

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

v.

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

Respondents.

) Supreme Court No. 77050

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Clerk of Supreme Court

**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

Michael K. Wall (2098)
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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 Statue of Limitations, filed 08/28/2015	IV	AA000600-AA000650
172	Plaintiffs' Response in Opposition to Defendants' Motion for Dismissal of Claims on an Order Shortening Time, filed 10/17/2018	XLVI	AA009289-AA009297
8	Plaintiffs' Response in Opposition to Defendants' Motion Seeking Reconsideration of the Court's February 8, 2013 Order Denying Defendants' Motion to Dismiss, filed 03/18/2013	I	AA000181-AA000187
154	Plaintiffs' Response to Defendants' Ex-Parte Motion to Quash Writ of Execution on an OST and Counter-Motion for Appropriate Judgment Enforcement Relief, filed 09/24/2018	XLIV	AA008919-AA008994
109	Plaintiffs' Response to Defendants' Motion in Limine to Exclude Expert Testimony, filed 01/12/2018	XXX, XXXI	AA006002-AA006117
184	Plaintiffs' Response to Special Master's	XLVII	AA009665-

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

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

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

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

CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this date **APPENDIX TO APPELLANTS OPENING BRIEF VOLUME 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
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Las Vegas, NV 89146
Telephone: (702) 383-6085
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leongreenberg@overtimelaw.com
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Attorneys for Respondents

DATED this 5th day of August, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

OFFER

Esther C. Rodriguez, Esq.
Nevada Bar No. 6473
RODRIGUEZ LAW OFFICES, P.C.
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Las Vegas, Nevada 89145
702-320-8400
info@rodriguezlaw.com
Attorneys for Defendant A Cab, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

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

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

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

Pursuant to NRS 17.115 and NRCP Rule 68, if this offer is not accepted within ten (10) days after service, it will be deemed withdrawn. If this action is thereafter tried or arbitrated and Plaintiff fails to obtain a judgment in excess of this offer, Defendant will seek an award of costs, attorneys'

1 fees, and interest that have been incurred from the time of this offer.

2 DATED this 9 day of March, 2015.

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

4
5 By: 

6 Esther C. Rodriguez, Esq.
7 Nevada Bar No. 6473
8 10161 Park Run Drive, Suite 150
9 Las Vegas, Nevada 89145
10 *Attorneys for Defendant A Cab, LLC*

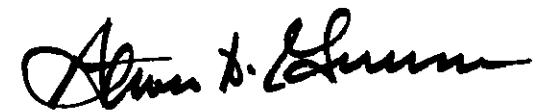
11 **RECEIPT OF COPY**

12 **RECEIPT OF COPY of A Cab, LLC'S Offer of Judgment to Plaintiff Michael 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*
20
21
22
23
24
25
26
27
28



CLERK OF THE COURT

1 **RSPN**

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11 Attorneys for Plaintiffs

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 MICHAEL MURRAY, and MICHAEL
15 RENO, Individually and on
16 behalf of others similarly
17 situated,

18 Plaintiffs,

19 vs.

20 A CAB TAXI SERVICE LLC, and A
21 CAB, LLC,

22 Defendants.

Case No.: A-12-669926-C

Dept.: I

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

23 Plaintiffs, by and through their attorney, Leon Greenberg
24 Professional Corporation, submit this memorandum of points and
25 authorities in response to defendants' Motion to Dismiss Plaintiffs'
26 First Claim for Relief.

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 **SUMMARY OF RESPONSE**

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

32 This Court, in its Order and Decision entered on February 11,
33 2013 (Ex. "A") found, correctly, that the plaintiffs, and Nevada
34 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

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

29 Adopting defendants' arguments, and failing to apply *Thomas's*,
30 and this Court's prior ruling to this case, would contravene the
31 fundamental principles of our system of justice and close to a
32 millennium of common law. Courts are required to make substantive,
33 and not merely future conduct, rulings about the civil legal rights
34 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:

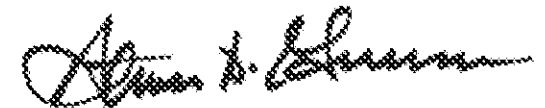
TO:

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

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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 Plaintiffs,)	
17 vs.	)	DECISION AND ORDER
18 A CAB TAXI SERVICE LLC, and A)	
19 CAB, LLC,)	
20 Defendants.)	

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

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 Feb, 2013

23

24

25

26

27

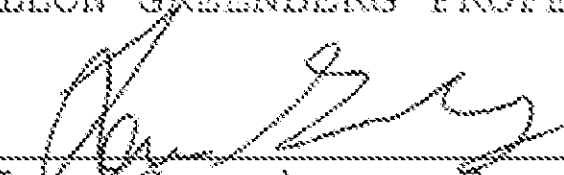
28

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.

3

4 
Leon Greenberg, Esq.

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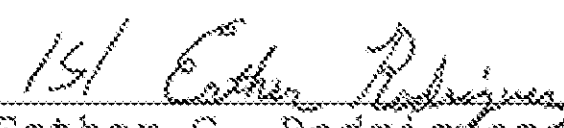
Attorney for the Plaintiffs

7

Approved as to Form:

8

9


Esther C. Rodriguez Esq.

10 Nevada Bar No. 6473

1061 Park Run Drive - Suite 150

11 Las Vegas, Nevada, 89145

Tel (702) 320-8400

12 Attorney for the Defendants

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EXHIBIT "B"

1 **ORDER**

2 LEON GREENBERG, ESQ., SBN 8094
3 DANA SNIEGOCKI, ESQ., SBN 11715
4 Leon Greenberg Professional Corporation
5 2965 South Jones Blvd- Suite E4
6 Las Vegas, Nevada 89146
7 (702) 383-6085
8 (702) 385-1827(fax)
9 leongreenberg@overtimelaw.com
10 dana@overtimelaw.com
11 Attorneys for Plaintiffs

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9	MICHAEL MURRAY, and MICHAEL	)	Case No.: A-12-669926-C
	RENO, Individually and on)	
10	behalf of others similarly	)	Dept.: I
	situated,)	
11)	
	Plaintiffs,)	
12		)	ORDER
	vs.)	
13)	
	A CAB TAXI SERVICE LLC, and A)	
14	CAB, LLC,)	
)	
15	Defendants.)	

16
17
18 This matter having come before the Court on the defendants'
19 motion for reconsideration of the Court's February 11, 2013 Order
20 denying defendants' motion to dismiss the plaintiffs' complaint
21 pursuant to Rules 12(b)(1) and 12(b)(5), such motion having been
22 filed with the Court on February 27, 2013, and after due
23 consideration of the briefs and papers submitted by counsel for the
24 parties, and the record of these proceedings;

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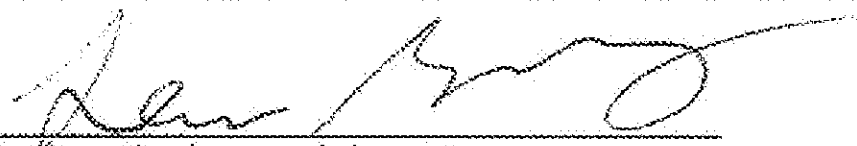
1 IT IS HEREBY ORDERED:

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

8
9 
10 HONORABLE JUDGE KENNETH CORY
11 DISTRICT COURT, CLARK COUNTY
2K

12 Submitted by:
13 LEON GREENBERG PROFESSIONAL CORP.

14 
15 Dana Sniegocki, Esq.
16 Nevada Bar No. 11715
17 LEON GREENBERG PROF. CORP.
18 2965 S. Jones Boulevard - Ste. E-4
19 Las Vegas, NV 89146
20 Tel (702) 383-6085
21 Attorney for the Plaintiffs

22 Approved as to Form:


23 
24 Esther C. Rodriguez, Esq.
25 Nevada Bar No. 6473
26 1061 Park Run Drive - Suite 150
27 Las Vegas, Nevada, 89145
28 Tel (702) 320-8400
Attorney for the Defendants

EXHIBIT "C"

1 **ORDER**

2 LEON GREENBERG, ESQ., SBN 8094
3 DANA SNIEGOCKI, ESQ., SBN 11715
4 Leon Greenberg Professional Corporation
5 2965 South Jones Blvd- Suite E4
6 Las Vegas, Nevada 89146
7 (702) 383-6085
8 (702) 385-1827(fax)
9 leongreenberg@overtimelaw.com
10 dana@overtimelaw.com
11 Attorneys for Plaintiffs

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 CHRISTOPHER THOMAS, and
15 CHRISTOPHER CRAIG, Individually 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

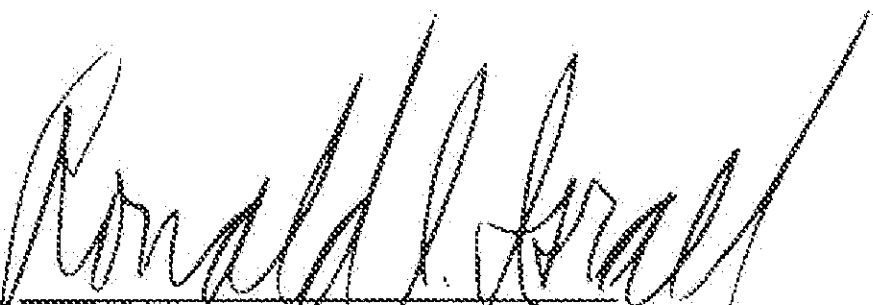
1 the case of Gilmore v. Desert Cab, Inc., Supreme Court No. 62905, currently pending before the Nevada
2 Supreme Court. This matter, having come before the Court for hearing on February 10, 2015, with
3 appearances by Tamer B. Botros, Esq., on behalf of all Defendants, and Leon Greenberg, Esq., on behalf
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
6

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**.
16
17

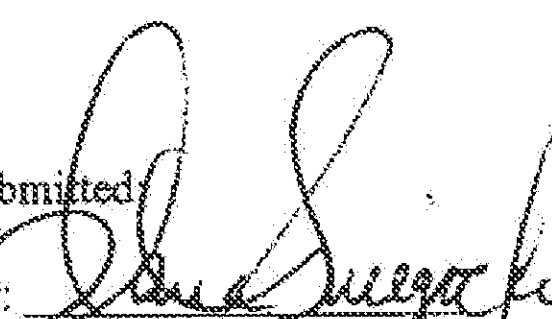
18 **IT IS SO ORDERED.**

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

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

23 Submitted:

24 By:

25 
26 Leon Greenberg, Esq.
27 Dana Sniegocki, Esq.
28 LEON GREENBERG PROF. CORP.
2965 s. Jones Blvd., Ste. E-4
Las Vegas, NV 89146
Attorney for Plaintiffs

Approved as to form and content:

By:

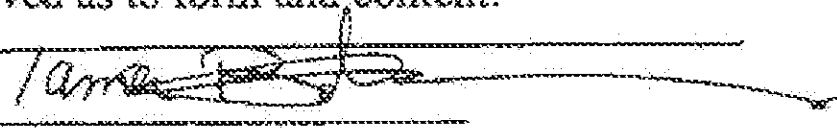
24 
25 Marc C. Gordon, Esq.
26 Tamer B. Botros, Esq.
27 YELLOW CHECKER STAR
28 TRANSPORTATION CO. LEGAL DEPT.
5225 W. Post Road
Las Vegas, Nevada 89118
Attorneys for Defendants

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

YELLOW CHECKER STAR

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mgordon@ycstrans.com

Attorneys for Petitioners

NEVADA YELLOW CAB CORPORATION

NEVADA CHECKER CAB CORPORATION

NEVADA STAR CAB CORPORATION

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725 (1972)7

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

1 I.

2 **RELIEF REQUESTED BY PETITIONERS**

3
4 An Order directing District Court Judge Ronald J. Israel to stay the Thomas
5 vs. Nevada Yellow Cab Corporation, et.al. matter until this Honorable Court
6 renders a decision in the Barbara Gilmore vs. Desert Cab, Inc., matter, Supreme
7 Court No. 62905, Clark County District Court Case No. A-12-668502-C.
8

9 II.

10 **ISSUE PRESENTED**

11
12 Is there a common question of law currently pending before this Honorable
13 Court in the matter of Barbara Gilmore vs. Desert Cab, Inc., Supreme Court No.
14 62905, Clark County District Court Case No. A-12-668502-C, that warrants a stay
15 of the entirety of the Thomas vs. Nevada Yellow Cab Corporation, et.al. case in
16 Clark County District Court Case No. A-12-661726-C?
17
18

19 III.

20 **STATEMENT OF FACTS**

- 21
22 1. On January 6, 2015, Petitioners filed the Motion to Dismiss.
23 See Petitioners' Appendix PA001-041.
24
25 2. On January 23, 2015, Real parties in interest filed their Opposition to the
26 Motion to Dismiss. See Petitioners' Appendix PA042-056.
27
28 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 5. On February 6, 2015, Petitioners filed a Reply and provided evidence of
8 the recently discovered Barbara Gilmore vs. Desert Cab, Inc., matter and
9 requested that the Honorable Judge Ronald J. Israel stay the entirety of the
10 Thomas matter until this Honorable Court renders a decision in the Gilmore
11 matter, because there is a common question of law currently pending
12 before this Honorable Court regarding whether the Thomas decision on
13 June 26, 2014 applies retroactively or prospectively. See Petitioners'
14 Appendix **PA067-144.**
15
- 16 6. On February 10, 2015, the Honorable Judge Ronald J. Israel denied the
17 Request for Stay and the Motion to Dismiss. See Petitioners' Appendix
18 **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 In this case, Petitioners recently discovered that the Gilmore matter involves
22 a common question of law, which was briefed in Petitioners' Motion to Dismiss
23 regarding whether the Thomas decision applies retroactively or prospectively from
24

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 Petitioners are respectfully requesting that this Honorable Court issue an Order
15 directing District Court Judge Ronald J. Israel to **stay the entirety of the Thomas**
16 **case**, until this Honorable Court renders a decision on whether the Thomas
17 decision applies retroactively or prospectively.
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1 V.

2 **CONCLUSION**

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

6
7 DATED this 27th day of March, 2015.

8
9 YELLOW CHECKER STAR
10 TRANSPORTATION CO. LEGAL DEPT.

11 /s/ Tamer B. Botros
12 _____
13 MARC C. GORDON, ESQ.
14 GENERAL COUNSEL
15 Nevada Bar No. 001866
16 TAMER B. BOTROS, ESQ.
17 ASSOCIATE COUNSEL
18 Nevada Bar No. 012183
19 5225 W. Post Road
20 Las Vegas, Nevada 89118
21 Attorneys for Petitioners
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Certificate of Compliance with N.R.A.P Rule 28.2

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

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

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

///

///

///

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

5 DATED this 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
12 TAMER B. BOTROS, ESQ.
13 ASSOCIATE COUNSEL
14 Nevada Bar No. 012183
15 5225 W. Post Road
16 Las Vegas, Nevada 89118
17 Attorneys for Petitioners
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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:

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

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

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

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

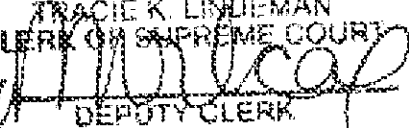
CHRISTOPHER CRAIG,

Real Parties in Interest.

No. 67664

FILED

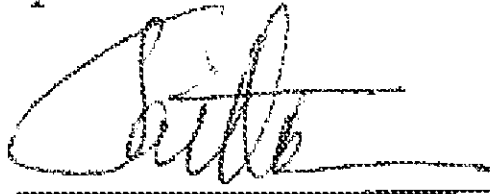
APR 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

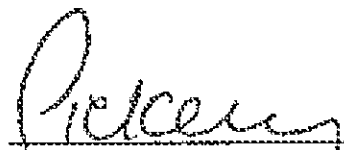
ORDER DENYING PETITION FOR WRIT OF MANDAMUS

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"

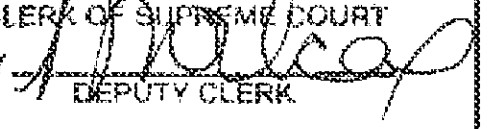
IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 62905

FILED

APR 16 2015

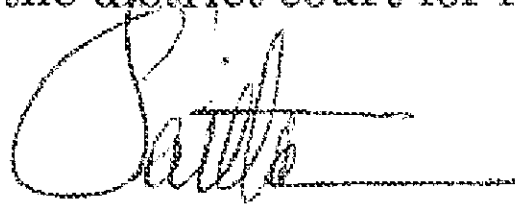
TRADIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

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


_____, J.

Saitta


_____, J.

Gibbons


_____, 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"

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

2 BARBARA GILMORE,
3 Individually and on behalf of others
4 similarly situated,

5 Appellant,

6 vs.

7 DESERT CAB, INC.,

8 Respondent.
9
10
11

Supreme Court Case No.: 62905

12 **RESPONDENT, DESERT CAB, INC.'S NRAP 26.1 DISCLOSURE**

13 The undersigned counsel of record certifies that the following are persons
14 and entities as described in *NRAP26.1(a)*, and must be disclosed. These
15 representations are made in order that the Justices of this Court may evaluate
16 possible disqualification or recusal.

- 17 1. Parent corporations -- No such corporation.
18 2. Publicly held company owning 10% of Respondent's stock -- No such
19 corporation.
20 3. Respondent's Law Firm -- Moran Brandon Bendavid Moran
21 4. Pseudonym -- None

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

28 (702) 384-8424

Attorney for Respondent

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----------------------------	---

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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15 As is the case with Appellant's entire argument on this issue, neither *Thomas*
16 nor this matter ever raised the issue or challenged in any way the effective date of
17 Nevada's Minimum Wage Amendment.⁷⁷ More importantly, the Court in
18 *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 Contrary to Appellant's Opening Brief, the Court in *Thomas* expressly
4 recognized the simultaneous existence of Nevada's Minimum Wage Amendment
5 and the prior enacted exception for taxi drivers to Nevada minimum wage laws as
6 expressed in *NRS 608.250(2)(e)*.⁷⁹ Thus, prior to the Court's decision in *Thomas*,
7 employers of taxicab drivers were lawfully permitted not to pay Nevada's
8 minimum wage pursuant to *NRS 608.250(2)(e)*.
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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 Therefore, the Court held that *NRS 608.250(2)(e)* was "irreconcilably repugnant"
17 to Nevada's Minimum Wage Amendment.⁸¹ Consequently, this Court in *Thomas*
18 held that the constitutional supremacy of Nevada's Minimum Wage Amendment
19 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

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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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15 The Court’s use of the present tense in *Thomas* in two (2) distinct instances
16 cements the reality that the implied repeal of *NRS 608.250(2)(e)* was never
17 intended to occur from the effective date of Nevada’s Minimum Wage
18 Amendment. First, in determining that *NRS 608.250(2)(e)* was “irreconcilably
19 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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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
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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
include the future as well as the present”) (citations and quotations omitted).

28 ⁸⁹ *See Id.*

29 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

13 Unlike *Hansen*, neither *Thomas* nor this matter is concerned with the
14 application of Nevada's common law at-will employment rules or any other
15 common law rules or claims.⁹⁸ Further, *Hansen*, unlike *Thomas*, never concerned
16 itself with the application of a decision by the Nevada Supreme Court implicitly
17 repealing a Nevada statute.⁹⁹ Instead, the Court in *Hansen* made use of its
18 exclusive power to create a common law claim in tort to support Nevada's public
19 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.
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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*.
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12

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
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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 Like the employers in *Hansen*, Respondent had no possibility of knowing that
4 that taxicab driver exception to Nevada’s minimum wage laws was going to be
5 found years later, “irreconcilably repugnant” because of this Court’s decision in
6 *Thomas*.¹¹¹ To date, four (4) sessions and five (5) special sessions of Nevada’s
7 Legislature convened and closed since the 2006 enactment of Nevada’s Minimum
8 Wage Amendment.¹¹² None of those sessions enacted any law repealing *NRS*
9 *608.250* or recognized the possible conflict or “irreconcilable repugnancy” of this
10 statute in light of the passage and enactment of Nevada’s Minimum Wage
11 Amendment.

12 Further, Nevada’s Labor Commissioner, until this Court’s decision in *Thomas*,
13 identified, recognized, and enforced all of the exceptions to Nevada’s minimum
14 wage laws as set forth in *NRS 608.250*. Finally, as recognized in Appellant’s
15 Opening Brief, at least six other District Courts, and in one instance, the United
16 States District Court for Nevada, previous to *Thomas*, held that the taxicab driver
17 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.

Minimum Wage Amendment.¹¹³ In other words, every branch of Nevada's government recognized for nearly eight (8) years after the passage and enactment of Nevada's Minimum Wage Amendment that employers of taxi drivers were still exempt from paying Nevada's minimum wage. As such, it was impossible for Respondent, as an employer of taxi drivers such as Appellant, to have any knowledge that their alleged failure to pay Nevada's minimum was somehow unlawful and actionable prior to this Court's decision in *Thomas*.¹¹⁴

As a result, the retroactive application of the Court's decision in *Thomas*, as in *Hansen*, would be completely unjust and unfair to Respondent since it was impossible for Respondent to know that *NRS 608.250(2)(e)* was "irreconcilably repugnant" to Nevada's Minimum Wage Amendment.¹¹⁵ Such "irreconcilable repugnancy" only arose by operation of this Court's decision *Thomas*.

Consequently, applying *Thomas* retroactively against Respondent, as argued for by Appellant, would unjustly punish Respondent in the same manner as the employers in *Hansen*. Therefore, as in *Hansen*, the Court's decision in *Thomas* should not apply to Respondent so that Respondent would not be unfairly punished by the Court's implied repeal of *NRS 608.250(2)(e)*.¹¹⁶

¹¹³ See Appellant's Opening Brief at 4-5.

¹¹⁴ Accord, *Hansen*, 100 Nev. at 65.

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

22 /s/Jeffery A. Bendavid

23 JEFFERY A. BENDAVID, ESQ.

24 Nevada Bar No. 6220

25 MORAN BRANDON BENDAVID MORAN

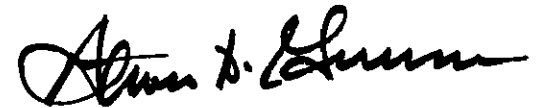
26 630 South 4th Street

27 Las Vegas, Nevada 89101

28 (702) 384-8424

Attorney for Respondent

¹¹⁷ See *Id.*



CLERK OF THE COURT

1 **ANAC**
2 Esther C. Rodriguez, Esq.
3 Nevada Bar No. 6473
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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,

as a taxicab company.

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

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

...

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

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

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TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

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

...

WHEREFORE, Defendant prays as follow:

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

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

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

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

DATED this 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

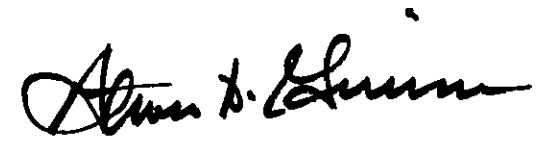
CERTIFICATE OF SERVICE

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

RSPN

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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,	)	RESPONSE IN OPPOSITION TO
	)	DEFENDANTS' MOTION TO
vs.	)	DISMISS AND FOR SUMMARY
	)	JUDGMENT AGAINST
A CAB TAXI SERVICE LLC, and A	)	PLAINTIFF MICHAEL MURRAY
CAB, LLC,)	
)	
Defendants.)	

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

MEMORANDUM OF POINTS AND AUTHORITIES

SUMMARY OF RESPONSE

Defendants' motion seeks dismissal, or summary judgment, because (1) Murray's deposition testimony supposedly articulates a claim not for minimum wages, the claim raised in the complaint, but "for hours worked for which he was not paid" and over which only the 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 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 judgment is not accepted.

23 Defendants insist a plaintiff who has received an offer of
24 judgment in excess of the value of their claim no longer has a valid
25 claim and their case should be dismissed. While that may be
26 defendants' view of how the law *should* work, that is not the way the
27 offer of judgment rules do work. Neither NRCP 68 nor NRS 17.115
28 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-
64 (6th Cir. 2005) (Discussing collected cases).¹

26 ¹ Arguably the law, in federal court class actions, has changed
27 with the amendment of FRCP Rule 23(e) to now provide that its
28 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 By: /s/ Leon Greenberg
23 LEON GREENBERG, Esq. NSB 8094
24 Attorney for Plaintiff
25 2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
(702) 383-6085

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)
2 COUNTY OF CLARK)

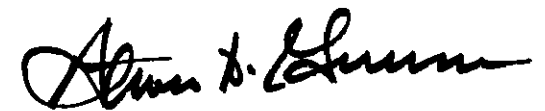
3 CERTIFICATE OF REPORTER

4 I, Andrea N. Martin, a duly commissioned and
5 licensed court reporter, Clark County, State of
6 Nevada, do hereby certify:

7 That I reported the taking of the deposition of
8 Michael Murray, commencing on Wednesday, August 26,
9 2015, at the hour of 1:59 p.m.; that the witness
10 was, by me, duly sworn to testify to the truth and
11 that I thereafter transcribed my said shorthand
12 notes into typewriting, and that the typewritten
13 transcript of said deposition is a complete, true,
14 and accurate transcription of said shorthand notes;
15 that I am not a relative or employee of any of the
16 parties involved in said action, nor a relative or
17 employee of an attorney involved in nor a person
18 financially interested in said action; further, that
19 the reading and signing of the transcript was
20 requested.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 in my office in the County of Clark, State of
23 Nevada, this 3rd day of September, 2015.

24
25 _____
 ANDREA N. MARTIN, CRR, CCR NO. 887



CLERK OF THE COURT

1 **RSPN**

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

11 Attorneys for Plaintiffs

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

23 Plaintiffs, by and through their attorney, Leon Greenberg
24 Professional Corporation, submit this memorandum of points and
25 authorities in response to defendants' Motion to Dismiss and for
26 Summary Judgment against plaintiff Michael Reno.

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 **SUMMARY OF RESPONSE**

Defendants' motion seeks dismissal, or summary judgment,
because (1) Reno's deposition testimony, and the rest of the record
developed in this case, supposedly demonstrates a complete failure
to present any evidence of a minimum wage violation; and (2) Reno
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
20 LEON GREENBERG, Esq. NSB 8094
21 Attorney for Plaintiff
22 2965 South Jones Blvd- Suite E3
23 Las Vegas, Nevada 89146
24 (702) 383-6085
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

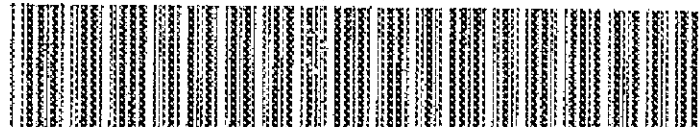
Employee

SSN

Michael A Reno [REDACTED]

Earnings and Hours	Qty	Rate	Current	YTD Amount
Driver Commission	1.00	440.98	440.98	8,329.90
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			-26.00	-727.00
Social Security Employee			-20.50	-412.20
Medicare Employee			-7.08	-142.31
			-53.58	-1,281.51
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	6,767.71

A Cab 0035

Name	Reno, Michael	Cab#	1358	Med#	7	Date	7/9/2011
TA#	17799				Shift	04-01	
Total Fares	209.50				Time	7/9/2011	
Not on meter +	8				Start	3:35:28 AM	
VIP/CPO	0				Radio Calls	7 ✓	
Charges	171.00				\$ Per Gallon	3.359	
Coupons	0	# of Gallons	6.930				
Turn-in	132.50	Total Gas Cost	23.28				

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	Quota
End	480.40		1731	525	60	970.83	1200.43
Start	270.90		597	473	43	893.83	1199.15
Diff	209.50		134	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!

S = Stand F = Flag R = Radio Call Voucher # = Taxi Pass							
Ride #	Ride Type or Voucher #	Pick Up From	Drop Off At	Amount	Time In	Time Out	# of Pass
1	C-V CARD	Strogo/SLIDE	CLD	6.10	3:43	3:48	1
2	12 STAND	Escalante	W. SHAW	1.70	4:19	4:40	2
3	12 STAND	Denver		1.70	5:20	5:30	3
4	12 STAND	Holiday Motel		7.50	6:00	6:10	1
5	12 STAND	W. MARROT		3.70	7:00	7:24	1
6	12 STAND	TCR		1.90	8:53	8:46	2
7	12 (R) 150 S.W. Hwy	San. m. m. m. m. m.		1.90	9:40	9:50	1
8	12 STAND	SHAW		6.90	10:15	10:20	1
9	12 STAND	Promenade		1.10	10:30	10:40	1
10	12 STAND	616 Campbell	R 90	5.10	11:20	11:35	3
11	8 palms	CASARS		1.30	12:00	12:10	1
12	8 palms	W. MARROT		9.20	12:30	12:30	1
13	12 CRR	Arville		1.10	1:00	1:08	1
14	12 STAND			9.30	2:00	2:50	2
15	8 STAND			7.10	2:30	3:06	2
16	9 STAND			12.20	2:30	3:40	1
17	12 STAND			15.90	3:00	3:15	2
18							
19							
20							

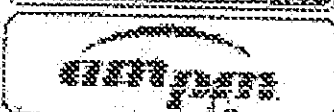
A Cab 00824

SNACK	(12hr Shift = 30min X 2)	SNACK	Initial Here:
MEAL	(12hr Shift = 1 hour)	MEAL	Initial Here: M.R. 3pm 4pm
Requirements to be included in a break are:		SNACK	Initial Here: M.R. 6:15 6:45
1. Outside the control of management.		BREAK	Initial Here: M.R. 8:15 8:45
2. Not performing duties associated with taxi driving.		BREAK	Initial Here:

AA000891

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							

017799



#3542

ARCO am/pm 62874
300 W Lake Mead
Las Vegas
NV 89030
Tel : 7026337300
Site Number 11909107

Qty	Name	Price	Total
1	Unleaded Regular		23.28
Pump: 9	8.930 Gallon	\$3.359/Gallon	
	SubTotal		23.28
	Total		23.28

Cash 40.00
Prepay Refund Due \$ -16.72

Receipt 1544913 Duplicate
1 JANUCLIN 07/09/2011 15:32
PREPAY RECALLED
Thank you for choosing AMPM

A Cab2
1-111 S. Valley View Bl
Las Vegas, NV

VALIDATED DROP

Drop # : 00029879
Trans # : 00229415
Date-Time: 07/09/11 17:45:47
POS :
Remote ID: FK
Oper # : 00435
Oper Name: RENO, MICHAEL
Cash : Cash Val
Rejected : 1

Val 2

Currency: USD

Qty	Value	Subtotal
0003	1.00	3.00
0001	10.00	10.00
0006	20.00	120.00
0010 Tot USD		133.00

***** TOTAL *****
TOTAL USD 133.00

Printed by: 0544 RENO, MICHAEL
Time: 07/09/11 17:45:48

End Totals

TAXIPASS VOUCHER(S) AND TOTALS

CAB#: 1358
TIME: 15:39
DATE: 7/9/2011
DATE: 7/9/2011
VOUCH#: 9345
Amount: \$ 29.00
DATE: 7/9/2011
VOUCH#: 9350
Amount: \$ 27.00
DATE: 7/9/2011
VOUCH#: 9360
Amount: \$ 21.00

T.Pass TOT.: \$ 77.00
Accu.T.Pass: \$33970.83

METER DETAILS

Tot.FARE: \$151480.40
Tot.EXTRAS: \$ 0.00
Accu.Trips: 9360
Tot.DIST.: 105730.99
PAID DIST.: 43525.97
1-800-222-TAXI

- METER TOTALS SENT - OK

A Cab 00825

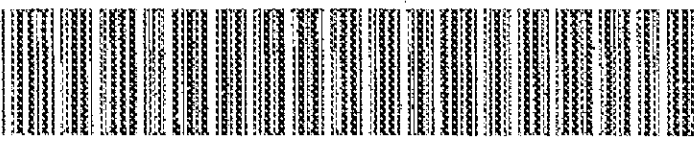
Time End
(stamp here)

11 JUL 9 3:47pm

Driver
Signature

Michael RENO

AA000892

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	1	Turn-In	88.10	Total Gas Cost	22.99		

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

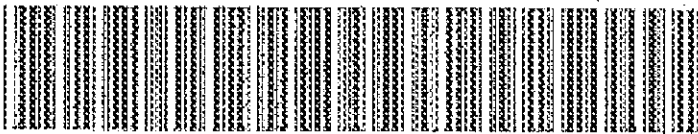
You must include Accumulated Totals (Credit Card Totals), Gas Receipt, Senior Coupons, Credit Card Receipts, & Gift Certificates - ALL MUST BE SIGNED!

S = Stand F = Flag R = Radio Call Voucher # = Taxi Pass							
Ride #	Ride Type or Voucher #	Pick Up From	Drop Off At	Amount	Time In	Time Out	# of Page
1	12 STAND	26 United		20.30	4:10	4:18	1
2	2 STAND	26 United		15.10	4:40	4:55	2
3	12 STAND	26 United		10.70	5:10	5:20	3
4	12 STAND	26 United		00.50	5:20	5:20	4
5	12 STAND	26 United		6.50	6:00	6:05	5
6	12 STAND	26 United		20.90	6:30	6:50	6
7	12 STAND (R)	152 El Paso - Chaper		17.90	7:35	8:30	7
8	12 STAND	152 El Paso		10.30	9:30	9:40	8
9	12 STAND (R) Trader Joe's	Sandwich		5.10	10:20	10:30	9
10	12 STAND	26 United		10.30	11:15	11:25	10
11	12 STAND	26 United		10.30	11:30	11:40	11
12	12 STAND	26 United		10.30	12:00	12:10	12
13	12 STAND	26 United		10.30	12:20	12:30	13
14	12 STAND (California)	26 United		10.30	12:35	12:45	14
15	12 STAND	26 United		10.30	1:00	1:10	15
16	12 STAND	26 United		10.30	1:35	1:45	16
17	12 STAND	26 United		10.30	2:50	3:00	17
18	12 STAND	26 United		10.30	3:15	3:25	18
19	12 STAND	26 United		10.30	3:45	3:55	19
20	12 STAND	26 United		10.30	4:15	4:25	20

A Cab 00826

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

AA000893

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					Radio Calls	5
VIP/CPO	0					\$ Per Gallon	3.359
Charges	7					# of Gallons	8.117
Coupons	10.00	Total Gas Cost	27.47				
Turn-In	160.10	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	Accu. T. Pass
End	727.50		449	503	77	912.40	32860
Start	557.40		330	460	66	912.40	32645
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!

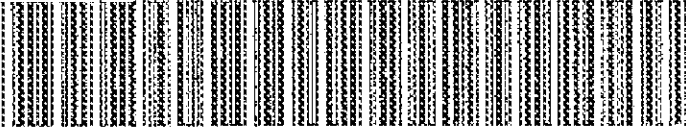
S = Stand F = Flag R = Radio Call Voucher # = Taxi Pass							
Ride #	Ride Type or Voucher #	Pick Up From	Drop Off At	Amount	Time In	Time Out	# of Pass
1	12 STAND			1.50	4:21	4:12	1
2	12 STAND			1.50	5:35	5:25	1
3	12 STAND			1.50	7:15	7:05	1
4	12 STAND			1.50	9:20	9:32	3
5	12 STAND			1.50	10:02	10:21	3
6	12 STAND			1.50	11:10	11:16	1
7	12 STAND			1.90	11:46	11:47	1
8	12 STAND			1.50	12:35	12:30	1
9	12 STAND			1.50	1:00	1:15	1
10	12 STAND			1.50	1:10	1:12	1
11	12 STAND			1.30	1:36	1:45	1
12	12 STAND			1.50	2:00	2:08	3
13	12 STAND			1.50	2:10	2:25	1
14							
15							
16							
17							
18							
19							
20							

FOR previous DRIVER 1st Receipt 1
2nd gas Receipt mine

P.S.

A Cab 00828

SNACK (12hr Shift = 30min X 2)	SNACK	Initial Here:	
MEAL (12hr Shift = 1 hour)	MEAL	Initial Here:	M.R. 2pm 3pm
Requirements to be included in a break are:	SNACK	Initial Here:	
1. Outside the control of management.	BREAK	Initial Here:	M.R. 3:15 3:45
2. Not performing duties associated with taxi driving.	BREAK	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				Radio Calls	708	
VIP/CPO	-				\$ Per Gallon	3.359	
Charges	41.00				# of Gallons	6.893	
Coupons	9.00	Total Gas Cost	23.15				
Turn-in	179.40	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)	Accum. Pass	Odometer (3)
End	545.49		814	662	86	411.25	99345
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	21.10	3:10	3:30	1
2	12 STAND (Sprint Reel Rock)			14.90	4:00	4:14	1
3	12 STAND (Sprint Reel Rock)			20.70	5:05	5:25	1
4	12 STAND (SAHARA & 1st Ave)			24.20	6:00	6:13	1
5	12 S (2900 S Waller / View)			17.90	6:44	6:59	1
6	12 STAND (R) Mothers			19.10	7:10	7:29	1
7	12 STAND (R) 1400 V. View (Dmv)			18.90	8:06	8:23	1
8	12 STAND (R) 2525 Washington			9.90	9:28	9:34	1
9	12 STAND (R) 6211 14th St			15.90	10:00	10:11	1
10	12 STAND (R) 5th Ave / 1st Ave			18.10	10:40	10:50	1
11	12 STAND (R) 13th Ave			11.70	11:30	11:40	2
12	12 STAND (R) 1st Ave / 1st Ave			16.30	12:44	12:58	1
13	12 STAND (R) 2nd Ave			9.10	10:10	10:21	1
14	12 STAND (R) 1st Ave / 1st Ave			10.30	12:40	12:50	1
15	12 STAND (R) Smith's Market			6.90	1:10	1:18	1
16	12 (R) CHydro Decatur			23.30	1:40	2:03	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
1. Outside the control of management.		BREAK	Initial Here:	M.R. 8:00 9:00
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 B2874
300 W Lake Mead
Las Vegas
NV 89030
Tel : 7026337300
Site Number 11909107

Qty	Name	Price	Total
1	Unleaded Regular		23.15
Pump: 2	6.899 Gallon	\$3.359/Gallon	
	Subtotal		23.15
	Total		23.15

Cash 40.00
Prepay Refund Due \$ -16.85

Receipt 1553747 Duplicate
1 LOGAN 07/13/2011 14:44
PREPAY RECALLED
Thank you for choosing ANPM

A Cab2
1444 S. Valley View Bl.
Las Vegas, NV

VALIDATED DROP

Drop # : 00030034
Trans # : 00230644
Date-Time: 07/13/11 16:56:13
POS :
Remote ID: FK
Oper # : 00435
Oper Name: RENO, MICHAEL
Cash : Cash Val
Rejected : 0

Val 2

Currency: USD

Qty	Value	Subtotal
0004	1.00	4.00
0003	5.00	15.00
0008	20.00	160.00
0015 Tot USD		179.00

TOTAL USD 179.00

Printed By: 00435 RENO, MICHAEL
Time: 07/13/11 16:56:14

End of day

UBTAXIPASS VOUCHER(S) AND TOTALS

CAB#: 1350
TIME: 14:51
DATE: 7/13/2011
DATE: 7/13/2011
VOUCH#: 1071
Amount: \$ 26.10
DATE: 7/13/2011
VOUCH#: 1072
Amount: \$ 14.90

T.Pass TOT.: \$ 41.00
Accu.T.Pass: \$24411.25

METER DETAILS

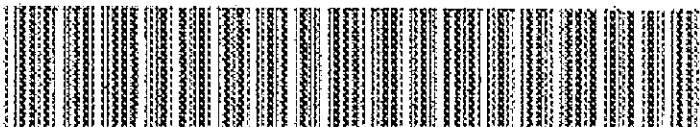
Tot.FARE: \$14545.49
Tot.EXTRAS: \$21474836.47
Accu.Trips: 1086
Tot.DIST.: 8813.54
PAID DIST.: 3662.22
1-800-222-TAXI

A Cab 00831

Time End
(stamp here)

Driver
Signature

Michael RENO

Name	Reno, Michael	Cab#	1358	Med#	7	Date	7/16/2011
TA#	17799					Shift	04-01
Total Fares	215.86					Time Start	7/16/2011 3:37:24 AM
Not on meter +	0					Radio Calls	8
VIP/CPO	0					\$ Per Gallon	3.339
Charges	27.00					# of Gallons	6.979
Coupons	0					Total Gas Cost	23.30
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.					

Write corrections in the space provided above.							
	Total Fare (1)	Total Miles (4)	Paid Miles (5)	Trips (6)	Accu.T.Pass	Scd meter	
End	818.10	914	382	604	518.93	1221.49	
Start	603.00	791	332	584	491.93	1020.30	
Diff	215.80	123	50	220	21.00	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	4/115	4/23	4
2	12 STANDER	Escalante		1.50	5/60	5/10	2
3	12 STANDER	Wendover		10.10	5/15	5/25	4
4	12 STANDER	Wendover		5.70	5/45	5/51	1
5	12 STANDER	Sahara		1.10	6/00	6/11	2
6	12 STANDER	Orleans		10.10	6/15	6/25	1
7	12 STANDER	Univ. Reno Rock		8.90	6/25	6/30	1
8	12 STANDER	HC		15.30	7/40	7/56	3
9	7 STANDER	Minuteman		12.30	11/15	10/22	3
10	12 STANDER	CCOSAR		12.50	11/15	11/26	1
11	12 STANDER	P. Viora		12.90	11/15	11/56	1
12	12 STANDER	5353		10.10	12/10	12/16	1
13	12 STANDER	Wells Fargo		6.40	12/30	12/35	1
14	12 STANDER	LU Hilton		9.70	12/35	12/44	4
15	12 STANDER	COENOPOL		13.70	1/10	1/20	1
16	12 STANDER	Rollerco		6.90	1/15	1/20	7
17	12 STANDER	TRUCKEE		10.30	1/23	1/27	7
18	12 STANDER	TRUCKEE		10.30	2/20	2/25	1
19	12 STANDER	TRUCKEE		10.30	2/10	2/18	4
20	12 STANDER	TRUCKEE		10.30	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:		

AA000899

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							

017799
#3544
ARCO
am/pm
CAB
1358

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 1561252 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: 0000 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

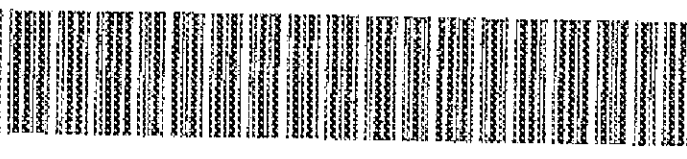
A Cab 00833

Time End

(stamp here)

Driver
Signature

Michael Remy

Name	Reno, Michael	Cab#	1358	Med#	7	Date	7/17/2011
TA#	17799					Shift	04-01
Total Fares	207.20					Time Start	7/17/2011 3:28:31 AM
Not on meter	0					Radio Calls	3
VIP/CPO	0					\$ Per Gallon	3.359
Charges	0	# of Gallons	6.524	Total Gas Cost	21.91		
Coupons	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.					
Turn-In	0						

Write corrections in the space provided above.						
Total Fare (1)	Total Miles (4)	Paid Miles (5)	Trips (6)	Accu.T. Pass	Address	
End 581.70	178	488	43	518.93	123456	
Start 074.50	051	437	27	518.93	123456	
Diff 207.20	127	51	16	0	123456	

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

S = Stand		F = Flag		R = Radio Call		Voucher # = Taxi Pass			
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)	City Center		10.70	4:15	4:25	1		
3	12 (R) Cellular	Rainbow		22.50	4:25	5:00	2		
4	12 STAND	Park 700		10.10	5:30	6:40	1		
5	12 STAND	M. Park		16.10	7:00	7:16	1		
6	12 (R) Noble Park	Shack (Smiths)		15.90	7:20	7:32	1		
7	12 STAND (R) 888	3339 LUBS		10.10	8:10	9:20	1		
8	8 STAND	Caesars (Venezia)		8.90	10:20	10:27	1		
9	12 STAND	Island		9.70	10:40	10:50	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	Alamo Plaza		5.90	1:05	1:06	1		
14	12 STAND	City Center		8.70	1:25	1:33	1		
15	12 STAND	City Center		3.30	2:00	2:12	1		
16	12 STAND	City Center		21.30	2:25	2:46	2		
17	12 STAND	City Center			3:31	3:31			
18									
19									
20									

SNACK (12hr Shift = 30min X 2)

MEAL (12hr Shift = 1 hour)

Requirements to be included in a break are:

1. Outside the control of management.

2. Not performing duties associated with taxi driving.

SNACK

Initial Here:

MEAL

Initial Here:

SNACK

Initial Here:

BREAK

Initial Here:

BREAK

Initial Here:

A Cab 00834

AA000901

Ride #	Ride Type or Voucher #	Pick Up From	Drop Off At	Amount	Time In	Time Out	# of Pass
21							

017799 CAB
#3544 1358



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

Qty	Name	Price	Total
1	Unleaded Regular		21.91
Pump: 8	6.524 Gallon	\$3.359/Gallon	
	SubTotal		21.91
	Total		21.91

Cash 40.00
Prepay Refund Due \$ -18.09

Receipt 1634208 Duplicate
2 JAUCLEEN 07/17/2011 15:04
PREPAY RECALLED
Thank you for choosing AMPM.

TAXIPASS VOUCHER(S) AND TOTALS

CAB#: 1358
TIME: 3:33
DATE: 7/17/2011

T. Pass TOT.: \$ 0.00
Accu. T. Pass: \$34518.93

METER DETAILS

Tot. FARE: \$155074.50
Tot. EXTRAS: \$ 0.00
Accu. Trips: 9627
Tot. DIST.: 108052.88
PAID DIST.: 44437.38
1-800-222-TAXI

- METER TOTALS SENT - OK

A Cab1
1144 S. Valley View Bl
Las Vegas, NV

VALIDATED DROP

Drop # : 00038905
Trans # : 00285100
Date-Time: 07/17/11 17:34:28
PCS :
Remote ID: FK
Oper # : 00437
Oper Name: RENO, MICHAEL
Cash : Cash Val
Rejected : 1

Val 2

Currency: USD

Qty	Value	Subtotal
0001	1.00	1.00
0001	5.00	5.00
0005	10.00	50.00
0002	20.00	40.00
0001	100.00	100.00
0010 Tot USD		196.00

***** TOTAL *****
TOTAL USD 196.00

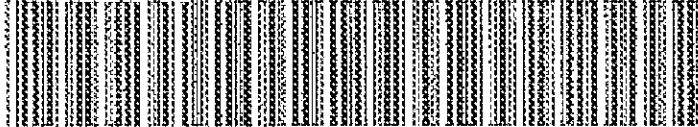
Printed by: TALLERNO, MICHAEL
Date: 07/17/11 17:34:29

A Cab 00835

Time End
(stamp here)

Driver
Signature

Michael RENO

Name	Reno, Michael	Cab#	1350	Med#	24	Date	7/19/2011
Taxi	17799					Shift	03-01
Total Fares	148.30					Time Start	7/19/2011 2:51:17 AM
Not on meter +	0					Radio Calls	6
VIP/CPO	0					\$ Per Gallon	\$ 3.379
Charges	\$ 31.90	# of Gallons	5.457	Total Gas	\$ 18.44		
Coupons	33.00						
Turn-in	\$ 177.40						

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)	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!

Ride #	Ride Type or Voucher #	Pick Up From	Drop Off At	Amount	Time In	Time Out	# of Pass
1	V1263	125/00-14	Philly Vista	34.90	3:22	3:41	1
2		125	Decatur Pl	15.10	4:27	4:31	1
3		125	Arbor	5.90	5:20	5:25	2
4		125	Arbor	4.90	5:40	5:44	1
5		125	Arbor	5.90	8:35	8:40	4
6	Coupons	125	Arbor	7.30	9:08	9:08	1
7		125	Arbor	1.30	9:25	9:36	1
8		125	Arbor	0.30	10:10	10:10	3
9	Coupons	125	Arbor	5.90	11:25	11:30	1
10		125	Arbor	11.90	12:18	12:32	3
11		125	Arbor	14.70	1:31	1:44	3
12		125	Arbor				
13							
14							
15							
16							
17							
18							
19							
20							

A Cab 00836

SNACK	(12hr Shift = 30min X 2)	Initial Here:	
MEAL	(12hr Shift = 1 hour)	Initial Here:	
Requirements to be included in a break are:		Initial Here:	
1. Outside the control of management.		Initial Here:	
2. Not performing duties associated with taxi driving.		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							
29							
30							
31							

019977
3544
#

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



Receipt

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 Cab1
4444 S. Valley View Bl
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
0001	10.00	10.00
0002	20.00	40.00
0022 Tot USD		77.00

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

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

End Totals

BATAXIPASS 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

B\$---- METER TOTALS SENT
-- OK ----

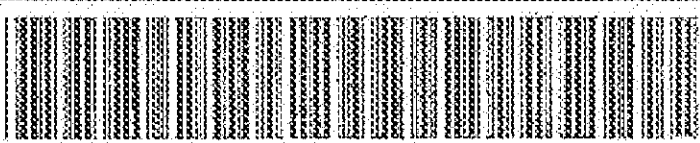
A Cab 00837

Time End
(stamp here)

11 JUL 19 2:42 PM

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/CPO	0						\$ Per Gallon	3.30
Charge's	1.10						# of Gallons	9.46
Coupons	93.90						Total Gas Cost	32.00
Turn-In	93.90							

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	69959
Start	390.79		765	189	11	224.50	69806
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!

S = Stand F = Flag R = Radio Call Voucher # = Taxi Pass							
Ride #	Ride Type or Voucher #	Pick Up From	Drop Off At	Amount	Time In	Time Out	# of Pass
1	12 (R) Wickiup	Tap House		5.70	3:20	3:26	1
2	CR (R) Tap House	Cap House		16.10	3:40	3:50	1
3	12 STAND	26 St		28.90	4:30	4:40	2
4	12 STAND	P Sims		18.70	5:40	5:57	1
5	12 STAND (R) DANA	DANA		6.70	6:30	6:36	1
6	12 STAND (R) Cas. 2nd	Cas. 2nd		4.90	7:31	7:35	1
7	12 STAND	FT A. Jack H		137.50	8:00	8:30	1
8	17 STAND	SUN Gas St		31.50	9:00	9:31	1
9	12 (R) 1600 View	Skinner		7.30	10:38	1:08	1
10	12 STAND	Walmart		10.50	11:30	11:40	2
11	12 STAND (R) Skinner	Skinner		7.50	12:00	12:08	1
12	12 STAND (R) Chalked Apple	Chalked Apple		18.90	12:21	12:31	2
13	12 STAND (R) Stark	Stark		29.50	1:20	1:50	2
14	3 STAND (R)				2:00	2:00	
15							
16							
17							
18							
19							
20							

A Cab 00838

A Cab 00838

SNACK	(12hr Shift = 30min X 2)	SNACK	Initial Here:		
MEAL	(12hr Shift = 1 hour)	MEAL	Initial Here:	MR	2pm 3pm
Requirements to be included in a break are:		SNACK	Initial Here:	MR	9:40 AM NO AM
1. Outside the control of management.		BREAK	Initial Here:	MR	6:45 7:15
2. Not performing duties associated with taxi driving.		BREAK	Initial Here:		

AA000905

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.

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

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

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

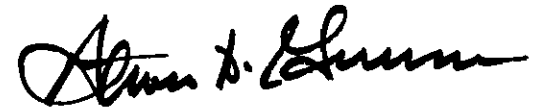
That prior to being examined, the witness
was by me duly sworn to testify to the truth, the whole
truth, and nothing but the truth;

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

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

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

LORI-ANN LANDERS, CCR 792, RPR



CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

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

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

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

POINTS AND AUTHORITIES

Before the Court ever addresses the elements of a class claim under NRCP 23, the Court has to address whether the individual claimant before it is subject to dismissal under NRCP 12(b). Plaintiff's counsel wants the Court to overlook this fact, and simply fast forward to class certification. This strategy is forbidden by NRCP 23. First and foremost, the Plaintiff himself must have a justiciable claim, and one over which this Court has jurisdiction. The Court must have a 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
Las Vegas, Nevada 89146
Counsel for Plaintiff

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

EXHIBIT 1

EXHIBIT 1

REGISTER OF ACTIONS

CASE No. 90C096930

The State of Nevada vs Michael P Murray

§
§
§
§
§
§
§
§
§

Case Type: **Felony/Gross
Misdemeanor**
 Date Filed: **10/17/1990**
 Location: **Department Unassigned**
 Cross-Reference Case Number: **C096930**
 Defendant's Scope ID #: **1017083**
 Lower Court Case # Root: **90F04808**
 Lower Court Case Number: **90F04808X**

RELATED CASE INFORMATION**Related Cases**

90F04808X (Bind Over Related Case)

PARTY INFORMATIONDefendant **Murray, Michael P**Plaintiff **State of Nevada**

Lead Attorneys
William H. Smith
Retained
 7023845563(W)
Rex A. Bell, Jr.
 702-387-6156(W)

CHARGE INFORMATION

Charges: Murray, Michael P	Statute	Level	Date
1. OPEN OR GROSS LEWDNESS	201.210	Gross Misdemeanor	01/01/1900
2. LEWDNESS WITH CHILD UNDER 14 YEARS	201.230	Felony	01/01/1900
3. LEWDNESS WITH CHILD UNDER 14 YEARS	201.230	Felony	01/01/1900
4. LEWDNESS WITH CHILD UNDER 14 YEARS	201.230	Felony	01/01/1900
5. LEWDNESS WITH CHILD UNDER 14 YEARS	201.230	Felony	01/01/1900
6. LEWDNESS WITH CHILD UNDER 14 YEARS	201.230	Felony	01/01/1900

EVENTS & ORDERS OF THE COURT

DISPOSITIONS	
01/01/1900	Plea (Judicial Officer: User, Conversion) 1. OPEN OR GROSS LEWDNESS Guilty
10/25/1990	Disposition (Judicial Officer: User, Conversion) 2. LEWDNESS WITH CHILD UNDER 14 YEARS Charges Amended/Dropped
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

A CAB 01837

Clark County (US) clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=7391191

Suggested Sites Web Slice Gallery

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# 0801: SUSPENDED Minimum 1 Years to Maximum 1 Years Placement: CCDC Converted Disposition: Sentence# 0802: PROBATION Minimum 3 Years to Maximum 3 Years Converted Disposition: Sentence# 0803: COUNSELING PROGRAM Converted Disposition: Sentence# 0804: ADMINISTRATION FEE Amount: \$28.00 Converted Disposition: Sentence# 0805: 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

4:24 PM 10/1/2015

A CAB 01838

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 REQ. OF COURT: MODIFICATION PROBATION
90C0969300006.tif pages

11/02/1992 **Request of Court (9:00 AM) ()**
AT REQ. OF COURT: MODIFICATION PROBATION Court Clerk: LOIS BAZAR Reporter/Recorder: DONNA LITTLE Heard By: MOSLEY, DONALD M.
Parties Present
Result: Matter Continued

11/04/1992 **Request of Court (9:00 AM) ()**
AT REQ. OF COURT: MODIFICATION PROBATION Court Clerk: PAULETTE TAYLOR Reporter/Recorder: DONNA LITTLE Heard By: MOSLEY, DONALD M.
Parties Present
Result: Matter Continued

11/05/1992 **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 REQ. OF COURT: MODIFICATION PROBATION Relief Clerk: SHARON PHELPS Reporter/Recorder: MELISSA HILL Heard By: Myron Leavitt
Parties Present
Result: Matter Continued

11/16/1992 **CANCELED Motion to Modify Probation (9:00 AM) ()**
Vacated
Result: Vacate

12/10/1992 **Judgment**
AMENDED JUDGMENT OF CONVICTION - PLEA
90C0969300010.tif pages

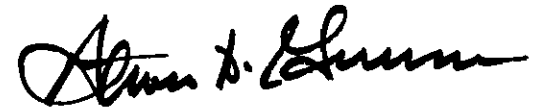
01/06/1993 **Order**
ORDER ADMITTING DEFENDANT TO PROBATION AND FIXING THE TERMS THEREOF
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12/23/1993 **Order**
ORDER HONORABLY DISCHARGING PROBATIONER
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FINANCIAL INFORMATION

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)

MICHAEL P MURRAY



CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

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

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

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

POINTS AND AUTHORITIES

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

Plaintiff's counsel instead seeks to sweep this critical fact under the carpet by arguing that 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

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: _____

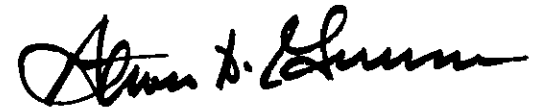
Form WH-56

Date: 08/13/2015 2:59:10 PM

Case ID: 1611567

Page 38

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CLERK OF THE COURT

RIS
Esther C. Rodriguez, Esq.
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702-320-8400
info@rodriguezlaw.com
Attorneys for Defendant A Cab, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

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

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

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

POINTS AND AUTHORITIES

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

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
26
27
28

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]

Gibbons

[Signature]

Pickering

_____, J.

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 **IN THE SUPREME COURT OF NEVADA**

2
3 BOULDER CAB, INC.)

4 Petitioners,)

5 vs.)

6
7 THE EIGHTH JUDICIAL DISTRICT)
8 COURT of the State of Nevada, in and)
9 For the County of Clark, and THE)
HONORABLE TIMOTHY C. WILLIAMS)
District Judge,)

10 Respondents,)

11 and)
12)

13 DAN HERRING,)

14 Real party in interest)
15)

Docket No. Electronically Filed
District Court Oct 08 2015 09:04 a.m.
Case No.: A-13-0151 Tracie K. Lindeman
Clerk of Supreme Court

16 **PETITION FOR WRIT OF MANDAMUS**

17
18 ROBERT A. WINNER, ESQ.
Nevada Bar No. 005167
19 **WINNER & CARSON, P.C.**
20 510 South Eighth Street
Las Vegas, Nevada 89101
21 T: 702-471-1111; F: 702-471-0110
22 raw@winnercarson.com

23 //

24 //

25 //

26 //

27 //

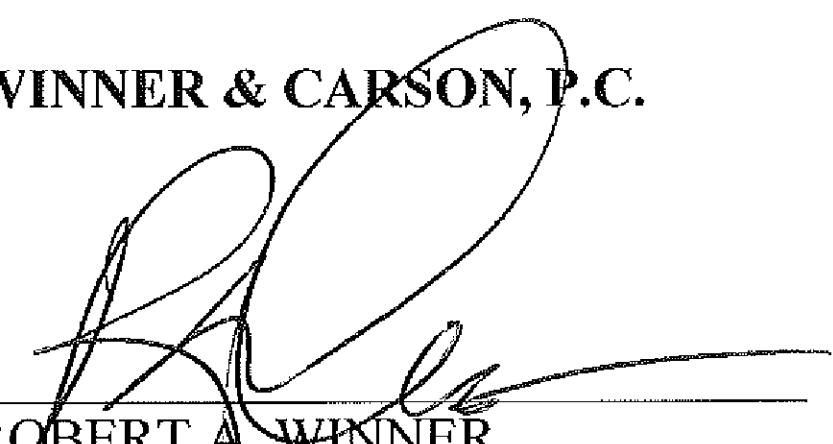
N.R.A.P Rule 26.1 Disclosure

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

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

DATED this 7 day of October, 2015.

WINNER & CARSON, P.C.



ROBERT A. WINNER
Nevada Bar No. 5167
510 South Eighth Street
Las Vegas, Nevada 89101
Attorney for Petitioner

TABLE OF AUTHORITIES

Statutes

NRS 608.250(2).....	3,5,6,8,10,12,16,17,18
NRS 34.160.....	6
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NRS 34.330.....	6
NRS 34.340.....	6

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NRAP 28.2.....	21

Nevada Constitution

Article XV, Section 16 Nevada Constitution.....	6,7,15,16
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Case Law

<u>Thomas v. Nevada Yellow Cab Corp.</u> , 327 P.3d 518, 522, 130 Nev., Adv. Op. 52 (2014).....	6,7,15,16,17,18
<u>Int'l Game Tech., Inc. v. Second Judicial Dist. Court</u> , 124 Nev. 193, 197, 179P.3d 556, 558 (2008).....	8
<u>NSE, Inc. v. Eighth Judicial Dist. Court</u> , 124 Nev. 862, 867, 192 P.3d 738, 742 (2008).....	8

1	<u>State v. Eighth Judicial District Court</u> , 130 Nev. Adv. Opp. 41, 351 P.3d 736, 740	
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4	<u>Imperial Credit Corp. v. Eighth Judicial District Court</u> , 130 Nev. Adv. Op. 59, 330	
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7	<u>In Re Advisory Opinion</u> , 132 So. 2d 163, 169 (1961 Fla.).....	22
8	<u>Breithautt v. USAA</u> , 110 Nev. 31 867 P.2d 402 (1994).....	9
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10	<u>Hustead v. Farmers Insurance</u> , 90 Nev. 354, 526 P.2d 1116 (1974).....	12
11	<u>Ziglinski v. Farmers insurance</u> , 93 Nev. 23 (1977).....	12
12	<u>Duke v. Duke</u> , 98 Nev. 148 (1982), <u>Schoels v. State</u> , 115 Nev. 33, 36 (1999).....	12
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14	<u>Nunez-Reyes v. Holder</u> , 646 F.3 rd 684 (9 th Circuit 2011).....	12
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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.

//

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

STATEMENT OF FACTS

On November 11, 2013, a real party in interest Dan Herring filed suit in the Eighth Judicial District Court demanding back pay for minimum wage on behalf of himself and a punitive class of Boulder taxicab drivers relying on the 2006 minimum, wage amendment, Art. XV, Sec. 16 of the Nevada Constitution. In response to a Motion to Dismiss, Plaintiff sought and received a stay of the case until the Supreme Court ruled on the Thomas v. Yellow Cab case.

1. On June 1, 2015, Plaintiff filed an Amended Complaint, seeking punitive damages, in addition to back pay, penalties and attorney fees. PA001-009
2. On July 17, 2015, Boulder filed a Motion to Dismiss/Motion for Summary Judgment. PA010-059
3. Herring filed an Opposition on August 6, 2015 to the Motion to Dismiss/Motion for Summary Judgment. PA060-118
4. Boulder replied on August 14 2014 to the opposition. PA119-131
5. On September 4, 2015 the court filed its Order denying Boulder's Motion to Dismiss/Motion for Summary Judgment, finding the cab driver

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.
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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 prior to June 26 of 2014, the date of the Thomas decision. The long standing practice
4 in the taxicab industry of compensating drivers by a percentage of the book, the
5 reliance on the existing law, as well as the apparent continuation of the minimum
6 wage exemption for cab drivers by the labor commissioner suggest prospective
7 application . The substantial inequities that are visited upon Boulder, to be subject to
8 back pay, penalties, attorney fees, and punitive damages while other cab companies
9 are exempt from past damages because of collective bargaining, further underscores
10 prospective application.
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15 V.

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

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

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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
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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.

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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

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 **E. The Thomas Opinion(s)**

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

18
19 The majority opinion noted the state legislature does not have the power to
20 enact laws conflicting with the Constitution. Id at 521. Harmonizing the amendment
21 and the statutory exemptions would "run afoul of the principal of constitutional
22 supremacy" Id at 521. The Nevada Constitution controls over any conflicting
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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.
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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
5 163, 169 (1961)

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

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 Respectfully, the Thomas majority justices and those in dissent put forth
19 informed and reasoned application of the law and the facts before them. Before
20 Thomas, other honorable and seasoned District Court Judges (State and Federal)
21 harmonized the statute and amendment, finding no implied repeal.
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Respectfully, NRS 608.250 (which is presumed constitutional) was valid and in effect until this court ruled otherwise in June 2014. Respectfully, a retroactive application of Thomas, invalidating NRS 608.250 (2) unduly punishes a small cab owner for reasonably relying on the statute's continued existence, the Labor Commission's notices and the traditional, union sanctioned manner of compensating cab drivers by commission, or a percentage.

VI.

CONCLUSION

Most cab drivers made more than minimum wage. No cab driver went to work under any misapprehension that compensation would be anything other than commission, or a percentage. Requiring Boulder to track driver hours after the Thomas decision (to insure minimum wage) is fair.

Considering the long standing statute, history of the industry, Boulder's reasonable reliance on the old law, and the substantial inequities already occurring, Boulder prays this court rule the repeal of NRS 608.250(2) effective June 26, 2014.

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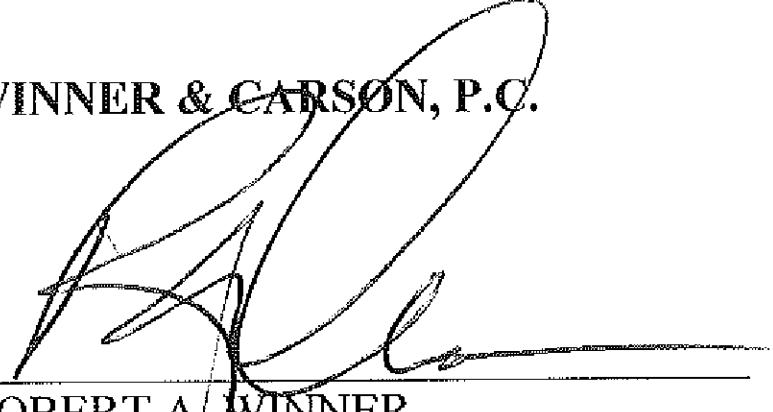
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1 Based on the foregoing points and authorities, Petitioners respectfully
2 request that this Honorable Court grant the Petition for Writ of Mandamus.

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*
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I, ROBERT A. WINNER, being first duly sworn under penalty of perjury,
deposes and says:

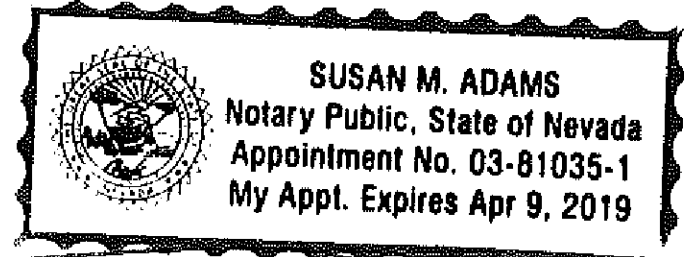
1. Affiant is the Attorney for BOULDER CAB, INC., Petitioners, and testifies as follows:

2. Affiant verifies that the facts and statements within the Petition are true and correct.

FURTHER YOUR AFFIANT SAYETH NAUGHT.



 ROBERT A. WINNER



Susan M. Adams
Notary Public in and for said 10/7/15 Date
Clark County, Nevada

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

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

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

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

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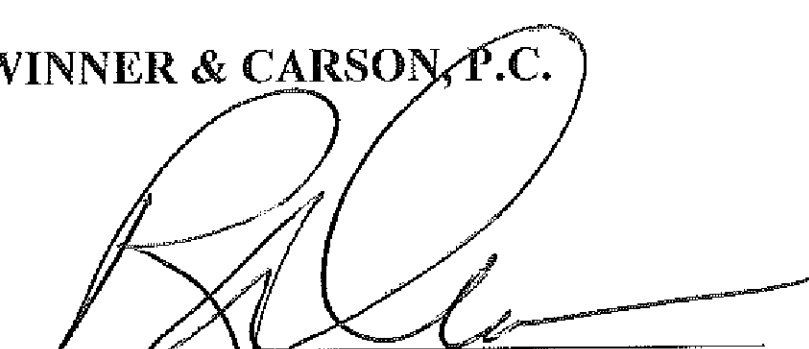
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1 I understand that I may be subject to sanctions in the event that the
2 accompanying Petition is not in conformity with the requirements of the Nevada
3 Rules of Appellate Procedure.
4

5 DATED this 7 day of October, 2015.

6 WINNER & CARSON, P.C.

7
8 
9
10 ROBERT A. WINNER
11 Nevada Bar No. 5167
12 510 South Eighth Street
13 Las Vegas, Nevada 89101
14 *Attorney for Petitioners*
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[illegible]

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

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. 15-111
T. Case 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



MALANI L. KOTCHKA

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Las Vegas, Nevada, 89101

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Facsimile: (702) 834-5262

Email: mlk@hmlawlv.com

*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:

Robert A. Winner, Esq.
WINNER & CARSON, P.C.
510 South Eighth Street
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Telephone: (702) 471-1111
Facsimile: (702) 471-0110
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Las Vegas, NV 89146
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Facsimile: (702) 385-1827
Email:
leongreenberg@overtimelaw.com

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

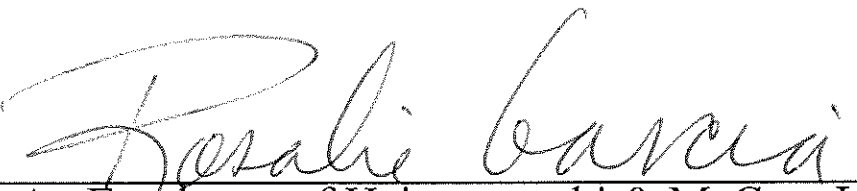

An Employee of Hejmanowski & McCrea LLC

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.)

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Dept. No.: XXVIII

PETITION FOR WRIT OF MANDAMUS

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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.
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22 IV.

23 STATEMENT OF REASONING FOR THE ISSUANCE OF A WRIT

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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
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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.
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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:
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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

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.

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

13 The Nevada Department of Business and Industry which oversees the Nevada
14 Office of Labor Commissioner, agrees that the application of *Thomas* is
15 prospective, not retroactive. In its recent publication, The Business Advocate, it
16 contained an article titled, "A Minimum Wage Guide for Nevada Employers,"
17 where it stated:
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20 While the constitutional amendment did not directly conflict with the
21 exemptions outlined in NRS 608.250, its passage created some
22 **uncertainty**. It was this uncertainty that the Nevada Supreme Court
23 addressed this past summer in *Thomas v. Nevada Yellow Cab*, 130
24 Nev. Adv. Op. 52 (2014). In its opinion, the Nevada Supreme Court
25 found that exemptions outlined in the Nevada Constitution supersede
26 the exemptions previously provided for in NRS 608.250. The only
27 individuals who are exempt from the payment of minimum wage,
28 according to the Nevada Supreme Court, are those specifically
outlined in the constitutional amendment.

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

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

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

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

17 In Breithaupt v. USAA Property and Casualty Insurance Company, 110 Nev.
18 31, 867 P.2d 402 (1994), at page 405 this Honorable Court followed the three part
19 test in Chevron Oil Co. v. Huson, 404 U.S. 97, 106-07, 92 S.Ct. 349, 355, 30
20 L.Ed.2d 296 (1971) on whether a new rule of law should be limited to prospective
21 application. In determining whether a new rule of law should be limited to
22 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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10 In this case, the Thomas decision was a landmark decision which established
11 a new principle of law that NRS 608.250(2)(e), which was in existence since 1965,
12 was no longer to be followed. This issue was of first impression, which was not
13 clearly foreshadowed by similar cases prior to the Thomas decision. The Thomas
14 decision was not rendered to punish Petitioners including other employers who
15 reasonably and legitimately relied upon NRS 608.250(2). Retroactive application
16 would effectively punish Petitioners for alleged actions that occurred prior to the
17 decision, which will not further the substantive nature of the Thomas decision,
18 since the ruling is worded in present rather than in the past tense. This analysis
19 would be entirely different had the Thomas decision been specifically worded to
20 apply retroactively. However, the decision was worded in the present tense and
21 meant to be applied prospectively. Furthermore, there will be substantial
22 inequitable results of retroactively applying the Thomas decision in the numerous
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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.

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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1 V.

2 **CONCLUSION**

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

6
7 DATED this 13th day of October, 2015.

8 YELLOW CHECKER STAR
9 TRANSPORTATION CO. LEGAL DEPT.

10 /s/ Tamer B. Botros

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

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

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

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

///

///

///

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

5 DATED this 13th day of October, 2015.

6 YELLOW CHECKER STAR
7 TRANSPORTATION CO. LEGAL DEPT.
8

9 /s/ Tamer B. Botros

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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**
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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 A001726
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

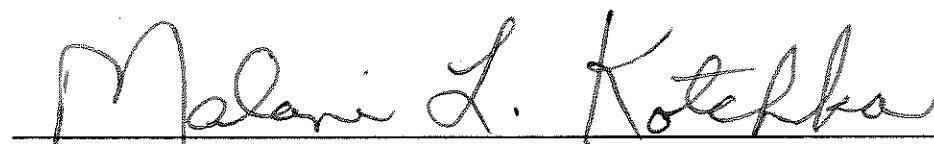
wages depends on some undefined and vague offering of "health benefits." The definition of "health benefits," however, appears to have been preempted entirely by the federal Affordable Care Act, leaving no room for the states to enact their own conflicting standards.

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,

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 22nd day of October, 2015, to the following:

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Email: leongreenberg@overtimelaw.com

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

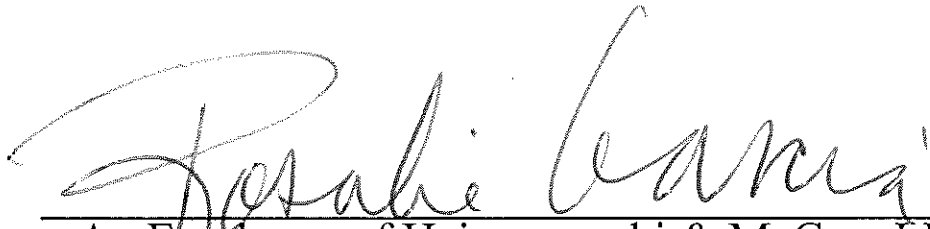

An Employee of Hejmanowski & McCrea LLC

EXHIBIT 6

EXHIBIT 6

AFFIDAVIT OF KEITH SAKELHIDE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, KEITH SAKELHIDE, being duly sworn, states:

1. I am the former Deputy Labor Commissioner for the State of Nevada Office of the Labor Commissioner for the Las Vegas office.
2. I served as Deputy Labor Commissioner from approximately 2007 to 2013.
3. The position of Deputy Labor Commissioner is subordinate to the Labor Commissioner.
4. During my time as Deputy Labor Commissioner I received a directive from Labor Commissioner Michael Tanchek regarding minimum wage claims concerning taxi and limousine drivers.
5. The aforementioned directive was to follow the standard initial intake procedures in that that upon receipt of such complaints, staff was to inform the employer of the complaint and offer the employer the opportunity to resolve the complaint. In the event that the complaint was not resolved at this stage, it was to be held in abeyance until such time that a court of competent jurisdiction issued a final ruling.
6. Upon information and belief, the Labor Commissioner's directive was based upon the divergent views concerning the validity of exceptions to minimum wage laws expressed in Nevada Attorney General Opinion 2005-05 (March 2, 2005) and Lucas v. Bell Trans., 2009 WL 2424557 (D. Nev. 2009).
7. The aforementioned directive coincided with the litigation before the US District Court in Lucas v. Bell Trans.
8. I directed staff in the Labor Commissioner's Las Vegas office to follow the aforementioned directive.

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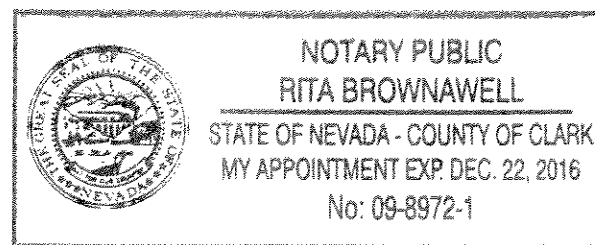
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2 9. I declare under the penalty of perjury under the laws of the State of Nevada that the
3 foregoing is true and correct.

4 FURTHER AFFIANT SAYETH NAUGHT

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8 KEITH SAKELHIDE

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



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13 Notary Public
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