

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

v.

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

Respondents.

) Supreme Court No. 77050

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

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

HUTCHISON & STEFFEN, PLLC

Michael K. Wall (2098)
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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 VIII of LII** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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Attorneys for Respondents

DATED this 5th day of August, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

1 Court's attention.

2 THE COURT: Do you have this, Ms. Rodriguez?

3 MR. GREENBERG: It was served through the -- the
4 WizNet system, Your Honor, and it does bear an October 13th --

5 THE COURT: File-stamped October 13th.

6 MS. RODRIGUEZ: I'm -- I'm looking, but I recall it,
7 because I think I objected that that document that he's
8 referring to was another document that was never produced in
9 discovery. And plus, it's based on what he put in his brief.
10 It wasn't matching up with the exhibits. So it actually
11 wasn't making any sense, his representation in the supplement.

12 THE COURT: Which -- which exhibit are we speaking
13 of?

14 MS. RODRIGUEZ: We're talking about Exhibit B to his
15 October 13th submission.

16 THE COURT: Is that -- is that the correct exhibit,
17 Mr. Greenberg?

18 MR. GREENBERG: What I just handed you, on page
19 five, was referring to exhibit -- exhibit -- well, I believe
20 it's at Exhibit B there. This was originally at Exhibit G of
21 the class certification moving papers, as well, Your Honor.
22 These are pay stubs from Mr. Sargeant.

23 THE COURT: All right.

24 MR. GREENBERG: And if you look at these pay stubs,
25 they have a column that says minimum wage subsidy and a

1 quantity. For example, it says 87.48 on the one I'm looking
2 at. There are like three or five of these particular pay
3 stubs.

4 THE COURT: Uh-huh.

5 MR. GREENBERG: The deposition testimony of Mr. Nady
6 which is in the supplement from October which I gave you, Your
7 Honor, and actually I believe it's also referenced in the
8 supplement from September that I submitted on September 18th,
9 confirms that that minimum wage subsidy quantity number is the
10 number of hours that defendants recoded on these pay stubs Mr.
11 Sargeant was working in that pay period.

12 So we now have, for these pay stubs, a period of
13 time where defendants acknowledge exactly how many hours the
14 taxi driver was working and what they paid him. These are
15 defendant's own records. And as it says here, they actually
16 paid him a subsidy of a 1.43 for that 87.48 hours because his
17 commission wasn't sufficient to meet the minimum-wage. And
18 this is discussed in the supplement.

19 The problem, Your Honor, is that until June of 2014
20 when the Thomas decision was issued, that supplement
21 calculation still included the tips, so that they were not
22 actually supplementing enough to meet the Nevada standard.
23 They were supplementing enough to meet the federal standard
24 because they were saying, okay, how much do we have to
25 increase Mr. Sargeant's pay to make it 7.25 with the tips.

1 And that's the federal standard of compliance.
2 They're not subsidizing -- they're not subsidizing enough here
3 to meet and 8.25 standard, because Mr. Sargeant didn't get
4 health insurance, and they're including the tips in the
5 calculation. And that is discussed, again, in the supplement
6 I just gave you, Your Honor. I give a detailed analysis.

7 My point, Your Honor, is that you have irrefutable
8 proof from defendant's own records, from their testimony from
9 Mr. Nady about what the entries in those records mean, that
10 they were not in compliance during this period of time.

11 So, again, clearly the class should be certified, if
12 only for the period of time that exist for those records. In
13 fact, this would be a summary judgment class, Your Honor.

14 But again, as I said, we're not here on the merits.
15 It would make a lot more sense to certify the class to the
16 full extent that has been requested by the plaintiff, and then
17 we would deal with this issue of an equitable toll of the
18 statute of limitations and so forth after we do the
19 certification.

20 But my point, Your Honor, is that even if the Court
21 for some reason believes the factual record is not sufficient
22 to grant the full scope of the class certification that I
23 initially requested back in May, in full, there clearly -- and
24 none of this evidence, Your Honor, that I'm pointing out about
25 Mr. Sargeant's payroll records has been refuted by the

1 defendants.

2 They've confirmed the conclusions that I've just
3 drawn to the Court's attention from these records. And it was
4 confirmed by Mr. Nady in his testimony what those entries
5 meant on those records in terms of the time that he was
6 working.

7 So, Your Honor, just to move along here --

8 MS. RODRIGUEZ: Your Honor, may I respond to that?
9 Because that's -- that's incorrect. And for him to say that
10 is, again --

11 THE COURT: You may -- you may, but it's his motion,
12 so he'll get the last word.

13 MS. RODRIGUEZ: And he's relying -- I did want to
14 point out to the Court, though, this Exhibit B that -- again,
15 this is another time that what he's asking you to look at, the
16 first page of Exhibit B, you will see it does not have a Bates
17 stamp number, because it has never been produced in discovery.
18 Discovery is closed. Here's a -- here's a supplement, October
19 13th, where he's producing this alleged pay stub from Mr.
20 Sargeant for the first time. The Court shouldn't even be
21 looking at that.

22 THE COURT: What about that?

23 MR. GREENBERG: Your Honor, those pay stubs were
24 produced in May with the initial moving papers at Exhibit G.

25 THE COURT: Okay.

1 MR. GREENBERG: Not in October, they were produced
2 in May. They were produced in discovery. The fact that that
3 copy doesn't have --

4 MS. RODRIGUEZ: No, that --

5 MR. GREENBERG: -- a Bates stamp on it, this is
6 Exhibit G, Your Honor, the moving papers --

7 MS. RODRIGUEZ: I objected at that point. I said --

8 THE COURT: Wait, wait.

9 MS. RODRIGUEZ: I said -- I said they haven't done
10 it.

11 THE COURT: Hold on, hold on. What were you --
12 you're saying it was produced in May.

13 MR. GREENBERG: It was produced in May when I made
14 the motion to certify the class, Your Honor. It's at -- those
15 same pay stubs are at Exhibit G of the moving papers.

16 THE COURT: Okay. Now what were you saying about
17 the fact there is no Bates stamp?

18 MR. GREENBERG: The fact that there's no Bates stamp
19 doesn't affect it's admissibility, Your Honor. They were
20 provided with this. They were provided with these through
21 discovery as soon as I got them are very shortly thereafter.
22 I filed this motion within a week or two weeks after I was
23 contacted by Mr. Sargeant and these came into my possession.

24 THE COURT: So this was an originally -- was
25 originally attached to the motion itself; is that correct?

1 MR. GREENBERG: That's correct. From May of -- it's
2 at Exhibit G of the motion filed 5/19. I mean, you can take a
3 look at your copy. You do have a copy of that, Your Honor.

4 THE COURT: All right.

5 MS. RODRIGUEZ: That's not producing them in
6 discovery, Your Honor. And I objected --

7 THE COURT: I'm sorry?

8 MS. RODRIGUEZ: That is not producing them in
9 discovery. And I objected at that point, because that's the
10 first time it surfaced and I said, where are these documents
11 coming from? They've never been produced in discovery. And
12 he did it again. He's just -- attaches them to motions
13 without producing. They've never been produced.

14 THE COURT: What about that?

15 MR. GREENBERG: Your Honor --

16 MS. RODRIGUEZ: And, Your Honor --

17 MR. GREENBERG: -- they were produced --

18 THE COURT: Wait, wait, let me --

19 MR. GREENBERG: Your Honor, they were produced in
20 May at Exhibit G --

21 THE COURT: All right. So you're --

22 MR. GREENBERG: -- along with Exhibit F.

23 THE COURT: And discovery had not closed in May?

24 MR. GREENBERG: Discovery hadn't closed, Your Honor,
25 and it was produced with Mr. Sargeant's declaration at Exhibit

1 F who's supporting the class certification.

2 THE COURT: Well, when you say produced, you mean
3 attached to your motion?

4 MR. GREENBERG: They were attached to the motion at
5 that time.

6 THE COURT: Okay. Were they produce pursuant to
7 16.1?

8 MR. GREENBERG: They -- they were produced, Your
9 Honor, through discovery as well in a subsequent supplemental
10 production. Was it done on May 18th when this motion was
11 served? I don't know, Your Honor.

12 But, I mean, for -- and these are defendants' own
13 records. Mr. Nady was examined at his deposition in August on
14 these documents. Defendants don't dispute that they generated
15 these documents. In fact, Mr. Nady's testimony confirms that
16 these are of the form that A Cab produces.

17 So, I mean, for them to attack the authenticity of
18 these materials is really frivolous, Your Honor.

19 THE COURT: All right. Hang on now. Ms. Rodriguez,
20 you wanted --

21 MS. RODRIGUEZ: No, he's never produced them, no.
22 If he's produced them, I'd love for him to produce them to the
23 Court, because he's never produced them. I objected back
24 then. He doesn't feel like he has to comply with any NRCP
25 rules for some reason. And he's asking Your Honor to look at

1 his calculations based on page 3 and 4 of this last
2 supplement.

3 And that's why I responded to it because he's
4 talking about this May 14th pay stub shows a violation. And
5 you can look at everything he's attached, he's still
6 referencing documents that have never been produced. So if
7 Your Honor's going to take the time --

8 THE COURT: You're talking about the same thing?

9 MS. RODRIGUEZ: Yes. If Your Honor's going to take
10 the time to look at that, look at his allegations versus what
11 he's attached and nothing even matches up. He just throws it
12 out there and expects that nobody's going to check it.

13 THE COURT: Well, this shouldn't be all that hard to
14 figure out, folks.

15 MR. GREENBERG: It's straight math, Your Honor.

16 THE COURT: Have you got something that shows that
17 this was -- I mean, typically, when something is produced,
18 it's given a Bates stamp number.

19 MR. GREENBERG: Your Honor, yes. And, Your Honor,
20 this -- I am completely mystified as to defendants' position
21 here that this is somehow not before the Court for
22 consideration. Mr. Sargeant comes to me shortly before May
23 18th, and he is a member of the class. He contacts me
24 independently, he furnishes a declaration in support of the
25 certification motion, he agrees to be a representative, he

1 produces to me documents he has that demonstrate his work as a
2 class member for the employer. This is all included in the
3 Motion to Certify.

4 How is it that that is not properly before the
5 Court? Because -- because allegedly defendants say, well, it
6 wasn't produced in a 16.1 disclosure. You have -- you have it
7 right here, Your Honor. Mr. Nady was examined under oath.

8 THE COURT: Part of the reason why counsel
9 typically, in my experience, try to utilize documents that
10 have been given pursuant to 16.1, is that that's usually when
11 it does get a Bates stamp, and thereafter it's very easy to
12 establish that it was given during --

13 MR. GREENBERG: Well, Your Honor, in this case it's
14 very easy because it was filed with the Court on May 18th.
15 It's public record that these were served through the Wiznet
16 system and defendants got them on that date. They can't claim
17 any prejudice.

18 THE COURT: Well, Ms. Rodriguez, if this is a
19 document that was regularly kept in the course of business by
20 your client, at least I would not expect there to be a
21 terrible surprise here.

22 MS. RODRIGUEZ: I don't know that it is, Your Honor.
23 And Mr. Sargeant's never even been named as a witness. So I
24 don't know how he can come in and authenticate this at all. I
25 mean, he's -- like I said, he's been dangling these

1 plaintiffs, but he's never even named them as a witness. So
2 why should I have to depose them or conduct discovery on
3 Sargeant and Brauchle if he's just had them as a threat.

4 THE COURT: But you don't believe -- you don't
5 believe that this was a pay stub issued by your client; is
6 that it?

7 MS. RODRIGUEZ: I have not pulled that pay stub. I
8 haven't gone back because it's never been produced in
9 discovery, so I didn't think it was part of this case.

10 THE COURT: Did you get it attached to your -- the
11 May --

12 MS. RODRIGUEZ: The May motion? Yes, because I
13 objected that the Court should not consider it. And I gave
14 them opportunity to produce it and again, they didn't produce
15 it. All this time they haven't produced it.

16 THE COURT: Well, let's -- you know, there's been a
17 lot of allegations flying back and forth. Why don't you
18 subsequent to today please submit to the Court your --
19 whatever discovery document you have that shows that this was
20 transmitted to Ms. Rodriguez. Would you do that?

21 MR. GREENBERG: Your Honor, it is my belief a
22 supplemental Rule 16 Response was sent. I would point out,
23 Your Honor, in her Response --

24 THE COURT: Will you do that?

25 MR. GREENBERG: I will certainly -- do you want me

1 to bring something to Your Honor, to chambers documenting
2 that? I have to go back to my office, but I believe on my
3 computer --

4 THE COURT: Well, sure, but --

5 MR. GREENBERG: -- I will have a copy showing in
6 June or May that this was sent.

7 THE COURT: Just -- just do this. Submit it to Ms.
8 Rodriguez and to me, if you would. I don't care if you just
9 do it in a letter.

10 MR. GREENBERG: Okay.

11 MS. RODRIGUEZ: But, Your Honor, as well, I
12 appreciate that, and thank you. But my second point on this
13 was that everything that he's writing in the actual body of
14 the pleading references something which has never been
15 produced and is not attached to any motion. He's talking
16 about a
17 May --

18 THE COURT: Which is what?

19 MS. RODRIGUEZ: -- a May 14th, 2014 pay stub.

20 THE COURT: What -- what page are you on?

21 MS. RODRIGUEZ: Page 3.

22 THE COURT: Okay. A discussion -- plaintiff's
23 moving papers at pages 11 to 12. That discussion is repeated
24 below. So he's repeating something from his motion at page 11
25 to 12. Sargeant's 5/14, et cetera, et cetera, et cetera. So

1 that was in the May motion.

2 MS. RODRIGUEZ: Right.

3 THE COURT: And so your point is that?

4 MS. RODRIGUEZ: There has never been -- that pay
5 stub that he's talking about where he's trying to show the
6 Court that this demonstrates -- irrefutably establishes a
7 violation, we've never seen that pay stub. I don't know what
8 he's talking about.

9 THE COURT: That's -- that's the -- that's the May
10 14th of 2014, to June 6th of 2014 pay stub, right?

11 MS. RODRIGUEZ: Correct, Your Honor.

12 THE COURT: Okay.

13 MR. GREENBERG: Your Honor, it's a typo; it's May
14 24th to June 6th. It's a 14-day pay period.

15 THE COURT: Okay.

16 MR. GREENBERG: It's not May 14th to June 6th.

17 THE COURT: May 24th to June 6th. But is that --

18 MR. GREENBERG: Yes, Your Honor. That's at Exhibit
19 G of the moving papers. It is the very first page of Exhibit
20 G of the May 18th filed papers. You will see it there, Your
21 Honor. And I apologize for the typo. Counsel is correct, it
22 refers to a May 14th date. It should be a May 24th date.

23 THE COURT: All right. So that's Exhibit G. Is
24 that different than -- I mean, that's the same one that --

25 MS. RODRIGUEZ: Right.

1 MR. GREENBERG: It's the same one as in the October
2 supplement I handed up to Your Honor personally a little while
3 ago.

4 THE COURT: All right.

5 MR. GREENBERG: It's the same discussion --

6 THE COURT: Does that --

7 MR. GREENBERG: -- the same math, the same documents
8 the math is based on, Your Honor.

9 THE COURT: All right.

10 MS. RODRIGUEZ: Well, Your Honor, when I looked at
11 it, to me, I could not match those up. I didn't assume that
12 was a typo because the numbers were not adding up.

13 THE COURT: Okay.

14 MS. RODRIGUEZ: So that's why I'm questioning
15 whether a 5/14 pay stub even existed.

16 THE COURT: Okay. The typo is continued in the next
17 paragraph, Sergeant's 6/21/14 pay stub, unlike the 5/14. All
18 right. So now we at least know what we're talking about.

19 MR. GREENBERG: Yes, Your Honor. On this issue,
20 Your Honor, I would just point out that in their Response to
21 the class certification motion filed in June, they do not
22 raise any objection to the admission of Exhibit G or the
23 arithmetical presentation that was made at page 11 of the
24 Motion to Certify.

25 THE COURT: Okay.

1 MR. GREENBERG: Okay, Your Honor. But Your Honor
2 can -- Your Honor's quite capable of multiplying and dividing
3 and subtracting, as we all are. So those numbers speak for
4 themselves, Your Honor.

5 There are -- there are some sort of peripheral
6 allegations here made regarding the adequacy of the -- of the
7 claim representatives, Mr. Murray and Reno, to represent the
8 class for certification purposes.

9 Your Honor, I mean, there's a 20-year old conviction
10 of I believe it's Mr. Murray. I think that's a little bit
11 beyond the pale in terms of admissibility for any purpose of
12 at this point.

13 And I -- and, you know, when defense counsel has a
14 chance to perhaps speak a little more, if Your Honor's going
15 to entertain that, they may raise issues as to their
16 deposition testimony not evidencing an understanding of the
17 claims and so forth and so on.

18 But, Your Honor, that's not their responsibility as
19 a class representative to show that they are familiar
20 intricately with the nature of the legal claims in this case.
21 And, I mean, this is addressed in the September 18th Response.
22 I mean, their duty is to show that they're willing to
23 cooperate and to help prosecute the case. They did give
24 depositions. I know that there's allegations that they
25 refused to answer certain questions. I don't know what the

1 germaneness of that is. Defense counsel hasn't explained why
2 that refusal is germane or impairs their ability to represent
3 the class.

4 At page five of the September 18th Response, I mean,
5 there's a huge body of case law in this. You can't disqualify
6 a class representative just because they're not able to
7 actually articulate what the legal theory is that is being
8 brought on their behalf in court.

9 Their job is simply to testify as best as they can
10 regarding the facts of the case and to cooperate with the
11 process, which is what they're doing here, Your Honor.
12 Otherwise, you know, defendants would, you know, always manage
13 to disqualify people as representatives supposedly to protect
14 the class, but really they're protecting the defendant from
15 ever getting sued by anybody who would be inadequate
16 representative in their view. I mean, it's just not the
17 examination that should be going on here, Your Honor.

18 Otherwise, Your Honor, we've spent a lot of time,
19 and I appreciate Your Honor's indulgence. And I have to say,
20 just to finish up right now, I think a lot of what we've
21 discussed is quite collateral to the issues that are before
22 the Court.

23 Let me not say anything more unless the Court has
24 something more to direct to me or I feel there's something I
25 should respond to from defendants --

1 THE COURT: No.

2 MR. GREENBERG: -- if the Court's going to entertain
3 further discussion from counsel.

4 THE COURT: No, I have no more questions. I will --
5 the ruling on this must necessarily await the ruling on the
6 other two motions that I've put over to Monday. I would
7 anticipate entering a minute order Monday which would
8 represent a ruling on this motion as well. So, I think that
9 should do it.

10 All right, anything else?

11 MS. RODRIGUEZ: Thank you, Your Honor.

12 MR. GREENBERG: Thank you. We appreciate your
13 patience. I certainly appreciate your patience and I think I
14 can speak for defense counsel as well on that one.

15 THE COURT: All right.

16 MS. RODRIGUEZ: Absolutely, as well as your staff.
17 I respect your endurance.

18 MR. GREENBERG: The only thing maybe we can agree
19 on, Your Honor.

20 (Proceeding concluded at 3:08 p.m.)

21 * * * * *

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23

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25

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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(303) 798-0890



JULIE LORD, TRANSCRIBER

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

March 28, 2016

A-12-669926-C Michael Murray, Plaintiff(s)
vs.
A Cab Taxi Service LLC, Defendant(s)

March 28, 2016 3:00 AM All Pending Motions

HEARD BY: Cory, Kenneth **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Michele Tucker

JOURNAL ENTRIES

DEFENDANT'S MOTION FOR RECONSIDERATION ...DEFENDANTS' MOTION FOR STAY
PENDING PROCEEDINGS

COURT ORDERED, Defendants' Motion for Reconsideration is GRANTED IN PART and DENIED IN PART. The Court agrees with Defendants and ORDERS that claims Nos. 3 and 4 were not certified as class claims. The COURT FURTHER ORDERS that language on p. 5: 11-13 regarding qualifying health insurance be removed. Lastly, the COURT ORDERS that language on p. 5:26 stating that defendants do not dispute be removed. COURT FURTHER ORDERS, the balance of the motion is DENIED. Plaintiff to submit a new order with the above changes.

This case is now three and a half years old. Defendants have no reason to believe that the pending matters before the Supreme Court will be resolved in the near term. Accordingly, this matter must proceed forward. The fact that this is a class action that little or no discovery has been done is alarming to say the least. There can be no more delays. COURT ORDERS, Defendants' Motion for Stay Pending Proceedings DENIED.

Mr. Greenberg to prepare the Order.

CLERK'S NOTE: The above minute order has been distributed to: Leon Greenberg, Esq. and Esther Rodriguez, Esq. via e-mail. /mlt

CLERK'S NOTE: Minute Order has been corrected to indicate the correct Motion For Reconsideration. /mlt


CLERK OF THE COURT

ODM
Esther C. Rodriguez, Esq.
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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: March 16, 2016
Hearing Time: 9:00 a.m.

ORDER DENYING PLAINTIFFS' MOTION
TO IMPOSE SANCTIONS AGAINST DEFENDANTS FOR VIOLATING THIS COURT'S
ORDER OF FEBRUARY 10, 2016 and COMPELLING COMPLIANCE WITH THAT
ORDER ON AN ORDER SHORTENING TIME

Plaintiffs' Motion to Impose Sanctions Against Defendants for Violating This Court's Order
of February 10, 2016 and Compelling Compliance with That Order on An Order Shortening Time
filed on March 11, 2016, and having come before this Court on March 16, 2016, before the
Honorable Kenneth Cory,
...

1 The Court having, read all the pleadings and papers on file herein, hearing the arguments of
2 the parties, and good cause appearing,

3 **IT IS HEREBY ORDERED** that Plaintiffs' Motion **IS DENIED**.

4 DATED this 29 day of March, 2016.

5
6 
DISTRICT COURT JUDGE

7 Submitted by:

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

9
10 By: 

11 Esther C. Rodriguez, Esq.
12 Nevada State Bar No. 6473
13 10161 Park Run Drive, Suite 150
14 Las Vegas, Nevada 89145
15 Attorneys for A Cab LLC
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CLERK OF THE COURT

ORDR
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DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL MURRAY and
MICHAEL RENO, individually and
on behalf of all others similarly
situated,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

DEPT.: I

Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP
Rule 23(b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice
Plaintiffs' Motion to Appoint a Special Master Under NCRP Rule 53
as Amended by this Court in Response to Defendants' Motion for
Reconsideration heard in Chambers on March 28, 2016

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

1 hearing on November 3, 2015, with appearances by Leon Greenberg, Esq. and Dana
2 Sniegocki, Esq. on behalf of all plaintiffs, and Esther Rodriguez, Esq., on behalf of all
3 defendants, and the Court, having heard in Chambers on March 28, 2016 the
4 defendants' motion for reconsideration of the Order entered by this Court on February
5 10, 2016, granting in part and denying in part such motion by the plaintiffs, following
6 the arguments of such counsel, and after due consideration of the parties' respective
7 briefs, and all pleadings and papers on file herein, and good cause appearing, therefore
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9
10 **THE COURT FINDS:**
11

12 **That it had previously issued an Order on the aforesaid motion made by**
13 **plaintiffs, which Order was entered on February 10, 2016 and which Order is**
14 **now superseded and replaced by this Order as a result of the Court granting in**
15 **part Defendants' Motion for Reconsideration of the February 10, 2016 Order**
16 **which Motion for Reconsideration was heard in Chambers on March 28, 2016**
17 **and an Order on the same entered on April 28, 2016.**
18

19
20 In Respect to the Request for Class Certification
21

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

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19
20 As an initial matter, the nature of the claims made in this case are of the sort for
21 which class action treatment would, at least presumptively, likely be available if not
22 sensible. A determination of whether an employee is owed unpaid minimum hourly
23 wages requires that three things be determined: the hours worked, the wages paid, and
24 the applicable hourly minimum wage. Once those three things are known the
25 minimum wages owed, if any, are not subject to diminution by the employee’s
26 contributory negligence, any state of mind of the parties, or anything else of an

1 individual nature that has been identified to the Court. Making those same three
2 determinations, involving what is essentially a common formula, for a large group of
3 persons, is very likely to involve an efficient process and common questions. The
4 minimum hourly wage rate is set at a very modest level, meaning the amounts of
5 unpaid minimum wages likely to be owed to any putative class member are going to
6 presumptively be fairly small, an additional circumstance that would tend to weigh in
7 favor of class certification.
8

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

12 The first such question would be whether the class members are owed
13 additional minimum wages, beyond that agreed to be paid in the USDOL consent
14 judgment, and for the period covered by the consent judgment, by virtue of the
15 Minimum Wage Amendment imposing an hourly minimum wage rate that is \$1.00 an
16 hour higher than the hourly minimum wage required by the FLSA for employees who
17 do not receive “qualifying health insurance.” The second such question would be
18 whether the class members are owed additional minimum wages, beyond that alleged
19 by USDOL for the period covered by the consent judgment, by virtue of the Minimum
20 Wage Amendment not allowing an employer a “tip credit” towards its minimum wage
21 requirements, something that the FLSA does grant to employers in respect to its
22 minimum wage requirements. It is unknown whether the USDOL consent judgment
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1 calculations include or exclude the application of any “tip credit” towards the FLSA
2 minimum wage deficiency alleged by the USDOL against the defendants.

3
4 In respect to the “tip credit” issue plaintiffs have also demonstrated a violation
5 of Nevada’s Constitution existing prior to June of 2014. Plaintiff has provided to the
6 Court payroll records from 2014 for taxi driver employee and class member Michael
7 Sargeant indicating that he was paid \$7.25 an hour but only when his tip earnings are
8 included. Defendant has not produced any evidence (or even asserted) that the
9 experience of Michael Sargeant in respect to the same was isolated and not common
10 to many of its taxi driver employees. The Nevada Constitution’s minimum wage
11 requirements, unlike the FLSA, prohibits an employer from using a “tip credit” and
12 applying an employee’s tips towards any portion of its minimum wage obligation.
13 The Sargeant payroll records, on their face, establish a violation of Nevada’s
14 minimum wage standards for a certain time period and strongly support the granting
15 of the requested class certification.

16
17 The Court makes no finding that the foregoing two identified common
18 questions are the only common questions present in this case that warrant class
19 certification. Such two identified issues are sufficient for class certification as the
20 commonality prerequisite of NRCP Rule 23(a) is satisfied when a “single common
21 question of law or fact” is identified. *Shuette v. Beazer Homes Holdings Corp.*, 121
22 Nev. 837, 848 (2005). In addition, there also appear to be common factual and legal
23 issues presented by the claims made under NRS 608.040 for statutory “waiting time”
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1 penalties for former taxi driver employees of defendants.. Such common questions
2 are readily apparent as NRS 608.040 is a strict liability statute..
3

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

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

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

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16 Defendants have not proffered evidence or arguments convincing the Court that
17 it should doubt the accuracy of the foregoing findings. The Court is also mindful that
18 *Shuette* supports the premise that it is better for the Court to initially grant class
19 certification, if appropriate, and "reevaluate the certification in light of any problems
20 that appear post-discovery or later in the proceedings." *Shuette* 124 P.3d at 544.
21

22
23 In Respect to the Request for the Appointment of a Special Master

24 Plaintiffs have also requested the appointment of a Special Master under NRC
25 Rule 53, to be paid by defendants, to compile information on the hours of work of the
26 class members as set forth in their daily trip sheets. The Court is not persuaded that
27 the underlying reasons advanced by plaintiffs provide a sufficient basis to place the
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1 entirety of the financial burden of such a process upon the defendants. Accordingly,
2 the Court denies that request without prejudice at this time.

3
4 Therefore

5 **IT IS HEREBY ORDERED:**

6 Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(3) is

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

6 **IT IS FURTHER ORDERED:**
7

8 Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(2) for
9 appropriate equitable and injunctive relief as authorized by Article 15, Section 16 of
10 Nevada's Constitution is **GRANTED** and the named plaintiffs Michael Murray and
11 Michael Reno, and class member Michael Sargeant, are also appointed as class
12 representatives for that purpose. The class shall consist of all persons employed by
13 defendants as taxi drivers in the State of Nevada at any time from July 1, 2007
14 through the present and continuing into the future until a further Order of this Court
15 issues.
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20 **IT IS FURTHER ORDERED:**
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22
23 (1) Defendants' counsel is to produce to plaintiffs' counsel, within 10 days
24 of the service of Notice of Entry of this Order, the names and last known addresses of
25 all persons employed as taxicab drivers by any of the defendants in the State of
26 Nevada from July 1, 2007 through December 31, 2015, such information to be
27 provided in an Excel or CSV or other agreed upon computer data file, as agreed upon
28

1 by counsel for the parties, containing separate fields for name, street address, city,
2 state and zip code and suitable for use to mail the Notice of Class Action ;
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5 (2) Plaintiffs' counsel, upon receipt of the names and addresses described in
6 (1) above, shall have 40 days thereafter (and if such 40th day is a Saturday, Sunday or
7 holiday the first following business day) to mail a Notice of Class Action in
8 substantially the form annexed hereto as Exhibit "A" to such persons to notify them of
9 the certification of this case as a class action pursuant to Nev. R. Civ. P. 23(b)(3) and
10 shall promptly file with the Court a suitable declaration confirming that such mailing
11 has been performed;
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16 (3) The class members are enjoined from the date of entry of this Order, until
17 or unless a further Order is issued by this Court, from prosecuting or compromising
18 any of the class claims except as part of this action and only as pursuant to such
19 Order; and
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22 (4) Class members seeking exclusion from the class must file a written
23 statement with the Court setting forth their name, address, and election to be excluded
24 from the class, no later than 55 days after the mailing of the Notice of Class Action as
25 provided for in (2), above.
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28 **IT IS FURTHER ORDERED:**



1 Plaintiffs' motion to appoint a Special Master under NRCP Rule 53 is denied
2 without prejudice at this time.
3

4
5 IT IS FURTHER ORDERED:

6 That the stay issued by this Court pending the Court's Reconsideration of Prior
7 Order, such stay entered via the Court's Order of April 6, 2016, is dissolved.
8

9
10 IT IS SO ORDERED.

11 Dated this 3rd day of June, 2016.
12

13 
14 Hon. Kenneth Cory
15 District Court Judge
16 

17 Submitted.

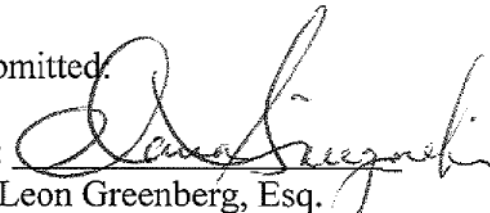
18 By: 
19 Leon Greenberg, Esq.
20 Dana Sniegocki, Esq.
21 LEON GREENBERG PROF. CORP.
22 2965 S. Jones Blvd., Ste. E-3
23 Las Vegas, NV 89146
24 Attorneys for Plaintiffs
25
26
27
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EXHIBIT "A"

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?

The class certification in this case may also be amended or revised in the future which means the Court may not answer all of the above questions or may answer additional questions.

NOTICE OF YOUR RIGHTS AS A CLASS MEMBER

If you wish to have your claim as a class member decided as part of this case you do not need to do anything. The class is represented by Leon Greenberg and Dana Sniegocki (the "class counsel"). Their attorney office is Leon Greenberg Professional Corporation, located at 2965 South Jones Street, Suite E-3, Las Vegas, Nevada, 89146. Their telephone number is 702-383-6085 and email can be sent to them at leongreenberg@overtimelaw.com. Communications by email instead of telephone calls are preferred.

AA001434

You are not required to have your claim for unpaid minimum wages and other possible monies owed to you by A Cab 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 you should contact class counsel at 702-383-6085 or by email to leongreenberg@overtimelaw.com or consult with another attorney. The Court cannot advise you about what you should do.

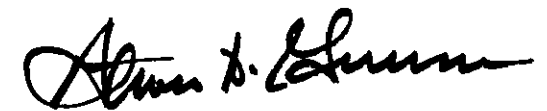
NO RETALIATION IS PERMITTED IF YOU CHOOSE TO PARTICIPATE IN THIS LAWSUIT

Nevada's Constitution protects you from any retaliation or discharge from your employment for participating in this case or remaining a member of the class. You cannot be punished by A-Cab or fired from your employment with them for being a class member. A-Cab cannot fire you or punish you if this case is successful in collecting money for the class members and you receive a share of that money.

IT IS SO ORDERED

Date:

/s/ Hon. Kenneth Cory, District Court Judge



CLERK OF THE COURT

1 **MOT**
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
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leongreenberg@overtimelaw.com
dana@overtimelaw.com
Attorneys for Plaintiffs

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

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

11 Plaintiffs,

12 vs.

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

15 Defendants.

Case No.: A-12-669926-C

Dept.: I

**MOTION TO ENJOIN
DEFENDANTS FROM
SEEKING SETTLEMENT OF
ANY UNPAID WAGE CLAIMS
INVOLVING ANY CLASS
MEMBERS EXCEPT AS PART
OF THIS LAWSUIT AND FOR
OTHER RELIEF**

16 Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation,
17 hereby move this Court for an Order enjoining the defendants from engaging in any
18 settlement of any claims involving unpaid wages owed to any of the members of the
19 NRCPP Rule 23(b)(2) class certified in this case except as part of this lawsuit. For the
20 reasons stated *infra*, the Court should amend the NRCPP Rule 23(b)(3) class
21 certification of this case to include minimum wage and related claims arising after
22 December 31, 2015 and provide an NRCPP Rule 23(c)(2) notification to defendant's
23 taxi drivers hired after December 31, 2015 so they may have their damages claims
24 adjudicated in this case. An award of attorneys' fees is also requested.

25 Plaintiffs' motion is made and based upon the annexed declaration of counsel,
26 the memorandum of points and authorities submitted with this motion, the attached
27 exhibits, and the other papers and pleadings in this action.
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Dated: October 14, 2016

By: /s/ Leon Greenberg

Leon Greenberg, Esq.
Nevada Bar No.: 8094
2965 South Jones Boulevard - Suite E3
Las Vegas, Nevada 89146
(702) 383-6085
Attorney for Plaintiffs

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NATURE OF THIS MOTION

Defendants are seeking to circumvent this Court's prior Order granting class certification and must be enjoined from attempting to do so.

This is a class action case for damages and injunctive and equitable relief for defendants' taxi driver employees arising from defendants' violation of Nevada Constitution Article 15, Section 16, the Nevada Minimum Wage Amendment (the "MWA"). This Court, via an Order on June 7, 2016, certified this case as a class action under NRCP 23(b)(2) and NRCP 23(b)(3) for equitable/injunctive relief and for damages. Ex. "A." Plaintiffs' counsel, Leon Greenberg and Dana Sniegocki, were appointed class counsel for the class, which, under NRCP Rule 23(b)(2), consists of all of defendants' taxi driver employees. The only persons excluded from the class were Jasminka Dubric, who filed her own MWA lawsuit in 2015 (almost three years after this case was filed) and such persons who elected to exclude themselves from the NRCP Rule 23(b)(3) damages class pursuant to such Order after receiving notice of the class certification (Ex. "A" p. 9., l. 12-17). Such notice was required for the NRCP Rule 23(b)(3) damages class certification as per NRCP 23(c)(2). October 5, 2016 was the last day for exclusions from class to be filed with the Court and none have been filed.

The Court's June 7, 2016 Order further enjoined the class members from settling any of their claims that were the subject of class certification **except as part of this lawsuit** and only upon approval by a further Order of this Court. Ex. "A" p. 12, l. 16-20.

As discussed, *infra* defendants and their counsel, in violation of the Ex. "A" Order, have now entered into a collusive, and void, agreement to have Jasminka Dubric (who is *not* a class member), in her separate lawsuit, present to the Court a motion to assume the position of class representative and settle the class claims certified for class resolution in *this case*. The Court needs to enjoin defendants, whose attempt to propose a class settlement in the *Dubric* case, is in contempt of the Court's June 7,

1 2016 Order, from proceeding in any such fashion.

2 RELEVANT FACTS

3 The *Dubric* case was filed on July 7, 2015 (complaint, Ex. “B”) with the original
4 complaint in this case being filed on October 8, 2012 (Ex. “C”). The *Dubric* complaint
5 is a “copy cat” filing of this case containing, virtually verbatim, the exact same
6 language as this case’s original complaint. Compare, Ex. “B,” ¶ 19, ¶¶ 20-21, ¶ 22, ¶
7 23 with, respectively, Ex. “C,” ¶ 9, ¶ 10, ¶ 11, ¶ 12. While the *Dubric* case purports to
8 allege an additional second claim for relief for “conversion” that claim is completely
9 derivative of the MWA claim asserted and is without legal substance. Ex. “B” ¶ 35.
10 Significantly, the *Dubric* case fails to allege any class claim under NRS 608.040,
11 Nevada’s penalty statute for the late payment of wages, a valuable claim possessed by
12 many class members. See, Ex. “C”, second claim for relief, ¶¶ 17-21. Judge Cory of
13 this Court, in *Valdez v. Video Internet Phone Installs, Inc.*, A-09-597433-C, has
14 previously recognized the applicability of such statute, and penalty, to claims involving
15 a failure to pay statutorily required wages to former employees. Ex. “D.”

16 At the time the *Dubric* case was filed plaintiffs in this case had, nearly two
17 months earlier, on May 19, 2015, already filed their motion for class certification
18 pursuant to NRCPP Rule 23(b)(2) and Rule 23(b)(3). Plaintiffs’ counsel first
19 communicated with Dubric’s counsel on October 8, 2016 by telephone. Ex. “E” ¶ 2
20 declaration of Leon Greenberg. At that time Dubric’s counsel was advised of the
21 pending motion for class certification in this case and the interest of counsel in this
22 case in speaking with Dubric, who may be a witness with information helpful to the
23 prosecution of the class claims. *Id.* Dubric’s counsel refused to allow any such
24 discussion with Dubric or furnish any information that would assist in the prosecution
25 of the class claims. *Id.* Plaintiffs’ counsel (now class counsel) kept in communication
26 with Dubric’s counsel and promptly advised them of the Court’s minute order granting
27 class certification in this case on January 12, 2016 and promptly sent them a copy of
28 the Court’s Order entered on February 10, 2016 granting class certification. *Id.* ¶ 3.

1 Defendants in this case are represented by the same counsel, Esther Rodriguez,
2 who represents defendant in *Dubric*. Ms. Rodriguez, on January 13, 2016, engaged in
3 a discussion of the interplay between the *Dubric* case and this then class certified case
4 with class counsel and Discovery Commissioner Bulla. Ex. "F," transcript. She was
5 advised, in no uncertain terms, by Discovery Commissioner Bulla that there could be
6 no class proceeding in *Dubric*, in light of the class certification in this case. *Id.*, p. 10-
7 13. She was further advised to the extent there was any overlap between *Dubric* and
8 this case the *Dubric* case would have to be consolidated into this earlier filed case. *Id.*

9 Despite counsel for plaintiff in the *Dubric* case's knowledge of this Court's class
10 certification Order in this case, and defendants' knowledge of that Order, and
11 defendants' express advisement by the Court that class certification cannot be had in
12 the *Dubric* case, the parties in *Dubric* now propose to proceed with a class certification,
13 and class settlement, in that case. At a settlement conference held on October 5, 2016
14 in *Dubric* the following minutes were entered by the Court:

15 10/05/2016 10:30 AM

16 - The above-referenced matter came on for a settlement conference
17 with Judge Jerry A Wiese II, on Wednesday, October 05, 2016. The
18 Plaintiff, Jasminka Dubric, was present with her daughter, Valentina
19 Astalos, and her attorneys, Mark Bourassa, Esq., Trent Richards,
20 Esq., and Hillary Ross, Esq. The Defendant, A Cab LLC, was
21 present through its managing member, Creighton J. Nady, and was
22 represented by Esther Rodriguez, Esq. Also present was Donna
23 Burelson with A Cab LLC, and Nicole Omps (CPA). The parties have
24 agreed to a resolution and settlement of this case. The parties will
25 stipulate and agree to class certification. Additional terms regarding
26 the settlement, payment terms, payment to the class representative,
27 class member distributions, etc., were agreed to as part of the
28 settlement. The parties will work together in good faith to prepare
any additional settlement documents. It is anticipated that once the
class distributions have been finalized, counsel for the Plaintiffs will
submit a motion for fees and costs. This matter is now referred back
to the originating department, to await the filing of a proposed
Stipulation and Order for Class Certification. The settlement
agreement among and between the parties is subject to and
contingent upon the Court's approval of the class certification, and
all other terms of settlement. Ex. "G."

27 Counsel for the plaintiff in *Dubric* have been contacted about the improper
28 nature of the proposed *Dubric* class settlement. Ex. "H." They refuse to address those

improprieties and simply insist they have a right to proceed with that class settlement, in that case, in direct violation of this Court's Order in this case. *Id.* Counsel for defendants, Esther Rodriguez, was spoken with by class counsel, Leon Greenberg, shortly before the submission of this motion. Ex. "E" ¶ 5. When asked for an explanation of how any proposed class settlement of the *Dubric* case could be proper, given this Court's Order, Ms. Rodriguez did not give any such explanation. She did state a desire to investigate the issue further and to make an attempt to advise class counsel further about the same. She was advised class counsel would present this motion most promptly but would work with her to resolve this issue via a suitable stipulation and order prior to any motion hearing.

ARGUMENT

**I. THERE CAN BE NO SETTLEMENT OF THE CLASS CLAIMS
MADE IN THIS CASE, AND CERTIFIED FOR CLASS
TREATMENT IN THIS CASE, THROUGH ANY SETTLEMENT
PROPOSED IN THE DUBRIC CASE**

It is axiomatic, and needs no explanation, that the claims made in this case, and certified for class treatment in this case, can only be resolved *in this case*. Indeed, the whole purpose of the class action procedure is to centralize the resolution of common claims in one proceeding. Once a case has been granted class certification all of the claims so certified must be resolved in that case, there cannot be another, separate, grant of class certification over those *same claims* in a *different case*. To the extent that defendants wish to settle those claims they must do so *in this case*. To the extent plaintiff's counsel in the *Dubric* case is proposing that those claims be certified for class treatment in *Dubric*, they seek to have a coordinate judge of this Court issue an order violating this Court's Order in this case. That is manifestly improper.

1 **II. THE COURT MUST ENJOIN DEFENDANTS FROM ENGAGING**
2 **IN ANY SETTLEMENT OF ANY WAGE CLAIMS POSSESSED**
3 **BY ANY OF THE NRCP RULE 23(B)(2) CLASS MEMBERS**
4 **EXCEPT UPON APPLICATION TO THIS COURT IN THIS CASE**

5 A. The Court should act to protect the NRCP Rule 23(b)(2)
6 class members from defendants' collusive settlement actions
7 in *Dubric* by the issuance of a suitable injunction.

8 This Court has granted class certification for the purpose of issuing appropriate
9 equitable and injunctive relief under NRCP Rule 23(b)(2) for all of the defendants' taxi
10 drivers, in respect to safeguarding their rights under the MWA. Ex. "A," The
11 members of that class are defined as "...all persons employed by defendants as taxi
12 drivers in the State of Nevada at any time from July 1, 2007 through the present and
13 continuing into the future until further Order of this Court issues." Accordingly, the
14 Court has the authority, under its prior class certification Order, to protect the rights of
15 the NRCP Rule 23(b)(2) class members by enjoining any settlement by defendants of
16 any wage claims possessed by such persons except by application to this Court in this
17 case.

18 The NRCP Rule 23(b)(3) class certification for damages in this case was only
19 certified for MWA claims accruing through December 31, 2015. Ex. "A," p. 10, l. 10-
20 15. That certification was so limited as a mechanical matter, as any damages class
21 requires notice to the class members. Any "future class members" (those accruing
22 claims *only* after December 31, 2015 because they were hired *after* that date) would
23 require "future" notice. Perhaps the collusive settlement proposed in *Dubric* is only an
24 attempt to extinguish the MWA damages claims of defendants' taxi drivers accruing
25 *after* December 31, 2015. That is unknown as neither defendant's counsel, nor
26 *Dubric's* counsel, will communicate in any fashion about the substance, and exact
27 scope, of the class settlement they are proposing.

28 The "December 31, 2015" term of the current NRCP Rule 23(b)(3) class
29 certification cannot act as a "loophole" for defendants, with the assistance of *Dubric's*
30 counsel, to collusively limit their MWA liability to their taxi drivers. That such

1 proposed class settlement in *Dubric*, whatever its terms, is inherently collusive and
2 improper is manifest in its very nature. If defendants want to properly propose a
3 settlement of their taxi driver's MWA related damages claims, whether just for those
4 accruing after December 31, 2015 or otherwise, they could propose the same to class
5 counsel in this case. Nor do defendants have to rely upon class counsel's endorsement
6 of any such proposal. Defendants are free, in this case, to propose such a settlement
7 directly to the Court for its approval. Defendants have not attempted that proper, and
8 necessary, course of action. Instead they seek to bypass this Court's scrutiny of any
9 such settlement, in this case, by using the *Dubric* case as a "strawman" or "shill" to
10 secure such a settlement.

11
12 **B. The Court should amend the NRCP Rule 23(b)(3) certification**
13 **to include, for all class members already notified, all claims for**
14 **MWA related damages arising after December 31, 2015 and**
continuing until judgment or further order of the Court.

15 The Court's class certification Order expressly advised the NRCP Rule 23(b)(3)
16 class members, defendants' taxi drivers who were employed prior to January 1, 2016,
17 that the "class certification in this case may also be amended or revised in the future."
18 Ex. "A" at ex. "A" thereto, p. 1. Accordingly, those claims should now be amended to
19 include damages claims for those NRCP Rule 23(b)(3) damages class members arising
20 under the MWA and NRS 608.040 that accrued after December 31, 2015.

21
22 **C. The Court should now direct NRCP Rule 23(b)(3) damages**
23 **class certification notice to defendant's taxi drivers hired after**
December 31, 2015 now and at 120 day intervals in the future.

24 Defendants can be prohibited from compromising the MWA related damages
25 claims of its taxi drivers hired after December 31, 2015 through a suitable injunction
26 issued to protect the NRCP Rule 23(b)(2) class, as discussed *supra*. But judicial
27 efficiency, and fairness, would also be served by having such "new hires" included in
28 the damages class in this case, which requires notice to such new hires pursuant to

1 NRCPP Rule 23(c)(2). Accordingly, the Court should direct such notice, as in Ex. "A,"
2 to those "new hires" so they may properly have their damages claims adjudicated in
3 this case. Such notice should be renewed at 120 day intervals in the future until a date
4 suitably in advance of trial.

5 **III. REQUEST FOR AWARD OF ATTORNEY'S FEES**

6 Class counsel has the obligation to guard the MWA rights of the NRCPP Rule
7 23(b)(2) class members from abuse and misconduct by the defendants. Accordingly,
8 class counsel was charged with a duty to bring this motion. In addition, this motion
9 would have been completely unnecessary if defendants had abided by this Court's class
10 certification Order. To call defendants' actions improper is too mild a term. Such
11 conduct is more properly viewed as contemptuous. The Court's class certification
12 Order expressly prohibited defendants from engaging in any settlement of any class
13 members' claims *except as part of this action*. Defendants' attempt to engage this
14 Court, in the *Dubric* case, to proceed with such a class settlement is in direct violation
15 of that Order.

16 Unless this motion is resolved cooperatively by the defendants, through their
17 consent, prior to any motion hearing, to a suitable stipulation and order achieving the
18 same judicial relief requested in this motion, attorney's fees should be awarded to class
19 counsel.

20 **CONCLUSION**

21 For all the foregoing reasons, class counsel's motion should be granted in its
22 entirety together with such other further and different relief that the Court deems proper.

23 Dated: October 14, 2016

24 LEON GREENBERG PROFESSIONAL CORP.

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

CERTIFICATE OF MAILING

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

Motion to Enjoin Defendants from Seeking Settlement of Any Unpaid Wage Claims Involving Any Class Members Except as Part of this Lawsuit and for Other Relief

by court electronic service to:

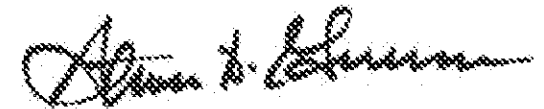
TO:

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

/s/ Dana Sniegocki

Dana Sniegocki

EXHIBIT "A"



CLERK OF THE COURT

1 **ORDR**
2 LEON GREENBERG, ESQ.
3 Nevada Bar No.: 8094
4 DANA SNIEGOCKI, ESQ.
5 Nevada Bar No.: 11715
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13 Attorneys for Plaintiffs

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

11 MICHAEL MURRAY and
12 MICHAEL RENO, individually and
13 on behalf of all others similarly
14 situated,

15 Plaintiffs,

16 vs.

17 A CAB TAXI SERVICE LLC, A
18 CAB, LLC, and CREIGHTON J.
19 NADY,

20 Defendants.

Case No.: A-12-669926-C

DEPT.: I

21 **Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP**
22 **Rule 23(b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice**
23 **Plaintiffs' Motion to Appoint a Special Master Under NCRP Rule 53**
24 **as Amended by this Court in Response to Defendants' Motion for**
25 **Reconsideration heard in Chambers on March 28, 2016**

26 Plaintiffs filed their Motion to Certify this Case as a Class Action Pursuant to
27 NRCP 23(b)(3) and NRCP 23(b)(2), and appoint a Special Master, on May 19, 2015.
28 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

1 hearing on November 3, 2015, with appearances by Leon Greenberg, Esq. and Dana
2 Sniegocki, Esq. on behalf of all plaintiffs, and Esther Rodriguez, Esq., on behalf of all
3 defendants, and the Court, having heard in Chambers on March 28, 2016 the
4 defendants' motion for reconsideration of the Order entered by this Court on February
5 10, 2016, granting in part and denying in part such motion by the plaintiffs, following
6 the arguments of such counsel, and after due consideration of the parties' respective
7 briefs, and all pleadings and papers on file herein, and good cause appearing, therefore
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10 **THE COURT FINDS:**
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12 That it had previously issued an Order on the aforesaid motion made by
13 plaintiffs, which Order was entered on February 10, 2016 and which Order is
14 now superseded and replaced by this Order as a result of the Court granting in
15 part Defendants' Motion for Reconsideration of the February 10, 2016 Order
16 which Motion for Reconsideration was heard in Chambers on March 28, 2016
17 and an Order on the same entered on April 28, 2016.
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19
20 In Respect to the Request for Class Certification

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

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20 As an initial matter, the nature of the claims made in this case are of the sort for
21 which class action treatment would, at least presumptively, likely be available if not
22 sensible. A determination of whether an employee is owed unpaid minimum hourly
23 wages requires that three things be determined: the hours worked, the wages paid, and
24 the applicable hourly minimum wage. Once those three things are known the
25 minimum wages owed, if any, are not subject to diminution by the employee’s
26 contributory negligence, any state of mind of the parties, or anything else of an
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1 individual nature that has been identified to the Court. Making those same three
2 determinations, involving what is essentially a common formula, for a large group of
3 persons, is very likely to involve an efficient process and common questions. The
4 minimum hourly wage rate is set at a very modest level, meaning the amounts of
5 unpaid minimum wages likely to be owed to any putative class member are going to
6 presumptively be fairly small, an additional circumstance that would tend to weigh in
7 favor of class certification.
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10 In respect to granting the motion and the record presented in this case, the
11 Court finds it persuasive that a prior United States Department of Labor ("USDOL")
12 litigation initiated against the defendants resulted in a consent judgment obligating the
13 defendants to pay \$139,834.80 in unpaid minimum wages to the USDOL for
14 distribution to 430 taxi drivers under the federal Fair Labor Standards Act (the
15 "FLSA") for the two year period from October 1, 2010 through October 2, 2012. The
16 parties dispute the *collateral estoppel* significance of that consent judgment in this
17 litigation. The Court does not determine that issue at this time, inasmuch as whether
18 the plaintiffs are actually owed minimum wages (the "merits" of their claims) is not a
19 finding that this Court need make, nor presumably one it should make, in the context
20 of granting or denying a motion for class certification. The USDOL, as a public law
21 enforcement agency has a duty, much like a prosecuting attorney in the criminal law
22 context, to only institute civil litigation against employers when credible evidence
23 exists that such employers have committed violations of the FLSA. Accordingly,
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1 whether or not the consent judgment is deemed as a binding admission by defendants
2 that they owe \$139,834.80 in unpaid minimum wages under the FLSA for distribution
3 to 430 taxi drivers, it is appropriate for the Court to find that the Consent judgment
4 constitutes substantial evidence that, at least at this stage in these proceedings,
5 common questions exist that warrant the granting of class certification. The Court
6 concludes that the record presented persuasively establishes that there are at least two
7 common questions warranting class certification in this case for the purposes of
8 NRCP Rule 23(b)(3) ("damages class" certification) that are coextensive with the
9 period covered by the USDOL consent judgment and for the period prior to June of
10 2014.
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14 The first such question would be whether the class members are owed
15 additional minimum wages, beyond that agreed to be paid in the USDOL consent
16 judgment, and for the period covered by the consent judgment, by virtue of the
17 Minimum Wage Amendment imposing an hourly minimum wage rate that is \$1.00 an
18 hour higher than the hourly minimum wage required by the FLSA for employees who
19 do not receive "qualifying health insurance." The second such question would be
20 whether the class members are owed additional minimum wages, beyond that alleged
21 by USDOL for the period covered by the consent judgment, by virtue of the Minimum
22 Wage Amendment not allowing an employer a "tip credit" towards its minimum wage
23 requirements, something that the FLSA does grant to employers in respect to its
24 minimum wage requirements. It is unknown whether the USDOL consent judgment
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1 calculations include or exclude the application of any "tip credit" towards the FLSA
2 minimum wage deficiency alleged by the USDOL against the defendants.

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4 In respect to the "tip credit" issue plaintiffs have also demonstrated a violation
5 of Nevada's Constitution existing prior to June of 2014. Plaintiff has provided to the
6 Court payroll records from 2014 for taxi driver employee and class member Michael
7 Sargeant indicating that he was paid \$7.25 an hour but only when his tip earnings are
8 included. Defendant has not produced any evidence (or even asserted) that the
9 experience of Michael Sargeant in respect to the same was isolated and not common
10 to many of its taxi driver employees. The Nevada Constitution's minimum wage
11 requirements, unlike the FLSA, prohibits an employer from using a "tip credit" and
12 applying an employee's tips towards any portion of its minimum wage obligation.
13 The Sargeant payroll records, on their face, establish a violation of Nevada's
14 minimum wage standards for a certain time period and strongly support the granting
15 of the requested class certification.

16 The Court makes no finding that the foregoing two identified common
17 questions are the only common questions present in this case that warrant class
18 certification. Such two identified issues are sufficient for class certification as the
19 commonality prerequisite of NRCP Rule 23(a) is satisfied when a "single common
20 question of law or fact" is identified. *Shuette v. Beazer Homes Holdings Corp.*, 121
21 Nev. 837, 848 (2005). In addition, there also appear to be common factual and legal
22 issues presented by the claims made under NRS 608.040 for statutory "waiting time"
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1 penalties for former taxi driver employees of defendants.. Such common questions
2 are readily apparent as NRS 608.040 is a strict liability statute..
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4 The Court also finds that the other requirements for class certification under
5 NRCPL Rule 23(b)(3) are adequately satisfied upon the record presented. Numerosity
6 is established as the United States Department of Labor investigation identified over
7 430 potential class members in the consent judgment who may have claims for
8 minimum wages under the Minimum Wage Amendment. “[A] putative class of forty
9 or more generally will be found numerous.” *Skutumpah*, 122 Nev. at 847. Similarly,
10 adequacy of representation and typicality seem appropriately satisfied upon the record
11 presented. It is undisputed that the two named plaintiffs, who were found in the
12 USDOL consent judgment to be owed unpaid minimum wages under the FLSA, and
13 additional class representative Michael Sargeant, whose payroll records show, on their
14 face, a violation of Nevada’s minimum wage requirements, are or have been taxi
15 drivers employed by the defendants. Counsel for the plaintiffs have also
16 demonstrated their significant experience in the handling of class actions. The Court
17 also believes the superiority of a class resolution of these claims is established by their
18 presumptively small individual amounts, the practical difficulties that the class
19 members would encounter in attempting to litigate such claims individually and obtain
20 individual counsel, the status of many class members as current employees of
21 defendants who may be loath to pursue such claims out of fear of retaliation, and the
22 desirability of centralizing the resolution of the common questions presented by the
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1 over 430 class members in a single proceeding.

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

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

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

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

24 Plaintiffs have also requested the appointment of a Special Master under NRCP
25 Rule 53, to be paid by defendants, to compile information on the hours of work of the
26 class members as set forth in their daily trip sheets. The Court is not persuaded that
27 the underlying reasons advanced by plaintiffs provide a sufficient basis to place the
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1 entirety of the financial burden of such a process upon the defendants. Accordingly,
2 the Court denies that request without prejudice at this time.

3
4 Therefore

5 **IT IS HEREBY ORDERED:**

6 Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(3) is
7
8 **GRANTED.** The class shall consist of the class claims as alleged in the First and
9 Second Claims for Relief in the Second Amended and Supplemental Complaint of all
10 persons employed by any of the defendants as taxi drivers in the State of Nevada at
11 anytime from July 1, 2007 through December 31, 2015, except such persons who file
12 with the Court a written statement of their election to exclude themselves from the
13 class as provided below. Also excluded from the class is Jasminka Dubric who has
14 filed an individual lawsuit against the defendant A CAB LLC seeking unpaid
15 minimum wages and alleging conversion by such defendant, such case pending before
16 this Court under Case No. A-15-721063-C. The class claims are all claims for
17 damages that the class members possess against the defendants under the Minimum
18 Wage Amendment arising from unpaid minimum wages that are owed to the class
19 members for work they performed for the defendants from July 1, 2007 through
20 December 31, 2015 and all claims they may possess under NRS 608.040 if they are a
21 former taxi driver employee of the defendants and are owed unpaid minimum wages
22 that were not paid to them upon their employment termination as provided for by such
23 statute Leon Greenberg and Dana Sniegocki of Leon Greenberg Professional
24
25
26
27
28

1 Corporation are appointed as class counsel and the named plaintiffs Michael Murray
2 and Michael Reno, and class member Michael Sargeant, are appointed as class
3 representatives. The Court will allow discovery pertaining to the class members and
4 the class claims.
5

6 **IT IS FURTHER ORDERED:**
7

8 Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(2) for
9 appropriate equitable and injunctive relief as authorized by Article 15, Section 16 of
10 Nevada's Constitution is **GRANTED** and the named plaintiffs Michael Murray and
11 Michael Reno, and class member Michael Sargeant, are also appointed as class
12 representatives for that purpose. The class shall consist of all persons employed by
13 defendants as taxi drivers in the State of Nevada at any time from July 1, 2007
14 through the present and continuing into the future until a further Order of this Court
15 issues.
16
17
18
19

20 **IT IS FURTHER ORDERED:**
21

22 (1) Defendants' counsel is to produce to plaintiffs' counsel, within 10 days
23 of the service of Notice of Entry of this Order, the names and last known addresses of
24 all persons employed as taxicab drivers by any of the defendants in the State of
25 Nevada from July 1, 2007 through December 31, 2015, such information to be
26 provided in an Excel or CSV or other agreed upon computer data file, as agreed upon
27
28

1 by counsel for the parties, containing separate fields for name, street address, city,
2 state and zip code and suitable for use to mail the Notice of Class Action ;
3
4

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

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

22 (4) Class members seeking exclusion from the class must file a written
23 statement with the Court setting forth their name, address, and election to be excluded
24 from the class, no later than 55 days after the mailing of the Notice of Class Action as
25 provided for in (2), above.
26
27

28 **IT IS FURTHER ORDERED:**


1 Plaintiffs' motion to appoint a Special Master under NRCP Rule 53 is denied
2 without prejudice at this time.
3
4

5 **IT IS FURTHER ORDERED:**

6 That the stay issued by this Court pending the Court's Reconsideration of Prior
7 Order, such stay entered via the Court's Order of April 6, 2016, is dissolved.
8
9

10 **IT IS SO ORDERED.**

11 Dated this 3rd day of June, 2016.
12
13



Hon. Kenneth Cory
District Court Judge

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
20 Las Vegas, NV 89146
21 Attorneys for Plaintiffs
22
23
24
25
26
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?

The class certification in this case may also be amended or revised in the future which means the Court may not answer all of the above questions or may answer additional questions.

NOTICE OF YOUR RIGHTS AS A CLASS MEMBER

If you wish to have your claim as a class member decided as part of this case you do not need to do anything. The class is represented by Leon Greenberg and Dana Sniegocki (the "class counsel"). Their attorney office is Leon Greenberg Professional Corporation, located at 2965 South Jones Street, Suite E-3, Las Vegas, Nevada, 89146. Their telephone number is 702-383-6085 and email can be sent to them at leongreenberg@overtimelaw.com. Communications by email instead of telephone calls are preferred.

You are not required to have your claim for unpaid minimum wages and other possible monies owed to you by A Cab 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 you should contact class counsel at 702-383-6085 or by email to leongreenberg@overtimelaw.com or consult with another attorney. The Court cannot advise you about what you should do.

NO RETALIATION IS PERMITTED IF YOU CHOOSE TO PARTICIPATE IN THIS LAWSUIT

Nevada's Constitution protects you from any retaliation or discharge from your employment for participating in this case or remaining a member of the class. You cannot be punished by A-Cab or fired from your employment with them for being a class member. A-Cab cannot fire you or punish you if this case is successful in collecting money for the class members and you receive a share of that money.

IT IS SO ORDERED

Date:

/s/ Hon. Kenneth Cory, District Court Judge

EXHIBIT "B"

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

A- 15- 721063- C

Case No. _____

(Assigned by Clerk's Office)

XXV

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):

Jasminka Dubric

Defendant(s) (name/address/phone):

A Cab LLC

Attorney (name/address/phone):

Mark J. Bourassa, Esq.

The Bourassa Law Group, LLC

8668 Spring Mountain Road, Suite 101

Las Vegas NV 89117

Attorney (name/address/phone):

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

<p style="text-align: center;">Real Property</p> <p>Landlord/Tenant</p> <p><input type="checkbox"/> Unlawful Detainer</p> <p><input type="checkbox"/> Other Landlord/Tenant</p> <p>Title to Property</p> <p><input type="checkbox"/> Judicial Foreclosure</p> <p><input type="checkbox"/> Other Title to Property</p> <p>Other Real Property</p> <p><input type="checkbox"/> Condemnation/Eminent Domain</p> <p><input type="checkbox"/> Other Real Property</p>	<p style="text-align: center;">Negligence</p> <p><input type="checkbox"/> Auto</p> <p><input type="checkbox"/> Premises Liability</p> <p><input type="checkbox"/> Other Negligence</p> <p style="text-align: center;">Malpractice</p> <p><input type="checkbox"/> Medical/Dental</p> <p><input type="checkbox"/> Legal</p> <p><input type="checkbox"/> Accounting</p> <p><input type="checkbox"/> Other Malpractice</p>	<p style="text-align: center;">Torts</p> <p style="text-align: center;">Other Torts</p> <p><input type="checkbox"/> Product Liability</p> <p><input type="checkbox"/> Intentional Misconduct</p> <p><input checked="" type="checkbox"/> Employment Tort</p> <p><input type="checkbox"/> Insurance Tort</p> <p><input type="checkbox"/> Other Tort</p>
<p style="text-align: center;">Probate</p> <p><i>(select case type and estate value)</i></p> <p><input type="checkbox"/> Summary Administration</p> <p><input type="checkbox"/> General Administration</p> <p><input type="checkbox"/> Special Administration</p> <p><input type="checkbox"/> Set Aside</p> <p><input type="checkbox"/> Trust/Conservatorship</p> <p><input type="checkbox"/> Other Probate</p> <p>Estate Value</p> <p><input type="checkbox"/> Over \$200,000</p> <p><input type="checkbox"/> Between \$100,000 and \$200,000</p> <p><input type="checkbox"/> Under \$100,000 or Unknown</p> <p><input type="checkbox"/> Under \$2,500</p>	<p style="text-align: center;">Construction Defect & Contract</p> <p>Construction Defect</p> <p><input type="checkbox"/> Chapter 40</p> <p><input type="checkbox"/> Other Construction Defect</p> <p style="text-align: center;">Contract Case</p> <p><input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> Building and Construction</p> <p><input type="checkbox"/> Insurance Carrier</p> <p><input type="checkbox"/> Commercial Instrument</p> <p><input type="checkbox"/> Collection of Accounts</p> <p><input type="checkbox"/> Employment Contract</p> <p><input type="checkbox"/> Other Contract</p>	<p style="text-align: center;">Judicial Review/Appeal</p> <p>Judicial Review</p> <p><input type="checkbox"/> Foreclosure Mediation Case</p> <p><input type="checkbox"/> Petition to Seal Records</p> <p><input type="checkbox"/> Mental Competency</p> <p style="text-align: center;">Nevada State Agency Appeal</p> <p><input type="checkbox"/> Department of Motor Vehicle</p> <p><input type="checkbox"/> Worker's Compensation</p> <p><input type="checkbox"/> Other Nevada State Agency</p> <p style="text-align: center;">Appeal Other</p> <p><input type="checkbox"/> Appeal from Lower Court</p> <p><input type="checkbox"/> Other Judicial Review/Appeal</p>
<p style="text-align: center;">Civil Writ</p> <p>Civil Writ</p> <p><input type="checkbox"/> Writ of Habeas Corpus</p> <p><input type="checkbox"/> Writ of Mandamus</p> <p><input type="checkbox"/> Writ of Quo Warrant</p> <p><input type="checkbox"/> Writ of Prohibition</p> <p><input type="checkbox"/> Other Civil Writ</p>		<p style="text-align: center;">Other Civil Filing</p> <p>Other Civil Filing</p> <p><input type="checkbox"/> Compromise of Minor's Claim</p> <p><input type="checkbox"/> Foreign Judgment</p> <p><input type="checkbox"/> Other Civil Matters</p>

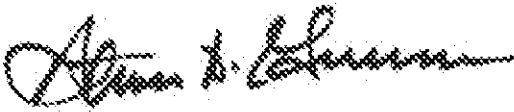
Business Court filings should be filed using the Business Court civil coversheet.

July 7, 2015

Date

Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

1 **COMJD**
2 MARK J. BOURASSA, ESQ.
3 Nevada Bar No. 7999
4 TRENT L. RICHARDS, ESQ.
5 Nevada Bar No. 11448
6 **THE BOURASSA LAW GROUP, LLC**
7 8668 Spring Mountain Road, Suite 101
8 Las Vegas, Nevada 89117
9 Tel: (702) 851-2180
10 Fax: (702) 851-2189
11 mbourassa@bourassalawgroup.com
12 trichards@bourassalawgroup.com
13 *Attorney for Plaintiffs*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 JASMINKA DUBRIC, individually and on behalf) Case No.: A- 15- 721063- C
12 of those similarly situated,)
13) Dept No.: XXV
14 Plaintiff,)
15 vs.) **CLASS ACTION COMPLAINT AND**
16) **DEMAND FOR JURY TRIAL**
17)
18 A CAB LLC, a Nevada Limited Liability)
19 Company; and DOES 1 through 20)
20)
21 Defendants.)
22)
23)
24)

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

24 **PRELIMINARY STATEMENT**

25 1. Plaintiff brings this class action on her own behalf and on the behalf of all others
26 similarly situated for damages arising from violations of the Nevada Constitution, Article 15,
27 Section 16.
28

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

28 ///

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