't you ever, you know --

6 Q. Okay. We are just talking about Tim, right? I  
7 just want to know about Tim, and I will ask you about the  
8 lady in a minute.

9 But I want to make sure when you are telling me  
10 that somebody is telling you something --

11 A. Right, Tim told me --

12 Q. Hold on, sir -- if we are talking about Tim or  
13 if we are talking about the lady who gave you the payroll  
14 report. So what is it that you are saying Tim told you?

15 A. I talked to Tim, he said, yeah, I know they were  
16 stealing from you.

17 Q. Okay.

18 A. And like it was they were stealing from  
19 everybody. It was his analysis. It wasn't just me, it  
20 was everybody. And everybody to a man felt the same way.  
21 I can get a guy right now who will be there one week,  
22 they will say, damn, they're taking too much out of my  
23 check. Everybody, not just me. Everybody knows that  
24 they are taking the money.

25 Q. All right. Sir, in the conversation, because I

1 A. I don't know. I haven't filed anything.

2 Q. Well, you did file something against A Cab,  
3 right?

4 A. You said any other --

5 Q. Right. Do you understand --

6 A. A Cab. Anything else? Yeah, just A Cab.

7 Q. Do you understand that you filed a complaint  
8 against A Cab?

9 A. Well, that's -- that's kind of a thing like the  
10 president, you sign a deal to get something, the book has  
11 you giving up everything else. I went against A Cab.  
12 They got something going on with Western because they are  
13 in, what, collusion you call it?

14 That's not my idea, but if their shortness, too,  
15 and I'm working for them, of course I want that money,  
16 too. I just want fairness. If another person is  
17 shorting them, another person is shorting them, then they  
18 are all in it. All of their hands are dirty.

19 Q. But you have worked for other cab companies  
20 other than Western and A Cab, right?

21 A. I thought they paid me fairly. Yellow Cab paid  
22 me fairly, I thought.

23 Q. Let's start with Yellow Cab. What time did you  
24 work for Yellow?

25 A. Let's start with Frias. I started with Frias.



1           A.    No.  Any of the years that I wasn't paid right  
2   through minimum wage or whatever, I would like the money  
3   back.  It's just that simple.  It's like I went to work  
4   and you found a discrepancy in the payroll, okay, we  
5   shorted you \$40, here is your \$40.  That's all I'm doing.

6           Q.    But that's what I'm asking you, sir, because you  
7   have only worked for A Cab since 2010.  So --

8           A.    I was --

9           Q.    Let me finish my question.  Because I'm asking  
10   you if you made a claim for anything prior to 2010.

11          A.    I don't know because I don't know if I can  
12   legally go against the other ones, Yellow Cab or Frias,  
13   because I don't know when the thing started.  But I know  
14   legally I can go against A Cab because they were way out  
15   of line on the pay.

16          Q.    And what are you basing that on?

17          A.    The hours that I worked and the pay that I got.  
18   Anywhere else I get seven, 800, here I got 400.  And they  
19   did some other things, too.

20          Q.    Before we get into the details of that let me  
21   ask you a little bit more about your employment history.  
22   When -- you worked for Frias, '96 to 2002, right?

23          A.    Right.

24          Q.    What was your job with them?

25          A.    Cab driver.

1           A.     Right.

2           Q.     -- specific breaks, et cetera.  So, you know,  
3     you have given me an overview, but I need to know  
4     specifically, and I'm going to walk you through each one.

5                     Did you have an understanding of how you would  
6     be paid at Frias?

7           A.     Vaguely.  I never understood any of their  
8     paperwork.  You would have to be a Ph.D. to figure it  
9     out.

10          Q.     Did you have an understanding of how you would  
11     be paid when you were a driver at Yellow Cab?

12          A.     Vaguely.

13          Q.     Did you have an understanding of how you would  
14     be paid when you came on board as a driver at A Cab?

15          A.     Vaguely.

16          Q.     Nothing -- you have no -- other than stating  
17     vaguely, you had no idea how you would be paid?

18          A.     That's what I said, a percentage of what I did.

19          Q.     Do you know what that percentage was?

20          A.     No, because it varied.

21          Q.     Did you have an expectation when you came on  
22     board with A Cab that you would at least get a minimum  
23     wage?

24          A.     I thought I would get the commission that I got.  
25     Like I made six, seven, \$800 every pay period at the

1 other companies. I thought I would get pretty close to  
2 the same with A Cab if I did the same amount of work, but  
3 I didn't. And you people say, well, they had to pay for  
4 gas, they don't take out for tips. It's the same thing.

5 Q. All right. So you were making approximately 6-  
6 to \$700 when you previously worked at Yellow Cab?

7 A. Right.

8 Q. Did you make that amount when you worked at  
9 Frias?

10 A. Yeah, I make about 6-, \$700. I never made 4-,  
11 500.

12 Q. And it's your testimony, then, you were making  
13 how much when you were working at A Cab?

14 A. They paid two weeks usually about \$500 average,  
15 right around there.

16 Q. And what do you attribute that to?

17 A. I'm just saying they've taken out, in my  
18 opinion, 100 to \$200 a pay period for whatever reason and  
19 not paying me what I should have -- and there was a lot  
20 of reasons. One of them they got you for accounting. If  
21 you didn't count the -- we are not accountants, we are  
22 cab drivers.

23 At Frias and Yellow the women would do the --  
24 file paperwork, you give them the money. At Western and  
25 A Cab, you do your own, which is fine. I took accounting

1 testimony. You can answer.

2 A. That's exactly right.

3 Q. Because it was your intention to just go to  
4 court, right?

5 A. Yeah. I went once and she said, no, you're  
6 wrong. So I didn't push it. If I pushed it, I'm fired.  
7 So I said I will let it work itself out. And then when  
8 it does, I will come back.

9 Like I said, it's confusing, all of these guys  
10 do confusing accounting with the payroll. And if I am  
11 wrong, I will owe an apology.

12 Q. Do you have any idea what you believe that you  
13 are owed?

14 A. Yeah, about \$200 a month, at least, for two  
15 years, which is 4,800 plus all that \$6 crap that they  
16 added on and \$20 fees for radio calls and the interest  
17 for the money that should have been mine to begin with.

18 Then there is aggravation, making us do stuff  
19 that wasn't legal. They wanted us to go into people's  
20 houses with groceries. They fired one girl, I can get  
21 her statement, too. That's dangerous. They fired her.

22 They told her she was supposed to get groceries  
23 from somebody's house. Young girl goes at night to  
24 somebody's house, she gets raped. And they fired her and  
25 called her all kinds of bad names.

1 check. They were doing stuff that was illegal. It's  
2 like if we have cab drivers do that crap --

3 Q. Tell me what they did that was illegal.

4 A. Charging us \$6 for making a mistake when we are  
5 not accountants on our paperwork. Charging us \$20 for  
6 radio calls when you can't be in your cab all the time.  
7 We are doing luggage, other things, we are doing our job,  
8 yet they are charging us for not answering a radio call  
9 because we didn't hear it. That's illegal, too. That's  
10 just a made up amount.

11 Q. Why do you believe that those were illegal?

12 A. Well, okay, who is to say I don't charge you  
13 \$50? How can you tell you that your job is to get  
14 groceries and help people with groceries? You are  
15 getting their groceries, I call you on the phone in your  
16 car, and you don't hear it because you are getting  
17 groceries; how can you be in two places at the same time?  
18 How can you be -- legally say I'm charging you for not  
19 being there when you are doing your job doing the  
20 groceries or luggage or somebody is talking to you?

21 Q. Sir, you are making very strong allegations.

22 A. That's how crooked these people are.

23 Q. All right. When you are making accusations that  
24 A Cab is engaging in illegal activities, A Cab is  
25 corrupt, A Cab is crooked, I need to know what you are

1 America they feel like they are shorted on a check, they  
2 go to a bookkeeper, or whatever, they say I think I got  
3 the wrong amount of money, you got a right to do that.  
4 That's all I'm doing.

5 And I think it went on for a two year period.  
6 That's all I'm saying. I'm just trying to get my money  
7 that's owed to me if I am right, and I think I'm right.

8 Q. And I'm asking you what money you think you are  
9 owed --

10 A. I just told you, around \$200 a month --

11 Q. And how are you --

12 A. -- for a two year period which is 4,800, and  
13 other stuff was aggravating, too.

14 Q. How are you coming up with \$200 a month for two  
15 years?

16 A. Because I usually made 6- or 700 at A Cab -- I  
17 mean at Western and everybody else. There I made, what,  
18 4-, 500. So there is 300 right there right off the top.  
19 How you figure it, it's \$300 less.

20 Q. Okay.

21 A. And I did the same amount of money.

22 Q. It's your allegation that because you made less  
23 at A Cab than you were making a Yellow and Frias, by \$200  
24 on average, that's what you are basing your claim on; is  
25 that correct?

1           A.     Something like that with the other stuff they  
2     were doing.

3           Q.     Okay. And then you mentioned the \$6 crap to  
4     quote you --

5           A.     The \$6 charges that I feel are illegal.

6           Q.     Tell me what that is.

7           A.     I just showed you right there. You make a  
8     mistake on the accounting, they charge you for the amount  
9     that you were wrong, plus the \$6 fee.

10          Q.     Do you know how many \$6 charges you received?

11          A.     At least 20 over a two year period. It wasn't  
12     just me, it was the whole company.

13          Q.     I'm just asking about you, sir. I don't need  
14     you to testify about any other driver right now. I'm  
15     just asking you specifically.

16          A.     I probably had 10. Of course I'm guessing. It  
17     was years ago.

18                 MS. SNIEGOCKI: We don't want you to guess.

19          Q.     I don't want you to guess. I do not want you to  
20     guess.

21          A.     It's pretty hard to remember 10 years.

22          Q.     Hold on. Listen to the very important  
23     instruction, okay? Do you understand the difference  
24     between a guess and an estimate?

25          A.     Estimate, maybe seven.

1           A.     I don't know.

2           Q.     Have you been contacted by the federal  
3 government about receiving a check in that amount?

4           A.     No.

5           Q.     If you are contacted, do you intend to accept  
6 that check?

7                   MS. SNIEGOCKI:  Objection.  Calls for  
8 speculation.

9           A.     No.

10          Q.     Are you aware that A Cab offered you \$15,000 as  
11 an attempt to resolve any amounts that you were owed?

12          A.     I never heard anything.  Nobody ever told me  
13 anything.

14          Q.     Take a look at that document that I have just  
15 handed you, Mr. Reno.

16          A.     I wonder why they wouldn't --

17          Q.     Have you ever seen this document before, it's  
18 entitled A Cab LLC's Offer Of Judgment To Plaintiff,  
19 Michael Reno?

20          A.     No, ma'am.

21          Q.     So you were unaware that there was a \$15,000  
22 offer to you?

23          A.     Yep.

24          Q.     Let me hand you another document.

25                   MS. RODRIGUEZ:  I will have this one marked as



1           A.     Well, it wasn't I was making so much less, it's  
2     just they have a lot of drivers in front of you, too.  
3     See, they changed the cab industry. When I first started  
4     Frias, '96, there was no cabs in front of you. You can  
5     do 40 rides a day. In fact, one day I did 53 rides. It  
6     was almost impossible to do 53 rides, but I did, I got it  
7     on the sheet.

8                 You'd average 30 or 40, you'd turn the sheet  
9     over because they had 29 rides, you'd turn it over and  
10    the only thing stopping you was you would get tired of  
11    taking people. I swear there would be 50 people in line,  
12    and then you would drop them off and they would be  
13    loading before you even got these other people out and  
14    putting the luggage in. That's how good it was.

15                And then all of a sudden when Yellow Cab -- I  
16    went from Frias to Yellow Cab in 2000, something like  
17    that, 2002, 2001, they changed it. They used to be on  
18    Tompkins, and they got that new facility. They went from  
19    Tompkins by The Orleans to Post Road, 30 million tarp  
20    facility, they went from like 400 drivers to like 2,000.  
21    They had like 4,000 cabs. I never seen anything like  
22    that. And I said, crap, what happened to the industry,  
23    we are getting a third of the rides now.

24                You know, instead of getting a ride in maybe 10  
25    minutes, you are waiting an hour, hour and-a-half for one

1 ride. That's what some of these guys at the airport are  
2 doing. They're saying, wait a minute, I wait an hour  
3 and-a-half, I got to make this cab a \$12 ride, a \$40 ride  
4 to make up for this. See, that's what they are doing.

5 Q. By the time you worked for A Cab starting there  
6 June 2010, how many drivers did you have on the road at  
7 that point, or cabs I should say?

8 A. Oh, when I worked for A Cab?

9 MS. SNIEGOCKI: Objection. Calls for  
10 speculation. You can answer if you know.

11 A. I really don't know. A Cab was the smallest --  
12 one of the smallest companies. They only had like 200  
13 cabs. But then again, I did all right with A Cab. I did  
14 almost the same with them.

15 You got to remember, too, you can get burned out  
16 on some of these companies. I had done it for 10, 15  
17 years, 12 hours a day. You get older and you start  
18 getting -- it beats you up.

19 When I was with A Cab it was 2010, I did, what,  
20 15, 16 years. 12 hour shifts can -- I was thin as a  
21 rail, I'm least 100 pounds overweight. I used to be in  
22 shape and stuff. It shows you how much it beats you up  
23 getting in and out of those cars, sitting 12 hours.

24 So I'm saying I almost did my average, but you  
25 are bound to get a little bit less productive because I

1 was 35 in my prime, and now I'm 50.

2 Q. You start getting burned out?

3 A. I love my job. It's funny just because I like  
4 people.

5 Q. I guess my question, too, is from what you are  
6 describing it sounds like when you went from Frias to  
7 Yellow, there were just a lot more cabs on the road by  
8 that time?

9 A. Yeah, doubled.

10 Q. More competition?

11 A. Yeah. You had to work harder to make the same  
12 amount of money. You know, you had to make the same  
13 amount of money. You are actually getting less and less.  
14 I read an article a week before I even got the  
15 job -- a week before I got the job with that girl, I had  
16 read in the paper where a driver said in '75 and '80, in  
17 the '80s he wore a suit, but he would make \$40,000, and  
18 he only had a few rides. It was easy. And now he has to  
19 kill himself to make 30. It's true.

20 I mean, every year I'm making less and less, but  
21 I'm trying harder and harder. And I know more than I did  
22 before, and I make less money. Then with Uber coming  
23 in -- see, I like them for their honesty, and they're not  
24 the cheap people. That's a good thing. You want all  
25 these crooks off the road.

1 wants two or \$3. I'm getting \$18 for every hundred.

2 That's no good.

3 Q. I told you I wouldn't keep you too much more.

4 Let me just make sure I got the sum. We went through

5 your damages and --

6 A. I wonder --

7 Q. Let me just ask you the question. Anything you

8 want to ask me in the presence of your attorney when we

9 get off the record, we will just finish up your

10 deposition, that will be fine.

11 I just want to make sure that I got a handle on

12 what you are claiming. You know, we went, roughly, we

13 went through the radio call penalties, the \$6 penalties

14 for being short, I have the documentation on some of

15 that, and then for basically the hours that you were

16 forced to write down that you believe you worked that

17 were -- you were not paid for.

18 MS. SNIEGOCKI: I'm going to object.

19 Q. Is that a fair statement?

20 MS. SNIEGOCKI: I object that it misstates

21 testimony, but you can answer if you understand the

22 question.

23 A. I don't know what to say.

24 THE WITNESS: You just objected.

25 MS. SNIEGOCKI: Yes, but you can answer the

1 question.

2 THE WITNESS: Whatever you said -- I don't know  
3 what you said. I don't know what we are objecting about  
4 if it doesn't matter for me to answer or not.

5 Q. Well, unless she tells you not to answer, you  
6 are supposed to answer the question. If you don't  
7 understand my question, I don't want you to answer it. I  
8 want to make sure you understand.

9 A. Right, that's what I'm saying, I just said what  
10 you said. I'm agreeing with what you said. That's what  
11 I'm saying, what you just went over.

12 Q. Okay. Well, I thank you, Mr. Reno. I'm going  
13 to pass you to your attorney for some questions if she  
14 has any.

15 A. I want --

16 MS. SNIEGOCKI: Hang on. We are going to go off  
17 the record. I'm going to take a couple of minutes and  
18 then I'm not sure if -- I may have a few.

19 MS. RODRIGUEZ: I'm going to object to you  
20 instructing him on your cross-examination on what to  
21 answer. I think that's completely improper.

22 MS. SNIEGOCKI: Are you saying that I'm  
23 instructing my client what to answer? I'm taking a  
24 break. I don't know if I have any questions, but I may.  
25 That's all.

1 Q. What did you refer to that as?

2 A. Breaks and lunch.

3 Q. So my question to you is, and just before we  
4 looked at this just now, you had said you don't believe  
5 that you were paid the minimum wage for all the hours  
6 that you worked at A Cab, right?

7 A. Right.

8 Q. So my question to you is even if we were to  
9 deduct this break time that appears on the bottom right  
10 corner of the trip sheet, let's say we take that out, we  
11 deduct it, we assume that those are valid breaks that you  
12 took; do you believe even after taking out those breaks  
13 that you were paid the minimum wage?

14 A. No.

15 MS. SNIEGOCKI: I'm concluded.

16 FURTHER EXAMINATION BY

17 MS. RODRIGUEZ:

18 Q. Mr. Reno, right before Ms. Sniegocki, the  
19 attorney, just started her cross-examination, you guys  
20 stepped out of the room for about 10 minutes to meet  
21 privately, right?

22 A. I never talked to her. She was on the phone.

23 Q. I'm just asking the question whether you left  
24 about 10 minutes to meet with Ms. Sniegocki outside the  
25 room?

## REPORTER'S CERTIFICATE

STATE OF NEVADA       )  
                                ) ss  
COUNTY OF CLARK     )

I, Lori-Ann Landers, a duly commissioned  
Notary Public, Clark County, State of Nevada, do hereby  
certify:

That I reported the taking of the deposition of the witness, MICHAEL RENO, at the time and place aforesaid;

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That I thereafter transcribed my shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of my said shorthand notes taken down at said time to the best of my ability.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in the action; and that transcript review NRCP 30(e) was requested.

IN WITNESS WHEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 25th day of August 2015.

LORI-ANN LANDERS, CCR 792, RPR

# EXHIBIT 3

# EXHIBIT 3



## Summary of Unpaid Wages

U.S. Department of Labor  
Wage and Hour Division

Office Address: Las Vegas District Office  
600 Las Vegas Blvd., S.  
Suite 550  
Las Vegas, NV 89101-6654  
702-388-6001

Investigator:  
Richard Quezada

Date:  
08/13/2015

Employer Fed Tax ID Number:

1. Name	2. Address	3. Period Covered by Work Week Ending Dates	4. Act(s)	5. BWs Due	Total
33		10/08/2010 to 10/05/2012	FLSA		
33		10/08/2010 to 10/05/2012	FLSA		
33		10/08/2010 to 10/05/2012	FLSA		
3		10/08/2010 to 10/05/2012	FLSA		
330		10/08/2010 to 10/05/2012	FLSA		
339		10/08/2010 to 10/05/2012	FLSA		
340. Reno, Michael	811 E. Bridger Ave. #363 Las Vegas, NV 89101	10/08/2010 to 10/05/2012	FLSA	\$1,048.94	\$1,048.94
341.		10/08/2010 to 10/05/2012	FLSA		
34		10/08/2010 to 10/05/2012	FLSA		

I agree to pay the listed employees the  
amount due shown above by 12/30/2015

Employer Name and Address:  
A Cab, LLC  
A Cab, LLC  
1500 Searles Ave  
Las Vegas NV 89101

Subtotal:

Total:

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Form WH-56

Date: 08/13/2015 2:59:10 PM

Case ID: 1611567

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AA000803

# EXHIBIT 4

# EXHIBIT 4