

IN THE SUPREME COURT OF THE STATE OF NEVADA

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| A CAB, LLC; AND A CAB SERIES, LLC, |) | Supreme Court No. 77050 |
| |) | |
| Appellants, |) | Electronically Filed |
| |) | Aug 05 2020 03:53 p.m. |
| |) | Elizabeth A. Brown |
| |) | Clerk of Supreme Court |
| v. |) | |
| |) | |
| MICHAEL MURRAY; AND |) | |
| MICHAEL RENO, INDIVIDUALLY |) | |
| AND ON BEHALF OF ALL OTHERS |) | |
| SIMILARLY SITUATED, |) | |
| |) | |
| Respondents. |) | |
| _____ |) | |

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

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

HUTCHISON & STEFFEN, PLLC

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Las Vegas, Nevada 89145
Attorney for Appellants

Chronological Index

| Doc No. | Description | Vol. | Bates Nos. |
|---------|--|------|-----------------------|
| 1 | Complaint, filed 10/08/2012 | I | AA000001- AA000008 |
| 2 | Defendant's Motion to Dismiss Complaint, filed 11/15/2012 | I | AA000009- AA000015 |
| 3 | Response in Opposition to Defendants' Motion to Dismiss, filed 12/06/2012 | I | AA000016- AA000059 |
| 4 | Defendant's Reply in Support of Motion to Dismiss Complaint, filed 01/10/2013 | I | AA000060- AA000074 |
| 5 | First Amended Complaint, filed 01/30/2013 | I | AA000075- AA000081 |
| 6 | Decision and Order, filed 02/11/2013 | I | AA000082- AA000087 |
| 7 | Defendant's Motion for Reconsideration, filed 02/27/2013 | I | AA000088- AA000180 |
| 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 |
| 9 | Defendant's Motion to Strike Amended Complaint, filed 03/25/2013 | I | AA000188- AA000192 |
| 10 | Defendant's Reply in Support of Motion for Reconsideration, filed 03/28/2013 | I | AA000193- AA000201 |
| 11 | Plaintiffs' Response in Opposition to Defendants' Motion to Strike First Amended Complaint and Counter-Motion for a Default Judgment or Sanctions Pursuant to EDCR 7.60(b), filed 04/11/2013 | II | AA000202- AA000231 |

| | | | |
|----|---|-----|-------------------|
| 12 | Defendant A Cab, LLC's Answer to Complaint, filed 04/22/2013 | II | AA000232-AA000236 |
| 13 | Defendant's Reply in Support of Motion to Strike Amended Complaint, filed 04/22/2013 | II | AA000237-AA000248 |
| 14 | Minute Order from April 29, 2013 Hearing | II | AA000249 |
| 15 | Order, filed 05/02/2013 | II | AA000250-AA000251 |
| 16 | Defendant A Cab, LLC's Answer to First Amended Complaint, filed 05/23/2013 | II | AA000252-AA000256 |
| 17 | Motion to Certify this Case as a Class Action Pursuant to NRCP Rule 23 and Appoint a Special Master Pursuant to NRCP Rule 53, filed 05/19/2015 | II | AA000257-AA000398 |
| 18 | Defendant's Opposition to Motion to Certify Case as Class Action Pursuant to NRCP 23 and Appoint a Special Master Pursuant to NRCP 53, filed 06/08/2015 | III | AA000399-AA000446 |
| 19 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Certify this Case as a Class Action Pursuant to NRCP Rule 23 and Appoint a Special Master Pursuant to NRCP Rule 53, filed 07/13/2018 | III | AA000447-AA000469 |
| 20 | Defendant's Motion for Declaratory Order Regarding Statue of Limitations, filed 08/10/2015 | III | AA000470-AA000570 |
| 21 | Defendant's Motion to Dismiss Plaintiffs' Second Claim for Relief, filed 08/10/2015 | III | AA000571-AA000581 |
| 22 | Second Amended Supplemental Complaint, filed 08/19/2015 | III | AA000582-AA000599 |
| 23 | Plaintiffs' Response in Opposition to Defendants' Motion for Declaratory Order Regarding Statue of Limitations, filed | IV | AA000600-AA000650 |

| | | | |
|----|---|-------|-----------------------|
| | 08/28/2015 | | |
| 24 | Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss Plaintiffs' Second Claim for Relief, filed 08/28/2015 | IV | AA000651- AA000668 |
| 25 | Defendants Reply In Support of Motion to Dismiss Plaintiffs' Second Claim for Relief, filed 09/08/2015 | IV | AA000669- AA000686 |
| 26 | Defendant's Reply In Support of Motion for Declaratory Order Regarding Statue of Limitations, filed 09/08/2015 | IV | AA000687- AA000691 |
| 27 | Defendant's Motion to Dismiss Plaintiffs' First Claim for Relief, filed 09/11/2015 | IV | AA000692- AA000708 |
| 28 | Defendant A Cab, LLC's Answer to Second Amended Complaint, filed 09/14/2015 | IV | AA000709- AA000715 |
| 29 | Defendant's Motion to Dismiss and for Summary Judgment Against Plaintiff Michael Murray, filed 09/21/2015 | IV | AA000716- AA000759 |
| 30 | Defendant's Motion to Dismiss and for Summary Judgment Against Plaintiff Michael Reno, filed 09/21/2015 | IV, V | AA000760- AA000806 |
| 31 | Response in Opposition to Defendants' Motion to Dismiss Plaintiffs' First Claim for Relief, filed 09/28/2015 | V | AA000807- AA000862 |
| 32 | Defendant Creighton J. Nady's Answer to Second Amended Complaint, filed 10/06/2015 | V | AA000863- AA000869 |
| 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 | V | AA000881- AA000911 |

| | | | |
|----|---|-----|-----------------------|
| | Judgment Against Plaintiff Michael Reno, filed 10/08/2015 | | |
| 35 | Defendant's Reply in Support of Motion to Dismiss and for Summary Judgment Against Plaintiff Michael Murray, filed 10/27/2015 | V | AA000912- AA000919 |
| 36 | Defendant's Reply in Support of Motion to Dismiss and for Summary Judgment Against Plaintiff Michael Reno, filed 10/27/2015 | V | AA000920- AA000930 |
| 37 | Defendant's Reply in Support of Motion to Dismiss Plaintiffs' First Claim for Relief, filed 10/28/2015 | V | AA000931- AA001001 |
| 38 | Transcript of Proceedings, November 3, 2015 | VI | AA001002- AA001170 |
| 39 | Minute Order from November 9, 2015 Hearing | VI | AA001171 |
| 40 | Order Granting in Part and Denying in Part Defendant's Motion for Declaratory Order Regarding Statue of Limitations, filed 12/21/2015 | VI | AA001172- AA001174 |
| 41 | Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP Rule 23(b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to Appoint a Special Master Under NRCP Rule 53, filed 02/10/2016 | VI | AA001175- AA001190 |
| 42 | Order Denying Defendant's Motion to Dismiss and For Summary Judgment Against Michael Murray, filed 02/18/2016 | VI | AA001191- AA001192 |
| 43 | Order Denying Defendant's Motion to Dismiss and for Summary Judgment Against Michael Reno, filed 02/18/2016 | VI | AA001193- AA001194 |
| 44 | Defendants' Motion for Reconsideration, filed 02/25/2016 | VII | AA001195- AA001231 |

| | | | |
|----|--|-----------|-------------------|
| 45 | Plaintiffs' Response in Opposition to Defendants' Motion Seeking Reconsideration of the Court's Order Granting Class Certification, filed 03/14/2016 | VII | AA001232-AA001236 |
| 46 | Reply in Support of Defendants' Motion for Reconsideration, filed 03/24/2016 | VII, VIII | AA001237-AA001416 |
| 47 | Minute Order from March 28, 2016 Hearing | VIII | AA001417 |
| 48 | Order Denying Plaintiffs' Motion to Impose Sanctions Against Defendants for Violating This Court's Order of February 10, 2016 and Compelling Compliance with that Order on an Order Shortening Time, filed 04/06/2016 | VIII | AA001418-AA001419 |
| 49 | Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP Rule 23(b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to Appoint a Special Master Under NRCP Rule 52 as Amended by this Court in Response to Defendants' Motion for Reconsideration heard in Chambers on March 28, 2016, filed 06/07/2016 | VIII | AA001420-AA001435 |
| 50 | Motion to Enjoin Defendants from Seeking Settlement of Any Unpaid Wage Claims Involving Any Class Members Except as Part of this Lawsuit and for Other Relief, filed 10/14/2016 | VIII | AA001436-AA001522 |
| 51 | Defendants' Opposition to Plaintiffs' Motion to Enjoin Defendants from Seeking Settlement of any Unpaid Wage Claims Involving any Class Members Except as Part of this Lawsuit and for Other Relief, filed 11/04/2016 | VIII | AA001523-AA001544 |
| 52 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Enjoin Defendants | VIII | AA001545-AA001586 |

| | | | |
|----|--|-----------------------------|-----------------------|
| | From Seeking Settlement of any Unpaid Wage Claims Involving any Class Members Except as Part of this Lawsuit and for Other Relief, filed 11/10/2016 | | |
| 53 | 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 Limitations, filed 11/17/2016 | VIII | AA001587- AA001591 |
| 54 | Defendants' Motion for Leave to Amend Answer to Assert a Third-Party Complaint, filed 11/29/2016 | IX | AA001592- AA001621 |
| 55 | Opposition to Defendants' Motion for Judgment on the Pleadings, Counter Motion for Toll of Statue of Limitations and for an Evidentiary Hearing, filed 12/08/2016 | IX | AA001622- AA001661 |
| 56 | Opposition to Defendants' Motion for Leave to Amend Answer to Assert Third-Party Complaint and Counter-Motion for Sanctions and Attorney's Fees, filed 12/16/2016 | IX, X, XI | AA001662- AA002176 |
| 57 | Notice of Withdrawal of Defendants' Motion for Leave to Amend Answer to Assert a Third-Party Complaint, filed 12/16/2016 | XI | AA002177- AA002178 |
| 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 |
| 59 | Motion for Partial Summary Judgment, filed 01/11/2017 | XII, XIII, XIV, XV | AA002190- AA002927 |

| | | | |
|----|--|----------------|-----------------------|
| 60 | Motion to Bifurcate Issue of Liability of Defendant Creighton J. Nady from Liability of Corporate Defendants or Alternative Relief, filed 01/12/2017 | XV, XVI | AA002928- AA003029 |
| 61 | Errata to Plaintiffs' Motion for Partial Summary Judgment, filed 01/13/2017 | XVI | AA003030- AA003037 |
| 62 | Defendants' Motion for Leave to Amend Answer to Assert a Third-Party Complaint, filed 01/27/2017 | XVI | AA003038- AA003066 |
| 63 | Defendants' Opposition to Plaintiffs' Motion to Bifurcate Issue of Liability of Defendant Creighton J. Nady from Liability of Corporate Defendants or Alternative Relief, filed 01/30/2017 | XVI | AA003067- AA003118 |
| 64 | Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment, filed 02/02/2017 | XVI | AA003119- AA003193 |
| 65 | Plaintiffs' Motion on OST to Expedite Issuance of Order Granting Motion Filed on 10/14/2016 to Enjoin Defendants from Seeking Settlement of Any Unpaid Wage Claims Involving any Class Members Except as Part of this Lawsuit and for Other Relief and for Sanctions, filed 02/03/2017 | XVII, XVIII | AA003194- AA003548 |
| 66 | Transcript of Proceedings, February 8, 2017 | XVIII | AA003549- AA003567 |
| 67 | Defendants' Opposition to Plaintiffs' Motion on OST to Expedite Issuance of Order Granting Motion Filed on 10/14/16 to Enjoin Defendants from Seeking Settlement of any Unpaid Wage Claims Involving any Class Members Except as Part of this Lawsuit and for Other Relief and for Sanctions, filed 02/10/2017 | XVIII, XIX | AA003568- AA003620 |

| | | | |
|----|--|---------|-------------------|
| 68 | Plaintiffs' Reply to Defendants's Opposition to Plaintiffs' Motion on OST to Expedite Issuance of Order Granting Motion Filed on 10/14/2016 to Enjoin Defendants From Seeking Settlement of Any Unpaid Wage Claims Involving Any Class Members Except as Part of This Lawsuit and For Other Relief and for Sanctions, filed 02/10/2017 | XIX | AA003621-AA003624 |
| 69 | Opposition to Defendants' Motion for Leave to Amend Answer to Assert Third-Party Complaint and Counter-Motion for Sanctions and Attorneys' Fees, filed 02/13/2017 | XIX | AA003625-AA003754 |
| 70 | Transcript of Proceedings, February 14, 2017 | XIX | AA003755-AA003774 |
| 71 | Order Granting Certain Relief on Motion to Enjoin Defendants From Seeking Settlement of Any Unpaid Wage Claims Involving Any Class Members Except as Part of this Lawsuit and for Other Relief, filed 02/16/2017 | XIX | AA003775-AA003776 |
| 72 | Supplement to Order For Injunction Filed on February 16, 2017, filed 02/17/2017 | XIX | AA003777-AA003780 |
| 73 | Order Granting in Part and Denying in Part Plaintiffs' Motion to Have Case Reassigned to Dept I per EDCR Rule 1.60 and Designation as Complex Litigation per NRCP Rule 16.1(f), filed on 02/21/2017 | XIX | AA003781-AA003782 |
| 74 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment, filed 02/22/2017 | XIX, XX | AA003783-AA003846 |
| 75 | Plaintiffs' Supplement to Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment, filed 02/23/2017 | XX | AA003847-AA003888 |

| | | | |
|----|--|------------|-----------------------|
| 76 | Declaration of Charles Bass, filed 02/27/2017 | XX | AA003889- AA003892 |
| 77 | Transcript of Proceedings, May 18, 2017 | XX, XXI | AA003893- AA004023 |
| 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 |
| 80 | Motion on Order Shortening Time to Extend Damages Class Certification and for Other Relief, filed 06/02/2017 | XXI | AA004143- AA004188 |
| 81 | Decision and Order, filed 06/07/2017 | XXI | AA004189- AA004204 |
| 82 | Defendants' Opposition to Plaintiffs' Motion on Order Shortening Time to Extend Damages Class Certification and for Other Relief, filed 06/09/2017 | XXII | AA004205- AA004222 |
| 83 | Transcript of Proceedings, June 13, 2017 | XXII | AA004223- AA004244 |
| 84 | Plaintiffs' Motion to Impose Sanctions Against Defendants for Violating this Court's Order of March 9, 2017 and Compelling Compliance with that Order, filed 07/12/2017 | XXII | AA004245- AA004298 |
| 85 | Order Denying Plaintiffs' Motion for Partial Summary Judgment, filed 07/14/2017 | XXII | AA004299- AA004302 |
| 86 | Order, filed 07/17/2017 | XXII | AA004303- AA004304 |

| | | | |
|----|---|---------------------------------|-----------------------|
| 87 | Order, filed 07/17/2017 | XXII | AA004305- AA004306 |
| 88 | Order, filed 07/17/2017 | XXII | AA004307- AA004308 |
| 89 | Defendants' Opposition to Plaintiffs' Motion to Impose Sanctions Against Defendants for Violating this Court's Order of March 9, 2017 and Compelling Compliance with that Order, filed 07/31/2017 | XXII | AA004309- AA004336 |
| 90 | Order Denying Plaintiff's Counter-Motion for Sanctions and Attorneys' Fees and Order Denying Plaintiffs' Anti-SLAPP Motion, filed 07/31/2017 | XXII | AA004337- AA004338 |
| 91 | Declaration of Plaintiffs' Counsel Leon Greenberg, Esq., filed 11/02/2017 | XXII, XXIII, XXIV, XXV | AA004339- AA004888 |
| 92 | Motion for Partial Summary Judgment and Motion to Place Evidentiary Burden on Defendants to Establish "Lower Tier" Minimum Wage and Declare NAC 608.102(2)(b) Invalid, filed 11/02/2017 | XXV | AA004889- AA004910 |
| 93 | Motion for Bifurcation and/or to Limit Issues for Trial Per NRC 42(b), filed 11/03/2017 | XXV | AA004911- AA004932 |
| 94 | Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment and Motion to Place Evidentiary Burden on Defendants to Establish "Lower Tier" Minimum Wage and Declare NAC 608.102(2)(b) Invalid, filed 11/20/2017 | XXV, XXVI | AA004933- AA005030 |
| 95 | Defendants' Motion for Summary Judgment, filed 11/27/2017 | XXVI | AA005031- AA005122 |
| 96 | Defendants' Opposition to Plaintiffs' Motion for Bifurcation and/or to Limit Issues for | XXVI | AA005123- AA005165 |

| | | | |
|-----|--|------------------|-----------------------|
| | Trial Per NRC 42(b), filed 11/27/2017 | | |
| 97 | Plaintiffs' Reply to Defendant's Opposition to Plaintiffs' Motions for Partial Summary Judgment and to Place Evidentiary Burden on Defendants to Establish "Lower Tier" Minimum Wage and Declare NAC 608.102(2)(b) Invalid, filed 11/29/2017 | XXVI, XXVII | AA005166- AA005276 |
| 98 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Bifurcation and/or to Limit Issues for Trial Per NRC 42(b), filed 12/01/2017 | XXVII | AA005277- AA005369 |
| 99 | Minute Order from December 7, 2017 Hearing | XXVII | AA005370- AA005371 |
| 100 | Response in Opposition to Defendant's Motion for Summary Judgment, filed 12/14/2017 | XXVII, XXVIII | AA005372- AA005450 |
| 101 | Transcript of Proceedings, December 14, 2017 | XXVIII | AA005451- AA005509 |
| 102 | Defendants' Motion in Limine to Exclude Testimony of Plaintiffs' Experts, filed 12/22/2017 | XXVIII | AA005510- AA005564 |
| 103 | Plaintiffs' Omnibus Motion in Limine # 1-25, filed 12/22/2017 | XXVIII, XXIV | AA005565- AA005710 |
| 104 | Defendants' Reply in Support of Motion for Summary Judgment, filed 12/27/2017 | XXIV | AA005711- AA005719 |
| 105 | Transcript of Proceedings, January 2, 2018 | XXIV | AA005720- AA005782 |
| 106 | Defendants' Supplement as Ordered by the Court on January 2, 2018, filed 01/09/2018 | XXIV | AA005783- AA005832 |
| 107 | Plaintiffs' Supplement in Support of Motion for Partial Summary Judgment, filed 01/09/2018 | XXX | AA005833- AA005966 |

| | | | |
|-----|--|-----------|-------------------|
| 108 | Defendants' Opposition to Plaintiffs' Omnibus Motion in Limine #1-25, filed 01/12/2018 | XXX | AA005967-AA006001 |
| 109 | Plaintiffs' Response to Defendants' Motion in Limine to Exclude Expert Testimony, filed 01/12/2018 | XXX, XXXI | AA006002-AA006117 |
| 110 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion in Limine #1-#25, filed 01/17/2018 | XXXI | AA006118-AA006179 |
| 111 | Reply in Support of Defendants' Motion in Limine to Exclude the Testimony of Plaintiffs' Experts, filed 01/19/2018 | XXXI | AA006180-AA001695 |
| 112 | Order, filed 01/22/2018 | XXXI | AA006196-AA006199 |
| 113 | Minute Order from January 25, 2018 Hearing | XXXI | AA006200-AA006202 |
| 114 | Transcript of Proceedings, January 25, 2018 | XXXI | AA006203-AA006238 |
| 115 | Plaintiffs' Supplement in Connection with Appointment of Special Master, filed 01/31/2018 | XXXII | AA006239-AA006331 |
| 116 | Order Denying Plaintiffs' Motion for Bifurcation and/or to Limit Issues for Trial Per NRCP 42(b), filed 02/02/2018 | XXXII | AA006332-AA006334 |
| 117 | Transcript of Proceedings, February 2, 2018 | XXXII | AA006335-AA006355 |
| 118 | Defendants' Supplement Pertaining to an Order to Appoint Special Master, filed 02/05/2018 | XXXII | AA006356-AA006385 |
| 119 | Order Granting Plaintiffs' Motion to Appoint a Special Master, filed 02/07/2018 | XXXII | AA006386-AA006391 |
| 120 | Defendants' Supplement to Its Proposed | XXXII | AA006392- |

| | | | |
|-----|---|------------------|-----------------------|
| | Candidates for Special Master, filed 02/07/2018 | | AA006424 |
| 121 | Order Modifying Court's Previous Order of February 7, 2019 Appointing a Special Master, filed 02/13/2018 | XXXII | AA006425- AA006426 |
| 122 | Transcript of Proceedings, February 15, 2018 | XXXII, XXXIII | AA006427- AA006457 |
| 123 | NC Supreme Court Judgment, filed 05/07/2018 | XXXIII | AA006458- AA006463 |
| 124 | Pages intentionally omitted | XXXIII | AA006464- AA006680 |
| 125 | Plaintiffs' Motion on OST to Lift Stay, Hold Defendants in Contempt, Strike Their Answer, Grant Partial Summary Judgment, Direct a Prove Up Hearing, and Coordinate Cases, filed 04/17/2018 | XXXIII, XXXIV | AA006681- AA006897 |
| 126 | Plaintiff Jasminka Dubric's Opposition to Michael Murray and Michael Reno's Motion for Miscellaneous Relief, filed 04/23/2018 | XXXIV | AA006898- AA006914 |
| 127 | Declaration of Class Counsel, Leon Greenberg, Esq., filed 04/26/2018 | XXXIV | AA006915- AA006930 |
| 128 | Plaintiffs' Reply to Jasminka Dubric's Opposition to Plaintiffs' Motion for Miscellaneous Relief, filed 04/26/2018 | XXXIV | AA006931- AA006980 |
| 129 | Supplemental Declaration of Class Counsel, Leon Greenberg, Esq., filed 05/16/2018 | XXXIV | AA006981- AA007014 |
| 130 | Second Supplemental Declaration of Class Counsel, Leon Greenberg, Esq., filed 05/18/2018 | XXXIV | AA007015- AA007064 |
| 131 | Defendants' Opposition to Plaintiffs' Declarations; Motion on OST to Lift Stay, Hold Defendants in Contempt, Strike Their | XXXV | AA007065- AA007092 |

| | | | |
|-----|--|-----------------------------|-------------------|
| | Answer, Grant Partial Summary Judgment, Direct a Prove up Hearing, and Coordinate Cases, filed 05/20/2018 | | |
| 132 | Plaintiffs' Reply to A Cab and Nady's Opposition to Plaintiff's Motion for Miscellaneous Relief, filed 05/21/2018 | XXXV | AA007093-AA007231 |
| 133 | Declaration of Class Counsel, Leon Greenberg, Esq., filed 05/30/2018 | XXXV | AA007232-AA007249 |
| 134 | Defendants' Response to Plaintiffs' Additional Declaration, filed 05/31/2018 | XXXVI | AA007250-AA007354 |
| 135 | Memorandum re: Legal Authorities on the Court's Power to Grant a Default Judgment as a Contempt or Sanctions Response to Defendants' Failure to Pay the Special Master, filed 06/04/2018 | XXXVI | AA007355-AA007359 |
| 136 | Defendants' Supplemental List of Citations Per Court Order, filed 06/04/2018 | XXXVI | AA007360-AA007384 |
| 137 | Transcript of Proceedings, filed 07/12/2018 | XXXVI, XXXVII | AA007385-AA007456 |
| 138 | Declaration of Class Counsel, Leon Greenberg, Esq., filed 06/20/2018 | XXXVII, XXXVII I, XXXIX, XL | AA007457-AA008228 |
| 139 | Plaintiffs Supplement in Support of Entry of Final Judgment Per Hearing Held June 5, 2018, filed 06/22/2018 | XL, XLI | AA008229-AA008293 |
| 140 | Defendants' Objection to Billing By Stricken Special Master Michael Rosten, filed 06/27/2018 | XLI | AA008294-AA008333 |
| 141 | Opposition to Additional Relief Requested in Plaintiffs' Supplement, filed 07/10/2018 | XLI | AA008334-AA008348 |

| | | | |
|-----|---|----------------|-----------------------|
| 142 | Defendants' Supplemental Authority in Response to Declaration of June 20, 2018, filed 07/10/2018 | XLI | AA008349- AA008402 |
| 143 | Michael Rosten's Response to Defendants' Objection to Billing by Stricken Special Master Michael Rosten, filed 07/13/2018 | XLI | AA008403- AA008415 |
| 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 |
| 145 | Defendants' Supplemental Authority in Response to Plaintiffs' Additional Supplement Filed July 13, 2018, filed 07/18/2018 | XLII | AA008506- AA008575 |
| 146 | Plaintiffs' Supplement in Reply to Defendants' Supplement Dated July 18, 2018, filed 08/03/2018 | XLII | AA008576- AA008675 |
| 147 | Notice of Entry of Order Granting Judgment, filed 08/22/2018 | XLIII | AA008676- AA008741 |
| 148 | Motion to Amend Judgment, filed 08/22/2018 | XLIII | AA008742- AA008750 |
| 149 | Defendants' Motion for Reconsideration, Amendment, for New Trial, and for Dismissal of Claims, filed 09/10/2018 | XLIII | AA008751- AA008809 |
| 150 | Opposition to Plaintiffs' Motion to Amend Judgment, filed 09/10/2018 | XLIII | AA008810- AA008834 |
| 151 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Amend Judgment, filed 09/20/2018 | XLIII, XLIV | AA008835- AA008891 |
| 152 | Defendant's Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening Time, filed 09/21/2018 | XLIV | AA008892- AA008916 |

| | | | |
|-----|--|--------------|-----------------------|
| 153 | Notice of Appeal, filed 09/21/2018 | XLIV | AA008917- AA008918 |
| 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 |
| 155 | Plaintiffs' Response in Opposition to Defendants' Motion for Reconsideration, Amendment, for New Trial and for Dismissal of Claims, filed 09/27/2018 | XLIV | AA008995- AA009008 |
| 156 | Plaintiffs' Supplemental Response to Defendants' Ex-Parte Motion to Quash Writ of Execution on an OSt, filed 09/27/2018 | XLIV | AA009009- AA009029 |
| 157 | Defendant's Exhibits in support of Ex-Parte Motion to Quash Writ of Execution and, In the Alternative, Motion for Partial Stay of Execution on Order Shortening Time, filed 10/01/2018 | XLIV, XLV | AA009030- AA009090 |
| 158 | Claim of Exemption from Execution - A Cab Series, LLC, Administration Company, filed 10/04/2018 | XLV | AA009091- AA009096 |
| 159 | Claim of Exemption from Execution - A Cab Series, LLC, CCards Company, filed 10/04/2018 | XLV | AA009097- AA009102 |
| 160 | Claim from Exemption from Execution - A Cab Series, LLC, Employee Leasing Company Two, filed 10/04/2018 | XLV | AA009103- AA009108 |
| 161 | Claim of Exemption from Execution - A Cab Series, LLC, Maintenance Company, filed 10/04/2018 | XLV | AA009109- AA009114 |
| 162 | Claim from Exemption from Execution - A Cab Series, LLC, Medallion Company, filed 10/04/2018 | XLV | AA009115- AA009120 |

| | | | |
|-----|---|------|-------------------|
| 163 | Claim from Exemption from Execution - A Cab Series, LLC, Taxi Leasing Company, filed 10/04/2018 | XLV | AA009121-AA009126 |
| 164 | Claim of Exemption from Execution - A Cab, LLC, filed 10/04/2018 | XLV | AA009127-AA009132 |
| 165 | Plaintiffs' Motion for an Order Granting a Judgment Debtor Examination and for Other Relief, filed 10/05/2018 | XLV | AA009133-AA009142 |
| 166 | Plaintiffs' Motion for an Award of Attorneys Fees and Costs as Per NRCP Rule 54 and the Nevada Constitution, filed 10/12/2018 | XLV | AA009143-AA009167 |
| 167 | Plaintiffs' Objections to Claims from Exemption from Execution and Notice of Hearing, filed 10/15/2018 | XLV | AA009168-AA009256 |
| 168 | Opposition to Plaintiffs' Counter-Motion for Appropriate Judgment Relief, filed 10/15/2018 | XLV | AA009257-AA009263 |
| 169 | Plaintiffs' Reply to Defendants' Response to Plaintiffs' Counter-Motion for Appropriate Judgment Enforcement Relief, filed 10/16/2018 | XLV | AA009264-AA009271 |
| 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 |
| 171 | Defendants' Motion for Dismissal of Claims on Order Shortening Time, filed 10/17/2018 | XLV | AA009278-AA009288 |
| 172 | Plaintiffs' Response in Opposition to Defendants' Motion for Dismissal of Claims on an Order Shortening Time, filed 10/17/2018 | XLVI | AA009289-AA009297 |
| 173 | Notice of Entry of Order, filed 10/22/2018 | XLVI | AA009298-AA009301 |

| | | | |
|-----|---|----------------|-----------------------|
| 174 | Order, filed 10/22/2018 | XLVI | AA009302- AA009303 |
| 175 | Transcript of Proceedings, October 22, 2018 | XLVI | AA009304- AA009400 |
| 176 | Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs as Per NRCP Rule 54 and the Nevada Constitution, filed 10/29/2018 | XLVI | AA009401- AA009413 |
| 177 | Opposition to Plaintiffs' Motion for an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution, filed 11/01/2018 | XLVI, XLVII | AA009414- AA009552 |
| 178 | Resolution Economics' Application for Order of Payment of Special Master's Fees and Motion for Contempt, filed 11/05/2018 | XLVII | AA009553- AA009578 |
| 179 | Affidavit in Support of Resolution Economics' Application for Order of Payment of Special Master's Fees and Motion for Contempt, filed 11/05/2018 | XLVII | AA009579- AA009604 |
| 180 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for an Award of Attorneys Fees and Costs as Per NRCP Rule 54 and the Nevada Constitution, filed 11/08/2018 | XLVII | AA009605- AA009613 |
| 181 | Opposition to Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution, filed 11/16/2018 | XLVII | AA009614- AA009626 |
| 182 | Plaintiffs' Ex Parte Motion for Temporary Restraining Order and Motion on an Order Requiring the Turnover of Certain Property of the Judgment Debtor Pursuant to NRS 21.320, filed 11/26/2018 | XLVII | AA009627- AA009646 |

| | | | |
|-----|---|--------|-----------------------|
| 183 | Opposition to Resolution Economics' Application for Order of Payment of Special Master's Fees and Motion for Contempt, filed 11/26/2018 | XLVII | AA009647- AA009664 |
| 184 | Plaintiffs' Response to Special Master's Motion for an Order for Payment of Fees and Contempt, filed 11/26/2018 | XLVII | AA009665- AA009667 |
| 185 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs as Per NRCP Rule 54 and the Nevada Constitution, filed 11/28/2018 | XLVII | AA009668- AA009674 |
| 186 | Defendant's Opposition to Plaintiffs' Ex-Parte Motion for a Temporary Restraining Order and Motion on an Order [sic] Requiring the Turnover of Certain Property of the Judgment Debtor Pursuant to NRS 21.320, filed 11/30/2018 | XLVII | AA009675- AA009689 |
| 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 |
| 188 | Minute Order from December 4, 2018 Hearing | XLVIII | AA009697- AA009700 |
| 189 | Transcript of Proceedings, December 4, 2018 | XLVIII | AA009701- AA009782 |
| 190 | Transcript of Proceedings, December 11, 2018 | XLVIII | AA009783- AA009800 |
| 191 | Defendant's Opposition to Plaintiffs' Motion for Other Relief, Including Receiver, filed 12/12/2018 | XLVIII | AA009801- AA009812 |
| 192 | Transcript of Proceedings, December 13, 2018 | XLVIII | AA009813- AA009864 |

| | | | |
|-----|--|---------|-------------------|
| 193 | Notice of Entry of Order Denying Motion to Quash, filed 12/18/2018 | XLVIII | AA009865-AA009887 |
| 194 | Notice of Entry of Order Granting Objections to Claims from Exemption of Execution, filed 12/18/2018 | XLVIII | AA009888-AA009891 |
| 195 | Plaintiffs' Objections to Claims of Exemption from Execution and Notice of Hearing, filed 12/19/2018 | XLIX | AA009892-AA009915 |
| 196 | Order on Motion for Dismissal of Claims on Order Shortening Time, filed 12/20/2018 | XLIX | AA009916-AA009918 |
| 197 | Notice of Entry of Order Granting Motion for Judgment Enforcement, filed 01/02/2019 | XLIX | AA009919-AA009926 |
| 198 | Order Denying Defendants' Counter-Motion to Stay Proceedings and Collection Actions, filed 01/08/2019 | XLIX | AA009927-AA009928 |
| 199 | Amended Notice of Appeal, filed 01/15/2019 | XLIX | AA009929-AA009931 |
| 200 | Motion to Amend the Court's Order Entered on December 18, 2018, filed 01/15/2019 | XLIX | AA009932-AA009996 |
| 201 | Motion to Distribute Funds Held by Class Counsel, filed 01/5/2019 | XLIX, L | AA009997-AA010103 |
| 202 | Defendants' Motion to Pay Special Master on Order Shortening Time, filed 01/17/2019 | L | AA010104-AA010114 |
| 203 | Plaintiffs' Response in Opposition to Defendants' Motion to Pay Special Master on an Order Shortening Time and Counter-Motion for an Order to Turn Over Property, filed 01/30/2019 | L | AA010115-AA010200 |
| 204 | Judgment and Order Granting Resolution Economics' Application for Order of Payment of Special Master's Fees and Order of Contempt, filed on 02/04/2019 | L | AA010201-AA010207 |

| | | | |
|-----|--|----|-----------------------|
| 205 | Minute Order from February 5, 2019 Hearing | L | AA01208- AA01209 |
| 206 | Notice of Entry of Order Granting Resolution Economics' Application for Order of Payment and Contempt, filed 02/05/2019 | L | AA010210- AA010219 |
| 207 | Notice of Entry of Order Granting Plaintiffs' Motion for Attorney's Fees and Costs, filed 02/07/2019 | L | AA010220- AA010230 |
| 208 | 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 02/25/2019 | L | AA010231- AA010274 |
| 209 | Order, filed 03/04/2019 | L | AA010275- AA010278 |
| 210 | Order Denying in Part and Continuing in Part Plaintiffs' Motion on OST to Lift Stay, Hold Defendants in Contempt, Strike Their Answer, Grant Partial Summary Judgment, Direct a Prove Up Hearing, and Coordinate Cases, filed 03/05/2019 | L | AA010279- AA010280 |
| 211 | Order on Defendants' Motion for Reconsideration, filed 03/05/2019 | L | AA010281- AA010284 |
| 212 | Second Amended Notice of Appeal, filed 03/06/2019 | L | AA010285- AA010288 |
| 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 |
| 214 | Notice of Entry of Order Denying Defendants' Motion for Reconsideration of | LI | AA010379- AA010384 |

| | | | |
|-----|--|---------|-------------------|
| | Judgment and Order Granting Resolution Economics Application for Order of Payment of Special Master's Fees and Order of Contempt, filed 08/09/2019 | | |
| 215 | Transcript of Proceedings, September 26, 2018 | LI | AA010385-AA010452 |
| 216 | Transcript of Proceedings, September 28, 2018 | LI, LII | AA010453-AA010519 |
| 217 | Minute Order from May 23, 2018 Hearing | LII | AA10520 |
| 218 | Minute Order from June 1, 2018 Hearing | LII | AA10521 |

Alphabetical Index

| Doc No. | Description | Vol. | Bates Nos. |
|---------|---|-------|-------------------|
| 179 | Affidavit in Support of Resolution Economics' Application for Order of Payment of Special Master's Fees and Motion for Contempt, filed 11/05/2018 | XLVII | AA009579-AA009604 |
| 199 | Amended Notice of Appeal, filed 01/15/2019 | XLIX | AA009929-AA009931 |
| 160 | Claim from Exemption from Execution - A Cab Series, LLC, Employee Leasing Company Two, filed 10/04/2018 | XLV | AA009103-AA009108 |
| 162 | Claim from Exemption from Execution - A Cab Series, LLC, Medallion Company, filed 10/04/2018 | XLV | AA009115-AA009120 |
| 163 | Claim from Exemption from Execution - A Cab Series, LLC, Taxi Leasing Company, filed 10/04/2018 | XLV | AA009121-AA009126 |
| 164 | Claim of Exemption from Execution - A Cab, LLC, filed 10/04/2018 | XLV | AA009127-AA009132 |

| | | | |
|-----|---|---|-------------------|
| 158 | Claim of Exemption from Execution - A Cab Series, LLC, Administration Company, filed 10/04/2018 | XLV | AA009091-AA009096 |
| 159 | Claim of Exemption from Execution - A Cab Series, LLC, CCards Company, filed 10/04/2018 | XLV | AA009097-AA009102 |
| 161 | Claim of Exemption from Execution - A Cab Series, LLC, Maintenance Company, filed 10/04/2018 | XLV | AA009109-AA009114 |
| 1 | Complaint, filed 10/08/2012 | I | AA000001-AA000008 |
| 6 | Decision and Order, filed 02/11/2013 | I | AA000082-AA000087 |
| 81 | Decision and Order, filed 06/07/2017 | XXI | AA004189-AA004204 |
| 76 | Declaration of Charles Bass, filed 02/27/2017 | XX | AA003889-AA003892 |
| 127 | Declaration of Class Counsel, Leon Greenberg, Esq., filed 04/26/2018 | XXXIV | AA006915-AA006930 |
| 133 | Declaration of Class Counsel, Leon Greenberg, Esq., filed 05/30/2018 | XXXV | AA007232-AA007249 |
| 138 | Declaration of Class Counsel, Leon Greenberg, Esq., filed 06/20/2018 | XXXVII , XXXVII I, XXXIX, XL | AA007457-AA008228 |
| 91 | Declaration of Plaintiffs' Counsel Leon Greenberg, Esq., filed 11/02/2017 | XXII, XXIII, XXIV, XXV | AA004339-AA004888 |
| 12 | Defendant A Cab, LLC's Answer to | II | AA000232- |

| | | | |
|-----|--|-----------|-------------------|
| | Complaint, filed 04/22/2013 | | AA000236 |
| 16 | Defendant A Cab, LLC's Answer to First Amended Complaint, filed 05/23/2013 | II | AA000252-AA000256 |
| 28 | Defendant A Cab, LLC's Answer to Second Amended Complaint, filed 09/14/2015 | IV | AA000709-AA000715 |
| 32 | Defendant Creighton J. Nady's Answer to Second Amended Complaint, filed 10/06/2015 | V | AA000863-AA000869 |
| 152 | Defendant's Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening Time, filed 09/21/2018 | XLIV | AA008892-AA008916 |
| 157 | Defendant's Exhibits in support of Ex-Parte Motion to Quash Writ of Execution and, In the Alternative, Motion for Partial Stay of Execution on Order Shortening Time, filed 10/01/2018 | XLIV, XLV | AA009030-AA009090 |
| 20 | Defendant's Motion for Declaratory Order Regarding Statue of Limitations, filed 08/10/2015 | III | AA000470-AA000570 |
| 7 | Defendant's Motion for Reconsideration, filed 02/27/2013 | I | AA000088-AA000180 |
| 29 | Defendant's Motion to Dismiss and for Summary Judgment Against Plaintiff Michael Murray, filed 09/21/2015 | IV | AA000716-AA000759 |
| 30 | Defendant's Motion to Dismiss and for Summary Judgment Against Plaintiff Michael Reno, filed 09/21/2015 | IV, V | AA000760-AA000806 |
| 2 | Defendant's Motion to Dismiss Complaint, filed 11/15/2012 | I | AA000009-AA000015 |
| 21 | Defendant's Motion to Dismiss Plaintiffs' Second Claim for Relief, filed 08/10/2015 | III | AA000571-AA000581 |

| | | | |
|-----|---|--------|-------------------|
| 27 | Defendant's Motion to Dismiss Plaintiffs' First Claim for Relief, filed 09/11/2015 | IV | AA000692-AA000708 |
| 9 | Defendant's Motion to Strike Amended Complaint, filed 03/25/2013 | I | AA000188-AA000192 |
| 18 | Defendant's Opposition to Motion to Certify Case as Class Action Pursuant to NRCPC 23 and Appoint a Special Master Pursuant to NRCPC 53, filed 06/08/2015 | III | AA000399-AA000446 |
| 186 | Defendant's Opposition to Plaintiffs' Ex-Parte Motion for a Temporary Restraining Order and Motion on an Order [sic] Requiring the Turnover of Certain Property of the Judgment Debtor Pursuant to NRS 21.320, filed 11/30/2018 | XLVII | AA009675-AA009689 |
| 191 | Defendant's Opposition to Plaintiffs' Motion for Other Relief, Including Receiver, filed 12/12/2018 | XLVIII | AA009801-AA009812 |
| 10 | Defendant's Reply in Support of Motion for Reconsideration, filed 03/28/2013 | I | AA000193-AA000201 |
| 13 | Defendant's Reply in Support of Motion to Strike Amended Complaint, filed 04/22/2013 | II | AA000237-AA000248 |
| 4 | Defendant's Reply in Support of Motion to Dismiss Complaint, filed 01/10/2013 | I | AA000060-AA000074 |
| 35 | Defendant's Reply in Support of Motion to Dismiss and for Summary Judgment Against Plaintiff Michael Murray, filed 10/27/2015 | V | AA000912-AA000919 |
| 36 | Defendant's Reply in Support of Motion to Dismiss and for Summary Judgment Against Plaintiff Michael Reno, filed 10/27/2015 | V | AA000920-AA000930 |
| 37 | Defendant's Reply in Support of Motion to Dismiss Plaintiffs' First Claim for Relief, filed 10/28/2015 | V | AA000931-AA001001 |

| | | | |
|-----|---|--------|-----------------------|
| 26 | Defendant's Reply In Support of Motion for Declaratory Order Regarding Statue of Limitations, filed 09/08/2015 | IV | AA000687- AA000691 |
| 25 | Defendants Reply In Support of Motion to Dismiss Plaintiffs' Second Claim for Relief, filed 09/08/2015 | IV | AA000669- AA000686 |
| 171 | Defendants' Motion for Dismissal of Claims on Order Shortening Time, filed 10/17/2018 | XLV | AA009278- AA009288 |
| 53 | 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 Limitations, filed 11/17/2016 | VIII | AA001587- AA001591 |
| 54 | Defendants' Motion for Leave to Amend Answer to Assert a Third-Party Complaint, filed 11/29/2016 | IX | AA001592- AA001621 |
| 62 | Defendants' Motion for Leave to Amend Answer to Assert a Third-Party Complaint, filed 01/27/2017 | XVI | AA003038- AA003066 |
| 149 | Defendants' Motion for Reconsideration, Amendment, for New Trial, and for Dismissal of Claims, filed 09/10/2018 | XLIII | AA008751- AA008809 |
| 44 | Defendants' Motion for Reconsideration, filed 02/25/2016 | VII | AA001195- AA001231 |
| 208 | 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 02/25/2019 | L | AA010231- AA010274 |
| 95 | Defendants' Motion for Summary Judgment, filed 11/27/2017 | XXVI | AA005031- AA005122 |
| 102 | Defendants' Motion in Limine to Exclude Testimony of Plaintiffs' Experts, filed | XXVIII | AA005510- AA005564 |

| | | | |
|-----|---|-----------|-------------------|
| | 12/22/2017 | | |
| 202 | Defendants' Motion to Pay Special Master on Order Shortening Time, filed 01/17/2019 | L | AA010104-AA010114 |
| 140 | Defendants' Objection to Billing By Stricken Special Master Michael Rosten, filed 06/27/2018 | XLI | AA008294-AA008333 |
| 131 | Defendants' Opposition to Plaintiffs' Declarations; Motion on OST to Lift Stay, Hold Defendants in Contempt, Strike Their Answer, Grant Partial Summary Judgment, Direct a Prove up Hearing, and Coordinate Cases, filed 05/20/2018 | XXXV | AA007065-AA007092 |
| 108 | Defendants' Opposition to Plaintiffs' Omnibus Motion in Limine #1-25, filed 01/12/2018 | XXX | AA005967-AA006001 |
| 94 | Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment and Motion to Place Evidentiary Burden on Defendants to Establish "Lower Tier" Minimum Wage and Declare NAC 608.102(2)(b) Invalid, filed 11/20/2017 | XXV, XXVI | AA004933-AA005030 |
| 51 | Defendants' Opposition to Plaintiffs' Motion to Enjoin Defendants from Seeking Settlement of any Unpaid Wage Claims Involving any Class Members Except as Part of this Lawsuit and for Other Relief, filed 11/04/2016 | VIII | AA001523-AA001544 |
| 82 | Defendants' Opposition to Plaintiffs' Motion on Order Shortening Time to Extend Damages Class Certification and for Other Relief, filed 06/09/2017 | XXII | AA004205-AA004222 |
| 96 | Defendants' Opposition to Plaintiffs' Motion for Bifurcation and/or to Limit Issues for Trial Per NRCP 42(b), filed 11/27/2017 | XXVI | AA005123-AA005165 |

| | | | |
|-----|--|---------------|-----------------------|
| 64 | Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment, filed 02/02/2017 | XVI | AA003119- AA003193 |
| 63 | Defendants' Opposition to Plaintiffs' Motion to Bifurcate Issue of Liability of Defendant Creighton J. Nady from Liability of Corporate Defendants or Alternative Relief, filed 01/30/2017 | XVI | AA003067- AA003118 |
| 89 | Defendants' Opposition to Plaintiffs' Motion to Impose Sanctions Against Defendants for Violating this Court's Order of March 9, 2017 and Compelling Compliance with that Order, filed 07/31/2017 | XXII | AA004309- AA004336 |
| 67 | Defendants' Opposition to Plaintiffs' Motion on OST to Expedite Issuance of Order Granting Motion Filed on 10/14/16 to Enjoin Defendants from Seeking Settlement of any Unpaid Wage Claims Involving any Class Members Except as Part of this Lawsuit and for Other Relief and for Sanctions, filed 02/10/2017 | XVIII, XIX | AA003568- AA003620 |
| 104 | Defendants' Reply in Support of Motion for Summary Judgment, filed 12/27/2017 | XXIV | AA005711- AA005719 |
| 134 | Defendants' Response to Plaintiffs' Additional Declaration, filed 05/31/2018 | XXXVI | AA007250- AA007354 |
| 106 | Defendants' Supplement as Ordered by the Court on January 2, 2018, filed 01/09/2018 | XXIV | AA005783- AA005832 |
| 118 | Defendants' Supplement Pertaining to an Order to Appoint Special Master, filed 02/05/2018 | XXXII | AA006356- AA006385 |
| 120 | Defendants' Supplement to Its Proposed Candidates for Special Master, filed 02/07/2018 | XXXII | AA006392- AA006424 |
| 145 | Defendants' Supplemental Authority in | XLII | AA008506- |

| | | | |
|-----|--|--------|-----------------------|
| | Response to Plaintiffs' Additional Supplement Filed July 13, 2018, filed 07/18/2018 | | AA008575 |
| 142 | Defendants' Supplemental Authority in Response to Declaration of June 20, 2018, filed 07/10/2018 | XLI | AA008349- AA008402 |
| 136 | Defendants' Supplemental List of Citations Per Court Order, filed 06/04/2018 | XXXVI | AA007360- AA007384 |
| 61 | Errata to Plaintiffs' Motion for Partial Summary Judgment, filed 01/13/2017 | XVI | AA003030- AA003037 |
| 5 | First Amended Complaint, filed 01/30/2013 | I | AA000075- AA000081 |
| 204 | Judgment and Order Granting Resolution Economics' Application for Order of Payment of Special Master's Fees and Order of Contempt, filed on 02/04/2019 | L | AA010201- AA010207 |
| 135 | Memorandum re: Legal Authorities on the Court's Power to Grant a Default Judgment as a Contempt or Sanctions Response to Defendants' Failure to Pay the Special Master, filed 06/04/2018 | XXXVI | AA007355- AA007359 |
| 143 | Michael Rosten's Response to Defendants' Objection to Billing by Stricken Special Master Michael Rosten, filed 07/13/2018 | XLI | AA008403- AA008415 |
| 14 | Minute Order from April 29, 2013 Hearing | II | AA000249 |
| 99 | Minute Order from December 7, 2017 Hearing | XXVII | AA005370- AA005371 |
| 113 | Minute Order from January 25, 2018 Hearing | XXXI | AA006200- AA006202 |
| 188 | Minute Order from December 4, 2018 Hearing | XLVIII | AA009697- AA009700 |
| 205 | Minute Order from February 5, 2019 Hearing | L | AA01208- |

| | | | |
|-----|---|-----------------------------|-----------------------|
| | | | AA01209 |
| 218 | Minute Order from June 1, 2018 Hearing | LII | AA10521 |
| 47 | Minute Order from March 28, 2016 Hearing | VIII | AA001417 |
| 217 | Minute Order from May 23, 2018 Hearing | LII | AA10520 |
| 39 | Minute Order from November 9, 2015 Hearing | VI | AA001171 |
| 93 | Motion for Bifurcation and/or to Limit Issues for Trial Per NRCP 42(b), filed 11/03/2017 | XXV | AA004911- AA004932 |
| 92 | Motion for Partial Summary Judgment and Motion to Place Evidentiary Burden on Defendants to Establish “Lower Tier” Minimum Wage and Declare NAC 608.102(2)(b) Invalid, filed 11/02/2017 | XXV | AA004889- AA004910 |
| 59 | Motion for Partial Summary Judgment, filed 01/11/2017 | XII, XIII, XIV, XV | AA002190- AA002927 |
| 80 | Motion on Order Shortening Time to Extend Damages Class Certification and for Other Relief, filed 06/02/2017 | XXI | AA004143- AA004188 |
| 148 | Motion to Amend Judgment, filed 08/22/2018 | XLIII | AA008742- AA008750 |
| 200 | Motion to Amend the Court’s Order Entered on December 18, 2018, filed 01/15/2019 | XLIX | AA009932- AA009996 |
| 60 | Motion to Bifurcate Issue of Liability of Defendant Creighton J. Nady from Liability of Corporate Defendants or Alternative Relief, filed 01/12/2017 | XV, XVI | AA002928- AA003029 |
| 17 | Motion to Certify this Case as a Class Action Pursuant to NRCP Rule 23 and Appoint a Special Master Pursuant to NRCP Rule 53, filed 05/19/2015 | II | AA000257- AA000398 |

| | | | |
|-----|---|---------|-------------------|
| 201 | Motion to Distribute Funds Held by Class Counsel, filed 01/5/2019 | XLIX, L | AA009997-AA010103 |
| 50 | Motion to Enjoin Defendants from Seeking Settlement of Any Unpaid Wage Claims Involving Any Class Members Except as Part of this Lawsuit and for Other Relief, filed 10/14/2016 | VIII | AA001436-AA001522 |
| 123 | NC Supreme Court Judgment, filed 05/07/2018 | XXXIII | AA006458-AA006463 |
| 153 | Notice of Appeal, filed 09/21/2018 | XLIV | AA008917-AA008918 |
| 214 | Notice of Entry of Order Denying 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 08/09/2019 | LI | AA010379-AA010384 |
| 193 | Notice of Entry of Order Denying Motion to Quash, filed 12/18/2018 | XLVIII | AA009865-AA009887 |
| 173 | Notice of Entry of Order, filed 10/22/2018 | XLVI | AA009298-AA009301 |
| 147 | Notice of Entry of Order Granting Judgment, filed 08/22/2018 | XLIII | AA008676-AA008741 |
| 197 | Notice of Entry of Order Granting Motion for Judgment Enforcement, filed 01/02/2019 | XLIX | AA009919-AA009926 |
| 194 | Notice of Entry of Order Granting Objections to Claims from Exemption of Execution, filed 12/18/2018 | XLVIII | AA009888-AA009891 |
| 207 | Notice of Entry of Order Granting Plaintiffs' Motion for Attorney's Fees and Costs, filed 02/07/2019 | L | AA010220-AA010230 |
| 206 | Notice of Entry of Order Granting Resolution | L | AA010210- |

| | | | |
|-----|---|----------------|-----------------------|
| | Economics' Application for Order of Payment and Contempt, filed 02/05/2019 | | AA010219 |
| 57 | Notice of Withdrawal of Defendants' Motion for Leave to Amend Answer to Assert a Third-Party Complaint, filed 12/16/2016 | XI | AA002177- AA002178 |
| 141 | Opposition to Additional Relief Requested in Plaintiffs' Supplement, filed 07/10/2018 | XLI | AA008334- AA008348 |
| 55 | Opposition to Defendants' Motion for Judgment on the Pleadings, Counter Motion for Toll of Statue of Limitations and for an Evidentiary Hearing, filed 12/08/2016 | IX | AA001622- AA001661 |
| 56 | Opposition to Defendants' Motion for Leave to Amend Answer to Assert Third-Party Complaint and Counter-Motion for Sanctions and Attorney's Fees, filed 12/16/2016 | IX, X, XI | AA001662- AA002176 |
| 69 | Opposition to Defendants' Motion for Leave to Amend Answer to Assert Third-Party Complaint and Counter-Motion for Sanctions and Attorneys' Fees, filed 02/13/2017 | XIX | AA003625- AA003754 |
| 168 | Opposition to Plaintiffs' Counter-Motion for Appropriate Judgment Relief, filed 10/15/2018 | XLV | AA009257- AA009263 |
| 177 | Opposition to Plaintiffs' Motion for an Award of Attorneys Fees and Costs Per NRCF Rule 54 and the Nevada Constitution, filed 11/01/2018 | XLVI, XLVII | AA009414- AA009552 |
| 150 | Opposition to Plaintiffs' Motion to Amend Judgment, filed 09/10/2018 | XLIII | AA008810- AA008834 |
| 181 | Opposition to Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs Per NRCF Rule 54 and the Nevada Constitution, filed 11/16/2018 | XLVII | AA009614- AA009626 |

| | | | |
|-----|--|-------|-----------------------|
| 183 | Opposition to Resolution Economics' Application for Order of Payment of Special Master's Fees and Motion for Contempt, filed 11/26/2018 | XLVII | AA009647- AA009664 |
| 42 | Order Denying Defendant's Motion to Dismiss and For Summary Judgment Against Michael Murray, filed 02/18/2016 | VI | AA001191- AA001192 |
| 43 | Order Denying Defendant's Motion to Dismiss and for Summary Judgment Against Michael Reno, filed 02/18/2016 | VI | AA001193- AA001194 |
| 198 | Order Denying Defendants' Counter-Motion to Stay Proceedings and Collection Actions, filed 01/08/2019 | XLIX | AA009927- AA009928 |
| 210 | Order Denying in Part and Continuing in Part Plaintiffs' Motion on OST to Lift Stay, Hold Defendants in Contempt, Strike Their Answer, Grant Partial Summary Judgment, Direct a Prove Up Hearing, and Coordinate Cases, filed 03/05/2019 | L | AA010279- AA010280 |
| 90 | Order Denying Plaintiff's Counter-Motion for Sanctions and Attorneys' Fees and Order Denying Plaintiffs' Anti-SLAPP Motion, filed 07/31/2017 | XXII | AA004337- AA004338 |
| 116 | Order Denying Plaintiffs' Motion for Bifurcation and/or to Limit Issues for Trial Per NRCP 42(b), filed 02/02/2018 | XXXII | AA006332- AA006334 |
| 85 | Order Denying Plaintiffs' Motion for Partial Summary Judgment, filed 07/14/2017 | XXII | AA004299- AA004302 |
| 48 | Order Denying Plaintiffs' Motion to Impose Sanctions Against Defendants for Violating This Court's Order of February 10, 2016 and Compelling Compliance with that Order on an Order Shortening Time, filed 04/06/2016 | VIII | AA001418- AA001419 |

| | | | |
|-----|--|-------|-----------------------|
| 15 | Order, filed 05/02/2013 | II | AA000250- AA000251 |
| 86 | Order, filed 07/17/2017 | XXII | AA004303- AA004304 |
| 87 | Order, filed 07/17/2017 | XXII | AA004305- AA004306 |
| 88 | Order, filed 07/17/2017 | XXII | AA004307- AA004308 |
| 112 | Order, filed 01/22/2018 | XXXI | AA006196- AA006199 |
| 174 | Order, filed 10/22/2018 | XLVI | AA009302- AA009303 |
| 209 | Order, filed 03/04/2019 | L | AA010275- AA010278 |
| 71 | Order Granting Certain Relief on Motion to Enjoin Defendants From Seeking Settlement of Any Unpaid Wage Claims Involving Any Class Members Except as Part of this Lawsuit and for Other Relief, filed 02/16/2017 | XIX | AA003775- AA003776 |
| 40 | Order Granting in Part and Denying in Part Defendant's Motion for Declaratory Order Regarding Statute of Limitations, filed 12/21/2015 | VI | AA001172- AA001174 |
| 73 | Order Granting in Part and Denying in Part Plaintiffs' Motion to Have Case Reassigned to Dept I per EDCR Rule 1.60 and Designation as Complex Litigation per NRCP Rule 16.1(f), filed on 02/21/2017 | XIX | AA003781- AA003782 |
| 119 | Order Granting Plaintiffs' Motion to Appoint a Special Master, filed 02/07/2018 | XXXII | AA006386- AA006391 |
| 41 | Order Granting Plaintiffs' Motion to Certify | VI | AA001175- |

| | | | |
|-----|--|---------|-----------------------|
| | Class Action Pursuant to NRCP Rule 23(b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to Appoint a Special Master Under NRCP Rule 53, filed 02/10/2016 | | AA001190 |
| 49 | Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP Rule 23(b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to Appoint a Special Master Under NRCP Rule 52 as Amended by this Court in Response to Defendants' Motion for Reconsideration heard in Chambers on March 28, 2016, filed 06/07/2016 | VIII | AA001420- AA001435 |
| 121 | Order Modifying Court's Previous Order of February 7, 2019 Appointing a Special Master, filed 02/13/2018 | XXXII | AA006425- AA006426 |
| 211 | Order on Defendants' Motion for Reconsideration, filed 03/05/2019 | L | AA010281- AA010284 |
| 196 | Order on Motion for Dismissal of Claims on Order Shortening Time, filed 12/20/2018 | XLIX | AA009916- AA009918 |
| 124 | Pages intentionally omitted | XXXIII | AA006464- AA006680 |
| 126 | Plaintiff Jasminka Dubric's Opposition to Michael Murray and Michael Reno's Motion for Miscellaneous Relief, filed 04/23/2018 | XXXIV | AA006898- AA006914 |
| 139 | Plaintiffs Supplement in Support of Entry of Final Judgment Per Hearing Held June 5, 2018, filed 06/22/2018 | XL, XLI | AA008229- AA008293 |
| 182 | Plaintiffs' Ex Parte Motion for Temporary Restraining Order and Motion on an Order Requiring the Turnover of Certain Property of the Judgment Debtor Pursuant to NRS 21.320, filed 11/26/2018 | XLVII | AA009627- AA009646 |

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| 166 | Plaintiffs' Motion for an Award of Attorneys Fees and Costs as Per NRCPC Rule 54 and the Nevada Constitution, filed 10/12/2018 | XLV | AA009143- AA009167 |
| 165 | Plaintiffs' Motion for an Order Granting a Judgment Debtor Examination and for Other Relief, filed 10/05/2018 | XLV | AA009133- AA009142 |
| 65 | Plaintiffs' Motion on OST to Expedite Issuance of Order Granting Motion Filed on 10/14/2016 to Enjoin Defendants from Seeking Settlement of Any Unpaid Wage Claims Involving any Class Members Except as Part of this Lawsuit and for Other Relief and for Sanctions, filed 02/03/2017 | XVII, XVIII | AA003194- AA003548 |
| 125 | Plaintiffs' Motion on OST to Lift Stay, Hold Defendants in Contempt, Strike Their Answer, Grant Partial Summary Judgment, Direct a Prove Up Hearing, and Coordinate Cases, filed 04/17/2018 | XXXIII, XXXIV | AA006681- AA006897 |
| 176 | Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs as Per NRCPC Rule 54 and the Nevada Constitution, filed 10/29/2018 | XLVI | AA009401- AA009413 |
| 84 | Plaintiffs' Motion to Impose Sanctions Against Defendants for Violating this Court's Order of March 9, 2017 and Compelling Compliance with that Order, filed 07/12/2017 | XXII | AA004245- AA004298 |
| 167 | Plaintiffs' Objections to Claims from Exemption from Execution and Notice of Hearing, filed 10/15/2018 | XLV | AA009168- AA009256 |
| 195 | Plaintiffs' Objections to Claims of Exemption from Execution and Notice of Hearing, filed 12/19/2018 | XLIX | AA009892- AA009915 |
| 103 | Plaintiffs' Omnibus Motion in Limine # 1- | XXVIII, | AA005565- |

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| | 25, filed 12/22/2017 | XXIV | AA005710 |
| 132 | Plaintiffs' Reply to A Cab and Nady's Opposition to Plaintiff's Motion for Miscellaneous Relief, filed 05/21/2018 | XXXV | AA007093- AA007231 |
| 97 | Plaintiffs' Reply to Defendant's Opposition to Plaintiffs' Motions for Partial Summary Judgment and to Place Evidentiary Burden on Defendants to Establish "Lower Tier" Minimum Wage and Declare NAC 608.102(2)(b) Invalid, filed 11/29/2017 | XXVI, XXVII | AA005166- AA005276 |
| 98 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Bifurcation and/or to Limit Issues for Trial Per NRCPC 42(b), filed 12/01/2017 | XXVII | AA005277- AA005369 |
| 52 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Enjoin Defendants From Seeking Settlement of any Unpaid Wage Claims Involving any Class Members Except as Part of this Lawsuit and for Other Relief, filed 11/10/2016 | VIII | AA001545- AA001586 |
| 74 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment, filed 02/22/2017 | XIX, XX | AA003783- AA003846 |
| 110 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion in Limine #1-#25, filed 01/17/2018 | XXXI | AA006118- AA006179 |
| 151 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Amend Judgment, filed 09/20/2018 | XLIII, XLIV | AA008835- AA008891 |
| 19 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Certify this Case as a Class Action Pursuant to NRCPC Rule 23 and Appoint a Special Master Pursuant to NRCPC Rule 53, filed 07/13/2018 | III | AA000447- AA000469 |

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| 180 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for an Award of Attorneys Fees and Costs as Per NRCP Rule 54 and the Nevada Constitution, filed 11/08/2018 | XLVII | AA009605-AA009613 |
| 185 | Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs as Per NRCP Rule 54 and the Nevada Constitution, filed 11/28/2018 | XLVII | AA009668-AA009674 |
| 169 | Plaintiffs' Reply to Defendants' Response to Plaintiffs' Counter-Motion for Appropriate Judgment Enforcement Relief, filed 10/16/2018 | XLV | AA009264-AA009271 |
| 68 | Plaintiffs' Reply to Defendants's Opposition to Plaintiffs' Motion on OST to Expedite Issuance of Order Granting Motion Filed on 10/14/2016 to Enjoin Defendants From Seeking Settlement of Any Unpaid Wage Claims Involving Any Class Members Except as Part of This Lawsuit and For Other Relief and for Sanctions, filed 02/10/2017 | XIX | AA003621-AA003624 |
| 128 | Plaintiffs' Reply to Jasminka Dubric's Opposition to Plaintiffs' Motion for Miscellaneous Relief, filed 04/26/2018 | XXXIV | AA006931-AA006980 |
| 45 | Plaintiffs' Response in Opposition to Defendants' Motion Seeking Reconsideration of the Court's Order Granting Class Certification, filed 03/14/2016 | VII | AA001232-AA001236 |
| 203 | Plaintiffs' Response in Opposition to Defendants' Motion to Pay Special Master on an Order Shortening Time and Counter-Motion for an Order to Turn Over Property, filed 01/30/2019 | L | AA010115-AA010200 |

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| 155 | Plaintiffs' Response in Opposition to Defendants' Motion for Reconsideration, Amendment, for New Trial and for Dismissal of Claims, filed 09/27/2018 | XLIV | AA008995-AA009008 |
| 11 | Plaintiffs' Response in Opposition to Defendants' Motion to Strike First Amended Complaint and Counter-Motion for a Default Judgment or Sanctions Pursuant to EDCR 7.60(b), filed 04/11/2013 | II | AA000202-AA000231 |
| 24 | Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss Plaintiffs' Second Claim for Relief, filed 08/28/2015 | IV | AA000651-AA000668 |
| 23 | Plaintiffs' Response in Opposition to Defendants' Motion for Declaratory Order Regarding Statute 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- |

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| | 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 Statute of Limitation and Opposition to Counter Motion for Toll of Statute of Limitations and for an Evidentiary Hearing, filed 12/28/2016 | XI | AA002179- AA002189 |

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| 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 |

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| | 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 |

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| 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 V 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:

Leon Greenberg, Esq.
Dana Sniegocki, Esq.
Leon Greenberg Professional Corporation
2965 S. Jones Blvd., Ste. E3
Las Vegas, NV 89146
Telephone: (702) 383-6085
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leongreenberg@overtimelaw.com
Dana@overtimelaw.com

Attorneys for Respondents

DATED this 5th day of August, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

1 **OFFER**

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
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 **A CAB, LLC'S OFFER OF JUDGMENT TO PLAINTIFF MICHAEL RENO**

16 Defendant A Cab, LLC, by and through its attorney of record, ESTHER C. RODRIGUEZ, ESQ.,
17 of RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRS 17.115, hereby offers to accept judgment
18 against it and in favor of Plaintiff Michael Reno in the amount of FIFTEEN THOUSAND
19 DOLLARS (\$15,000.00) as full and final settlement of this matter. Said offer is inclusive of
20 interest, costs and attorney's fees.
21

22 This offer shall not be construed as a waiver of any of Defendant's rights in this matter.
23 This offer of judgment is made solely for the purposes specified in NRCP 68 and NRS 17.115 as a
24 compromise offer of settlement only and shall not be deemed as an admission or introduced into
25 evidence at the time of trial.

26 Pursuant to NRS 17.115 and NRCP Rule 68, if this offer is not accepted within ten (10) days
27 after service, it will be deemed withdrawn. If this action is thereafter tried or arbitrated and Plaintiff
28 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.

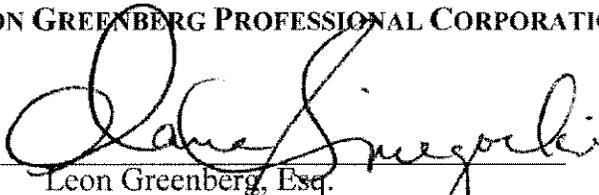
3 **RODRIGUEZ LAW OFFICES, P.C.**

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**

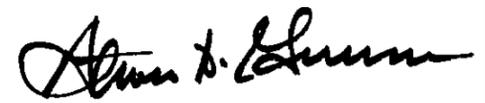
12 **RECEIPT OF COPY of A Cab, LLC'S Offer of Judgment to Plaintiff Michael Reno is**
13 hereby acknowledged this 10th day of March, 2015 by:

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*

Rodriguez Law Offices, P.C.

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CLERK OF THE COURT

1 **RSPN**
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6 Attorneys for Plaintiffs

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

| | | | |
|----|-------------------------------|---|---------------------------|
| 10 | MICHAEL MURRAY, and MICHAEL |) | Case No.: A-12-669926-C |
| | RENO, Individually and on |) | |
| 11 | behalf of others similarly |) | Dept.: I |
| | situated, |) | |
| 12 | |) | |
| | Plaintiffs, |) | RESPONSE IN OPPOSITION TO |
| 13 | |) | DEFENDANTS' MOTION TO |
| | vs. |) | DISMISS PLAINTIFFS' FIRST |
| 14 | |) | CLAIM FOR RELIEF |
| | A CAB TAXI SERVICE LLC, and A |) | |
| 15 | CAB, LLC, |) | |
| | |) | |
| 16 | Defendants. |) | |
| | |) | |
| 17 | _____ |) | |
| | |) | |

18
19 Plaintiffs, by and through their attorney, Leon Greenberg
20 Professional Corporation, submit this memorandum of points and
21 authorities in response to defendants' Motion to Dismiss Plaintiffs'
22 First Claim for Relief.

23 MEMORANDUM OF POINTS AND AUTHORITIES

24 SUMMARY OF RESPONSE

25 Defendants' argument that there is only a "Prospective Application"
26 of the *Thomas v. Yellow Cab* decision is nonsensical and has also
been rejected by the Nevada Supreme Court.

27 This Court, in its Order and Decision entered on February 11,
28 2013 (Ex. "A") found, correctly, that the plaintiffs, and Nevada
Taxi Driver employees, must be paid the minimum hourly wage

1 specified by Nevada's Constitution. This Court did not rely upon
2 some "new" rule of law that was "announced" by the Nevada Supreme
3 Court in *Thomas v. Yellow Cab* but made its own independent, and
4 correct, determination of such issue. It also denied defendants'
5 motion to reargue such decision. (Ex. "B"). Defendants are now
6 actually seeking to reargue, again, this Court's decision, which
7 never relied upon *Thomas v. Yellow Cab*, and have it apply only
8 "prospectively." Defendants present no basis for the Court to grant
9 such relief (which could only be properly presented on defendants'
10 now denied motion to reargue).

11 As discussed, *infra*, the argument that *Thomas*, which is really
12 an argument that Article 15, Section 16 of Nevada's Constitution,
13 only has "prospective" application after the June 2014 publication
14 of the *Thomas* Opinion is baseless. It has been rejected by the
15 Nevada Supreme Court and the Ninth Circuit and such argument seeks
16 to completely ignore fundamental principles underlying nearly 1000
17 years of common law jurisprudence.

18 **ARGUMENT**

19 **I. THIS COURT NEVER RELIED UPON THOMAS AND CANNOT**
20 **NOW ENTERTAIN DEFENDANTS' "PROSPECTIVE ONLY"**
21 **APPLICATION OF NEVADA'S CONSTITUTIONAL**
22 **MINIMUM WAGE AMENDMENT**

23 Amendments to Nevada's Constitution become "effective upon the
24 canvass of the votes by the supreme court." *Tovinen v. Rollins*, 560
25 P.2d 915, 916-917 (Nev. Sup. Ct. 1977). Article 15, Section 16, of
26 the Nevada Constitution, creating new minimum wage rights for
27 Nevada's employees, was enacted by the voters in the 2006 general
28 election and became effective on November 28, 2006. See, N.R.S. §
293.395(2).

1 Article 15, Section 16, of the Nevada Constitution, and all of
2 its terms, became the law of Nevada as of its effective date of
3 November 28, 2006, not on the date of the Supreme Court's Opinion in
4 *Thomas* on June 26, 2014, nor on February 11, 2013, the date on which
5 this Court issued correct decision (Ex. "A"). Plaintiffs are not
6 making any claims against defendants involving conduct occurring
7 prior to that effective date. The only "prospective application" of
8 Article 15, Section 16, of the Nevada Constitution is its
9 application *after* November 28, 2006: "As a general rule, a
10 constitutional amendment is to be given *only prospective application*
11 *from its effective date* unless the intent to make it retrospective
12 clearly appears from its terms." *Tovinen*, 560 P.2d at 917 (emphasis
13 added).

14 Nor have defendants previously argue this Court's application
15 of Article 15, Section 16, of the Nevada Constitution to the
16 plaintiffs should be "prospective only" and defendants never raised
17 that argument in its motion to reargue, which was denied (Ex. "B").
18 Defendants cannot now raise that argument.

19 **II. THE ARGUMENT THAT THOMAS ANNOUNCED A NEW "PROSPECTIVE**
20 **ONLY" RULE OF LAW HAS BEEN REJECTED BY THE NEVADA**
SUPREME COURT AND IS BASELESS

21 Upon remand in *Thomas*, it was argued that the Nevada Supreme
22 Court's *Thomas* Opinion only governed conduct taking place after its
23 publication on June 26, 2014. Judge Israel rejected that argument
24 and declined to stay *Thomas* pending the disposition by the Nevada
25 Supreme Court of the taxi driver minimum wage case of *Gilmore v.*
26 *Desert Cab.* Ex. "C." The defendants in *Thomas* subsequently filed
27 a petition for a writ of mandamus seeking to overturn that decision.
28 Ex. "D." That petition was denied as moot as a result of the

1 disposition in *Gilmore v. Desert Cab, Inc.*, Appeal No. 62905, NV.
2 Sup. Ct. Decision of April 16, 2015. Ex. "E." The Nevada Supreme
3 Court reversed and remanded *Gilmore* based upon the decision in
4 *Thomas* and in doing so declined to embrace the argument raised in
5 the *Gilmore* appeal that *Thomas* had no application to conduct taking
6 place prior to June 26, 2014, the date the *Thomas* decision was
7 issued. Ex. "F", *Gilmore* appeal disposition order, Ex. "G"
8 Respondent's Brief in *Gilmore* appeal, pages 17-27, arguing *Thomas*
9 was not applicable to conduct taking place prior to June 26, 2014.

10 The Ninth Circuit Court of Appeals has also expressly rejected
11 this argument and found *Thomas* applies to all taxi and limousine
12 drivers employed in Nevada after the Nevada Minimum Wage Amendment's
13 enactment in 2006. See, *Greene v. Executive Coach & Carriage*, 591
14 Fed Appx. 550 (9th Cir. 2015):

15 The district court erred in dismissing Greene's claim
16 under the Nevada Minimum Wage Amendment, embodied in
17 Article 15, § 16 of the Nevada
18 Constitution. See *Thomas v. Nevada Yellow Cab Corp.*, 327
19 P.3d 518, 522 (Nev. 2014) (holding that the Nevada Minimum
20 Wage Amendment, which contains no taxicab and limousine
21 exception, "supersedes and supplants the taxicab driver
22 exception set out in [Nevada Revised Statutes §]
23 608.250(2)"). Because the repeal of § 608.250(2) occurred
24 in 2006 when the amendment was ratified, we reject
25 Executive Coach and Carriage's ("Executive") retroactivity
26 argument. Greene does not allege that he is owed wages for
27 hours worked prior to 2006. We therefore reverse the
28 district court's dismissal of the minimum wage claim.

Adopting defendants' arguments, and failing to apply *Thomas's*,
and this Court's prior ruling to this case, would contravene the
fundamental principles of our system of justice and close to a
millennium of common law. Courts are required to make substantive,
and not merely future conduct, rulings about the civil legal rights
of the parties. "The general rule that judicial decisions are given

1 retroactive effect is basic in our legal tradition." See, *Newman v.*
2 *Emerson Radio Corp.*, 48 Cal. 3d 973, 978 (Cal. Sup. Ct. 1989) citing
3 *Linkletter v. Walker*, 381 U.S. 618, 622 (1965) ("At common law there
4 was no authority for the proposition that judicial decisions made
5 law only for the future", citing 1 Blackstone, Commentaries 69 (15th
6 ed. 1809)). *Thomas*, a final decision from the Nevada Supreme Court
7 on an issue of Nevada law, **is the law** and is binding upon this Court
8 in respect to all legal claims that have yet to reach final
9 judgment.

10
11 Defendants attempt to mislead the Court by citing to *Miranda v.*
12 *Arizona*, 384 U.S. 436 (1966), which deals with the prospective
13 application of new law created by *judicial decisions* on conduct
14 occurring *prior* to the rendering of such *decisions*. No such "newly
15 created judicial law" is at issue in this case. Plaintiffs make
16 claims under an amendment to the Nevada Constitution which became
17 affective **on November 28, 2006**. Such amendment was in place, and in
18 force, nearly *eight years* prior to the *Thomas* decision. Plaintiff's
19 claims only concern the defendant's conduct occurring **after** November
20 26, 2006.

21 Defendants also misrepresent the holding of cases such as
22 *County of Clark v. Roosevelt Title Ins.*, 396 P.2d 844, 846 (Nev.
23 Sup. Ct. 1964) when they argue "substantive statutes are presumed to
24 only operate prospectively." The jurisprudence defendants' cite in
25 support of this branch of their argument concern applying statutes
26 to conduct that *pre-dates the effective date of the statute!* The
27 "prospective application" doctrine in all of the cases cited by
28 defendant limited the application of such statute to conduct taking

1 place *after* the effective date of such statute. In this case the
2 only claim made is in respect to conduct taking place *after* the
3 effective date of Article 15, Section 16, of the Nevada
4 Constitution, which is November 28, 2006. No "prospective
5 application" issue is raised in this case. Defendants' contrary
6 representations to the Court are not just incorrect, they are
7 absolutely misleading and made in bad faith.

8 **CONCLUSION**

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

10 Dated this 28th day of September, 2015.

11 Leon Greenberg Professional Corporation

12
13 By: /s/ Leon Greenberg
14 LEON GREENBERG, Esq. NSB 8094
15 Attorney for Plaintiff
2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
(702) 383-6085

CERTIFICATE OF MAILING

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

RESPONSE IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS PLAINTIFFS' FIRST
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

Dana Sniegocki

EXHIBIT "A"

CLERK OF THE COURT

1 DECN

2 LEON GREENBERG, ESQ., SBN 8094
3 DANA SNIEMOCKI, ESQ., SBN 11715
4 Leon Greenberg Professional Corporation
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9 leongreenberg@overtimelaw.com
10 dana@overtimelaw.com
11 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

| | | | |
|----|-------------------------------|---|-------------------------|
| 12 | MICHAEL MURRAY, and MICHAEL |) | Case No.: A-12-669926-C |
| 13 | RENO, Individually and on |) | |
| 14 | behalf of others similarly |) | Dept.: I |
| 15 | situated, |) | |
| 16 | |) | |
| 17 | Plaintiffs, |) | |
| 18 | |) | DECISION AND ORDER |
| 19 | vs. |) | |
| 20 | |) | |
| 21 | A CAB TAXI SERVICE LLC, and A |) | |
| 22 | CAB, LLC, |) | |
| 23 | |) | |
| 24 | Defendants. |) | |

18 This matter having come before the Court on the defendants'
19 motion to dismiss plaintiffs' complaint¹ pursuant to NRCP Rules
20 12(b)(1) and 12(b)(5), such motion having come before the Court for
21 oral argument on January 17, 2012, with Esther C. Rodriguez, Esq.,
22 arguing on behalf of the defendants and Leon Greenberg, Esq.,
23 arguing on behalf of the plaintiffs, and after due consideration of
24 the arguments, briefs and papers submitted by counsel for the
25 parties, and the record of these proceedings;

26
27
28 ¹ The Complaint served in this case indicated the first named
plaintiff as Michael Murphy although the Court's docket indicates
his name is Michael Murray which is such person's correct name.
Defendants do not concede that the caption of this order is proper.

1 THE COURT FINDS:

2 Summary of Plaintiffs' Claims and the Parties' Dispute

3 Plaintiffs allege they were formerly employed by defendants as
4 taxi cab drivers. They allege when they were so employed the
5 defendants were obligated to pay them a minimum wage as provided for
6 under Nevada's Constitution Article 15, Section 16 ("Section 16").
7 They further allege they were not paid such minimum wage. As a
8 result, they allege they are entitled to damages and other
9 relief as provided for by Section 16 and certain penalties
10 pursuant to NRS § 608.040. Defendants claim Section 16 does not
11 confer any right to a minimum wage upon taxi drivers and moves
12 to dismiss on that basis.

13 Discussion

14 The Court's decision ultimately rests upon the supremacy
15 of Nevada's Constitution in all matters of law not otherwise
16 controlled by federal law or the United States Constitution.
17 The very first sentence of Section 16, in paragraph "A,"
18 provides:

19 Each employer shall pay a wage to each employee of not
20 less than the hourly rates set forth in this section.

21 This language is clear, direct and unambiguous.

22 Accordingly, the Court's inquiry is limited to determining
23 whether the parties are "employer" and "employee" for the
24 purposes of Section 16. Defendants assert Section 16 was
25 intended only to raise the minimum wage and not disturb the
26 exemptions to Nevada's minimum wage requirements in Nevada
27 Revised Statutes 608.250(2). In resolving such assertion the
28 starting point for the Court must, of course, be the language

1 of Section 16 itself. In Section 16, paragraph "C," the
2 following definition of "employee" is provided:

3 As used in this section, "employee" means any person who
4 is employed by an employer as defined herein but does not
5 include an employee who is under eighteen (18) years of
6 age, employed by a nonprofit organization for after school
or summer employment or as a trainee for a period not
longer than ninety (90) days.

7 Again, this language is clear, direct and unambiguous.
8 Through such language Section 16 extends its minimum wage
9 requirements to all employees except those set forth in paragraph
10 "C." Such paragraph "C" does not include taxi drivers among the
11 employees excluded from the reach of Section 16.

12 Defendants argue that Section 16 makes no mention of the
13 exemptions in Nevada Revised Statutes 608.250(2) and implied repeal
14 occurs only when there is irreconcilable repugnancy between the two
15 laws compelling the conclusion that the later enactment necessarily
16 repeals the earlier. They further argue where express terms of
17 repeal are not used, the presumption is always against an intention
18 to impliedly repeal an earlier statute. In support of these
19 contentions they cite *Washington v. State*, 30 P.3d 1134, 1170 (Sup
20 Ct. Nev. 2001), *Mengelkamp v. List*, 501 P.2d 1032, 1034 (Sup. Ct.
21 Nev. 1972), and the authorities discussed therein. Accordingly, in
22 defendants' view, this Court must find that the two laws can exist
23 and be read in harmony; and Section 16 did not supplant the
24 exemptions specified in Nevada Revised Statute 608.250(2).

25 Unfortunately for defendants, the foregoing clear and
26 unambiguous language of Section 16, paragraph "A," and the clear and
27 unambiguous language of paragraph "C" setting forth who is an
28 "employee" for the purposes of Section 16, renders the Court unable

1 to conduct the intent analysis urged by defendants and reach the
2 disposition they desire.

3 An examination of the intent or purpose behind a constitutional
4 provision is only proper when ambiguity exists in the language of
5 the provision. If there is no ambiguity the provision must be
6 applied in accordance with its plain meaning. See, *Halverson v.*
7 *Miller* 186 P.3d 893, 897 (Nev. Sup. Ct. 2008); *Nevadans for Nevada*
8 *v. Beers*, 142 P.3d 339, 347 (Nev. Sup. Ct. 2006); and *Rogers v.*
9 *Heller*, 18 P.3d 1034, 1038, n. 17 (Nev. Sup. Ct. 2001). The Court
10 discerns no ambiguity in the language of Section 16 and none has
11 been brought to its attention by defendants. Under such
12 circumstances, for the Court to engage in an analysis of the intent
13 behind Section 16, and by doing so override its express, clear, and
14 unambiguous language, would be antithetical to our system of
15 constitutional law. The people of the State of Nevada, through the
16 democratic process, have made Section 16 the supreme law of the
17 State of Nevada by placing its provisions in Nevada's Constitution.
18 This Court is duty bound to enforce Section 16 and its clear
19 language.

20 The provisions of NRS 608.250(2) make no mention of Section 16
21 and speak only of providing an exemption to the requirements set
22 forth in NRS 608.250(1). Nor does Section 16 grant the legislature
23 the power to modify any of its requirements. Section 16, being a
24 constitutional provision not subject to legislative modification,
25 must displace any conflicting statute. Accordingly, the provisions
26 of NRS 608.250 are not controlling upon plaintiffs' claims brought
27 under Section 16.

28 In reaching its decision, the Court acknowledges it has been

1 advised of the contrary conclusion rendered in the opinion issued by
2 United States District Court Judge Jones in *Lucas v. Bell*
3 *Transportation*, 2009 U.S. Dist. LEXIS 72549, (D. Nev. June 23, 2009).
4 It has also been made aware that the holding of *Lucas* has been
5 adopted by two of the judges of this Court.² With all due respect
6 to its judicial brethren, this Court must decline to follow *Lucas*
7 which this Court believes has not appropriately recognized, and
8 respected, the clear language and primacy of Section 16.

9 The Court realizes application of Section 16 to the defendants,
10 and its industry, represents a significant change for how such
11 employers must conduct business. The Court is effectuating such
12 change because it is required to do so, it passes no judgment on the
13 wisdom of such change. [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 **Conclusion**

19 Defendants' motion to dismiss pursuant to NRCP Rules 12(b)(1)
20 and 12(b)(5) is denied.

21
22 IT IS SO ORDERED this 8 day of Jul, 2013

23
24 
25 _____
26 HONORABLE JUDGE KENNETH CORY
27 DISTRICT COURT, CLARK COUNTY
ER

28 ² See, *Thomas v. Nevada Yellow Cab*, A-12-661726-C, August 30,
2012 and *Gilmore v. Desert Cab*, A-12-668502-C.

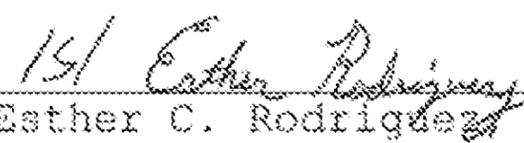
1 Submitted by:

2 LEON GREENBERG PROFESSIONAL CORP.

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10 Esther C. Rodriguez Esq.
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Attorney for the Defendants

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EXHIBIT "B"

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ORDER
LEON GREENBERG, ESQ., SBN 8094
DANA SNIEGOCKI, ESQ., SBN 11715
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY, and MICHAEL) Case No.: A-12-669926-C
RENO, Individually and on)
behalf of others similarly) Dept.: I
situated,)
)
Plaintiffs,)
)
vs.) **ORDER**
)
A CAB TAXI SERVICE LLC, and A)
CAB, LLC,)
)
Defendants.)

This matter having come before the Court on the defendants' motion for reconsideration of the Court's February 11, 2013 Order denying defendants' motion to dismiss the plaintiffs' complaint pursuant to Rules 12(b)(1) and 12(b)(5), such motion having been filed with the Court on February 27, 2013, and after due consideration of the briefs and papers submitted by counsel for the parties, and the record of these proceedings;

///
///
///
///
///

1 IT IS HEREBY ORDERED:

2 Defendants' motion for reconsideration of the Court's February
3 11, 2013 Order denying defendants' motion to dismiss the plaintiffs'
4 complaint pursuant to Nev. R. Civ. P. 12(b)(1) and 12(b)(5) is
5 DENIED.

6

7 IT IS SO ORDERED this 30 day of April, 2013

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9


HONORABLE JUDGE KENNETH CORY
DISTRICT COURT, CLARK COUNTY
2K

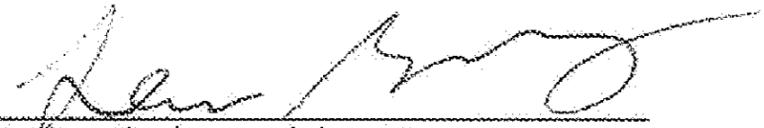
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12 Submitted by:

13 LEON GREENBERG PROFESSIONAL CORP.

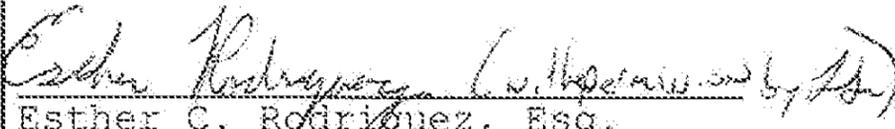
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26

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28

EXHIBIT "C"

1 **ORDR**

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12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

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

17 Plaintiffs,

18 vs.

19 NEVADA YELLOW CAB CORPORATION,
20 NEVADA CHECKER CAB CORPORATION,
21 and NEVADA STAR CAB CORPORATION,

22 Defendants.

CASE NO. A-12-661726

DEPT. NO. XXVIII

Hearing Date: February 10, 2015
Hearing Time: 9:00 a.m.

23 **ORDER DENYING DEFENDANTS' MOTION TO DISMISS**

24 Defendants filed their Motion to Dismiss Pursuant to NRCP 12(b)(5) on January 6, 2015.
25 Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss was filed on January 23, 2015. On
26 January 27, 2015, Plaintiffs filed a "Supplement to Plaintiffs' Response In Opposition To Defendants'
27 Motion To Dismiss Consisting of Newly Issued Authority." Defendants thereafter filed their Reply to
28 Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss on February 6, 2015. Such Reply
also sought a stay of all proceedings in this case until the Nevada Supreme Court rendered a decision in

1 the case of Gilmore v. Desert Cab, Inc., Supreme Court No. 62905, currently pending before the Nevada
2 Supreme Court. This matter, having come before the Court for hearing on February 10, 2015, with
3 appearances by Tamer B. Botros, Esq., on behalf of all Defendants, and Leon Greenberg, Esq., on behalf
4 of all Plaintiffs, and following the arguments of such counsel, and after due consideration of the parties'
5 respective briefs, and all pleadings and papers on file herein, and good cause appearing, therefore

7 **IT IS HEREBY ORDERED:**

8 Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5) is **DENIED** in its entirety. The legal
9 argument put forth in Defendants' Motion to Dismiss that the Nevada Supreme Court's Opinion in the
10 appeal in this case was not intended to have retroactive application to conduct pre-dating that Opinion is
11 rejected. This Court does not view the actions of the Nevada Supreme Court in this case as supporting
12 such argument. Defendants to file an Answer to the First Amended Complaint within 10 days of notice
13 of entry of this order being electronically filed. Defendants' request to stay all proceedings in this case
14 until the Nevada Supreme Court issues a decision in Gilmore v. Desert Cab, Inc., Supreme Court No.
15 62905 is also **DENIED**.

18 **IT IS SO ORDERED.**

19 Dated this 24 ^{March} day of ~~February~~, 2015.

20 
21 Hon. Ronald J. Israel
22 District Court Judge

23 Submitted: 
24 By: Dana Sniegocki
25 Leon Greenberg, Esq.
26 Dana Sniegocki, Esq.
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Attorney for Plaintiffs

Approved as to form and content:

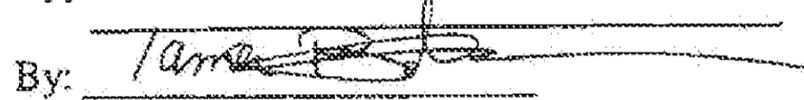
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Tamer B. Botros, Esq.
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5225 W. Post Road
Las Vegas, Nevada 89118
Attorneys for Defendants

EXHIBIT "D"

IN THE SUPREME COURT OF NEVADA

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

Petitioners,)

vs.)

THE EIGHTH JUDICIAL DISTRICT)
COURT of the State of Nevada, in and)
For the County of Clark, and THE)
HONORABLE RONALD J. ISRAEL)
District Judge,)

Respondents,)

and)

CHRISTOPHER THOMAS, and)
CHRISTOPHER CRAIG,)

Real parties in interest.)

.....)

Electronically Filed
Mar 30 2015 10:34 a.m.
Tracie K. Lindeman
Sup. Ct. No. Clerk of Supreme Court
Case No.: A-12-661726-C

Dept. No.: XXVIII

PETITION FOR WRIT OF MANDAMUS

MARC C. GORDON, ESQ.
Nevada Bar No. 001866
TAMER B. BOTROS, ESQ.
Nevada Bar No. 012183
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NEVADA STAR CAB CORPORATION

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TABLE OF CONTENTS

RELIEF REQUESTED BY PETITIONERS4

ISSUE PRESENTED4

STATEMENT OF FACTS.....4

STATEMENT OF REASONING FOR THE ISSUANCE OF A WRIT.....6

CONCLUSION.....9

TABLE OF AUTHORITIES

1
2
3
4
5
6
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10
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12
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15
16
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NRS 34.160.....6

NRAP 8.....6

**MAHEU V. EIGHTH JUDICIAL DISTRICT, 88 NEV. 26, 493 P.2D 709, AT
725 (1972).....7**

MIKULICH V. CARNER, 68 NEV. 161, 168, 228 P.2D 257, AT 260 (1951)....7

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I.

RELIEF REQUESTED BY PETITIONERS

An Order directing District Court Judge Ronald J. Israel to stay the Thomas vs. Nevada Yellow Cab Corporation, et.al. matter until this Honorable Court renders a decision in the Barbara Gilmore vs. Desert Cab, Inc., matter, Supreme Court No. 62905, Clark County District Court Case No. A-12-668502-C.

II.

ISSUE PRESENTED

Is there a common question of law currently pending before this Honorable Court in the matter of Barbara Gilmore vs. Desert Cab, Inc., Supreme Court No. 62905, Clark County District Court Case No. A-12-668502-C, that warrants a stay of the entirety of the Thomas vs. Nevada Yellow Cab Corporation, et.al. case in Clark County District Court Case No. A-12-661726-C?

III.

STATEMENT OF FACTS

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

1 4. Petitioners recently discovered that the Barbara Gilmore vs. Desert Cab,
2 Inc., case, Supreme Court No. 62905, Clark County District Court Case
3 No. A-12-668502-C, has been appealed to this Honorable Court and the
4 Appellant is seeking to have this Honorable Court rule that the Thomas
5 decision applies retroactively. See Petitioners' Appendix **PA067-144.**

6
7
8 5. On February 6, 2015, Petitioners filed a Reply and provided evidence of
9 the recently discovered Barbara Gilmore vs. Desert Cab, Inc., matter and
10 requested that the Honorable Judge Ronald J. Israel stay the entirety of the
11 Thomas matter until this Honorable Court renders a decision in the Gilmore
12 matter, because there is a common question of law currently pending
13 before this Honorable Court regarding whether the Thomas decision on
14 June 26, 2014 applies retroactively or prospectively. See Petitioners'
15 Appendix **PA067-144.**

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18 6. On February 10, 2015, the Honorable Judge Ronald J. Israel denied the
19 Request for Stay and the Motion to Dismiss. See Petitioners' Appendix
20 **PA145-146.**

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IV.

STATEMENT OF REASONING FOR THE ISSUANCE OF A WRIT

A Writ of Mandamus is available “to compel the performance of an act that the law requires as a duty resulting from an ‘office, trust or station’ or to control an arbitrary or capricious exercise of discretion.” NRS 34.160.

Nevada Rules of Appellate Procedure Rule 8 states in pertinent part:

(a) Motion for Stay.

(1) Initial Motion in the District Court. A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of, or proceedings in, a district court pending appeal or resolution of a petition to the Supreme Court for an extraordinary writ;

(2) Motion in the Supreme Court; Conditions on Relief. A motion for the relief mentioned in Rule 8(a)(1) may be made to the Supreme Court or to one of its justices.

(A) The motion shall:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion shall also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule shall be filed with the clerk and normally will be considered by a panel of the court. But in an

1 exceptional case in which time constraints make that procedure
2 impracticable, the motion may be considered by a single justice.
3 (E) The court may condition relief on a party's filing a bond or
4 other appropriate security in the district court.

5 On February 10, 2015, the Honorable Judge Ronald J. Israel denied the
6 Request for Stay and the Motion to Dismiss. Under NRAP 8(2)(A)(ii), Petitioners
7 were not afforded with the relief requested in District Court, which was to stay the
8 Thomas matter until this Honorable Court renders its decision in the Gilmore
9 matter. The issue of whether the Thomas decision applies retroactively or
10 prospectively is currently before this Honorable Court in Barbara Gilmore vs.
11 Desert Cab, Inc. As stated in Maheu v. Eighth Judicial District, 88 Nev. 26, 493
12 P.2d 709, at 725 (1972) (quoting Landis v. North American Co., 299 U.S. 248,
13 254-55 (1936))

14 The power to stay proceedings is incidental to the power inherent in
15 every court to control the disposition of the causes on its docket with
16 the economy of time and effort for itself, for counsel, and for litigants.

17 Also, according to Mikulich v. Carner, 68 Nev. 161, 168, 228 P.2d 257, at 260
18 (1951), when actions with common questions of law or fact are pending, Nevada
19 courts can make "orders concerning the proceedings to avoid delay or unnecessary
20 costs."
21

22 In this case, Petitioners recently discovered that the Gilmore matter involves
23 a common question of law, which was briefed in Petitioners' Motion to Dismiss
24 regarding whether the Thomas decision applies retroactively or prospectively from
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1 June 26, 2014. The question of whether the Thomas decision applies retroactively
2 or prospectively is a common question of law currently pending before this
3 Honorable Court. In the Gilmore matter, Appellant's Opening Brief contains a
4 specific section titled, "This Court Should Expressly Advise The District Court
5 That The Holding In Thomas v. Nevada Yellow Cab Corporation Is Not Limited
6 To Conduct Taking Place After June 26, 2014," and argues in the Brief that the
7 Thomas decision should apply retroactively. See Petitioners' Appendix PA079-
8 084. In light of the current circumstances, the Thomas case must be stayed in its
9 entirety, since Petitioners provided clear and convincing evidence in their Reply
10 that a common question of law is present in the Gilmore matter which is currently
11 before this Honorable Court. See Petitioners' Appendix PA069. To conserve
12 judicial resources and unnecessary costs since the Gilmore matter is currently
13 before this Honorable Court, and it involves a common question of law,
14
15 Petitioners are respectfully requesting that this Honorable Court issue an Order
16 directing District Court Judge Ronald J. Israel to **stay the entirety of the Thomas**
17 **case**, until this Honorable Court renders a decision on whether the Thomas
18 decision applies retroactively or prospectively.
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V.

CONCLUSION

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

DATED this 27th day of March, 2015.

YELLOW CHECKER STAR
TRANSPORTATION CO. LEGAL DEPT.

/s/ Tamer B. Botros

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GENERAL COUNSEL
Nevada Bar No. 001866
TAMER B. BOTROS, ESQ.
ASSOCIATE COUNSEL
Nevada Bar No. 012183
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Attorneys for Petitioners

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

2
3 I hereby certify that this Petition complies with the formatting requirements
4 of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
5 requirements of NRAP 32(a)(6) because this brief has been prepared in a
6 proportionally spaced type face using 14 point Times New Roman typeface in
7 Microsoft Word 2013.
8

9
10 I further certify that this Petition complies with the page-or type volume
11 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by
12 NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or
13 more and contains 1,699 words.
14

15 Finally, I hereby certify that I have read this Petition, and to the best of my
16 knowledge, information, and belief, it is not frivolous or interposed for any
17 improper purpose. I further certify that this Petition complies with all applicable
18 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires
19 every assertion in the brief regarding matters in the record to be supported by a
20 reference to the page and volume number, if any, of the transcript or appendix
21 where the matter relied on is to be found.
22
23
24

25 ///

26 ///

27 ///

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

5 DATED this 27th day of March, 2015.

6 YELLOW CHECKER STAR
7 TRANSPORTATION CO. LEGAL DEPT.

8 /s/ Tamer B. Botros

9 MARC C. GORDON, ESQ.
10 GENERAL COUNSEL
11 Nevada Bar No. 001866
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CERTIFICATE OF SERVICE

The undersigned certifies that on March 27th, 2015, service of the foregoing, **PETITION FOR WRIT OF MANDAMUS and PETITIONERS' APPENDIX** was made by depositing same in the U.S. mail, first class postage, prepaid, addressed as follows:

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CHRISTOPHER THOMAS
CHRISTOPHER CRAIG

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

/s/ Sheila Robertson

For Yellow Checker Star
Transportation Co. Legal Dept.

EXHIBIT "E"

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK;
AND THE HONORABLE RONALD J.
ISRAEL, DISTRICT JUDGE,

Respondents,

and

CHRISTOPHER THOMAS; AND

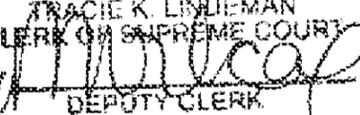
CHRISTOPHER CRAIG,

Real Parties in Interest.

No. 67664

FILED

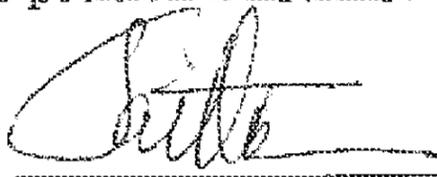
APR 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

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

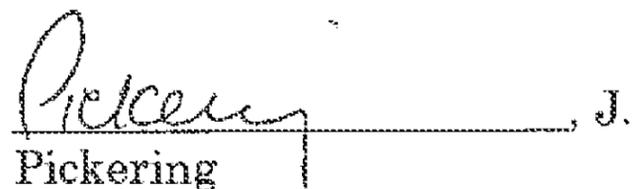
ORDER the petition DENIED.

 _____, J.

Saitta

 _____, J.

Gibbons

 _____, J.

Pickering

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

EXHIBIT "F"

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARBARA GILMORE, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,
Appellant,
vs.
DESERT CAB, INC.,
Respondent.

No. 62905

FILED

APR 16 2015

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a class action for minimum wages. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

The Minimum Wage Amendment to the Nevada Constitution, Nev. Const. art. 15, § 16, implicitly repealed NRS 608.250(2)(e)'s exception for taxicab drivers. *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. ___, 327 P.3d 518 (2014). Therefore, appellant taxicab driver stated a viable claim for minimum wages, and we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for further proceedings.¹

[Signature]
_____, J.

Saitta

[Signature]
_____, J.

Gibbons

[Signature]
_____, J.

Pickering

¹We have considered the parties' arguments on appeal, and we decline to further address them.

cc: Hon. Douglas W. Herndon, District Judge
Leon Greenberg Professional Corporation
Moran Law Firm, LLC
Eighth District Court Clerk

EXHIBIT "G"

TABLE OF CONTENTS

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

Table of Authorities iii

I. Jurisdictional Statement 1

II. Issues Presented 1

III. Combined Statement of the Case and Facts 1

IV. Standard of Review 4

V. Summary of the Argument 4

VI. Argument 7

 A. The District Court’s Decision Is Not Identical
 and Need Not Be Reversed In Light of This Court’s
 Opinion in *Thomas v. Nevada Yellow Cab
 Corporation*..... 7

 B. Appellant Is Precluded by Nevada Law from Seeking
 an “Advisement” From the Court and From Arguing
 That the Holding in *Thomas v. Nevada Yellow Cab
 Corporation* Is Not Limited to Conduct Taking Place
 After June 26, 2014..... 11

 C. The Nevada’s Supreme Court Decision in *Thomas v.
 Nevada Yellow Cab Corporation* Expressly Limits
 Conduct Taking Place After June 26, 2014..... 17

VII. Conclusion 27

VIII. Certificate of Compliance

TABLE OF AUTHORITIES

I. Cases:

1. Edwards v. Emperor's Garden Restaurant,
122 Nev. 317, 330, n.38, 130 P.3d 1280, 1288, n.38 (2006)..... 13
2. Hansen v. Harrah's,
100 Nev. 60, 62-65, 675 P.2d 394, 396-98 (1984) 21-27
3. Heidt v. Heidt,
108 Nev. 1009, 1011, 842 P.2d 723, 725(1992)..... 12
4. Kahn v. Morse & Mowbray,
121 Nev. 464, 480, n.24, 117 P.3d 227, 238, n.24 (2005) 12
5. Mengelkamp v. List,
88 Nev. 542, 545-46, 501 P.2d 1032, 1034 (1972)7-9
6. Peot v. Peot,
92 Nev. 338, 390, 551 P.2d 242, 244 (1976)12
7. Pack v. LaTourette, 128 Nev. Adv. Rep. 25 * 5-6,
2773d 1246, 1248 (May 31, 2012)4
8. Thomas v. Nevada Yellow Cab Corporation,
130 Nev. Adv. Op. 52 *2-9, 327 P.3d 518, 519-22
(June 26, 2014) 4-12, 15-26
9. State of Washington v. Bagley,
114v. 788, 792, 963 P.2d 498, 501 (1998)..... 12
10. United States v. Jackson,
480 F.3d 1014, 1019 (9th Cir. 2007) 20

II. Nevada Constitution:

1. Article 15, Section 162, 7, 15

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III. Nevada Revised Statutes:

1. NRS 218.0108
2. NRS 608.0202, 10
3. NRS 608.0302, 10
4. NRS 608.0402, 10
5. NRS 608.2503, 19

IV. Nevada Rules of Appellate Procedure:

1. NRAP 3(A)(a)3
2. NRAP 28(a)(9)13
3. NRAP 303

V. Nevada Rules of Civil Procedure:

1. N.R.C.P. 12(b)(5)3

1 C. The Nevada's Supreme Court Decision in *Thomas v. Nevada Yellow*
2 *Cab Corporation* Expressly Limits Conduct Taking Place After June
3 26, 2014.

4 Notwithstanding the above and in the event that this Court elects to consider
5 Appellant's self-concocted "Second" Issue on Appeal, Appellant does not
6 demonstrate the absence of an issue of retroactivity as concluded in Appellant's
7 Opening Brief.⁷⁴ Specifically, Appellant first contends in her Opening Brief that
8 this matter does not present "any retroactive application of law" since Nevada's
9 Minimum Wage Amendment became effective on November 28, 2006, or the
10 date that the Nevada Supreme Court canvassed the votes.⁷⁵ Therefore, Appellant
11 incorrectly concludes that no issue remains regarding the retroactive application
12 of the Court's decision in *Thomas*, which impliedly repealed *NRS 608.250*.⁷⁶
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16 As is the case with Appellant's entire argument on this issue, neither *Thomas*
17 nor this matter ever raised the issue or challenged in any way the effective date of
18 Nevada's Minimum Wage Amendment.⁷⁷ More importantly, the Court in
19 *Thomas* considered only a single issue - whether Nevada's Minimum Wage
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26 ⁷⁴ See Appellant's Opening Brief at 6.

27 ⁷⁵ See *Id.*

28 ⁷⁶ See *Id.*

⁷⁷ See 130 Nev. Adv. Op. 52. See generally, also, Respondent's Appendix at 1-13.

1 Amendment repealed the taxi drivers exception as provided in *NRS*
2 *608.250(2)(e)*.⁷⁸

3
4 Contrary to Appellant's Opening Brief, the Court in *Thomas* expressly
5 recognized the simultaneous existence of Nevada's Minimum Wage Amendment
6 and the prior enacted exception for taxi drivers to Nevada minimum wage laws as
7 expressed in *NRS 608.250(2)(e)*.⁷⁹ Thus, prior to the Court's decision in *Thomas*,
8 employers of taxicab drivers were lawfully permitted not to pay Nevada's
9 minimum wage pursuant to *NRS 608.250(2)(e)*.
10
11

12 Only the Court's analysis in *Thomas* determined that these two (2) laws could
13 no longer coexist (*i.e.*, be harmonized), since Nevada's Minimum Wage
14 Amendment failed to identify taxicab drivers as a specific exception to the new
15 definition of "employee" prescribed by Nevada's Minimum Wage Amendment.⁸⁰
16
17 Therefore, the Court held that *NRS 608.250(2)(e)* was "irreconcilably repugnant"
18 to Nevada's Minimum Wage Amendment.⁸¹ Consequently, this Court in *Thomas*
19 held that the constitutional supremacy of Nevada's Minimum Wage Amendment
20 required the implied repeal of *NRS 608.250(2)(e)* and therefore, Nevada's
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26 ⁷⁸ See, *130 Adv. Op. 52 at *3-6*.

27 ⁷⁹ See *Id.*

28 ⁸⁰ See *Id. at *9*.

⁸¹ *Id. at *6*.

1 Minimum Wage Amendment “supersedes and supplants” the taxi drivers
2 exception provided by *NRS 608.250(2)(e)*.⁸²

3
4 Never did this Court in *Thomas* declare that *NRS 608.250(2)(e)* did not exist
5 prior to or because of Nevada’s Minimum Wage Amendment.⁸³ Never did this
6 Court in *Thomas* declare that implied repeal of *NRS 608.250(2)(e)* retroactively
7 applied to the effective date of Nevada’s Minimum Wage Amendment.⁸⁴

8
9 Instead, the implied repeal of *NRS 608.250(2)(e)* was accomplished only by
10 the Nevada’s Supreme Court holding in *Thomas* and not by the effectuation of
11 Nevada’s Minimum Wage Amendment.⁸⁵ As such, both existed side by side until
12 *Thomas*, wherein the Court held that Nevada’s Minimum Wage Amendment
13 impliedly repealed *NRS 608.250(2)(e)*.⁸⁶

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16 The Court’s use of the present tense in *Thomas* in two (2) distinct instances
17 cements the reality that the implied repeal of *NRS 608.250(2)(e)* was never
18 intended to occur from the effective date of Nevada’s Minimum Wage
19 Amendment. First, in determining that *NRS 608.250(2)(e)* was “irreconcilably
20 repugnant” to Nevada’s Minimum Wage Amendment, the Court expressly stated
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25 ⁸² *Id.* at *9.

26 ⁸³ *Id.* at *6-9.

27 ⁸⁴ *See Id.*

28 ⁸⁵ *Id.* at *9 (“supersedes and supplants the taxicab drivers exception set out in
NRS 608.250(2)”).

⁸⁶ *See Id.*

1 in *Thomas* that *NRS 608.250(2)(e)* “is impliedly repealed.”⁸⁷ In other words, the
2 Court, using the present tense statement “is impliedly repealed,” appropriately
3 concluded and declared that going forward from its decision in *Thomas*, *NRS*
4 *608.250(2)(e)* could no longer be used by employers of taxi drivers to avoid
5 paying Nevada’s minimum wage.⁸⁸ Any other ruling would unjustly penalize an
6 entire industry and possibly lead to calamitous results for some of the cab
7 companies.
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9

10 Had the Court, which it was free to do, made use of the past tense statement,
11 “was impliedly repealed,” then the Court would have indicated that it deemed
12 *NRS 608.250(2)(e)* repealed as of the effective date of Nevada’s Minimum Wage
13 Amendment. The Court in *Thomas* made no such past tense statement.⁸⁹
14
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16 Second, the Court in *Thomas* declared, “the Minimum Wage Amendment, by
17 enumerating specific exceptions that do not include taxi drivers, supersedes and
18 supplants the taxicab driver exception set out in *NRS 608.250(2)*.”⁹⁰ Again, the
19 Court in *Thomas* made use of the present tense plainly indicating that Nevada’s
20 Minimum Wage Amendment, prospectively from *Thomas*, “supersedes and
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25 ⁸⁷ *Id.* at *6.

26 ⁸⁸ *See Id.* *See also, e.g., United States v. Jackson, 480 F.3d 1014, 1019 (9th Cir.*
27 *2007) (use of verb tense is significant) (“words used in the present tense*
28 *include the future as well as the present”)* (citations and quotations omitted).

29 ⁸⁹ *See Id.*

⁹⁰ *Id.* at *9. (*Emphasis Added*).

1 supplants” *NRS 608.250(2)*.⁹¹ As before, the Court in *Thomas* had the ability to
2 make use of the past tense, “superseded and supplanted,” and elected instead to
3 make use of the present tense.⁹²
4

5 Appellant’s Opening Brief makes no argument regarding the Court’s use of
6 the present tense in *Thomas*.⁹³ Nonetheless, the *Thomas* Court’s election to make
7 use of the present tense plainly demonstrates the Court’s intention only to hold
8 *Thomas* and the implied repeal of *NRS 608.250(2)(e)* effective prospectively from
9 the Court’s decision rendered on July 26, 2014.⁹⁴ As such, the effective date of
10 Nevada’s Minimum Wage Amendment does not determine in any way the
11 Court’s implied repeal of *NRS 608.250(2)(e)* pursuant to *Thomas* or the date for
12 determining when the employers of taxi drivers were required to pay Nevada’s
13 minimum wage.
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18 In addition, Appellant’s reliance on the Court’s decision in *Hansen v.*
19 *Harrah’s* has no merit and the actual application of *Hansen* supports the
20 prospective application only from the date of the Court’s decision in *Thomas*.
21 Appellant’s Opening Brief declares that *Hansen* somehow “illustrates the
22 complete fallaciousness of the claim that *Thomas* has no application” to conduct
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26 ⁹¹ *See Id.*

27 ⁹² *Id.*

28 ⁹³ *See generally, Appellant’s Opening Brief.*

⁹⁴ *See supra.*

1 that occurred prior thereto⁹⁵ However, the Court's decision in *Hansen* is
2 distinguishable and in fact supportive of such a claim. In *Hansen*, the Court first
3 considered "whether Nevada should adopt the public policy exception to the at-
4 will employment rule recognizing as a proper cause of action retaliatory discharge
5 for filing a workmen's compensation claim."⁹⁶ As an exception to Nevada's
6 common law at-will employment rule, the Court in *Hansen* adopted, as a common
7 law claim in tort, a claim for retaliatory discharge for an injured person's
8 wrongful discharge in response to that injured person's filing of a worker's
9 compensation claim.⁹⁷

10 Unlike *Hansen*, neither *Thomas* nor this matter is concerned with the
11 application of Nevada's common law at-will employment rules or any other
12 common law rules or claims.⁹⁸ Further, *Hansen*, unlike *Thomas*, never concerned
13 itself with the application of a decision by the Nevada Supreme Court implicitly
14 repealing a Nevada statute.⁹⁹ Instead, the Court in *Hansen* made use of its
15 exclusive power to create a common law claim in tort to support Nevada's public
16 policy of protecting injured workers.¹⁰⁰ Accordingly, the Court's decision in
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25 ⁹⁵ *Id.* at *8.

26 ⁹⁶ *Hansen v. Harrah's*, 100 Nev. 60, 62, 675 P.2d 394, 396 (1984).

27 ⁹⁷ *See Id.* at 64-65.

28 ⁹⁸ *See generally*, 130 Nev. Adv. Op. 52, and Appellant's Opening Brief at 8-9.

⁹⁹ *See*, 100 Nev. at 63-65.

¹⁰⁰ *See Id.* at 64-65.

1 *Hansen* to create a new common law claim in tort for retaliatory discharge has no
2 application or influence on the application of the Court's decision in *Thomas*
3 implicitly repealing *NRS 608.250* because of Nevada's Minimum Wage
4 Amendment.
5

6 Appellant also contends that the Court in *Hansen* "imposed a current liability"
7 on the employer in *Hansen* based on that employer's "prior conduct" even though
8 the employers in *Hansen* had no advance notice of the newly created common
9 law claim for retaliatory discharge.¹⁰¹ Appellant's declaration actually is contrary
10 to the Court's decision in *Hansen*.
11
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13 First, the Court in *Hansen* never imposed any liability on any party.¹⁰²
14 Instead, the Court in *Hansen*, after creating an entirely new common law claim in
15 tort, specifically remanded the matter to the District Court without imposing any
16 liability whatsoever on any party.¹⁰³
17
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19 Second, the Court in *Hansen* expressly considered whether punitive damages
20 were available to a party who prevails on the newly created claim for retaliatory
21 discharge.¹⁰⁴ In *Hansen*, the Court found that punitive damages were available to
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26 ¹⁰¹ *Appellant's Opening Brief at 8-9.*

27 ¹⁰² *See, 100 Nev. at 65.*

28 ¹⁰³ *See Id.*

¹⁰⁴ *See Id.*

1 a party prevailing on such a claim, but not in that case.¹⁰⁵ Although not discussed
2 in Appellant's Opening Brief, the Court in *Hansen* specifically found that the
3 imposition of punitive damages "would be unfair" since the Court determined it
4 was impossible for employers to know beforehand that their conduct was now,
5 because of *Hansen*, actionable in Nevada.¹⁰⁶ The Court in *Hansen* therefore
6 determined that these same unknowing employers could not be punished for such
7 conduct.¹⁰⁷ As such, the Court in *Hansen* expressly held that if the employees in
8 *Hansen* prevailed in trial, they still were prohibited from obtaining an award of
9 punitive damages against their employers.¹⁰⁸

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13 It is the Court's analysis of the "Second" Issue in *Hansen* that actually
14 supports the prospective application of *Thomas* only from the date of decision.
15 Like the employers in *Hansen*, Respondent, as an employer of Appellant, a
16 taxicab driver, had no knowledge prior to *Thomas* that its reliance on the taxicab
17 driver exception set out in *NRS 6082.250(2)(e)* to not pay minimum wage was no
18 longer valid.¹⁰⁹ Appellant's Opening Brief declares that Respondent had such

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26 ¹⁰⁵ *See Id.*

27 ¹⁰⁶ *Id.*

28 ¹⁰⁷ *See Id.*

29 ¹⁰⁸ *See Id.*

30 ¹⁰⁹ *See supra.*

1 “knowledge,” but fails to reference any facts or allegations demonstrating such
2 alleged knowledge.¹¹⁰

3
4 Like the employers in *Hansen*, Respondent had no possibility of knowing that
5 that taxicab driver exception to Nevada’s minimum wage laws was going to be
6 found years later, “irreconcilably repugnant” because of this Court’s decision in
7 *Thomas*.¹¹¹ To date, four (4) sessions and five (5) special sessions of Nevada’s
8 Legislature convened and closed since the 2006 enactment of Nevada’s Minimum
9 Wage Amendment.¹¹² None of those sessions enacted any law repealing *NRS*
10 *608.250* or recognized the possible conflict or “irreconcilable repugnancy” of this
11 statute in light of the passage and enactment of Nevada’s Minimum Wage
12 Amendment.
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16 Further, Nevada’s Labor Commissioner, until this Court’s decision in *Thomas*,
17 identified, recognized, and enforced all of the exceptions to Nevada’s minimum
18 wage laws as set forth in *NRS 608.250*. Finally, as recognized in Appellant’s
19 Opening Brief, at least six other District Courts, and in one instance, the United
20 States District Court for Nevada, previous to *Thomas*, held that the taxicab driver
21 exception provided by *NRS 608.250* remained enforceable despite Nevada’s
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27 ¹¹⁰ See Appellant’s Opening Brief at 6-7.

28 ¹¹¹ See *supra*.

¹¹² 74th through 77th Sessions and 23rd through 27th Special Sessions.

1 Minimum Wage Amendment.¹¹³ In other words, every branch of Nevada's
2 government recognized for nearly eight (8) years after the passage and enactment
3 of Nevada's Minimum Wage Amendment that employers of taxi drivers were still
4 exempt from paying Nevada's minimum wage. As such, it was impossible for
5 Respondent, as an employer of taxi drivers such as Appellant, to have any
6 knowledge that their alleged failure to pay Nevada's minimum was somehow
7 unlawful and actionable prior to this Court's decision in *Thomas*.¹¹⁴
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9
10 As a result, the retroactive application of the Court's decision in *Thomas*, as
11 in *Hansen*, would be completely unjust and unfair to Respondent since it was
12 impossible for Respondent to know that *NRS 608.250(2)(e)* was "irreconcilably
13 repugnant" to Nevada's Minimum Wage Amendment.¹¹⁵ Such "irreconcilable
14 repugnancy" only arose by operation of this Court's decision *Thomas*.
15
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17
18 Consequently, applying *Thomas* retroactively against Respondent, as argued
19 for by Appellant, would unjustly punish Respondent in the same manner as the
20 employers in *Hansen*. Therefore, as in *Hansen*, the Court's decision in *Thomas*
21 should not apply to Respondent so that Respondent would not be unfairly
22 punished by the Court's implied repeal of *NRS 608.250(2)(e)*.¹¹⁶
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26 ¹¹³ See Appellant's Opening Brief at 4-5.

27 ¹¹⁴ Accord, *Hansen*, 100 Nev. at 65.

28 ¹¹⁵ See *Id.*

¹¹⁶ See *Id.*

1 Thus, the Court's decision in *Hansen* fails to support Appellant's argument on
2 appeal. Further, the Court's determination in *Hansen* that it would be unfair to
3 employers to be subject to punitive damages where they had no prior indication
4 that their conduct was actionable, demonstrates the Court's willingness to
5 consider the effect of its decision on those parties, who like Respondent had
6 engaged in lawful business practices until the Court's decision to repeal.¹¹⁷
7
8

9 VII. CONCLUSION

10 Pursuant to the arguments provided above, the District Court did not error
11 in any way by granting Respondent's Motion to Dismiss Appellant's Complaint.
12 Appellant failed to provide any arguments or assignments of error on appeal that
13 concern Respondent's actual Motion to Dismiss.
14
15

16 Based upon the foregoing, Respondent respectfully requests that this
17 Honorable Court uphold the District Court's Order Granting Respondent's
18 Motion to Dismiss Appellant's Complaint.
19

20 DATED this 1st day of December, 2014,
21

22 /s/Jeffery A. Bendavid

23 JEFFERY A. BENDAVID, ESQ.

24 Nevada Bar No. 6220

25 MORAN BRANDON BENDAVID MORAN

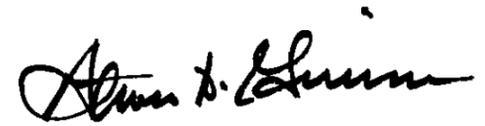
26 630 South 4th Street

27 Las Vegas, Nevada 89101

(702) 384-8424

Attorney for Respondent

28 ¹¹⁷ *See Id.*



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
9 *Attorneys for Defendants*

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, A CAB, LLC, and
14 CREIGHTON J. NADY,

15 Defendants.

16
17 **DEFENDANT CREIGHTON J. NADY'S ANSWER**
18 **TO SECOND AMENDED COMPLAINT**

19 Defendant CREIGHTON J. NADY ("Defendant"), by and through his attorney of record,
20 ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., pursuant to NRCP Rule 12,
21 and as his Answer to Plaintiffs' Second Amended Complaint on file herein ("Complaint"), admits,
22 denies and alleges as follows:

23 **JURISDICTION, PARTIES AND PRELIMINARY STATEMENT**

24 1. Answering Paragraph 1 of the Complaint, Defendant is without sufficient
25 information or knowledge to form a belief as to the truth of such allegations, and therefore denies
26 the same. Defendant denies the allegation that Plaintiffs are current employees.

27 2. Answering Paragraph 2 of the Complaint, Defendant admits A Cab, LLC is a
28 Nevada Series Limited Liability Company doing business in the County of Clark, State of Nevada,

1 as a taxicab company.

2 3. Answering Paragraphs 3 and 4 of the Complaint, Defendant admits he is the sole and
3 managing member of A Cab, LLC. To the extent these paragraphs contain any other factual
4 allegations requiring a response, Defendant denies same.

5 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

28 10. Answering Paragraphs 23, 24, 25, and 26 of the Complaint, Defendant asserts 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.

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

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

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

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

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

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

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

18 **PRAYER FOR RELIEF**

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

21 **AFFIRMATIVE DEFENSES**

22 **FIRST AFFIRMATIVE DEFENSE**

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

25 **SECOND AFFIRMATIVE DEFENSE**

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

28 **THIRD AFFIRMATIVE DEFENSE**

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

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

3 **FOURTH AFFIRMATIVE DEFENSE**

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

6 **FIFTH AFFIRMATIVE DEFENSE**

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

9 **SIXTH AFFIRMATIVE DEFENSE**

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

13 **SEVENTH AFFIRMATIVE DEFENSE**

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

16 **EIGHTH AFFIRMATIVE DEFENSE**

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

19 **NINTH AFFIRMATIVE DEFENSE**

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

22 **TENTH AFFIRMATIVE DEFENSE**

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

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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.

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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 6th day of October, 2015.

RODRIGUEZ LAW OFFICES, P.C.

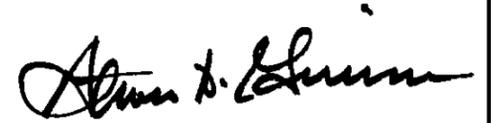
/s/ Esther C. Rodriguez, Esq.
Esther C. Rodriguez, Esq.
Nevada Bar No. 6473
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendant A Cab, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 6th day of October, 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

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

6 Attorneys for Plaintiffs

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9
10 MICHAEL MURRAY, and MICHAEL) Case No.: A-12-669926-C
RENO, Individually and on)
11 behalf of others similarly) Dept.: I
situated,)
12)
Plaintiffs,)
13 vs.) RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO
14) DISMISS AND FOR SUMMARY
JUDGMENT AGAINST
15 A CAB TAXI SERVICE LLC, and A) PLAINTIFF MICHAEL MURRAY
CAB, LLC,)
16 Defendants.)

17
18 Plaintiffs, by and through their attorney, Leon Greenberg
19 Professional Corporation, submit this memorandum of points and
20 authorities in response to defendants' Motion to Dismiss and for
21 Summary Judgment against plaintiff Michael Murray.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **SUMMARY OF RESPONSE**

24 Defendants' motion seeks dismissal, or summary judgment,
25 because (1) Murray's deposition testimony supposedly articulates a
26 claim not for minimum wages, the claim raised in the complaint, but
27 "for hours worked for which he was not paid" and over which only the
28 Nevada Labor Commissioner may assert jurisdiction; and (2) Murray
has been offered a payment (offer of judgment) in an amount

1 exceeding his damages rendering his claim "moot." Defendants cite no
2 case law, statutory language, or anything else, supporting either of
3 the claims underlying their motion. Instead they demand the Court
4 accept their assertions as controlling law.

5 A claim for unpaid minimum wages is a claim an employee worked
6 and their *total paid compensation* for the *total hours worked* during
7 the relevant period (day, week, etc.) was less than the required
8 minimum wage. An employer who pays minimum wage for some hours, and
9 then nothing for other hours, does not convert an unpaid minimum
10 wage claim into some other sort of legal claim (defendants' asserted
11 "unpaid hours" claim, whatever that is). Nor does an unaccepted
12 offer of judgment, even if for an amount far in excess of a
13 plaintiff's claim, moot a claim. The offer of judgment rules
14 provide for no such result. Nor can this case be dismissed under
15 the offer of judgment rules given its class action nature under Rule
16 23 and its request for equitable relief.

17 **ARGUMENT**

18 **I. AN UNACCEPTED OFFER OF JUDGMENT CANNOT MOOT**
19 **A PLAINTIFF'S CASE NOR CAN AN OFFER OF JUDGMENT**
20 **TERMINATE A PUTATIVE CLASS ACTION CASE, ESPECIALLY**
21 **WHEN EQUITABLE RELIEF IS SOUGHT**

22 **A. The offer of judgment rules do not allow for**
23 **the dismissal of a case when an offer of**
24 **judgment is not accepted.**

25 Defendants insist a plaintiff who has received an offer of
26 judgment in excess of the value of their claim no longer has a valid
27 claim and their case should be dismissed. While that may be
28 defendants' view of how the law *should* work, that is not the way the
offer of judgment rules *do* work. Neither NRCP 68 nor NRS 17.115
authorize the dismissal of an individual plaintiff's claim, or an

1 entire case, when an offer of judgment is *not* accepted. Of course
2 defendants cite no precedent supporting their view of how the offer
3 of judgment rule *should* work because no such precedents exist.

4 The controlling language of NRCP 68 and NRS 17.115 are
5 absolutely clear and defendants' argument on this point is
6 frivolous.

7 **B. Dismissal of this case under the offer of**
8 **judgment rules would be improper in light of**
9 **its class action nature and request for**
10 **equitable relief.**

11 Plaintiffs have had a motion pending before this Court since
12 May of 2015 to certify this case as a class action under NRCP Rule
13 23. Plaintiffs also seek class wide equitable relief to reign in
14 defendants' continuing minimum wage violations. Defendants ignore
15 that the offer of judgment rules are inapplicable to a class action
16 case, in that a class action plaintiff lacks independent power to
17 accept an "offer" and have a "judgment" entered under those rules,
18 even prior to class certification. See, NRCP Rule 23(e), requiring
19 notice to the class, and Court approval, for any dismissal of a
20 class action lawsuit. Such language has been uniformly interpreted
21 as requiring *Court approval* (and usually notice to the class) of any
22 dismissal of an alleged class action case (even prior to class
23 certification) thus rendering any automatic "judgment" entry as a
24 result of an accepted Rule 68 offer of judgment impossible. See,
25 *Doe v. Lexington-Fayette Urban County Government*, 407 F.3d 755, 762-
26 64 (6th Cir. 2005) (Discussing collected cases).¹

27 ¹ Arguably the law, in federal court class actions, has changed
28 with the amendment of FRCP Rule 23(e) to now provide that its
provisions only govern conduct of the federal court in respect to a
"certified class." NRCP Rule 23(e) has not been so amended and
retains the language of the earlier version of FRCP Rule 23(e).

1 Under Rule 23(e) the plaintiff was without authority to accept
2 defendants' offer of judgment, since he could not dismiss his case,
3 and obtain a judgment against the defendants, without Court
4 approval. That is especially true when the class relief sought by
5 the plaintiff includes equitable relief and defendants' offer of
6 judgment offered no relief (equitable or damages) to the class.

7 **II. DEFENDANTS' ASSERTION MURRAY'S CLAIM IS OUTSIDE THIS**
8 **COURT'S JURISDICTION BECAUSE IT SEEKS PAYMENT FOR**
9 **"UNPAID HOURS" IS BASELESS AND, IF ADOPTED BY THE COURT,**
10 **WOULD ALLOW EMPLOYERS TO ALWAYS STRIP THIS COURT OF**
11 **JURISDICTION OVER MINIMUM WAGE CLAIMS**

12 Defendants, through a distortion of Murray's deposition, insist
13 that Murray is only seeking payment for "unpaid" work time, not
14 minimum wages. According to defendants, this sort of "unpaid hours"
15 claim is outside the jurisdiction of this Court and can only be
16 pursued before the Nevada Labor Commissioner. Defendants offer no
17 explanation or support (such as a citation to precedent or relevant
18 statute) supporting that "no jurisdiction" conclusion.²

19 Plaintiffs' claim is for minimum wages owed under Nevada's
20 Constitution because the total compensation defendants paid to them
21 during some work shifts or pay periods was less than the minimum
22 wage required by the Constitution. Adopting defendants' argument on
23 this point would allow employers to *always* strip this Court of
24 jurisdiction over minimum wage claims as long as they paid the
25 minimum wage for at least 1 hour of work. An employer could insist
26 a worker paid only \$8.25 for a 10 hour shift was someone "with a
27 claim for unpaid hours, not minimum wages" because the employer paid

28 ² This senseless argument was raised by defendants in their
opposition to plaintiffs' motion for class certification and is
discussed in the reply in support of such motion.

1 them the minimum wage of \$8.25 an hour for 1 hour, but nothing for
2 the other 9 hours. Voilá, as if by magic, that worker's claim could
3 then only be brought to the Labor Commissioner and not to this
4 Court. Such a rule of law, beyond being patently absurd, would
5 contravene Nevada's Constitution, which expressly grants employees
6 the right to recover minimum wages in a lawsuit in this Court.

7 It should also be observed that Murray explicitly testified he
8 was asserting a claim in this case for unpaid minimum wages, not
9 some sort of "non-minimum" wages he might be owed under contract (or
10 anything else outside of this case), but that he was unsure of the
11 amount he was owed:

12 Q Okay. Well, I asked you earlier if -- if
13 you had any idea how much -- what you were claiming,
14 and I think your statement was you didn't know what you
were claiming, if anything; right?

15 A No. My statement was: I was claiming minimum wage from
16 2008 until 2011.

17 Deposition excerpt, Ex. "A."

18 **CONCLUSION**

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

20 Dated this 8th day of October, 2015.

21 Leon Greenberg Professional Corporation

22
23 By: /s/ Leon Greenberg
LEON GREENBERG, Esq. NSB 8094
24 Attorney for Plaintiff
2965 South Jones Blvd- Suite E3
25 Las Vegas, Nevada 89146
(702) 383-6085

26

27

28

CERTIFICATE OF MAILING

The undersigned certifies that on October 8, 2015, she served the within:

Response in Opposition to Defendants'
Motion to Dismiss and for Summary
Judgment Against Plaintiff Michael
Murray

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/ Sydney Saucier

Sydney Saucier

EXHIBIT "A"

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL MURRAY and MICHAEL RENO,)
Individually and on behalf of)
others similarly situated,)
)
Plaintiffs,)
)
vs.) CASE NO: A-12-669926-C
) DEPT NO: I
)
A CAB TAXI SERVICE LLC and)
A CAB, LLC,)
)
Defendants.)
_____)

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 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 you were claiming, if anything; right?

2 **A No. My statement was: I was claiming**
3 **minimum wage from 2008 until 2011.**

4 Q Okay. And do you know what that amount
5 is?

6 **A No.**

7 Q But do you -- are you able to give me your
8 best estimate?

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

11 **A No.**

12 BY MS. RODRIGUEZ:

13 Q Because you've never done any kind of
14 calculation, looking at your -- your hours or your
15 pay stubs or anything like that; right?

16 MS. SNIEGOCKI: Objection --

17 (Reporter requests clarification.)

18 MS. SNIEGOCKI: Same objection: Asked and
19 answered.

20 You can answer.

21 **A No.**

22 MS. RODRIGUEZ: Let's go off the record
23 for a second.

24 (Pause in proceedings.)

25 MS. RODRIGUEZ: Can we just see what the

1 STATE OF NEVADA)
COUNTY OF CLARK)

2

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:

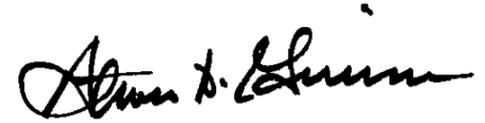
7 That I reported the taking of the deposition of
8 Michael Murray, commencing on Wednesday, August 26,
9 2015, at the hour of 1:59 p.m.; that the witness
10 was, by me, duly sworn to testify to the truth and
11 that I thereafter transcribed my said shorthand
12 notes into typewriting, and that the typewritten
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



CLERK OF THE COURT

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

6 Attorneys for Plaintiffs

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9
10 MICHAEL MURRAY, and MICHAEL) Case No.: A-12-669926-C
RENO, Individually and on)
11 behalf of others similarly) Dept.: I
situated,)
12)
Plaintiffs,)
13) RESPONSE IN OPPOSITION TO
vs.) DEFENDANTS' MOTION TO
14) DISMISS AND FOR SUMMARY
A CAB TAXI SERVICE LLC, and A) JUDGMENT AGAINST
15 CAB, LLC,) PLAINTIFF MICHAEL RENO
16)
Defendants.)

17
18 Plaintiffs, by and through their attorney, Leon Greenberg
19 Professional Corporation, submit this memorandum of points and
20 authorities in response to defendants' Motion to Dismiss and for
21 Summary Judgment against plaintiff Michael Reno.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **SUMMARY OF RESPONSE**

24 Defendants' motion seeks dismissal, or summary judgment,
25 because (1) Reno's deposition testimony, and the rest of the record
26 developed in this case, supposedly demonstrates a complete failure
27 to present any evidence of a minimum wage violation; and (2) Reno
28 has been offered a payment (offer of judgment) in an amount
exceeding his damages rendering his claim "moot." Defendants cite no

1 case law, statutory language, or anything else, supporting either of
2 the claims underlying their motion. Instead they demand the Court
3 accept their assertions as controlling law and findings of fact.

4 As demonstrated in the Ex. "A" analysis, discussed, *infra*,
5 defendants during at least one pay period, as documented **by their**
6 **own records** paid Reno only \$5.52 an hour. Defendants also fail to
7 advise there are long standing motions to compel before the
8 Discovery Commissioner. Accordingly, summary judgment cannot be
9 granted as to Reno's claim (even if this case was ripe for summary
10 judgment, which it is not). Nor does an unaccepted offer of
11 judgment, even if for an amount far in excess of a plaintiff's
12 claim, moot a claim. The offer of judgment rules provide for no
13 such result. Nor can this case be dismissed under the offer of
14 judgment rules given its class action nature under Rule 23 and its
15 request for equitable relief.

16 ARGUMENT

17 I. AN UNACCEPTED OFFER OF JUDGMENT CANNOT MOOT 18 A PLAINTIFF'S CASE NOR CAN AN OFFER OF JUDGMENT 19 TERMINATE A PUTATIVE CLASS ACTION CASE, ESPECIALLY 20 WHEN EQUITABLE RELIEF IS SOUGHT

21 A. The offer of judgment rules do not allow for 22 the dismissal of a case when an offer of 23 judgment is not accepted.

24 Defendants insist a plaintiff who has received an offer of
25 judgment in excess of the value of their claim no longer has a valid
26 claim and their case should be dismissed. While that may be
27 defendants' view of how the law *should* work, that is not the way the
28 offer of judgment rules *do* work. Neither NRCP 68 nor NRS 17.115
authorize the dismissal of an individual plaintiff's claim, or an
entire case, when an offer of judgment is *not* accepted. Of course

1 defendants cite no precedent supporting their view of how the offer
2 of judgment rule *should* work because no such precedents exist.

3 The controlling language of NRCP 68 and NRS 17.115 are
4 absolutely clear and defendants' argument on this point is
5 frivolous.

6 **B. Dismissal of this case under the offer of**
7 **judgment rules would be improper in light of**
8 **its class action nature and request for**
9 **equitable relief.**

10 Plaintiffs have had a motion pending before this Court since
11 May of 2015 to certify this case as a class action under NRCP Rule
12 23. Plaintiffs also seek class wide equitable relief to reign in
13 defendants' continuing minimum wage violations. Defendants ignore
14 that the offer of judgment rules are inapplicable to a class action
15 case, in that a class action plaintiff lacks independent power to
16 accept an "offer" and have a "judgment" entered under those rules,
17 even prior to class certification. See, NRCP Rule 23(e), requiring
18 notice to the class, and Court approval, for any dismissal of a
19 class action lawsuit. Such language has been uniformly interpreted
20 as requiring *Court approval* (and usually notice to the class) of any
21 dismissal of an alleged class action case (even prior to class
22 certification) thus rendering any automatic "judgment" entry as a
23 result of an accepted Rule 68 offer of judgment impossible. See,
24 *Doe v. Lexington-Fayette Urban County Government*, 407 F.3d 755, 762-
25 64 (6th Cir. 2005) (Discussing collected cases).¹

26 Under Rule 23(e) the plaintiff was without authority to accept

27 ¹ Arguably the law, in federal court class actions, has changed
28 with the amendment of FRCP Rule 23(e) to now provide that its
provisions only govern conduct of the federal court in respect to a
"certified class." NRCP Rule 23(e) has not been so amended and
retains the language of the earlier version of FRCP Rule 23(e).

1 defendants' offer of judgment, since he could not dismiss his case,
2 and obtain a judgment against the defendants, without Court
3 approval. That is especially true when the class relief sought by
4 the plaintiff includes equitable relief and defendants' offer of
5 judgment offered no relief (equitable or damages) to the class.

6 **II. DEFENDANTS' ASSERTION RENO PRESENTS NO EVIDENCE OF A**
7 **MINIMUM WAGE VIOLATION AND SUMMARY JUDGMENT IS PROPER**
8 **IS SPECIOUS**

9 **A. Defendants' own records establish that**
10 **Reno was paid less than the minimum wage.**

11 Annexed as Ex. "A" is a copy of Reno's trip sheets for every
12 shift he worked from July 9, 2011 to July 22, 2011, his payroll
13 record from defendants for that period indicating he received a
14 total payment of \$440.98 ("commissions") as wages from defendants
15 (Reno is also recorded as receiving tip compensation, but that is
16 irrelevant for Nevada minimum wage purposes). Those trip sheets set
17 forth a shift start time, a shift end time, and listed "break times"
18 (those break times are always listed as 2 hours per shift).
19 Accepting all of this information at face value as accurate, Reno's
20 hourly compensation, as documented by the first page of Ex. "A," was
21 \$5.52 per hour, far below the \$7.25 or \$8.25 an hour minimum wage
22 required under Nevada law.

23 Defendants, through a distortion of Reno's deposition, insist
24 that Reno is not even making a claim for minimum wages in this case
25 and somehow just asserts he was generally being "cheated" by
26 defendants. That is untrue. While his deposition testimony is wide
27 ranging, as a result of defendants' counsel's scattered and unclear
28 questioning, when asked by defendants' counsel to clarify what he is
claiming in this lawsuit he makes clear that (1) He does not know

1 what he is owed and wants an accounting of his pay and hours and (2)
2 He is seeking his unpaid minimum wages (Ex. "B," page 26, line 24 -
3 page 27, line 5):

4
5 Q. Is that your understanding of what you are
6 asking for is wages from 2006?

7
8 A. No. Any of the years that I wasn't paid right
9 through minimum wage or whatever, I would like the
10 money back. It's just that simple. It's like I went
11 to work and you found a discrepancy in the payroll,
12 okay, we shorted you \$40, here is your \$40. That's
13 all I'm doing.

14 B. **Discovery is still ongoing and the Department of**
15 **Labor directed payment to Reno did not resolve his**
Nevada minimum wage claim.

16 The Ex. "A" analysis involved a very time consuming review of
17 paper records. Plaintiffs' counsel has outstanding motions to
18 compel discovery of electronic (computer data file) records, that
19 defendants refuse to produce, that can be much more efficiently
20 analyzed. Those motions to compel are pending with the Discovery
21 Commissioner. Plaintiffs also have an outstanding request for the
22 Court to appoint a Special Master, paid for by the defendants, to
23 conduct the sort of laborious Ex. "A" analysis on a mass scale.
24 Summary judgment would be improper while those motions are
25 outstanding.

26 Defendants also insist, without explanation, that Reno's claim
27 cannot be valued at more than \$1,048.94, an amount arrived at in
28 some unexplained, incomplete, and unauthenticated, United States

1 Department of Labor document produced by defendants. That \$1,048.94
2 may well reflect inclusion of a "tip credit" allowed under the
3 federal minimum law. For example, during the time period covered by
4 the Ex. "A" analysis, Reno also received \$88.25 in tips. While that
5 amount is irrelevant for Nevada minimum wage purposes, it would
6 have, under Federal Law, increased the hourly wage actually paid for
7 federal minimum wage purposes to \$6.63 an hour, an amount still
8 below the federal minimum wage of \$7.25 an hour. This presents an
9 additional issue of fact (the amount Reno is owed under Nevada law,
10 in addition to whatever payment he may receive from the federal
11 Department of Labor, as a result of this federal "tip credit" rule)
12 preventing the granting of summary judgment.

13

14

CONCLUSION

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

16 Dated this 8th day of October, 2015.

17

Leon Greenberg Professional Corporation

18

19

By: /s/ Leon Greenberg
LEON GREENBERG, Esq. NSB 8094
Attorney for Plaintiff
2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
(702) 383-6085

20

21

22

23

24

25

26

27

28

CERTIFICATE OF MAILING

The undersigned certifies that on October 8, 2015, she served the within:

Response in Opposition to Defendants'
Motion to Dismiss and for Summary
Judgment Against Plaintiff Michael
Reno

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

EXHIBIT "A"

MICHAEL RENO - HOURLY PAY BASED UPON DEFENDANT TRIP SHEETS AND PAYROLL 7/9/11 TO 7/22/11

| DATE | START TIME | END TIME | FULL HOURS | ADDITIONAL MINUTES | HOURS OF BREAK TIME RECORDED ON TRIP SHEET | Total Work Hours for Pay Period After Deducting Break Time |
|-------------|------------|------------|------------|--------------------|--|--|
| 7/9/2011 | 3:35:28 AM | 3:47:00 PM | 12 | 12 | 2 | |
| 7/10/2011 | 3:33:22 AM | 2:45:00 PM | 11 | 12 | 2 | |
| 7/12/2011 | 2:53:00 AM | 2:51:00 PM | 11 | 58 | 2 | |
| 7/13/2011 | 2:45:00 AM | 2:59:00 PM | 12 | 14 | 2 | |
| 7/16/2011 | 3:37:00 AM | 3:49:00 PM | 12 | 12 | 2 | |
| 7/17/2011 | 3:28:00 AM | 3:35:00 PM | 12 | 7 | 2 | |
| 7/19/2011 | 2:51:00 AM | 2:42:00 PM | 11 | 51 | 2 | |
| 7/22/2011 | 2:41:00 AM | 2:47:00 PM | 12 | 6 | 2 | |
| total hours | | | 93 | 2.866666667 | | 79.86 |

TOTAL WAGES: 440.98 Rate Per Hour: \$5.52

A Cab, LLC
 1500 Searles Avenue

Michael A Reno

[REDACTED]
 [REDACTED]

Employee Pay Stub

Check number: 15440

Pay Period: 07/09/2011 - 07/22/2011

Pay Date: 07/29/2011

Employee

SSN

Michael A Reno

| Earnings and Hours | Qty | Rate | Current | YTD Amount |
|--------------------------------|------|--------|---------------|-----------------|
| Driver Commission | 1.00 | 440.98 | 440.98 | 8,329.80 |
| Tips Supplemental | | | 88.27 | 1,746.96 |
| | 1.00 | | 529.25 | 10,076.86 |
| Deductions From Gross | | | Current | YTD Amount |
| Dental Ins. Amt pd by Employee | | | -11.57 | -173.55 |
| Section 125 Medical | | | -28.71 | -89.13 |
| | | | -41.28 | -262.68 |
| Taxes | | | Current | YTD Amount |
| Federal Withholding | | | -26.09 | -727.06 |
| Social Security Employee | | | -20.59 | -412.20 |
| Medicare Employee | | | -7.08 | -142.31 |
| | | | -53.58 | -1,261.51 |
| Adjustments to Net Pay | | | Current | YTD Amount |
| Tips Out | | | -88.27 | -1,746.96 |
| Cash loan | | | | -18.00 |
| | | | -88.27 | -1,764.96 |
| Net Pay | | | 346.12 | 6,767.74 |

A Cab 0035

| | | | | | | | |
|----------------|---------------|---|------|------|---|----------------|-------------------------|
| Name | Reno, Michael | Cab# | 1358 | Med# | 7 | Date | 7/19/2011 |
| TA# | 17799 |  | | | | Shift | 04-01 |
| Total Fares | 209.50 | | | | | Time Start | 7/19/2011 3:35:28 AM |
| Not on meter + | 0 | After meeting with UNITED STATES DEPARTMENT OF LABOR: All drivers who work a 12-hour shift must take two 30-minute snack breaks and a 1-hour meal break. Your snack breaks and meal break must be documented on your trip sheet with a Time In and a Time Out. Space at the bottom of this page has been provided for this information. You must initial next to the "Time In" for all breaks and a meal. Anyone who doesn't adhere to this rule will be disciplined. | | | | Radio Calls | 7 ✓ |
| VIP/CPO | 0 | | | | | \$ Per Gallon | 3.359 |
| Charges | 17.00 | | | | | # of Gallons | 6.930 |
| Coupons | 0 | | | | | Total Gas Cost | 23.28 |
| Turn-in | 132.50 | | | | | | |

Write corrections in the space provided above.

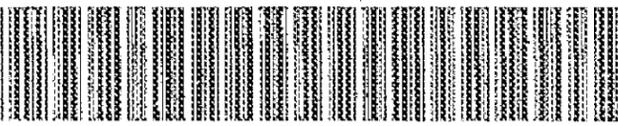
| | Total Fare (1) | Extra (2) | Total Miles (4) | Paid Miles (5) | Trips (6) | Accum. Pass (7) | Miles (8) |
|-------|----------------|-----------|-----------------|----------------|-----------|-----------------|-----------|
| End | 480.40 | | 1731 | 525 | 60 | 970.83 | 120043 |
| Start | 270.90 | | 597 | 473 | 43 | 893.83 | 119915 |
| Diff | 209.50 | | 1334 | 352 | 17 | 77.00 | 130 |

You must include Accumulated Totals (Credit Card Totals), Gas Receipt, Senior Coupons, Credit Card Receipts, & Gift Certificates - ALL MUST BE SIGNED!

| Ride # | Ride Type or Voucher # | Pick Up From | Drop Off At | Amount | Time In | Time Out | # of Pass |
|--------|------------------------|---------------|-------------|--------|---------|----------|-----------|
| 1 | 9-VRAD | Street/ Suite | 610 | 6.10 | 3:43 | 3:48 | 1 |
| 2 | 12 STAND | Escalade | V. SHAW | 1.70 | 4:19 | 4:40 | 2 |
| 3 | 12 STAND | VENICE | | 1.70 | 5:20 | 5:30 | 3 |
| 4 | 12 STAND | Holiday Motel | | 7.50 | 6:00 | 6:10 | 4 |
| 5 | 12 STAND | W MARRIOTT | | 3.70 | 7:00 | 7:24 | 5 |
| 6 | 12 STAND | Car Wash | | 1.90 | 8:13 | 8:46 | 6 |
| 7 | 12 (R) 50 S.W. Ave | Sum. market | | 1.90 | 9:40 | 9:50 | 7 |
| 8 | 12 STAND | SHADER | | 6.90 | 10:15 | 10:20 | 8 |
| 9 | 12 STAND | Promenade | Falgate | 1.10 | 10:30 | 10:40 | 9 |
| 10 | 12 STAND | 16 Campbell | RIO | 5.10 | 11:20 | 11:35 | 10 |
| 11 | 8 palms | CASARS | | 2.30 | 12:00 | 12:10 | 11 |
| 12 | 8 palms | KUMON | | 9.20 | 12:30 | 12:30 | 12 |
| 13 | 12 CARR | Arville's | 14 (9th) St | 4.10 | 1:00 | 1:00 | 13 |
| 14 | 12 STAND | | | 9.30 | 2:00 | 2:50 | 14 |
| 15 | 8 STAND | RIO | | 7.10 | 2:30 | 3:06 | 15 |
| 16 | 9 STAND | | | 18.20 | 2:30 | 3:40 | 16 |
| 17 | 12 STAND | | | 15.90 | 3:00 | 3:15 | 17 |
| 18 | | | | | | | |
| 19 | | | | | | | |
| 20 | | | | | | | |

A Cab 00824

| | | | |
|--|--------------------------|---------------|---------------|
| SNACK | (12hr Shift = 30min X 2) | Initial Here: | |
| MEAL | (12hr Shift = 1 hour) | Initial Here: | M.R. 30m 4pm |
| Requirements to be included in a break are: | | Initial Here: | MUR 6:15 6:45 |
| 1. Outside the control of management. | | Initial Here: | MUR 7:45 8:15 |
| 2. Not performing duties associated with taxi driving. | | Initial Here: | |

| | | | | | | | |
|----------------|---------------|---|----------|------|---|---------------|-------------------------|
| Name | Reno, Michael | Cab# | 1349 | Med# | 6 | Date | 7/10/2011 |
| TAF | 17799 |  | | | | Shift | 03-01 |
| Total Fares | 207.10 | | | | | Time Start | 7/10/2011 3:33:22 AM |
| Not on meter + | 0 | | | | | Radio Calls | 3 |
| VIP/CPO | 0 | | | | | \$ Per Gallon | 3.359 |
| Charges | 19.00 | | | | | # of Gallons | 6.845 |
| Coupons | 0 | Total Gas Cost | \$ 22.99 | | | | |
| Turn-In | 188.10 | After meeting with UNITED STATES DEPARTMENT OF LABOR: All drivers who work a 12-hour shift must take two 30-minute snack breaks and a 1-hour meal break. Your snack breaks and meal break must be documented on your trip sheet with a Time In and a Time Out. Space at the bottom of this page has been provided for this information. You must initial next to the "Time in" for all breaks and a meal. Anyone who doesn't adhere to this rule will be disciplined. | | | | | |

Write corrections in the space provided above.

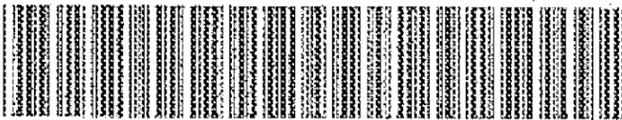
| | Total Fare (1) | Extra (2) | Total Miles (4) | Paid Miles (5) | Trips (6) | Accu. T. Pass | Odometer |
|-------|----------------|-----------|-----------------|----------------|-----------|---------------|----------|
| End | 691.00 | | 401 | 437 | 86 | 402.00 | 56530 |
| Start | 491.90 | | 267 | 385 | 69 | 383.00 | 56318 |
| Diff | 207.10 | | 134 | 52 | 17 | 19.00 | 132 |

You must include Accumulated Totals (Credit Card Totals), Gas Receipt, Senior Coupons, Credit Card Receipts, & Gift Certificates - ALL MUST BE SIGNED!

| Ride # | Ride Type or Voucher # | Pick Up From | Drop Off At | Amount | Time In | Time Out | # of Page |
|--------|-------------------------|------------------------|-------------|--------|---------|----------|-----------|
| 1 | 12 STAND | 26 United | | 23.30 | 4:10 | 4:18 | 1 |
| 2 | 12 STAND | UNITE | | 15.10 | 4:40 | 4:55 | 2 |
| 3 | 12 STAND | UNITE | | 10.90 | 5:10 | 5:20 | 3 |
| 4 | 12 STAND | 26 UNITE | | 20.50 | 5:25 | 5:40 | 4 |
| 5 | 12 STAND | 26 UNITE | | 6.50 | 6:00 | 6:05 | 5 |
| 6 | 12 STAND | 26 UNITE | | 20.90 | 6:30 | 6:50 | 6 |
| 7 | 12 STAND (R) | 152 ELIZABETH - Cheech | | 17.90 | 7:35 | 7:37 | 7 |
| 8 | 12 STAND | UNITE | | 10.30 | 9:30 | 9:40 | 8 |
| 9 | 12 STAND (R) TRADER JES | Sandwich | | 5.10 | 10:20 | 10:30 | 9 |
| 10 | 12 STAND | UNITE | | 10.30 | 11:15 | 11:25 | 10 |
| 11 | 12 STAND | UNITE (Palace) | | 10.30 | 11:30 | 11:40 | 11 |
| 12 | 12 STAND | UNITE | | 10.30 | 12:10 | 12:20 | 12 |
| 13 | 12 STAND | UNITE | | 10.30 | 12:20 | 12:30 | 13 |
| 14 | 12 STAND (California) | UNITE | | 12.10 | 12:35 | 12:45 | 14 |
| 15 | 12 STAND | UNITE | | 12.10 | 1:00 | 1:10 | 15 |
| 16 | 12 STAND | UNITE | | 9.10 | 1:35 | 1:45 | 16 |
| 17 | 12 (R) | GRE. Howard Bus | | 11.30 | 2:50 | 2:55 | 17 |
| 18 | 12 (R) | (WELMART no go) | | 5.15 | 2:55 | 3:00 | 18 |
| 19 | | | | | | | |
| 20 | | | | | | | |

A Cab 00826

| | | |
|--|---------------|---------------|
| SNACK (12hr Shift = 30min X 2) | Initial Here: | |
| MEAL (12hr Shift = 1 hour) | Initial Here: | MWR 2pm 3pm |
| Requirements to be included in a break are: | Initial Here: | MWR 3:15 3:45 |
| 1. Outside the control of management. | Initial Here: | MWR 8:45 9:15 |
| 2. Not performing duties associated with taxi driving. | Initial Here: | |

| | | | | | | | | | |
|----------------|---------------|---|------|------|------------|-------------------------|----------------|--------|--|
| Name | Reno, Michael | Cab# | 1344 | Med# | 1 | Date | 7/12/2011 | | |
| TA# | 17799 |  | | | Shift | 03-02 | | | |
| Total Fares | 110.10 | | | | Time Start | 7/12/2011 2:53:06 AM | | | |
| Not on meter + | 0 | After meeting with UNITED STATES DEPARTMENT OF LABOR: All drivers who work a 12-hour shift must take two 30-minute snack breaks and a 1-hour meal break. Your snack breaks and meal break must be documented on your trip sheet with a Time In and a Time Out. Space at the bottom of this page has been provided for this information. You must initial next to the "Time In" for all breaks and a meal. Anyone who doesn't adhere to this rule will be disciplined. | | | | | Radio Calls | SAC ✓ | |
| VIP/CPO | 0 | | | | | | \$ Per Gallon | 83.359 | |
| Charges | 0 | | | | | | # of Gallons | 8.117 | |
| Coupons | 3/10.00 | | | | | | Total Gas Cost | 27.47 | |
| Turn-In | 160.10 | | | | | | | | |

Write corrections in the space provided above.

| | Total Fare (1) | Extra (2) | Total Miles (4) | Paid Miles (5) | Trips (6) | Accu. T. Pass (7) | Quotient (8) |
|-------|----------------|-----------|-----------------|----------------|-----------|-------------------|--------------|
| End | 727.50 | | 449 | 503 | 77 | 912.40 | 32645/8 |
| Start | 557.40 | | 330 | 460 | 66 | 912.40 | 32645/1 |
| Diff | 170.10 | | 119 | 43 | 13 | 0 | 117 |

You must include Accumulated Totals (Credit Card Totals), Gas Receipt, Senior Coupons, Credit Card Receipts, & Gift Certificates - ALL MUST BE SIGNED!

| Ride # | Ride Type or Voucher # | Pick Up From | Drop Off At | Amount | Time In | Time Out | # of Pass |
|--------|------------------------|--------------|-------------|--------|---------|----------|-----------|
| 1 | 12 STAND | | | 11.50 | 4:20 | 4:12 | 1 |
| 2 | 12 STAND | 26 Amber | | 10.10 | 5:35 | 6:25 | 1 |
| 3 | 12 STAND | 26 Amber | | 16.90 | 7:50 | 8:05 | 1 |
| 4 | 12 STAND | Corey Hump | | 12.50 | 9:20 | 9:32 | 3 |
| 5 | 12 STAND | COX NEW WIND | | 10.90 | 10:03 | 10:21 | 3 |
| 6 | 7 STAND (R) | RIND | | 5.70 | 11:10 | 11:16 | 1 |
| 7 | 12 STAND (R) | Bette Uita | | 11.90 | 11:46 | 11:07 | 1 |
| 8 | 8 STAND | 26 Amber | RIND | 11.10 | 12:35 | 12:50 | 1 |
| 9 | 12 STAND | CUC Pharmacy | | 6.70 | 1:00 | 1:15 | 1 |
| 10 | 12 R/C Food | 4 less tax | | 5.50 | 1:00 | 1:12 | 1 |
| 11 | 12 STAND | Wannemore | | 11.30 | 1:36 | 1:45 | 1 |
| 12 | 12 STAND | SM LOACO | | 9.50 | 2:00 | 2:08 | 3 |
| 13 | 12 STAND | 6 Campbell | RIND | 16.50 | 2:10 | 2:25 | 1 |
| 14 | | | | | | | |
| 15 | | | | | | | |
| 16 | | | | | | | |
| 17 | | | | | | | |
| 18 | | | | | | | |
| 19 | | | | | | | |
| 20 | | | | | | | |

A Cab 00828

| | | |
|--|---------------|----------------|
| SNACK (12hr Shift = 30min X 2) | Initial Here: | |
| MEAL (12hr Shift = 1 hour) | Initial Here: | M.R. 2pm 3pm |
| Requirements to be included in a break are: | Initial Here: | |
| 1. Outside the control of management. | Initial Here: | M.R. 3:15 3:45 |
| 2. Not performing duties associated with taxi driving. | Initial Here: | M.R. 4:45 5:15 |

| | | | | | | | | |
|--------------|---------------|---|------|------|----|------------|-------------------------|-------|
| Name | Reno, Michael | Cab# | 1350 | Med# | 13 | Date | 7/13/2011 | |
| TA# | 17799 |  | | | | Shift | 03-01 | |
| Total Fares | 229.40 | | | | | Time Start | 7/13/2011 2:45:16 AM | |
| Not on meter | 0 | After meeting with UNITED STATES DEPARTMENT OF LABOR: All drivers who work a 12-hour shift must take two 30-minute snack breaks and a 1-hour meal break. Your snack breaks and meal break must be documented on your trip sheet with a Time In and a Time Out. Space at the bottom of this page has been provided for this information. You must initial next to the "Time In" for all breaks and a meal. Anyone who doesn't adhere to this rule will be disciplined. | | | | | Radio Calls | 708 |
| VIP/CPO | 0 | | | | | | \$ Per Gallon | 3.359 |
| Charges | 41.00 | | | | | | # of Gallons | 6.893 |
| Coupons | 9.00 | | | | | | Total Gas Cost | 23.15 |
| Turn-in | 179.40 | | | | | | | |

Write corrections in the space provided above.

| | Total Fare (1) | Excess (2) | Total Miles (4) | Paid Miles (5) | Trips (6) | Accum. Pass (7) | Odometer (8) |
|-------|----------------|------------|-----------------|----------------|-----------|-----------------|--------------|
| End | 545.49 | | 814 | 662 | 86 | 411.00 | 99340 |
| Start | 316.09 | | 665 | 602 | 70 | 370.25 | 99236 |
| Diff | 229.40 | | 149 | 60 | 16 | 41.00 | 149 |

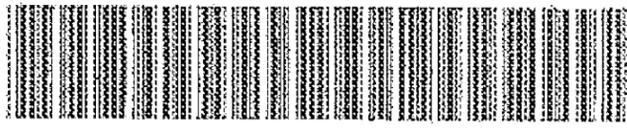
You must include Accumulated Totals (Credit Card Totals), Gas Receipt, Senior Coupons, Credit Card Receipts, & Gift Certificates - ALL MUST BE SIGNED!

| Ride # | Ride Type or Voucher # | Pick Up From | Drop Off At | Amount | Time In | Time Out | # of Pass |
|--------|---------------------------------|--------------------|-------------|--------|---------|----------|-----------|
| 1 | 12-1014 | Dunsmuir | Dunsmuir | 2.10 | 3:10 | 3:30 | 1 |
| 2 | 12 STAND (Sprint Rock) | | | 14.90 | 4:00 | 4:14 | 1 |
| 3 | 12 STAND | | | 20.70 | 5:25 | 5:38 | 1 |
| 4 | 12 STAND | SAHARA | 24th | 3.20 | 6:00 | 6:13 | 1 |
| 5 | 12 S | 2900 S Waller/View | | 17.90 | 6:24 | 6:50 | 1 |
| 6 | 12 STAND (R) Markon | | | 9.10 | 7:10 | 7:27 | 1 |
| 7 | 12 STAND (R) 1400 V. View (Dmv) | | | 18.90 | 8:06 | 8:23 | 1 |
| 8 | 12 STAND (R) 2525 Washington | | | 9.90 | 9:25 | 9:34 | 1 |
| 9 | 12 STAND (R) W. 14th St | | | 15.90 | 10:00 | 10:11 | 1 |
| 10 | 12 STAND (R) SHAWNEE | | | 10.10 | 10:40 | 10:50 | 1 |
| 11 | 12 STAND | 13th St | | 11.70 | 11:30 | 11:00 | 2 |
| 12 | 12 STAND (R) Cameros | | | 16.30 | 11:45 | 12:02 | 1 |
| 13 | 12 STAND | 20th | | 9.10 | 12:00 | 12:11 | 1 |
| 14 | 12 STAND | Lochendra | | 10.30 | 12:40 | 12:50 | 1 |
| 15 | 12 STAND (R) Smith's Market | | | 6.90 | 1:10 | 1:18 | 1 |
| 16 | 12 (R) Hydrodecatur | 50 Tour | | 23.30 | 1:40 | 1:40 | 2 |
| 17 | | | | | | | |
| 18 | | | | | | | |
| 19 | | | | | | | |
| 20 | | | | | | | |

A Cab 00830

| | | | | |
|---|---|-------|---------------|-------------------|
| SNACK | (12hr Shift = 30min X 2) | SNACK | Initial Here: | |
| MEAL | (12hr Shift = 1 hour) | MEAL | Initial Here: | M.R. 2am 3pm |
| Requirements to be included in a break are: | | SNACK | Initial Here: | M.R. 4:30 5:50 AM |
| 1. | Outside the control of management. | BREAK | Initial Here: | M.R. 8:00 9:00 AM |
| 2. | Not performing duties associated with taxi driving. | BREAK | Initial Here: | |

Name: Reno, Michael Cab# 1358 Med# 7 Date: 7/16/2011
 TA#: 17799
 Total Fares: 215.86
 Not on meter: 0
 VIP/CPO: 0
 Charges: 27.00
 Coupons: 0
 Turn-In: 188.86



After meeting with UNITED STATES DEPARTMENT OF LABOR: All drivers who work a 12-hour shift must take two 30-minute snack breaks and a 1-hour meal break. Your snack breaks and meal break must be documented on your trip sheet with a Time In and a Time Out. Space at the bottom of this page has been provided for this information. You must initial next to the "Time In" for all breaks and a meal. Anyone who doesn't adhere to this rule will be disciplined.

Shift: 04-01
 Date: 7/16/2011
 Time Start: 3:37:24 AM
 Radio Calls: 8
 \$ Per Gallon: 3.339
 # of Gallons: 6.979
 Total Gas Cost: 23.30

Write corrections in the space provided above.

| | Total Fare (1) | Total Miles (4) | Paid Miles (5) | Trips (6) | Accu. T. Pass | Odometer |
|-------|----------------|-----------------|----------------|-----------|---------------|----------|
| End | 878.00 | 914 | 382 | 604 | 518.93 | 122119 |
| Start | 603.00 | 791 | 332 | 584 | 491.93 | 122030 |
| Diff | 275.00 | 123 | 50 | 20 | 27.00 | 119 |

You must include Accumulated Totals (Credit Card Totals), Gas Receipt, Senior Coupons, Credit Card Receipts, & Gift Certificates - ALL MUST BE SIGNED!
 A Cab 00832

| Ride # | Ride Type or Voucher # | Pick Up From | Drop Off At | Amount | Time In | Time Out | # of Pass |
|--------|--|--------------------------|---------------|---------------|---------------|-----------|-----------|
| 1 | 12 STANDER | 6 Nevada | | 8.70 | 4/15 | 4/23 | 4 |
| 2 | 12 STANDER | Escondido | | 1.50 | 5/00 | 5/10 | 2 |
| 3 | 12 STANDER | W. Price | | 10.00 | 5/15 | 5/25 | 4 |
| 4 | 12 STANDER | W. Price | | 5.70 | 5/45 | 5/51 | X |
| 5 | 12 STANDER | Sahara | | 1.00 | 6/00 | 6/11 | 2 |
| 6 | 12 STANDER | Artrans | | 10.10 | 6/15 | 6/25 | 1 |
| 7 | 12 STANDER | Chandler | Red Rock | 8.90 | 7/15 | 7/20 | 1 |
| 8 | 12 STANDER | Chandler | | 15.30 | 7/40 | 7/50 | 3 |
| 9 | 12 STANDER | Chandler | | 1.30 | 11/15 | 11/23 | 3 |
| 10 | 12 STANDER | CAASAR | | 11.50 | 11/15 | 11/26 | 1 |
| 11 | 12 STANDER | Palm Springs | P. Viera | 12.90 | 11/15 | 11/25 | 1 |
| 12 | 12 STANDER | 5353 | S. Somerville | 10.10 | 12/10 | 12/16 | 1 |
| 13 | 12 STANDER | Wells Fargo | | 6.60 | 12/30 | 12/35 | 1 |
| 14 | 12 STANDER | LU Hilton | | 9.70 | 12/35 | 12/44 | 4 |
| 15 | 12 STANDER | Cosmo | | 13.70 | 1/10 | 1/20 | 1 |
| 16 | 12 STANDER | Rolling | | 6.90 | 1/15 | 1/20 | 2 |
| 17 | 12 STANDER | Rolling | | 11.30 | 1/23 | 1/27 | 2 |
| 18 | 12 STANDER | Rolling | | 10.30 | 2/20 | 2/25 | 1 |
| 19 | 12 STANDER | Rolling | | 10.50 | 2/10 | 2/18 | 1 |
| 20 | 12 STANDER | Rolling | | 10.50 | 2/10 | 2/18 | 1 |
| | SNACK | (12hr Shift = 30min X 2) | SNACK | Initial Here: | | | 4 |
| | MEAL | (12hr Shift = 1 hour) | MEAL | Initial Here: | M.R. 3:00 | 4:00 | |
| | Requirements to be included in a break are: | | | SNACK | Initial Here: | M.R. 6:00 | 7:00 |
| | 1. Outside the control of management. | | | BREAK | Initial Here: | M.R. 8:00 | 8:30 |
| | 2. Not performing duties associated with taxi driving. | | | BREAK | Initial Here: | | |

| Ride # | Ride Type or Voucher # | Pick Up From | Drop Off At | Amount | Time In | Time Out | # of Pass |
|--------|------------------------|--------------|-------------|--------|---------|----------|-----------|
| 21 | | | | | | | |
| 22 | | | | | | | |
| 23 | | | | | | | |
| 24 | | | | | | | |
| 25 | | | | | | | |
| 26 | | | | | | | |
| 27 | | | | | | | |
| 28 | | | | | | | |



ARCO am/pm 82874
 300 W Lake Mead
 Las Vegas
 NV 89030
 Tel : 7026337300
 Site Number 11909107

| Qty Name | Price | Total |
|----------------------|----------------|-------|
| 1 Unleaded Regular | | 23.30 |
| Pump: 5 6.978 Gallon | \$3.339/Gallon | |
| SubTotal | | 23.30 |
| Total | | 23.30 |

Cash 50.00
 Prepay Refund Due \$ -26.70

Receipt 1581252 Duplicate
 1 LARRY 07/16/2011 15:33

PREPAY RECALLED

Thank you for choosing AMPM

A Cab1
 1414 S. Valley View Bl
 Las Vegas, NV

VALIDATED DROP

Drop # : 00038858
 Trans # : 00284772
 Date-Time: 07/16/11 17:52:03
 POS :
 Remote ID: FK
 Oper # : 00437
 Oper Name: RENO, MICHAEL
 Cash : Cash Val
 Rejected : 0

Val 2

Currency: USD

| Qty | Value | Subtotal |
|--------------|--------|----------|
| 0004 | 1.00 | 4.00 |
| 0005 | 5.00 | 25.00 |
| 0002 | 10.00 | 20.00 |
| 0002 | 20.00 | 40.00 |
| 0001 | 100.00 | 100.00 |
| 0014 Tot USD | | 189.00 |

TOTAL USD 189.00

PRINTED BY: 3300 RENO, MICHAEL
 Time: 07/16/11 17:52:04

A Cab1

End Totals

CARD EXPIRED/READ ERROR

CARD EXPIRED/READ ERROR

CARD EXPIRED/READ ERROR

TAXIPASS VOUCHER(S) AND TOTALS

CAB#: 1358
 TIME: 15:44
 DATE: 7/16/2011
 DATE: 7/16/2011
 VOUCH#: 9591
 Amount: \$ 27.00
 T. Pass TOT.: \$ 27.00
 Accu. T. Pass: \$34518.93

METER DETAILS
 Tot. FARE: \$154818.80
 Tot. EXTRAS: \$ 0.00
 Accu. Trips: 9604
 Tot. DIST.: 107914.29
 PAID DIST.: 44382.63
 1-800-222-TAXI

A Cab 00833

Time End

(stamp here)

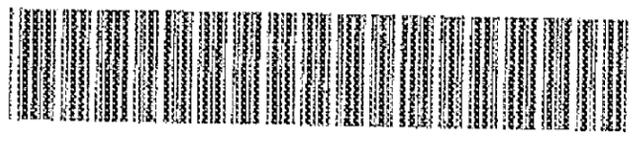
Driver
 Signature

Michael Rem

Name: Reno, Michael Cab#: 1358 Med#: 7 Date: 7/17/2011
 TA#: 17799
 Total Fares: 207.20
 Not on meter: 0
 VIP/CPO: 0
 Charges: 10.00
 Coupons: 19.00
 Turn-in: 19.00

After meeting with UNITED STATES DEPARTMENT OF LABOR: All drivers who work a 12-hour shift must take two 30-minute snack breaks and a 1-hour meal break. Your snack breaks and meal break must be documented on your trip sheet with a Time In and a Time Out. Space at the bottom of this page has been provided for this information. You must initial next to the "Time in" for all breaks and a meal. Anyone who doesn't adhere to this rule will be disciplined.

Shift: 04-01
 Time Start: 7/17/2011 3:28:31 AM
 Radio Calls: 9
 \$ Per Gallon: 3.359
 # of Gallons: 6.524
 Total Gas Cost: 21.91



Write corrections in the space provided above.

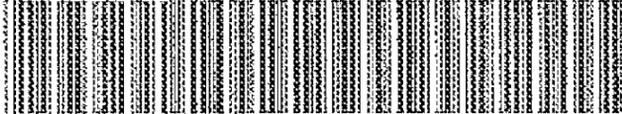
| Total Fare (1) | Total Miles (4) | Paid Miles (5) | Trips (6) | Accu. T. Pass | Address |
|----------------|-----------------|----------------|-----------|---------------|---------|
| End 281.70 | 178 | 488 | 43 | 518.93 | 122206 |
| Start 074.50 | 051 | 437 | 27 | 518.93 | 122203 |
| Diff 207.20 | 127 | 51 | 16 | 0 | 122203 |

You must include Accumulated Totals (Credit Card Totals), Gas Receipt, Senior Coupons, Credit Card Receipts, & Gift Certificates - ALL MUST BE SIGNED!

| Ride # | Ride Type or Voucher # | Pick Up From | Drop Off At | Amount | Time In | Time Out | # of Pass |
|--------|------------------------|--------------|--------------|--------|---------|----------|-----------|
| 1 | 12 STAND | | Park 700 | 10.10 | 3:40 | 4:00 | 2 |
| 2 | 12 STAND (R) | | C. Center | 10.70 | 4:15 | 4:25 | 1 |
| 3 | 12 (R) STAND | | Rainbow | 22.50 | 4:45 | 5:10 | 2 |
| 4 | 12 STAND | | Park 700 | 10.10 | 6:30 | 6:46 | 1 |
| 5 | 12 STAND | | M. Park | 16.10 | 7:00 | 7:16 | 1 |
| 6 | 12 (R) STAND | | Noble Park | 15.90 | 7:27 | 7:32 | 1 |
| 7 | 12 STAND (R) | | 3339 LUBS. | 10.10 | 8:10 | 8:28 | 1 |
| 8 | 8 STAND | | Caesars | 8.10 | 10:20 | 10:27 | 1 |
| 9 | 12 STAND | | Island | 9.50 | 10:40 | 10:55 | 1 |
| 10 | 12 STAND | | Wynn Encore | 12.50 | 11:30 | 11:41 | 1 |
| 11 | 12 STAND | | Spanish Oaks | 8.50 | 12:05 | 12:13 | 1 |
| 12 | 12 STAND | | Excelsior | 8.90 | 12:25 | 12:42 | 1 |
| 13 | 12 STAND | | Near Pres | 5.90 | 1:05 | 1:06 | 1 |
| 14 | 12 STAND | | City center | 2.70 | 1:15 | 1:23 | 1 |
| 15 | 12 STAND | | Car | 3.30 | 2:00 | 2:12 | 1 |
| 16 | 12 STAND | | 5330 | 21.30 | 2:25 | 2:46 | 2 |
| 17 | 12 STAND | | | | 31 | 31 | |
| 18 | | | | | | | |
| 19 | | | | | | | |
| 20 | | | | | | | |

SNACK (12hr Shift = 30min X 2) Initial Here: M.R. 3:40 4:00
 MEAL (12hr Shift = 1 hour) Initial Here: M.R. 5:15 5:45
 SNACK Initial Here: M.R. 8:15 8:45
 BREAK Initial Here: M.R. 8:15 8:45

Requirements to be included in a break are:
 1. Outside the control of management.
 2. Not performing duties associated with taxi driving.

| | | | | | | | | |
|----------------|---------------|---|------|------|----|------------|-------------------------|----------|
| Name | Reno, Michael | Cab# | 1350 | Med# | 24 | Date | 7/19/2011 | |
| TA# | 17799 |  | | | | Shift | 03-01 | |
| Total Fares | 148.30 | | | | | Time Start | 7/19/2011 2:51:17 AM | |
| Not on meter + | 0 | After meeting with UNITED STATES DEPARTMENT OF LABOR: All drivers who work a 12-hour shift must take two 30-minute snack breaks and a 1-hour meal break. Your snack breaks and meal break must be documented on your trip sheet with a Time In and a Time Out. Space at the bottom of this page has been provided for this information. You must initial next to the "Time In" for all breaks and a meal. Anyone who doesn't adhere to this rule will be disciplined. | | | | | Radio Calls | 6 |
| VIP/CPO | 0 | | | | | | \$ Per Gallon | \$ 3.379 |
| Charges | \$ 31.90 | | | | | | # of Gallons | 5.457 |
| Coupons | 33.00 | | | | | | Total Gas Sold | \$ 18.44 |
| Turn-in | \$ 177.40 | | | | | | | |

Write corrections in the space provided above.

| | Total Fare (1) | Total Miles (4) | Paid Miles (5) | Trips (6) | Accu.T.Pass | Odometer |
|-------|----------------|-----------------|----------------|-----------|-------------|----------|
| End | 1037.39 | 255 | 285 | 73 | 786.55 | 100764 |
| Start | 889.09 | 139 | 247 | 62 | 748.65 | 100652 |
| Diff | 148.30 | 116 | 38 | 11 | 37.90 | 112 |

You must include Accumulated Totals (Credit Card Totals), Gas Receipt, Senior Coupons, Credit Card Receipts, & Gift Certificates - ALL MUST BE SIGNED!

Years

| Ride # | Ride Type or Voucher # | Pick Up From | Drop Off At | Amount | Time In | Time Out | # of Pass |
|--------|------------------------|-----------------------------------|-----------------|--------|---------|----------|-----------|
| 1 | V1263 | 125/10-10 | Phd Mt Vista | 34.90 | 3:22 | 3:41 | 1 |
| 2 | | 125 → | Decatur Pl | 15.10 | 4:27 | 4:31 | 1 |
| 3 | | 125 → (S) S. Law | Arbor Pl | 5.90 | 7:20 | 7:25 | 2 |
| 4 | | 125 → (S) S. Law | Arbor Pl | 4.90 | 7:40 | 7:44 | 1 |
| 5 | | 125 → 9960 W. Sahara Blvd | Arbor Pl | 5.90 | 8:35 | 8:40 | 1 |
| 6 | Coupons | 125 → (R) Allard → | 216 Coleridge | 7.30 | 9:08 | 9:06 | 1 |
| 7 | | 125 → (R) Harbor Arts | St. Joseph Pkwy | 1.30 | 9:25 | 9:36 | 1 |
| 8 | | 125 → (R) Harbor Arts | St. Joseph Pkwy | 1.30 | 9:10 | 10:00 | 3 |
| 9 | Coupons | 125 → (S) STAND (5th St) | Arbor Pl | 5.90 | 11:25 | 11:30 | 1 |
| 10 | | 125 → (R) Smith's | Arbor Pl | 9.90 | 12:58 | 10:32 | 3 |
| 11 | | 125 → (S) STAND (Main Blvd, meal) | | 14.70 | 1:31 | 1:44 | 3 |
| 12 | | 125 → (S) STAND | | | | | |
| 13 | | | | | | | |
| 14 | | | | | | | |
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A Cab 00836

| | | |
|--|---------------------|--------------|
| SNACK (12hr Shift = 30min X 2) | Initial Here: | |
| MEAL (12hr Shift = 1 hour) | Initial Here: | MA 3:00/4:00 |
| Requirements to be included in a break are: | SNACK Initial Here: | MA 5:15/5:45 |
| 1. Outside the control of management. | BREAK Initial Here: | MA 6:15/7:15 |
| 2. Not performing duties associated with taxi driving. | BREAK Initial Here: | |

| Ride # | Ride Type or Voucher # | Pick Up From | Drop Off At | Amount | Time In | Time Out | # of Pass |
|--------|------------------------|--------------|-------------|--------|---------|----------|-----------|
| 21 | | | | | | | |
| 22 | | | | | | | |
| 23 | | | | | | | |
| 24 | | | | | | | |
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| 29 | | | | | | | |
| 30 | | | | | | | |
| 31 | | | | | | | |

0199777
3544
#

ARCO

AMPM

Receipt

ARCO am/pm 82874
300 W Lake Mead
Las Vegas
NV 89030
Tel : 7026337300
Site Number- 11909107

| Qty | Name | Price | Total |
|---------|------------------|----------------|-------|
| 1 | Unleaded Regular | | 18.44 |
| Pump: 9 | 5.457 Gallon | \$3.379/Gallon | |
| | SubTotal | | 18.44 |
| | Total | | 18.44 |

Cash 40.00
Prepay Refund Due \$ -21.56

Receipt 1586178 Duplicate
1 MIGUEL 07/19/2011 14:20
PREPAY RECALLED
Thank you for choosing AMPM

A Cab
4444 S. Valley View St
Las Vegas, NV

VALIDATED DROP

Drop # : 00038991
Trans # : 00285796
Date-Time: 07/19/11 16:47:27
POS :
Remote ID: FK
Oper # : 00437
Oper Name: RENO, MICHAEL
Cash : Cash Val
Rejected : 0

Val 2
Currency: USD

| Qty | Value | Subtotal |
|--------------|-------|----------|
| 0017 | 1.00 | 17.00 |
| 0002 | 5.00 | 10.00 |
| 0061 | 10.00 | 10.00 |
| 0002 | 20.00 | 40.00 |
| 0022 Tot USD | | 77.00 |

***** TOTAL *****
TOTAL USD 77.00

Printed by: 0011 0000, MICHAEL
Time: 07/19/11 16:47:27

End Totals

BRTAXIPASS VOUCHER(S) AND TOTALS

CAB#: 1350
TIME: 14:26
DATE: 7/19/2011
DATE: 7/19/2011
VOUCH#: 1263
Amount: \$ 37.90
T. Pass TOT.: \$ 37.90

Accu. T. Pass: \$24786.55

METER DETAILS

Tot. FARE: \$17037.39
Tot. EXTRAS: \$21474836.47
Accu. Trips: 1273
Tot. DIST.: 10255.71
PAID DIST.: 4285.97
1-800-222-TAXI

BS----- METER TOTALS SENT
-- OR -----

A Cab 00837

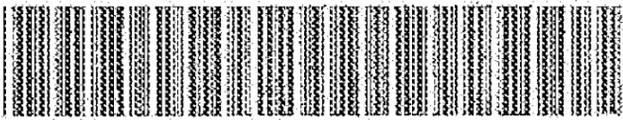
Time End

11 JUL 19 2:42M

(stamp here)

Driver
Signature

Michael RENO

| | | | | | | | | |
|--------------|---------------|---|------|------|---|------------|-------------------------|-------|
| Name | Reno, Michael | Cab# | 1304 | Med# | 3 | Date | 7/22/2011 | |
| TA# | 17799 |  | | | | Shift | 03-02 | |
| Total Fares | 217.30 | | | | | Time Start | 7/22/2011 2:41:40 AM | |
| Not on meter | 0 | After meeting with UNITED STATES DEPARTMENT OF LABOR: All drivers who work a 12-hour shift must take two 30-minute snack breaks and a 1-hour meal break. Your snack breaks and meal break must be documented on your trip sheet with a Time In and a Time Out. Space at the bottom of this page has been provided for this information. You must initial next to the "Time In" for all breaks and a meal. Anyone who doesn't adhere to this rule will be disciplined. | | | | | Radio Calls | 601 |
| VIP/CFO | 0 | | | | | | \$ Per Gallon | 3.30 |
| Charges | 1.10 | | | | | | # of Gallons | 9.46 |
| Coupons | 1.00 | | | | | | Total Gas Cost | 32.00 |
| Turn-In | 195.30 | | | | | | | |

Write corrections in the space provided above.

| | Total Fare (1) | Fares (2) | Total Miles (4) | Paid Miles (5) | Trips (6) | Accu.T.Pass | Odometer |
|-------|----------------|-----------|-----------------|----------------|-----------|-------------|----------|
| End | 608.09 | | 918 | 250 | 24 | 224.50 | 6995 |
| Start | 390.79 | | 765 | 189 | 11 | 224.50 | 6790 |
| Diff | 217.30 | | 153 | 61 | 13 | 0 | 153 |

You must include Accumulated Totals (Credit Card Totals), Gas Receipt, Senior Coupons, Credit Card Receipts, & Gift Certificates - ALL MUST BE SIGNED!

| Ride # | Ride Type or Voucher # | Pick Up From | Drop Off At | Amount | Time In | Time Out | # of Pass |
|--------|------------------------|--------------|-------------|--------|---------|----------|-----------|
| 1 | 12 (R) Wick | Tap House | Tap House | 5.10 | 3:20 | 3:26 | 1 |
| 2 | 12 (R) Tap House | Tap House | Tap House | 16.10 | 3:40 | 3:56 | 1 |
| 3 | 12 STAND | 26 St | 26 St | 28.90 | 4:30 | 4:59 | 2 |
| 4 | 12 STAND | P Sims | P Sims | 18.70 | 5:40 | 5:57 | 1 |
| 5 | 12 STAND | DAN | DAN | 6.90 | 6:30 | 6:36 | 1 |
| 6 | 12 STAND | Carroll | Carroll | 4.90 | 7:13 | 7:18 | 1 |
| 7 | 12 STAND | FTA | FTA | 137.50 | 8:00 | 8:30 | 4 |
| 8 | 12 STAND | SUN | SUN | 31.50 | 9:00 | 9:31 | 1 |
| 9 | 12 (R) | 1600 view | 1600 view | 7.30 | 10:38 | 10:45 | 1 |
| 10 | 12 STAND | Walmart | Walmart | 10.50 | 11:30 | 11:40 | 2 |
| 11 | 12 STAND | Stimmed | Stimmed | 2.50 | 12:00 | 12:07 | 1 |
| 12 | 12 STAND | Small | Small | 18.90 | 12:21 | 12:31 | 2 |
| 13 | 12 STAND | Stimmed | Stimmed | 29.50 | 1:20 | 1:50 | 2 |
| 14 | 3 STAND | | | | | | |
| 15 | | | | | | | |
| 16 | | | | | | | |
| 17 | | | | | | | |
| 18 | | | | | | | |
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A Cab 00838

| | | | | |
|--|--------------------------|-------|---------------|------------------|
| SNACK | (12hr Shift = 30min X 2) | SNACK | Initial Here: | |
| MEAL | (12hr Shift = 1 hour) | MEAL | Initial Here: | MR 2am 3am |
| Requirements to be included in a break are: | | SNACK | Initial Here: | MR 9:40 10:10 AM |
| 1. Outside the control of management. | | BREAK | Initial Here: | MR 6:45 7:15 AM |
| 2. Not performing duties associated with taxi driving. | | BREAK | Initial Here: | |

EXHIBIT "B"

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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 Frias is in operation for six or seven years.

2 Q. Do you remember what years you worked for them?

3 A. Yeah, '96 to 2002. I worked for Yellow 2002 to
4 2009, and then I went to Oregon for a year to see my
5 brother, cut meat up there. I was a butcher for years.
6 I went back to Nevada and got on with Yellow Cab right --
7 not Yellow Cab. Yellow Cab?

8 Q. A Cab? Did you start at A Cab when you came
9 back from Oregon?

10 A. I was with Yellow Cab 2009. Yeah, I went to
11 unemployment for a year, nine months, and then I went to
12 A Cab.

13 Q. Are you part of the class action lawsuit against
14 Yellow Cab?

15 MS. SNIEGOCKI: Objection. Calls for a legal
16 conclusion. You can answer if you know.

17 A. I don't even know that one, but I probably -- I
18 don't know if -- I would have the years right because I
19 was there, what, 2009? See, I guess I could be. 2006,
20 they legally did the minimum wage 2006. So anything 2006
21 above I would be eligible for if they are found they were
22 in the wrong. But I didn't file for anything except for
23 A Cab.

24 Q. Is that your understanding of what you are
25 asking for is wages from 2006?

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?

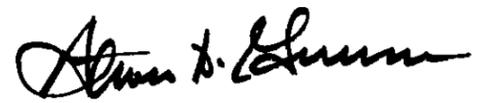
17 A. The hours that I worked and the pay that I got.
18 Anywhere else I get seven, 800, here I got 400. And they
19 did some other things, too.

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.



CLERK OF THE COURT

1 **RIS**
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
9 *Attorneys for Defendant A Cab, LLC*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

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

11 Plaintiffs,

12 vs.

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

14 Defendants.

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

**DEFENDANT'S REPLY IN SUPPORT
OF MOTION TO DISMISS AND FOR
SUMMARY JUDGMENT AGAINST
PLAINTIFF MICHAEL MURRAY**

15
16 Defendant A Cab, LLC, by and through its attorney of record, ESTHER C. RODRIGUEZ,
17 ESQ., of RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRCP 12(b)(1), NRCP 12(b)(5) and
18 NRCP 56(c) hereby respectfully submits its Reply in Support of Motion to Dismiss and for
19 Summary Judgment against Plaintiff Michael Murray. This Reply is based upon the pleadings and
20 papers on file, the attached Memorandum of Points and Authorities, and any oral argument that
21 may be entertained at the hearing of this Motion.

22 **POINTS AND AUTHORITIES**

23 Before the Court ever addresses the elements of a class claim under NRCP 23, the Court has
24 to address whether the individual claimant before it is subject to dismissal under NRCP 12(b).
25 Plaintiff's counsel wants the Court to overlook this fact, and simply fast forward to class
26 certification. This strategy is forbidden by NRCP 23. First and foremost, the Plaintiff himself must
27 have a justiciable claim, and one over which this Court has jurisdiction. The Court must have a
28 legitimate Plaintiff with legitimate claims before it. This is the problem with this matter. Plaintiff

1 Michael Murray is not that Plaintiff. This Plaintiff is not pursuing a dispute based upon a minimum
2 wage claim, but rather one for unpaid hours, and not within the jurisdiction of this Court.

3 Plaintiff's arguments that granting summary judgment will somehow preclude a legitimate
4 minimum wage claim from being pursued is nonsensical. Plaintiff Murray has simply failed to
5 support his claim through his own testimony, any documents, or any witnesses. Pursuant to Nevada
6 caselaw, his claims must be dismissed as a matter of law.

7 It should also be noted that in briefing submitted to the Court, it has been demonstrated that
8 Michael Murray is not a proper class representative to any proposed class. *See Second Supplement*
9 *to Defendant's Opposition to Plaintiffs' Motion to Certify Case*, p. 5-6 and **Exhibit 1** attached
10 hereto *State of Nevada v. Michael P. Murray*, Case No. 90C096930. Plaintiff Michael Murray does
11 not have the minimum personal qualities to be a class representative. His criminal record with the
12 State of Nevada indicates that he has a history of felony charges, in which he pled guilty to open or
13 gross lewdness with a child under 14 years of age.

14 Further, as cited in Defendant's Motion, Murray outright refused to answer deposition
15 questions by pleading the Fifth Amendment Right Against Self-Incrimination, or just outright
16 refused to answer. When reminded that he was under oath to tell the truth, Murray pled the Fifth
17 Amendment under threat of perjury during his deposition. A Plaintiff should not be allowed to
18 engage in such tactics to evade discovery, and not be subject to dismissal.

19 Since the filing of Defendant's Motion for Summary Judgment, the discovery period is now
20 closed. Discovery closed October 1, 2015. Upon closure, Plaintiff Michael Murray had not
21 demonstrated any evidence supporting his claims as asserted in his complaint. He has not come
22 forward with the necessary evidence to defeat summary judgment, and summary judgment *must* be
23 granted in Defendant's favor. Plaintiff's last ditch effort to say that there are issues before the
24 Discovery Commissioner is a red-herring. ***There is nothing pertaining to Michael Murray***
25 ***pending before the Discovery Commissioner.*** Pending before the Discovery Commissioner is
26 Plaintiffs' request to obtain a computer database for all other drivers' work hours and pay
27 information. This discovery issue is not related to any issue pertaining to Michael Murray, and
28 does not serve to defeat summary judgment against Michael Murray.

1 “Although the party opposing a motion for summary judgment is entitled to all favorable
2 inferences from the pleadings and documentary evidence, the opposing party ‘is not entitled to
3 build a case on the gossamer threads of whimsy, speculation and conjecture.’” *Collins v. Union*
4 *Fed.Sav. & Loan Ass’n.*, 99 Nev. 284, 302; 662 P.2d 610, 621 (1983) (citing *Mullis v. Nevada*
5 *National Bank*, 98 Nev. 510, 654 P.2d 533 (1982), and *Hahn v. Sargent*, 523 F.2d 461, 468 (1st Cir.
6 1975), *cert. denied*, 425 U.S. 904 (1976)). This is exactly what is occurring herein. Plaintiff
7 Murray has altogether failed to show witnesses, documents, or even his own testimony to support
8 his claims.

9 In order to avoid the requested relief, Plaintiff must come forward with specific facts on
10 which this Court could rule in its favor on the issues addressed in this motion. *Hickman v. Meadow*
11 *Wood Reno*, 96 Nev. 782, 617 P.2d 871 (1980). Here, the motion must be granted because there are
12 no genuine issues of fact which remain for trial and Defendant A Cab is entitled to judgment as a
13 matter of law. Plaintiff has failed to attach any supporting affidavits, testimony, or document that
14 would support the claims of Michael Murray.

15 Further, in their response to Defendant’s Motion to Dismiss, Plaintiffs gloss over a glaring
16 fact in this matter - that a settlement offer was not timely conveyed to Plaintiff Michael Murray by
17 his counsel. Plaintiff’s counsel never addresses, denies, nor offers an explanation as to why they
18 failed to convey this offer to their own client.

19 Plaintiff’s counsel instead seeks to sweep this critical fact under the carpet by arguing that
20 offers of judgment do not moot a lawsuit. This is an irrelevant argument to these circumstances.
21 Instead, what should be evident to the Court is that this is attorney-driven litigation; and not one in
22 which Plaintiff Michael Murray has any say or any legitimate claim, for that matter. Murray is
23 merely a “name” which Plaintiffs’ counsel wishes to use to get a class certified, so he can obtain a
24 payday on attorney fees. There is no justice being sought for these drivers. These drivers have
25 been paid, and do not even have a grasp of what a minimum wage claim is, much less that they
26 actually claim they are owed anything from A Cab. Plaintiff Murray has not proven that he is owed
27 anything from A Cab; it is his burden of proof, not the employer’s.

28 Plaintiffs have never produced any evidence in support of Murray’s claim, and have never

1 complied with NRCP 16.1 and shown any damages for this Plaintiff. In sum, Plaintiff has failed to
2 prove he is owed any sum from A Cab, LLC, and the matter is ripe for summary judgment and
3 dismissal. The Plaintiff must come forward with admissible evidence to defeat summary
4 judgment, and Murray has not done so.

5 **CONCLUSION**

6 Based upon the foregoing points and authorities, Defendant A CAB, LLC respectfully
7 requests this Honorable Court to enter an Order granting Defendant's Motion to Dismiss Plaintiff
8 Michael Murray's Claims for Relief for failure to state a claim upon which relief can be granted; or
9 in the alternative that there remain no genuine issues of material fact and the moving party is
10 entitled to judgment as a matter of law. NRCP 56(c).

11 DATED this 27th day of October, 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 27th day of October, 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.
25 Leon Greenberg Professional Corporation
26 2965 South Jones Boulevard, Suite E4
27 Las Vegas, Nevada 89146
28 *Counsel for Plaintiff*

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

EXHIBIT 1

EXHIBIT 1

- 10/25/1990 **Disposition (Judicial Officer: User, Conversion)**
3. LEWDNESS WITH CHILD UNDER 14 YEARS
Charges Amended/Dropped
- 10/25/1990 **Disposition (Judicial Officer: User, Conversion)**
4. LEWDNESS WITH CHILD UNDER 14 YEARS
Charges Amended/Dropped
- 10/25/1990 **Disposition (Judicial Officer: User, Conversion)**
5. LEWDNESS WITH CHILD UNDER 14 YEARS
Charges Amended/Dropped
- 10/25/1990 **Disposition (Judicial Officer: User, Conversion)**
6. LEWDNESS WITH CHILD UNDER 14 YEARS
Charges Amended/Dropped
- 12/10/1990 **Disposition (Judicial Officer: User, Conversion)**
1. OPEN OR GROSS LEWDNESS
Guilty
- 12/10/1990 **Adult Adjudication (Judicial Officer: User, Conversion)**
1. OPEN OR GROSS LEWDNESS
Converted Disposition:
Sentence# 0301: SUSPENDED Minimum 1 Years to Maximum 1 Years Placement: CCDC
Converted Disposition:
Sentence# 0302: PROBATION Minimum 3 Years to Maximum 3 Years
Converted Disposition:
Sentence# 0303: COUNSELING PROGRAM
Converted Disposition:
Sentence# 0304: ADMINISTRATION FEE Amount: \$25.00
Converted Disposition:
Sentence# 0305: PROBATION MODIFIED

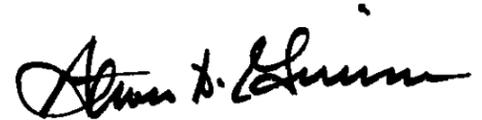
OTHER EVENTS AND HEARINGS

- 10/17/1990 **Hearing**
INITIAL ARRAIGNMENT
90C0969300001.tif pages
- 10/24/1990 **Information**
INFORMATION
90C0969300013.tif pages
- 10/25/1990 **Conversion Case Event Type**
SENTENCING
90C0969300002.tif pages
- 10/25/1990 **Information**
AMENDED INFORMATION
90C0969300003.tif pages
- 10/25/1990 **Initial Arraignment (9:00 AM) {}**
INITIAL ARRAIGNMENT Heard By: Addellar Guy, III
Result: Matter Heard
- 12/10/1990 **Sentencing (9:00 AM) {}**
SENTENCING Heard By: Donald Mosley
Result: Granted
- 02/13/1991 **Order**
ORDER ADMITTING DEFENDANT TO PROBATION AND FIXING THE TERMS THEREOF
90C0969300004.tif pages
- 03/18/1991 **Judgment**

| | |
|------------|---|
| 02/13/1991 | SENTENCING Heard By: Donald Mosley Result: Granted Order ORDER ADMITTING DEFENDANT TO PROBATION AND FIXING THE TERMS THEREOF 90C0969300004.tif pages |
| 03/18/1991 | Judgment JUDGMENT OF CONVICTION - PLEA 90C0969300005.tif pages |
| 10/27/1992 | Hearing AT REG. OF COURT: MODIFICATION PROBATION 90C0969300006.tif pages |
| 11/02/1992 | Request of Court (9:00 AM) () AT REG. OF COURT: MODIFICATION PROBATION Court Clerk: LOIS BAZAR Reporter/Recorder: DONNA LITTLE Heard By: MOSLEY, DONALD M. <u>Parties Present</u> |
| 11/04/1992 | Result: Matter Continued Request of Court (9:00 AM) () AT REG. OF COURT: MODIFICATION PROBATION Court Clerk: PAULETTE TAYLOR Reporter/Recorder: DONNA LITTLE Heard By: MOSLEY, DONALD M. <u>Parties Present</u> |
| 11/05/1992 | Result: Matter Continued Motion MOTION FOR MODIFICATION OF PROBATION AND REQUEST FOR HEARING DATE VAC, MOOT 90C0969300008.tif pages |
| 11/16/1992 | Request of Court (9:00 AM) () AT REG. OF COURT: MODIFICATION PROBATION Relief Clerk: SHARON PHELPS Reporter/Recorder: MELISSA HILL Heard By: Myron Leavitt <u>Parties Present</u> |
| 11/16/1992 | Result: Matter Continued CANCELED Motion to Modify Probation (9:00 AM) () Vacated |
| 12/10/1992 | Result: Vacate Judgment AMENDED JUDGMENT OF CONVICTION - PLEA 90C0969300010.tif pages |
| 01/06/1993 | Order ORDER ADMITTING DEFENDANT TO PROBATION AND FIXING THE TERMS THEREOF 90C0969300011.tif pages |
| 12/23/1993 | Order ORDER HONORABLY DISCHARGING PROBATIONER 90C0969300012.tif pages |

FINANCIAL INFORMATION

| | | | |
|------------|-------------------------------------|--------------------|-------------|
| | Defendant Murray, Michael P | | |
| | Total Financial Assessment | | 24.00 |
| | Total Payments and Credits | | 24.00 |
| | Balance Due as of 10/01/2015 | | 0.00 |
| 04/09/1991 | Transaction Assessment | | 20.00 |
| 07/14/1999 | Conversion Payment | Receipt # 00512393 | (20.00) |
| 09/11/2000 | Transaction Assessment | | 4.00 |
| 09/11/2000 | Conversion Payment | Receipt # 00619265 | (4.00) |



CLERK OF THE COURT

1 **RIS**
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
9 *Attorneys for Defendant A Cab, LLC*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

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

11 Plaintiffs,

12 vs.

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

14 Defendants.

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

**DEFENDANT'S REPLY IN SUPPORT
OF MOTION TO DISMISS AND FOR
SUMMARY JUDGMENT AGAINST
PLAINTIFF MICHAEL RENO**

15
16 Defendant A Cab, LLC, by and through its attorney of record, ESTHER C. RODRIGUEZ,
17 ESQ., of RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRCP 12(b)(1), NRCP 12(b)(5) and
18 NRCP 56(c) hereby files its Reply in Support of Motion to Dismiss the Claims for Relief and for
19 Summary Judgment against Plaintiff Michael Reno. This Reply is based upon the pleadings and
20 papers on file, the attached Memorandum of Points and Authorities, and any oral argument that
21 may be entertained at the hearing of this Motion.

22 **POINTS AND AUTHORITIES**

23 In their response to Defendant's Motion to Dismiss, Plaintiffs gloss over a glaring fact in
24 this matter - that a settlement offer was never conveyed to Plaintiff Michael Reno by his counsel.
25 Plaintiff's counsel never addresses, denies, nor offers an explanation as to why they failed
26 altogether to convey the offer to their own client.

27 Plaintiff's counsel instead seeks to sweep this critical fact under the carpet by arguing that
28 offers of judgment do not moot a lawsuit. This is an irrelevant argument to these circumstances.

1 Instead, what should be evident to the Court is that this is attorney-driven litigation; and not one in
2 which Plaintiff Michael Reno has any say or any legitimate claim for that matter. Reno is merely a
3 “name” which Plaintiffs’ counsel wishes to use to get a class certified, so he can hit a payday on
4 attorney fees. There is no justice being sought for these drivers. These drivers have been paid, and
5 do not even have a grasp of what a minimum wage claim is, much less that they actually claim they
6 are owed anything from A Cab. Plaintiff Reno has not proven that he is owed anything from A
7 Cab; it is his burden of proof, not the employer’s.

8 As pointed out in the referenced deposition testimony, Plaintiff Reno has numerous
9 complaints against his former employer but they are just that - complaints. They are not grounds
10 for a lawsuit. He complains about being penalized for not taking radio calls; he complains about
11 receiving a penalty for when his cash drop was short; he complains about having to carry a
12 customer’s groceries. These are not justiciable claims.

13 Before the Court ever addresses the elements of a class claim under NRCP 23, the Court has
14 to address whether the individual claimant before it is subject to dismissal under NRCP 12(b).
15 Plaintiff’s counsel wants the Court to overlook this fact, and simply fast forward to class
16 certification. This strategy is forbidden by NRCP 23. First and foremost, the Plaintiff himself must
17 have a justiciable claim, and one over which this Court has jurisdiction. The Court must have a
18 legitimate Plaintiff with legitimate claims before it. This is the problem with this matter. Plaintiff
19 Michael Reno is not that Plaintiff. This Plaintiff is not pursuing a dispute based upon a minimum
20 wage claim. Rather, he testified that he merely heard through the rumor mill that he needed to add
21 his name and address to a list in order to possibly get some money. **Exhibit 1**, Deposition of
22 Michael Reno, 45:8-12.

23 Since the filing of Defendant’s Motion for Summary Judgment, the discovery period is now
24 closed. Discovery closed October 1, 2015. Upon closure, Plaintiff Michael Reno had not
25 demonstrated any evidence supporting his claims as asserted in his complaint. He has not come
26 forward with the necessary evidence to defeat summary judgment, and summary judgment *must* be
27 granted in Defendant’s favor. Plaintiff’s last ditch effort to say that there are issues before the
28 Discovery Commissioner is a red-herring. ***There is nothing pertaining to Michael Reno pending***

1 *before the Discovery Commissioner.* Pending before the Discovery Commissioner is Plaintiffs'
2 request to obtain a computer database for all other drivers' work hours and pay information. This
3 discovery issue is not related to any issue pertaining to Michael Reno, and does not serve to defeat
4 summary judgment against Michael Reno.

5 "Although the party opposing a motion for summary judgment is entitled to all favorable
6 inferences from the pleadings and documentary evidence, the opposing party 'is not entitled to
7 build a case on the gossamer threads of whimsy, speculation and conjecture.'" *Collins v. Union*
8 *Fed.Sav. & Loan Ass'n.*, 99 Nev. 284, 302; 662 P.2d 610, 621 (1983) (citing *Mullis v. Nevada*
9 *National Bank*, 98 Nev. 510, 654 P.2d 533 (1982), and *Hahn v. Sargent*, 523 F.2d 461, 468 (1st Cir.
10 1975), *cert. denied*, 425 U.S. 904 (1976)). This is exactly what is occurring herein. Plaintiff Reno
11 has altogether failed to show witnesses, documents, or even his own testimony to support his
12 claims.

13 In order to avoid the requested relief, Plaintiff must come forward with specific facts on
14 which this Court could rule in its favor on the issues addressed in this motion. *Hickman v. Meadow*
15 *Wood Reno*, 96 Nev. 782, 617 P.2d 871 (1980). Here, the motion must be granted because there are
16 no genuine issues of fact which remain for trial and Defendant A Cab is entitled to judgment as a
17 matter of law.

18 Plaintiff has failed to attach any supporting affidavits, testimony, or document that would
19 support the claims of Michael Reno. Discovery closed October 1, 2015. Defendant has repeatedly
20 emphasized to this Court that Plaintiffs have refused to comply with NRCP 16.1's requirement of a
21 calculations of damages. Now, for the first time attached to their responsive pleading, Plaintiffs
22 produce a calculation of Michael Reno's alleged deficiency in pay for one week. **Defendant**
23 **strenuously objects to the Court considering this document.** This has been Plaintiffs' *modus*
24 *operandi* in refusing to comply with the Nevada Rules of Civil Procedure -- failing to disclose
25 documents and attaching them for the first time in pleadings to the Court. Such blatant disregard
26 for the Court rules should not continue to be rewarded.

27 Further, this one page document (which is not bate-stamped) is not authenticated and not
28 reliable. It cannot serve as a basis to defeat summary judgment. This calculation was not produced

1 within the discovery period, was purportedly written by Plaintiff's counsel. It would be reversible
2 error if this Court were to rely upon this manufactured document as a basis to defeat summary
3 judgment.

4 Further, the calculation is full of errors. For example, the break times are calculated in
5 error, for at least 2 of the dates, 7/16/11 and 7/22/11. For each of these dates, Plaintiff Reno wrote
6 in times exceeding 2 hours. For both dates, he wrote in 2 hours and 40 minutes of break, not the 2
7 hours as presented by Plaintiffs' counsel.

8 Plaintiffs' counsel also ignores the fact that Michael Reno has been paid additional funds by
9 the Department of Labor that would extinguish any alleged deficiency. **Exhibit 2**, DOL payment to
10 Michael Reno.

11 In sum, Plaintiff has failed to prove he is owed any sum from A Cab, LLC, and the matter is
12 ripe for summary judgment and dismissal.

13 **CONCLUSION**

14 Based upon the foregoing points and authorities, Defendant A CAB, LLC respectfully
15 requests this Honorable Court to enter an Order granting Defendant's Motion to Dismiss Plaintiff
16 Michael Reno's Claims for Relief for failure to state a claim upon which relief can be granted; or in
17 the alternative, that there remain no genuine issues of material fact and the moving party is entitled
18 to judgment as a matter of law. NRCP 56(c).

19 DATED this 27th day of October, 2015.

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

21
22 By: /s/ Esther C. Rodriguez, Esq.
23 Esther C. Rodriguez, Esq.
24 Nevada Bar No. 6473
25 10161 Park Run Drive, Suite 150
26 Las Vegas, Nevada 89145
27 *Attorneys for Defendant A Cab, LLC*
28

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 27th day of October, 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

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 record, but I need to instruct you, again, we have to
2 stick to this format. It is a question-and-answer
3 format. You can't give narratives, stories. You have to
4 listen to Ms. Rodriguez's question and just answer it.
5 That's all that we are here for. There is no argument,
6 story telling. Stick with the question/answer format if
7 you can.

8 THE WITNESS: All right.

9 Q. So, Mr. Reno, you just mentioned three drivers
10 that you have been speaking with.

11 A. Yep.

12 Q. These are former A Cab drivers; is that what I'm
13 understanding?

14 A. Yes, ma'am.

15 Q. And as we sit here today, you don't know their
16 names?

17 A. Yes, I can get their names. They are working
18 for Western right now. I will have their names once we
19 go to court.

20 MS. SNIEGOCKI: Again, listen to the question.
21 Just answer it. Not what you can do or what you think
22 you can do. She asked if you knew their names sitting
23 here today.

24 A. One of them is Steve, one of them is Victor.
25 Steve -- I will get their last names, Victor, and I will

1 have another one tomorrow. I will have to go into work.

2 Q. So these are three drivers that used to work for
3 A Cab and now they are working for Western?

4 A. They are working for Western and their names are
5 down in the lawsuit with me.

6 Q. And why -- let me ask you when, when did this
7 discussion occur?

8 A. The discussion was yesterday. When they took me
9 to see her we were talking about the thing, she goes -- I
10 go, did you put your name down on the list, if you get
11 any money they will have to know your name, address and
12 phone number. They said, yeah, I'm going too.

13 And Steve is the one that took me to the
14 building. I go I need you for that radio thing, they
15 charged me \$20, too. He goes, I know they did, they did
16 that to me. I need your statement. I need a statement
17 from you. And I talked to the other guy, too, and they
18 are real good about that, I asked to get their
19 statements, we'll get your statements.

20 Q. So Steve is the driver that took you to your
21 attorney's office yesterday?

22 A. Yes, took me. Yeah.

23 Q. And you brought up -- did you bring up the
24 subject of this lawsuit?

25 A. No, I talked to him, I needed a ride to meet the

EXHIBIT 2

EXHIBIT 2

Summary of Unpaid Wages

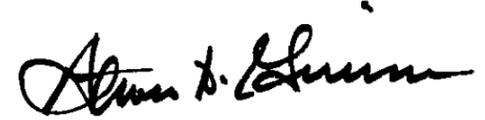
U.S. Department of Labor
Wage and Hour Division



| | | |
|---|----------------------------------|---------------------|
| 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 | | |
| 33 | | 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: _____ | | |



CLERK OF THE COURT

1 **RIS**
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
9 *Attorneys for Defendant A Cab, LLC*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 MICHAEL MURPHY 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.

**DEFENDANT'S REPLY IN SUPPORT
OF MOTION TO DISMISS
PLAINTIFFS' FIRST CLAIM FOR
RELIEF**

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

14 Defendants.

15
16 Defendant A Cab, LLC, by and through its attorney of record, ESTHER C. RODRIGUEZ,
17 ESQ., of RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRCP 12(b)(5), hereby respectfully
18 submits its Reply in Support of Motion to Dismiss the First Claim for Relief in Plaintiffs' Second
19 Amended Complaint. This Reply is based upon the pleadings and papers on file, the attached
20 Memorandum of Points and Authorities, and any oral argument that may be entertained at the
21 hearing of this Motion.

22 **POINTS AND AUTHORITIES**

23 Both Plaintiffs in this matter are former employees of Defendant A Cab, LLC ("A Cab"),
24 and had separated from the company long before the Nevada Supreme Court's decision in *Thomas*
25 *v. Nevada Yellow Cab*.¹ Contrary to the representations put forth by Plaintiffs' counsel, the
26 Nevada Supreme Court has not rejected a prospective application of their decision in *Thomas v.*

27
28 ¹ *Thomas v. Nevada Yellow Cab Corporation*, 130 Nev., Adv. Op. 52 (2014).

1 *Nevada Yellow Cab*. In fact, Plaintiffs' counsel sought such wording from the Nevada Supreme
2 Court, and his request to the Court was expressly rejected.

3 As stated in Defendant's Motion, Plaintiffs' counsel filed his "Motion to Correct" the
4 *Thomas* decision with the Supreme Court, and requested that the Court change its written opinion to
5 include past tense terminology so that it would be retroactive, rather than prospective, as it
6 currently is. See **Exhibit 1** to Defendant's Motion². The Supreme Court denied Plaintiffs' "Motion
7 to Correct," and ruled that the opinion "shall stand as issued." See **Exhibit 2** to Defendant's
8 Motion. This provides further support that the Supreme Court never intended its decision to be
9 used to pursue actions against Defendants or similarly situated employers, retroactively prior to
10 June 26, 2014.

11 Contrary to Plaintiffs' arguments, if the Supreme Court had intended its landmark decision
12 on minimum wage in *Thomas*, to have a retroactive effect as argued by Plaintiffs' Counsel in his
13 "Motion to Correct," the Court would have certainly granted Plaintiffs' "Motion to Correct," and
14 changed the language from the current present tense, to past tense as specifically requested by
15 Plaintiffs' Counsel. However, the Supreme Court refused to change the wording of its opinion,
16 which is profound and compelling. The Supreme Court's decision to deny Plaintiffs' "Motion to
17 Correct" is a clear and authoritative evidence that the *Thomas* decision only applies prospectively
18 and thus Plaintiffs have no claim upon which relief can be granted.

19 **1. The Prospective Application Issue Is Currently Pending before the Nevada Supreme**
20 **Court.**

21 Plaintiffs' counsel implies that the Nevada Supreme Court already determined the
22 prospective application issue in the *Gilmore v. Desert Cab, Inc.* matter, but the Court did not
23 address this issue. *Order of Reversal and Remand*, Appeal No. 62905, NV. Sup. Ct. Decision of
24 April 16, 2015, attached hereto as **Exhibit 1**. In fact, there are several writs currently pending
25 before the Court pertaining to this issue.

27 ² "Defendant's Motion to Dismiss Plaintiffs' First Claim for Relief" ("Defendant's
28 Motion")

1 Boulder Cab, Inc. filed its Petition for Writ of Mandamus on October 8, 2015. **Exhibit 2.**
2 In its Writ, Boulder argues the cab industry’s reasonable reliance on NRS 608.250 (which is
3 presumed constitutional) was valid and in effect until the Nevada Supreme Court ruled otherwise in
4 June 2014. To conserve resources, A Cab incorporates Boulder Cab’s arguments and requests that
5 the District Court consider these arguments that are currently before the Supreme Court.

6 Western Cab Company has filed its Motion for Leave to Appear as Amicus Curiae in
7 Support of Boulder’s Writ. **Exhibit 3.** Western Cab has highlighted to the Supreme Court that the
8 AFL-CIO drafted the Minimum Wage Amendment, and intended for it to level the playing field
9 between union and non-unionized employers. Therefore, the Minimum Wage Amendment violates
10 the supremacy clause of the United States Constitution and is preempted by the National Labor
11 Relations Act.

12 Nevada Yellow Cab Corporation filed a Petition for Writ of Mandamus on October 13,
13 2015, specifically requesting that the Court answer the issue of whether the *Thomas v. Nevada*
14 *Yellow Cab Corporation* decision only applies prospectively. **Exhibit 4.** Western Cab Company
15 has filed its Motion for Leave to Appear as Amicus Curiae in Support of Yellow Cab’s Writ.
16 **Exhibit 5.**

17 These briefs highlight to the Supreme Court that changes in laws, whether enacted by the
18 Legislature or adopted by constitutional amendment by popular referendum, generally operate
19 prospectively not retroactively. It is the position of all of the cab companies involved in raising the
20 issues to the Supreme Court that to hold the elimination of the exceptions of NRS 608.250(2) as
21 dating from November 2006, is in effect an impermissible retroactive application of the law which
22 was the subject of much dispute and not clarified until the *Thomas* decision was published in 2014.

23 A Cab attaches the affidavit of the former Deputy Labor Commissioner of the Nevada
24 Office of the Labor Commissioner Keith Sakelhide hereto as **Exhibit 6.** In his affidavit, Attorney
25 Sakelhide offers his sworn statement as to the circumstances in dealing with minimum wage claims
26 by taxicab drivers prior to the *Thomas* decision. The Office of the Labor Commissioner recognized
27 there were “divergent views” and confusion as to whether the exemptions still applied, until
28 everyone was given the guidance from the Supreme Court in June 2014.

1 If prospective application of a new law, not clear upon its adoption, is required as fair, just
2 and consistent with due process, then this Court's definitive interpretation of the statute as
3 impliedly repealing NRS 608.250(2) must run prospectively from June 26, 2014.

4 **2. Plaintiffs' Action Is Ripe for Dismissal.**

5 Pursuant to NRCP 12(b)(5), a defendant may move to dismiss a Complaint on the basis that
6 it fails to state a claim upon which relief can be granted. Plaintiffs' argument that Defendant
7 should have raised the prospective application of *Thomas* over a year before the Court issued its
8 decision simply does not make any sense. Further, they have no authority in support of this
9 argument.

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

12 **CONCLUSION**

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

16 DATED this 28th day of October, 2015.

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

18
19 By: /s/ Esther C. Rodriguez, Esq.
20 Esther C. Rodriguez, Esq.
21 Nevada Bar No. 6473
22 10161 Park Run Drive, Suite 150
23 Las Vegas, Nevada 89145
24 *Attorneys for Defendant A Cab, LLC*
25
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 28th day of October, 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

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARBARA GILMORE, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,
Appellant,
vs.
DESERT CAB, INC.,
Respondent.

No. 62905

FILED

APR 16 2015

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a class action for minimum wages. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

The Minimum Wage Amendment to the Nevada Constitution, Nev. Const. art. 15, § 16, implicitly repealed NRS 608.250(2)(e)'s exception for taxicab drivers. *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. ___, 327 P.3d 518 (2014). Therefore, appellant taxicab driver stated a viable claim for minimum wages, and we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for further proceedings.¹

[Signature]

_____, J.
Saitta

[Signature]

_____, J.
Gibbons

[Signature]

_____, J.
Pickering

¹We have considered the parties' arguments on appeal, and we decline to further address them.

cc: Hon. Douglas W. Herndon, District Judge
Leon Greenberg Professional Corporation
Moran Law Firm, LLC
Eighth District Court Clerk

EXHIBIT 2

EXHIBIT 2

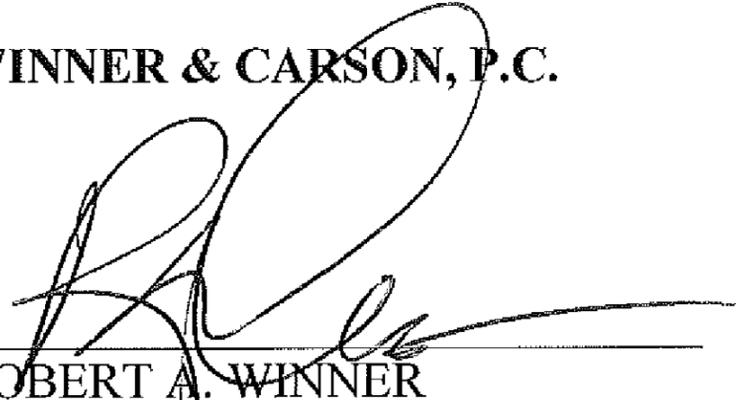
1 **N.R.A.P Rule 26.1 Disclosure**

2 Pursuant to NRAP 26.1 the undersigned counsel of record certifies that Petitioner
3 Boulder Cab Inc., has no parent corporation and no publicly held company owned
4 10 percent or more of its stock.
5

6 The undersigned counsel of record further certifies that he is the only
7 attorney that has appeared for Petitioner Boulder Cab, Inc. in the proceedings in
8 District Court and in this court and that he has appeared since January 8, 2014
9 through the law firm of Winner and Carson.
10

11 DATED this 7 day of October, 2015.
12

13 **WINNER & CARSON, P.C.**

14 
15
16
17 **ROBERT A. WINNER**
18 Nevada Bar No. 5167
19 510 South Eighth Street
20 Las Vegas, Nevada 89101
21 *Attorney for Petitioner*
22
23
24
25
26
27
28

1 TABLE OF AUTHORITIES

2 Statutes

3

4 NRS 608.250(2).....3,5,6,8,10,12,16,17,18

5 NRS 34.160.....6

6 NRS 34.170.....6

7

8 NRS 34.190.....6

9 NRS 34.330.....6

10

11 NRS 34.340.....6

12 Court Rules

13 NRAP 26.1.....2

14

15 NRAP 28.2.....21

16 Nevada Constitution

17 Article XV, Section 16 Nevada Constitution.....6,7,15,16

18

19 Case Law

20 Thomas v. Nevada Yellow Cab Corp., 327 P.3d 518, 522, 130 Nev., Adv. Op. 52

21 (2014).....6,7,15,16,17,18

22

23 Int'l Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193, 197, 179P.3d

24 556, 558 (2008).....8

25

26 NSE, Inc. v. Eighth Judicial Dist. Court, 124 Nev. 862, 867, 192 P.3d 738, 742

27 (2008).....8

28

1 State v. Eighth Judicial District Court, 130 Nev. Adv. Opp. 41, 351 P.3d 736, 740
2 (2015).....8
3
4 Imperial Credit Corp. v. Eighth Judicial District Court, 130 Nev. Adv. Op. 59, 330
5 P.3d 862 (2014).....8
6
7 In Re Advisory Opinion, 132 So, 2.d 163, 169 (1961 Fla.).....22
8
9 Breithautt v. USAA, 110 Nev. 31 867 P.2d 402 (1994).....9
10
11 Hustead v. Farmers Insurance, 90 Nev. 354, 526 P.2d 1116 (1974).....12
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13 Ziglinski v. Farmers insurance, 93 Nev. 23 (1977).....12
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15 Duke v. Duke, 98 Nev. 148 (1982), Schoels v. State, 115 Nev. 33, 36 (1999).....12
16
17
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TABLE OF CONTENTS

1

2 **RELIEF SOUGHT** 6

3

4 **ISSUE PRESENTED**.....6-7

5

6 **STATEMENT OF FACTS** 7-8

7

8 **STANDARDS OF WRIT RELIEF**.....8-9

9

10 **STATEMENT OF REASONING FOR THE ISSUANCE OF A WRIT**9-18

11

12 **A. The Nature of the Taxicab Business**.....10-12

13

14 **B. Boulder Reasonably Relied on NRS 608.250**.....12-13

15

16 **C. Retroactive Application Capriciously Punishes Boulder in**

17 **Discovery**.....13-14

18

19 **D. Retroactive Operation Will Produce Substantial Inequitable Results**

20 **That Need Not Occur**.....14-15

21

22 **E. The Thomas Opinion**.....15-18

23

24

25

26

27

28 **CONCLUSION**18-19

1
2
3
4
5
6
7
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I.

RELIEF SOUGHT

Pursuant to NRAP 21, NRS 34.160, NRS 34.170 NRS 34.190 NRS 34.330, NRS 34.340, Petitioner Boulder Cab Inc. (Boulder) seeks this court's resolution by Writ of Mandamus, or alternatively Writ of Prohibition, of a seriously, costly and too frequently occurring issue in Nevada: Did the taxicab driver exemption from minimum wage law repeal on November 28, 2006, or does public policy require prospective application of the Thomas v. Nevada Yellow Cab Corporation, 130 Nev. Adv. Op. 52 (2014) ?

Petitioner, Boulder requests this court issue a writ compelling the Honorable Timothy C. Williams, Eighth Judicial District Judge, to vacate his September 4, 2015 Order denying prospective application of the Thomas v. Nevada Yellow decision.

II.

ISSUE PRESENTED

Retroactive application of Thomas v. Nevada offends public policy because of reasonable reliance by the parties on the old law and substantial inequities resulting by retroactive application. Article XV Section 16 of the Nevada Constitution did not clearly repeal NRS 608.250 (2), the cab driver exemption.

//

1 exemption NRS 608.250(2) from minimum wage ended on November
2 28, 2006. PA132-134
3

4 IV.

5 **STANDARDS FOR WRIT RELIEF**

6 A Writ of Mandamus is available “to compel the performance of an act that
7 the law requires as a duty resulting from an ‘office, trust or station’ or to control an
8 arbitrary or capricious exercise of discretion.” Int'l Game Tech., Inc. v. Second
9 Judicial Dist. Court, 124 Nev. 193, 197, 179P.3d 556, 558 (2008); NRS 34.160.
10

11 There is no adequate and speedy remedy at law available. This writ poses an
12 important issue of law requiring clarification. ANSE, Inc. v. Eighth Judicial Dist.
13 Court, 124 Nev. 862, 867, 192 P.3d 738, 742 (2008). This is an important issue of
14 law with statewide impact requiring clarification and because an appeal from the
15 final judgment would not constitute an adequate and speedy legal remedy, given
16 the urgent need for resolution, Petitioners respectfully request that this Honorable
17 Court entertain the merits of the Petition.
18
19

20
21 State v. Eighth Judicial District Court, 130 Nev. Adv. Opp. 41, 351 P.3d 736,
22 740 (2015). A writ appropriately granted when “an important issue of law needs
23 clarification in consideration of a sound judicial economy and administration militate
24 in favor of granting the petition. International Gaming Connect, 124 Nev. at 197.
25 Also see Imperial Credit Corp. v. Eighth Judicial District Court, 130 Nev. Adv. Op.
26 59, 330 P.3d 862 (2014). A critical issue of law requires clarification in that Boulder
27
28

1 Cab is subject to extensive litigation and discovery, among other similarly situated
2 parties throughout the state, based on reasonable reliance of the old law as existed
3
4 prior to June 26 of 2014, the date of the Thomas decision. The long standing practice
5 in the taxicab industry of compensating drivers by a percentage of the book, the
6 reliance on the existing law, as well as the apparent continuation of the minimum
7
8 wage exemption for cab drivers by the labor commissioner suggest prospective
9 application . The substantial inequities that are visited upon Boulder, to be subject to
10
11 back pay, penalties, attorney fees, and punitive damages while other cab companies
12 are exempt from past damages because of collective bargaining, further underscores
13
14 prospective application.

15 V.

16 **STATEMENT OF REASONING AND BACKGROUND FOR THE**
17
18 **ISSUANCE OF THE WRIT**

19
20 Courts in Nevada, and elsewhere, consider the effect of retroactive application
21
22 of a new law. This should be especially true when a statute has been impliedly
23 repealed, by voter initiative. Courts examine the reasonable reliance of parties on the
24
25 old law, the effect of a retroactive application, and substantial inequitable results if so
26 applied. Breithautt v. USAA, 110 Nev. 31 867 P.2d 402 (1994)

27 In determining whether a new rule of law should be limited to
28 prospective application, the courts have considered three factors: (1)

1 “the decision to be applied non retroactively must establish a new
2 principal of law, either by overruling clear past precedent on which
3 litigants may have relied, or by deciding an issue of first impression
4 whose resolution was not clearly foreshadowed;” (2) the court must
5 “weigh the merits and demerits in each case by looking to the prior
6 history of the rule in question, its purpose and effect, and whether
7 retrospective operation will further or retard its operation;” (3) courts
8 consider whether retroactive application “could produce substantial
9 inequitable results.”(cases cited) 867 P.2d at 405

10 Also see Hustead v. Farmers Insurance, 90 Nev. 354, 526 P.2d 1116 (1974),
11 Ziglinski v. Farmers insurance, 93 Nev. 23 (1977) Duke v. Duke, 98 Nev. 148
12 (1982), Schoels v. State, 115 Nev. 33, 36 (1999) Nunez-Reyes v. Holder, 646 F.3rd
13 684 (9th Circuit 2011).

14 “The overruling of a judicial construction of a statute generally will not
15 be given retroactive effect.” Breithautte 867 P.2d at 406. The unique facts
16 surrounding NRS 608.250(2) repeal should, likewise, not be given retroactive
17 effect.

18 **A. The Nature of the Taxicab Business**

19 The exemption from minimum wage for taxi drivers has been the law in
20 Nevada for decades, NRS 608.250(2). The vast majority of cab drivers make more
21 than minimum wage. Traditionally, compensation for cab drivers was not an hourly
22 rate, but a commission or percentage of the book. PA022. By law, Boulder has to
23 install cab meters in its cabs, which records the amount of the fare based on miles and
24 time. It also records the initial trip charge and any other fees necessary for Boulder
25
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1 to pay its lawful trip charges or fees to the airport. Each trip is recorded on the trip
2 sheet, which includes its start, stop and total fare. The total fare, or "book" is what's
3 on the meter. Boulder, like all other cab companies, pays a percentage of the book
4 the driver generates for himself and Boulder. Boulder splits the book 50/50 with the
5 driver, after expenses (trip charges, gas). PA023. Cab drivers, by Nevada regulation
6 cannot work more than 12 hours NAC 706.549. The percentage of the book as
7 compensation for cab drivers is necessary because of the nature of the work.
8

9
10 Boulder, in complying with Nevada law, must purchase and outfit the cab, insure it,
11 pay taxes, worker's compensation and other necessary expenses in order to put a cab
12 on the road. PA036, PA037, PA039. We are not Uber.
13

14
15 Once Boulder hands the keys to a cab driver, Boulder has very little control
16 over the cab driver. A cab driver is, in essence, a separate and independent business
17 while he's on the road for up to 12 hours. PA038, PA039. The percentage
18 commission compensation encourages cab drivers to look for work and generate
19 rides and therefore revenue. The cab driver makes money for himself as well as the
20 company. It encourages hustle and discourages inactivity. If you don't make efforts
21 to find rides, you won't make revenue. Because of the significant investment it had
22 to make before the cab is put on the road, Boulder has an interest in the cab driver
23 generating more revenue, too. The cab driver exemption from the minimum wage is
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1 based on the nature of the business, and not because cab drivers make less than
2 minimum wage. PA022-024

3
4 **B. Boulder Reasonably Relied on NRS 608.250**

5 Although the minimum wage amendment passed in 2006, and it clearly raised
6 the minimum wage, Boulder Cab reasonably relied on the clear past precedent of cab
7 driver exemption. The minimum wage amendment did not mention cab drivers, nor
8 did it mention NRS 608.250. Furthermore, the notices Boulder received from the
9 Labor Commissioner, still seem to exempt cab drivers even after the minimum wage
10 amendment took effect. PA021, PA022, PA026, PA039.

11
12
13 Boulder prays this court rule that the new law occurred when the Thomas
14 decision was published. The Thomas court essentially declared NRS 608.250(2)
15 unconstitutional, even though it had been on the legislative books for decades. It was
16 only because of legal analysis done by the majority in Thomas that declared the cab
17 driver exemption irreconcilably repugnant to the minimum wage amendment.
18

19
20 The law of retroactive versus prospective in Nevada considers the clear past
21 precedent and the reasonable reliance by Boulder on the cab driver exemption as to
22 the nature of compensating cab drivers. The minimum wage amendment implied
23 repeal could not have been foreshadowed by Boulder. Candidly, the Thomas
24 majority found a repugnancy between the two, but three honorable justices dissented,
25 finding the amendment and statute could be harmonized. Further, the District Court
26
27
28

1 judges that had considered the amendment versus cab driver exemption had almost
2 unanimously harmonized the two and did not find irreconcilable repugnancy between
3 the amendment and the statute. Respectfully, if learned jurists can struggle and
4 disagree on the effect of the amendment on the statute and its clarity, how can a cab
5 owner know that the amendment clearly repealed the statutory exemption?
6
7

8 **C. Retroactive Application Capriciously Punishes Boulder in Discovery**

9 While Boulder allowed its cab drivers to work up to a 12 hour shift, many did
10 not, because of the vagaries of demand within Boulder's certificated area. PA021.
11 Boulder never tracked the hours of the cab drivers (except for monitoring the 12
12 hours, maximum) until the Thomas decision. PA026. Since Thomas, the instant case
13 has been moving forward, and Plaintiff has been inundating Boulder with discovery
14 requests for the hours per shift. The trip sheets, generated pursuant to compliance
15 with Nevada law have been offered to Plaintiff's counsel as a way to get a rough
16 estimate as to the hours worked. PA038, PA039. We had never tracked, prior to
17 Thomas, the hours any driver worked as the exemption under 608.250 seemed to still
18 exist. PA029, PA028, PA026. Furthermore, the length of the shift wasn't necessarily
19 important in calculating driver compensation, nor taxes for the IRS, nor trip charges
20 to be remitted to the Nevada Taxicab Authority. PA036,PA038. Retroactive
21 application of the Thomas decision turns the entire cab industry on its head in trying
22 to find the hours that may or may not have been worked in a particular shift by a cab
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1 driver. PA039, PA021, PA022. We've provided Plaintiff's attorney our computer
2 data showing revenue generated and number of shifts, but there's no information on
3 hours of the shift. That must be done by a tedious process of looking at each and
4 every trip sheet generated for each driver on each shift to get a rough estimate of the
5 length of the shift. The merits and demerits of applying retroactive versus
6 prospective application of Thomas demonstrates an injustice in trying to efficiently
7 recreate shift hours and undue a long standing process relied upon by Boulder if the
8 Thomas decision is given retroactive application.

9
10
11
12 **D. Retroactive Operation Will Produce Substantial Inequitable Results**

13 Boulder has been subjected to substantial inequities already, having to endure
14 and trying to comply with discovery requests and orders in this litigation. As noted,
15 the compensation of cab drivers has been done at all cab companies in Clark County
16 in roughly the same manner for decades. Some of the larger cab companies have
17 collective bargaining agreements. PA040. Unions represent drivers in these larger
18 companies and have through collective bargaining negotiated compensation and
19 insurance benefits, among other things. PA039, PA040. By virtue of the agreements,
20 for insurance and compensation negotiated by the unions, those standards had a
21 rippling effect throughout the cab industry. Medium and smaller size cab companies
22 in Clark County had to compensate the drivers and provide insurance benefits like
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1 those the unions negotiated at the larger companies PA025, like Frias' five
2 companies. PA014.

3
4 A retroactive application of the Thomas decision necessarily requires Boulder
5 to be subjected to this litigation, trying to comply with discovery, back wages,
6 penalties and punitive damages for merely compensating a driver in the same manner
7 as larger unionized companies like the Frias companies. PA004-006 Pursuant to the
8 minimum wage amendment, Frias' Companies are exempt from the minimum wage
9 law. PA058. Boulder Cab is facing back pay, penalties and punitive damages for
10 relying on the prior law while the Frias Companies, don't. What purpose or public
11 policy mandates that Boulder should be subjected to substantial inequitable results by
12 a Thomas retroactive application? Clearly a prospective application of Thomas
13 would help minimize the inequities visited on Boulder when compared to the
14 unionized companies.
15

16
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18
19 **E. The Thomas Opinion(s)**

20
21 Thomas vs. Nevada Yellow Cab Corporation, 130 Nev., Adv. Op. 52 (2014)
22 ruled the taxicab exemption unconstitutional.

23
24 The majority opinion noted the state legislature does not have the power to
25 enact laws conflicting with the Constitution. Id at 521. Harmonizing the amendment
26 and the statutory exemptions would "run afoul of the principal of constitutional
27 supremacy" Id at 521. The Nevada Constitution controls over any conflicting
28

1 statutory provision. Id at 521. If the legislature could change the constitution by an
2 ordinary enactment, no longer would the constitution be superior. Id at 522. “In this
3 case, the principal of constitutional supremacy prevents the Nevada legislature from
4 creating exceptions to the rights and privileges protected by Nevada’s constitution.”
5 Id at 522.
6

7
8 The Nevada legislature did not create exceptions to the Nevada constitution.
9 Rather, taxicab drivers were exempt from minimum wage. The exemptions were
10 based on policy decisions made by the legislature. The statutory exemptions under
11 NRS 608.250(2) had existed for many decades. Until the Thomas decision, this
12 statute was the law in Nevada. The voter initiative never mentioned cab drivers,
13 NRS 608.250, nor any language restructuring the “entire legislative scheme”
14 Thomas, at 253 (dissent). The Thomas majority found the statute irreconcilably
15 repugnant with the constitutional amendment. Three learned justices did not
16 (dissent). As the voter initiative neither expressly nor impliedly mentioned NRS
17 608.250, or the existing exceptions to minimum wage, it was only through legal
18 analysis could the majority find it “unconstitutional”. The Thomas decision should
19 be prospective in its application.
20
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23

24 In considering the effect of constitutional amendments upon existing
25 statutes, the rule is that the statute will continue in effect unless it is
26 completely inconsistent with the plain terms of the constitution.
27 ***Implied repeals of statutes by later constitutional provisions is not
28 favored and the courts require that in order to produce a repeal by
implication the repugnancy between the statute and the constitution

1 must be obvious or necessary. Pursuant to this rule, by any fair course
2 of reasoning the statute can be harmonized or reconciled with the new
3 constitutional provision, then it is the duty of the court's to do so."
4 (Cases cited) (emphasis added) In Re Advisory Opinion. 132 So. 2d
163, 169 (1961)

5 The Thomas opinion(s) alone demonstrates prospective application is
6 appropriate. This court's sudden invalidation/striking of NRS 608.250(2) makes
7 prospective the only fair and equitable application. There was no express repeal of
8 NRS 608.250. Had the minimum wage amendment declared "no exceptions" an
9 implied repeal of NRS 608.250 would have clearly occurred.
10

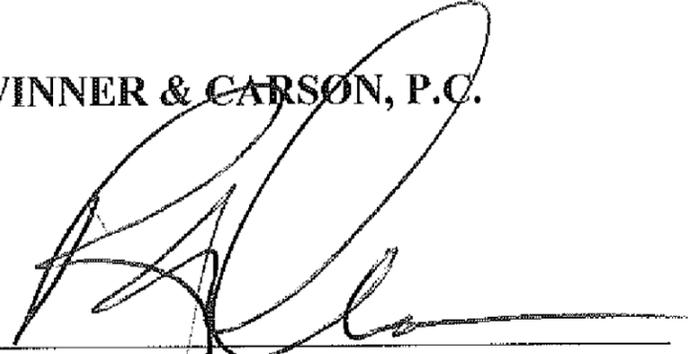
11 Implied repeals are not favored. If an existing statute (like NRS 680.250) is
12 impliedly repealed by a constitutional amendment, courts have found that the intent
13 to repeal must be clear. It must be completely inconsistent with the plain terms of the
14 constitutional amendment. The repugnancy of the statute through the constitutional
15 amendment must be obvious. Case law directs our courts to harmonize or reconcile
16 the constitution and the statute by any fair course of reasoning. In Re Advisory
17 Opinion, (supra); Also cited in Thomas, at 522 (dissent)
18

19 Respectfully, the Thomas majority justices and those in dissent put forth
20 informed and reasoned application of the law and the facts before them. Before
21 Thomas, other honorable and seasoned District Court Judges (State and Federal)
22 harmonized the statute and amendment, finding no implied repeal.
23
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1 Based on the foregoing points and authorities, Petitioners respectfully
2 request that this Honorable Court grant the Petition for Writ of Mandamus.

3
4 DATED this 7 day of October, 2015.

5
6 **WINNER & CARSON, P.C.**

7
8 

9 ROBERT A. WINNER
10 Nevada Bar No. 5167
11 510 South Eighth Street
12 Las Vegas, Nevada 89101
13 *Attorney for Petitioners*

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

2
3 I hereby certify that this Petition complies with the formatting requirements
4 of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
5 requirements of NRAP 32(a)(6) because this brief has been prepared in a
6 proportionally spaced type face using 14 point Times New Roman typeface in
7 Microsoft Word 2013.
8

9
10 I further certify that this Petition complies with the page-or type volume
11 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by
12 NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or
13 more and contains 3839 words.
14

15 Finally, I hereby certify that I have read this Petition, and to the best of my
16 knowledge, information, and belief, it is not frivolous or interposed for any
17 improper purpose. I further certify that this Petition complies with all applicable
18 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires
19 every assertion in the Petition regarding matters in the record to be supported by a
20 reference to the page and volume number, if any, of the transcript or appendix
21 where the matter relied on is to be found.
22
23

24
25 //

26 //

27
28 //

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

5 DATED this 7 day of October, 2015.

6 WINNER & CARSON, P.C.

7 
8
9

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14 *Attorney for Petitioners*
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1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies that on October 7, 2015, service of the
3
4 foregoing, **PETITION FOR WRIT OF MANDAMUS** and **PETITIONERS'**
5 **APPENDIX** was made by electronic service through the Nevada Supreme Court
6
7 Electronic Filing System, addressed as follows:

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14 The Honorable Timothy C. Williams
15 Regional Justice Center
16 Department 16
17 200 Lewis Avenue
18 Las Vegas, Nevada 89155
19 (Via-Hand Delivery)

20 

21 _____
22 An employee of **Winner & Carson, P.C.**

EXHIBIT 3

EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

BOULDER CAB, INC.

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for the County of Clark; and THE HONORABLE TIMOTHY C. WILLIAMS, District Judge,

Respondents,

and

DAN HERRING,

Real Party in Interest.

Case No.: 68949

Electronically Filed
Oct 20 2015 09:05 a.m.

Clark County District Court Case No. 15-0015
Trace K. Lindeman
Clerk of Supreme Court

**WESTERN CAB COMPANY'S
MOTION FOR LEAVE TO
APPEAR AS AMICUS CURIAE IN
SUPPORT OF PETITION FOR
WRIT OF MANDAMUS AND
SUPPORTING REVERSAL OF THE
DISTRICT COURT'S DECISION**

Pursuant to NRAP 29(a) and 21(b)(3), Western Cab Company, a Nevada company doing business in Clark County, Nevada, moves for leave to appear as amicus curiae in support of Petitioner Boulder Cab, Inc.'s Petition for Writ of Mandamus filed on October 8, 2015. Like Petitioner, Western Cab seeks the Court's clarification that the decision in *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (2014), applies prospectively from June 26, 2014, in its implied repeal of NRS 608.250(2). Additionally, Western Cab has discovered that the AFL-CIO drafted the Minimum Wage Amendment to level the playing field between unionized and non-unionized employers. Therefore, the Minimum Wage Amendment is preempted by the National Labor Relations Act.

At issue are practical and legal issues affecting Nevada employers and

employees with regard to the interpretation and applicability of the Minimum Wage Amendment, Nevada Const. Art. XV, sec. 16. Conflicts of interpretation as to how to reconcile the Minimum Wage Amendment with NRS Chapter 608, Nevada's Compensation, Wages and Hours chapter, immediately arose. State and federal trial courts have inconsistently applied two, three and four year statutes of limitations to claims for back wages. In addition, there was divergence among the same courts as to whether Nevada employees previously excepted from the minimum wage by NRS 608.250(2), *e.g.*, casual babysitters, certain domestic service employees, certain outside salespersons, certain agricultural employees, taxicab and limousine drivers, and certain persons with severe disabilities, were covered under the Minimum Wage Amendment. Questions as to the meaning of "health benefits" under the Amendment have also been raised in Nevada's state and federal trial courts.

On June 26, 2014, this Court addressed the conflict between the Minimum Wage Amendment and NRS 608.250(2), holding that the Minimum Wage Amendment had impliedly repealed NRS 608.250(2) and that employees previously excepted by statute from the minimum wage were now entitled to it under the Constitutional Amendment. *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (2014).

Thomas, however, did not resolve other issues concerning the Minimum Wage Amendment's meaning, which issues have now been presented to this Court

in several proceedings, including but not limited to, *Hanks v. Briad Restaurant Group, LLC*, Case No. 68845, and *Kwayisi vs. Wendys of Las Vegas*, Case No. 68754, both presenting certified questions of the U.S. District Court Judge Gloria M. Navarro, which questions have been accepted by the Court for review (“Whether an employee must actually enroll in health benefits offered by an employer before the employer may pay that employee at the lower-tier wage under the Minimum Wage Amendment, Nev. Const. art. XV, §16?”); *MDC Restaurants LLC vs. District Court (Diaz)*, Case No. 68523 (presenting the same question as those certified in *Hanks* and *Kwayisi*); *MDC Restaurants LLC v. District Court (Diaz)*, Case No. 67631 (petitioning for a two-year statute of limitations); *Nevada Yellow Cab v. District Court (Thomas)*, Case No. 68975 (seeking clarification as to the prospective effect of the 2014 *Thomas* decision); and *Western Cab Co. v. District Court (Perera)*, Case No. 68796 (petitioning for a two-year statute of limitations).

In this matter, Petitioner Boulder Cab has raised the issue of whether the implied repeal of the exceptions of NRS 608.250(2) fairly dates from November 2006, when the Minimum Wage Amendment was adopted, or from June 26, 2014, when this Court published its decision in *Thomas* announcing by a 4/3 decision that the exceptions had been impliedly repealed. Like Boulder Cab, Western Cab faces serious issues of record-keeping and fundamental fairness as it has employees who were previously excepted from the minimum wage, others who

were not excepted, and has maintained its records in conformity with NRS 608.115 (“Records of wages must be maintained for a 2-year period following the entry of information in the record”).

While as a general proposition, changes in laws, whether enacted by the Legislature or adopted by constitutional amendment by popular referendum, operate prospectively and not retroactively, it is the position of Boulder Cab and proposed amicus curiae Western Cab that to hold the elimination of the exceptions of NRS 608.250(2) as dating from November 2006, is in effect an impermissible retroactive application of the law which was the subject of much dispute and not clarified until the *Thomas* decision was published in 2014. If prospective application of a new law, not clear upon its adoption, is required as fair, just and consistent with due process, then this Court’s definitive interpretation of the statute as impliedly repealing NRS 608.250(2) must run prospectively from June 26, 2014.

In addition, there are other infirmities with the Minimum Wage Amendment that may render the entire Amendment violative of federal law and preempted by it. The AFL-CIO who drafted the Minimum Wage Amendment intended for it to level the playing field between union and non-unionized employers. Therefore, the Minimum Wage Amendment violates the supremacy clause of the United States Constitution and is preempted by the National Labor Relations Act.

In conclusion, the issues raised by Boulder Cab’s Petition should be resolved

with all possible arguments presented to the Court. Western Cab therefore respectfully requests that the Court hear Boulder Cab's Petition and also grant Western Cab leave to file an amicus brief.

DATED: October 19, 2015

Respectfully submitted,

HEJMANOWSKI & McCREA LLC



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*Attorneys for Amicus Curiae
Western Cab Company*

CERTIFICATE OF SERVICE

The undersigned does hereby certify that pursuant to NRAP 25(c), a true and correct copy of the forgoing **WESTERN CAB COMPANY'S MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS AND SUPPORTING REVERSAL OF THE DISTRICT COURT'S DECISION** was filed electronically with the Nevada Supreme Court Electronic Filing System, and a copy was served electronically on this 19th day of October, 2015, to the following:

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And a true and correct copy of the foregoing **WESTERN CAB COMPANY'S MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS AND SUPPORTING REVERSAL OF THE DISTRICT COURT'S DECISION** was served via first class, postage-paid U.S. Mail on this 19th day of October, 2015, to the following:

The Honorable Timothy C. Williams
District Court Judge
Eighth Judicial District Court of Nevada
200 Lewis Avenue, #12D
Las Vegas, NV 89101

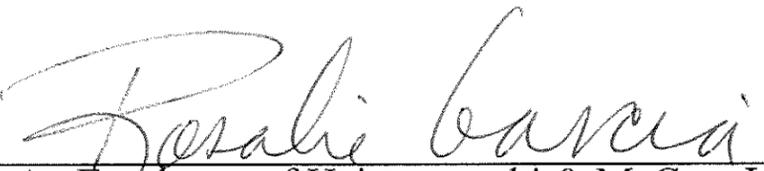

An Employee of Hejmanowski & McCrea LLC

EXHIBIT 4

EXHIBIT 4

IN THE SUPREME COURT OF NEVADA

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

Petitioners,)

vs.)

THE EIGHTH JUDICIAL DISTRICT)
COURT of the State of Nevada, in and)
For the County of Clark, and THE)
HONORABLE RONALD J. ISRAEL)
District Judge,)

Respondents,)

and)

CHRISTOPHER THOMAS, and)
CHRISTOPHER CRAIG,)

Real Parties in Interest.)

Electronically Filed
Oct 13 2015 11:21 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
Sup. Ct. No.
Case No.: A-12-661726-C

Dept. No.: XXVIII

PETITION FOR WRIT OF MANDAMUS

MARC C. GORDON, ESQ.
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TABLE OF CONTENTS

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

RELIEF REQUESTED BY PETITIONERS.....4

ISSUE PRESENTED4

STATEMENT OF FACTS.....4

STATEMENT OF REASONING FOR THE ISSUANCE OF A WRIT.....5

A. Real Parties in Interest Have No Claim For Minimum Wage Since The Application of The Thomas Decision is Prospective, Not Retroactive.....7

B. There Were Two (2) Conflicting Laws Regarding The Same Subject Matter.....10

C. A New Rule of Law Must Be Given Prospective Application.....14

D. This Honorable Court Denied Real Parties' in Interest "Motion to Correct" Its Opinion.....16

CONCLUSION.....18

TABLE OF AUTHORITIES

1

2 **Thomas vs. Nevada Yellow Cab Corporation, 130 Nev., Adv. Op. 52 (2014)...4**

3

4 **Int'l Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193, 197, 179P.3d**
556, 558 (2008).....5

5 **NRS 34.160.....6**

6

7 **ANSE, Inc. v. Eighth Judicial Dist. Court, 124 Nev. 862, 867,**
192 P.3d 738, 742 (2008).....6

8

9 **NRS 608.250(2).....7**

10

11 **Landgraf v. USI Film Prods., 511 U.S. 244, 273 (1994); *PEBP*, 124 Nev. at 154,**
12 179 P.3d at 553.....8

13

14 **Cnty. of Clark v. Roosevelt Title Ins. Co., 80 Nev. 530, 535, 396 P.2d 844, 846**
15 (1964). (Cited in Sandpointe Apartments, LLC v. Eighth Judicial District
16 Court, 129 Nev. Adv. Op. 87 Nov. 14, 2013).....8

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18 **McKellar v. McKellar, 110 Nev. 200, 871 P.2d 296, 298 (1994).....9**

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20 **Lucas v. Bell Trans, 2009 WL 2424557 (D. Nev. 2009).....11**

21

22 **Terry v. Sapphire Gentlemen’s Club, 130 Nev., Adv. Op. 87 (2014).....13**

23

24 **Breithaupt v. USAA Property and Casualty Insurance Company, 110 Nev. 31,**
25 867 P.2d 402 (1994).....14

26

27 **Chevron Oil Co. v. Huson, 404 U.S. 97, 106-07, 92 S.Ct. 349, 355, 30 L.Ed.2d**
28 296 (1971).....14

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I.

RELIEF REQUESTED BY PETITIONERS

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

II.

ISSUE PRESENTED

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

III.

STATEMENT OF FACTS

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

1 4. On February 10, 2015, the Honorable Judge Ronald J. Israel denied the
2 Motion to Dismiss. See Petitioners' Appendix **PA145-146**.

3
4 5. Currently there are numerous similar cases in Clark County District Court
5 involving allegations of violation of the 2006 Constitutional Minimum
6 Wage Amendment prior to the Thomas decision. The names and cases
7 numbers are the following: *Melaky Tesema vs. Lucky Cab Co.* Case No. A-
8 12-660700-C; *Barbara Gilmore vs. Desert Cab, Inc.* Case No. A-12-
9 668502-C; *Michael Murray vs. A Cab Taxi Service, LLC* Case No. A-12-
10 669926-C; *Neal Golden vs. Sun Cab Inc.,* Case No. A-13-678109-C; *Dan*
11 *Herring vs. Boulder Cab, Inc.,* Case No. A-13-691551-C; *Laksiri Perera*
12 *vs. Western Cab Company* Case No. A-14-707425-C.

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16 6. The case of *Michael Sargeant vs. Henderson Taxi* Case No. A-15-714136-
17 C was filed on February 19, 2015 after the Thomas decision; however, it
18 involves similar allegations of violation of the 2006 Constitutional
19 Minimum Wage Amendment prior to the Thomas decision.
20
21

22 IV.

23 STATEMENT OF REASONING FOR THE ISSUANCE OF A WRIT

24
25 A Writ of Mandamus is available “to compel the performance of an act that
26 the law requires as a duty resulting from an ‘office, trust or station’ or to control an
27 arbitrary or capricious exercise of discretion.” Int'l Game Tech., Inc. v. Second
28

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

2 There is no adequate and speedy remedy at law available. This writ poses an
3 important issue of law requiring clarification. ANSE, Inc. v. Eighth Judicial Dist.
4 Court, 124 Nev. 862, 867, 192 P.3d 738, 742 (2008). This is an important issue of
5 law with statewide impact requiring clarification and because an appeal from the
6 final judgment would not constitute an adequate and speedy legal remedy, given
7 the urgent need for resolution, Petitioners respectfully request that this Honorable
8 Court entertain the merits of the Petition.
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12 One of the central tenants in common law, is that individuals and entities be
13 made aware and provided with clear and unambiguous notices of laws so they can
14 comport their conduct to those existing laws. When two (2) conflicting laws
15 regarding the same subject matter are in existence at the same time, it creates
16 uncertainty and ambiguity for individuals and entities regarding which law to follow.
17 This major problem is compounded when an enforcement agency, such as the Office
18 of Nevada Labor Commissioner, itself is operating under the same uncertainty and
19 ambiguity as employers. Hence, on June 26, 2014 this Honorable Court for the first
20 time clarified the law with respect to the Minimum Wage Amendment in Nevada. It
21 is Petitioners' strong contention that the Thomas decision was intended **to only apply**
22 **prospectively**. There are currently numerous similar cases involving allegations of
23 violation of the 2006 Constitutional Minimum Wage Amendment prior to the
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1 Thomas decision on June 26, 2014. Those cases including the instant matter will
2 encounter long, arduous and protracted likely class action litigation which will
3 undoubtedly and unnecessarily consume tremendous judicial resources and costs. In
4 the instant matter, Real Parties in Interest are seeking class action certification. See
5 Petitioners' Appendix **PA166-167**. Therefore this matter requires this Honorable
6 Court to definitively rule that the Thomas decision only applies prospectively from
7 June 26, 2014.
8
9

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

13 In this case, on June 26, 2014, this Honorable Court decided the
14 Thomas case and recognized in its decision, that at the time, there were two (2)
15 conflicting laws regarding the same subject matter, namely NRS 608.250(2) and
16 the 2006 Constitutional Minimum Wage Amendment. The Court also recognized
17 that employers were put in the most impossible and unenviable position in
18 choosing between which legal provision to follow, on the same exact subject
19 matter. Following passage of the Nevada Minimum Wage Amendment in 2006,
20 the statutory exemption for taxicab and limousine drivers remained. There was no
21 express or implied repeal at that time and in the years following. In addition, the
22 Nevada Labor Commissioner comported with NRS 608.250(2). Up until June 26,
23 2014, NRS 608.250(2) was the law that employers were following and it was
24 reasonable to do so. Therefore, this Honorable Court decided, that from June 26,
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1 2014 it would make clear to employers and employees in the State of Nevada what
2 the current law on Minimum Wage would be moving forward. The decision is
3 clear and speaks for itself.
4

5 There is nothing in the Thomas decision either directly or indirectly, that
6 supports the proposition that a taxicab or limousine driver can now go back in time
7 and pursue minimum wage claims against individual employers prior to June 26,
8 2014. Substantive statutes are presumed to only operate prospectively, unless it is
9 clear that the drafters intended the statute to be applied retroactively. Landgraf v.
10 USI Film Prods., 511 U.S. 244, 273 (1994); PEBP, 124 Nev. at 154, 179 P.3d at
11 553; Cnty. of Clark v. Roosevelt Title Ins. Co., 80 Nev. 530, 535, 396 P.2d 844,
12 846 (1964). (Cited in Sandpointe Apartments, LLC v. Eighth Judicial District
13 Court, 129 Nev. Adv. Op. 87 Nov. 14, 2013). The presumption against
14 retroactivity is typically explained by reference to fairness. Landgraf, 511 U.S. at
15 270.
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20 As stated in Sandpointe Apartments, LLC Id. at page 18:
21

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

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

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

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

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

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

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18 **B. There Were Two (2) Conflicting Laws Regarding The Same Subject**
19 **Matter**

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

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

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

1 until the Thomas decision. Following passage of the Nevada Minimum Wage
2 Amendment in 2006, the statutory exemption for taxicab and limousine drivers
3 remained on the books and effective (NRS 608.250(2)). There was no express or
4 implied repeal at that time and in the years following. In 2009, Federal Judge
5 Clive Jones was the first jurist to weigh in on the question of “implied repeal,”
6 interpreting Nevada law in the Lucas v. Bell Trans, 2009 WL 2424557 (D. Nev.
7 2009) case. His decision against “implied repeal,” although not binding on this
8 Honorable Court, was nonetheless the only statement of competent judicial
9 authority on the Nevada law question, and remained so until Thomas. All during
10 those years from 2006 until June 26, 2014, employers and employees followed the
11 law as interpreted by Judge Jones, and were reasonable in doing so, since this
12 Honorable Court had not spoken otherwise. In addition, the Nevada Labor
13 Commissioner comported with that state of affairs, and continued to recognize
14 NRS 608.250(2) by issuing “Rules to be Observed By Employers,” dated
15 November 13, 2012, where it specifically listed the exceptions to minimum wage,
16 including taxicab drivers. See Petitioners’ Appendix **PA036**. Therefore,
17 Petitioners were following the law as it existed at the time, which was being
18 enforced by the Office of Labor Commissioner and hence there were no violations
19 of existing laws. This Honorable Court recognized this fact when it stated, “The
20 Amendment’s broad definition of employee and very specific exemptions
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1 necessarily and directly conflict with the legislative exception for taxicab drivers
2 established by NRS 608.250(2)(e). Therefore, the two are “irreconcilably
3 repugnant,”... such that “both cannot stand,”... and the statute **is impliedly**
4 **repealed** by the constitutional amendment.” (Page 6 of *Thomas* decision) The
5 majority did not state “the statute **was** impliedly repealed.” This means that up
6 until the *Thomas* decision, this Honorable Court believed there was a legitimate
7 confusion among the public and employers, in that there were two (2) conflicting
8 laws on the same subject matter requiring a conclusive decision that would
9 establish precedent moving forward that would only apply prospectively. Nothing
10 from the *Thomas* decision indicates that it granted Real Parties in Interest a right to
11 pursue claims against Petitioners retroactively after the *Thomas* decision. Since
12 there were no violations of existing laws, Real Parties in Interest have no claims
13 against Petitioners upon which relief can be granted prior to June 26, 2014.

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19 The *Thomas* decision made it clear that the exemptions under NRS
20 608.250(2) no longer apply. NRS 608.250(2) contained exemptions in effect since
21 1965, which employers reasonably and legitimately relied upon. The intent of the
22 *Thomas* decision was **not to punish** Petitioners including other employers who
23 reasonably and legitimately relied upon NRS 608.250(2) and the notices from the
24 Office of Labor Commissioner. Rather, the intent of *Thomas* was to make one
25 conclusive opinion on minimum wage law and to clarify the law prospectively.
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1 This Honorable Court recently took the opportunity to cite to the *Thomas*
2 decision, by specifically using the present tense language, which provides further
3 support that this Honorable Court's decision had **prospective effect**.
4
5 In *Terry v. Sapphire Gentlemen's Club*, 130 Nev., Advance Opinion 87 (2014), at
6 Page 6 this Honorable Court stated:

7
8 ... and though this court has recognized that the text of the Minimum
9 Wage Amendment **supplants** that of our statutory minimum wage
10 laws to some extent, see *Thomas v. Nev. Yellow Cab Corp.*, 130 Nev.
11 ___, ___, 327 P.3d 518, 522 (2014) (holding that "[t]he text of the
12 Minimum Wage Amendment ... **supersedes** and **supplants** the
13 taxicab driver exception set out in NRS 608.250(2)")

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

19
20 While the constitutional amendment did not directly conflict with the
21 exemptions outlined in NRS 608.250, its passage created some
22 **uncertainty**. It was this uncertainty that the Nevada Supreme Court
23 addressed this past summer in *Thomas v. Nevada Yellow Cab*, 130
24 Nev. Adv. Op. 52 (2014). In its opinion, the Nevada Supreme Court
25 found that exemptions outlined in the Nevada Constitution supersede
26 the exemptions previously provided for in NRS 608.250. The only
27 individuals who are exempt from the payment of minimum wage,
28 according to the Nevada Supreme Court, are those specifically
outlined in the constitutional amendment.

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

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

10 Petitioners were among those employers who reasonably and legitimately relied on
11 the exemptions prior to the *Thomas* decision and thus should not be punished by
12 having to defend alleged class action claims involving alleged conduct that
13 occurred prior to the *Thomas* decision. Petitioners have been in compliance with
14 the *Thomas* decision since June 26, 2014. See Affidavit of Gene Auffert, CEO and
15 CFO as Petitioners’ Appendix **PA041**.
16
17

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19 **C. A New Rule of Law Must Be Given Prospective Application**

20 In Breithaupt v. USAA Property and Casualty Insurance Company, 110 Nev.
21 31, 867 P.2d 402 (1994), at page 405 this Honorable Court followed the three part
22 test in Chevron Oil Co. v. Huson, 404 U.S. 97, 106-07, 92 S.Ct. 349, 355, 30
23 L.Ed.2d 296 (1971) on whether a new rule of law should be limited to prospective
24 application. In determining whether a new rule of law should be limited to
25 prospective application, courts have considered three factors: (1) “the decision to
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1 be applied nonretroactively must establish a new principle of law, either by
2 overruling clear past precedent on which litigants may have relied, or by deciding
3 an issue of first impression whose resolution was not clearly foreshadowed,” (2)
4 the court must “weigh the merits and demerits in each case by looking to the prior
5 history of the rule in question, its purpose and effect, and whether retrospective
6 operation will further or retard its operation;” and (3) courts consider whether
7 retroactive application “could produce substantial inequitable results.”
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11 In this case, the Thomas decision was a landmark decision which established
12 a new principle of law that NRS 608.250(2)(e), which was in existence since 1965,
13 was no longer to be followed. This issue was of first impression, which was not
14 clearly foreshadowed by similar cases prior to the Thomas decision. The Thomas
15 decision was not rendered to punish Petitioners including other employers who
16 reasonably and legitimately relied upon NRS 608.250(2). Retroactive application
17 would effectively punish Petitioners for alleged actions that occurred prior to the
18 decision, which will not further the substantive nature of the Thomas decision,
19 since the ruling is worded in present rather than in the past tense. This analysis
20 would be entirely different had the Thomas decision been specifically worded to
21 apply retroactively. However, the decision was worded in the present tense and
22 meant to be applied prospectively. Furthermore, there will be substantial
23 inequitable results of retroactively applying the Thomas decision in the numerous
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1 referenced cases involving taxicab drivers, and by permitting casual babysitters,
2 domestic service employees, outside salespersons, agricultural employees, persons
3 with severe disabilities and limousine drivers to pursue likely class action litigation
4 against their current or former employers for alleged conduct that allegedly
5 occurred prior to the *Thomas* decision, when those employers had a reasonable and
6 legitimate basis for relying on NRS 608.250(2) and the notices from the Office of
7 Labor Commissioner.

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

13 Counsel for Real Parties in Interest has admitted that *Thomas* is not
14 retroactive by filing the "Motion to Correct" and seeking from this Honorable
15 Court to change its written opinion to include past tense terminology so that it
16 would be retroactive, and exclude key present tense words. See Petitioners'
17 Appendix **PA147-153**. On October 17, 2014, Petitioners filed their Opposition to
18 "Motion to Correct," and persuasively argued that the *Thomas* decision was meant
19 to only apply prospectively, not retroactively. See Petitioners' Appendix **PA154-**
20 **163**. On October 27, 2014, this Honorable Court denied Real Parties' in Interest
21 "Motion to Correct," and ruled that the opinion "shall stand as issued." See
22 Petitioners' Appendix **PA164-165**. This provides further support that this
23 Honorable Court never intended its decision to be used to pursue actions against
24 Petitioners or similarly situated employers, retroactively prior to June 26, 2014.
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1 This was a compelling decision to deny the “Motion to Correct,” and was a clear
2 pronouncement by this Honorable Court indicating, that its decision was to be only
3 applied prospectively. If this Honorable Court had intended its landmark decision
4 on minimum wage in *Thomas* to have a retroactive effect upon Petitioners, as
5 argued in the “Motion to Correct,” this Honorable Court would have certainly
6 granted the “Motion to Correct,” and changed the language from the current
7 present tense, to past tense as specifically requested. However, this Honorable
8 Court refused to change the wording of its opinion, which is profound and
9 compelling. This Honorable Court’s decision to deny the “Motion to Correct,” is a
10 clear and authoritative evidence that the *Thomas* decision only applies
11 prospectively and thus Real Parties in Interest have no claim upon which relief can
12 be granted.
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V.

CONCLUSION

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

DATED this 13th day of October, 2015.

YELLOW CHECKER STAR
TRANSPORTATION CO. LEGAL DEPT.

/s/ Tamer B. Botros

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

2
3 I hereby certify that this Petition complies with the formatting requirements
4 of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
5 requirements of NRAP 32(a)(6) because this brief has been prepared in a
6 proportionally spaced type face using 14 point Times New Roman typeface in
7 Microsoft Word 2013.
8

9
10 I further certify that this Petition complies with the page-or type volume
11 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by
12 NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or
13 more and contains 4,076 words.
14

15 Finally, I hereby certify that I have read this Petition, and to the best of my
16 knowledge, information, and belief, it is not frivolous or interposed for any
17 improper purpose. I further certify that this Petition complies with all applicable
18 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires
19 every assertion in the brief regarding matters in the record to be supported by a
20 reference to the page and volume number, if any, of the transcript or appendix
21 where the matter relied on is to be found.
22
23
24

25 ///

26 ///

27 ///

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

5 DATED this 13th day of October, 2015.

6 YELLOW CHECKER STAR
7 TRANSPORTATION CO. LEGAL DEPT.

8 /s/ Tamer B. Botros

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CERTIFICATE OF SERVICE

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

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

EXHIBIT 5

EXHIBIT 5

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, in and for the County of
Clark; and THE HONORABLE
RONALD J. ISRAEL, District Judge,

Respondents,

and

CHRISTOPHER THOMAS and
CHRISTOPHER CRAIG,

Real Parties in Interest.

Case No.: 68975

Clark County District Court Case No. 2015-001726
Electronically Filed
Oct 23 2015 09:12 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

**WESTERN CAB COMPANY'S
MOTION FOR LEAVE TO APPEAR
AS AMICUS CURIAE IN SUPPORT
OF PETITION FOR WRIT OF
MANDAMUS AND SUPPORTING
REVERSAL OF THE DISTRICT
COURT'S DECISION**

Pursuant to NRAP 29(a) and 21(b)(3), Western Cab Company, a Nevada company doing business in Clark County, Nevada, moves for leave to appear as amicus curiae in support of Petitioners Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation, and Nevada Star Cab Corporation's Petition for Writ of Mandamus filed on October 13, 2015, and seeking the Court's clarification that the decision in *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (2014), applies prospectively from June 26, 2014, in its implied repeal of NRS 608.250(2).

At issue are practical and legal issues affecting Nevada employers and employees with regard to the interpretation and applicability of the Minimum

Wage Amendment, Nevada Const. Art. XV, sec. 16. Conflicts of interpretation as to how to reconcile the Minimum Wage Amendment with NRS Chapter 608, Nevada's Compensation, Wages and Hours chapter, immediately arose. For example, state and federal trial courts inconsistently applied two, three and four year statutes of limitations to claims for back wages. In addition, there was divergence among the same courts as to whether Nevada employees previously excepted from the minimum wage by NRS 608.250(2), *e.g.*, casual babysitters, certain domestic service employees, certain outside salespersons, certain agricultural employees, taxicab and limousine drivers, and certain persons with severe disabilities, were covered under the Minimum Wage Amendment. Questions as to the meaning of "health benefits" under the Amendment have also been raised in Nevada's state and federal trial courts.

On June 26, 2014, this Court addressed the conflict between the Minimum Wage Amendment and NRS 608.250(2), holding that the Minimum Wage Amendment had impliedly repealed NRS 608.250(2) and that employees previously excepted by statute from the minimum wage were now entitled to it under the Constitutional Amendment. *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (2014).

Thomas, however, did not resolve other issues concerning the Minimum Wage Amendment's meaning, which issues have now been presented to this Court in several proceedings, including but not limited to *Hanks v. Briad Restaurant*

Group, LLC, Case No. 68845, and *Kwayisi vs. Wendys of Las Vegas*, Case No. 68754, both presenting certified questions of the U.S. District Court Judge Gloria M. Navarro, which questions have been accepted by the Court for review (“Whether an employee must actually enroll in health benefits offered by an employer before the employer may pay that employee at the lower-tier wage under the Minimum Wage Amendment, Nev. Const. art. XV, §16?”); *MDC Restaurants LLC vs. District Court (Diaz)*, Case No. 68523 (presenting the same question as those certified in *Hanks* and *Kwayisi*); *MDC Restaurants LLC v. District Court (Diaz)*, Case No. 67631 (petitioning for a two-year statute of limitation); *Boulder Cab, Inc. v. District Court (Herring)*, Case No. 68949 (seeking clarification as to the prospective effect of the 2014 *Thomas* decision); and *Western Cab Co. v. District Court (Perera)*, Case No. A68796 (petitioning for a two-year statute of limitations).

In this matter, Petitioners Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation and Nevada Star Cab Corporation have raised the issue of whether the implied repeal of the exceptions of NRS 608.250(2) fairly dates from November 2006, when the Minimum Wage Amendment was adopted, or from June 26, 2014, when this Court published its decision in *Thomas* announcing by a 4/3 decision that the exceptions had been impliedly repealed. Like Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation and Nevada Star Cab Corporation, Western Cab faces serious issues of record-keeping and fundamental

fairness as it has employees who were previously excepted from the minimum wage, others who were not excepted, and has maintained its records in conformity with NRS 608.115 (“Records of wages must be maintained for a 2-year period following the entry of information in the record”).

Changes in laws, whether enacted by the Legislature or adopted by constitutional amendment by popular referendum, generally operate prospectively and not retroactively. It is the position of Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation and Nevada Star Cab Corporation and proposed amicus curiae Western Cab that to hold the elimination of the exceptions of NRS 608.250(2) as dating from November 2006, is in effect an impermissible retroactive application of the law which was the subject of much dispute and not clarified until the *Thomas* decision was published in 2014. If prospective application of a new law, not clear upon its adoption, is required as fair, just and consistent with due process, then this Court’s definitive interpretation of the statute as impliedly repealing NRS 608.250(2) must run prospectively from June 26, 2014.

In addition, as the Court is well aware from the numerous cases filed in the wake of the Minimum Wage Amendment, there are other infirmities that may render the entire Amendment violative of federal law and preempted by it. ERISA preempts state law requiring that employers offer a health insurance plan. Moreover, the Minimum Wage Amendment’s division between rates of minimum

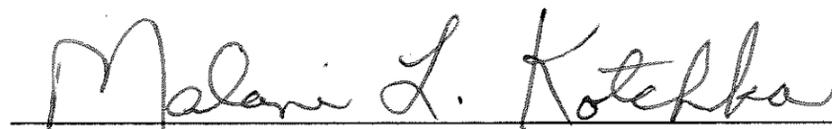
wages depends on some undefined and vague offering of “health benefits.” The definition of “health benefits,” however, appears to have been preempted entirely by the federal Affordable Care Act, leaving no room for the states to enact their own conflicting standards.

In conclusion, the issues raised by Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation and Nevada Star Cab Corporation’s Petition should be resolved with all possible arguments presented to the Court. Western Cab therefore respectfully requests that the Court hear Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation and Nevada Star Cab Corporation’s Petition and also grant Western Cab leave to file a brief.

DATED: October 22, 2015

Respectfully submitted,

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*Attorneys for Amicus Curiae
Western Cab Company*

CERTIFICATE OF SERVICE

The undersigned does hereby certify that pursuant to NRAP 25(c), a true and correct copy of the forgoing **WESTERN CAB COMPANY'S MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS AND SUPPORTING REVERSAL OF THE DISTRICT COURT'S DECISION** was filed electronically with the Nevada Supreme Court Electronic Filing System, and a copy was served electronically on this 22nd day of October, 2015, to the following:

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And a true and correct copy of the foregoing **WESTERN CAB COMPANY'S MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS AND SUPPORTING REVERSAL OF THE DISTRICT COURT'S DECISION** was served via first class, postage-paid U.S. Mail on this 22nd day of October, 2015, to the following:

The Honorable Ronald J. Israel
District Court Judge
Eighth Judicial District Court of Nevada
200 Lewis Avenue, #15C
Las Vegas, NV 89101

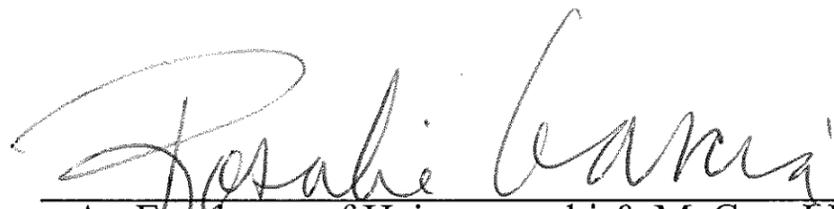

An Employee of Hejmanowski & McCrea LLC

EXHIBIT 6

EXHIBIT 6

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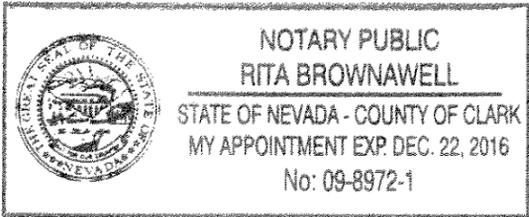
9. I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT



KEITH SAKELHIDE

SUBSCRIBED AND SWORN to before me this 1st day of October, 2015



Notary Public