

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

Electronically Filed
Aug 05 2020 03:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

3 c. Plaintiff is further informed and believes and thereon alleges that
4 Defendant was, or should have been, aware of the Nevada Supreme Court's holding in *Thomas*
5 *v. Nevada Yellow Cab Corp. et al*, 327 P.3d 518 (Nev. 2014), in which the Nevada Supreme
6 Court specifically held that the provisions of Article 15, Section 16, of the Nevada Constitution
7 applied to taxi cab drivers such as Plaintiff and the class members.
8

9 28. Plaintiff is informed and believes and thereon alleges that Defendant engaged in
10 the acts and/or omissions detailed in paragraph 23 in an intentional scheme to maliciously,
11 oppressively and fraudulently deprive its taxi cab driver employees of the hourly minimum
12 wages that were guaranteed to those employees by Article 15, Section 16, of the Nevada
13 Constitution. Defendant so acted consciously, willfully, and intentionally to deprive such taxi
14 driver employees of any knowledge that they might be entitled to such minimum hourly wages,
15 despite the defendant's obligation under Article 15, Section 16, of the Nevada Constitution to
16 advise such cab driver employees of their right to those minimum hourly wages. Defendant's
17 malicious, oppressive and fraudulent conduct is also demonstrated by their failure to make any
18 allowance to pay such minimum hourly wages if they were found to be due, such as through an
19 escrow account, while seeking any judicial determination of their obligation to make those
20 payments.
21

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

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

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

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

22 32. It has been necessary for Plaintiff to obtain the services of an attorney to pursue
23 this claim, and Plaintiffs and the members of the Class are entitled to recover reasonable
24 attorneys' fees and costs pursuant to Nev. Const. Art. 15, § 16.
25

26 ///

27 ///

28 ///

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

2

3

4
5
6

7
8

9
10
11
12
13

14

15
16
17

18
19
20
21
22

23

24
25
26
27
28

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

DATED this 7th day of July, 2015.

THE BOURASSA LAW GROUP, LLC

MARK J. BOURASSA, ESQ.

Nevada Bar No. 7999

8668 Spring Mountain Rd., Suite 101

Las Vegas, Nevada 89117

Tel: (702) 851-2180

Fax: (702) 851-2189

mbourassa@bourassalawgroup.com

trichards@bourassalawgroup.com

Attorneys for Plaintiff

1 DEMAND FOR JURY TRIAL

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

4 DATED this 7th day of June, 2015.
5
6

7 **THE BOURASSA LAW GROUP, LLC**

8 
9
10 MARK J. BOURASSA, ESQ.

11 Nevada Bar No. 7999

12 8668 Spring Mountain Rd., Suite 101

13 Las Vegas, Nevada 89117

14 Tel: (702) 851-2180

15 Fax: (702) 851-2189

16 mbourassa@bourassalawgroup.com

17 trichards@bourassalawgroup.com

18 *Attorneys for Plaintiff*
19
20
21
22
23
24
25
26
27
28

EXHIBIT "C"

CIVIL COVER SHEET

A-12-669926-C

Clark County, Nevada

XXVII I

Case No. _____
(Assigned by Clerk's Office)**I. Party Information**Plaintiff(s) (name/address/phone): Michael P. Murray, 3555
Stober Blvd., Apt. 111, Las Vegas, NV 89103, Michael
Reno, 811 E. Bridger Avenue, #363, Las Vegas, NV 89101
Attorney (name/address/phone):Leon Greenberg, 2965 S. Jones Blvd., Suite E-4, Las Vegas,
NV 89146, 702-383-6085Defendant(s) (name/address/phone): A Cab Taxi Service, LLC, 3730
Pama Lane, Las Vegas, NV 89120Attorney (name/address/phone):
Unknown**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ Arbitration Requested**Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	Negligence <input type="checkbox"/> Negligence -- Auto <input type="checkbox"/> Negligence -- Medical/Dental <input type="checkbox"/> Negligence -- Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence -- Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input checked="" type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment -- Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input checked="" type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category, for Clark or Washoe Counties only.)

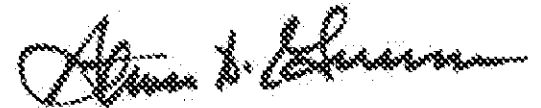
- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

October 8, 2012

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

1 COMP

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

11 Attorneys for Plaintiffs

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 A-12-669926-C

15 Case No.:

16 Dept.: XXVIII

17 MICHAEL MURPHY and MICHAEL
18 RENO, Individually and on
19 behalf of others similarly
20 situated,

21 Plaintiffs,

22 vs.

23 A CAB TAXI SERVICE LLC and
24 A CAB, LLC,

25 Defendants.

26 COMPLAINT

27 ARBITRATION EXEMPTION
28 CLAIMED BECAUSE THIS IS
A CLASS ACTION CASE

29 MICHAEL MURPHY and MICHAEL RENO, Individually and on
30 behalf of others similarly situated, by and through their
31 attorney, Leon Greenberg Professional Corporation, as and
32 for a Complaint against the defendants, state and allege,
33 as follows:

34 JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

35 1. The plaintiffs, MICHAEL MURPHY and MICHAEL RENO,
36 (the "individual plaintiffs" or the "named plaintiffs")

1 are residents of the State of Nevada and during all
2 relevant times were residents of Clark County, Nevada, and
3 all plaintiffs are current employees of the defendants.

4 2. The defendants A CAB TAXI SERVICE LLC and A CAB,
5 LLC, (hereinafter referred to as "A CAB" or "defendants")
6 are limited liability companies or corporations existing
7 and established pursuant to the laws of the State of
8 Nevada with their principal place of business in the
9 County of Clark, State of Nevada and conduct business in
10 Nevada.

11 CLASS ACTION ALLEGATIONS

12 3. The plaintiffs bring this action as a class
13 action pursuant to Nev. R. Civ. P. §23 on behalf of
14 themselves and a class of all similarly situated persons
15 employed by the defendants in the State of Nevada.

16 4. The class of similarly situated persons consists
17 of all persons employed by defendant in the State of
18 Nevada during the applicable statute of limitations
19 periods prior to the filing of this Complaint continuing
20 until date of judgment, such persons being employed as
21 Taxi Cab Drivers (hereinafter referred to as "cab drivers"
22 or "drivers") such employment involving the driving of
23 taxi cabs for the defendants in the State of Nevada.

24 5. The common circumstance of the cab drivers giving
25 rise to this suit is that while they were employed by
26 defendants they were not paid the minimum wage required by
27 Nevada's Constitution, Article 15, Section 16 for many or
28 most of the days that they worked in that their hourly

1 compensation, when calculated pursuant to the requirements
2 of said Nevada Constitutional Provision, did not equal at
3 least the minimum hourly wage provided for therein.

4 6. The named plaintiffs are informed and believe,
5 and based thereon allege that there are at least 200
6 putative class action members. The actual number of class
7 members is readily ascertainable by a review of the
8 defendants' records through appropriate discovery.

9 7. There is a well-defined community of interest in
10 the questions of law and fact affecting the class as a
11 whole.

12 8. Proof of a common or single set of facts will
13 establish the right of each member of the class to
14 recover. These common questions of law and fact
15 predominate over questions that affect only individual
16 class members. The individual plaintiffs' claims are
17 typical of those of the class.

18 9. A class action is superior to other available
19 methods for the fair and efficient adjudication of the
20 controversy. Due to the typicality of the class members'
21 claims, the interests of judicial economy will be best
22 served by adjudication of this lawsuit as a class action.
23 This type of case is uniquely well-suited for class
24 treatment since the employers' practices were uniform and
25 the burden is on the employer to establish that its method
26 for compensating the class members complies with the
27 requirements of Nevada law.

28 10. The individual plaintiffs will fairly and

1 adequately represent the interests of the class and have
2 no interests that conflict with or are antagonistic to the
3 interests of the class and have retained to represent them
4 competent counsel experienced in the prosecution of class
5 action cases and will thus be able to appropriately
6 prosecute this case on behalf of the class.

7 11. The individual plaintiffs and their counsel are
8 aware of their fiduciary responsibilities to the members
9 of the proposed class and are determined to diligently
10 discharge those duties by vigorously seeking the maximum
11 possible recovery for all members of the proposed class.

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

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

26 13. The named plaintiffs repeat all of the
27 allegations previously made and bring this First Claim for
28 Relief pursuant to Article 15, Section 16, of the Nevada

1 Constitution.

2 14. Pursuant to Article 15, Section 16, of the Nevada
3 Constitution the named plaintiffs and the class members
4 were entitled to an hourly minimum wage for every hour
5 that they worked and the named plaintiffs and the class
6 members were often not paid such required minimum wages.

7 15. The named plaintiffs seek all relief available to
8 them and the alleged class under Nevada's Constitution,
9 Article 15, Section 16 including appropriate injunctive
10 and equitable relief to make the defendants cease their
11 violations of Nevada's Constitution and a suitable award
12 of punitive damages.

13 16. The named plaintiffs on behalf of themselves and
14 the proposed plaintiff class members, seek, on this First
15 Claim for Relief, a judgment against the defendants for
16 minimum wages, such sums to be determined based upon an
17 accounting of the hours worked by, and wages actually paid
18 to, the plaintiffs and the class members, a suitable
19 injunction and other equitable relief barring the
20 defendants from continuing to violate Nevada's
21 Constitution, a suitable award of punitive damages, and an
22 award of attorney's fees, interest and costs, as provided
23 for by Nevada's Constitution and other applicable laws.

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

27 17. Plaintiffs repeat and reiterate each and every
28 allegation previously made herein.

1 18. The named plaintiffs bring this Second Claim for
2 Relief against the defendants pursuant to Nevada Revised
3 Statutes § 608.040 on behalf of themselves and those
4 members of the alleged class of all similarly situated
5 employees of the defendants who have terminated their
6 employment with the defendants.

7 19. The named plaintiffs have been separated from
8 their employment with the defendants and at the time of
9 such separation were owed unpaid wages by the defendants.

10 20. The defendants have failed and refused to pay the
11 named plaintiffs and numerous members of the putative
12 plaintiff class who are the defendants' former employees
13 their earned but unpaid wages, such conduct by such
14 defendants constituting a violation of Nevada Revised
15 Statutes § 608.020, or § 608.030 and giving such named
16 plaintiffs and similarly situated members of the putative
17 class of plaintiffs a claim against the defendants for a
18 continuation after the termination of their employment
19 with the defendants of the normal daily wages defendants
20 would pay them, until such earned but unpaid wages are
21 actually paid or for 30 days, whichever is less, pursuant
22 to Nevada Revised Statutes § 608.040.

23 21. As a result of the foregoing, the named
24 plaintiffs seek on behalf of themselves and the similarly
25 situated putative plaintiff class members a judgment
26 against the defendants for the wages owed to them and such
27 class members as prescribed by Nevada Revised Statutes §
28 608.040, to wit, for a sum equal to up to thirty days

1 wages, along with interest, costs and attorneys' fees.

2 WHEREFORE, plaintiffs demand the relief on each cause
3 of action as alleged aforesaid.

4 Plaintiffs demand a trial by jury on all issues so
5 triable.

6 Dated this 8th day of October, 2012.

7

8 Leon Greenberg Professional Corporation

9

10 By: /s/ Leon Greenberg

11 LEON GREENBERG, Esq.
12 Nevada Bar No.: 8094
13 2965 South Jones Blvd- Suite E4
14 Las Vegas, Nevada 89146
15 (702) 383-6085

16

17 Attorney for Plaintiff

18

19

20

21

22

23

24

25

26

27

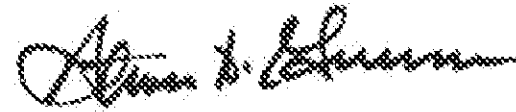
28

29

30

31

EXHIBIT "D"



CLERK OF THE COURT

ORDR

LEON GREENBERG, SBN 8094
DANA SNIEGOCKI, SBN 11715
Leon Greenberg Professional Corporation
2965 S. Jones Blvd. - Suite E-4
Las Vegas, Nevada 89146
Tel (702) 383-6085
Fax (702) 385-1827
leongreenberg@overtimelaw.com
dana@overtimelaw.com

CHRISTIAN GABROY, SBN 8805
Gabroy Law Offices
170 S. Green Valley Parkway - Suite 280
Henderson, Nevada 89012
Tel(702) 259-7777
Fax(702) 259-7704
Christian@gabroy.com

Attorney for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

JOE VALDEZ, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

VIDEO INTERNET PHONE INSTALLS,
INC.,

Defendant.

Case No. A-09-597433-C

Dept. No. 1

ORDER

THIS MATTER having come before the Court for hearing on September 3, 2013 on
plaintiff's Motion for Summary Judgment and defendant's Countermotion for Summary
Judgment, after due consideration of all supporting and opposing briefs submitted by counsel

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Sup Dis	<input type="checkbox"/> Jury Trial	<input type="checkbox"/> Final Disposition
<input type="checkbox"/> Involuntary (and) Dis	<input type="checkbox"/> Sup Dis	<input type="checkbox"/> Jury Trial	<input type="checkbox"/> Final Disposition
<input type="checkbox"/> Disposed on 4th Board	<input type="checkbox"/> Disposed on 4th Board	<input type="checkbox"/> Disposed on 4th Board	<input type="checkbox"/> Disposed on 4th Board
<input type="checkbox"/> Disposed on 4th Board	<input type="checkbox"/> Disposed on 4th Board	<input type="checkbox"/> Disposed on 4th Board	<input type="checkbox"/> Disposed on 4th Board

1 for the parties, the oral argument by counsel, and the record of these proceedings, and good
2 cause appearing, now therefore:

3 **THE COURT FINDS:**

4 Plaintiff sought an Order granting summary judgment on his remaining claim for 30
5 days of continuing wages under N.R.S. 608.040 for defendant's failure to pay him all wages
6 owed and due at the time of his separation from employment and for his claim under N.R.S.
7 99.040 for prejudgment interest. Plaintiff's unpaid wages for purposes of his N.R.S. 608.040
8 claim concerned defendant's failure to pay him overtime wages calculated at time and one-
9 half his "regular rate" of pay. The parties do not dispute that Plaintiff received no waiting-
10 time penalties under NRS 608.040 at the time of his separation from the Defendant.
11

12
13 In the parties' companion federal litigation, the parties entered into a Settlement and
14 Release of Claims in March 2013. Through such Settlement and Release, defendant satisfied
15 a payment of \$20,000.00 to plaintiff, which was inclusive of all "taxable costs, attorneys'
16 fees, and prejudgment interest" in the companion federal litigation. Prior to such Settlement
17 and Release, the plaintiff had also accepted an Offer of Judgment in the amount of \$4194.20
18 which was entered on November 14, 2012 in the federal litigation. Thus, plaintiff's only
19 remaining claims concerned his entitlement to damages under N.R.S. 608.040 and
20 prejudgment interest on his unpaid wages claims.
21

22 **Conclusions of Law**

23
24 The Court accepts both parties' position that no triable issues of material fact exist
25 and only questions of law remain before the Court. The Court finds that it is undisputed that
26 plaintiff has accepted an offer of judgment for the unpaid overtime wages owed to him at the
27 time of his separation of employment from the defendant and that such offer of judgment
28

1 acceptance establishes, for the purposes of NRS 608.040, that the plaintiff was owed unpaid
2 overtime at the time of his employment termination. Thus, plaintiff's entitlement to the
3 requested 30 days of continuing wages as a penalty under N.R.S. 608.040 rests on a pure
4 issues of law concerning whether unpaid overtime wages, due under a piece rate payment
5 system, constitute the unpaid "compensation" or "wages" contemplated by the legislature
6 under N.R.S. 608.040 and whether N.R.S. 608.040 contains a private right of action. The
7 Court finds that in both instances it does.

8
9 In so finding, the Court disagrees with the federal district court decisions that the
10 later complications by statute obliterate the earlier meaning. The Court reaches its
11 conclusion regardless of whether the Court would construe this statute the way the Supreme
12 Court has indicated in *General Motors v. Jackson*, saying that giving meaning to their parts
13 and language read each sentence, phrase and word to render it meaningful within the context
14 of the purpose of the legislation. *General Motors v. Jackson*, 99 Nev. 739, 670 P.2d 102
15 (Nev. 1983). Thus, the Court would arrive at the same conclusion it arrived at if it did go to
16 the secondary method, which is where the statutory language does not speak to the issue
17 before the Court, the Court should construe it according to that which reason and public
18 policy would indicate the legislature intended, and the Court finds they intended employees
19 to be paid the agreed-upon contractual rate, which was, in this case, the average of the
20 piecemeal rate.

21
22 The Court further finds that plaintiff is entitled to thirty days of continuing wages
23 under N.R.S. 608.040 for defendant's failure to pay plaintiff all overtime wages owed and
24 due at the time of his separation from employment. Because plaintiff was employed under a
25 piecework payment system, such "continuing wages" are to be calculated based upon his
26
27
28

1 average earnings while employed by defendant, which the Court finds to be at a rate of
2 \$115.20 per day for a total award of \$3,456.00 for a period of 30 days.

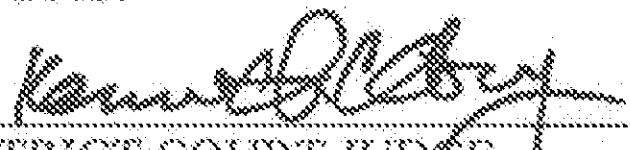
3 In respect to plaintiffs' request for prejudgment interest on his unpaid overtime
4 wages, the Court finds that such prejudgment interest was satisfied and foreclosed as a result
5 of the parties' Settlement and Release in the companion federal district court case in March
6 2013. The Court concludes that nothing in the settlement could be read to have parceled out,
7 or excluded out, some later consideration by this Court as to prejudgment interest.

8
9 Conclusion

10 Based on the foregoing, it is hereby ORDERED that plaintiffs' Motion for Summary
11 Judgment is GRANTED in part and DENIED in part. Plaintiff is entitled to thirty days of
12 continuing wages under N.R.S. 608.040. Summary judgment on such claim is GRANTED
13 and plaintiff is entitled to a judgment in the amount of \$3,456.00. Plaintiff's Motion for
14 Summary Judgment under N.R.S. 99.040 for prejudgment interest is DENIED for the
15 reasons stated above.

16
17 It is hereby further ORDERED that defendant's Counter Motion for Summary
18 Judgment is GRANTED in part and DENIED in part. Defendant's Motion for Summary
19 Judgment on plaintiff's claim under N.R.S. 99.040 for prejudgment interest is GRANTED
20 pursuant to the parties' Settlement and Release satisfied in the companion federal district
21 court litigations. Defendant's Motion for Summary Judgment on plaintiff's claim under
22 N.R.S. 608.040 is DENIED for the reasons stated above.

23
24 Dated this 11 day of Oct, 2013.

25
26 
27 DISTRICT COURT JUDGE
28 THE HONORABLE KENNETH CORY

1 Submitted:

2
3 By:

4 Leon Greenberg, Esq.
5 Dana Sniegocki, Esq.
6 LEON GREENBERG PROF. CORP.
7 2965 s. Jones Blvd., Ste. E-4
8 Las Vegas, NV 89146

9 Attorney for Plaintiffs

10 Approved as to form and content:

11
12 By:

13 Rick Roskelley
14 Montgomery Paek
15 Littler Mendelson
16 3960 Howard Hughes Parkway
17 Suite 300
18 Las Vegas, NV 89169-5937

19 Attorney for Defendant
20 VIP Installs
21
22
23
24
25
26
27
28

EXHIBIT "E"

1 **DECL**
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
(702) 383-6085
(702) 385-1827(fax)
leongreenberg@overtimelaw.com
dana@overtimelaw.com
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

11 Plaintiffs,)

12 vs.)

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

15 Defendants.)
16

Case No.: A-12-669926-C

Dept.: I

**DECLARATION OF CLASS
COUNSEL, LEON
GREENBERG, ESQ.**

17 Leon Greenberg, an attorney duly licensed to practice law in the State of
18 Nevada, hereby affirms, under the penalty of perjury, that:

19
20 1. I am one of the attorneys representing the class of plaintiffs in this matter and
21 submit this declaration as part of plaintiffs' motion to enjoin defendants from pursuing
22 any settlement of class members' wage claims, except by application to the Court in
23 this case, and for other relief.

24
25 2. I first communicated with counsel for the plaintiff in the *Dubric* action,
26 Trent Richards, by telephone on October 8, 2015. At that time I advised him of the
27 pendency of this lawsuit and the pending class certification motion in this case, such
28 motion having been filed in May of 2015. I explained to him that the putative class

1 claims in the *Dubric* case could not proceed given the pendency of class certification
2 in this much older case. I also expressed to Mr. Richards a desire to secure his
3 cooperation and that of his client, Ms. Dubric. I suspected that his client, who worked
4 not just as a taxi driver for defendants but in other capacities, might have information
5 valuable to the prosecution of the class claims. Mr. Richards refused to assist me in
6 the prosecution of this case, advising he would not arrange for me to speak with Ms.
7 Dubric. He stated that Ms. Dubric had other sexual harassment claims he intended to
8 prosecute against defendants in a federal lawsuit apart from the *Dubric* case's
9 minimum wage claims.

10 3. I kept in regular communication with Mr. Richards, Dubric's counsel, as
11 this case developed. I spoke with him on January 12, 2016 about the Court's minute
12 order granting class certification of this case and sent him a copy of that minute order
13 and on February 10, 2016 a copy of this Court's Class Certification Order. At no time
14 did Dubric's counsel, or defendants' counsel, advise me that they intended to pursue a
15 class action settlement, in the *Dubric* case, of any of the minimum wage related claims
16 that are at issue in this case.

17
18 4. Upon learning of the *Dubric* case's proposed settlement I contacted
19 Dubric's counsel by email. I advised them they were proceeding improperly and asked
20 them to cooperatively resolve that situation with me. They refused and declined to
21 offer any explanation of how their conduct could be proper in light of this Court's
22 class certification order. That email is at Ex. "H" of this motion.

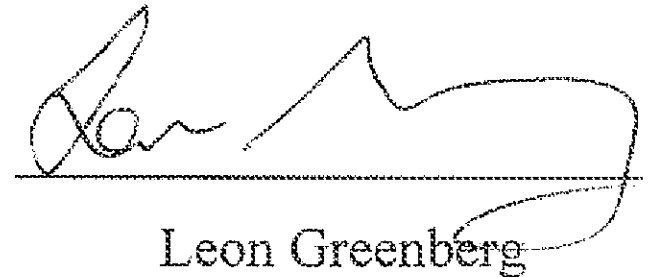
23
24 5. Today I spoke for about 40 minutes with Ms. Rodriguez, defendants'
25 counsel. I asked her to explain how the *Dubric* case's proposed class settlement, to
26 be presented to the Court in that case, was jurisdictionally and procedurally proper and
27 not in violation of the class certification order in this case. She did not offer any such
28

1 to speak with me further about that once she did so. I advised her I intended to file
2 this motion with the Court, today, and in the event defendants agreed to enter into a
3 suitable stipulation and order resolving the issues addressed by this motion it would be
4 withdrawn.

5 I have read the foregoing and affirm the same is true and correct.

6 Affirmed this 14th day of October, 2016

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Leon Greenberg

EXHIBIT "F"

1 Las Vegas, Nevada - Wednesday, January 13, 2016, 9:29 a.m.

2 * * * * *

3 DISCOVERY COMMISSIONER: Murray.

4 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez, for the
5 Defendants.

6 DISCOVERY COMMISSIONER: Good morning.

7 MR. GREENBERG: Good morning, Your Honor. Leon Greenberg, Dana
8 Sniegocki, for Plaintiffs.

9 MS. SNEGOCKI: Good morning.

10 DISCOVERY COMMISSIONER: Good morning. It's gonna be a Happy
11 New Year, everybody?

12 MR. GREENBERG: I hope so.

13 DISCOVERY COMMISSIONER: I hope so too. I'm counting on it.
14 So we're here for a status check, and I know we've been back and forth a
15 number of times, and I'm sure that there is probably a little bit of confusion. I do know that
16 there was an objection to my Report and Recommendation by defense counsel, but I don't
17 think it's been heard yet.

18 MS. RODRIGUEZ: No, Your Honor, it hasn't.

19 DISCOVERY COMMISSIONER: So I'm not sure what the status is. But I
20 think where we left off last time, if I -- if memory serves me correctly, is that the Defendant
21 was going to produce some additional information, and then there was going to be a review
22 of that information and a determination whether or not it was different than what had already
23 been produced on the time cards and the initially disclosed information. So I don't know
24 what the status of that is. I know that apparently it was a little more labor intensive than
25 anticipated. I had the impression certainly, and I think the record will bear me out, that we

1 didn't think it was going to be that big of a deal just to provide that information to the
2 Plaintiffs' counsel in addition to the timecards and everything that had already been
3 provided.

4 If it had turned out to be such a big chore, I would have hoped I would have
5 had a telephone call or a conference call so that we could address the issue, but perhaps it has
6 been taken care of, and the documentation is now produced. I just don't know what the
7 status is.

8 MR. GREENBERG: Well --

9 MS. RODRIGUEZ: I can update you as to what we have produced.

10 DISCOVERY COMMISSIONER: Okay.

11 MS. RODRIGUEZ: As Your Honor indicated, there is not a signed order yet,
12 and I don't know if Judge Cory -- what he's gonna do with the Report and Recommendation,
13 if he's gonna modify it, as we've requested, to just kinda limit the time. So, in the interim,
14 while we were kind of on hold over the holidays, I had Jim Morgan, the expert, and A Cab
15 personnel start to work to try to put this together. And so they have -- or I have produced
16 what we were able to come up with so far, which is a QuickBooks production, as ordered,
17 and the CAB Manager production, as ordered.

18 And I subsequently recently just got correspondence from Mr. Greenberg
19 indicating that he's not happy with the production, and so I think we are gonna have further
20 discussions on this because I think it was his interpretation that we were supposed to turn
21 over all of the names of the cab drivers associated with that information, and that was never
22 my understanding of Your Honor's order. I think you previously ordered that the specific
23 names of the drivers wasn't to be disclosed, but the data that he's been looking for was to be
24 disclosed, and that's what --

25 DISCOVERY COMMISSIONER: I don't remember --

1 MS. RODRIGUEZ: -- I turned over.

2 DISCOVERY COMMISSIONER: -- talking about the names. I think that's
3 actually something that you may need to talk with the District Court Judge when it comes to
4 the class certification issue. Right now we're dealing with numerosity.

5 MS. RODRIGUEZ: Right.

6 DISCOVERY COMMISSIONER: I don't think you need to know the exact
7 names of the drivers. I think you need to know the number that we're dealing with that fall
8 in -- potentially fall into the categories of concern so that the Judge can deal with the
9 certification issue. Then once it is certified as a class, if, in fact, it is, then the names of the
10 individuals have to be exchanged, a letter has to be sent advising them that they're a member
11 of the class, and that's something that typically the District Court Judge works out with the
12 lawyers.

13 MS. RODRIGUEZ: Right, and that --

14 DISCOVERY COMMISSIONER: It's not something I personally do.

15 MS. RODRIGUEZ: And just --

16 MR. GREENBERG: If I could --

17 MS. RODRIGUEZ: -- to update you, and I guess I'm trying to jump ahead of
18 Mr. Greenberg because --

19 DISCOVERY COMMISSIONER: Right. That's okay.

20 MS. RODRIGUEZ: -- a lot of times he'll hit so many issues that I can't even
21 address 'em all, so I just wanted to get a couple points out. Yes, we just got a minute order
22 Friday from the Judge. We don't have a full order of what he's going to certify, but there is
23 a minute order indicating that he's gonna move forward with class certification.

24 DISCOVERY COMMISSIONER: Okay.

25 MS. RODRIGUEZ: But when I produced all of this over the holidays, we

1 didn't have any indication.

2 DISCOVERY COMMISSIONER: And I didn't order it, so I'm not as
3 concerned about that. I think it's -- certainly I'd like you to have your order in place, and
4 then we can figure out the -- how to provide the names of the individuals.

5 MS. RODRIGUEZ: Okay. And the only thing that I would add is that he did
6 send me another E-mail yesterday -- I'm sure he's gonna bring this up -- indicating that
7 there -- he had some other questions about the way the electronic data is being reflected
8 between gross wages and hours, which I think is what your order indicated, that we were
9 supposed to turn over all information pertaining to the -- or information pertaining to the
10 wages and the hours, which we did, but now I think he's wanting a further specification of
11 all of the deductions, which we don't feel is appropriate, like federal tax withholdings, social
12 security withholdings, FICA, all of those things, because that has nothing to do with the
13 minimum wage claims. And I don't think that was ever addressed.

14 DISCOVERY COMMISSIONER: I agree with you on that.

15 MS. RODRIGUEZ: That's all I have, Your Honor. Thank you.

16 MR. GREENBERG: Your --

17 DISCOVERY COMMISSIONER: Go ahead.

18 MR. GREENBERG: -- Honor, counsel's making some representations about
19 the QuickBooks production which I got last Friday. Okay.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. GREENBERG: What I want to explain to the Court, I -- Your Honor just
22 made a statement about something not being appropriate in respect to the production. I
23 would ask Your Honor to simply reserve any ruling on any issue regarding what should or
24 shouldn't be done with the QuickBooks production. Let us, as counsel, confer further about
25 this. There are problems with the form of the production. Not only didn't -- they didn't

1 produce it with the employee names, they didn't produce it with an employee reference.
2 Normally I get this with a code number for each employee, so I don't even know --

3 DISCOVERY COMMISSIONER: Didn't we talk about that? I'm -- again, I
4 apologize to counsel because I have a number of cases, so I try to keep all these straight, but
5 I'm not always wonderful at it.

6 And I'm wondering -- didn't we talk about producing them with names, or
7 letters, or numbers, or something?

8 MR. GREENBERG: Well, my point is the obvious, Your Honor. Without a
9 unique identification for a payroll period, we don't know who it refers to. But, again, back
10 to my first request, Your Honor, that we simply defer the Court making any instructions or
11 any rulings regarding the QuickBooks --

12 DISCOVERY COMMISSIONER: I'm just trying to find out what the status is
13 today.

14 MS. RODRIGUEZ: Well --

15 MR. GREENBERG: Yes, Your Honor. In respect to this issue of the
16 deductions from the pay, it is germane because deductions are taken from pay that are not tax
17 deductions that reduce pay below the minimum wage amount. That's why we need to see
18 the bills and the net. It is not irrelevant to this case, Your Honor.

19 DISCOVERY COMMISSIONER: I'm not sure I agree with you on that, so
20 that might be something we'll have to brief and deal with later.

21 MR. GREENBERG: Yes, Your Honor.

22 DISCOVERY COMMISSIONER: What I'm concerned about right now
23 though -- and I -- you know, defense counsel, you're going to have to have a way for
24 whatever information you turned over per employee of identifying that employee on your
25 QuickBook. Now, I'm assuming you can do that, but I can't imagine you wouldn't have had

1 some sort of a code or chart so you could know which employee's information you were
2 turning over. I mean, that's a common sense issue that I'm not sure I can really address
3 further than that.

4 MS. RODRIGUEZ: Well, it's laid out line by line, Your Honor, and the only
5 thing --

6 DISCOVERY COMMISSIONER: I'm sure you have a number -- a name that
7 goes with each line, right?

8 MS. RODRIGUEZ: Yes. It just was left off. I mean, we could easily number
9 it as employee number 1 through 300.

10 MR. GREENBERG: Yes, Your Honor. Without a unique identifier, the
11 information is useless. There are other problems with the information --

12 DISCOVERY COMMISSIONER: Well, it's --

13 MR. GREENBERG: -- as produced.

14 DISCOVERY COMMISSIONER: -- not useless if each line represents an
15 employee, then number the lines. I mean, you know --

16 MR. GREENBERG: No, but, Your Honor, I don't know which employee goes
17 with which line. It's --

18 DISCOVERY COMMISSIONER: Well, not yet.

19 MR. GREENBERG: Well, yes, if it was supplemented it could be useful.

20 DISCOVERY COMMISSIONER: Not yet.

21 MR. GREENBERG: In its current form, Your Honor --

22 DISCOVERY COMMISSIONER: But you have numerosity; that's what
23 you're missing. And it doesn't even matter because the Judge is gonna certify the class,
24 right?

25 MR. GREENBERG: The class has --

1 DISCOVERY COMMISSIONER: So --

2 MR. GREENBERG: -- been certified --

3 DISCOVERY COMMISSIONER: Right, so --

4 MR. GREENBERG: -- Your Honor.

5 DISCOVERY COMMISSIONER: --- we're done with that issue.

6 MR. GREENBERG: I really don't want to take up Your Honor's time.

7 DISCOVERY COMMISSIONER: Oh, no.

8 MR. GREENBERG: You're being very --

9 DISCOVERY COMMISSIONER: It's my pleasure.

10 MR. GREENBERG: -- patient. You're being very patient with us.

11 DISCOVERY COMMISSIONER: Oh, sometimes I'm better than others.

12 MR. GREENBERG: Well, Your Honor, what I would like to do is try to work

13 cooperatively with defense counsel to resolve all of this, and if we are not able to, spell it out

14 for the Court in some written submission, hopefully very brief where it is all absolutely clear

15 'cause we're talking about charts, and documents, and, you know, a spreadsheet and so forth.

16 DISCOVERY COMMISSIONER: Right.

17 MR. GREENBERG: And data. It's hard to discuss orally without detail, Your

18 Honor.

19 DISCOVERY COMMISSIONER: Have we seen the order for class

20 certification yet?

21 MR. GREENBERG: We --

22 DISCOVERY COMMISSIONER: We just have the minute order.

23 MR. GREENBERG: We have --

24 MS. RODRIGUEZ: Have a minute order.

25 MR. GREENBERG: -- a minute order, if Your Honor would like a copy,

1 but --

2 DISCOVERY COMMISSIONER: Okay.

3 MR. GREENBERG: -- I am drafting an order for Judge --

4 DISCOVERY COMMISSIONER: For the Judge.

5 MR. GREENBERG: -- Cory's submission.

6 DISCOVERY COMMISSIONER: Okay.

7 MR. GREENBERG: Hopefully this week it'll get to him.

8 What I did want to point out, just as a scheduling issue here, Your Honor --

9 DISCOVERY COMMISSIONER: Yes.

10 MR. GREENBERG: -- your Report and Recommendation did put this to June
11 29th for conclusion of discovery. Given the class certification and the fact that there's going
12 to be a notice sent, which notice and opt-out period probably is not going to be concluded I
13 would suspect until April or May --

14 DISCOVERY COMMISSIONER: I was gonna say May.

15 MR. GREENBERG: -- at this point. Yeah. I don't know if that discovery
16 period is gonna be workable. I'm just --

17 DISCOVERY COMMISSIONER: Probably not.

18 MR. GREENBERG: Just giving you a heads up, Your Honor. I'm not
19 suggesting there's something you need to do at this point about it, but you wanted to know
20 the status, so I think that should be something you're --

21 DISCOVERY COMMISSIONER: Well, I --

22 MR. GREENBERG: -- told about.

23 DISCOVERY COMMISSIONER: -- think that you all need to think about
24 preparing either a 2.35 stipulation, or I think you're going to need to submit something to
25 me. Now, did Judge Cory talk to you about how you were gonna do the notice?

1 MS. RODRIGUEZ: No, Your Honor. None of that has been addressed.
2 We've been on hold, and we just got that -- what he just held up, just a one-paragraph minute
3 order, on Friday afternoon. So there hasn't been any further guidance, and we still have a
4 number of issues pending before Judge Cory --

5 DISCOVERY COMMISSIONER: Okay.

6 MS. RODRIGUEZ: -- in terms of the time that's gonna -- you know, for the --
7 for each employee.

8 DISCOVERY COMMISSIONER: 'Cause we're going to need to have -- once
9 the class is certified, the list of names that potentially go with the class is going to need to be
10 identified. So it may be time now to turn over the names. I'm going to let you all talk about
11 it and try to work it out. But it seems to me, defense counsel, now is probably the time to
12 provide the list of names that go with the documents, as you've already turned over, because
13 those people are going to have to be contacted.

14 MS. RODRIGUEZ: Your Honor, and it gets a little bit more complex, and I
15 would just like to give you the heads up as well on this.

16 DISCOVERY COMMISSIONER: Okay.

17 MS. RODRIGUEZ: Is that we have another pending class action suit for the
18 same employees, the same timeframe, pending from another law firm in another Department.
19 And so Judge --

20 DISCOVERY COMMISSIONER: How is that possible?

21 MR. GREENBERG: Your Honor, it's not.

22 MS. RODRIGUEZ: So Judge Cory needs to -- I'm gonna bring all of these
23 issues before Judge Cory to let him know that the Barassa Law Group has this pending
24 before Judge Delaney at the same time, so there are some issues because --

25 DISCOVERY COMMISSIONER: Maybe that was my confusion.

1 MS. RODRIGUEZ: No, Your Honor.

2 DISCOVERY COMMISSIONER: I've seen this twice.

3 MS. RODRIGUEZ: This is -- we haven't even addressed these issues before
4 you. I've talked to Mr. Greenberg about 'em, but none of this has really been --

5 DISCOVERY COMMISSIONER: Before me.

6 MS. RODRIGUEZ: I didn't -- exactly.

7 DISCOVERY COMMISSIONER: Okay.

8 MS. RODRIGUEZ: And we're gonna have -- I can't necessarily release all of
9 the names because some of 'em are under the Barassa Law Group as opposed to Mr.
10 Greenberg's.

11 MR. GREENBERG: Your Honor, that's not -- I spoke with Mr. -- with
12 counsel at Barassa Law Group yesterday.

13 DISCOVERY COMMISSIONER: Okay.

14 MR. GREENBERG: And their position is they simply want to get notice of
15 the certification in this case. Their client may remain a class member in this case. Their
16 client has other claims against Defendants. They have not moved for class certification.
17 This case has been certified as a class. It includes everyone. So there's not going to be --

18 DISCOVERY COMMISSIONER: This has to be the earlier case too.

19 MR. GREENBERG: Yes, Your Honor.

20 DISCOVERY COMMISSIONER: So if there's any consolidation, that other
21 case would come into this one I would suspect.

22 MR. GREENBERG: Yes, Your Honor. There's not gonna be any conflict or
23 overlap or separation. I mean, there's one person in that case who can or cannot proceed in
24 this case, if they wish. That's up to them.

25 DISCOVERY COMMISSIONER: But their claims are different in the other

1 case.

2 MR. GREENBERG: They have --

3 MS. RODRIGUEZ: No.

4 MR. GREENBERG: They have --

5 MS. RODRIGUEZ: No. They --

6 MR. GREENBERG: -- other claims against the Defendant involving
7 completely different issues as well in federal litigation that they're pursuing against the
8 company. They have identical claims in this court in respect to minimum wages for the one
9 individual they represent. They did allege that as a class case, but it was never certified. No
10 request was made for certification.

11 DISCOVERY COMMISSIONER: So how is the Barassa Group's case in
12 front of Judge Delaney different than yours?

13 MR. GREENBERG: Your Honor, it's not certified. It's only for one
14 individual. This case has been certified for everyone, including that individual, if she elects
15 to participate in this case. If she wishes to --

16 DISCOVERY COMMISSIONER: Can she opt out and then have her own
17 lawsuit --

18 MR. GREENBERG: Absolutely, Your Honor.

19 DISCOVERY COMMISSIONER: -- in front of Judge Delaney? Okay.

20 MR. GREENBERG: And that was what I was speaking with her counsel about
21 yesterday --

22 DISCOVERY COMMISSIONER: All right.

23 MR. GREENBERG: -- Your Honor.

24 DISCOVERY COMMISSIONER: All right.

25 MS. RODRIGUEZ: Well, I was unaware of his conversations, but they're

1 exactly the same case. The different claims he's talking about is a separate case --

2 DISCOVERY COMMISSIONER: But --

3 MS. RODRIGUEZ: -- in a federal lawsuit.

4 DISCOVERY COMMISSIONER: But they can't move for class certification
5 because this case has already certified the class.

6 MR. GREENBERG: Correct, Your Honor.

7 DISCOVERY COMMISSIONER: I don't think they can. Otherwise, they're
8 going to be consolidated 'cause it's the same case, and then we've got a problem.

9 MR. GREENBERG: Yes, Your Honor.

10 MS. RODRIGUEZ: Well --

11 MR. GREENBERG: That's correct. Your Honor, as I was urging the Court to
12 let us work as counsel to try to deal further with the discovery and the production of the
13 QuickBooks, the other materials --

14 DISCOVERY COMMISSIONER: So when do you want to come back and
15 see me, because you're -- I'm not gonna let you go today without a followup.

16 MR. GREENBERG: I would suggest something on the order of 45 to 60 days
17 is probably sensible. I don't want to put it off too far. On the other hand, if we come back in
18 three weeks, I don't think there's gonna be that much we can really substantively discuss.
19 Maybe --

20 DISCOVERY COMMISSIONER: How about a mandatory settlement
21 conference?

22 MS. RODRIGUEZ: That would be wonderful, Your Honor. We've -- I think
23 we've tried to engage in --

24 DISCOVERY COMMISSIONER: Because we've got --

25 MS. RODRIGUEZ: -- some discussions.

1 DISCOVERY COMMISSIONER: -- class certification now. We do have
2 some information; I understand it's not everything you want, but you've got -- somebody's
3 not feeling very good over there.

4 MS. SNIEGOCKI: Sorry.

5 DISCOVERY COMMISSIONER: I think class certification is important.
6 You've got that. You've got some of the QuickBooks. You've got the time cards. I think
7 maybe -- let's see where you're at when I bring you back. I may suggest that. I may even
8 suggest that we see what we can do to coordinate one for you.

9 MR. GREENBERG: Yes, Your Honor, if there's adequate production, that
10 would make sense. At this point, there is not adequate production of information.

11 DISCOVERY COMMISSIONER: Okay. Well, I need you to work it out. It
12 sounds to me like there's been a good faith effort. So here's what I'm going to do today.

13 I also know I continued this matter for further Rule 37 sanctions; I'm going to
14 deny that without prejudice right now. I think that the party's conduct at deposition is going
15 to come out at trial, and I don't think it's going to be a wonderful thing for the Defendant,
16 but I'm not willing to give anymore sanctions at this point, but I will deny that without
17 prejudice, but I will defer. I mean, if conduct continues, I'm going to have to deal with it
18 appropriately. I just -- I have my reasons for denying it without prejudice, but I don't want
19 the Plaintiffs' counsel to think that I am not appalled by what happened because I am. But I
20 think that I'm not going to do anything further right now about it because I think the
21 Defendant actually has hurt himself sufficiently by his conduct. I also think that if there are
22 future issues or future problems with him, then I will have to do something more active than
23 I'm doing it. But I think you have a lot of good cross-exam.

24 MR. GREENBERG: Your Honor, my concern about that is Your Honor has
25 definitely shown the Defendant its disapproval, and I appreciate that. My concern about the

1 limiting of the sanctions award is Your Honor awarded me costs for the cost of the
2 deposition attendance. My time that was involved in bringing this issue --

3 DISCOVERY COMMISSIONER: Right, and I did award those. I'm not
4 taking those away. Those remain.

5 MR. GREENBERG: I understand, Your Honor, but I spent probably another
6 20 hours of time presenting the misconduct of the Defendants to this Court for ruling, and
7 the Court did find that that misconduct at the deposition --

8 DISCOVERY COMMISSIONER: I think I gave you an award of your time --

9 MR. GREENBERG: For attendance --

10 DISCOVERY COMMISSIONER: -- for that, and for bringing the motion.
11 I'm pretty sure I did. And the 2.3, did I not?

12 MS. RODRIGUEZ: Yes, you did, Your Honor.

13 MR. GREENBERG: You did not, Your Honor. The recommendation simply
14 covered the time and the cost for the deposition itself.

15 DISCOVERY COMMISSIONER: I thought I brought -- I thought I awarded
16 the costs of the motion.

17 MR. GREENBERG: You did not, Your Honor.

18 MS. RODRIGUEZ: Yeah, I was objecting because he even included his travel
19 time, and when he noticed it --

20 DISCOVERY COMMISSIONER: Yeah. I think --

21 MS. RODRIGUEZ: -- two hours away --

22 MR. GREENBERG: Your Honor --

23 DISCOVERY COMMISSIONER: I think you're confused, counsel. I think
24 you did, and I think I gave it.

25 MR. GREENBERG: Your Honor --

1 DISCOVERY COMMISSIONER: I think -- All right. Listen.

2 MR. GREENBERG: I have the report right here, and recommendation.

3 DISCOVERY COMMISSIONER: May I take a look at it, because I don't
4 have it.

5 [Mr. Greenberg approaches the bench]

6 DISCOVERY COMMISSIONER: And then I need to get you on your way
7 today.

8 MR. GREENBERG: It is page 7 and 8, Your Honor.

9 DISCOVERY COMMISSIONER: I'm looking.

10 THE CLERK: Is this from November 18th?

11 DISCOVERY COMMISSIONER: Yes, it is.

12 THE CLERK: You did award, in the minute order, some things --

13 DISCOVERY COMMISSIONER: I think I awarded the money for the
14 preparation and the attendance, but not for the motion.

15 MR. GREENBERG: None for the motion, Your Honor, and this was for the
16 deposition --

17 DISCOVERY COMMISSIONER: Okay. So why don't you, before the next
18 hearing, prepare a supplemental affidavit applying the Brunzell factors for the cost and time
19 of bringing it to my attention through the motion.

20 MR. GREENBERG: And, Your Honor, just to clarify, the award covered the
21 Morgan deposition, not Mr. Nady's deposition. You believed that the cost of the Nady
22 deposition should not be assessed against --

23 DISCOVERY COMMISSIONER: Right, because you were going to need to
24 take that deposition.

25 MR. GREENBERG: Just to clarify --

1 DISCOVERY COMMISSIONER: But --

2 MR. GREENBERG: -- I understand, Your Honor.

3 DISCOVERY COMMISSIONER: But -- and I understand the bad conduct
4 that happened during the deposition. I'll give you the fees and costs you spent preparing the
5 motion on that conduct.

6 MR. GREENBERG: Thank you, Your Honor.

7 DISCOVERY COMMISSIONER: But you'll need to apply the Brunzell
8 factors, and you'll need to do it by a supplemental affidavit in advance of the next hearing,
9 and that will give defense counsel opportunity to look at it as well and make any arguments
10 against it that she desires to do.

11 I'm going to continue this matter 60 days, so I'll need that supplement with
12 your affidavit applying the Brunzell factors in advance of the next hearing, and I would like
13 it certainly let's say by March 1st --

14 MR. GREENBERG: Yes, Your Honor.

15 DISCOVERY COMMISSIONER: -- 2016, and that will give defense counsel
16 an opportunity to file any type of opposition she desires to do. And then I'm going to bring
17 you back March 16th, which is a Wednesday, at 10 a.m., for further status check conference.
18 I do -- would require though, defense counsel, on the Rule 37 sanctions, I'm basically going
19 to deny that in large part. It's gonna be granted in part and denied in part, but I will allow
20 the Plaintiff to submit an affidavit just for bringing the motion and referencing the conduct.

21 MS. RODRIGUEZ: I understand, Your Honor.

22 DISCOVERY COMMISSIONER: All right.

23 MR. GREENBERG: Yes, Your Honor.

24 DISCOVERY COMMISSIONER: But that's it.

25 MS. RODRIGUEZ: Thank you.

1 DISCOVERY COMMISSIONER: No other Rule 37 sanctions at this point.
2 But the further Rule 37 sanctions are denied without prejudice, but I am going to award the
3 fees and costs for having to bring the motion, but they'll have to -- Plaintiffs' counsel, you'll
4 just have to do your supplement.

5 MR. GREENBERG: Yes, Your Honor. I understand.

6 DISCOVERY COMMISSIONER: So I make sure I have the right number.

7 And I don't think there's anything further to do today. I would request -- when
8 are you going back in front of Judge Cory? Do you have a hearing set?

9 MR. GREENBERG: We do not, Your Honor.

10 MS. RODRIGUEZ: No, Your Honor.

11 DISCOVERY COMMISSIONER: Okay. So one of you will need to go back
12 in front of the Judge and make the determination as to how the class certification notice is
13 going to be prepared and proceed. And, you know, I leave that to you all. You know what
14 your next step is in that regard.

15 MR. GREENBERG: That will be addressed in the order that will be --

16 DISCOVERY COMMISSIONER: Okay.

17 MR. GREENBERG: -- submitted on the minute order. He was provided with
18 a draft on the moving papers.

19 DISCOVERY COMMISSIONER: Okay.

20 MR. GREENBERG: So it will be requested. He approved the notice
21 procedure --

22 DISCOVERY COMMISSIONER: So it --

23 MR. GREENBERG: -- now.

24 DISCOVERY COMMISSIONER: -- would make the Commissioner very
25 happy if, before you return to see me in March, that the names of the drivers have been

1 disclosed.

2 MR. GREENBERG: That will be part of the order going to Judge Cory --

3 DISCOVERY COMMISSIONER: Because that has to be done now. Okay?

4 MS. RODRIGUEZ: Okay.

5 DISCOVERY COMMISSIONER: All right. I don't have anything further
6 today. Do you all have anything further?

7 MR. GREENBERG: We have nothing further, Your Honor.

8 DISCOVERY COMMISSIONER: Okay.

9 MR. GREENBERG: In terms --

10 DISCOVERY COMMISSIONER: I do need defense counsel to prepare my
11 Report and Recommendation from today's hearing because I am denying -- I had continued
12 the motion on the Rule 37 sanctions, which is denied in part and granted in part, and it's just
13 granted with respect -- very limited with respect to bringing the motion, but that award will
14 be made at the time of the next hearing. I also need you to put the next hearing date and time
15 in the motion -- or in the Report and Recommendations.

16 MS. RODRIGUEZ: I will.

17 MR. GREENBERG: Your Honor --

18 DISCOVERY COMMISSIONER: Thank you.

19 MR. GREENBERG: -- defense counsel will presumably take the opportunity
20 to include in the Report and Recommendation a statement that the Court does not believe
21 that the deduction information from the payroll should be produced. I don't need --

22 DISCOVERY COMMISSIONER: I don't need to have that included in the
23 Report and Recommendations because I haven't made that decision yet. I tend to agree with
24 the defense counsel on that, but then you asked me not to make a decision --

25 MR. GREENBERG: That's correct, Your Honor.

1 DISCOVERY COMMISSIONER: -- pending further discussions between the
2 two of you, so I'm going to honor that. I'm just saying I don't know if the deduction part -- I
3 mean, my wage, your -- well, you're different. You all are employed differently. But as an
4 employee, you know, my wage -- the deductions don't affect the wage rate, so I'm not sure
5 how they do here.

6 MR. GREENBERG: Your Honor, if the employer is deducting for accidents,
7 for money loaned to the employee with interest, which is what was happening at this
8 company, it --

9 DISCOVERY COMMISSIONER: Well, that's a different issue.

10 MR. GREENBERG: Yes, Your Honor. Those are the deductions I'm
11 interested in, not the tax deductions, not the child support deductions, 'cause those don't
12 implicate --

13 DISCOVERY COMMISSIONER: Okay. Why don't you all have your 2.34
14 conference on this issue, and then we can address it further when you return to see me in
15 March.

16 MR. GREENBERG: Thank you, Your Honor.

17 DISCOVERY COMMISSIONER: And then we'll also address the discovery
18 deadlines, if you're not able to work that out by 2.35 stipulation.

19 MS. RODRIGUEZ: Okay.

20 DISCOVERY COMMISSIONER: So the next hearing date will be March 16th
21 at 10 a.m. We will address the imposition of the attorney's fees for having to bring the
22 motion for sanctions. We will address compliance with discovery. We will address class
23 certification issues, and we will discuss the discovery deadlines at that time.

24 THE CLERK: And the status check for the Report and Recommendation is
25 February 19th at 11.

1 DISCOVERY COMMISSIONER: And that's only for defense counsel to be
2 here, but I do need you to address the motion for sanctions.

3 MS. RODRIGUEZ: I understand. Thank you, Your Honor.

4 MR. GREENBERG: Thank you, Your Honor.

5 DISCOVERY COMMISSIONER: Thank you. And make sure you run it by
6 Plaintiffs' counsel to approve as to form and content.

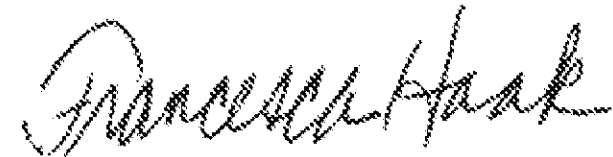
7 MS. RODRIGUEZ: I will.

8 DISCOVERY COMMISSIONER: Thank you.

9 [Proceeding concluded at 9:53 a.m.]

10 * * *

11 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
12 video recording of this proceeding in the above-entitled case.

13 

14 _____
15 FRANCESCA HAAK
16 Court Recorder/Transcriber
17
18
19
20
21
22
23
24
25

EXHIBIT "G"

[Skip to Main Content](#) [Logout My Account](#) [Search Menu](#) [New District Civil/Criminal Search](#) [Refine Search](#) [Close](#)

Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE NO. A-15-721063-C

Jasminka Dubric, Plaintiff(s) vs. A Cab LLC, Defendant(s)

§
§
§
§
§
§

Case Type: **Employment Tort**

Date Filed: **07/07/2015**

Location: **Department 25**

Cross-Reference Case Number: **A721063**

PARTY INFORMATION

Defendant **A Cab LLC**

Lead Attorneys
Esther Rodriguez
Retained
7023208400(W)

Plaintiff **Dubric, Jasminka**

Mark J. Bourassa
Retained
702-851-2180(W)

EVENTS & ORDERS OF THE COURT

10/05/2016 | **Settlement Conference** (10:30 AM) (Judicial Officer Wiese, Jerry A.)

Minutes

10/05/2016 9:00 AM

10/05/2016 10:30 AM

10/05/2016 10:30 AM

- The above-referenced matter came on for a settlement conference with Judge Jerry A Wiese II, on Wednesday, October 05, 2016. The Plaintiff, Jasminka Dubric, was present with her daughter, Valentina Astalos, and her attorneys, Mark Bourassa, Esq., Trent Richards, Esq., and Hillary Ross, Esq. The Defendant, A Cab LLC, was present through its managing member, Creighton J. Nady, and was represented by Esther Rodriguez, Esq. Also present was Donna Burelson with A Cab LLC, and Nicole Omgs (CPA). The parties have agreed to a resolution and settlement of this case. The parties will stipulate and agree to class certification. Additional terms regarding the settlement, payment terms, payment to the class representative, class member distributions, etc., were agreed to as part of the 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.

[Return to Register of Actions](#)

EXHIBIT "H"

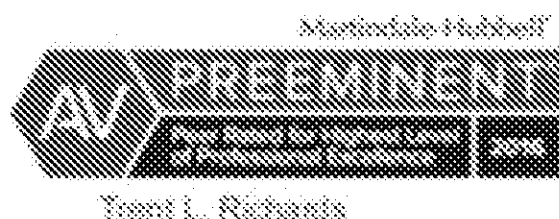
Subject: RE: Dubric v. A-Cab - It is imperative we speak MOST PROMPTLY
From: Trent Richards <trichards@blgwins.com>
Date: 10/14/2016 11:58 AM
To: Leon Greenberg <wagelaw@hotmail.com>, Mark Bourassa <mbourassa@blgwins.com>, 'Dana Sniegocki' <dana@overtimelaw.com>

Mr. Greenberg,

As you are aware, this firm is pursuing a wage and hour claim against A-Cab on behalf of its former employees. This firm has vigorously prosecuted that claim on behalf of our client, and the putative class. This firm has pushed the defendant employer A-Cab to a settlement conference before a judge, at which time we were able to reach a settlement of the class claims from Ms. Dubric's complaint on a class wide basis with A-Cab.

Our office is in the process of preparing the appropriate paperwork to bring the necessary motions before the court regarding a settlement of the allegations in Ms. Dubric's complaint. You are certainly free to respond to those pleadings as you see appropriate.

Best regards,



Trent L. Richards
Attorney at Law

8668 Spring Mountain Road #101
Las Vegas, NV 89117
trichards@blgwins.com
Office: 702.851.2180
Facsimile: 702.851.2189
Direct: 702-789-7178

BEVERLY HILLS • DENVER • LAS VEGAS

BourassaLawGroup.com | 866.306.6632

From: Leon Greenberg [<mailto:wagelaw@hotmail.com>]
Sent: Wednesday, October 12, 2016 4:01 PM
To: Trent Richards <trichards@blgwins.com>; Mark Bourassa <mbourassa@blgwins.com>; 'Dana Sniegocki' <dana@overtimelaw.com>
Subject: Dubric v. A-Cab - It is imperative we speak MOST PROMPTLY

Counselors:

As Mr. Richards should recall, he and I had some cordial telephone and email communications about this. I called and tried to speak with him a few minutes ago but was unable to do so and left a message.

Today I located the attached minutes from the 10/5/16 court hearing. As Mr. Richards is aware, both from

the below email and order sent to him on 2/10/16 (attached again) and my communications with him prior to 2/10/16, there can be no class prosecution, much less settlement, of the class claims alleged as part of Ms. Dubric's complaint filed on 7/7/15 and as apparently contemplated in the 10/5/16 minutes. Those claims have already been certified for class action prosecution, and I have been appointed class counsel, in the *Murray* case, as I confirmed to you in my February 10, 2016 email which included the class certification order. That class certification order was also revised on 6/7/16, which I send to you now, but that did not materially change anything.

I write to you directly, without copying defendant's counsel or communicating with them in any fashion about this, in an attempt to cordially resolve this. **But I expect to hear from you most promptly (this week) and for us to cooperatively resolve this or I will have to file an appropriate application with the Court to have the Court address this situation.** Please do not compel such actions on my part. And please rest assured, I have no animus towards you, or your advocacy for your client. But what is apparently contemplated by the 10/5/16 minutes is not proper and perhaps is an outgrowth of some sort of lack of understanding on your part, which we should discuss and cooperatively resolve. And I say "apparently contemplated" because despite my difficulty in comprehending how what is intended to be done as per the 10/5/16 minutes can be proper, I remain open to hearing an explanation from you about that.

Thank you.

Accordingly, the references to the minu

----- Forwarded Message -----

Subject: Dubric v. A-Cab

Date: Wed, 10 Feb 2016 20:27:34 -0800

From: Leon Greenberg <wagelaw@hotmail.com>

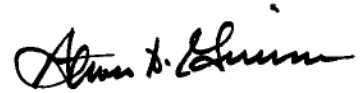
To: trichards@bourassalawgroup.com

Attached is the Order entered on the class certification on the *Murray* case. Your client is expressly excluded from the class.

I remain very interested in speaking with your client as I believe she likely has helpful information about A-Cab's operations.

--

Leon Greenberg
Attorney at Law
2965 South Jones Boulevard #E-3
Las Vegas, Nevada 89146
(702) 383-6085
website: overtimelaw.com



CLERK OF THE COURT

OPPM

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

Michael K. Wall, Esq.
Nevada Bar No. 2098
Hutchison & Steffen, LLC
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
702-385-2500
mwall@hutchlegal.com
Attorneys for Defendant A Cab, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

Hearing Date: November 17, 2016
Hearing Time: Chambers

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION

TO ENJOIN DEFENDANTS FROM SEEKING SETTLEMENT OF ANY UNPAID

WAGE CLAIMS INVOLVING ANY CLASS MEMBERS EXCEPT AS PART

OF THIS LAWSUIT AND FOR OTHER RELIEF

Defendants, by and through their attorneys, Esther C. Rodriguez, Esq., of RODRIGUEZ LAW OFFICES, P.C., and Michael K. Wall, Esq., of HUTCHISON & STEFFEN, LLC, hereby submit this Opposition to Plaintiffs' Motion to Enjoin Defendants from Seeking Settlement of any Unpaid Wage Claims Involving any Class Members Except as Part of this Lawsuit and for Other Relief (hereinafter "Motion").

1 **I. Legal Argument.**

2 Plaintiffs' Motion is entirely premature. The terms and conditions of settlement in *Dubric*
3 *v. A Cab, LLC*, District Court Case No. A-15-721063-C, are predicated upon approval not only by
4 the judge presiding over that matter, the Honorable Kathleen Delaney, but have not even been
5 agreed upon by the parties. At this time, no settlement documents have even been submitted in the
6 *Dubric* matter. Plaintiffs have prematurely filed this Motion in an attempt to prejudice the
7 settlement in a separate department of the Eighth Judicial District Court, and to further continue to
8 run up fees and costs.

9 It has been no secret that throughout this litigation, Plaintiffs' counsel in this matter refuses
10 to enter into any type of settlement negotiations. As recent as this week, Plaintiffs' counsel
11 confirmed that he will not make any type of settlement demand, nor enter into settlement
12 discussions or a mediation unless Defendant agrees to a stay and tolling of the entire case. Even
13 when presented with the option of mediation within 30 days, which would not delay the
14 proceedings or necessitate a stay, Plaintiffs' counsel refuses to agree to a engage in settlement
15 negotiations. For over two years, Plaintiffs' counsel has indicated he was putting together a
16 settlement demand and would provide Defendant with his figure "shortly."

17 Defendants have already resolved all minimum wage issues with the United States
18 Department of Labor. Defendants have now reached a resolution with counsel for Plaintiffs in the
19 *Dubric* matter, utilizing the assistance of a settlement judge from the Eighth Judicial District Court.
20 This same offer to sit down with a settlement judge was made to Plaintiffs' counsel in this matter,
21 but has been repeatedly refused. It is Defendants' intent to resolve these issues, but Plaintiffs'
22 counsel refuses to come to the table.

23 This present matter continues to be attorney-driven litigation, with the proof being that
24 offers of resolution were forwarded to the named Plaintiffs months ago, and Plaintiffs' counsel
25 refused to convey any offer of resolution to their clients. *See Defendants' Motions to Dismiss and*
26 *for Summary Judgment Against Plaintiff Michael Reno and Plaintiff Michael Murray*, both filed
27 September 21, 2015, *Defendant's Opposition to Plaintiffs' Motion to Extend Discovery Schedule*
28 *(Second Request)* filed October 7, 2015, and *Second Supplement to Defendant's Opposition to*

1 *Motion to Certify Case as Class Action Pursuant to NRCP 23 and Appoint a Special Master*
2 *Pursuant to NRCP 53* filed October 20, 2015.¹ Such behavior is not only sanctionable under the
3 rules of professional conduct, but is clear evidence that the goal in this litigation is to continue to
4 run up the attorney fees in order for Plaintiffs' counsel to profit in a fee-shifting case.

5 With Plaintiff's recent request to continue the trial to accommodate more harassing
6 discovery and escalation of attorney fees, Defendants will be seeking leave to assert causes of
7 action against Plaintiffs' counsel as has been done in the other suits currently pending in the Eighth
8 Judicial District Court. *See Defendant's Answer to Third Amended Complaint, Counterclaims and*
9 *Third Party Complaint* filed in *Perera v. Western Cab Company*, District Court Case A-14-707425-
10 C, attached as **Exhibit 1**.

11 **II. Plaintiffs' Second Request to extend the time in the Class Order is not Supported.**

12 Plaintiffs seek to enjoin any resolution to not only their claims, but everyone else's as well.
13 The goal of our judicial system is to attempt a resolution to outstanding claims, either through
14 agreement or litigation when a middle ground cannot be reached. If resolution for the Claimants
15 can be achieved prior to merely running up fees and costs for attorney profit, surely the Court
16 would favor such a goal. Here, Plaintiffs seek injunctive relief to stop all settlement discussions not
17 only in another case, but also seek to extend their reach in this case to "own" as many Plaintiffs as
18 they can get their hands on. And that really is the bottom line, Plaintiffs counsel does not own
19 these drivers, and has not demonstrated the elements necessary for this Court to provide injunctive
20 relief to have all settlement discussions cease and desist. Such requested relief is nonsensical and
21 goes against common sense and judicial economy. If the drivers and defendants want to resolve
22 their claims through counsel and with the assistance of a settlement judge, and a submission to the
23

24
25 ¹ See Rule 1.2 of the Nevada Rules of Professional Conduct and the ABA Model Rules of
26 Professional Conduct (Scope Of Representation And Allocation Of Authority Between Client
27 And Lawyer): "*A lawyer shall abide by a client's decision whether to settle a matter.*" See also
28 Rule 1.4 (Communication) of the Nevada Rules of Professional Conduct and the ABA Model
Rules of Professional Conduct: "*A lawyer shall promptly inform the client of any decision or
circumstance with respect to which the client's informed consent is required by these Rules.*"

1 Court for approval, what would be the purpose of issuing an injunction?

2 Further, there is nothing to enjoin at this point. Settlement documents have not been agreed
3 upon, and have not been submitted to the Court. There are numerous items still to be agreed upon
4 in the other District Court case, but ultimately any settlement will need to be approved by the
5 District Court.

6 **III. Conclusion.**

7 Based upon the foregoing points and authorities, Defendants respectfully request this
8 Honorable Court to enter an Order denying Plaintiffs' Motion as it is premature, and there is
9 nothing to enjoin at this point. Any proposed settlement in another District Court case will have to
10 be submitted to the Court for approval, at which time Plaintiffs in this matter can move to enjoin if
11 they so choose.

12 DATED this 4th day of November, 2016.

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

14
15 /s/ Esther C. Rodriguez, Esq.

16 Esther C. Rodriguez, Esq.

17 Nevada State Bar No. 006473

18 10161 Park Run Drive, Suite 150

19 Las Vegas, Nevada 89145

20 *Attorneys for Defendant A Cab, LLC*

21 **CERTIFICATE OF SERVICE**

22 I HEREBY CERTIFY on this 4th day of November, 2016, I electronically filed the
23 foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System
24 which will send a notice of electronic service to the following:

25 Leon Greenberg, Esq.

26 Leon Greenberg Professional Corporation

27 2965 South Jones Boulevard, Suite E4

28 Las Vegas, Nevada 89146

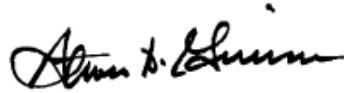
Counsel for Plaintiffs

/s/ Susan Dillow

An Employee of Rodriguez Law Offices, P.C.

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

1 ANTC
2 MALANI L. KOTCHKA
3 Nevada Bar No. 283
4 HEJMANOWSKI & McCREA LLC
5 520 South Fourth Street, Suite 320
6 Las Vegas, NV 89101
7 Telephone: (702) 834-8777
8 Facsimile: (702) 834-5262

9 *Attorneys for Defendant*
10 *Western Cab Company*

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 LAKSIRI PERERA, IRSHAD AHMED, and
14 MICHAEL SARGEANT, individually and on
15 behalf of others similarly situated,

16 Plaintiffs/Counterdefendants,

17 v.

18 WESTERN CAB COMPANY,

19 Defendant/Counterclaimants.

20 WESTERN CAB COMPANY,

21 Third-Party Plaintiff,

22 v.

23 LEON GREENBERG,

24 Third-Party Defendant.

) Case No.: A-14-707425-C

) Dep't. No.: VII

) DEFENDANT'S ANSWER TO THIRD
) AMENDED COMPLAINT,
) COUNTERCLAIMS AND THIRD-
) PARTY COMPLAINT

25 ANSWER

26 For its Answer to plaintiffs' Third Amended Complaint, defendant Western Cab
27 Company ("Western Cab") admits, denies and alleges as follows:

28 1. Western Cab is without knowledge or information sufficient to form a belief as to
the truth of the allegations regarding residency contained in paragraph 1 but admits that the

1 named plaintiffs are former employees of Western Cab.

2 2. Western Cab admits the allegations contained in paragraph 2.

3 3. Western Cab denies that the plaintiffs meet the criteria of a class action and
4 therefore denies the allegations contained in paragraphs, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the
5 Third Amended Complaint.
6

7 4. Western Cab repeats the admissions, denials and allegations set forth in
8 paragraphs 1 through 3 above as though fully set forth herein.

9 5. Western Cab denies the allegations contained in paragraphs 14, 15, 16, 17, 18,
10 and 19 of the Third Amended Complaint.

11 **AFFIRMATIVE DEFENSES**

12 For its affirmative defenses, Western Cab alleges as follows:

13 1. This action is not maintainable as a class action pursuant to Rule 23 of the Nevada
14 Rules of Civil Procedure.
15

16 2. This action is preempted by federal labor law.

17 3. This action is preempted by ERISA.

18 4. This action is preempted by the Affordable Care Act.

19 5. This action is barred by the separation of powers. The Labor Commissioner had
20 no authority to enact regulations regarding the meaning of health benefits in the Minimum Wage
21 Amendment.
22

23 6. The Minimum Wage Amendment is unconstitutional.

24 7. The Minimum Wage Amendment violates the due process clauses of the federal
25 and state constitutions.

26 8. If the Minimum Wage Amendment is preempted or unconstitutional, Western
27 Cab is not subject to minimum wage pursuant to NRS 608.250(2)(e).
28

1 9. The Minimum Wage Amendment does not require that gas payments be deducted
2 from nontip wages before computing the minimum wage.

3 10. Fuel payments by the plaintiffs decrease their income but not their wages as
4 defined by the Minimum Wage Amendment.

5 11. Plaintiffs have been given gas credits on some vehicles.

6 12. This action is barred by the statute of limitations.

7 13. Perera's claim is barred by the Labor Commissioner's determination that he has
8 no claim for the recovery of minimum wage and/or that he was paid correctly.

9 14. Perera's claim is barred by his own admissions.

10 15. This action is barred by payment.

11 16. Perera's claim is barred by res judicata and/or collateral estoppel.

12 17. Perera's claim is barred by estoppel.

13 18. Perera's claim is barred by waiver.

14 19. The Third Amended Complaint fails to state a claim upon which relief can be
15 granted,

16 20. The named plaintiffs lack standing to bring this action against Western Cab.

17 21. The named plaintiffs as former employees cannot represent current employees of
18 Western Cab.

19 22. Plaintiffs have no claim for punitive damages.

20 23. Western Cab's motivation for any action or inaction is irrelevant.

21 24. This action is barred by the doctrine of unclean hands.

22 25. This action is barred by the doctrine of consent.

23 26. This action is barred by NAC 608.115(2).

24 27. This action is barred by NAC 608.155.

- 1 28. Plaintiffs' claim is barred by ratification and acquiescence.
- 2 29. The named plaintiffs are not adequate class representatives.
- 3 30. This action is barred by unjust enrichment.
- 4 31. Plaintiffs' requests for equitable relief are barred because they have an adequate
- 5 remedy of law.
- 6 32. Plaintiffs have failed to mitigate their damages.
- 7 33. Plaintiffs failed to comply with their legal obligations as cab drivers and
- 8 employees.
- 9 34. Plaintiffs' claim is barred by set-off.
- 10 35. The named plaintiffs would not make fair and adequate representatives of any
- 11 purported class because they are significantly different than most other members of any potential
- 12 class.
- 13 36. There are no questions of law and/or fact common to the class.
- 14 37. The claims or defenses of the named plaintiffs are not typical of the claims or
- 15 defenses of the class.
- 16 38. Perera's claim is barred by the doctrine of latches.
- 17 39. The named plaintiffs would not make a fair and adequate representative of any
- 18 purported class because there would be conflicts between their interests and the interests of many
- 19 other members of any purported class.
- 20 40. All claims of specific plaintiffs not common to the entire class are barred.
- 21 41. This action is barred by plaintiffs' violations of the implied covenants of good
- 22 faith and fair dealing applicable to each wage and/or employment agreement.
- 23 42. This action is partially barred by settlement, release and/or accord and
- 24 satisfaction.
- 25
- 26
- 27
- 28

43. Plaintiffs' remedy request is not a remedy available under the law or in equity when the Minimum Wage Amendment was enacted.

44. This action is barred by no request for backpay.

45. Western Cab complied with state law.

46. State law did not change until June 26, 2014.

47. The Minimum Wage Amendment does not prohibit the use of vendor's fees and/or tips to pay for fuel used by Western Cab drivers.

48. Any claims not common to the entire class are barred.

49. Plaintiffs' claim is barred by their breaches of contract.

50. This Court lacks subject matter jurisdiction over this action. The claims cannot be aggregated and this case belongs in Justice Court.

51. Plaintiffs' request for a remedy of the Court's assistance to correct calculations that have been reported to the Internal Revenue Service and the Social Security Administration is barred because it is not an available remedy under the Minimum Wage Amendment. If this request is granted, plaintiffs' deductions of their fuel costs as business expenses on their tax returns must be disallowed.

WHEREFORE, Western Cab requests that: (1) plaintiffs take nothing by their Third Amended Complaint; (2) Western Cab be awarded its reasonable attorney's fees and costs of suit incurred for having to defend this action; and (3) it be awarded such other and further relief as this Court deems just and proper.

COUNTERCLAIMS

For its counterclaims, Western Cab alleges as follows:

Breach of Contract

1. Western Cab is a Nevada corporation which was incorporated in Nevada on

1 September 28, 1950, and has been operating as a cab company in Clark County, Nevada ever
2 since.

3 2. Plaintiffs/counterdefendants allege they were and are residents of Clark County,
4 Nevada.

5 3. On August 29, 2012, Western Cab attended a meeting with Ms. Salazar and her
6 supervisor at the U.S. Department of Labor. Western Cab had been audited by the U.S.
7 Department of Labor for minimum wage compliance pursuant to federal law. The Department
8 of Labor said that Western Cab's payment of gasoline for the drivers could not be considered in
9 determining whether the company complied with federal minimum wage requirements. Ms.
10 Salazar said that only the amount shown on a payroll check could be considered for minimum
11 wage compliance.
12

13 4. On February 5, 2012, Western Cab decided that the drivers would pay for their
14 own gasoline. However, Western Cab then decreased the trip charge and increased the drivers'
15 commissions on their trips to compensate them for the direct purchase of their own gasoline. In
16 doing so, Western Cab was complying with the directions of the U.S. Department of Labor.
17

18 5. Except for some gas credits for larger fuel-consuming vehicles, all Western Cab
19 drivers are, and since February 5, 2012, have been, responsible for the purchase of fuel used on
20 their shifts. All drivers are supposed to retain the receipts for the purchase of fuel for their
21 personal records.
22

23 6. Requiring drivers to pay for their own fuel costs out of their tips and vendors fees
24 discourages personal use of the cabs during the drivers' shifts.

25 7. Western Cab has been informed that some drivers deduct their fuel expenses as
26 business expenses on their federal tax returns.

27 8. Western Cab's obligation to pay plaintiffs/counterdefendants as employees arose
28

1 under an employment contract.

2 9. Western Cab's obligation to pay employee plaintiffs/counterdefendants
3 commissions arose under an employment contract and/or wage agreement. Pursuant to those
4 agreements, plaintiffs/counterdefendants agreed to pay for their fuel used in driving Western
5 Cab's vehicles.
6

7 10. In requiring its driver employees to pay the cost of fuel, Western Cab was abiding
8 by the terms of its wage agreements and/or employment contracts with
9 plaintiffs/counterdefendants.

10 11. Plaintiffs/counterdefendants are seeking to recover "damage caused by" Western
11 Cab "forcing" plaintiffs/counterdefendants "to pay for taxicab fuel from their own funds." If
12 plaintiffs/counterdefendants recover any part of the cost of fuel paid by them pursuant to their
13 wage agreements and/or employment contracts with Western Cab, they will be breaching their
14 wage agreements and employment contracts.
15

16 12. Furthermore, by alleging that payments for fuel have to be deducted from
17 nontipped wages to determine minimum wage payments, plaintiffs/counterdefendants are
18 seeking to recover their fuel payments and are breaching their employment and wage agreements
19 with Western Cab.
20

21 13. Therefore, Western Cab is entitled to recover from plaintiffs/counterdefendants its
22 damages, the cost of fuel which plaintiffs/counterdefendants agreed to pay in return for their
23 receipt of commissions, tips from customers and vendor fees. As a result of
24 plaintiffs/counterdefendants' breach of their employment and wage agreements, Western Cab
25 has been damaged in excess of \$10,000.

26 14. It has also become necessary for Western Cab to retain the services of an attorney
27 and Western Cab is therefore entitled to recover its reasonable attorney's fees and costs of this
28

1 suit.

2 **Breach of the Covenant of Good Faith and Fair Dealing**

3 15. The allegations of paragraphs 1 through 13 are incorporated by reference as
4 though fully set forth herein.

5 16. Western Cab entered into wage and employment agreements with
6 plaintiffs/counterdefendants wherein each plaintiff/counterdefendant agreed to be bound by the
7 terms of their wage and employment agreements.

8 17. Consequently, plaintiffs/counterdefendants had a duty under the implied covenant
9 of good faith and fair dealing to comply at all times and in good faith with each term of their
10 wage and employment agreements.

11 18. Plaintiffs/counterdefendants have breached the implied covenant of good faith
12 and fair dealing by accepting and retaining the benefits of their wage and employment
13 agreements while seeking to repudiate their wage and employment agreements and to recover the
14 cost of gasoline which they agreed to pay.

15 19. As a result of plaintiff/counterdefendants' breach of the implied covenant of good
16 faith and fair dealing in their respective wage and employment agreements, Western Cab has
17 been damaged in excess of \$10,000.

18 20. It has also become necessary for Western Cab to retain the services of an attorney
19 and Western Cab is therefore entitled to recover its reasonable attorney's fees and costs of suit.

20 **Unjust Enrichment**

21 21. The allegations of paragraphs 1 through 19 are incorporated by reference as
22 though fully set forth herein.

23 22. In return for plaintiff/counterdefendants' agreement to pay for their gas, Western
24 Cab paid plaintiff/counterdefendants increased commissions and allowed
25

1 plaintiff/counterdefendants to keep vendors' fees which they collected from certain vendors upon
2 delivering customers to those vendors. In return for the payment of gas, the
3 plaintiffs/counterdefendants were paid commissions and permitted to collect and accept the
4 vendors' fees which otherwise would constitute lawful income of Western Cab.

5
6 23. If Western Cab is required to reimburse plaintiffs/counterdefendants for their
7 gasoline costs, plaintiffs/counterdefendants have been unjustly enriched to Western Cab's
8 detriment by receiving commissions and collecting, accepting and retaining vendor fees.

9 24. Equity and good conscience preclude plaintiffs/counterdefendants from retaining
10 the commissions and vendors' fees.

11 25. As the result of plaintiffs/counterdefendants' unjust enrichment, Western Cab was
12 damaged in excess of \$10,000.

13
14 26. It has become necessary for Western Cab to retain the services of an attorney and
15 Western Cab is therefore entitled to recover a reasonable attorney's fees and costs of this suit.

16 WHEREFORE, Western Cab requests that: (1) it be awarded its damages in excess of
17 \$10,000; (2) it be awarded its reasonable attorney's fees and costs of suit; and (3) it be awarded
18 such other relief as this Court deems just and proper.

19 **THIRD-PARTY COMPLAINT**

20 For its Third Party Complaint, Western Cab alleges as follows:

21 **Intentional Interference With Contractual Relationship**

22
23 1. Third-Party Plaintiff Western Cab is a Nevada corporation which was
24 incorporated in Nevada on September 28, 1950 and has been operating as a cab company in
25 Clark County, Nevada ever since.

26 2. Third-Party Defendant Leon Greenberg ("Greenberg") is an attorney practicing in
27 Clark County, Nevada who was not a party to Western Cab's employment contracts and/or wage
28

1 agreements with its drivers.

2 3. As of February 5, 2012, Western Cab required its driver employees to pay the cost
3 of fuel as a term of their employment. This term was part of Western Cab's employment
4 contracts and/or wage agreements with its drivers.

5 4. Western Cab's obligation to pay the plaintiffs arose under employment contracts
6 and/or wage agreements.

7 5. On or about September 2014, Greenberg obtained the names and addresses of
8 Western Cab's drivers from someone other than Western Cab.

9 6. Before Greenberg had a client or filed a lawsuit, he maliciously and willfully
10 trolled for clients by using the private personal information of Western Cab's drivers which he
11 had obtained to solicit new clients. Contacting the employee drivers of Western Cab through
12 personalized letters was an invasion of their privacy. Greenberg commercially used private
13 personal information to solicit new clients.

14 7. Greenberg's solicitation of remunerative employment was a business transaction
15 which he engaged in for his own financial benefit. It was a business act or practice. He let
16 potential clients know his name and his interest in performing legal services for them.

17 8. Greenberg's trolling for clients demonstrated in Exhibit 1, attached hereto and
18 incorporated herein, was false and deceptive. In Exhibit 1, Greenberg gave his opinion on
19 liability. He said, "I believe Western Cab may have violated Nevada's Minimum Wage laws and
20 may owe you and many other taxi drivers unpaid minimum wages." He made calculations and
21 expressed his personal belief that many taxi drivers were collecting less than minimum wage.
22 Greenberg's unsolicited legal advice was designed to suggest that he had some significant
23 personal knowledge about and concern for the recipient.

24 9. At the various times of his solicitation of Western Cab's drivers, Greenberg was
25
26
27
28

1 aware that Western Cab had employment and/or wage agreements with its drivers to pay the cost
2 of fuel in exchange for an increased commission.

3 10. Greenberg, through his solicitation of Western Cab's drivers and his claim that
4 Western Cab must pay for the cost of fuel, tried to prevent Western Cab from the full benefit of
5 its contracts with its drivers.
6

7 11. Greenberg acted intentionally in a manner designed to interfere with the contracts
8 between Western Cab and its drivers.

9 12. There has been actual disruption of the contracts. Greenberg is seeking to have
10 Western Cab pay the cost of fuel, which is an interference with Western Cab's contracts with its
11 drivers.
12

13 13. Western Cab has been damaged by Greenberg's intentional interference with its
14 contractual relations with its drivers. It has had to defend its benefit from the contracts with its
15 drivers.

16 14. Western Cab's damages include among other things, legal fees, interruption of its
17 business for time spent on this case during work hours and damage to its business interests.
18

19 Champerty

20 15. Western Cab repeats paragraphs 1 through 14 as though fully set forth herein.

21 16. Greenberg initially had no interest in this litigation. He solicited the
22 plaintiffs/counterdefendants to initiate this litigation.

23 17. Greenberg undertook this litigation at his own expense and prosecuted this action
24 on behalf of plaintiffs/counterdefendants in consideration for receiving in the event of success a
25 part of the proceeds of the litigation or personal profit from the litigation.

26 18. This conduct by Greenberg was unlawful and as a result, Western Cab has been
27 damaged.
28

1 19. Western Cab's damages include its legal fees, interruption of its business for time
2 spent on this case during work hours and damage to its business interests.

3 WHEREFORE, Western Cab is entitled to (1) damages in excess of \$10,000; (2) punitive
4 damages; (3) a reasonable attorney's fees and costs of suit; and (4) such other and further relief
5 as this Court deems just and proper.
6

7 Respectfully submitted,

8 HEJMANOWSKI & McCREA LLC
9

10 By: /s/ Malani L. Kotchka
11 Malani L. Kotchka
12 Nevada Bar No. 283
13 520 South Fourth Street, Suite 320
14 Las Vegas, NV 89101

15 *Attorneys for Defendant*
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1

LEON GREENBERG

Attorney at Law

2965 South Jones Boulevard • Suite E-4
Las Vegas, Nevada 89146
(702) 383-6085

Fax: (702) 385-1827

Leon Greenberg
Member Nevada, California
New York, Pennsylvania and New Jersey Bars
Admitted to the United States District Court of Colorado

Dana Sniegocki
Member Nevada and California Bars

September 16, 2014

Elias Gil
3106 Harbor Heights Drive
Las Vegas, NV 89117

**Re: CLAIM AGAINST WESTERN CAB
FOR UNPAID MINIMUM WAGES**

Dear Elias Gil:

I understand that you may have worked as a taxi driver for Western Cab. I believe Western Cab may have violated Nevada's Minimum Wage laws and may owe you and many other taxi drivers unpaid minimum wages. I believe many of the taxi drivers for Western Cab were earning, from the fares collected by customers, less than the \$7.25 or \$8.25 an hour currently required by Nevada's Minimum Wage law. While drivers may have also collected a substantial amount of tips from customers, those tips are **not** counted for purposes of Nevada's Minimum Wage law. For example, a taxi driver's share of the meter (customer fares collected) for an 11 hour work day must currently equal at least \$79.75 or \$90.75 under Nevada's Minimum Wage law, depending upon whether proper medical insurance was provided by Western Cab. So if you are working a full 12 hour shift, and earning less than \$80 or \$90 a day **without** including your tips, you may have a claim for unpaid minimum wages.

I would appreciate a chance to speak with you about any experience you had working as a taxi driver for Western Cab. Please call me confidentially and without obligation or charge.

I can be reached at the above number or toll free at 1-800-257-4841. Please call me anytime. I enclose some business cards.

Very truly yours,



Leon Greenberg

NOTICE: THIS IS AN
ADVERTISEMENT



AA001541

LAWYER'S BIOGRAPHICAL DATA FORM AS
REQUIRED BY THE NEVADA RULES OF PROFESSIONAL CONDUCT

1. Full Name and Business Address of Leon Greenberg:

Leon Marc Greenberg
2965 South Jones Boulevard
Las Vegas, Nevada 89146

2. Leon Greenberg was initially admitted to practice law in New York on February 3, 1993.

3. Subsequent to his initial admission to practice law Leon Greenberg was admitted to practice law in the following States on the following dates:

New Jersey: April 15, 1993;
Nevada: October 11, 2002;
California: August 11, 2003;
Pennsylvania: September 29, 2003.

4. Leon Greenberg is a *magna cum laude* graduate of New York Law School and graduated from that school with a Juris Doctor degree in 1992.

NOTICE: THIS IS AN
ADVERTISEMENT

AA001542

Member Nevada, California
New York, New Jersey &
Pennsylvania Bars
Admitted to the United States District Court of Colorado

Free Telephone Consultation
(702) 383-6085
(800) 257-4841

LEON GREENBERG
ATTORNEY AT LAW



Leon Greenberg
Attorney At Law
2965 S. Jones Blvd., Suite E-4
Las Vegas, Nevada 89146

leongreenberg@overtimelaw.com
Website: minimumwagelaw.com
Fax: (702) 385-1827

Member Nevada, California
New York, New Jersey &
Pennsylvania Bars
Admitted to the United States District Court of Colorado

Free Telephone Consultation
(702) 383-6085
(800) 257-4841

LEON GREENBERG
ATTORNEY AT LAW



Leon Greenberg
Attorney At Law
2965 S. Jones Blvd., Suite E-4
Las Vegas, Nevada 89146

leongreenberg@overtimelaw.com
Website: minimumwagelaw.com
Fax: (702) 385-1827

LEON GREENBERG
ATTORNEY AT LAW
2965 S. Jones Blvd. • Ste. E-4
Las Vegas, Nevada 89146



Elias Gil
3106 Harbor Heights Drive
Las Vegas, NV 89117

LAS VEGAS, NV 890
18 SEP 2014 PM 2 L



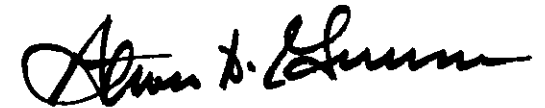
NOTICE: THIS IS AN
ADVERTISEMENT

89117915905

THIS LETTER CONCERNS A POSSIBLE
LEGAL CLAIM AGAINST WESTERN
CAB

WESTERN CAB
3106 HARBOR HEIGHTS DRIVE
LAS VEGAS, NV 89117
TEL: 702-731-1590
FAX: 702-731-1591
WWW.WESTERN-CAB.COM
E-MAIL: INFO@WESTERN-CAB.COM
P.O. BOX 1000
LAS VEGAS, NV 89102
© 2014 WESTERN CAB
ALL RIGHTS RESERVED

AA001544



CLERK OF THE COURT

RPLY

LEON GREENBERG, ESQ., SBN 8094
DANA SNIEGOCKI, ESQ., SBN 11715
Leon Greenberg Professional Corporation
2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
(702) 383-6085
(702) 385-1827(fax)
leongreenberg@overtimelaw.com
dana@overtimelaw.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' REPLY TO
DEFENDANTS' OPPOSITION
TO PLAINTIFF'S 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**

Hearing Date: November 17, 2016

Hearing Time: Chambers

Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation, hereby submit this reply to defendants' opposition to plaintiffs motion for an Order enjoining the defendants from engaging in any settlement of any claims involving unpaid wages owed to any of the members of the NRCP Rule 23(b)(2) class certified in this case except as part of this lawsuit; to amend the NRCP Rule 23(b)(3) class certification of this case to include minimum wage and related claims arising after December 31, 2015; to provide an NRCP Rule 23(c)(2) notification to defendant's taxi drivers hired after December 31, 2015 so they may have their damages claims adjudicated in this case; and for an award of attorneys' fees to class counsel.

MEMORANDUM OF POINTS AND AUTHORITIES

**I. DEFENDANTS DO NOT DISPUTE THEY ARE VIOLATING
THE CLASS CERTIFICATION ORDER IN THIS CASE**

As explained in the moving papers, this Court's Order granting class certification expressly prohibited any settlement of the claims of the class members

1 **except as part of this lawsuit** and only upon approval by a further Order of this Court
2 **in this case.** Moving papers, Ex. “A” p. 12, l. 16-20. Defendants do not, and cannot,
3 explain how their activities, in negotiating with counsel for a *non-class member*,
4 Dubric, to settle class member claims, not as part of *this case* but as part of *Dubric’s*
5 *separate case*, complies with the Court’s Order granting class certification. As
6 documented in the moving papers, both defendants’ counsel and Dubric’s counsel
7 were fully aware of this Court’s class certification Order in this case and willfully
8 chose to ignore it.

9 It is obvious, and defendants’ counsel does not dispute, that it entered into its
10 “settlement discussions” with Dubric’s counsel with the specific intent of *avoiding* any
11 scrutiny by this Court, in this case, of whatever proposed settlement of the class
12 members’ claims it was seeking to secure in *Dubric*. It was going to present that
13 proposed settlement to Judge Delaney, all the while keeping Judge Delaney ignorant
14 of this Court’s prior class certification Order in this case. It would also keep the judge
15 presiding over this case and class counsel in this case completely ignorant of such
16 actions. It would then, in direct violation of the Court’s Order in this case, secure a
17 “friendly settlement” of the class members’ claims as a *fait accompli* from Judge
18 Delaney in *Dubric*. It would do so with the cooperation of Dubric’s counsel. Such
19 counsel, even though fully aware of the Court’s Order in this case, was pleased to
20 assist defendant (no doubt in return for a handsome “class counsel fee payment”) with
21 violating that Order and presumably has no knowledge of the actual value of the class
22 claims. It was only the vigilance of class counsel in this case that foiled such nefarious
23 plan. Defendants’ counsel should be reprimanded by the Court and class counsel
24 awarded attorney’s fees for the time expended on this motion.

25 **II. DEFENDANTS’ CLAIM THAT CLASS COUNSEL IS**
26 **OBSTRUCTING, AND FRUSTRATING, THE SETTLEMENT**
27 **PROCESS IS UNTRUE AND DEFENDANTS CAN PROPOSE**
28 **A CLASS SETTLEMENT IN THIS CASE WITH OR WITHOUT**
THE SUPPORT OF CLASS COUNSEL

Because defendants cannot dispute the impropriety, and contemptuous, nature of

1 their actions they offer no explanation for those actions or substantive opposition to
2 the plaintiffs' motion. Instead they argue class counsel is manipulating this litigation
3 to further their own, abusive, interests and are asking the Court to issue an Order
4 obstructing a desirable settlement of the class members' claims. Those assertions are
5 absolutely false, both as a matter of law and fact.

6 Defendants can, at anytime, propose a class settlement to the Court, **but they**
7 **must do so as part of *this case* in compliance with the Court's prior Order.** It is
8 the Court, not class counsel, that must approve of any settlement defendants may
9 propose. This Court can both consider, and Order, any such class settlement, with or
10 without the support of class counsel. Yet defendants have made no such settlement
11 proposal, of any sort, in this case, either to class counsel or the Court. They have
12 failed to do so because they do not want any such settlement to be properly reviewed
13 by the Court or commented upon by class counsel. Instead, they seek to foist upon the
14 Court, with the assistance of Dubric's collusive and clearly uniformed counsel¹, a
15 "friendly" to defendants settlement of the class claims, not in this case but in *Dubric*,
16 and in direct violation of this Court's Order.

17 Defendants' assertion class counsel has refused to enter into settlement
18 discussions or communicate a settlement position is untrue. Ex. "C," letter to
19 defendants' counsel. Class counsel has only very recently received the needed
20 information on the class claims so an informed settlement can be pursued. *Id.* It took
21 18 months of motion practice, two unnecessary depositions, and the imposition of over

22
23 ¹ Class counsel served upon Dubric's counsel a subpoena for the materials
24 Dubric's counsel obtained in discovery in *Dubric*. Ex. "A." Dubric's counsel refuses
25 to provide any of the materials they secured in discovery in *Dubric* and have objected
26 to that subpoena in its entirety. Ex. "B." They also, as documented in the moving
27 papers, pages 4-6, have refused to allow Ms. Dubric to provide any information to
28 class counsel that could assist in the prosecution of the class claims. Such conduct by
Dubric's counsel amply supports the conclusion that they are profoundly ignorant of
the facts and circumstances bearing upon the class claims and are acting in collusion
with the defendants.

1 \$3,200 in sanctions upon the defendants, for defendants to finally provide that
2 information to class counsel. *Id.* and Ex. "D," Order entered March 4, 2016. Class
3 counsel has repeatedly offered to engage in mediated settlement discussions, with the
4 only condition that defendants agree to remove the time (30 days, 60 days, etc.)
5 necessary to complete those discussions from consideration for Rule 41(e) five year
6 rule purposes (this case was filed in 2012). Ex. "C." Defendants refuse to enter into
7 any such agreement, such conduct confirming their bad faith and lack of interest in
8 pursuing a non-collusive class settlement. Rather, they seek to waste the limited
9 amount of time class counsel has left to prosecute this case to judgment so defendants
10 can then pursue a successful "five year rule" dismissal.

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

12 Class counsel in their moving papers warned that unless defendants agreed to
13 suitably resolve this motion by stipulation class counsel would seek an award of
14 attorney's fees for the time expended on this motion. Defendants have refused to so
15 stipulate (or even discuss such a stipulation) and accordingly a request is now made
16 for an award of attorney's fees in connection with this motion. This motion, and the
17 attendant communications with Dubric's counsel and defendant's counsel about this
18 motion, has consumed at least 10 hours of class counsel, Leon Greenberg's, time. Ex.
19 "E" declaration. Attorneys fees should be imposed upon defendants, consistent with
20 the Court's prior Order entered on March 4, 2016 (Ex. "D" p. 7) of \$400 an hour for
21 his time, for a total attorney's fee award of \$4,000.

22 /

23 /

24 /

25 /

26 /

27 /

28 /

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

CONCLUSION

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

Dated: November 9, 2016

LEON GREENBERG PROFESSIONAL CORP.

/s/ Leon Greenberg
Leon Greenberg, Esq.
Nevada Bar No. 8094
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 November 10, 2016, she served the within:

Plaintiffs' Reply to Defendants' Opposition to Plaintiff's' 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"

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

14 Plaintiffs,

15 vs.

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

18 Defendants.

Case No.: A-12-669926-C

Dept.: I

**SUBPOENA DUCES TECUM FOR
BUSINESS RECORDS
(No Appearance Required)**

19 THE STATE OF NEVADA SENDS GREETINGS TO:

20 Mark J. Bourassa
21 Bourassa Law Group
22 8668 Spring Mountain Road, Suite 101
23 Las Vegas, NV 89117

24 YOU ARE URGED TO CONTACT LEON GREENBERG AT 702-383-6085
25 WHO IS THE ATTORNEY SERVING THIS SUBPOENA PRIOR TO
26 APPEARING IN RESPONSE TO THIS SUBPOENA OR MAKING ANY
27 OTHER EFFORTS TO COMPLY WITH THIS SUBPOENA TO DISCUSS
28 WHAT THIS SUBPOENA IS SEEKING. IF YOU DO SO IT MAY BE
POSSIBLE FOR YOU TO AVOID ANY NEED TO APPEAR OR PROVIDE
DOCUMENTS OR ANY OTHER RESPONSE TO THIS SUBPOENA.

YOU ARE ORDERED, pursuant to Nev. R. Civ. P. 45, to produce and permit
inspection and copying of the books, documents, or tangible things set forth below that
are in your possession, custody, or control, by delivering a true, legible, and durable

1 copy of the business records described below to the requesting attorney or party
2 appearing in proper person, by United States mail or similar delivery service, no later
3 than November 4, 2016 at the following address: Leon Greenberg Professional
4 Corporation, 2965 South Jones Boulevard, Suite E3, Las Vegas, Nevada 89146.
5 All documents shall be produced as they are kept in the usual course of business or
6 shall be organized and labeled to correspond with the categories listed. NRCP
7 45(d)(1).

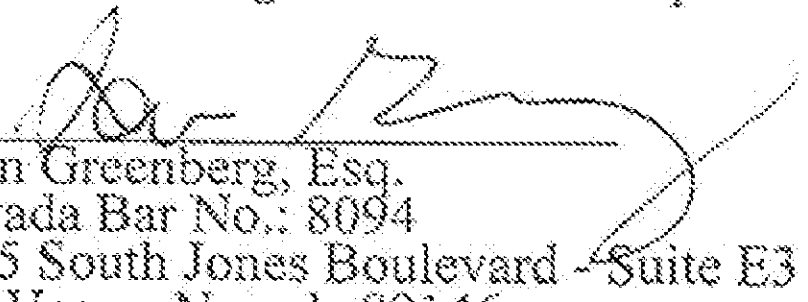
8 YOU ARE FURTHER ORDERED to authenticate the business records
9 produced, pursuant to NRS 52.260, and to provide with your production a completed
10 Certificate of Custodian of Records in substantially the form attached as Exhibit "B."

11 CONTEMPT: Failure by any person without adequate excuse to obey a
12 subpoena served upon that person may be deemed a contempt of the court, NRCP
13 45(e), punishable by a fine not exceeding \$500 and imprisonment not exceeding 25
14 days, NRS 22.100. Additionally, a witness disobeying a subpoena shall forfeit to the
15 aggrieved party \$100 and all damages sustained as a result of the failure to attend, and
16 a warrant may issue for the witness' arrest. NRS 50.195, 50.205, and 22.100(3).

17 Please see the attached Exhibit "A" for information regarding your rights and
18 responsibilities relating to this Subpoena.

19 Dated this October 17, 2016.

20 Leon Greenberg Professional Corporation

21 By: 
22 Leon Greenberg, Esq.
23 Nevada Bar No.: 8094
24 2965 South Jones Boulevard - Suite E3
25 Las Vegas, Nevada 89146
26 (702) 383-6085
27 Attorney for Plaintiff
28

ITEMS TO BE PRODUCED

1
2 1. Copies of all documents, materials, and information, including written
3 responses and objections, received by your office from defendant pursuant to Nev. R.
4 Civ. P. 16.1, 33, 34, and 36, or from any non-party pursuant to a subpoena, as part of
5 the litigation matter *Dubric v. A Cab, LLC*, Case No. A721062, pending in Department
6 25 of the Eighth Judicial District Court, Clark County, Nevada.

7 2. Copies of all transcripts and all other recordings (video and audio) of
8 deposition testimony, if any are in your possession, custody or control, recorded as part
9 of the litigation matter *Dubric v. A Cab, LLC*, Case No. A721062, in Department 25 of
10 the Eighth Judicial District Court, Clark County, Nevada.

11 3. Copies of all documents, materials, and information, including written
12 responses and objections, received by your office from defendant pursuant to Fed. R.
13 Civ. P. 26, 33, 34, and 36, or from any non-party pursuant to a subpoena, as part of the
14 litigation matter *Dubric v. A Cab, LLC et al.*, Case No. 2:15-cv-02136-RCJ-CWH,
15 pending in the United States District Court, District of Nevada.

16 4. Copies of all transcripts and all other recordings (video and audio) of
17 deposition testimony, if any are in your possession, custody or control, recorded as part
18 of the litigation matter *Dubric v. A Cab, LLC et al.*, Case No.
19 2:15-cv-02136-RCJ-CWH, pending in the United States District Court, District of
20 Nevada.

21 In the event that any documents requested for production herein exist in
22 electronic (be it database, PDF, word processing, or other computer software) form, or
23 were generated from such electronic form, please specify the electronic form for each
24 document produced. This includes the actual database files or other computer files in
25 their original, native, format.

26 If you should make any objection(s) to any request on the ground that it calls for
27 the disclosure of a communication or information protected from discovery by any
28

1 privilege or doctrine, including, but not limited to, the attorney-client privilege or
2 attorney work product doctrine, you must specify the nature of the privilege or doctrine
3 claimed, describe the precise ground of your claim of privilege, and identify with
4 specificity the communication or information that you claim is privileged.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that on October 17, 2016, pursuant to NRCP 5(b)(2)(B), I
3 served a true and correct copy of the foregoing **SUBPOENA DUCES TECUM FOR**
4 **BUSINESS RECORDS** via court electronic service to:

5
6 Esther C. Rodriguez, Esq.
7 RODRIGUEZ LAW OFFICES, P.C.
8 10161 Park Run Drive, Suite 150
9 Las Vegas, NV 89145

10
11
12 /s/ Sydney Saucier

13
14 _____
15 Sydney Saucier
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) *Protection of persons subject to subpoena.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

1 (ii) requires a person who is not a party or an officer of a party to
2 travel to a place more than 100 miles from the place where that person resides, is
3 employed or regularly transacts business in person, except that such a person may in
4 order to attend trial be commanded to travel from any such place within the state in
5 which the trial is held, or

6 (iii) requires disclosure of privileged or other protected matter and
7 no exception or waive applies, or

8 (iv) subjects a person to undue burden.

9 (B) If a subpoena

10 (i) requires disclosure of a trade secret or other confidential
11 research, development, or commercial information, or

12 (ii) requires disclosure of an unretained expert's opinion or
13 information not describing specific events or occurrences in dispute and resulting from
14 the expert's study made not at the request of any party,

15 the court may, to protect a person subject to or affected by the subpoena, quash or
16 modify the subpoena or, if the party in whose behalf the subpoena is issued shows a
17 substantial need for the testimony or material that cannot be otherwise met without
18 undue hardship and assures that the person to whom the subpoena is addressed will be
19 reasonably compensated, the court may order appearance or production only upon
20 specified conditions.

21
22 (d) *Duties in responding to subpoena.*

23 (1) A person responding to a subpoena to produce documents shall produce
24 them as they are kept in the usual course of business or shall organize and label them to
25 correspond with the categories in the demand.

26 (2) When information subject to a subpoena is withheld on a claim that it is
27 privileged or subject to protection as trial preparation materials, the claim shall be
28 made expressly and shall be supported by a description of the nature of the documents,

1 communications, or things not produced that is sufficient to enable the demanding
2 party to contest the claim.
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 event, condition, opinion or diagnosis recited therein by or from information
2 transmitted by a person with knowledge, in the course of a regularly conducted activity
3 of the deponent or _____
4 _____ *(name of employer)*.

5
6 Executed on:

7
8 *(Date)*
9 *Records)*

(Signature of Custodian of

10 **SUBSCRIBED AND SWORN** to before me this
11 _____ day of _____, 20____.
12
13

14 **NOTARY PUBLIC** in and for the
15 County of _____, State of _____.
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIDAVIT OF SERVICE

STATE OF NEVADA)

) ss:

COUNTY OF CLARK)

_____, being duly sworn says: That at all times herein, affiant was over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received the Subpoena on the _____ day of _____, and served the same on the _____ day of _____ by delivering a copy to the witness at the following address:

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

EXECUTED this _____ day of _____, 2016.

Signature of person making service

EXHIBIT "B"

OBJ

MARK J. BOURASSA, ESQ.

Nevada Bar No. 7999

TRENT L. RICHARDS, ESQ.

Nevada Bar No. 11448

THE BOURASSA LAW GROUP

8668 Spring Mountain Road, Suite 101

Las Vegas, Nevada 89117

Tel: (702) 851-2180

Fax: (702) 851-2189

mbourassa@blgwins.com

trichards@blgwins.com

Attorneys for The Bourassa Law Group

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 No.: I

**OBJECTIONS TO SUBPOENA
DUCES TECUM FOR BUSINESS
RECORDS TO THE BOURASSA
LAW GROUP**

THE BOURASSA LAW GROUP ("The Firm") hereby objects, pursuant to NRCP
45(c)(2)(B) to the Subpoena Duces Tecum ("Subpoena") served on it by Plaintiffs MICHAEL
MURRAY and MICHAEL RENO ("Plaintiffs") as follows:

OBJECTIONS TO SUBPOENA DUCES TECUM

ITEMS TO BE PRODUCED

Categories 1 and 2: Categories 1 and 2 of the Subpoena seeks all of the written discovery
and deposition testimony obtained by the Plaintiff in a putative class action lawsuit brought by the
Firm on behalf of its client and similarly situated employees entitled *Dubric v. A Cab, LLC*, Clark
County District Court Case No. A721062 (the "*Dubric Class Action*"). The *Dubric Class Action*

1 alleges claims for violation of the minimum wage provision of the Nevada Constitution, Article 15,
2 Section 16, and conversion.

3 The Firm objects to Categories 1 and 2 on the grounds that they seek information that is
4 neither relevant to the subject matter of this litigation. Courts have held that discovery of discovery
5 conducted in other cases, or "piggyback discovery," is inappropriate and prohibited. *Racing Optics*
6 *v. Aevoe Corp.*, No. 2:15-CV-1774-RCL-VCF, 2016 WL 4059358, at *1 (D. Nev. July 28, 2016),
7 *reconsideration denied sub nom. Racing Optics, Inc. v. Aevoe Corp.*, No. 2:15CV01774RCJVC, 2016 WL 4994961 (D. Nev. Sept. 16, 2016) (citing *Chen v. Ampco Sys. Parking*, Case No. 08-cv-
8 0422-BEN (JMA), 2009 WL 2496729, at *3 (S.D. Cal. Aug. 14, 2009). Indeed, in *Racing Optics*,
9 under very similar circumstances, the court very recently granted a protective order for a subpoena
10 to law firm seeking discovery conducted in other cases on the grounds that the discovery was
11 inappropriate piggyback discovery. *Id.* A plaintiff "must specifically ask for the documents he
12 wants and be able to demonstrate that the information he seeks is relevant to his claims in this case"
13 because the mere fact that a party has produced documents or information in another case does not
14 necessarily make it discoverable in another case. *Racing Optics*, 2016 WL 4059358 (quoting *Chen*,
15 2009 WL 2496729 at *3). Therefore, "plaintiffs' counsel must do their own work and request the
16 information they seek directly." *Midwest Gas Servs., Inc. v. Indiana Gas Co.*, No. IP 99-690-C-
17 D/F, 2000 WL 760700, at *1 (S.D. Ind. Mar. 7, 2000).

18
19 In addition, The Firm objects to Categories 1 and 2 of the subpoena on the grounds that it
20 imposes an undue burden and expense on The Firm. Even if the documents sought were somehow
21 relevant and discoverable (which they are not), the discovery and deposition testimony conducted
22 in the *Dubric* Class Action could be easily and more readily requested from A Cab directly in this
23 matter by way of a Request for Production of Documents under NRCP 34 rather than from The
24 Firm, a third party to this litigation.

25 Perhaps most importantly, it appears that the purpose of this subpoena is not to obtain
26 properly discoverable information, but instead to harass The Firm. On October 5, 2016, the parties
27 in the *Dubric* Class Action engaged in a settlement conference before Judge Jerry Weise, II, and
28 settled the *Dubric* matter on a class-wide basis. Since that time, counsel for Plaintiffs in this matter

1 has sent counsel for the plaintiff in the Dubric matter a series of emails threatening to bring the
2 matter of the settlement before the Court in unspecified ways. It would appear that the Subpoena
3 is nothing more than the latest step in counsel for Plaintiff's inappropriate efforts to harass and
4 intimidate The Firm as a result of the settlement, and is therefore an abuse of the discovery process.
5 *See Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 814 (9th Cir. 2003) (affirming district
6 court's order quashing subpoena and awarding attorney fees where subpoena was "served for the
7 purpose of annoying and harassment and not really for the purpose of getting information."). The
8 Firm will therefore not be producing any documents in response to Categories 1 and 2 of the
9 Subpoena absent a Court order.

10 Categories 3 and 4: Categories 3 and 4 of the Subpoena seeks all of the written discovery
11 and deposition testimony obtained by the Plaintiff in a Federal Title VII lawsuit brought by the
12 Firm on behalf of Jasminka Dubric entitled *Dubric v. A Cab, LLC et al.*, United States District
13 Court, District of Nevada Case No.15-cv-02136-RCL-CWH (the "*Dubric Federal Case*"). The
14 *Dubric Federal Case* alleges claims for sexual harassment and retaliation in violation of Title VII,
15 42 U.S.C. § 2000e *et seq.*, as well as state law tort claims against Creighton J. Nady individually
16 relating to the alleged harassment.

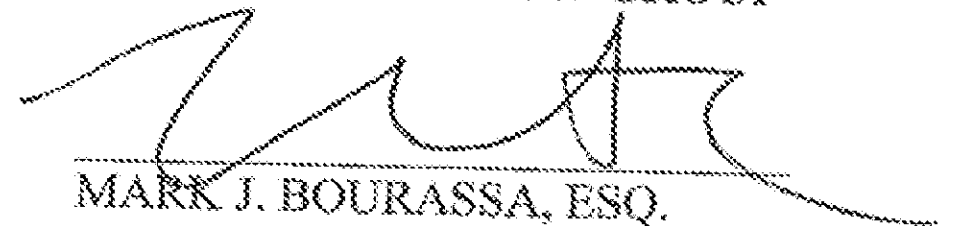
17 The Firm objects to Categories 3 and 4 on the grounds that they seek information that is
18 neither relevant to the subject matter of this litigation. It strains credulity that discovery conducted
19 in an unrelated federal sexual harassment case could be in any way relevant to the wage claims
20 alleged in this matter, or lead to the discovery of admissible evidence. Moreover, as set forth above,
21 these categories of items to be produced constitute impermissible piggyback discovery. *See Racing*
22 *Optics*, 2016 WL 4059358 at *1.

23 In addition, The Firm objects to Categories 3 and 4 of the subpoena on the grounds that it
24 imposes an undue burden and expense on The Firm. Even if the documents sought were somehow
25 relevant and discoverable (which they are not), the discovery and deposition testimony conducted
26 in the *Dubric Federal Case* could be easily and more readily requested from A Cab directly in this
27 matter by way of a Request for Production of Documents under NRCP 34 rather than from The
28 Firm, a third party to this litigation.

1 Furthermore, as explained in detail above, the purpose of this subpoena is not to obtain
2 properly discoverable information, but instead to harass The Firm and is therefore an abuse of the
3 discovery process. *See Mattel, Inc.*, 353 F.3d at 814 (9th Cir. 2003). The Firm will therefore not
4 be producing any documents in response to Categories 3 and 4 of the Subpoena absent a Court
5 order.

6
7 Dated: October 21, 2016
8

9 **THE BOURASSA LAW GROUP**

10 

11 MARK J. BOURASSA, ESQ.

12 Nevada Bar No. 7999

13 TRENT L. RICHARDS, ESQ.

14 Nevada Bar No. 11448

15 8668 Spring Mountain Road, Suite 101

16 Las Vegas, Nevada 89117

17 Tel: (702) 851-2180

18 Fax: (702) 851-2189

19 mbourassa@blgwins.com

20 trichards@blgwins.com

21 *Attorneys for The Bourassa Law Group*
22
23
24
25
26
27
28

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that on 21st day of October 2016, I served a true and correct copy
3 of the foregoing document entitled **OBJECTIONS TO SUBPOENA DUCES TECUM FOR**
4 **BUSINESS RECORDS TO THE BOURASSA LAW GROUP** via the Court's electronic
5 system.
6

7
8 Leon Greenberg, Esq.
9 Dana Sniegocki, Esq.
10 LEON GREENBERG PROFESSIONAL CORPORATION
11 2965 S Jones Blvd, Suite E3
12 Las Vegas NV 89146
13 *Attorneys for Michael Murray and Michael Reno*

14 /s/ Hilary Daniels
15 An employee of
16 The Bourassa Law Group
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT "C"

LEON GREENBERG

Attorney at Law

2965 South Jones Boulevard • Suite E-3

Las Vegas, Nevada 89146

(702) 383-6085

Leon Greenberg

Member Nevada, California

New York, Pennsylvania and New Jersey Bars

Admitted to the United States District Court of Colorado

Dana Snięocki

Member Nevada and California Bars

Fax: (702) 385-1827

November 9, 2016

Esther C. Rodriguez, Esq.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

Via Fax to 702-320-8401 and email

Re: Murray v. A-Cab
Plaintiffs' Motion for an Injunction and Other Relief
Hearing date: November 17, 2016, Chambers

Dear Ms. Rodriguez:

I write in respect to your incorrect representations in your opposition to the above motion. Those representations are (1) That I am refusing to enter into any settlement negotiations or make any settlement demand without "a stay and tolling of the entire case;" and (2) That "for over two years" I have indicated that I was putting together a settlement demand.

In respect to (1) You neglect to mention that this case has been pending since 2012 and that the "five year" rule issue is quite serious. I would welcome settlement discussions, as I have repeatedly explained to you, but I cannot devote the time to that while "five year rule" time continues to run in this case. Defendant refuses to remedy that problem by agreeing to set aside any "five year rule" accrual for whatever period of time it takes (30 days, 60 days, etc.) to conduct those discussions. Defendant wants to use those proposed settlement discussions as a litigation tactic to advance their goal of a five year rule dismissal.

Page 1 of 2

Defendant needs to demonstrate good faith in their proposed settlement discussions by waiving that five year rule accrual. That was not an issue in *Dubric* as that case was not filed until 2015. So making the "same offer" to engage in settlement discussions in this case as in *Dubric* (which by all indications involved completely uninformed discussions by Ms. Dubric's counsel) is meaningless.

In respect to (2) I have repeatedly explained to you that I have only been in possession of sufficient information to formulate a settlement position for the last two months. I repeatedly advised you there could be no settlement of this case until I had that information. It took me over 18 months of repeated motion practice, two unnecessary depositions, and the imposition of over \$3,200 in sanctions, to get that information from the defendant. It is also taking time to analyze that information. I will, as required by this litigation, be setting forth a statement of the class damages soon. Defendant is free to also propose a settlement and analysis of the class damages as well (defendant possesses the exact same information I am now working with). Indeed, at various times defendant promised to provide me with certain information germane to settlement, including information on its inability to pay a large judgment, but it has provided none of that information.

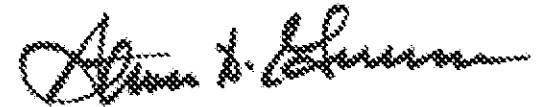
I remain,

Very truly yours,


Leon Greenberg

cc. Michael K. Wall, Esq (Via Email)

EXHIBIT "D"



CLERK OF THE COURT

DCRR

LEON GREENBERG, ESQ.

Nevada Bar No.: 8094

DANA SNIEGOCKI, ESQ.

Nevada Bar No.: 11715

Leon Greenberg Professional Corporation

2965 South Jones Boulevard - Suite E-3

Las Vegas, Nevada 89146

(702) 383-6085

(702) 385-1827(fax)

leongreenberg@overtimelaw.com

dana@overtimelaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

DEPT.: I

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATION**

Hearing Date: November 18, 2015

Hearing Time: 9:00 a.m.

Attorney for Plaintiff Dana Sniegocki, Esq. and Leon Greenberg, Esq. of

Leon Greenberg Professional Corporation

Attorney for Defendant: Esther Rodriguez, Esq. of Rodriguez Law Offices, P.C

I.
FINDINGS

1. This matter was heard before the Discovery Commissioner on Plaintiffs' Motion to Compel the Production of Documents, which was originally heard by the Court on March 18, 2015 and continued for a further hearing on November 18, 2015 and was heard on that date along with Plaintiffs' Motion to Extend the Discovery Schedule. This matter was also heard on a status check to advise the Court of the parties' progress on conducting Rule 30(b)(6) depositions, first recommended by the Discovery Commissioner at the May 20, 2015 status check, on information relevant to the plaintiffs' Motion to Compel Production of Documents.

2. Plaintiffs' motion to compel seeks the production of those portions of the electronic computer data records from defendants' Cab Manager software system which would assist at trial in determining the times that defendants' taxi drivers start and end their shifts, *as well as the location and activity of any given* ~~the defendants not otherwise maintaining any computerized time~~ *Cab. M.* ~~records on their taxi drivers' hours of work.~~ *Plaintiffs position is as follows:* Taxi drivers conduct certain activities at the start and end of their shifts which activities communicate information into the Cab Manager software. Those activities involve having the bar codes on their Taxicab Authority identification cards and trip sheets scanned and uploading their taxi meter totals into the Cab Manager software system. The taxi drivers also deposit money into electronic drop safes at the end of their shifts and information about that activity

1 may also be communicated to the Cab Manager software. The trip sheets the taxi
2 drivers use also come with "start times" printed on them and those "start times" are
3 printed by the Cab Manager software. The times the defendants' taxi drivers
4 conducted the foregoing activities, and the printed "start times" on their trip sheets, if
5 preserved in the Cab Manager computer data records, are relevant and discoverable
6 information that should be produced. In addition, records showing that a particular
7 taxi cab was operated by a particular taxi driver on a particular day, along with the
8 attendant records, if any, of the times during such day such taxi cab was operated, and
9 placed into service and taken out of service, is relevant and discoverable information
10 that should be produced. *Based on the foregoing, &* Defendants are to produce the portion of the Cab Manager
11 computer data records containing the foregoing information for all of defendants'
12 taxicab drivers *and/or cabs &* from October 8, 2008 through the present. Additionally, plaintiffs'
13 request for electronic computer data records from defendants' Quickbooks software
14 system showing the wages paid (excluding tips actually received or credited as gross
15 income), shifts worked, and hours worked (or hours recorded for payroll purposes or
16 minimum wage compliance purposes as having been worked), of defendants' taxicab
17 drivers also seeks relevant information that can be produced and must be produced for
18 the time period of October 8, 2008 through the present.
19
20
21
22
23
24
25
26

27 3. Defendants have not complied with their obligation to respond to
28 *discovery requests timely and in accordance with NACF 161.* plaintiffs' discovery requests in an informed, good faith, and appropriate manner. The

defendants' principal, Creighton J. Nady, ^{told} misrepresented to the Court at the March 18, 2015 hearing the difficulties defendants' faced in producing the information originally sought by plaintiffs in February 2015 and specifically that burdensome computer "code" would have to be written to produce such information. ^{This representation} ~~A conclusion that such~~ ^{was incorrect.} ~~misrepresentation was intentional is supported by the course of events in this case.~~ ~~Even if that misrepresentation was not intentional it was, by defendants' own admission, uninformed, not the product of appropriate due diligence, and without any actual basis in fact.~~ Despite having a duty to do so, defendants never inquired with any knowledgeable person, which clearly should have been their computer consultant James Morgan, about what would be necessary to produce such information. ~~Such dereliction of their responsibility to cooperate with the discovery process, or their affirmative misrepresentation, resulted in the need for plaintiffs' counsel to conduct a Rule 34 inspection that was terminated early by defendants, and ultimately resulted in the unnecessary deposition of non-party James Morgan. The foundational information secured from James Morgan on the Cab Manager system during that deposition was always available to defendants. Defendants should have complied with their duty to inquire with James Morgan about producing the information sought by plaintiffs and taken appropriate action to produce such information. There was no need for the deposition of James Morgan.~~

1 4. Defendants' non-compliance with their obligation to respond to
2 plaintiffs' discovery request in an informed, ~~good faith~~ ^W and appropriate manner, was
3 also manifested in the deposition held of defendants' principal, Creighton J. Nady as
4 an NRCP Rule 30(b)(6) witness. ~~That deposition was required for the same reason,~~
5 ~~defendants' failure to comply with their discovery obligations as specified in~~
6 ~~paragraph 3, supra, as the unnecessary deposition of James Morgan. Many or most of~~
7 ~~the NRCP Rule 30(b)(6) subjects inquired about at that deposition were unnecessary~~
8 ~~for the same reasons the James Morgan deposition was unnecessary.~~ In addition the
9 conduct of Mr. Nady at the deposition was highly inappropriate and inexcusable. He
10 was not a proper NRCP Rule 30(b)(6) deposition witness as he conceded he made no
11 attempt to inform himself as to certain noticed deposition topics, that he was not
12 informed about those topics, and indicated other personnel of the defendants, known
13 to him, had knowledge about those topics. He was abusive to examining counsel,
14 and *Plaintiffs' position is that he was also* evasive and confrontational beyond any appropriate or allowable boundaries, and was
15 *uninformed as to several key areas, which has not* ^{conduct} ~~not~~ cautioned or counseled to curb his behavior by defendants' counsel. *yet been*
16 *Unfortunately, it does not appear* *specifically*
17 *based on a review of the record Mr. Nady was* *addressed to*
18 *effectively*

19 5. An extension of the discovery schedule, as requested by the plaintiffs, is
20 also warranted in light of the plaintiffs' motion to compel the production of
21 documents which has been pending for eight months and the resolution of which was
22 delayed by defendants. Accordingly, the discovery deadlines in this matter will be
23 extended as specified below.

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

II.

RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED that Plaintiffs' Motion to Compel the Production of Documents is GRANTED. The electronic computer data records from the Cab Manager software system recording the dates, times, and activities specified in paragraph 2 of the Findings shall be produced by defendants for each of their taxicab drivers, and taxi cabs, from October 8, 2008 through the present must be produced. Such information is to be produced in an Excel spreadsheet format or in an otherwise searchable electronic format and be produced to plaintiffs on or before December 31, 2015.

Defendants' counsel is instructed to work with Cab Manager personnel, including Jim Morgan who provided testimony in this matter regarding the Cab Manager software system and stated he had the ability to review the Cab Manager computer data records and segregate and produce the information, if it existed, specified in paragraph 2 of the Findings.

Difficulties in producing the Cab Manager information
~~Defendants' counsel should also communicate with plaintiffs' counsel should~~
as recommended may result in the Commissioner
~~any issues arise with the production of the records being compelled. As the testimony~~
of Morgan indicates that the entire Cab Manager database can be copied and produced.
The specifics of such production will be
~~in bulk without difficulty, should the portion of the data being compelled by this~~
deferred until such time it becomes necessary in
~~Report and Recommendation be unable to be extracted and provided to the plaintiffs~~
~~counsel, the Court will require the entire contents of the Cab Manager database to be~~

1 ~~turned over to plaintiffs' counsel who must then sort and extract the relevant~~
2 ~~information plaintiffs sought in their motion to compel.~~ *ON* Additionally, defendants
3
4 must also provide to plaintiffs' counsel, no later than December 31, 2015, electronic
5
6 computer data records in Excel spreadsheet or an otherwise searchable electronic
7
8 format from defendants' Quickbooks system as specified in paragraph 2 of the
Findings for the time period of October 8, 2008 through the present.

9
10 No other information contained within defendants' Quickbooks system, such as
11
12 defendants' internal business or accounts payable records, are being compelled in this
Report and Recommendation, provided that defendants produce the information as
13
14 specified in paragraph 2 of the Findings. If they fail to do so, or assert they cannot
extract such information, the *Discovery Commission will likely require* ~~Court will require~~ the parties to enter into a suitable

15
16 ~~protective order preserving the confidentiality of the Quickbooks database and~~
for the applicable time frame to be produced
17 ~~defendants shall turn over the entire contents of the Quickbooks database to plaintiffs'~~
Subject to an appropriate protective order, the
18 ~~counsel who must then sort and extract the relevant information plaintiffs sought in~~
19 *specifics of such production will be deferred until*
20 ~~their motion to compel~~ *such time as it becomes necessary.*

21 IT IS FURTHER RECOMMENDED that based upon paragraph 3 of the
22
23 Findings defendants are ordered to pay the costs and fees of plaintiffs' counsel for
24
25 having to proceed with the unnecessary deposition of James Morgan on July 8, 2015.
The Discovery Commissioner has determined that plaintiffs' counsel must be
26
27 reimbursed \$638.95 for court reporter fees, plus \$400 per hour for plaintiffs' counsel's
28
time in connection with the Morgan deposition. The Discovery Commissioner is

1 satisfied that plaintiffs' counsel's time records showing 2.5 hours of preparation, 2.8
2 hours of attendance, and 1.2 hours for travel relating to the Morgan deposition are fair.

3 Accordingly, defendants are required to submit to plaintiffs' counsel, a check for
4 \$3,238.95 to cover the costs and fees associated with the Morgan deposition. *These*

5 *Costs and fees will be due and owing within 30 days after this*
6 *Report*

7 IT IS FURTHER RECOMMENDED that based upon paragraphs 3 and 4 of the *Recommendation*
8 Findings the imposition of additional fees and costs upon defendants in connection *is signed by me*
9 with plaintiffs' motion to compel, including but not limited to the deposition of *District Court Judge W.*

10 Creighton J. Nady, be reserved for further consideration and recommendations by the
11 Discovery Commissioner at the parties' next status check on January 13, 2016 *at*
12 *9:00 a.m. MT*

13 Finally, the discovery deadlines in this matter are extended as follows:

14 **Close of Discovery:** June 29, 2016

15 **Deadline to Amend Pleadings and Add Parties:** April 1, 2016

16 **Deadline to Disclose Expert Reports:** April 1, 2016

17 **Deadline to Disclose Rebuttal Expert Reports:** April 29, 2016

18 **Dispositive Motion Deadline:** July 29, 2015

19 *Further, the case will now be ready for trial on or after*
20 *9-12-16*
21 The parties are further ordered to appear back before the Discovery *and be current*

22 Commissioner on January 13, 2016 at 9:00 a.m. for a status check on compliance
23 with the foregoing. The parties may provide additional briefings to the Discovery
24 Commissioner regarding compliance with this Report and Recommendation no later
25 than January 8, 2016.

CASE NAME: *Murray et al. v. A Cab Taxi Service LLC., et al.*

Case No. A-12-669926-C

Hearing Date: November 18, 2015

The Discovery Commissioner, met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.


DATED: December 11, 2015.


DISCOVERY COMMISSIONER

Respectfully submitted:

Approved as to form and content:


LEON GREENBERG, ESQ.
DANA SNIEGOCKI, ESQ.
LEON GREENBERG
PROFESSIONAL
CORPORATION
2965 South Jones Blvd., #E4
Las Vegas, NV 89146
Tel (702) 383-6085
Fax (702) 385-1827
dana@overtimelaw.com
Attorney for Plaintiffs


ESTHER C. RODRIGUEZ, ESQ.
NV Bar 006473
RODRIGUEZ LAW OFFICES,
P.C.
10161 Park Run Drive.
Suite 150
Las Vegas, NV 89145
Tel: (702) 320-8400
Fax (702) 320-8401
info@rodriguezlaw.com
Attorney for Defendant

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

NOTICE

Pursuant to N.R.C.P. 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

[Pursuant to E.D.C.R. 2.34(f), an objection must be filed and served no more than five (5) days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of the party's lawyer in the Clerk's office. See E.D.C.R. 2.34(f).]

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to the parties at the following address on the _____ day of _____

X Placed in the folders of Plaintiff's/Defendant's counsel in the Clerk's Office on the 17 day of Dec.

STEVEN D. GRIERSON

By 
DEPUTY CLERK

CASE NAME: *Murray et al. v. A Cab Taxi Service LLC., et al.*

Case No. A-12-669926-C

Hearing Date: November 18, 2015

ORDER

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

_____ The parties having waived the right to object thereto,

_____ No timely objections having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),

☒ Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

☒ AND

☒ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner:

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report and Recommendations is set for the _____ day of _____ 2015, at _____ a.m./p.m.

Dated this 29 day of Feb, 2015.


DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

The undersigned certifies that on March 4, 2016, she served the
within:

Order on Discovery Commissioner's Report and Recommendation

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 "E"

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

7 **DISTRICT COURT**
CLARK COUNTY, NEVADA

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

10 Plaintiffs,)

11 vs.)

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

13 Defendants.)
14)
15)

Case No.: A-12-669926-C

Dept.: I

**DECLARATION OF CLASS
COUNSEL, LEON
GREENBERG, ESQ.**

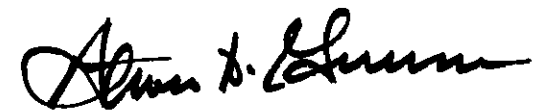
16 Leon Greenberg, an attorney duly licensed to practice law in the State of
17 Nevada, hereby affirms, under the penalty of perjury, that:

18 1. I have been appointed by the Court as class counsel in this matter. I am
19 offering this declaration to explain to the Court the amount of time I, personally, have
20 expended in connection with plaintiffs' motion for an injunction and other relief, set
21 for a decision in chambers on November 17, 2016.

22 2. A review of the contemporaneous time records that I have personally
23 maintained indicates that I have spent no less than 10 hours of time in connection with
24 that motion. Those time expenditures include drafting the moving and reply papers
25 and communications with defendants' counsel and counsel in the *Dubric* case about
26 the issues raised in such motion.

27 Affirmed this 10th day of November, 2016

28 /s/ Leon Greenberg
Leon Greenberg, Esq.



CLERK OF THE COURT

MOT

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

Michael K. Wall, Esq.
Nevada Bar No. 2098
Hutchinson & Steffen, LLC
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
702-385-2500
mwall@hutchlegal.com
Attorneys for Defendants

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

Hearing Date: 01 / 03 / 17
Hearing Time: In Chambers

DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS
PURSUANT TO NRCP 12(C) WITH RESPECT TO
ALL CLAIMS FOR DAMAGES OUTSIDE THE
TWO-YEAR STATUE OF LIMITATIONS

Defendants A Cab, LLC and Creighton J. Nady, by and through their attorneys of record,
ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., and MICHAEL K. WALL, ESQ., of
HUTCHISON & STEFFEN, LLC, and pursuant to NRCP 12(c), hereby respectfully move this
Honorable Court for judgment on the pleadings and to dismiss the claims for relief in Plaintiffs'

Complaint which are past the statute of limitations, with prejudice.

DATED this 17th day of November, 2016.

RODRIGUEZ LAW OFFICES, P.C.

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

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendants will bring the foregoing Motion for Judgment on the Pleadings on for hearing before this Court on the 03 day of Jan ., ²⁰¹⁷~~2016~~, or as soon thereafter as counsel may be heard.
In Chambers

DATED this 17th day of November, 2016.

RODRIGUEZ LAW OFFICES, P. C.

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

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendants bring this motion based on Plaintiffs' claims for relief in Second Amended and Supplemental Complaint ("Amended Complaint") which extend beyond the two-year statute of limitations period for minimum wage-based claims. Plaintiffs' original complaint was filed on October 8, 2012, alleging two claims for relief against two Defendants: Defendant A Cab Taxi Service LLC and Defendant A Cab, LLC. The two claims for relief were: "First Claim for Relief pursuant to Article 15, Section 16, of the Nevada Constitution" and "Second Claim for Relief

pursuant to NRS 608.040.” (Plaintiffs’ Complaint ¶ 13, 14, and 18.) Both claims are minimum wage based claims.

Pursuant the guidance provided by the Nevada Supreme Court, all claims arising from the Minimum Wage Amendment to the Nevada Constitution, like those arising under NRS Chapter 608, are limited to a two-year statute of limitations. *Perry v. Terrible Herbst, Inc.*, 132 Nev Adv. Op. No. 75 (October 27, 2016.) Therefore, Plaintiffs’ claims for relief prior to October 8, 2010 must dismissed for failure to state a claim.

II.

LEGAL ARGUMENT

A. Legal Standard.

A party may move for judgment on the pleadings pursuant to Rule 12(c) after the pleadings have closed. NRCP 12(c). In deciding the NRCP 12(c) motion, the court may not look beyond the face of all of the pleadings. *See Bernard v. Rockhill Dev. Co.*, 103 Nev. 132 (1987). A motion for judgment on the pleadings is similar to that of a motion to dismiss for failure to state a claim as it is one method of raising the defense of failure to state a claim. NRCP 12(h)(2). Thus, any ground effective for a motion to dismiss for failure to state a claim will be sufficient for a judgment on the pleadings.

Dismissal of all class and individual claims falling outside the two year statute of limitations, is appropriate under NRCP 12(b)(5), which provides, pertinent part, that a Court may dismiss a claim for relief for “failure to state a cause of action.” According to the Nevada Supreme Court, dismissal is appropriate under NRCP 12(b)(5) if a plaintiff’s allegations fail to state a claim even “accepting all of the plaintiff’s factual allegations as true and drawing every reasonable inference in the plaintiff’s favor.” *DeBoer v. Senior Bridges of Sparks Family Hosp. Inc.*, 128 Nev. Adv. Op. No. 38, 283 P.3d 727, 730 (2012). Thus, a “complaint should be dismissed for failure to state a claim ‘only if it appears beyond a doubt that it could prove no set of facts, which if true, would entitle it to relief.’” *Id. (quoting Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008)).

...

B. Plaintiffs' Claims Prior to October 8, 2010 must Be Dismissed as a Matter of Law.

Plaintiffs have asserted class-based claims for damages based on allegations which fall outside the applicable two-year statute of limitations. (Plaintiffs' Complaint ¶ 13, 14, and 18.) The Nevada Supreme Court has given clear guidance that minimum-wage based claims are subject to an explicit two-year statute of limitations. *Perry v. Terrible Herbst, Inc.*, 132 Nev Adv. Op. No. 75 (October 27, 2016.) Thus, all class-based claims, as well as the individual drivers' whose claims fall outside the statute of limitations are barred and must be dismissed with prejudice as a matter of law. *See, Bemis v. Estate of Bemis*, 114 Nev. 1021, 1024, 967 P.2d 437, 439 (1998) (stating "[a] court [may] dismiss a complaint for failure to state a claim upon which relief may be granted if the action is barred by the statute of limitations.")

Accordingly, Defendants request that this Court dismiss all class-based claims for damages which fall outside the statute of limitations, as well as those individuals whose claims are prior to October 8, 2010.

III.

CONCLUSION

Based upon the foregoing points and authorities, Defendants respectfully request that this Court grant their Motion for Judgment on the Pleadings and issue an Order dismissing all of Plaintiffs' claims which extend beyond the applicable two-year statute of limitations.

DATED this 17th day of November, 2016.

RODRIGUEZ LAW OFFICES, P. C.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 17th day of November, 2016, I electronically filed the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

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

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