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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APPENDIX TO
APPELLANTS OPENING BRIEF
VOLUME VI of LII

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

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Chronological Index

Doc No.	Description	Vol.	Bates Nos.
1	Complaint, filed 10/08/2012	I	AA000001-AA000008
2	Defendant's Motion to Dismiss Complaint, filed 11/15/2012	I	AA000009-AA000015
3	Response in Opposition to Defendants' Motion to Dismiss, filed 12/06/2012	I	AA000016-AA000059
4	Defendant's Reply in Support of Motion to Dismiss Complaint, filed 01/10/2013	I	AA000060-AA000074
5	First Amended Complaint, filed 01/30/2013	I	AA000075-AA000081
6	Decision and Order, filed 02/11/2013	I	AA000082-AA000087
7	Defendant's Motion for Reconsideration, filed 02/27/2013	I	AA000088-AA000180
8	Plaintiffs' Response in Opposition to Defendants' Motion Seeking Reconsideration of the Court's February 8, 2013 Order Denying Defendants' Motion to Dismiss, filed 03/18/2013	I	AA000181-AA000187
9	Defendant's Motion to Strike Amended Complaint, filed 03/25/2013	I	AA000188-AA000192
10	Defendant's Reply in Support of Motion for Reconsideration, filed 03/28/2013	I	AA000193-AA000201
11	Plaintiffs' Response in Opposition to Defendants' Motion to Strike First Amended Complaint and Counter-Motion for a Default Judgment or Sanctions Pursuant to EDCR 7.60(b), filed 04/11/2013	II	AA000202-AA000231

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

	08/28/2015		
24	Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss Plaintiffs' Second Claim for Relief, filed 08/28/2015	IV	AA000651-AA000668
25	Defendants Reply In Support of Motion to Dismiss Plaintiffs' Second Claim for Relief, filed 09/08/2015	IV	AA000669-AA000686
26	Defendant's Reply In Support of Motion for Declaratory Order Regarding Statue of Limitations, filed 09/08/2015	IV	AA000687-AA000691
27	Defendant's Motion to Dismiss Plaintiffs' First Claim for Relief, filed 09/11/2015	IV	AA000692-AA000708
28	Defendant A Cab, LLC's Answer to Second Amended Complaint, filed 09/14/2015	IV	AA000709-AA000715
29	Defendant's Motion to Dismiss and for Summary Judgment Against Plaintiff Michael Murray, filed 09/21/2015	IV	AA000716-AA000759
30	Defendant's Motion to Dismiss and for Summary Judgment Against Plaintiff Michael Reno, filed 09/21/2015	IV, V	AA000760-AA000806
31	Response in Opposition to Defendants' Motion to Dismiss Plaintiffs' First Claim for Relief, filed 09/28/2015	V	AA000807-AA000862
32	Defendant Creighton J. Nady's Answer to Second Amended Complaint, filed 10/06/2015	V	AA000863-AA000869
33	Response in Opposition to Defendants' Motion to Dismiss and for Summary Judgment Against Plaintiff Michael Murray, filed 10/08/2015	V	AA000870-AA000880
34	Response in Opposition to Defendants' Motion to Dismiss and for Summary	V	AA000881-AA000911

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

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

	From Seeking Settlement of any Unpaid Wage Claims Involving any Class Members Except as Part of this Lawsuit and for Other Relief, filed 11/10/2016		
53	Defendants' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) with Respect to All Claims for Damages Outside the Two-Year Statue of Limitations, filed 11/17/2016	VIII	AA001587-AA001591
54	Defendants' Motion for Leave to Amend Answer to Assert a Third-Party Complaint, filed 11/29/2016	IX	AA001592-AA001621
55	Opposition to Defendants' Motion for Judgment on the Pleadings, Counter Motion for Toll of Statue of Limitations and for an Evidentiary Hearing, filed 12/08/2016	IX	AA001622-AA001661
56	Opposition to Defendants' Motion for Leave to Amend Answer to Assert Third-Party Complaint and Counter-Motion for Sanctions and Attorney's Fees, filed 12/16/2016	IX, X, XI	AA001662-AA002176
57	Notice of Withdrawal of Defendants' Motion for Leave to Amend Answer to Assert a Third-Party Complaint, filed 12/16/2016	XI	AA002177-AA002178
58	Reply in Support of Defendants' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) with Respect to All Claims for Damages Outside the Two-Year Statue of Limitation and Opposition to Counter Motion for Toll of Statue of Limitations and for an Evidentiary Hearing, filed 12/28/2016	XI	AA002179-AA002189
59	Motion for Partial Summary Judgment, filed 01/11/2017	XII, XIII, XIV, XV	AA002190-AA002927

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

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

76	Declaration of Charles Bass, filed 02/27/2017	XX	AA003889-AA003892
77	Transcript of Proceedings, May 18, 2017	XX, XXI	AA003893-AA004023
78	Supplement to Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment, filed 05/24/2017	XXI	AA004024-AA004048
79	Supplement to Defendants' Opposition to Plaintiffs' Motion to Bifurcate Issue of Liability of Defendant Creighton J. Nady From Liability of Corporate Defendants or Alternative Relief, filed 05/31/2017	XXI	AA004049-AA004142
80	Motion on Order Shortening Time to Extend Damages Class Certification and for Other Relief, filed 06/02/2017	XXI	AA004143-AA004188
81	Decision and Order, filed 06/07/2017	XXI	AA004189-AA004204
82	Defendants' Opposition to Plaintiffs' Motion on Order Shortening Time to Extend Damages Class Certification and for Other Relief, filed 06/09/2017	XXII	AA004205-AA004222
83	Transcript of Proceedings, June 13, 2017	XXII	AA004223-AA004244
84	Plaintiffs' Motion to Impose Sanctions Against Defendants for Violating this Court's Order of March 9, 2017 and Compelling Compliance with that Order, filed 07/12/2017	XXII	AA004245-AA004298
85	Order Denying Plaintiffs' Motion for Partial Summary Judgment, filed 07/14/2017	XXII	AA004299-AA004302
86	Order, filed 07/17/2017	XXII	AA004303-AA004304

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

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

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

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

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

142	Defendants' Supplemental Authority in Response to Declaration of June 20, 2018, filed 07/10/2018	XLI	AA008349-AA008402
143	Michael Rosten's Response to Defendants' Objection to Billing by Stricken Special Master Michael Rosten, filed 07/13/2018	XLI	AA008403-AA008415
144	Plaintiffs' Supplement in Reply and In Support of Entry of Final Judgment Per Hearing Held June 5, 2018, filed 07/13/2018	XLI, XLII	AA008416-AA008505
145	Defendants' Supplemental Authority in Response to Plaintiffs' Additional Supplement Filed July 13, 2018, filed 07/18/2018	XLII	AA008506-AA008575
146	Plaintiffs' Supplement in Reply to Defendants' Supplement Dated July 18, 2018, filed 08/03/2018	XLII	AA008576-AA008675
147	Notice of Entry of Order Granting Judgment, filed 08/22/2018	XLIII	AA008676-AA008741
148	Motion to Amend Judgment, filed 08/22/2018	XLIII	AA008742-AA008750
149	Defendants' Motion for Reconsideration, Amendment, for New Trial, and for Dismissal of Claims, filed 09/10/2018	XLIII	AA008751-AA008809
150	Opposition to Plaintiffs' Motion to Amend Judgment, filed 09/10/2018	XLIII	AA008810-AA008834
151	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Amend Judgment, filed 09/20/2018	XLIII, XLIV	AA008835-AA008891
152	Defendant's Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening Time, filed 09/21/2018	XLIV	AA008892-AA008916

153	Notice of Appeal, filed 09/21/2018	XLIV	AA008917-AA008918
154	Plaintiffs' Response to Defendants' Ex-Parte Motion to Quash Writ of Execution on an OST and Counter-Motion for Appropriate Judgment Enforcement Relief, filed 09/24/2018	XLIV	AA008919-AA008994
155	Plaintiffs' Response in Opposition to Defendants' Motion for Reconsideration, Amendment, for New Trial and for Dismissal of Claims, filed 09/27/2018	XLIV	AA008995-AA009008
156	Plaintiffs' Supplemental Response to Defendants' Ex-Parte Motion to Quash Writ of Execution on an OSt, filed 09/27/2018	XLIV	AA009009-AA009029
157	Defendant's Exhibits in support of Ex-Parte Motion to Quash Writ of Execution and, In the Alternative, Motion for Partial Stay of Execution on Order Shortening Time, filed 10/01/2018	XLIV, XLV	AA009030-AA009090
158	Claim of Exemption from Execution - A Cab Series, LLC, Administration Company, filed 10/04/2018	XLV	AA009091-AA009096
159	Claim of Exemption from Execution - A Cab Series, LLC, CCards Company, filed 10/04/2018	XLV	AA009097-AA009102
160	Claim from Exemption from Execution - A Cab Series, LLC, Employee Leasing Company Two, filed 10/04/2018	XLV	AA009103-AA009108
161	Claim of Exemption from Execution - A Cab Series, LLC, Maintenance Company, filed 10/04/2018	XLV	AA009109-AA009114
162	Claim from Exemption from Execution - A Cab Series, LLC, Medallion Company, filed 10/04/2018	XLV	AA009115-AA009120

163	Claim from Exemption from Execution - A Cab Series, LLC, Taxi Leasing Company, filed 10/04/2018	XLV	AA009121-AA009126
164	Claim of Exemption from Execution - A Cab, LLC, filed 10/04/2018	XLV	AA009127-AA009132
165	Plaintiffs' Motion for an Order Granting a Judgment Debtor Examination and for Other Relief, filed 10/05/2018	XLV	AA009133-AA009142
166	Plaintiffs' Motion for an Award of Attorneys Fees and Costs as Per NRCP Rule 54 and the Nevada Constitution, filed 10/12/2018	XLV	AA009143-AA009167
167	Plaintiffs' Objections to Claims from Exemption from Execution and Notice of Hearing, filed 10/15/2018	XLV	AA009168-AA009256
168	Opposition to Plaintiffs' Counter-Motion for Appropriate Judgment Relief, filed 10/15/2018	XLV	AA009257-AA009263
169	Plaintiffs' Reply to Defendants' Response to Plaintiffs' Counter-Motion for Appropriate Judgment Enforcement Relief, filed 10/16/2018	XLV	AA009264-AA009271
170	Reply in Support of Defendants' Motion for Reconsideration, Amendment, for New Trial, and for Dismissal of Claims, filed 10/16/2018	XLV	AA009272-AA009277
171	Defendants' Motion for Dismissal of Claims on Order Shortening Time, filed 10/17/2018	XLV	AA009278-AA009288
172	Plaintiffs' Response in Opposition to Defendants' Motion for Dismissal of Claims on an Order Shortening Time, filed 10/17/2018	XLVI	AA009289-AA009297
173	Notice of Entry of Order, filed 10/22/2018	XLVI	AA009298-AA009301

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

183	Opposition to Resolution Economics' Application for Order of Payment of Special Master's Fees and Motion for Contempt, filed 11/26/2018	XLVII	AA009647-AA009664
184	Plaintiffs' Response to Special Master's Motion for an Order for Payment of Fees and Contempt, filed 11/26/2018	XLVII	AA009665-AA009667
185	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs as Per NRCP Rule 54 and the Nevada Constitution, filed 11/28/2018	XLVII	AA009668-AA009674
186	Defendant's Opposition to Plaintiffs' Ex-Parte Motion for a Temporary Restraining Order and Motion on an Order [sic] Requiring the Turnover of Certain Property of the Judgment Debtor Pursuant to NRS 21.320, filed 11/30/2018	XLVII	AA009675-AA009689
187	Resolution Economics' Reply to Defendants' Opposition and Plaintiffs' Response to its Application for an Order of Payment of Special Master's Fees and Motion for Contempt, filed 12/03/2018	XLVII	AA009690-AA009696
188	Minute Order from December 4, 2018 Hearing	XLVIII	AA009697-AA009700
189	Transcript of Proceedings, December 4, 2018	XLVIII	AA009701-AA009782
190	Transcript of Proceedings, December 11, 2018	XLVIII	AA009783-AA009800
191	Defendant's Opposition to Plaintiffs' Motion for Other Relief, Including Receiver, filed 12/12/2018	XLVIII	AA009801-AA009812
192	Transcript of Proceedings, December 13, 2018	XLVIII	AA009813-AA009864

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

205	Minute Order from February 5, 2019 Hearing	L	AA01208-AA01209
206	Notice of Entry of Order Granting Resolution Economics' Application for Order of Payment and Contempt, filed 02/05/2019	L	AA010210-AA010219
207	Notice of Entry of Order Granting Plaintiffs' Motion for Attorney's Fees and Costs, filed 02/07/2019	L	AA010220-AA010230
208	Defendants' Motion for Reconsideration of Judgment and Order Granting Resolution Economics' Application for Order of Payment of Special Master's Fees and Order of Contempt, filed 02/25/2019	L	AA010231-AA010274
209	Order, filed 03/04/2019	L	AA010275-AA010278
210	Order Denying in Part and Continuing in Part Plaintiffs' Motion on OST to Lift Stay, Hold Defendants in Contempt, Strike Their Answer, Grant Partial Summary Judgment, Direct a Prove Up Hearing, and Coordinate Cases, filed 03/05/2019	L	AA010279-AA010280
211	Order on Defendants' Motion for Reconsideration, filed 03/05/2019	L	AA010281-AA010284
212	Second Amended Notice of Appeal, filed 03/06/2019	L	AA010285-AA010288
213	Special Master Resolution Economics' Opposition to Defendants Motion for Reconsideration of Judgment and Order Granting Resolution Economics Application for Order of Payment of Special Master's Fees and Order of Contempt, filed 03/28/2019	LI	AA010289-AA010378
214	Notice of Entry of Order Denying Defendants' Motion for Reconsideration of	LI	AA010379-AA010384

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

Alphabetical Index

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

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

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

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

26	Defendant's Reply In Support of Motion for Declaratory Order Regarding Statue of Limitations, filed 09/08/2015	IV	AA000687-AA000691
25	Defendants Reply In Support of Motion to Dismiss Plaintiffs' Second Claim for Relief, filed 09/08/2015	IV	AA000669-AA000686
171	Defendants' Motion for Dismissal of Claims on Order Shortening Time, filed 10/17/2018	XLV	AA009278-AA009288
53	Defendants' Motion for Judgment on the Pleadings Pursuant to NRCP 12(c) with Respect to All Claims for Damages Outside the Two-Year Statue of Limitations, filed 11/17/2016	VIII	AA001587-AA001591
54	Defendants' Motion for Leave to Amend Answer to Assert a Third-Party Complaint, filed 11/29/2016	IX	AA001592-AA001621
62	Defendants' Motion for Leave to Amend Answer to Assert a Third-Party Complaint, filed 01/27/2017	XVI	AA003038-AA003066
149	Defendants' Motion for Reconsideration, Amendment, for New Trial, and for Dismissal of Claims, filed 09/10/2018	XLIII	AA008751-AA008809
44	Defendants' Motion for Reconsideration, filed 02/25/2016	VII	AA001195-AA001231
208	Defendants' Motion for Reconsideration of Judgment and Order Granting Resolution Economics' Application for Order of Payment of Special Master's Fees and Order of Contempt, filed 02/25/2019	L	AA010231-AA010274
95	Defendants' Motion for Summary Judgment, filed 11/27/2017	XXVI	AA005031-AA005122
102	Defendants' Motion in Limine to Exclude Testimony of Plaintiffs' Experts, filed	XXVIII	AA005510-AA005564

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

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

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

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

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

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

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

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

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

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

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

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

155	Plaintiffs' Response in Opposition to Defendants' Motion for Reconsideration, Amendment, for New Trial and for Dismissal of Claims, filed 09/27/2018	XLIV	AA008995-AA009008
11	Plaintiffs' Response in Opposition to Defendants' Motion to Strike First Amended Complaint and Counter-Motion for a Default Judgment or Sanctions Pursuant to EDCR 7.60(b), filed 04/11/2013	II	AA000202-AA000231
24	Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss Plaintiffs' Second Claim for Relief, filed 08/28/2015	IV	AA000651-AA000668
23	Plaintiffs' Response in Opposition to Defendants' Motion for Declaratory Order Regarding 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 VI of LII** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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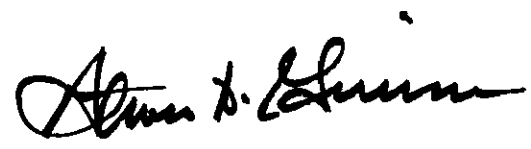
Attorneys for Respondents

DATED this 5th day of August, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

MICHAEL MURRAY, et al.,	.	CASE NO. A-12-669926-C
Plaintiffs,	.	DEPT. NO. I
vs.	.	
A CAB SERVICE, LLC, et al.,	.	**TRANSCRIPT OF PROCEEDINGS**
Defendants.	.	

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE

ALL PENDING MOTIONS

NOVEMBER 3, 2015

APPEARANCES:

FOR THE PLAINTIFFS: LEON GREENBERG, ESQ.
DANA SNIEGOCKI, ESQ.

FOR THE DEFENDANTS: ESTHER C. RODRIGUEZ, ESQ.

COURT RECORDER:

LISA LIZOTTE
District Court

TRANSCRIPTION BY:

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LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 3, 2015, 9:47 A.M.

THE CLERK: Okay. A-669926, Murray vs. A Cab Taxi Service. Counsel state their appearances for the record.

(Pause in the proceedings)

MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez for the defendant. And I have my assistant present just for assistance, due to the number of hearings we have this morning.

THE COURT: Okay. Good morning.

MS. SNIEGOCKI: Dana Sniegocki, for plaintiff.

MR. GREENBERG: Leon Greenberg, Your Honor, for plaintiff.

THE COURT: All right. The defense also, I believe, wanted to continue this so your client could be here, and I understand he has a great interest in this. I didn't feel that we -- that it was going to be productive or really possible to continue this further. We've kind of pushed it out there as far as we can push it.

I am concerned that -- that inasmuch as this was filed in 2012 -- and I don't really know exactly how much time might be excluded from a computation of the length that the lawsuit has been in operation, and that I know that there are issues of discovery yet to be hashed out, I felt that this -- this case is far enough along that just to make sure we don't wind up bumping up against the five-year rule, it's important

to get this part of it done so we can then move on to other things.

MS. RODRIGUEZ: Thank you, Your Honor. Yes, we just asked -- Mr. Nady wanted to be present and he's in Russia this week, so.

THE COURT: Okay.

MS. RODRIGUEZ: As I explained to your assistant, he was unable to call in from Russia.

THE COURT: He's not flying on a Russian airline, or is he?

MS. RODRIGUEZ: Yes, I know. That happened like a day before he left.

THE COURT: Is that right? Does that -- let's see, what country was that in that that --

MS. RODRIGUEZ: Egypt.

THE COURT: -- went down?

MS. RODRIGUEZ: Yeah.

THE COURT: He's not going by way of Egypt though?

MS. RODRIGUEZ: No. I hope not, no.

THE COURT: All right. We have several motions on. Why don't we take them in this order. And I've -- I've put them in this order because I'm leaving the Motion to Certify as last, because if the defendant scores on any of these other motions it's going to at least simplify and perhaps make the plaintiffs' motion moot.

So let's look first at the Defendants' Motion for Declaratory Order Regarding the Statute of Limitations. Anything additional that you wish to argue at this point? We had a -- sort of a convoluted bite at the apple last time and I have notes of some of the argument that was made then. But I'm sure that there is more that both sides want to say about this motion.

MS. RODRIGUEZ: Well, briefly, Your Honor, as I recall, I'm not sure that we got too far into the arguments because we did have the pending argument before the Supreme Court that did go forward in the Gilmore case. And I think at that time Your Honor was wanting to see if we were going to catch some inclination from the Supreme Court as to which way they were going to head on this and --

THE COURT: I thought of it afterwards and I thought, that's got to be a vain hope really. I don't suppose they ruled from the Bench?

MS. RODRIGUEZ: They did not. And if anything, there may be even an indication that the way that it was taken up to them, they may not even rule on it. They questioned the lot whether they even had jurisdiction as the way it was pled in that particular case. So they may again punt and not even address it at this point.

THE COURT: Does that raise the same issues as the Yellow Cab, or different?

MS. RODRIGUEZ: Yes, if Your Honor is referring to the writ now that I believe that Yellow Cab --

THE COURT: Okay.

MS. RODRIGUEZ: -- took to the Supreme Court. I believe there's -- there's several writs and amicus briefs that are before the Court. They're pertaining to this statute of limitations issues, the prospective application.

THE COURT: Okay.

MS. RODRIGUEZ: Some of them were mix and mingling them, but there are writs and amicus briefs from Yellow Cab, from Boulder Cab and from Western Cab as well.

And they've asked to join and to consolidate also with these other cases that -- the Gilmore case. I believe they were denied, but now there's -- and it was funny because the Supreme Court acted in my opinion somewhat surprised that these writs were floating around because the defense counsel that was arguing, Elayna Youchah mentioned to the Court that the Court's decision was going to affect a number of industries as to how they ruled on the statute of limitations.

And I think it was Justice Pickering said, well, how do we know that these other things are even out there other than checking our own docket and the rest of us were kind of scratching our heads like, well, you just denied the writs to -- and to join. But I'm not sure how much they were aware of that, but at least now they've all been filed and they're up

there.

THE COURT: Well, I assume that a strong strain of thought, then, would be that they want to make a decision based on as full a record as they can which works against whoever's trying to get the writ on.

MS. RODRIGUEZ: Right, right.

THE COURT: But becomes the more pervasive or impact that their decision is going to have on other industries, the more they would want to be sure that it's a sound decision and they always like to have as much of the facts as they can have.

MS. RODRIGUEZ: Right.

THE COURT: And that's -- that seems to me to often be why a writ fails, they're wary. And I think, not that they need my say-so, but I'd have to agree with that. I think it's difficult to arrive at a sound decision when you don't have all the facts in front of you.

MS. RODRIGUEZ: Well, I won't spent a lot of time arguing this this morning, Your Honor, because we do have six different hearings. Pretty much the same arguments that I briefed were argued before the Supreme Court.

I would just highlight to the Court that what makes this case a little bit different from the other ones and why I believe that the Court would -- it's proper for the Court to enforce a two-year statute of limitation is because the

allegations that are against A Cab in this case, both from what is actually specified in the plaintiff's Complaints and their supporting declarations, all lend themselves that this is a claim for unpaid hours as opposed to specifically a minimum wage where they were paid $5.00 instead of 8.25 or 7.25. The unpaid hours provisions all fall within the jurisdiction of the Labor Commissioner and everything under the Labor Commissioner pertains to a two-year statute of limitations.

The record-keeping requirements, the enforcement statutes, I can go through and I cited to those in my brief, but they all directly point to a two-year statute of limitations. And while we all wait for direction from the Supreme Court, I believe it would be unfair to the defense to impose either a four-year or a six-year statute due to the expense that was going to be involved.

And if Your Honor is inclined, once we get to the class certification issue, the two-year statute of limitations is the one that at least we should commence with until Supreme Court directs us otherwise. But in this instance --

THE COURT: Does -- does that -- does the same rationale apply to both types of claims, the statutory versus the Constitution?

MS. RODRIGUEZ: Well, those were the arguments that I put in my brief as well as what Ms. Youchah argued to the

Supreme Court, that there was no reason to default to a catchall statue of limitation when there's one directly on point, one that pertains to minimum wage claims.

You're making a minimum wage claim, whether it's under a constitutional amendment or whether it's under the NRS 608, then there is a statute that says it's a two-year statute of limitations. So why would you have to go to the catchall?

THE COURT: If we say that -- if we say that and make it all encompassing to both types of claims, don't we run afoul of the decision in Yellow Cab?

MS. RODRIGUEZ: Don't we run afoul of that?

THE COURT: Yeah. Doesn't -- doesn't the decision of the majority, at least, in Yellow Cab seem to mitigate that or argue more forcefully that where it's a constitutional claim --

MS. RODRIGUEZ: Well, I think --

THE COURT: -- that this catchall must apply?

MS. RODRIGUEZ: -- the way I understood the Yellow Cab decision, and that's going to overlap into some of our other hearings this morning about the prospective application, but the Yellow Cab decision, the wording was very specific that says it supplants and supersedes the statute. And so now, we're working with a comprehensive, minimum-wage claim. And any -- I think one of the arguments that supports why a two-year statute of limitation should be across the board is

that if you have people filing, such as taxicab drivers, and they're falling -- for a minimum wage claim, and they would fall under four years or six years versus anybody else in the city of Las Vegas is going to fall under a two-year statute of limitation, that didn't make any sense in terms of not being the intent of the decision or the legislature to have two different statutes of limitations running just based on the particular industry that you were working in.

That was never the intent of the constitutional amendment. The constitutional amendment was to raise a level amount for all workers to be entitled to, and not for them to have two different statute of limitations. That is just not logical and it's not practical or workable for employers to have to worry about two different statutes of limitations.

THE COURT: Anything else on that one?

MS. RODRIGUEZ: Not at this time, Your Honor.

THE COURT: Okay. Mr. Greenberg, what about that last point?

MR. GREENBERG: Well, Your Honor, I think, is really directing your inquiry to the critical issue here, which is what is the nature of the claim made here. It's a claim made under the Constitution of the State of Nevada. So the attendant question is, well, what is the statute of limitations for a claim brought under the Constitution?

This is unusual because this is a very specific,

civil right that is in the Constitution. But, nonetheless, I mean, if this was a, I don't know, a search-and-seizure or in violation of some other more traditional Bill of Rights-type privilege or right secured constitutionally, there would be a statute of limitations to that claim because of its constitutional nature. So the question presented is really what is the statute of limitations for a claim under the Constitution in the State of Nevada, okay?

Now, this is addressed at page 5 of my brief in opposition. To the extent that the Nevada Supreme Court has looked at this in the Alper case and the White Pine Lumber case, they have basically agreed with the analysis that it is a four-year statute of limitations because that is the miscellaneous catchall period for claims that are not otherwise specified.

That application of the catchall statute of limitations has, in fact, been embraced by every other jurisdiction that has come across this issue. This is discussed at page 6 of my brief. We have cases from High Court in Texas, New York, Nebraska. Now, the -- yes?

THE COURT: So there's no need to look at whether it creates a specialized favorite class of people, being the taxicab drivers, versus everybody out in the world, that's another --

MR. GREENBERG: This idea that somehow we're going

to have a dual class, a dual statute of limitations for different groups of employees is a fabrication by a number of counsel and defendants who are faced with these litigations and are arguing these issues.

The constitutional minimum wage embraces all employees in the State of Nevada. It's very clear from its language, not just cab drivers. Cab drivers create this change in the law or change in business practice which, of course, is of dramatic importance to this industry.

But the law is the law. It's not about the business issues, so to speak. And the language of the Constitution applies to everyone who's an employee in the State of Nevada with the exception of certain teenagers who are under 18 or are in after-school employment and this is -- this is how it's written into the Constitution.

So for those individuals, their minimum wage rights would be governed still by statute, by 608.250 and then by the two-year statute of limitations of 608.260. That is obviously an extremely nominal slice of Nevada's work force. But for everyone else, they have rights directly under the Constitution. They're governed by the same constitutional statute of limitations. Now, this -- this argument --

THE COURT: So they get the benefit of the four-year statute as well?

MR. GREENBERG: They -- their employees. I mean,

the language -- Your Honor arrived at the correct decision as was arrived at in Thomas about 18 months before Thomas took this up, arriving in an analysis that was contrary to Judge Herndon, for instance, in the Desert Cab case which subsequently did go up on appeal along with Thomas and was reversed after Thomas.

So the entirety of defendant's reasoning as to why the two-year statute of limitations should apply is because we have the statute 608.260. And if you read the statute, it says, any employee -- "If any employer pays an employee a lesser amount than the minimum wage prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250." This is at page 7 of my opposition.

So 608.260, which is where this two-year period comes from, it is very, very specific. It is completely limited to the provisions of 608.250, which is Nevada's statutory minimum wage as enacted by the legislature.

Now, if 608.260 did not exist, as Your Honor is well aware, we would have a three-year statute of limitations for claims under Nevada's statutory minimum wage because three years is the general period for statutory claims in Nevada.

For whatever reason, when Nevada's legislature enacted the statutory minimum wage, they've also specifically carved out a two-year statute of limitations for claims brought pursuant to that statutory minimum wage.

Now, as Your Honor was observing just a few minutes ago, you posed the question, well, if I'm going to apply this two-year statute of limitations, wouldn't we run afoul of what the Supreme Court's majority said in Thomas. And clearly you would, because as discussed on page 6 of my opposition, in Thomas what the holding was -- ultimately was in this case, the principle of constitutional supremacy prevents the Nevada legislature from creating exceptions to the rights and privileges protected by Nevada's Constitution.

So this brings us back to where I started my discussion with you, Your Honor, which is the question is, what is the statute of limitations for a claim under Nevada's Constitution? That is where you will find the answer for what the statute of limitations should be in this case, Your Honor, because clearly under Thomas, and under general principles of constitutional supremacy, the legislature is without power to modify or reduce the privileges and rights that are granted under Nevada's Constitution.

The legislature can't in the next session pass a law saying claims brought under Nevada's Constitution for minimum wages will now have a six-month statute of limitation or a one-year statute of limitations.

THE COURT: Notwithstanding Judge Navarro's opinion?

MR. GREENBERG: Notwithstanding Judge Navarro's opinion. I mean you have Judge Bell's opinion in this, which

is an exhibit that I attached to my brief.

I understand there is a divergence of views on this. I mean, we have Judge -- Judge Tao in this court who issued this very lengthy opinion in Williams which I do analyze and discuss in my opposition. It really is lacking in terms of its assumptions in a very -- a number of ways.

That was the one that the Supreme Court took up on mandamus, the argument that counsel's referring to. And I do agree, there was no real indication at argument as to the Supreme Court's direction in resolving that writ from their questioning. Maybe they will decide that it was granted improvidently and decline to reach the merits, Your Honor.

THE COURT: What do you make of the defendant's emphasis on whether or not this is a claim for unpaid hours versus minimum wage?

MR. GREENBERG: I don't know what that is, Your Honor. I don't understand how you can convert a claim for unpaid minimum wages. I worked for 10 hours for the defendant. They owe me at least $72.50 in Nevada minimum wages.

The defendant comes to court and says, well, Your Honor, no. We paid him $7.25 because he only worked one hour. So he's saying that he worked another nine hours that we didn't pay him for. He's really claiming unpaid hours, not a minimum-wage deficiency.

Your Honor, how does that change a claim under Nevada's Constitution? I have to prove my case. I have to prove I actually worked the 10 hours, and I didn't get paid the 72.50. What defendant is coming in and defense is saying, well, if he work the 10 hours, because we paid him for one of those hours, his claim is no longer a claim for unpaid minimum wages. It's a claim for nine hours of unpaid -- that's not the structure of the constitutional right that's afforded here.

I mean, Your Honor, recognizing that sort of analysis would essentially allow any defendant to come into this court and convert any claim for unpaid minimum wages into a claim for unpaid hours, whatever that is, which is not specified anywhere in the NRS. There's no case law recognizing this is some separate claim from a minimum wage claim.

And under defendant's argument, being within the exclusive jurisdiction of the Labor Commissioner, as well. I mean there's just no support for this analysis and defendant gives no support for this analysis. I mean, the minimum wage law prescribes a minimum measure of compensation for an amount of time the employee works, okay.

THE COURT: Which necessarily involves the evidence of the number of hours and the amount paid.

MR. GREENBERG: Well, right.

THE COURT: To see whether measures up.

MR. GREENBERG: Right. Was the employee not paid at all for nine hours as in the example I gave you? Or was he underpaid $6 an hour for 10 hours? It doesn't matter, Your Honor, okay. I mean, the -- the fact of the matter is at the end of the day, if the employee establishes he worked 10 hours, but was only paid $7.25 and not $72.50, then he's owed the difference.

So, I mean, essentially, what the defendants are urging the Court to do is to package up the analysis of this in a way that just evades the coverage of the law or would allow the employers to evade the coverage of the law in all circumstances. I guess, if an employer paid nothing, then maybe their argument would somehow fall apart under their approach.

Although, even then they could say, well, we just -- we just didn't pay him for the 10 hours. He's really claiming that he wasn't paid for -- well, he wasn't paid minimum wages, Your Honor. At the end of the day it amounts to the same thing. The laborer labored for the hours and wasn't paid the full requisite amount prescribed by the Constitution.

That is the issue. I mean, clearly the Constitution requires a broad understanding and application. And I'm not -- I don't think by any means I'm stretching anything by explaining this analytic approach to the Court. In fact, it's

quite the contrary. It's the defendants that are really sort of going through this acrobatic maneuver to try to stretch the legal requirements into something other than what they are. And Your Honor's familiar with the constitutional language that commands the Court to use its full measure of remedial powers, equitable and so forth, to enforce the rights that are granted by the Constitution.

So you just can't, as I said, engage in this -- in this sort of dance of whatever one would call it, invasion of the constitutional provision by adopting this analysis which would essentially destroy it.

I don't want to belabor this issue with the Court. I think the Court needs to make a ruling on this. I do understand that it is unsettled. I mean, I've given you the analysis that I think is clearly correct. There are other trial level jurists who disagree with that, obviously.

THE COURT: When you say, rules on this, you don't mean this -- this little issue of unpaid hours versus minimum wage. You mean, on the overall question on the statute of limitations for a constitutional claim?

MR. GREENBERG: Well, yes, Your Honor. I mean, in terms of this issue of this claim not even be in a minimum-wage claim, this was repeatedly raised by defendants in opposition to their requests for class certification and so forth. I mean, I guess if Your honor was to embrace that and

agree fully with what defendants are urging the Court to do, you would dismiss the case and say, that's not what this -- this case is not a minimum-wage case, it's a claim for unpaid hours, whatever that is, and you have to go to the Labor Commissioner because he's the one who has exclusive jurisdiction over such claims. I think the whole argument is nonsensical and untenable, Your honor.

In respect to the statute of limitations issue, what I want to point out to the Court, just as a pragmatic matter, is that whether the Court was to decide if it was two years or four years -- and by the way, Judge Jones in a case called Schaeffer (phonetic), which was issued about three or four months ago, revisited this issue himself. And he agreed that NRS 608.260 does not control these claims because if you look at the language, it's particular to 608.250.

So he agrees that under Nevada's Constitution, you can't use this two-year statute of limitations. For whatever reason, he said that the applicable statute of limitations should be three years, which would be the general statute of limitations period for statutory rights, essentially, saying in his view, a constitutional right is not in a different class than a general statutory right.

I -- he doesn't really cite any authority for that view, but that was ultimately his holding in that case. I know Your Honor rejected Judge Jones's reasoning in the Lucas

(phonetic) case which would have led Your Honor to make a contrary ruling then what was ultimately found correct in Yellow Cab.

But what I was getting to as a pragmatic matter, Your Honor, there's also a claim in this case that the statute of limitations should be tolled as of July 1st, 2007, because Nevada's Constitution contains a written notification requirement that imposes upon employers an affirmative duty to provide each employee with a written notice as to the change in the minimum wage.

The first change in the minimum wage since the enactment of the constitutional provision in 2006 came on July 1st, 2007. Defendants never gave that written notification to their taxi driver employees.

It would be my argument that because the Constitution specifies that all equitable and other relief should be available to remedy violations, the remedy for a violation of the notice provision of the Constitution would have to be a toll of the statute of limitations.

That would be the only possible remedy that would afford a remedy, Your Honor, because the purpose of the notice provision is obviously to be sure that the employee is aware of their rights and to impose an affirmative duty on the employer to advise the employee of their rights when the minimum wage rate changes in the State of Nevada.

So if a toll was to be granted, that would take this -- that would take these claims past, actually, the four-year period that would otherwise be applicable, which would take them back to October of 2008, because this case was filed in October of 2012.

Now, the tolling -- the Court is not going to decide this issue of the tolling of the statute of limitations right now. This is discussed in a Motion to Certify at page 13, Your Honor. And there is -- there is clearly --

THE COURT: At page 13, you said?

MR. GREENBERG: Of the Motion to Certify, Your Honor. The issue of the fact that the statute of limitations --

THE COURT: Oh.

MR. GREENBERG: The tolling issue needs to be considered, Your Honor. And in the Copeland (phonetic) case, the Supreme --

THE COURT: Within the context of which motion?

MR. GREENBERG: Well, Your Honor, I'm saying as a -- I'm not trying to deter the Court from making a determination on the statute of limitations. What am saying is, let's say the Court says the statute of limitations is two years, or four years, or three years. The fact of the matter is, that the time period of the claims that are going to be subject to adjudication in this case still needs to await a determination

on this equitable tolling claim, okay.

The Court cannot decide today what the statute of limitations is and certify the class and simply say, we're not going to consider claims or adjudicate claims that may exist prior to this two or four-year period prior to the commencement of this case because of the equitable tolling issue.

It is very clear from the Nevada Supreme Court in the Copeland case, which is discussed in the class certification motion, that the Court must hold an evidentiary hearing and review an actual record before making a determination on a claim regarding an equitable toll of the statute of limitations. We're not at that point. We obviously are not going to hold such a hearing.

THE COURT: That is separate and apart from the Court declaring what the statute of limitations are for both the constitutional and --

MR. GREENBERG: Absolutely, Your Honor. I'm just saying it's a -- I'm just saying there's a relationship here pragmatically in terms of moving the case forward, that's all.

THE COURT: I assume you would say, though, that that must be included within the consideration of the motion, both Motions to Dismiss?

MR. GREENBERG: I mean, Your Honor, we're dealing with the statute of limitations issue. I'm not quite sure

where the Motion to Dismiss would fit into this unless the issue was the Court was going to dismiss claims that predated the statute of limitations.

THE COURT: Well, there's Motions to Dismiss Plaintiffs' First Claim and Second Claim. And then, of course, there's Motion to Dismiss and Summary Judgment against each of the two named plaintiffs.

MR. GREENBERG: Yes, there is, Your Honor.

THE COURT: So would not the tolling have to necessarily be considered within those? Otherwise, how can the Court rule?

MR. GREENBERG: Well, Your Honor, I'm just not sure from my reading of what it is the defendants are requesting why that would -- why that would apply. I mean, in respect to dismissing the first claim for relief, they're saying your order here is completely prospective and that they had no legal obligation to pay the minimum wage until Thomas was issued in June of 2014.

So if they had no obligations under Nevada's Constitution until June of 2014, anything that happens before then --

THE COURT: So it's -- so you don't get into --

MR. GREENBERG: -- in their view, is irrelevant. I understand that, Your Honor.

THE COURT: I see, yeah.

MR. GREENBERG: So that would render all of this discussion moot, I guess.

THE COURT: Okay.

MR. GREENBERG: Anyway, Your Honor, I took up a fair amount of the Court's time. I'm happy to discuss this further if it would be helpful. I don't know that it would be.

THE COURT: No.

MR. GREENBERG: Okay. Thank you, Your Honor.

THE COURT: No. Well, other than this. You do agree, I believe your materials indicate it, and I think you said it verbally last time, that the two-year statute is appropriate to the statutory claims?

MR. GREENBERG: To the 608.040 claim, that is in the nature of a statutory penalty. So the two-year general statute of limitations for statutory penalty claims would apply to the 608.040 claim. We do not contest that analysis.

THE COURT: Right. Ms. Rodriguez?

MS. RODRIGUEZ: Your Honor, I think it's very important to clarify that it is not the defendants who are coming up with this argument of the unpaid hours. I tried to point out to the Court, this is their argument. This is the basis of their claim.

If Your honor will look exactly on their Second Amended and Supplemental Complaint, which is what is currently being litigated, and nowhere do they say anything other than

this issue of falsifying break time, falsifying hours. That's the basis of their Complaint.

Page 6 of their Complaint says, "Defendants forced their taxi driver employees to falsely record their activities on their daily taxi driver trip sheet so as to make it appear that the taxi drivers were taking many hours of breaks during their work days, which was not true, and defendants knew was not true. Defendants fostered such an accurate and untrue recording by their taxi drivers of their work activities by refusing to allow the taxi drivers to submit accurate daily taxi driver trip sheets that did not have such excessive and untrue recordings of break time. Defendants enforced their break time listings required policy on the taxi drivers trip sheets with the intentional goal of making it impossible for those taxi drivers to collect the minimum wage they were owed and to conceal defendants violation of the Nevada Constitution."

This is their pleading. The only evidence they have --

THE COURT: It says -- doesn't it --

MS. RODRIGUEZ: The only --

THE COURT: Didn't you just say minimum wage there?

MS. RODRIGUEZ: Based on false hours. Based on false break times. They've always --

THE COURT: Well, but wouldn't that -- wouldn't that

-- a false hours claim factually support, if they proved it, the legal theory of therefore you didn't pay me the minimum wage?

MS. RODRIGUEZ: Absolutely not, Your Honor.

THE COURT: Why not?

MS. RODRIGUEZ: The minimum wage was paid for all hours worked. Their claim is, we weren't paid for two hours of time that we actually worked. I took the plaintiffs' depositions. My -- plaintiff Michael Murray, that's what he said. The only evidence that has ever been produced by the plaintiffs --

THE COURT: And your point is that if they say that, then it can't be part of a legal --

MS. RODRIGUEZ: That's an unpaid hours claim.

THE COURT: -- just a second -- that it can't be part also of a legal theory of, therefore, you didn't pay me the minimum wage for the hours that I actually worked.

MS. RODRIGUEZ: Your Honor, a minimum wage claim, as they've plead against every other cab company in town, is that they were being paid 5.25 instead of 7.25. That's not pled.

What's pled here, and what is supported by the evidence, I want to refer Your Honor to Michael Murray's declaration, the only declaration that's ever been produced in this case, Exhibit E of their Motion to Certify, Michael Murray, his whole declaration is the common false break time

recording issue.

THE COURT: That was E, you said?

MS. RODRIGUEZ: Yes, Your Honor.

THE COURT: Okay. Go ahead.

MS. RODRIGUEZ: This is the unpaid hours issue. And that's been my point in this briefing is that this is not a minimum-wage claim. This is unpaid hours. He's -- they can go make their claim for unpaid hours, but this should be before the Labor Commissioner.

And when I asked each one of these plaintiffs in their deposition, what is your case, what are your claims, what is your -- what is your beef with A Cab? Neither one of them said minimum-wage claim.

As your -- as Your Honor knows from what I attached, plaintiff Michael Murray -- excuse me, Reno said, well, I was making less money at A Cab than I was making that Frias and I was making at Yellow Cab, so therefore, something has got to be wrong. And I was told the company was stealing from me. Murray says, I was working during my break time. I should have been paid for those hours. That's not a minimum-wage claim, Your Honor.

And that's -- we'll get into that, into the Motions to Dismiss and why they've absolutely produced no evidence to support a minimum-wage claim. But for purposes of the statute of limitations, I wanted to point out to Your Honor that, you

know, Mr. Greenberg is standing up here saying, oh, the way that the defendants are presenting it, they could mischaracterize it and you could never have minimum-wage claim.

It's not us who's characterizing it that way, it's the plaintiffs who have characterized it that way, both in their Complaint and both in their evidence, the only evidence that's ever been produced. This is an unpaid hours claim. That's a two-year statute of limitations.

I did want to clarify to the Court that I did misspeak. I don't know why I was -- had the Gilmore case in my mind. It was actually the Williams v. Claim Jumper Acquisition Company that we were waiting to hear the argument from the Supreme Court.

THE COURT: Okay.

MS. RODRIGUEZ: I found it interesting that Mr. Greenberg, in his argument, because that was nowhere contained in his briefing and it's never been brought up before, that now he's arguing that the four-year statute of limitation is applicable to everybody. That's never been brought up in any of the arguments. I don't believe that that was -- there's ever been any indication that from the Thomas case that that was the intent. The intent was to bring in these additional Nevada employees who have never been a part of the minimum-wage scheme, bring them into the fold, but not to eliminate a

two-year statute of limitation that has always been on the books.

There's been absolutely no indication to say, well, now, employers, you need to change all your record-keeping requirements. You are now facing a four-year limitation across the board. There's never -- there's never been any briefing, any argument, any indication that that is the new matter. If anything, the intent is, bring them in, make them part of what is existing already, which is a two-year statute of limitation.

With that, Your Honor, I think that's the only points I wanted to counter from Mr. Greenberg's --

THE COURT: Tell me, then, what I do about the fact of the Yellow Cab decision, notwithstanding it's a -- it's a contentious point. And even at the Supreme Court level, 4 to 3. And as we -- as I already commented, even since then, notwithstanding that --

MS. RODRIGUEZ: Right.

THE COURT: -- Judge Navarro disagrees with that reasoning. But isn't that presently the law in Nevada?

MS. RODRIGUEZ: To do away with the statute of limitations in its entirety?

THE COURT: To make the statute of limitations, on the constitutional claim, be the four-year statute. In other words, the less restrictive, if you will, four-year statute as

opposed to the two-year statute on a purely statutory claim?

MS. RODRIGUEZ: I don't believe that that's the law at all, Your Honor. I think we've attached several decisions showing otherwise and that's why the issue of this clarification is before the Supreme Court right now. I don't think anybody knows what it is currently and that's why this issue is before the Supremes --

THE COURT: Well, part of --

MS. RODRIGUEZ: -- and I think until they render their decision, what I asked the Court to consider was fairness to the defendant in this.

THE COURT: Uh-huh.

MS. RODRIGUEZ: I don't believe they're going to take too much longer to render their decision, hopefully within the next six months or so, but why open it up to --

THE COURT: Well here's -- here's partly what I key off of when I say that Yellow Cab seems to say that it's four years. A lot of that they can just get from Justice Parragguire's dissent, a vigorous dissent in which he says I disagree, I don't think it should be four hours (sic), I think it should be two hours and he gives all of this reasons why.

Well, if that's the dissent, then presumably that's because the majority opinion says that it's four years, does it not?

MS. RODRIGUEZ: Well, and I think if Your Honor is

going to look to the dissent, the dissent also seems to support that it's a prospective application only. And if that's the case, then these plaintiffs have no business filing this Complaint in the first place, because the dissent, Justice Parragguire, went into how there was this confusion, there wasn't -- this isn't meant to be the penalty to penalize the employer, there's the conflicting laws, and therefore the Court should move forward with the -- you know, this is the other issue that's going to be before the Supremes, is the prospective application.

THE COURT: Your Motion for Declaratory -- Declaratory Order -- sorry, give me just a second. Does it raise the issue of whether or not it's prospective only?

MS. RODRIGUEZ: That's on our -- give me one second, Your Honor.

THE COURT: I don't see it in --

MS. RODRIGUEZ: That's our Motion to Dismiss the First Claim for Relief.

THE COURT: Okay. All right. All right. Well, for purposes of your -- of your -- of this motion, I think it's -- to my mind, it comes down to half a loaf and that is I think it's a two-year statute on the statutory claims. But I -- I have to -- I consider that I'm bound by our Supreme Court law that it is four years for the constitutional claim.

I would add that there is yet another reason why I

would opt for the four-year catchall as opposed to the two-year. It seems to me that -- that we are to give a respect, perhaps "reverence" is too strong a word, but definitely a deep respect to the constitutional documents of any political organization, whether it's the United States or the State of Nevada. The Constitution should be amended only sparingly and that seems to be the general rule.

Every time a Constitution is amended, be it the State of Nevada Constitution or the United States Constitution, there necessarily flow therefrom a bunch of cases which are necessary to interpret, okay, what does that really mean, and issues such as what's the implication of the statute of limitations language.

It seems to me that the -- the will of the people was expressed in the constitutional amendment, and that will is not to be unduly restricted by application of a two-year statute which was designed to apply, I suggest, not to constitutional causes of action, but to apply to -- properly to the statutory causes of action that were the subject at that statutory framework, that statutory scheme.

I think the fact that the Constitution was amended reflects a significant expression of the will of the people and the framers of the Constitution to place a principle firmly in evidence by which we are to all be governed in our actions. And I think that in order to restrict one's access

to a constitutional protection, there must be expressed a specific intention, not by any later court and not by any legislature even, but by the passage of the constitutional provision itself, that it is only intended to grant a two-year statute as opposed to the four-year.

So, on that basis, additionally, I agree with -- it doesn't matter if I agree with it or not -- that's part of the reason why I agree with Justice Cherry's decision, his opinion in that case.

So, I think that that is the ruling of the Court, that it's governed by a four-year statute of limitations.

MS. RODRIGUEZ: Your Honor, I know that Mr. Greenberg and I will be arguing about the wording of your -- the Court's order on this, so I would like to ask a couple of questions for clarification.

THE COURT: Okay.

MS. RODRIGUEZ: One, how does the Court reconcile this -- the ruling with the record-keeping provision that is targeted to employers?

And two, is it the Court's opinion then that there are two statute of limitations that will continue to run concurrently? If an employee files under the statutory scheme, they will be subject to a two-year statute of limitations, but if they characterize their claim as constitutional, it will be four-year? Or is it of the Court's

opinion --

THE COURT: Well --

MS. RODRIGUEZ: -- that the two-year statute of limitations is gone?

THE COURT: -- I think that it will follow the courts as we go down the road to determine whether or not the facts in any particular case actually give rise to a colorable claim under the Constitution, or whether they are something else, i.e. a colorable claim under the statutory framework.

And I disagree with your argument, that certain facts, if they seem to support one claim, i.e. unpaid hours, that they therefore could not also support a claim for minimum wage.

I think that what the expression of the Constitution intends, that provision, is that if somebody works 10 hours, you've got to pay them X amount of dollars. And whether you -- the facts seem to characterize it as, oh, there's a dispute about whether or not the records were kept in this case, there are claims that people were forced to turn in sheets that -- that consciously declared fewer hours. Well, so there is a factual issue.

If it is proven that individuals actually worked a certain number of hours other than what was reported in the sheets, then I think the application of the constitutional cause of action comes into play. I think it may be argued to

be a minimum-wage claim. It's not unusual in other areas of the law, in other entirely discrete fact patterns, to have one set of facts that gives rise to claims implicating two different statutes, or one statute and one constitutional prohibition, or constitutional mandatory provision.

So, I think that there could also be instances where you're stretching it too far to say that the facts of a particular case -- and, again, I'm not just speaking of these kinds of cases, but any kind of case, I think it's up to a court to determine if the facts that are claimed actually give rise to a colorable claim to the constitutional provision or prohibition or mandatory provision, or whether they really are simply a question of unpaid hours.

At any rate, I -- and I can conceive of how that could happen in a case very -- very close to our fact pattern. But I don't see that it's been shown in this case that the kinds of allegations, factual allegations made by the plaintiff, plaintiffs, amount to nothing more than unpaid hours.

It seems to me that if they were able to prove up their case, that they may very well -- I mean, all of which is to say I can't say at this point that the door gets closed on the constitutional claim, on the minimum-wage claim, or that the door gets closed on -- well, that they get shunted into the Labor Commissioner track as opposed to a constitutional

claim. It may be that at a later point, for example, in a -- with a Motion for Summary Judgment, that it turns out that's not the case.

MS. RODRIGUEZ: Well, I don't -- is Your Honor ruling on those motions right now?

THE COURT: No.

MS. RODRIGUEZ: Or are we talking about those? Because I thought we were --

THE COURT: No.

MS. RODRIGUEZ: -- just talking about the statute of limitations issue.

THE COURT: No.

MS. RODRIGUEZ: And my concern was --

THE COURT: No. What I -- well, the point I'm trying to make here is, that in ruling on -- you know, in determining at what point the Court would intercede to close the door on a particular cause of action, a theory of recovery, it may be that even the act -- even the facts that are alleged are enough for the court to say, that's not really a constitutional claim.

MS. RODRIGUEZ: Right.

THE COURT: But in other instances, I can see where the Court couldn't close the door at this point, but when you -- later down the road when you get to looking at what facts are actually --

MS. RODRIGUEZ: Right.

THE COURT: -- able to be proven --

MS. RODRIGUEZ: And I think later on down the road is going to be later this morning, right?

THE COURT: It may well be that -- that minimum-wage claim goes out the window --

MS. RODRIGUEZ: Okay.

THE COURT: -- and you're looking at unpaid hours. I don't know.

All right. So that's the closest you get to the declaratory relief. You get some relief on that one.

Defendant's Motion to Dismiss Plaintiffs' First Claim for Relief. What more needs to be said here?

MS. RODRIGUEZ: Your Honor, this is with one having to deal with the prospective application. I think we've started to talk a little bit about that. And our position is that there was -- there was never any intent or any indication from the Thomas v. Yellow Cab decision, that this was to apply retroactively.

I cited the Landgraf decision, as well as the amendment to the Constitution, the Supreme Court decision of the Miranda case to show that courts do not typically apply retroactively and nullify prior -- for the Miranda case it was all the prior criminal convictions.

As I mentioned prior to the Thomas decision, there

were two conflicting laws that were on the books. This was recognized by the dissent in the Thomas decision by the Judge Jones' decision that went the other way. There were several jurisdictions -- or excuse me -- several courts that decided the issue differently than Your Honor.

THE COURT: Um-hum.

MS. RODRIGUEZ: I attached the affidavit from Keith Sakelhide, the Deputy Attorney from the Labor Commissioner to show that even the Labor Commissioner was confused by how to handle these claims by the taxicabs.

And, again, what I'm trying to emphasize to the Court is that when the Thomas decision came out, it wasn't to punish employers and go back and try to say, well, you should have been doing this all these other because there was this confusion. It was rather to clarify the law and to move forward from that point onward even though --

THE COURT: Is this where -- is this where the plaintiff wants to sort of clobber your client with the notion that, hey, there's already been --

MS. RODRIGUEZ: Right.

THE COURT: -- federal investigation here?

MS. RODRIGUEZ: Right.

THE COURT: And you can't say that there was no notice?

MS. RODRIGUEZ: No, not really.

THE COURT: How applicable is that?

MS. RODRIGUEZ: I think -- well, I mean, he's thrown that out on everything and I --

THE COURT: Sure, yeah.

MS. RODRIGUEZ: -- and I've tried to object strenuously to that. And I'm going to have my meet-and-confer with him to say stop doing that so I can file a Motion in Limine because we've attached this repeatedly to show that A Cab was not clobbered by the federal government. I think he managed to convince the Court of that previously by saying it enough times.

But the first time that they came in in 2009, they found absolutely no violations. They got pretty much a perfect score. But this was what the DOL, the Department of Labor was doing across the industry. They weren't targeting A Cab, as Mr. Greenberg has attempted to paint it.

These were industry-wide audits. They came in 2009, A Cab was fine. They came in again in 2010, back-to-back audits. And in 2010, the audit just went on and on, as we explained to Your Honor. It went on for a couple of years. And at that point, Mr. Nady made that decision, you know, let's just settle this thing and it's costing me a lot more in terms of attorneys' fees and attempt to resolve it. And so we settled it.

THE COURT: And by that point -- by that point,

they'd actually filed the Complaint?

MS. RODRIGUEZ: No. No, Your Honor. No.

THE COURT: No? Okay.

MS. RODRIGUEZ: We resolved it and we resolved it for -- or A Cab resolved it for $139,000 or thereabouts.

THE COURT: This is the consent judgment, right?

MS. RODRIGUEZ: Right. However, A Cab chose -- well, they really didn't have 100,000 to pay out in a lump sum, so they agreed with the Department of Labor to pay it in monthly installments over a year.

THE COURT: Monthly installments, okay.

MS. RODRIGUEZ: And in order for the DOL to agree to monthly installments, they filed -- we agreed that they would file the consent judgment as protection, that if A Cab every defaulted on their monthly payment, that would immediately go into effect and they could collect on it.

But the consent judgment has the wording in there, just as any settlement agreement does, that says that this is not an admission of liability and in no way is any kind of finding. It is merely to secure a settlement agreement to resolve the audit.

THE COURT: I took a look -- I took a look at that consent judgment to -- to try and figure out which of you was correct, and I must say that to this point, it does appear to me that I lean closer to your interpretation of what -- of

what happened here.

It does have some language -- the very last paragraph has some language in it which makes me really question whether I can consider that this was a -- a judgment that is to be given the persuasive power, I guess, that the -- that the plaintiff urges me to do. So you may have your hands full there, Mr. Greenberg, at least insofar as your argument relies on that prior consent judgment.

It's difficult for me to say that a consent judgment, especially if I'm finding that you're saying then that there was no Complaint filed prior to the consent judgment?

MS. RODRIGUEZ: They were filed together.

THE COURT: They were filed together.

MS. RODRIGUEZ: The Complaint and the consent judgment filed together.

THE COURT: So -- so you didn't have discovery and hard fought --

MS. RODRIGUEZ: No.

THE COURT: -- summary judgment considerations or anything like that?

MS. RODRIGUEZ: No, they were filed hand-in-hand.

THE COURT: That gives me some pause. Okay.

MS. RODRIGUEZ: And we've listed the Department of Labor -- Department of Justice representative in our list of

witnesses should this become an issue, because we'll call them to the stand to testify, if need be, the Solicitor General out of San Francisco who reached the settlement agreement, because I consulted with him after Mr. Greenberg continued to raise that issue to the Court as to -- I said, will you come in and testify, then, that this is your standard operating procedure for the Department of Justice? And he's named in our witnesses if we need to have him --

THE COURT: Yeah.

MS. RODRIGUEZ: -- come offer testimony to the Court that this is what they do to secure installment payments.

THE COURT: Let me ask you this though. I'm guessing that Mr. Greenberg would want the Court to at least recognize that regardless of what sort of evidentiary or preclusive effect the judgment may have, that it does represent a firm, if you want to call it an admission, against interest by your client, that they were now well aware of the -- of the law in this matter and of what their requirements were, and that any deviation from what they agreed to be bound by in the consent judgment should be viewed by the Court as a sort of willful violation of the law.

MS. RODRIGUEZ: I don't have an issue with that, Your Honor, because the DOL didn't find any violations, Mr. Greenberg hasn't proven any violations --

THE COURT: Yeah.

MS. RODRIGUEZ: -- there are no violations. So, no, there's definitely not any willful violations.

THE COURT: Well, what I'm -- what I'm guessing -- and I shouldn't be guessing, particularly with these attorneys who know a lot more about this area of the law than I do -- that he wants to lay claim to, I mean, he's already at least adverting to the argument that even since that time, there's been this business of requiring taxicab drivers to under-report, and to do all sorts of things that he would say would be violative, not only of the law, but of this specific recognition evidenced by this consent judgment. So we'll wait. We won't put words in his mouth. Let's see if he goes there.

MS. RODRIGUEZ: Okay.

THE COURT: What else do I need to consider in consideration of this Motion to Dismiss the first claim?

MS. RODRIGUEZ: Well, the -- the other consideration that I attach rather than summarizing all of my fellow cab attorneys' work, I attached a number of briefs that are currently before the Supreme Court. Boulder Cab has filed a Petition for Writ of Mandamus the early part of October arguing the cab industry's reasonable reliance on NRS 608.250 as the reason to why it supports that this prospective application is the appropriate application.

Western Cab has similarly filed amicus. Their brief

was interesting, Your Honor, and I attached that as well to -- this is another argument I failed to highlight to the Court -- but Western Cab is arguing that it was actually the AFLCIO who was involved in drafting the minimum wage amendment which is precluded by the National Labor Relations Act. And they are actually going to argue that the NLRB, the National Labor Relations Act will -- it violates the supremacy clause of the United States Constitutions and it's preempted.

THE COURT: So they're asking them to declare the -- part of the Nevada Constitution as unconstitutional?

MS. RODRIGUEZ: You know, it will be an interesting argument to see. But I thought I would attach that and highlight that to Your Honor, as well.

And as Your Honor mentioned early on, Yellow Cab has brought this issue up as well again to -- to argue that the Thomas -- their Thomas decision only applies prospectively. And as Your Honor is aware, Mr. Greenberg himself asked the Court to amend their decision, the Thomas decision, by asking them to include the past tense terminology of supplanted and superceded, and they denied that.

And, again, defense believes that -- and it would assert to this Court that that is proof in and of itself from the Supreme Court that refused to go back and change their terminology to the past tense, that their intent was to make it prospective.

And the subsequent cases, I believe it was the Sapphires case, the Gentlemen's Club case, that again, they had an opportunity to address it and only use the prospective application terminology, the future, as opposed to going back and retroactively trying to penalize employers while these two conflicting laws were on the books.

So, with that, Your Honor, we would ask that for this particular case that -- we're asking for dismissal because if Your Honor is inclined to agree with the case law that we've cited, and the fact that the Supreme Court has not -- there is no indication to make it retroactive, both of these plaintiffs worked several years before the Thomas decision was issued. And so they are -- they -- the Court would not have jurisdiction to hear their claims since they are -- they're outside of the jurisdiction of the Court and we've asked for dismissal. That's the basis of this Motion to Dismiss.

THE COURT: Okay. All right. Now, before you respond to that, let's -- let's go ahead and take a short recess, may we?

MR. GREENBERG: Yes, Your Honor.

THE COURT: Five minutes.

MR. GREENBERG: Whatever the Court believes is appropriate.

(Court's recessed at 10:48 a.m. until 11:00 a.m.)

THE COURT: Please be seated.

All right, Mr. Greenberg.

MR. GREENBERG: Your Honor, in respect to this theory that defendants are presenting to the Court that somehow the rights afforded by Nevada's Constitution to my plaintiffs did not actually arise or come into being until June of 2014, when the Supreme Court issued the Thomas decision, asks this Court to abandon all fundamental principles of our systems jurisprudence.

This is discussed, you know, in my opposition which quite honestly, Your Honor, is quite brief, in part because of the fundamental infirmity of this entire argument. I mean, Judge Israel rejected this argument when Thomas came back to him from the Supreme Court, and you're dealing essentially with 800 years of common law.

I mean, this is discussed -- I cite -- I quote Blackstone on page 5 of my Response. At common law, there was no authority for the proposition that judicial decisions made law only for the future. And, I mean, this is Newman v. Emerson Radio and Linkletter v. Walker which was a very important United States Supreme Court case.

Now, what defendants in these cases are trying to do is they throw out Miranda and they are trying to analogize this somehow, to the prospective application situation in cases like Miranda.

But as I'm sure Your Honor can understand, Miranda was the express overriding and creation of new constitutional rights such as in Mapp v. Ohio involving Fourth Amendment search and seizure law, which overrode previous court decisions defining the contours of these constitutional rights, and of which no one could possibly have any inkling was going to develop as part of our jurisprudence, okay.

It is for that sole reason that in those cases prospective application was applied to those criminal defense rights, because who knew that the right to counsel, or to not incriminate oneself, or to be free from search and seizure without a warrant would, in fact, require a decision such as Miranda where, you know, we now of course have Miranda rights that arrestees are subjected to and have to be advised of.

The implications of making Miranda retroactive to all criminal -- already adjudicated criminal convictions that were not final would have been, to put it mildly, quite chaotic, Your Honor. And it was for that reason that we see this prospective application in that very, very narrow sort of situation.

There is absolutely no parallel here between this situation and those prospective application situations. In the field of civil law, such as we are dealing with here, okay, it would be as I was saying, contrary to the fundamental principles of common law to say that, no, we're going to

adjudicate this case, but we're not actually going to give the plaintiffs anything even though we're finding in their favor because that's not the way the common law works.

I mean, this argument that we're discussing was actually raised before the Ninth Circuit, and this is discussed in the Green v. Executive Coach and Carriage case. This is at page four of my Response. And it was completely rejected summarily that this idea that Thomas somehow had no application to the class of persons that we're dealing with here, taxi and limousine drivers, prior to its issuance in 2014.

I mean, with all due respect, Your Honor, I actually watched the video of the Ninth Circuit argument and Judge Friedlander (phonetic), who heard the argument, was practically laughing when counsel was making this argument at the time they heard the appeal.

Your Honor, and in respect to just the history of what's gone on here, if you look at the Desert Cab decision, which is attached as Exhibit E to my opposition, because there's discussion here about how, well, Thomas was talking about present tense and not past tense, and Mr. Greenberg asked them -- I did, in fact, ask them to revise the order because I knew this argument was going to be coming up and regardless of how baseless it was, they declined to do so.

In Desert Cab, which came later, these precise

arguments were raised to the Supreme Court. I mean, this -- and I have the -- it's in my brief at Exhibit D. I mean, you have -- or Exhibit F -- you have Desert Cab's brief to the Nevada state court where they implore the Supreme Court in their appeal to say that Thomas has -- does not have application to conduct prior to its decision.

They ignore it. They reverse and remand, as at Exhibit F, and they say, the minimum wage amendment to the Nevada Constitution implicitly repealed the exceptions to the statutory scheme.

So, I mean, here they're using clearly past tense. They were made aware of this. They understand, as I was saying, the dynamics of how the common-law functions here and the principles of our jurisprudential system.

Now, let's just set all of that aside, Your Honor, and somehow look at the equities here, okay. If we were to address the equities, they have no equitable claim here. The fact of the matter is, Your Honor, when this constitutional amendment came into being and became effective in November of 2006, the Attorney General of the State of Nevada issued a public opinion advising all employers that -- ll employees, including specifically workers in these industries, would be covered by this constitutional amendment if it was, in fact, enacted by the people. That was his opinion.

Now, I understand there was subsequent

determinations that disagreed with it. There was the Lucas decision, there was Your Honor, there was Judge Israel who actually, you know, went up on appeal in Yellow Cab who found contrary to Your Honor's determination. But the point is, defendants in the industry were on notice. They had warning that this was out there.

Their argument wasn't, by the way, Your Honor, about a lack of clarity in the Constitution itself. The entire argument here that defendants have raised was raised in Thomas, is that, well, we have this other statutory scheme in 608.250, which excludes these people.

o when you look at this other thing and you -- and you compare it to the constitutional language, somehow the Constitution doesn't cover these people. So, it wasn't even a question of an ambiguity organic to the constitutional language itself. It was an argument based upon the interplay of another statutory scheme with the constitutional enactment.

And finally, Your Honor, what did the industry do in Response to all of this warning and notice? Nothing, Your Honor. They did nothing. They said, well, we'll wait until we get sued and then if somebody sues us, they're coming in now and saying, oh, well, we're sorry and we won't do it again and let us run away with the goods.

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Your Honor, they could have come to this court and

sought a declaratory judgment. They could have brought the same class-action lawsuit that I have brought in this case and said, tell us, District Court, we want to name all of our employees, everyone in the industry who works in this industry as a defendant in this punitive class action. Let's have a procedure here where the Court can take input from everybody and give us a determination as to what our legal responsibilities are.

Your Honor, why would they do that? They wouldn't do it, because they had everything to lose by doing it, especially if they could just wait to get sued and then argue that they didn't actually have to pay anything until they got an adverse decision against them, Your Honor.

So, when we look at the -- and by the way, Your Honor, we don't -- we shouldn't even be getting to examining these equities given the structure of the common law and the legal principles I was advising the Court of at the beginning of my discussion here, which the Court is well aware of. But when we get to the equities, they have no equitable basis to claim that they should be relieved of their liability here, Your Honor.

THE COURT: Well, is there -- is there room for a court to even look to the equities or is it -- is that foreign to this analysis here?

MR. GREENBERG: It is -- it is completely foreign to

this analysis, Your Honor. I mean, given, you know, 800 years of the common law. I mean, I'm quoting Blackstone from 1809. I mean, again, the common law, judicial decisions do not make law only for the future. I mean, they adjudicate the rights of the parties directly between them -- between themselves and for the Court to consider. The circumstances of Miranda and so forth that we were discussing deal with the change in judicial-made law, Your Honor.

This is not a question of the judiciary itself announcing or revising the legal relationships between parties. The defendants and the industry somehow want to say that, well, it was Thomas that created these rights out of the blue that came to these workers in these industries. No, it wasn't Thomas that created these rights, it was the amendment to Nevada's Constitution.

And as I was pointing out, Your Honor, if you read that Constitution by itself without reference to anything else, you can't dispute that these rights exist for these employees because it says "all employees."

Their argument is based on a completely separate statutory enactment and an interpretation that they urged on the Court that's external to the Constitution's itself. So there was no doubt when considering just the Constitution's language that these rights existed.

They were on notice, Your Honor. They had an

obligation to either follow what that language directed or if they were unsure and they wished to contest the application at that language based upon their argument as to the statutory scheme in these exceptions in 608.250, then they could have come to the Court and raised those claims. They can't just sit back and do nothing, Your Honor, which is what they did here.

So, I think Your Honor understands my point very well, and I don't want to sort of just belabor it unless Your Honor has questions that I can help with.

THE COURT: Okay. No.

MR. GREENBERG: Thank you, Your Honor.

MS. RODRIGUEZ: Your Honor, Mr. Greenberg knows otherwise, because he asked that question of Mr. Nady in the deposition. What did you do? And Mr. Nady indicated to him -- Mr. Greenberg's saying here they did nothing. That's just not true. Mr. Nady said, I went to the Labor Commissioner, I asked for guidance from the Labor Commissioner, and the Labor Commissioner said, we don't know. We don't know what to do with these claims.

Mr. Greenberg is wanting to argue to the Court that this Attorney General opinion was so clear. If it was so clear, why was the State of Nevada Labor Commissioner themselves still confused? They were relying on Judge Jones's decision per the affidavit I attached. They had the one

judicial decision out there and said, we're going to stay everything until we get guidance from the Supreme Court.

So you have the State of Nevada Labor Commissioner, you have Judge Jones, you have the three dissenting Justices of the Supreme Court; Justice Saitta, Justice Parragguire, Justice Gibbons; all saying there was confusion, there was conflicting laws, this is why we need to clarify. If there -- if they admit that there was confusion amongst this distinguished panel, how can the Court put this burden upon an employer and say, well, you should have known.

THE COURT: Well, aren't you --

MS. RODRIGUEZ: Like Mr. Greenberg is saying, you should have known way back in 2006.

THE COURT: Aren't you inviting me to determine this based upon the equities of the parties, as opposed to upon, you know, stare decisis, or some less equitable-type determination?

MS. RODRIGUEZ: Your Honor can always look to fairness. And Your Honor has done that in the majority of your decisions to this. And I think that that's what the Court needs to look at, is fairness to the defense, due notice, and putting the employer on notice. I know Mr. Greenberg says, well, they could have come filed for declaratory relief packing 2006. No. They did what they needed to do, which was to ask for guidance from the Labor

Commissioner, what do we do. We were all on hold until the Supreme Court told us what to do. And that's -- there was no --

THE COURT: Is the real -- is that the real analytical tool, then? Is it a matter of, in effect, due process or due notice, at least?

MS. RODRIGUEZ: To an extent, Your Honor, because I think what we talked about in prior hearings is that there was no express repeal. There was no clear intention when the Nevada Constitution was amended that it was automatically repealing this 608, NRS 608. That's why the -- that's where the confusion came from. Nobody was clear because it didn't come right out and say it.

THE COURT: Well, does that -- that only implicates the statute of limitations question, doesn't it?

MS. RODRIGUEZ: Well, no, Your Honor.

THE COURT: No? Okay.

MS. RODRIGUEZ: Because if there's two laws that are running concurrently --

THE COURT: Okay.

MS. RODRIGUEZ: -- there is no express repeal. You're looking more at an implied repeal. And until you get the clarification from the Court, the intent is not to go back -- that's why I associated it with Miranda because you don't want to go back and create the chaos that Mr. Greenberg is

talking about, where you don't have records kept, because all along, from the beginning of time, taxi drivers have been exempt from minimum wage.

The only thing that you have floating around is an Attorney General opinion saying otherwise. You've got the federal court saying no, they continue to be exempt. And so the -- there's no indication from Thomas, contrary what Mr. Greenberg is arguing, that there was any intention to go back and apply it retroactively.

Again, I would ask the Court to not -- to look at the Thomas decision, that the intent was not to punish the industry, punish employers, punish defendant A Cab, but to clarify the law for them and to go forward from June 24, 2014. I probably got that day wrong. It's June 26th, isn't it?

THE COURT: All right.

MS. RODRIGUEZ: June -- I'll give you the two days.

THE COURT: All right. I -- I'm going to do what I didn't want to do. I want to take one more look at the analysis and statutes that both of you have -- I mean, analysis and authorities that both of you have supplied.

So I'm going to put this on -- is there any reason we can't hold this over to Monday on our chamber's calendar? Have we got any conflicting, nothing coming up here with us? We're going to put it on for this coming Monday.

THE CLERK: November 9, chamber's calendar.

THE COURT: For decision. And I will send you a Minute Order on it.

MS. RODRIGUEZ: Thank you, Your Honor.

THE COURT: All right. And now, the second Motion to Dismiss the second claim for relief.

MS. RODRIGUEZ: Your Honor, this is our -- Defendant's Motion to Dismiss the Plaintiffs' Second Claim for Relief which was basically their claim. They've claimed two items in the current Complaint that is pending. This one is pertaining to a violation of NRS 608.040.

It's interesting that the plaintiffs, for all other purposes, have been arguing that NRS 608 is not applicable. Is not applicable for statute of limitations, it's not applicable as to the exemptions, it's not applicable for all other purposes except for this one when it's a penalty that is targeted towards the employer. On that one, they want to enforce it and say, oh, it's still applicable to the constitutional amendment and employees who fall within that.

So our position is, no, this penalty statute was never one that was to go hand-in-hand with any employees that would fall under the constitutional amendment.

And, again, now with the Court's ruling that we're working with a four-year statute of limitations, and this is a -- this is the statute that pertains to payment of wages when the employee terminates or separates from the company.

Again, this is creating a nightmare for employers because, as I mentioned repeatedly, the record-keeping statute is two years. And here, in this particular case, I want to highlight to the Court, if I haven't already, that we've got two plaintiffs here who they don't know what they're owed, if anything. I attached their deposition to show that both of them even said, well, if I'm not owed anything, then I owe the company an apology. I have no idea what I'm owed.

And here they're asking the Court to enforce a penalty statute to penalize the employer for not paying wages that are due at the time of separation when we still, as of today, three years after this thing has been filed, have no idea, if anything, is owed at all.

It is simply not practical to work with those two concepts. And, basically, with -- trying to enforce this statute, you'd be holding the employer to a higher standard than they employee themselves. It would encourage the employee to basically sit on their hands, as these have done.

They've both admitted they never asked the employee -- employer for any wages that are due. They've never brought it to their attention to say that I owe -- I'm owed anything, and yet we want to go back and penalize the employer for wages that were alleged to do.

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So it's simply not applicable in this particular

claim, and we're asking the Court to dismiss that second claim for relief for both of these plaintiffs.

THE COURT: Okay.

MR. GREENBERG: Your Honor, you have actually dug into this issue previously in the Valdez case and you have Your Honor's determination here. We also have Judge Barker who's looked at some of the issues raised by this claim as well. I think I gave you a copy of Judge Barker's decision as well as your prior decisions in Valdez addressing this.

Your Honor, I'm a little confused about this two-year record-keeping requirement. I mean, there's only a two-year statute of limitations on this claim, so any employee would have to bring it within two years of separation. Presumably, their records would be maintained for that same two-year period, not that that's even germane to the issue of recognizing the availability of this relief.

Your Honor, you previously ruled on this. The language of the statute is clear. What I would point out is that Nevada law actually has no other penalty or sort of teeth by way of enforcement or remedial provisions that are in the statutory scheme regarding protecting workers' wages. For example, under the Fair Labor Standards Act, which covers overtime claims or minimum wage claims, there are provisions for double damages. Other states have specific double damage provisions or 10 percent interest or what other provisions

which actually encourage compliance by employers with their legal obligations to pay wages.

608.040 is the only thing in Nevada that is an analogous to giving employers an incentive, a monetary incentive to comply with the law and pay all of their workers' wages. So if the Court were to restrict the reach of 608.040, as defendants are urging the Court to do, and as Your Honor rejected in Valdez, essentially, employers, in my view, would be given kind of like a blank check to violate the law, or certainly to act with impunity because it's kind of like, well, if I don't pay you your wages, Mr. Employee, what are you going to? Are you going to sue me? Maybe then I'll have to pay you, and then I'll just have to pay you what I owe you in the first place.

There's no general attorneys' fee provision allowing collection of attorneys' fees for employees in the State of Nevada. There is -- there is a provision that allows to give notice, but the employee has to know exactly what's owed, and he has to give notice in advance, and that's a possibility. I mean, there are other provisions of Nevada law as Your Honor is well familiar with that do allow collection of attorneys' fees generally to civil litigants.

My point, though, is there are really no provisions or protections granted under Nevada's statutory scheme to employees except 608.040, which is one of the reasons why

enforcing it pursuant to its language is quite important. And I do reference the Doolittle case on page two of my Response which is from 1932, the Nevada Supreme Court. I don't actually discuss it, but if Your Honor wanted to dwell into this a little further, I would urge the Court to read the decision. It's a fairly short decision.

What's interesting about Doolittle, Your Honor, because I was looking at this the other day, is that in that case it was a homeowner who was sued by a laborer. And the laborer was actually employed by a subcontractor. And the homeowner was found responsible for the wages and for the penalty that was at issue under 608.040.

And the Supreme Court, in affirming the application of 608.040, the homeowner noted in its decision that, well, probably the homeowner had a good defense here because they never hired the laborer. The laborer was hired by the subcontractor.

It declined to reach that issue because it said it wasn't properly preserved on the record, but it had no qualm about upholding the judgment against the homeowner even though it was recognizing that very probably, as to the facts that were alleged, the homeowner had no liability.

So clearly, the Supreme Court was taking a very broad view. And, in fact, in the Doolittle decision you'll even see the language that says, well, you know, petitioner

argues that there will be a hardship if we apply this law in this fashion. They say, well, look, this is the way it's written and if it's causing a hardship, it's up to the legislature to change it.

So the perspective that Your Honor enunciated in the Valdez decision that I'm urging upon the Court has significant historical support in the Doolittle decision as well, Your Honor.

So, and -- I mean, you know, there's determinations from the State of California, which I believe are discussed -- well, they're actually not discussed here, but they were discussed in the Valdez case. I think Your Honor may have considered them.

It's interesting in that the statutory language in California that parallels this with the 30-day penalty provision, actually includes language which gives an employer a defense based upon the good faith dispute or a reasonable belief as to nonliability.

That type of language is absent in the statute, and as I was -- in the Nevada version of the statute. And as I was saying, Doolittle apparently was very unconcerned with that issue in their view in terms of how the statutory language should be applied.

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I don't think there's really much more I can say

about this, Your Honor, unless the Court has questions or would like me to address something else.

THE COURT: No, thank you. Nothing at this point.

MS. RODRIGUEZ: Your Honor, just briefly. I just -- I'm struggling, and I cannot see how the Court can reconcile enforcing the 608.040, which is something that falls squarely within the Labor Commissioner. I mean, just looking at the statute, the statute's very clear. It says, if an employer fails to pay within three days after the wages or compensation of a discharged employee becomes due, that's when the penalty kicks in.

We're here three years later and we don't even know if anything is due at all, because we're going back and reconstructing based on four years, six years, the 2006 amendment. It's just simply not applicable to the facts that are before you, Judge.

And plus, we have, as I mentioned, we're going to get into the Motions to Dismiss, but these plaintiffs never went to the Labor Commissioner to kick the statute, to get the statute going. You fill out a form, you say what you think you're due, and that the employer refused to give it to you. We just simply do not have those circumstances in this case and that's why the 608.040 is not applicable to minimum wage -- I mean to amend --

THE COURT: Well --

MS. RODRIGUEZ: Go ahead.

THE COURT: Isn't the question, though, whether they have to in order to be able to bring their private cause of action?

MS. RODRIGUEZ: I think that's a big portion of it, yes.

THE COURT: Well, so the --

MS. RODRIGUEZ: That was our argument, as well, that there was not a private right -- cause of action on this, and I cited to the Baldonado (phonetic) case on that. And I think the cases that Mr. Greenberg attached didn't have anything to do with the minimum-wage issues. They had to do with overtime compensation, I believe. It's -- it's two separate animals, because now we're talking about a constitutional amendment issue.

And this -- this statute -- you know, this is the one statute they've pulled out of the minimum-wage statute schemes that they want to use, the penalty statute. And again, you just -- you can't -- I mean, it's one way or the other.

THE COURT: No great surprise in that.

MS. RODRIGUEZ: Am I surprised by that?

THE COURT: Yeah. Not really.

MS. RODRIGUEZ: I won't answer that one.

THE COURT: That's good.

All right. I'm going to do the same thing and put this on for Monday.

THE CLERK: November 9th.

THE COURT: All right. And now we get to -- first let's deal with the Motion to Dismiss against Mr. Reno.

MS. RODRIGUEZ: Your Honor, I think from some of our discussions this morning, you've gotten the gist of some of the issues that I've had with Mr. Reno.

At the last hearing of this matter, I began to tell the Court that we had the deposition scheduled. Up until that point, the plaintiffs had not produced anything to support their case other than a pleading. We had a Complaint.

Everything had been produced from the defendants. We've produced all of their time sheets, all of their employment file, all of their pay stubs for Murray, for Reno, because there simply isn't anything there that shows a violation of a minimum-wage claim.

I then took the deposition of Mr. Reno. Mr. Reno talked for three hours. The deposition took three hours. He did the majority of the talking without me even having to ask a lot of the questions. He has a lot of issues against his former employer. He complained that he was penalized for taking radio calls, he was penalized for when he dropped cash short, he complained about the policies for customer service. He had a lot of complaints, none of which had anything to do

with the minimum-wage claim. He was angry with his former employer.

I point that out to the Court because, Your Honor, I'm sure you see plaintiffs every day that come in quite angry about a lot of different things, and in some cases you can administer justice, and sometimes you can't because there simply isn't a cause of action for those particular Complaints.

And that's what we have here, is that Mr. Reno is complaining about a lot of things, none of which have anything to do with his Complaint, and none of which are a legitimate cause of action under Nevada state law.

He, basically, when I tried to asking details about his minimum-wage claim, or any kind of wage issue, the bottom line was that he had previously worked for other larger companies, like the Frias companies and they Yellow Cab company he made a lot more money. So when he came to A Cab he was making less money and he felt like that was proof that there was something wrong and that the company owed him something.

He said he heard the company was stealing with -- from him, so he needed to go sign up at Mr. Greenberg's office, get on the list to -- because money was basically available for the taking.

But he doesn't know about a minimum-wage claim. He

is not making an assertion for a minimum-wage claim. He never spoke about a minimum-wage claim in three hours, other than in the cross-examination which lasted about five minutes after -- Ms. Sniegocki was representing -- was defending the deposition. She took him out, he comes back in, she asked "yes" or "no" questions, are you making a minimum-wage claim, yes. You know, is this your claim, yes, you know, that's it.

The purpose of a deposition is to allow the opposing party an opportunity to get to the gist of the claim. There is no gist of the claim in this. I brought copies of the written discovery, which I subsequently got. I just recently got it October 16th. So, I have copies for the Court. I'd like to supply those to the Court as soon as I can dig through my piles here. But basically, when I asked for the basis of the claim, again, there was either a refusal to answer, this is a wage claim.

I've asked for authorizations to then get tax information, wage information from other employers. It's an employment case. I was refused employment authorizations. And I know that these are discovery issues, but discovery is now closed. Discovery closed October 1st and there simply is no evidence, no --

THE COURT: Have there been Motions to Compel filed?

MS. RODRIGUEZ: No, Your Honor, I just got them. I just received those. I just received the Responses, and the

Responses are basically blank.

THE COURT: I see, these were not verbal. These were -- these were written -- Responses to written interrogatories or --

MS. RODRIGUEZ: Interrogatories and requests for production of documents.

THE COURT: Requests for production, I see.

MS. RODRIGUEZ: And if I may approach, Your Honor, I think I have the --

THE COURT: Yes.

MS. RODRIGUEZ: -- the copies. I have defendant -- Michael Reno's Response to Defendants' Second Interrogatories. Michael -- I'm sorry, I said defendant. Plaintiff Michael Reno's Response to Defendants' Second Interrogatories. Plaintiff Michael Murray's Response and both plaintiffs' Response to the Second Request for Production of Documents.

THE COURT: Okay.

MS. RODRIGUEZ: And, Your Honor, in preparation for this hearing, I was going over these things and just -- just to make sure that they had not produced any kind of evidence, any documents, any witnesses, any affidavits, any evidence that would defeat summary judgment.

I know Your Honor is going to get to class certification later. But before the Court ever gets to that, the Court needs to look at the two plaintiffs that are before

it. This particular plaintiff just has not made any evidence to support the allegations in the Complaint. That's why summary judgment is appropriate for Mr. Reno.

Mr. Greenberg has a number of cases, as we all know, pending in a number of other District Courts. He's free to refile with an appropriate plaintiff. This plaintiff is not the appropriate one, because there is absolutely no evidence before the Court to support Mr. Reno's claim and we're asking that the Court granted summary judgment against Mr. Reno.

THE COURT: Okay. Mr. Greenberg?

MR. GREENBERG: Your Honor, I've heard repeatedly from defense counsel that there's absolutely no evidence in the record here that Mr. Reno actually possesses a claim. I draw the Court's attention to Exhibit A of the Response which is discussed at page five.

We actually took Mr. Reno's trip sheets, and it is defendant's position that those trip sheets accurately reflect, when you take out the break time and you look at the start time and the stop time, the actual hours Mr. Reno would have worked in a two-week period that matches the payroll. And if you look at Exhibit A, he's making 5.52 an hour.

These are defendant's own records, Your Honor. These are the records that I am advised repeatedly that the United States Department of Labor relied upon to determine that Mr. Reno was owed $1,048.94.

Your Honor, Mr. Reno may be very loquacious and not perhaps the best informed witness in respect to the contours of his case, and the legal issues presented by this litigation, is neither here nor there, okay.

To the extent that the Court even -- I mean, discovery is ongoing, Your Honor. There's a Motion to Compel Discovery. We have two or three motions, plaintiffs do, to compel discovery pending before the Discovery Commissioner. There is an application to extend the discovery period. There's a question of production of electronic records that defendants have not honored that are still in dispute in terms of action from the Discovery Commissioner. I'm not going to get into all of that in detail.

I know defendants are raising this issue that they should have authorizations or disclosures from the plaintiffs regarding their tax returns or their earnings records or their information from other employers. There's absolutely no basis for any of that to have any germane as to any issue between this plaintiff and this defendant.

The issue is how many hours did this plaintiff work and how much was he paid for those hours. If he meets the minimum wage requirement in terms of payment, there's no claim. It's what they would call an hours claim or just a breach of contract claim if there was something, but we're not claiming breach of contract, Your Honor. It's just a question

of the deficiency below this minimum-wage threshold.

Your Honor, there sufficient evidence in the record here, as I said. And just so the Court understands, the Department of Labor judgment is, in fact, a judgment and it -- and we can talk about the language of that, but the issue isn't merits in terms of the Department of Labor judgment. It's simply foundational, in that, it shows that there is a common issue that's presented by Mr. Reno, who is owed 400 -- $1,048 and all -- and 400 other people or whoever it was, 500 other drivers.

And the Department of Labor found that there was -- or there was some basis for them to reach these findings. And if they were owed that under federal law, there's these common questions of, well, federal law allows the employer to take a tip credit, state law doesn't.

So are these individuals owed something because he can't apply the tips against the Nevada minimum? And also, federal law is a dollar an hour less, it's 7.25 not 8.25, under the Nevada law unless you get the health coverage. So again there is a common issue as to whether these plaintiffs, such as Mr. Reno, were entitled to that extra dollar an hour.

We don't have to prove the case here, were not here to prove the case. To the extent the Court even believes it's ripe to look at the evidentiary file, so to speak, or what evidence has been marshaled in the record so far to see if

there's a sufficient basis for Mr. Reno -- and Mr. Murray, it's the same issue -- to proceed, clearly, there's sufficient evidence in front of the Court to proceed.

As I said, just looking at Exhibit A, just looking at the defendant's own records, we're just looking that one particular pay period where we sat down and we went through those trip sheets. And presumably, the Department of Labor did the same thing and that's why they decided that he was owed $1,048. That's part of the Motion to Certify in respect to wanting a Special Master appointed to do that thorough investigation. That's a different issue, Your Honor.

That's basically it in terms of this issue for summary judgment. I mean, there's claims made in defendant's submission that somehow because there was an Offer of Judgment made and it was in excess of anything that Mr. Reno might be owed, and he can't articulate what he's owed, the case should be dismissed.

Your Honor, the site know authority for that and there really is no basis to proceed, to proceed in that fashion, particularly in a class-action case where we're talking about relief that sought on behalf of the class. There's claims for equitable relief here as well.

I think Your Honor understands all this. I don't really want to take up more time on it unless there's something more that would be helpful to the Court for me to

address.

THE COURT: All right.

MR. GREENBERG: Thank you.

MS. RODRIGUEZ: Your Honor, Mr. Greenberg -- I think we totally have different perspectives on this, and I think the summary judgment law and rules support the defendants on this one because Mr. Greenberg just stood up and said, I don't have to prove my case.

Yeah, you do. You have to have a prima facie case at this point when discovery is closed. You have to by the -- by the rule and by the case law show something to defeat summary judgment and he absolutely hasn't done that.

The one week that he's attached for Mr. Reno -- and Mr. Greenberg's aware of this, because we've talked about this one week before, that was a calculation error on July 9th and July 10th. Mr. Reno was paid eight hours on one day and five days on the other as opposed to the 10 hours per day. That's -- that a mathematical calculation error in one week's time of his entire employment. That is not a minimum-wage claim, that is not demonstrative of why this case should continue to defeat summary judgment at this point.

The fact that -- oh, and this issue of discovery, you know, to say that there's discovery issues that are pending before the Discovery Commissioner, that is pertaining to all the other drivers. This has nothing to do with Michael

Reno. He's not asked for any Motions to Compel on Michael Reno. We've turned everything over pertaining to Michael Reno and there is nothing to support that he is owed any minimum-wage claim whatsoever.

Again, I've tried to -- throughout this litigation, Mr. Greenberg has asked this Court certify, certify, certify. Certify the class --

THE COURT: I know.

MS. RODRIGUEZ: -- so that we can just get past these plaintiffs and find the real plaintiff in this. That's not the way it works.

Class certification is secondary. The Court considers class certification after legitimate claims are before it and the Court starts looking at whether joinder is practical or impractical to -- is class certification the appropriate way to handle all of these claims together.

We're not there by any means. The two plaintiffs that are before the Court are not legitimate plaintiffs. They do not have a minimum-wage claim and Mr. Greenberg has not given a scintilla of evidence to the Court to show that they have a minimum-wage claim.

And I won't try to group them together because we're only talking about Mr. Reno right now, but Your Honor has the transcript and now the written discovery. And there's simply nothing there to show that Mr. Reno has a minimum-wage claim

violation. And so this Court must grant summary judgment against him. We'll talk about Mr. Murray after that, but Mr. Reno himself, per his testimony, per his documentation, has no claim and the Court can't turn a blind eye to that.

THE COURT: Okay, let me ask you this. If the Court -- if the Motion to Compel and the Motion to -- I mean, part of the claims of the plaintiffs, on behalf of the class at least, is that there's a bunch of records that have yet to be produced and/or I guess reconstituted or some such thing and that's why he wants a Special Master.

MS. RODRIGUEZ: That has nothing to do with Mr. Reno. He has every single record for Mr. Reno and I don't believe that he will dispute that. He -- he's got --

THE COURT: Is this the only -- is this the only basis for his claim is this one document that you've given me in Exhibit A?

MS. RODRIGUEZ: Well, and Your Honor, you know, I have object -- I objected to that record as well because like every other time that we've been before the Court, that is a record that was never produced in discovery. It shows up in his oppositions for the very first time. And it's a -- it's a --

THE COURT: Let's deal with that first, then. What about that?

MR. GREENBERG: Your Honor, the record that you have

at Exhibit A of my Response is a compilation of the trip sheets for Mr. Reno that defendants produced in discovery.

THE COURT: Okay.

MR. GREENBERG: They do not -- they're telling the Court right now that there are errors and there's an explanation for this and this calculation that works out to 5.52 an hour isn't correct; none of this is in their Reply, Your Honor. They don't address this at all in their Reply. So I have no idea what they're talking about when they say that's not true or accurate.

Your Honor, in terms of the discovery that's seeking to be compelled from the Discovery Commissioner, it's for the class, Your Honor. It would apply equally to Mr. Reno and Mr. Murray. We're seeking the electronic records that we believe --

THE COURT: So what more would it be in relation to Mr. Reno, for example, other than these trip sheets that I have here?

MR. GREENBERG: Your Honor, it would be records showing the actual activities of the drivers in terms of when they appeared to work, when they were given their trip sheets.

THE COURT: I'm speaking of Mr. Reno now.

MR. GREENBERG: For Mr. Reno, for Mr. Murray and for all the other cab drivers. There is a sophisticated computer system that keeps track of the activities of the cab drivers

and the medallions.

THE COURT: And is --

MR. GREENBERG: It says when they go out and when they come back.

THE COURT: Is the idea that it would show discrepancies -- more discrepancies than what is reflected in these trip sheets?

MR. GREENBERG: Your Honor, it is our position that an analysis of those records will show the drivers are working far more hours than shown on the trip sheets. But, Your Honor --

THE COURT: Including Mr. Reno?

MR. GREENBERG: Including Mr. Reno and Mr. Murray, they're members of the class.

But, Your Honor, I want to point something else out here that defendants are skipping over, and it hasn't been addressed, which is that NRS 608.115 which is discussed in the motion in relation to the request for the Special Master, requires defendants, employers, to maintain a statement of hours of what an employee has worked during every pay period. They have violated that in this case. And, in fact, they did so intentionally because they were told by the U.S. Department of Labor back in 2010 that they needed to keep these records.

THE COURT: Then these things that you --

MS. RODRIGUEZ: I'm objecting to that, Your Honor.

THE COURT: These things that you submitted to me are not those records then?

MR. GREENBERG: Right. Those records don't exist, Your Honor. They simply issued -- until -- until shortly before Your Honor's ruling in February of -- or January of 2013, and only after the Department of Labor came back in 2012, did the defendant start issuing payroll checks that actually had a statement of hours per pay period on them. They never issued them prior to that date.

And, by the way, Your Honor, when they started issuing those payroll checks as we've discussed in the Motion to Certify, they were still taking tip credit which is not allowed under Nevada law, even after Your Honor ruled that they were subject to Nevada's law in January or February of 2013. My point is, Your Honor --

THE COURT: And is the evidence that you seek to bring about more evidence as to those alleged violations?

MR. GREENBERG: The evidence we're seeking, Your Honor, is to establish what the true hours were that these --

THE COURT: Okay.

MR. GREENBERG: We know what they were paid, Your Honor --

THE COURT: All right.

MR. GREENBERG: -- because we have the payroll record, okay. Although, we don't actually have them in an

electronic form, which is what we've requested and defendants have refused to give us without any good reason. That's another issue in front of the Discovery Commissioner.

We can't really do an analysis, Your Honor, without the electronic records. There's no reason they haven't been provided to us except they're just obstructing the process of the case. But these are issues for the Discovery Commissioner to deal with. And those Motions to Compel have been -- has been filed now since -- I guess March was the first one. There's been two subsequent ones.

THE COURT: When are they set to be heard?

MR. GREENBERG: This month, in a few weeks, Your Honor.

MS. RODRIGUEZ: Your Honor, he keeps asking for a continuance of these motions. So the implication that we've delayed this is completely false.

THE COURT: Okay.

MS. RODRIGUEZ: Further, none of those issues have anything to do with Murray and Reno. The Discovery Commissioner has already told them that we are not required to keep them in the format that they want where they want to do this searchable stuff. She said, if we turned over these documents, these trip sheets, these pay stubs, that's what we were required to do. That's what we showed to the DOL. I told the Discovery Commissioner, this is everything the DOL

looked at. She said, as long as you're giving Mr. Greenberg what you gave the DOL, that's what we gave him.

He is not going to see anything else in these alleged computer files that are going to show different hours. There's no such thing that they, even by this document that I'm objecting to with their opposition, this is what they put together I'm assuming because this document has never shown up in discovery. I'm assuming one of the two attorneys put it together.

And what I pointed out to the Court in my Reply, that they had done it wrong. They put two hours some places and there were two and a half hours actually written in the trip sheets. So they manipulated the numbers to come up with this $5.52 as a rate of pay. That's wrong. This Court should not even be looking at this stuff because it's not authenticated. It's attorney written.

And another issue that we've completely jumped over on this, since Mr. Greenberg has raised this issue about what Mr. Reno was entitled to, the $1,100, I didn't want to emphasize this to the Court, but I think it's important since this issue has been raised.

I attached the Offer of Judgment, Your Honor. During the deposition, the plaintiff himself -- it's not that the Offer moots the litigation. The important part is that this Offer was never even conveyed to the client. There's a

serious issue there. And we have sworn testimony from both of these plaintiffs saying they were never even aware of these offers. There is a complete failure on the duty of plaintiff's counsel to inform them. I think what he's wanting to do is then to, again, get the class certified. I don't care about these plaintiffs, because somewhere out there there's a legitimate plaintiff.

THE COURT: What is the effect of that on these -- this motion?

MS. RODRIGUEZ: The effect of -- well, for --

THE COURT: Not conveying the Offer -- offering judgment?

MR. GREENBERG: Your Honor --

MS. RODRIGUEZ: The --

THE COURT: No, just a minute.

MS. RODRIGUEZ: I'm trying to gather my thoughts here, Your Honor, because I'm -- I definitely pled it towards the opposition to certifying the class in terms of the qualifications of plaintiff's counsel and the plaintiff himself in proceeding and representing the class.

THE COURT: Understood.

MS. RODRIGUEZ: So I don't want to skip over that. The importance of that --

THE COURT: In relation to this motion.

MS. RODRIGUEZ: -- this is attorney-driven

litigation. This plaintiff has no indication as to what a minimum-wage claim is, if he is owed anything at all, whether the fact that the defense has already offered him a resolution. Why are we here? Why are we running up attorneys' fees and costs into the thousands of dollars when the plaintiff has been offered a resolution?

THE COURT: Let me --

MS. RODRIGUEZ: That completely goes against --

THE COURT: Let me -- let me ask you this. I am not sure that I read this correctly was -- as to one of these two at least, and maybe both. Did they, during that same deposition, indicate -- after indicating surprise that they didn't know about the Offer of Proof, did they indicate they are not interested in that, they want to go forward?

MS. RODRIGUEZ: No.

THE COURT: In other words, a rejection of the -- I said offer of proof, of the offering judgment?

MS. RODRIGUEZ: Right, right. No, Mr. Reno did not say that.

THE COURT: All right. Okay, go ahead.

MS. RODRIGUEZ: No. He was surprised that he would be getting a check from the Department of Labor and that there was an offer from the employer to -- to settle his claim as well.

THE COURT: And does set have effect on this motion?

MS. RODRIGUEZ: I believe it does, Your Honor.
THE COURT: What is the effect?
MS. RODRIGUEZ: The effect is --
THE COURT: How does it tie in?
MS. RODRIGUEZ: -- that the plaintiff has not -- does not -- the plaintiff himself, Michael Reno, does not have a grasp of a claim, does not have a judicial controversy. And further, that the defense has already offered to resolve a claim, his claim, more than sufficiently. And he has not been given the opportunity to go ahead and resolve this claim before this Court. Why are we going forward?
THE COURT: All right. I've --
MS. RODRIGUEZ: It extinguishes his claim.
THE COURT: We're into playing ping-pong now. Normally, I would have stopped right there. But you do raise a question. I think Mr. Greenberg needs to be given the opportunity to respond.
MR. GREENBERG: Your Honor, I understand the Court is trying to navigate its way here, okay. But it is -- it is extremely offensive, improper for me to be brought before this Court and questioned regarding what my communications were with my clients. And that is completely sacrosanct and privileged. I can't talk about that. I will certainly tell the Court, I have absolutely fulfilled my obligations to see my clients are fully informed as I am required to do as an

officer of this court.

If the Court wants to satisfy itself because it believes it's germane, and that is Your Honor's --

THE COURT: Right.

MR. GREENBERG: -- determination to make as to what my clients know about what was offered or not offered, we can arrange to have them come down here, you can talk to them in chambers outside of my presence, I'd be happy to arrange that. I'm just put in an impossible situation by these allegations, Your Honor.

THE COURT: All right. Well let me ask you the same question I was asking Ms. Rodriguez. Does that have any impact on this motion?

MR. GREENBERG: Does it have any impact on this motion that what?

THE COURT: The issue of whether or not the offering judgment was transmitted to your client, communicated to your client; does that have anything to do with this motion that we are presently considering?

MR. GREENBERG: It has no impact -- it has --

THE COURT: Their dismissal and summary judgment against Mr. Reno.

MR. GREENBERG: It has no bearing whatsoever, Your Honor, because I assure the Court they were advised, okay. I mean, again, I have a duty to advise my clients of such thing

as well as other things that occur litigation during the course of my representation. And I do -- and I never fail to fulfill those duties. I mean, obviously, I can't talk about what I discussed --

THE COURT: Okay.

MR. GREENBERG: -- when, where, how, et cetera, with my clients in a privileged capacity, and the Court understands that. It is really outrageous that this is even raised in this context, Your Honor.

But the point is that the Offer of Judgment is irrelevant to use the issue before the Court. The plaintiffs have no obligation to accept it. And let's just -- let's just go with the alternative. Let's say they wanted to take the Offer of Judgment. Your Honor would still have to approve the settlement in this case because it's a punitive class action litigation.

There's -- there's an interest here of the unnamed punitive class members. And this is, in fact, discussed -- there was a Response filed on the 19th of September to their supplement where this whole issue was raised by the defendants as to the sufficiency of Mr. Murray and Reno as representatives.

And it's very clear, Your Honor, that this Court is not -- these plaintiffs don't have the freedom in a class context under Rule 23 to simply accept an Offer of Judgment,

have a final judgment entered in their favor against defendants and terminate the litigation. It can't work that way procedurally given the context of this case, as a punitive class action case. The law is very clear on this, Your Honor.

Plus there are claims for equitable relief here, Your Honor, which, of course, are not addressed by the Offer of Judgment. So the Offer of Judgment is completely irrelevant to the course of this litigation.

Your Honor, there were all sorts of representations made about what's gone on with the Discovery Commissioner and what the Discovery Commissioner told the defendants to do or not to do.

In fact, the Discovery Commissioner directed an inspection of the plaintiffs' -- of defendants' premises on this electronics records production; that wasn't completed. There was a dispute about that.

She directed that a 30(b)(6) deposition be held. That wasn't completed either. We have a host of disputes regarding the development of the record here that have been pending before the Discovery Commissioner.

The reason why these have not gone to further hearing with the Discovery Commissioner is because this motion for class certification was fully briefed in June, and we were waiting for Your Honor to resolve it because the Discovery Commissioner has repeatedly indicated that she has to manage

the scope of the discovery that she's going to direct if there isn't a class certified. Quite understandably, that is of concern to her.

The idea was to streamline and to simplify the process knowing what Your Honor's view was on the request for the class certification. And defendants have consistently agreed to continue these hearings before the Discovery Commissioner.

So, again, we need to focus on what we have here, Your Honor, and I'm sort of running a little afield myself. I'm trying to assist the Court.

THE COURT: Okay.

MR. GREENBERG: Is there something further I should address that would be --

THE COURT: No, I just wanted you to --

MR. GREENBERG: -- that would be helpful?

THE COURT: Since that was raised --

MR. GREENBERG: And, Your Honor, I have to --

THE COURT: -- I wanted you to have the opportunity to respond.

MR. GREENBERG: -- I have to apologize. There is a misunderstanding here. I had said that -- defense counsel, and their Reply in respect to Mr. Reno's Exhibit A submission of my Response did not address this. I actually realized I don't have the Reply with me. I have the Reply from Mr.

Murray, not Mr. Reno. So my statement may be incorrect about that that I make previously.

What I did hear them say in court was something about the one page on Exhibit A which is essentially a chart. Your Honor, that's just a summary of the record. I mean, if somebody wants to go through those 10 trip sheets or whatever it is, and see the start time, and the end time, and take out the break time that's recorded, they'll get the same numbers of hours worked.

And if they run those numbers -- you know, that total of, I think it's 92 hours or whatever it is, against the $400 or whatever it was that he earned for the period which, you know, is discussed in the opposition, you're going to wind up with the same 5.52 an hour number.

They haven't presented a different number that would be in compliance with the minimum wage standard based upon an analysis of those trip sheets; have they? I haven't heard them say, well, the actual analysis would show that Mr. Reno made, you know, $9.00 an hour during this period. So, still, there's nothing in the record showing he was ever paid less than minimum wage.

Your Honor, to the extent that I need to put in an evidentiary standard here, an offer of proof of some sort, it's here, Your Honor, okay. So enough for me consuming the Court's time on that. Thank you.

THE COURT: All right.

MS. RODRIGUEZ: Your Honor, again, we're putting the cart before the horse. We are not under Rule 23 right now, the class has been certified. We need to look at this plaintiff as any other plaintiff that would walk in before this Court.

And this particular plaintiff, as I've mentioned, has no idea what he's owed. I have repeatedly informed the Court that they have completely failed to comply with NRCP 16.1 to show a calculation of damages. We have no indication as we sit here today if they think that Michael Reno is owed anything at all.

This is the first time in this opposition that we saw this one week calculation of a week where he was shorted some hours. As I've mentioned, we've talked about this week before because this was a mathematical error. This is not an underpayment. This was a shortage of the hours. He was paid five hours for whatever reason. Sam Wood was the person who added up the hours on that particular day. Mr. Greenberg took his deposition.

If -- even accepting everything that the plaintiffs say, Your Honor, if you had a plaintiff walk in and say, okay, I've got a weeks worth here of seven hours at 7.25, that I'm owed 8.25, he's talking about 50 bucks that should have been drafted up in an NRCP 16.1 to show, this is what I think I'm

owed, $55.00, and the employer has offered them $15,000 to resolve the case, would Your Honor that case to go forward? Absolutely not. It makes absolutely no sense. And that's why the Offer of Judgment extinguishes that claim.

Mr. Reno recognized that if that offer was far beyond his expectations, it was completely surprised. I know that Mr. Greenberg is representing to the Court that he conveyed that offer, but Your Honor has the sworn testimony from the plaintiff himself saying. I didn't know anything about that offer. I've never heard of that offer. I've never seen this document. I'm totally surprised that I'm getting any money from the Department of Labor. I have no idea what I'm owed. It simply makes no sense to allow this case to proceed.

Again, the issues that are before the Discovery Commissioner, I cringe every time I hear Mr. Greenberg making these representations to the Court about the lack of conclusion of some deposition or the inspection. All of those were terminated because of actions on the behalf of the plaintiff.

But I would like to point out that none of those issues are before the Discovery Commissioner. They've not asked for -- to compel, to go any further than -- we were -- we did a PMK depo for like 10 hours and he wants to continue it. But that has nothing to do with Michael Murray and

Michael Reno again.

Discovery is closed. There's no other issues pertaining to Murray and Reno. And I would ask the Court to treat Murray and Reno like any other plaintiff that is here before the Court, and they simply have not given the Court anything to survive a summary judgment. That's why the Court has to grant summary judgment against both of them.

I can go into Murray, but the bottom line is, the basis is the same thing.

THE COURT: Let's -- let's -- yeah, let's look at Murray and see what -- what, if anything, may be --

MS. RODRIGUEZ: Murray has been the --

THE COURT: -- particularly applicable to him.

MS. RODRIGUEZ: Your Honor has his discovery responses. I would urge you to read those. There is nothing in there that would suffice to defeat summary judgment.

Apparently, they have some statement from a witness that they're refusing to disclose until they deem it timely for them to disclose it. But discovery is closed, so I don't know what mystery document is out there. But as we sit here today, with discovery closed as of October 1st, there are no documents, there are no witnesses, there are no affidavits that are required by the rule.

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Let me find my notes on Murray to add if there's any

-- oh, Mr. Murray was an interesting one. And again, I attached his deposition, because as I mentioned, a deposition is the time to get to the bottom of the claim.

Mr. Murray outright refused to answer the questions. He absolutely refused. I said, are you going -- you're refusing to answer the question? I'm refusing. I'm not saying anything further on that issue.

And when I pressed him about this issue of the Offer of Judgment and his claim, he pled the Fifth. He said, I'm pleading the Fifth Amendment against the right of self-incrimination and against perjuring himself in his own deposition.

Your Honor, if you had any other plaintiff that would come in into that before this Court, you'd absolutely throw that case out. These plaintiffs have refused to cooperate in discovery, they refused to turn over any evidence. They are just lined up because they've heard there's money to be had somewhere.

But the Court has to look at what is before it and there just simply isn't any evidence to support either one of them on this. We are not -- again, with Murray, it's the same thing. We are not at NRCP 23. He's not representing the class. He's not appropriate for a class. And we'll get into that a little bit later. But I've attached his criminal record to show the type of character and integrity that this

person brings; there is none. He has a felony record and --

THE COURT: Well, does that tie in on this motion?

MS. RODRIGUEZ: No, Your Honor. It is on to the next one on whether he's appropriate.

THE COURT: Okay.

MS. RODRIGUEZ: But his claims themselves, he has nothing to support the claims himself. So he should be dismissed on summary judgment.

THE COURT: Okay.

MR. GREENBERG: Your Honor, this time I am correct in that in the Motion to Certify, at page 20, Exhibit M, this is on the Motion to Certify filed back in May, you have, again, a comparison of the trip sheets from defendants and the pay for that pay period.

And Mr. Murray was paid 7.19 an hour, below the minimum wage, as discussed at page 20 in the Class Certification Motion as documented in Exhibit M. And these, again, are from defendants' records. And this time I'm correct in that defendants never dispute in any manner the appropriateness of that summary of their records.

So, again, 7.19 isn't 7.25 an hour, Your Honor, or 8.25 an hour. Again, Mr. Murray is among the individuals who the Department of Labor did make a finding, defendants agreed, were owed something.

And because there was a finding they were owed

something, it does raise a question as to whether they were owed that extra dollar an hour above the federal minimum wage something they were found to owed. And if they were owed something extra, because the tips were applied against the federal minimum wage requirement. These are questions the defendants have not resolved in their favor, and that certainly exist for purposes of trial, Your Honor.

And as I've said before, what's pending before the Discovery Commissioner is disclosure of all of the electronic records relating to the activities of all of the drivers, including Mr. Murray and Mr. Reno, which we've never gotten. And that will be taken up by her in due course.

THE COURT: Let's --

MR. GREENBERG: Yes.

THE COURT: Let's assume for the moment, just for the moment, that your -- that you get some relief from your pending motion or motions before the Discovery Commissioner. Does that mean that discovery is going to be reopened?

MR. GREENBERG: There's a motion pending to extend the discovery schedule --

MS. SNIEGOCKI: Yes.

MR. GREENBERG: -- because we never got a resolution as to the production of the electronic records. The defendants even admitted under oath that they have Quickbooks records. They never produce them to me. They've never given

me any reason for their failure to produce them.

They alleged that certain records relating to Cab Manager can't be produced. In fact, we took a deposition of the person whose their consultants who runs that system and he completely contradicted representations made to the Discovery Commissioner. These files exist on a hard drive on a server in their premises and they can be copied just by copying the hard drive.

Whether they should be copied and produced is a different story, Your Honor. We have basically been stuck since March of this year on these representations that defendants have made under oath to the Discovery Commissioner, by Mr. Nady himself in court before the Discovery Commissioner that these -- these records didn't exist and couldn't be duplicated or produced.

When I asked him at his deposition about this, he said he had no idea why he told this to the Discovery Commissioner and he ran out of the room. And if necessary, we will bring all of these issues to the Discovery Commissioner for further resolution.

The point is, all of that is pending, Your Honor, okay. It is clearly premature for the Court to consider the sufficiency of the record and the evidence at this point in regard to these two individuals' claims.

And to the extent that the Court wants to look at

what's been established, we have established, Your Honor, that a review of the trip sheets and the payroll for these two individuals, at least for one pay period, showed deficiencies in the minimum wage rate, below even the 7.25.

And we don't know whether they are entitled to the 8.25 because we haven't resolved that issue in respect to the health insurance either. That is an additional issue which is subject to further ruling by the Court and discovery.

So, Your Honor, there's no basis to dismiss these claims at this point. Defendants certainly have a right to make a request for summary judgment at an appropriate time on an appropriate record. This is not the time, not given the fact that we've been, you know, trying to get these materials from the Discovery Commissioner, a ruling from her.

Your Honor, this isn't a situation where I should be coming in with like a 56(f) request or something for alternative relief on summary judgment because my requests to compel the discovery have been pending before the Court since March of this year, Your Honor. So this is all premature, okay.

And, again, you do have a documentation in the record from the trip sheets that have been examined, from the Department of Labor's findings, from the defendants' agreement with the Department of Labor's findings that money was owed to these individuals under federal law which, as I've pointed out

repeatedly, is much less demanding of the defendants in respect to its minimum wage standard.

Even if the defendants have 100 percent complied with their federal requirements, the significant question still exists as to whether they owe something more under Nevada law. And these plaintiffs need to be given an opportunity to litigate those issues.

I think I've made my point clear, Your Honor, thank you.

MS. RODRIGUEZ: Well --

THE COURT: And back to you.

MS. RODRIGUEZ: Thank you, Your Honor. You know, some of these allegations that Mr. Greenberg is just now bringing for the first time about health insurance and things like that, he never conducted any discovery -- discovery on any of those issues. It's a little late to do any of that, Your Honor.

That's -- that's what summary judgment is about. You have your discovery period. He never asked for an extension of discovery until two days before the close of discovery. I think he realized he hadn't done any discovery, he hadn't worked up this file. He's been so concerned about doing the class certification that he forgot about these two main plaintiffs.

THE COURT: When the Motions to Compel filed in

relation to the cutoff of discovery?

MS. RODRIGUEZ: Well, one of the Motions to Compel has already been denied.

THE COURT: Okay.

MS. RODRIGUEZ: The big one that he keeps talking about saying electronic records and this and that, Mr. Greenberg wasn't there, but this co-counsel was there, and that's what I was referring, where she was very clear and said they don't need to manufacture something, they don't need to give it to you in the form that you want. As long as they're giving you the paper documents that they gave the DOL, she was fine with that.

They came back again, they refiled it after being denied. And then she said, fine, go back, take a PMK depo, take a -- the computer expert depo. They did. They didn't -- contrary to his representations, and we can turn it over -- over those transcripts -- they did not say what he is wanting to hear what that they said. That's absolutely not true.

So he's had these motions pending, the second round, and he keeps asking to continue those things. I've not asked to continue those things; Mr. Greenberg asked to continue those things. So to now come into the Court and say, well, now we've got all these issues, so the Court can't grant summary judgment; he has just failed to make his case for these two plaintiffs.

As I mentioned to the Court, he can refile with an appropriate plaintiff. He just doesn't have an appropriate plaintiff with these two gentlemen. Reno and Murray do not have a minimum-wage claim. They don't know anything about a minimum-wage claim, they don't have the evidence. This Court has to follow the summary judgment in this particular instance.

And I think it's important to highlight to the Court that you may not be aware, but we have a concurrent class-action lawsuit for the same claims, a minimum-wage claim that is going before Judge Delaney. And Mr. Greenberg's aware of this, because the plaintiff's counsel called me up and told me that Mr. Greenberg talk to him about it.

It's the same thing, but they have a better plaintiff, to be quite honest. It's the Jasminka Dubric case v. A Cab. Same, I mean, their Complaints are almost word for word as Mr. Greenberg, but it's a different lawsuit and it's a class-action that's proceeding before Judge Delaney. So if the Court is concerned that there's a whole --

THE COURT: Which one was filed first?

MS. RODRIGUEZ: Mr. Greenberg's. His was filed in 2012, I believe, and -- but there's plenty of these class-action lawsuits. And, again, the Court doesn't have to preclude Mr. Greenberg, obviously, from getting the right plaintiff and filing if he feels it's appropriate, but in this

circumstance, these are not the guys.

These -- they have to be dismissed per summary judgment based on what is before the Court. He can throw out all the speculative things, you know, and say, well, we can prove this if you let us go on, if you extend discovery. He's never asked for an extension of discovery until, like I mentioned, the two days before.

And if -- if we have to go back before the Discovery Commissioner, I am confident that she is not going to be happy with the plaintiffs' behavior because she does recognize that all of these things could have been brought up within the discovery period.

And when she sees those answers that I turned over to the Court showing their refusal to answer the questions, their refusal to cooperate in discovery, the plaintiffs' depositions where they refused to answer the questions, pled the Fifth Amendment.

And then with counsel's written Response saying, I have a statement, but I will turn it over when I deem fit, not within the discovery period; I don't think Commissioner Bulla is going to be very happy with the plaintiffs' behavior. So I am doubtful that she is going to engage in an extension of this discovery.

THE COURT: You may be correct, but my interpretation of the Supreme Court's bent on Motions for

Summary Judgment convinces me that I must deny the motions at this time, without prejudice, until -- well, until we see what is going to happen on the discovery issues. So that has to be the ruling as to both of those.

So that means that the Defendant's Motion to Dismiss and for summary judgment against Michael Reno and against Michael Murray are denied without prejudice at this time.

All right. Now, assuming that I don't knock out one or both of the claims by virtue of the two motions I've taken under advisement, the two Motions to Dismiss, one for the first claim and one for the second claim, let us move on to the Motion to Certify. Well, it's 12:00 now.

MS. RODRIGUEZ: I have a suggestion on this, Your Honor, because it --

THE COURT: How's your -- how's your afternoon? Oh, good, let's start back up at 1:30 and get this done.

MS. RODRIGUEZ: Your Honor, may I -- may I make a --

THE COURT: Sure.

MS. RODRIGUEZ: -- quick suggestion to the Court?

THE COURT: Sure.

MS. RODRIGUEZ: Because based on what I've just raised, I believe we need to take this to the Discovery Commissioner and we are set, I believe, next week for her to make a decision on this, because if she extends discovery or -- or does not, I'm going to refile this MSJ on both of these

gentlemen, and then the Court will not have two plaintiffs to certify this case.

So I don't think that the Court will be in a position to rule on the class certification today pending the Discovery Commissioner's hearings next week. I would urge the Court to maybe continue this a couple weeks out.

THE COURT: You're right. I am not inclined to do so, just because of what I said earlier. We've had all kinds of things that have held this case up, and I think that if this Court is -- contributes to that logjam any further, I think that when this shakes out at the Supreme Court level, there may -- there might be some legitimate criticism of the trial court. And I'm just not going to do it anymore.

I want to get these issues done so we all know where we stand with these issues. Let's -- why don't we come back at 1:30 and we'll get this done.

MR. GREENBERG: If that's what Your Honor believes is best. I fully agree, Your Honor. We need to get this fully brief, considered by Your Honor and decided. If that's what we should do, we will return at 1:30 and hopefully we can move speedily along at that time, Your Honor.

THE COURT: Yeah, let's do that. 1:30 then.

MR. GREENBERG: Thank you, Your Honor.

THE COURT: Thank you.

MS. RODRIGUEZ: Thank you.

(Court's recessed at 12:15 p.m. until 1:39 p.m.)

THE COURT: All right. Oh, this, I believe -- is this -- this is yours, I believe. Did you hand me this?

MS. RODRIGUEZ: You know, Your Honor, I gave you -- I gave you the wrong set. I had a courtesy copy for you because I think that one had writing.

THE COURT: This is a Response to interrogatories?

MS. RODRIGUEZ: Right.

THE COURT: Yeah.

MS. RODRIGUEZ: I have copies for the Court.

THE COURT: Okay.

MS. RODRIGUEZ: Thank you. If I can find them again. I noticed it at lunch, I apologize.

THE COURT: That's all right. All right. Plaintiffs' motion, certify the case and appoint a Special Master.

MR. GREENBERG: Yes, good afternoon, Your Honor. Before I begin, first of all, two things. I was before Judge Israel a week ago in the Thomas case and he granted class certification, the record that I would submit was substantially less compelling than the record in this case, but in many ways quite similar.

What was presented to Judge Israel in that case was a record of the U.S. Department of Labor investigation which was resolved by a review of records, which made a finding

about 600 or so drivers were owed about $400,000 in unpaid minimum wages under federal law which, you know, which was taken care of. The company paid it and so forth.

So the issue wasn't whether they, in fact, owed that. The issue was that it established, as a matter of record, that there was reason to believe that there was a common issue for the Yellow Cab drivers in respect to the issues we've discussed previously in this case, specifically, that that review and finding a resolution by the Department of Labor, that the federal Department of Labor still left open this issue of the tip credit that was being used to reach that assessment in this issue of the additional one dollar an hour question that Nevada law requires be considered in respect to the health insurance requirements as to whether they are met which would make --

THE COURT: Did he -- did he appoint the Special Master?

MR. GREENBERG: There was no request made for the appointment of a Special Master because that issue is not present in that case, because in that case, we don't appear to have the same question as to the noncompliance with the record-keeping requirements.

And I would submit, actually, a record of a willful evasion of those requirements. But that's not a required showing that I think needs to be made here in terms of bad

faith or willfulness by the defendants to have the Special Master appointed. And this is discussed in my briefs.

But before I go on to address anything further, there is no order actually entered by Judge Israel at this time. It's just a Minute Order on the record, a form of order that needs to be submitted to him.

But as I said, I think there is an important parallel there between this case and that case. I mean, here we have a judgment which involved the same sort of review in history involving a federal minimum wage compliance and so forth in findings.

Was there any particular issues that the Court would like me to address or that the Court is concerned about? I do believe the briefing has been pretty thorough. We did discuss this morning some issues that the Court may find germane or of concern to it in respect to this motion.

THE COURT: The question regarding appointment of the Special Master.

MR. GREENBERG: Well, yes, Your Honor. And --

THE COURT: One of the questions being what would a Special Master be doing?

MR. GREENBERG: Well, what a Special Master would be charged with doing, Your Honor, is creating the record the defendants were statutorily required to create and did not create. And what defendants have done here --

THE COURT: And in order to do that, how would the Special Master proceed?

MR. GREENBERG: Well, I brought the Court's attention this morning to reviews that were done as to trip sheets that were used by Mr. Murray and Mr. Reno for two particular pay periods. And I explained to the Court that looking at the start times, the end times, the break times entered on this trip sheets, there would be violations of the minimum-wage threshold when you compare those hours to the corresponding payroll.

THE COURT: And your allegation somewhere in here was there's like 230,000 of those?

MR. GREENBERG: There are hundreds of thousands trip sheets, yes, that would be within the time period.

THE COURT: How -- how long would it take the Special Master and presumably a fleet of personnel?

MR. GREENBERG: It would -- it would obviously be an undertaking of thousands of dollars of expenses, tens of thousands of dollars of expenses, Your Honor. No question about it in my mind.

THE COURT: Do -- do you have any sort of estimate of how long it would take them to do that?

MR. GREENBERG: Well, Your Honor, the Department of Labor investigation was actually resolve upon a representative sample. I believe, they looked at six weeks, six pay periods

for a two-year period. Defendants are not willing to stipulate to that in this case presumably.

Defendants' defense in this case is essentially that everything is recorded in the trip sheets. No, we have no weekly payroll hours, at least not before 2012 when the second Department of Labor investigation came back, which resulted in the 2014 consent judgment.

At that time, they did change their record-keeping practices and this is documented in my submissions to the Court, and did provide an hours work statement for every corresponding payroll period. But prior to that time they did not.

And, actually, Your Honor, we even have testimony from -- I don't know that this was submitted in the briefs here, Your Honor, from -- and we can supplement to develop this further if the Court found it of interest. We actually have testimony from Mr. Nady that was taken back in August where he says that, yes, we did review contemporaneously the trip sheets of the drivers, and we're going back to 2010 or what have you. And then we would -- on a piece of paper, there would be a statement as to the hours that were worked.

And if we determined that the hours -- that the -- the commission pay, because drivers are paid a commission, but if they determined the commission that the drivers would get for the pay period would be less than the minimum wage as

shown by that review on that piece of paper, we would adjust the pay of the driver to increase it to the minimum-wage threshold.

But they made no actual recording of the adjustment on -- on the driver's pay stub, supposedly, because they didn't want to encourage them to be lazy and therefore not work hard enough and get the minimum wage subsidy that they were getting. And they kept no record of those pay period reviews that were conducted of the trip sheets contemporaneously.

So, essentially, Your Honor, defendants have constructed this problem for themselves, clearly in an attempt to subvert a holding of responsibility that is sought in this case. They have very conveniently failed to keep these records, Your Honor, to make it impossible as a practical matter, or at least to build for them a defense that they can come to court with that, oh, well, no, everything was in the trip sheets.

But to know what's actually in those trip sheets and compile them on the class-wide basis for hundreds of drivers over a number of years involving, as Your Honor was pointing out, hundreds of thousands of trip sheets, is an impractical economic burden to put on a plaintiff, any individual plaintiff or any plaintiff's counsel. So therefore, you're not going to be able to hold us responsible. It's a very nice

sort of situation for the defendants to be in if that's allowed by the Court.

That's why I requested a Special Master. The Special Master is a last resort, Your Honor. And they should pay for this Special Master.

THE COURT: What would you say to the defendant's argument that using a Special Master -- I'm not sure how -- they aren't exactly clear on what they think the duties of the Special Master would be, but they are clear that they fear the Special Master becoming a fact-finder with the Court being merely a reviewing court.

MR. GREENBERG: Well, Your Honor, the fact-finder -- excuse me -- the Special Master cannot be a fact-finder, we know that. The facts that will be found need to be found by a jury, or if the Court was sitting as a fact -- finder of fact, by the Court.

THE COURT: So if --

MR. GREENBERG: But the Special Master would not be --

THE COURT: He's just doing the math?

MR. GREENBERG: He's just doing the math, Your Honor. All he's going to be doing is looking at the trip sheets and creating a summary of the information that's in there. And defendants -- just as I gave Your Honor those -- Exhibit A of the opposition we were discussing in respect to

Mr. Murray and Mr. Reno, and as we have attached to the Motion to Certify also as an exhibit, I believe, maybe it's M, it would be the exact same thing I've already demonstrated to this Court, is that someone would sit down -- in fact, defendants did this already in connection with the Department of Labor audit which was the result.

In fact, defendants testified under oath they did this contemporaneously with when they did their payroll going back to 2010 or wherever -- whenever it was. But they didn't keep the information and they didn't centralize it, okay, and put it in a spreadsheet or at least a spreadsheet that they admit exists and that they be willing to produce.

So, Your Honor, the problem that is caused here is of defendants' own making. And again, they had a statutory obligation to keep these records. I mean, if you want, I can give you a copy right here if 608 -- NRS 608.115, I mean, (1)(a)(d). It says that an employer shall keep records for the benefit of the employee and (1)(a)(d) says total hours employed in the pay period by noting the number of hours per day.

There is no total of the hours kept per pay period. In fact, Your Honor, we don't even have a total per day, because the trip sheets themselves only had information from which one can calculate the hours per day. There's a start time, there's an end time, and there are break times that are

listed. But you would actually have to sit down and, you know, go through with your pencil and added it up and do the calculations. So, in fact, they kept no record whatsoever that even --

THE COURT: As you -- as you --

MR. GREENBERG: -- facially complies with the statute.

THE COURT: As you can imagine, Ms. Rodriguez, that would be something that you might need to respond to when --

MS. RODRIGUEZ: I'd be happy to, Your Honor.

MR. GREENBERG: If Your Honor would appreciate --

THE COURT: Then I'll get you to do that when you give your opposition.

MR. GREENBERG: Your Honor, again, I understand that the Special Master appointment is an unusual step for this Court to take. But I don't really know how else the Court can promote justice here, and enforce the command of the Nevada Constitution under these circumstances which, as Your Honor has observed, the Court has a very strong duty to enforce those rights that are granted.

The remedial language of the Constitution itself could not be broader. It authorizes the granting of all remedial equitable, et cetera, relief, damages, et cetera, that are appropriate to remedy any violation.

If an employer can essentially violate the statute

largely with impunity by simply not keeping the records that they -- it's not violate the statute, it's violate the Constitution, Your Honor, by not keeping the records that they are required to by statute, and then built a defense based upon that, it is inequitable.

Your Honor, you know, and there's other background here. I mean, we have been arguing over the production of certain electronic Cab Management records which -- which record information regarding the activities of defendants' taxicabs.

Defendants insist that those records, even though the they'll tell us when a particular cab was being driven by a particular driver and went out of the garage and came back at the end of the shift, would not accurately reflect the time that a driver was, in fact, working. And again, they kept no punch clock, time clock records, in fact, reflecting the information.

Defendants are not inclined to agree to use that alternative information source as a record for understanding what the plaintiffs -- what the class members were working. In fact, they are fighting to even produce any of that. They insist it can't be produced or it should be produced and so -- that's with the Discovery Commissioner. We're not here to argue about the production of that information.

But what I'm saying, Your Honor, is that defendants

have very clearly postured themselves in this litigation as building a defense on the position that the only accurate information relating to the time that these individuals worked is in those trip sheets. And there is no other source of accurate information.

And they had a duty to keep that information in some accessible form. They didn't, Your Honor. And it's clear that they didn't do that intentionally because they were told by the Department of Labor in 2010 to do it.

In fact, part of the consent order, which we were previously discussing earlier today, with the federal Department of Labor, compels them to keep records of hours that the individuals are working, because they were found to have been deficient in that duty under the federal minimum wage law.

And as I told the Court, starting at sometime in 2012, apparently they have started correlating hours worked with pay period wages and have actually put it in the electronic record. And it's -- I told you, and we can get the testimony, I don't know if it's -- if it's in the record here, if the Court wants it.

Mr. Nady said they were doing that all along, they just weren't bothering to preserve the information which, of course, raises an interesting question why they weren't. They were going to all of that trouble to review the records and

supposedly calculating and adjusting the pay to be sure that it was compliant with the minimum wage, and presumably defendants at trial would be entitled to testify to that effect. I mean, their credibility might not be great, but that would be for a jury to decide, Your Honor. But they didn't keep those records.

So, again, Your Honor, given the duty that is imposed by statute on the employer under 608.115, the need to enforce the rights granted under the Constitution, and the history of this case, the fact, again, that the defendants were explicitly told, and it was actually in 2009, when the original U.S. Department of Labor investigation was -- was undertaken. That's at page 22, Exhibit B of the Class Certification Motion. Well, page 22 is where it's discussed. They promised they were going to keep these records; they never did, Your Honor.

And, again, I don't believe it should be necessary for the Court to make a finding of willful evasion or bad faith on the part of the defendants to appoint the Special Master here. But if the Court believes that that finding is something that it would consider making or is germane to its decision, it should certainly review that material.

And, you know, there was an assurance. In fact, it also states in that report that they were advised they have to pay their taxi drivers Nevada minimum hourly rages which was

6.85 an hour and Nevada, of course, doesn't get them tip credit.

Now, again, Your Honor, we're not talking about whether they owe my client something, whether they owe the class something, you know, what they were found to be owed under the federal minimum wage law.

Again, we're just talking about the background here, the circumstances, the nature of the claims made in this case and how they justify this admittedly unusual remedy that I'm asking the Court to apply in respect to granting appointment of a Special Master.

What's the alternative, Your Honor? If no Special Master is appointed, the alternative is, this case can proceed, presumably, defendants can proceed to trial with their insistence that only -- only the -- the trip sheets contain the accurate information, and they'll be allowed to argue that. And how can I -- how can I possibly counter that? I can't, Your Honor.

I don't have the tens of thousands, maybe hundreds of thousands of dollars of resources that would be required to review those trip sheets, and refute those claims, which defendant has created that defense again through their inaction, through their obvious neglect and failure to preserve this information despite being statutorily required to do so. And that promotes an injustice in this case, Your

Honor, by allowing this case to proceed in that posture.

I mean, remember, Your Honor, as class counsel, I have undertaken to underwrite the cost and the expenses of this litigation, and I intend to do so. And I may have to hire an expert witness at some point to do that and I understand that, Your Honor.

But the point is, the defendants, they're not required to pay anything prior to judgment. And upon judgment, who knows, if they go out of business, they may not have to pay a judgment either, Your Honor. There's a limit to the resources that I, as plaintiffs' counsel, can logically devote to the championing of the class's interest. I'm going to do my best; if the Court feels certification is proper and I'm competent to be counsel, I will certainly discharge my duties as class counsel to the best of my ability.

But given this unusual history and set of circumstances here, the statutory obligation, the purpose of the Constitution, a Special Master appointment, I think, is clearly needed.

Now, Your Honor, in terms of limiting the burden, let's say it would be $100,000 for a Special Master to go through 200,000 trip sheets and compile all of this information for what could be a four-year period, perhaps. Well, you know, defendants and the plaintiffs can sit down and say, okay, look, will each select a one-month period from each

of those four years, and thereby cut the cost down to 112 as to what it would be as a representative sample and stipulate to work with that.

And I would be open to such a resolution, Your Honor. If Your Honor grants my request, okay, you can certainly also tailor it in such a fashion to compel the parties to work together, to prepare a proposal that will limit the cost.

I'm not -- it doesn't do my clients, the class, any good to see $100,000 or more spent on a Special Master when that may deprive ultimately the class the funds that could be available for them to recover on a judgment.

But the problem, Your Honor, is if the Court doesn't push defendants towards any sort of agreement or willingness to work out an alternative arrangement or approach here, it doesn't grant me any measure of relief on this request for appointment of a Special Master, it will promote an injustice, Your Honor.

And I would -- you know, I suppose the Court could even, if it wanted to appoint a Special Master who had some sort of statistical expertise, and could opine to the Court as to what a statistically significant sampling of four years of trip sheets might consist of, so forth and so on, I mean, I think we, as relatively intelligent counsel, could agree on what would be an appropriate sample.

My point is that there are ways to approach this and to give the relief that I'm requesting and promote the just ends that I'm asking the Court to do without creating this sort of overwhelmingly difficult and burdensome result for everyone, which is not what I desire here. And as I said, that's clearly not in the interest of the class either, Your Honor.

You know, alternatively, look, if the defendants wouldn't agree to be bound by such a sampling that the Court might director through a Special Master, the Court could at least enter an order allowing the results of such a sampling to be presented to a jury and allow a jury to consider that for whatever -- for whatever it wishes.

I mean, if the defendants still want to insist that, you know, there is an insufficient quantum of evidence here and so forth and so on and argue to the jury that the plaintiffs have failed to make out their case as they are alleging because it's all in the trip sheets, and the trip sheets within the trip sheets, isn't really fully known, I suppose they could still to that.

But at least there would be some level playing field here, Your Honor. At least there would be some measure of remedy afforded to the plaintiffs in this case for what clearly was an improper history and course of conduct by the defendants in failing to preserve and keep this information in

the first place.

So, I think Your Honor understands. I mean, we can move on and discuss the issues with the certification. I think you're asking me to address the merits in terms of why, why is Special Master should be granted here.

THE COURT: Yes, I --

MR. GREENBERG: And I've tried to address that as best as I can, Your Honor.

THE COURT: Yeah. If there's anything else that you feel, other than what's in the written work that you -- that you want to address with me regarding the merits of the motion itself, then feel free, but I don't have any questions.

MR. GREENBERG: Your Honor, quite candidly, essentially what I would do if I was to argue further at this point without specific inquiries from the Court, is really to simply repeat what has been quite thoroughly briefed. And I don't really want to take up the Court's time simply -- it's nice for the Court to indulge me by giving me the time and your attention to listen to what I have to say, Your Honor.

But, you know, just in a -- in a very brief nutshell here, Your Honor --

THE COURT: Do you hear that? A lawyer said "brief" --

MR. GREENBERG: Yes, very --

THE COURT: -- "I'll be brief."

MR. GREENBERG: I think Your Honor can appreciate we are talking about common claims. We've talked about this issue of the tip credit that was applied, of whether they're entitled to this extra dollar an hour.

We have some quantum of evidence here to show that there are hundreds of people who may be affected here based on the Department of Labor's, you know, consent judgment.

So the idea that there's, you know, if a common issue is numerosity is satisfied, we have common issues of the law. Your Honor was addressing in the statute of limitations issue a little while ago. We have a common issue of law as to whether punitive damages would be available to the class, a common issue as to whether the health insurance requirements apply here and the extra dollar an hour applies.

There's also a request for injunctive relief in respect to defendants' continuing violations of the statute. It is apparent from the most recent pay stubs we have, which go back to the 2014 period just about 15 months ago, and this is in the record, I know, in terms of the submission we gave Your Honor, that they're only paying 7.25 an hour. They may well have to pay 8.25 an hour based on the health insurance requirements.

Mr. Sargeant, who is an alternative representative, and we submitted his payroll documents, states he never got health insurance coverage from the company. The company

hasn't introduced any evidence actually establishing that they met the health insurance requirement to the Constitution which are pretty rigorous.

I mean, it's only 10 percent of the wages, not the tips the employee earns that can be a contribution. It has to provide family coverage. It's quite an expensive undertaking for an employer to provide insurance that complies with those requirements, Your Honor.

So, again, we're not resolving that issue right now. But the point is, we should resolve it, and to get equitable relief granted on that, to make them comply going forward clearly is within the scope of what the Constitution provides. There's questions as to the record-keeping process as well. There are allegations that they are not keeping records properly and so forth.

And potentially -- we are asking potentially the Special Master be appointed actually to monitor the defendants operations and continuing compliance with the requirements of the Constitution.

But we're not asking at this point that a Special Master be applied -- be appointed to actually enforce any decrees from this Court. We're simply asking the Court, allow us to gather evidence and presumably the Court, in equity, would have to, you know, hear and determine those claims at some point in the future.

And, again, this is discussed in the brief. There's questions of standing about the ability to request equitable relief. This is, again, addressed in the brief. It's not an Article III standing issue under the United States Constitution of Nevada.

I could go on, Your Honor. And there are additional nuances of the law here and legal issues that are raised. And I -- again, there's not much point of me just going on and on about it. If the Court has questions, I should assist the Court or maybe I should respond to what counsel has to say. Thank you.

THE COURT: Okay. No, I don't have any further questions at this point. Ms. Rodriguez?

MS. RODRIGUEZ: Your Honor, I'll try to start in the order in which Mr. Greenberg addressed some of the items. I can't go through and refute everything he said, but listening to it, I'm just dumbfounded, because of the majority of the representations to the Court, I feel like he was just making them up as he went along. They are unfounded. They're simply allegations.

He threw so much out there. He said no less than three times, he brought up that -- that DOL, and that there was this adverse finding, and I think Your Honor already took a look at that. And I'm sure we're going to have to brief that separately, because he continues to throw that out as a

basis for certification. And that couldn't be further from the truth about a finding, an adverse finding against A Cab.

A Cab has a clean history, a clean record, has never been reprimanded, has never received these penalties, has never been told otherwise. Everything that Mr. Greenberg continues to hammer and say this is -- this is it, this is it, go forward, grant certification because they're such bad guys. It's just, I am stunned that these representations are being made to the Court.

THE COURT: Well, let me toss in a question there, then, because in between -- somewhere in amongst all the various points that Mr. Greenberg brings up about the prior, whatever you want to call it, monitoring, examination, investigation, audit by --

MS. RODRIGUEZ: The Department of Labor.

THE COURT: Yeah.

MS. RODRIGUEZ: Um-hum.

THE COURT: Is the notion that as early as 2009, there was -- and I take it there was an order of sorts that --

MS. RODRIGUEZ: No.

THE COURT: -- they were to maintain records.

MS. RODRIGUEZ: No, sir. No, Your Honor. I mean, you have that exhibit, that same exhibit that he keeps reading. I don't know where he's reading because it just keeps saying, no violations found. Record-keeping, no

violations found.

THE COURT: All right. And no -- your position is that at no time has any of the -- any government agency, rather it be federal or state, have ordered your client to maintain records of the sort that they are seeking in this case?

MS. RODRIGUEZ: Well, Your Honor, and that's -- that was -- I'm glad you brought that up, because it's quite the opposite. Mr. Greenberg just keeps continuing to emphasize they've been told, they have to do this. It's been the opposite. The Department of Labor checked off on the records that were being kept. There's been no violation. They looked at the records. They -- A Cab has kept the trip sheets, has kept the pay stubs, the DOL signed off. The Discovery Commissioner looked --

THE COURT: When you say signed off, is there some record of them signing off?

MS. RODRIGUEZ: It's attached to --

THE COURT: Or just the --

MS. RODRIGUEZ: It's the same thing that Mr. Greenberg keeps pointing to, the 2009 DOL audit.

THE COURT: And it's just that there's --

MS. RODRIGUEZ: It says no violations found.

THE COURT: -- an absence of saying that you're supposed to keep records?

MS. RODRIGUEZ: Right. It just says no violations. I think it says it four times, no violations, no violations. I don't know how many other ways they can say it.

THE COURT: Okay.

MS. RODRIGUEZ: Number two, Discovery Commissioner tells them they're keeping -- that the records that we have and that we've produced are fine. Mr. Greenberg then says, well, they should have been keeping an electronic time clock, they should have been keeping electronic files. It's illegal in the taxicab industry.

There is a statute in the NRS's that says you have to use a manual time clock. You cannot have the electronic time clock that he's wanting. And we went through this extensively in the depositions. And it was explained to him over and over and over. But he hears what he wants to hear and he manipulates the information to say otherwise and it's absolutely not true.

The Taxicab Authority and the Nevada Transportation Authority, the NTA, both require that a manual time clock, which is reflected on the time sheets, is what is required to show the hours worked. A Cab has kept all of those records.

But I went back to the very first point because the Court's question was, what is a Special Master going to do?

THE COURT: Okay.

MS. RODRIGUEZ: First of all, I don't know why we're

talking about a Special Master because -- for two reasons. One, discovery is closed. It closed October 1st. Any remaining issues are before the Discovery Commissioner.

And I put this in my brief, that I didn't even like the fact that he was asking for a Special Master. I pointed out to the Court is that he's trying to get around the orders from the Discovery Commissioner because he -- she has said otherwise. She's already told him, they're not required to do this, this and this. He doesn't like it.

So now he's coming back and asking the Court for the appointment of a Special Master to do the discovery that he's refusing to do, and that it's too late to do. He said, oh, I can get an expert to come look at some of this stuff, perhaps I should. It's too late. The expert deadline was months ago. He did not do that.

It's too late to speculate about what could be done in this case. And that was my whole point, is we have to look at where are we at now. He simply has not worked up the case and he wants a Special Master to go back and look at everything that he should have been doing for the last 2 to 3 years which he's refused to do at the defendant's expense.

THE COURT: What -- which is what? Which is what?

MS. RODRIGUEZ: Which is look at the trip sheets, look at the pay stubs. And we've given them for -- already the two named plaintiffs. He's refused to even look at those.

In two years he hasn't looked at them, because if he had, we wouldn't have these motions for summary judgment saying there's no evidence, there's no proof that there's been any violation whatsoever.

He -- now he wants them for the rest of the class, but he doesn't want to look at them again. He wants a Special Master to go look at them, find me a plaintiff, find somebody with the violation so I can proceed against A Cab. Oh, and by the way, A Cab's paying for it.

This is an upside down case, Your Honor. That absolutely makes no sense. And for the Court to -- I think the Court denied the summary judgment motions at this point saying we need to resolve these discovery issues based on his representations that they had something to do with Michael Murray and Michael Reno, which I am represented to the Court they have absolutely nothing to do with those two plaintiffs.

But I understand Your Honor's concerns that we need to resolve that issue with the Discovery Commissioner and then I'm going to come back and I'm going to refile those things.

But for the same reason, it makes no sense that unless the Discovery Commissioner is going to rule to reopen discovery on all these issues or to extend discovery, that the Court should appoint a Special Master at this point. There is nothing for the Special Master to do as discovery is closed at this point.

Everything I heard come out of Mr. Greenberg's mouth had to do with, again, fraud, falsifying trip sheets, falsifying hours, we want to Special Master to go back and look at those things.

And I think it is very important to point this out, Your Honor, because we're back on this issue of unpaid hours, false trip sheets, fraud and those --

THE COURT: He claims -- he claims in his written work here that in the face of your -- you're protesting to that effect in your opposition that there's fraud claims here.

MS. RODRIGUEZ: He just said they were. He just told you over and over and over, the employer has been deceitful, has purposely deceived the drivers. Deception and fraud to me are ringing the same tune.

THE COURT: Okay. But there is a difference between a fraud claim cause of action --

MS. RODRIGUEZ: Correct.

THE COURT: -- and allegations of in the course of the, you know, evidentiary fraud, if you will --

MS. RODRIGUEZ: Right.

THE COURT: -- or some such thing, right?

MS. RODRIGUEZ: But again, his claim is not that the drivers were underpaid on a minimum-wage claim. His claim is that the employer has purposefully forced the drivers to falsify trip sheets, they're engaging in fraud.

He personally even amended his Complaint to allege those claims against Jay Nady, that he was fraudulently doing all of these things profiteer from it -- to profit from it.

And this goes exactly to the point of why fraud is not an appropriate claim under a class-action certification. By his own theories and by his own arguments --

THE COURT: Is there a fraud claim?

MS. RODRIGUEZ: -- he's just talked himself out of a class certification.

THE COURT: Is there a fraud claim in the Complaint as it stands?

MR. GREENBERG: Your Honor, there --

THE COURT: Wait, wait, I'll let you respond.

MR. GREENBERG: Oh, oh --

THE COURT: But let me --

MR. GREENBERG: I'm sorry.

MS. RODRIGUEZ: Everything in this Complaint --

THE COURT: I'm sorry, I meant --I meant to direct that to her.

MS. RODRIGUEZ: Is there a specific fraud claim?

THE COURT: Yeah.

MS. RODRIGUEZ: The word "fraud" goes throughout the pleading. It's not -- doesn't say --

THE COURT: Well, that's not my question. My question is --

MS. RODRIGUEZ: First, class --

THE COURT: My question is, is there a fraud claim in the Complaint? You know what I mean?

MS. RODRIGUEZ: I'd have to pull the Complaint out to see if there's a fraud --

THE COURT: Okay. Let me rephrase that; a fraud cause of action?

MS. RODRIGUEZ: There -- my understanding, there's three claims.

THE COURT: Okay.

MS. RODRIGUEZ: One is the minimum wage based on fraud, based on false trip sheets. Number two is the statutory claim that Your Honor was going to consider. That has -- I don't believe that has anything to do with fraud. But number three, the amended one, has to do against Jay Nady and his fraudulent practices. So two out of three are based on broad.

THE COURT: Is that -- is that a fraud claim against him then?

MS. RODRIGUEZ: I believe so. It said -- it said that he is purposely trying to bankrupt the company so that he can keep the money.

THE COURT: Okay. All right. Now, is there a fraud cause of action in your Complaint?

MR. GREENBERG: Your Honor, no.

THE COURT: All right.

MR. GREENBERG: The Court is familiar --

THE COURT: What is the one against Mr. Nagy? Naggy? Am I saying that right?

MS. RODRIGUEZ: Nady, N-a-d-y.

THE COURT: Nady.

MR. GREENBERG: The claims made against Mr. Nady personally concern his misuse of the corporate forum and his tortious acts independently by directing that the drivers not be paid the minimum wage, by failing to have the cooperation which he fully controls, comply with Your Honor's determination in January and February of 2013, that the minimum wage needed to be paid to the drivers. The defendants just ignored that. They kept not paying the drivers in compliance --

THE COURT: Okay. Well, I'm not asking what all the -- what the evidence is.

MR. GREENBERG: Well, that's the allegation, Your Honor.

THE COURT: All right.

MR. GREENBERG: Okay. Fraud, you're just -- as we all know, Your Honor, fraud is a common law concept that requires a misrepresentation, but it involves reliance. You induce someone to act.

THE COURT: But the cause of action, is -- is it one

to pierce the corporate veil or what is the objective?

MR. GREENBERG: In terms of Mr. Nady, yes. That -- that civil conspiracy, there may be a related -- as I said, a related tort claim.

THE COURT: All right.

MR. GREENBERG: But it is not -- it's not a fraud claim because, Your Honor, the taxi drivers here weren't induced to rely upon any representations. There's no claim in this case --

THE COURT: Okay.

MR. GREENBERG: -- that there was reliance. That is an essential element to fraud.

THE COURT: Okay.

MR. GREENBERG: So it's just not in the picture here in any capacity in respect to any claim.

THE COURT: All right. Thank you.

MR. GREENBERG: I -- the Court maybe wants to continue with defendants' counsel?

THE COURT: I do, yes.

MR. GREENBERG: Yes.

MS. RODRIGUEZ: The cause of action under -- against Mr. Nady says that Nady and the corporate defendants or separate legal parties. They would promote a fraud and an injustice, at least to the extent that Nady has personally enriched himself from the violation of the Nevada

Constitution.

THE COURT: What's the prayer for that cause of action?

MS. RODRIGUEZ: I think it's unjust --

THE COURT: Is it fraud damages or --

MS. RODRIGUEZ: -- unjust enrichment.

THE COURT: Okay. Unjust enrichment and perhaps piercing the corporate veil; is that what it's --

MS. RODRIGUEZ: Correct. Correct.

THE COURT: Okay. All right.

MS. RODRIGUEZ: Punitive damages.

THE COURT: Okay. Okay, go ahead then. I -- I had interrupted you with that question.

MS. RODRIGUEZ: "The defendants' malicious, oppressive and fraudulent conduct is demonstrated by his failure to make any the allowances to pay a minimum hourly wage. Defendants engaged in the acts and omissions or fraudulently conduct." He says it repeatedly. It's -- the whole Complaint is based on fraud.

THE COURT: Okay.

MS. RODRIGUEZ: Not appropriate for class certification. I cited the case law in there, that's the Travelers case, the Johnson v. Travelers case. Fraud is not an appropriate cause of action for certification.

THE COURT: Is this a fraud cause of action?

MS. RODRIGUEZ: I think we're doing a play on words, Your Honor.

THE COURT: Maybe so because --

MS. RODRIGUEZ: If you allege a cause of action, but throughout the pleading --

THE COURT: You throw in a lot of --

MS. RODRIGUEZ: -- you say fraud, fraud, fraud, fraud, fraud.

THE COURT: Yeah.

MS. RODRIGUEZ: And then the only basis to support your claim is a declaration, one declaration that says fraud and falsification --

THE COURT: Yeah.

MS. RODRIGUEZ: -- I was forced to falsify my trip sheets and that's why I'm bringing this claim against A Cab, I think there's no question that we're talking about fraud. That's the cause of his --

THE COURT: Okay.

MS. RODRIGUEZ: And that's what his basis --

THE COURT: I guess what I was trying to get at, was is there a claim whereby one alleges fraud and therefore punitive damages.

MS. RODRIGUEZ: Right, correct. Yes, yes, he is seeking that, absolutely. I mean, if -- if he's --

THE COURT: Okay.

MS. RODRIGUEZ: -- if he's going to concede on punitive damages, I would -- I'd love to hear that because that's probably our next motion is -- is the punitive damages. I mean, he's seeking punitive damages and seeking class certification, both based on fraud.

THE COURT: Okay.

MS. RODRIGUEZ: You know, and Your Honor, I think one thing that we just completely skipped over and I touched upon in early on this morning, is the plaintiffs' counsel and the plaintiffs themselves and their qualifications to proceed to represent the class in this matter. I mean, Mr. Greenberg just stood up and gave you all these reasons about fulfilling his duty to the class, and he understood his obligations to the class.

I think we have clear evidence here, Your Honor, and I'm really stunned that he has not been more reprimanded about this issue, because when I learned in the depositions that a settlement offer had not even been conveyed to these plaintiffs, and that they were shocked that such an offer was even on the table, I have never -- in my 17 years of practice, I have never run into that where a counsel has not conveyed the offer. And I -- it violates the very basics of our Professional Rules of Conduct and Ethics and that in and of --

THE COURT: Well, I think you have just struck at the reason why you haven't heard me say more about it. There

are other avenues available to people if they wish to avail themselves of it.

My understanding -- and I don't -- I may not be accurate in this. That's why I asked earlier how accurate this was, was that at least one at these plaintiffs in the deposition said, no, I didn't know about it, but at a later point said something to the effect where they -- they were not interested in taking any Offer in Judgment.

MS. RODRIGUEZ: Well, number one was Reno. He never said what Your Honor just indicated.

THE COURT: Okay. All right.

MS. RODRIGUEZ: Number two, got a heads up about my question because he was on day two or three later.

THE COURT: Okay.

MS. RODRIGUEZ: So he knew the question was coming. There's no doubt in my mind that he knew the question was coming about whether he had received notification of the Offer of Judgment.

THE COURT: Okay.

MS. RODRIGUEZ: My Offer of Judgment was served in March. He said under oath that he learned of it two months later. As Your Honor knows, they're only good for 10 days. So he's -- and I pressed him. I said, so you learned of this two months later? And that's when he started pleading the Fifth Amendment.

He refused to answer further. Ms. Sniegocki continued to tell him, I'm instructing you not to answer anything as pertains to discussions between yourself, Mr. Greenberg and myself. And so then he proceeded from thereon to plead the Fifth so that he would not perjure himself in his deposition.

So, I think if Your Honor looks at that deposition transcript, it's very clear that neither plaintiff knew about the offer on the table. And, you know, for the second guy to start saying, I don't want to perjure myself, I'm going to plead the Fifth, and then thereafter he refused to answer questions is -- you know, the other prong of this, of my statement, that these plaintiffs are -- do not reach the minimum threshold to represent the class based on their character, based on their background, everything I produced to the Court.

The Court needs to look at that. If they cannot -- on both ends. If Mr. Greenberg is not even representing the interests of these two -- the best interest of these two plaintiffs, how can he be trusted to represent the best interest of the class?

This is why I pointed out to the Court that this is attorney-driven litigation, not for the protection of the plaintiffs, as he continues to want to emphasize to the Court, because I think he understands the Court's concern that the

Court's only concern is upholding the Constitution, administering justice.

And I know that Your Honor is concerned about the taxicab drivers, that they are -- have been deprived in any fashion. But your -- the trust is being misplaced. This employer does everything, bends over backwards to take care of its drivers.

And I'm sorry that Mr. Nady is not here personally to continue to emphasize that to you because, you know, this is a family-owned, he's -- it's a one-owner person. He has shed blood, sweat and tears to build this company. It's a smaller company. They don't have the electronic capacity of the larger companies that Mr. Greenberg is going against, the Yellow Cabs and the Whittlesea Blue and this is a small company.

THE COURT: I read your description of the --

MS. RODRIGUEZ: Right, right. And it's important.

THE COURT: -- of the business and the fact that it operates for the most part in a restricted part of the --

MS. RODRIGUEZ: Correct.

THE COURT: -- of the Valley here.

MS. RODRIGUEZ: Their restrictions were lifted, I think, 10 days ago.

THE COURT: Well, let me -- let me -- so that we're -- I don't know if I'll actually make anything clearer.

Sometimes when you try to clarify things, you actually wind up doing the opposite.

But you seem to be -- you're shocked, I believe, was the way you put it, that I -- that I wasn't more shocked or didn't jump on something about the allegations that plaintiffs' counsel didn't convey an offer to his client. And what I want to make clear is there are all kinds of facts that oftentimes pertain to issues that sometimes rear their ugly heads in litigation, but that aren't really part of the litigation.

There's no cause of action here that relates to plaintiffs' counsel's representation of his client in the sense of conveying offers. There are other forums for that.

Years of seeing all sorts of thorny issues crop up in litigation convinces me that unless this is the proper forum for an issue, a thorny issue, the -- only that which really needs to be said, should be said, because of the fact that there may well be a lot of other facts that revolve around it, that cannot be properly brought up in the context of this litigation.

And when it deals with the reputation of an attorney, and the way they deal with their counsel, I have learned through sometimes thorny experience that one must tread cautiously and be aware of the fact that there are facts that may not ever come to light in the context of this

litigation. They may well be in another forum, I don't know.

MS. RODRIGUEZ: I appreciate and understand what you're saying, Your Honor. And that sheds light on me -- for me, because, I guess I was troubled by the fact that you heard that and to me, I didn't even see you flinch.

THE COURT: Sure. I read it.

MS. RODRIGUEZ: And to me it was shocking to -- to see it.

THE COURT: I read it before I heard it.

MS. RODRIGUEZ: And -- and --

THE COURT: So any flinching that went on went on in chambers.

MS. RODRIGUEZ: But I hear what you're saying, that it is -- perhaps it's not the appropriate forum. But I will -- I will -- I understand what you're saying, and I will address that as -- but I think it does go to the issue of this certification, because there is -- and I supplied the case law that says that the Court has to be assured that both the counsel and the plaintiffs are the proper one to represent this class. And I think it's important.

And the reason to me it's shocking is because, you know, it's a basic, ethical rules for proceeding. I represent a lot of plaintiffs in my -- in my practice. And I know no matter how pathetic the offers are, I get $5 offers all the time and I have to call them up and tell them, you know, I'm

obligated to pass this offer on to you.

And when I learned in these depositions that -- these weren't $5 offers; these were legitimate, outstanding offers to try to resolve this thing. And this wasn't the first time that this -- because we tried other avenues with Mr. Greenberg early on. We've had several meetings where we're trying to sit down and work these things out.

But we are meeting a wall over and over and over because this plaintiffs' counsel wants to -- clearly wants to take this thing to get it certified, wants to get -- I don't -- you know, what becomes evident is that he -- from the evidence, it does not appear that the concern is for the plaintiffs themselves, but rather to -- for the fees and the costs, to acquire that. And I think that's why I attached some of the case law that shows that that's not the proper way to handle a class certification.

We -- we are all here to make sure that as the taxi drivers, that if there has been a violation, they need to be compensated. And that was Mr. Nady's intention in making them a very large offer, say, if you can't tell me what you're owed, we have a DOL saying you're owed $100 and, here, I'm going to offer you $5,000, you know, because he wants his cab drivers, even former cab drivers to be happy.

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But he was convinced that these guys were just never

told because he said, I can't believe that they wouldn't accept that. That's more than they've made in six months. You know, I want to pay them six months worth. And its because they simply were not told. And I think the Court needs to consider that before ever addressing a certification.

And I just -- I know the Court is anxious to certify this because of the --

THE COURT: Well, let me give you another practical, pragmatic reason why I would be loathe to go down that road. Because I know, as I'm sure you know from seeing Mr. Greenberg's involvement in other class-action cases, I know that he's involved in a lot of class-actions.

I daresay that's probably exclusively what he does, at least as far as I know. I have seen him at work in a lot of other cases and I have confidence in him, as I do you now, that you know what you're doing when it comes to this type of litigation.

If I go down that road, if I get detoured from the issues that are so important in this case, to go down this other road, we're going to turn this into not only a whole new lawsuit, a separate lawsuit, but World War III, because I would imagine that when it came right down to it, he would do the appropriate thing; hire counsel, new causes of action would eventuate that would certainly involve several people. And the next thing you know, we would never get this matter

resolved.

So I'm going to try to keep my nose on the issues that are properly within the context of this litigation. That is not the say that I always cast a blind eye, or a blind ear -- that's not right -- a deaf ear to things that are brought up that make me question. But it just means that I'm more likely to make note of it, but as long -- unless I see something that causes me to think that I must take action here, I'm liable to try and keep my nose to the grindstone and get this case litigated and let you all deal with the next case to be litigated.

MS. RODRIGUEZ: And we certainly will in a different forum, Your Honor. But unfortunately, or fortunately, however you want to look at it, it is an element for class certification.

THE COURT: Okay.

MS. RODRIGUEZ: The Court has to consider plaintiffs' counsel --

THE COURT: Indeed.

MS. RODRIGUEZ: -- as well as plaintiffs in this matter. And I know that Your Honor has -- is going to take the prospective issue, prospective application issue under advisement further. But if Your Honor rules in our favor on that one, both of these plaintiffs are gone.

As I mentioned, the Discovery Commissioner's

hearings are in the next week, if not two weeks I believe they're next week. If she refuses to extend discovery, or limits it for the one issue, I believe, that he has in front of her, it's not going to affect the -- any additional evidence for Murray or Reno, and I will be refiling the Motions for Summary Judgment and to Dismiss.

And I think the Court has, you know, is trying to be cautious in allow -- in denying those without prejudice by just letting these Discovery Commissioner issues play out. But at this point, we don't have two solid plaintiffs. They are very questionable. They're questionable with character, they're questionable with their claims, they're questionable as to whether they will survive at all with the dismissal on a prospective application issue.

So, you know, all during this course of this litigation, Mr. Greenberg has wanted you to certify so that he can find a plaintiff. And he's amended his Complaint several times, as Your Honor knows, to even personally assert things against Jay Nady.

He's never brought in another plaintiff. He keeps dangling this Michael Sargeant or this Brauchle out there. He's had ample opportunity to name them, even as a witness. He's never done so. And again, I don't know how many times -- I know the Courts probably tired of me saying this, but discovery closed October 1. We have nothing to show that

Brauchle or Sargeant is any better of a plaintiff. And, in fact, it's kind of suspicious as to why he would never name them as a plaintiff or even as a witness.

But with what is before the Court today, there is not sufficient elements. He's not even touched the elements for class certification. And, you know, I just -- that's the plaintiffs' doing in this, that we -- that I know the Court is concerned, well, this may not go to trial in five years, but this is plaintiff who has created this situation by not adequately preparing his case.

And if there was any other plaintiff -- I mean, I've been before you, Your Honor, as a plaintiff's counsel on this and I know you kick them out.

So I'm just -- I'm befuddled that these two plaintiffs that have nothing to support their case, that we're even considering a class certification because class certification is secondary.

First, Your Honor needs to see if these are legitimate claims before them. And then if joinder is impracticable -- and we haven't even gotten to any of those elements because we're down here.

And I think Mr. Greenberg is just wanting you to skip ahead and he's talking to you about health issues and dollar per hour and this and that, but he didn't do any discovery on any of that, and there's nothing to support that

there's been any violation ever.

And he's asking, you know, the contrary of what we see all the time. He's asking the defense to put forward all these things to prove that his -- to disprove his case. But it's his burden to prove it, and it simply not there, Your Honor.

So I don't think class certification is appropriate at this time.

THE COURT: All right. Okay. I need to take five minutes --

MR. GREENBERG: Yes, Your Honor.

THE COURT: -- before we hear from Mr. Greenberg.

(Court's recessed at 2:34 p.m. until 2:41 p.m.)

THE COURT: All right, Mr. Greenberg.

MR. GREENBERG: Yes, Your Honor.

Is there anything in particular that the Court would like me to respond to or that was raised?

THE COURT: No, I don't think so.

MR. GREENBERG: Then I would like to respond, Your Honor, to this issue of the history here with the Department of Labor, and the report that was actually conducted. And if you go to Exhibit B, and I'm reading verbatim from this.

THE COURT: I'm sorry, which exhibit?

MR. GREENBERG: This is Exhibit B, Your Honor.

THE COURT: B as in boy?

MR. GREENBERG: B as in boy of the moving papers. This is the 2009 U.S. DOL report that defense counsel was also referring to. If you look on page 2, it says, "Section 6, there were no minimum wage violations found." Okay. And skipping one more sentence, it says, "While there is no record of actual hours worked, the drivers have scheduled hours and complete trip sheets." So they find there is no record of actual hours worked.

THE COURT: Okay.

MR. GREENBERG: If we go down to the bottom where it says "Disposition" after the redacted portion, it says, "We discussed the findings of the investigation. The firm was advised that they must keep a record of actual hours worked and that the drivers, while exempt from overtime, must be paid at least the applicable minimum wage for all hours worked." They're advised that Nevada minimum wage is currently 6.85. And in the last phrase it says, "This investigation is being concluded with the firm's assurance of future compliance."

Your Honor, I don't see how one can interpret that as anything other than a promise by the defendants that they were going to follow the admonition right there in that disposition paragraph, that they were going to keep records of the actual hours worked by the taxi drivers. The DOL said, you need to do this. They said, you have our assurance we're going to comply and that's how it was disposed of in 2009.

The reality is, they never did it. I know we have trip sheets, Your Honor. But as I pointed out to the Court before, those trip sheets don't even include a statement as to the hours the driver worked during that particular shift.

They only include information from which it could be gathered, but those aren't -- those aren't statements of the actual hours they worked on a shift. It's only information from which one could ascertain it which -- they testified they did, and that testimony is not actually before the Court.

That deposition was taken in August. I could present it if the Court wanted. I don't know that the Court should need to consider that actually. But this is just addressing this issue that we started at regarding the Special Master and the question of the history here.

Now, there was a statement from defense counsel that the trip sheets have to be manually stamped and they're not allowed to keep an electronic record of the time that these drivers worked. Your Honor, there is no prohibition against them keeping a payroll record of the hours that any employee works or that these drivers work. Again, 608.115 specifically requires that they keep these records as to the number of hours worked per pay period and maintain them. They didn't.

Counsel is referring to this operational requirement regarding the Taxi Commission that on those trip sheets themselves, they want to see a manual stamped timestamp from a

time clock, because they have to keep those trip sheets to see what passengers they transported, various other things.

That's an independent regulatory requirement. It's got nothing to do, Your Honor, with their obligation as an employer to maintain records of the hours their employees work, Your Honor. So it -- it's not even apples to oranges. It's just -- it's just a completely different issue and regulatory requirement.

Your Honor, you've heard a lot from defense counsel about representations regarding what the Discovery Commissioner has decided in this case. Your Honor, I don't want to get into refuting that. We do have some decisions from the Discovery Commissioner. I will say that we do have a hearing with her again on the 18th of this month.

She has specifically granted me leave to supplement my submissions to her based on this deposition of Mr. Nady that was conducted in August, based upon a deposition of this computer data consultant that was conduct before then because we've been in this electronic records production dispute since March of this year, Your Honor. She will rule on these issues. A request for extension of the discovery period was made because defendants wouldn't agree to that.

All of these issues with the discovery, again, have been held largely in abeyance and continued in front of the Discovery Commissioner because we filed this motion in May,

and it was fully briefed in June. And we're waiting for resolution of the class certification issue as a matter of economy before trying to get the Discovery Commissioner's rulings on this.

So we're not trying to delay things, we're not trying to avoid things here, Your Honor. We are being diligent and trying to press forward as best as we can.

And that brings me to another issue, which I really should have emphasized in my first statements to Your Honor. This motion is not about the merits. We all understand that class certification is not a determination of the merits. It's a determination as to whether there is a sufficient quantum of information of evidence that can lead the Court to believe that at least there is the good basis to find that the Rule 23 elements of numerosity, commonality, technicality of claims, adequacy of representation and so forth are met. So this is not about us proving our case at this point.

And, again, back to this U.S. Department of Labor consent judgment. Whether that, in fact, is a binding finding on the defendants, that they, in fact, owed this $139,000 to the 435 people specified, is not the foundation of the Motion for Certification. The fact of the matter is that they reached an agreement with the Department of Labor.

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Let's just -- let's just assume it's not, in fact, a

binding judgment. It clearly is, Your Honor. Let's just say it's not. It's no different than what was presented to Judge Israel in Yellow Cab, where they came in and they did a cooperative audit. And rather than having to take it to a consent judgment, they simply reached an understanding that based upon this review of the records, this was what was owed under the Fair Labor Standards Act.

The fact that there is a history there of a review and a determination provides enough quantum of evidence for this Court to say, hey, there's enough of -- there's enough people here that have an interest in this, there's enough bases to find that there are common claims at issue for the reasons I've repeated numerous times.

The fact that the federal law is much more lenient here, and that even if they've complied hundred percent with the federal law by honoring that consent judgment, they still very probably could owe additional money for that same time period to the same drivers under state law, and we need to have an opportunity to determine that.

So it's really just a predicate fact, Your Honor. It's not a merits determination. We are not here to determine the merits of anything.

Now, actually, if we want to look at a merits issue and tie that to the class certification, this is presented front and center to Your Honor by the final supplement I filed

with the Court on October 13th, where I address -- and I addressed this briefly when we were here for argument before -- the fact that the Court has to certify -- I mean, I say, have to, Your Honor, and I know that's not my job, it's your job to decide what you have to do.

But given the record that's before the Court which is not refuted, there is no basis to deny certification of the claims going from October 2012 forward. We have introduced evidence to Your Honor in the record that shows that Mr. Sargeant -- and these are documents that are at Exhibit G of the moving papers, originally. These are documents and they're discussed at pages 11 to 12 in the moving papers. These are -- these are statements --

THE COURT: Hang -- hang on one second.

MR. GREENBERG: Yes.

THE COURT: You said your supplement.

MR. GREENBERG: My supplement. And this is discussed, again, in the supplement at page three. You may just want to look at page three. Actually, they're reproduced -- the documents are reproduced again in the supplement that was filed on October 18th -- October 13th. And it only addresses the partial class certification that I'm talking about for the period after October of 2012.

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Defendants started producing these payroll records

which showed how much they were paying the driver in compensation per pay period, and also the hours they worked. And as I -- and next to the supplement, we have the testimony from Mr. Nady confirming the correctness --

THE COURT: No, I'm sorry.

MR. GREENBERG: Yes.

THE COURT: I have to -- I have to ask you. This is -- you're talking about your second supplement?

MR. GREENBERG: It -- I -- it would be the second supplement. It's -- it was --

THE COURT: Plaintiff's Response to Defendants' Supplement.

MR. GREENBERG: No, Your Honor. It's Plaintiffs' -- it's Plaintiffs' Supplement to Plaintiffs' Motion to Certify this case as class action. It was filed on October 13th. That is the electronic filing stamp date that appears on it. It was the final.

(Pause in the proceedings)

MR. GREENBERG: Well, if it would assist, I can give Your Honor my copy.

THE COURT: Yeah, would you? I don't think we have it.

MR. GREENBERG: Well, it should have been -- a chamber's copy should have been sent to Your Honor and I'm sorry if -- if Your Honor doesn't have this. I will draw the

Court's attention.

THE COURT: Do you have this, Ms. Rodriguez?

MR. GREENBERG: It was served through the -- the WizNet system, Your Honor, and it does bear an October 13th --

THE COURT: File-stamped October 13th.

MS. RODRIGUEZ: I'm -- I'm looking, but I recall it, because I think I objected that that document that he's referring to was another document that was never produced in discovery. And plus, it's based on what he put in his brief. It wasn't matching up with the exhibits. So it actually wasn't making any sense, his representation in the supplement.

THE COURT: Which -- which exhibit are we speaking of?

MS. RODRIGUEZ: We're talking about Exhibit B to his October 13th submission.

THE COURT: Is that -- is that the correct exhibit, Mr. Greenberg?

MR. GREENBERG: What I just handed you, on page five, was referring to exhibit -- exhibit -- well, I believe it's at Exhibit B there. This was originally at Exhibit G of the class certification moving papers, as well, Your Honor. These are pay stubs from Mr. Sargeant.

THE COURT: All right.

MR. GREENBERG: And if you look at these pay stubs, they have a column that says minimum wage subsidy and a

quantity. For example, it says 87.48 on the one I'm looking at. There are like three or five of these particular pay stubs.

THE COURT: Uh-huh.

MR. GREENBERG: The deposition testimony of Mr. Nady which is in the supplement from October which I gave you, Your Honor, and actually I believe it's also referenced in the supplement from September that I submitted on September 18th, confirms that that minimum wage subsidy quantity number is the number of hours that defendants recoded on these pay stubs Mr. Sargeant was working in that pay period.

So we now have, for these pay stubs, a period of time where defendants acknowledge exactly how many hours the taxi driver was working and what they paid him. These are defendant's own records. And as it says here, they actually paid him a subsidy of a 1.43 for that 87.48 hours because his commission wasn't sufficient to meet the minimum-wage. And this is discussed in the supplement.

The problem, Your Honor, is that until June of 2014 when the Thomas decision was issued, that supplement calculation still included the tips, so that they were not actually supplementing enough to meet the Nevada standard. They were supplementing enough to meet the federal standard because they were saying, okay, how much do we have to increase Mr. Sargeant's pay to make it 7.25 with the tips.

And that's the federal standard of compliance. They're not subsidizing -- they're not subsidizing enough here to meet and 8.25 standard, because Mr. Sargeant didn't get health insurance, and they're including the tips in the calculation. And that is discussed, again, in the supplement I just gave you, Your Honor. I give a detailed analysis.

My point, Your Honor, is that you have irrefutable proof from defendant's own records, from their testimony from Mr. Nady about what the entries in those records mean, that they were not in compliance during this period of time.

So, again, clearly the class should be certified, if only for the period of time that exist for those records. In fact, this would be a summary judgment class, Your Honor.

But again, as I said, we're not here on the merits. It would make a lot more sense to certify the class to the full extent that has been requested by the plaintiff, and then we would deal with this issue of an equitable toll of the statute of limitations and so forth after we do the certification.

But my point, Your Honor, is that even if the Court for some reason believes the factual record is not sufficient to grant the full scope of the class certification that I initially requested back in May, in full, there clearly -- and none of this evidence, Your Honor, that I'm pointing out about Mr. Sargeant's payroll records has been refuted by the

defendants.

They've confirmed the conclusions that I've just drawn to the Court's attention from these records. And it was confirmed by Mr. Nady in his testimony what those entries meant on those records in terms of the time that he was working.

So, Your Honor, just to move along here --

MS. RODRIGUEZ: Your Honor, may I respond to that? Because that's -- that's incorrect. And for him to say that is, again --

THE COURT: You may -- you may, but it's his motion, so he'll get the last word.

MS. RODRIGUEZ: And he's relying -- I did want to point out to the Court, though, this Exhibit B that -- again, this is another time that what he's asking you to look at, the first page of Exhibit B, you will see it does not have a Bates stamp number, because it has never been produced in discovery. Discovery is closed. Here's a -- here's a supplement, October 13th, where he's producing this alleged pay stub from Mr. Sargeant for the first time. The Court shouldn't even be looking at that.

THE COURT: What about that?

MR. GREENBERG: Your Honor, those pay stubs were produced in May with the initial moving papers at Exhibit G.

THE COURT: Okay.

MR. GREENBERG: Not in October, they were produced in May. They were produced in discovery. The fact that that copy doesn't have --

MS. RODRIGUEZ: No, that --

MR. GREENBERG: -- a Bates stamp on it, this is Exhibit G, Your Honor, the moving papers --

MS. RODRIGUEZ: I objected at that point. I said --

THE COURT: Wait, wait.

MS. RODRIGUEZ: I said -- I said they haven't done it.

THE COURT: Hold on, hold on. What were you -- you're saying it was produced in May.

MR. GREENBERG: It was produced in May when I made the motion to certify the class, Your Honor. It's at -- those same pay stubs are at Exhibit G of the moving papers.

THE COURT: Okay. Now what were you saying about the fact there is no Bates stamp?

MR. GREENBERG: The fact that there's no Bates stamp doesn't affect it's admissibility, Your Honor. They were provided with this. They were provided with these through discovery as soon as I got them are very shortly thereafter. I filed this motion within a week or two weeks after I was contacted by Mr. Sargeant and these came into my possession.

THE COURT: So this was an originally -- was originally attached to the motion itself; is that correct?

MR. GREENBERG: That's correct. From May of -- it's at Exhibit G of the motion filed 5/19. I mean, you can take a look at your copy. You do have a copy of that, Your Honor.

THE COURT: All right.

MS. RODRIGUEZ: That's not producing them in discovery, Your Honor. And I objected --

THE COURT: I'm sorry?

MS. RODRIGUEZ: That is not producing them in discovery. And I objected at that point, because that's the first time it surfaced and I said, where are these documents coming from? They've never been produced in discovery. And he did it again. He's just -- attaches them to motions without producing. They've never been produced.

THE COURT: What about that?

MR. GREENBERG: Your Honor --

MS. RODRIGUEZ: And, Your Honor --

MR. GREENBERG: -- they were produced --

THE COURT: Wait, wait, let me --

MR. GREENBERG: Your Honor, they were produced in May at Exhibit G --

THE COURT: All right. So you're --

MR. GREENBERG: -- along with Exhibit F.

THE COURT: And discovery had not closed in May?

MR. GREENBERG: Discovery hadn't closed, Your Honor, and it was produced with Mr. Sargeant's declaration at Exhibit

F who's supporting the class certification.

THE COURT: Well, when you say produced, you mean attached to your motion?

MR. GREENBERG: They were attached to the motion at that time.

THE COURT: Okay. Were they produce pursuant to 16.1?

MR. GREENBERG: They -- they were produced, Your Honor, through discovery as well in a subsequent supplemental production. Was it done on May 18th when this motion was served? I don't know, Your Honor.

But, I mean, for -- and these are defendants' own records. Mr. Nady was examined at his deposition in August on these documents. Defendants don't dispute that they generated these documents. In fact, Mr. Nady's testimony confirms that these are of the form that A Cab produces.

So, I mean, for them to attack the authenticity of these materials is really frivolous, Your Honor.

THE COURT: All right. Hang on now. Ms. Rodriguez, you wanted --

MS. RODRIGUEZ: No, he's never produced them, no. If he's produced them, I'd love for him to produce them to the Court, because he's never produced them. I objected back then. He doesn't feel like he has to comply with any NRCP rules for some reason. And he's asking Your Honor to look at

his calculations based on page 3 and 4 of this last supplement.

And that's why I responded to it because he's talking about this May 14th pay stub shows a violation. And you can look at everything he's attached, he's still referencing documents that have never been produced. So if Your Honor's going to take the time --

THE COURT: You're talking about the same thing?

MS. RODRIGUEZ: Yes. If Your Honor's going to take the time to look at that, look at his allegations versus what he's attached and nothing even matches up. He just throws it out there and expects that nobody's going to check it.

THE COURT: Well, this shouldn't be all that hard to figure out, folks.

MR. GREENBERG: It's straight math, Your Honor.

THE COURT: Have you got something that shows that this was -- I mean, typically, when something is produced, it's given a Bates stamp number.

MR. GREENBERG: Your Honor, yes. And, Your Honor, this -- I am completely mystified as to defendants' position here that this is somehow not before the Court for consideration. Mr. Sargeant comes to me shortly before May 18th, and he is a member of the class. He contacts me independently, he furnishes a declaration in support of the certification motion, he agrees to be a representative, he

produces to me documents he has that demonstrate his work as a class member for the employer. This is all included in the Motion to Certify.

How is it that that is not properly before the Court? Because -- because allegedly defendants say, well, it wasn't produced in a 16.1 disclosure. You have -- you have it right here, Your Honor. Mr. Nady was examined under oath.

THE COURT: Part of the reason why counsel typically, in my experience, try to utilize documents that have been given pursuant to 16.1, is that that's usually when it does get a Bates stamp, and thereafter it's very easy to establish that it was given during --

MR. GREENBERG: Well, Your Honor, in this case it's very easy because it was filed with the Court on May 18th. It's public record that these were served through the Wiznet system and defendants got them on that date. They can't claim any prejudice.

THE COURT: Well, Ms. Rodriguez, if this is a document that was regularly kept in the course of business by your client, at least I would not expect there to be a terrible surprise here.

MS. RODRIGUEZ: I don't know that it is, Your Honor. And Mr. Sargeant's never even been named as a witness. So I don't know how he can come in and authenticate this at all. I mean, he's -- like I said, he's been dangling these

plaintiffs, but he's never even named them as a witness. So why should I have to depose them or conduct discovery on Sargeant and Brauchle if he's just had them as a threat.

THE COURT: But you don't believe -- you don't believe that this was a pay stub issued by your client; is that it?

MS. RODRIGUEZ: I have not pulled that pay stub. I haven't gone back because it's never been produced in discovery, so I didn't think it was part of this case.

THE COURT: Did you get it attached to your -- the May --

MS. RODRIGUEZ: The May motion? Yes, because I objected that the Court should not consider it. And I gave them opportunity to produce it and again, they didn't produce it. All this time they haven't produced it.

THE COURT: Well, let's -- you know, there's been a lot of allegations flying back and forth. Why don't you subsequent to today please submit to the Court your -- whatever discovery document you have that shows that this was transmitted to Ms. Rodriguez. Would you do that?

MR. GREENBERG: Your Honor, it is my belief a supplemental Rule 16 Response was sent. I would point out, Your Honor, in her Response --

THE COURT: Will you do that?

MR. GREENBERG: I will certainly -- do you want me

to bring something to Your Honor, to chambers documenting that? I have to go back to my office, but I believe on my computer --

THE COURT: Well, sure, but --

MR. GREENBERG: -- I will have a copy showing in June or May that this was sent.

THE COURT: Just -- just do this. Submit it to Ms. Rodriquez and to me, if you would. I don't care if you just do it in a letter.

MR. GREENBERG: Okay.

MS. RODRIGUEZ: But, Your Honor, as well, I appreciate that, and thank you. But my second point on this was that everything that he's writing in the actual body of the pleading references something which has never been produced and is not attached to any motion. He's talking about a

May --

THE COURT: Which is what?

MS. RODRIGUEZ: -- a May 14th, 2014 pay stub.

THE COURT: What -- what page are you on?

MS. RODRIGUEZ: Page 3.

THE COURT: Okay. A discussion -- plaintiff's moving papers at pages 11 to 12. That discussion is repeated below. So he's repeating something from his motion at page 11 to 12. Sargeant's 5/14, et cetera, et cetera, et cetera. So

that was in the May motion.

MS. RODRIGUEZ: Right.

THE COURT: And so your point is that?

MS. RODRIGUEZ: There has never been -- that pay stub that he's talking about where he's trying to show the Court that this demonstrates -- irrefutably establishes a violation, we've never seen that pay stub. I don't know what he's talking about.

THE COURT: That's -- that's the -- that's the May 14th of 2014, to June 6th of 2014 pay stub, right?

MS. RODRIGUEZ: Correct, Your Honor.

THE COURT: Okay.

MR. GREENBERG: Your Honor, it's a typo; it's May 24th to June 6th. It's a 14-day pay period.

THE COURT: Okay.

MR. GREENBERG: It's not May 14th to June 6th.

THE COURT: May 24th to June 6th. But is that --

MR. GREENBERG: Yes, Your Honor. That's at Exhibit G of the moving papers. It is the very first page of Exhibit G of the May 18th filed papers. You will see it there, Your Honor. And I apologize for the typo. Counsel is correct, it refers to a May 14th date. It should be a May 24th date.

THE COURT: All right. So that's Exhibit G. Is that different than -- I mean, that's the same one that --

MS. RODRIGUEZ: Right.

MR. GREENBERG: It's the same one as in the October supplement I handed up to Your Honor personally a little while ago.

THE COURT: All right.

MR. GREENBERG: It's the same discussion --

THE COURT: Does that --

MR. GREENBERG: -- the same math, the same documents the math is based on, Your Honor.

THE COURT: All right.

MS. RODRIGUEZ: Well, Your Honor, when I looked at it, to me, I could not match those up. I didn't assume that was a typo because the numbers were not adding up.

THE COURT: Okay.

MS. RODRIGUEZ: So that's why I'm questioning whether a 5/14 pay stub even existed.

THE COURT: Okay. The typo is continued in the next paragraph, Sargeant's 6/21/14 pay stub, unlike the 5/14. All right. So now we at least know what we're talking about.

MR. GREENBERG: Yes, Your Honor. On this issue, Your Honor, I would just point out that in their Response to the class certification motion filed in June, they do not raise any objection to the admission of Exhibit G or the arithmetical presentation that was made at page 11 of the Motion to Certify.

THE COURT: Okay.

MR. GREENBERG: Okay, Your Honor. But Your Honor can -- Your Honor's quite capable of multiplying and dividing and subtracting, as we all are. So those numbers speak for themselves, Your Honor.

There are -- there are some sort of peripheral allegations here made regarding the adequacy of the -- of the claim representatives, Mr. Murray and Reno, to represent the class for certification purposes.

Your Honor, I mean, there's a 20-year old conviction of I believe it's Mr. Murray. I think that's a little bit beyond the pale in terms of admissibility for any purpose of at this point.

And I -- and, you know, when defense counsel has a chance to perhaps speak a little more, if Your Honor's going to entertain that, they may raise issues as to their deposition testimony not evidencing an understanding of the claims and so forth and so on.

But, Your Honor, that's not their responsibility as a class representative to show that they are familiar intricately with the nature of the legal claims in this case. And, I mean, this is addressed in the September 18th Response. I mean, their duty is to show that they're willing to cooperate and to help prosecute the case. They did give depositions. I know that there's allegations that they refused to answer certain questions. I don't know what the

germaneness of that is. Defense counsel hasn't explained why that refusal is germane or impairs their ability to represent the class.

At page five of the September 18th Response, I mean, there's a huge body of case law in this. You can't disqualify a class representative just because they're not able to actually articulate what the legal theory is that is being brought on their behalf in court.

Their job is simply to testify as best as they can regarding the facts of the case and to cooperate with the process, which is what they're doing here, Your Honor. Otherwise, you know, defendants would, you know, always manage to disqualify people as representatives supposedly to protect the class, but really they're protecting the defendant from ever getting sued by anybody who would be inadequate representative in their view. I mean, it's just not the examination that should be going on here, Your Honor.

Otherwise, Your Honor, we've spent a lot of time, and I appreciate Your Honor's indulgence. And I have to say, just to finish up right now, I think a lot of what we've discussed is quite collateral to the issues that are before the Court.

Let me not say anything more unless the Court has something more to direct to me or I feel there's something I should respond to from defendants --

THE COURT: No.

MR. GREENBERG: -- if the Court's going to entertain further discussion from counsel.

THE COURT: No, I have no more questions. I will -- the ruling on this must necessarily await the ruling on the other two motions that I've put over to Monday. I would anticipate entering a minute order Monday which would represent a ruling on this motion as well. So, I think that should do it.

All right, anything else?

MS. RODRIGUEZ: Thank you, Your Honor.

MR. GREENBERG: Thank you. We appreciate your patience. I certainly appreciate your patience and I think I can speak for defense counsel as well on that one.

THE COURT: All right.

MS. RODRIGUEZ: Absolutely, as well as your staff. I respect your endurance.

MR. GREENBERG: The only thing maybe we can agree on, Your Honor.

(Proceeding concluded at 3:08 p.m.)

* * * * *

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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Englewood, CO 80110
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Julie Lord

JULIE LORD, TRANSCRIBER

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**November 09, 2015**

A-12-669926-C Michael Murray, Plaintiff(s)
vs.
A Cab Taxi Service LLC, Defendant(s)

November 09, 2015 **Chambers** **All Pending Motions**

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

JOURNAL ENTRIES

- ALL PENDING

DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' FIRST CLAIM FOR RELIEF:
COURT ORDERED, Motion DENIED.

DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' SECOND CLAIM FOR RELIEF:
COURT ORDERED, Motion DENIED.

PLAINTIFF'S MOTION TO CERTIFY THIS CASE AS A CLASS ACTION PURSUANT TO NRCP RULE 23 AND APPOINT A SPECIAL MASTER PURSUANT TO NRCP RULE 53
After oral argument and reviewing the authorities submitted in this matter, the Court finds that the Plaintiffs have adequately met the requirements of class certification and that the motion to certify the class should be granted. However, the Court cannot grant Plaintiffs motion to appoint a special master. The underlying reasons advanced by the Plaintiffs do not provide a sufficient basis for the Court to place the entire financial burden of the requested work on the Defendants. The Court must deny the motion to appoint a special master without prejudice at this time. Accordingly, COURT ORDERS, Plaintiffs Motion to Certify this Case as a Class Action Pursuant to NRCP Rule 23 and Appoint a Special Master Pursuant to NRCP Rule 53 GRANTED IN PART and DENIED IN PART. Plaintiffs are to prepare the order.

CLERK'S NOTE: The above minute order has been distributed to: Leon Greenberg, Esq. and Esther Rodriguez, Esq. via e-mail. /mlt

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY and MICHAEL RENO, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC, A CAB, LLC, and CREIGHTON J. NADY,

Defendants.

Case No.: A-12-669926-C

DEPT.: I

Hearing Date: November 3, 2015
Hearing Time: 9:00 a.m.

Order Granting in Part and Denying in Part Defendant's Motion for Declaratory Order Regarding Statute of Limitations

Defendants filed their Motion for Declaratory Order Regarding the Statute of Limitations on August 10, 2015. Plaintiff's Response in Opposition to defendant's motion was filed on August 28, 2015. Defendants thereafter filed their Reply to plaintiff's Response in Opposition to defendants' motion on September 8, 2015. This matter, having come before the Court for hearing on November 3, 2015, with appearances by Leon Greenberg, Esq. and Dana Sniegocki, Esq., on behalf of all plaintiffs, and Esther Rodriguez, Esq., on behalf of all defendants, and following the arguments of such counsel,

and after due consideration of the parties' respective briefs, and all pleadings and papers on file herein, and good cause appearing, therefore

THE COURT FINDS:

Defendants' Motion seeks to limit the statute of limitations applicable to claims for unpaid minimum wages under Article 15, Section 16 of the Nevada Constitution to a two year period as in NRS 608.260, the Nevada statute that sets the statute of limitations for claims brought for unpaid minimum wages under NRS 608.250, from which the plaintiff taxicab drivers are specifically exempt. In opposition, plaintiffs urged the Court to apply the four year "catch all" statute of limitations under NRS 11.220, which applies to all claims for relief not otherwise provided for by statute.

The claims asserted involve claims under Nevada's Constitution. The Court finds there must be expressed a specific intention by the passage of the constitutional provision itself that it is intended to be limited to a specific period of limitations. Because the Constitution is silent on the period of limitations within which to bring an action, plaintiffs must not be restricted by application of a two year statute of limitations that was designed not to apply to a constitutional provision, but to a specific statutory provision. Accordingly, the Court finds that the four year "catch all" period of limitations, set forth in NRS 11.220, is the most appropriate period of limitations to apply to a claim under Nevada's Constitution. Therefore,

IT IS HEREBY ORDERED:

Defendants' Motion for a Declaratory Order Regarding the Statute of Limitations is GRANTED in part and DENIED in part. Defendants' Motion is GRANTED to the extent that the instant order will be deemed a declaratory order regarding the statute of limitations applicable to plaintiffs' First Claim for Relief which seeks unpaid minimum

wages under Article 15, Section 16 of the Nevada Constitution. Defendants' Motion is DENIED in part to the extent that defendants sought the Court to apply a two year statute of limitations to such claims under Article 15, Section 16 of the Nevada Constitution. The Court will apply a four year statute of limitations as provided for under the "catch all" period of limitations found in NRS 11.220

IT IS SO ORDERED.

Dec 15 2015
Honorable Kenneth Cory
District Court Judge

Date

Respectfully submitted:

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY and MICHAEL RENO, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC, A CAB, LLC, and CREIGHTON J. NADY,

Defendants.

Case No.: A-12-669926-C

DEPT.: I

Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP Rule 23(b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to Appoint a Special Master Under NCRP Rule 53

Plaintiffs filed their Motion to Certify this Case as a Class Action Pursuant to NRCP 23(b)(3) and NRCP 23(b)(2), and appoint a Special Master, on May 19, 2015. Defendants' Response in Opposition to plaintiffs' motion was filed on June 8, 2015. Plaintiffs thereafter filed their Reply to defendants' Response in Opposition to plaintiffs' motion on July 13, 2015. This matter, having come before the Court for hearing on November 3, 2015, with appearances by Leon Greenberg, Esq. and Dana

Sniegocki, Esq. on behalf of all plaintiffs, and Esther Rodriguez, Esq., on behalf of all defendants, and following the arguments of such counsel, and after due consideration of the parties' respective briefs, and all pleadings and papers on file herein, and good cause appearing, therefore

THE COURT FINDS:

In Respect to the Request for Class Certification

Upon review of the papers and pleadings on file in this matter, and the evidentiary record currently before the Court, the Court holds that plaintiffs have adequately established that the prerequisites of Nev. R. Civ. P. 23(b)(3) and 23(b)(2) are met to certify the requested classes seeking damages and suitable injunctive relief under Article 15, Section 16 of the Nevada Constitution (the "Minimum Wage Amendment") and NRS 608.040 and the claims asserted against defendant Nady in the Third and Fourth Claims for Relief in the Second Amended and Supplemental Complaint and grants the motion. The Court makes no determinations of the merits of the claims asserted nor whether any minimum wages are actually owed to any class members, or whether any injunctive relief should actually be granted, as such issues are not properly considered on a motion for class certification. In compliance with what the Court believes is required, or at least directed by the Nevada Supreme Court as desirable, the Court also makes certain findings supporting its decision to grant class certification under NRCP Rule 23. *See, Beazer Homes Holding Corp. v. Eighth Judicial Dist. Court.*, 291 P.3d 128, 136 (2012) (En Banc) (Granting writ petition,

finding district court erred in failing to conduct an NRCP Rule 23 analysis, and holding that "[u]ltimately, upon a motion to proceed as a class action, the district court must "thoroughly analyze NRCP 23's requirements and document its findings."" *Citing D.R. Horton v. Eighth Judicial Dist. Court ("First Light II"),* 215 P.3d 697, 704 (Nev. Sup. Ct. 2009).

As an initial matter, the nature of the claims made in this case are of the sort for which class action treatment would, at least presumptively, likely be available if not sensible. A determination of whether an employee is owed unpaid minimum hourly wages requires that three things be determined: the hours worked, the wages paid, and the applicable hourly minimum wage. Once those three things are known the minimum wages owed, if any, are not subject to diminution by the employee's contributory negligence, any state of mind of the parties, or anything else of an individual nature that has been identified to the Court. Making those same three determinations, involving what is essentially a common formula, for a large group of persons, is very likely to involve an efficient process and common questions. The minimum hourly wage rate is set at a very modest level, meaning the amounts of unpaid minimum wages likely to be owed to any putative class member are going to presumptively be fairly small, an additional circumstance that would tend to weigh in favor of class certification.

In respect to granting the motion and the record presented in this case, the Court finds it persuasive that a prior United States Department of Labor ("USDOL")

litigation initiated against the defendants resulted in a consent judgment obligating the defendants to pay $139,834.80 in unpaid minimum wages to the USDOL for distribution to 430 taxi drivers under the federal Fair Labor Standards Act (the "FLSA") for the two year period from October 1, 2010 through October 2, 2012. The parties dispute the *collateral estoppel* significance of that consent judgment in this litigation. The Court does not determine that issue at this time, inasmuch as whether the plaintiffs are actually owed minimum wages (the "merits" of their claims) is not a finding that this Court need make, nor presumably one it should make, in the context of granting or denying a motion for class certification. The USDOL, as a public law enforcement agency has a duty, much like a prosecuting attorney in the criminal law context, to only institute civil litigation against employers when credible evidence exists that such employers have committed violations of the FLSA. Accordingly, whether or not the consent judgment is deemed as a binding admission by defendants that they owe $139,834.80 in unpaid minimum wages under the FLSA for distribution to 430 taxi drivers, it is appropriate for the Court to find that the Consent judgment constitutes substantial evidence that, at least at this stage in these proceedings, common questions exist that warrant the granting of class certification. The Court concludes that the record presented persuasively establishes that there are at least two common questions warranting class certification in this case for the purposes of NRCP Rule 23(b)(3) ("damages class" certification) that are coextensive with the period covered by the USDOL consent judgment and for the period prior to June of

2014.

The first such question would be whether the class members are owed additional minimum wages, beyond that agreed to be paid in the USDOL consent judgment, and for the period covered by the consent judgment, by virtue of the Minimum Wage Amendment imposing an hourly minimum wage rate that is $1.00 an hour higher than the hourly minimum wage required by the FLSA for employees who do not receive "qualifying health insurance." The Court concludes that resolving such "qualifying health insurance" question involves issues common to all of the class members and defendants have not proffered any meaningful evidence tending to contradict such conclusion. The second such question would be whether the class members are owed additional minimum wages, beyond that alleged by USDOL for the period covered by the consent judgment, by virtue of the Minimum Wage Amendment not allowing an employer a "tip credit" towards its minimum wage requirements, something that the FLSA does grant to employers in respect to its minimum wage requirements. It is unknown whether the USDOL consent judgment calculations include or exclude the application of any "tip credit" towards the FLSA minimum wage deficiency alleged by the USDOL against the defendants.

In respect to the "tip credit" issue plaintiffs have also demonstrated, and defendants do not dispute, a violation of Nevada's Constitution existing prior to June of 2014. Plaintiff has provided to the Court payroll records from 2014 for taxi driver employee and class member Michael Sargeant indicating that he was paid $7.25 an

hour but only when his tip earnings are included. Defendant does not dispute the accuracy of those records. Nor has it produced any evidence (or even asserted) that the experience of Michael Sargeant in respect to the same was isolated and not common to many of its taxi driver employees. The Nevada Constitution's minimum wage requirements, unlike the FLSA, prohibits an employer from using a "tip credit" and applying an employee's tips towards any portion of its minimum wage obligation. The Sargeant payroll records, on their face, establish a violation of Nevada's minimum wage standards for a certain time period and strongly support the granting of the requested class certification.

The Court makes no finding that the foregoing two identified common questions are the only common questions present in this case that warrant class certification. Such two identified issues are sufficient for class certification as the commonality prerequisite of NRCP Rule 23(a) is satisfied when a "single common question of law or fact" is identified. *Shuette v.Beazer Homes Holdings Corp.*, 121 Nev. 837, 848 (2005). In addition, there also appear to be common factual and legal issues presented by the claims made under NRS 608.040 for statutory "waiting time" penalties for former taxi driver employees of defendants and whether defendant Nady can be found, personally liable, as alleged in the Third and Fourth Claims for Relief in the Second Amended and Supplemental Complaint, for any monies owed to the class members that would otherwise be just the responsibility of the corporate defendants. Such common questions are readily apparent as NRS 608.040 is a strict liability

statute and the conduct alleged by Nady that would impose liability upon him is common to the class, as it involves his direction and control of the corporate defendants and not his actions towards any class member individually.

The Court also finds that the other requirements for class certification under NRCP Rule 23(b)(3) are adequately satisfied upon the record presented. Numerosity is established as the United States Department of Labor investigation identified over 430 potential class members in the consent judgment who may have claims for minimum wages under the Minimum Wage Amendment. "[A] putative class of forty or more generally will be found numerous." *Shuette*, 122 Nev. at 847. Similarly, adequacy of representation and typicality seem appropriately satisfied upon the record presented. It is undisputed that the two named plaintiffs, who were found in the USDOL consent judgment to be owed unpaid minimum wages under the FLSA, and additional class representative Michael Sargeant, whose payroll records show, on their face, a violation of Nevada's minimum wage requirements, are or have been taxi drivers employed by the defendants. Counsel for the plaintiffs have also demonstrated their significant experience in the handling of class actions. The Court also believes the superiority of a class resolution of these claims is established by their presumptively small individual amounts, the practical difficulties that the class members would encounter in attempting to litigate such claims individually and obtain individual counsel, the status of many class members as current employees of defendants who may be loath to pursue such claims out of fear of retaliation, and the

desirability of centralizing the resolution of the common questions presented by the over 430 class members in a single proceeding.

In respect to class certification under NRCP Rule 23(b)(2) for appropriate class wide injunctive relief the Court makes no finding that any such relief shall be granted, only that it will grant such class certification and consider at an appropriate time the form and manner, if any, of such injunction. The existence of common policies by defendants that either directly violate the rights of the class members to receive the minimum wages required by Nevada's Constitution, or that impair the enforcement of those rights and are otherwise illegal, are substantially supported by the evidence proffered by the plaintiffs. That evidence includes a written policy of defendants reserving the right to unilaterally deem certain time during a taxi driver's shift as non-compensable and non-working "personal time." Defendants have also failed to keep records of the hours worked by their taxi drivers for each pay period for a number years, despite having an obligation to maintain such records under NRS 608.215 and being advised by the USDOL in 2009 to keep such records. And as documented by the Michael Sargeant payroll records, the defendants, for a period of time after this Court's Order entered on February 11, 2013 finding that the Nevada Constitution's minimum wage provisions apply to defendants' taxicab drivers, failed to pay such minimum wages, such failure continuing through at least June of 2014. Plaintiffs have also alleged in sworn declarations that defendants have a policy of forcing their taxi drivers to falsify their working time records, allegations, which if true, may also

warrant the granting of injunctive relief.

The Court notes that Nevada's Constitution commands this Court to grant the plaintiffs "all remedies available under the law or in equity" that are "appropriate" to "remedy any violation" of the Nevada Constitution's minimum wage requirements. In taking note of that command the Court does not, at this time, articulate what form, if any, an injunction may take, only that it is not precluding any of the forms of injunctive relief proposed by plaintiffs, including Ordering defendants to pay minimum wages to its taxi drivers in the future; Ordering defendants to maintain proper records of their taxi drivers' hours of work; Ordering notification to the defendants' taxi drivers of their rights to minimum wages under Nevada's Constitution; and Ordering the appointment of a Special Master to monitor defendants' compliance with such an injunction.

Defendants have not proffered evidence or arguments convincing the Court that it should doubt the accuracy of the foregoing findings. The Court is also mindful that *Shuette* supports the premise that it is better for the Court to initially grant class certification, if appropriate, and "reevaluate the certification in light of any problems that appear post-discovery or later in the proceedings." *Shuette* 124 P.3d at 544.

In Respect to the Request for the Appointment of a Special Master

Plaintiffs have also requested the appointment of a Special Master under NRCP Rule 53, to be paid by defendants, to compile information on the hours of work of the class members as set forth in their daily trip sheets. The Court is not persuaded that

the underlying reasons advanced by plaintiffs provide a sufficient basis to place the entirety of the financial burden of such a process upon the defendants. Accordingly, the Court denies that request without prejudice at this time.

Therefore

IT IS HEREBY ORDERED:

Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(3) is **GRANTED**. The class shall consist of the class claims as alleged in the Second Amended and Supplemental Complaint of all persons employed by any of the defendants as taxi drivers in the State of Nevada at anytime from July 1, 2007 through December 31, 2015, except such persons who file with the Court a written statement of their election to exclude themselves from the class as provided below. Also excluded from the class is Jasminka Dubric who has filed an individual lawsuit against the defendant A CAB LLC seeking unpaid minimum wages and alleging conversion by such defendant, such case pending before this Court under Case No. A-15-721063-C. The class claims are all claims for damages that the class members possess against the defendants under the Minimum Wage Amendment arising from unpaid minimum wages that are owed to the class members for work they performed for the defendants from July 1, 2007 through December 31, 2015; all claims they may possess under NRS 608.040 if they are a former taxi driver employee of the defendants and are owed unpaid minimum wages that were not paid to them upon their employment termination as provided for by such statute; and the claims alleged

against defendant Nady in the third and fourth claims for relief in the Second Amended and Supplemental Compliant. Leon Greenberg and Dana Sniegocki of Leon Greenberg Professional Corporation are appointed as class counsel and the named plaintiffs Michael Murray and Michael Reno, and class member Michael Sargeant, are appointed as class representatives. The Court will allow discovery pertaining to the class members and the class claims.

IT IS FURTHER ORDERED:

Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(2) for appropriate equitable and injunctive relief as authorized by Article 15, Section 16 of Nevada's Constitution is **GRANTED** and the named plaintiffs Michael Murray and Michael Reno, and class member Michael Sargeant, are also appointed as class representatives for that purpose. The class shall consist of all persons employed by defendants as taxi drivers in the State of Nevada at any time from July 1, 2007 through the present and continuing into the future until a further Order of this Court issues.

IT IS FURTHER ORDERED:

(1) Defendants' counsel is to produce to plaintiffs' counsel, within 10 days of the service of Notice of Entry of this Order, the names and last known addresses of all persons employed as taxicab drivers by any of the defendants in the State of

Nevada from July 1, 2007 through December 31, 2015, such information to be provided in an Excel or CSV or other agreed upon computer data file, as agreed upon by counsel for the parties, containing separate fields for name, street address, city, state and zip code and suitable for use to mail the Notice of Class Action ;

(2) Plaintiffs' counsel, upon receipt of the names and addresses described in (1) above, shall have 40 days thereafter (and if such 40th day is a Saturday, Sunday or holiday the first following business day) to mail a Notice of Class Action in substantially the form annexed hereto as Exhibit "A" to such persons to notify them of the certification of this case as a class action pursuant to Nev. R. Civ. P. 23(b)(3) and shall promptly file with the Court a suitable declaration confirming that such mailing has been performed;

(3) The class members are enjoined from the date of entry of this Order, until or unless a further Order is issued by this Court, from prosecuting or compromising any of the class claims except as part of this action and only as pursuant to such Order; and

(4) Class members seeking exclusion from the class must file a written statement with the Court setting forth their name, address, and election to be excluded from the class, no later than 55 days after the mailing of the Notice of Class Action as

provided for in (2), above.

IT IS FURTHER ORDERED:

Plaintiffs' motion to appoint a Special Master under NRCP Rule 53 is denied without prejudice at this time.

IT IS SO ORDERED.

Dated this 9 day of January, 2016.

Hon. Kenneth Cory
District Court Judge

Submitted:

By: _____
Leon Greenberg, Esq.
Dana Sniegocki, Esq.
LEON GREENBERG PROF. CORP.
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Attorney for Defendants

EXHIBIT "A"

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC, A CAB, LLC, and CREIGHTON J. NADY,

Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF CLASS ACTION CERTIFICATION

You are being sent this notice because you are a member of the class of current and former taxi drivers employed by A CAB TAXI SERVICE LLC and A CAB, LLC ("A-Cab") that has been certified by the Court. Your rights as a class member are discussed in this notice.

NOTICE OF CLASS ACTION CERTIFICATION

On [date] this Court issued an Order certifying this case as a class action for all taxi driver employees of A-Cab (the "class members") who were employed at anytime from July 1, 2007 to December 31, 2015. The purpose of such class action certification is to resolve the following questions:

(1) Does A-Cab owe class members any unpaid minimum wages pursuant to Nevada's Constitution?

(2) If they do owe class members minimum wages, what is the amount each is owed and must now be paid by A-Cab?

(3) What additional money, if any, should A-Cab pay to the class members besides unpaid minimum wages?

(4) For those class members who have terminated their employment with A-Cab since October 8, 2010, what, if any, additional money, up to 30 days unpaid wages, are owed to them by A-Cab under Nevada Revised Statutes 608.040?

(5) Is the defendant CREIGHTON J. NADY ("Nady") responsible for paying any money owed by A-Cab to the class members?

The class certification in this case may also be amended or revised in the future which means the Court may not answer all of the above questions or may answer additional questions.

NOTICE OF YOUR RIGHTS AS A CLASS MEMBER

If you wish to have your claim as a class member decided as part of this case you do not need to do anything. The class is represented by Leon Greenberg and Dana Sniegocki (the "class counsel"). Their attorney office is Leon Greenberg Professional Corporation, located at 2965 South Jones Street, Suite E-3, Las Vegas, Nevada, 89146. Their telephone number is 702-383-6085 and email

can be sent to them at leongreenberg@overtimelaw.com. Communications by email instead of telephone calls are preferred.

You are not required to have your claim for unpaid minimum wages and other possible monies owed to you by A Cab or Nady decided as part of this case. If you wish to exclude yourself from the class you may do so by filing a written and signed statement in this Court's file on this case with the Clerk of the Eighth Judicial District Court, which is located at 200 Lewis Avenue, Las Vegas, Nevada, 89101 no later than [insert date 55 days after mailing] setting forth your name and address and stating that you are excluding yourself from this case. If you do not exclude yourself from the class you will be bound by any judgment rendered in this case, whether favorable or unfavorable to the class. If you remain a member of the class you may enter an appearance with the Court through an attorney of your own selection. You do need not get an attorney to represent you in this case and if you fail to do so you will be represented by class counsel.

THE COURT IS NEUTRAL

No determination has been made that A-Cab or Nady owes any class members any money. The Court is neutral in this case and is not advising you to take any particular course of action. If you have questions about this notice or your legal rights against A-Cab and Nady you should contact class counsel at 702-383-6085 or by email to leongreenberg@overtimelaw.com or consult with another attorney. The Court cannot advise you about what you should do.

NO RETALIATION IS PERMITTED IF YOU CHOOSE TO PARTICIPATE IN THIS LAWSUIT

Nevada's Constitution protects you from any retaliation or discharge from your employment for participating in this case or remaining a member of the class. You cannot be punished by A-Cab or fired from your employment with them for being a class member. A-Cab cannot fire you or punish you if this case is successful in collecting money for the class members and you receive a share of that money.

IT IS SO ORDERED

Date:
/s/ Hon. Kenneth Cory, District Court Judge

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CLERK OF THE COURT

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY and MICHAEL RENO, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC, A CAB, LLC, and CREIGHTON J. NADY,

Defendants.

Case No.: A-12-669926-C

DEPT.: I

Hearing Date: November 3, 2015
Hearing Time: 9:00 a.m.

Order Denying Defendant's Motion to Dismiss and For Summary Judgment Against Michael Murray

Defendants filed their Motion to Dismiss and for Summary Judgment against Michael Murray on September 21, 2015. Plaintiff's Response in Opposition to defendant's motion was filed on October 8, 2015. Defendants thereafter filed their Reply to plaintiff's Response in Opposition to defendants' motion on October 27, 2015. This matter, having come before the Court for hearing on November 3, 2015, with appearances by Leon Greenberg, Esq. and Dana Sniegocki, Esq., on behalf of all plaintiffs, and Esther Rodriguez, Esq., on behalf of all defendants, and following the arguments of such counsel, and after due consideration

of the parties' respective briefs, and all pleadings and papers on file herein, and good cause appearing, therefore

IT IS HEREBY ORDERED:

Defendants' Motion to Dismiss and for Summary Judgment against Michael Murray is DENIED without prejudice.

IT IS SO ORDERED.

Honorable Kenneth Cory
District Court Judge

Feb 17 2016
Date

Respectfully submitted:

LEON GREENBERG, ESQ.
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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY and MICHAEL RENO, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC, A CAB, LLC, and CREIGHTON J. NADY,

Defendants.

Case No.: A-12-669926-C

DEPT.: I

Hearing Date: November 3, 2015
Hearing Time: 9:00 a.m.

Order Denying Defendant's Motion to Dismiss and For Summary Judgment Against Michael Reno

Defendants filed their Motion to Dismiss and for Summary Judgment against Michael Reno on September 21, 2015. Plaintiff's Response in Opposition to defendant's motion was filed on October 8, 2015. Defendants thereafter filed their Reply to plaintiff's Response in Opposition to defendants' motion on October 27, 2015. This matter, having come before the Court for hearing on November 3, 2015, with appearances by Leon Greenberg, Esq. and Dana Sniegocki, Esq., on behalf of all plaintiffs, and Esther Rodriguez, Esq., on behalf of all defendants, and following the arguments of such counsel, and after due consideration

of the parties' respective briefs, and all pleadings and papers on file herein, and good cause appearing, therefore

IT IS HEREBY ORDERED:

Defendants' Motion to Dismiss and for Summary Judgment against Michael Reno is DENIED without prejudice.

IT IS SO ORDERED.

Honorable Kenneth Cory
District Court Judge

Dec 9, 2019
Date

Respectfully submitted:

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