

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

v.

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

Respondents.

) Supreme Court No. 77050

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

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

HUTCHISON & STEFFEN, PLLC

Michael K. Wall (2098)
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11	Plaintiffs' Response in Opposition to Defendants' Motion to Strike First Amended Complaint and Counter-Motion for a Default Judgment or Sanctions Pursuant to EDCR 7.60(b), filed 04/11/2013	II	AA000202-AA000231
24	Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss Plaintiffs' Second Claim for Relief, filed 08/28/2015	IV	AA000651-AA000668
23	Plaintiffs' Response in Opposition to Defendants' Motion for Declaratory Order Regarding Statue of Limitations, filed 08/28/2015	IV	AA000600-AA000650
172	Plaintiffs' Response in Opposition to Defendants' Motion for Dismissal of Claims on an Order Shortening Time, filed 10/17/2018	XLVI	AA009289-AA009297
8	Plaintiffs' Response in Opposition to Defendants' Motion Seeking Reconsideration of the Court's February 8, 2013 Order Denying Defendants' Motion to Dismiss, filed 03/18/2013	I	AA000181-AA000187
154	Plaintiffs' Response to Defendants' Ex-Parte Motion to Quash Writ of Execution on an OST and Counter-Motion for Appropriate Judgment Enforcement Relief, filed 09/24/2018	XLIV	AA008919-AA008994
109	Plaintiffs' Response to Defendants' Motion in Limine to Exclude Expert Testimony, filed 01/12/2018	XXX, XXXI	AA006002-AA006117
184	Plaintiffs' Response to Special Master's	XLVII	AA009665-

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

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

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

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

CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this date **APPENDIX TO APPELLANTS OPENING BRIEF VOLUME IX of LII** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

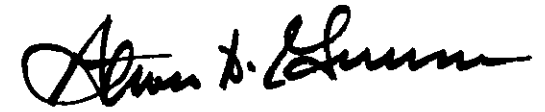
Leon Greenberg, Esq.
Dana Sniegocki, Esq.
Leon Greenberg Professional Corporation
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Telephone: (702) 383-6085
Facsimile: (702) 385-1827
leongreenberg@overtimelaw.com
Dana@overtimelaw.com

Attorneys for Respondents

DATED this 5th day of August, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC



CLERK OF THE COURT

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Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

Plaintiffs,

vs.

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

Defendants.

DEFENDANTS' MOTION FOR LEAVE TO AMEND ANSWER

TO ASSERT A THIRD-PARTY COMPLAINT

Defendants A Cab, LLC and Creighton J. Nady, by and through their attorneys of record,
and pursuant to NRCP 10(a) and NRCP 15, hereby move for leave to amend their Answer to Assert
a Third Party Complaint against Leon Greenberg, Esq., Leon Greenberg Professional Corporation,
and Dana Sniegocki, Esq.

...

...

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

DATED this 29th day of November, 2016.

RODRIGUEZ LAW OFFICES, P. C.

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

NOTICE OF HEARING

PLEASE TAKE NOTICE that Plaintiffs will bring the foregoing Motion on for hearing before this Court on the 3 day of JAN, 201⁷, @ 9 AM, or as soon thereafter as counsel may be heard.

DATED this 29th day of November, 2016.

RODRIGUEZ LAW OFFICES, P. C.

By: /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 Plaintiffs

I.

POINTS AND AUTHORITIES

1. The Requested Amendments Conform to the Evidence

A proposed amended answer with third-party complaint is attached for the Court's review at **Exhibit 1**. The requested amendments are tailored to conform to the evidence obtained during the discovery period. The requested amendment is to assert a third-party complaint against those persons and entities which have engaged in champerty, and seek to profit from the continued litigation of others.

1 As the Nevada Supreme Court stated in *Schwartz v. Eliades*, 939 P.2d 1034, 113 Nev. 586
2 (1997):

3 "A champertous agreement is one in which a person without interest in another's
4 litigation undertakes to carry on the litigation at his own expense, in whole or in part,
5 in consideration of receiving, in the event of success, a part of the proceeds of the
6 litigation." *Martin v. Morgan Drive Away, Inc.*, 665 F.2d 598, 603 (5th Cir.1982),
7 cert. dismissed, 458 U.S. 1122, 103 S.Ct. 5, 73 L.Ed.2d 1394 (1982). "To maintain
8 the suit of another is now, and always has been, held to be unlawful, unless the
9 person maintaining has some interest in the subject of the suit." *Lum v. Stinnett*, 87
10 Nev. 402, 408, 488 P.2d 347, 350 (1971) (citing *Gruber v. Baker*, 20 Nev. 453, 23 P.
11 858, 862 (1890)). "Where a person promoting the suit of another has any interest
12 whatever, legal or equitable, in the thing demanded, ... he is in effect also a suitor
13 according to the nature and extent of his interest." *McIntosh v. Harbour Club Villas*
14 *Condominium*, 421 So.2d 10, 11 (Fla.Dist.Ct.App.1982). *Schwartz v. Eliades*, 939
15 P.2d at 1036.

16 See also, *Vosberg Equipment v. Zupancic*, 737 P.2d 522, 103 Nev. 266 (1987) stating:

17 In 1890 this court held that even in the absence of statute it was, under the common
18 law of England, unlawful to "maintain the suit of another" unless the person
19 maintaining the suit "has some interest in the subject of the suit." *Gruber v. Baker*,
20 Nev. 453, 469, 23 P. 858 (1890). In *Lum v. Stinnett*, 87 Nev. 402, 408, 488 P.2d
21 347, 350 (1971), we recognized the "common law offense of maintenance" as
22 existing "when a person without interest in a suit officiously intermeddles therein by
23 assisting either party with money or otherwise to prosecute or defend it." Champerty
24 is maintenance with the additional feature of an agreement for the payment of
25 compensation or personal profit from the subject of the suit. *Lum v. Stinnett*, 87
26 Nev. at 408, 488 P.2d at 350. *Vosberg Equipment v. Zupancic*, 737 P.2d at 523.

27 In the present case, the evidence has demonstrated that Third-Party Defendants Greenberg,
28 Leon Greenberg Professional Corporation, and Sniegocki are not acting on behalf of their clients'

1 interests, but rather are seeking to profit themselves from prolonged litigation and a fee-shifting
2 mechanism. The depositions and discovery responses of the named Plaintiffs, Michael Murray and
3 Michael Reno, make it clear that both had no interest in the litigation, had no understanding of the
4 litigation, and had merely signed up when solicited by Third-Party Defendants.

5 Further, when Defendant made a good faith attempt to resolve the claim, at a value
6 exceeding 10 times the value of the claim, the clients were not made aware of such offers. Third-
7 Party Defendants had no interest in what was best for the Plaintiffs, but rather stood to obtain
8 further financial gain by prolonging the litigation and escalating attorney fees in a fee-shifting type
9 case.

10 Most recently, Third-Party Defendant Greenberg confirmed that he will not engage in any
11 mediation or alternative type of resolution, nor will he disclose a settlement demand. Further,
12 Third-Party Defendants have now commenced interfering with Third-Party Plaintiffs' ability to
13 resolve and negotiate other matters with other employees.

14 Therefore, Third-Party Plaintiffs assert they have a right to contribution and indemnity for
15 the damages caused by Third-Party Defendants' purposeful escalation of damages. A defendant is
16 permitted to defend the case and at the same time assert his right of indemnity against the party
17 ultimately responsible for the damage. *Reid v. Royal Ins. Co.*, 80 Nev. 137, 390 P.2d 45 (1964).

18 Also telling is that Third-Party Defendants have continued to drag out the litigation asking
19 for extension after extension with the Court, indicating they need more time to prepare, and
20 compelling discovery which they then do not utilize. In reality, they are prolonging the litigation to
21 continue advertising and attempting to recruit more clients by stating, "**there is no set deadline for**
22 **this case to be finished.**" *Third-Party Defendants' website advertising page, Exhibit 2.* The
23 website and ad is targeted directly to Third-Party Plaintiffs A Cab's employees, and in fact is
24 labeled "**A Cab Driver's Page.**" *Exhibit 2.*

25 **2. NRCP 14 and NRCP 15 Support That Leave to Amend Should Be Granted.**

26 At any time after commencement of the action a defending party, as a third-party plaintiff,
27 may cause a summons and complaint to be served upon a person not a party to the action who is or
28 may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party

1 plaintiff. **NRCP 14.** A party may amend the party's pleading only by leave of court or by written
2 consent of the adverse party; and leave shall be freely given when justice so requires. **NRCP 15.**

3 In the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory
4 motive on the part of the movant - the leave to amend should be freely given. *Stephens v. Southern*
5 *Nev. Music Co.*, 89 Nev. 104, 507 P.2d 138 (1973). Here, there has been no bad faith in seeking
6 these amendments. In fact, Defendants are seeking these amendments well in advance of the new
7 deadlines extended by the Court and the Discovery Commissioner. *See* DCRR extending deadlines
8 at Plaintiffs' request at **Exhibit 3**. As recent as the status check of November 17, 2016, the
9 Discovery Commissioner further extended deadlines, making the recommended Close of Discovery
10 April 28, 2017. Therefore, the proposed amendment will not affect the discovery deadlines or trial
11 date.

12 II.

13 CONCLUSION

14 For the foregoing, Defendants respectfully request that this Court grant Defendants leave to
15 amend and permission to file the Third Amended Complaint attached hereto as **Exhibit 1**.

16 DATED this 29th day of November, 2016.

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

18
19 By: /s/ Esther C. Rodriguez, Esq.

20 Esther C. Rodriguez, Esq.
21 Nevada State Bar No. 6473
22 10161 Park Run Drive, Suite 150
23 Las Vegas, Nevada 89145
24 *Attorneys for Defendants*
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th 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 filing to the following:

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

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

EXHIBIT 1

EXHIBIT 1

1 AANS

2 Esther C. Rodriguez, Esq.
3 Nevada Bar No. 6473
4 RODRIGUEZ LAW OFFICES, P.C.
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9 Michael K. Wall, Esq.
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11 Hutchinson & Steffen, LLC
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13 Las Vegas, Nevada 89145
14 702-385-2500
15 mwall@hutchlegal.com
16 *Attorneys for Defendants*

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

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

15 Plaintiffs,

16 vs.

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

18 Defendants.

19 A CAB, LLC, and CREIGHTON J. NADY,

20 Third-Party Plaintiffs,

21 v.

22 LEON GREENBERG; LEON GREENBERG
23 PROFESSIONAL CORPORATION; and DANA
24 SNIEGOCKI,

24 Third-Party Defendants.

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

25 **DEFENDANTS A CAB, LLC and CREIGHTON J. NADY'S AMENDED ANSWER TO**
26 **SECOND AMENDED COMPLAINT AND THIRD-PARTY COMPLAINT**

27 Defendants A Cab, LLC and Creighton J. Nady (collectively "Defendants"), by and through
28 their attorneys of record, pursuant to NRCP Rule 12, 14, and 15 and as their Amended Answer to

1 Plaintiffs' Second Amended Complaint on file herein ("Complaint"), admit, deny and allege as
2 follows:

3 **JURISDICTION, PARTIES AND PRELIMINARY STATEMENT**

4 1. Answering Paragraph 1 of the Complaint, Defendants are without sufficient
5 information or knowledge to form a belief as to the truth of such allegations, and therefore deny the
6 same. Defendants deny the allegation that Plaintiffs are current employees.

7 2. Answering Paragraph 2 of the Complaint, Defendants admit A Cab, LLC is a
8 Nevada Limited Liability Company doing business in the County of Clark, State of Nevada, as a
9 taxicab company.

10 3. Answering Paragraphs 3 and 4 of the Complaint, Defendants admit Nady is the sole
11 and managing member of A Cab, LLC. To the extent these paragraphs contain any other factual
12 allegations requiring a response, Defendants deny same.

13 **CLASS ACTION ALLEGATIONS**

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

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

21 5. Answering Paragraph 15 of the Complaint, Defendants repeat and reallege their
22 answers to the allegations contained in Paragraphs 1 through 14 as though fully set forth herein.

23 6. Answering Paragraph 16 of the Complaint, Defendants assert that the allegations
24 contained therein are a legal conclusion to which no response is required. To the extent this
25 Paragraph contains any factual allegations requiring a response, Defendants deny same.

26 7. Answering Paragraphs 17 and 18 of the Complaint, Defendants deny each and every
27 allegation contained therein, including all sub-parts.

28 8. Answering Paragraphs 19, 20, and 21 of the Complaint, Defendants assert that the

1 allegations contained therein are a legal conclusion to which no response is required. To the extent
2 these Paragraphs contain any factual allegations requiring a response, Defendants deny same.

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

6 9. Answering Paragraph 22 of the Complaint, Defendants repeat and reallege their
7 answers to the allegations contained in Paragraphs 1 through 21 as though fully set forth herein.

8 10. Answering Paragraphs 23, 24, 25, and 26 of the Complaint, Defendants assert that
9 the allegations contained therein are a legal conclusion to which no response is required. To the
10 extent these Paragraphs contain any factual allegations requiring a response, Defendants deny same.

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

15 11. Answering Paragraph 27 of the Complaint, Defendants repeat and reallege their
16 answers to the allegations contained in Paragraphs 1 through 26 as though fully set forth herein.

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

19 13. Answering Paragraph 29 of the Complaint, Defendants assert that the allegations
20 contained therein are a legal conclusion to which no response is required. To the extent this
21 Paragraph contains any factual allegations requiring a response, Defendants deny same.

22 **AS AND FOR A FOURTH CLAIM AGAINST**
23 **Defendants NADY FOR UNJUST ENRICHMENT**

24 14. Answering Paragraph 39 of the Complaint, Defendants repeat and reallege their
25 answers to the allegations contained in Paragraphs 1 through 38 as though fully set forth herein.

26 15. Answering Paragraphs 40, 41, 42, 43, 44 and 45 of the Complaint, Defendants deny
27 each and every allegation contained therein.

28 . . .

PRAYER FOR RELIEF

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

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

As a third separate and affirmative defense, Defendants allege that Plaintiffs' damages, if any, were caused solely by the conduct of others and are not the result of any conduct of Defendants A Cab, LLC.

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

...

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

As a twenty-fourth separate and affirmative defense, Plaintiffs unreasonably and

1 unjustifiably delayed the assertion of their purported claims, all to Defendants' substantial
2 detriment.

3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

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

6 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

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

10 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

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

13 WHEREFORE, Defendants prays as follow:

- 14 1. That Plaintiffs take nothing by way of their Complaint;
15 2. That Plaintiffs' Complaint be dismissed with prejudice in its entirety and Judgment
16 entered in favor of Defendants;
17 3. That Defendants be awarded their attorneys' fees, costs, and interest; and
18 4. For such other and further relief as this Court deems just and proper.

19 DATED this 29th day of November, 2016.

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

21
22 /s/ Esther C. Rodriguez, Esq.
23 Esther C. Rodriguez, Esq.
24 Nevada Bar No. 6473
25 10161 Park Run Drive, Suite 150
26 Las Vegas, Nevada 89145
27 *Attorneys for Defendants*
28

DEFENDANTS' THIRD-PARTY COMPLAINT

Defendants/Third-Party Plaintiffs A CAB, LLC and CREIGHTON J. NADY (hereinafter "Third-Party Plaintiffs"), by and through their attorneys of record, hereby assert their Third-Party Complaint against Third-Party Defendants LEON GREENBERG, LEON GREENBERG PROFESSIONAL CORPORATION, and DANA SNIEGOCKI (hereinafter collectively "Third-Party Defendants"), as follows:

GENERAL ALLEGATIONS

1. At all times mentioned herein, Third-Party Plaintiff A Cab, LLC ("A Cab") is and was a Nevada Limited Liability Company licensed to do business as a taxicab company in the County of Clark, State of Nevada.

2. At all times mentioned herein, Third-Party Plaintiff Creighton J. Nady ("Nady"), a resident of Clark County, Nevada, is and was the sole managing member of A Cab, LLC.

3. At all times mentioned herein, it is believed Third-Party Defendant Leon Greenberg ("Greenberg"), is an attorney practicing in Clark County, Nevada who was not an employee of A Cab or Nady's, and has no relationship to either Third-Party Plaintiff.

4. At all times mentioned herein, it is believed Third-Party Defendant Leon Greenberg Professional Corporation ("Greenberg PC"), is a Nevada Domestic Corporation licensed to do business in the County of Clark, State of Nevada.

5. At all times mentioned herein, it is believed Third-Party Defendant Dana Sniegocki ("Sniegocki"), is an attorney practicing in Clark County, Nevada who was not an employee of A Cab or Nady's, and has no relationship to either Third-Party Plaintiff.

6. A Cab's obligations to pay the plaintiffs arose under employment and/or wage agreements, or in other words through an employer-employee relationship.

7. Plaintiffs' claims in the underlying action arise solely from each driver's employer-employee relationship.

8. At all time mentioned herein, Greenberg, Greenberg PC, and Sniegocki (collectively referred to as "Third-Party Defendants") never had an employer-employee relationship with any of the Third-Party Plaintiffs.

1 9. On or about September 2012, Third-Party Defendants obtained the names and
2 addresses of A Cab's drivers from someone other than A Cab.

3 10. Before Third-Party Defendants had a client or filed a lawsuit, Third-Party
4 Defendants maliciously and willfully trolled for clients by using the private personal information of
5 A Cab's drivers which he and/or she had obtained to solicit new clients. Contacting the employee
6 drivers of A Cab through personalized letters was an invasion of their privacy. Greenberg and/or
7 Sniegocki used private personal information to solicit new clients for the benefit of each of the
8 Third-Party Defendants.

9 11. Since September 2012 through the present, Third-Party Defendants have continued
10 to troll for clients by targeting Third-Party Plaintiffs' employees and drivers, including the use of
11 online marketing, direct mailers, and publications distributed to Third-Party Plaintiffs' employees.

12 12. Third-Party Defendants' solicitation of remunerative employment was a business
13 transaction which he and/or she engaged in for his and/or her own financial benefit. It was a
14 business act or practice. Third-Party Defendants let potential clients know their names and their
15 interest in performing legal services for them.

16 13. Third-Party Defendants' trolling for clients was false and deceptive. Greenberg
17 gave his opinion on liability indicating to Third-Party Plaintiffs' employees that A Cab may have
18 violated Nevada's Minimum Wage laws and may owe them and many other taxi drivers unpaid
19 minimum wages. He made calculations and expressed his personal belief that many taxi drivers
20 were collecting less than minimum wage. Greenberg's unsolicited legal advice was designed to
21 suggest he had some significant personal knowledge about and concern for the recipient.

22 14. Third-Party Defendants acted intentionally in a manner designed to interfere with the
23 agreements and relationships between Third-Party Plaintiffs and its drivers.

24 15. Third-Party Defendants have failed to prosecute the action in the best interest of the
25 Plaintiffs, but rather seek self-profit; and therefore have acted in their own financial interest and
26 benefit.

27 16. Such actions by the Third-Party Defendants include but are not limited to a complete
28 absence of communication with Plaintiffs regarding Third-Party Plaintiffs' offers of resolution, far

1 exceeding the value of the claim. Such offers were in the best interest of the individual Plaintiff,
2 but not of Third-Party Defendants, and therefore were deliberately withheld to the detriment of
3 Plaintiffs and Third-Party Plaintiffs.

4 17. Third-Party Defendants have engaged in an escalation of attorney fees and costs in
5 order to maximize the profit of a fee-shifting provision, and continue to refuse offers of alternative
6 dispute resolution, mediation, or settlement conferences all of which would be in the best interest of
7 the Plaintiffs, but not of Third-Party Defendants.

8 18. Third-Party Defendants have also damaged Third-Party Plaintiffs by interfering with
9 Third-Party Plaintiffs' business and have attempted to enjoin Third-Party Plaintiffs' settlement in
10 other matters.

11 19. With such actions, Third-Party Defendants have damaged Third-Party Plaintiffs with
12 an escalation of legal fees and costs and prolonged litigation, thereby adversely affecting the
13 business, livelihood, well-being, and reputation of Third-Party Plaintiffs.

14 FIRST CAUSE OF ACTION

15 (Champertry)

16 20. Third-Party Plaintiffs incorporate by reference each and every allegation contained
17 in paragraphs 1 through 19 of the Third-Party Complaint as specifically set forth herein.

18 21. Plaintiffs initially had no interest in this litigation, and through the time of their
19 depositions, had no understanding of their claims against Third-Party Plaintiffs.

20 22. Third Party-Defendants solicited the Plaintiffs to initiate this litigation.

21 23. Third Party-Defendants undertook this litigation at their own expense and
22 prosecuted this action on behalf of Plaintiffs in consideration for receiving, in the event of success,
23 a part of the proceeds of the litigation and personal profit from the litigation.

24 24. This conduct by Third-Party Defendants was unlawful and as a result, Third-Party
25 Plaintiffs have been damaged.

26 25. Third-Party Plaintiffs' damages include its legal fees, interruption of business for the
27 time spent on this case during work hours, and damage to its business interests.

28 . . .

SECOND CAUSE OF ACTION**(Indemnity)**

26. Third-Party Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 25 of the Third-Party Complaint as specifically set forth herein.

27. Third-Party Plaintiffs, by way of their Answer, have denied and continue to deny the allegations as lodged by the Plaintiffs and have asserted by way of their Answer appropriate affirmative defenses.

28. Third-Party Plaintiffs allege that, in the event they are found liable to the Plaintiffs for any damages, or if payment is made by Third-Party Plaintiffs to the Plaintiffs or any other party as a result of the incidents and occurrences described in the Second Amended Complaint, then Third-Party Plaintiffs' liability or payment is based upon the acts or omissions of Third-Party Defendants. Third-Party Plaintiffs therefore allege that if they are required to pay damages or any other sums pursuant to the Second Amended Complaint herein, Third-Party Plaintiffs are entitled to full implied indemnification from Third-Party Defendants.

29. It has become necessary for Third-Party Plaintiffs to retain the services an attorney to defend against the lawsuit and to bring this Third-Party Complaint. Accordingly, Third-Party Plaintiffs are entitled to recover its reasonable attorney's fees and costs incurred herein.

THIRD CAUSE OF ACTION**(Contribution)**

30. Third-Party Plaintiffs incorporate by reference each and every allegation contained in paragraphs 1 through 29 of the Third-Party Complaint as specifically set forth herein.

31. Third-Party Plaintiffs allege that in the event they are found liable to the Plaintiffs for any damages, or if payment is made by Third-Party Plaintiffs to the Plaintiffs or any other party as a result of the incidents and occurrences described in the Second Amended Complaint, then Third-Party Plaintiffs' liability of payment is partially based upon the acts and omissions of Third-Party Defendants. Third-Party Plaintiffs therefore allege that if they are required to pay damages or other sums pursuant to the Second Amended Complaint herein, they are entitled to contribution from Third-Party Defendants.

WHEREFORE, Third-Party Plaintiffs, expressly reserving the right to amend this third-party complaint, demand judgment against Third-Party Defendants and each of them as follows:

1. For an award of damages in excess of \$50,000.00;
2. Punitive damages;
3. For attorneys' fees and costs of suit; and
4. For such other and further relief as this Court may deem just and proper.

DATED this 29th day of November, 2016.

RODRIGUEZ LAW OFFICES, P.C.

By: /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

EXHIBIT 2

EXHIBIT 2

HOME

CONTACT

ABOUT THE SUIT

A CAB DRIVERS C

A Cab Drivers

- The lawsuit against A Cab has been certified as a class action for unpaid minimum wages owed to all drivers working for A Cab from July 1, 2007 through December 31, 2015. That means all drivers who worked for the company during that time period are eligible to benefit if this case has a successful outcome.
- We would like all current and former A Cab drivers who worked during the period of July 1, 2007 through the present to register their information with our office. **YOU CAN DO SO USING THE FORM ON THIS PAGE.** Registration is optional and you are not required to register. You may still benefit from the case without registering.
- If you'd like to see a copy of the Court's Order certifying this case as a class action, please click [HERE](#).
- Because there are over 2000 individuals who are members of the class, we are not able to speak to all drivers individually by phone. E-mail communications are much more efficient. There is no set deadline for this case to be finished and the case is not scheduled for trial until January of 2017, at the earliest. The best way to stay updated about this case is by registering your e-mail address with this office so we may communicate important updates to you.

PLEASE FILL OUT THIS FORM

First and Last Name *

Enter text here

Email: *

Enter email address

☐ Check here to receive email updates

Years Employed (example: 2011-2015)

Enter text here

If you'd like to update your mailing address

Enter address

Phone

Enter phone number

May we contact you to help with our case?

☐ Yes

☐ No

☐ You may only contact me about ne Cab case

SUBMIT

EXHIBIT 3

EXHIBIT 3

**THIS IS YOUR COURTESY COPY
DO NOT FORWARD TO JUDGE
DO NOT ATTEMPT TO FILE**

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11/07/2016 03:29:37 PM**

DCRR
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

Plaintiffs,

vs.

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

Defendants.

DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

Hearing Date: 10/12/16
Hearing Time: 9:00 a.m.

Attorney for Plaintiffs: Leon Greenberg, Esq., and Dana Sniegocki, Esq.,
Leon Greenberg Professional Corporation.

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

Defendants' co-counsel, Michael K. Wall, Esq., did not attend the hearing.

I.

FINDINGS

1. This matter came before the Discovery Commissioner on “*Defendants’ Motion for Protective Order or, in the Alternative, Motion to Terminate Deposition of a Cab, LLC 30(b)(6) Witness; Motion to Limit the Deposition of Creighton J. Nady; and Motion for Protective Order from Plaintiffs’ Written Discovery on Order Shortening Time*”; and Status Check for Compliance and Production.

2. As a result of the hearing of September 7, 2016, a Discovery Commissioner Report and Recommendations (“DCR&R”) was prepared and submitted by Plaintiffs without the signature of Defendants. A telephonic status check was held by the Discovery Commissioner on October 7, 2016, to address compliance. As a result, Plaintiffs brought the aforementioned DCR&R to the hearing of October 12, 2016, which was signed by Defendants, and submitted to the Discovery Commissioner for approval and entry.

3. Contained within the aforementioned DCR&R were the Recommendations which were scheduled for status check for compliance and production on October 12, 2016.

4. The first Recommendation contained within the DCR&R was “that defendants’ re-run the QuickBooks data extract previously produced so that they produce to plaintiffs the QuickBooks information, in a CSV or Excel or other file format agreed upon by the parties.” During the October 12, 2016 hearing, the parties agreed that Defendants had complied in producing this re-run data as ordered. The Discovery Commissioner finds that compliance and production is satisfied pertaining to this first Recommendation.

5. The second Recommendation was “that defendants provide supplemental responses to Requests Nos. 1-3 in Plaintiffs’ Seventh Request for the Production of Documents pertaining to defendants’ providing of health insurance benefits to the class members and Interrogatories Nos. 3-5 pertaining to the same”; “or provide a detailed sworn affidavit showing their efforts to provide informed responses to the same.” The Discovery Commissioner finds that Defendants did comply in providing this sworn affidavit with employee health summary plans that were available in a timely fashion to Plaintiffs. Plaintiffs have subsequently requested that a list of annual cost to the

1 employer now be produced; and Defendants have agreed to attempt to gather this information and to
2 provide it to Plaintiffs.

3 6. The third Recommendation stemming from the DCR&R recommended "that defendants
4 provide a copy of the Excel spreadsheet they provided to the U.S. Department of Labor as testified
5 to by Creighton J. Nady"; or if defendants are unable to provide such file, "provide a detailed sworn
6 affidavit showing efforts to provide the same." The Discovery Commissioner finds that Defendants
7 did provide the sworn affidavit as ordered; however, Plaintiffs have requested additional items to be
8 inserted into the affidavit which Defendants have agreed to incorporate.

9 7. As pertains to "*Defendants' Motion for Protective Order or, in the Alternative, Motion to*
10 *Terminate Deposition of a Cab, LLC 30(b)(6) Witness; Motion to Limit the Deposition of Creighton*
11 *J. Nady; and Motion for Protective Order from Plaintiffs' Written Discovery on Order Shortening*
12 *Time*", the Discovery Commissioner finds that Plaintiffs' written discovery is post-judgment debtor
13 discovery, and accordingly prohibits the discovery of corporate and individual tax returns as
14 requested.

↑ Also permitted is distribution of funds to family
including the total amount of distributions (see minutes). *AK*

15 8. The Discovery Commissioner finds that production of Defendant Nady's compensation from
16 Defendant A Cab, LLC will be allowed including any written proof of distribution for the time
17 period of 2007 - 2015. Further, the corporate profit and loss statements for Defendant A Cab, LLC
18 should be produced for those same years. Defendants are protected from the remainder of
19 Plaintiffs' written requests.

20 9. The Discovery Commissioner further finds that the deposition of the NRCP 30(b)(6) witness
21 for A Cab, LLC will be limited to one day of 7 hours to answer the questions not addressed in the
22 prior deposition.

23 10. To the extent the individual deposition of Defendant Nady is necessary, this deposition will
24 be limited to 3 hours.

25 11. The Discovery Commissioner finds that in lieu of the categories contained within the notice
26 of the NRCP 30(b)(6) deposition, the parties may either stipulate to any of the topics contained
27 within the notice; or Plaintiff may address these topics by interrogatory. As such, the Discovery
28 Commissioner finds that an additional 40 interrogatories may be lodged by Plaintiffs to address

1 topics within the 30(b)(6) notice. The interrogatory and deposition topics will not be duplicative.

2 12. The Discovery Commissioner previously advised counsel to prepare a stipulation pursuant
3 to EDCR 2.35, or a separate submission to the Discovery Commissioner after the parties attempt to
4 resolve the scheduling issues between themselves. As such, Plaintiffs circulated the following dates
5 which were agreed upon by Defendants with the following deadlines:

6 Close of Discovery: February 28, 2017;

7 Deadline to file motions to amend pleadings/add parties: November 29, 2016;

8 Final dates for initial expert disclosures: November 29, 2016;

9 Final date for rebuttal expert disclosures: December 29, 2016;

10 Final date to file dispositive motions: March 23, 2017.

11 13. At the hearing of October 12, 2016, Plaintiffs requested additional time for their initial
12 expert disclosures. As such, the Discovery Commissioner recommends the following additional
13 extensions to the above schedule:

14 Final dates for initial expert disclosures: December 23, 2016;

15 Final date for rebuttal expert disclosures: January 23, 2017;

16 All other dates will remain as proposed.

17 II.

18 RECOMMENDATIONS

19 IT IS HEREBY RECOMMENDED that "*Defendants' Motion for Protective Order or, in*
20 *the Alternative, Motion to Terminate Deposition of a Cab, LLC 30(b)(6) Witness; Motion to Limit*
21 *the Deposition of Creighton J. Nady; and Motion for Protective Order from Plaintiffs' Written*
22 *Discovery on Order Shortening Time*" is GRANTED in part, and DENIED in part.

23 IT IS RECOMMENDED that Defendants' motion for protective order is granted with
24 respect to the written discovery that was served, that includes both interrogatories and request to
25 produce that are identified in the motion;

26 IT IS RECOMMENDED that alternative relief be provided to Plaintiffs in that Defendant
27 will provide supporting documentation and identification of distributions, salary, payment to Mr.
28 Nady for 2007-2015.

1 IT IS RECOMMENDED that A Cab Taxi Service will provide its profit and loss statements
2 for 2007-2015.

3 IT IS RECOMMENDED that the remainder of the financial information requested is
4 protected at this time.

5 IT IS RECOMMENDED that the deposition of the NRCP Rule 30(b)(6) witness of A Cab,
6 LLC will be limited to one day, seven hours. The parties may agree to eliminate topics by
7 stipulation; or by interrogatory but the categories will not duplicate. As such, Plaintiffs are allowed
8 40 additional interrogatories to address topics contained within the notice by interrogatory, rather
9 than by deposition.

10 IT IS RECOMMENDED that the deposition of Defendant Creighton J. Nady will be limited
11 to three hours.

12 THE DISCOVERY COMMISSIONER FURTHER RECOMMENDS:

- 13 1. The Discovery Cutoff is extended to February 28, 2017;
- 14 2. Deadline to file motions to amend pleadings/add parties is extended to November 29,
15 2016;
- 16 3. Initial Expert Disclosures are extended to December 23, 2016;
- 17 4. Rebuttal Expert Disclosures are extended to January 23, 2017.
- 18 5. The deadline for filing of dispositive motions is March 23, 2017.

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


22 DATED this 3 day of November, 2016.

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25 _____
26 DISCOVERY COMMISSIONER
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Submitted by:

RODRIGUEZ LAW OFFICES, P.C.


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Case Name: Murray v. A Cab, LLC, et al.
Case No.: A-12-669926-C

Approved as to form and content:

LEON GREENBERG PROFESSIONAL CORPORATION

not approved
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Case Name: Murray v. A Cab, LLC, et al.
Case No.: A-12-669926-C

NOTICE

Pursuant to NRCP 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.

The Commissioner's Report is deemed received three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. E.D.C.R. 2.34(f).

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

_____ Mailed to Plaintiff/Defendant at the following address on the ____ day of _____, 2016:

_____ Placed in the folder of counsel in the Clerk's office on the ____ day of _____, 2016:

✓ _____ Electronically served counsel on NOV 7, 2016, Pursuant to N.E.F.C.R. Rule 9.

By Natasha Feham
Commissioner Designee

Case Name: Murray v. A Cab, LLC, et al.
Case No.: A-12-669926-C

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

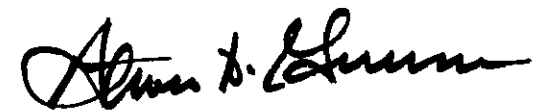
_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted.

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

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report
and Recommendations is set for _____, 2016, at ____:____ a.m.

Dated this _____ day of _____, 2016.

DISTRICT COURT JUDGE



CLERK OF THE COURT

OPP
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

**OPPOSITION TO
DEFENDANTS' MOTION FOR
JUDGMENT ON THE
PLEADINGS**

**COUNTER MOTION FOR
TOLL OF STATUTE OF
LIMITATIONS AND FOR AN
EVIDENTIARY HEARING**

Motion Hearing: 1/3/2007
In Chambers

Plaintiffs submit this opposition to defendants' motion for judgment on the pleadings and plaintiffs' counter-motion for a toll of the statute of limitations and an evidentiary hearing.

OVERVIEW

As discussed, *infra*, the Nevada Constitution imposes an absolute duty upon employers when the Nevada minimum wage rate changes to give "written notification of the rate adjustments to each of its employees." It also grants employees, in the broadest possible language, a right to "all remedies available under the law or in equity appropriate to remedy any violation" of the Nevada Constitution's minimum wage protections. Defendants never gave each of the class members a written notice of the changes in Nevada's constitutionally mandated minimum wage rate. Accordingly, the appropriate "remedy" for such "violation" of the Nevada Constitution is to equitably

1 toll the otherwise applicable statute of limitations for the class members' minimum
2 wage claims. This Court should also, if it deems it necessary, hold an evidentiary
3 hearing to determine if such a toll of the statute of limitations should be imposed.

4 **ARGUMENT**

5 **I. THE NEVADA CONSTITUTION'S "NOTICE" REQUIREMENTS** 6 **MANDATE A WAIVER BY EMPLOYERS OF ANY STATUTE OF** 7 **LIMITATIONS DEFENSE WHEN THEY FAIL TO GIVE** 8 **NOTICE OF A CHANGE IN THE MINIMUM WAGE RATE**

9 The minimum wage requirements of Nevada's Constitution became effective on
10 November 28, 2006. Nevada's Constitution also provides for a yearly adjustment to
11 its minimum wage rate and imposes a mandatory duty upon employers to advise
12 employees about the minimum wage rate:

13 An employer shall provide written notification of the rate adjustments to
14 each of its employees and make the necessary payroll adjustments by July
15 1 following the publication of the bulletin. Art. 15, Sec. 16 (A).

16 The first such rate adjustment bulletin was issued by the Nevada Labor
17 Commissioner on April 1, 2007, effectuating an increase of the Nevada Constitution's
18 minimum hourly wage from \$5.15 or \$6.15 an hour to \$5.30 or \$6.33 per hour
19 depending upon whether qualifying health insurance was provided. Ex. "C." As a
20 result, defendants should have advised each class member, in writing, of that increase
21 no later than July 1, 2007.

22 Defendants concede they never provided any written notification of any
23 minimum wage rate adjustment to each of the class members. Defendant Nady
24 testified at an NRCP Rule 30(b)(6) deposition on this (Ex. "D" # 13, deposition
25 notice, Ex. "B" transcript):

26 **Q: Are you aware that Nevada's minimum wage has increased over**
27 **the last 10 years?**

28 A: Yes.

Q: Has A Cab ever advised taxi drivers
of the amount of those increases?

A: Yes.

1 **Q: When?**

2 A: As soon as it came out. We put
3 signs out [4:06:44 inaudible]

4 **Q: So you're saying signs were posted**
5 **showing the change to the Nevada's minimum wage,**
6 **correct?**

7 A: Yes.

8 **Q: Besides the signs, was anything**
9 **else in writing given to taxi drivers, telling them**
10 **that the minimum wage in Nevada was changing?**

11 A: I don't think so. They pretty much
12 know it. They tell me before I tell them.

13 **Q: Has A Cab done anything to**
14 **determine what its requirement is, legally, in terms**
15 **of advising its taxi drivers about changes in**
16 **Nevada's minimum wage?**

17 A: We have counsel on staff over here,
18 Ms. Rodriguez, and we do have some meetings with the
19 Nevada labor board and we put signs up every time
20 there's something new. We're required to do so and
21 we put them in two or three different places. Then
22 we tell them when they're hired. Other than that, I
23 don't think we do anything else.

24 Defendants are bound by the foregoing testimony. It establishes that they did
25 not give "written notification of the [minimum wage] rate adjustments" to each of the
26 class members. Their failure to give any such notice is also attested to by class
27 member Michael Brauchle. Ex. "A."

28 Article 15, Section 16, Subsection "B" of Nevada's Constitution provides that:

 "An employee claiming violation of this section may bring an action against his
 or her employer in the courts of this State ***to enforce the provisions of this***
 section and shall be entitled to all remedies available under the law or in
 equity appropriate to remedy any violation of this section, including but not
 limited to back pay, damages, reinstatement or injunctive relief. (emphasis
 provided)

 Employees are empowered to bring civil actions to "enforce the provisions" of
Article 15, Section 16 of Nevada's Constitution and this Court must grant them all
remedies appropriate to correct "any violation" of that section including relief "in

1 equity.” Plaintiffs are not merely granted rights, individually, to damages or remedies
2 for the injuries they have suffered but a right to “enforce” the Nevada Constitution’s
3 provisions against defendants and remedy all “violations” of those provisions
4 committed by defendants.

5 Defendants had a duty under Nevada’s Constitution to both pay the minimum
6 hourly wage specified by the Constitution *and* provide to “each” class member
7 “written notification” of any change in that minimum hourly wage. Defendants’
8 violation of their written notification obligation should be subject to the most severe,
9 and adverse to the defendants, consequences, as such written notice was
10 constitutionally commanded. If defendants had complied with that obligation this
11 lawsuit would have been initiated years earlier. Such violation should equitably toll
12 the statute of limitations in this case from July 1, 2007, the date defendants were first
13 compelled to give such notice, until such time as they actually give that individual
14 written notice to each class member. The grant of such relief is not only fully
15 consistent with, it is mandated by, the foregoing broad remedial provision of the
16 Nevada Constitution’s minimum wage amendment.

17 Nevada law also recognizes that an equitable estoppel of the statute of
18 limitations should be imposed in appropriate cases. *See, Copeland v. Desert Inn*
19 *Hotel*, 673 P.2d 490, 493 (Nev. Sup. Ct. 1983). Such estoppel need not be pleaded in
20 the complaint. *See, Harrison v. Rodriguez*, 701 P.2d 1015, 1017 (Nev. Sup. Ct. 1985).
21 The defendants’ “non-advisement” of the class member’s minimum wage rights,
22 starting in July of 2007, has been found to create an equitable statute of limitations toll
23 in analogous cases under federal law. *See, Bonham v. Dresser Industries, Inc.*, 569
24 F.2d 187, 193 (3rd Cir. 1977) (Holding, and finding support for the conclusion in other
25 authorities, that an employer who fails to post statutorily required a notice in the
26 workplace of employee rights under Age Discrimination in Employment Act is subject
27 to equitable statute of limitations toll); *Kamens v. Summit Stainless, Inc.*, 586 F. Supp.
28 324, 328 (E.D.Pa 1984) (Citing *Bonham* and recognizing such “notice violation”

1 provides a basis to impose equitable estoppel on the statute of limitations of a Fair
2 Labor Standards Act (“FLSA”) claim, such act also being the federal minimum wage
3 statute); *Henchy v. City of Absecon*, 148 F. Supp. 2d 435, 439 (Dist. N.J. 2001)(Citing
4 *Kamens* and reaching same conclusion) and numerous other cases.

5 The language of Nevada’s Constitution is clear and imposes a mandatory duty:
6 “[a]n employer ***shall provide written notification*** of the rate adjustments [of the
7 minimum wage, starting in July 2007] to ***each*** of its employees.” (emphasis supplied).
8 It is undisputed that defendants provided no such “written notification” to each of the
9 class members. Indeed, prior to this litigation, it was defendants’ position that its taxi
10 drivers had no right to a minimum wage under Nevada’s Constitution so they, of
11 course, never advised any of their drivers of any such right.

12 *Copeland* directed the conducting of an evidentiary hearing by the district court
13 upon remittitur. *Id.* Plaintiffs accordingly request such a hearing, though they believe
14 the uncontested record establishes the need for an equitable toll of the statute of
15 limitations from July 1, 2007 forward and believe it is proper for the Court to grant the
16 same without any further evidentiary hearing.

17 Accordingly, although the statute of limitations for claims arising under the
18 Nevada Constitution’s minimum wage amendment is two years, in this case that
19 statute of limitations should be equitably tolled and the claims made in this case on
20 behalf of the class allowed to proceed on their merits for the time period after July 1,
21 2007.

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CONCLUSION

For all the foregoing reasons, defendants’ motion should be denied and plaintiffs’ counter-motion should be granted in its entirety together with such other further and different relief that the Court deems proper.

Dated: December 8, 2016

LEON GREENBERG PROFESSIONAL CORP.

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Tel (702) 383-6085
Attorney for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that on December 8, 2016, she served the within:

Opposition to Defendants' Motion for
Judgment on the Pleadings Counter Motion
for Toll of Statute of Limitations and for an
Evidentiary Hearing

by court electronic service to:

TO:

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

/s/ Sydney Saucier

Sydney Saucier

EXHIBIT "A"

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

11
12 **DISTRICT COURT**
13
14 **CLARK COUNTY, NEVADA**

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

18 Plaintiffs,

19 vs.

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

22 Defendants.

Case No.: A-12-669926-C

Dept.: I

DECLARATION OF MICHAEL
BRAUCHLE

23 Michael Brauchle hereby affirms and declares under penalty of perjury the
24 following:

25 1. I am a former taxi driver employee of the defendants A Cab in this case. I
26 was employed by A Cab for approximately 12 years until September 2013. I am
27 offering this declaration to explain to the Court that A Cab never, during the time I
28 worked for them, advised me or any of its other taxi drivers about any change in the
Nevada minimum wage rate for employees working in Nevada.

2. I am advised by my attorney in this case that the first change in the
Nevada minimum wage rate that it is claimed in this case the other A Cab taxi drivers
and I should have been advised about took place on July 1, 2007. I am advised by my
attorney that change in the Nevada minimum rate increased the minimum wage under
Nevada law for Nevada employees to \$5.30 per hour for employees who had available

1 to them certain employer provided health insurance and \$6.33 per hour for employees
2 for whom that health insurance was not made available. Neither myself nor any of the
3 other A Cab taxi drivers were advised by A Cab, prior to or after July 1, 2007, that we
4 were entitled to that minimum hourly wage. We were not told that orally or in any
5 written communication given to each of us by A Cab. Nor were we told that through
6 any sort of group announcement, such as through a sign or anything else that we all
7 had to see.

8 3. I understand from my attorney that on July 1, 2008 the Nevada minimum
9 wage increased to \$5.85 and \$6.85 an hour; on July 1, 2009 it increased to \$6.55 and
10 \$7.55 an hour; and on July 1, 2010 it increased to \$7.25 and \$8.25 an hour. A Cab
11 never advised the other A Cab taxi drivers or I, in any fashion, about those increases in
12 the Nevada minimum wage. We received no individual or group written or oral notice
13 or other communication about those changes in the Nevada minimum wage.

14 I have read the foregoing and affirm under penalty of perjury that the same is
15 true and correct.

16
17
18 
19 Michael Brauchle

December 8th 2016
Date

EXHIBIT “B”

DISTRICT COURT

MICHAEL MURRAY, and MICHAEL RENO,) Case No.: A-12-669926-C
Individually and on behalf of) Dept. No.: I
Others similarly situated,)
)
Plaintiff,)
vs)
A CAB TAXI SERVICE LL, A CAB, LLC)
And CREIGHTON J. NADY,)
Defendants.)
_____)

RECORDED DEPOSITION OF PMK A CAB TAXI SERVICE LLC & A CAB,
LLC

CREIGHTON NADY

Taken on November 22, 2016

At 9:41 a.m.

Evolve Downtown

400 South 4th Street, Suite 300

Las Vegas, Nevada 89101

1 APPEARANCES:

2 For the Plaintiffs: LEON GREENBERG, ESQ.

3 DANA SNIEGOCKI

4 LEON GREENBERG PROFESSIONAL CORPORATION

5 2965 South Jones Blvd, Suite E3

6 Las Vegas, Nevada 89146

7

8

9

10 For the Defendants: ESTHER RODRIGUEZ, ESQ.

11 RODRIGUEZ LAW OFFICES, PC

12 10161 Park run Drive, Suite 150

13 Las Vegas, Nevada 89145

14

15 MICHAEL WALL, ESQ.

16 HUTCHISON & STEFFEN

17 10080 Alta Drive, Suite 200

18 Las Vegas, Nevada 89145

19

20

21

22

23

24

25

1 you get a dollar or two dollars a shift, and if
2 you're called in because your trip sheet's a pigpen
3 you get 6 minutes at... I think it's 8.50 an hour.

4 Q: Mr. Nady, my question was about
5 written materials, not discussions.

6 A: Well, it's written. It's written
7 in the handbook, I'm pretty sure, what the minimum
8 wage is. Like I said, we have adjusted this to the
9 new one.

10 Q: So to be clear, you're testifying
11 that in addition to Exhibit 2 you believe there are
12 other written documents that A Cab gives to taxi
13 drivers discussing minimum wage?

14 A: I think they are presented with
15 something if not in writing, then certainly in verbal
16 when they go through their orientation.

17 Q: My questions are restricted to
18 written materials.

19 A: I don't know.

20 Q: I'm just... okay. Thank you, you
21 don't know. Are you aware that Nevada's minimum wage
22 has increased over the last 10 years?

23 A: Yes.

24 Q: Has A Cab ever advised taxi drivers
25 of the amount of those increases?

1 A: Yes.

2 Q: When?

3 A: As soon as it came out. We put
4 signs out [4:06:44 inaudible]

5 Q: So you're saying signs were posted
6 showing the change to the Nevada's minimum wage,
7 correct?

8 A: Yes.

9 Q: Besides the signs, was anything
10 else in writing given to taxi drivers, telling them
11 that the minimum wage in Nevada was changing?

12 A: I don't think so. They pretty much
13 know it. They tell me before I tell them.

14 Q: Has A Cab done anything to
15 determine what its requirement is, legally, in terms
16 of advising its taxi drivers about changes in
17 Nevada's minimum wage?

18 A: We have counsel on staff over here,
19 Ms. Rodriguez, and we do have some meetings with the
20 Nevada labor board and we put signs up every time
21 there's something new. We're required to do so and
22 we put them in two or three different places. Then
23 we tell them when they're hired. Other than that, I
24 don't think we do anything else.

25 Q: You had testified previously about

1 CERTIFICATE OF RECORDER

2 STATE OF NEVADA)

3 COUNTY OF CLARK)

4 NAME OF CASE: MICHAEL MURRAY vs A CAB TAXI SERVICE LL

5 I, Shaynelle McCalister, a duly commissioned

6 Notary Public, Clark County, State of Nevada, do hereby

7 certify: That I recorded the taking of the

8 deposition of the witness, Creighton Nady,

9 commencing on 11/22/2016.

10 That prior to being examined the witness was

11 duly sworn to testify to the truth.

12 I further certify that I am not a relative or

13 employee of an attorney or counsel of any of the

14 parties, nor a relative or employee of an attorney or

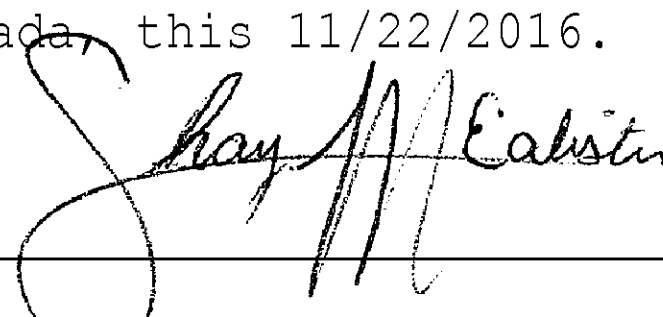
15 counsel involved in said action, nor a person

16 financially interested in the action.

17 IN WITNESS WHEREOF, I have hereunto set my

18 hand in my office in the County of Clark, State of

19 Nevada, this 11/22/2016.

20 
21 _____

22 Shaynelle McCalister Notary

23

24

25

1 CERTIFICATE OF TRANSCRIPTION

2 STATE OF NEVADA)

3 COUNTY OF CLARK)

4 NAME OF CASE: MICHAEL MURRAY vs A CAB TAXI SERVICE LL

5 I, Peter Hellman, a duly commissioned

6 Notary Public, Clark County, State of Nevada, do hereby

7 certify: That I transcribed or supervised the transcription

8 of the Recorded deposition of the witness,

9 Creighton Nady,

10 commencing on 11/22/2016. The Transcription is a true

11 and accurate representation of the testimony taken from

12 the witness, Creighton Nady.

13 I further certify that I am not a relative or

14 employee of an attorney or counsel of any of the

15 parties, nor a relative or employee of an attorney or

16 counsel involved in said action, nor a person

17 financially interested in the action.

18 IN WITNESS WHEREOF, I have hereunto set my

19 hand in my office in the County of Clark, State of

20 Nevada, this 11/22/2016.

21

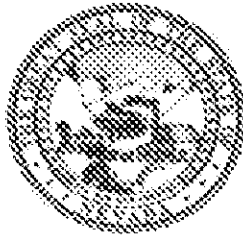
22 _____

23 Peter Hellman - Notary

24

25

EXHIBIT “C”



STATE OF NEVADA
Department of Business & Industry
OFFICE OF THE LABOR COMMISSIONER

675 Fairview Drive Suite 226

Carson City, Nevada 89701

Telephone (775) 687-4850 Fax (775) 687-6409

JIM GIBBONS
Governor

MENDY ELLIOTT
Director

MICHAEL TANCHEK
Labor Commissioner

**STATE OF NEVADA
MINIMUM WAGE
2007 ANNUAL BULLETIN**

APRIL 1, 2007

PURSUANT TO ARTICLE 15, SECTION 16(A) OF THE CONSTITUTION OF THE STATE OF NEVADA, THE GOVERNOR HEREBY ANNOUNCES THAT THE FOLLOWING MINIMUM WAGE RATES SHALL APPLY TO ALL EMPLOYEES IN THE STATE OF NEVADA UNLESS OTHERWISE EXEMPTED. THESE RATES SHALL BECOME EFFECTIVE ON JULY 1, 2007.

FOR EMPLOYEES TO WHOM QUALIFYING HEALTH BENEFITS HAVE BEEN MADE AVAILABLE BY THE EMPLOYER:

NO LESS THAN \$5.30 PER HOUR

FOR ALL OTHER EMPLOYEES:

NO LESS THAN \$6.33 PER HOUR

Copies of this bulletin may be obtained on the internet at
{<http://www.laborcommissioner.com/docs/4-1-07%20ANNUAL%20BULLETIN%20for%20site.doc>}

Copies may also be obtained from the Labor Commissioner's Offices at

675 Fairview Drive, Suite 226
Carson City, Nevada 89701
(775) 687-4850

or

555 East Washington, Suite 4100
Las Vegas, Nevada 89101
(702) 486-2650

EXHIBIT “D”

NOTC
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leongreenberg@overtimelaw.com
dana@overtimelaw.com
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL MURRAY, and MICHAEL	}	Case No.: A-12-669926-C
RENO, Individually and on behalf of		Dept.: I
others similarly situated,		
Plaintiffs,		AMENDED NOTICE TO
vs.		TAKE DEPOSITION
A CAB TAXI SERVICE LLC, A CAB,	}	
LLC and CREIGHTON J. NADY,		
Defendants.	}	

PLEASE TAKE NOTICE that pursuant to Nevada Rules of Civil Procedure § 26 and § 30(b)(6), plaintiffs, by their attorneys, Leon Greenberg Professional Corporation, will take the deposition of defendants, A CAB TAXI SERVICE LLC, and A CAB, LLC. (hereafter “defendant”) by a person(s) that it designates as possessing and having acquired prior to such deposition the best knowledge of such corporate defendant as to the following specified subjects.

TIME FRAME TO BE COVERED BY REQUESTED TESTIMONY

The testimony requested for the below subjects concerns the time frame from July 1, 2007 through the date of the deposition.

TESTIMONY REQUESTED

1. The length of the work shifts to which taxi drivers employed by defendant were assigned, meaning the length of time from the beginning of the work shift to the end of the work shift, irrespective of whether the taxi driver may have been “off duty” or “on break” or “on personal time” during one or more periods of time between the beginning and the end of the work shift. If the length of time of such assigned work shifts was not consistent throughout the period covered by this litigation the witness shall state what that length of time was during each period (*e.g.*, that it was XXX hours during the dates DATE A to DATE B and was YYY hours during the dates DATE C to DATE D and so forth). If the length of time of such assigned work shifts was not the same for all taxi drivers the witness shall provide details as to the same.
2. The average amount of time taxi drivers employed by the defendant worked each shift to which they were assigned. This means the amount of time from the beginning of their shift to the end of their shift that each taxi driver was, on average, working and not on a break (a break being a period of time during which the taxi driver was not working and was fully relieved of all work responsibilities). This includes defendant’s knowledge of the amount of break time taxi drivers employed by defendant usually, on average, took each work shift and how defendant has acquired that knowledge.
3. The time(s) of day taxi drivers were expected by defendant to be present at the defendant’s place of business prior to beginning their work shift each day and the time(s) each day taxi drivers were expected by

1 defendants to end their work shift by returning their assigned taxi cab to
2 defendant. Such testimony will include how defendant calculated the
3 start and stop time of each taxi driver's work day for the purpose of
4 recording the total amount of hours a taxi driver worked, including the
5 policies set forth in A Cab bates 0577, how those policies were enforced,
6 records relating to the enforcement of those policies, and when that
7 document was issued and such policies were created. Such testimony
8 shall include how the written policy at A Cab 00633 directing cab drivers
9 to report 15 minutes prior to their scheduled shift was enforced and
10 whether records were kept of its enforcement and the duration of that
11 policy if it was not in use consistently by defendant. Such testimony will
12 include whether the Check In and Check Out procedures set forth at Bates
13 A Cab 00650 were followed by defendant and for what time periods they
14 were so followed and whether defendant recorded the start and stop of the
15 work shift for each taxi driver employee based upon such driver's start
16 and end of those procedures, and if it was so recorded in what fashion and
17 where.

- 18
- 19 4. The amount of time during each assigned work shift that taxi driver
20 employees of defendant were allowed under defendant's policies to take
21 as break time, including but not limited to the taking of lunch or other
22 meal breaks. Such testimony will include all policies that defendant had
23 as to the taking of lunch breaks by taxi drivers and all other breaks from
24 work that taxi drivers were authorized by defendants to take during their
25 work shift. Such testimony will include all policies requiring taxi drivers
26 to use their radios or cell phones to report to defendants that they were
27 going to, or sought permission to, commence a break and all records kept
28 by the defendants of such break times. Such testimony will include the

1 policy on break time set forth at A Cab 00601, including whether that
2 policy was enforced, how it was enforced, records if any that were kept of
3 its enforcement or violations of that policy, when that policy was first
4 implemented, why it was implemented and the person(s) making the
5 decision to implement such policy. Such testimony will include whether
6 that policy was ever relaxed or modified during work shifts where drivers
7 had a strong enough demand for passenger rides that they would, if they
8 fulfilled that demand, not have the time to take the full amount of
9 mandatory breaks during the shift set forth in that policy.

10
11 5. How defendant enforced any policies requiring taxi drivers to monitor
12 their radio or respond to radio or cell phone calls. Such testimony will
13 include whether taxi drivers were required by defendant to monitor their
14 two way radio while on lunch breaks or other breaks, how they were
15 expected by defendant to monitor those two way radios, and whether taxi
16 drivers were required to remain in or at their taxi cabs during break
17 periods so they could hear and monitor their two way radios. Such
18 testimony will include how defendant enforced the policy set forth at A
19 Cab Bates 00651 about defendant considering periods of time that taxi
20 drivers could not be reached by radio or cell phone as “personal time,”
21 what periods of time that policy was enforced, records of its enforcement,
22 why that policy was implemented, who decided to implement, and if it
23 was not implemented or used why no written communication was issued
24 about defendant’s decision to not implement or use that policy and why
25 defendant’s employee handbook was not updated to remove that policy.

26
27 6. The means by which defendant determined if a taxi driver employee was
28 maintaining “an average or above productivity rate” as specified in Bates

1 A Cab 00635 including what defendant did if a taxi driver did not meet
2 that standard and how defendant made the determination as to whether
3 that standard was, or was not, met.
4
5

6 7. Defendant's break time policies in respect to what drivers were required
7 to do or refrain from doing during their break times, including but not
8 limited to whether they were required to or allowed to park and get out of
9 their taxi cabs and required to interrupt, or prohibited from interrupting,
10 their breaks by accepting customers, and whether they were required to be
11 available for customer assignments by radio calls or cell phones during
12 their break times.
13

14 8. All safety meetings taxi drivers required to attend as specified at
15 defendant's document A Cab Bates 00625 including the frequency and
16 length of such meetings and if compensation was ever paid by defendant
17 to taxi drivers for attending such meetings and if so in what amounts and
18 how that compensation was calculated and the records kept of the
19 attendance at all safety meetings and the payment of any compensation
20 for attending such meetings. Such testimony will include what actions
21 defendant took or did not take in response to taxi drivers failing to attend
22 safety meetings.
23

24 9. All systems used by defendant, including computer systems, to keep track
25 of the hours worked by their taxi drivers and/or their compensation paid.
26

27 10. All records maintained by the defendant of the hours worked during each
28 pay period by each of defendant's taxi driver employees and the

1 compensation they were paid and/or earned or were reported as earning
2 for tax purposes. This will include testimony on how and why amounts
3 of time were recorded in defendants' Quickbooks system as a "Quantity"
4 denominated under the item "Minimum Wage Subsidy" including how
5 those amounts were recorded in decimal form, why they took the decimal
6 form recorded in those records, the identities of all persons who entered
7 or had recorded that decimal form information in Quickbooks, where such
8 information was gathered from, and the defendants' processes for
9 gathering such information and recording the same.

10
11 11. All records maintained by the defendant of the hours
12 worked during each workday by each of defendant's taxi driver
13 employees. This includes all records of the break time that taxi drivers
14 employed by defendant took during their work shifts.

15
16 12. All computer systems and software used by defendant that recorded the
17 activities of their taxi cabs and taxi drivers, including whether such
18 computer systems and software created records of the dates and times that
19 taxi cabs and their drivers were engaged in any specific activities, and if
20 so, what records of such activities were created and whether such records
21 still exist and if they do so exist for what time frame. This includes all
22 computer records that indicate or record that a taxi driver did work on a
23 particular day, such as a record of a "shift" of taxi driving being
24 performed by a particular driver on a particular day, even if such
25 computer records sets forth no record of the amount of time such taxi
26 driver was working on that day.

27
28 13. All written statements defendant has given to each of its taxi driver

1 employees since June 1, 2007 advising the taxi driver employees of the
2 minimum hourly wage set forth in Nevada's Constitution. Such
3 testimony will include when those written statements were given, their
4 contents, how they were distributed including if they (it) were (was)
5 posted in one or more locations for an intended viewing by such taxi
6 driver employees collectively or if given to each taxi driver employee
7 individually in writing.
8

9 14. All efforts defendant has made to ascertain what obligations it has under
10 the law to maintain records of the hours worked by its employees,
11 including but not limited to its taxi driver employees, and including the
12 form of such records. This shall include all communications it had with
13 legal counsel about such topic both prior to and after the commencement
14 of this litigation and all changes, if any, it has made to its keeping of such
15 records since the commencement of this lawsuit. This shall include
16 defendant's understanding of what records it was legally obligated, under
17 state and federal law, to keep of the total hours worked by its employees
18 during each pay period and when it obtained such understanding (or if it
19 has had different understandings of that obligation when it obtained each
20 such understanding).
21

22 15. Defendant's knowledge of the minimum wage requirements of the Fair
23 Labor Standards Act prior to the commencement of this lawsuit and all
24 efforts, if any, that it has made prior to and after the commencement of
25 this lawsuit to comply with the same. Such testimony is to include all
26 records, procedures or policies defendant has implemented, used, or relied
27 upon any time in an attempt to monitor or ensure its compliance with
28 those requirements.

1 16. Defendant's communications with the United States Department of Labor.
2 Such testimony shall include all information about meetings and
3 communications with that office and all parties who were present at all
4 such meetings and a party to such communications and what was said by
5 each such person involved with or present at such meetings and
6 communications. Such testimony shall include all information defendant
7 possesses about what documents or other information or things were
8 provided by defendants to, or made available for review by, the United
9 States Department of Labor in connection with all of that office's
10 investigations and audits of defendant. Such testimony shall include all
11 information defendant possesses or has under its, or its agents including
12 its attorneys, custody and control about all actions that were taken by
13 defendant in response to communications by the United States
14 Department of Labor or information provided by the United States
15 Department of Labor. **Such testimony will include all facts bearing on**
16 **the defendants' preservation, loss of, previous possession of,**
17 **preparation of, and efforts since this litigation was commenced to**
18 **locate a copy of the Excel file prepared in response to that agency's**
19 **investigation, such Excel file (the "final Excel file") being testified**
20 **about by defendant Nady at his deposition held on August 18, 2015.**
21 **Such testimony will include the identity of all persons who**
22 **participated in the preparation of such final Excel file and/or**
23 **designed and/or oversaw the collection and input of information that**
24 **was gathered for that final Excel file, all details of how it was**
25 **prepared, and whether that final Excel file was prepared from**
26 **separate Excel files and the existence, location and preservation of**
27 **those separate Excel files. Such testimony will include testimony on**
28 **the existence of any prior, draft or less than fully complete prior**

1 versions of the final Excel file or other Excel files that were used to
2 construct that final Excel file that ever existed, whether that final
3 Excel file or any prior drafts or separate Excel files that were
4 assembled into that final Excel file were preserved, and the identity
5 and location of all computer hard drives where any copies of either
6 that final Excel file and/or other Excel files used to construct that
7 final Excel file or any portion or prior versions of either were stored,
8 including whether any such files were stored on a computer server.
9 Such testimony will include testimony on defendant's data
10 preservation policies and why such final Excel file and/or other Excel
11 files used to construct that final Excel file or any portion or prior
12 versions of such files cannot be located in any data archive or backup
13 of any computer hard drives that were or are maintained by
14 defendants and all of defendants' efforts to locate the same in such
15 archives or backups. Such testimony will include the identity of all
16 persons ever having possession of such final Excel file and/or other
17 Excel files used to construct that final Excel file and when defendants
18 (which includes all of their agents and employees) last saw or had
19 possession of such Excel files, where that was and the persons who
20 did so. Such testimony will include all circumstances surrounding the
21 supposed "loss" of such file(s). Such testimony will include all that is
22 known about the contents of such file(s) and any communications
23 made by defendants to other persons (including counsel for the
24 defendants) about such contents.

25
26 17. The health insurance benefits, if any, defendant's taxi driver
27 employees were eligible to participate in by virtue of their status as
28 employees of the defendant. Such information shall include:

1 (A) The amounts taxi drivers had to pay to secure coverage,
2 including the differing amounts, if any, required for them to
3 secure coverage just for themselves, for just themselves and
4 their spouse, for themselves and their dependent children,
5 and for themselves, their spouse, and their dependent
6 children (the latter being “family coverage”);
7

8 (B) All qualifications that the defendant’s taxi drivers had to
9 fulfill to be eligible to participate in the health insurance
10 plan(s) made available by defendant. This would include any
11 waiting period after the commencement of their first day of
12 employment for them to be eligible to receive such insurance
13 or any requirement that they continue to work a minimum
14 number of shifts or hours in any month or other specified
15 period. This would include the amounts defendant’s taxi
16 drivers had to pay to continue to receive such insurance, after
17 they had started receiving such insurance, if they failed to
18 meet a minimum number of shifts or hours of work
19 requirement.
20

21 (C) The nature of the health insurance provided, including
22 the coverage limitations (if any) expressed in dollars and
23 whether such insurance provided coverage for hospital costs,
24 physician costs, and surgical costs, and the amounts
25 (percentages and dollar amounts) of all deductibles and co-
26 payments required by taxi driver employees participating in
27 such health insurance.
28

1 18. Defendant's awareness of this Court's Order entered on February
2 11, 2013 and such Order's finding that defendant's taxi driver
3 employees must be paid the minimum wage specified in Nevada's
4 Constitution. Such testimony will include:

5
6 (a) When defendant first became aware of such Order;

7
8 (b) What modifications, if any, defendant made to how it
9 paid its taxi driver employees after it became aware of that
10 Order; the date it implemented all such modifications; why it
11 made such modifications, and why it made such
12 modifications on the date(s) it elected to do so and not on
13 earlier date(s);

14
15 (c) Whether defendant was aware its method of compliance
16 with the minimum wage requirements of the Fair Labor
17 Standards Act, under which it included amounts received by
18 its taxi drivers as tips towards such minimum wage
19 requirements (its use of a "tip credit"), was not permitted for
20 purposes of its compliance with the minimum wage
21 requirements of the Nevada Constitution. Such testimony
22 will include when it first became aware of the same and why,
23 after becoming aware of the same, it did not, for any time
24 period after February 11, 2013, fully comply with the
25 minimum wage requirements of the Nevada Constitution and
26 pay its taxi drivers the minimum hourly wage required by
27 Nevada's Constitution not reduced by any "tip credit." Such
28 testimony will also include the identity of the person who

1 made such decision for the defendant to not comply with the
2 Nevada Constitution and the reasons why they made that
3 decision. Such testimony will include why defendant, if it is
4 now aware it did not comply with the minimum wage
5 requirements of Nevada's Constitution after February 11,
6 2013 for its taxi drivers, has not made payments to the
7 affected taxi drivers for the amounts of unpaid minimum
8 wages they are owed.

9
10 (d) All procedures defendant currently uses, and has used
11 since February 11, 2013, to ensure it pays its taxi driver
12 employees the minimum wage required by Nevada's
13 Constitution. This includes how defendant has determined
14 what minimum wage rate it is required to pay under the
15 Nevada Constitution to its taxi driver employees including
16 the minimum wage rate it is currently paying those taxi
17 driver employees, and if it has determined that rate is not the
18 same for all of its employees how it has made that
19 determination. Such testimony will include how defendant
20 has determined, and currently determines, whether a taxi
21 driver can properly be paid the minimum wage rate
22 applicable to employees for whom "health benefits" are
23 provided (currently a \$7.25 an hour rate) instead of the
24 minimum wage rate applicable to employees for whom no
25 "health benefits" (currently an \$8.25 an hour rate) are
26 provided. If defendant makes no such determination, and
27 instead only assures all employees of a minimum wage equal
28 to the "health benefits" rate (currently \$7.25 an hour) it shall

so state.

19. The identity, name and address, and job title and job responsibilities of every person who was employed by defendant A-Cab after July 1, 2007 and who (1) Is not currently employed by defendants and (2) As part of their job for A-Cab (such job not being as a taxi driver) were involved in supervising or managing taxi drivers and/or preparing payroll for taxi drivers and/or reviewing, recording or maintaining any records of the hours worked by taxi drivers.

20. All persons and entities, including defendants' counsel and agents, that have ever had possession of the Excel spreadsheet file created by defendant A-Cab and discussed at pages 228 to 239 of defendant Nady's deposition of August 18, 2015. Defendant A-Cab shall also advise of the location of all computer hard drives where that Excel spreadsheet file has ever been placed on and the location of such computer hard drives. Defendant A-Cab shall also testify as to all efforts it has made to locate that Excel file and produce it in this litigation.

21. All procedures defendant A-Cab uses to pay to taxi drivers tips that are charged by customers to credit cards including all records of such payments that are possessed by A-Cab.

22. **In respect to the defendants' maintenance of copies of the**

1 trip sheets of class members, whether all or some of those
2 trip sheets are already in the possession of the defendants
3 in the form of PDF files (scans of the original paper trip
4 sheets). If any are so possessed in PDF form by the
5 defendants testimony shall be given about to what extent
6 they exist in that form, where and how they are
7 maintained and organized in that form (including
8 whether on a computer hard drive, a server, in an
9 archived data form) and what defendants would have to
10 do to provide a copy of all such PDF file(s) on a portable
11 hard drive or other media. Defendants shall also testify
12 about when it started maintaining those trip sheets in
13 PDF form and for what period of time, if any, it currently
14 only possesses in paper form either those original trip
15 sheets or paper copies of such trip sheets.

16
17 23. In respect to the defendants' production of selected
18 information from its Cab Manager software, including
19 but not limited to its production of the computer file
20 "DataExport 7-15-16.txt" it shall explain why for certain
21 periods of time such information includes additional
22 details, specifically why such produced information for
23 certain taxi driver shifts includes a "Cab_Start" time and
24 a "Cab_Finish" time but for other taxi driver shifts no
25 such information has been provided. Such testimony will
26 include all efforts made by defendants to produce Cab
27 Manager information in this litigation, what they
28 attempted to produce and how they attempted to produce

1 it, and the contents of, and parties to, all communications
2 about such production with any non-employees of
3 defendants who assisted defendants in providing such
4 information. Such testimony will also include whether
5 the defendants' Cab Manager stored information ever
6 included a "Cab_Start" time and a "Cab_Finish" time
7 for the taxi drivers' work shifts that defendants are now
8 unable to produce such information for. Such testimony
9 will also involve all uses of the Cab Manager stored
10 information by the defendants including their use, if any,
11 of such "Cab_Start" time and a "Cab_Finish" times.

12
13 24. In respect to defendant's attempts to comply with
14 plaintiffs' seventh request for production of documents
15 items 1 to 3, with plaintiffs' third set of interrogatories,
16 items 3 to 5, and to provide information on the health
17 insurance benefits (the term "health insurance benefits"
18 means medical insurance benefit plans such as those
19 offered to class members and described in Ex. "A"
20 hereto, which is only an example applicable to the certain
21 limited periods detailed therein) offered to class members
22 ("the health insurance information"), defendant shall
23 advise:

24
25 (1) Of the nature of all records maintained by the
26 defendants that contain any of the information sought by
27 class counsel in respect to the health insurance benefits
28 offered by defendants to the class members. This would

1 include, without limitation, the existence of originals or
2 copies of all executed applications and contracts for
3 health insurance and all documents (whether as part of
4 those applications or contracts or otherwise) detailing the
5 nature of the health insurance secured by defendants
6 through such contracts and the cost that would be paid
7 by each participant in such insurance depending on the
8 level of insurance coverage they elected; records of
9 enrollment of class members in such health insurance
10 plans; records of payments made by defendants for such
11 health insurance plans; records of when class members
12 became eligible to participate in such health insurance
13 plans including the notifications they were given about
14 such eligibility; and all other records in the defendants'
15 possession that contain information on the eligibility of
16 the class members to participate in its health insurance
17 benefits and/or such eligibility standards and/or the
18 insurance premium that would have to be paid by the
19 class members depending upon their participation in such
20 insurance under single (employee coverage only), married
21 (employee and spouse coverage) and dependent
22 (employee and children or employee, spouse and children
23 coverage) coverage status.

24
25 (2) In respect to the records identified in (1)
26 immediately preceding, detail the nature of such
27 records and how they are maintained, either in a
28 computer file form or on paper, and their location and

1 how they can be accessed; whether defendants maintain
2 any record of class members' health insurance eligibility
3 status in their computer system (in which event they must
4 specify how such information is recorded and can be
5 accessed or retrieved) and how (including who is
6 responsible for doing so) they keep track of that status
7 and take steps to be sure they properly advise class
8 members of that status.

9
10 (3) Defendants must identify the name and address of all
11 agents or insurance brokers who have assisted them or
12 been involved in providing them with, and/or in their
13 application for, health insurance that class members were
14 eligible to participate in. Defendants shall also testify
15 about all communications they have had with such agents
16 or brokers about providing the health insurance
17 information to defendants, and all other efforts they
18 made to gather such health insurance information, both
19 prior to, and after, asserting in their answer to
20 Interrogatory number 3 that it would be "unduly
21 burdensome" to provide such information. Defendants
22 shall also state what efforts they made to collect the
23 information set forth in response to plaintiff's
24 Interrogatories numbers 4 and 5, including who
25 undertook those efforts and what they did to ascertain the
26 information set forth in those interrogatory responses.

27
28 (4) In respect to the "Employee Health Plan" summaries

1 discussed in the affidavit of Creighton J. Nady dated
2 September 21, 2016, defendants shall explain how such
3 documents have previously been kept by defendants;
4 where they have been kept in the past by defendants; and
5 all efforts made to locate additional “Employee Health
6 Plan Summaries” that such affidavit says cannot be
7 located, including the identity of all persons undertaking
8 those efforts and what those efforts consisted of, the dates
9 such efforts were undertaken and the results of such
10 efforts including all contacts and communications made
11 with defendants’ insurance broker(s) about obtaining
12 copies of the same.

13 The witness(es) is to be produced on the 22th day of November, 2016 at the
14 hour of 9:30 a.m. or another agreed date and time at the **Offices of Evolve Deposition**
15 **Services, located at 400 South 4th Street, Suite 400, Las Vegas, Nevada, 89101**, and
16 will continue day to day until completed. Such witness(es) will be examined as to the
17 foregoing and all facts and circumstances bearing upon any and all issues in this
18 litigation. Such deposition shall be recorded via digital means.

19
20 Dated this 4th day of November, 2016.

21
22 Leon Greenberg Professional Corporation

23
24 By: /s/ Leon Greenberg

25 LEON GREENBERG, Esq.
26 Nevada Bar No.: 8094
27 2965 South Jones Blvd- Suite E3
28 Las Vegas, Nevada 89146
(702) 383-6085

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that on November 21, 2016, she served the within:

AMENDED NOTICE TO TAKE DEPOSITION

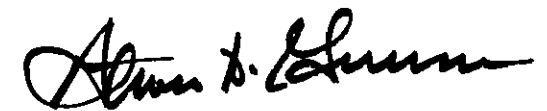
by court electronic service to:

TO:

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

/s/ Sydney Saucier

Sydney Saucier



CLERK OF THE COURT

OPPM
LEON GREENBERG, ESQ., SBN 8094
DANA SNIEGOCKI, ESQ., SBN 11715
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

**OPPOSITION TO
DEFENDANTS' MOTION FOR
LEAVE TO AMEND ANSWER
TO ASSERT THIRD-PARTY
COMPLAINT**

AND

**COUNTER-MOTION FOR
SANCTIONS AND
ATTORNEYS' FEES**

Hearing Date: 1/3/2017
Hearing Time: 9:00 a.m.

Plaintiffs, through their attorneys, hereby submit this opposition to defendants' motion for leave to amend their answer to file a third-party complaint and counter-motion for sanctions and attorneys' fees.

OVERVIEW

Defendants' motion for leave to amend their Answer to now sue plaintiffs' counsel (court appointed class counsel) as "third party defendants" on claims of "Champerty" and contribution/indemnification are patently abusive, frivolous, and made solely to exhaust class counsel and hinder their prosecution of this case. Defendants' proposed Third-Party Complaint against class counsel asserts non-existent claims never recognized by any common law court and they have proposed no factual allegations that could even remotely support such non-existent claims.

1 Class counsel has prepared and served on defendants a proposed motion for
2 sanctions under Nev. R. Civ. P. 11 for the filing of this frivolous motion. That motion
3 will be ripe for filing, and filed, pursuant to Nev. R. Civ. P. 11(c)(1), on December 27,
4 2016, after the 21 day safe harbor provision expires. But given the abject abuse of this
5 Court by defendants, and their counsel, plaintiffs are requesting through a counter-
6 motion they are now presenting that the Court impose sanctions, including an award of
7 attorneys' fees, pursuant to the other provisions of the Nevada Revised Statutes and
8 the local rules of this Court.

9 ARGUMENT

10 **I. LEAVE TO AMEND MUST BE DENIED AS DEFENDANTS' COUNSEL**
11 **SEEKS TO FILE A KNOWINGLY VOID THIRD PARTY COMPLAINT**
12 **AGAINST PLAINTIFFS' COUNSEL FOR "CHAMPERTY,"**
13 **"CONTRIBUTION," AND "INDEMNITY, WHILE KNOWING FULL**
14 **WELL THOSE CLAIMS ARE IMPOSSIBLE AS A MATTER OF LAW**

15 "A motion for leave to amend is addressed to the sound discretion of the trial
16 court and its action in denying the motion should not be held to be error unless that
17 discretion has been abused." *Stephens v. Southern Nev. Music Co.*, 89 Nev. 104, 105
18 (Nev. Sup. Ct. 1973). "NRCP 15(a) provides that leave to amend a complaint shall be
19 'freely given when justice so requires.' However, leave to amend should not be
20 granted if the proposed amendment would be futile." *Halcrow, Inc. v. Eighth Judicial*
21 *Dist. Court of the State*, 302 P.3d 1148, 1152 (Nev. Sup. Ct. 2013), citing *Allum v.*
22 *Valley Bank of Nev.*, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993). "A proposed
23 amendment may be deemed futile if the plaintiff seeks to amend the complaint in order
24 to plead an impermissible claim." *Id.*

25 Defendants are seeking to file a Third-Party Complaint against class counsel
26 asserting three wholly frivolous, non-existent, and impermissible "claims" that have no
27 basis in law.

28 **A. "Champerty" is not a cause of action in Nevada or anywhere.**

No cause of action exists for champerty or any damages alleged to have been
incurred by a third party to a champertous agreement:

1 We conclude that there was no secure basis for the district court to predict that
2 the Nevada Supreme Court would recognize a common-law tort cause of action
3 for damages or equitable relief asserted by a stranger to an allegedly
4 champertous agreement. The Nevada Supreme Court stated a century ago that
5 “[t]he great weight of authority is to the effect ... that the rule rendering
6 contracts void for champerty, cannot be invoked except between the parties to
7 the champertous agreement in cases where such contract is sought to be
8 enforced.” *Del Webb Communities, Inc. v. Partington*, 652 F.3d 1145, 1154 (9th
9 Cir. 2011) citing and quoting *Prosky v. Clark*, 32 Nev. 441, 109 P. 793, 794
10 (1910).

11 To the extent any issue of champerty might even exist in respect to class
12 counsels’ relationship with the named plaintiffs and the class members, that is an issue
13 for the Nevada State Bar to deal with. Similarly, nowhere do defendants allege class
14 counsel’s advertisements or communications with the class members, that are alleged
15 to have improperly fomented this litigation, were illegal or contrary to the State Bar’s
16 rules (they were not). Nor does defendants’ counsel wish to risk the displeasure of the
17 State Bar by filing with that office such frivolous complaints of champerty or false
18 advertising, particularly since the State Bar is not going to waste class counsel’s time
19 by forcing it to respond to such a complaint. Instead defendants’ counsel asserts the
20 absurd concept that principles of champerty allow *any defendant* in *any case* where the
21 plaintiff’s counsel is compensated on a contingency (whether through a fee shifting
22 statute or percentage of recovery) basis to make a claim against such plaintiff’s
23 counsel. Under defendants’ counsel’s theory, the mere presence of such a personal
24 financial interest in the outcome of a case, something possessed by every contingency
25 fee compensated plaintiffs’ counsel in every litigation, generates a “champerty” claim
26 by a defendant against such plaintiff’s counsel. And it does so despite the State Bar’s
27 express authorization of contingency fee agreements between attorneys and clients.

28 **B. No claim for “contribution” is possible when defendants
do not allege, and cannot allege, that class counsel was a
joint tortfeasor with defendants.**

In Nevada “contribution is a creature of statute” and governed by NRS 17.225 to
17.305. *Doctors Co. v. Vincent*, 98 P.3d 681, 686 (Nev. Sup. Ct. 2004). “[T]he
remedy of contribution allows one tortfeasor to extinguish joint liabilities through

1 payment to the injured party, and then seek partial reimbursement from a joint
2 tortfeasor for sums paid in excess of the settling or discharging tortfeasor's equitable
3 share of the common liability.” *Id.*

4 Class counsel is not alleged anywhere in the proposed third party complaint to
5 have acted as a joint tortfeasor and contributed, with the defendants, to the class
6 members’ injuries. Nor, given the nature of the class claims, could any such joint
7 tortfeasor allegations be made against class counsel. The claims against defendant A-
8 Cab do not sound in tort but arise under Nevada’s statutes and Constitution. Ex. “A,”
9 Second Amended and Supplemental Complaint. Accordingly, contribution in respect
10 to the claims against A-Cab is impossible since they are not tort claims. Similarly, the
11 claims against Nady based upon unjust enrichment and his status as an alter ego of A-
12 Cab involve equitable remedies, not tort causes of action, and contribution cannot
13 apply to those claims. *See, In Re AMERCO Derivative Litig.*, 252 P.3d 681, 703 (Nev.
14 Sup. Ct. 2011) (“Unjust enrichment occurs whenever a person has and retains a benefit
15 which in equity and good conscience belongs to another.” *quoting Nevada Industrial*
16 *Dev. v. Benedetti*, 741 P.2d 802, 804 n.2 (Nev. Sup. Ct. 1987)) and *LFC Mktg. Group,*
17 *Inc. v. Loomis*, 8 P.3d 841, 845-46 (Nev. Sup. Ct. 2000) (Alter ego doctrine is an
18 equitable remedy to protect those injured by an abuse of the corporate form)

19 While the claims against Nady under theories of aiding and abetting, civil
20 conspiracy, and concert of action do sound in tort, the nature of those tort claims, and
21 the facts alleged in this case (and not alleged by defendants) make contribution on
22 those claims also impossible as a matter of law. Civil conspiracy is an intentional tort
23 that requires not just proof of an agreement between the tortfeasors but an intent by the
24 tortfeasors to cause harm. *See, Sutherland v. Gross*, 772 P.2d 1287, 1290 (Nev. Sup.
25 Ct. 1989) (“An actionable [civil] conspiracy consists of a combination of two or more
26 persons who, by some concerted action, intend to accomplish an unlawful objective for
27 the purpose of harming another, and damage results from the act or acts.”) Under NRS
28 17.255 the remedy of contribution is unavailable to those who commit intentional

1 torts.

2 Nevada, in recognizing the tort of aiding and abetting, and the separate tort of
3 concert of action, has adopted the definitions for each of the Restatement 2nd of Torts,
4 § 876(a) and 876(b) respectively .¹ See, *Dow Chem. Co. v. Mahlum*, 970 P.2d 98, 111-
5 112 (Nev. Sup. Ct. 1998). A “liability attaches for concert of action if two persons
6 commit a tort while acting in concert with one another or pursuant to a common
7 design” while “liability attaches for civil aiding and abetting if the defendant
8 substantially assists or encourages another's conduct in breaching a duty to a third
9 person.” *Id.*

10 The *per se* bar on contribution among intentional tortfeasors of NRS 17.255
11 does not apply to all aiding and abetting or concert of action tort claims. “[C]ivil
12 conspiracy requires that the defendants have an intent to accomplish an unlawful
13 objective for the purpose of harming another, while concert of action merely requires
14 that the defendants commit a tort while acting in concert.” *Dow Chem. Co.* 970 P.2d
15 at 112. But while two or more persons committing such torts may be able to seek
16 contribution, they ***must still be joint tortfeasors causing injury to a third party.***

17 The proposed third-party complaint contains no allegation about how class
18 counsel was a joint tortfeasor with Nady, in respect to the underlying torts of aiding
19 and abetting or concert of action alleged against Nady. It fails to do so because those
20

21 ¹ Section 876 states: For harm resulting to a third person from the tortious
22 conduct of another, one is subject to liability if he
23 (a) does a tortious act in concert with the other or pursuant to a common design with
24 him, or
25 (b) knows that the other's conduct constitutes a breach of duty and gives substantial
26 assistance or encouragement to the other so to conduct himself, or
27 (c) gives substantial assistance to the other in accomplishing a tortious result and his
28 own conduct, separately considered, constitutes a breach of duty to the third person.
Caveat: The Institute takes no position on whether the rules stated in this Section are
applicable when the conduct of either the actor or the other is free from intent to do
harm or negligence but involves strict liability for the resulting harm.

1 torts by Nady involve the illegal acts (non-payment of minimum wages by A-Cab) that
2 damaged the class members and that Nady aided, abetted and acted in concert to
3 perform. A claim for contribution will not lie absent an allegation in the third party
4 complaint that class counsel, along with Nady, aided, abetted, and acted in concert as
5 joint tortfeasors to cause A-Cab to not pay minimum wages. No such activities by
6 class counsel are alleged and as a result the contribution claim is completely frivolous.

7 **C. No claim for “implied indemnification” exists as the**
8 **damages sought by the class arise solely from a failure**
9 **by A-Cab to pay minimum wages; class counsel is**
10 **not alleged to be a joint tortfeasor causing such damages**
11 **or with a legal liability to the class members; and class**
12 **counsel has no nexus or special relationship with defendants.**

13 “Noncontractual or implied indemnity is an equitable remedy that allows a
14 defendant to seek recovery from other potential tortfeasors whose negligence primarily
15 caused the injured party's harm.” *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793,
16 801 (Nev. Sup. Ct. 2009), *citing Doctors Company v. Vincent*, 98 P.3d 681, 686 (Nev.
17 Sup. Ct. 2009). As discussed, the proposed third party complaint completely lacks any
18 allegation that class counsel were joint tortfeasors nor is such a status possible given
19 the nature of the class claims. Nor does this case involve any alleged situation where
20 class counsel’s “negligence primarily caused” the class members’ damages. Or for
21 that matter any negligence claim at all.

22 It is also established that in Nevada to recover on an implied indemnity claim
23 the party seeking indemnification must plead and prove that the “potential indemnitor
24 must be liable for the injuries to the plaintiff.” *Rodriguez v. Primadonna*, 216 P.3d at
25 802. All of the class damages flow from an alleged failure by A-Cab, their employer,
26 to pay minimum wages. No allegation is made in the proposed third-party complaint
27 that class counsel had any obligation to pay those minimum wages of the class
28 members or any duty to A-Cab to see that they were paid. In fact, the exact opposite is
alleged, that class counsel had no employee-employer, or presumably any other agency
or entrusted relationship, with the defendants. *See*, ¶¶ 3-8 of proposed third party

1 complaint. Since class counsel had no legal liability to the class members for the
2 alleged damages (the unpaid minimum wages owed by A-Cab) being collected for the
3 class from the defendants, no claim for implied indemnification can be made against
4 class counsel.

5 As also discussed in *Rodriguez v. Primadonna, id.*, absent a nexus or special
6 relationship between defendants and their proposed indemnitor (class counsel), a claim
7 for implied indemnification will not lie. “Implied indemnification is not a license to
8 assert a cross-claim against any third party in hope of alleviating the burden of costs
9 associated with defending litigation.” *Id.* No nexus or special relationship exists
10 between class counsel and the defendants and the proposed third party complaint
11 expressly alleges the *absence* of any such relationship. *See*, ¶¶ 3-8 of proposed third
12 party complaint. Indeed, the foregoing language from *Rodriguez v. Primadonna* is
13 clearly intended as a warning, that defendants’ counsel has intentionally ignored, that
14 the sort of “implied indemnification” claim they propose to make is absolutely
15 improper.

16 COUNTERMOTION FOR SANCTIONS

17 **II. DEFENDANTS AND THEIR COUNSEL SHOULD BE 18 SANCTIONED AND ATTORNEY’S FEES AWARDED**

19 The manifest impropriety and abusive nature of the conduct of defendants and
20 their counsel needs no elaboration. Defendants’ counsel sullies this Court with such
21 abusive conduct which should not be tolerated.

22 Plaintiffs’ counsel has already served on defendants and their counsel a
23 proposed motion for sanctions under Nev. R. Civ. P. 11 for the filing of this frivolous
24 motion which seeks to add claims against plaintiffs’ counsel that have no basis in law
25 or fact. *See*, Ex. “B,” proposed motion and correspondence to defendants’s counsel.
26 Such Rule 11 motion is not yet ripe for filing (such motion, pursuant to Nev. R. Civ. P.
27 11(c)(1) cannot be filed until December 27, 2016, after the 21 day safe harbor
28 provision expires), but plaintiffs are requesting the Court impose sanctions, including

1 an award of attorneys' fees, pursuant to NRS 41.670(1)(b) (the Nevada "anti-SLAPP"
2 statute), and EDCR Rule 7.60(b)(3) and its inherent authority. Up to this point,
3 plaintiffs' counsel has already expended no fewer than 10.7 hours of attorney time on
4 this motion and in preparing their proposed motion for sanctions under Rule 11 (Ex.
5 "B"), all of the work therein being incorporated into this opposition and
6 countermotion. *See*, Ex. "C" Declaration of Leon Greenberg. At a modest rate of
7 \$450 per hour, an award of \$4,815.00 in attorneys' fees would be proper to
8 compensate counsel for their time consumed opposing defendants' frivolous motion.
9 If the Court believes a "rounded" or somewhat reduced fee should be awarded, \$4,000
10 is proposed. If the Court were to just compensate class counsel for the time already
11 expended on this motion, plus one additional hour for motion hearing time, by just
12 Leon Greenberg (total of 8.3 hours), at the rate it has previously awarded in this
13 litigation (Ex. "D," p. 7, Order entered 3/4/16 directing fee payment of \$400 an hour to
14 Leon Greenberg), such an award would be no less than \$3,320. In addition to this
15 Court's inherent authority to punish such abusive conduct by counsel and parties who
16 appear before it, a variety of statutes and court rules authorize such an award of
17 attorney's fees and sanctions in addition to the typical Rule 11 sanctions.

18 **A. An award of attorney's fees and additional sanctions of \$10,000**
19 **to be paid to the plaintiffs' counsel is authorized by Nevada's**
20 **anti-SLAPP protections set forth at NRS 41.670 and 41.660.**

21 Nevada's anti-SLAPP ("Strategic Lawsuits Against Public Participation") law is
22 expressly intended to deter, stop, and punish persons who bring lawsuits intended to
23 repress "free speech in direct connection with an issue of public concern." NRS §
24 41.637. Defendants' proposed third-party complaint against plaintiffs' counsel is
25 expressly made in retaliation for such counsel's public, and legally protected,
26 communications about the defendants' business practices. Indeed, it **relies upon the**
27 **supposed impropriety of those legally protected communications in alleging its**
28 **basis for relief.** California has expressly found that the exact same sort of legally
protected communications by an attorney, as those at issue in this case, are entitled to

1 anti-SLAPP law protections. *See, Simpson Strong-Tie Co. v. Gore*, 230 P.3d 1117
2 (Cal. Supreme Ct., 2010) (Upholding district court grant of SLAPP law relief to
3 attorneys sued by manufacturer for making public advertisements seeking to represent
4 certain allegedly injured members of the public against manufacturer).

5 In addition to attorney's fees, the Court is authorized by NRS 41.670(1)(b) to
6 award plaintiffs' counsel up to \$10,000 as sanctions as part of the relief in granting
7 this counter-motion. It should do so.

8 **B. An award of attorney's fees and sanctions**
9 **is authorized by EDCR Rule 7.60(b)(3).**

10 EDCR Rule 7.60(b)(3) authorizes the imposition of "any and all sanctions" and
11 awards of attorney's fees whenever "an attorney or a party without just cause" engages
12 in conduct that "multiplies the proceedings in a case as to increase costs unreasonably
13 and vexatiously." Defendants and their counsel have engaged in that precise conduct.
14 There is no purpose or validity to their proposed third-party complaint except to harass
15 and burden class counsel and consume class counsel's time and obstruct these
16 proceedings.

17 **CONCLUSION**

18 For all the foregoing reasons, defendants' motion should be denied and plaintiffs'
19 counter-motion should be granted in its entirety together with such other further and
20 different relief that the Court deems proper.

21 Dated: December 16, 2016

22 LEON GREENBERG PROFESSIONAL CORP.

23
24 /s/ Leon Greenberg
25 Leon Greenberg, Esq.
26 Nevada Bar No. 8094
27 2965 S. Jones Boulevard - Ste. E-3
28 Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Plaintiffs

CERTIFICATE OF MAILING

The undersigned certifies that on December 16, 2016, she served the within:

Opposition to Defendants' Motion for Leave to Amend Answer to Assert Third-party Complaint

And

Counter-motion for Sanctions and Attorneys' Fees

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"

Attorneys for Plaintiffs

Defendants.

**ARBITRATION EXEMPTION
CLAIMED BECAUSE THIS IS
A CLASS ACTION CASE**

1. The plaintiffs, MICHAEL MURRAY and MICHAEL RENO, (the "individual plaintiffs" or the "named plaintiffs") are residents of the State of Nevada and during all relevant times were residents of Clark County, Nevada, and all plaintiffs are current employees of the defendants.

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

3. The defendant CREIGHTON J. NADY ("NADY") either directly, or through other entities that he controls and owns, is the sole owner of the corporate defendants.

4. The defendant NADY exercises complete control over the activities of the corporate defendants, in that he is the highest level manager and decision maker of the corporate defendants and there are no other officers, directors, owners, members, managers, principals or other employees of the corporate defendants who can override or modify against his will any decision he makes in respect to the conduct of the corporate defendants.

CLASS ACTION ALLEGATIONS

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

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

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

1 requirements of said Nevada Constitutional Provision, did not equal at least the
2 minimum hourly wage provided for therein.

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

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

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

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

20 12. The individual plaintiffs will fairly and adequately represent the interests
21 of the class and have no interests that conflict with or are antagonistic to the interests
22 of the class and have retained to represent them competent counsel experienced in the
23 prosecution of class action cases and will thus be able to appropriately prosecute this
24 case on behalf of the class.

25 13. The individual plaintiffs and their counsel are aware of their fiduciary
26 responsibilities to the members of the proposed class and are determined to diligently
27 discharge those duties by vigorously seeking the maximum possible recovery for all
28 members of the proposed class.

1 14. There is no plain, speedy, or adequate remedy other than by maintenance
2 of this class action. The prosecution of individual remedies by members of the class
3 will tend to establish inconsistent standards of conduct for the defendants and result in
4 the impairment of class members' rights and the disposition of their interests through
5 actions to which they were not parties. In addition, the class members' individual
6 claims are small in amount and they have no substantial ability to vindicate their
7 rights, and secure the assistance of competent counsel to do so, except by the
8 prosecution of a class action case.

9
10 **AS AND FOR A FIRST CLAIM FOR RELIEF ON BEHALF OF THE NAMED**
11 **PLAINTIFFS AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO**
12 **NEVADA'S CONSTITUTION**

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

16 16. Pursuant to Article 15, Section 16, of the Nevada Constitution the named
17 plaintiffs and the class members were entitled to an hourly minimum wage for every
18 hour that they worked and the named plaintiffs and the class members were often not
19 paid such required minimum wages.

20 17. The defendants' violation of Article 15, Section 16, of the Nevada
21 Constitution involved malicious and/or fraudulent and/or oppressive conduct by the
22 defendants sufficient to warrant an award of punitive damages for the following,
23 amongst other reasons:

24 (a) Defendants despite having, and being aware of, an express
25 obligation under Article 15, Section 16, of the Nevada
26 Constitution, such obligation commencing no later than July 1,
27 2007, to advise the plaintiff and the class members, in writing, of
28 their entitlement to the minimum hourly wage specified in such
constitutional provision, failed to provide such written advisement;

1 (b) Defendants were aware that the highest law enforcement
2 officer of the State of Nevada, the Nevada Attorney General, had
3 issued a public opinion in 2005 that Article 15, Section 16, of the
4 Nevada Constitution, upon its effective date, would require
5 defendant and other employers of taxi cab drivers to compensate
6 such employees with the minimum hourly wage specified in such
7 constitutional provision. Defendants consciously elected to ignore
8 that opinion and not pay the minimum wage required by Article
9 15, Section 16, of the Nevada Constitution to its taxi driver
10 employees in the hope that it would be successful, if legal action
11 was brought against it, in avoiding paying some or all of such
12 minimum wages;

13 (c) Defendants, to the extent they believed they had a colorable
14 basis to legitimately contest the applicability of Article 15, Section
15 16, of the Nevada Constitution to its taxi driver employees, made
16 no effort to seek any judicial declaration of its obligation, or lack
17 of obligation, under such constitutional provision and to pay into
18 an escrow fund any amounts it disputed were so owed under that
19 constitutional provision until such a final judicial determination
20 was made;

21 (d) Defendants were the subject of an investigation by the United
22 States Department of Labor in respect to defendants' compliance
23 with the minimum wage requirements of the federal Fair Labor
24 Standards Act, 29 U.S.C. § 201-219 which investigation was
25 concluded on April 30, 2009. Such investigation did not
26 determine if any violations of the Fair Labor Standards Act were
27 committed by the defendants, and no claim is made in this case
28 against the defendants under the Fair Labor Standards Act. Such

1 investigation resulted in defendants on April 30, 2009, being
2 advised by the U.S. Department of Labor that they must keep a
3 record of the actual hours worked by their taxi driver employees
4 and that defendants must pay their taxi drivers the minimum
5 hourly wage, defendants also being told such minimum hourly
6 wage at that time under Nevada law was \$6.85 an hour. Rather
7 than follow such advisement, defendants intentionally acted to not
8 institute any system that would keep an express, confirmed, and
9 accurate record of the hours worked by such taxi driver employees,
10 such as a dedicated payroll time clock system. Defendants also
11 acted to force their taxi driver employees to falsely record their
12 activities on their daily taxi driver trip sheets so as to make it
13 appear that the taxi drivers were taking many hours of breaks
14 during their working days, which was not true and defendants
15 knew was not true. Defendants fostered such inaccurate and
16 untrue recording by their taxi drivers of their work activities by
17 refusing to allow taxi drivers to submit accurate daily taxi driver
18 trip sheets that did not have such excessive, and untrue, recordings
19 of break time. Defendants enforced their "break time listings
20 required" policy on their taxi drivers' trip sheets with the
21 intentional goal of making it impossible for those taxi drivers to
22 collect the minimum wages they were owed and to conceal
23 defendants' violations of the Nevada Constitution. Such actions
24 by the defendants included, among other things, actually reviewing
25 the "fares booked" per shift on each taxi driver's trip sheet and
26 requiring additional break time be listed for those shifts where the
27 fare bookings were so low that minimum wages would be owed to
28 the taxi driver if their break times, as listed on their trip sheets,

1 were not inflated.

2 18. Defendants engaged in the acts and/or omissions and/or fraudulently
3 conduct detailed in paragraph 17 in an intentional scheme to maliciously, oppressively
4 and fraudulently deprive its taxi driver employees of the hourly minimum wages that
5 were guaranteed to those employees by Article 15, Section 16, of the Nevada
6 Constitution. Defendants so acted in the hope that by the passage of time whatever
7 rights such taxi driver employees had to such minimum hourly wages owed to them by
8 the defendants would expire, in whole or in part, by operation of law. Defendant so
9 acted consciously, willfully, and intentionally to deprive such taxi driver employees of
10 any knowledge that they might be entitled to such minimum hourly wages, despite the
11 defendant's obligation under Article 15, Section 16, of the Nevada Constitution to
12 advise such taxi driver employees of their right to those minimum hourly wages.
13 Defendants' malicious, oppressive and fraudulent conduct is also demonstrated by its
14 failure to make any allowance to pay such minimum hourly wages if they were found
15 to be due, such as through an escrow account, while seeking any judicial determination
16 of its obligation to make those payments.

17 19. The rights secured to the plaintiffs and the class members under Nevada's
18 Constitution, Article 15, Section 16, for a minimum level of remuneration for their
19 labor as defendants' employees, constitute property rights, in that such level of
20 remuneration constitutes property of the plaintiffs and the class members, to wit, a sum
21 of money that they have a right to possess for the inalienable value of their labor,
22 which labor the defendants obtained from them as employers. Defendants have
23 obtained such property, the minimum wages properly the property of the plaintiffs and
24 the class members, illegally and defendants still possess the same, the defendants
25 having also committed a conversion of such property. As a result defendants should
26 be, and are, subject to all forms of equitable relief and legal sanctions necessary to
27 return such property to the plaintiffs and the class members and/or make them whole,
28 including, without limitation, a suitable Court Order directing that the defendants

1 make restitution to the plaintiffs and the class members for the full value of all such
2 property taken and held by the defendants, with interest and an award of all proper
3 incidental, consequential and/or punitive damages available under the law or in equity
4 appropriate to remedy such violations of the plaintiffs' and the class members' rights
5 under Nevada's Constitution, Article 15, Section 16.

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

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

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

22 22. Plaintiffs repeat and reiterate each and every allegation previously made
23 herein.

24 23. The named plaintiffs bring this Second Claim for Relief against the
25 corporate defendants pursuant to Nevada Revised Statutes § 608.040 on behalf of
26 themselves and those members of the alleged class of all similarly situated employees
27 of the defendants who have terminated their employment with the defendants.

28 24. The named plaintiffs have been separated from their employment with the

1 defendants and at the time of such separation were owed unpaid wages by the
2 defendants.

3 25. The defendants have failed and refused to pay the named plaintiffs and
4 numerous members of the putative plaintiff class who are the defendants' former
5 employees their earned but unpaid wages, such conduct by such defendants
6 constituting a violation of Nevada Revised Statutes § 608.020, or § 608.030 and
7 giving such named plaintiffs and similarly situated members of the putative class of
8 plaintiffs a claim against the defendants for a continuation after the termination of their
9 employment with the defendants of the normal daily wages defendants would pay
10 them, until such earned but unpaid wages are actually paid or for 30 days, whichever is
11 less, pursuant to Nevada Revised Statutes § 608.040.

12 26. As a result of the foregoing, the named plaintiffs seek on behalf of
13 themselves and the similarly situated putative plaintiff class members a judgment
14 against the corporate defendants for the wages owed to them and such class members
15 as prescribed by Nevada Revised Statutes § 608.040, to wit, for a sum equal to up to
16 thirty days wages, along with interest, costs and attorneys' fees.

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

20 27. Plaintiffs repeat and reiterate each and every allegation previously made
21 herein.

22 28. The named plaintiffs bring this Third Claim for Relief against the
23 defendant NADY for civil conspiracy, concert of action, aiding or abetting the actions
24 of the corporate defendants, and/or as the alter ego of the corporate defendants, on
25 behalf of themselves and the members of the alleged class of all similarly situated
26 employees of the corporate defendants.

27 29. The corporate defendants, as the employers of the class members, had a
28 legal duty to abide by all laws imposed upon the corporate defendants by the State of

1 Nevada in respect to their treatment of the class members as such persons' employers,
2 including abiding by the provisions of Nevada's Constitution, Article 15, Section 16
3 and paying such persons the minimum wages required therein.

4 30. Defendant NADY exercised his complete control of the corporate
5 defendants to purposefully direct and have the corporate defendants violate Article 15,
6 Section 16 of Nevada's Constitution and not pay the class members the minimum
7 wages they were entitled to receive as employees from the corporate defendants,
8 NADY commanding such action by the corporate defendants despite knowing that
9 such actions were illegal and in violation of Nevada's Constitution.

10 31. The corporate defendants, although established as legal entities, had no
11 ability to resist NADY's directive to them to violate the provisions of Nevada's
12 Constitution, Article 15, Section 16 and not pay the class members the minimum
13 wages they were entitled to thereunder, as NADY completely controlled the corporate
14 defendants which control he could, and did, use to direct such non-payment of
15 minimum wages by the corporate defendants.

16 32. Defendant NADY intentionally and knowingly directed the aforesaid
17 violations of Article 15, Section 16 of Nevada's Constitution by the corporate
18 defendant and by doing so caused injury to the class members who did not receive
19 their earned and unpaid minimum wages. NADY directed the corporate defendants
20 commit those violations for the express purpose of enriching NADY, personally, and
21 not as part of any legitimate duty he had as an agent or officer of the corporate
22 defendants. NADY was enriched by those violations as he intended because he
23 received additional distributions, dividends, salary or other earnings and profits from
24 the corporate defendants that he would not have received, and could not have received,
25 except for such violations of Article 15, Section 16 of Nevada's Constitution that he
26 had the corporate defendants commit.

27 33. While it is alleged in this claim for relief that NADY is personally liable
28 for all unpaid minimum wages owed by the corporate defendants pursuant to Article

1 15, Section 16 of Nevada's Constitution to the class members, it is also alleged that
2 NADY is liable for those minimum wages so owed for work performed by the class
3 members after January 17, 2013 because of certain additional circumstances. The
4 additional circumstances requiring that NADY be held personally liable for those post
5 January 17, 2013 earned, but unpaid, minimum wages are the following:

- 6
- 7 (a) On January 17, 2013 the Court in this action held that the class
8 members were entitled to be paid by the corporate defendants the
9 minimum wages specified in Article 15, Section 16 of Nevada's
10 Constitution, which removed any uncertainty that NADY may have
11 had prior to that date as to whether the corporate defendants were
12 required to pay the class members such minimum wages;
- 13
- 14 (b) Despite such ruling on such date, and NADY's prompt advisement
15 of the same, NADY directed the corporate defendants to continue
16 for over one year to not pay the minimum wages specified in
17 Article 15, Section 16 of Nevada's Constitution to the class
18 members, and by doing so continued to enrich himself after January
19 17, 2013 with additional distributions, dividends, salary or other
20 earnings and profits from the corporate defendants that he would
21 not have received, and could not have received, except for such
22 violations of Article 15, Section 16 of Nevada's Constitution that
23 he had the corporate defendants continue to commit;
- 24
- 25 (c) To the extent NADY believed or hoped that the Court's ruling on
26 January 17, 2013, would be overturned or reversed, and the
27 corporate defendants subsequently found to not be legally obligated
28 to pay the class members the minimum wages specified by Article

1 15, Section 16 of Nevada's Constitution, he purposefully took no
2 steps to have the corporate defendants comply with that January 17,
3 2013 ruling in the interim. Such steps would have been if not to
4 pay such minimum wages to the class members to at least make
5 arrangements, subject to this Court's approval, for those minimum
6 wage amounts to be paid into an escrow fund and kept secure, and
7 available for the class members' ultimate benefit, until it was
8 determined whether the January 17, 2013 ruling would be
9 overturned or reversed. NADY intentionally failed to take any
10 such steps and directed the corporate defendants to violate this
11 Court's ruling so that NADY could enrich himself with additional
12 distributions, dividends, salary or other earnings and profits from
13 the corporate defendants that he would not have received, and
14 could not have received, if the corporate defendants had taken such
15 proper steps to comply with the Court's January 17, 2013 ruling;

16
17 (d) NADY by personally enriching himself with additional
18 distributions, dividends, salary or other earnings and profits from
19 the corporate defendants that he would not have received, and
20 could not have received, if the corporate defendants had taken
21 proper steps to comply with the Court's January 17, 2013 ruling has
22 rendered the corporate defendants financially insolvent and unable
23 to pay the minimum wages owed to the class members for their
24 work performed after January 17, 2013.

25
26 34. Defendant NADY has used the corporate defendants as his "alter ego"
27 and is personally liable for the claims made in this case, at least to the extent he has
28 personally enriched himself from the violations of the Nevada Constitution alleged

1 herein that he has commanded and directed the corporate defendants to commit. Such
2 "alter ego" liability is properly imposed upon him, and the separate legal existence of
3 the corporate defendants as the class members' employer ignored for the purpose of
4 such liability, because (a) NADY has completely influenced and governed the
5 corporate defendants and compelled them to violate the Nevada Constitution and deny
6 the class members the minimum wages they are owed so that NADY could be
7 personally enriched in a commensurate amount, NADY using the corporate defendants
8 as tools for NADY to accomplish such illegal and unconstitutional goals, NADY also
9 expressly directing, planning and causing such illegal conduct that took place
10 including the intentional conduct by the defendants alleged in paragraph 17; (b) There
11 is no actual or effective separation of interests between NADY and the corporate
12 defendants as NADY completely owns and controls the corporate defendants; and (c)
13 The continued adherence to the fiction that NADY and the corporate defendants are
14 separate legal parties, with separate and different liabilities to the class members under
15 Nevada's Constitution, would promote a fraud and an injustice, at least to the extent
16 that NADY has personally enriched himself from the violations of the Nevada
17 Constitution alleged in this complaint and the corporate defendants are otherwise
18 insolvent and unable to make sufficient restitution to the class members to remedy
19 such violations.

20 35. Defendant NADY has conspired with the corporate defendants to
21 personally enrich himself from the violations of the Nevada Constitution alleged
22 herein that he has commanded the corporate defendants to perform. Such civil
23 conspiracy by NADY occurred, and results in liability by NADY to the class members
24 for such violations, because NADY acted with the corporate defendants to have such
25 violations performed and personally took affirmative steps to have them so performed;
26 NADY intended for such activities to violate Nevada's Constitution, they did in fact
27 violate Nevada's Constitution, and NADY intended for the class members to be
28 deprived of the minimum wages guaranteed to them under Nevada's Constitution and

1 the class members were so deprived and damaged by their denial of those minimum
2 wages; and NADY performed such actions not as an agent or officer of the corporate
3 defendants or in the furtherance of any duty or lawful goal in his official capacity on
4 behalf of the corporate defendants but solely for his own personal individual
5 advantage and enrichment as alleged herein.

6 36. That NADY has acted in concert with or aided and abetted the conduct
7 of the corporate defendants in that he acted in concert with the corporate defendants to
8 have them violate their duties to the class members as employers under Nevada's
9 Constitution and NADY knew such actions that he aided and abetted by the corporate
10 defendants were breaches of those duties. NADY has also personally enriched himself
11 from the violations of the Nevada Constitution alleged in this complaint that he aided
12 and abetted the corporate defendants in performing and acted in concert with them to
13 perform and as a result is personally liable to the class members for the damages
14 caused to the class members from such violations, to the extent the corporate
15 defendants are otherwise insolvent and unable to make sufficient restitution to the
16 class members to remedy such violations.

17 37. That NADY engaged in the forgoing alleged course of conduct with the
18 express intent of leaving the corporate defendants insolvent, bereft of assets, and
19 unable to pay the class members the minimum wages they are owed by the corporate
20 defendants and to enrich NADY, personally, by an equal amount.

21 38. The named plaintiffs on behalf of themselves and the proposed plaintiff
22 class members, seek, on this Third Claim for Relief, a judgment against the defendant
23 NADY for minimum wages and restitution, such sums to be determined based upon an
24 accounting of the hours worked by, and wages actually paid to, the plaintiffs and the
25 class members, at least to the extent the corporate defendants are unable to pay such
26 sums to the class members, along with other suitable equitable relief, a suitable award
27 of punitive damages, and an award of attorney's fees, interest and costs, as provided
28 for by Nevada's Constitution and other applicable laws.

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

3 39. Plaintiffs repeat and reiterate each and every allegation previously made
4 herein.

5 40. The minimum wages that were owed to the class members by the
6 corporate defendants, as alleged herein and in paragraph 19, were the property of the
7 class members and the corporate defendants owed such property, which were sums of
8 money, to the class members when those minimum wages were earned; the corporate
9 defendants actually possessed money sufficient to pay those minimum wages to the
10 class members and could have paid those wages to the class members when they were
11 earned by and due to the class members; and the corporate defendants had no legal
12 right to refuse to pay those minimum wages to the class members when they were
13 earned or pay sums of money equal to those minimum wages to someone else besides
14 the class members who were owed those minimum wages without also paying the class
15 members, at that time, those earned and owed minimum wages.

16 41. The defendant NADY received sums of money from the corporate
17 defendants that were equal to the minimum wages owed by the corporate defendants to
18 the class members but not paid to the class members by the corporate defendants,
19 NADY receiving those sums of money from the corporate defendants only because he
20 used his complete control over the corporate defendants to have such sums of money
21 paid to him, and not the class members, by the corporate defendants.

22 42. The aforesaid sums of money in paragraph 41 received by NADY should
23 not have been paid to him but used by the corporate defendants to meet their legal
24 obligation under Nevada's Constitution to pay the class members the minimum wages
25 they were owed and NADY would not have received those monies from the corporate
26 defendants if he had not commanded the corporate defendants to pay those monies to
27 him and if the corporate defendants had acted properly and used those monies to pay
28 the class members such owed, but unpaid, minimum wages.

1 43. Although plaintiffs do not allege it was necessary for NADY to have such
2 knowledge for them to be granted the relief sought in this fourth claim for relief, they
3 expressly allege, if the Court finds such knowledge must be established for such relief
4 to be granted, that NADY commanded the payment by the corporate defendants to him
5 of the monies discussed in paragraphs 41 and 42 with full knowledge that the
6 corporate defendants only had such funds available to pay him because the class
7 members had not been paid an equal amount of minimum wages they were owed by
8 the corporate defendants.

9 44. NADY'S retention of the monies he received from the corporate
10 defendants as alleged in paragraphs 41 and 42, such monies that should have been
11 properly used by the corporate defendants to pay the class members their owed, but
12 unpaid, minimum wages, such monies also being the *de facto* property of the class
13 members, would be against fundamental principles of equity, justice and good
14 conscience, to the extent the corporate defendants, owing to their payment of such
15 monies to NADY, are now insolvent and unable to pay the class members the
16 minimum wages they are owed.

17 45. The named plaintiffs on behalf of themselves and the proposed plaintiff
18 class members, seek, on this Fourth Claim for Relief, a judgment against the defendant
19 NADY for restitution to the class of the amount of NADY'S unjust enrichment, such
20 amount to be determined based upon how much the corporate defendants are found to
21 owe the class members for unpaid minimum wages that the corporate defendants are
22 unable to pay the class members (the "deficiency amount") and how much NADY has
23 been unjustly enriched as alleged in this claim for relief up to, but not in excess of, that
24 deficiency amount, along with other suitable equitable relief and an award of
25 attorney's fees, interest and costs, as provided for by Nevada's Constitution and other
26 applicable laws.

27
28 WHEREFORE, plaintiffs demand the relief on each cause of action as alleged

1 aforesaid.

2 Plaintiff's demand a trial by jury on all issues so triable.

3
4 Dated this 22nd day of June, 2015.

5
6 Leon Greenberg Professional Corporation

7
8 By: /s/ Leon Greenberg

9 LEON GREENBERG, Esq.
10 Nevada Bar No.: 8094
2965 South Jones Blvd- Suite E4
11 Las Vegas, Nevada 89146
(702) 383-6085
12 Attorney for Plaintiff
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28

CERTIFICATE OF MAILING

The undersigned certifies that on August 19, 2015, she served the within:

SECOND AMENDED AND SUPPLEMENTAL COMPLAINT

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 "B"

LEON GREENBERG
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2965 South Jones Boulevard • Suite E-3
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(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 Sniegocki
Member Nevada and California Bars

Fax: (702) 385-1827

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December 1, 2016

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

Via Court Electronic Service

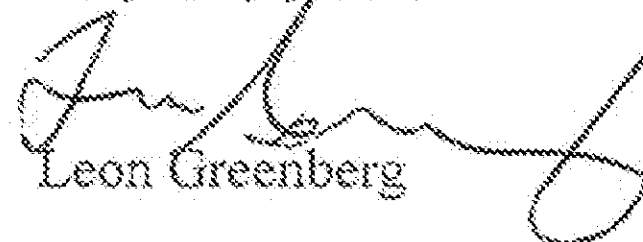
Re: Murray v. A-Cab

Dear Ms. Rodriguez:

Pursuant to Nev. R. Civ. P. 11(c)(1), plaintiffs are serving a copy of the attached Proposed Plaintiffs' Motion for Sanctions under NRCP Rule 11(c).

In the event defendants do not withdraw their Motion for Leave to Amend Answer to Assert a Third-Party Complaint, which was filed on November 29, 2016, plaintiffs intend to file the attached motion on December 27, 2016.

Very truly yours,


Leon Greenberg

cc. Michael K. Wall, Esq



1 MSNC
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6 Attorneys for Plaintiffs

7
8 DISTRICT COURT
CLARK COUNTY, NEVADA

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

11 Plaintiffs,

12 vs.

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

15 Defendants.
16

Case No.: A-12-669926-C

Dept.: I

PROPOSED
PLAINTIFFS' MOTION
FOR SANCTIONS UNDER
NRCP RULE 11(c)

Served, but not filed, on
December 1, 2016

17
18 Plaintiffs, by and through their attorney, Leon Greenberg Professional
19 Corporation, submit this memorandum of points and authorities in support of their
20 motion for sanctions pursuant to NRCP Rule 11.

21
22 Leon Greenberg Professional Corporation
By: /s/ Leon Greenberg
23 Leon Greenberg, Esq.
Nevada Bar No.: 8094
24 2965 South Jones Boulevard - Suite E3
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25 (702) 383-6085
Attorney for Plaintiffs
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Dated: December 1, 2016

By: /s/ Leon Greenberg
Leon Greenberg, Esq.
Nevada Bar No.: 8094
2965 South Jones Boulevard - Suite E3
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Attorney for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

OVERVIEW

DEFENDANTS' COUNSEL HAS FILED A FRIVOLOUS PLEADING SEEKING TO COMMENCE AN IMPEADER ACTION AGAINST CLASS COUNSEL FOR CHAMPERTY, CONTRIBUTION AND INDEMNIFICATION WHILE KNOWING FULL WELL THOSE CLAIMS ARE IMPOSSIBLE AS A MATTER OF LAW

This a class action lawsuit for minimum wages allegedly owed to the taxi driver class members by their employer, the defendant A-Cab, under Article 15, Section 16, of Nevada's Constitution. Ex. "A," Second Amended and Supplemental Complaint. Other claims are made for statutory penalties and against defendant Nady arising from his relationship with A-Cab, all of such claims being derivative of the class members' minimum wage claims against A-Cab. By an Order entered on June 7, 2016, this Court certified this case as a class action and appointed Leon Greenberg and Dana Sniegocki as class counsel.

Defendants now propose, in a completely frivolous, malicious, and harassing fashion, to name class counsel as "third party defendants" who are allegedly liable to the defendants for whatever damages (unpaid minimum wages) A-Cab is found to owe the class members. Ex. "B" defendant's motion for leave to file and serve a third party complaint. The proposed third party complaint seeks to impose liability upon any counsel, for any plaintiff (or class of plaintiffs as in this case), under the absurd theory that "but for" such counsel's willingness to prosecute those plaintiffs' claims the defendant would not have to pay those claims! The actions of defendants' counsel are not only frivolous, they are an affront to the dignity of the legal profession and this Court.

Rule 11 requires a determination of whether a pleading is frivolous, and exposes the counsel filing such pleading to sanctions, under a "two pronged analysis." *Bergmann v. Boyce*, 856 P.2d 560, 564 (Nev. Sup. Ct. 1993). The two prongs of that analysis are (1) whether the pleading is "well grounded in fact and warranted by existing law or a good faith argument for the extension, modification or reversal of

1 existing law”; and (2) whether the attorney made a reasonable and competent inquiry.

2 *Id.*

3 Defendants’ counsel has indisputably failed to conform their conduct as
4 required by NRCP Rule 11(b). The sole purpose of their motion to file and serve a
5 proposed third party complaint, which has no merit whatsoever, is to harass class
6 counsel, cause unnecessary delay, and increase the burden upon class counsel in the
7 performance of their duties to the class to diligently prosecute this case, all in violation
8 of NRCP Rule 11(b)(1). As discussed, *infra*, the claims proposed to be made are
9 without any basis in existing law. Nor does the pleading filed by defendants’ counsel
10 contain even a scintilla of a nonfrivolous argument for an extension, modification, or
11 reversal of existing law, or the establishment of new law. Such pleading is in
12 complete derogation of indisputably established law. It makes tort dependent implied
13 indemnification and contribution claims that by their very nature cannot apply to this
14 case (much less to class counsel). It asserts a claim under a legal doctrine, champerty,
15 that never has, and cannot, confer the right to bring any form of civil legal action.
16 Defendants’ counsel, by filing such pleading, has grossly disregarded its duties to
17 make a reasonable inquiry as to the non-frivolous nature of such pleading pursuant to
18 NRCP Rule 11(c)(2).

19 ARGUMENT

20 I. DEFENDANTS’ MOTION FOR LEAVE TO FILE A PROPOSED 21 THIRD PARTY COMPLAINT IS VEXATIOUS, FRIVOLOUS, AND 22 MADE IN BAD FAITH AND SHOULD BE SUBJECT TO 23 SANCTIONS UNDER NRCP RULE 11

24 A. “Champerty” is not a cause of action in Nevada or anywhere.

25 No cause of action exists for champerty or any damages alleged to have been
26 incurred by a third party to a champertous agreement:

27 We conclude that there was no secure basis for the district court to predict that
28 the Nevada Supreme Court would recognize a common-law tort cause of action
for damages or equitable relief asserted by a stranger to an allegedly
champertous agreement. The Nevada Supreme Court stated a century ago that
“[t]he great weight of authority is to the effect ... that the rule rendering
contracts void for champerty, cannot be invoked except between the parties to
the champertous agreement in cases where such contract is sought to be

1 enforced.” *Del Webb Communities, Inc. v. Partington*, 652 F.3d 1145, 1154 (9th
2 Cir. 2011) citing and quoting *Prosky v. Clark*, 32 Nev. 441, 109 P. 793, 794
(1910).

3 To the extent any issue of champerty might even exist in respect to class
4 counsels’ relationship with the named plaintiffs and the class members, that is an issue
5 for the Nevada State Bar to deal with. Similarly, nowhere do defendants allege class
6 counsel’s advertisements or communications with the class members, that are alleged
7 to have improperly fomented this litigation, were illegal or contrary to the State Bar’s
8 rules (they were not). Nor does defendants’ counsel wish to risk the displeasure of the
9 State Bar by filing such frivolous complaints of champerty or false advertising,
10 particularly since the State Bar is not going to waste class counsel’s time responding to
11 such complaint. Instead defendants’ counsel asserts the absurd concept that principles
12 of champerty allow *any defendant in any case* where the plaintiff’s counsel is
13 compensated on a contingency (whether through a fee shifting statute or percentage of
14 recovery) basis to make a claim against such plaintiff’s counsel. Under defendants’
15 counsel’s theory, the mere presence of such a personal financial interest in the
16 outcome of a case, something possessed by every contingency fee compensated
17 plaintiffs’ counsel in every litigation, generates a “champerty” claim by a defendant
18 against such plaintiff’s counsel. And it does so despite the State Bar’s express
19 authorization of contingency fee agreements between attorneys and clients.

20 **B. No claim for “contribution” is possible when defendants**
21 **do not allege, and cannot allege, that class counsel was a**
joint tortfeasor with defendants.

22 In Nevada “contribution is a creature of statute” and governed by NRS 17.225 to
23 17.305. *Doctors Co. v. Vincent*, 98 P.3d 681, 686 (Nev. Sup. Ct. 2004). “[T]he
24 remedy of contribution allows one tortfeasor to extinguish joint liabilities through
25 payment to the injured party, and then seek partial reimbursement from a joint
26 tortfeasor for sums paid in excess of the settling or discharging tortfeasor’s equitable
27 share of the common liability.” *Id.*

28 Class counsel is not alleged anywhere in the proposed third party complaint to

1 have acted as a joint tortfeasor and contributed, with the defendants, to the class
2 members' injuries. Nor, given the nature of the class claims, could any such joint
3 tortfeasor allegations be made against class counsel. The claims against defendant A-
4 Cab do not sound in tort but arise under Nevada's statutes and Constitution.
5 Accordingly, contribution in respect to the claims against A-Cab is impossible since
6 they are not tort claims. Similarly, the claims against Nady based upon unjust
7 enrichment and his status as an alter ego of A-Cab involve equitable remedies, not tort
8 causes of action, and contribution cannot apply to those claims. *See, In Re AMERCO*
9 *Derivative Litig.*, 252 P.3d 681, 703 (Nev. Sup. Ct. 2011) ("Unjust enrichment occurs
10 whenever a person has and retains a benefit which in equity and good conscience
11 belongs to another." *quoting Nevada Industrial Dev. v. Benedetti*, 741 P.2d 802, 804
12 n.2 (Nev. Sup. Ct. 1987)) and *LFC Mktg. Group, Inc. v. Loomis*, 8 P.3d 841, 845-46
13 (Nev. Sup. Ct. 2000) (Alter ego doctrine is an equitable remedy to protect those
14 injured by an abuse of the corporate form)

15 While the claims against Nady under theories of aiding and abetting, civil
16 conspiracy, and concert of action do sound in tort, the nature of those tort claims, and
17 the facts alleged in this case (and not alleged by defendants) make contribution on
18 those claims also impossible as a matter of law. Civil conspiracy is an intentional tort
19 that requires not just proof of an agreement between the tortfeasors but an intent by the
20 tortfeasors to cause harm. *See, Sutherland v. Gross*, 772 P.2d 1287, 1290 (Nev. Sup.
21 Ct. 1989) ("An actionable [civil] conspiracy consists of a combination of two or more
22 persons who, by some concerted action, intend to accomplish an unlawful objective for
23 the purpose of harming another, and damage results from the act or acts.") Under NRS
24 17.255 the remedy of contribution is unavailable to those who commit intentional
25 torts.

26 Nevada, in recognizing the tort of aiding and abetting, and the separate tort of
27 concert of action, has adopted the definitions for each of the Restatement 2nd of Torts,
28

1 § 876(a) and 876(b) respectively.¹ See, *Dow Chem. Co. v. Mahlum*, 970 P.2d 98, 111-
2 112 (Nev. Sup. Ct. 1998). A “liability attaches for concert of action if two persons
3 commit a tort while acting in concert with one another or pursuant to a common
4 design” while “liability attaches for civil aiding and abetting if the defendant
5 substantially assists or encourages another’s conduct in breaching a duty to a third
6 person.” *Id.*

7 The *per se* bar on contribution among intentional tortfeasors of NRS 17.255
8 does not apply to all aiding and abetting or concert of action tort claims. “[C]ivil
9 conspiracy requires that the defendants have an intent to accomplish an unlawful
10 objective for the purpose of harming another, while concert of action merely requires
11 that the defendants commit a tort while acting in concert.” *Dow Chem. Co.* 970 P.2d
12 at 112. But while two or more persons committing such torts may be able to seek
13 contribution, they *must still be joint tortfeasors causing injury to a third party.*

14 The proposed third party complaint contains no allegation about how class
15 counsel was a joint tortfeasor with Nady, in respect to the underlying torts of aiding
16 and abetting or concert of action alleged against Nady. It fails to do so because those
17 torts by Nady involve the illegal acts (non-payment of minimum wages by A-Cab) that
18 damaged the class members and that Nady aided, abetted and acted in concert to
19 perform. A claim for contribution will not lie absent an allegation in the third party
20

21 ¹ Section 876 states: For harm resulting to a third person from the tortious
22 conduct of another, one is subject to liability if he
23 (a) does a tortious act in concert with the other or pursuant to a common design with
24 him, or
25 (b) knows that the other’s conduct constitutes a breach of duty and gives substantial
26 assistance or encouragement to the other so to conduct himself, or
27 (c) gives substantial assistance to the other in accomplishing a tortious result and his
28 own conduct, separately considered, constitutes a breach of duty to the third person.
Caveat: The Institute takes no position on whether the rules stated in this Section are
applicable when the conduct of either the actor or the other is free from intent to do
harm or negligence but involves strict liability for the resulting harm.

1 complaint that class counsel, along with Nady, aided, abetted, and acted in concert as
2 joint tortfeasors to cause A-Cab to not pay minimum wages. No such activities by
3 class counsel are alleged and as a result the contribution claim is completely frivolous.

4 **C. No claim for “implied indemnification” exists as the**
5 **damages sought by the class arise solely from a failure**
6 **by A-Cab to pay minimum wages; class counsel is**
7 **not alleged to be a joint tortfeasor causing such damages**
8 **or with a legal liability to the class members; and class**
9 **counsel has no nexus or special relationship with defendants.**

10 “Noncontractual or implied indemnity is an equitable remedy that allows a
11 defendant to seek recovery from other potential tortfeasors whose negligence primarily
12 caused the injured party's harm.” *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793,
13 801 (Nev. Sup. Ct. 2009), citing *Doctors Company v. Vincent*, 98 P.3d 681, 686 (Nev.
14 Sup. Ct. 2009). As discussed, the proposed third party complaint completely lacks any
15 allegation that class counsel were joint tortfeasors nor is such a status possible given
16 the nature of the class claims. Nor does this case involve any alleged situation where
17 class counsel’s “negligence primarily caused” the class members’ damages. Or for
18 that matter any negligence claim at all.

19 It is also established that in Nevada to recover on an implied indemnity claim
20 the party seeking indemnification must plead and prove that the “potential indemnitor
21 must be liable for the injuries to the plaintiff.” *Rodriguez v. Primadonna*, 216 P.3d at
22 802. All of the class damages flow from an alleged failure by A-Cab, their employer,
23 to pay minimum wages. No allegation is made in the proposed third-party complaint
24 that class counsel had any obligation to pay those minimum wages of the class
25 members or any duty to A-Cab to see that they were paid. In fact, the exact opposite is
26 alleged, that class counsel had no employee-employer, or presumably any other agency
27 or entrusted relationship, with the defendants. See, ¶¶ 3-8 of proposed third party
28 complaint. Since class counsel had no legal liability to the class members for the
alleged damages (the unpaid minimum wages owed by A-Cab) being collected for the
class from the defendants, no claim for implied indemnification can be made against

1 class counsel.

2 As also discussed in *Rodriguez v. Primadonna, id.*, absent a nexus or special
3 relationship between defendants and their proposed indemnitor (class counsel), a claim
4 for implied indemnification will not lie. “Implied indemnification is not a license to
5 assert a cross-claim against any third party in hope of alleviating the burden of costs
6 associated with defending litigation.” *Id.* No nexus or special relationship exists
7 between class counsel and the defendants and the proposed third party complaint
8 expressly alleges the *absence* of any such relationship. See, ¶¶ 3-8 of proposed third
9 party complaint. Indeed, the foregoing language from *Rodriguez v. Primadonna* is
10 clearly intended as a warning, that defendants’ counsel has intentionally ignored, that
11 the sort of ‘implied indemnification’ claim they propose to make is absolutely
12 improper.

13 **II. SEVERE SANCTIONS SHOULD BE IMPOSED ON**
14 **DEFENDANTS’ COUNSEL AS THEY HAVE REPEATEDLY**
15 **ENGAGED IN IMPROPER AND FRIVOLOUS ACTIONS**
16 **DURING THE COURSE OF THIS LITIGATION**

17 In determining the measure of sanctions to impose on defendants’ counsel, the
18 Court is urged to take note of the repeated course of abusive and improper conduct by
19 such counsel in these proceedings. Such counsel has not acted as a vigorous advocate
20 who one time crossed the line between permissible advocacy and improper activity.
21 The record of these proceedings amply establish that such counsel is engaging in an
22 intended and calculated course of unethical conduct. Such counsel has completely,
23 and repeatedly, abdicated her responsibilities as an officer of the court in this case and
24 instead become a willing (and no doubt well paid) agent of defendants’ abusive and
25 improper conduct.

26 **A. Defendants’ counsel has purposely and improperly violated**
27 **the class certification order in this case by pursuing a collusive**
28 **“class settlement” in another case before Judge Delaney in**
direct violation of that order.

On November 17, 2016, this Court had submitted on its chamber’s calendar
class counsel’s motion for an injunction, award of attorney’s fees, and other relief,

1 related to defendants' counsel's improper attempt to bypass the class certification
2 order in this case and secure a class settlement in *another* case pending in this Court.
3 Ex. "C" motion papers. Defendants' counsel acted in direct violation of this Court's
4 class certification order in doing so. It was well aware that any class settlement
5 defendants sought to pursue had to be presented to this Court in this case, and it could
6 do so with, or without, the cooperation of class counsel. Instead of doing so, and
7 having such class settlement proposal properly considered, defendants' counsel abused
8 this court's limited resources by engaging Judge Wiese as a "settlement conference"
9 judge in another case before Judge Delaney for such wholly void and collusive "class
10 settlement." It did so knowingly and in furtherance of its clients', defendants', willful
11 and bad faith attempt to violate this Court's class certification order.

12 **B. Defendants' counsel has directly endorsed, and urged its client**
13 **to pursue, improper conduct in discovery that has resulted in**
sanctions previously being imposed in this case.

14 Defendants were sanctioned \$3,238.95 in response to defendants' abusive
15 discovery conduct. Ex. "D" Order entered March 4, 2016. That sanction resulted
16 from the grossly abusive, and improper, discovery conduct of defendants in 2015.
17 Discovery Commissioner Bulla, at a hearing held on plaintiffs' Motion for Sanctions
18 on November 18, 2015 (Ex. "E" hearing transcript), having also read the transcript of
19 the NRCP 30(b)(6) deposition of defendants with the deponent being defendant Nady,
20 in addition to imposing the foregoing sanction, made the following findings about the
21 impropriety of the conduct of both defendant Nady and his counsel, Esther Rodriguez:

22 DISCOVERY COMMISSIONER: Okay. So I know the attorneys know this,
23 but I just need to say it based on what I reviewed in this particular case, and that
24 is as a lawyer you do have responsibility for the client, and even though we can't
always control what other people do, we have to be able to control our client in
deposition, and, Ms. Rodriguez, you did not do that.

25 I don't know if I would have had more success. I'm not sure anyone in this room
26 would have had more success, but, unfortunately, what it did was it caused a
27 problem in the process, and I'm concerned about how this case ultimately gets
prepared for trial.

28 I understand depositions are very difficult for lay people, and certain
personalities don't always work very well with this deposition process, but that's

1 something the lawyer has to be able to deal with.

2 It was inexcusable, what your client called Plaintiffs counsel during the
3 deposition, which I will not repeat in open court. Inexcusable, almost to the
4 point where I'm not sure he should be allowed to be a Defendant in the 8th
Judicial District Court-- that's how serious this is-- because I have no confidence
in what he's-- how he's answering questions. Ex. "E" p. 2-3.

5 Esther Rodriguez's conduct at the deposition reviewed by Discovery
6 Commissioner also demonstrates her support, and encouragement, of defendant's
7 indisputably abusive, malicious, and improper conduct. A full copy of the deposition
8 is provided at Ex. "F." At page 70, lines 8 to 10 of the deposition transcript defendant
9 Nady is asked a question, which he answers at lines 12 and 13 of that page. He then
10 goes on a tirade, calling class counsel a "spoiled little brat," when he is advised there
11 is no question pending. He continues with that tirade. When Ms. Rodriguez is
12 requested to terminate such behavior by defendant Nady by going off the record she
13 refuses. This exchange concludes at page 73, lines 7 through 24, where Ms.
14 Rodriguez insists Nady has a right to engage in such conduct, *e.g.*, give an abusive
15 speech, hurling insults at examining counsel, during the deposition when no question
16 is posed to him and he has already fully answered the last question posed.

17 In addition to the foregoing affirmative, on the record, and abusive endorsement
18 and defense by Ms. Rodriguez of defendant's Nady's improper deposition conduct,
19 such counsel also repeatedly through her "silence" endorsed such conduct. At pages
20 176 to 183 and page 211 to 221 of the Ex. "F" transcript, defendant Nady engages in
21 extended streams of improper statements, hurling profanities at class counsel, with Ms.
22 Rodriguez sitting by as a "silent" enabler and endorser of such conduct and doing
23 nothing to counsel her client or stop such conduct. Such conduct by Nady even
24 resulted, at page 183, in the court reporter stopping the proceedings.

25 ///

26 ///

27 ///

1 **CONCLUSION**

2 Wherefore, for all the foregoing reasons, the plaintiffs' motion should be
3 granted in its entirety.

4 Dated: December 1, 2016

5 Respectfully submitted,

6 /s/ Leon Greenberg
7 Leon Greenberg, Esq. (Bar # 8094)
8 A Professional Corporation
9 2965 S. Jones Blvd., Suite E-3
10 Las Vegas, Nevada 89146
11 (702) 383-6085
12 Attorney for Plaintiffs
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27
28

CERTIFICATE OF MAILING

The undersigned certifies that on December 1, 2016, she served the within:

Proposed Plaintiffs' Motion for Sanctions under NRCp Rule 11(c)

by court electronic service to:

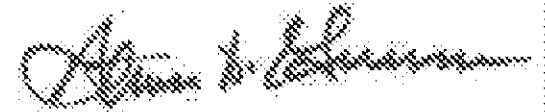
TO:

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

/s/ Dana Sniegocki

Dana Sniegocki

EXHIBIT "A"



CLERK OF THE COURT

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Attorneys for Plaintiffs

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

SECOND AMENDED AND
SUPPLEMENTAL
COMPLAINT

ARBITRATION EXEMPTION
CLAIMED BECAUSE THIS IS
A CLASS ACTION CASE

18
19
20 MICHAEL MURRAY and MICHAEL RENO, Individually and on behalf of
21 others similarly situated, by and through their attorney, Leon Greenberg Professional
22 Corporation, as and for a Complaint against the defendants, state and allege, as
23 follows:

24 JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

25 1. The plaintiffs, MICHAEL MURRAY and MICHAEL RENO, (the
26 "individual plaintiffs" or the "named plaintiffs") are residents of the State of Nevada
27 and during all relevant times were residents of Clark County, Nevada, and all plaintiffs
28 are current employees of the defendants.

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

6 3. The defendant CREIGHTON J. NADY ("NADY") either directly, or
7 through other entities that he controls and owns, is the sole owner of the corporate
8 defendants.

9 4. The defendant NADY exercises complete control over the activities of
10 the corporate defendants, in that he is the highest level manager and decision maker of
11 the corporate defendants and there are no other officers, directors, owners, members,
12 managers, principals or other employees of the corporate defendants who can override
13 or modify against his will any decision he makes in respect to the conduct of the
14 corporate defendants.

15 CLASS ACTION ALLEGATIONS

16 5. The plaintiffs bring this action as a class action pursuant to Nev. R. Civ.
17 P. §23 on behalf of themselves and a class of all similarly situated persons employed
18 by the defendants in the State of Nevada.

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

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

1 requirements of said Nevada Constitutional Provision, did not equal at least the
2 minimum hourly wage provided for therein.

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

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

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

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

20 12. The individual plaintiffs will fairly and adequately represent the interests
21 of the class and have no interests that conflict with or are antagonistic to the interests
22 of the class and have retained to represent them competent counsel experienced in the
23 prosecution of class action cases and will thus be able to appropriately prosecute this
24 case on behalf of the class.

25 13. The individual plaintiffs and their counsel are aware of their fiduciary
26 responsibilities to the members of the proposed class and are determined to diligently
27 discharge those duties by vigorously seeking the maximum possible recovery for all
28 members of the proposed class.

1 14. There is no plain, speedy, or adequate remedy other than by maintenance
2 of this class action. The prosecution of individual remedies by members of the class
3 will tend to establish inconsistent standards of conduct for the defendants and result in
4 the impairment of class members' rights and the disposition of their interests through
5 actions to which they were not parties. In addition, the class members' individual
6 claims are small in amount and they have no substantial ability to vindicate their
7 rights, and secure the assistance of competent counsel to do so, except by the
8 prosecution of a class action case.

9
10 **AS AND FOR A FIRST CLAIM FOR RELIEF ON BEHALF OF THE NAMED**
11 **PLAINTIFFS AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO**
NEVADA'S CONSTITUTION

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

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

19 17. The defendants' violation of Article 15, Section 16, of the Nevada
20 Constitution involved malicious and/or fraudulent and/or oppressive conduct by the
21 defendants sufficient to warrant an award of punitive damages for the following,
22 amongst other reasons:

23 (a) Defendants despite having, and being aware of, an express
24 obligation under Article 15, Section 16, of the Nevada
25 Constitution, such obligation commencing no later than July 1,
26 2007, to advise the plaintiff and the class members, in writing, of
27 their entitlement to the minimum hourly wage specified in such
28 constitutional provision, failed to provide such written advisement;

1 (b) Defendants were aware that the highest law enforcement
2 officer of the State of Nevada, the Nevada Attorney General, had
3 issued a public opinion in 2005 that Article 15, Section 16, of the
4 Nevada Constitution, upon its effective date, would require
5 defendant and other employers of taxi cab drivers to compensate
6 such employees with the minimum hourly wage specified in such
7 constitutional provision. Defendants consciously elected to ignore
8 that opinion and not pay the minimum wage required by Article
9 15, Section 16, of the Nevada Constitution to its taxi driver
10 employees in the hope that it would be successful, if legal action
11 was brought against it, in avoiding paying some or all of such
12 minimum wages;

13 (c) Defendants, to the extent they believed they had a colorable
14 basis to legitimately contest the applicability of Article 15, Section
15 16, of the Nevada Constitution to its taxi driver employees, made
16 no effort to seek any judicial declaration of its obligation, or lack
17 of obligation, under such constitutional provision and to pay into
18 an escrow fund any amounts it disputed were so owed under that
19 constitutional provision until such a final judicial determination
20 was made;

21 (d) Defendants were the subject of an investigation by the United
22 States Department of Labor in respect to defendants' compliance
23 with the minimum wage requirements of the federal Fair Labor
24 Standards Act, 29 U.S.C. § 201-219 which investigation was
25 concluded on April 30, 2009. Such investigation did not
26 determine if any violations of the Fair Labor Standards Act were
27 committed by the defendants, and no claim is made in this case
28 against the defendants under the Fair Labor Standards Act. Such

1 investigation resulted in defendants on April 30, 2009, being
2 advised by the U.S. Department of Labor that they must keep a
3 record of the actual hours worked by their taxi driver employees
4 and that defendants must pay their taxi drivers the minimum
5 hourly wage, defendants also being told such minimum hourly
6 wage at that time under Nevada law was \$6.85 an hour. Rather
7 than follow such advisement, defendants intentionally acted to not
8 institute any system that would keep an express, confirmed, and
9 accurate record of the hours worked by such taxi driver employees,
10 such as a dedicated payroll time clock system. Defendants also
11 acted to force their taxi driver employees to falsely record their
12 activities on their daily taxi driver trip sheets so as to make it
13 appear that the taxi drivers were taking many hours of breaks
14 during their working days, which was not true and defendants
15 knew was not true. Defendants fostered such inaccurate and
16 untrue recording by their taxi drivers of their work activities by
17 refusing to allow taxi drivers to submit accurate daily taxi driver
18 trip sheets that did not have such excessive, and untrue, recordings
19 of break time. Defendants enforced their "break time listings
20 required" policy on their taxi drivers' trip sheets with the
21 intentional goal of making it impossible for those taxi drivers to
22 collect the minimum wages they were owed and to conceal
23 defendants' violations of the Nevada Constitution. Such actions
24 by the defendants included, among other things, actually reviewing
25 the "fares booked" per shift on each taxi driver's trip sheet and
26 requiring additional break time be listed for those shifts where the
27 fare bookings were so low that minimum wages would be owed to
28 the taxi driver if their break times, as listed on their trip sheets,

1 were not inflated.

2 18. Defendants engaged in the acts and/or omissions and/or fraudulently
3 conduct detailed in paragraph 17 in an intentional scheme to maliciously, oppressively
4 and fraudulently deprive its taxi driver employees of the hourly minimum wages that
5 were guaranteed to those employees by Article 15, Section 16, of the Nevada
6 Constitution. Defendants so acted in the hope that by the passage of time whatever
7 rights such taxi driver employees had to such minimum hourly wages owed to them by
8 the defendants would expire, in whole or in part, by operation of law. Defendant so
9 acted consciously, willfully, and intentionally to deprive such taxi driver employees of
10 any knowledge that they might be entitled to such minimum hourly wages, despite the
11 defendant's obligation under Article 15, Section 16, of the Nevada Constitution to
12 advise such taxi driver employees of their right to those minimum hourly wages.
13 Defendants' malicious, oppressive and fraudulent conduct is also demonstrated by its
14 failure to make any allowance to pay such minimum hourly wages if they were found
15 to be due, such as through an escrow account, while seeking any judicial determination
16 of its obligation to make those payments.

17 19. The rights secured to the plaintiffs and the class members under Nevada's
18 Constitution, Article 15, Section 16, for a minimum level of remuneration for their
19 labor as defendants' employees, constitute property rights, in that such level of
20 remuneration constitutes property of the plaintiffs and the class members, to wit, a sum
21 of money that they have a right to possess for the inalienable value of their labor,
22 which labor the defendants obtained from them as employers. Defendants have
23 obtained such property, the minimum wages properly the property of the plaintiffs and
24 the class members, illegally and defendants still possess the same, the defendants
25 having also committed a conversion of such property. As a result defendants should
26 be, and are, subject to all forms of equitable relief and legal sanctions necessary to
27 return such property to the plaintiffs and the class members and/or make them whole,
28 including, without limitation, a suitable Court Order directing that the defendants

1 make restitution to the plaintiffs and the class members for the full value of all such
2 property taken and held by the defendants, with interest and an award of all proper
3 incidental, consequential and/or punitive damages available under the law or in equity
4 appropriate to remedy such violations of the plaintiffs' and the class members' rights
5 under Nevada's Constitution, Article 15, Section 16.

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

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

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

22 22. Plaintiffs repeat and reiterate each and every allegation previously made
23 herein.

24 23. The named plaintiffs bring this Second Claim for Relief against the
25 corporate defendants pursuant to Nevada Revised Statutes § 608.040 on behalf of
26 themselves and those members of the alleged class of all similarly situated employees
27 of the defendants who have terminated their employment with the defendants.

28 24. The named plaintiffs have been separated from their employment with the

1 defendants and at the time of such separation were owed unpaid wages by the
2 defendants.

3 25. The defendants have failed and refused to pay the named plaintiffs and
4 numerous members of the putative plaintiff class who are the defendants' former
5 employees their earned but unpaid wages, such conduct by such defendants
6 constituting a violation of Nevada Revised Statutes § 608.020, or § 608.030 and
7 giving such named plaintiffs and similarly situated members of the putative class of
8 plaintiffs a claim against the defendants for a continuation after the termination of their
9 employment with the defendants of the normal daily wages defendants would pay
10 them, until such earned but unpaid wages are actually paid or for 30 days, whichever is
11 less, pursuant to Nevada Revised Statutes § 608.040.

12 26. As a result of the foregoing, the named plaintiffs seek on behalf of
13 themselves and the similarly situated putative plaintiff class members a judgment
14 against the corporate defendants for the wages owed to them and such class members
15 as prescribed by Nevada Revised Statutes § 608.040, to wit, for a sum equal to up to
16 thirty days wages, along with interest, costs and attorneys' fees.

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

20 27. Plaintiffs repeat and reiterate each and every allegation previously made
21 herein.

22 28. The named plaintiffs bring this Third Claim for Relief against the
23 defendant NADY for civil conspiracy, concert of action, aiding or abetting the actions
24 of the corporate defendants, and/or as the alter ego of the corporate defendants, on
25 behalf of themselves and the members of the alleged class of all similarly situated
26 employees of the corporate defendants.

27 29. The corporate defendants, as the employers of the class members, had a
28 legal duty to abide by all laws imposed upon the corporate defendants by the State of

1 Nevada in respect to their treatment of the class members as such persons' employers,
2 including abiding by the provisions of Nevada's Constitution, Article 15, Section 16
3 and paying such persons the minimum wages required therein.

4 30. Defendant NADY exercised his complete control of the corporate
5 defendants to purposefully direct and have the corporate defendants violate Article 15,
6 Section 16 of Nevada's Constitution and not pay the class members the minimum
7 wages they were entitled to receive as employees from the corporate defendants,
8 NADY commanding such action by the corporate defendants despite knowing that
9 such actions were illegal and in violation of Nevada's Constitution.

10 31. The corporate defendants, although established as legal entities, had no
11 ability to resist NADY's directive to them to violate the provisions of Nevada's
12 Constitution, Article 15, Section 16 and not pay the class members the minimum
13 wages they were entitled to thereunder, as NADY completely controlled the corporate
14 defendants which control he could, and did, use to direct such non-payment of
15 minimum wages by the corporate defendants.

16 32. Defendant NADY intentionally and knowingly directed the aforesaid
17 violations of Article 15, Section 16 of Nevada's Constitution by the corporate
18 defendant and by doing so caused injury to the class members who did not receive
19 their earned and unpaid minimum wages. NADY directed the corporate defendants
20 commit those violations for the express purpose of enriching NADY, personally, and
21 not as part of any legitimate duty he had as an agent or officer of the corporate
22 defendants. NADY was enriched by those violations as he intended because he
23 received additional distributions, dividends, salary or other earnings and profits from
24 the corporate defendants that he would not have received, and could not have received,
25 except for such violations of Article 15, Section 16 of Nevada's Constitution that he
26 had the corporate defendants commit.

27 33. While it is alleged in this claim for relief that NADY is personally liable
28 for all unpaid minimum wages owed by the corporate defendants pursuant to Article

1 15, Section 16 of Nevada's Constitution to the class members, it is also alleged that
2 NADY is liable for those minimum wages so owed for work performed by the class
3 members after January 17, 2013 because of certain additional circumstances. The
4 additional circumstances requiring that NADY be held personally liable for those post
5 January 17, 2013 earned, but unpaid, minimum wages are the following:

- 6
- 7 (a) On January 17, 2013 the Court in this action held that the class
8 members were entitled to be paid by the corporate defendants the
9 minimum wages specified in Article 15, Section 16 of Nevada's
10 Constitution, which removed any uncertainty that NADY may have
11 had prior to that date as to whether the corporate defendants were
12 required to pay the class members such minimum wages;
- 13
- 14 (b) Despite such ruling on such date, and NADY's prompt advisement
15 of the same, NADY directed the corporate defendants to continue
16 for over one year to not pay the minimum wages specified in
17 Article 15, Section 16 of Nevada's Constitution to the class
18 members, and by doing so continued to enrich himself after January
19 17, 2013 with additional distributions, dividends, salary or other
20 earnings and profits from the corporate defendants that he would
21 not have received, and could not have received, except for such
22 violations of Article 15, Section 16 of Nevada's Constitution that
23 he had the corporate defendants continue to commit;
- 24
- 25 (c) To the extent NADY believed or hoped that the Court's ruling on
26 January 17, 2013, would be overturned or reversed, and the
27 corporate defendants subsequently found to not be legally obligated
28 to pay the class members the minimum wages specified by Article

1 15, Section 16 of Nevada's Constitution, he purposefully took no
2 steps to have the corporate defendants comply with that January 17,
3 2013 ruling in the interim. Such steps would have been if not to
4 pay such minimum wages to the class members to at least make
5 arrangements, subject to this Court's approval, for those minimum
6 wage amounts to be paid into an escrow fund and kept secure, and
7 available for the class members' ultimate benefit, until it was
8 determined whether the January 17, 2013 ruling would be
9 overturned or reversed. NADY intentionally failed to take any
10 such steps and directed the corporate defendants to violate this
11 Court's ruling so that NADY could enrich himself with additional
12 distributions, dividends, salary or other earnings and profits from
13 the corporate defendants that he would not have received, and
14 could not have received, if the corporate defendants had taken such
15 proper steps to comply with the Court's January 17, 2013 ruling;

16
17 (d) NADY by personally enriching himself with additional
18 distributions, dividends, salary or other earnings and profits from
19 the corporate defendants that he would not have received, and
20 could not have received, if the corporate defendants had taken
21 proper steps to comply with the Court's January 17, 2013 ruling has
22 rendered the corporate defendants financially insolvent and unable
23 to pay the minimum wages owed to the class members for their
24 work performed after January 17, 2013.

25
26 34. Defendant NADY has used the corporate defendants as his "alter ego"
27 and is personally liable for the claims made in this case, at least to the extent he has
28 personally enriched himself from the violations of the Nevada Constitution alleged.

1 herein that he has commanded and directed the corporate defendants to commit. Such
2 "alter ego" liability is properly imposed upon him, and the separate legal existence of
3 the corporate defendants as the class members' employer ignored for the purpose of
4 such liability, because (a) NADY has completely influenced and governed the
5 corporate defendants and compelled them to violate the Nevada Constitution and deny
6 the class members the minimum wages they are owed so that NADY could be
7 personally enriched in a commensurate amount, NADY using the corporate defendants
8 as tools for NADY to accomplish such illegal and unconstitutional goals, NADY also
9 expressly directing, planning and causing such illegal conduct that took place
10 including the intentional conduct by the defendants alleged in paragraph 17; (b) There
11 is no actual or effective separation of interests between NADY and the corporate
12 defendants as NADY completely owns and controls the corporate defendants; and (c)
13 The continued adherence to the fiction that NADY and the corporate defendants are
14 separate legal parties, with separate and different liabilities to the class members under
15 Nevada's Constitution, would promote a fraud and an injustice, at least to the extent
16 that NADY has personally enriched himself from the violations of the Nevada
17 Constitution alleged in this complaint and the corporate defendants are otherwise
18 insolvent and unable to make sufficient restitution to the class members to remedy
19 such violations.

20 35. Defendant NADY has conspired with the corporate defendants to
21 personally enrich himself from the violations of the Nevada Constitution alleged
22 herein that he has commanded the corporate defendants to perform. Such civil
23 conspiracy by NADY occurred, and results in liability by NADY to the class members
24 for such violations, because NADY acted with the corporate defendants to have such
25 violations performed and personally took affirmative steps to have them so performed;
26 NADY intended for such activities to violate Nevada's Constitution, they did in fact
27 violate Nevada's Constitution, and NADY intended for the class members to be
28 deprived of the minimum wages guaranteed to them under Nevada's Constitution and

1 the class members were so deprived and damaged by their denial of those minimum
2 wages; and NADY performed such actions not as an agent or officer of the corporate
3 defendants or in the furtherance of any duty or lawful goal in his official capacity on
4 behalf of the corporate defendants but solely for his own personal individual
5 advantage and enrichment as alleged herein.

6 36. That NADY has acted in concert with or aided and abetted the conduct
7 of the corporate defendants in that he acted in concert with the corporate defendants to
8 have them violate their duties to the class members as employers under Nevada's
9 Constitution and NADY knew such actions that he aided and abetted by the corporate
10 defendants were breaches of those duties. NADY has also personally enriched himself
11 from the violations of the Nevada Constitution alleged in this complaint that he aided
12 and abetted the corporate defendants in performing and acted in concert with them to
13 perform and as a result is personally liable to the class members for the damages
14 caused to the class members from such violations, to the extent the corporate
15 defendants are otherwise insolvent and unable to make sufficient restitution to the
16 class members to remedy such violations.

17 37. That NADY engaged in the forgoing alleged course of conduct with the
18 express intent of leaving the corporate defendants insolvent, bereft of assets, and
19 unable to pay the class members the minimum wages they are owed by the corporate
20 defendants and to enrich NADY, personally, by an equal amount.

21 38. The named plaintiffs on behalf of themselves and the proposed plaintiff
22 class members, seek, on this Third Claim for Relief, a judgment against the defendant
23 NADY for minimum wages and restitution, such sums to be determined based upon an
24 accounting of the hours worked by, and wages actually paid to, the plaintiffs and the
25 class members, at least to the extent the corporate defendants are unable to pay such
26 sums to the class members, along with other suitable equitable relief, a suitable award
27 of punitive damages, and an award of attorney's fees, interest and costs, as provided
28 for by Nevada's Constitution and other applicable laws.

1 AS AND FOR A FOURTH CLAIM AGAINST
2 DEFENDANT NADY FOR UNJUST ENRICHMENT

3 39. Plaintiffs repeat and reiterate each and every allegation previously made
4 herein.

5 40. The minimum wages that were owed to the class members by the
6 corporate defendants, as alleged herein and in paragraph 19, were the property of the
7 class members and the corporate defendants owed such property, which were sums of
8 money, to the class members when those minimum wages were earned; the corporate
9 defendants actually possessed money sufficient to pay those minimum wages to the
10 class members and could have paid those wages to the class members when they were
11 earned by and due to the class members; and the corporate defendants had no legal
12 right to refuse to pay those minimum wages to the class members when they were
13 earned or pay sums of money equal to those minimum wages to someone else besides
14 the class members who were owed those minimum wages without also paying the class
15 members, at that time, those earned and owed minimum wages.

16 41. The defendant NADY received sums of money from the corporate
17 defendants that were equal to the minimum wages owed by the corporate defendants to
18 the class members but not paid to the class members by the corporate defendants,
19 NADY receiving those sums of money from the corporate defendants only because he
20 used his complete control over the corporate defendants to have such sums of money
21 paid to him, and not the class members, by the corporate defendants.

22 42. The aforesaid sums of money in paragraph 41 received by NADY should
23 not have been paid to him but used by the corporate defendants to meet their legal
24 obligation under Nevada's Constitution to pay the class members the minimum wages
25 they were owed and NADY would not have received those monies from the corporate
26 defendants if he had not commanded the corporate defendants to pay those monies to
27 him and if the corporate defendants had acted properly and used those monies to pay
28 the class members such owed, but unpaid, minimum wages.

1 43. Although plaintiffs do not allege it was necessary for NADY to have such
2 knowledge for them to be granted the relief sought in this fourth claim for relief, they
3 expressly allege, if the Court finds such knowledge must be established for such relief
4 to be granted, that NADY commanded the payment by the corporate defendants to him
5 of the monies discussed in paragraphs 41 and 42 with full knowledge that the
6 corporate defendants only had such funds available to pay him because the class
7 members had not been paid an equal amount of minimum wages they were owed by
8 the corporate defendants.

9 44. NADY'S retention of the monies he received from the corporate
10 defendants as alleged in paragraphs 41 and 42, such monies that should have been
11 properly used by the corporate defendants to pay the class members their owed, but
12 unpaid, minimum wages, such monies also being the *de facto* property of the class
13 members, would be against fundamental principles of equity, justice and good
14 conscience, to the extent the corporate defendants, owing to their payment of such
15 monies to NADY, are now insolvent and unable to pay the class members the
16 minimum wages they are owed.

17 45. The named plaintiffs on behalf of themselves and the proposed plaintiff
18 class members, seek, on this Fourth Claim for Relief, a judgment against the defendant
19 NADY for restitution to the class of the amount of NADY'S unjust enrichment, such
20 amount to be determined based upon how much the corporate defendants are found to
21 owe the class members for unpaid minimum wages that the corporate defendants are
22 unable to pay the class members (the "deficiency amount") and how much NADY has
23 been unjustly enriched as alleged in this claim for relief up to, but not in excess of, that
24 deficiency amount, along with other suitable equitable relief and an award of
25 attorney's fees, interest and costs, as provided for by Nevada's Constitution and other
26 applicable laws.

27
28 WHEREFORE, plaintiffs demand the relief on each cause of action as alleged

1 aforesaid.

2 Plaintiff's demand a trial by jury on all issues so triable.

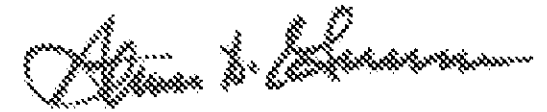
3
4 Dated this 22nd day of June, 2015.

5
6 Leon Greenberg Professional Corporation

7
8 By: /s/ Leon Greenberg

9 LEON GREENBERG, Esq.
10 Nevada Bar No.: 8094
11 2965 South Jones Blvd.- Suite E4
12 Las Vegas, Nevada 89146
13 (702) 383-6085
14 Attorney for Plaintiff
15
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28

EXHIBIT "B"



CLERK OF THE COURT

MAMA
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Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

Plaintiffs,

vs.

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

Defendants.

DEFENDANTS' MOTION FOR LEAVE TO AMEND ANSWER
TO ASSERT A THIRD-PARTY COMPLAINT

Defendants A Cab, LLC and Creighton J. Nady, by and through their attorneys of record,
and pursuant to NRCP 10(a) and NRCP 15, hereby move for leave to amend their Answer to Assert
a Third Party Complaint against Leon Greenberg, Esq., Leon Greenberg Professional Corporation,
and Dana Sniegocki, Esq.

...

...

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

DATED this 29th day of November, 2016.

RODRIGUEZ LAW OFFICES, P. C.

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

NOTICE OF HEARING

PLEASE TAKE NOTICE that Plaintiffs will bring the foregoing Motion on for hearing before this Court on the 3 day of JAN, 2017, at 9 AM, or as soon thereafter as counsel may be heard.

DATED this 29th day of November, 2016.

RODRIGUEZ LAW OFFICES, P. C.

By: /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 Plaintiffs

I.

POINTS AND AUTHORITIES

I. The Requested Amendments Conform to the Evidence

A proposed amended answer with third-party complaint is attached for the Court's review at Exhibit I. The requested amendments are tailored to conform to the evidence obtained during the discovery period. The requested amendment is to assert a third-party complaint against those persons and entities which have engaged in champerty, and seek to profit from the continued litigation of others.

1 As the Nevada Supreme Court stated in *Schwartz v. Eliades*, 939 P.2d 1034, 113 Nev. 586
2 (1997):

3 "A champertous agreement is one in which a person without interest in another's
4 litigation undertakes to carry on the litigation at his own expense, in whole or in part,
5 in consideration of receiving, in the event of success, a part of the proceeds of the
6 litigation." *Martin v. Morgan Drive Away, Inc.*, 665 F.2d 598, 603 (5th Cir.1982),
7 cert. dismissed, 458 U.S. 1122, 103 S.Ct. 5, 73 L.Ed.2d 1394 (1982). "To maintain
8 the suit of another is now, and always has been, held to be unlawful, unless the
9 person maintaining has some interest in the subject of the suit." *Lum v. Stinnett*, 87
10 Nev. 402, 408, 488 P.2d 347, 350 (1971) (citing *Gruber v. Baker*, 20 Nev. 453, 23 P.
11 858, 862 (1890)). "Where a person promoting the suit of another has any interest
12 whatever, legal or equitable, in the thing demanded, ... he is in effect also a suitor
13 according to the nature and extent of his interest." *McIntosh v. Harbour Club Villas*
14 *Condominium*, 421 So.2d 10, 11 (Fla.Dist.Ct.App.1982). *Schwartz v. Eliades*, 939
15 P.2d at 1036.

16 See also, *Vosberg Equipment v. Zupancic*, 737 P.2d 522, 103 Nev. 266 (1987) stating:

17 In 1890 this court held that even in the absence of statute it was, under the common
18 law of England, unlawful to "maintain the suit of another" unless the person
19 maintaining the suit "has some interest in the subject of the suit." *Gruber v. Baker*,
20 Nev. 453, 469, 23 P. 858 (1890). In *Lum v. Stinnett*, 87 Nev. 402, 408, 488 P.2d
21 347, 350 (1971), we recognized the "common law offense of maintenance" as
22 existing "when a person without interest in a suit officiously intermeddles therein by
23 assisting either party with money or otherwise to prosecute or defend it." Champerty
24 is maintenance with the additional feature of an agreement for the payment of
25 compensation or personal profit from the subject of the suit. *Lum v. Stinnett*, 87
26 Nev. at 408, 488 P.2d at 350. *Vosberg Equipment v. Zupancic*, 737 P.2d at 523.

27 In the present case, the evidence has demonstrated that Third-Party Defendants Greenberg,
28 Leon Greenberg Professional Corporation, and Sniegocki are not acting on behalf of their clients'

1 interests, but rather are seeking to profit themselves from prolonged litigation and a fee-shifting
2 mechanism. The depositions and discovery responses of the named Plaintiffs, Michael Murray and
3 Michael Reno, make it clear that both had no interest in the litigation, had no understanding of the
4 litigation, and had merely signed up when solicited by Third-Party Defendants.

5 Further, when Defendant made a good faith attempt to resolve the claim, at a value
6 exceeding 10 times the value of the claim, the clients were not made aware of such offers. Third-
7 Party Defendants had no interest in what was best for the Plaintiffs, but rather stood to obtain
8 further financial gain by prolonging the litigation and escalating attorney fees in a fee-shifting type
9 case.

10 Most recently, Third-Party Defendant Greenberg confirmed that he will not engage in any
11 mediation or alternative type of resolution, nor will he disclose a settlement demand. Further,
12 Third-Party Defendants have now commenced interfering with Third-Party Plaintiffs' ability to
13 resolve and negotiate other matters with other employees.

14 Therefore, Third-Party Plaintiffs assert they have a right to contribution and indemnity for
15 the damages caused by Third-Party Defendants' purposeful escalation of damages. A defendant is
16 permitted to defend the case and at the same time assert his right of indemnity against the party
17 ultimately responsible for the damage. *Reid v. Royal Ins. Co.*, 80 Nev. 137, 390 P.2d 45 (1964).

18 Also telling is that Third-Party Defendants have continued to drag out the litigation asking
19 for extension after extension with the Court, indicating they need more time to prepare, and
20 compelling discovery which they then do not utilize. In reality, they are prolonging the litigation to
21 continue advertising and attempting to recruit more clients by stating, "there is no set deadline for
22 this case to be finished." *Third-Party Defendants' website advertising page, Exhibit 2.* The
23 website and ad is targeted directly to Third-Party Plaintiffs A Cab's employees, and in fact is
24 labeled "A Cab Driver's Page." Exhibit 2.

25 **2. NRCP 14 and NRCP 15 Support That Leave to Amend Should Be Granted.**

26 At any time after commencement of the action a defending party, as a third-party plaintiff,
27 may cause a summons and complaint to be served upon a person not a party to the action who is or
28 may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party

1 plaintiff. NRCP 14. A party may amend the party's pleading only by leave of court or by written
2 consent of the adverse party; and leave shall be freely given when justice so requires. NRCP 15.

3 In the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory
4 motive on the part of the movant - the leave to amend should be freely given. *Stephens v. Southern*
5 *Nev. Music Co.*, 89 Nev. 104, 507 P.2d 138 (1973). Here, there has been no bad faith in seeking
6 these amendments. In fact, Defendants are seeking these amendments well in advance of the new
7 deadlines extended by the Court and the Discovery Commissioner. See DCRR extending deadlines
8 at Plaintiffs' request at Exhibit 3. As recent as the status check of November 17, 2016, the
9 Discovery Commissioner further extended deadlines, making the recommended Close of Discovery
10 April 28, 2017. Therefore, the proposed amendment will not affect the discovery deadlines or trial
11 date.

12 II.

13 CONCLUSION

14 For the foregoing, Defendants respectfully request that this Court grant Defendants leave to
15 amend and permission to file the Third Amended Complaint attached hereto as Exhibit 1.

16 DATED this 29th day of November, 2016.

17 RODRIGUEZ LAW OFFICES, P. C.

18
19 By: /s/ Esther C. Rodriguez, Esq.

20 Esther C. Rodriguez, Esq.
21 Nevada State Bar No. 6473
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
22 Attorneys for Defendants
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th 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 filing to the following:

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

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

EXHIBIT 1

EXHIBIT 1

AANS

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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,

A CAB, LLC and CREIGHTON J. NADY,

Third-Party Plaintiffs,

v.

LEON GREENBERG, LEON GREENBERG
PROFESSIONAL CORPORATION, and DANA
SNIEGOCKI,

Third-Party Defendants.

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

DEFENDANTS A CAB, LLC and CREIGHTON J. NADY'S AMENDED ANSWER TO
SECOND AMENDED COMPLAINT AND THIRD-PARTY COMPLAINT

Defendants A Cab, LLC and Creighton J. Nady (collectively "Defendants"), by and through
their attorneys of record, pursuant to NRCF Rule 12, 14, and 15 and as their Amended Answer to

1 Plaintiffs' Second Amended Complaint on file herein ("Complaint"), admit, deny and allege as
2 follows:

3 **JURISDICTION, PARTIES AND PRELIMINARY STATEMENT**

4 1. Answering Paragraph 1 of the Complaint, Defendants are without sufficient
5 information or knowledge to form a belief as to the truth of such allegations, and therefore deny the
6 same. Defendants deny the allegation that Plaintiffs are current employees.

7 2. Answering Paragraph 2 of the Complaint, Defendants admit A Cab, LLC is a
8 Nevada Limited Liability Company doing business in the County of Clark, State of Nevada, as a
9 taxicab company.

10 3. Answering Paragraphs 3 and 4 of the Complaint, Defendants admit Nady is the sole
11 and managing member of A Cab, LLC. To the extent these paragraphs contain any other factual
12 allegations requiring a response, Defendants deny same.

13 **CLASS ACTION ALLEGATIONS**

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

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

21 5. Answering Paragraph 15 of the Complaint, Defendants repeat and reallege their
22 answers to the allegations contained in Paragraphs 1 through 14 as though fully set forth herein.

23 6. Answering Paragraph 16 of the Complaint, Defendants assert that the allegations
24 contained therein are a legal conclusion to which no response is required. To the extent this
25 Paragraph contains any factual allegations requiring a response, Defendants deny same.

26 7. Answering Paragraphs 17 and 18 of the Complaint, Defendants deny each and every
27 allegation contained therein, including all sub-parts.

28 8. Answering Paragraphs 19, 20, and 21 of the Complaint, Defendants assert that the

1 allegations contained therein are a legal conclusion to which no response is required. To the extent
2 these Paragraphs contain any factual allegations requiring a response, Defendants deny same.

3 **AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT TO NEVADA REVISED**
4 **STATUTES § 698.040 ON BEHALF OF THE NAMED PLAINTIFFS AND**
5 **THE PUTATIVE CLASS**

6 9. Answering Paragraph 22 of the Complaint, Defendants repeat and reallege their
7 answers to the allegations contained in Paragraphs 1 through 21 as though fully set forth herein.

8 10. Answering Paragraphs 23, 24, 25, and 26 of the Complaint, Defendants assert that
9 the allegations contained therein are a legal conclusion to which no response is required. To the
10 extent these Paragraphs contain any factual allegations requiring a response, Defendants deny same.

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

15 11. Answering Paragraph 27 of the Complaint, Defendants repeat and reallege their
16 answers to the allegations contained in Paragraphs 1 through 26 as though fully set forth herein.

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

19 13. Answering Paragraph 29 of the Complaint, Defendants assert that the allegations
20 contained therein are a legal conclusion to which no response is required. To the extent this
21 Paragraph contains any factual allegations requiring a response, Defendants deny same.

22 **AS AND FOR A FOURTH CLAIM AGAINST**
23 **Defendants NADY FOR UNJUST ENRICHMENT**

24 14. Answering Paragraph 39 of the Complaint, Defendants repeat and reallege their
25 answers to the allegations contained in Paragraphs 1 through 38 as though fully set forth herein.

26 15. Answering Paragraphs 40, 41, 42, 43, 44 and 45 of the Complaint, Defendants deny
27 each and every allegation contained therein.

PRAYER FOR RELIEF

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

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

As a third separate and affirmative defense, Defendants allege that Plaintiffs' damages, if any, were caused solely by the conduct of others and are not the result of any conduct of Defendants A Cab, LLC.

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

As a twenty-fourth separate and affirmative defense, Plaintiffs unreasonably and

1 unjustifiably delayed the assertion of their purported claims, all to Defendants' substantial
2 detriment.

3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

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

6 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

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

10 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

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

13 WHEREFORE, Defendants prays as follow:

- 14 1. That Plaintiffs take nothing by way of their Complaint;
- 15 2. That Plaintiffs' Complaint be dismissed with prejudice in its entirety and Judgment
16 entered in favor of Defendants;
- 17 3. That Defendants be awarded their attorneys' fees, costs, and interest; and
- 18 4. For such other and further relief as this Court deems just and proper.

19 DATED this 29th day of November, 2016.

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

21
22 /s/ Esther C. Rodriguez, Esq.
23 Esther C. Rodriguez, Esq.
24 Nevada Bar No. 6473
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendants

DEFENDANTS' THIRD-PARTY COMPLAINT

Defendants/Third-Party Plaintiffs A CAB, LLC and CREIGHTON J. NADY (hereinafter "Third-Party Plaintiffs"), by and through their attorneys of record, hereby assert their Third-Party Complaint against Third-Party Defendants LEON GREENBERG, LEON GREENBERG PROFESSIONAL CORPORATION, and DANA SNIEGOCKI (hereinafter collectively "Third-Party Defendants"), as follows:

GENERAL ALLEGATIONS

1. At all times mentioned herein, Third-Party Plaintiff A Cab, LLC ("A Cab") is and was a Nevada Limited Liability Company licensed to do business as a taxicab company in the County of Clark, State of Nevada.

2. At all times mentioned herein, Third-Party Plaintiff Creighton J. Nady ("Nady"), a resident of Clark County, Nevada, is and was the sole managing member of A Cab, LLC.

3. At all times mentioned herein, it is believed Third-Party Defendant Leon Greenberg ("Greenberg"), is an attorney practicing in Clark County, Nevada who was not an employee of A Cab or Nady's, and has no relationship to either Third-Party Plaintiff.

4. At all times mentioned herein, it is believed Third-Party Defendant Leon Greenberg Professional Corporation ("Greenberg PC"), is a Nevada Domestic Corporation licensed to do business in the County of Clark, State of Nevada.

5. At all times mentioned herein, it is believed Third-Party Defendant Dana Sniegocki ("Sniegocki"), is an attorney practicing in Clark County, Nevada who was not an employee of A Cab or Nady's, and has no relationship to either Third-Party Plaintiff.

6. A Cab's obligations to pay the plaintiffs arose under employment and/or wage agreements, or in other words through an employer-employee relationship.

7. Plaintiffs' claims in the underlying action arise solely from each driver's employer-employee relationship.

8. At all time mentioned herein, Greenberg, Greenberg PC, and Sniegocki (collectively referred to as "Third-Party Defendants") never had an employer-employee relationship with any of the Third-Party Plaintiffs.

1 9. On or about September 2012, Third-Party Defendants obtained the names and
2 addresses of A Cab's drivers from someone other than A Cab.

3 10. Before Third-Party Defendants had a client or filed a lawsuit, Third-Party
4 Defendants maliciously and willfully trolled for clients by using the private personal information of
5 A Cab's drivers which he and/or she had obtained to solicit new clients. Contacting the employee
6 drivers of A Cab through personalized letters was an invasion of their privacy. Greenberg and/or
7 Sniegocki used private personal information to solicit new clients for the benefit of each of the
8 Third-Party Defendants.

9 11. Since September 2012 through the present, Third-Party Defendants have continued
10 to troll for clients by targeting Third-Party Plaintiffs' employees and drivers, including the use of
11 online marketing, direct mailers, and publications distributed to Third-Party Plaintiffs' employees.

12 12. Third-Party Defendants' solicitation of remunerative employment was a business
13 transaction which he and/or she engaged in for his and/or her own financial benefit. It was a
14 business act or practice. Third-Party Defendants let potential clients know their names and their
15 interest in performing legal services for them.

16 13. Third-Party Defendants' trolling for clients was false and deceptive. Greenberg
17 gave his opinion on liability indicating to Third-Party Plaintiffs' employees that A Cab may have
18 violated Nevada's Minimum Wage laws and may owe them and many other taxi drivers unpaid
19 minimum wages. He made calculations and expressed his personal belief that many taxi drivers
20 were collecting less than minimum wage. Greenberg's unsolicited legal advice was designed to
21 suggest he had some significant personal knowledge about and concern for the recipient.

22 14. Third-Party Defendants acted intentionally in a manner designed to interfere with the
23 agreements and relationships between Third-Party Plaintiffs and its drivers.

24 15. Third-Party Defendants have failed to prosecute the action in the best interest of the
25 Plaintiffs, but rather seek self-profit, and therefore have acted in their own financial interest and
26 benefit.

27 16. Such actions by the Third-Party Defendants include but are not limited to a complete
28 absence of communication with Plaintiffs regarding Third-Party Plaintiffs' offers of resolution, far

1 exceeding the value of the claim. Such offers were in the best interest of the individual Plaintiff,
2 but not of Third-Party Defendants, and therefore were deliberately withheld to the detriment of
3 Plaintiffs and Third-Party Plaintiffs.

4 17. Third-Party Defendants have engaged in an escalation of attorney fees and costs in
5 order to maximize the profit of a fee-shifting provision, and continue to refuse offers of alternative
6 dispute resolution, mediation, or settlement conferences all of which would be in the best interest of
7 the Plaintiffs, but not of Third-Party Defendants.

8 18. Third-Party Defendants have also damaged Third-Party Plaintiffs by interfering with
9 Third-Party Plaintiffs' business and have attempted to enjoin Third-Party Plaintiffs' settlement in
10 other matters.

11 19. With such actions, Third-Party Defendants have damaged Third-Party Plaintiffs with
12 an escalation of legal fees and costs and prolonged litigation, thereby adversely affecting the
13 business, livelihood, well-being, and reputation of Third-Party Plaintiffs.

14 FIRST CAUSE OF ACTION

15 (Champertry)

16 20. Third-Party Plaintiffs incorporate by reference each and every allegation contained
17 in paragraphs 1 through 19 of the Third-Party Complaint as specifically set forth herein.

18 21. Plaintiffs initially had no interest in this litigation, and through the time of their
19 depositions, had no understanding of their claims against Third-Party Plaintiffs.

20 22. Third-Party-Defendants solicited the Plaintiffs to initiate this litigation.

21 23. Third-Party-Defendants undertook this litigation at their own expense and
22 presented this action on behalf of Plaintiffs in consideration for receiving, in the event of success,
23 a part of the proceeds of the litigation and personal profit from the litigation.

24 24. This conduct by Third-Party Defendants was unlawful and as a result, Third-Party
25 Plaintiffs have been damaged.

26 25. Third-Party Plaintiffs' damages include its legal fees, interruption of business for the
27 time spent on this case during work hours, and damage to its business interests.

28 ...

1 SECOND CAUSE OF ACTION

2 (Indemnity)

3 26. Third-Party Plaintiffs incorporate by reference each and every allegation contained
4 in paragraphs 1 through 25 of the Third-Party Complaint as specifically set forth herein.

5 27. Third-Party Plaintiffs, by way of their Answer, have denied and continue to deny the
6 allegations as lodged by the Plaintiffs and have asserted by way of their Answer appropriate
7 affirmative defenses.

8 28. Third-Party Plaintiffs allege that, in the event they are found liable to the Plaintiffs
9 for any damages, or if payment is made by Third-Party Plaintiffs to the Plaintiffs or any other party
10 as a result of the incidents and occurrences described in the Second Amended Complaint, then
11 Third-Party Plaintiffs' liability or payment is based upon the acts or omissions of Third-Party
12 Defendants. Third-Party Plaintiffs therefore allege that if they are required to pay damages or any
13 other sums pursuant to the Second Amended Complaint herein, Third-Party Plaintiffs are entitled to
14 full implied indemnification from Third-Party Defendants.

15 29. It has become necessary for Third-Party Plaintiffs to retain the services an attorney
16 to defend against the lawsuit and to bring this Third-Party Complaint. Accordingly, Third-Party
17 Plaintiffs are entitled to recover its reasonable attorney's fees and costs incurred herein.

18 THIRD CAUSE OF ACTION

19 (Contribution)

20 30. Third-Party Plaintiffs incorporate by reference each and every allegation contained
21 in paragraphs 1 through 29 of the Third-Party Complaint as specifically set forth herein.

22 31. Third-Party Plaintiffs allege that in the event they are found liable to the Plaintiffs
23 for any damages, or if payment is made by Third-Party Plaintiffs to the Plaintiffs or any other party
24 as a result of the incidents and occurrences described in the Second Amended Complaint, then
25 Third-Party Plaintiffs' liability of payment is partially based upon the acts and omissions of Third-
26 Party Defendants. Third-Party Plaintiffs therefore allege that if they are required to pay damages or
27 other sums pursuant to the Second Amended Complaint herein, they are entitled to contribution
28 from Third-Party Defendants.

32. It has become necessary for Third-Party Plaintiffs to retain the services an attorney to defend against the lawsuit and to bring this Third-Party Complaint. Accordingly, Third-Party Plaintiffs are entitled to recover their reasonable attorney's fees and costs incurred herein.

WHEREFORE, Third-Party Plaintiffs, expressly reserving the right to amend this third-party complaint, demand judgment against Third-Party Defendants and each of them as follows:

1. For an award of damages in excess of \$50,000.00;
2. Punitive damages;
3. For attorneys' fees and costs of suit; and
4. For such other and further relief as this Court may deem just and proper.

DATED this 28th day of November, 2016.

RODRIGUEZ LAW OFFICES, P.C.

By: /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

EXHIBIT 2

EXHIBIT 2

HOME

CONTACT

ABOUT THE SUIT

A CAB DRIVERS' C

A Cab Drivers

- The lawsuit against A Cab has been certified as a class action for unpaid minimum wages owed to all drivers working for A Cab from July 1, 2007 through December 31, 2015. That means all drivers who worked for the company during that time period are eligible to benefit if this case has a successful outcome.
- We would like all current and former A Cab drivers who worked during the period of July 1, 2007 through the present to register their information with our office. **YOU CAN DO SO USING THE FORM ON THIS PAGE.** Registration is optional and you are not required to register. You may still benefit from the case without registering.
- If you'd like to see a copy of the Court's Order certifying this case as a class action, please click [HERE](#).
- Because there are over 2000 individuals who are members of the class, we are not able to speak to all drivers individually by phone. E-mail communications are much more efficient. There is no set deadline for this case to be finished and the case is not scheduled for trial until January of 2017, at the earliest. The best way to stay updated about this case is by registering your e-mail address with this office so we may communicate important updates to you.

PLEASE FILL OUT THIS FORM

First and Last Name *

Enter text here

Email *

Enter email address

☐ Check here to receive email updates

Years Employed (example: 2011-2015)

Enter text here

If you'd like to update your mailing address

Enter address

Phone

Enter phone number

May we contact you to help with our case?

☐ Yes☐ No☐ You may only contact me about the A Cab case

SUBMIT

EXHIBIT 3

EXHIBIT 3

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Las Vegas, Nevada 89145
Tel (702) 320-8400
Fax (702) 320-8401

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DCRR
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Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Case No.: A-12-669926-C
Dept. No. 1

Plaintiffs,

vs.

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

Defendants.

DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS

Hearing Date: 10/12/16
Hearing Time: 9:00 a.m.

Attorney for Plaintiffs: Leon Greenberg, Esq., and Dana Sniegocki, Esq.,
Leon Greenberg Professional Corporation,

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

Defendants' co-counsel, Michael K. Wall, Esq., did not attend the hearing.

I.

FINDINGS

1. This matter came before the Discovery Commissioner on "*Defendants' Motion for Protective Order or, in the Alternative, Motion to Terminate Deposition of a Cab, LLC 30(b)(6) Witness; Motion to Limit the Deposition of Creighton J. Nady; and Motion for Protective Order from Plaintiffs' Written Discovery on Order Shortening Time*"; and Status Check for Compliance and Production.

2. As a result of the hearing of September 7, 2016, a Discovery Commissioner Report and Recommendations ("DCR&R") was prepared and submitted by Plaintiffs without the signature of Defendants. A telephonic status check was held by the Discovery Commissioner on October 7, 2016, to address compliance. As a result, Plaintiffs brought the aforementioned DCR&R to the hearing of October 12, 2016, which was signed by Defendants, and submitted to the Discovery Commissioner for approval and entry.

3. Contained within the aforementioned DCR&R were the Recommendations which were scheduled for status check for compliance and production on October 12, 2016.

4. The first Recommendation contained within the DCR&R was "that defendants' re-run the QuickBooks data extract previously produced so that they produce to plaintiffs the QuickBooks information, in a CSV or Excel or other file format agreed upon by the parties." During the October 12, 2016 hearing, the parties agreed that Defendants had complied in producing this re-run data as ordered. The Discovery Commissioner finds that compliance and production is satisfied pertaining to this first Recommendation.

5. The second Recommendation was "that defendants provide supplemental responses to Requests Nos. 1-3 in Plaintiffs' Seventh Request for the Production of Documents pertaining to defendants' providing of health insurance benefits to the class members and Interrogatories Nos. 3-5 pertaining to the same"; "or provide a detailed sworn affidavit showing their efforts to provide informed responses to the same." The Discovery Commissioner finds that Defendants did comply in providing this sworn affidavit with employee health summary plans that were available in a timely fashion to Plaintiffs. Plaintiffs have subsequently requested that a list of annual cost to the

1 employer now be produced; and Defendants have agreed to attempt to gather this information and to
2 provide it to Plaintiffs.

3 6. The third Recommendation stemming from the DCR&R recommended "that defendants
4 provide a copy of the Excel spreadsheet they provided to the U.S. Department of Labor as testified
5 to by Creighton J. Nady"; or if defendants are unable to provide such file, "provide a detailed sworn
6 affidavit showing efforts to provide the same." The Discovery Commissioner finds that Defendants
7 did provide the sworn affidavit as ordered; however, Plaintiffs have requested additional items to be
8 inserted into the affidavit which Defendants have agreed to incorporate.

9 7. As pertains to *"Defendants' Motion for Protective Order or, in the Alternative, Motion to*
10 *Terminate Deposition of A Cab, LLC 30(b)(6) Witness; Motion to Limit the Deposition of Creighton*
11 *J. Nady; and Motion for Protective Order from Plaintiffs' Written Discovery on Order Shortening*
12 *Time"*, the Discovery Commissioner finds that Plaintiffs' written discovery is post-judgment debtor
13 discovery, and accordingly prohibits the discovery of corporate and individual tax returns as
14 requested.

*Also permitted is distribution of funds to family
including the total amount of distributions (see minutes). AM*

15 8. The Discovery Commissioner finds that production of Defendant Nady's compensation from
16 Defendant A Cab, LLC will be allowed including any written proof of distribution for the time
17 period of 2007 - 2015. Further, the corporate profit and loss statements for Defendant A Cab, LLC
18 should be produced for those same years. Defendants are protected from the remainder of
19 Plaintiffs' written requests.

20 9. The Discovery Commissioner further finds that the deposition of the NRCP 30(b)(6) witness
21 for A Cab, LLC will be limited to one day of 7 hours to answer the questions not addressed in the
22 prior deposition.

23 10. To the extent the individual deposition of Defendant Nady is necessary, this deposition will
24 be limited to 3 hours.

25 11. The Discovery Commissioner finds that in lieu of the categories contained within the notice
26 of the NRCP 30(b)(6) deposition, the parties may either stipulate to any of the topics contained
27 within the notice; or Plaintiff may address these topics by interrogatory. As such, the Discovery
28 Commissioner finds that an additional 40 interrogatories may be lodged by Plaintiffs to address

1 topics within the 30(b)(6) notice. The interrogatory and deposition topics will not be duplicative.
2 12. The Discovery Commissioner previously advised counsel to prepare a stipulation pursuant
3 to EDCR 2.35, or a separate submission to the Discovery Commissioner after the parties attempt to
4 resolve the scheduling issues between themselves. As such, Plaintiffs circulated the following dates
5 which were agreed upon by Defendants with the following deadlines:

6	Close of Discovery:	February 28, 2017;
7	Deadline to file motions to amend pleadings/add parties:	November 29, 2016;
8	Final dates for initial expert disclosures:	November 29, 2016;
9	Final date for rebuttal expert disclosures:	December 29, 2016;
10	Final date to file dispositive motions:	March 23, 2017.

11 13. At the hearing of October 12, 2016, Plaintiffs requested additional time for their initial
12 expert disclosures. As such, the Discovery Commissioner recommends the following additional
13 extensions to the above schedule:

14	Final dates for initial expert disclosures:	December 23, 2016;
15	Final date for rebuttal expert disclosures:	January 23, 2017;
16	All other dates will remain as proposed.	

17 II.

18 RECOMMENDATIONS

19 IT IS HEREBY RECOMMENDED that *"Defendants' Motion for Protective Order or, in*
20 *the Alternative, Motion to Terminate Deposition of a Cab, LLC 30(b)(6) Witness; Motion to Limit*
21 *the Deposition of Creighton J. Nady; and Motion for Protective Order from Plaintiffs' Written*
22 *Discovery on Order Shortening Time"* is GRANTED in part, and DENIED in part.

23 IT IS RECOMMENDED that Defendants' motion for protective order is granted with
24 respect to the written discovery that was served, that includes both interrogatories and request to
25 produce that are identified in the motion;

26 IT IS RECOMMENDED that alternative relief be provided to Plaintiffs in that Defendant
27 will provide supporting documentation and identification of distributions, salary, payment to Mr.
28 Nady for 2007-2015.

1 IT IS RECOMMENDED that A Cab Taxi Service will provide its profit and loss statements
2 for 2007-2015.

3 IT IS RECOMMENDED that the remainder of the financial information requested is
4 protected at this time.

5 IT IS RECOMMENDED that the deposition of the NRCP Rule 30(b)(6) witness of A Cab,
6 LLC will be limited to one day, seven hours. The parties may agree to eliminate topics by
7 stipulation; or by interrogatory but the categories will not duplicate. As such, Plaintiffs are allowed
8 40 additional interrogatories to address topics contained within the notice by interrogatory, rather
9 than by deposition.

10 IT IS RECOMMENDED that the deposition of Defendant Creighton J. Nady will be limited
11 to three hours.

12 THE DISCOVERY COMMISSIONER FURTHER RECOMMENDS:

- 13 1. The Discovery Cutoff is extended to February 28, 2017;
- 14 2. Deadline to file motions to amend pleadings/add parties is extended to November 29,
15 2016;
- 16 3. Initial Expert Disclosures are extended to December 23, 2016;
- 17 4. Rebuttal Expert Disclosures are extended to January 23, 2017;
- 18 5. The deadline for filing of dispositive motions is March 23, 2017.

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

22 DATED this 3 day of November, 2016.

23
24 
25 DISCOVERY COMMISSIONER
26
27
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Case Name: Murray v. A Cab, LLC, et al.
Case No.: A-12-669926-C

Submitted by:
RODRIGUEZ LAW OFFICES, P.C.

Approved as to form and content:
LEON GREENBERG PROFESSIONAL CORPORATION


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Case Name: Murray v. A Cab, LLC, et al.
Case No.: A-12-669926-C

NOTICE

Pursuant to NRCP 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.

The Commissioner's Report is deemed received three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. E.D.C.R. 2.34(f).

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

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____, 2016:

_____ Placed in the folder of counsel in the Clerk's office on the _____ day of _____, 2016:

✓ _____ Electronically served counsel on NOV 7, 2016, Pursuant to N.E.F.C.R. Rule 9.

By *Natasha F. [Signature]*
Commissioner Designee

Case Name: Murray v. A Cab, LLC, et al.
Case No: A-12-669926-C

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(1),

_____ 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.

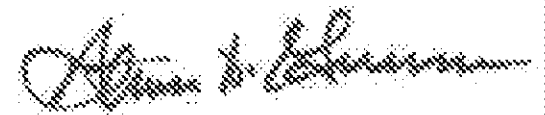
_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted as modified in the following manner
attached hereto.

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report
and Recommendations is set for _____, 2016, at _____ a.m.

Dated this _____ day of _____, 2016.

DISTRICT COURT JUDGE

EXHIBIT "C"



CLERK OF THE COURT

MOT
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

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

Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation, hereby move this Court 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 NRCF Rule 23(b)(2) class certified in this case except as part of this lawsuit. For the reasons stated *infra*, the Court should amend the NRCF Rule 23(b)(3) class certification of this case to include minimum wage and related claims arising after December 31, 2015 and provide an NRCF 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. An award of attorneys' fees is also requested.

Plaintiffs' motion is made and based upon the annexed declaration of counsel, the memorandum of points and authorities submitted with this motion, the attached exhibits, and the other papers and pleadings in this action.

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NATURE OF THIS MOTION

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

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

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

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

2016 Order, from proceeding in any such fashion.

RELEVANT FACTS

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

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

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

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

15 10/05/2016 10:30 AM

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

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

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

ABSTRACT

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

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

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

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

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

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

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

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

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

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

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

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

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

5 III. REQUEST FOR AWARD OF ATTORNEY'S FEES

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

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

20 CONCLUSION

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

23 Dated: October 14, 2016

24 LEON GREENBERG PROFESSIONAL CORP.

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

CERTIFICATE OF MAILING

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

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

by court electronic service to:


TO:

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

/s/ Dana Sniegocki

Dana Sniegocki

EXHIBIT "A"


CLERK OF THE COURT

1 ORDER
2 LEON GREENBERG, ESQ.
3 Nevada Bar No.: 8094
4 DANA SNEGOCKI, ESQ.
5 Nevada Bar No.: 11715
6 Leon Greenberg Professional Corporation
7 2965 South Jones Boulevard - Suite E-3
8 Las Vegas, Nevada 89146
9 (702) 383-6085
10 (702) 385-1827 (fax)
11 leon@greenberg-law.com
12 dana@greenberg-law.com
13 Attorneys for Plaintiffs

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 MICHAEL MURRAY and
17 MICHAEL RENO, individually and
18 on behalf of all others similarly
19 situated,

20 Plaintiffs,

21 vs.

22 A CAB TAXI SERVICE LLC, A
23 CAB, LLC, and CREIGHTON J.
24 NADY,

25 Defendants.

Case No.: A-12-669926-C

DEPT.: I

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

31 Plaintiffs filed their Motion to Certify this Case as a Class Action Pursuant to
32 NRCP 23(b)(3) and NRCP 23(b)(2), and appoint a Special Master, on May 19, 2015.
33 Defendants' Response in Opposition to plaintiffs' motion was filed on June 8, 2015.
34 Plaintiffs thereafter filed their Reply to defendants' Response in Opposition to
35 plaintiffs' motion on July 13, 2015. This matter, having come before the Court for

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

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

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20 In Respect to the Request for Class Certification

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

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20 As an initial matter, the nature of the claims made in this case are of the sort for
21 which class action treatment would, at least presumptively, likely be available if not
22 sensible. A determination of whether an employee is owed unpaid minimum hourly
23 wages requires that three things be determined: the hours worked, the wages paid, and
24 the applicable hourly minimum wage. Once those three things are known the
25 minimum wages owed, if any, are not subject to diminution by the employee's
26 contributory negligence, any state of mind of the parties, or anything else of an
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1 individual nature that has been identified to the Court. Making those same three
2 determinations, involving what is essentially a common formula, for a large group of
3 persons, is very likely to involve an efficient process and common questions. The
4 minimum hourly wage rate is set at a very modest level, meaning the amounts of
5 unpaid minimum wages likely to be owed to any putative class member are going to
6 presumptively be fairly small, an additional circumstance that would tend to weigh in
7 favor of class certification.

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10 In respect to granting the motion and the record presented in this case, the
11 Court finds it persuasive that a prior United States Department of Labor ("USDOL")
12 litigation initiated against the defendants resulted in a consent judgment obligating the
13 defendants to pay \$139,834.80 in unpaid minimum wages to the USDOL for
14 distribution to 430 taxi drivers under the federal Fair Labor Standards Act (the
15 "FLSA") for the two year period from October 1, 2010 through October 2, 2012. The
16 parties dispute the *collateral estoppel* significance of that consent judgment in this
17 litigation. The Court does not determine that issue at this time, inasmuch as whether
18 the plaintiffs are actually owed minimum wages (the "merits" of their claims) is not a
19 finding that this Court need make, nor presumably one it should make, in the context
20 of granting or denying a motion for class certification. The USDOL, as a public law
21 enforcement agency has a duty, much like a prosecuting attorney in the criminal law
22 context, to only institute civil litigation against employers when credible evidence
23 exists that such employers have committed violations of the FLSA. Accordingly,
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1 whether or not the consent judgment is deemed as a binding admission by defendants
2 that they owe \$139,834.80 in unpaid minimum wages under the FLSA for distribution
3 to 430 taxi drivers, it is appropriate for the Court to find that the Consent judgment
4 constitutes substantial evidence that, at least at this stage in these proceedings,
5 common questions exist that warrant the granting of class certification. The Court
6 concludes that the record presented persuasively establishes that there are at least two
7 common questions warranting class certification in this case for the purposes of
8 NRCP Rule 23(b)(3) ("damages class" certification) that are coextensive with the
9 period covered by the USDOL consent judgment and for the period prior to June of
10 2014.
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15 The first such question would be whether the class members are owed
16 additional minimum wages, beyond that agreed to be paid in the USDOL consent
17 judgment, and for the period covered by the consent judgment, by virtue of the
18 Minimum Wage Amendment imposing an hourly minimum wage rate that is \$1.00 an
19 hour higher than the hourly minimum wage required by the FLSA for employees who
20 do not receive "qualifying health insurance." The second such question would be
21 whether the class members are owed additional minimum wages, beyond that alleged
22 by USDOL for the period covered by the consent judgment, by virtue of the Minimum
23 Wage Amendment not allowing an employer a "tip credit" towards its minimum wage
24 requirements, something that the FLSA does grant to employers in respect to its
25 minimum wage requirements. It is unknown whether the USDOL consent judgment
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1 calculations include or exclude the application of any "tip credit" towards the FLSA
2 minimum wage deficiency alleged by the USDOL against the defendants.

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

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

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

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

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

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

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

18 Plaintiffs have also requested the appointment of a Special Master under NRCF
19 Rule 53, to be paid by defendants, to compile information on the hours of work of the
20 class members as set forth in their daily trip sheets. The Court is not persuaded that
21 the underlying reasons advanced by plaintiffs provide a sufficient basis to place the

1 entirety of the financial burden of such a process upon the defendants. Accordingly,
2 the Court denies that request without prejudice at this time.

3
4 Therefore

5 **IT IS HEREBY ORDERED:**

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

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

6 **IT IS FURTHER ORDERED:**
7

8 Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(2) for
9 appropriate equitable and injunctive relief as authorized by Article 15, Section 16 of
10 Nevada's Constitution is **GRANTED** and the named plaintiffs Michael Murray and
11 Michael Reno, and class member Michael Sargeant, are also appointed as class
12 representatives for that purpose. The class shall consist of all persons employed by
13 defendants as taxi drivers in the State of Nevada at any time from July 1, 2007
14 through the present and continuing into the future until a further Order of this Court
15 issues.
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20 **IT IS FURTHER ORDERED:**
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23 (1) Defendants' counsel is to produce to plaintiffs' counsel, within 10 days
24 of the service of Notice of Entry of this Order, the names and last known addresses of
25 all persons employed as taxicab drivers by any of the defendants in the State of
26 Nevada from July 1, 2007 through December 31, 2018, such information to be
27 provided in an Excel or CSV or other agreed upon computer data file, as agreed upon
28

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

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

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IT IS FURTHER ORDERED:

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

IT IS SO ORDERED.

Dated this 3rd day of June, 2016.


Hon. Kenneth Carr
District Court Judge

Submitted


By: 
Leon Greenberg, Esq.
Dana Spiegocki, Esq.
LEON GREENBERG PROF. CORP.
2965 S. Jones Blvd., Ste. B-3
Las Vegas, NV 89146
Attorneys for Plaintiffs

EXHIBIT "A"

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: 1

NOTICE OF CLASS
ACTION
CERTIFICATION

You are being sent this notice because you are a member of the class of current and former taxi drivers employed by A CAB TAXI SERVICE LLC and A CAB, LLC ("A-Cab") that has been certified by the Court. Your rights as a class member are discussed in this notice.

NOTICE OF CLASS ACTION CERTIFICATION

On [date] this Court issued an Order certifying this case as a class action for all taxi driver employees of A-Cab (the "class members") who were employed at anytime from July 1, 2007 to December 31, 2015. The purpose of such class action certification is to resolve the following questions:

(1) Does A-Cab owe class members any unpaid minimum wages pursuant to Nevada's Constitution?

(2) If they do owe class members minimum wages, what is the amount each is owed and must now be paid by A-Cab?

(3) What additional money, if any, should A-Cab pay to the class members besides unpaid minimum wages?

(4) For those class members who have terminated their employment with A-Cab since October 8, 2010, what, if any, additional money, up to 30 days unpaid wages, are owed to them by A-Cab under Nevada Revised Statutes 608.040?

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

NOTICE OF YOUR RIGHTS AS A CLASS MEMBER

If you wish to have your claim as a class member decided as part of this case you do not need to do anything. The class is represented by Leon Greenberg and Dana Sniegocki (the "class counsel"). Their attorney office is Leon Greenberg Professional Corporation, located at 2955 South Jones Street, Suite E-3, Las Vegas, Nevada, 89146. Their telephone number is 702-383-6085 and email can be sent to them at leongreenberg@overtime1aw.com. Communications by email instead of telephone calls are preferred.

You are not required to have your claim for unpaid minimum wages and other possible monies owed to you by A-Cab decided as part of this case. If you wish to exclude yourself from the class you may do so by filing a written and signed statement in this Court's file on this case with the Clerk of the Eighth Judicial District Court, which is located at 200 Lewis Avenue, Las Vegas, Nevada, 89101 no later than [insert date 55 days after mailing] setting forth your name and address and stating that you are excluding yourself from this case. If you do not exclude yourself from the class you will be bound by any judgment rendered in this case, whether favorable or unfavorable to the class. If you remain a member of the class you may enter an appearance with the Court through an attorney of your own selection. You do not need to get an attorney to represent you in this case and if you fail to do so you will be represented by class counsel.

THE COURT IS NEUTRAL

No determination has been made that A-Cab or Nady owes any class members any money. The Court is neutral in this case and is not advising you to take any particular course of action. If you have questions about this notice or your legal rights against A-Cab you should contact class counsel at 702-383-8085 or by email to leongreenberg@overtime1aw.com or consult with another attorney. The Court cannot advise you about what you should do.

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

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

IT IS SO ORDERED

Date:

/s/ Hon. Kenneth Cory, District Court Judge

EXHIBIT "B"

DISTRICT COURT CIVIL COVER SHEET

County, Nevada

A- 15- 721063- C

Case No. _____

(Assigned by Clerk's Office)

XXV

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

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

Jasminka Dubric

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

A Cab LLC

Attorney (name/address/phone):

Mark J. Bourassa, Esq.

The Bourassa Law Group, LLC

8808 Spring Mountain Road, Suite 101

Las Vegas NV 89117

Attorney (name/address/phone):

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

Civil Case Filing Types

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


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

July 7, 2015

Date

Signature of Initiating Party or Representative

See other side for family-related case filings.


CLERK OF THE COURT

COMID
MARK J. BOURASSA, ESQ.
Nevada Bar No. 7999
TRENT L. RICHARDS, ESQ.
Nevada Bar No. 11448
THE BOURASSA LAW GROUP, LLC
8668 Spring Mountain Road, Suite 101
Las Vegas, Nevada 89117
Tel: (702) 851-2180
Fax: (702) 851-2189
mbourassa@bourassalawgroup.com
trichards@bourassalawgroup.com
Attorney for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No: A- 15- 721063- C

Dept No: XXV

CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL

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

PRELIMINARY STATEMENT

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

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

2008

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

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

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

CLASS ALLEGATIONS

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

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

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

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

- a. Whether Defendant failed to pay minimum wage to the Class as required by the Nevada Constitution, Article 13, Section 16;
- b. Whether Defendant impermissibly credited tips towards the payment of minimum wage resulting in payment of less than minimum wage to the Class as required by the Nevada Constitution, Article 13, Section 16;
- c. Whether Defendant made unlawful deductions from the Class' wages, including, but not limited to, deductions for "cash loan fees," resulting in payment of less than minimum wage to the Class as required by the Nevada Constitution, Article 13, Section 16.

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

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

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

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

4
5 20. Plaintiff will fairly and adequately represent the interests of the members of the
6 class and has no interests that conflict with or are antagonistic to the interests of the class.

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

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

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

21
22 FIRST CLAIM FOR RELIEF

23 FAILURE TO PAY MINIMUM WAGE

24 (Nev. Const. Art. 15, § 16)

25 By Plaintiff and the Class against Defendant

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

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

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

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

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

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

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

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

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 these minimum hourly wages. Defendant's
17 malicious, oppressive and fraudulent conduct is also demonstrated by their failure to make any
18 allowance to pay such minimum hourly wages if they were found to be due, such as through an
19 escrow account, while seeking any judicial determination of their obligation to make those
20 payments.
21
22

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

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

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.

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SECOND CLAIM FOR RELIEF

CONVERSION

By Plaintiff and the Class Against Defendant

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

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

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

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

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

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

PRAYER FOR RELIEF

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

- (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

DEMAND FOR JURY TRIAL

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

DATED this 7th day of June, 2015.

THE BOURASSA LAW GROUP, LLC



MARK J. BOURASSA, ESQ.

Nevada Bar No: 7979

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Las Vegas, Nevada 89117

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Fax: (702) 831-2189

mbourassa@bourassalawgroup.com

richard@bourassalawgroup.com

Attorneys for Plaintiff

EXHIBIT "C"