

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 XVI of LII**

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

HUTCHISON & STEFFEN, PLLC

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23	Plaintiffs' Response in Opposition to Defendants' Motion for Declaratory Order Regarding Statue of Limitations, filed 08/28/2015	IV	AA000600-AA000650
172	Plaintiffs' Response in Opposition to Defendants' Motion for Dismissal of Claims on an Order Shortening Time, filed 10/17/2018	XLVI	AA009289-AA009297
8	Plaintiffs' Response in Opposition to Defendants' Motion Seeking Reconsideration of the Court's February 8, 2013 Order Denying Defendants' Motion to Dismiss, filed 03/18/2013	I	AA000181-AA000187
154	Plaintiffs' Response to Defendants' Ex-Parte Motion to Quash Writ of Execution on an OST and Counter-Motion for Appropriate Judgment Enforcement Relief, filed 09/24/2018	XLIV	AA008919-AA008994
109	Plaintiffs' Response to Defendants' Motion in Limine to Exclude Expert Testimony, filed 01/12/2018	XXX, XXXI	AA006002-AA006117
184	Plaintiffs' Response to Special Master's	XLVII	AA009665-

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

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

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

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

CERTIFICATE OF SERVICE

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

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Attorneys for Respondents

DATED this 5th day of August, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

1 pointer --

2 MR. GREENBERG: Yes.

3 DISCOVERY COMMISSIONER: -- at deposition; I
4 probably wouldn't use the term "illegal" when you ask him the
5 question. That's number one.

6 Number two, why can't you take that deposition
7 currently?

8 MR. GREENBERG: Because I don't know what his profit
9 was from the company. And they're not willing -- they gave me
10 a net income amount for the company, A Cab. They are not
11 willing to stipulate that that is the net amount of gain that
12 Mr. Nady received from the company's business.

13 DISCOVERY COMMISSIONER: Maybe you should ask him
14 during deposition.

15 MR. GREENBERG: Your Honor, I asked him 2015 in his
16 deposition to tell me what --

17 DISCOVERY COMMISSIONER: Yeah, but that deposition
18 didn't go very well.

19 MR. GREENBERG: It didn't go very well. And his
20 answer was, I don't know; okay? Whatever the income was to
21 the company is going on his 1040, because he is apparently the
22 only member of the LLC. If there's more than one member of an
23 LLC, it must file a separate return, a K-1 is issued. There
24 is no K-1. They don't have to issue a K-1. So essentially he
25 is the company.

1 I would find what the income was by looking at his
2 Schedule C and his Schedule E of his 1040. I wouldn't need
3 the rest of his 1040 because it would have to be listed on one
4 or both of those schedules. They don't want to produce that
5 information to me. They don't want to stipulate that the net
6 income of the company was, in fact, the net income to Mr. Nady
7 during the relevant time period.

8 So how -- if I'm going to go to trial, Your Honor,
9 and I'm going to get a finding responsibility by Mr. Nady, and
10 he's going to say, well, I'm not responsible to the extent
11 greater than what my profit was how -- how -- and what my
12 financial gain was from the supposed illegal activities, then
13 how am I going to establish what that number is? Isn't the
14 burden on me to show the extent of what he should be
15 responsible for?

16 If he's going to assume 100 percent responsibility
17 if A Cab can't pay a judgment, then I don't care. But if he's
18 going to interpose this defense then I need to be able to
19 establish for purposes of trial what -- well, what was his
20 gain?

21 DISCOVERY COMMISSIONER: Isn't that more
22 appropriately for a judgment debtor exam once you get a
23 judgment?

24 MR. GREENBERG: Your Honor, a judgment, they're not
25 joint and severally liable defendants here. Presumably, he is

1 liable only to the amount of his gain, or at least he has a
2 defense to raise based on that. So you're saying that I
3 should proceed to trial, get a judgment. If A Cab doesn't
4 pay, then determine in a supplementary proceeding what the
5 extent of his liability is based on his gain from the
6 operations.

7 It could be approached that way. And if the
8 District Judge authorized it, and I reserved my rights in that
9 fashion, my right -- you know, my clients' interests would be
10 protected. I acknowledge that, Your Honor. I just don't know
11 that that makes sense; okay?

12 DISCOVERY COMMISSIONER: I don't know what makes
13 sense anymore on this case to be candid with you.

14 MS. RODRIGUEZ: Your Honor?

15 DISCOVERY COMMISSIONER: Have you turned over all
16 the financial information --

17 MS. RODRIGUEZ: I did.

18 DISCOVERY COMMISSIONER: -- that I previously
19 ordered?

20 MS. RODRIGUEZ: Yes.

21 DISCOVERY COMMISSIONER: What's the problem --

22 MS. RODRIGUEZ: Exactly.

23 DISCOVERY COMMISSIONER: -- with regard to the --
24 you know, the net worth?

25 MS. RODRIGUEZ: We just had -- we -- you had these

1 arguments before. We spent an hour --

2 DISCOVERY COMMISSIONER: I know.

3 MS. RODRIGUEZ: -- arguing about this and Your Honor
4 said we didn't have to turn over the full tax --

5 DISCOVERY COMMISSIONER: I did.

6 MS. RODRIGUEZ: -- documents. We turned over the
7 Profit and Loss Statements as you ordered. We turned over all
8 of the tax information, the W-2s I believe, W-2s --

9 MR. GREENBERG: There is no W-2, Your Honor.

10 MS. RODRIGUEZ: -- for Nady. What did she receive?
11 1099's. I'm sorry. I was -- I was thinking of the wrong tax
12 form.

13 DISCOVERY COMMISSIONER: All right.

14 MS. RODRIGUEZ: 1099s for Nady and family as
15 ordered.

16 DISCOVERY COMMISSIONER: Okay. Mr. Greenberg --

17 MS. RODRIGUEZ: I told Mr. Greenberg --

18 MR. GREENBERG: Yes, Your Honor?

19 MS. RODRIGUEZ: -- anything else, he needs to ask
20 Mr. Nady at the deposition. If he's interested in -- in the
21 interplay between the company and what Nady profits from, he's
22 got the tax documents in front of him. He can thoroughly ask
23 him all of that at a deposition. I don't know why he chose to
24 abandon that deposition.

25 DISCOVERY COMMISSIONER: Well, I think he probably

1 wants the other information on the health insurance which you
2 are working on providing him.

3 MS. RODRIGUEZ: That has nothing to -- that was the
4 PMK. That was the 30(b)(6). Or he -- probably he's going to
5 notice another 30(b)(6) on the health insurance.

6 DISCOVERY COMMISSIONER: You know what; I'm going to
7 rely on you all to prepare your case for trial. You know it
8 much better than I do, and I know it better than I would like
9 to know it. So you all need to get busy, get your discovery
10 exchanged.

11 Mr. Greenberg, I would go ahead and take his
12 deposition. If you want to wait for the health insurance so
13 you can take the PMK and his individual deposition at one
14 time, take it. Ask the financial questions that you feel you
15 need to ask. You're either going to draw an objection and an
16 instruction not to answer, and then I will have to deal with
17 it by a separate motion.

18 But I can't do anymore right now. This is what I
19 can do. If you're not satisfied, you're welcome to talk to
20 the District Court Judge.

21 MR. GREENBERG: Yes, Your Honor.

22 DISCOVERY COMMISSIONER: But you have the Profit and
23 Loss. You have his 1099 forms.

24 MS. RODRIGUEZ: All Income Statements as well.

25 DISCOVERY COMMISSIONER: All Income Statements.

1 MR. GREENBERG: I -- I --

2 DISCOVERY COMMISSIONER: Move forward.

3 MS. RODRIGUEZ: And there will not be an instruction
4 not to answer. That's what I told Mr. Greenberg; he's ready
5 to answer these questions.

6 MR. GREENBERG: Your Honor, again, some of these
7 issues involve evidentiary determinations and how the case
8 would proceed at trial or --

9 DISCOVERY COMMISSIONER: I understand.

10 MR. GREENBERG: -- potential judgment. And perhaps
11 I should address them to the District Court. If Your Honor is
12 not going to order the production of Schedule C and the
13 Schedule E of the 1040, then you're not. I understand.

14 DISCOVERY COMMISSIONER: I'm not. And I --

15 MR. GREENBERG: And I don't want to belabor the
16 point.

17 DISCOVERY COMMISSIONER: We've already addressed
18 that issue.

19 MR. GREENBERG: Okay.

20 DISCOVERY COMMISSIONER: I've already ordered the
21 financial documents.

22 MR. GREENBERG: Then --

23 DISCOVERY COMMISSIONER: If -- if you think that my
24 recommendation was not appropriate, then you should object.

25 MS. RODRIGUEZ: I think he did object. Didn't --

1 MR. GREENBERG: Well --

2 MS. RODRIGUEZ: -- you object already?

3 DISCOVERY COMMISSIONER: And what did the --

4 MR. GREENBERG: -- Your Honor --

5 DISCOVERY COMMISSIONER: -- Judge say?

6 MR. GREENBERG: -- I couldn't really object to the
7 financial disclosures because I didn't have them until about a
8 week ago or 10 days ago.

9 What I'd ask Your Honor to do, is if we could have a
10 Report and Recommendation just confirming you're not ordering
11 disclosure of the Schedule C and the Schedule E of Mr. Nady,
12 and the 1040s, I'll have it in the record. And that way, if I
13 want to object to that ruling by Your Honor, I'll take it --

14 DISCOVERY COMMISSIONER: But I've already --

15 MR. GREENBERG: -- to District Judge.

16 DISCOVERY COMMISSIONER: -- made that decision.

17 MR. GREENBERG: Well, you -- you --

18 DISCOVERY COMMISSIONER: You do a Motion to
19 Reconsider to the District Court Judge. You sign the order.
20 If you signed it, do a Motion to Reconsider to him. I don't
21 want to -- I don't want to revisit that issue because I've
22 already made a recommendation on it.

23 MR. GREENBERG: Well --

24 DISCOVERY COMMISSIONER: If the Judge has signed it,
25 then do a Motion to Reconsider to the Judge.

1 MR. GREENBERG: Okay.

2 MS. RODRIGUEZ: Right.

3 MR. GREENBERG: Then -- then that's -- then that's
4 how we need to proceed --

5 DISCOVERY COMMISSIONER: Okay.

6 MR. GREENBERG: -- if -- if necessary, Your Honor.

7 There are at least three or four other issues that
8 are outstanding. I don't know if the Court wants to take the
9 time to address them.

10 DISCOVERY COMMISSIONER: Well, we could --

11 MR. GREENBERG: It's up to Your Honor.

12 DISCOVERY COMMISSIONER: Well, we could take a vote
13 of the audience. I think the answer is going to be "no". But
14 actually everyone seems to be enjoying the argument now, so
15 I'm getting, you know, encouragement here.

16 What else do we have to address, Mr. Greenberg? Can
17 you just give me a list?

18 MR. GREENBERG: Your Honor, this is in -- primarily
19 in the second supplement I submitted to Your Honor. There
20 were disclosures at Mr. Nady's recent deposition regarding
21 materials that have not been produced or that are otherwise
22 germane and can be produced.

23 DISCOVERY COMMISSIONER: Can you just give me a
24 list?

25 MR. GREENBERG: Okay. There are Excels of the daily

1 time every driver worked. They're called "J-Rolls" sometimes.
2 These exist. They were maintained in the normal course of
3 business. I --

4 DISCOVERY COMMISSIONER: Haven't I already addressed
5 this issue?

6 MR. GREENBERG: Your Honor, they were --

7 MS. RODRIGUEZ: Your Honor, I've --

8 MR. GREENBERG: -- they were --

9 MS. RODRIGUEZ: -- just received the supplement
10 yesterday and he's got a whole new list of items. And I'm
11 really not prepared to address all of that.

12 DISCOVERY COMMISSIONER: Okay.

13 MS. RODRIGUEZ: You -- you ordered a certain time
14 for supplements. We just got this yesterday.

15 DISCOVERY COMMISSIONER: Okay.

16 MR. GREENBERG: Your Honor --

17 DISCOVERY COMMISSIONER: So the J-Rolls, I thought
18 we had address that like months ago. So maybe --

19 MR. GREENBERG: Yes, Your Honor --

20 DISCOVERY COMMISSIONER: -- I'm confused.

21 MR. GREENBERG: -- and they were never produced.

22 And Mr. Nady doesn't -- at his deposition confirms the
23 existence of these things, says if -- they should be in the
24 computer system. If they're there, we can produce them. Why
25 they weren't produced, he has no explanation. They should be

1 produced. They should have been produced, Your Honor.

2 DISCOVERY COMMISSIONER: What's the second item?

3 MR. GREENBERG: The second issue, Your Honor, is
4 that Mr. Nady testified that the Quickbooks system will
5 indicate to us whether someone is recorded as having a spouse,
6 being married or unmarried. This is required on a W-4 form
7 for every employee and it will also tell us how many
8 dependents they're claiming for tax purposes.

9 We would like that information produced because it's
10 going to tell us what the cost was for a particular employee.
11 Somebody who isn't married, Your Honor, clearly has no
12 interest in getting spousal coverage.

13 DISCOVERY COMMISSIONER: Well, then it's going to
14 show whether they took the individual plan or the family plan.
15 I am not inclined to go further.

16 MR. GREENBERG: Your Honor, it's not going to show
17 whether they took any plan. It's simply going to tell us
18 whether they had a spouse to insure. That's all. We --

19 DISCOVERY COMMISSIONER: No. You can tell that --
20 the issue is, did they offer health insurance and was it
21 within the 10 percent of their overall salary. Those are the
22 issues. You don't need --

23 MR. GREENBERG: Yeah.

24 DISCOVERY COMMISSIONER: -- to know everybody's
25 individual arrangements.

1 MR. GREENBERG: Your Honor, defendants will argue
2 that for the single person they complied, but maybe not for
3 the spouse or the person -- the person who was married or had
4 dependents because it cost the person with the spouse more,
5 Your Honor.

6 DISCOVERY COMMISSIONER: I understand that. But you
7 can make that argument without knowing these details.

8 MR. GREENBERG: But, Your Honor, how am I going to
9 know who had to -- who had the spouse and had to pay more and
10 didn't --

11 DISCOVERY COMMISSIONER: Because you're going to see
12 the payment being made.

13 MR. GREENBERG: No, I won't, Your Honor. If they
14 didn't enroll, I won't see it. And they could have enrolled
15 only for themselves --

16 DISCOVERY COMMISSIONER: Well --

17 MR. GREENBERG: -- not for the spouse. The plans
18 didn't even offer spousal coverage for certain time periods,
19 so they weren't eligible to enroll their spouse.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. GREENBERG: I have that from the disclosures.
22 If Your Honor wants this briefed more fully and we should
23 return, I will do so. I appreciate we're taking up a lot of
24 your time.

25 DISCOVERY COMMISSIONER: So my question is, we have

1 the date of hire, the date of rehire. We have the financial
2 information, the amount that the plan was offered. So should
3 not we -- shouldn't we be able to derive whether they took an
4 individual plan, no plan, or the family plan? Isn't there a
5 way to capture that information?

6 MR. GREENBERG: Your Honor, it's not whether they
7 took any plan. It's whether they could have covered
8 themselves and their dependents within the 10 percent once
9 they were eligible.

10 DISCOVERY COMMISSIONER: Well, you don't need to
11 know all the details.

12 MR. GREENBERG: Your Honor, if they -- if they had a
13 spouse, they couldn't cover the spouse if the plan didn't
14 offer spousal coverage which --

15 DISCOVERY COMMISSIONER: But that's a different --

16 MR. GREENBERG: -- it didn't.

17 DISCOVERY COMMISSIONER: -- issue. We're --

18 MR. GREENBERG: No, Your Honor --

19 DISCOVERY COMMISSIONER: -- just going in circles.

20 MR. GREENBERG: Your --

21 DISCOVERY COMMISSIONER: I -- I don't want to spend
22 anymore time --

23 MR. GREENBERG: Can I -- can I --

24 DISCOVERY COMMISSIONER: -- on that issue. What is
25 your third issue?

1 MR. GREENBERG: Your Honor, all I would ask is
2 permission to brief that issue and return it by motion.

3 DISCOVERY COMMISSIONER: Then you'll have to bring a
4 separate motion.

5 MR. GREENBERG: Thank you, Your Honor.

6 DISCOVERY COMMISSIONER: Number three, what's your
7 third issue?

8 MR. GREENBERG: Your Honor, there was testimony at
9 the deposition that we -- we noticed Mr. Nady as a 30(b)(6)
10 witness to tell us about the PDF storage, electronic scanned
11 storage of trip sheets. He came to the deposition. He could
12 tell us nothing about that.

13 DISCOVERY COMMISSIONER: You have the trip sheets
14 now.

15 MR. GREENBERG: Your Honor, I don't have them in the
16 PDF form. If they're stored in PDF form, not 500,000 pages of
17 paper form, I want them, and they should be produced, and it's
18 very easy to produce them. Mr. Nady even testified at his
19 deposition that if they were there --

20 DISCOVERY COMMISSIONER: Didn't we address --

21 MR. GREENBERG: -- they could be copied.

22 DISCOVERY COMMISSIONER: -- these issues before? Is
23 this like Groundhog Day where I'm hearing the same things all
24 over again? Because that's --

25 MR. GREENBERG: Yes, you --

1 DISCOVERY COMMISSIONER: -- how I feel.

2 MR. GREENBERG: -- you are, Your Honor, because I
3 don't --

4 MS. RODRIGUEZ: And it's not the subject of --

5 MR. GREENBERG: -- I don't get --

6 MS. RODRIGUEZ: -- any of his Motions to Compel.

7 MR. GREENBERG: -- I don't get production or
8 forthrightness from --

9 MS. RODRIGUEZ: That's not true.

10 MR. GREENBERG: -- not from counsel, but from the
11 defendants about --

12 DISCOVERY COMMISSIONER: Well --

13 MR. GREENBERG: -- the materials that they have --

14 DISCOVERY COMMISSIONER: -- but counsel's --

15 MR. GREENBERG: -- and can produce.

16 DISCOVERY COMMISSIONER: -- the one who's
17 responsible.

18 Ms. Rodriguez, what was the deal with the PDF format
19 on this? I cannot recall.

20 MS. RODRIGUEZ: The PDFs have always been made
21 available to him. That was our argument for two years, that
22 he's welcome to come look at this PDFs. Now, I have contacted
23 Jim Morgan -- back to Jim Morgan, the computer guy -- to
24 figure out how he can copy 500,000 PDFs to Mr. Greenberg. I
25 went back last night and I reviewed one of your earlier

1 transcripts where this was discussed, where he's going to
2 furnish an external disk drive, I believe, to have them
3 copied. I --

4 DISCOVERY COMMISSIONER: That's right. Weren't --

5 MS. RODRIGUEZ: -- I believe it's --

6 DISCOVERY COMMISSIONER: -- we to do that?

7 MS. RODRIGUEZ: Yes, Mr. Wall was present for that
8 one. I think --

9 MR. GREENBERG: Your Honor --

10 MS. RODRIGUEZ: -- I missed that one. And I did
11 talk to Mr. Morgan about that. He suggests that he purchase
12 it and bill Mr. Greenberg. I think it's going to be less than
13 the \$500 that Mr. Greenberg offered. I'll certainly discuss
14 it with him --

15 MR. GREENBERG: Yes, Your Honor.

16 MS. RODRIGUEZ: -- prior.

17 DISCOVERY COMMISSIONER: Okay.

18 MS. RODRIGUEZ: But just for viruses and bugs and
19 things like that, just for protection.

20 DISCOVERY COMMISSIONER: Okay.

21 MS. RODRIGUEZ: So it's in the works.

22 MR. GREENBERG: Your Honor?

23 MS. RODRIGUEZ: But it's a huge project. It's not
24 -- I know Mr. Greenberg thinks miraculously my client can push
25 a button and give him all this electronic data but it's --

1 it's a lot more complex. And --

2 DISCOVERY COMMISSIONER: I understand.

3 MS. RODRIGUEZ: -- this has been a shell game for
4 us, too, because every time we give him something it's -- it's
5 quite a production and then he doesn't like it. And so then
6 we're back here asking for something else.

7 MR. GREENBERG: And, Your Honor --

8 DISCOVERY COMMISSIONER: All right. I'm -- I'm
9 going to let counsel follow-up on the PDF issue.

10 MR. GREENBERG: Okay. So we -- we will -- we will
11 leave that for further hopeful -- hopeful resolution --

12 DISCOVERY COMMISSIONER: Hopeful resolution.

13 MR. GREENBERG: -- by counsel.

14 The one remaining issue that I wanted to bring to
15 Your Honor's attention was this Department of Labor Excel file
16 and this request that had been made to the Department of Labor
17 for that file. I have asked defendants to sign an
18 authorization waiving one of the FOIA exemptions. There's a
19 FOIA exemption where the Department of Labor will not disclose
20 information from a private business.

21 DISCOVERY COMMISSIONER: Haven't we talked about
22 this as well?

23 MS. RODRIGUEZ: Yes. But this is a --

24 DISCOVERY COMMISSIONER: What was the --

25 MS. RODRIGUEZ: -- new one.

1 DISCOVERY COMMISSIONER: -- ultimate -- okay.

2 MS. RODRIGUEZ: This is a new one where he's wanting
3 Mr. Nady to sign a full authorization. So we've never -- no,
4 that's -- that's a new one that I just got yesterday.

5 DISCOVERY COMMISSIONER: Okay. So you're going to
6 have to have a 2.34 conference on it and bring a separate
7 Motion to Compel.

8 MR. GREENBERG: We will do so, Your Honor.

9 DISCOVERY COMMISSIONER: All right. And you might
10 want to address the J-Roll while you're at it.

11 Okay. I'm not going to handle anything further
12 today.

13 MR. GREENBERG: Yes, Your Honor.

14 DISCOVERY COMMISSIONER: I really am not inclined to
15 set you for another Status Check. I am inclined to tell you,
16 though, that I will hear that motion, Mr. Greenberg. You just
17 need to prepare it and file it. And that's when you'll come
18 back.

19 MR. GREENBERG: That will presumably be in January
20 sometime, Your Honor.

21 DISCOVERY COMMISSIONER: Okay.

22 MR. GREENBERG: And I hope you have a good holiday
23 because you won't be seeing us until after the holidays, so
24 that should make it a little better.

25 DISCOVERY COMMISSIONER: Well, I don't know about

1 that. I might go through withdrawals.

2 Okay. So prepare your motion, if necessary, but
3 let's give defense counsel an opportunity to pull together
4 some of the additional information. Have your 2.34. Make
5 sure, Ms. Rodriguez, you provide the cost of the hard drive or
6 whatever mechanism Mr. Morgan's going to use to download this
7 information, so Mr. Greenberg knows in advance what it is
8 going to cost.

9 MS. RODRIGUEZ: Right.

10 DISCOVERY COMMISSIONER: Okay?

11 MS. RODRIGUEZ: I understand.

12 DISCOVERY COMMISSIONER: All right.

13 THE CLERK: Who's going to be preparing the Report
14 and Recommendation?

15 DISCOVERY COMMISSIONER: Do we need a Report and
16 Recommendation from today's hearing? Yes, we do. Ms.
17 Rodriguez, you are going to prepare it. You're going to run
18 it by counsel to approve as to form and content. That would
19 be a really nice holiday gift for me, if you all could sign
20 off on one Report and Recommendation. If you can't just
21 submit your own and I'll look at both of them.

22 MR. GREENBERG: We -- we did come close on the one,
23 Your Honor.

24 DISCOVERY COMMISSIONER: You did. I --

25 MR. GREENBERG: It was --

1 DISCOVERY COMMISSIONER: -- grant you.

2 MR. GREENBERG: -- but one sentence, perhaps.

3 DISCOVERY COMMISSIONER: One paragraph.

4 MR. GREENBERG: Yes.

5 DISCOVERY COMMISSIONER: One paragraph issue. All
6 right. Well, let's --

7 MR. GREENBERG: Thank you, Your Honor.

8 DISCOVERY COMMISSIONER: -- let's try a little
9 harder this time; okay? All right.

10 THE CLERK: January 13th at 11:00 for the Status
11 Check.

12 DISCOVERY COMMISSIONER: On the Report and
13 Recommendations only.

14 MR. GREENBERG: Okay.

15 DISCOVERY COMMISSIONER: I'm not setting this case
16 for another Status Check. I will hear additional motion work
17 when it becomes necessary. I need to make sure your trial
18 gets reset, too. I don't think it has been yet. So, I need
19 to follow up on that.

20 MS. RODRIGUEZ: I don't know.

21 MR. GREENBERG: I thought I saw the order from Judge
22 Cory on that. I apologize. I don't know, Your Honor.

23 DISCOVERY COMMISSIONER: Okay. All right.

24 MS. RODRIGUEZ: I don't think so.

25 DISCOVERY COMMISSIONER: If I don't see you all

1 before, Happy Holidays.

2 MS. RODRIGUEZ: Thank you, Your Honor. You too.

3 MR. WALL: Thank you, Your Honor.

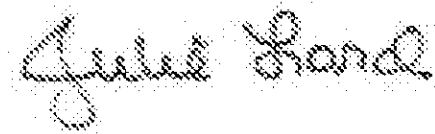
4 (Proceeding concluded at 11:12 a.m.)

5 * * * * *

6 CERTIFICATE

7 ATTEST: I hereby certify that I have truly and correctly
8 transcribed the audio/visual proceedings in the above-entitled
9 case to the best of my ability.

10



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JULIE LORD, INDEPENDENT TRANSCRIBER

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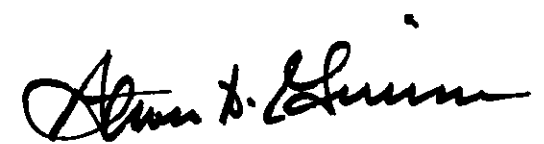
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CLERK OF THE COURT

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

Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: XVIII

**ERRATA TO PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Hearing Date: February 14, 2017
Hearing Time: 9:00 a.m.

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

1. I am submitting this Errata because two Exhibits referenced in plaintiffs'
motion for partial summary judgment, filed on January 11, 2017, were either
incomplete or omitted.

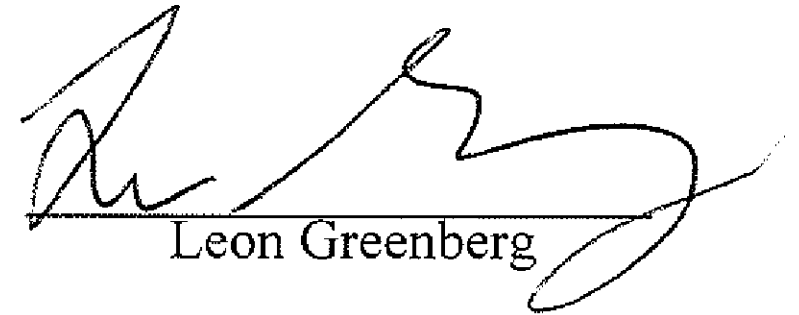
2. Attached as Exhibit "1" is the one page document referenced as Exhibit
"D" at page 7, lines 4-11 in the declaration of Charles Bass. This document was
omitted from that declaration as filed.

3. Attached as Exhibit "2" are two pages that were to appear as Exhibit "B"
of the declaration of Leon Greenberg. These pages were not completely set forth in
that declaration as filed.

1 4. I apologize for any inconvenience or confusion the foregoing errors
2 caused and appreciate the Court's allowance of this Errata.

3 I have read the foregoing and affirm the same is true and correct.
4

5 Affirmed this 13th day of January, 2017
6

7 
8 Leon Greenberg
9

CERTIFICATE OF SERVICE

The undersigned certifies that on January 13, 2017, she served the within:

ERRATA TO
MOTION FOR PARTIAL SUMMARY JUDGMENT

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 “1”

EXHIBIT “1”

A Cab, LLC
Payroll Item Detail
June 28, 2014 through May 27, 2016

	C	D	E	F	G	H	I	J	K	L
1	Num	Date	Name Account #	SSN/Tax ID	Payroll Item	Qty	Sales Price	Amount	Pay Period Begin Date	Pay Period End Date
129700	22602	11/13/2015	30374	***_** [REDACTED]	Minimum Wage Subsidy	92.62		0.00	10/24/2015	11/06/2015
129701	22602	11/13/2015	30374	***_** [REDACTED]	Driver Commission	1.00	1,101.15	1,101.15	10/24/2015	11/06/2015
129702	22602	11/13/2015	30374	***_** [REDACTED]	Incentive #5		9.00	9.00	10/24/2015	11/06/2015
129703	22602	11/13/2015	30374	***_** [REDACTED]	We Did Good Bonus		66.11	66.11	10/24/2015	11/06/2015

EXHIBIT “2”

Employee					SSN	Status (Fed/State)	Allowances/Extra
Michael C. Sargeant, 2001 Ramrod Ave. #2215, Henderson, NV 89014					***-**-5207	Single/(none)	Fed-1/0/NV-0/0
					Pay Period: 07/05/2014 - 07/18/2014		Pay Date: 07/25/2014
Earnings and Hours		Qty	Rate	Current	YTD Amount		
Minimum Wage Subsidy		57.08	4.27	243.73	583.62		
Driver Commission		1.00	165.01	165.01	1,163.01		
Incentive #5			5.00	5.00	16.00		
Tips Supplemental				46.71	267.79		
Supervisor Counseling Pay				0.00	1.45		
		57.08		460.45	2,031.87		
Taxes				Current	YTD Amount		
Federal Withholding				-22.00	-111.00		
Social Security Employee				-28.55	-125.98		
Medicare Employee				-6.67	-29.46		
				-57.22	-266.44		
Adjustments to Net Pay				Current	YTD Amount		
Tips Out				-46.71	-267.79		
Cash loan				-10.00	-10.00		
				-56.71	-277.79		
Net Pay				346.52	1,487.64		

A Cab, LLC, 1500 Searles Avenue, 1500 Searles Avenue, Las Vegas, NV 89101-1123, A CAB TAXI SERVICE LLC

A CAB, SERIES LLC Employee Leasing Company

12959

Employee					SSN	Status (Fed/State)	Allowances/Extra
Michael C. Sargeant, 2001 Ramrod Ave. #2215, Henderson, NV 89014					***-**-5207	Single/(none)	Fed-1/0/NV-0/0
					Pay Period: 07/19/2014 - 08/01/2014		Pay Date: 07/28/2014
Earnings and Hours		Qty	Rate	Current	YTD Amount		
Minimum Wage Subsidy		22.81	4.08	93.06	676.68		
Driver Commission		1.00	72.41	72.41	1,235.42		
Tips Supplemental				17.90	285.69		
Supervisor Counseling Pay				0.00	1.45		
Incentive #5				0.00	16.00		
		22.81		183.37	2,215.24		
Taxes				Current	YTD Amount		
Federal Withholding				0.00	-111.00		
Social Security Employee				-11.36	-137.34		
Medicare Employee				-2.66	-32.12		
				-14.02	-280.46		
Adjustments to Net Pay				Current	YTD Amount		
Tips Out				-17.90	-285.69		
Cash loan				0.00	-10.00		
				-17.90	-295.69		
Net Pay				151.45	1,639.09		

A Cab, LLC, 1500 Searles Avenue, 1500 Searles Avenue, Las Vegas, NV 89101-1123, A CAB TAXI SERVICE LLC

Employee

Michael C. Sargeant, 2001 Ramrod Ave. #2215, Henderson, NV 89014

SSN

***-**-5207

Status (Fed/State)

Single/(none)

Allowances/Extra

Fed-1/0/NV-0/0

Pay Period: 05/24/2014 - 06/06/2014

Pay Date: 06/13/2014

Earnings and Hours

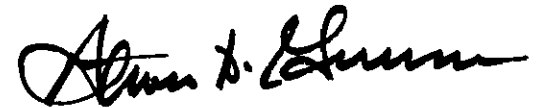
	Qty	Rate	Current	YTD Amount
Minimum Wage Subsidy	87.48	1.43	125.10	125.10
Driver Commission	1.00	416.41	416.41	416.41
Tips Supplemental			92.79	92.79
	87.48		634.30	634.30

Taxes

	Current	YTD Amount
Federal Withholding	-42.00	-42.00
Social Security Employee	-39.33	-39.33
Medicare Employee	-9.20	-9.20
	-90.53	-90.53

Adjustments to Net Pay

	Current	YTD Amount
Tips Out	-92.79	-92.79
Net Pay	450.98	450.98



CLERK OF THE COURT

MAMA
Esther C. Rodriguez, Esq.
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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,

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 27th day of January, 2017.

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 27 day of February, 2017, or as soon thereafter as counsel may be heard.
In Chambers

DATED this 27th day of January, 2017.

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, interfered with business and contractual relations, and seek to profit from the continued litigation of others.

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

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

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

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

In the present case, the evidence has demonstrated that Third-Party Defendants Greenberg, 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 Further, Third-party defendants have tortiously interfered with the contractual relations of A
15 Cab employees, as evidenced in the breach of contract of Wendy Gagliano who was induced by
16 Third party Defendants to breach her contract with Third-Party Plaintiffs. Therefore, Third-Party
17 Plaintiffs assert they have been damaged by Third-Party Defendants' purposeful and intentional
18 acts, and request the Court's leave to amend to conform to the evidence in the record.

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

26 **2. NRCP 15 Supports That Leave to Amend Should Be Granted.**

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

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

9 **II.**

10 **CONCLUSION**

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

13 DATED this 27th day of January, 2017.

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

15
16 By: /s/ Esther C. Rodriguez, Esq.
17 Esther C. Rodriguez, Esq.
18 Nevada State Bar No. 6473
19 10161 Park Run Drive, Suite 150
20 Las Vegas, Nevada 89145
21 *Attorneys for Defendants*
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of January, 2017, 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

AA003044

AANS
Esther C. Rodriguez, Esq.
Nevada Bar No. 6473
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
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Hutchinson & Steffen, LLC
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
702-385-2500
mwall@hutchlegal.com
Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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 NRCP Rule 12, 14, and 15 and as their Amended Answer to

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

JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

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

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

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

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

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

WHEREFORE, Defendants prays as follow:

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

DATED this 27th day of January, 2017.

RODRIGUEZ LAW OFFICES, P.C.

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

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. Third-Party Defendants have also interfered with the contractual relations between
12 Third-party Plaintiffs and former employees, including but not limited to Wendy Gagliano who was
13 enticed and/or coerced to breach her written contract with Third-Party Plaintiffs.

14 20. With such actions, Third-Party Defendants have damaged Third-Party Plaintiffs with
15 an escalation of legal fees and costs and prolonged litigation, thereby adversely affecting the
16 business, livelihood, well-being, and reputation of Third-Party Plaintiffs.

17 **FIRST CAUSE OF ACTION**

18 **(Champerty)**

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

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

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

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

27 25. The actions taken by Third-Party Defendants have not been in the best interest of the
28 Plaintiffs who they purport to represent, but instead they have acted in their own self-interests in

1 seeking personal profit from litigation.

2 26. This conduct by Third-Party Defendants was unlawful and as a result, Third-Party
3 Plaintiffs have been damaged.

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

6 **SECOND CAUSE OF ACTION**

7 **(Intentional Interference with Contractual Relations)**

8 28. Third-Party Plaintiffs incorporate by reference each and every allegation contained
9 in paragraphs 1 through 27 of the Third-Party Complaint as specifically set forth herein.

10 29. Third-Party Plaintiffs have entered into contractual relations with third parties which
11 Third-party Defendants have intentionally interfered with to the detriment of Third-party Plaintiffs.

12 30. One such contract was wherein A Cab, LLC entered into a contract known as
13 "Severance Agreement and Release" on or about June 18, 2013, with employee Wendy A. Parison-
14 Gagliano ("Gagliano").

15 31. In this above referenced contract, Gagliano agreed to a nondisclosure and
16 confidentiality clause upon her separation from A Cab, LLC, in which she agreed to keep
17 confidential and not disclose to anyone any information concerning company business not of a
18 public nature.

19 32. Additionally, in the above referenced contract, Gagliano agreed to a
20 nondisparagement clause agreeing not to knowingly publish any oral or written statement that is
21 negative, disparaging, defamatory or critical of Company, its officers or employees.

22 33. In exchange, Gagliano received and accepted \$20,000 severance compensation.

23 34. Third-Party Defendants have deliberately induced and/or coerced Gagliano into
24 breaking her contract with Third-Party Plaintiff.

25 35. Third-Party Defendants have obtained a declaration from Gagliano in which she
26 disparages Third-Party Plaintiffs and its employees, and purports to disclose non-public information
27 regarding company business.

28 36. Third-Party Defendants have engaged in tortious interference with contract rights

1 wherein they convinced Gagliano to breach her contract with Third-Party Plaintiff through the use
2 of blackmail, threats, and/or influence.

3 37. Another such contract is wherein Third-Party Plaintiffs entered into an agreement
4 with Jasminka Dubric and other employees on or about December 28, 2016 to resolve the claims
5 arising in the District Court Case No. A721063, *Jasminka Dubric v. A Cab, LLC*.

6 38. Third-Party Defendants have engaged in tortious interference with contract rights
7 wherein they have attempted to convince Dubric to breach her contract with Third-Party Plaintiffs
8 through the use of blackmail, threats, and/or influence and/or other means.

9 39. As a result of such intentional acts by Third-Party Defendants, Third-Party Plaintiffs
10 have been damaged.

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

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

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

20 DATED this 27th day of January, 2017.

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

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

EXHIBIT 2

EXHIBIT 2

AA003057

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

AA003059

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: 11/18/16
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.

Michael K. Wall, Esq.
Hutchinson & Steffen, LLC

I.

FINDINGS

1. This matter came before the Discovery Commissioner as a Status Check for continued compliance and production following “*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,*” heard on October 12, 2016; as well as “*Plaintiffs’ Motion to Compel the Production of Documents and Interrogatory Responses*” heard on June 13, 2016.

2. Following the most recent discovery hearing and status check of October 12, 2016, addressing the above referenced motions, the Nevada Supreme Court issued several decisions directly affecting the issues and discovery ordered in this matter, and thus necessitating a further discussion on compliance, production, and scope of discovery.

3. Firstly, following the Nevada Supreme Court decision of *Perry v. Terrible Herbst, Inc.*, 132 Nev. Adv. Op. No. 75 (Oct. 27, 2016), the Discovery Commissioner finds that the applicable statute of limitations and discovery period has been further defined and delineated by the Court. Accordingly, in this matter, such period is limited to a two-year time period prior to the filing of Plaintiffs’ Complaint as held by the Nevada Supreme Court: “When a right of action does not have an express limitations period, we apply the most closely analogous limitations period. The MWA does not expressly indicate which limitations period applies and the most closely analogous statute to the MWA is NRS 608.260, as both permit an employee to sue his employer for failure to pay the minimum wage. Moreover, applying the NRS 608.260 limitations period is consistent with Nevada minimum wage law.” *Id.* at pp. 10-11.

4. The Discovery Commissioner finds that Plaintiffs’ Complaint was filed October 8, 2012, and thus the applicable period for discovery commences October 8, 2010. Plaintiffs disagreed with this finding, arguing for an equitable tolling period. The Discovery Commissioner finds that any argument by Plaintiffs for deviating from the Supreme Court decision will have to be further briefed, and brought by motion.

5. The Discovery Commissioner also finds that further guidance has been provided by the

1 Nevada Supreme Court pertaining to health care benefits and the discovery disputes surrounding
2 this issue. Following the decision of *MDC Rests. v. Eighth Jud. Dist. Ct.*, 132 Nev Adv. Op. No. 76
3 (October 27, 2016), the Supreme Court has indicated “with regard to whether employers must
4 ‘offer’ or ‘enroll’ employees in health benefit plans to pay the lower-tier wage, our holding is
5 consistent with the Labor Commissioner’s promulgations, see NAC 608.102 (2007) (providing that
6 an employer must ‘offer’ health benefits), and the language of the MWA is plain: employers need
7 only offer health benefits to pay the lower-tier wage.” *Id.* at p. 12.

8 6. The Discovery Commissioner finds that the following discovery pertaining to health
9 insurance is appropriate: costs of health insurance for the five years at issue (2010-2015) for all
10 ~~employees at all~~ ^{paid for the employees} levels (individual plan and family plan); the criteria to access or to participate in the plan; and the
11 waiting period for access to the plan.

12 7. In accordance with the parameters outlined by the Discovery Commissioner’s order on
13 *Defendants’ Motion for Protective Order*, the continued deposition of Defendant’s NRCP 30(b)
14 witness was scheduled on November 22, 2016. The Discovery Commissioner further addressed the
15 difficulties presented at the prior deposition by both parties, and indicates that she will be available
16 to the parties should problems arise. In the event that the deposition is discontinued pursuant to
17 Rule 30(d), and the Commissioner hears the Motion for Protective Order, the losing party will pay
18 fees and costs.

19 8. In further discussion pertaining to Defendants’ tax information (including that of non-
20 parties) to be produced to Plaintiffs, the Discovery Commissioner finds that such records should
21 remain confidential pursuant to NRCP 26(c) within the confines of litigation until otherwise ordered
22 by the District Court Judge.

23 9. In further discussion regarding the prior extended discovery dates arising from the hearing of
24 October 12, 2016, Defendants lodged an objection with the District Court asserting they would be
25 prejudiced with the new initial expert deadline falling on December 23, 2016, and rebuttal expert
26 deadline of January 23, 2017, and thus requested through February 3, 2017 to account for the
27 holidays. The Discovery Commissioner finds the following new dates are appropriate, and finds
28 that any *Objection to the DCR&R* will be withdrawn:

1 Close of Discovery: April 28, 2017;
2 Deadline to file motions to amend pleadings/add parties: January 27, 2017;
3 Final dates for initial expert disclosures: January 27, 2017;
4 Final date for rebuttal expert disclosures: February 28, 2017;
5 Final date to file dispositive motions: May 31, 2017;
6 Case Ready for Trial: July 10, 2017.

7 II.

8 RECOMMENDATIONS

9 IT IS HEREBY RECOMMENDED that following the decisions recently issued by the
10 Nevada Supreme Court, the following revisions be made to the prior Discovery Commissioner
11 Report and Recommendation of October 12, 2016 pertaining to "*Defendants' Motion for Protective*
12 *Order or, in the Alternative, Motion to Terminate Deposition of a Cab, LLC 30(b)(6) Witness;*
13 *Motion to Limit the Deposition of Creighton J. Nady; and Motion for Protective Order from*
14 *Plaintiffs' Written Discovery on Order Shortening Time*":

15 WHEREAS IT WAS PREVIOUSLY RECOMMENDED that alternative relief be provided
16 to Plaintiffs in that Defendant will provide supporting documentation and identification of
17 distributions, salary, payment to Mr. Nady and family for 2007-2015, this RECOMMENDATION is
18 modified to encompass the years 2010-2015.

19 WHEREAS IT WAS PREVIOUSLY RECOMMENDED that A Cab Taxi Service will
20 provide its profit and loss statements for 2007-2015, this RECOMMENDATION is modified to
21 encompass the years 2010-2015. *Further, the discovery regarding health*

22 *insurance information will be produce in accordance with paragraph 6*
23 IT IS FURTHER RECOMMENDED that Defendants' tax information (including that of
24 non-parties) produced to Plaintiffs should remain confidential pursuant to NRCP 26(c) within the
25 confines of litigation until otherwise ordered by the District Court Judge. *Findings Section 10*

26 THE DISCOVERY COMMISSIONER FURTHER RECOMMENDS that the Objection to
27 the Discovery Commissioner Report and Recommendation of October 12, 2016 be WITHDRAWN
28 and the following dates be implemented:

1. The Discovery Cutoff is extended to April 28, 2017;

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

2. Deadline to file motions to amend pleadings/add parties is extended to January 27, 2017;
3. Initial Expert Disclosures are extended to January 27, 2017;
4. Rebuttal Expert Disclosures are extended to February 28, 2017;
5. The deadline for filing of dispositive motions is May 31, 2017;
6. The case will be ready for trial July 10, 2017.

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

DATED this 9 day of December, 2016.




DISCOVERY COMMISSIONER

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 _____, 201__:

_____ Placed in the folder of counsel in the Clerk's office on the ____ day of _____, 201__:

✓ _____ Electronically served counsel on Dec. 16, 2016, Pursuant to N.E.F.C.R. Rule 9.

By Natlie Fehrmann
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

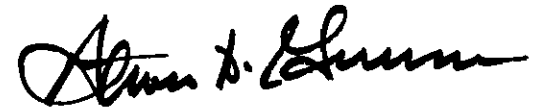
_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted.

_____ 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 _____, 201__, at ____:____ a.m.

Dated this _____ day of _____, 201__.

DISTRICT COURT JUDGE



CLERK OF THE COURT

OPPM

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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,

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

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

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO BIFURCATE ISSUE OF
LIABILITY OF DEFENDANT CREIGHTON J. NADY FROM LIABILITY OF
CORPORATE DEFENDANTS OR ALTERNATIVE RELIEF**

Defendants, by and through their attorneys of record, hereby submit this Opposition to
Plaintiffs' Motion to Bifurcate Issue of Liability of Defendant Creighton J. Nady from Liability of
Corporate Defendants or Alternative Relief. This Opposition is based upon NRCP 42(b), and the
Points and Authorities herein.

...

...

POINTS AND AUTHORITIES

1. Applicable Rules.

NRCP 42(b) governs separation of trials. A District Court abuses its discretion in bifurcating a trial where the issues of liability and damages are inextricably intertwined. *Verner v. Nevada Power Co.*, 101 Nev. 551, 706 P.2d 147 (1985).

2. Plaintiffs' Claims Are Subject to Dismissal.

After multiple extensions in this matter, Plaintiffs have failed to adequately prepare their case for trial. Due to their own negligence and wastefulness of critical time and resources, they simply are not ready to proceed on their claims. Plaintiffs have wasted the Court's and Defendants' time in addressing motion after motion on nonsensical issues that had nothing to do with the matters at hand, or the necessary discovery for a minimum wage claim. From the commencement of this matter, Defendants have always made the necessary documentation available to Plaintiffs including all records of hours and wages. Instead, Plaintiffs proceeded down a path of seeking items unrelated to proving their claims, while clamoring to the Court and to the Commissioner that Defendants were obstructing discovery. Presently, the parties are back at "square one" with Plaintiffs now **commencing** a review of the tripsheets and the payroll that has been available since the commencement of the case. Plaintiffs' smoke screen has essentially come back to bite them, as they are ill-prepared to bear their burden of proof on any claim against Defendant Nady.

Discovery closes April 28, 2017; and the expert deadline of January 27, 2017 has already passed, with the Plaintiffs failing to meet that deadline.¹ Plaintiffs have not proven any of their claims against Defendant Nady; and these claims are subject to dismissal. Upon close of discovery, Defendants will be moving for summary judgment on these claims. Despite their numerous requests for extensions, Plaintiff are merely seeking another discovery extension with this motion for more time to work up the claims against Nady. This is a clever way of circumventing the Discovery Commissioner who is aware of the numerous extensions already granted.

¹ Plaintiffs failed to meet the expert deadline after repeated requests for extensions, only producing a disclosure that indicates their numbers are not ready. **Exhibit A**, Plaintiff's Seventh Supplemental Disclosure.

1 As stated in their motion and in their complaint, Plaintiffs are lodging serious allegations “in
2 respect to Nady’s personal wrongdoing and his intentional, and wrongful, profiteering from the
3 non-payment of minimum wages by A Cab that he expressly directed for his own personal profit.”
4 *Plaintiffs Motion*, 4:8-11. These are indeed serious accusations, that Plaintiffs cannot support at
5 trial. Nothing in the course of discovery has supported these claims.

6 As conceded in Plaintiffs’ Motion, the Discovery Commissioner agreed with defendant’s
7 position as to the income items that were to be produced. *Plaintiffs’ Motion*, 6:14-17. This issue
8 has been addressed at multiple hearings before the Commissioner who is extremely familiar with
9 the discovery issues in this case. At the most recent hearing, the Commissioner was quite firm in
10 pinning Plaintiffs’ counsel down to what he needed to prove his case, as he has been all over the
11 map in not really having a handle of what discovery is necessary for this type of claim.
12 Unfortunately, his fishing expeditions have been quite costly to the defense who has jumped
13 through each and every hoop in an unsuccessful quest to appease Plaintiffs’ every whim.

14 Plaintiffs’ assertion contained in this motion that in the alternative they are seeking Nady’s
15 personal tax returns has been discussed ad nauseam before the Commissioner. The Commissioner
16 has correctly identified such materials as post-judgment debtor discovery. **Exhibit B**, *Transcript of*
17 *October 12, 2016 Proceedings*, p. 12:13-20:25. When this issue was addressed yet again, she
18 informed Plaintiffs’ counsel that if he did not agree with her recommendation, he could object to
19 the Court. He failed to do so, and is now seeking another means for his failure to timely object.

20 Nady has already turned over all income documents from himself and immediate family
21 members.² Plaintiffs have propounded written discovery on the issue which Defendants have
22 answered. Plaintiffs have taken Nady’s deposition as an individual, and twice as a NRCP 30(b)(6)
23 witness where they repeated the same questions and same subject matter. None of this discovery
24 has supported Plaintiffs’ claims pertaining to Nady. There is no evidence in the record to support
25 Plaintiffs’ claims against Nady.

27 ²These documents were produced to Plaintiffs under protective order of the Discovery
28 Commissioner, deemed confidential and therefore not attached hereto.

1 **3. At Plaintiffs' Persistence, the Class Order Containing the Claims Against Nady Has**
2 **Already Been Published to the Public; and Nady Should Be Provided An Opportunity**
3 **To Defend the Claims And To Have Them Dismissed, Not Delayed.**

4 As this Court will recall, these claims against Nady were excluded by the Court when
5 certifying the class. Nevertheless, Plaintiffs' counsel inserted the claims in the Court's Order,
6 forcing Defendants' to file for reconsideration to have them removed. **Exhibit C**, *Defendants'*
7 *Motion for Reconsideration* filed 2/25/16. At that time, the Court had already cautioned Plaintiffs
8 about their inaccurate wording to the Court. *Id.*, 3:10-13. The Court granted Defendants' motion
9 **ordering the removal** of these claims against Nady as part of the class order. **Exhibit D**, *Court*
10 *Order on Defendants' Motion for Reconsideration*, p. 2:3, filed April 28, 2016.

11 With little activity conducted to move the case along, instead ninety (90) days later,
12 Plaintiffs filed a "*Motion to Continue the Trial Date and Extend Discovery and For Other Relief.*"
13 **Exhibit E**. As part of this motion seeking extensions, Plaintiffs threw in a 2 paragraph argument
14 that the Nady claims should be included, while offering nothing new to the Court. *Plaintiffs'*
15 *Motion*, 10:8-24 at **Exhibit E**. Plaintiffs simply made the same argument that the Court had already
16 denied. Defendants opposed this request for further extension, and argued to the Court that there
17 was nothing new that should cause the Court to reverse its prior order on the Nady claims, as
18 Plaintiffs were simply trying to get around a motion for reconsideration that had already been
19 argued. **Exhibit F**. "*Defendants' Opposition to Plaintiffs' Motion to Continue Trial Date and*
20 *Extend Discovery Schedule and for Other Relief*", p. 4:21-5. On September 22, 2016, the Court
21 issued a Minute Order now allowing the claims back in to the class order against Nady. **Exhibit G**,
22 *Minute Order*, p. 2.

23 As such, Plaintiffs mailed a notice and class order to all former and current taxicab drivers
24 alleging these slanderous claims against owner Creighton Nady, including assertions of illegal
25 actions to unjustly enrich himself at the detriment of his employees.

26 At this stage, now that Plaintiffs cannot support their claims, they come to the Court and
27 state: "Engaging in discovery, depositions, and further motion practice on these issues at this point
28 in time would be *pointless* since the Court has yet to determine the liability of A Cab." *Plaintiffs'*

1 *Motion*, 4:19-21 (emphasis added). (This of course is after the discovery has been conducted
2 yielding nothing favorable to Plaintiffs.) Plaintiffs continue that in the event that such a liability
3 finding is made, then the Court can direct the parties to engage in discovery, dispositive motion
4 briefing and, if necessary, a trial on the claims against Nady. *Id.*, 23-25.

5 The proper thing to do would be for Plaintiffs to propose a voluntary dismissal of Defendant
6 Nady, seeing the writing on the wall that there is no evidence to support their vicious attack upon
7 him. However, Plaintiffs are aware they have persisted without cause in seeking sanction after
8 sanction with the Court and the Discovery Commissioner in a harassing fashion, that no doubt they
9 fear that their bad acts would come to light and be reviewed as sanctionable.

10 **II. Conclusion**

11 Based upon the foregoing points and authorities, Defendants respectfully request this
12 Honorable Court to deny this Motion in its entirety.

13 If Plaintiffs do not move to voluntarily dismiss their claims against Nady, Defendants will
14 be moving for summary judgment upon close of discovery, and for fees and costs associated
15 therewith.

16 DATED this 30th day of January, 2017.

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

18
19 /s/ Esther C. Rodriguez, Esq.
20 Esther C. Rodriguez, Esq.
21 Nevada State Bar No. 006473
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 on this 30th day of January, 2017, I electronically filed the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

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

/s/ Esther C. Rodriguez, Esq.
An Employee of Rodriguez Law Offices, P.C.

EXHIBIT A

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 E-3
5 (702) 383-6085
6 (702) 385-1827(fax)
7 leongreenberg@overtimelaw.com
8 dana@overtimelaw.com

Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

13 A CAB TAXI SERVICE LLC, and A
14 CAB, LLC,

Defendants.

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' SEVENTH
SUPPLEMENTAL
DISCLOSURES UNDER NEV. R.
CIV. P. 16.1**

17 Plaintiffs, as and for their compliance with the provisions of Nev. R. Civ. P.
18 16.1, hereby provide the following supplemental disclosures:

Reservation of Expert Witness;

20 Annexed hereto is the Curriculum Vitae of Charles Bass. Charles Bass is
21 assisting the plaintiffs in summarizing the voluminous records provided by defendants
22 in this case and, based upon those summaries, creating Excel files upon which
23 calculations can be made using uniform assumptions about the hours worked by and/or
24 the proper minimum wage rate owed to, the class members. The results of the
25 summaries that Charles Bass is creating, the Excel files that he has constructed that
26 utilize those summaries and contain them, are not believed by plaintiffs to constitute an
27 expert report or to require expert testimony or constitute the "conclusions" of any
28 expert. It is not anticipated that Charles Bass will offer testimony that would include
opinions requiring the knowledge or specialized training of an expert, although he is

1 fully qualified to do so in respect to the use of computer systems and software,
2 including those that he used to create the summaries of the defendants' records and the
3 Excel files upon which plaintiffs will rely to perform uniform calculations upon such
4 summarized information. Plaintiffs contend that the materials prepared by Charles Bass
5 are properly considered at trial pursuant to NRS 52.275 as summaries of voluminous
6 records that can be presented in the form of a "chart, summary or calculation."
7 Defendants will be provided with those summaries and all necessary supporting
8 information in the form of a suitable declaration(s) from Charles Bass to understand
9 their contents and the steps undertaken to prepare them from defendants' records, to the
10 extent not already provided. Because discovery is continuing, and all of the
11 information germane to the calculations sought to be made upon defendants' records
12 have not yet been provided by defendants, the summaries being prepared by Charles
13 Bass, and the Excel files upon which plaintiffs will rely to perform uniform
14 calculations upon such summarized information, are not yet complete.

15 In the event that the materials prepared by Charles Bass for plaintiffs are deemed
16 by the Court to constitute the work product of an expert witness, plaintiffs so designate
17 him as an expert witness. His fees are set forth in his declaration of January 11, 2017.
18 Charles Bass has not given testimony as an expert in any litigation matter in any
19 capacity within the last five years.
20

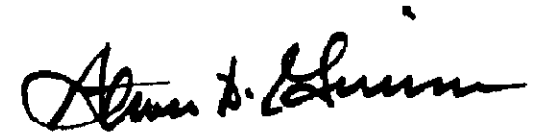
21 Dated: January 27, 2017

22 Leon Greenberg Professional Corporation

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

EXHIBIT B

EXHIBIT B



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

MICHAEL MURRAY,

Plaintiff,

vs.

A CAB TAXI SERVICE LLC,

Defendant.

AND OTHER PARTIES

CASE NO. A-12-669926-C
DEPT NO. I

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

RE: MOTIONS
STATUS CHECK: COMPLIANCE
STATUS CHECK: PRODUCTION

WEDNESDAY, OCTOBER 12, 2016

APPEARANCES:

FOR THE PLAINTIFFS:

LEON GREENBERG, ESQ.
DANA SNIEGOCKI, ESQ.

FOR THE DEFENDANTS:

ESTHER C. RODRIGUEZ, ESQ.

RECORDED BY: FRANCESCA HAAK, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 that I shouldn't be allowed to get these specifically answered
2 at a 30(b)(6) deposition, and I can discuss them. A lot of
3 them have to do with issues like, tell us on average how long
4 were these drivers working. What were the policies regarding
5 their break times, when they had to show up, when they could
6 leave work. None of --

7 THE DISCOVERY COMMISSIONER: I think that's --

8 MS. RODRIGUEZ: I don't have an issue with that.

9 MR. GREENBERG: Okay.

10 THE DISCOVERY COMMISSIONER: Right. I think that's
11 perfectly fine.

12 MR. GREENBERG: Okay, Your Honor.

13 THE DISCOVERY COMMISSIONER: Let me tell you the only
14 thing I do have an issue with is the written discovery because
15 to me this is postjudgment debtor discovery. It is not
16 appropriate discovery at this point. I'm not saying you won't
17 get it eventually, but you're going to have to get a judgment
18 first. I understand -- you talk about the interrelationship
19 between Mr. Nady and his company.

20 I think you can ask him about that at deposition, but
21 I'm not really willing at this point to turn over his
22 individual tax returns and all of the other information you've
23 asked for in written discovery, not right now because we're not
24 collecting a debt.

25 MR. GREENBERG: Well, Your Honor, I understand your

1 view on that, and what I would point out and request is that
2 the basis for Mr. Nady's liability in this case is two tiered.
3 I first have to establish that the employer, the corporation,
4 actually owes the class some money, okay. Assuming the
5 corporation owes the class money, if they satisfy that, then I
6 don't -- we have no issue with Mr. Nady presumably. On the
7 other hand, if they don't, well, then we might, which is this
8 issue of the debtor-type discovery you're talking about.

9 But the problem is that in terms of proof at trial
10 Mr. Nady is not stipulating that he's going to be liable here
11 if the corporation is liable. I mean, he presumably can come
12 to court and has a legal right to say, well, I'm an
13 independent, separate legal person from the corporation. Just
14 because the corporation's liable, it doesn't make me liable.
15 So there's issues of fact regarding did he control the
16 corporation, et cetera, and so forth. I don't think that's
17 really in dispute. I mean, he's in charge clearly.

18 But the liability against him requires establishing
19 that he benefited in some capacity from the corporation's
20 misdeeds. If he never benefited, okay, if he received no
21 economic benefit from the corporation's violations of the law,
22 he has no liability. It's not enough that he simply gave the
23 orders here. Do you understand, Your Honor?

24 THE DISCOVERY COMMISSIONER: I do, but I don't
25 understand how production of tax returns and taxable income

1 because money's fungible, so I don't know how that would
2 necessarily support your position. If he is paid a salary, you
3 can find that out at deposition. You can find out how much
4 he's paid.

5 I'd like you to get some foundation before I go
6 ordering some of this information. I know we're running out of
7 time here. I understand that, but to me going into his tax
8 returns, preparation of all the documents for his tax returns,
9 his amount of taxable income, the annual income that he earned
10 versus the income of the entities and the current net worth of
11 each of the defendants, that -- a lot of that information if it
12 deals with punitive damages won't be turned over until 30 days
13 prior to trial, but some of -- to make sure that the punitive
14 claim still exists, but if it's to find out his relationship
15 and his benefit, I'm not sure he can argue he doesn't benefit
16 if he gets a salary.

17 MR. GREENBERG: I understand, Your Honor, and his
18 individual net worth, his income from other sources is not
19 within the scope of what should be disclosed here. If the
20 wording includes that, then that's too broad; I agree, Your
21 Honor. That's not the purpose of the inquiry here.

22 The other thing I was going to get to about this is I
23 think this really is an issue that's addressed to bifurcation
24 possibly with Judge Cory as the trial Judge. I mean, if Judge
25 Cory intends for all the issues, all of the liability issues in

1 this case to go in front of a single jury for one trial, then
2 that jury is going to have to hear evidence on whether there
3 was benefit to Mr. Nady from his relationship with the
4 corporation.

5 And I don't know how this sort of evidence dealing
6 with his financial gain from the corporation's activity cannot
7 come in to that review of factual information that the jury's
8 going to have to weigh. Now, Judge Cory might prefer to
9 bifurcate that. That's quite possible. I understand that, but
10 at the moment I have no bifurcation order from him. Defendants
11 have not requested bifurcation. So --

12 THE DISCOVERY COMMISSIONER: So what do we really
13 need? See, that's where I'm struggling. What do we really
14 need to show? I mean you can ask him what his salary is.

15 MS. RODRIGUEZ: He has.

16 THE DISCOVERY COMMISSIONER: Okay.

17 MS. RODRIGUEZ: Because if I'm recalling correctly,
18 that was a bone of contention between us --

19 MR. GREENBERG: Yeah --

20 MS. RODRIGUEZ: -- is that in that last 30(b)(6), the
21 very first one, he started off asking him whether he received a
22 salary, did he take a draw, all of those.

23 THE DISCOVERY COMMISSIONER: Okay. Well --

24 MS. RODRIGUEZ: Those questions have been answered.

25 MR. GREENBERG: No, they -- Your Honor, he didn't

1 answer them. He said he didn't know.

2 THE DISCOVERY COMMISSIONER: Okay. So again my
3 vision for this final deposition of Mr. Nady would be the one
4 day, seven hours. I would request that you stick with your
5 deposition topics on the 30(b)(6) that he has not addressed.
6 You can go back and look at the first deposition. If he did
7 not answer questions, you can reask them until we get some
8 answers.

9 But from a document perspective, how can we narrow
10 this so it gives you what you need without opening the full
11 financial picture? Because I don't think you're entitled to
12 that right now. If he says I got a salary, do you need a proof
13 of a -- I don't know if he gets a 1099 or a W -- I don't know
14 how he is paid out of the corporation. You need to find that
15 out.

16 If there's supporting documentation that shows how
17 he's paid, I'd probably be willing to give you that and whether
18 it -- you know, properly redacted so income from other sources
19 are not disclosed, but whether it's a W-2, a 1099 from the
20 corporation, how is he paid? I suspect --

21 MR. GREENBERG: Your Honor, because it's an LLC --

22 THE DISCOVERY COMMISSIONER: How would it be paid?

23 MR. GREENBERG: Well, it's not just a question of a
24 salary. I mean, he may get a draw. He may get distributions.

25 THE DISCOVERY COMMISSIONER: Right.

1 MR. GREENBERG: Earnings may be retained within the
2 corporation as well, increasing the value of the corporate
3 assets. He's the sole shareholder. So if the corporation's
4 making a profit, and that profit is retained by the
5 corporation, that's essentially property that he's increased
6 the value as a result of the corporation's activities, as a
7 result of the corporation's allegedly illegal activities. So
8 he's benefited to that extent.

9 So, Your Honor, he could simply answer detailed
10 interrogatories, and we could do that as a first step. Tell
11 us -- you know, answer, tell us what was the value -- net value
12 of the corporation's assets at the beginning, at the end of
13 each of these years' time period. What did you receive in
14 terms of property distributions, you and your family members?
15 What did you receive in the form of salary during the time
16 period?

17 THE DISCOVERY COMMISSIONER: Why would the family
18 members be relevant?

19 MR. GREENBERG: Well --

20 THE DISCOVERY COMMISSIONER: Because if you have to
21 show that he benefited, I'm not really willing to go into the
22 family members' financial. They're not parties to this
23 litigation.

24 MR. GREENBERG: Your Honor, I'm not interested in
25 their financial status, but if they're receiving distributions

1 from the corporation, then if it's -- not, you know, if it's
2 his cousin or something, I'm not going to -- you know, three
3 times removed, I'm not going to get into that, but if it's his
4 spouse, if it's his child, Your Honor, it is germane here
5 because I mean it should be -- it could be and should be
6 imputed to him, or at least that's an issue for somebody to
7 weigh at trial, Your Honor.

8 He can answer detailed interrogatories as to these
9 issues. We can see what he has to say. If further
10 documentation of the financials themselves would be justified,
11 we can visit that at that point. I'm willing to go through
12 stages here, but he should at least have to place -- and it's
13 going to be confidential, Your Honor. It'll all be under seal.
14 It won't go anywhere, but he should at least have to come in at
15 some stage at this point to demonstrate what financial benefit,
16 if any. For all we know, the corporation has made no money, or
17 maybe it's been very nominal. So that would provide him with a
18 significant defense.

19 Again, Your Honor, if these claims are not
20 bifurcated, I need to be able to come at trial and provide
21 documentation as to the benefit to Mr. Nady. If Mr. Nady's
22 total benefit for over the five-year period is only a hundred
23 thousand dollars, then arguably that's the limit of his
24 liability as well. So this goes to his defense. If Mr. Nady
25 simply wants to stipulate that he's going to be liable if the

1 corporation doesn't pay, then I don't need to do any of this,
2 but he's not going to agree to that, and he has a right to make
3 his defense. I understand that, Your Honor.

4 THE DISCOVERY COMMISSIONER: So here's what I'm
5 concerned about. I think that -- again I go back to what do
6 you really need right now, and I think what you need to find
7 out is the relationship between Mr. Nady and the corporation,
8 how he was paid, and he'll need to answer those questions, what
9 distributions were made.

10 And I think you can talk about distributions to
11 family members generally. I don't know if the amount -- again,
12 you know, you're walking a very narrow path here because you do
13 not want to invade the privacy of nonparties. I know they're
14 family members. I think you can ask: Do any of your family
15 members receive distribution of funds from the corporation?
16 But I think the amount, I'm not really willing to require him
17 to answer at least at deposition. I'll have to think about
18 that further because I don't know -- then he'd have to be
19 liable for those distributions.

20 I think you're entitled to know the total amount of
21 distributions made for the year to him or to others. That
22 might be something you could ask. I think you are probably
23 entitled to know the amount of his distributions and how he did
24 that. Was it a draw? I think you're certainly entitled to
25 know whether the corporation made a profit in the years at

1 issue, and how much did they make? So I think these types of
2 questions can be asked of him and answered.

3 Now, in terms of the supporting documentation, I
4 think we need to get those answers first. I think -- I don't
5 know how the distribution is made, but I think he needs to be
6 able to show documentation to support the money that he
7 received from the corporation.

8 MR. GREENBERG: Yes.

9 THE DISCOVERY COMMISSIONER: I think he also needs to
10 show the net -- you know, what the profit was.

11 MR. GREENBERG: Your Honor, given that we have a
12 number of topics to get into in the deposition, I understand
13 you believe it's more appropriate for Mr. Nady to answer
14 questions about these issues as you've outlined.

15 THE DISCOVERY COMMISSIONER: Or interrogatories.

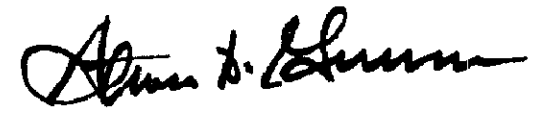
16 MR. GREENBERG: Yes, I would prefer to do it
17 through --

18 THE DISCOVERY COMMISSIONER: Yeah, you can do either
19 way, and maybe that's what we do, is we protect -- right now I
20 protect the discovery as served, but I allow you to go back and
21 send detailed interrogatories on the financial information you
22 need and the request to produce for specific supporting
23 documentation.

24 I don't know why you need -- see I'm just -- do we
25 need the taxi cab? What tax returns, if any, have been

EXHIBIT C

EXHIBIT C


CLERK OF THE COURT

MRCN
Esther C. Rodriguez, Esq.
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Las Vegas, Nevada 89145
702-320-8400
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Attorneys for Defendant A Cab, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

Hearing Date:

Hearing Time:

DEFENDANTS' MOTION FOR RECONSIDERATION

Defendants A Cab, LLC and Creighton J. Nady, by and through their attorney of record,
ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRCP 60
and EDCR 2.24 hereby respectfully moves this Honorable Court to reconsider its prior Order of
February 10, 2016, granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP Rule
23(b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to Appoint a
Special Master Under NCRP (*sic*) 53. Order, Exhibit 1

...

...

...

...

...

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

3 DATED this 25th day of February, 2016.

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

5 /s/ Esther C. Rodriguez, Esq.
6 Esther C. Rodriguez, Esq.
7 Nevada Bar No. 6473
8 10161 Park Run Drive, Suite 150
9 Las Vegas, Nevada 89145
10 *Attorneys for Defendants*

11 **NOTICE OF HEARING**

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

15 DATED this 25th day of February, 2016.

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

17 /s/ Esther C. Rodriguez, Esq.
18 Esther C. Rodriguez, Esq.
19 Nevada State Bar No. 006473
20 10161 Park Run Drive, Suite 150
21 Las Vegas, Nevada 89145
22 *Attorneys for Defendants*

23 **POINTS AND AUTHORITIES**

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

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

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

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

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

As an example of improper wording which must be stricken, Plaintiffs have once again included the wording which the Court has already cautioned them regarding misrepresenting to the Court. At the hearing of this matter on November 3, 2015, this Honorable Court stated to Plaintiffs' counsel that the Court had reviewed the Consent Judgment which Defendant A Cab, LLC had entered into with the Department of Labor, and that the document did not say what Plaintiffs' counsel had indicated. The Court reviewed the Judgment noting it was a settlement document with no finding or admission of liability. Nevertheless, Plaintiffs' counsel has defiantly included this in the Order, stating the opposite of the Court's words: "*the Court finds it persuasive that a prior United States Department of Labor ("USDOL") litigation initiated against the defendants resulted in a consent judgment obligating the defendants to pay \$139,834.80 in unpaid minimum wages.*" Order, p. 4.¹

The Plaintiffs further expand this issue with additional items which were never addressed in briefing or orally in Court, but yet now find their way into the Court's Order. An example is the wording, "*The USDOL, as a public law enforcement agency has a duty, much like a prosecuting attorney in the criminal law context, to only institute civil litigation against employers when credible evidence exists that such employers have committed violations of the FLSA.*" There is no support for this statement which is raised for the first time in the Order, and only for purposes of

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

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

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

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

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

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

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

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

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

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

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

28 ² *Motion to Dismiss Plaintiffs' First Claim for Relief*, filed September 11, 2015

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

6 **II.**

7 **CONCLUSION**

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

10 DATED this 25th day of February, 2016.

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

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

17 **CERTIFICATE OF SERVICE**

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

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

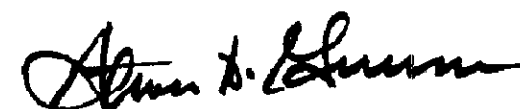
24 /s/ Susan Dillow
25 An Employee of Rodriguez Law Offices, P.C.

EXHIBIT D

EXHIBIT D

ORIGINAL

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04/28/2016 03:56:42 PM



CLERK OF THE COURT

ORDR

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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,

Plaintiffs,

vs.

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

Defendants.

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

Hearing Date: March 28, 2016
Hearing Time: Chambers

ORDER ON DEFENDANTS' MOTION FOR RECONSIDERATION

Defendants' Motion for Reconsideration of this Honorable Court's prior Order of February 10, 2016, granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP Rule 23(b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to Appoint a Special Master Under NCRP (*sic*) 53, having come before this Court on March 28, 2016, before the Honorable Kenneth Cory in chambers,

The Court having, read all the pleadings and papers on file herein, and good cause appearing,

...

...

IT IS HEREBY ORDERED that Defendants' Motion is **GRANTED IN PART** and **DENIED IN PART**. The Motion is Granted as follows:

Plaintiffs' claims numbered 3 and 4 were not certified as class claims.

The Court further orders that the language on page 5, lines 11-13 regarding qualifying health insurance is to be removed.

The Court further orders the language commencing on page 5 at line 26 that “Defendants do not dispute” is to be removed. The balance of the Motion is DENIED. Plaintiffs to submit an amended order with the above changes.

DATED this 25 day of April, 2016.

Submitted by:

RODRIGUEZ LAW OFFICES, P. C.

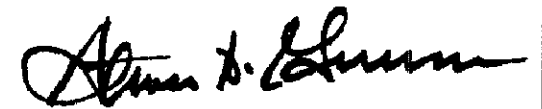
By:

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

Kenneth A. Berry
DISTRICT COURT JUDGE

EXHIBIT E

EXHIBIT E



CLERK OF THE COURT

1 **MOT**
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6 Attorneys for Plaintiffs

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

10 MICHAEL MURRAY, and MICHAEL
RENO, Individually and on behalf of
11 others similarly situated,
12 Plaintiffs,
13 vs.
14 A CAB TAXI SERVICE LLC, A CAB,
LLC, and CREIGHTON J. NADY,
15 Defendants.
16

Case No.: A-12-669926-C

Dept.: I

**MOTION TO CONTINUE
TRIAL DATE AND EXTEND
DISCOVERY SCHEDULE
AND FOR OTHER RELIEF**

17
18 Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation,
19 hereby move this Court for an Order continuing the trial of this matter for a period of
20 at least sixty (60) days, extending the current discovery schedule by at least sixty (60)
21 days, and for other relief addressed *infra*.

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

25 ///

26 ///

27 ///

28 ///

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT the plaintiffs, by and through their attorneys of record, will bring the foregoing **MOTION TO CONTINUE TRIAL DATE AND EXTEND DISCOVERY SCHEDULE AND FOR OTHER RELIEF**, which was filed in the above-entitled case for hearing before the Hon. Kenneth Cory of Department 1 on August 29, 2016, at the hour of In Chambers.

Dated: July 25, 2016

Leon Greenberg Professional Corporation

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **RELEVANT NATURE AND STATUS OF THIS CASE**

3 The plaintiffs and members of the plaintiff class are current and former taxicab
4 drivers employed by the defendants. The named plaintiffs filed this case as class
5 action for minimum wages owed under Article 15, Section 16 of the Nevada
6 Constitution. On June 7, 2016, the Court entered its Order certifying this case as a
7 class action on behalf of the named plaintiffs and a class of plaintiffs in excess of 2000
8 current and former taxicab drivers. Notice to the class members is scheduled to be
9 mailed no later than August 15, 2016. The time for them to exclude themselves from
10 this class action will expire 55 days after the mailing of such notice.

11 This case is subject to a current schedule that provides, among other things, for
12 the furnishing of expert reports by August 1, 2016, the close of discovery by October
13 31, 2016, and trial on January 3, 2017. Ex. "A." This case was filed on October 8,
14 2012. While the five year rule time period for its trial would normally be October 8,
15 2017, this case was subject to a series of Orders (Ex. "B") staying all proceedings for a
16 period of 240 days. Based upon those stays, a trial of this case under the five year rule
17 can commence as late as June 5, 2018. *See, D.R. Horton v. Eighth Judicial Dist.*
18 *Court*, 358 P.3d 925, 930 (Nev. Sup. Ct. 2015) relying on *Boren v. City of N. Las*
19 *Vegas*, 638 P.2d 404-405 (Nev. Sup. Ct. 1982) (All periods in which proceedings are
20 completely stayed excluded for five year rule calculations).

21 **SUMMARY OF RELIEF REQUESTED**

22 This motion seeks the following relief:

- 23 (1) An Order extending the discovery schedule and continuing the trial date of
24 this case for at least 60 days and for as much as 120 days, or longer, as is appropriate;
25 (2) An Order deeming it defendants' burden, if they are to only have a legal
26 responsibility in this case to compensate class members at the "lower tier" or "health
27 benefits provided" minimum wage rate specified by Article 15, Section 16, of
28 Nevada's Constitution, to determine, and provide to plaintiffs' counsel, the

1 information detailing, for each payroll period of the class period (July 1, 2007 through
2 December 31, 2015) and for each class member:

- 3 (a) Whether the class member was eligible to both enroll in and receive
4 health insurance benefits provided by the defendant;
- 5 (b) The nature of such health insurance benefits, but only in respect to
6 medical coverage, meaning a summary of coverage as is provided
7 to such a health insurance plan participant, listing monetary
8 coverage limits, co-pays, deductibles, and the general included and
9 excluded benefits, such as surgical, hospital and physician services.
10 Defendants need not provide such information for dental or optical
11 or disability insurance that may have been offered;
- 12 (c) The amount that the class member had to pay each pay period or
13 month to receive such health insurance benefits, for themselves
14 individually and for themselves and their spouse and/or children.

15 Such Order to further provide that, for any class member for whom the foregoing
16 information is not provided by the defendants, the class member shall be conclusively
17 deemed to have been entitled to the "higher tier" or "no health benefits provided"
18 minimum wage rate specified by Article 15, Section 16, of Nevada's Constitution.

19 (3) An Order certifying the claims made against defendant Nady in the Third
20 and Fourth Claims for Relief in the Second Amended Complaint for class action
21 treatment on behalf of the plaintiff class certified in this Court's Order entered on June
22 7, 2016 (Ex. "C").

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **ARGUMENT**

2 **I. THE CURRENT TRIAL DATE SHOULD BE CONTINUED AND THE**
3 **CURRENT DISCOVERY SCHEDULE SHOULD BE AMENDED**

4 Pursuant to EDCR 7.30(a), “any party may, for good cause, move the court for
5 an order continuing the day set for trial of any cause. A motion for continuance of a
6 trial must be supported by affidavit except where it appears to the court that the
7 moving party did not have the time to prepare an affidavit, in which case counsel for
8 the moving party need only be sworn and orally testify to the same factual matters as
9 required for an affidavit. Counter-affidavits may be used in opposition to the motion.”
10 Additionally, subsection (h) of such rule also allow for the movant to seek an
11 extension of the discovery schedule concurrent with a request to continue a trial date,
12 so long as such request complies with Rule 2.35. *See*, EDCR 7.30(a) and (h).

13 As discussed *infra*, this case has been subjected to extensive delays in allowing
14 plaintiffs to obtain the discovery materials necessary to prepare this case for trial.
15 Accordingly, an Order continuing the trial date and extending the Discovery Schedule
16 by a period of no less than 60 days and perhaps even 120 days should issue.

17 **A. Defendants have caused an inordinate delay in these proceedings**
18 **by obstructing the production of computer data files for 15 months.**

19 Claims for unpaid minimum wages involve the determination of three facts: (1)
20 what was the employee paid during the relevant pay period; (2) how many hours did
21 the employee work during that pay period; and (3) what was the applicable minimum
22 wage rate for the employee (the \$7.25 an hour “health benefits provided” rate or the
23 \$8.25 an hour “no health benefits provided” rate). Not surprisingly, defendants kept
24 detailed computerized records (Quickbooks) of the compensation (payroll) of the class
25 members. They kept no such computerized records (or at least none prior to January
26 of 2013) purporting to record the hours of work of the class members. In an attempt to
27 ascertain those work hours, plaintiffs’ counsel sought the production of computer files
28 from the defendants’ Cab Manager software system. That system maintains, at least

1 for some period of time (apparently from 2013 forward) a record of the time each class
2 member took “out” a cab and returned “back” that cab each working day. Obviously
3 that information, in the absence of any “punch clock” time record, is appropriately
4 considered in determining the class members’ hours of work.

5 Plaintiffs sought production of those computer data files/electronic records
6 (Quickbooks and Cab Manager). Defendants refused to produce those materials.
7 Plaintiffs filed a Motion to Compel those materials on February 11, 2015, *more than*
8 *seventeen months ago*. Defendants opposed that motion, claiming either they were
9 unable to produce such materials or they were unnecessary and offering to produce
10 hundreds of thousands of pages of paper records (including those printed from their
11 payroll computer system) instead. In response, the Discovery Commissioner
12 suggested an inspection, with the assistance of both sides’ computer data consultants,
13 be conducted of the defendants’ computer systems. That inspection, which took place
14 on March 31, 2015, was terminated by defendant Nady prior to its completion. That
15 circumstance forced the plaintiffs, as then instructed by the Discovery Commissioner,
16 to conduct a deposition of James Morgan, who is the proprietor of the third party Cab
17 Manager software used by defendants in the operation of their taxicab business. The
18 testimony obtained from such deposition established that the materials originally
19 sought by plaintiffs in their February 11, 2015 motion to compel *did* exist, were not
20 exceptionally burdensome for defendants to produce, and did contain the relevant
21 information being sought by the plaintiffs. As a result, on December 11, 2015, seven
22 months after plaintiffs initially filed their motion to compel, the Discovery
23 Commissioner signed her Report and Recommendations granting plaintiffs’ Motion to
24 Compel and directing payment by defendants to plaintiffs’ counsel of \$3,238.95 in
25 costs and attorney’s fees. Defendants filed timely objections to such Report and
26 Recommendations, which this Court overruled, and signed the Discovery

1 Commissioner's Report and Recommendations on February 29, 2016.¹ Thereafter,
2 defendants, despite having filed objections to the Discovery Commissioner's Report
3 and Recommendations, filed a Motion for Reconsideration *of the same Discovery*
4 *Commissioner's Report and Recommendations*. An Order denying defendants'
5 Motion for Reconsideration was eventually entered by this Court on May 26, 2016. In
6 June and July of 2016, defendant produced the Quickbooks data files and a substantial
7 volume of Cab Manager data (that Cab Manager data not being received until July 10,
8 2016). As of the date of this motion, full production of these materials, in particular
9 certain Cab Manager data files that defendants have indicated do exist, is still awaited
10 (defendants are attempting to have the same produced promptly).

11 **B. This case has been delayed by the process of**
12 **considering, and granting, class certification.**

13 Not surprisingly, the plaintiffs' request for class certification of this case was
14 vigorously opposed by the defendants. The process of securing that class certification
15 was commenced by the plaintiffs via a motion filed on May 19, 2015. It proceeded
16 through a number of hearing dates, continuances, supplemental briefings, and a motion
17 for reconsideration, and did not result in the entry of a final order granting class
18 certification until June 7, 2016, *almost one year after plaintiffs' filed their motion*.
19 Class notice is still to be completed pursuant to that order.

20 **C. The relevant circumstances require a modification**
21 **of the discovery schedule and the trial date.**

22 Defendants refuse to consent to any modification of the discovery schedule, or
23 trial date, of this case. As a result, Discovery Commissioner Bulla, at the status
24 conference held on July 20, 2016, authorized plaintiffs' counsel to proceed with this
25 motion to the District Court Judge.

26 It is manifest that the January 3, 2017 trial date, and the other relevant case

27 ¹ The copy of the Order at Ex. "D" erroneously stated such order was signed on February 29,
28 2015, but such date should read 2016. The error exists because such Report and Recommendations
was submitted by the Clerk to the District Judge in 2015, but not signed until 2016.

1 management dates (August 1, 2016 for experts, October 31, 2016 for close of
2 discovery, and so forth) are not workable and need to be advanced by at least 60 days
3 and more likely by a time period of 120 days or possibly a bit longer. Plaintiffs are
4 **still awaiting full production of the electronic discovery (Cab Manager data files)**
5 from defendants that will be the subject of any possible expert report. Accordingly,
6 they cannot provide an expert report by August 1, 2016. Plaintiffs' counsel also needs
7 adequate time to gather evidence from the class members and secure the remaining
8 necessary class wide discovery. The notice and exclusion period to class members
9 will not be completed until some time from late September to late October of 2016.

10 Plaintiffs are acting diligently in moving the prosecution of this case forward
11 (which is why they are seeking certain procedural/evidentiary rulings with this
12 motion). They should not be hindered in the effective prosecution of this case by
13 defendants' delays and the inherent delays this Court has dealt with in respect to
14 resolving the class certification dispute.

15 **II. THE COURT SHOULD HOLD THAT DEFENDANTS' FAILURE**
16 **TO SPECIFY THE AVAILABILITY AND COST OF THEIR HEALTH**
17 **INSURANCE BENEFITS FOR ANY CLASS MEMBER WILL**
18 **CONSTITUTE A WAIVER OF THEIR RIGHT TO PAY THAT**
19 **CLASS MEMBER THE "LOWER TIER" MINIMUM WAGE**

20 The MWA imposes either a "health benefits provided" minimum wage rate (the
21 "lower tier minimum wage") upon employers or a "no health benefits provided"
22 minimum wage rate (the "higher tier minimum wage"). There are certain unsettled
23 issues regarding how the "health benefits provided" status is determined (and how the
24 employee's ability to obtain health insurance coverage for their dependents bears upon
25 that status). But one relevant issue is the cost, to the employee, of such health
26 insurance benefits, as the MWA states such cost cannot exceed 10% of the employee's
27 compensation from the employer (e.g., their wages).

28 Discovery is ongoing in this case, including discovery that is attempting to
ascertain details about both whether health insurance was made "available" to the class
members and what the "cost" of any such health insurance would be to the class

1 members (including the cost for their dependents to receive such insurance). At this
2 stage of these proceedings, defendants have declined to specify that information,
3 insisting it is too burdensome for them to do so. This is set forth in their recent
4 interrogatory response, Ex. "E" ¶ 3, wherein they insist it is "too burdensome" to
5 provide that information while contradictorily claiming that information is "readily
6 ascertainable" from the Quickbooks data produced (meaning, of course, it cannot be
7 overly "burdensome" for defendants to provide that information in an interrogatory
8 response). Defendants' assertion such information can be obtained from the
9 Quickbooks data is manifestly false. All that data will detail is the deductions from
10 some employees, during some pay periods, for some unspecified health insurance that
11 they participated in. It will not indicate whether an employee (other than one for
12 whom that deduction was made) was even eligible for health insurance benefits. Nor
13 will it advise about what the cost was for the employee to obtain insurance benefits for
14 dependents who were *not* being covered by the employee's payroll deductions.

15 An employer's entitlement to pay the "lower tier" minimum wage rate under the
16 MWA should require that the *employer* document such entitlement, by detailing the
17 availability of health insurance to the employee and its cost (as in any other affirmative
18 defense). If they fail to do so because, as defendants assert, it is "too burdensome,"
19 then they should waive any right to pay the lower tier minimum wage. Once plaintiff
20 has requested such information in discovery, and defendant has failed to provide it, the
21 plaintiff should not be put to the task of seeking to compel such discovery or otherwise
22 ascertain such information on their own to "prove" their right to the "higher tier"
23 minimum wage. Accordingly, the plaintiffs request that the Court issue an Order
24 specifying that defendants, if they wish to avail themselves of the "lower tier"
25 minimum wage rate for any pay period for any class members must, for such pay
26 period (or month of employment), specify the availability of health insurance, its cost
27 to the employee (including costs for all forms of dependent coverage), and medical
28 benefits provided under such insurance (the typical one or two page summary of

1 medical insurance benefits an insurance participant receives). Such Order should
2 further provide that upon the expiration of 30 days from entry of such Order
3 defendants will waive their right to claim that any class member was only entitled to
4 the “lower tier” minimum wage for any pay period for which they have not provided
5 such information.

6 **III. THE COURT SHOULD EXTEND THE DAMAGES CLASS**
7 **CERTIFICATION TO THE THIRD AND FOURTH CLAIMS**
8 **FOR RELIEF AGAINST DEFENDANT, CREIGHTON J. NADY**

9 Owing to a “crossing chronology,” plaintiffs’ motion for class certification
10 being filed in May of 2015 and the Court’s Order granting leave to amend the
11 complaint and add the third and fourth claims for relief against Nady as an additional
12 defendant not being entered until August of 2015 (Ex. “F”), the claims against Nady
13 have not been certified for class action treatment under NRCP Rule 23(b)(3). The
14 Court should so certify those claims now for the existing NRCP Rule 23(b)(3) class.

15 There is no basis to deny class treatment of the claims against Nady. Those
16 claims (civil conspiracy, as an alter ego, concert of action, aiding and abetting, unjust
17 enrichment) all have their basis in allegations that Nady personally and knowingly
18 enriched himself, to the detriment of the class members, through his abuse and
19 direction of the corporate defendant, A-Cab. Nady’s liability is not predicated upon
20 his actions towards any particular class member or members but in respect to his
21 management, control, direction, and misuse of the corporate defendant, A-Cab. If
22 Nady is so liable as alleged, as result of his dealings with A-Cab, that liability is the
23 same for *all* class members. Accordingly, the class certification of the third and fourth
24 claims for relief in the Second Amended and Supplemental Complaint should be
25 granted.

26 **IV. PLAINTIFFS’ COUNSEL’S GOOD FAITH CONFERRAL**

27 In compliance with EDCR 2.34, plaintiffs’ counsel has attempted, in good faith,
28 to confer with defendants’ counsel concerning continuing the trial setting in this matter
and extending all discovery deadlines. Defendants’ counsel could not obtain the

1 approval of defendants to do so. As documented in Ex. "G," the parties have reached
2 an impasse, making the instant motion ripe for filing.

3 **CONCLUSION**

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

6 Dated: July 25, 2016

7 LEON GREENBERG PROFESSIONAL CORP.

8 /s/ Leon Greenberg
9 Leon Greenberg, Esq.
10 Nevada Bar No. 8094
2965 S. Jones Boulevard - Ste. E-3
11 Las Vegas, NV 89146
Tel (702) 383-6085
12 Attorney for the Plaintiffs
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EXHIBIT F

EXHIBIT F


CLERK OF THE COURT

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Attorneys for Defendant A Cab, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

Hearing Date: August 29, 2016
Hearing Time: Chambers

DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION
TO CONTINUE TRIAL DATE AND EXTEND DISCOVERY SCHEDULE
AND FOR OTHER RELIEF

Defendants, by and through their attorney, Esther C. Rodriguez, Esq., of RODRIGUEZ LAW OFFICES, P.C., hereby submit this Opposition to Plaintiffs' Motion to Continue Trial Date and Extend Discovery Schedule and for Other Relief.

I. Legal Argument.

Defendants adamantly oppose any further delay or stay of this matter as Plaintiffs have had more than sufficient time to prepare their case, and have failed to do so. Their actions towards Defendants have been an abuse of process, and actions which have completely worked against the interests of justice.

Defendants oppose this request to further delay this proceeding. This matter has been pending since October 8, 2012. All stays in this matter have been requested by Plaintiffs, and

1 Plaintiffs have still failed to prove any liability against Defendants. As this Court is aware, prior
2 motions for summary judgment and for dismissal have been filed, as Plaintiffs have never proven
3 any liability for the named representative Plaintiffs. In fact, the named Plaintiffs remain subject to
4 dismissal pending further guidance from the Nevada Supreme Court on the prospective application
5 of the *Thomas v. YCS* matter. In the interim, Defendants have continued to incur over \$300,000 in
6 attorney fees and costs in defending this frivolous matter. Defendants have continued to produce
7 each new piece of evidence that Plaintiffs can think up, and yet Plaintiffs cannot establish a
8 foundation for proceeding with a trial, and thus are requesting more time to prepare for trial.

9 This matter continues to be attorney-driven litigation, with the proof being that offers of
10 resolution were forwarded to the named Plaintiffs months ago, and Plaintiffs' counsel refused to
11 convey any offer of resolution to their clients. *See Defendants' Motions to Dismiss and for*
12 *Summary Judgment Against Plaintiff Michael Reno and Plaintiff Michael Murray*, both filed
13 September 21, 2015, *Defendant's Opposition to Plaintiffs' Motion to Extend Discovery Schedule*
14 *(Second Request)* filed October 7, 2015, and *Second Supplement to Defendant's Opposition to*
15 *Motion to Certify Case as Class Action Pursuant to NRCP 23 and Appoint a Special Master*
16 *Pursuant to NRCP 53* filed October 20, 2015.¹ Such behavior is not only sanctionable under the
17 rules of professional conduct, but is clear evidence that the goal in this litigation is to continue to
18 run up the attorney fees in order for Plaintiffs' counsel to profit in a fee-shifting case.

19 If this Court is inclined to grant Plaintiff's request to continue with this escalation of more
20 attorney fees, Defendants will be seeking leave to assert causes of action against Plaintiffs' counsel
21 as has been done in the other suits currently pending in the Eighth Judicial District Court. *See*
22 *Defendant's Answer to Third Amended Complaint, Counterclaims and Third Party Complaint* filed
23

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

1 in *Perera v. Western Cab Company*, District Court Case A-14-707425-C, attached as **Exhibit 1**.

2 Plaintiffs have already sought multiple continuances, which were untimely and yet granted.
3 The close of discovery was first set on April 24, 2014. We are now well over 2 years past this
4 deadline.

5 Pursuant to the Stipulation and Order Extending Discovery Deadlines (First Request) filed
6 November 10, 2014 in this matter, the next close of discovery was October 1, 2015. EDCR 2.35(a)
7 indicates that motions to extend any date set by the discovery scheduling order must be in writing
8 and received by the discovery commissioner within 20 days before the discovery cut-off date or any
9 extension thereof. As such, the last date in which to seek a continuance of discovery was
10 September 11, 2015. However, Plaintiffs did not file their motion until September 14, 2015, and
11 therefore were untimely with their request. However, the Discovery Commissioner allowed an
12 extension to June 29, 2016. At a status check before the Discovery Commissioner on May 20,
13 2016, Plaintiffs verbally requested, and received, an additional discovery extension to October 31,
14 2016. Plaintiffs have altogether failed to act and are again asking for yet another extension, and to
15 move the trial date.

16 Such requests are without basis and are simply to provide Plaintiffs with more time to
17 prepare a case that they should have prepared in the last four years. As this Court is aware, a
18 lawyer shall act with reasonable diligence and promptness in representing a client. Rule 1.3 of the
19 Nevada Rules of Professional Conduct and the ABA Model Rules of Professional Conduct.

20 Plaintiffs argue that Defendants have delayed in production of necessary information and
21 thus argue for more time. The tripsheets have always been made available to Plaintiffs, who have
22 refused to review them. These tripsheets are the same information upon which all Federal and State
23 Agencies have relied for wage and hour information. At Plaintiffs' insistence, Defendants have
24 incurred substantial costs in producing trip data in an electronic format from Cab Manager.
25 Ironically, in the most recent round of discovery, Plaintiffs are now asking for copies of the
26 tripsheets which they previously refused to review. Plaintiffs now seek copies of these tripsheets in
27 a "pdf" format, which number over 500,000 pages. Defendants have always maintained that the
28 Cab Manager data is not relevant to the determination of a minimum wage violation. It now

1 appears Plaintiffs have come to the same conclusion. Thus Plaintiffs seek more time to review the
2 documents which have been available but refused. Plaintiffs should not be rewarded for such
3 actions which have been quite costly to Defendants.

4 **II. Plaintiffs' Second Request is a Request for a Discovery Sanction Which Is Premature**
5 **and Improperly Before this Court.**

6 The second requested relief in Plaintiffs' motion is for the Court to deem it Defendants'
7 burden to provide detailed insurance information for each employee for each pay period of the class
8 period, or to have Defendants be denied the right to claim the class members were compensated at
9 the "lower tier" or "health benefits provided" minimum wage allowed by the Nevada Constitution.

10 The Plaintiffs are seeking an Order which is basically an NRCP 37 rule for sanctions, and
11 are completely "jumping the gun" so to speak. Plaintiffs have just now asked for discovery relevant
12 to this issue, which response is not even due yet. And yet, Plaintiffs, due to their own delay and
13 shortcomings, now want the Court to shift the burden to Defendants to prove an element that
14 Plaintiffs are required to prove. Plaintiffs propounded extensive discovery requests to Defendants
15 requesting a detailed analysis for each employee for each payroll period from July 1, 2007 through
16 December 31, 2015, the responses of which will not be due until two months before the current
17 discovery cut off. These requests will surely be the subject of motions as the information Plaintiffs
18 are requesting is not kept in the normal course of business. In any event, Plaintiffs have not given
19 themselves enough time to review the information and are therefore improperly, and prematurely,
20 requesting the Court to impose sanctions that will shift the burden of proof to Defendants.

21 **III. Plaintiffs' Request for an Order Certifying the Claims made Against Defendant Nady**
22 **in the Third and Fourth Claims for Relief in the Second Amended Complaint for Class**
23 **Action Treatment, is in fact, a Motion for Reconsideration of the Court's Prior Order.**

24 This issue first arose in the *Order Granting Plaintiffs' Motion to Certify Class Action*
25 *Pursuant to NRCP Rule 23(b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice*
26 *Plaintiffs' Motion to Appoint a Special Master Under NCRP (sic) 53* submitted by Plaintiffs. In
27 that Order, Plaintiffs, unilaterally and without basis, alleged that the Court granted class
28 certification on the Third and Fourth Claims for Relief against Defendant Nady.

1 Defendants filed a *Motion for Reconsideration of the Class Order* arguing against the
2 improper wording Plaintiffs inserted into the Order, as the Court made no finding that the Third and
3 Fourth Claims were appropriate for class certification. As the Court will recall, these are claims of
4 Civil Conspiracy and Unjust Enrichment directly asserted against the individual, Creighton Nady.
5 These are claims which were not argued as part of the request for certification, nor were they within
6 the intent of the Court to include on a class-wide basis. Plaintiffs were ordered to remove this
7 wording by the Court and an Amended Order, without the improper language among other things,
8 was filed June 7, 2016.

9 Plaintiffs now seek to include these claims once again with no further support. Plaintiffs
10 had an opportunity to brief to the Court why these claims should be included when this matter was
11 on reconsideration by the Court. Pursuant to Rule 60(b) of the Nevada Rules of Civil Procedure, a
12 party may seek relief from judgment or order based upon mistakes, inadvertence, excusable neglect,
13 newly discovered evidence, fraud, etc. Here, Plaintiffs offer no new evidence as to why the Court
14 should reconsider its prior ruling. The Court already ruled on this issue, and here Plaintiffs move
15 improperly again for “reconsideration.” Such a request should be denied as procedurally improper
16 and without basis.

17 The Court has already ruled that these claims are not proper for certification, and should not
18 be included as part of the order. *From the Order on Defendants’ Motion for Reconsideration* filed
19 April 28, 2016: “Plaintiffs’ claims numbered 3 and 4 were not certified as class claims.”

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1 **IV. Conclusion.**

2 Based upon the foregoing points and authorities, Defendants respectfully request this
3 Honorable Court to enter an Order denying Plaintiffs' Motion to Continue Trial Date and Extend
4 Discovery Schedule and for Other Relief in its entirety.

5 DATED this 15th day of August, 2016.

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

7
8 /s/ Esther C. Rodriguez, Esq.
9 Esther C. Rodriguez, Esq.
10 Nevada State Bar No. 006473
11 10161 Park Run Drive, Suite 150
12 Las Vegas, Nevada 89145
13 *Attorneys for Defendant A Cab, LLC*

14 **CERTIFICATE OF SERVICE**

15 I HEREBY CERTIFY on this 15th day of August, 2016, I electronically filed the
16 foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System
17 which will send a notice of electronic service to the following:

18 Leon Greenberg, Esq.
19 Leon Greenberg Professional Corporation
20 2965 South Jones Boulevard, Suite E4
21 Las Vegas, Nevada 89146
22 *Counsel for Plaintiffs*

23 /s/ Susan Dillow
24 An Employee of Rodriguez Law Offices, P.C.
25
26
27
28

EXHIBIT G

EXHIBIT G

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

September 22, 2016

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

September 22, 2016

Minute Order

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

JOURNAL ENTRIES

Plaintiff has submitted a proposed Order to the Court, to which the Defendants have objected.

A reading of the Defendants' opposition to the present Motion leaves one with the question of whether the Defense appreciates the gravity that inures to a Plaintiffs case when alleging the denial of constitutional rights under Nevada's Constitution. The Second Amended Complaint alleges a wholesale denial of constitutional rights to Defendants' employees. It follows that a careful examination of the serious allegations and the evidence that underlies those allegations must be made by the Court. To the extent that Plaintiffs are unable to prove their allegations in the matter because Defendants are in sole possession of evidence Plaintiffs would utilize, then unless some privilege protects disclosure of the evidence it will not do for Defendants to simply fail to produce the evidence. In the event that Defendants protest that they do not possess such evidence, then it is the proper course for this Court to determine the truth of that position through all means necessary and reasonable.

Nonetheless, in light of Defendants continued objections to providing the evidence called for (the Court notes Defendants have now filed a Motion for a Protective Order from the Discovery Commissioner), and their protest that the burden of proof in this matter should not be shifted to Defendants, the Court will not order the burden shifted at this time. It would behoove the Court to move cautiously in this area. Accordingly, the Court will echo Defendants request in their Motion for a Protective Order that the Discovery Commissioner give what time she can to the monitoring of the discovery process in this area of controversy.

Only after discovery discloses whether the Defendants could provide the already ordered discovery will the Court further consider Plaintiff's request to shift the burden of proof on this issue, and other

PRINT DATE: 09/22/2016

Page 1 of 2

Minutes Date: September 22, 2016

measures.

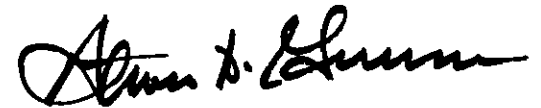
The Order submitted by Plaintiffs should be amended accordingly.

Given the allegations of the Second Amended and Supplemental Complaint, the Order submitted by Plaintiffs as to the certification of the third and fourth claims for relief in the Second Amended Complaint against Defendant Creighton Nady are accurately framed in the Order submitted.

COURT ORDERS, Plaintiff is to resubmit in compliance with this Order.

A copy of this minute order shall be submitted to the Discovery Commissioner.

CLERK'S NOTE: The above minute order has been distributed to: Leon Greenberg, Esq. (leongreenberg@overtimelaw.com); Michael Wall, Esq. (mwall@hutchlegal.com), and Esther Rodriguez, Esq. (esther@rodriguezlaw.com). /mlt



CLERK OF THE COURT

OPPM

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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. No. I

DEFENDANTS' OPPOSITION TO

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants, by and through their attorneys of record, hereby submit this Opposition to Plaintiffs' Motion for Partial Summary Judgment. This Opposition is based upon NRCP 56(a), and the Points and Authorities herein.

POINTS AND AUTHORITIES

1. Standard for Summary Judgment.

Summary judgment shall be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. NRCP 56(a). Trial judges are to exercise great

caution in granting summary judgment, which is not to be granted if there is the slightest doubt as to the operative facts. *Posadas v. City of Reno*, 109 Nev. 448, 851 P.2d 438 (1993). The trial judge may not in granting summary judgment pass upon the credibility or weight of the opposing affidavits or evidence; that function is reserved for the trial. *Hidden Wells Ranch, Inc. v. Strip Realty, Inc.*, 83 Nev. 143, 425 P.2d 599 (1967). In their motion, Plaintiffs assert several “facts” in their request for summary judgment which are not only not established, they are not even supported by the evidence in the record.

Plaintiffs are seeking summary judgment on damages, and skipping right over any questions of liability; further, they do not even address which Defendant they believe would be liable for the damages claimed herein.

2. Plaintiffs’ Argue Material “Facts” Which Have No Citation or Reference; Are Not Supported By The Evidence; and Are Disputed.

Plaintiffs are seeking to shortcut the jury trial of this matter, by taking their expert’s computations which are in dispute, and asserting that his work should be established as a finding. Firstly, after repeated extensions were provided to the Plaintiffs who have been flailing erratically all over the discovery map, Plaintiffs still missed their deadline to produce an expert report to support their damages. **Exhibit A**, Plaintiffs’ 7th Supplemental Disclosure. The deadline was January 27, 2017 for Plaintiffs to finally after nearly 5 years put forth a computation of damages. Plaintiffs failed to do so. Instead, Plaintiffs merely indicated in a disclosure, like they have since October 2012, that they are still working on the numbers. *Id.*

As this Court is aware, NRCP 16.1 provides strict guidelines as to the disclosure requirements of experts. Plaintiffs did not comply. Therefore, Defendants will be moving to exclude any attempts to bring in expert testimony regarding damages. Presumably, part of this expert testimony subject to exclusion are the incomplete calculations that Plaintiffs seek to rely upon in this motion for damages.

Plaintiffs put forth calculations partially completed by Charles Bass, and request that this Court accept this expert’s calculations on their face without subjecting his methodology or his qualifications to any inquiry or cross-examination.

Defendants have always maintained that the tripsheets are the most accurate document containing hours worked and breaks taken by each driver. A Cab is required to maintain accurate

tripsheets by the State of Nevada Taxicab Authority, and has always done so. These documents have been available to Plaintiffs since the commencement of discovery, but until recently, Plaintiffs have never chosen to review the tripsheets. During discovery, Plaintiffs have insisted that Defendants download electronic data from its dispatching system, which was not utilized as a payroll program, so that Plaintiffs could work up the numbers as they saw fit. Apparently, they have indeed done so, and now offer to the Court their findings of what they believe are the hours worked for each driver. As the Court can deduce, these alleged hours are greatly disputed by Defendants as they are not derived from the tripsheets. Of note is that Plaintiffs have recently requested the tripsheets, but again they do not want to review the files as maintained, but rather have had the Defendants employ a third party to download the files onto an external hard drive for them. This task has been completed, but Plaintiffs have not yet paid for the external drive as ordered by the Commissioner, so Plaintiffs are still not in possession of the tripsheets. **Exhibit B**, Esther C. Rodriguez letter to Leon Greenberg dated January 26, 2017.

The critical point is: how can Plaintiffs possibly assert to the Court that their expert has determined the hours worked by all drivers if Plaintiffs haven't even looked at the drivers' tripsheets containing this information?

In request for summary judgment, Plaintiffs put forth all types of statements to the Court, without any supporting documentation at all. Statements include:

"Defendants have admitted in these proceedings that during the period January 1, 2013 through May 27, 2016 they owe, at the \$7.25 an hour minimum wage rate, and as established by their own records, at least \$10.00 and in certain instances in excess of \$3,000 in unpaid minimum wages to at least 321 class members" *Plaintiffs' Motion*, 1:9-13.

This representation to the Court comes **with no citation whatsoever**.

"The defendants in this case have produced two Excel computer files in this litigation that **they** represent contain all of the details of their payroll records, meaning wages paid and hours worked." *Plaintiff's Motion*, 2:11-14.

Again, there is **no citation whatsoever** accompanying this statement made in Plaintiffs' Motion.

Obviously, it is difficult to refute a request for summary judgment when statements are simply made to the Court without supporting authority.

Guessing that Plaintiffs are referring to an electronic production ordered by the Discovery

Commissioner, Defendants respond that Plaintiffs' statement is not accurate. Defendants were ordered to prepare Quickbooks data at Plaintiffs' insistence to the Discovery Commissioner in a format that Plaintiff wanted in order to manipulate the data in an electronic fashion. Defendants complied in doing so, despite objection that this was production that would have to be created, as it was not kept in the normal course of Defendants' business. Now, Plaintiffs have apparently taken this data and had their expert reformulate and extrapolate to come up with a figure that their expert proposes to be the underpayments. Obviously, the validity of such methodology is disputed.

It is ironic that Plaintiffs have repeatedly argued to the Court, relying upon a Department of Labor document, that A Cab did not keep accurate time records. Now, Plaintiffs want the Court to accept on their face the number of hours their expert offers as definitive of the "hours worked." One must question what indeed did the Plaintiffs' expert base his numbers on, if A Cab did not keep accurate time records of hours worked? By their own arguments, Plaintiffs' request for summary judgment on this issue must fail, as this is a dispute of a material fact.

3. Plaintiffs' Expert's Numbers are Not Established As All Other Experts Have Refuted The Calculations.

Throughout the litigation, Plaintiffs have argued that the Consent Judgment agreed to by A Cab was "proof" of A Cab's liability. Accepting this "proof" of any liability, the U.S. Department of Labor ("DOL") found substantially lesser numbers than those being asserted by Plaintiffs. The DOL agreed that \$139,988.80 was the underpayment for a two year time period. **Exhibit C.** Plaintiffs are asserting an underpayment for a 2 ½ year period of over \$700,000! *Plaintiffs Motion*, 7:19-21. Given that Plaintiffs' amount is 5 times what the DOL determined after reviewing driver wages and hours, the Court can appreciate the absurdity of such a number. Further, Plaintiffs' claim is for the more recent time period when A Cab's 30(b)(6) witness has testified they were taking all steps to comply with the minimum wage amendment after the Supreme Court's guidance in the *Thomas v. Yellow Cab* case.

A second independent Certified Public Accountant has also reviewed any potential liability that A Cab would have for this time period, and determined numbers far below those asserted by Mr. Bass. Nicole Omps is an independent CPA that was jointly retained by the Plaintiffs' lawfirm Bourassa Law Group and Defendants in the matter of *Jasminka Dubric v. A Cab, LLC*, District Court Case No. A-15-

721063-C. Ms. Omps reviewed data and documents pertaining to wages and hours of the A Cab drivers and prepared her analysis of any potential liability for underpayments. **Exhibit D**, Report of BETA Consultants LLC. This report was reviewed and relied upon by both the Plaintiffs and Defendants, and the Honorable Jerry Wiese, who assisted the parties in reaching an agreement to resolve the matter. In her analysis, Ms. Omps provided ranges of any potential underpayments. Like the U.S. Department of Labor, Ms. Omps' numbers were far below those arrived at by Mr. Bass. Ms. Omps determined that at the most the liability for underpayment for the time period of July 2014 through September 2016 would be **\$247,122.48**. **Exhibit D**, Appendix A. This independent CPA clearly disputes the numbers arrived at by Plaintiffs' expert Mr. Bass for the overlapping time period.

Mr. Bass' numbers are not supported, but are inflated and based upon Plaintiffs' methodology to present to a jury as his best case scenario. Defendants in opposition will be demonstrating by the reliable documentation of the tripsheets and the paystubs that any underpayment is far below those arrived at by Mr. Bass. Therefore, it is a complete fabrication for Plaintiffs to represent to the Court that, "Defendants have confirmed...that the methodology used by Charles Bass to summarize from the defendants' records the total wages paid to each class member each pay period is correct." *Plaintiffs' Motion*, 3:7-9. It is difficult to ascertain how Defendants could confirm Mr. Bass' methodology and concede to same, when Plaintiffs never previously produced Bass' report except as an attachment to the instant motion.

Further, as this Court is aware, Plaintiffs' expert report is hearsay document that is subject to a motion in limine, and cannot serve as a basis for summary judgment.

4. Plaintiffs Are Seeking Summary Judgment for Members Outside of the Class Order, as Well as Members Outside the Scope of Their Representation.

Plaintiffs are seeking summary judgment for a period of January 1, 2013 through May 27, 2016. As this Court is aware, the Class Order is certified through December 31, 2015. **Exhibit E**, Amended Class Order, page 10:8-12. Further, all discovery has been conducted and produced bearing this date of December 31, 2015 in mind, so if Plaintiffs believe they have the information necessary for computations for an extra year and a half, it will be interesting to see what sources they base these numbers upon.

Further, there is no indication that Plaintiffs' counsel represents any client that worked at A Cab anytime after September 2012, nearly four (4) years prior to the time they are now seeking summary judgment on damages. Michael Murray was no longer employed as of **April 7, 2011**; and Michael Reno was no longer employed as of **September 26, 2012**. At the recent hearing before the Discovery Commissioner on January 25, 2017, Commissioner Bulla recommended that Plaintiffs' counsel Leon Greenberg ("Greenberg") contact his clients to ascertain personal information he was seeking, stating "they're your clients." In response, Greenberg was clear he was not in contact with his alleged clients, and expected little response from them. [Transcript of 1/25/17 proceeding not yet available.] It is reasonable to ascertain from Mr. Greenberg's response that he does not represent a client during the time frame for damages he is seeking. The *Wal-Mart v. Dukes* case would support the position that Mr. Greenberg cannot represent a class of these members, when he has no representative Plaintiff in this time frame for which he seeks damages. *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2550 (2011):

The class action is "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Califano v. Yamasaki*, 442 U.S. 682, 700-701, 99 S.Ct. 2545, 61 L.Ed.2d 176 (1979). In order to justify a departure from that rule, "a class representative must be part of the class and 'possess the same interest and suffer the same injury' as the class members." *East Tex. Motor Freight System, Inc. v. Rodriguez*, 431 U.S. 395, 403, 97 S.Ct. 1891, 52 L.Ed.2d 453 (1977) (quoting *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 216, 94 S.Ct. 2925, 41 L.Ed.2d 706 (1974)). Rule 23(a) ensures that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate. The Rule's four requirements—numerosity, commonality, typicality, and adequate representation—"effectively 'limit the class claims to those fairly encompassed by the named plaintiff's claims.'" *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 156, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982) (quoting *General Telephone Co. of Northwest v. EEOC*, 446 U.S. 318, 330, 100 S.Ct. 1698, 64 L.Ed.2d 319 (1980)).

As discovery is not complete in this area, for this reason alone the Court should not grant summary judgment on this issue.

5. Plaintiffs Are Improperly Seeking To Shift the Burden of Proof Again.

On more than one occasion, Plaintiffs inserted wording into the Court's Order, and continued to argue that the Court should shift the burden of proof to Defendants pertaining to health insurance coverage. Plaintiffs requested that if Defendants could not prove the availability of comprehensive

1 health insurance within the minimum wage amendment, that there would be an adverse presumption
2 against Defendants. The Court has already denied this request, and Plaintiffs are now simply coming
3 at it again from a different angle; but they are seeking the same result. *See* Minute Order of 3/28/16
4 striking Plaintiffs' language; *see also* Minute Order of 9/22/16 indicating the Court is not willing to
5 shift burden of proof to Defendants on this issue. **Exhibit F.**

6 Plaintiffs' request for the Court to grant summary judgment utilizing an \$8.25 per hour is
7 essentially shifting the burden of proof to Defendants. In support of their request, Plaintiffs cite to a
8 6 month time period within the class order (May 2015-December 2015) in which the insurance carrier
9 changed A Cab's health insurance coverage to exclude spousal coverage, while still offering dependent
10 coverage. This six month period does not lend support to a Court finding that the higher tier should
11 be applied for all requested periods. Therefore, Mr. Bass's extrapolation to the entire class is improper,
12 not based upon reliable methodology, and is disputed. Further, the exclusion of any spouses during this
13 time affected only a handful of drivers. Again, this is a factual issue which Plaintiffs have simply
14 glossed over.

15 Plaintiffs are asking the Court to rule via summary judgment on items that have not even been
16 addressed by the Nevada Supreme Court. They argue that the 60 and 90 day waiting period for each
17 employee should be an automatic presumption that should result in a higher-tiered payment. The *MDC*
18 *Restaurant* case did not address the waiting period issue.

19 More telling in Plaintiffs' Motion is the level of individual analysis that is necessary to
20 determine any liability and an accompanying amount for each driver. Using Plaintiffs' arguments the
21 following must determined to assess liability:

- 22 • each driver's hours per pay-period;
- 23 • each driver's pay per pay-period;
- 24 • insurance coverage that was offered during each applicable pay period;
- 25 • whether the driver had a spouse during each pay period;
- 26 • whether the driver had dependents during each pay period;
- 27 • the waiting period for insurance coverage for each driver during the various times of his/her
- 28 employment;

- whether the driver left employment, and re-entered the class at anytime.

This not only lends support as to why this Court should not grant summary judgment in one broad stroke addressing these issues, but more importantly highlights why these claims are not appropriate to proceed as class action litigation.

“What matters to class certification ... is not the raising of common ‘questions’—even in droves—but, rather the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation. Dissimilarities within the proposed class are what have the potential to impede the generation of common answers.” *Wal-Mart v. Dukes*, 131 S.Ct. at 2551, citing Nagareda, Class Certification in the Age of Aggregate Proof, 84 N.Y.U.L.Rev. 97, 131–132 (2009), at 132.

6. Plaintiffs’ Requests for Attorneys Fees Are Not Supported.

Using Plaintiffs’ methodology, Defendants have in fact already beat their offers of judgment to Plaintiffs and will be entitled to their attorneys fees and costs. The Court will recall that Offers of Judgment were propounded to Plaintiffs very early in the case, but were never conveyed to the clients by their counsel. Defendants’ offers exceed even the “best case scenario” calculations the Plaintiffs believe they can recover, thus it will be Defendants who are entitled to fees, costs and interest.

A similar scenario has recently occurred in Department XVII (*Sargeant v. Henderson Taxi*, Case A-15-714136-C), wherein Plaintiff Michael Sargeant is now burdened with a judgment for Defendants’ attorney fees of \$26,715 due to the actions of his counsel, Leon Greenberg. **Exhibit G**, Notice of Entry of Order Granting Motion for Attorneys’ Fees. Senior Judge Bonaventure found the class action complaint was frivolous (*See* page 5, paragraph 19 of **Exhibit G**).

As the items asserted by Plaintiffs are factual items in dispute, and are appropriately left to the jury, summary judgment should be denied. Any award of attorney fees would certainly be putting the cart before the horse. The escalation of fees has been deliberate and intentional in order to profit from this type of fee-shifting case. Plaintiffs have a business to manufacture and to profit from such type cases which is recognized as the tort of champerty. Accordingly, Defendants have requested leave of Court to assert this third-party complaint for the jury’s consideration. Defendants’ Motion for Leave to Amend Answer filed January 27, 2017.

...

...

II. Conclusion

Defendants have come forward with evidence creating genuine and triable issues of fact. *Bird v. Casa Royale*, 97 Nev. 67, 624 P.2d 269 (1981). Defendants indeed have put forward specific facts on which this Court could rule in its favor on the issues addressed in this motion, as have previous fact finders. *Hickman v. Meadow Wood Reno*, 96 Nev. 782, 617 P.2d 871 (1980).

Based upon the foregoing points and authorities, Defendants respectfully request this Honorable Court to deny this Motion in its entirety.

DATED this 2nd day of February, 2017.

RODRIGUEZ LAW OFFICES, P. C.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 2nd day of February, 2017, I electronically filed the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

Leon Greenberg, Esq.
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Las Vegas, Nevada 89146
Counsel for Plaintiff

/s/ Esther C. Rodriguez, Esq.
An Employee of Rodriguez Law Offices, P.C.

EXHIBIT A

EXHIBIT A

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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

13 A CAB TAXI SERVICE LLC, and A
14 CAB, LLC,

Defendants.

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' SEVENTH
SUPPLEMENTAL
DISCLOSURES UNDER NEV. R.
CIV. P. 16.1**

17 Plaintiffs, as and for their compliance with the provisions of Nev. R. Civ. P.
18 16.1, hereby provide the following supplemental disclosures:

Reservation of Expert Witness;

20 Annexed hereto is the Curriculum Vitae of Charles Bass. Charles Bass is
21 assisting the plaintiffs in summarizing the voluminous records provided by defendants
22 in this case and, based upon those summaries, creating Excel files upon which
23 calculations can be made using uniform assumptions about the hours worked by and/or
24 the proper minimum wage rate owed to, the class members. The results of the
25 summaries that Charles Bass is creating, the Excel files that he has constructed that
26 utilize those summaries and contain them, are not believed by plaintiffs to constitute an
27 expert report or to require expert testimony or constitute the "conclusions" of any
28 expert. It is not anticipated that Charles Bass will offer testimony that would include
opinions requiring the knowledge or specialized training of an expert, although he is

1 fully qualified to do so in respect to the use of computer systems and software,
2 including those that he used to create the summaries of the defendants' records and the
3 Excel files upon which plaintiffs will rely to perform uniform calculations upon such
4 summarized information. Plaintiffs contend that the materials prepared by Charles Bass
5 are properly considered at trial pursuant to NRS 52.275 as summaries of voluminous
6 records that can be presented in the form of a "chart, summary or calculation."
7 Defendants will be provided with those summaries and all necessary supporting
8 information in the form of a suitable declaration(s) from Charles Bass to understand
9 their contents and the steps undertaken to prepare them from defendants' records, to the
10 extent not already provided. Because discovery is continuing, and all of the
11 information germane to the calculations sought to be made upon defendants' records
12 have not yet been provided by defendants, the summaries being prepared by Charles
13 Bass, and the Excel files upon which plaintiffs will rely to perform uniform
14 calculations upon such summarized information, are not yet complete.

15 In the event that the materials prepared by Charles Bass for plaintiffs are deemed
16 by the Court to constitute the work product of an expert witness, plaintiffs so designate
17 him as an expert witness. His fees are set forth in his declaration of January 11, 2017.
18 Charles Bass has not given testimony as an expert in any litigation matter in any
19 capacity within the last five years.

20
21 Dated: January 27, 2017

22 Leon Greenberg Professional Corporation

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

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 27, 2017, she served the within:

**PLAINTIFFS' SEVENTH SUPPLEMENTAL DISCLOSURES
UNDER NEV. R. CIV. P. 16.1**

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

CHARLES M. BASS
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EDUCATION :

Master of Science (M.S.), The American College, Bryn Mawr, PA, 1982, Major: Financial Services
Bachelor of Arts (B.A.), University of Maryland, Baltimore, MD, 1972, Major: Mathematics

EXPERIENCE :

SYSTEMS CONSULTANT, Regency Envisions Corp., Denver, CO, 1985-2001, Hardware and software design and implementation for small to medium size companies involving Internet, electronic mail, data transfer, bulletin boards, database configuration, presentation graphics and financial analysis. Programming involving Foxpro, Clipper, Dbase, C++, Visual Basic, SQL Server, Windows NT.

ECONOMIC ANALYST, Regency Econometrics, Denver, CO, 1985-1989, Financial and Economic Valuations and Appraisals involving personal injury litigation, professional sports contracts, and corporate finance. Extensive design and presentation of spreadsheets and graphics applications for negotiations, mediations and trials.

GENERAL MANAGER, Manufacturers Financial Group, Denver, CO, 1983-1985, Directed entire fiscal, marketing, legal and administrative activities in Colorado and Wyoming for \$20 Billion Canadian financial and insurance conglomerate. Created and designed computer systems for administrative and marketing uses.

DIRECTOR, Structured Financial Services, Inc., Baltimore, MD, 1982-1985, Advisory Board to National Structured Settlement Company dealing in annuity settlements for personal injury litigation cases. Created computerized systems for headquarters and 18 regional offices.

PARTNER, Bass, Bridge & Associates, Columbia, MD, 1976-1983, Founder and Senior Partner of marketing firm dealing in insurance, investments and financial services for businesses and individuals. Created and implemented marketing program for fastest growing insurance sales organization in region.

LIFE UNDERWRITER, Equitable Life Assurance Society, Baltimore, MD, 1973-1976, Sales and design of insurance programs for businesses and individuals based on Human life value analysis. Was the youngest person to attain the Chartered Life Underwriter designation in the state of Maryland and qualified for the highest sales awards in the first year.

GROUP REPRESENTATIVE, Monumental Life Insurance Company, Baltimore, MD, 1972-1973, Design and implementation of employee benefit plans including life and medical insurance, disability income, pension and profit sharing plans.

AFFILIATIONS :

PRESIDENT, Colorado Association of Computer Consultants, Denver, CO, 1988-Present

MEMBER, Denver Clipper Users Group, 1988-Present, Electronic Bulletin Board Operator

DIRECTOR, Rocky Mountain Fox Users Group, 1991-Present, Electronic Bulletin Board Operator

AFFILIATIONS (continued) :

PRESIDENT, Las Vegas Internet Chamber of Commerce, 2002-2010

MEMBER, Denver Borland Users Group / Developers Conference, 1992-Present, Electronic Bulletin Board Operator

MEMBER, Microsoft Solution Provider, 1992-Present

MEMBER, I/O Group, 1992-Present, Invitation Only Developers Group, Electronic Bulletin Board Operator

DIRECTOR, Denver Association of Life Underwriters, 1984-1986, Field Practices & Ethics Chairman, State Directory Chairman, Awards Chairman

PRESIDENT, Columbia/Howard County Life Underwriters Association, Columbia, MD, 1982-1983

VICE-CHAIRMAN, Howard County Economic Development Advisory Council, 1978-1983, Ellicott City, MD, Industrial Revenue Bond Committee

MEMBER, American Society of Chartered Life Underwriters, 1976-1992

MEMBER, National Association of Life Underwriters, 1972-1987

MEMBER, International Association of Financial Planners, 1981-1989

MEMBER, National Association of Securities Dealers, 1981-1987

MEMBER, National Association of Estate Planning Councils, 1978-1983

PRESIDENT, Howard County Business Club, 1976-1983

LIFE MEMBER, Million Dollar Round Table, 1974-1987

HONORS :

CHAIRMAN, United Way Campaign, Howard County, MD, 1978

Outstanding Young Men of America, 1978 Edition

Who's Who in the East, 1981-1982, 1983-1984 Editions

Who's Who in the West, 1985-1986, 1987-1988, 1989-1990, 1991-1992, 1993-1994 Editions

Who's Who in the World, 1986-1987, 1988-1989 Editions

Who's Who in Society, 1986 Edition

Who's Who in Finance and Industry, 1987 - 1995 Editions

Who's Who in Emerging Leaders of America, 1987 - 1995 Editions

Who's Who in the Computer Industry, 1990, 1991, 1992 Editions

Published articles in industry journals on business usage of computers and financial analysis.

Addressed Bar Associations, Computer Industry Trade Shows, Life Underwriter Groups, C.L.U. Chapters and Computer Consultant's Organizations on business and financial analysis, creative usage of computers and marketing.

REFERENCES : *Available upon request.*

EXHIBIT B

EXHIBIT B

RODRIGUEZ

LAW OFFICES, P.C.

www.rodriquezlaw.com

ELECTRONICALLY SERVED
01/26/2017 02:04:19 PM

January 26, 2017

Via Electronic Service

Leon Greenberg, Esq.
2965 South Jones Boulevard, Suite E4
Las Vegas, Nevada 89146

***Re: A Cab, LLC adv. Murray & Reno;
District Court Case No. A-12669926C***

Dear Mr. Greenberg:

Enclosed please find the invoice paid by A Cab, LLC to retrieve and transfer the tripsheets to an external hard drive as you requested.

Please forward a check made payable to A Cab, LLC in care of my office. Upon receipt, the hard drive will be provided to you.

Sincerely,

RODRIGUEZ LAW OFFICES, P.C.

EC Rodriguez

Esther C. Rodriguez, Esq.

ECR:srd

enc.

cc: Michael Wall, Esq.

 **Cicomputers, Inc.**
The IT Department for Small Businesses
PAYMENT ADDRESS
PO BOX 35153
LAS VEGAS NV 89133

Invoice

Date	Invoice #
1/20/2017	14228

Bill To
A-Cab 1500 Searles Ave Las Vegas, NV 89101

Terms
Due on receipt

Date	Quantity	Description	Rate	Amount
1/20/2017	1	WD 1TB USB External Hard Drive	225.00	225.00T
1/23/2017	4.5	Data extraction and management of Tripsheets	150.00	675.00

We accept VISA, MasterCard & Discover

<https://www.cicomputers.com/payment>

Please include invoice number with all payments. Thank you for your confidence in our services!

Phone #	Fax #	Subtotal	\$900.00
702-450-6104	702-940-8012	Sales Tax (8.15%)	\$18.34
E-mail	Web Site	Total	\$918.34
rtyler@cicomputers.com	www.cicomputers.com	Payments/Credits	\$0.00
		Balance Due	\$918.34

AA003136

EXHIBIT C

EXHIBIT C

JANET M. HEROLD, Regional Solicitor
SUSAN SELETSKY, FLSA Counsel
ANDREW J. SCHULTZ, Trial Attorney
California State Bar Number 237231
United States Department of Labor
Office of the Solicitor
90 Seventh Street, Suite 3-700
San Francisco, California 94103
Telephone: (415) 625-7745
Facsimile: (415) 625-7772
email: . schultz.andrew@dol.gov

Attorneys for Plaintiff, Thomas E. Perez,
United States Department of Labor

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THOMAS E. PEREZ, Secretary of
Labor, United States Department of
Labor,

Plaintiff,

v.

A CAB, LLC; and,
CREIGHTON J. NADY an individual,

Defendants.

) Case No.: 2:14-cv-01615-JCM-VCF

)

)

) CONSENT JUDGMENT AGAINST

) ALL DEFENDANTS

)

)

)

)

)

)

)

Plaintiff, THOMAS PEREZ, Secretary of Labor, United States Department of Labor (the
“Secretary”); Defendant A CAB LLC, and CREIGHTON J. NADY, an individual, (collectively,
“Defendants”) having appeared through counsel, and having been duly advised on the
proceedings, waive their right to answer the Secretary’s Complaint and agree to resolve the
matters in controversy in this civil action, and consent to the entry of this Consent Judgment in
accordance herewith:

Consent Judgment

1 A. The Secretary filed a Complaint alleging that Defendants violated provisions of
 2 Sections 6, 11(c), 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended
 3 (“FLSA” or the “Act”). 29 U.S.C. § 206, 211(c), 215(a)(2), and (5). The Secretary’s Complaint
 4 alleged that Defendants violated Sections 6 and 15(a)(2) of the FLSA by paying its employees’
 5 wages at rates less than the applicable federal minimum wage in workweeks when said
 6 employees were engaged in commerce or in the production of goods for commerce or were
 7 employed in an enterprise engaged in commerce or in the production of goods for commerce,
 8 within the meaning of the FLSA; and Defendants violated Sections 11(c) and 15(a)(5) of the
 9 FLSA by failing to make, keep and preserve records of their employees and of the wages, hours,
 10 and other conditions and practices of employment maintained by them as prescribed by the
 11 regulations found in 29 CFR part 516 that are issued, and from time to time amended, pursuant
 12 to section 11(c) of the FLSA.

13 B. Defendants understand and agree that demanding or accepting any of the funds
 14 due employees under this Consent Judgment (“Consent Judgment” or “Judgment”) or
 15 threatening any employee for accepting money due under this Consent Judgment or for
 16 exercising any of their rights under the Fair Labor Standards Act of 1938, as amended (“FLSA”
 17 or “the Act”), 29 U.S.C. §201, *et seq.* is specifically prohibited by this Consent Judgment and
 18 may subject Defendants to equitable and legal damages, including punitive damages and civil
 19 contempt.

20 C. Defendants waive Findings of Fact and Conclusions of Law, and agree to the
 21 entry of this Consent Judgment in settlement of this action, without further contest.

22 Therefore, upon motion of the attorneys for the Secretary, and for cause shown:

23 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that pursuant to Section
 24 17 of the FLSA, 29 U.S.C. § 217, Defendants, their officers, agents, servants, employees, and all
 25 persons in active concert or participation with them be, and they hereby are, permanently
 enjoined and restrained from violating the provisions of the Act, in any of the following
 manners:

1 1. Defendants shall not, contrary to Sections 6 and 15(a)(2) of the Act, 29 U.S.C. §§
2 206 and 215(a)(2), employ any of their employees at rates less than the applicable federal
3 minimum wage in workweeks when said employees are engaged in commerce or in the
4 production of goods for commerce or are employed in an enterprise engaged in commerce or in
5 the production of goods for commerce, within the meaning of the FLSA.

6 2. Defendants shall not, contrary to Sections 11(c) and 15(a)(5) of the Act, 29 U.S.C.
7 §§ 211(c) and 215(a)(5), fail to make, keep and preserve records of their employees and of the
8 wages, hours, and other conditions and practices of employment maintained by them as
9 prescribed by the regulations found in 29 CFR part 516 that are issued, and from time to time
10 amended, pursuant to section 11(c) of the Act.

11 3. Defendants, jointly and severally, shall not continue to withhold payment of
12 \$139,834.80, plus interest of \$154.00, which represents the unpaid minimum wage compensation
13 hereby found to be due for the period from October 1, 2010, through October 1, 2012, to the
14 present and former employees named in Exhibit A, attached hereto and made a part hereof, in the
15 amounts set forth therein.

16 **FURTHER, JUDGMENT IS HEREBY ENTERED**, pursuant to Section 16(c) of the
17 Act, 29 U.S.C. § 216(c), in favor of the Secretary and against the Defendants, jointly and
18 severally, in the total amount of \$139,988.80

19 4. The provisions of paragraphs 3 of this Consent Judgment will be deemed satisfied
20 when Defendants deliver the following to District Director, Wage and Hour Division, United
21 States Department of Labor, 600 Las Vegas Blvd. S., Suite 750 Las Vegas, NV 89101-6654.

22 a. Within fourteen calendar days of the entry of this Consent Judgment,
23 Defendants shall deliver a schedule containing the last known (home) address, social
24 security number, home telephone number (if known), and cell phone number of those
25 persons listed in Exhibit A.

 b. **PAYMENT TERMS.** No later than January 2, 2015, Defendants shall
deliver a cashier's check or money order in the amount of \$39,988.84 payable to the

1 order of the "Wage & Hour Div., Labor," with the term "A Cab, LLC" written thereon, as
2 the first of thirteen payments towards the back wages found due hereunder.

3 c. On or before the first day of each of the following 12 consecutive months,
4 Defendants shall deliver a cashier's check or money order payable to "Wage & Hour
5 Div., Labor," with the term "A Cab, LLC" written thereon, in the amount of \$8,333.33,
6 until the total amount due under the backwage provisions of this Consent Judgment has
7 been paid in full.

8 5. The Secretary shall allocate and distribute the remittances, or the proceeds
9 thereof, less deductions for employees' share of Social Security and federal withholding taxes to
10 the persons named in the attached Exhibit A, or to their estates if that be necessary, in his sole
11 discretion, and any money not so paid within a period of three years from the date of its receipt,
12 because of an inability to locate the proper persons or because of their refusal to accept it, shall
13 be then deposited in the Treasury of the United States, as miscellaneous receipts, pursuant to 29
14 U.S.C. § 216(c). The Secretary shall be responsible for deducting the employee's share of FICA
15 and federal income taxes from the amounts paid to the persons named in the attached Exhibit A,
16 and for remitting said deductions to the appropriate federal agencies.

17 6. Defendants shall not request, solicit, suggest, or coerce, directly, or indirectly, any
18 employee to return or to offer to return to any Defendant or to any person acting on behalf of any
19 Defendant, any money in the form of cash, check, or any other form, for wages previously due or
20 to become due in the future to said employee under the provisions of this judgment or the Act;
21 nor shall any Defendant accept, or receive from any employee, either directly or indirectly, any
22 money in the form of cash, check, or any other form, for wages heretofore or hereafter paid to
23 said employee under the provisions of this judgment or the Act; nor shall Defendants discharge
24 or in any other manner discriminate, nor solicit or encourage anyone else to discriminate, against
25 any such employee because such employee has received or retained money due to him from the
Defendants under the provisions of this judgment or the Act. Defendants shall pay all wages
owed to their employees "free and clear," as required by 29 C.F.R. § 531.35.

1 7. In the event of a default in the timely making of any of the payments specified
2 herein, the full gross amount outstanding due under this Consent Judgment, plus liquidated
3 damages due under FLSA Section 16(c), 29 U.S.C. § 216(c), in the amount of \$139,834.80, plus
4 post-judgment interest at the rate of 10% per year from the date of this Consent Judgment until
5 the full amount of this Consent Judgment is paid in full, shall become immediately due and
6 payable directly to the U.S. Department of Labor by certified check to the District Director of the
7 Wage and Hour Division at the address in paragraph 4. For the purposes of this paragraph, a
8 “default” is deemed to occur if payment is not delivered within five calendar days of the due
9 date.

10 8. Defendants shall make and keep records demonstrating the total number of hours
11 worked for each driver for each day and each week.

12 9. Defendants shall not claim that any portion of a driver’s work shift is break time
13 to be excluded from hours worked unless the driver is completely relieved from all duties for at
14 least 30 consecutive minutes.

15 10. The filing, pursuit, and/or resolution of this proceeding with the filing of this
16 Consent Judgment shall not act as or be asserted as a bar to any action under Section 16(b) of the
17 FLSA, 29 U.S.C. § 216(b), as to any employee not named on the Exhibit A attached to the
18 Consent Judgment and incorporated hereto by reference, nor as to any employee named on the
19 Exhibit A for any period not specified herein for the back wage recovery provisions.

20 11. Defendants agree and stipulate to enter into this Consent Judgment for the sole
21 purpose of resolving disputed facts and neither admit nor deny the allegations contained in the
22 Secretary’s Complaint.
23
24
25

12. Each party shall bear all fees and other expenses (including court costs) incurred by such party in connection with any stage of this proceeding to date; and it is further,

ORDERED that the parties to the instant complaint shall comply with the terms of this Consent Judgment;

ORDERED that this Court shall retain jurisdiction of this action for purposes of enforcing compliance with the terms of this Consent Judgment; and

Dated November 5, 2014.


UNITED STATES DISTRICT JUDGE


Consented to By:

For Plaintiffs:

M. PATRICIA SMITH
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

SUSAN SELETSKY
FLSA Counsel


ANDREW J. SCHULTZ
Trial Attorney
Attorneys for U.S. Department of Labor


Dated: October 1, 2014

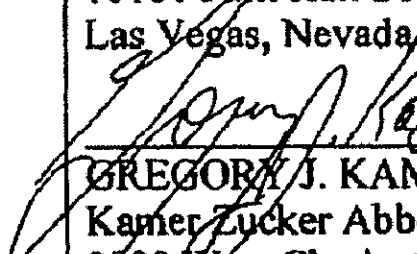
For Defendants:

Dated: September 30, 2014


CREIGHTON J. NADY, as an individual and on behalf of A CAB LLC

Approved as to Form:

 Dated: 9/30/14
ESTHER C. RODRIGUEZ, Esq.
Rodriguez Law Offices, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada, 89145

 Dated: 9/30/2014
GREGORY J. KAMER
Kamer Zucker Abbott
3000 West Charleston Blvd., Suite 3
Las Vegas, NV 89102

Attorneys for Defendants

Consent Judgment

EXHIBIT A

NAME

Abdella, Juhar M
Abebe, Tamrat
Abraha, Tesfalem B
Abuel, Alan B
Abuhay, Fasil M
Acosta, Lorrie F
Adamian, Robert
Adams, Michael J
Adamson, Nicole K
Agacevic, Ibnel
Ahmed, Ahmed A
Alemayhu, Tewodros D
Alexander, Darvious N
Ali, Abraham A
Allen, Otis L
Alnaif, Abdul S
Altamura, Vincent T
Alves, Mary A
Ameha, Samuale B
Anastasio, James
Anderson, Jason E
Anderson, Roosevelt A
Anif, Janeid M
Appel, Howard J
Applegate, Angela M
Arar, Isam K
Arell, Roger D
Arellano, Miguel A
Arnwine, Howard B
Asad, Tassawar A
Aseffa, Mulubahan Z

EXHIBIT A

Assena, Zenebech K
Atanasov, Nikolay P
Atterbury, Joseph A
Aurich, Juan P
Awalom, Alemayehu G
Azzouay, El Houcine
Baca-Paez, Sergio A
Baker, Timothy J
Bakhtiari, Marco L
Barbu, Ion D
Bardo, Timothy F
Barich, Edward C
Barnes, Benjamin
Barr, Kenneth W
Barrett, Jon A
Barseghyan, Artur
Bartunek, Johnny W
Batista, Eugenio L
Bellegarde, Josue
Benel, Christian E
Bey, Ronald A
Bialorucki, Richard M
Black, Burton J
Blanco, Mario L
Blanusa, Zeljko
Boling, Freddy D
Borges, Antonio G
Borja, Virginia
Bowen, Christopher T
Bozic, Nebojsa
Bradley, Leroy V
Brauchle, Michael
Brimhall, Tracy L
Brisco, Allen L
Briski, Louis

EXHIBIT A

Brown, Maurice
Buergey, Christopher M
Butler, Bonnie J
Caldwell Jr., Paul M
Calise, Domenic R
Cancio-Betancourt, Rene S
Carr, Jamaal C
Casiello, Anthony R
Catoggio, Alfred T
Caymite, Luc
Chang, Yun-Yu
Chasteen, Jeffrey T
Chatrizeh, Shahin
Chau, Phi V
Chico, David
Choudhary, Krishna M
Christensen, Rosa L
Christodoulou, Panos
Cohoon, Thomas S
Coizeau, Leonardo R
Collier, Ella R
Collins, Donald V
Collins, Lincoln
Coney-Cummings, Keisha T
Conway, James H
Costello, Brad
Craddock, Charles P
Crawford, Darryl W
Daniels, Donald W
Daniels, Katherine A
Danielsen, Danny
D'Arcy, Timothy C
Davis, Bradley C
Deguzman, Fermin B
Deguzman, Leloi S

EXHIBIT A

DeMarco, William J
Deocampo, Michael M
Desta, Fissehaye S
Diaz, Aiser L
Dibaba, Desta T
Diemoz, Ernest D
Dillard, Corey L
Dinok, Ildiko
Disbrow, Ronald L
Dobszewicz, Gary S
Donahoe, Stephen L
Dontchev, Nedeltcho
Dotson, Contessa R
Dotson, Eugene B
Draper, Ivan L
Dudek, Anthony R
Durey, Robert J
Durtschi, Jeffrey
Edwards, Jeffrey A
Egan, Joseph W
Ekoue, Ayi
Ellis, Charles C
Emling, Paul E
Ernst, William L
Eshaghi, Mohammad
Estrada, Michael S
Evans, Pamela D
Fadlallah, Michel J
Farah, Yohannes M
Fears, Thomas A
Feleke, Melak M
Fesehazion, Teabe
Filfel, Kamal A
Fleming, Gary G
Frankenberger, Grant R

EXHIBIT A

Furst III, James P
Garcia, John E
Garcia, Miguel B
Gardea, Alfred E
Gared, Yaekob G
Garras, Bill G
Gaumond, Gerard J
Gebrayes, Henock L
Gebremariam, Meley A
Gebreyes, Fanuel H
Gelane, Samuel G
Ghori, Azhar
Gianopoulos, Samuel N
Gillett, David C
Gilmore, Paula J
Gleason, John T
Glogovac, Goran
Godsey, Kelly L
Golden, Theresa M
Golla, Dawit A
Gomez-Gomez, Arlene R
Gonzalez, Luis A
Gonzalez, Ramon
Goolsby, Victor
Grafton, Natasha D
Gray, Gary D
Green, Tony D
Greever, Rickey E
Gross, Timothy S
Guil, Inessa
Guinan, William J
Gyuro, John H
Habtom, Ermias
Hadley, Aaron S
Haigh III, Walter E

EXHIBIT A

Hanna, Christopher S
Hansen, Jordan Z
Haralambov, Valko G
Harms, Michael
Harrell, Mark K
Harris III, Reggie W
Harris, Dennis R
Harris, Jason B
Harris, Jay L
Harun, Idris Y
Hasen, Akmel W
Haskell, William L
Hays, Larry M
Herbert, Christopher L
Herga, Ryan A
Hinks, Dana
Holcomb, Dalton E
Holler, Alfonso
Hollis, James L
Holt, John R
Hooper, Donald L
Hoschouer, Christina A
Hughes, Jerry
Hunter, James A
Huntington, Walter D
Hurd, Donald P
Hurley, Robert A
Hurtado, Hubert B
Hussien, Leykun E
Inman, Christopher W
Ivey, Timothy
Jackson, Frederick D
Jackson, Willie J
Jarmosco, John J
Jelancic, Vladko

EXHIBIT A

Jellison, Charles S
Jimenez, Michael J
Johnson, Kennard T
Johnson, Richard B
Johnson, Rodney L
Jones, Glenn O
Joseph, Leroy A
Kaiyoorawongs, Chaipan
Kang, Chong
Kang, Dae Ik
Kaplon, Mark S
Karner, Adam M
Keba, Woldmarim G
Kenary, Brian T
Kennerly, Bridgett N
Kern, Gary F
Key, Roy F
King Jr., John
Klein, Phillip N
Knight, Tyree D
Kogan, Martin J
Krouse, Stephen P
Kunik, Robert
Laico, Paul T
Lantis, Glen
Leacock, Brian
Leal, Jill I
Lee, Thomas J
Legesse, Dereje G
Ligus, Thomas J
Link, Peter J
Linn, Ronald M
Linzer, Steven A
Little, Dennis P
Lonbani, Khosro D

EXHIBIT A

Lovelady, Warren S
Lovin, Charles E
Lydick, Chip S
Macato, Jaime L
Magana, Luis Antonio
Magazin, Milorad
Mahoney, Kevin J
Mainwaring, David C
Majors, John N
Manor, Quincy A
Maras, Maria M
Martinez-Ramirez, Eduardo
Mastrio, Angelo M
Maza, Inez E
McCarter, Patrick E
McCarthy, John L
McConnell, Therral R
McCoubrey, Earl E
McGowan, Sean
McGregor, Matthew E
McLandaum, Antonio O
McNeece, James J
Medina, Taurean S
Mekonen, Solomon
Melesse, Abebe B
Meloro, Paul M
Mengesha, Alemayehu
Menocal, Pedro P
Mezzenasco, Pedro J
Milliron, Darrol Q
Mindyas, James B
Mirkulovski, Danny
Mitrikov, Ilko I
Mogeeth, Ehab K
Monforte II, Peter R

EXHIBIT A

Monteagudo, Oscar C
Montoya, Francisco J
Moore, Aileen L
Moore, Jerry
Moreno, James M
Moretti, Bryan J
Morley, David L
Morris, Robert
Morris, Thomas J
Mostafa, Ahmed M
Murawski, Richard F
Murray, Mark A
Murray, Michael P
Nazarov, Mikael A
Ndichu, Simon K
Negashe, Legesse M
Netrayana, Kanchalee
Newell, John D
Ngo, Tuan T
Nichols, Keith
Nigussie, Gulilat T
Norberg, Christopher R
Norvell, Chris D
Ocampo, Leonardo O
Ogbazghi, Dawit
Ohlson, Ryan E
Olen, Virginia F
Oliveros, Mario
Ontura, Tesfalem B
O'Shea, Kevin M
Osterman, Victor L
Overson, Michael T
Oyebade, Vincent O
Ozgulgec, Tunc
Pak, Sam U

EXHIBIT A

Pariso, David J
Parker, Shawnette M
Paros, Nicholas
Patry, Michael J
Pearson, Jon C
Penera, Eric S
Perrotti, Dominic W
Peterson, Kenneth C
Peterson, Steven A
Petrossian, Robert
Phonesavanh, Paul
Pilkington, Margaret A
Pitts, Amir G
Platania, John A
Pletz, David E
Pohl, Daniel
Portillo, Mario E
Presnall, Darryl L
Price, Allen D
Price, James L
Prifti, Ilia K
Purdue, Robert H
Pyles, Joseph P
Ramirez, Erney M
Rasheed, Willie A
Ray, William A
Reid, Marvin D
Relopez, Craig M
Reno, Michael A
Rivas, Victor M
Roach, Jayson R
Roberson, Ronnie
Roberts, James
Robles, Mark A
Rockett Jr., Roosevelt

EXHIBIT A

Rohlas, Polly A
Romano, Anthony L
Romero, Ruben J
Rosenthal, John S
Ross, Larry W
Rothenberg, Edward L
Rotich, Emertha
Rousseau, James R
Ruby, Melissa F
Ruiz, Travis C
Russell, Darrell L
Saevitz, Neil R
Salameh, George S
Saleh, Jemal
Sampson, James M
Sanders, Acy
Saravanos, John T
Sayed, Jamil A
Schoeb, Kirk C
Schroeder, William L
Schwartz, George H
Schwartz, Steven
Sedgwick, Anthony A
Serio, John A
Serrano, Hector N
Sevillet, Otto E
Sexner, Alexis L
Shallufa, Azmy
Shein, Efraim
Sherman, Jason C
Shinn, Kevin H
Shoyombo, Rilwan O
Siasat, Manuel N
Siegel, Jeffrey M
Siljak, Lidiya

EXHIBIT A

Siljkovic, Becir
Simmons, John D
Sinay, Abraham
Singh, Baldev
Sitotaw, Haileab T
Smale, Charles J
Smith Jr., Willie
Smith, Jephthy L
Smith, Lisa
Smith, Lottie M
Smith, Robert J
Solis, Brigido D
Sorbi, Nina F
Soree, Mladen V
Sorrosa-Paulin, Juan
Soto, Jacob D
Soto, Johnny
Sparks, Cody J
Spaulding, Ross X
Spilmon, Mark A
Springer, Marvin L
Stauff, John E
Stayton, William P
Steck, Gregory C
Stern, Robert H
Stevenson, John F
Stockton, Clarence W
Stonebreaker, Dawn M
Talley, George A
Tarragano, Stephen G
Terry, James J
Thomas, Scott R
Thompson, Glen R
Thompson, Michael B
Ticheste, Biserot G

EXHIBIT A

Travis, Brian T
Tucker, Kenlon A
Tullao, Isaac T
Tyler, Christopher M
Ullah, Mohammad H
Urban, David
Urbanski, Anthony
Valdes, Lazaro R
Vanluven, RJ
Vences, Alfredo B
Viado, Ramon S
Villegas, Gene L
Vongthep, Christopher
Wagg, John M
Wakeel, Daud I
Wallace, James S
Wallace, Roy L
Warner, Terrance O
Weaver, Gerie L
Webb, Ricky
Weiss, Matthew B
Welborn, Paul M
Weldu, Berhane G
Welzbacher, Daniel R
Williams, Danny H
Wilson Jr., Mose
Wolde, Hailemariam G
Woldeghebriel, Berhane H
Wondired, Eshetu D
Wong, Jorge S
Woodall, Charles E
Wright, Edward T
Yabut, Gerry C
Yamaguchi, Alicia C
Yepiz-Patron, Ubaldo

EXHIBIT A

Yesayan, Razmik
Yihdego, Abdulkadir M
Yimer, Yidersal Z
Younes, Ahmed
Zabadneh, Randa
Zafar, John A
Zawoudie, Masfen B
Zelege, Abraham A
Zhen, Yong Q

EXHIBIT D

EXHIBIT D

BETA Consultants LLC

**Dubric v. A Cab LLC
Case No. A-15-721063-C**

**Estimate of Wage and Hour Settlement,
April 1, 2009 to September 30, 2016**

Prepared by: Nicole S. Omph, CPA

**Prepared for: Trent L. Richards, Esq.
and Esther C. Rodriguez, Esq.**

Report Date: October 4, 2016

Summary

I, Nicole S. Ompps, was engaged by The Bourassa Law Group and A Cab, LLC to review amounts paid to class members as compared to amounts that should have been paid, prepare a summary of findings and provide claim support during the Alternative Dispute Resolution Process and Mediation of Dubric v. A Cab LLC.

Procedures performed during this engagement do not constitute a compilation, review, or audit of financial records or financial statements.

Objectives, Scope and Observations

The objective of this engagement is to assist the parties in reaching a fair settlement amount. I have reviewed and analyzed documentation provided by the defendant, A Cab LLC, in order to identify an estimation of a fair settlement amount for the period of April 1, 2009 to September 30, 2016.

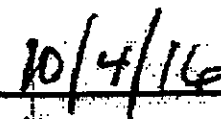
I have identified an estimated settlement range of \$224,529 to \$471,651, which is detailed in Appendix A - Estimate of Wage and Hour Settlement. This schedule is supported by my review of relevant documentation and calculations, including gross payroll detail and includes assumptions as outlined in the schedule.

Limitations and Restrictions

Findings are based on information readily available as of the date of this report. Various time constraints, availability of documentation and reporting parameters may have imposed unforeseeable limits on the scope and procedures performed. Due to the limited nature and scope of this engagement it cannot be relied upon to discover all documents and other information or provide all analyses, which may have importance to this matter.



Nicole S. Ompps, CPA
BETA Consultants LLC



Date

Appendix A

A Cab, LLC
Estimate of Wage and Hour Settlement
April 2009 through September 2016

Time Period	Total Gross Pay	DOL Audit % of Gross Pay	Estimated Under Payment
April 2009 - September 2010	4,149,175.16	2.161585%	89,687.95
October 2010 - September 2012	6,476,209.51	2.161585%	139,988.80
October 2012 - June 2014	6,238,047.77	2.161585%	134,840.70
July 2014 - September 2016	11,432,466.24	2.161585%	247,122.48
Total April 2009 - September 2016			611,639.93
DOL Audit Consent Judgment Paid			(139,988.80)
Adjusted April 2009 - September 2016			471,651.13
Minimum Wage Requirements Met			(247,122.48)
Total April 2009 - June 2014			224,528.65

Based on the calculations of above I have identified an estimated settlement range of:
\$224,258.65 to \$471,651.13

Assumptions:

Based on a Department of Labor Wage-Hour Investigation A Cab for the time period October 2010 to October 2012, it was determined that A Cab, LLC underpaid Drivers at a rate of 2.161585% of total gross pay.

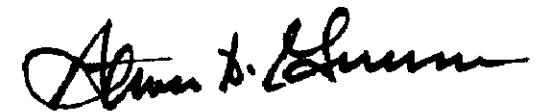
Gross Pay	6,476,209.51
Judgement	139,988.80
Rate	2.161585%

The calculations above use this over the entire period from April 2009 through September 2016.

June 26, 2014 Nevada Supreme Court decision in Thomas v. Yellow Cab maintains that taxicab drivers are not exempt from minimum wage requirements. A Cab, LLC asserts from this point forward all minimum wage requirements were met.

EXHIBIT E

EXHIBIT E



CLERK OF THE COURT

1 NOEO

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

7
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

13 Plaintiffs,

14 vs.

15 A CAB TAXI SERVICE LLC, and A
16 CAB, LLC,

17 Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF ORDER

18 PLEASE TAKE NOTICE that the Court entered the attached Order in this
19 matter on June 7, 2016.

20 Dated: June 7, 2016

21 LEON GREENBERG PROFESSIONAL CORP.

22 /s/ Leon Greenberg

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

CERTIFICATE OF MAILING

The undersigned certifies that on June 7, 2016, she served the within:

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

by court electronic service to:

TO:

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

/s/ Dana Sniegocki

Dana Sniegocki


CLERK OF THE COURT

1 **ORDER**
2 LEON GREENBERG, ESQ.
3 Nevada Bar No.: 8094
4 DANA SNIEGOCKI, 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 leongreenberg@overtimelaw.com
12 dana@overtimelaw.com
13 Attorneys for Plaintiffs

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

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

15 Plaintiffs,

16 vs.

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

20 Defendants.

Case No.: A-12-669926-C

DEPT.: I

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

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

1 hearing on November 3, 2015, with appearances by Leon Greenberg, Esq. and Dana
2 Sniegocki, Esq. on behalf of all plaintiffs, and Esther Rodriguez, Esq., on behalf of all
3 defendants, and the Court, having heard in Chambers on March 28, 2016 the
4 defendants' motion for reconsideration of the Order entered by this Court on February
5 10, 2016, granting in part and denying in part such motion by the plaintiffs, following
6 the arguments of such counsel, and after due consideration of the parties' respective
7 briefs, and all pleadings and papers on file herein, and good cause appearing, therefore
8

9
10 **THE COURT FINDS:**
11

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

19
20 In Respect to the Request for Class Certification

21 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 “[u]ltimately, upon a motion to proceed as a class action, the district
12 court must “thoroughly analyze NRCP 23’s requirements and document its findings.””
13 Citing *D.R. Horton v. Eighth Judicial Dist. Court (“First Light II”)*, 215 P.3d 697,
14 704 (Nev. Sup. Ct. 2009).

15
16 As an initial matter, the nature of the claims made in this case are of the sort for
17 which class action treatment would, at least presumptively, likely be available if not
18 sensible. A determination of whether an employee is owed unpaid minimum hourly
19 wages requires that three things be determined: the hours worked, the wages paid, and
20 the applicable hourly minimum wage. Once those three things are known the
21 minimum wages owed, if any, are not subject to diminution by the employee’s
22 contributory negligence, any state of mind of the parties, or anything else of an

1 individual nature that has been identified to the Court. Making those same three
2 determinations, involving what is essentially a common formula, for a large group of
3 persons, is very likely to involve an efficient process and common questions. The
4 minimum hourly wage rate is set at a very modest level, meaning the amounts of
5 unpaid minimum wages likely to be owed to any putative class member are going to
6 presumptively be fairly small, an additional circumstance that would tend to weigh in
7 favor of class certification.
8
9

10 In respect to granting the motion and the record presented in this case, the
11 Court finds it persuasive that a prior United States Department of Labor ("USDOL")
12 litigation initiated against the defendants resulted in a consent judgment obligating the
13 defendants to pay \$139,834.80 in unpaid minimum wages to the USDOL for
14 distribution to 430 taxi drivers under the federal Fair Labor Standards Act (the
15 "FLSA") for the two year period from October 1, 2010 through October 2, 2012. The
16 parties dispute the *collateral estoppel* significance of that consent judgment in this
17 litigation. The Court does not determine that issue at this time, inasmuch as whether
18 the plaintiffs are actually owed minimum wages (the "merits" of their claims) is not a
19 finding that this Court need make, nor presumably one it should make, in the context
20 of granting or denying a motion for class certification. The USDOL, as a public law
21 enforcement agency has a duty, much like a prosecuting attorney in the criminal law
22 context, to only institute civil litigation against employers when credible evidence
23 exists that such employers have committed violations of the FLSA. Accordingly,
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1 whether or not the consent judgment is deemed as a binding admission by defendants
2 that they owe \$139,834.80 in unpaid minimum wages under the FLSA for distribution
3 to 430 taxi drivers, it is appropriate for the Court to find that the Consent judgment
4 constitutes substantial evidence that, at least at this stage in these proceedings,
5 common questions exist that warrant the granting of class certification. The Court
6 concludes that the record presented persuasively establishes that there are at least two
7 common questions warranting class certification in this case for the purposes of
8 NRCF Rule 23(b)(3) ("damages class" certification) that are coextensive with the
9 period covered by the USDOL consent judgment and for the period prior to June of
10 2014.
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14 The first such question would be whether the class members are owed
15 additional minimum wages, beyond that agreed to be paid in the USDOL consent
16 judgment, and for the period covered by the consent judgment, by virtue of the
17 Minimum Wage Amendment imposing an hourly minimum wage rate that is \$1.00 an
18 hour higher than the hourly minimum wage required by the FLSA for employees who
19 do not receive "qualifying health insurance." The second such question would be
20 whether the class members are owed additional minimum wages, beyond that alleged
21 by USDOL for the period covered by the consent judgment, by virtue of the Minimum
22 Wage Amendment not allowing an employer a "tip credit" towards its minimum wage
23 requirements, something that the FLSA does grant to employers in respect to its
24 minimum wage requirements. It is unknown whether the USDOL consent judgment
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1 calculations include or exclude the application of any "tip credit" towards the FLSA
2 minimum wage deficiency alleged by the USDOL against the defendants.
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.
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20 The Court makes no finding that the foregoing two identified common
21 questions are the only common questions present in this case that warrant class
22 certification. Such two identified issues are sufficient for class certification as the
23 commonality prerequisite of NRCP Rule 23(a) is satisfied when a "single common
24 question of law or fact" is identified. *Shuette v. Beazer Homes Holdings Corp.*, 121
25 Nev. 837, 848 (2005). In addition, there also appear to be common factual and legal
26 issues presented by the claims made under NRS 608.040 for statutory "waiting time"
27
28

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

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

1 The Court notes that Nevada's Constitution commands this Court to grant the
2 plaintiffs "all remedies available under the law or in equity" that are "appropriate" to
3 "remedy any violation" of the Nevada Constitution's minimum wage requirements. In
4 taking note of that command the Court does not, at this time, articulate what form, if
5 any, an injunction may take, only that it is not precluding any of the forms of
6 injunctive relief proposed by plaintiffs, including Ordering defendants to pay
7 minimum wages to its taxi drivers in the future; Ordering defendants to maintain
8 proper records of their taxi drivers' hours of work; Ordering notification to the
9 defendants' taxi drivers of their rights to minimum wages under Nevada's
10 Constitution; and Ordering the appointment of a Special Master to monitor
11 defendants' compliance with such an injunction.
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16 Defendants have not proffered evidence or arguments convincing the Court that
17 it should doubt the accuracy of the foregoing findings. The Court is also mindful that
18 *Shuette* supports the premise that it is better for the Court to initially grant class
19 certification, if appropriate, and "reevaluate the certification in light of any problems
20 that appear post-discovery or later in the proceedings." *Shuette* 124 P.3d at 544.
21
22

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

24 Plaintiffs have also requested the appointment of a Special Master under NRCP
25 Rule 53, to be paid by defendants, to compile information on the hours of work of the
26 class members as set forth in their daily trip sheets. The Court is not persuaded that
27 the underlying reasons advanced by plaintiffs provide a sufficient basis to place the
28

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

3
4 Therefore

5 **IT IS HEREBY ORDERED:**

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

6 **IT IS FURTHER ORDERED:**

7
8 Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(2) for
9 appropriate equitable and injunctive relief as authorized by Article 15, Section 16 of
10 Nevada's Constitution is **GRANTED** and the named plaintiffs Michael Murray and
11 Michael Reno, and class member Michael Sargeant, are also appointed as class
12 representatives for that purpose. The class shall consist of all persons employed by
13 defendants as taxi drivers in the State of Nevada at any time from July 1, 2007
14 through the present and continuing into the future until a further Order of this Court
15 issues.
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20 **IT IS FURTHER ORDERED:**

21
22 (1) Defendants' counsel is to produce to plaintiffs' counsel, within 10 days
23 of the service of Notice of Entry of this Order, the names and last known addresses of
24 all persons employed as taxicab drivers by any of the defendants in the State of
25 Nevada from July 1, 2007 through December 31, 2015, such information to be
26 provided in an Excel or CSV or other agreed upon computer data file, as agreed upon
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1 by counsel for the parties, containing separate fields for name, street address, city,
2 state and zip code and suitable for use to mail the Notice of Class Action ;
3
4

5 (2) Plaintiffs' counsel, upon receipt of the names and addresses described in
6 (1) above, shall have 40 days thereafter (and if such 40th day is a Saturday, Sunday or
7 holiday the first following business day) to mail a Notice of Class Action in
8 substantially the form annexed hereto as Exhibit "A" to such persons to notify them of
9 the certification of this case as a class action pursuant to Nev. R. Civ. P. 23(b)(3) and
10 shall promptly file with the Court a suitable declaration confirming that such mailing
11 has been performed;
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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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23 (4) Class members seeking exclusion from the class must file a written
24 statement with the Court setting forth their name, address, and election to be excluded
25 from the class, no later than 55 days after the mailing of the Notice of Class Action as
26 provided for in (2), above.
27

28 **IT IS FURTHER ORDERED:**

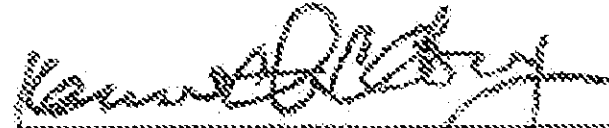
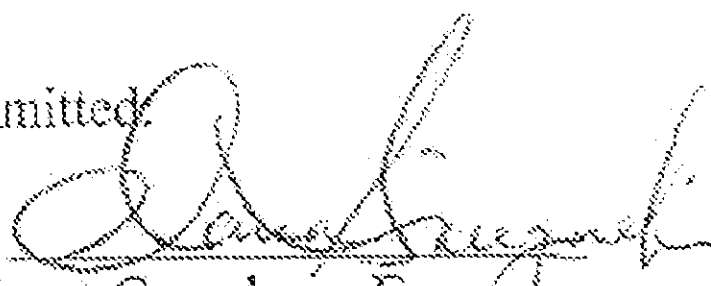
1 Plaintiffs' motion to appoint a Special Master under NRCP Rule 53 is denied
2 without prejudice at this time.
3

4
5 **IT IS FURTHER ORDERED:**

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

9
10 **IT IS SO ORDERED.**

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

13 
14 Hon. Kenneth Conroy
15 District Court Judge
16 

15 Submitted:


16 By: 
17 Leon Greenberg, Esq.
18 Dana Sniegocki, Esq.
19 LEON GREENBERG PROF. CORP.
20 2965 S. Jones Blvd., Ste. E-3
21 Las Vegas, NV 89146
22 Attorneys for Plaintiffs
23
24
25
26
27
28

EXHIBIT "A"

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF CLASS
ACTION
CERTIFICATION

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

NOTICE OF CLASS ACTION CERTIFICATION

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

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

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

(3) What additional money, if any, should A-Cab pay to the class members besides unpaid minimum wages?

(4) For those class members who have terminated their employment with A-Cab since October 8, 2010, what, if any, additional money, up to 30 days unpaid wages, are owed to them by A-Cab under Nevada Revised Statutes 608.040?

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

NOTICE OF YOUR RIGHTS AS A CLASS MEMBER

If you wish to have your claim as a class member decided as part of this case you do not need to do anything. The class is represented by Leon Greenberg and Dana Sniegocki (the "class counsel"). Their attorney office is Leon Greenberg Professional Corporation, located at 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@overtimelaw.com. Communications by email instead of telephone calls are preferred.

You are not required to have your claim for unpaid minimum wages and other possible monies owed to you by A Cab decided as part of this case. If you wish to exclude yourself from the class you may do so by filing a written and signed statement in this Court's file on this case with the Clerk of the Eighth Judicial District Court, which is located at 200 Lewis Avenue, Las Vegas, Nevada, 89101 no later than [insert date 55 days after mailing] setting forth your name and address and stating that you are excluding yourself from this case. If you do not exclude yourself from the class you will be bound by any judgment rendered in this case, whether favorable or unfavorable to the class. If you remain a member of the class you may enter an appearance with the Court through an attorney of your own selection. You do need not get an attorney to represent you in this case and if you fail to do so you will be represented by class counsel.

THE COURT IS NEUTRAL

No determination has been made that A-Cab or Nady owes any class members any money. The Court is neutral in this case and is not advising you to take any particular course of action. If you have questions about this notice or your legal rights against A-Cab you should contact class counsel at 702-383-6085 or by email to leongreenberg@overtimelaw.com or consult with another attorney. The Court cannot advise you about what you should do.

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

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

IT IS SO ORDERED

Date:

/s/ Hon. Kenneth Cory, District Court Judge

EXHIBIT F

EXHIBIT F

REGISTER OF ACTIONS

CASE No. A-12-669926-C

Michael Murray, Plaintiff(s) vs. A Cab Taxi Service LLC,
Defendant(s)

§
§
§
§
§
§

Case Type: Other Civil Filing
Subtype: Other Civil Matters
Date Filed: 10/08/2012
Location: Department 1
Cross-Reference Case Number: A669926

PARTY INFORMATION

Defendant A Cab LLC

Lead Attorneys
Esther C. Rodriguez
Retained
7023208400(W)

Defendant A Cab Taxi Service LLC

Esther C. Rodriguez
Retained
7023208400(W)

Defendant Nady, Creighton J

Esther C. Rodriguez
Retained
7023208400(W)

Plaintiff Murray, Michael

Leon Greenberg
Retained
7023836085(W)

Plaintiff Reno, Michael

Leon Greenberg
Retained
7023836085(W)

EVENTS & ORDERS OF THE COURT

03/28/2016 All Pending Motions (3:00 AM) (Judicial Officer Cory, Kenneth)

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

Minutes

03/28/2016 3:00 AM

- DEFENDANT'S MOTION FOR RECONSIDERATION ...DEFENDANTS' MOTION FOR STAY PENDING PROCEEDINGS COURT ORDERED, Defendants Motion for Reconsideration is GRANTED IN PART and DENIED IN PART. The Court agrees with Defendants and ORDERS that claims Nos. 3 and 4 were not certified as class claims. The COURT FURTHER ORDERS that language on p. 5: 11-13 regarding qualifying health insurance be removed. Lastly, the COURT ORDERS that language on p. 5:26 stating that defendants do not dispute be removed. COURT FURTHER ORDERS, the balance of the motion is DENIED. Plaintiff to submit a new order with the above changes. This case is now three and a half years old. Defendants have no reason to believe that the pending matters before the Supreme Court will be resolved in the near term. Accordingly, this matter must proceed forward. The fact that this is a class action that little or no discovery has been done is alarming to say the least. There can be no more delays. COURT ORDERS, Defendants' Motion for Stay Pending Proceedings DENIED. Mr. Greenberg to prepare the Order. CLERK'S NOTE: The above minute order has been distributed to: Leon Greenberg, Esq. and Esther Rodriguez, Esq. via e-mail. /mlt CLERK'S NOTE: Minute Order has been corrected to indicate the correct Motion For Reconsideration. /mlt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

September 22, 2016

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

September 22, 2016

Minute Order

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

JOURNAL ENTRIES

Plaintiff has submitted a proposed Order to the Court, to which the Defendants have objected.

A reading of the Defendants' opposition to the present Motion leaves one with the question of whether the Defense appreciates the gravity that inures to a Plaintiffs case when alleging the denial of constitutional rights under Nevada's Constitution. The Second Amended Complaint alleges a wholesale denial of constitutional rights to Defendants' employees. It follows that a careful examination of the serious allegations and the evidence that underlies those allegations must be made by the Court. To the extent that Plaintiffs are unable to prove their allegations in the matter because Defendants are in sole possession of evidence Plaintiffs would utilize, then unless some privilege protects disclosure of the evidence it will not do for Defendants to simply fail to produce the evidence. In the event that Defendants protest that they do not possess such evidence, then it is the proper course for this Court to determine the truth of that position through all means necessary and reasonable.

Nonetheless, in light of Defendants continued objections to providing the evidence called for (the Court notes Defendants have now filed a Motion for a Protective Order from the Discovery Commissioner), and their protest that the burden of proof in this matter should not be shifted to Defendants, the Court will not order the burden shifted at this time. It would behoove the Court to move cautiously in this area. Accordingly, the Court will echo Defendants request in their Motion for a Protective Order that the Discovery Commissioner give what time she can to the monitoring of the discovery process in this area of controversy.

Only after discovery discloses whether the Defendants could provide the already ordered discovery will the Court further consider Plaintiff's request to shift the burden of proof on this issue, and other

PRINT DATE: 09/22/2016

Page 1 of 2

Minutes Date: September 22, 2016

measures.

The Order submitted by Plaintiffs should be amended accordingly.

Given the allegations of the Second Amended and Supplemental Complaint, the Order submitted by Plaintiffs as to the certification of the third and fourth claims for relief in the Second Amended Complaint against Defendant Creighton Nady are accurately framed in the Order submitted.

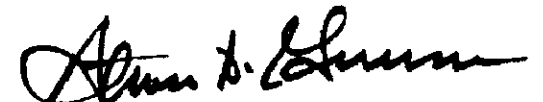
COURT ORDERS, Plaintiff is to resubmit in compliance with this Order.

A copy of this minute order shall be submitted to the Discovery Commissioner.

CLERK'S NOTE: The above minute order has been distributed to: Leon Greenberg, Esq. (leongreenberg@overtimelaw.com); Michael Wall, Esq. (mwall@hutchlegal.com), and Esther Rodriguez, Esq. (esther@rodriguezlaw.com). /mlt

EXHIBIT G

EXHIBIT G


CLERK OF THE COURT

1 **NEOJ**
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7 *Attorneys for Defendant Henderson Taxi*

8
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 MICHAEL SARGEANT, individually and on
behalf of others similarly situated,

12 Plaintiff,

13 v.

14 HENDERSON TAXI,

15 Defendant.

CASE NO.: A-15-714136-C
DEPT. NO.: XVII

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION FOR
ATTORNEYS' FEES**

16
17 PLEASE TAKE NOTICE, an Order Granting Motion for Attorneys' Fees was entered on
18 the 8th day of July, 2016. A copy is attached hereto.

19 DATED this 11th day of July 2016

20 HOLLAND & HART LLP

21 By /s/ R. Calder Huntington

22 Anthony L. Hall, Esq.
Nevada Bar No. 5977
23 R. Calder Huntington, Esq.
Nevada Bar No. 11996
24 9555 Hillwood Drive, 2nd Floor
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25 *Attorneys for Defendant Henderson Taxi*

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of July 2016, a true and correct copy of the foregoing
NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR ATTORNEYS' FEES was
served by the following method(s):

☒ **Electronic:** by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

Leon Greenberg, Esq.
Dana Sniegocki, Esq.
Leon Greenberg Professional Corporation
2965 South Jones Blvd., Suite E3
Las Vegas, Nevada 89146

Leon Greenberg: leongreenberg@overtimelaw.com
Dana Sniegocki: dana@overtimelaw.com

☐ **U.S. Mail:** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

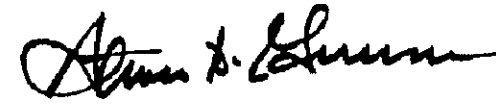
☐ **Email:** by electronically delivering a copy via email to the following e-mail address:

☐ **Facsimile:** by faxing a copy to the following numbers referenced below:

/s/ Valerie Larsen
An Employee of Holland & Hart LLP

7595599_1

Electronically Filed
07/08/2016 06:33:46 PM



CLERK OF THE COURT

ORDR

Anthony L. Hall, Esq.
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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL SARGEANT, individually and on
behalf of others similarly situated,

Plaintiff,

v.

HENDERSON TAXI,

Defendant.

CASE NO.: A-15-714136-C
DEPT. NO.: XVII

**ORDER GRANTING MOTION FOR
ATTORNEYS' FEES**

Defendant Henderson Taxi's ("Defendant" or "Henderson Taxi") Motion for Attorneys' Fees (the "Motion") came before the Court on Chamber's Calendar on May 4, 2016.

The Court, having read and considered Henderson Taxi's Motion, Plaintiff Michael Sargeant's ("Plaintiff" or "Sargeant") Opposition, Henderson Taxi's Reply, all exhibits attached thereto, and good cause appearing, hereby grants Henderson Taxi's Motion in the amount of \$26,715.00 for the reasons set forth below:

FINDINGS OF FACT

1. Sargeant filed this action on February 18, 2015, alleging that Henderson Taxi failed to pay its taxicab drivers the minimum wage required by the Nevada Constitution.
2. On May 27, 2015, Sargeant filed a motion seeking to certify this case as a class action ("Motion to Certify").

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1 3. On or about July 8, 2015, Henderson Taxi produced correspondence and a settlement
2 agreement between it and the ITPEU/OPEIU Local 4873, AFL-CIO (the "Union"), the Union
3 representing Henderson Taxi's taxicab drivers. This settlement agreement with the Union
4 extinguished any claim by Sargeant and the putative class for unpaid minimum wages.

5 4. Shortly thereafter, Henderson Taxi filed its opposition to Sargeant's Motion to
6 Certify, wherein it fully explained how it had settled Mr. Sargeant's claim with the Union.

7 5. On October 8, 2015, this Court found that the agreement between Henderson Taxi
8 and the Union "acted as a complete accord and satisfaction of the [Union's minimum wage]
9 grievance and any claims to minimum wage Henderson Taxi's cab drivers may have had."

10 6. On October 30, 2015, Sargeant filed a Motion for Partial Reconsideration or
11 Alternatively for Entry of Final Judgment ("Motion for Reconsideration"). This Motion for
12 Reconsideration sought certification of a class that was not pleaded in Plaintiff's Complaint and
13 judgment on a claim that was both unsupported and had not been pleaded in Plaintiff's Complaint.

14 7. On November 11, 2015, Henderson Taxi filed a Motion for Summary Judgment.
15 Sargeant opposed this Motion for Summary Judgment by again attempting to relitigate the accord
16 and satisfaction and settlement issue the Court had already clearly decided. Sargeant failed to even
17 attempt to present facts that might have contradicted the granting of summary judgment in this
18 opposition.

19 8. To the extent any of the forgoing Findings of Fact are properly construed as
20 Conclusions of Law, they will be interpreted as Conclusions of Law.

21 **CONCLUSIONS OF LAW**

22 **I. Recoverability of Attorneys' Fees**

23 1. "[A]ttorney's fees are not recoverable absent a statute, rule or contractual provision
24 to the contrary." *Rowland v. Lepage*, 99 Nev. 308, 315, 662 P.2d 1332, 1336 (1983).

25 2. NRS 18.010(2)(b) provides that attorneys' fees should be awarded to a prevailing
26 party "when the court finds that the claim ... was brought or maintained without reasonable
27 ground or to harass the prevailing party." (Emphasis added.)
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3. Furthermore, “it is the intent of the Legislature that the court award attorney’s fees pursuant to [NRS 18.010(2)(b)] ... in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.” NRS 18.010(2)(b).

4. Here, the Court held on October 8, 2015, that Sargeant lacked any cognizable claim for minimum wage against Henderson Taxi because such claim had been settled by the Union. This order made clear that Sargeant lacked any claim against Henderson Taxi for unpaid minimum wages.

5. After receipt of this Order, Sargeant and his counsel were on notice that Sargeant’s claim had no factual or legal basis.

6. Sargeant’s continued litigation of this case after October 8, 2015, including filing an entirely unsupported Motion for Reconsideration (seeking judgment on an unpleaded claim and certification of an unpleaded class) and Opposition to Motion for Summary Judgment, demonstrate that he maintained this action “without reasonable ground” because the Court had ruled he had no cognizable claim. This is the exact type of situation wherein the Legislature intended a fee award under NRS 18.010(2)(b): where a plaintiff will not let go of their alleged claim regardless of the evidence, law, and prior judicial orders stacked against them.

7. ~~This case did not present novel issues of law.~~ It is well-settled that unions may act on behalf of their members and that agents may settle claims for their principals. *See, e.g., May v. Anderson*, 121 Nev. 668, 674-75, 119 P.3d 1254, 1259-60 (2005) (“Schwartz had authority to negotiate on behalf of the Mays and accepted the offer in writing. ... The fact that the Mays refused to sign the proposed draft release document is inconsequential to the enforcement of the documented settlement agreement. The district court ... properly compelled compliance by dismissing the Mays’ action.”); *see also, e.g., St. Vincent Hospital*, 320 NLRB 42, 44-45 (1995) (“as a matter of law, when the parties by mutual consent have modified at midterm a provision contained in their collective-bargaining agreement, that lawful modification becomes part of the

1 parties' collective-bargaining agreement, unless the evidence sufficiently establishes that the parties
2 intended otherwise."); *see also Certified Corp. v. Hawaii Teamsters and Allied Workers, Local 996,*
3 *IBT*, 597 F.2d 1269, 1272 (9th Cir. 1979) (approving a union's and an employer's oral modification
4 of a CBA); *International Union v. ZF Boge Elastmetall LLC*, 649 F.3d 641 (7th Cir. 2011)
5 (recognizing mid-term modification to a CBA by a union and an employer).

6 ~~Plaintiff's issues~~
7 8. ~~Further, even had these issues been novel (which they were not), they were settled~~
8 by the Court's October 8, 2015 Order holding that Sargeant had no cognizable claim based on the
9 Union's settlement thereof.

10 9. Sargeant's Motion for Reconsideration was made without reasonable ground. A
11 motion for reconsideration seeking judgment on an unpleaded claim and certification of an
12 unpleaded class is not a motion for reconsideration and inherently has no merit.

13 10. Sargeant's Opposition to Motion for Summary Judgment was also made without
14 ground. In his Opposition, Sargeant failed to even attempt to present facts that might stave off
15 summary judgment, but rather sought to re-litigate the accord and satisfaction issue previously
16 decided.

17 11. For these reasons, the Court finds that Sargeant's claim was maintained without
18 reasonable ground after October 8, 2015.

19 **II. Reasonableness of Fees**

20 12. When awarding attorney's fees, the Court must consider the following factors: (1)
21 the qualities of the advocate; (2) the character of the work to be done; (3) the work actually
22 performed by the advocate; and (4) the result achieved. *Brunzell v. Golden Gate Nat'l Bank*, 85
23 Nev. 345, 349, 455 P.2d 31, 33 (1969). While the Court need not make explicit findings for each
24 factor, the Court must demonstrate that it considered the required factors and an award of attorneys'
25 fees must be supported by substantial evidence. *Logan v. Abe*, 131 Nev. Adv. Op. 31, 350 P.3d
26 1139 (2015).

27 13. Henderson Taxi's attorneys' fees are reasonable and justified under *Brunzell*.
28

1 14. First, Holland & Hart LLP and the attorneys involved in this case possess extensive
2 experience in commercial, labor, and employment litigation and provided high-quality work for
3 Henderson Taxi.

4 15. Second, Plaintiff brought this lawsuit as a putative class action and raised contractual
5 and other issues under the Nevada Constitution which Henderson Taxi (and, thereby, Holland &
6 Hart) had to defend.

7 16. Third, the work performed by Holland & Hart and Holland & Hart's hourly rates
8 were reasonable in light of all the circumstances and as demonstrated by their submissions to the
9 Court.

10 17. Fourth, and finally, Henderson Taxi was ultimately successful defending this matter
11 with the aid of Holland & Hart.

12 18. Accordingly, Henderson Taxi is entitled to an award of attorneys' fees for the time
13 after this Court issued its October 8, 2015, Order holding that Plaintiff and the putative class had no
14 viable claim in the amount of \$26,715.¹

15 19. Plaintiff's claim became frivolous at this time and any maintenance of the claim after
16 this date was unreasonable as a matter of law.

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27 ¹ Henderson Taxi sought fees either from the date it filed its Opposition to Plaintiff's Motion to
28 Certify in the amount of \$47,739.50 or after the issuance of the October 8, 2015, Order holding that
Plaintiff and the putative class had no viable claim in the amount of \$26,715.

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20. To the extent any of the forgoing Conclusions of Law are properly construed as Findings of Fact, they will be interpreted as Findings of Fact.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Henderson Taxi's Motion for Attorneys' Fees is GRANTED in the amount of \$26,715.00.

DATED this 21 day of June 2016.

for J. Bonaventura
DISTRICT COURT JUDGE

Sr J Bonaventura

Respectfully submitted by:

HOLLAND & HART LLP

By

[Signature]
Anthony L. Hall, Esq.
Nevada Bar No. 5977
R. Calder Huntington, Esq.
Nevada Bar No. 11996
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Attorneys for Defendant Henderson Taxi

Approved as to form:

By

Refused to Sign
Leon Greenberg, Esq.
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