

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

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

Appellants,

v.

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

Respondents.

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) Supreme Court No. 77050

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Elizabeth A. Brown  
Clerk of Supreme Court

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

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

HUTCHISON & STEFFEN, PLLC

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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 VII of LII** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Leon Greenberg, Esq.  
Dana Sniegocki, Esq.  
Leon Greenberg Professional Corporation  
2965 S. Jones Blvd., Ste. E3  
Las Vegas, NV 89146  
Telephone: (702) 383-6085  
Facsimile: (702) 385-1827  
[leongreenberg@overtimelaw.com](mailto:leongreenberg@overtimelaw.com)  
[Dana@overtimelaw.com](mailto:Dana@overtimelaw.com)

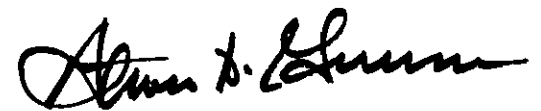
*Attorneys for Respondents*

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

*/s/ Kaylee Conradi*

---

An employee of Hutchison & Steffen, PLLC



CLERK OF THE COURT

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,  
and CREIGHTON J. NADY,

Defendants.

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

Hearing Date:

Hearing Time:

**DEFENDANTS' MOTION FOR RECONSIDERATION**

Defendants A Cab, LLC and Creighton J. Nady, by and through their attorney of record,  
ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRCP 60  
and EDCR 2.24 hereby respectfully moves this Honorable Court to reconsider its prior Order of  
February 10, 2016, 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 (*sic*) 53. Order, **Exhibit 1**

...

...

...

...

...

This Motion is based upon the pleadings and papers on file, the attached Memorandum of Points and Authorities, and any oral argument that may be entertained at the hearing of this Motion.

DATED this 25<sup>th</sup> day of February, 2016.

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

/s/ Esther C. Rodriguez, Esq.  
Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
*Attorneys for Defendants*

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that Defendant will bring the foregoing Motion on for hearing before this Court on the 28 day of March, 2016, or as soon thereafter as counsel may be heard. In Chambers

DATED this 25<sup>th</sup> day of February, 2016.

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

/s/ Esther C. Rodriguez, Esq.  
Esther C. Rodriguez, Esq.  
Nevada State Bar No. 006473  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
*Attorneys for Defendants*

**POINTS AND AUTHORITIES**

**A. Legal Standard for Reconsideration and Revision**

Defendant seeks reconsideration of this Court's ruling granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP Rule 60 and EDCR 2.24 served on February 10, 2016. Pursuant to EDCR 2.24, a party may move the Court for reconsideration of a prior ruling within 10 days after service of the written notice of the order. Pursuant to Rule 60 of the Nevada Rules of Civil Procedure, a party may seek relief from judgment or order when the Order is fraught with errors as is contained within the Court's Order as presently written by the Plaintiffs in this matter.

Reconsideration is appropriate when the decision is clearly erroneous. *See Masonry & Title Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth*, 941 P.2d 486, 489 (Nev. 1997).

**1. The Order as submitted by Plaintiffs Does Not Contain The Rulings As Outlined by the Court.**

Plaintiffs in this instance submitted an Order which goes far beyond the findings of the Court. In fact, in numerous instances, the Order directly contradicts the findings of the Court; sums up conclusions not made by the Court; and includes blatant misstatements of the facts.

As an example of improper wording which must be stricken, Plaintiffs have once again included the wording which the Court has already cautioned them regarding misrepresenting to the Court. At the hearing of this matter on November 3, 2015, this Honorable Court stated to Plaintiffs' counsel that the Court had reviewed the Consent Judgment which Defendant A Cab, LLC had entered into with the Department of Labor, and that the document did not say what Plaintiffs' counsel had indicated. The Court reviewed the Judgment noting it was a settlement document with no finding or admission of liability. Nevertheless, Plaintiffs' counsel has defiantly included this in the Order, stating the opposite of the Court's words: "*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.*" Order, p. 4.<sup>1</sup>

The Plaintiffs further expand this issue with additional items which were never addressed in briefing or orally in Court, but yet now find their way into the Court's Order. An example is the wording, "*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.*" There is no support for this statement which is raised for the first time in the Order, and only for purposes of

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<sup>1</sup> An inaccurate characterization of the DOL activities is discussed throughout the Court's "findings" including that Defendants failed to keep records, and were advised to do so by the DOL. (Order, p. 8). Defendants have not failed to keep records, and previously offered Plaintiffs an opportunity to view them, which they refused. Over 1800 documents have been turned over pertaining to these 2 Plaintiffs.



1 being inflammatory and prejudicial against the Defendant. The comparison to a prosecuting  
2 attorney in a criminal case is unnecessary, and is meant to taint a finding that this Court did not  
3 make. Instead, what was demonstrated to the Court was that the DOL audit was an industry-wide  
4 audit at the time which included A Cab. Plaintiffs have no basis for their statement that the DOL  
5 initiated litigation against A Cab because there was credible evidence of a violation.

6 Plaintiffs also include as part of the Court's findings new items not addressed by the Court  
7 pertaining to qualifying health insurance. Plaintiffs state that the Court concludes that defendants  
8 have not proffered any meaningful evidence on this issue. (Order p.5:11-13) The qualifying  
9 health insurance issue was not addressed in the hearing, and yet is now thrown in as part of the  
10 Court's "conclusions."

11 Unlike the wording which Plaintiff has inserted into the Order, the Court made no finding  
12 that the Third and Fourth Claims were appropriate for class certification. As the Court will recall,  
13 these are claims of Civil Conspiracy and Unjust Enrichment directly asserted against the individual,  
14 Creighton Nady. These are claims which were not argued as part of the request for certification,  
15 nor were they within the intent of the Court to include on a class-wide basis. However, Plaintiffs  
16 have snuck the claims in as part of the sentence on page 2 of the Order wherein they indicate that  
17 the Court has found the plaintiffs have adequately established the prerequisites of the Minimum  
18 Wage Amendment... "*and the claims asserted against Defendant Nady.*" These claims are not  
19 proper for certification, and should not be included as part of the order.

20 Also within the Order, Plaintiffs include blatant misstatements and inaccuracies, including  
21 that the Court finds that defendants do not dispute that there was a violation prior to June 2014.  
22 (Order, p. 5:26.) This Court is aware that Defendants absolutely dispute there was a violation.  
23 Defendants provided the Court with direct proof from the Department of Justice itself showing that  
24 their audit yielded "zero" minimum wage violations. Yet, here the Plaintiffs would have the Court  
25 sign an Order indicating that the Defendants are conceding violations prior to June 2014. It is quite  
26 telling that in support of this "concession" Plaintiffs cite to a driver who is not even a Plaintiff in  
27 this matter, Michael Sargeant, as the two Plaintiffs named in this case failed altogether to  
28 demonstrate any minimum wage violation with their testimony or documents.

1     **2.     This Court did not grant injunctive relief or the Appointment of a Special Master, as**  
2     **Plaintiffs have stated in the Order.**

3             This Court denied the appointment of a Special Master and made no finding of injunctive  
4 relief. Yet, page 8 through 9 of the Order implies otherwise, by stating among other things: “The  
5 Court notes that Nevada’s Constitution commands this Court to grant the plaintiffs all remedies  
6 available...In taking note of that command the Court does not, at this time, articulate what form if  
7 any, any injunction may take, only that its not precluding any of the forms of injunctive relief  
8 proposed by plaintiffs including...Ordering the appointment of a Special Master.” (Order. 9)

9             It is only proper that the Court reconsider the Order it has executed at Plaintiff’s request, as  
10 it clearly does not reflect the evidence, the arguments, nor the Court’s findings or conclusions.

11     **3.     The Time and the Class are overly broad in light of the Court’s pending Order and the**  
12     **competing class action case before Judge Delaney.**

13             Pending before this Court, as well as the Nevada Supreme Court, is a motion addressing the  
14 prospective application of *Thomas vs. Nevada Yellow Cab Corporation*, 130 Nev., Adv. Op. 52  
15 (2014).<sup>2</sup> As this Court is aware, not only is this issue pending before the Nevada Supreme Court,  
16 this Honorable Court has not rendered its ruling on this issue. Therefore, pending further guidance  
17 from the Supreme Court, this Court’s Order should be limited to those class members from June 26,  
18 2014 through present. This Court has already recognized the great expenditure to the Employer in  
19 being required to gather the information and to defend claims which will never be part of the class.  
20 The Order as written by the Plaintiffs has a finding by the Court dating back to July 1, 2007. There  
21 is a great probability that the Supreme Court will not only provide guidance on a statute of  
22 limitation (also before the Supreme Court), but will limit and exclude any claims prior to June 26,  
23 2014. Therefore, the Order as submitted by the Plaintiffs should be modified to reflect this date,  
24 pending any contradicting instruction by the Supreme Court.

25             An additional issue is that in the Order as written by the Plaintiffs, Plaintiffs’ counsel is  
26 attempting to solely exclude Jasminka Dubric who is represented by the Bourassa Law Group in  
27

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28             <sup>2</sup> *Motion to Dismiss Plaintiffs’ First Claim for Relief*, filed September 11, 2015

1 *Dubric v. A Cab, LLC*, District Court Case A-15-721063-C before Judge Kathleen Delaney.  
2 However, the *Dubric* lawsuit is also a class action lawsuit on behalf of similarly situated individuals  
3 who are also represented by the Bourassa Law Group. **Exhibit 2**. Therefore, the Order as written  
4 must account for the overlap of the representation by the two Plaintiffs' firms of the numerous  
5 drivers.

6 **II.**

7 **CONCLUSION**

8 Based upon the foregoing points and authorities, Defendant A CAB, LLC respectfully  
9 requests this Honorable Court to reconsider its prior Order and set a hearing on this matter.

10 DATED this 25<sup>th</sup> day of February, 2016.

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

12  
13 /s/ Esther C. Rodriguez, Esq.  
14 Esther C. Rodriguez, Esq.  
15 Nevada State Bar No. 006473  
16 10161 Park Run Drive, Suite 150  
17 Las Vegas, Nevada 89145  
18 *Attorneys for Defendants*

17 **CERTIFICATE OF SERVICE**

18 I HEREBY CERTIFY on this 25<sup>th</sup> day of February, 2016, I electronically *filed* the  
19 foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System  
20 which will send a notice of electronic service to the following:

21 Leon Greenberg, Esq.  
22 Leon Greenberg Professional Corporation  
23 2965 South Jones Boulevard, Suite E4  
24 Las Vegas, Nevada 89146  
25 *Counsel for Plaintiff*

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

# EXHIBIT 1

# EXHIBIT 1



CLERK OF THE COURT

1 **NOEO**

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

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

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

17 Plaintiffs,

18 vs.

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

21 Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF ORDER

22 PLEASE TAKE NOTICE that the Court entered the attached Order in this  
23 matter on February 10, 2016.

24 Dated: February 10, 2016

25 LEON GREENBERG PROFESSIONAL CORP.

26 /s/ Leon Greenberg

27 Leon Greenberg, Esq.  
28 Nevada Bar No. 8094  
2965 S. Jones Boulevard - Ste. E-3  
Las Vegas, NV 89146  
Tel (702) 383-6085  
Attorney for the Plaintiffs

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PROOF OF SERVICE

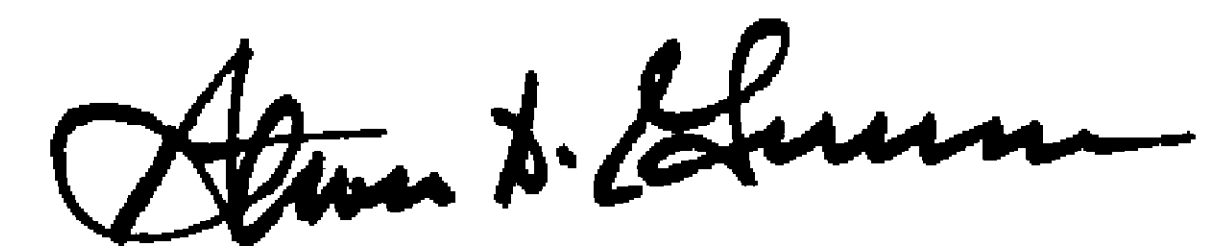
The undersigned certifies that on February 10, 2016, she served the  
within:

NOTICE OF ENTRY OF ORDER

by court electronic service to:

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

*/s/ Sydney Saucier*  
\_\_\_\_\_  
Sydney Saucier



CLERK OF THE COURT

**ORDR**

LEON GREENBERG, ESQ.  
Nevada Bar No.: 8094  
DANA SNIEGOCKI, ESQ.  
Nevada Bar No.: 11715  
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[dana@overtimelaw.com](mailto:dana@overtimelaw.com)  
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**

**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

1 Sniegocki, Esq. on behalf of all plaintiffs, and Esther Rodriguez, Esq., on behalf of all  
2 defendants, and following the arguments of such counsel, and after due consideration  
3 of the parties' respective briefs, and all pleadings and papers on file herein, and good  
4 cause appearing, therefore

5  
6 **THE COURT FINDS:**

7  
8 In Respect to the Request for Class Certification

9 Upon review of the papers and pleadings on file in this matter, and the  
10 evidentiary record currently before the Court, the Court holds that plaintiffs have  
11 adequately established that the prerequisites of Nev. R. Civ. P. 23(b)(3) and 23(b)(2)  
12 are met to certify the requested classes seeking damages and suitable injunctive relief  
13 under Article 15, Section 16 of the Nevada Constitution (the "Minimum Wage  
14 Amendment") and NRS 608.040 and the claims asserted against defendant Nady in  
15 the Third and Fourth Claims for Relief in the Second Amended and Supplemental  
16 Complaint and grants the motion. The Court makes no determinations of the merits  
17 of the claims asserted nor whether any minimum wages are actually owed to any class  
18 members, or whether any injunctive relief should actually be granted, as such issues  
19 are not properly considered on a motion for class certification. In compliance with  
20 what the Court believes is required, or at least directed by the Nevada Supreme Court  
21 as desirable, the Court also makes certain findings supporting its decision to grant  
22 class certification under NRCP Rule 23. *See, Beazer Homes Holding Corp. v. Eighth*  
23 *Judicial Dist. Court.*, 291 P.3d 128, 136 (2012) (En Banc) (Granting writ petition,  
24  
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1 finding district court erred in failing to conduct an NRCP Rule 23 analysis, and  
2 holding that “[u]ltimately, upon a motion to proceed as a class action, the district  
3 court must “thoroughly analyze NRCP 23's requirements and document its findings.””  
4 Citing *D.R. Horton v. Eighth Judicial Dist. Court (“First Light II”)*, 215 P.3d 697,  
5 704 (Nev. Sup. Ct. 2009).

6  
7  
8 As an initial matter, the nature of the claims made in this case are of the sort for  
9 which class action treatment would, at least presumptively, likely be available if not  
10 sensible. A determination of whether an employee is owed unpaid minimum hourly  
11 wages requires that three things be determined: the hours worked, the wages paid, and  
12 the applicable hourly minimum wage. Once those three things are known the  
13 minimum wages owed, if any, are not subject to diminution by the employee’s  
14 contributory negligence, any state of mind of the parties, or anything else of an  
15 individual nature that has been identified to the Court. Making those same three  
16 determinations, involving what is essentially a common formula, for a large group of  
17 persons, is very likely to involve an efficient process and common questions. The  
18 minimum hourly wage rate is set at a very modest level, meaning the amounts of  
19 unpaid minimum wages likely to be owed to any putative class member are going to  
20 presumptively be fairly small, an additional circumstance that would tend to weigh in  
21 favor of class certification.  
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27 In respect to granting the motion and the record presented in this case, the  
28 Court finds it persuasive that a prior United States Department of Labor (“USDOL”)

1 litigation initiated against the defendants resulted in a consent judgment obligating the  
2 defendants to pay \$139,834.80 in unpaid minimum wages to the USDOL for  
3 distribution to 430 taxi drivers under the federal Fair Labor Standards Act (the  
4 “FLSA”) for the two year period from October 1, 2010 through October 2, 2012. The  
5 parties dispute the *collateral estoppel* significance of that consent judgment in this  
6 litigation. The Court does not determine that issue at this time, inasmuch as whether  
7 the plaintiffs are actually owed minimum wages (the “merits” of their claims) is not a  
8 finding that this Court need make, nor presumably one it should make, in the context  
9 of granting or denying a motion for class certification. The USDOL, as a public law  
10 enforcement agency has a duty, much like a prosecuting attorney in the criminal law  
11 context, to only institute civil litigation against employers when credible evidence  
12 exists that such employers have committed violations of the FLSA. Accordingly,  
13 whether or not the consent judgment is deemed as a binding admission by defendants  
14 that they owe \$139,834.80 in unpaid minimum wages under the FLSA for distribution  
15 to 430 taxi drivers, it is appropriate for the Court to find that the Consent judgment  
16 constitutes substantial evidence that, at least at this stage in these proceedings,  
17 common questions exist that warrant the granting of class certification. The Court  
18 concludes that the record presented persuasively establishes that there are at least two  
19 common questions warranting class certification in this case for the purposes of  
20 NRCP Rule 23(b)(3) (“damages class” certification) that are coextensive with the  
21 period covered by the USDOL consent judgment and for the period prior to June of  
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1 2014.

2       The first such question would be whether the class members are owed  
3 additional minimum wages, beyond that agreed to be paid in the USDOL consent  
4 judgment, and for the period covered by the consent judgment, by virtue of the  
5 Minimum Wage Amendment imposing an hourly minimum wage rate that is \$1.00 an  
6 hour higher than the hourly minimum wage required by the FLSA for employees who  
7 do not receive “qualifying health insurance.” The Court concludes that resolving  
8 such “qualifying health insurance” question involves issues common to all of the class  
9 members and defendants have not proffered any meaningful evidence tending to  
10 contradict such conclusion. The second such question would be whether the class  
11 members are owed additional minimum wages, beyond that alleged by USDOL for  
12 the period covered by the consent judgment, by virtue of the Minimum Wage  
13 Amendment not allowing an employer a “tip credit” towards its minimum wage  
14 requirements, something that the FLSA does grant to employers in respect to its  
15 minimum wage requirements. It is unknown whether the USDOL consent judgment  
16 calculations include or exclude the application of any “tip credit” towards the FLSA  
17 minimum wage deficiency alleged by the USDOL against the defendants.  
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24       In respect to the “tip credit” issue plaintiffs have also demonstrated, and  
25 defendants do not dispute, a violation of Nevada’s Constitution existing prior to June  
26 of 2014. Plaintiff has provided to the Court payroll records from 2014 for taxi driver  
27 employee and class member Michael Sargeant indicating that he was paid \$7.25 an  
28

1 hour but only when his tip earnings are included. Defendant does not dispute the  
2 accuracy of those records. Nor has it produced any evidence (or even asserted) that  
3 the experience of Michael Sargeant in respect to the same was isolated and not  
4 common to many of its taxi driver employees. The Nevada Constitution's minimum  
5 wage requirements, unlike the FLSA, prohibits an employer from using a "tip credit"  
6 and applying an employee's tips towards any portion of its minimum wage obligation.  
7  
8 The Sargeant payroll records, on their face, establish a violation of Nevada's  
9 minimum wage standards for a certain time period and strongly support the granting  
10 of the requested class certification.  
11  
12

13       The Court makes no finding that the foregoing two identified common  
14 questions are the only common questions present in this case that warrant class  
15 certification. Such two identified issues are sufficient for class certification as the  
16 commonality prerequisite of NRCP Rule 23(a) is satisfied when a "single common  
17 question of law or fact" is identified. *Shuette v. Beazer Homes Holdings Corp.*, 121  
18 Nev. 837, 848 (2005). In addition, there also appear to be common factual and legal  
19 issues presented by the claims made under NRS 608.040 for statutory "waiting time"  
20 penalties for former taxi driver employees of defendants and whether defendant Nady  
21 can be found, personally liable, as alleged in the Third and Fourth Claims for Relief in  
22 the Second Amended and Supplemental Complaint, for any monies owed to the class  
23 members that would otherwise be just the responsibility of the corporate defendants.  
24  
25 Such common questions are readily apparent as NRS 608.040 is a strict liability  
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1 statute and the conduct alleged by Nady that would impose liability upon him is  
2 common to the class, as it involves his direction and control of the corporate  
3 defendants and not his actions towards any class member individually.  
4

5       The Court also finds that the other requirements for class certification under  
6 NRCF Rule 23(b)(3) are adequately satisfied upon the record presented. Numerosity  
7 is established as the United States Department of Labor investigation identified over  
8 430 potential class members in the consent judgment who may have claims for  
9 minimum wages under the Minimum Wage Amendment. “[A] putative class of forty  
10 or more generally will be found numerous.” *Shuette*, 122 Nev. at 847. Similarly,  
11 adequacy of representation and typicality seem appropriately satisfied upon the record  
12 presented. It is undisputed that the two named plaintiffs, who were found in the  
13 USDOL consent judgment to be owed unpaid minimum wages under the FLSA, and  
14 additional class representative Michael Sargeant, whose payroll records show, on their  
15 face, a violation of Nevada’s minimum wage requirements, are or have been taxi  
16 drivers employed by the defendants. Counsel for the plaintiffs have also  
17 demonstrated their significant experience in the handling of class actions. The Court  
18 also believes the superiority of a class resolution of these claims is established by their  
19 presumptively small individual amounts, the practical difficulties that the class  
20 members would encounter in attempting to litigate such claims individually and obtain  
21 individual counsel, the status of many class members as current employees of  
22 defendants who may be loath to pursue such claims out of fear of retaliation, and the  
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1 desirability of centralizing the resolution of the common questions presented by the  
2 over 430 class members in a single proceeding.  
3

4 In respect to class certification under NRCP Rule 23(b)(2) for appropriate class  
5 wide injunctive relief the Court makes no finding that any such relief shall be granted,  
6 only that it will grant such class certification and consider at an appropriate time the  
7 form and manner, if any, of such injunction. The existence of common policies by  
8 defendants that either directly violate the rights of the class members to receive the  
9 minimum wages required by Nevada's Constitution, or that impair the enforcement of  
10 those rights and are otherwise illegal, are substantially supported by the evidence  
11 proffered by the plaintiffs. That evidence includes a written policy of defendants  
12 reserving the right to unilaterally deem certain time during a taxi driver's shift as non-  
13 compensable and non-working "personal time." Defendants have also failed to keep  
14 records of the hours worked by their taxi drivers for each pay period for a number  
15 years, despite having an obligation to maintain such records under NRS 608.215 and  
16 being advised by the USDOL in 2009 to keep such records. And as documented by  
17 the Michael Sargeant payroll records, the defendants, for a period of time after this  
18 Court's Order entered on February 11, 2013 finding that the Nevada Constitution's  
19 minimum wage provisions apply to defendants' taxicab drivers, failed to pay such  
20 minimum wages, such failure continuing through at least June of 2014. Plaintiffs  
21 have also alleged in sworn declarations that defendants have a policy of forcing their  
22 taxi drivers to falsify their working time records, allegations, which if true, may also  
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1 warrant the granting of injunctive relief.

2       The Court notes that Nevada's Constitution commands this Court to grant the  
3 plaintiffs "all remedies available under the law or in equity" that are "appropriate" to  
4 "remedy any violation" of the Nevada Constitution's minimum wage requirements. In  
5 taking note of that command the Court does not, at this time, articulate what form, if  
6 any, an injunction may take, only that it is not precluding any of the forms of  
7 injunctive relief proposed by plaintiffs, including Ordering defendants to pay  
8 minimum wages to its taxi drivers in the future; Ordering defendants to maintain  
9 proper records of their taxi drivers' hours of work; Ordering notification to the  
10 defendants' taxi drivers of their rights to minimum wages under Nevada's  
11 Constitution; and Ordering the appointment of a Special Master to monitor  
12 defendants' compliance with such an injunction.

13       Defendants have not proffered evidence or arguments convincing the Court that  
14 it should doubt the accuracy of the foregoing findings. The Court is also mindful that  
15 *Shuette* supports the premise that it is better for the Court to initially grant class  
16 certification, if appropriate, and "reevaluate the certification in light of any problems  
17 that appear post-discovery or later in the proceedings." *Shuette* 124 P.3d at 544.

18       In Respect to the Request for the Appointment of a Special Master

19       Plaintiffs have also requested the appointment of a Special Master under NRC  
20 Rule 53, to be paid by defendants, to compile information on the hours of work of the  
21 class members as set forth in their daily trip sheets. The Court is not persuaded that  
22

1 the underlying reasons advanced by plaintiffs provide a sufficient basis to place the  
2 entirety of the financial burden of such a process upon the defendants. Accordingly,  
3 the Court denies that request without prejudice at this time.  
4

5 Therefore

6 **IT IS HEREBY ORDERED:**  
7

8 Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(3) is  
9 **GRANTED.** The class shall consist of the class claims as alleged in the Second  
10 Amended and Supplemental Complaint of all persons employed by any of the  
11 defendants as taxi drivers in the State of Nevada at anytime from July 1, 2007 through  
12 December 31, 2015, except such persons who file with the Court a written statement  
13 of their election to exclude themselves from the class as provided below. Also  
14 excluded from the class is Jasminka Dubric who has filed an individual lawsuit  
15 against the defendant A CAB LLC seeking unpaid minimum wages and alleging  
16 conversion by such defendant, such case pending before this Court under Case No. A-  
17 15-721063-C. The class claims are all claims for damages that the class members  
18 possess against the defendants under the Minimum Wage Amendment arising from  
19 unpaid minimum wages that are owed to the class members for work they performed  
20 for the defendants from July 1, 2007 through December 31, 2015; all claims they may  
21 possess under NRS 608.040 if they are a former taxi driver employee of the  
22 defendants and are owed unpaid minimum wages that were not paid to them upon  
23 their employment termination as provided for by such statute; and the claims alleged  
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1 against defendant Nady in the third and fourth claims for relief in the Second  
2 Amended and Supplemental Complaint. Leon Greenberg and Dana Sniegocki of  
3 Leon Greenberg Professional Corporation are appointed as class counsel and the  
4 named plaintiffs Michael Murray and Michael Reno, and class member Michael  
5 Sargeant, are appointed as class representatives. The Court will allow discovery  
6 pertaining to the class members and the class claims.  
7

8  
9 **IT IS FURTHER ORDERED:**

10 Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(2) for  
11 appropriate equitable and injunctive relief as authorized by Article 15, Section 16 of  
12 Nevada's Constitution is **GRANTED** and the named plaintiffs Michael Murray and  
13 Michael Reno, and class member Michael Sargeant, are also appointed as class  
14 representatives for that purpose. The class shall consist of all persons employed by  
15 defendants as taxi drivers in the State of Nevada at any time from July 1, 2007  
16 through the present and continuing into the future until a further Order of this Court  
17 issues.  
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21  
22 **IT IS FURTHER ORDERED:**  
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24  
25 (1) Defendants' counsel is to produce to plaintiffs' counsel, within 10 days  
26 of the service of Notice of Entry of this Order, the names and last known addresses of  
27 all persons employed as taxicab drivers by any of the defendants in the State of  
28

1 Nevada from July 1, 2007 through December 31, 2015, such information to be  
2 provided in an Excel or CSV or other agreed upon computer data file, as agreed upon  
3 by counsel for the parties, containing separate fields for name, street address, city,  
4 state and zip code and suitable for use to mail the Notice of Class Action ;  
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7

8 (2) Plaintiffs' counsel, upon receipt of the names and addresses described in  
9 (1) above, shall have 40 days thereafter (and if such 40<sup>th</sup> day is a Saturday, Sunday or  
10 holiday the first following business day) to mail a Notice of Class Action in  
11 substantially the form annexed hereto as Exhibit "A" to such persons to notify them of  
12 the certification of this case as a class action pursuant to Nev. R. Civ. P. 23(b)(3) and  
13 shall promptly file with the Court a suitable declaration confirming that such mailing  
14 has been performed;  
15  
16  
17

18 (3) The class members are enjoined from the date of entry of this Order, until  
19 or unless a further Order is issued by this Court, from prosecuting or compromising  
20 any of the class claims except as part of this action and only as pursuant to such  
21 Order; and  
22  
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24

25 (4) Class members seeking exclusion from the class must file a written  
26 statement with the Court setting forth their name, address, and election to be excluded  
27 from the class, no later than 55 days after the mailing of the Notice of Class Action as  
28

1 provided for in (2), above.  
2  
3

4 **IT IS FURTHER ORDERED:**  
5


6 Plaintiffs' motion to appoint a Special Master under NRCP Rule 53 is denied  
7  
8 without prejudice at this time.

9 **IT IS SO ORDERED.**

10 Dated this 9 day of January, 2016.  
11

12   
13 Hon. Kenneth Cory  
District Court Judge  
14 @

14 Submitted:

15 By:   
16 Leon Greenberg, Esq.  
17 Dana Sniegocki, Esq.  
18 LEON GREENBERG PROF. CORP.  
19 2965 S. Jones Blvd., Ste. E-3  
Las Vegas, NV 89146  
Attorneys for Plaintiffs

20 Approved as to form and content:

21 By: Not Approved  
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25 Tel: (702) 320-8400  
Fax (702) 320-8401  
26 info@rodriguezlaw.com  
Attorney for Defendants  
27  
28

# 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](mailto: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](mailto: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

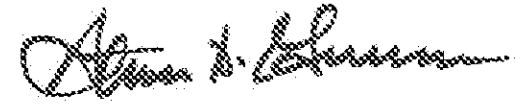
Date:

/s/ Hon. Kenneth Cory, District Court Judge

# EXHIBIT 2

# EXHIBIT 2

AA001220



CLERK OF THE COURT

COMJD

MARK J. BOURASSA, ESQ.

Nevada Bar No. 7999

TRENT L. RICHARDS, ESQ.

Nevada Bar No. 11448

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Attorney for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

JASMINKA DUBRIC, individually and on behalf  
of those similarly situated,

Plaintiff,

vs.

A CAB LLC, a Nevada Limited Liability  
Company; and DOES 1 through 20

Defendants.

Case No.: A- 15 - 721063 - C

Dept No.: XXV

CLASS ACTION COMPLAINT AND  
DEMAND FOR JURY TRIAL

Plaintiff JASMINKA DUBRIC, (hereinafter referred to as "Plaintiff"), by and through her attorneys of record, The Bourassa Law Group, LLC, on behalf of herself and all other persons similarly situated, alleges upon knowledge as to herself and their own acts, and upon information and belief as to all other matters, brings this complaint against the above-named defendant and in support thereof alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this class action on her own behalf and on the behalf of all others similarly situated for damages arising from violations of the Nevada Constitution, Article 15, Section 16.



1           2.       Venue in this District is proper because Plaintiff and A CAB, LLC, a Nevada  
2       Limited Liability Company ("Defendant") reside and/or do business in the District of Nevada.  
3       Venue is also proper in this district because the acts and transactions that give rise to this action  
4       occurred, in substantial part, in the District of Nevada.  
5

6                               PARTIES

7           3.       Plaintiff is, and at all times pertinent hereto was, a natural person who resides in  
8       Clark County, Nevada.

9           4.       Upon information and belief, at all times pertinent hereto, Defendant A Cab, LLC  
10       ("Defendant") is and was a Nevada Limited Liability Corporation with its principal place of  
11       business located at 1500 Searles Avenue Las Vegas, NV 89101 and at all times pertinent hereto,  
12       was a resident of Clark County, Nevada.  
13

14          5.       At all relevant times, DOES 1 through 20, and each of them, were legal entities or  
15       individuals doing business in the State of Nevada. That the true names and capacities, whether  
16       individual, corporate, agents, association or otherwise of the Defendants, DOES 1 through 20,  
17       inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names.  
18       Plaintiff is informed and believes, and thereon alleges, that each of the Defendants designated  
19       herein as DOES are responsible in some manner for the events and happenings herein referred to,  
20       and in some manner proximately caused the injuries and damages thereby to Plaintiff, as herein  
21       alleged. Plaintiff will ask leave of Court to amend the Complaint to insert the true names and  
22       capacities of DOES 1 through 20 and state appropriate charging allegations when that information  
23       has been ascertained.  
24

25          6.       At all times relevant to this Complaint, Plaintiff was employed by Defendant as a  
26       taxi cab driver ("Driver").  
27

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GENERAL ALLEGATIONS

7. Plaintiff's compensation as Driver for Defendant was based upon a "commission" of a percentage of her fares.

8. Pursuant to Defendant's policies applicable to all Drivers, in the event that an employee's commissions do not equal or exceed minimum wage, Defendant will pay the Driver a "minimum wage supplement."

9. Defendant's policies also provide that any tips earned by Drivers are to be credited by Defendant towards the calculation of minimum wage.

10. NRS 608.160(1)(b) provides that it is unlawful for an employer to "[a]pply as a credit toward the payment of the statutory minimum hourly wage established by any law of this State any tips or gratuities bestowed upon the employees of that person."

11. As a result of Defendant's unlawful tip credit policy, Plaintiff's wages were frequently less than the minimum wage required under the Nevada Constitution, Article 15, Section 16.

12. Defendant also made other unlawful and/or unauthorized deductions from Plaintiff's wages, including but not limited to deductions for purported "cash loan fees," thus causing Plaintiff's pay to drop below minimum wage.

CLASS ALLEGATIONS

13. Plaintiff brings this action as a class action pursuant to NRCP 23 on behalf of herself and a class of all similarly situated persons employed by Defendant in the State of Nevada.

14. The class of similarly situated persons consists of all persons who were employed by Defendant during the applicable statutory period prior to the filing of this Complaint continuing until date of judgment as Drivers in the State of Nevada.

1           15.     Plaintiffs seek certification pursuant to NRCP Rule 23 for the Class. Plaintiffs  
2 are informed and believe, and thereon allege, that the Class is so numerous that joinder of all  
3 members would be impractical. The actual number of class members is readily ascertainable by  
4 a review of Defendant's records through appropriate discovery.  
5

6           16.     There are questions of law and fact common to the Class. Common questions of  
7 law and fact include, but are not limited to, the following:

8           a.     Whether Defendant failed to pay minimum wage to the Class as required by  
9 the Nevada Constitution, Article 15, Section 16;

10          b.     Whether Defendant impermissibly credited tips towards the payment of  
11 minimum wage resulting in payment of less than minimum wage to the Class  
12 as required by the Nevada Constitution, Article 15, Section 16.

13          c.     Whether Defendant made unlawful deductions from the Class' wages,  
14 including, but not limited to, deductions for "cash loan fees," resulting in  
15 payment of less than minimum wage to the Class as required by the Nevada  
16 Constitution, Article 15, Section 16.  
17

18           17.     Plaintiff's claims are typical of those of the members of the class so that proof of  
19 a common or single set of facts will establish the right of each member of the class to recover.  
20

21           18.     Questions of law and fact common to the Class predominate over any questions  
22 affecting individual members of the Class.

23           19.     A class action is superior to the other available methods for the fair and efficient  
24 adjudication of the controversy. Due to the typicality of the class members' claims, the interests  
25 of judicial economy will be best served by adjudication of this lawsuit as a class action. This  
26 type of case is uniquely well-suited for class treatment because Plaintiff believes that the  
27 employers' practices were uniform and the burden is on the employer to establish that its  
28

1 method for compensating the class members complies with the requirements of Nevada law,  
2 and the interests of justice and judicial efficiency will be best served by bringing this action as a  
3 class action.  
4

5 20. Plaintiff will fairly and adequately represent the interests of the members of the  
6 class and has no interests that conflict with or are antagonistic to the interests of the class.

7 21. Plaintiff has retained counsel experienced in the prosecution of class action cases  
8 and employment claims and thus will be able to appropriately prosecute this case on behalf of  
9 the class.

10 22. Plaintiff and her counsel are aware of their fiduciary responsibilities to the  
11 members of the proposed class and are determined to diligently discharge those duties by  
12 vigorously seeking the maximum possible recovery for all members of the proposed class.  
13

14 23. There is no plain, speedy, or adequate remedy other than by maintenance of this  
15 class action. The prosecution of individual remedies by members of the class will tend to  
16 establish inconsistent standards of conduct for the defendant and result in the impairment of  
17 class members' rights and the disposition of their interests through actions to which they were  
18 not parties. In addition, the class members' individual claims are small in amount and they have  
19 no substantial ability to vindicate their rights, and secure the assistance of competent counsel to  
20 do so, except by the prosecution of a class action case.  
21

22 **FIRST CLAIM FOR RELIEF**

23 **FAILURE TO PAY MINIMUM WAGE**

24 **(Nev. Const. Art. 15, § 16)**

25 **By Plaintiff and the Class against Defendant**

26 24. Plaintiff incorporates by this reference each and every allegation previously made  
27 in this Complaint, as if fully set forth herein.  
28

1           25.     Article 15, Section 16 of the Nevada Constitution requires that Defendant pay  
2 Plaintiff and the class members an hourly minimum wage for each hour worked.

3           26.     However, Defendant failed to pay Plaintiff and the class members an amount  
4 equal to minimum wage for each hour worked by them. Defendant also unlawfully credited  
5 Plaintiff's and the class members' tips toward the payment of minimum wage, and made  
6 unlawful deductions from their wages, including but not limited to deductions for "cash loan  
7 fees," resulting in payment of less than minimum wage to Plaintiff and the class members.  
8

9           27.     Defendant's conduct in failing to pay Plaintiff and the class members for all  
10 hours worked in violation of Article 15, Section 16, of the Nevada Constitution was malicious  
11 and/or oppressive conduct by the defendant and undertaken with the intent to defraud and  
12 oppress plaintiff and the class, thus warranting the imposition of punitive damages pursuant to  
13 NRS § 42.005 sufficient to punish and embarrass Defendant thereby deterring such conduct by  
14 it in the future for the following reasons:  
15

16           a.     Plaintiff is informed and believes, and thereon alleges, that Defendant  
17 was aware of its obligation to pay its employees at least minimum wage for each hour worked  
18 pursuant to the Federal Fair Labor Standards Act, and is a party to a consent judgment with  
19 respect to its failure to pay its employees at least minimum wage for the time period of October  
20 1, 2010, through October 1, 2012. *See Perez v. A Cab, LLC*, Federal District of Nevada Case  
21 2:14-cv-01615-JCM-VCF.  
22

23           b.     Plaintiff is informed and believes and thereon alleges that Defendant,  
24 despite also having, and being aware of, an express obligation to pay minimum wage under  
25 Article 15, Section 16, of the Nevada Constitution, such obligation commencing no later than  
26 July 1, 2007, and to advise Plaintiff and the class members, in writing, of their entitlement to the  
27  
28

1 minimum hourly wage specified in such constitution provision, failed to provide such written  
2 advisement and failed to pay minimum wage as required;

3 c. Plaintiff is further informed and believes and thereon alleges that  
4 Defendant was, or should have been, aware of the Nevada Supreme Court's holding in *Thomas*  
5 *v. Nevada Yellow Cab Corp. et al*, 327 P.3d 518 (Nev. 2014), in which the Nevada Supreme  
6 Court specifically held that the provisions of Article 15, Section 16, of the Nevada Constitution  
7 applied to taxi cab drivers such as Plaintiff and the class members.

8  
9 28. Plaintiff is informed and believes and thereon alleges that Defendant engaged in  
10 the acts and/or omissions detailed in paragraph 23 in an intentional scheme to maliciously,  
11 oppressively and fraudulently deprive its taxi cab driver employees of the hourly minimum  
12 wages that were guaranteed to those employees by Article 15, Section 16, of the Nevada  
13 Constitution. Defendant so acted consciously, willfully, and intentionally to deprive such taxi  
14 driver employees of any knowledge that they might be entitled to such minimum hourly wages,  
15 despite the defendant's obligation under Article 15, Section 16, of the Nevada Constitution to  
16 advise such cab driver employees of their right to those minimum hourly wages. Defendant's  
17 malicious, oppressive and fraudulent conduct is also demonstrated by their failure to make any  
18 allowance to pay such minimum hourly wages if they were found to be due, such as through an  
19 escrow account, while seeking any judicial determination of their obligation to make those  
20 payments.

21  
22  
23 29. The rights secured to the plaintiff and to the class members under Article 15,  
24 Section 16, of the Nevada Constitution for a minimum level of remuneration for their labor as  
25 Defendant's employees, constitute property rights, in that such level of remuneration constitutes  
26 property of the plaintiff and the class members, to wit, a sum of money that they have a right to  
27 possess for the inalienable value of their labor, which labor the Defendant obtained from them  
28

1 as an employer. Defendant has obtained such property, the minimum wages properly the  
2 property of the plaintiff and the class members, illegally and defendant still possesses the same,  
3 the defendant having also committed a conversion of such property. As a result defendant  
4 should be, and are, subject to all forms of equitable relief and legal sanctions necessary to return  
5 such property to the plaintiffs and the class members and/or make them whole, including  
6 without limitation, a suitable Court Order directing that the defendant makes restitution to the  
7 plaintiff and the class members for the full value of all such property taken and held by the  
8 defendant, with interest and an award of all proper incidental consequential and/or punitive  
9 damages available under the law or in equity appropriate to remedy such violations of the  
10 plaintiff's and the class members' rights under Article 15, Section 16, of the Nevada  
11 Constitution.  
12

13  
14 30. Plaintiff, on behalf of herself and all class members, seeks all relief available to  
15 her and the alleged class under Article 15, Section 16, of the Nevada Constitution, including  
16 appropriate injunctive and equitable relief to make the defendant cease their violations of  
17 Nevada's Constitution and make a suitable award of punitive damages.

18 31. As a direct and proximate result of Defendant's conduct, Plaintiff and the class has  
19 incurred, and will continue to incur damages and other costs and expenses in an amount in excess  
20 of \$10,000.00.  
21

22 32. It has been necessary for Plaintiff to obtain the services of an attorney to pursue  
23 this claim, and Plaintiffs and the members of the Class are entitled to recover reasonable  
24 attorneys' fees and costs pursuant to Nev. Const. Art. 15, § 16.

25 ///

26 ///

27 ///



1  
2  
3 SECOND CLAIM FOR RELIEF

4 CONVERSION

5 By Plaintiffs and the Class Against Defendant

6 33. Plaintiff incorporates by this reference each and every allegation previously  
7 made in this Complaint, as if fully set forth herein.

8 34. Plaintiff and the Class had a right to possession of all wages earned by them as  
9 employees of Defendant;

10 35. Defendant intentionally and substantially interfered with Plaintiff's and the  
11 Class' right to possession of their earned wages by failing to pay minimum wage, by crediting  
12 their tips towards the payment of minimum wage, and by making unauthorized and/or unlawful  
13 deductions from their wages.

14 36. Plaintiff and the Class were harmed as a result of Defendant's conduct.

15 37. As a direct and proximate result of Defendant's conduct, Plaintiff and the class has  
16 incurred, and will continue to incur damages and other costs and expenses in an amount in excess  
17 of \$10,000.00.

18 38. Defendant's conduct in converting Plaintiff's and the Class' wages was  
19 malicious and undertaken with the intent to defraud and oppress Plaintiff and the Nevada Class,  
20 thus warranting the imposition of punitive damages pursuant to NRS § 42.005 sufficient to  
21 punish and embarrass Defendant thereby deterring such conduct by them in the future.  
22

23 PRAYER FOR RELIEF

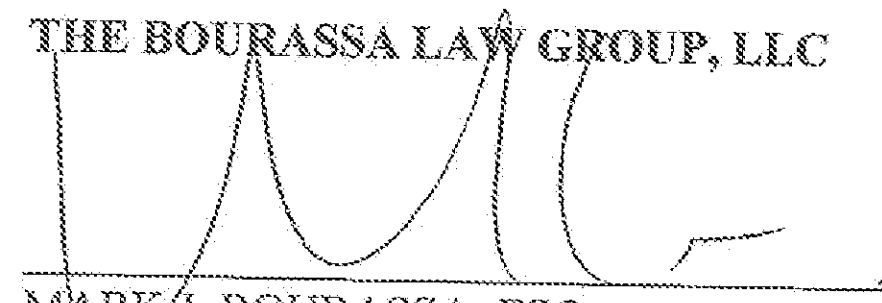
24  
25 WHEREFORE, Plaintiff, reserving the right to amend this Complaint at the time of trial to  
26 include all items of damages not yet ascertained, prays judgment against the defendants, and each  
27 of them, as follows:  
28



- 1 (1) For an order certifying the Class pursuant to Rule 23 of the Nevada Rules of  
2 Civil Procedure;  
3  
4 (2) Designation of Plaintiff as the class representative for the Class;  
5  
6 (3) Compensatory damages for Plaintiff and the Class in excess of \$10,000.00;  
7  
8 (4) For exemplary damages on behalf of Plaintiff and the Class;  
9  
10 (5) For disgorgement and/or restitution as the Court deems appropriate, just, and  
11 proper;  
12  
13 (6) For reasonable attorney fees for all services performed by counsel in connection  
14 with the prosecution of these claims;  
15  
16 (7) For reimbursement for all costs and expenses incurred in connection with the  
17 prosecution of these claims;  
18  
19 (8) Prejudgment interest; and  
20  
21 (9) For any and all other relief this Court may deem appropriate.

22 DATED this 7<sup>th</sup> day of July, 2015.

23 THE BOURASSA LAW GROUP, LLC

24   
25 MARK J. BOURASSA, ESQ.

26 Nevada Bar No. 7999

27 8668 Spring Mountain Rd., Suite 101

28 Las Vegas, Nevada 89117

Tel: (702) 851-2180

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*Attorneys for Plaintiff*

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DEMAND FOR JURY TRIAL

Plaintiff, by and through her attorneys of record, The Bourassa Law Group, LLC, hereby demands a jury trial of all of the issues in the above matter.

DATED this 7<sup>th</sup> day of June, 2015.

THE BOURASSA LAW GROUP, LLC



MARK J. BOURASSA, ESQ.

Nevada Bar No. 7999

8668 Spring Mountain Rd., Suite 101

Las Vegas, Nevada 89117

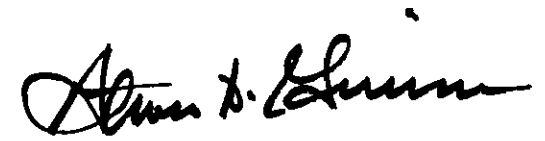
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*Attorneys for Plaintiff*

  
CLERK OF THE COURT

**OPPM**  
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Attorneys for Plaintiffs

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

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' RESPONSE IN  
OPPOSITION TO  
DEFENDANTS' MOTION  
SEEKING  
RECONSIDERATION OF THE  
COURT'S ORDER GRANTING  
CLASS CERTIFICATION**

Plaintiffs, by and through their attorney, Leon Greenberg Professional Corporation, submit this memorandum of points and authorities in response to defendants' motion seeking to have the Court reconsider its February 10, 2016 Order granting plaintiff's motion to certify a class action.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**ARGUMENT**

**I. DEFENDANTS FAIL TO MEET THE STANDARD FOR  
RECONSIDERATION**

"Only in very rare instances in which *new issues of fact or law* are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Masonry & Tile Contrs. v. Jolley, Urga & Wirth Ass'n*, 113

1 Nev. 737, 741 (Nev. 1997) (Emphasis in original), citing *Moore v. City of Las Vegas*,  
2 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). Further, a district court may reconsider a  
3 previously decided issue *if substantially different evidence* is subsequently introduced  
4 or the decision is clearly erroneous. *Id.* (emphasis added), citing *Little Earth of United*  
5 *Tribes v. Department of Housing*, 807 F.2d 1433, 1441 (8th Cir. 1986).

6 As discussed, *infra*, defendants present no new evidence. They simply rehash  
7 and represent the same arguments already rejected by the Court. Nor was the Court's  
8 prior order clearly erroneous. Indeed, defendants ascribe as "error" certain findings in  
9 the Order that they claim, without any authority (such as an actual Court hearing  
10 transcript, of which they present none), are contrary to the Court's actual findings  
11 (presumably those made at a hearing, though defendants never actually explain those  
12 claims).

## 13 **II. DEFENDANTS MISREPRESENT WHAT THE ORDER** 14 **HOLDS AND ITS HOLDINGS NEED NO AMENDMENT**

15 The Court's Order speaks for itself. Yet defendants' counsel, abusively,  
16 misrepresents that Order as making certain findings, that it did not make, and needing  
17 correction in respect to such findings:

18 ● No Special Master is appointed or injunction issued. The Order grants class  
19 certification under NRCP Rule 23(b)(2) to *possibly* issue a class wide injunction which  
20 it observes may *possibly* be effectuated through a Special Master. The Order makes  
21 clear no such injunction or Special Master is appointed, at this time, and it requires no  
22 amendment on this point.

23 ● The class is not "overly broad" with any "competing class action case."  
24 Defendants' counsel fabricates the existence of what it calls a "competing class action"  
25 case, the *Dubric v. A Cab*, A-15-721063-C, lawsuit and postures that "two plaintiffs'  
26 firms" represent "numerous drivers" and thus the class certification of this case is  
27 "overly broad." This is sheer nonsense. The *Dubric* case involves one plaintiff who  
28 was excluded from the class by the Order, it was filed years after this case, and it was  
never granted class certification. The *Dubric* case has no relevancy to this case. Nor

1 is there any basis for the Court to limit certification in this case to the “post” *Thomas v.*  
2 *Nevada Yellow Cab* (post June 2014) taxi drivers of defendants. That defendants  
3 persist in their claim *Thomas*, not Nevada’s Constitution, established the minimum  
4 wage rights at issue in this case, and only as of June of 2014, is of no moment. That  
5 claim was rejected in this case and has been rejected by every Court that has  
6 considered it.

7     • The Court’s background findings are permissible and correct. Defendant,  
8 without explanation, takes issue with certain background findings of the Court. It also  
9 distorts what those findings actually involve. Those findings, made by the Court in  
10 support of its class certification decision, are not actual holdings of liability or adverse  
11 determinations against the defendants. They are simply observations, reasoning,  
12 expressed by the Court that are supportive of its class certification holding. For  
13 example, the United States Department Labor did enter into a consent judgment with  
14 defendants and that consent judgment did legally obligate the defendants to make  
15 certain payments to its taxi drivers. Those payments were secured from the defendants  
16 by the Department of Labor in response to claims it brought as a government agency  
17 charged with enforcing the federal minimum wage. While the Court has not ruled  
18 defendants actually owed any unpaid minimum wages as claimed by the Department of  
19 Labor, or that the consent judgment establishes such minimum wages were owed, that  
20 consent judgment *did create a legal liability by defendant to make certain payments.*  
21 The Order states precisely that. Similarly, defendants’ assertions that the various  
22 findings incorporated in the Order were not passed upon orally by the Court at hearing  
23 is without merit. The Court is intelligent enough to vet and review those findings for  
24 itself and sign off on them as consistent with, and supporting, its ultimate class  
25 certification holding.

## 26 CONCLUSION

27 The Court’s class certification Order was rendered after over four hours of oral  
28 argument (a morning and afternoon session) and upon the consideration of numerous

1 briefs and supplemental briefs. No basis exists to modify that Order in any respect and  
2 defendants' motion should be denied in its entirety.

3 Dated this 14<sup>th</sup> day of March, 2016.

4  
5 Leon Greenberg Professional Corporation

6  
7 By: /s/ Leon Greenberg  
8 LEON GREENBERG, Esq. SBN 8094  
9 Attorney for Plaintiff  
10 2965 South Jones Blvd Suite E3  
11 Las Vegas, Nevada 89146  
12 (702) 383-6085  
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CERTIFICATE OF MAILING

The undersigned certifies that on March 14, 2016, she served the within:

**Plaintiffs' Response in Opposition to Defendants' Motion Seeking  
Reconsideration of the Court's Order Granting Class Certification**

by court electronic service to:

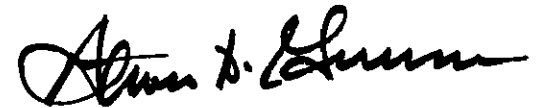
TO:

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

*/s/ Dana Sniegocki*

---

Dana Sniegocki



CLERK OF THE COURT

**RIS**

Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
RODRIGUEZ LAW OFFICES, P.C.  
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702-320-8400  
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Michael K. Wall, Esq.  
Nevada Bar No. 2098  
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10080 West Alta Drive, Suite 200  
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[mwall@hutchlegal.com](mailto:mwall@hutchlegal.com)  
*Attorneys for Defendants*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,  
and CREIGHTON J. NADY,

Defendants.

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

Hearing Date: March 28, 2016

Hearing Time: Chambers

**REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR RECONSIDERATION**

Defendants A Cab, LLC and Creighton J. Nady, by and through their attorneys of record,  
hereby respectfully submit this Reply in support of its Motion for Reconsideration of this  
Honorable Court's prior Order of February 10, 2016, 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 (*sic*) 53.

...

...

...



**POINTS AND AUTHORITIES**

As stated in its moving papers and in open court on March 16, 2016 when the parties were last present before this Honorable Court: with this request Defendants are not seeking for the Court to change its mind regarding the certification of the class. Rather, Defendants are requesting that the Court revisit the *Order* as submitted by Plaintiffs with multiple improper insertions fabricated by the Plaintiffs. These insertions into the Court's *Order* are:

- 1) in direct conflict with the Court's guidance;
- 2) never argued or considered by the Court during the 4 hour hearing; or
- 3) are wording to imply they are findings of the Court, when in reality they are the opinions of Plaintiffs' counsel.

Attached hereto as **Exhibit 1**, is a chart prepared for the Court to view the glaring inconsistencies between the Court's guidance during the November 3, 2015 Hearing, and that which was inserted by the Plaintiffs into the Court's *Order*.

The Court's *Order* is not a proper medium in which to include Plaintiffs' arguments as "findings," especially as this is the *Order* (with its mirror Notice<sup>1</sup>) that is proposed to be mailed to all of A Cab's drivers.

Plaintiffs are in essence arguing their case in the *Order*, rather than representing the Court's rulings. As a result, the *Order* contains outright falsehoods that must be corrected in the interest of justice and fairness. Reconsideration is appropriate when the decision is clearly erroneous. *See Masonry & Title Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth*, 941 P.2d 486, 489 (Nev. 1997).

Plaintiffs include such statements in the *Order* as "Defendants have not proffered any meaningful evidence tending to contradict such conclusion," when Plaintiffs have conducted no discovery on the particular issue; this example was pertaining to qualifying health insurance.

---

<sup>1</sup> If the Court finds that revision is necessary to the disputed Order, the proposed Notice should be revised to be consistent with the Court's findings. Currently, the Notice includes a retroactive date never ordered by the Court; additional causes of action not ordered by the Court; and issues pertaining to Defendant Nady which were not ordered by the Court nor are they proper for certification.

1 *Order*, 5:9. This issue was not only not addressed during the hearing, but no discovery has even  
2 been conducted on the issue. Yet, Plaintiffs insert it into the *Order* as a finding by the Court that  
3 “Defendants have not proffered any meaningful evidence.” This is just simply made up by  
4 Plaintiffs.

5 Plaintiffs insert statements into the *Order* which simply are not true like “plaintiffs have  
6 also demonstrated, and defendants do not dispute, a violation of Nevada’s Constitution existing  
7 prior to June of 2014.” *Order* 5:24. This is absolutely disputed, and Plaintiffs have *never* made a  
8 showing. In fact, discovery to date has demonstrated the opposite - Plaintiffs have altogether failed  
9 to demonstrate any violation whatsoever, and thus have been the subject of summary judgment.  
10 Yet, here it is written in completely the opposite, as a finding of the Court. The conclusions in the  
11 *Order* imply they are the findings of the court, when they are merely the self-serving opinions of  
12 Plaintiffs’ counsel.

13 Plaintiffs in this instance submitted an *Order* which goes far beyond the findings of the  
14 Court. They have included a retroactive date to July 1, 2007, when the Court clearly ordered  
15 otherwise. **Exhibit 2**, *Hearing Transcript*, 32:10. They have unilaterally inserted Michael  
16 Sargeant as another representative Plaintiff, rather than seeking leave of Court to amend the  
17 Complaint to add him as a proper Plaintiff. There is nothing in the transcript where the Court  
18 indicates the Plaintiffs have the Court’s leave to amend their Complaint, much less to insert a new  
19 Plaintiff as a class representative. Yet, Plaintiffs take liberty in doing so.

20 Defendants had the hearing transcribed, and a complete copy of the transcript is attached as  
21 **Exhibit 2**. It is quite telling that Plaintiffs drafted a 13 page *Order* without the benefit of a  
22 transcript, or the Court’s words. The result was Plaintiffs’ inserting items never addressed by the  
23 Court, and items that were in direct contradiction to the Court’s guidance.

## 24 II.

### 25 CONCLUSION

26 Based upon the foregoing points and authorities, Defendants respectfully request this  
27 Honorable Court to reconsider its prior *Order* as written by Plaintiffs. The *Order* and the  
28 accompanying Notice must be revised before being sent to the class. The numerous problems with

the *Order* have been detailed in **Exhibit 1** to this Reply.

Without revisions, the *Order* is extremely prejudicial and damaging to Defendants, in that it incorporates Plaintiffs' opinions as findings by the Court. Further, the retroactive date is inconsistent with the Court's Order. Finally, the Court made no finding to allow the addition of a new class representative.

DATED this 24<sup>th</sup> day of March, 2016.

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

/s/ Esther C. Rodriguez, Esq.  
Esther C. Rodriguez, Esq.  
Nevada State Bar No. 006473  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 24<sup>th</sup> day of March, 2016, I electronically *filed* the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

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

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

# EXHIBIT 1

# EXHIBIT 1

The following table displays inconsistencies that exist between Mr. Greenberg's ORDER and the November 3rd, 2015 Court hearing on which the order was based.

November 3rd, 2015 Hearing	Mr. Greenberg's Order
<p><b>1</b>  (Judge responding to Ms. Rodriguez on pg.39:22)  <u>"I took a look -- 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. <b>So you may have your hands full there, Mr. Greenberg, at least insofar as your argument relies on that prior consent judgment.</b>"</u>  <i>The judge later on pg.41 states that the DOL agreement only serves as evidence that A-Cab is aware of the law in this matter. This is the entirety of Judge Cory's thoughts on the DOL audit and the consent judgment.</i></p>	<p><b>1</b>  (Order pg.3:27) <u>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.</u></p>
<p><b>2</b>  <i>During the hearing Ms. Rodriguez mentions that the <b>audits were standard across the taxi cab industry.</b> Judge Cory never makes comments on how the USDOL institutes their litigation.</i></p>	<p><b>2</b>  (Order pg.4:12) <u>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.</u></p>
<p><b>3</b>  <i>Judge Cory never mentions that the Consent Judgment constitutes substantial evidence. As noted above, Judge Cory makes no comments on the consent judgment beyond it serving as evidence that A-Cab was informed of the laws with regard to mininum wage.</i></p>	<p><b>3</b>  (Order pg.4:16) <u>Accordingly, whether or not the consent judgment is deemed as a binding admission by defendants that they owe \$139,834.80 in unpaid mininum 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.</u></p>

4

*Judge Cory never mentions this issue during the November 3rd, 2015 hearing.*

5

*During the hearing Ms. Rodriguez clearly disputes that there was any violation. None of the conclusions being drawn here are from Judge Cory. They appear to be Mr. Greenberg's opinions. This is one of several points during the order where Mr. Greenberg chooses to argue his case instead of representing The Court's rulings. There are conclusions in here that are not based on established facts.*

4

(Order pg.5:9) 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.

5

(Order pg.5:24) 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 S+B16argeant 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.

6

*The third and fourth claims were never discussed by Judge Cory at the hearing.*

7

*The Court never found that Michael Sargeant's "payroll records show, on their face, a violation of Nevada's minimum wage requirements". Judge Cory offered no comments on Michael Sargeant during the hearing.*

*Michael Sargeant is not a class representative.*

8

*A-Cab company policies were never discussed by The Court at the November 3rd hearing.*

*Mr. Greenberg inserts his own opinion here as The Court has never stated A-Cab's policies violate any minimum wage rights. Mr. Greenberg also implies that The Court considers A-Cab to have illegal policies, but this is not supported by anything in the hearing.*

6

(Order pg.6:20) 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.

7

(Order pg.7:15) 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.

8

(Order pg.8:8) 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."

9

(Hearing pg. 122)

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, the 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?

*At this point Ms. Rodriguez explains that the DOL approved of A-Cab's record keeping and stated there are no violations. Mr. Greenberg has not provided any proof to The Court that A-Cab was advised by DOL to keep a different type of record.*

10

*The Motion to Appoint a Special Master was denied by the Court. Judge Cory makes no mention of revisiting that possibility in the future.*

11

*Judge Cory does not state during the hearing whether he has doubts or not. This statement seems to be Mr. Greenberg's opinion.*

12

(Hearing pg.32:10)

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

*This is all Judge Cory mentions about the statute of limitations during the hearing. Effectively Oct. 2008 to Oct. 2012.*

9

(Order pg.8:16) 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.

10

(Order Pg.9:15) ...and Ordering the appointment of a Special Master to monitor defendants' compliance with such an injunction.

11

(Order Pg.9:17) Defendants have not proffered evidence or arguments convincing the Court that it should doubt the accuracy of the foregoing findings.

12

(Order Pg.10:20) 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.



**13**

*On pages 2, 6, and 10 the Order mentions the Third and Fourth claims for relief. Judge Cory never discusses these claims.*

***At no point during the November 3rd hearing does Judge Cory discuss these claims which are directly aimed at Creighton Nady. Somehow they have snuck into the Order that Mr. Greenberg prepared.***

**13**

(Order Pg.10:28) ...and the claims alleged against defendant Nady in the third and fourth claims for relief in the Second Amended and Supplemental Complaint.

# EXHIBIT 2

# EXHIBIT 2

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.,	.	<b>TRANSCRIPT OF</b>
	.	<b>PROCEEDINGS</b>
	.	
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:

VERBATIM DIGITAL REPORTING, LLC  
Englewood, CO 80110  
(303) 798-0890

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

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

4                       (Pause in the proceedings)

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

9               THE COURT:   Okay.   Good morning.

10              MS. SNIEGOCKI:   Dana Sniegocki, for plaintiff.

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

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

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

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

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

6 THE COURT: Okay.

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

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

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

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

15 MS. RODRIGUEZ: Egypt.

16 THE COURT: -- went down?

17 MS. RODRIGUEZ: Yeah.

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

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

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

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

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

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

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

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

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

3 THE COURT: Okay.

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

8 THE COURT: Okay.

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

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

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

1 there.

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

6 MS. RODRIGUEZ: Right, right.

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

12 MS. RODRIGUEZ: Right.

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

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

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



1 allegations that are against A Cab in this case, both from  
2 what is actually specified in the plaintiff's Complaints and  
3 their supporting declarations, all lend themselves that this  
4 is a claim for unpaid hours as opposed to specifically a  
5 minimum wage where they were paid \$5.00 instead of 8.25 or  
6 7.25. The unpaid hours provisions all fall within the  
7 jurisdiction of the Labor Commissioner and everything under  
8 the Labor Commissioner pertains to a two-year statute of  
9 limitations.

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

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

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

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

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

4           You're making a minimum wage claim, whether it's  
5 under a constitutional amendment or whether it's under the NRS  
6 608, then there is a statute that says it's a two-year statute  
7 of limitations. So why would you have to go to the catchall?

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

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

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

16           MS. RODRIGUEZ: Well, I think --

17           THE COURT: -- that this catchall must apply?

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

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

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

15 THE COURT: Anything else on that one?

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

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

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

25 This is unusual because this is a very specific,

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

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

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

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

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

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

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

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

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

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

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

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

7           So the entirety of defendant's reasoning as to why  
8 the two-year statute of limitations should apply is because we  
9 have the statute 608.260. And if you read the statute, it  
10 says, any employee -- "If any employer pays an employee a  
11 lesser amount than the minimum wage prescribed by regulation  
12 of the Labor Commissioner pursuant to the provisions of NRS  
13 608.250." This is at page 7 of my opposition.

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

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

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

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

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

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

23           THE COURT: Notwithstanding Judge Navarro's opinion?

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

1 is an exhibit that I attached to my brief.

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

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

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

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

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



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

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

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

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

25           MR. GREENBERG: Well, right.

1 THE COURT: To see whether measures up.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 The first change in the minimum wage since the  
12 enactment of the constitutional provision in 2006 came on July  
13 1st, 2007. Defendants never gave that written notification to  
14 their taxi driver employees.

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

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

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

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

10           THE COURT: At page 13, you said?

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

14           THE COURT: Oh.

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

18           THE COURT: Within the context of which motion?

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

1 on this equitable tolling claim, okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 THE COURT: I see, yeah.



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

3           THE COURT: Okay.

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

7           THE COURT: No.

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

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

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

17           THE COURT: Right. Ms. Rodriguez?

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

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

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

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

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

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

21 MS. RODRIGUEZ: The only --

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

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

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

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

4 MS. RODRIGUEZ: Absolutely not, Your Honor.

5 THE COURT: Why not?

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

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

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

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

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

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

1 recording issue.

2 THE COURT: That was E, you said?

3 MS. RODRIGUEZ: Yes, Your Honor.

4 THE COURT: Okay. Go ahead.

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

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

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

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

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

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

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

15 THE COURT: Okay.

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

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

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

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

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

18           MS. RODRIGUEZ: Right.

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

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

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

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

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

8 THE COURT: Well, part of --

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

12 THE COURT: Uh-huh.

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

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

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

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

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

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

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

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

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

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

25 I would add that there is yet another reason why I



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

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

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

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

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

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

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

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

16 THE COURT: Okay.

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

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

1 opinion --

2 THE COURT: Well --

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

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

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

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

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

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

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

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

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

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

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

6 THE COURT: No.

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

9 THE COURT: No.

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

12 THE COURT: No.

13 MS. RODRIGUEZ: And my concern was --

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

21 MS. RODRIGUEZ: Right.

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

1 MS. RODRIGUEZ: Right.

2 THE COURT: -- able to be proven --

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

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

7 MS. RODRIGUEZ: Okay.

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

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

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

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

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

25 As I mentioned prior to the Thomas decision, there

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

6 THE COURT: Um-hum.

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

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

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

20 MS. RODRIGUEZ: Right.

21 THE COURT: -- federal investigation here?

22 MS. RODRIGUEZ: Right.

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

25 MS. RODRIGUEZ: No, not really.

1 THE COURT: How applicable is that?

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

4 THE COURT: Sure, yeah.

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

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

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

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



1 they'd actually filed the Complaint?

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

3 THE COURT: No? Okay.

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

6 THE COURT: This is the consent judgment, right?

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

11 THE COURT: Monthly installments, okay.

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

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

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

1 what happened here.

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

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

13           MS. RODRIGUEZ: They were filed together.

14           THE COURT: They were filed together.

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

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

19           MS. RODRIGUEZ: No.

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

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

23           THE COURT: That gives me some pause. Okay.

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

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

9 THE COURT: Yeah.

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

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

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

25 THE COURT: Yeah.

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

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

14 MS. RODRIGUEZ: Okay.

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

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

25 Western Cab has similarly filed amicus. Their brief

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

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

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

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

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

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

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

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

21           MR. GREENBERG: Yes, Your Honor.

22           THE COURT: Five minutes.

23           MR. GREENBERG: Whatever the Court believes is  
24   appropriate.

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

1 THE COURT: Please be seated.

2 All right, Mr. Greenberg.

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

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

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

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

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

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

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

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



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

4 I mean, this argument that we're discussing was  
5 actually raised before the Ninth Circuit, and this is  
6 discussed in the Green v. Executive Coach and Carriage case.  
7 This is at page four of my Response. And it was completely  
8 rejected summarily that this idea that Thomas somehow had no  
9 application to the class of persons that we're dealing with  
10 here, taxi and limousine drivers, prior to its issuance in  
11 2014.

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

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

25 In Desert Cab, which came later, these precise

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

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

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

15           Now, let's just set all of that aside, Your Honor,  
16 and somehow look at the equities here, okay. If we were to  
17 address the equities, they have no equitable claim here. The  
18 fact of the matter is, Your Honor, when this constitutional  
19 amendment came into being and became effective in November of  
20 2006, the Attorney General of the State of Nevada issued a  
21 public opinion advising all employers that -- all employees,  
22 including specifically workers in these industries, would be  
23 covered by this constitutional amendment if it was, in fact,  
24 enacted by the people. That was his opinion.

25           Now, I understand there was subsequent

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

7           Their argument wasn't, by the way, Your Honor, about  
8 a lack of clarity in the Constitution itself. The entire  
9 argument here that defendants have raised was raised in  
10 Thomas, is that, well, we have this other statutory scheme in  
11 608.250, which excludes these people.

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

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

24 //

25           Your Honor, they could have come to this court and

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

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

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

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

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

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

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

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

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

25           They were on notice, Your Honor. They had an

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

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

11           THE COURT: Okay. No.

12           MR. GREENBERG: Thank you, Your Honor.

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

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

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

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

11           THE COURT: Well, aren't you --

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

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

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

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

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

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

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

16 MS. RODRIGUEZ: Well, no, Your Honor.

17 THE COURT: No? Okay.

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

20 THE COURT: Okay.

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



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

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

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

15 THE COURT: All right.

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

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

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

25 THE CLERK: November 9, chamber's calendar.

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

3           MS. RODRIGUEZ: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

24    //

25           So it's simply not applicable in this particular

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

3 THE COURT: Okay.

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

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

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

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

3           608.040 is the only thing in Nevada that is an  
4 analogous to giving employers an incentive, a monetary  
5 incentive to comply with the law and pay all of their workers'  
6 wages. So if the Court were to restrict the reach of 608.040,  
7 as defendants are urging the Court to do, and as Your Honor  
8 rejected in Valdez, essentially, employers, in my view, would  
9 be given kind of like a blank check to violate the law, or  
10 certainly to act with impunity because it's kind of like,  
11 well, if I don't pay you your wages, Mr. Employee, what are  
12 you going to? Are you going to sue me? Maybe then I'll have  
13 to pay you, and then I'll just have to pay you what I owe you  
14 in the first place.

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

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

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

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

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

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

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

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

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

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

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

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

24 //

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

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

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

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

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

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

25 THE COURT: Well --



1 MS. RODRIGUEZ: Go ahead.

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

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

7 THE COURT: Well, so the --

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

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

21 THE COURT: No great surprise in that.

22 MS. RODRIGUEZ: Am I surprised by that?

23 THE COURT: Yeah. Not really.

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

25 THE COURT: That's good.

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

3 THE CLERK: November 9th.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23           THE COURT: Have there been Motions to Compel filed?

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

1 Responses are basically blank.

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

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

7 THE COURT: Requests for production, I see.

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

10 THE COURT: Yes.

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

17 THE COURT: Okay.

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

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

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

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

10 THE COURT: Okay. Mr. Greenberg?

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

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

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

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

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

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

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

1 of the deficiency below this minimum-wage threshold.

2           Your Honor, there sufficient evidence in the record  
3 here, as I said. And just so the Court understands, the  
4 Department of Labor judgment is, in fact, a judgment and it --  
5 and we can talk about the language of that, but the issue  
6 isn't merits in terms of the Department of Labor judgment.  
7 It's simply foundational, in that, it shows that there is a  
8 common issue that's presented by Mr. Reno, who is owed 400 --  
9 \$1,048 and all -- and 400 other people or whoever it was, 500  
10 other drivers.

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

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

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



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

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

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

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

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

1 address.

2 THE COURT: All right.

3 MR. GREENBERG: Thank you.

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

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

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

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

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

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

8 THE COURT: I know.

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

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

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

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

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

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

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

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

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

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

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

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

3 THE COURT: Okay.

4 MR. GREENBERG: They do not -- they're telling the  
5 Court right now that there are errors and there's an  
6 explanation for this and this calculation that works out to  
7 5.52 an hour isn't correct; none of this is in their Reply,  
8 Your Honor. They don't address this at all in their Reply.  
9 So I have no idea what they're talking about when they say  
10 that's not true or accurate.

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

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

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

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

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

1 and the medallions.

2 THE COURT: And is --

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

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

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

12 THE COURT: Including Mr. Reno?

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

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

24 THE COURT: Then these things that you --

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

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

3           MR. GREENBERG: Right. Those records don't exist,  
4 Your Honor. They simply issued -- until -- until shortly  
5 before Your Honor's ruling in February of -- or January of  
6 2013, and only after the Department of Labor came back in  
7 2012, did the defendant start issuing payroll checks that  
8 actually had a statement of hours per pay period on them.  
9 They never issued them prior to that date.

10           And, by the way, Your Honor, when they started  
11 issuing those payroll checks as we've discussed in the Motion  
12 to Certify, they were still taking tip credit which is not  
13 allowed under Nevada law, even after Your Honor ruled that  
14 they were subject to Nevada's law in January or February of  
15 2013. My point is, Your Honor --

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

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

20           THE COURT: Okay.

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

23           THE COURT: All right.

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

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

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

11           THE COURT: When are they set to be heard?

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

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

17           THE COURT: Okay.

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



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

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

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

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

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

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

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

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

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

13 MR. GREENBERG: Your Honor --

14 MS. RODRIGUEZ: The --

15 THE COURT: No, just a minute.

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

21 THE COURT: Understood.

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

24 THE COURT: In relation to this motion.

25 MS. RODRIGUEZ: -- this is attorney-driven

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

7 THE COURT: Let me --

8 MS. RODRIGUEZ: That completely goes against --

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

15 MS. RODRIGUEZ: No.

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

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

20 THE COURT: All right. Okay, go ahead.

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

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

1 MS. RODRIGUEZ: I believe it does, Your Honor.

2 THE COURT: What is the effect?

3 MS. RODRIGUEZ: The effect is --

4 THE COURT: How does it tie in?

5 MS. RODRIGUEZ: -- that the plaintiff has not --  
6 does not -- the plaintiff himself, Michael Reno, does not have  
7 a grasp of a claim, does not have a judicial controversy. And  
8 further, that the defense has already offered to resolve a  
9 claim, his claim, more than sufficiently. And he has not been  
10 given the opportunity to go ahead and resolve this claim  
11 before this Court. Why are we going forward?

12 THE COURT: All right. I've --

13 MS. RODRIGUEZ: It extinguishes his claim.

14 THE COURT: We're into playing ping-pong now.

15 Normally, I would have stopped right there. But you do raise  
16 a question. I think Mr. Greenberg needs to be given the  
17 opportunity to respond.

18 MR. GREENBERG: Your Honor, I understand the Court  
19 is trying to navigate its way here, okay. But it is -- it is  
20 extremely offensive, improper for me to be brought before this  
21 Court and questioned regarding what my communications were  
22 with my clients. And that is completely sacrosanct and  
23 privileged. I can't talk about that. I will certainly tell  
24 the Court, I have absolutely fulfilled my obligations to see  
25 my clients are fully informed as I am required to do as an

1 officer of this court.

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

4 THE COURT: Right.

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

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

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

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

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

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

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

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

5 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

12 THE COURT: Okay.

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

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

16 MR. GREENBERG: -- that would be helpful?

17 THE COURT: Since that was raised --

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

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

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



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

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

10 And if they run those numbers -- you know, that  
11 total of, I think it's 92 hours or whatever it is, against the  
12 \$400 or whatever it was that he earned for the period which,  
13 you know, is discussed in the opposition, you're going to wind  
14 up with the same 5.52 an hour number.

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

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

1 THE COURT: All right.

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

7 And this particular plaintiff, as I've mentioned,  
8 has no idea what he's owed. I have repeatedly informed the  
9 Court that they have completely failed to comply with NRCP  
10 16.1 to show a calculation of damages. We have no indication  
11 as we sit here today if they think that Michael Reno is owed  
12 anything at all.

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

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

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

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

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

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

1 Michael Reno again.

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

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

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

12           MS. RODRIGUEZ: Murray has been the --

13           THE COURT: -- particularly applicable to him.

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

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

24 //

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

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

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

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

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

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

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

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

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

5 THE COURT: Okay.

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

9 THE COURT: Okay.

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

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

21 So, again, 7.19 isn't 7.25 an hour, Your Honor, or  
22 8.25 an hour. Again, Mr. Murray is among the individuals who  
23 the Department of Labor did make a finding, defendants agreed,  
24 were owed something.

25 And because there was a finding they were owed

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

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

13 THE COURT: Let's --

14 MR. GREENBERG: Yes.

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

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

21 MS. SNIEGOCKI: Yes.

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

1 me any reason for their failure to produce them.

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

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

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

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

25           And to the extent that the Court wants to look at



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

5 And we don't know whether they are entitled to the  
6 8.25 because we haven't resolved that issue in respect to the  
7 health insurance either. That is an additional issue which is  
8 subject to further ruling by the Court and discovery.

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

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

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

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

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

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

10 MS. RODRIGUEZ: Well --

11 THE COURT: And back to you.

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

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

25 THE COURT: When the Motions to Compel filed in

1 relation to the cutoff of discovery?

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

4 THE COURT: Okay.

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

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

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

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

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

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

20           THE COURT: Which one was filed first?

21           MS. RODRIGUEZ: Mr. Greenberg's. His was filed in  
22 2012, I believe, and -- but there's plenty of these class-  
23 action lawsuits. And, again, the Court doesn't have to  
24 preclude Mr. Greenberg, obviously, from getting the right  
25 plaintiff and filing if he feels it's appropriate, but in this

1 circumstance, these are not the guys.

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

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

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

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

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

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

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

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

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

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

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

18 THE COURT: Sure.

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

20 THE COURT: Sure.

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

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

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

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

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

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

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

23           MR. GREENBERG: Thank you, Your Honor.

24           THE COURT: Thank you.

25           MS. RODRIGUEZ: Thank you.

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

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

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

7 THE COURT: This is a Response to interrogatories?

8 MS. RODRIGUEZ: Right.

9 THE COURT: Yeah.

10 MS. RODRIGUEZ: I have copies for the Court.

11 THE COURT: Okay.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 THE COURT: So if --

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

20 THE COURT: He's just doing the math?

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

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

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

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

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

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

5 THE COURT: As you -- as you --

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

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

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

11 MR. GREENBERG: If Your Honor would appreciate --

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

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

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

25 If an employer can essentially violate the statute



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

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

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

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

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

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

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

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

16 And as I told the Court, starting at sometime in  
17 2012, apparently they have started correlating hours worked  
18 with pay period wages and have actually put it in the  
19 electronic record. And it's -- I told you, and we can get the  
20 testimony, I don't know if it's -- if it's in the record here,  
21 if the Court wants it.

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

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

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

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

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

1 6.85 an hour and Nevada, of course, doesn't get them tip  
2 credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the first place.

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

6 THE COURT: Yes, I --

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

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

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

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

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

24 MR. GREENBERG: Yes, very --

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 MS. RODRIGUEZ: The Department of Labor.

16 THE COURT: Yeah.

17 MS. RODRIGUEZ: Um-hum.

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

20 MS. RODRIGUEZ: No.

21 THE COURT: -- they were to maintain records.

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

1 violations found.

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

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

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

18 MS. RODRIGUEZ: It's attached to --

19 THE COURT: Or just the --

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

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

23 MS. RODRIGUEZ: It says no violations found.

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

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

4 THE COURT: Okay.

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

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

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

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

24 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

17           MS. RODRIGUEZ: Correct.

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

20           MS. RODRIGUEZ: Right.

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

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

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

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

7           THE COURT: Is there a fraud claim?

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

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

12          MR. GREENBERG: Your Honor, there --

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

14          MR. GREENBERG: Oh, oh --

15          THE COURT: But let me --

16          MR. GREENBERG: I'm sorry.

17          MS. RODRIGUEZ: Everything in this Complaint --

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

20          MS. RODRIGUEZ: Is there a specific fraud claim?

21          THE COURT: Yeah.

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

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

1 MS. RODRIGUEZ: First, class --

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

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

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

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

10 THE COURT: Okay.

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

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

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

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

25 MR. GREENBERG: Your Honor, no.

1 THE COURT: All right.

2 MR. GREENBERG: The Court is familiar --

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

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

6 THE COURT: Nady.

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

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

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

20 THE COURT: All right.

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

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

1 to pierce the corporate veil or what is the objective?

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

5 THE COURT: All right.

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

10 THE COURT: Okay.

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

13 THE COURT: Okay.

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

16 THE COURT: All right. Thank you.

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

19 THE COURT: I do, yes.

20 MR. GREENBERG: Yes.

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

1 Constitution.

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

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

5 THE COURT: Is it fraud damages or --

6 MS. RODRIGUEZ: -- unjust enrichment.

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

9 MS. RODRIGUEZ: Correct. Correct.

10 THE COURT: Okay. All right.

11 MS. RODRIGUEZ: Punitive damages.

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

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

20 THE COURT: Okay.

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

25 THE COURT: Is this a fraud cause of action?

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

3 THE COURT: Maybe so because --

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

6 THE COURT: You throw in a lot of --

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

9 THE COURT: Yeah.

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

13 THE COURT: Yeah.

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

18 THE COURT: Okay.

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

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

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

25 THE COURT: Okay.

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

6 THE COURT: Okay.

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

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

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



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

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

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

11 THE COURT: Okay. All right.

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

14 THE COURT: Okay.

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

19 THE COURT: Okay.

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

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

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

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

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

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

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

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

16 THE COURT: I read your description of the --

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

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

20 MS. RODRIGUEZ: Correct.

21 THE COURT: -- of the Valley here.

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

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

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

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

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

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

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

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

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

6 THE COURT: Sure. I read it.

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

9 THE COURT: I read it before I heard it.

10 MS. RODRIGUEZ: And -- and --

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

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

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

1 obligated to pass this offer on to you.

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

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

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

24 //

25 But he was convinced that these guys were just never

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

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

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

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

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

1 resolved.

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

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

16           THE COURT: Okay.

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

19           THE COURT: Indeed.

20           MS. RODRIGUEZ: -- as well as plaintiffs in this  
21 matter. And I know that Your Honor has -- is going to take  
22 the prospective issue, prospective application issue under  
23 advisement further. But if Your Honor rules in our favor on  
24 that one, both of these plaintiffs are gone.

25           As I mentioned, the Discovery Commissioner's



1 hearings are in the next week, if not two weeks I believe  
2 they're next week. If she refuses to extend discovery, or  
3 limits it for the one issue, I believe, that he has in front  
4 of her, it's not going to affect the -- any additional  
5 evidence for Murray or Reno, and I will be refiling the  
6 Motions for Summary Judgment and to Dismiss.

7 And I think the Court has, you know, is trying to be  
8 cautious in allow -- in denying those without prejudice by  
9 just letting these Discovery Commissioner issues play out.  
10 But at this point, we don't have two solid plaintiffs. They  
11 are very questionable. They're questionable with character,  
12 they're questionable with their claims, they're questionable  
13 as to whether they will survive at all with the dismissal on a  
14 prospective application issue.

15 So, you know, all during this course of this  
16 litigation, Mr. Greenberg has wanted you to certify so that he  
17 can find a plaintiff. And he's amended his Complaint several  
18 times, as Your Honor knows, to even personally assert things  
19 against Jay Nady.

20 He's never brought in another plaintiff. He keeps  
21 dangling this Michael Sargeant or this Brauchle out there.  
22 He's had ample opportunity to name them, even as a witness.  
23 He's never done so. And again, I don't know how many times  
24 -- I know the Courts probably tired of me saying this, but  
25 discovery closed October 1. We have nothing to show that

1 Brauchle or Sargeant is any better of a plaintiff. And, in  
2 fact, it's kind of suspicious as to why he would never name  
3 them as a plaintiff or even as a witness.

4 But with what is before the Court today, there is  
5 not sufficient elements. He's not even touched the elements  
6 for class certification. And, you know, I just -- that's the  
7 plaintiffs' doing in this, that we -- that I know the Court is  
8 concerned, well, this may not go to trial in five years, but  
9 this is plaintiff who has created this situation by not  
10 adequately preparing his case.

11 And if there was any other plaintiff -- I mean, I've  
12 been before you, Your Honor, as a plaintiff's counsel on this  
13 and I know you kick them out.

14 So I'm just -- I'm befuddled that these two  
15 plaintiffs that have nothing to support their case, that we're  
16 even considering a class certification because class  
17 certification is secondary.

18 First, Your Honor needs to see if these are  
19 legitimate claims before them. And then if joinder is  
20 impracticable -- and we haven't even gotten to any of those  
21 elements because we're down here.

22 And I think Mr. Greenberg is just wanting you to  
23 skip ahead and he's talking to you about health issues and  
24 dollar per hour and this and that, but he didn't do any  
25 discovery on any of that, and there's nothing to support that

1 there's been any violation ever.

2 And he's asking, you know, the contrary of what we  
3 see all the time. He's asking the defense to put forward all  
4 these things to prove that his -- to disprove his case. But  
5 it's his burden to prove it, and it simply not there, Your  
6 Honor.

7 So I don't think class certification is appropriate  
8 at this time.

9 THE COURT: All right. Okay. I need to take five  
10 minutes --

11 MR. GREENBERG: Yes, Your Honor.

12 THE COURT: -- before we hear from Mr. Greenberg.

13 (Court's recessed at 2:34 p.m. until 2:41 p.m.)

14 THE COURT: All right, Mr. Greenberg.

15 MR. GREENBERG: Yes, Your Honor.

16 Is there anything in particular that the Court would  
17 like me to respond to or that was raised?

18 THE COURT: No, I don't think so.

19 MR. GREENBERG: Then I would like to respond, Your  
20 Honor, to this issue of the history here with the Department  
21 of Labor, and the report that was actually conducted. And if  
22 you go to Exhibit B, and I'm reading verbatim from this.

23 THE COURT: I'm sorry, which exhibit?

24 MR. GREENBERG: This is Exhibit B, Your Honor.

25 THE COURT: B as in boy?

1           MR. GREENBERG: B as in boy of the moving papers.  
2 This is the 2009 U.S. DOL report that defense counsel was also  
3 referring to. If you look on page 2, it says, "Section 6,  
4 there were no minimum wage violations found." Okay. And  
5 skipping one more sentence, it says, "While there is no record  
6 of actual hours worked, the drivers have scheduled hours and  
7 complete trip sheets." So they find there is no record of  
8 actual hours worked.

9           THE COURT: Okay.

10          MR. GREENBERG: If we go down to the bottom where it  
11 says "Disposition" after the redacted portion, it says, "We  
12 discussed the findings of the investigation. The firm was  
13 advised that they must keep a record of actual hours worked  
14 and that the drivers, while exempt from overtime, must be paid  
15 at least the applicable minimum wage for all hours worked."  
16 They're advised that Nevada minimum wage is currently 6.85.  
17 And in the last phrase it says, "This investigation is being  
18 concluded with the firm's assurance of future compliance."

19          Your Honor, I don't see how one can interpret that  
20 as anything other than a promise by the defendants that they  
21 were going to follow the admonition right there in that  
22 disposition paragraph, that they were going to keep records of  
23 the actual hours worked by the taxi drivers. The DOL said,  
24 you need to do this. They said, you have our assurance we're  
25 going to comply and that's how it was disposed of in 2009.

1           The reality is, they never did it. I know we have  
2 trip sheets, Your Honor. But as I pointed out to the Court  
3 before, those trip sheets don't even include a statement as to  
4 the hours the driver worked during that particular shift.

5           They only include information from which it could be  
6 gathered, but those aren't -- those aren't statements of the  
7 actual hours they worked on a shift. It's only information  
8 from which one could ascertain it which -- they testified they  
9 did, and that testimony is not actually before the Court.

10           That deposition was taken in August. I could  
11 present it if the Court wanted. I don't know that the Court  
12 should need to consider that actually. But this is just  
13 addressing this issue that we started at regarding the Special  
14 Master and the question of the history here.

15           Now, there was a statement from defense counsel that  
16 the trip sheets have to be manually stamped and they're not  
17 allowed to keep an electronic record of the time that these  
18 drivers worked. Your Honor, there is no prohibition against  
19 them keeping a payroll record of the hours that any employee  
20 works or that these drivers work. Again, 608.115 specifically  
21 requires that they keep these records as to the number of  
22 hours worked per pay period and maintain them. They didn't.

23           Counsel is referring to this operational requirement  
24 regarding the Taxi Commission that on those trip sheets  
25 themselves, they want to see a manual stamped timestamp from a

1 time clock, because they have to keep those trip sheets to see  
2 what passengers they transported, various other things.

3 That's an independent regulatory requirement. It's  
4 got nothing to do, Your Honor, with their obligation as an  
5 employer to maintain records of the hours their employees  
6 work, Your Honor. So it -- it's not even apples to oranges.  
7 It's just -- it's just a completely different issue and  
8 regulatory requirement.

9 Your Honor, you've heard a lot from defense counsel  
10 about representations regarding what the Discovery  
11 Commissioner has decided in this case. Your Honor, I don't  
12 want to get into refuting that. We do have some decisions  
13 from the Discovery Commissioner. I will say that we do have a  
14 hearing with her again on the 18th of this month.

15 She has specifically granted me leave to supplement  
16 my submissions to her based on this deposition of Mr. Nady  
17 that was conducted in August, based upon a deposition of this  
18 computer data consultant that was conduct before then because  
19 we've been in this electronic records production dispute since  
20 March of this year, Your Honor. She will rule on these  
21 issues. A request for extension of the discovery period was  
22 made because defendants wouldn't agree to that.

23 All of these issues with the discovery, again, have  
24 been held largely in abeyance and continued in front of the  
25 Discovery Commissioner because we filed this motion in May,

1 and it was fully briefed in June. And we're waiting for  
2 resolution of the class certification issue as a matter of  
3 economy before trying to get the Discovery Commissioner's  
4 rulings on this.

5 So we're not trying to delay things, we're not  
6 trying to avoid things here, Your Honor. We are being  
7 diligent and trying to press forward as best as we can.

8 And that brings me to another issue, which I really  
9 should have emphasized in my first statements to Your Honor.  
10 This motion is not about the merits. We all understand that  
11 class certification is not a determination of the merits.  
12 It's a determination as to whether there is a sufficient  
13 quantum of information of evidence that can lead the Court to  
14 believe that at least there is the good basis to find that the  
15 Rule 23 elements of numerosity, commonality, technicality of  
16 claims, adequacy of representation and so forth are met. So  
17 this is not about us proving our case at this point.

18 And, again, back to this U.S. Department of Labor  
19 consent judgment. Whether that, in fact, is a binding finding  
20 on the defendants, that they, in fact, owed this \$139,000 to  
21 the 435 people specified, is not the foundation of the Motion  
22 for Certification. The fact of the matter is that they  
23 reached an agreement with the Department of Labor.

24 //

25 Let's just -- let's just assume it's not, in fact, a

1 binding judgment. It clearly is, Your Honor. Let's just say  
2 it's not. It's no different than what was presented to Judge  
3 Israel in Yellow Cab, where they came in and they did a  
4 cooperative audit. And rather than having to take it to a  
5 consent judgment, they simply reached an understanding that  
6 based upon this review of the records, this was what was owed  
7 under the Fair Labor Standards Act.

8           The fact that there is a history there of a review  
9 and a determination provides enough quantum of evidence for  
10 this Court to say, hey, there's enough of -- there's enough  
11 people here that have an interest in this, there's enough  
12 bases to find that there are common claims at issue for the  
13 reasons I've repeated numerous times.

14           The fact that the federal law is much more lenient  
15 here, and that even if they've complied hundred percent with  
16 the federal law by honoring that consent judgment, they still  
17 very probably could owe additional money for that same time  
18 period to the same drivers under state law, and we need to  
19 have an opportunity to determine that.

20           So it's really just a predicate fact, Your Honor.  
21 It's not a merits determination. We are not here to determine  
22 the merits of anything.

23           Now, actually, if we want to look at a merits issue  
24 and tie that to the class certification, this is presented  
25 front and center to Your Honor by the final supplement I filed



1 with the Court on October 13th, where I address -- and I  
2 addressed this briefly when we were here for argument before  
3 -- the fact that the Court has to certify -- I mean, I say,  
4 have to, Your Honor, and I know that's not my job, it's your  
5 job to decide what you have to do.

6 But given the record that's before the Court which  
7 is not refuted, there is no basis to deny certification of the  
8 claims going from October 2012 forward. We have introduced  
9 evidence to Your Honor in the record that shows that Mr.  
10 Sargeant -- and these are documents that are at Exhibit G of  
11 the moving papers, originally. These are documents and  
12 they're discussed at pages 11 to 12 in the moving papers.  
13 These are -- these are statements --

14 THE COURT: Hang -- hang on one second.

15 MR. GREENBERG: Yes.

16 THE COURT: You said your supplement.

17 MR. GREENBERG: My supplement. And this is  
18 discussed, again, in the supplement at page three. You may  
19 just want to look at page three. Actually, they're reproduced  
20 -- the documents are reproduced again in the supplement that  
21 was filed on October 18th -- October 13th. And it only  
22 addresses the partial class certification that I'm talking  
23 about for the period after October of 2012.

24 //

25 Defendants started producing these payroll records

1 which showed how much they were paying the driver in  
2 compensation per pay period, and also the hours they worked.  
3 And as I -- and next to the supplement, we have the testimony  
4 from Mr. Nady confirming the correctness --

5 THE COURT: No, I'm sorry.

6 MR. GREENBERG: Yes.

7 THE COURT: I have to -- I have to ask you. This is  
8 -- you're talking about your second supplement?

9 MR. GREENBERG: It -- I -- it would be the second  
10 supplement. It's -- it was --

11 THE COURT: Plaintiff's Response to Defendants'  
12 Supplement.

13 MR. GREENBERG: No, Your Honor. It's Plaintiffs' --  
14 it's Plaintiffs' Supplement to Plaintiffs' Motion to Certify  
15 this case as class action. It was filed on October 13th.  
16 That is the electronic filing stamp date that appears on it.  
17 It was the final.

18 (Pause in the proceedings)

19 MR. GREENBERG: Well, if it would assist, I can give  
20 Your Honor my copy.

21 THE COURT: Yeah, would you? I don't think we have  
22 it.

23 MR. GREENBERG: Well, it should have been -- a  
24 chamber's copy should have been sent to Your Honor and I'm  
25 sorry if -- if Your Honor doesn't have this. I will draw the