

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 XIX of LII**

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

HUTCHISON & STEFFEN, PLLC

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

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

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

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

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

CERTIFICATE OF SERVICE

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

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

Attorneys for Respondents

DATED this 5th day of August, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

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.
11
12
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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.

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

1 penalties for former taxi driver employees of defendants.. Such common questions
2 are readily apparent as NRS 608.040 is a strict liability statute..
3

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

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

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

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

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

24 Plaintiffs have also requested the appointment of a Special Master under 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
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5 (2) Plaintiffs' counsel, upon receipt of the names and addresses described in
6 (1) above, shall have 40 days thereafter (and if such 40th day is a Saturday, Sunday or
7 holiday the first following business day) to mail a Notice of Class Action in
8 substantially the form annexed hereto as Exhibit "A" to such persons to notify them of
9 the certification of this case as a class action pursuant to Nev. R. Civ. P. 23(b)(3) and
10 shall promptly file with the Court a suitable declaration confirming that such mailing
11 has been performed;
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16 (3) The class members are enjoined from the date of entry of this Order, until
17 or unless a further Order is issued by this Court, from prosecuting or compromising
18 any of the class claims except as part of this action and only as pursuant to such
19 Order; and
20
21

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

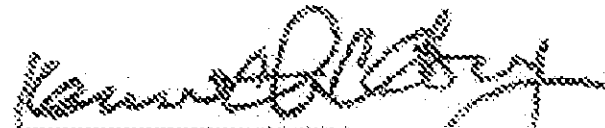
1 Plaintiffs' motion to appoint a Special Master under NRCP Rule 53 is denied
2 without prejudice at this time.
3

4
5 **IT IS FURTHER ORDERED:**

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

10 **IT IS SO ORDERED.**

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

13
14 
Hon. Kenneth Conroy
District Court Judge
15

16 Submitted.


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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF CLASS
ACTION
CERTIFICATION

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

NOTICE OF CLASS ACTION CERTIFICATION

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

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

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

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

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

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

NOTICE OF YOUR RIGHTS AS A CLASS MEMBER

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

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.

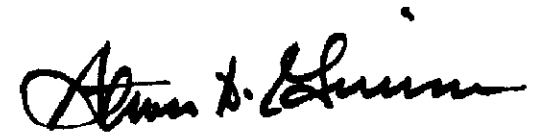
IT IS SO ORDERED

Date:

/s/ Hon. Kenneth Cory, District Court Judge

EXHIBIT D

EXHIBIT D



CLERK OF THE COURT

1 **RTRAN**

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5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

8

MICHAEL MURRAY, ET AL.,

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Plaintiffs,

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vs.

11

A CAB TAXI SERVICE LLC, ET AL.,

12

13

Defendants.

14

15

BEFORE THE HONORABLE BONNIE A. BULLA, DISCOVERY COMMISSIONER

16

WEDNESDAY, JANUARY 25, 2017

17

RECORDER'S TRANSCRIPT OF PROCEEDINGS

18

PLAINTIFFS' MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS

19

APPEARANCES:

20

For the Plaintiffs:

21

LEON GREENBERG, ESQ.
DANA SNIEGOCKI, ESQ.

22

For the Defendants:

23

ESTHER C. RODRIGUEZ, ESQ.
MICHAEL K. WALL, ESQ.

24

25

RECORDED BY: FRANCESCA HAAK, COURT RECORDER

1 produced is simply every employee has to have a tax deduction based on whether they're
2 married, or they're single, and if they claim dependents. It's in their computer system. It
3 would take literally a few minutes to produce that to me, Your Honor.

4 DISCOVERY COMMISSIONER: If that were true, it would have been done.

5 MR. GREENBERG: How do you know that would have been done, Your Honor?
6 Defendants have no --

7 DISCOVERY COMMISSIONER: Because we've been here five million times.

8 MR. GREENBERG: Your Honor, the Defendants have no interest in corroborating
9 who was or wasn't qualified through the insurance. The burden of proof is on me, Your
10 Honor. Why would they want to assist me in establishing those facts? They have no
11 motivation to do so.

12 DISCOVERY COMMISSIONER: But why not send out -- I'm just asking.

13 MR. GREENBERG: Because --

14 DISCOVERY COMMISSIONER: Because you do this type of litigation. I,
15 obviously, do not. But I am asking the question. We know the class, right?

16 MR. GREENBERG: Yes, Your Honor.

17 DISCOVERY COMMISSIONER: We know the identity of the class members. Why
18 not send out a survey? They're your clients, right?

19 MR. GREENBERG: Your Honor, they're -- to answer your question directly, okay,
20 the burden and the cost and the effectiveness of doing so to vindicate the class claims is
21 extremely marginal in these situations. There are at least a thousand class members. To
22 collect that information from all of them during the relevant period, to get them to respond,
23 the purpose, again, of the class proceeding here is to vindicate the rights of the class
24 members that are too small for them to take action on individually or they're too uninformed
25 or not able to act on for whatever reason, okay?

1 Recommendation.

2 Ms. Rodriguez, do your best to review it and approve it as to form and content.
3 Last time it took me over an hour-and-a-half because I pulled the transcript, I read it, I added
4 to it, and as much as I appreciate being able to help you all, I want you to work harder
5 together on it, and I believe what I did is I modified your Report and Recommendations, Mr.
6 Greenberg.

7 MR. GREENBERG: Yes, Your Honor.

8 DISCOVERY COMMISSIONER: Okay.

9 THE CLERK: Status check is February 24th at 11.

10 MS. RODRIGUEZ: Your Honor, I will be in a federal trial that week. May I have a
11 status check a week later? I know --

12 DISCOVERY COMMISSIONER: It's only for Mr. Greenberg.

13 MS. RODRIGUEZ: Okay.

14 DISCOVERY COMMISSIONER: So you don't have to be here on the 11th. But I
15 don't -- I'm -- I joked with somebody the other day, and they thought I was serious, so I'm
16 not joking anymore. Try to get it done timely. You have ten days to do it.

17 MS. RODRIGUEZ: Thank you, Judge.


18 DISCOVERY COMMISSIONER: Thank you.

19 MR. GREENBERG: Thank you, Your Honor.

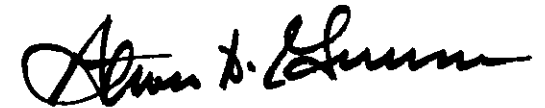
20 [Proceeding concluded at 10:28 a.m.]

21 * * *

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

24 

25 FRANCESCA HAAK
Court Recorder/Transcriber



CLERK OF THE COURT

RPLY

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Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' REPLY TO
DEFENDANTS'S
OPPOSITION TO
PLAINTIFFS' MOTION ON
OST TO EXPEDITE
ISSUANCE OF ORDER
GRANTING MOTION FILED
ON 10/14/2016 TO ENJOIN
DEFENDANTS FROM
SEEKING SETTLEMENT OF
ANY UNPAID WAGE CLAIMS
INVOLVING ANY CLASS
MEMBERS EXCEPT AS PART
OF THIS LAWSUIT AND FOR
OTHER RELIEF AND FOR
SANCTIONS**

Plaintiffs, through their attorneys, class counsel, Leon Greenberg and Dana Sniegocki of Leon Greenberg Professional Corporation, hereby submit this reply to defendants' opposition to plaintiffs' motion on an OST for the expedited issuance of an Order granting plaintiffs' motion filed October 14, 2016 enjoining defendants from seeking settlement of any unpaid wage claims involving any class members except as part of this lawsuit and for other relief and for sanctions.

MEMORANDUM OF POINTS AND AUTHORITIES

**DEFENDANTS FURNISH NOT A SCINTILLA OF
PROOF THAT THEIR CONDUCT IS PROPER**

Defendants have engaged in the most blatant, egregious, and abusive "judge shopping" conduct imaginable. They are, understandably, not pleased with the class

1 certification order in this case and the vigorous prosecution of the class claims that is
2 occurring in this case. They are currently faced with a motion for partial summary in
3 this case for which they have no defense. That motion, to be heard on March 7, 2017,
4 should result in a judgment of over \$174,000 (and more likely over \$278,000) for
5 minimum wages owed to over 300 class members for the 2013-2016 period as
6 established by defendants' own payroll records and admissions.

7 Defendants are attempting to terminate this litigation, and its impending very
8 unpleasant outcome for them, by drafting the lone plaintiff in the much later filed
9 *Dubric* case to act as their chosen class representative. They propose a class settlement
10 in *Dubric* in direct countervention of this Court's Order in this case so they can
11 extinguish the class claims certified for disposition in this case. They offer no
12 explanation as to how such conduct can be proper (having a judge in *another case* act
13 to extinguish through the class action process the class action claims already, and much
14 earlier, certified for disposition *in this case*). They just insist Judge Delaney, being
15 another judge of this Court, has the power in *Dubric* to modify the prior class
16 certification Order in this case and dispose of the class claims in this case. A more
17 chaotic course of events, and gross abuse of the judicial process, would be hard to
18 imagine. It would be manifestly improper for the class claims certified for disposition
19 in this case, and still pending in this case, to be subject to a *second* and later class
20 certification, and settlement, in another case. Such a result would be inimical to the
21 rule of law itself and would foment the exact sort of judge shopping and evasion of
22 justice that defendants are attempting in this case.

23 Defendants, unable to rationalize their improper conduct, barrage the Court with
24 a slew of alternative facts, false accusations against class counsel, and *ad hoc*
25 nonsensical justifications for their conduct, all of which are irrelevant. Most bizarrely,
26 they attack class counsel in this case for not appropriately prosecuting the class claims
27 and subjecting those claims to a potential "five year rule" dismissal (something the
28 defendants should warmly embrace!).

1 None of defendants' arguments, which they present as a claim that the equities of
2 the situation justify their proposed class settlement in *Dubric*, have any merit
3 whatsoever. And all such arguments beg the obvious question: Why are defendants
4 proposing such a settlement in *Dubric* and not in this case? They have never needed
5 class counsel's endorsement of that settlement to propose it to the Court in this case
6 and have the class members' claims fairly settled in this case. The jurist assigned to
7 this case is certainly as wise and as capable as Judge Delaney. If the class settlement
8 they propose should be approved in the proper course, and is in the interests of the
9 class, it will secure such approval in this case just as certainly as it will in *Dubric*.

10 The answer to the foregoing question is, of course, that the settlement defendants
11 are proposing in *Dubric* is completely inadequate; it is the product of collusion
12 between defendants and *Dubric*'s counsel and would never be approved in this case
13 (nor should it be in *Dubric* if there was jurisdiction in that case to approve the same);
14 and defendants surreptitiously sought such approval in *Dubric* to avoid any proper
15 scrutiny of such settlement. That settlement proposal would extinguish *all* of the class
16 claims for an amount significantly less than the amount to be awarded just for a
17 *minority* of the class claims on the pending motion for partial summary judgment in
18 this case.

19 CONCLUSION

20 Defendants' abusive and contemptuous conduct is manifest. Class counsel's motion
21 should be granted in its entirety together with such other further and different relief that
22 the Court deems proper.

23 Dated: February 10, 2017

24 LEON GREENBERG PROFESSIONAL CORP.

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

CERTIFICATE OF MAILING

The undersigned certifies that on February 10, 2017, he served the within:

Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion on OST to Expedite Issuance of Order Granting Motion Filed on 10/14/2016 to Enjoin Defendants from Seeking Settlement of Any Unpaid Wage Claims Involving Any Class Members Except as Part of this Lawsuit and for Other Relief and for Sanctions

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/ Leon Greenberg

Leon Greenberg


CLERK OF THE COURT

OPPM
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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

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

AND

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

Hearing Date: 2/27/2017
Hearing Time: chambers

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

OVERVIEW

This is Defendants' *second* motion for leave to amend their Answer to sue plaintiffs' counsel (court appointed class counsel) as "third party defendants" on claims of "Champerty" and now for "tortious interference with contractual relations" as well. Defendants have attempted to withdraw that first motion within the 21 day "post filing" and "safe harbor" period in an attempt to avoid Rule 11 sanctions and may now well attempt to do the same with this second motion. Defendants' motions

1 are patently abusive, frivolous, and made solely to exhaust class counsel and hinder
2 their prosecution of this case. Defendants' proposed Third-Party Complaint against
3 class counsel asserts non-existent claims never recognized by any common law court,
4 that are barred as a matter of law, and they have proposed no factual allegations that
5 could even remotely support such non-existent claims.

6 Class counsel has prepared and served on defendants a proposed motion for
7 sanctions under Nev. R. Civ. P. 11 for the filing of this *second* frivolous motion. That
8 motion will be ripe for filing, and filed, pursuant to Nev. R. Civ. P. 11(c)(1), on
9 February 27, 2017, after the 21 day safe harbor provision expires. Defendants have
10 refused to continue any hearing on their motion (now set for a chambers decision on
11 February 27, 2017 as well) so the Rule 11 period will run and such Rule 11 motion can
12 be filed and considered. They refuse to do so because, after this opposition is filed,
13 defendants, as they did with their first such motion to sue class counsel, will
14 presumably seek to withdraw this motion to avoid Rule 11 sanctions. They are
15 engaging in such conduct to waste class counsel's time and hamper the effective
16 prosecution of the class claims. As a result, plaintiffs are requesting, through a
17 counter-motion, that the Court impose sanctions, including an award of attorneys' fees,
18 pursuant to the other provisions of the Nevada Revised Statutes and the local rules of
19 this Court.

20 ARGUMENT

21 I. LEAVE TO AMEND MUST BE DENIED AS DEFENDANTS' COUNSEL 22 SEEKS TO FILE A KNOWINGLY VOID THIRD PARTY COMPLAINT 23 AGAINST PLAINTIFFS' COUNSEL FOR "CHAMPERTY" AND 24 TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS WHILE KNOWING FULL WELL SUCH CLAIMS ARE IMPOSSIBLE AS A MATTER OF LAW

25 "A motion for leave to amend is addressed to the sound discretion of the trial
26 court and its action in denying the motion should not be held to be error unless that
27 discretion has been abused." *Stephens v. Southern Nev. Music Co.*, 89 Nev. 104, 105
28 (Nev. Sup. Ct. 1973). "NRCP 15(a) provides that leave to amend a complaint shall be

1 ‘freely given when justice so requires.’ However, leave to amend should not be
2 granted if the proposed amendment would be futile.” *Halcrow, Inc. v. Eighth Judicial*
3 *Dist. Court of the State*, 302 P.3d 1148, 1152 (Nev. Sup. Ct. 2013), citing *Allum v.*
4 *Valley Bank of Nev.*, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993). “A proposed
5 amendment may be deemed futile if the plaintiff seeks to amend the complaint in order
6 to plead an impermissible claim.” *Id.*

7 Defendants, for the second time, are seeking to file a Third-Party Complaint
8 against class counsel asserting wholly frivolous, non-existent, and impermissible
9 “claims” that have no basis in law.

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

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

13 We conclude that there was no secure basis for the district court to predict that
14 the Nevada Supreme Court would recognize a common-law tort cause of action
15 for damages or equitable relief asserted by a stranger to an allegedly
16 champertous agreement. The Nevada Supreme Court stated a century ago that
17 “[t]he great weight of authority is to the effect ... that the rule rendering
18 contracts void for champerty, cannot be invoked except between the parties to
19 the champertous agreement in cases where such contract is sought to be
20 enforced.” *Del Webb Communities, Inc. v. Partington*, 652 F.3d 1145, 1154 (9th
21 Cir. 2011) citing and quoting *Prosky v. Clark*, 32 Nev. 441, 109 P. 793, 794
22 (1910).

23 To the extent any issue of champerty might even exist in respect to class
24 counsels’ relationship with the named plaintiffs and the class members, that is an issue
25 for the Nevada State Bar to deal with. Similarly, nowhere do defendants allege class
26 counsel’s advertisements or communications with the class members, that are alleged
27 to have improperly fomented this litigation, were illegal or contrary to the State Bar’s
28 rules (they were not). Nor does defendants’ counsel wish to risk the displeasure of the
State Bar by filing with that office such frivolous complaints of champerty or false
advertising, particularly since the State Bar is not going to waste class counsel’s time
by forcing it to respond to such a complaint. Instead, defendants’ counsel asserts the
absurd concept that principles of champerty allow *any defendant* in *any case* where the

1 plaintiff's counsel is compensated on a contingency (whether through a fee shifting
2 statute or percentage of recovery) basis to make a claim against such plaintiff's
3 counsel. Under defendants' counsel's theory, the mere presence of such a personal
4 financial interest in the outcome of a case, something possessed by every contingency
5 fee compensated plaintiffs' counsel in every litigation, generates a "champerty" claim
6 by a defendant against such plaintiff's counsel. And it does so despite the State Bar's
7 express authorization of contingency fee agreements between attorneys and clients.

8 **B. No claim for "tortious interference with contractual relations"**
9 **is possible where no valid "contract" exists or has been breached**

10 Defendants' counsel's additional vexatious, harassing, and frivolous proposed
11 claim against class counsel is based upon their alleged "tortious interference" with
12 defendants' contractual relations. In support of this proposed claim, defendants'
13 counsel asserts two unexplained and legally unsound bases that supposedly give rise to
14 such claim: (1) plaintiffs' counsel, through the use of "blackmail, threats, and/or
15 influence" coerced defendants' former payroll and benefits manager, Wendy Gagliano,
16 into providing a sworn affidavit in support of the class members' claims in violation of
17 some unspecified supposed "contract"; and (2) again, through the use of "blackmail,
18 threats, and/or influence," plaintiffs' counsel have somehow attempted to influence a
19 non-class member, Jasminka Dubric, to breach her contract.

20 **i. The Gagliano contract interference claim is frivolous**
21 **as a contract to prevent a witness from testifying in a**
22 **court case is illegal and void.**

23 Defendants assert that plaintiffs' use of a testifying witness, Wendy Gagliano,
24 who provided sworn testimony of her own free will, resulted in a "breach of contract"
25 by Ms. Gagliano of her "contract" with defendants. *See*, Defendants' Motion at 4:14-
26 18. Defendants fail to present the "contract" that forms the basis of the alleged
27 "breach of contract," presumably because none exists. But even if such a written
28 "contract" was signed by Gagliano purporting to prevent her from giving testimony in
this or any litigation matter, such contract is *void ab initio* and unenforceable.

1 Under Nevada law, unless “otherwise required by the Constitution of the United
2 States or of the State of Nevada, and except as otherwise provided in this title or title
3 14 of NRS, or NRS 41.071, no person has a privilege to: (d) Prevent another from
4 being a witness or disclosing any matter or producing any object or writing.” N.R.S.
5 49.015(1)(d). Any contract purporting to bar the furnishing of evidence in this case
6 by Ms. Gagliano is *void ab initio* and unenforceable under Nevada law. Since the
7 contract alleged by defendants is illegal and unenforceable no tortious interference
8 with contractual relations can result from any breach of such an illegal contract.

9 **ii. The *Dubric* contract interference claim is frivolous**
10 **as defendants have no enforceable contract right**
to secure the supposed class settlement they seek in *Dubric*.

11 As discussed in *Kronos, Inc. v. AVX Corp.*, 81 N.Y.2d 90, 94 (N.Y. Court of
12 Appeals, 1993):

13 The tort of inducement of breach of contract, now more broadly known as
14 interference with contractual relations, consists of four elements: (1) the
15 existence of a contract between plaintiff and a third party; (2) defendant's
16 knowledge of the contract; (3) defendant's intentional inducement of the third
17 party to breach or otherwise render performance impossible; and (4) damages to
18 plaintiff (*Israel v. Wood Dolson Co.*, 1 N.Y.2d 116, 120, 151 N.Y.S.2d 1, 134
19 N.E.2d 97; see generally, Restatement [Second] of Torts § 766; 4 Lee and
20 Lindahl, Modern Tort Law § 45.02, at 20 [rev ed.]). Since damage is an
21 essential element of the tort, the claim is not enforceable until damages are
22 sustained.

23 Nevada law is the same as the New York law discussed in *Kronos*, a widely
24 cited case, on this issue. *See, Sutherland v. Gross*, 772 P.2d 1287, 1290 (Nev. Sup. Ct.
25 1989) (“To establish intentional interference with contractual relations, the plaintiff
26 must show: (1) a valid and existing contract; (2) the defendant's knowledge of the
27 contract; (3) intentional acts intended or designed to disrupt the contractual
28 relationship; (4) actual disruption of the contract; and (5) resulting damage.”)

Even if defendants’ proposed complaint alleged facts that could establish
damages (as discussed, *infra*, it does not), defendant’s complaint fails the foregoing
pleading requirements as it **never alleges any “actual disruption of the contract”**
giving rise to their claim. There is simply no allegation, anywhere, that any contract

1 has actually been breached or “ actually disrupted” by anyone. Instead, defendants’
2 bare-boned and conclusory allegations in respect to the alleged interference with the
3 *Dubric* contract state:

- 4 (1) On December 28, 2016 an agreement was entered into between
5 defendants and Dubric to resolve certain claims;
- 6 (2) Third -Party Defendants have engaged in tortious interference with
7 contract rights wherein they have *attempted to convince* Dubric to breach
8 her contract with Third-Party Plaintiffs through the use of blackmail,
9 threats, and/or influence and/or other means;
- 10 (3) As a result of such intentional acts by Third-Party Defendants, Third-
11 Party Plaintiffs have been damaged. Proposed Third-Party Complaint at
12 ¶¶ 37-40 (emphasis added).

13 These claims are frivolous, barred as a matter of law, and without any basis
14 whatsoever and made solely to harass class counsel.

15 Defendants are free to settle the *Dubric* case with Ms. Dubric, the lone party to
16 that litigation. They do not complain of any interference with any such contract
17 between Ms. Dubric and themselves. The alleged “contract” forming the basis of such
18 interference claim is a proposal to settle the claims of a class of persons besides Dubric
19 if approved by the Court pursuant to NRCP Rule 23 (as required in any class action
20 case). Ex. “A” the alleged December 28, 2016 “contract” referred to by defendants.
21 That “contract” was an agreement to present a settlement proposal to the Court in the
22 *Dubric* case and be bound by that proposal *if it was approved*. See, also ¶ 9.2 therein,
23 expressly confirming the settlement proposed was only binding on the parties if it was
24 approved by the Court. There was no actual “interference” with that “agreement” (the
25 actual “contract” at issue) by Ms. Dubric to present such settlement proposal to the
26 Court, as no breach of that agreement is alleged and that settlement proposal was
27 presented to the Court by Dubric as promised. See, Ex. “B” motion for preliminary
28 approval of class action settlement filed in *Dubric*.

1 The sheer inanity of defendants' assertions is shocking. The *Dubric* parties had
2 no jurisdiction to engage in the class settlement they propose (those class claims are
3 already certified for disposition in this case). But even if such jurisdiction did exist in
4 *Dubric*, it is nonsensical to claim that anyone who objects to a proposed class
5 settlement on behalf of the class members is "interfering with a contract" to settle the
6 class claims. That assertion is even more ludicrous when the objections are made **by**
7 **the attorneys already appointed as counsel for the class** who have a *legal*
8 *obligation* to protect the class members' interests by objecting to such a void and sham
9 settlement of the class claims. But even setting all of those things aside, defendants
10 have, **by their own express agreement, no contract creating any legally**
11 **enforceable rights since the judge in *Dubric* has yet to approve such claimed**
12 **"contract."**

13 COUNTERMOTION FOR SANCTIONS

14 **II. DEFENDANTS AND THEIR COUNSEL SHOULD BE** 15 **SANCTIONED AND ATTORNEY'S FEES AWARDED**

16 The manifest impropriety and abusive nature of the conduct of defendants and
17 their counsel needs no elaboration. Defendants' counsel sullies this Court with such
18 abusive conduct which should not be tolerated.

19 Plaintiffs' counsel has already, now for the second time, served on defendants
20 and their counsel a proposed motion for sanctions under Nev. R. Civ. P. 11 for the
21 filing of this frivolous motion which seeks to add claims against plaintiffs' counsel
22 that have no basis in law or fact. *See*, Ex. "C," proposed motion and correspondence
23 to defendants's counsel. Such Rule 11 motion is not yet ripe for filing (such motion,
24 pursuant to Nev. R. Civ. P. 11(c)(1) cannot be filed until February 27, 2017, after the
25 21 day safe harbor provision expires). Defendants have, intentionally, repeatedly
26 refused to continue this motion hearing so as to ensure the Rule 11 "safe harbor"
27 period will expire (presumably so they can, for the second time, withdraw this motion
28 and claim sanctuary from Rule 11 sanctions). *Id.*

1 Plaintiffs are requesting the Court impose sanctions, including an award of
2 attorneys' fees, pursuant to NRS 41.670(1)(b) (the Nevada "anti-SLAPP" statute), and
3 EDCR Rule 7.60(b)(3) and its inherent authority in response to defendants' abuse and
4 intentional "gaming" of the Rule 11 safe harbor provisions. Class counsel has
5 previously requested \$4,815 in attorney's fees in response to defendants' *first* motion
6 for leave to sue class counsel as a third party defendant (counter motion seeking that
7 award is now set for hearing on February 28, 2017). They now request \$1,530 in
8 additional attorney's fees for the additional abusive waste of their time on this *second*
9 motion to sue class counsel, for a total of \$6,345 on both such motions. *See*, Ex. "D"
10 Declaration of Leon Greenberg. Such fee is calculated at a rate of \$450 per hour for
11 all attorney time consumed with opposing defendants' two frivolous motion. If the
12 Court believes a "rounded" or somewhat reduced fee should be awarded, \$ 3,890 is
13 proposed. That number is calculated by the Court just compensating senior class
14 counsel, Leon Greenberg's, time already expended on both such motions, plus one
15 additional hour for motion hearing time at the rate it has previously awarded in this
16 litigation (Ex. "E," p. 7, Order entered 3/4/16 directing fee payment of \$400 an hour to
17 Leon Greenberg). In addition to this Court's inherent authority to punish such abusive
18 conduct by counsel and parties who appear before it, a variety of statutes and court
19 rules authorize such an award of attorney's fees and sanctions in addition to the typical
20 Rule 11 sanctions.

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

23 Nevada's anti-SLAPP ("Strategic Lawsuits Against Public Participation") law is
24 expressly intended to deter, stop, and punish persons who bring lawsuits intended to
25 repress "free speech in direct connection with an issue of public concern." NRS §
26 41.637. Defendants' proposed third-party complaint against plaintiffs' counsel is
27 expressly made in retaliation for such counsel's public, and legally protected,
28 communications about the defendants' business practices, as well as class counsel's

1 duty to protect and advocate for the interests of their clients, the class members.
2 Indeed, it **relies upon the supposed impropriety of those legally protected**
3 **communications and vigorous advocacy in alleging its basis for relief.** California
4 has expressly found that the exact same sort of legally protected communications by an
5 attorney, as those at issue in this case, are entitled to anti-SLAPP law protections. *See,*
6 *Simpson Strong-Tie Co. v. Gore*, 230 P.3d 1117 (Cal. Supreme Ct., 2010) (Upholding
7 district court grant of SLAPP law relief to attorneys sued by manufacturer for making
8 public advertisements seeking to represent certain allegedly injured members of the
9 public against manufacturer).

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

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

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

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CONCLUSION

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

Dated: February 13, 2017

LEON GREENBERG PROFESSIONAL CORP.

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

CERTIFICATE OF SERVICE

The undersigned certifies that on February 13, 2017, he served the within:

**Opposition to Defendants' Motion for Leave to Amend Answer to
Assert Third-party Complaint And Counter-motion for Sanctions and
Attorneys' Fees**

by court electronic service to:

TO:

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

/s/ Sydney Saucier

Sydney Saucier

AA003635

EXHIBIT "A"

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (hereinafter "Agreement") is entered into by and between Jasminka Dubric ("Plaintiff") on behalf of herself and as class representative on behalf of the Class as further defined herein and defendants A Cab LLC, A Cab Series LLC, Employee Leasing Company, and Creighton J. Nady (collectively, "Defendants") in the class action lawsuit entitled *Jasminka Dubric v. A Cab LLC*, Clark County, Nevada District Court Case No. A721063 (the "Class Action"). Plaintiff and Defendants shall sometimes be collectively referred to herein as the "Parties." This Agreement is made effective as of October 5, 2016 ("Effective Date").

RECITALS

1.1 **WHEREAS**, on July 7, 2015, Plaintiff filed her original Class Action Complaint, on behalf of herself and a class consisting of consists of "all persons who were employed by A Cab LLC during the applicable statutory period prior to the filing of this Complaint continuing until date of judgment as Drivers in the State of Nevada." Complaint ¶ 14. Plaintiff's Complaint contains two causes of action: (1) Failure to Pay Minimum Wage in violation of Article 15, Section 16 of the Nevada Constitution and (2) Conversion. A Cab LLC responded with an Answer in August of 2015, denying the claims;

WHEREAS, on November 30, 2016, Plaintiff filed a First Amended Complaint adding A Cab Series LLC, Employee Leasing Company and Creighton J. Nady as Defendants;

WHEREAS, the Parties have conducted a thorough examination and investigation of the facts of this case, including written discovery and depositions, and have jointly retained the services of Beta Consulting, a CPA firm, to prepare a report regarding the dollar amounts of the allegedly unpaid wages for all potential class members; and

WHEREAS, the Parties engaged in a settlement conference with Judge Jerry A. Wiese, II on October 5, 2016 regarding settlement of the claims asserted in the Amended Complaint, and wish to settle completely and totally all claims and potential claims against Defendants arising out of or in any way connected thereto. Plaintiff believes that this settlement confers substantial benefits upon both Plaintiff and the Class and that the settlement set forth in this Agreement is in the best interest of the Plaintiff and the Class. The Parties recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the claims through trial and through appeals and other ancillary actions. The Parties also have taken into account the uncertain outcome and the risk of any litigation, especially in multi-party actions such as this proceeding, as well as the difficulties and delays inherent in such litigation. The Parties also are mindful of the potential problems of proof in establishing the claims and defenses asserted in this proceeding.

NOW THEREFORE, subject to approval by the Court of the Eighth Judicial District, Clark County, Nevada, as hereinafter provided, it is hereby agreed by the Parties that, in consideration of the promises and covenants set forth in this Agreement and upon the entry by the Court of a final order approving the settlement and directing the implementation of the terms and conditions of the settlement as set forth in this Agreement, the Class Action shall be settled and compromised upon the terms and conditions contained herein.

2. DEFINITIONS

The definitions contained herein shall apply only to this Agreement and shall not apply to any other agreement, including, without limitation, any other settlement agreement, nor shall they be used as evidence, except with respect to this Agreement, of the meaning of any term. Furthermore, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the

singular form. As used in this Agreement, in addition to any definitions elsewhere in this Agreement, the following terms shall have the meanings set forth below:

2.1 “Action” or “Class Action” means and refers to the putative class action lawsuit entitled *Jasminka Dubric v. A Cab LLC*, Clark County, Nevada District Court Case No. A721063.

2.2 “Agreement” means and refers to this Settlement Agreement.

2.3 “Opt-Out Period” means and refers to the period of time between the commencement of the notice program and an agreed date certain approximately forty-five (45) days later during which Settlement Class members may exercise the right to or affirmatively request to be excluded from this Agreement pursuant to the provisions of Sections 8 below.

2.4 “Court” means and refers to the Clark County, Nevada District Court.

2.5 “Class” means all persons who were employed by Defendants during the applicable statutory period prior to the filing of this Complaint continuing until date of judgment as Drivers in the State of Nevada.

2.6 “Class Counsel” means Mark J. Bourassa of the Bourassa Law Group, together with such other attorneys who represented, in any capacity, any Plaintiff in the Class Action.

2.7 “Class Notice” means the form of notice attached hereto as Exhibit 1 or a similar form as approved by the Court.

2.8 “Defendants” means and refers to A Cab LLC, A Cab Series LLC, Employee Leasing Company, and Creighton J. Nady.

2.9 “Fairness Hearing” means the final hearing, held after the Preliminary Approval Order is issued and the Settlement Class has been given notice and an opportunity to opt out and object pursuant to the Settlement, in which the Court will consider whether this Settlement should be approved as fair, reasonable and adequate

pursuant to Nevada Rule of Civil Procedure 23; whether the proposed Final Order and Judgment should be entered; and whether Class Counsel's application for attorneys' fees, expenses and costs and Class Representative incentive should be approved;

2.10 "Final Approval Order" means the Final Order and Judgment entered by the Court at the Fairness Hearing.

2.11 "Plaintiff" means and refers to Jasminka Dubric.

2.12 "Judgment" means a Judgment on Order of Final Approval of Settlement to be executed by the Court and entered in the Court records.

2.13 "Preliminary Approval Order" means and refers to the Court's order entered following and in connection with the Parties' motion for preliminary approval of this Settlement Agreement.

2.14 "Parties" means and refers to Plaintiff and Defendants, collectively.

2.15 "Person" means and refers to any individual, family, proprietorship, corporation, company, partnership, association, trustee, administrator, unincorporated association, estate, insurer, or any other type of legal entity.

2.16 "Released Claims" means and refers to each and all of the claims that are released by this Agreement as described in Section 13 below.

2.17 "Released Parties" means and refers to the following Persons: A Cab LLC, A Cab Series LLC, Employee Leasing Company, Creighton J. Nady, and their past, present, and future subsidiaries, parent companies, their predecessors in interest and/or ownership, successors in interest and/or ownership, partners, licensees, assignees, managing members, Insurers, including claims under any and all insurance policies, estates, and other affiliates and/or related entities, and each of the foregoing Persons' respective past, present, and future officers, directors, attorneys, shareholders, indemnitees, predecessors, successors, trusts, trustees, partners, associates, principals, divisions, employees, Insurers, any and all insurance policies, members, agents,

Representatives, brokers, consultants, heirs, and assigns.

2.18 “Releasing Parties” means and refers to Plaintiff and her agents, representatives, attorneys, predecessors, successors, heirs, assigns, and any Persons or entities claiming by or through the Settlement Class, in their capacities as such.

2.19 “Settled Claims” means and refers to any and all claims, demands, controversies, actions, causes of action, debts, liabilities, rights, contracts, damages, costs (including attorney’s fees and court and litigation expenses), expenditures, indemnities, obligations and alleged losses of every kind or nature whatsoever known or unknown, anticipated or unanticipated, direct or indirect, fixed or contingent, asserted or unasserted, patent or latent, individually or on behalf of the general public, which Releasing Parties asserted, have ever had, now have, or may hereafter have, related to, arising out of, or which could have been asserted, inferred, implied, included or connected in any way with, any of the allegations in the Action, including, without limitation, any claims, whether they arise under federal law, common law, or under the laws of any state, pertaining to Defendants.

2.20 “Settlement Class” means all members of the Class as defined in Section 2.5 above who do not elect to “opt out.”

2.21 “Settlement Class Representative” means and refers to Plaintiff.

2.22 “Settlement Termination Date” means and refers to the date, if any, that any Party exercises its right to terminate this Agreement under the terms thereof.

3. SETTLEMENT PURPOSES ONLY

3.1 General. This Agreement is made for the sole purpose of settlement of the Class Action on a class-wide basis, as well as the settlement of all related individual claims made by Plaintiff. The settlement of the Class Action is expressly conditioned upon the entry of a Preliminary Approval Order and a Final Approval Order by the Court. In the event that the Court does not execute and file the Order of Final Approval, or in the

event the Order of Final Approval does not become final for any reason, or is modified in any material respect, or in the event that the Final Effective Date, as defined herein, does not occur, this Agreement shall be deemed null and void *ab initio* and shall be of no force and effect whatsoever, and shall not be referred to or utilized for any purpose whatsoever.

3.2 Settlement Class Only. Any certification of a preliminary or final Settlement Class pursuant to the terms of this Agreement shall not constitute, shall not be construed as, and shall not be admissible in any proceeding as an admission on the part of the Defendants or any other Person that the Class Action or any other action is appropriate for class treatment at trial pursuant to Rule 23 of the Nevada Rules of Civil Procedure or any other class or representative action statute or rule. This Agreement shall not prejudice Defendants' rights or any other Person's rights: (a) to oppose class certification in this Action other than for purposes of settlement pursuant to this Agreement; or (b) to oppose class certification in any other action or proceeding. Certification of the Settlement Class is stipulated to as a part of and for the purposes of this Agreement only. For the purposes of settlement and the proceedings contemplated herein for effectuating settlement *only*, the Parties stipulate and agree that Plaintiff shall represent the Class for settlement purposes and shall be the Settlement Class Representative, and that Class Counsel shall be appointed as counsel for the Settlement Class.

3.3 Admissibility. Additionally, this Agreement, any negotiations or proceedings related hereto, the implementation hereof, and any papers submitted in support of the motions for approval hereof (collectively, the "Settlement Proceedings") shall not be construed as, or deemed to be evidence of, any admission or concession by any of the Parties or any other Person regarding liability, damages, or the appropriateness of class treatment, and shall not be offered or received in evidence in any action or proceeding for any purpose whatsoever; provided, however, that this Agreement and the

Settlement Proceedings may be presented to the Court in connection with the implementation or enforcement of this Agreement, or as may be necessary or appropriate to further the purposes sought to be achieved by this Agreement.

3.4 Denial Of Liability. By entering into this Agreement, it is understood that the Released Parties, including Defendants, do not admit and, to the contrary, expressly deny that they have breached any duty, obligation, or agreement; that they have engaged in any illegal, tortious, or wrongful activity; that they are liable to Class members or any other Person; and/or, that any damages have been sustained by any Class Member or by any other Person in any way arising out of or relating to the conduct alleged in the Class Action. Defendants expressly reserve all rights to challenge Plaintiff's claims on all factual and procedural grounds, including but not limited to the assertion of any and all defenses.

4. CONDITIONS OF SETTLEMENT

Performance by Defendants of the obligations set forth in this Agreement is subject to all of the following material conditions:

- a. The delivery to counsel for Defendants of this Agreement, fully executed by all Plaintiffs and by Class Counsel.
- b. Execution and filing by the Court of the Preliminary Approval Order.
- c. Mailing and publication of the notices, described in Section 7 below.
- d. The Court conducting a Fairness Hearing.
- e. Execution and filing by the Court of the Final Approval Order.
- f. Execution and entry of Judgment by the Court.
- g. Mailing of the notice following Final Approval.
- h. Funding of the Settlement in accordance with the terms of this

Agreement.

The Parties hereby covenant and agree to cooperate reasonably and in good faith for the purpose of achieving occurrence of the conditions set forth above, including, without limitation, timely filing of all motions, papers and evidence necessary to do so, and refraining from causing or encouraging directly or indirectly any appeal or petition for writ proceedings seeking review of any Order contemplated by this Agreement. Class Counsel represent and warrant that they have authority to take all such actions required of them pursuant to this Agreement, and that by doing so they are not in breach or violation of any agreement with any Plaintiff or any third party.

5. JURISDICTION

The Parties agree that the Court has, and shall continue to have, jurisdiction to make any orders as may be appropriate to effectuate, consummate, and enforce the terms of this Agreement, to approve awards of attorney's fees and costs pursuant hereto, and to supervise the administration of and the distribution of money funded pursuant to this Agreement. Except for those matters specifically identified in this Agreement as being subjects for decision by a neutral third party, and any other matters which counsel for Plaintiffs and Defendants later agree in writing to refer to any neutral third party, any dispute or question relating to or concerning the interpretation, enforcement, or application of this Agreement shall be presented to the Court for resolution.

6. COURT APPROVAL OF THE SETTLEMENT

6.1 Preliminary Approval And Notice. Promptly after execution of this Agreement, the Parties, through their counsel, shall, by stipulation, jointly move the Court for an order certifying the class for settlement purposes and granting preliminary approval of this Agreement under the legal standards relating to the preliminary approval of class action settlements. In connection therewith, the Parties, through their counsel, shall submit to the Court a mutually acceptable proposed Preliminary Approval Order

and Notice Order, which shall provide, among other things, for the conditional certification for purposes of settlement only of the Class as to damages, and the approval of the Parties' proposed notice program as set forth in Section 7 below and their proposed claim form. The Parties shall also cooperate in the preparation and filing of a Motion for Final Approval.

6.2 Objection And Opt-Out Periods. The Preliminary Approval Order shall specify that Settlement Class members shall have until an agreed date certain, which shall be approximately forty-five (45) days from the commencement of the notice program pursuant to Section 7 below, to affirmatively request to be excluded from this Settlement or file and serve objections to this Agreement.

6.3 Final Approval. After the expiration of the Opt-Out Period, if the Agreement has not been validly terminated under Section 8 below, the Court shall conduct a hearing regarding final approval of this Agreement. The Final Approval Hearing shall be set one hundred and five (105) days after the Opt-Out Period expires, subject to the schedule of the Court. In connection therewith, the Settlement Class, through their counsel, shall file a motion for final approval and submit a mutually acceptable proposed Final Approval Order, which shall provide, among other things, for the final approval of this Agreement, certification of the Settlement Class, and a complete release of the Released Parties of and from all Settled Claims, and then take all steps necessary to terminate the Class Action with prejudice.

7. CLASS NOTICE PROCEDURES

7.1 Mailed Notice To Settlement Class. Promptly after entry of the Preliminary Approval Order and the Notice Order, Class Counsel or their designee shall send to the Class by first class postage prepaid a mailed notice in a form approved by the Parties and by the Court. In a good faith effort towards cooperation, counsel for Defendants shall review Defendants' records and use their best efforts, consisting of a

diligent search and reasonable inquiry of the records in its possession and believed to hold such information, to provide to Class Counsel a list containing as many names and addresses of such Class members that Defendants is able to identify in Microsoft Excel format. The first date of the issuance of these notices shall be deemed the commencement date for the purposes of this Agreement.

7.2 Remailing of Notices. Any notices to Class Members returned as “undeliverable” will be promptly skip-traced by Class Counsel or their designee and re-mailed using any additional information obtained in the skip-tracing process.

7.3 Records Of Notice. Class Counsel or their designee shall keep records of all notices, and the cost thereof, and any remailing thereof. Promptly upon request, Class Counsel or its designee shall make such records available for inspection and shall provide a sworn proof of mailing that identifies each address where class notice was mailed and/or re-mailed, as applicable.

8. RIGHT OF EXCLUSION

8.1 Procedure. Any member of the Class may request to be excluded from the Settlement Class at any time during the Opt-Out Period. The Notice sent to the Class Members pursuant to Section 7 will include a mutually-agreeable form that Class Members can use to request exclusion. A Class member may also submit any written request to exclude himself or herself from this Agreement, provided that the request shall contain, at a minimum, the Settlement Class member’s name, address, telephone number, and email address (if available). Such requests for exclusion must be sent by regular U.S. mail to the Claims Administrator, and must be postmarked on or before the end of the Claims Period. All Class members who do not request exclusion in accordance with this Agreement during the Claims Period will be deemed Settlement Class members for all purposes under this Agreement and will be irrevocably bound by this Agreement except as otherwise provided herein. Any Person who timely and properly seeks exclusion shall

not be entitled to any individual relief under this Agreement and shall not be deemed a party to this Agreement.

8.2 Withdrawal Of Election To Be Excluded. Prior to the entry of the Final Approval Order, any Person who has elected to be excluded may withdraw that election by notifying the Claims Administrator by telephone (to be confirmed in a letter and copied to other counsel identified in Section 14) or in writing that he or she wishes to be a member of the Settlement Class. The Claims Administrator shall each maintain records of all withdrawn exclusions, and shall provide such information to the Parties and to the Court. At any time after the entry of the Final Approval Order, any Person who has elected to be excluded from this Agreement may withdraw that election only upon receiving the written consent of Defendants, through its counsel, and Court approval.

8.3 Persons To Be Expressly Excluded. Michael Murray, Michael Reno, and Michael Sargent are plaintiffs in a separate action entitled *Murray et al. v. A Cab Taxi Service LLC et al.*, Clark County Nevada District Court Case No. A-12-669926-C, which also alleges claims of unpaid minimum wages against A Cab Taxi Service LLC, A Cab LLC, and Creighton J. Nady, as well as associated penalties pursuant to NRS 608.040. These individuals are expressly excluded from this Settlement for all purposes.

9. SETTLEMENT TERMINATION AND/OR MODIFICATION

9.1 Termination Prior To Funding. This Agreement, and each of the obligations set forth herein, are subject to and expressly conditioned upon the funding on terms and conditions acceptable to Defendants, as set forth in Section 10 below. If such funding is not fully performed as set forth in this Agreement, and such non-performance is not cured within twenty-one (21) business days following notice given by Class Counsel, either of which deadline(s) may be extended upon an agreement of the Parties, through their counsel, this Agreement shall be voidable.

9.2 Termination Prior To Final Approval. This Agreement is expressly

conditioned upon Court approval of all aspects of this Agreement, and the entry of the Preliminary Approval Order and the Final Approval Order, all in accordance with the terms of this Agreement. If the Court declines to enter any of the Orders identified in this Section 9.2, or modifies in what any Party reasonably determines to be a material way any aspect of this Agreement or of such Orders, such Party may declare this Agreement null and void by giving written notice to counsel for the other Parties within twenty (20) days after such refusal or modification. Prior to giving such notice, the Parties shall consult with the Court on the issue of whether there is a reasonable way to avoid any Party exercising its right to declare this Agreement void under this Section; the twenty-day period is tolled during any such consultations.

9.3 Termination After Appeal. If a court declares unenforceable, reverses, vacates, or modifies on appeal any aspect of this Agreement, in what any Party reasonably determines to be a material way, such Party may declare this Agreement null and void by giving written notice to counsel for the other Parties within twenty days after notice of such ruling. Prior to giving such notice, the Party seeking to terminate this Agreement shall consult with the trial court on the issue of whether there is any reasonable way to avoid exercising its right to declare this Agreement null and void under this Section.

9.4 Procedures For Settlement Termination. In the event that a Party gives proper notice of termination pursuant to the terms of this Agreement, all monies paid into the Settlement Account (except for notice and/or administration costs already expended) shall be returned to Defendants, and none of the Parties shall have any further obligations under this Agreement.

10. SETTLEMENT PAYMENTS

10.1 Settlement Amount. Defendants agree to pay a total sum of Two Hundred Twenty-Four Thousand Five Hundred Twenty-Nine Dollars (\$224,529.00 USD)

as a fund for the Class. Defendants shall have no further obligation to make any payment or to provide any benefit referenced in this Agreement or relative to the Class Action except as expressly set forth herein. Any remaining portion of the Settlement Fund following payments referenced under in Section 11 below shall revert to Defendants.

10.2 Funding Commitment. Defendants shall use their best efforts to fund the obligations of this Agreement in accordance with the procedures set forth herein.

10.3 Funding Upon Preliminary Approval. Beginning no later than thirty (30) days of the entry of the Preliminary Approval Order, Defendants shall deposit the total amount of Two Hundred Twenty-Four Thousand Five Hundred Twenty-Nine Dollars (\$224,529.00) in twelve (12) equal monthly installments of Eighteen Thousand Seven Hundred Ten Dollars and Seventy-Five Cents each (\$18,710.75). The checks shall be delivered to the attention of Mark J. Bourassa, Esq. and deposited into Class Counsel's Trust Account.

10.4 Interest On The Settlement Fund. If the Final Approval Order is issued (and not reversed on appeal, if any), all interest, if any, generated by the Settlement Fund shall accumulate and shall be the property of the Settlement Class. If the Final Approval Order is not issued, all interest generated by the monies in the Settlement Fund Joint Account shall accumulate and shall be the property of Defendants.

11. PROTOCOL FOR ADMINISTERING SETTLEMENT

11.1 Allocation of Settlement Fund. The Settlement Fund shall be allocated to the Class Members based upon the number of workweeks each Class Member worked during the statutory period. Within thirty (30) days of the issuance of the Order granting Preliminary Approval of the Settlement, Defendants shall provide Class Counsel and Nicole Omps, CPA of Beta Consulting and provide Class Counsel and Ms. Omps with sufficient information to determine the number of workweeks for each Class Member, and Ms. Omps with be responsible for calculating the amount due to each Class Member.

11.2 Payment of Settlement Amount. Upon the Final Approval of the Settlement by the Court and receipt from Defendants of the total Settlement Amount, Class Counsel shall issue checks from the Settlement Fund in amounts calculated pursuant to Section 11.1 of this Agreement to all Class Members who did not elect to exclude themselves from this settlement as set forth in Section 8 of this Agreement. Any checks that are returned as undeliverable will be skip-traced and remailed. All checks not negotiated within 180 days of the last date of mailing will be considered null and void.

11.3 Ineligible Settlement Class Members. Notwithstanding this Section 11, or any other provision of this Agreement, the following Settlement Class members are not entitled to receive any benefit under this Agreement: (a) Persons who previously settled, adjudicated, dismissed with prejudice, assigned any or all rights and/or claims relating to or arising out of an alleged failure to pay minimum wage with Defendants, and/or previously received a payment in connection with an alleged claim against Defendants; and (b) those persons specifically set forth in Section 8.3 of this Agreement.

11.7 Maintenance Of Records. Class Counsel shall maintain complete, accurate, and detailed records regarding the administration of the Settlement Fund, including: any and all written requests for exclusion; any objection to proposed benefits and the resolution thereof; and any and all receipts by and disbursements from the Settlement Amount.

12. CLASS ATTORNEYS' FEES AND COSTS

12.1 Plaintiff's Attorney Fees And Costs. Class Counsel shall submit a petition to the Court, in connection with the motion for final approval, seeking approval of an award of attorneys' fees and seeking approval of an award for reimbursement of all necessary and reasonable costs and other expenses incurred by counsel for the Settlement Class. Plaintiff shall be entitled to seek an award of reasonable attorneys' fees, costs, or

other expenses claimed by Class Counsel relative to the Action separate from the Settlement Amount up to the total amount of Fifty-Seven Thousand Five Hundred Dollars (\$57,500.00). Any award of attorneys' fees and costs shall be due and payable within thirty (30) days after notice of entry of order awarding the fees and costs.

12.2 Incentive Payment. Class Counsel shall submit a request to the Court, in connection with the motion for final approval, seeking approval for an award of an incentive payment in the amount of Five Thousand Dollars (\$5,000.00) for Plaintiff, to be paid from the Settlement Fund. Defendants will not oppose such a request. The incentive award from the Court, if any, shall be paid to Plaintiff concurrently with any disbursement to her from the Settlement Fund as set forth in Section 11 above.

13. RELEASES

13.1 Final Approval Order. The Final Approval Order shall include a full, general release by the Releasing Parties of Defendants and the other Released Parties defined above from any and all Settled Claims.

13.2 Release of Defendants by Settlement Class. Except for the obligations and rights created by this Agreement, and upon Final Approval of the Settlement, the Settlement Class hereby releases and absolutely and forever discharges Defendants and each of its predecessors, successors, subsidiaries, parent companies, affiliates, assigns, agents, directors, officers, employees, representatives, trustees, beneficiaries, and associates from any and all Settled Claims.

13.3 Mutual Releases. The Releasing Parties acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those now known or believed to be true with respect to the subject matter of this Agreement and/or the Settled Claims. The Releasing Parties acknowledge that they intend to and will fully, finally, and forever settle and release any and all Settled Claims described herein, whether known or unknown, suspected or unsuspected, which

now exist, hereinafter may exist, or heretofore may have existed. In furtherance of this intention, the releases contained in this Agreement shall be and remain in effect as full and complete releases of the Settled Claims by the Releasing Parties without regard to the subsequent discovery or existence of such different or additional claims or facts. Furthermore, upon the expiration of the Claims Period, each and every Releasing Party and all successors in interest shall be permanently enjoined and forever barred from prosecuting any and all Settled Claims against Defendants, and each of its predecessors, successors, subsidiaries, parent companies, affiliates, assigns, agents, directors, officers, employees, representatives, trustees, beneficiaries, and associates.

14. NOTICES

14.1 Designated Recipients. Unless otherwise specified in this Agreement or agreed to in writing by the party receiving such communication, all notices, requests, or other required communications hereunder shall be in writing and shall be sent by one of the following methods: (a) by registered or certified, first class mail, postage prepaid; (b) by facsimile, with the original by first class mail, postage prepaid; or (c) by personal delivery (including by Federal Express or other courier service). All such communications shall be sent to the undersigned persons at their respective addresses as set forth herein.

Class Counsel:

Mark J. Bourassa, Esq.
The Bourassa Law Group
8668 Spring Mountain Road, Suite 101
Las Vegas, NV 89117
702-851-2180 (tel.)
702-851-2189 (fax)

Counsel for Defendants:

Esther C. Rodriguez, Esq.
Rodriguez Law Offices, PC
10161 Park Run Dr, Suite 150

Las Vegas, Nevada 89145
702-320-8400 (tel.)
702-320-8401 (fax)

Notice shall be deemed effective: (1) if given by mail or personal delivery, when signed for or when delivery is refused; and (2) if given by facsimile, when received as evidenced by a confirmation or evidence of delivery.

14.2 Changes In Designated Recipients. Any Party may re-designate the Person to receive notices, requests, demands, or other communications required or permitted by this Agreement by providing written notice to the other Parties, the Claims Administrator, and the Court.

13. MISCELLANEOUS

13.1 Entire Agreement. This Agreement supersedes and replaces any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or in writing, between the Parties with respect to the subject matter hereof. The Parties acknowledge that no representations, inducements, promises, or statements, oral or otherwise, have been made or relied upon by any of the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference herein, and further agree that no other covenant, representation, inducement, promise or statement not set forth in writing in this Agreement shall be valid or binding.

13.2 Modification Or Amendment. This Agreement may not be modified or amended except in a writing signed by counsel for Plaintiff and Defendants, respectively, and approved by the Court.

13.3 Execution In Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

13.4 Headings. The headings of the sections, paragraphs, and subparagraphs of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

13.5 Corporate Status. If any Party is or becomes during the Settlement Proceedings a suspended, forfeited, merged, or dissolved corporation, it is herein represented that that Party's authorized agent enters this Agreement on that Party's behalf to the full extent of the applicable laws.

13.7 Gender. Whenever in this Agreement the context so requires, the neuter gender shall refer to and include the masculine or feminine, and the singular shall refer to and include the plural.

13.8 Further Acts. The Parties shall perform such further acts and execute such further documents as may be reasonably necessary or appropriate to effectuate the terms and purposes of this Agreement.

13.9 Heirs, Successors, And Assignees. This Agreement shall be binding upon and shall inure to the benefit of the Parties' respective heirs, successors, and assignees.

13.10 Choice Of Law. This Agreement in all respects shall be interpreted, enforced, and governed by and under the laws of the State of Nevada applicable to instruments, persons, and transactions which have legal contacts and relationships solely within the State of Nevada. Any action pertaining to the terms of this Agreement shall be brought in the Court defined herein.

13.11 Warranty Regarding Advice. Class Counsel represents and warrants that the Individual Plaintiffs have been fully advised of and agree to the terms of this Agreement. The Parties hereby acknowledge that they have been represented by independent legal counsel throughout all negotiations which preceded the execution of this Agreement, and that this Agreement has been executed with the consent and on the advice of said counsel.

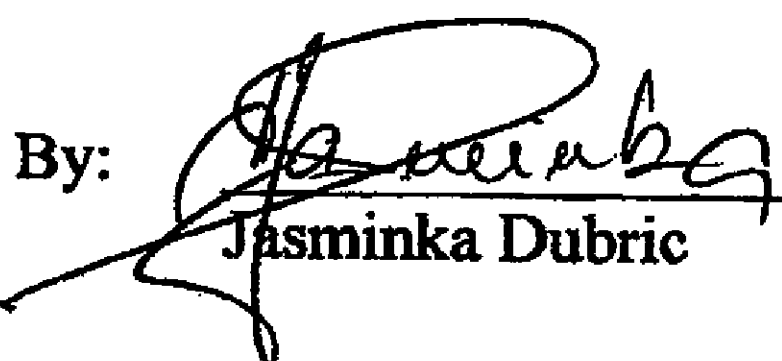
13.12 Fair, Adequate and Reasonable Settlement. The Parties believe this Settlement is a fair, adequate and reasonable settlement of the Action and have arrived at

this Settlement in arms-length negotiations, taking into account all relevant factors, present and potential. This Settlement was reached after a settlement conference before Judge Jerry A. Wiese II with the assistance of a neutral CPA, Nicole Omps of Beta Consulting.

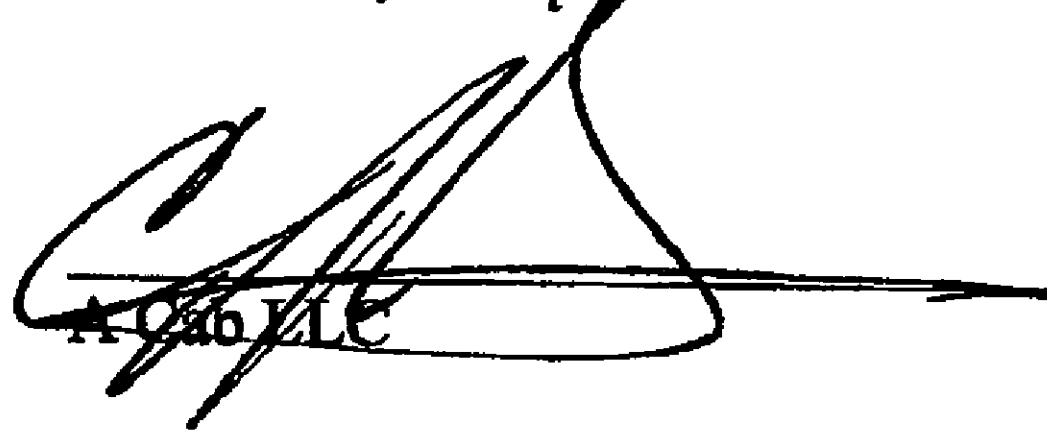
13.14 Voluntary Agreement. This Agreement is executed voluntarily and without duress or undue influence on the part or on behalf of the Parties, or of any other person or entity.

AGREED TO AND ACCEPTED.

DATED: 12/28/16

By: 
Jasminka Dubric

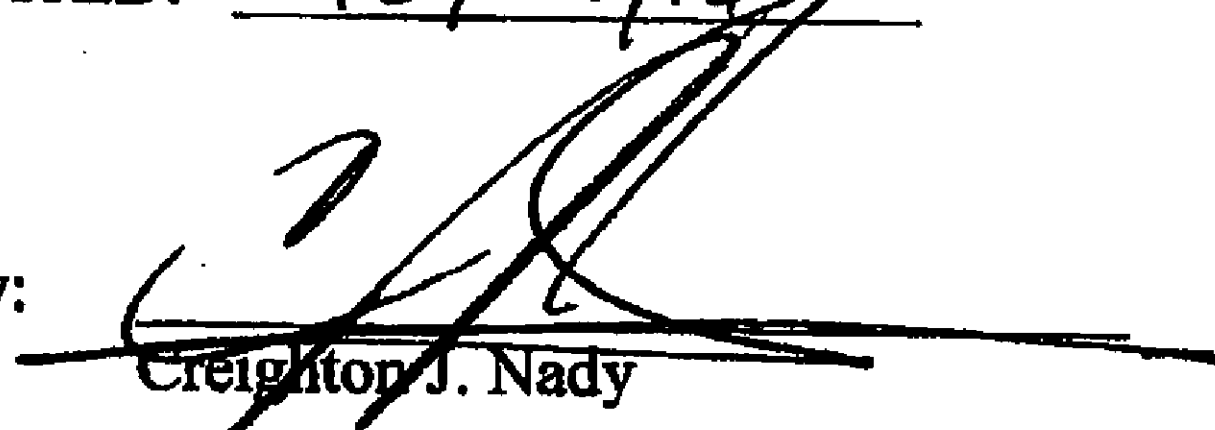
DATED: 12/28/16

By: 
A Cab LLC

DATED: 12/28/16

By: 
A Cab Series LLC, Employee
Leasing Company


DATED: 12/28/16

By: 
Creighton J. Nady

APPROVED AS TO FORM AND CONTENT:

DATED: 12/28/16

BOURASSA LAW GROUP, LLC

By: 
Mark J. Bourassa, Esq.
Attorneys for Plaintiff

DATED: 12/28/16

RODRIGUEZ LAW OFFICES, PC


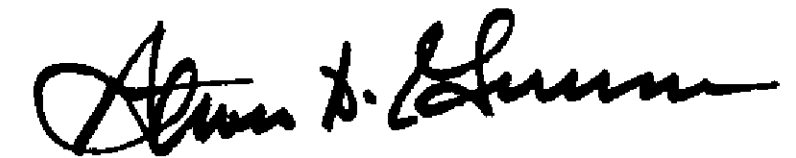
By: 
Esther C. Rodriguez, Esq.
Attorneys for Defendants

EXHIBIT “B”



CLERK OF THE COURT

MODR

MARK J. BOURASSA, ESQ.

Nevada Bar No. 7999

TRENT L. RICHARDS, ESQ.

Nevada Bar No. 11448

THE BOURASSA LAW GROUP

8668 Spring Mountain Road, Suite 101

Las Vegas, Nevada 89117

Telephone: (702) 851-2180

Facsimile: (702) 851-2189

Attorneys for Plaintiffs

DISTRICT COURT

DEPARTMENT XXV

NOTICE OF HEARING

CLARK COUNTY, NEVADA DATE 1/31/17 TIME 9:00 am

APPROVED BY 

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

Plaintiff,)

vs.)

A CAB, LLC, a Nevada Limited Liability)
Company; A CAB SERIES LLC, EMPLOYEE)
LEASING COMPANY, a Nevada Series Limited)
Liability Company; CREIGHTON J. NADY, an)
individual; and DOES 3 through 20)

Defendant.)

Case No.: A-15-721063-C

Dept. No.: XXV

JOINT MOTION FOR AN ORDER:

- (1) CONDITIONALLY CERTIFYING SETTLEMENT CLASS;**
 - (2) APPOINTING CLASS COUNSEL;**
 - (3) PRELIMINARY APPROVAL OF CLASS SETTLEMENT AGREEMENT;**
 - (4) DIRECTING THAT NOTICE BE SENT TO CLASS MEMBERS; AND**
 - (5) SCHEDULING A FINAL FAIRNESS HEARING; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**
- ON AN ORDER SHORTENING TIME**

**TO THIS HONORABLE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS
OF RECORD:**

PLEASE TAKE NOTICE that Plaintiff Jasminka Dubric, individually and on behalf of those similarly situated (the "Class") and Defendants A Cab, LLC, A Cab Series LLC, Employee Leasing Company, and Creighton J. Nady (collectively referred to as the "Parties"), will and hereby do jointly and respectfully move this Court, on an order shortening time, for an order:

- (1) conditionally certifying the settlement class;
- (2) appointing class counsel
- (3) granting preliminary approval of the proposed settlement of this class action;

1 (4) directing that notice of the proposed settlement be mailed to Class members; and

2 (5) scheduling a final fairness hearing for final approval of settlement.

3 Said motion is based on the grounds that the Parties have stipulated to the treatment of this
4 matter as a class action for settlement purposes only and have reached an agreement in principle to settle
5 this matter which is fair, adequate, reasonable and in the best interests of the class.

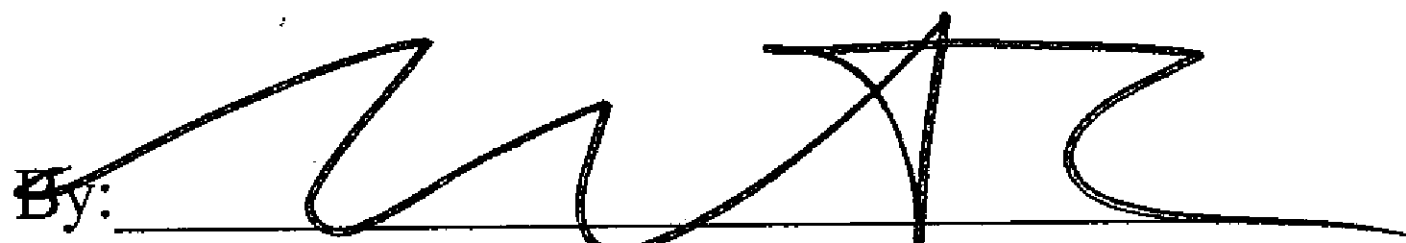
6 This motion will be and hereby is based on this Notice of Motion and Motion, the attached
7 Memorandum of Points and Authorities, the concurrently filed Declarations of Mark J. Bourassa, Esq.
8 and Esther C. Rodriguez, Esq., together with the Exhibits attached thereto, including the proposed Class
9 Action Settlement Agreement and Release, the proposed notice to Class members and the proposed
10 claim form, the complete files and records in this action, and on such further evidence and argument as
11 may be presented prior to or at the hearing on this motion.

12 Because all Parties have agreed to the proposed settlement and file this motion jointly, this
13 motion shall not be opposed.

14 Respectfully submitted:

15
16 DATED this 17th day of January, 2017.

17 **THE BOURASSA LAW GROUP**

18
19 By: 

20 MARK J. BOURASSA, ESQ.
Nevada Bar No. 7999
21 TRENT L. RICHARDS, ESQ.
Nevada Bar No. 11448
22 8668 Spring Mountain Rd, Suite 101
23 Las Vegas, Nevada 89117

24 *Attorneys for Plaintiffs*

DATED this 17 day of January, 2017.

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

18
19 By: 

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AFFIDAVIT OF TRENT L. RICHARDS, ESQ., IN SUPPORT OF
THE ORDER SHORTENING TIME

STATE OF NEVADA
COUNTY OF CLARK

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)
)

SS:

I, TRENT L. RICHARDS, ESQ., being first duly sworn, under oath, deposes and says:

1. I am an attorney licensed to practice law in the State of Nevada;

2. I have personal knowledge of the facts and circumstances herein and could testify to the same;

3. I am counsel for Plaintiff Jasminka Dubric, individually and on behalf of those similarly situated in this matter;

4. This matter concerns allegations of violations of the Nevada Constitution, Article 15, Section 16 and NRS 608.160(1)(b) arising from Defendants purportedly failing to pay minimum wage to its taxi cab drivers.

5. This matter has been stayed since July 22, 2016 wherein this Court granted a joint motion to continue trial so that the parties could pursue a settlement conference.

6. A settlement conference was held on October 5, 2016, at which the parties were able to reach a resolution and settlement of this case.

7. As part of the settlement, the parties agreed to class certification and additional terms regarding the settlement, payment terms, payment to the class representative, class member distributions, etc., were also agreed to as part of the settlement.

8. Thereafter, the parties worked together in good faith to prepare the settlement documents.

9. This matter was then referred back to the originating department, to await the filing of a proposed Stipulation and Order for Class Certification.

1 10. The settlement agreement among and between the parties is subject to and contingent
2 upon the Court's approval of the class certification, and all other terms of settlement.

3
4 11. An Order on Shortening Time is necessary as a tentative settlement agreement has been
5 reached, contingent upon this Court's approval, thus warranting this Motion be heard on an Order
6 Shortening Time.

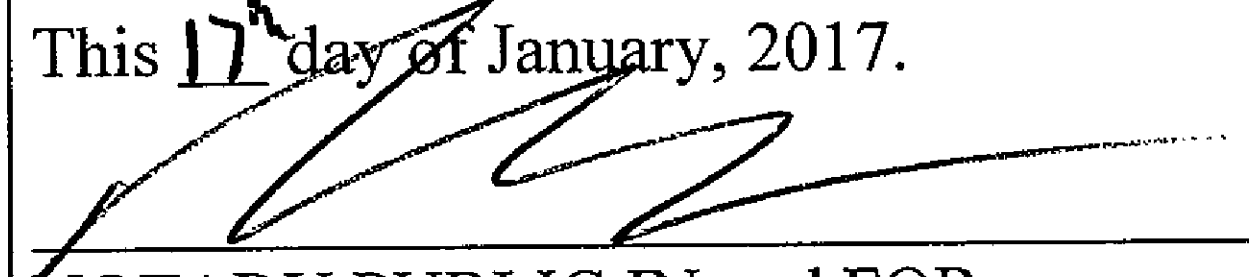
7 12. Additionally, an Order on Shortening Time is necessary as counsel for both parties have
8 upcoming trials in unrelated matters that could further delay resolution of this matter.

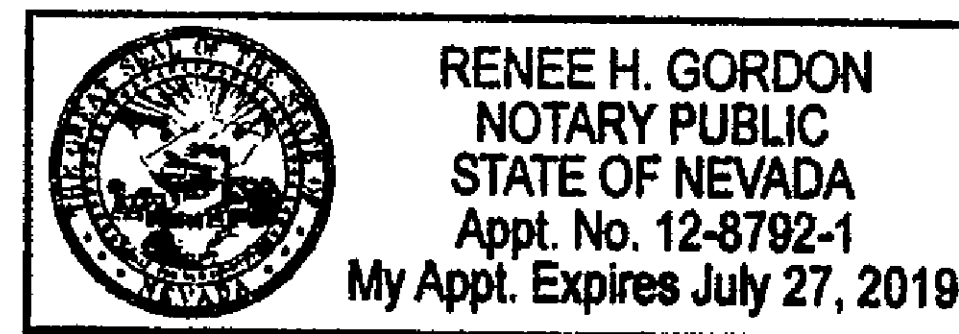
9 13. This Motion is not filed to harass or unnecessarily delay this matter and does not pose an
10 undue burden on opposing counsel or parties. This request is made in good faith, in the interests of
11 justice and will not cause prejudice to any party in the case.
12

13 FURTHER AFFIANT SAYETH NAUGHT.

14
15 
16 TRENT L. RICHARDS, ESQ.

17 SUBSCRIBED AND SWORN to before me
18 This 17 day of January, 2017.

19 
20 NOTARY PUBLIC IN and FOR
21 THE COUNTY OF CLARK
22 STATE OF NEVADA



ORDER SHORTENING TIME

Pursuant to the forgoing affidavit and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUGED, AND DECREED that the foregoing

JOINT MOTION FOR AN ORDER: (1) CONDITIONALLY CERTIFYING SETTLEMENT CLASS; (2) APPOINTING CLASS COUNSEL; (3) PRELIMINARY APPROVAL OF CLASS SETTLEMENT AGREEMENT; (4) DIRECTING THAT NOTICE BE SENT TO CLASS MEMBERS; AND (5) SCHEDULING A FINAL FAIRNESS HEARING; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF ON AN ORDER SHORTENING TIME shall be heard on the 31st day of January, 2017 at 9:00 a.m./p.m. or as soon thereafter as counsel can be heard.

By: 
DISTRICT COURT JUDGE

Submitted By:

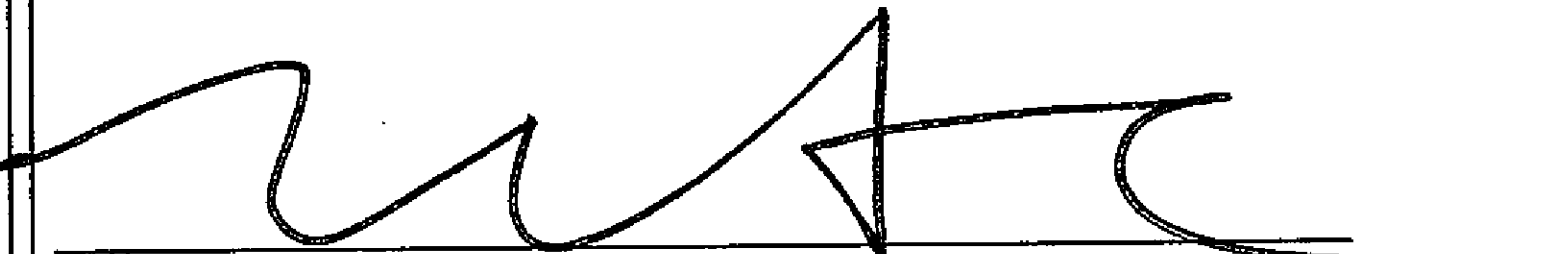

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This action involves the claims against A Cab, LLC, A Cab Series LLC, Employee Leasing Company, and Creighton J. Nady (collectively “Defendants”) on behalf of a putative class and Plaintiff Jasminka Dubric based upon allegations of, among other things, violations of the Nevada Constitution, Article 15, Section 16 and NRS 608.160(1)(b) arising from Defendants purportedly failing to pay minimum wage to its taxi cab drivers (“Drivers”). After over a year of vigorous prosecution and defense of this action, extensive discovery and arms-length adversarial negotiations, the Plaintiff, Defendants, and their respective counsel have reached a proposed Settlement that the Parties believe to be fair, adequate and reasonable, and in the best interests of the Class.

Following a settlement conference on October 5, 2016, the Parties agreed to stipulate to class certification for the purposes of settlement, and arrived at a mutually agreeable Class Action Settlement Agreement and Release (“Settlement Agreement”). A true and correct copy of the fully executed Settlement Agreement is attached to the concurrently filed Declaration of Mark J. Bourassa, Esq. (“Bourassa Decl.”) as Exhibit “A.” Consistent with the Settlement Agreement, the Parties have lodged with the Court a proposed Order (1) conditionally certifying the settlement class; (2) appointing class counsel; (3) preliminarily approving class action settlement; (4) directing mailing of class notice; and (5) scheduling a final fairness hearing (“Fairness Hearing”). Moreover, the Parties request that the Court establish certain dates for the mailing of notice to the Settlement Class and the procedure and timing for filing objections, if any, to the Settlement, or to opt out of the Settlement. A true and correct copy of the Parties’ proposed Notice of Proposed Class Action Settlement is attached to the Bourassa Decl. as Exhibit “B.”

While the Parties believe the proposed Settlement Agreement merits final approval, this Court need not make that determination at this time. The Court is being asked to conditionally certify the class, to appoint class counsel, to preliminarily approve the Settlement Agreement, to permit notice of the terms of the proposed Settlement Agreement to be given to the Class, and to schedule a hearing to consider any views by Class members of the fairness of the proposed Settlement Agreement. Given the nature of the dispute, and the uncertainties inherent in any class action litigation, the proposed

1 Agreement eliminates the risk that the action would be dismissed without any benefit or relief to the
2 Class. Moreover, as discussed herein, the proposed Settlement Agreement is well within the range of
3 possible approval in that its terms are fair, reasonable, and adequate, and in the best interests of the class.
4 Accordingly, the Parties submit that preliminary approval of the Settlement Agreement is warranted, and
5 that the Court should direct that notice be provided to the Settlement Class and that a Fairness Hearing
6 be scheduled.

7 **II. NATURE OF THE CASE**

8 On or about July 7, 2015, a putative class action was filed by Plaintiff Jasminka Dubric
9 (“Plaintiff”) in the District Court of Clark County, Nevada as Case No. A-15-721063-C, and was later
10 amended on or about November 30, 2016, to include additional defendants. The lawsuit alleges that
11 while Plaintiff was employed by Defendants as a taxi cab driver, Plaintiff’s wages were frequently less
12 than the minimum wage required under the Nevada Constitution, Article 15, Section 16. It is undisputed
13 that, pursuant to Defendants’ policies applicable to all Drivers, in the event that an employee’s
14 commissions do not equal or exceed minimum wage, Defendants would pay the Driver a “minimum
15 wage supplement.” However, Plaintiff claims her compensation, like all Drivers for Defendants, did not
16 meet the minimum wage requirements because it is also Defendants’ policy that any tips earned by
17 Drivers are to be credited by Defendants towards the calculation of minimum wage in violation of NRS
18 608.160(1)(b). Plaintiff further claims that Defendants made other unlawful and/or unauthorized
19 deductions from Plaintiff’s and the other Drivers’ wages, including but not limited to deductions for
20 purported “cash loan fees,” thus causing Plaintiff’s and the other Drivers’ pay to drop below the
21 minimum wage. In its Answer to Plaintiff’s Complaint, A Cab, LLC denied, and continues to deny,
22 each and every one of Plaintiff’s claims.

23 Prior to the settlement conference in this matter, the Parties took depositions and propounded
24 written discovery. Hundreds of pages of documents were exchanged in the process. Additionally, as
25 part of settlement discussions, the Parties jointly engaged an independent CPA, Beta Consulting, to
26 prepare a report regarding the dollar amounts of the allegedly unpaid wages for all potential class
27 members. Before the case went to trial, the Parties agreed to attend a settlement conference. The case
28 was submitted to a settlement conference on October 5, 2016, before the Honorable Jerry A. Wiese II.

1 After having engaged in the aforementioned extensive discovery and settlement conference,
2 notwithstanding Defendants' position, the Parties agreed to stipulate to certification of a single class for
3 settlement purposes, consisting of "all persons who were employed by Defendants during the applicable
4 statutory period prior to the filing of this Complaint continuing until date of judgment as Drivers in the
5 State of Nevada" ("Settlement Class"). *See* Settlement Agreement, ¶2.5 attached to the Bourassa Decl.
6 at Exhibit "A." The Parties have also arrived at a mutually agreeable Class Action Settlement
7 Agreement and Release in an attempt to consummate settlement of this class action on a class-wide
8 basis, as well as the settlement of all related individual claims. The proposed class representative is
9 Plaintiff Jasminka Dubric.

10 **III. TERMS OF THE PROPOSED SETTLEMENT**

11 As a direct result of the prosecution of this action, the negotiations between the Parties, and the
12 October 5, 2016 settlement conference, a proposed Settlement Agreement has been reached on the
13 following terms:

14 The Class comprises "all persons who were employed by Defendants during the applicable
15 statutory period prior to the filing of this Complaint continuing until date of judgment as Drivers in the
16 State of Nevada." *See* Settlement Agreement, ¶2.5 attached to the Bourassa Decl. at Exhibit "A."
17 Moreover, in furtherance of the Settlement, Plaintiff and Defendants have agreed that this action shall be
18 conditionally certified for settlement purposes only. *See id.* at ¶ 3.1.

19 Defendants have agreed to pay a total sum of Two Hundred Twenty-Four Thousand Five
20 Hundred Twenty-Nine Dollars (\$224,529.00) (the "Settlement Amount") as a fund for the Class. *See id.*
21 at ¶ 10.1. The Parties agree that The Bourassa Law Group ("Class Counsel") shall be appointed Class
22 Counsel. *See id.* at ¶2.6. Defendants will not oppose a request for attorneys' fees, costs, or other
23 expenses on the condition that such request shall not exceed Fifty-Seven Thousand Five Hundred
24 Dollars (\$57,500.00), which will be administrated from the Settlement Amount. *See id.* at ¶ 12.1. Any
25 and all fees, costs, and other expenses relative to the administration of the Settlement Amount, including
26 but not limited to the expenses for providing and publishing notice, claims administration, and Claims
27 Administrator fees, shall be borne by the Settlement Fund but shall not exceed \$57,500.00. *See id.*

28 Further, Defendants will not oppose a request for an additional incentive payment in the amount

1 of Five Thousand Dollars (\$5,000.00) for Jasminka Dubric, to be paid from the Settlement Fund. *See id.*
2 at ¶12.2. Defendants do not have any obligation to make any payment or to provide any benefit
3 referenced beyond the amounts set forth above. *See id.* at ¶10.1. Any remaining portion of the
4 Settlement Amount following the aforementioned payments shall revert to Defendants. *See id.*

5 The Settlement provides that upon this Court's granting preliminary approval of the proposed
6 Settlement, Class Counsel or their designee shall mail notice of the proposed Settlement to potential
7 members of the Settlement Class whose names shall be provided to the Class Counsel. *See id.* at ¶ 7.1.
8 The potential members of the Settlement Class will be identified by Defendants following a diligent
9 search and reasonable inquiry of its records. *See id.*

10 The Settlement Agreement further provides, Settlement Class members shall have an agreed date
11 45 days from commencement of the notice program to affirmatively request to be excluded from the
12 Settlement or file and serve objections to the Settlement Agreement. *See id.* at ¶6.2 & 8.1-8.2. Upon
13 final approval of the settlement from the Court and receipt of the total Settlement Amount from
14 Defendants, Class Counsel shall issue checks from the Settlement Fund to all Class Members who did
15 not elect to exclude themselves. *See id.* at ¶ 11.2. The amount that each claimant will receive shall be
16 determined by a neutral CPA, Nicole Omps, CPA of Beta Consulting, jointly retained by the Parties,
17 who will determine the number of workweeks for each Class Member and calculate the amount due.
18 *See id.* at ¶ 11.1.

19 In return for the consideration provided for in the Settlement Agreement, the Class agrees to
20 release, upon expiration of the opt out period, Defendants from any and all settled claims that were
21 brought or could have been brought against Defendants based upon the acts and omissions alleged in
22 this case. *See id.* at ¶13.1-13.3.

23 The terms of the Settlement Agreement and proposed Notice of Proposed Class Action
24 Settlement ("Notice") also set forth the manner in which members of the Class may seek to exclude
25 themselves from the binding effect of the Settlement Agreement (*see id.* at ¶¶ 8.1-8.3), or to oppose the
26 proposed Settlement Agreement and appear in this lawsuit. *See id.* at ¶ 6.2.

1 **IV. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE**

2 Where, like here, the proposed settlement involves a proposed class that has not yet been
3 certified, a court must preliminarily certify the proposed settlement class before it can preliminarily
4 approve the class settlement. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 619 (1997). A class
5 may be certified if a plaintiff has met all four requirements of Nevada Rule of Civil Procedure 23(a), as
6 well as at least one of the three requirements of Rule 23(b). *See Nev. R. Civ. P. 23(a)–(b); Johnson v.*
7 *Travelers Ins. Co.*, 89 Nev. 467, 471, 515 P.2d 68, 71 (1973).

8 Rule 23(a) requires: (1) that the proposed class be “so numerous that joinder of all members is
9 impracticable”; (2) that there be “questions of law or fact common to the class”; (3) that the
10 representative plaintiff’s claims be typical of the class’ claims; and (4) that the representative plaintiff
11 will “fairly and adequately protect the interests of the class.” Nev. R. Civ. P. 23(a). These four elements
12 are mandatory prerequisites to a class being certified. *Id.*

13 In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class
14 certification must also show that the action is appropriate under Nev. R. Civ. P. 23(b)(1), (2) or (3).”
15 *Johnson*, 89 Nev. at 741; *see also Meyer v. Eighth Judicial Dist. Court*, 110 Nev. 1357, 1363, 885 P.2d
16 622, 626 (1994). Here, the parties submit that certification is appropriate for the purposes of settlement
17 under Rule 23(b)(3). In order to qualify under this subsection, a class must satisfy two conditions in
18 addition to the Rule 23(a) prerequisites: common questions must ‘predominate over any questions
19 affecting only individual members,’ and class resolution must be ‘superior to other available methods
20 for the fair and efficient adjudication of the controversy. *Shuette v. Beazer Homes Holdings Corp.*, 121
21 Nev. 837, 850, 124 P.3d 530, 539 (2005); Nev. R. Civ. P. 23(b)(3). In making this determination, the
22 courts are advised to consider: (1) the class members’ interests, if any, in individually controlling the
23 prosecution of separate actions; (2) the extent and nature of any lawsuits concerning the controversy
24 already begun by members of the proposed class; (3) the desirability of concentrating the litigation in
25 the particular judicial forum; and (4) “the difficulties likely to be encountered in the management of a
26 class action.” Nev. R. Civ. P. 23(b)(3).

1 **A. The Proposed Settlement Class is Sufficiently Numerous**

2 The numerosity requirement for certification calls for a class to be sufficiently large such that
3 joinder of all members is impractical or individual joinder is impractical. Nev. R. Civ. P. 23(a)(1);
4 *Shuette*, 121 Nev. at 847 (indicating a “putative class of forty or more generally will be found
5 ‘numerous’”). Here, the proposed potential Settlement Class consists of approximately 210 Drivers
6 employed by Defendants and affected by their wage policies. *See* Defendant A Cab, LLC’s Answer to
7 Interrogatory No. 3, attached to the concurrently filed Declaration of Esther C. Rodriguez (“Rodriguez
8 Decl.”) as Exhibit “1”. Joinder of all members would be exceedingly difficult given the large number
9 of individual claimants. Accordingly, the numerosity requirement is met.

10 **B. There Are Questions of Law and Fact Common to the Class**

11 Second, Rule 23(a)(2) mandates that there be commonality of questions of law or fact between
12 the class members. Nev. R. Civ. P. 23(a)(2). “Questions are common to the class when their answers as
13 to one class member hold true for all class members.” *Shuette*, 121 Nev. at 848. In *Wal-Mart Stores v.*
14 *Dukes*, 564 U.S. 338 (2011), the Supreme Court expanded on the notion of commonality, stating the
15 “claims must depend upon a common contention. . . . That common contention, moreover, must be of
16 such a nature that it is capable of classwide resolution—which means that determination of its truth or
17 falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* at
18 350.

19 Here, the claims of both the Plaintiff and the rest of the proposed Settlement Class all stem from
20 the same alleged conduct: failing to pay minimum wage in violation of the Nevada Constitution,
21 Article 15, Section 16. Plaintiff alleges that Defendants had the policy of crediting tips earned by
22 Plaintiff and other Drivers towards the calculation of minimum wage in violation of NRS 608.160(1)(b),
23 and made other unlawful and/or unauthorized deductions from Plaintiff’s and other Drivers’ wages. As
24 Plaintiff and all the other Drivers of Defendants were subject to the same policies as employees of
25 Defendants, this element is satisfied.

26 **C. The Class Representative’s Claims are Typical**

27 Rule 23(a)(3) requires that a representative plaintiff’s claims be “typical of those of the class.”
28 *Shuette*, 121 Nev. 848; Nev. R. Civ. P. 23(a)(3). The typicality requirement generally focuses on the

1 defendant's actions, not the plaintiff's conduct. *Shuette*, 121 Nev. at 848. The Nevada Supreme Court
2 has repeatedly held:

3 The typicality prerequisite can be satisfied, then, by showing that "each class member's
4 claim arises from the same course of events and each class member makes similar legal
5 arguments to prove the defendant's liability." Thus, the representatives' claims need not
6 be identical, and class action certification will not be prevented by mere factual variations
among class members' underlying individual claims. *Id.* at 849 [citation omitted]; see also
Dancer v. Golden, Ltd., 124 Nev. 28, 35, 176 P.3d 271, 276 (2008).

7 Here, the claims of the class representative, Plaintiff, are typical of the Class because they arise
8 from the same factual basis and are based on the same legal theories as those applicable to all class
9 members. *Dancer*, 124 Nev. at 35. Factual differences may exist between the Class and the class
10 representatives so long as the claims arise from the same events or course of conduct and are based on
11 the same legal theories. *Shuette*, 121 Nev. 848. Here, Plaintiff seeks relief based on Defendants' policy
12 of crediting tips towards the calculation of minimum wage, which she claims resulted in her and other
13 Drivers being paid less than minimum wage in violation of the Nevada Constitution. Given that the
14 Class is composed of employees of Defendants who were subjected to the same policies during the same
15 time period, Plaintiff's claims are typical of the class members who also were paid below the minimum
16 wage due to Defendants' policies. Thus, the parties submit the typicality requirement has been met.

17 **D. The Class Representatives Will Adequately Protect Class Interests**

18 Finally, Rule 23(a)(4) requires a court to ask whether the representative plaintiff will fairly
19 adequately protect the class' interests. Nev. R. Civ. P. 23(a)(4). The Supreme Court has recognized that
20 the purpose of this requirement is "to uncover conflicts of interest between the named parties and the
21 class they seek to represent." *Amchem*, 521 U.S. at 625; see also *Shuette*, 121 Nev. 849. Class
22 members are generally required to "possess the same interest and suffer the same injury." *Id.*

23 Here, Plaintiff will fairly and adequately represent each of the Class members' interests as Plaintiff
24 was an employee subjected to Defendants' wage policies and as a result did not receive the required
25 minimum wage. Under the proposed Settlement, Plaintiff will receive a reasonable award for her time and
26 efforts assisting counsel with factual issues surrounding the case. See Ex. A to Bourassa Decl. at ¶ 12.2.
27 All of the Class members will receive an allocation based on the number of workweeks for each Class
28 Member, determined and calculated by a neutral CPA, Nicole Omps of Beta Consulting. See Ex A. to

1 Bourassa Decl. at ¶ 11.1. The terms of the Settlement raise no “settlement allocation” question, and the
2 enhancement for the Class Representative is appropriate. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020
3 (9th Cir. 1998). Furthermore, there is sufficient basis to settle – namely, the cost of litigation balanced
4 against the risks Plaintiff’s claims might not ultimately survive Defendants’ opposition to class
5 certification or summary judgment attacks. The Parties recognize and acknowledge the expense and time
6 associated with continuing with further proceedings, including trial, appeals and ancillary actions. The
7 Parties are also mindful of the uncertain outcome and risk involved in any litigation, especially in multi-
8 party actions such as this proceeding. Finally, as discussed in detail below, Plaintiff’s counsel is
9 competent to represent the class, as he is an experienced attorney with prior class action litigation
10 experience. *See* Bourassa Decl. at ¶ 8. Thus, the parties submit the adequacy requirement has been met.

11 **E. Common Issues Predominate and Class-wide Settlement is Superior to Other**
12 **Available Methods of Resolution**

13 As discussed above, under Rule 23(b)(3) a court must first look to whether common questions
14 “predominate over any questions affecting only individual members.” Nev. R. Civ. P. 23(b)(3). The
15 “predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication
16 by representation.” *Amchem*, 521 U.S. at 623. Here, Plaintiff’s claim is based on the alleged wage
17 policies of Defendants during a specific time period, which violate the Nevada Constitution, Article 15,
18 Section 16 and NRS 608.160(1)(b). The only difference among the class members is the variance in
19 damages, which is not enough to defeat class certification. *Meyer*, 110 Nev. at 1364-65. It is unlikely
20 that any other legal and factual issues will arise, as the class itself is based entirely on the employees of
21 Defendants. Because the claims in this case can be resolved for all members in a single adjudication
22 through “generalized proof”, Rule 23(b)(3)’s predominance requirement is met. *See Shuette*, 121 Nev. at
23 851 (*quoting Moore v. PaineWebber, Inc.*, 306 F.3d 1247, 1252 (2nd Cir. 2002)).

24 If the predominance test is met, the Court then must ask if a class action lawsuit would be a
25 “superior” method of adjudicating the various claims. In determining the answer to this question, courts are
26 instructed to look at four factors, namely (1) the class members’ interests, if any, in individually controlling
27 the prosecution of separate actions; (2) the extent and nature of any lawsuits concerning the controversy
28 already begun by members of the proposed class; (3) the desirability of concentrating the litigation in the

1 particular judicial forum; and (4) the likely difficulties in managing a class action. Nev. R. Civ. P. 23(b)(3);
2 *Deal v. 999 Lakeshore Ass'n*, 94 Nev. 301, 305, 579 P.2d 775, 778 (1978).

3 Particularly in the settlement context, class resolution is superior to other available methods for the
4 fair and efficient adjudication of the controversy. *Shuette*, 121 Nev. at 852. A proper class prevents
5 identical issues from being litigated repeatedly thereby avoiding duplicative cases and potentially
6 inconsistent results. *Id.* at 540-41. Here, the alternative method of resolution is hundreds of individual
7 claims for relatively small amounts of damages, proving uneconomical for potential plaintiffs because the
8 cost of litigation dwarfs potential recovery, risking not only significant expense but also inconsistent
9 judgments. More than likely, it will result in abandonment of claims by most class members because the
10 amount of individual recovery is relatively small. Under these circumstances, a class action is clearly the
11 superior vehicle for addressing these claims. To that end, the concentration of litigation in this forum is
12 desirable because of the weak remedies available to most individuals, and because actions have already
13 been consolidated in this forum. Finally, because this case is in a settlement posture, the fourth factor does
14 not apply because the case will not be going to trial. *Amchem*, 521 U.S. at 620. Therefore, a class action is
15 the preferred method of resolution. The Settlement Class satisfies each of the requirements for
16 certification, and the Parties request that the Court certify it in connection with the Settlement.

17 **V. DESIGNATION OF THE BOURASSA LAW GROUP AS CLASS COUNSEL**

18 In determining whether the named plaintiffs and counsel will prosecute the action vigorously on
19 the behalf of the class, the courts in the Ninth Circuit consider the competency and qualifications of
20 counsel. *Hanlon*, 150 F.3d at 1021; *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir.
21 1978). The Bourassa Law Group satisfies these requirements. Here, Plaintiffs' counsel carefully
22 investigated potential claims in this action. This investigation included significant pre-litigation
23 investigation, as well as extensive written discovery and the deposition of Defendant, Creighton J. Nady.
24 *See* Bourassa Decl. at ¶ 3. The Bourassa Law Group is an active practitioner in the areas of both class
25 actions and employment claims, and will protect the interests of the class. Bourassa Decl. at ¶ 8.
26 Plaintiffs' counsel has prosecuted numerous employment and wage and hour claims, on both the
27 plaintiff and defense sides. *Id.* In addition, Plaintiffs' counsel has initiated several class action matters
28 for violations of federal and state consumer protection and wage laws, as well as Nevada construction

1 defect laws. *Id.* Plaintiffs' counsel serves as class counsel for nearly 800 class members in a class
2 action construction defect case, *Weiss et al. v. Del Webb Communities, Inc. et al.*, Clark County District
3 Court Case No. A-09-605863-D, and more recently was appointed by the Federal District of Nevada and
4 served as class counsel in a class action FDCPA case of nearly 4000 class members, *Schmidt v. Red*
5 *Rock Fin. Servs., LLC*, District of Nevada Case No. 2:12-CV-01773-JCM and a class action
6 employment case, *Dulan, et. al. v. Jacob Trans. Servs., LLC*, District of Nevada Case No. 2:14- CV-
7 01135-JAD. *Id.* Plaintiffs' counsel therefore has sufficient knowledge, experience, and resources to
8 allow them to represent the interests of the class. Therefore, the firm respectfully requests that the Court
9 appoint it Class Counsel for the class in this matter.

10 **VI. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL**

11 Nevada Rule of Civil Procedure 23(e) provides that "[a] class action shall not be dismissed or
12 compromised without the approval of the court..." Although Rule 23(e) is silent respecting the standard
13 by which a proposed settlement is to be evaluated, the "universally applied standard is whether the
14 settlement is fundamentally fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*,
15 688 F.2d 615, 625 (9th Cir. 1982). The purpose of judicial approval of class action settlements is to
16 prevent fraud, collusion or unfairness to the class. *See In re Bluetooth Headset Prods. Liability Litig*,
17 654 F.3d 935, 940 (9th Cir. 2011).

18 The decision to approve or reject a proposed settlement is committed to the court's sound
19 discretion, but the court must give "proper deference to the private consensual decision of the parties,"
20 since "the court's intrusion upon what is otherwise a private consensual agreement negotiated between
21 the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the
22 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
23 and the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.*; *see also*
24 *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

25 It has long been held that there is a strong judicial policy that favors settlement. *See City of*
26 *Seattle*, 955 F.2d at 1276. "A 'voluntary conciliation and settlement are the preferred means of dispute
27 resolution. This is especially true in complex class action litigation' *Officers for Justice*, 688 F.2d
28 at 625.

1 The court's ultimate determination will necessarily involve a balancing of several factors which
2 may include, among others, some or all of the following: the strength of plaintiffs' case; the risk,
3 expense, complexity, and likely duration of further litigation; the risk of maintaining class action status
4 throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage
5 of the proceedings; the experience and views of counsel; the presence of a governmental participant; and
6 the reaction of the class members to the proposed settlement. *Officers for Justice*, 688 F.2d at 625, citing
7 *Flinn v. FMC Corp.*, 528 F.2d 1169, 1174 (4th Cir. 1975); *City of Detroit v. Grinnell Corp.*, 495 F.2d
8 448 (2d Cir. 1974).

9 The Manual for Complex Litigation describes a three-step procedure for approval of class action
10 settlements: (1) preliminary approval of the proposed settlement at an informal hearing; (2)
11 dissemination of mailed and/or published notice of the settlement to all affected class members; and (3)
12 a "formal fairness hearing" or final settlement approval hearing, at which class members may be heard
13 regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and
14 reasonableness of the settlement may be presented. *Manual For Complex Litigation, Fourth* § 21.632
15 (2008); see also *Harris v. U.S. Physical Therapy, Inc.*, 2012 U.S. Dist. LEXIS 111844, *8 (D. Nev. July
16 18, 2012). The purpose of this process is to protect the unnamed members of the class from unjust or
17 unfair settlements affecting their rights. See *Davis v. City and County of San Francisco*, 890 F.2d 1438,
18 1444 n.5 (9th Cir. 1989).

19 Thus, preliminary approval is merely the prerequisite to giving notice so that the proposed
20 settlement may be submitted to members of the prospective class for their acceptance or rejection.
21 *Philadelphia Housing Auth. v. Am. Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D.
22 Pa. 1970). Preliminary approval does not require the trial court to answer the ultimate question of
23 whether a proposed settlement is fair, reasonable and adequate. *Id.* That determination is made only
24 after notice of the proposed settlement has been given to the class members and after they have been
25 given an opportunity to voice their views of the settlement or to be excluded from the settlement. *Id.*

26 **A. Factors To Be Considered in Granting Preliminary Approval**

27 The question presented on a motion for *preliminary* approval of a proposed class action
28 settlement is whether the proposed settlement is "within the range of possible approval." Indeed,

1 If the preliminary evaluation of the proposed settlement does not disclose
2 grounds to doubt its fairness or other obvious deficiencies, such as unduly
3 preferential treatment of class representatives or of segments of the class,
4 or excessive compensation for attorneys, and appears to fall within the
5 range of possible approval, the court should direct that notice under Rule
6 23(e) be given to the class members of a formal fairness hearing, at which
arguments and evidence may be presented in support of and in opposition
to the settlement.

7 *Manual for Complex Litigation, Third* § 30.41, at 237 (1995); *see also In re Tableware Antitrust Litig.*,
8 484 F.Supp.2d 1078, 1079 (N.D. Cal. 2007) [finding that at the preliminary approval stage, the court's
9 only task is to determine whether "the proposed settlement appears to be the product of serious,
10 informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant
11 preliminary preferential treatment to class representatives or segments of the class, and falls within the
12 range of possible [judicial] approval."] [citation omitted].

13 Here, although the Court is not required at this time to make a final determination as to the
14 fairness of the proposed Settlement, the Parties submit that a consideration of these criteria and the
15 standards governing class action settlements demonstrate that the proposed Settlement is clearly "within
16 the range of possible approval," and that preliminary approval is proper.

17 **1. The Settlement is the Product of Serious, Informed and Non-Collusive**
18 **Negotiations**

19 This Settlement is the result of extensive and hard-fought negotiations between aggressive and
20 capable advocates on both sides. Defendants have denied and continue to deny all of Plaintiff's claims
21 as to liability and damages, as well as Plaintiff's class allegations. Plaintiff, on the other hand, believe
22 that the claims asserted in this action have merit and that the evidence developed to date supports her
23 claims. However, the Parties recognize and acknowledge the expense and time associated with
24 continuing with further proceedings, including trial, appeals and ancillary actions. The Parties are also
25 mindful of the uncertain outcome and risk involved in any litigation, especially in multi-party actions
26 such as this proceeding.

27 An evaluation of the benefits of the Settlement must be tempered by the recognition that any
28 compromise involves concessions on the part of the settling parties. Indeed, "the very essence of a
settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." *Officers for*

1 *Justice, supra*, 688 F.2d at 624 [internal quotations and citations omitted]. “The parties ... save
2 themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached
3 normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties
4 each give up something that they might have won had they proceeded with litigation.” *Id.*, quoting
5 *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971). Accordingly, the fact that the Class
6 potentially could have achieved a better recovery after trial does not preclude the Court from finding that
7 the proposed Settlement is appropriate for preliminary approval. Furthermore, it is well-settled law that a
8 cash settlement amounting to only a fraction of the potential recovery will not per se render the
9 settlement inadequate or unfair. *Flinn*, 528 F.2d at 1173-1174; *City of Detroit*, 495 F.2d at 455. Thus,
10 while the size of the Class is believed to be in excess of 200 employees of Defendants, the \$224,529.00
11 settlement fund is believed to be fair in light of the uncertainty of certification, the uncertainty that any
12 individual class member could succeed on a claim against Defendants, and the risk of pushing
13 Defendants to financial collapse with a series of individual judgments against the company, depriving
14 many class members of *any* recovery in the process. Further, the Parties jointly retained Nicole S.
15 Omms, CPA for Beta Consulting to review the amounts paid to class members compared to the amounts
16 they should have been paid under Nevada law and assist the Parties in determining a fair settlement
17 range based on Defendants records and records produced by Plaintiff. After review of the
18 documentation, Ms. Omms identified a settlement range of \$224,529 to \$471,651, which the Settlement
19 Amount is well within. *See* Estimate of Wage and Hour Settlement, attached to the Bourassa Decl. at
20 Exhibit “C.” Thus, the proposed class recovery is justified and reasonable based on a qualified CPA’s
21 review of the records.

22 With regard to class action settlements, the opinions of counsel should be given considerable
23 weight both because of counsel’s familiarity with the particular litigation and previous class action
24 litigation experience. *See Officers for Justice, supra*, 688 F.2d at 625; *In re Washington Pub. Power*
25 *Supply Sys. Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989) (“Counsels’ opinions warrant great
26 weight both because of their considerable familiarity with this litigation and because of their extensive
27 experience in similar actions.”).

28 Here, counsel for Plaintiff and counsel for Defendants are experienced attorneys with prior class

1 action litigation experience. *See* Rodriguez Decl. ¶¶ 8; Bourassa Decl., ¶ 8. Moreover, based upon their
2 familiarity with the factual and legal issues of this litigation, counsel for the Parties were ultimately able
3 to negotiate, with the assistance of the Honorable Jerry A. Wiese II, a fair settlement based upon the
4 benefits to the Settlement Class, the costs and risks of continued litigation, and the desire of the Parties
5 on both sides for a resolution by compromise rather than prolonged, costly, and uncertain litigation.
6 Accordingly, “[t]here is likewise every reason to conclude that settlement negotiations were vigorously
7 conducted at arms’ length and without any suggestion of undue influence.” *In re Washington Public*
8 *Power, supra*, 720 F. Supp. at 1392.

9 **2. The Settlement Does Not Improperly Grant Preferential Treatment to the Class**
10 **Representative**

11 The relief provided in the Settlement Agreement will benefit all class members who submit a
12 proper claim form in the form of a cash payment. Further, the Settlement Agreement permits the Class
13 Representative to seek an individual incentive award in the amount of \$5,000.00. Such an incentive
14 award is warranted given Plaintiff’s efforts to further the interests of the class as well as the risk inherent
15 in lending her name to this class action. Moreover, an incentive payment in the amount of \$5,000.00 is
16 not excessive and falls within the range of permissible awards. *See, e.g., Van Vranken v. Atlantic*
17 *Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (awarding an incentive payment to a single class
18 representative in the amount of \$50,000.00). Accordingly, the Parties submit that the proposed
19 Settlement does not improperly grant preferential treatment to the Class Representative.

20 **3. The Stage of the Proceedings are Sufficiently Advanced to Permit Preliminary**
21 **Approval of the Settlement**

22 The stage of the proceedings at which this Settlement was reached militates in favor of
23 preliminary approval (and, ultimately, final approval) of the Settlement. This action was originally filed
24 over a year ago. The Settlement Agreement was not reached until the Parties engaged in extensive
25 discovery allowing them to make an informed judgment regarding the likelihood of success on the
26 merits and the results that could be obtained through further litigation. The Parties have conducted a
27 thorough investigation into the facts of this class action and have determined that the proposed
28 Settlement is in the best interests of the Parties, and the class.

Accordingly, the proposed Settlement herein has no “obvious deficiencies” and is well within the

1 range of possible approval. The Parties request that this Court approve of their stipulation to certify the
2 class for the purposes of this settlement. All Settlement Class members will receive the same
3 opportunity to participate in and receive payment. Clearly the goal of this litigation, to seek redress for
4 the Settlement Class, will be met upon final approval of this Settlement.

5 Plaintiff and Defendants respectfully request that this Court take the initial steps in this process
6 by granting preliminary approval of the Settlement Agreement.

7 **B. Class Settlement Notice**

8 Rule 23(e) of the Nevada Rules of Civil Procedure provides that “notice of [a] proposed . . .
9 compromise shall be given to all members of the class in such manner as the court directs.” The Court
10 must ensure that the parties' notice plan provides for "the best notice that is practicable under the
11 circumstances, including individual notice to all members who can be identified through reasonable
12 effort" and that the notice itself explains the procedure to request exclusion, the nature of the class
13 judgment and the ability to appear through individual counsel. Nev. R. Civ. P. 23(c).

14 The Parties have, for settlement purposes, requested the Court conditionally certify the Class.
15 Accordingly, notice to the Class is required. See Nev. R. of Civ. P. 23(e) (Stating that if the claims of a
16 certified class are compromised, “notice of the . . . compromise shall be given to all members of the
17 class in such a manner as the court directs.”) “In an order preliminarily approving the settlement under
18 Rule 23(e), the judge sets the date for providing notice of the proposed settlement. This order, as well as
19 the notice, should establish the time and place of a public hearing on the proposed settlement and specify
20 the procedure and timetable for opting out, filing objections, and appearing at the settlement hearing.”
21 *Harris*, 2012 U.S. Dist. LEXIS at *14.

22 The “notice should announce the terms of a proposed settlement and state that, if approved, it
23 will bind all class members. If the class has been certified only for settlement purposes, that fact should
24 be disclosed. Even though a settlement is proposed, the notice should outline the original claims, relief
25 sought, and defenses so class members can make an informed decision about whether to opt out.” *Id.*
26 Pursuant to *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173 (9th Cir. 1977), notice to the class only
27 need state the aggregate amount of the proposed settlement and the formula for computing recoveries.
28 *Id.* at 1178; see also *In re Cement and Concrete Antitrust Litig.*, 817 F.2d 1435, 1440 (9th Cir. 1987)

1 (“Notice is satisfactory if it ‘generally describes the terms of the settlement in sufficient detail to alert
2 those with adverse viewpoints to investigate and to come forward and be heard.’”).

3 In furtherance of this joint motion, the Parties have prepared for the Court’s review and approval
4 the Notice, a copy of which is attached to the Bourassa Declaration as Exhibit “B.” Plaintiff and
5 Defendants submit that both the form and content of the proposed Notice and Claim Form, as well as the
6 method for communicating notice to the Class members, satisfies the applicable standards. Defendants
7 will create from its records a very *broad* list of potential class members in the range of 210 employees.
8 The list encompasses “all persons who were employed by Defendants during the applicable statutory
9 period prior to the filing of this Complaint continuing until date of judgment as Drivers in the State of
10 Nevada.” *See* Settlement Agreement, ¶2.5 attached to the Bourassa Decl. at Exhibit “A.” Thus, the
11 Parties have opted to provide broad notice to ensure all potential consumers are notified. The terms of
12 the proposed Settlement, including the right to comment on or object to the Settlement, or to opt out of
13 the Class entirely, will be disseminated via a mailed notice with first class postage prepaid in a form
14 approved by the Parties and by the Court to persons who fall within the class definition. *See id.* at 6.2 &
15 8.1-8.2. The aggregate amount of settlement, and the formula used to determine the amount each class
16 member recovers, is included in the Settlement Agreement, which will accompany the Notice.
17 Defendants shall provide Class Counsel and Nicole Omps, CPA of Beta Consulting with sufficient
18 information to determine the number of workweeks for each Class Member, and Ms. Omps, a neutral
19 CPA engaged jointly by the Parties, will be responsible for calculating the amount due to each Class
20 Member. *See* Settlement Agreement, ¶11.1 attached to the Bourassa Decl. at Exhibit “A.”

21 **VII. CONCLUSION**

22 Counsel for the Parties committed substantial amounts of time, energy, and resources litigating
23 and ultimately settling this case. In the judgment of the Parties, the proposed Settlement is a fair,
24 reasonable, and adequate compromise of the issues in dispute in light of the strengths and weaknesses of
25 each party’s case. Moreover, after weighing the substantial, certain and immediate benefit of this
26 Settlement against the uncertainty of trial and appeal, the Parties believe that the proposed Settlement is
27 fair, reasonable and adequate, and in the best interests of the class. Accordingly, the Parties respectfully
28 request that the Court (1) conditionally certify the settlement class; (2) appoint The Bourassa Law

1 Group as Class Counsel; (3) preliminarily approve the proposed Settlement; (4) direct that notice of the
2 proposed Settlement be provided to the Settlement Class; and (5) schedule a Final Fairness Hearing.

3 Respectfully submitted:

4
5 DATED this 17th day of January, 2017.

6 **THE BOURASSA LAW GROUP**

7
8 By: 

9 MARK J. BOURASSA, ESQ.

Nevada Bar No. 7999

10 TRENT L. RICHARDS, ESQ.

Nevada Bar No. 11448

11 8668 Spring Mountain Rd, Suite 101

12 Las Vegas, Nevada 89117

13 *Attorneys for Plaintiffs*

DATED this 17 day of January, 2017.

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

7
8 By: 

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11 Las Vegas, Nevada 89145

12 *Attorneys for Defendants*

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An employee of
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1 **DECL**
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11 *Attorneys for Plaintiffs*

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

14 JASMINKA DUBRIC, individually and on behalf)
15 of those similarly situated,)

16 Plaintiff,)

17 vs.)

18 A CAB, LLC, a Nevada Limited Liability)
19 Company; A CAB SERIES LLC, EMPLOYEE)
20 LEASING COMPANY, a Nevada Series Limited)
21 Liability Company; CREIGHTON J. NADY, an)
22 individual; and DOES 3 through 20)

23 Defendant.)

Case No.: A-15-721063-C

Dept No.: XXV

**DECLARATION OF MARK J. BOURASSA,
ESQ. IN SUPPORT OF JOINT MOTION
FOR AN ORDER:**

- (1) CONDITIONALLY CERTIFYING
SETTLEMENT CLASS;
(2) APPOINTING CLASS COUNSEL;
(3) PRELIMINARY APPROVAL OF
CLASS SETTLEMENT AGREEMENT;
(4) DIRECTING THAT NOTICE BE SENT
TO CLASS MEMBERS; AND
(5) SCHEDULING A FINAL FAIRNESS
HEARING; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

24 I, MARK J. BOURASSA, hereby declare and state as follows:

25 1. I am an attorney of The Bourassa Law Group, and I am the attorney responsible for
26 representing Plaintiff Jasminka Dubric ("Plaintiff") individually and on behalf of those similarly situated
27 (the "Class") in this action. I am duly licensed to practice law in the State of Nevada and before this
28 Court. The facts set forth herein are of my own personal knowledge and if sworn I could and would
testify competently thereto.

2. This declaration is being submitted in support of Plaintiff's and Defendants A Cab, LLC,
A Cab Series LLC, Employee Leasing Company, and Creighton J. Nady's (collectively the "Parties")

1 Joint Motion for an order (1) conditionally certifying the settlement class; (2) appointing class counsel;
2 (3) preliminarily approving class action settlement; (4) directing mailing of class notice; and (5)
3 scheduling a final fairness hearing.

4 3. Plaintiff's counsel carefully investigated potential claims in this action both prior to filing
5 this lawsuit and thereafter. This investigation included significant pre-litigation investigation, as well as
6 extensive written discovery and the deposition of Defendant Creighton J. Nady.

7 4. I attended the settlement conference of this matter on October 5, 2016, before the
8 Honorable Jerry A. Wiese II. During the settlement conference, the parties agreed to settlement terms
9 with respect to Plaintiff's and the putative Class members' claims in this matter. A true and correct
10 copy of the fully executed copy of the parties' Class Action Settlement Agreement and Release (the
11 "Settlement Agreement") is attached hereto as **Exhibit "A."**

12 5. The Settlement Agreement provides that, subsequent to this Court granting preliminary
13 approval of the settlement, notice shall be sent to members of the Class. A true and correct copy of the
14 Parties' proposed Notice of Proposed Class Action Settlement is attached hereto as **Exhibit "B."**

15 6. The Settlement Agreement further provides, Class members shall have an agreed date 45
16 days from commencement of the notice program to affirmatively request to be excluded from the
17 Settlement or file and serve objections to the Settlement Agreement. Upon final approval of the
18 settlement from the Court and receipt of the total Settlement Amount from Defendants, Class Counsel
19 shall issue checks from the Settlement Fund to all Class Members who did not elect to exclude
20 themselves.

21 7. On information and belief, and based upon my review of the records and report of Nicole
22 Omps, CPA of Beta Consulting, the proposed Settlement Fund in this case is within the settlement range
23 determined to be sufficient to allocate lost wages to all Class Members and cover administration
24 expenses. A true and correct copy of Nicole Omps report is attached hereto as **Exhibit "C."**

25 8. The Bourassa Law Group has extensive experience with both class actions and
26 employment claims, and will protect the interests of the class. The firm has prosecuted numerous
27 employment and wage and hour claims, on both the plaintiff and defense sides.in Nevada and
28 Colorado. In addition, the Firm has initiated several class action matters for violations of federal and

1 state consumer protection and wage laws, as well as Nevada construction defect laws. I am currently
2 serving as class counsel for nearly 800 class members in a class action construction defect case, *Weiss*
3 *et al. v. Del Webb Communities, Inc. et al.*, Clark County District Court Case No. A-09-605863-D, and
4 more recently was appointed and served as class counsel in a class action FDCPA case of nearly 4000
5 class members, *Schmidt v. Red Rock Fin. Servs., LLC*, District of Nevada Case No. 2:12-CV-01773-
6 JCM, and a class action employment case, *Dulan, et. al. v. Jacob Trans. Servs., LLC*, District of
7 Nevada Case No. 2:14- CV-01135-JAD.

8 9. Based upon my experience with both employment claims and class actions, I believe that
9 the proposed settlement of the claims in this matter, as set forth in detail in Exhibit A attached hereto, is
10 fair, reasonable and in the best interest of the class.

11 I declare under penalty of perjury under the laws of the United States and the State of Nevada
12 that the foregoing is true and correct.

13 Dated this 5th day of January, 2017.

14 
15 MARK J. BOURASSA, ESQ.

EXHIBIT A

Class Action Settlement Agreement and Release

Class Action Settlement Agreement and Release

EXHIBIT A

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (hereinafter "Agreement") is entered into by and between Jasminka Dubric ("Plaintiff") on behalf of herself and as class representative on behalf of the Class as further defined herein and defendants A Cab LLC, A Cab Series LLC, Employee Leasing Company, and Creighton J. Nady (collectively, "Defendants") in the class action lawsuit entitled *Jasminka Dubric v. A Cab LLC*, Clark County, Nevada District Court Case No. A721063 (the "Class Action"). Plaintiff and Defendants shall sometimes be collectively referred to herein as the "Parties." This Agreement is made effective as of October 5, 2016 ("Effective Date").

RECITALS

1.1 **WHEREAS**, on July 7, 2015, Plaintiff filed her original Class Action Complaint, on behalf of herself and a class consisting of consists of "all persons who were employed by A Cab LLC during the applicable statutory period prior to the filing of this Complaint continuing until date of judgment as Drivers in the State of Nevada." Complaint ¶ 14. Plaintiff's Complaint contains two causes of action: (1) Failure to Pay Minimum Wage in violation of Article 15, Section 16 of the Nevada Constitution and (2) Conversion. A Cab LLC responded with an Answer in August of 2015, denying the claims;

WHEREAS, on November 30, 2016, Plaintiff filed a First Amended Complaint adding A Cab Series LLC, Employee Leasing Company and Creighton J. Nady as Defendants;

WHEREAS, the Parties have conducted a thorough examination and investigation of the facts of this case, including written discovery and depositions, and have jointly retained the services of Beta Consulting, a CPA firm, to prepare a report regarding the dollar amounts of the allegedly unpaid wages for all potential class members; and

WHEREAS, the Parties engaged in a settlement conference with Judge Jerry A. Wiese, II on October 5, 2016 regarding settlement of the claims asserted in the Amended Complaint, and wish to settle completely and totally all claims and potential claims against Defendants arising out of or in any way connected thereto. Plaintiff believes that this settlement confers substantial benefits upon both Plaintiff and the Class and that the settlement set forth in this Agreement is in the best interest of the Plaintiff and the Class. The Parties recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the claims through trial and through appeals and other ancillary actions. The Parties also have taken into account the uncertain outcome and the risk of any litigation, especially in multi-party actions such as this proceeding, as well as the difficulties and delays inherent in such litigation. The Parties also are mindful of the potential problems of proof in establishing the claims and defenses asserted in this proceeding.

NOW THEREFORE, subject to approval by the Court of the Eighth Judicial District, Clark County, Nevada, as hereinafter provided, it is hereby agreed by the Parties that, in consideration of the promises and covenants set forth in this Agreement and upon the entry by the Court of a final order approving the settlement and directing the implementation of the terms and conditions of the settlement as set forth in this Agreement, the Class Action shall be settled and compromised upon the terms and conditions contained herein.

2. DEFINITIONS

The definitions contained herein shall apply only to this Agreement and shall not apply to any other agreement, including, without limitation, any other settlement agreement, nor shall they be used as evidence, except with respect to this Agreement, of the meaning of any term. Furthermore, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the

singular form. As used in this Agreement, in addition to any definitions elsewhere in this Agreement, the following terms shall have the meanings set forth below:

2.1 “Action” or “Class Action” means and refers to the putative class action lawsuit entitled *Jasminka Dubric v. A Cab LLC.*, Clark County, Nevada District Court Case No. A721063.

2.2 “Agreement” means and refers to this Settlement Agreement.

2.3 “Opt-Out Period” means and refers to the period of time between the commencement of the notice program and an agreed date certain approximately forty-five (45) days later during which Settlement Class members may exercise the right to or affirmatively request to be excluded from this Agreement pursuant to the provisions of Sections 8 below.

2.4 “Court” means and refers to the Clark County, Nevada District Court.

2.5 “Class” means all persons who were employed by Defendants during the applicable statutory period prior to the filing of this Complaint continuing until date of judgment as Drivers in the State of Nevada.

2.6 “Class Counsel” means Mark J. Bourassa of the Bourassa Law Group, together with such other attorneys who represented, in any capacity, any Plaintiff in the Class Action.

2.7 “Class Notice” means the form of notice attached hereto as Exhibit 1 or a similar form as approved by the Court.

2.8 “Defendants” means and refers to A Cab LLC, A Cab Series LLC, Employee Leasing Company, and Creighton J. Nady.

2.9 “Fairness Hearing” means the final hearing, held after the Preliminary Approval Order is issued and the Settlement Class has been given notice and an opportunity to opt out and object pursuant to the Settlement, in which the Court will consider whether this Settlement should be approved as fair, reasonable and adequate

pursuant to Nevada Rule of Civil Procedure 23; whether the proposed Final Order and Judgment should be entered; and whether Class Counsel's application for attorneys' fees, expenses and costs and Class Representative incentive should be approved;

2.10 "Final Approval Order" means the Final Order and Judgment entered by the Court at the Fairness Hearing.

2.11 "Plaintiff" means and refers to Jasminka Dubric.

2.12 "Judgment" means a Judgment on Order of Final Approval of Settlement to be executed by the Court and entered in the Court records.

2.13 "Preliminary Approval Order" means and refers to the Court's order entered following and in connection with the Parties' motion for preliminary approval of this Settlement Agreement.

2.14 "Parties" means and refers to Plaintiff and Defendants, collectively.

2.15 "Person" means and refers to any individual, family, proprietorship, corporation, company, partnership, association, trustee, administrator, unincorporated association, estate, insurer, or any other type of legal entity.

2.16 "Released Claims" means and refers to each and all of the claims that are released by this Agreement as described in Section 13 below.

2.17 "Released Parties" means and refers to the following Persons: A Cab LLC, A Cab Series LLC, Employee Leasing Company, Creighton J. Nady, and their past, present, and future subsidiaries, parent companies, their predecessors in interest and/or ownership, successors in interest and/or ownership, partners, licensees, assignees, managing members, Insurers, including claims under any and all insurance policies, estates, and other affiliates and/or related entities, and each of the foregoing Persons' respective past, present, and future officers, directors, attorneys, shareholders, indemnitees, predecessors, successors, trusts, trustees, partners, associates, principals, divisions, employees, Insurers, any and all insurance policies, members, agents,

Representatives, brokers, consultants, heirs, and assigns.

2.18 “Releasing Parties” means and refers to Plaintiff and her agents, representatives, attorneys, predecessors, successors, heirs, assigns, and any Persons or entities claiming by or through the Settlement Class, in their capacities as such.

2.19 “Settled Claims” means and refers to any and all claims, demands, controversies, actions, causes of action, debts, liabilities, rights, contracts, damages, costs (including attorney’s fees and court and litigation expenses), expenditures, indemnities, obligations and alleged losses of every kind or nature whatsoever known or unknown, anticipated or unanticipated, direct or indirect, fixed or contingent, asserted or unasserted, patent or latent, individually or on behalf of the general public, which Releasing Parties asserted, have ever had, now have, or may hereafter have, related to, arising out of, or which could have been asserted, inferred, implied, included or connected in any way with, any of the allegations in the Action, including, without limitation, any claims, whether they arise under federal law, common law, or under the laws of any state, pertaining to Defendants.

2.20 “Settlement Class” means all members of the Class as defined in Section 2.5 above who do not elect to “opt out.”

2.21 “Settlement Class Representative” means and refers to Plaintiff.

2.22 “Settlement Termination Date” means and refers to the date, if any, that any Party exercises its right to terminate this Agreement under the terms thereof.

3. SETTLEMENT PURPOSES ONLY

3.1 General. This Agreement is made for the sole purpose of settlement of the Class Action on a class-wide basis, as well as the settlement of all related individual claims made by Plaintiff. The settlement of the Class Action is expressly conditioned upon the entry of a Preliminary Approval Order and a Final Approval Order by the Court. In the event that the Court does not execute and file the Order of Final Approval, or in the

event the Order of Final Approval does not become final for any reason, or is modified in any material respect, or in the event that the Final Effective Date, as defined herein, does not occur, this Agreement shall be deemed null and void *ab initio* and shall be of no force and effect whatsoever, and shall not be referred to or utilized for any purpose whatsoever.

3.2 Settlement Class Only. Any certification of a preliminary or final Settlement Class pursuant to the terms of this Agreement shall not constitute, shall not be construed as, and shall not be admissible in any proceeding as an admission on the part of the Defendants or any other Person that the Class Action or any other action is appropriate for class treatment at trial pursuant to Rule 23 of the Nevada Rules of Civil Procedure or any other class or representative action statute or rule. This Agreement shall not prejudice Defendants' rights or any other Person's rights: (a) to oppose class certification in this Action other than for purposes of settlement pursuant to this Agreement; or (b) to oppose class certification in any other action or proceeding. Certification of the Settlement Class is stipulated to as a part of and for the purposes of this Agreement only. For the purposes of settlement and the proceedings contemplated herein for effectuating settlement *only*, the Parties stipulate and agree that Plaintiff shall represent the Class for settlement purposes and shall be the Settlement Class Representative, and that Class Counsel shall be appointed as counsel for the Settlement Class.

3.3 Admissibility. Additionally, this Agreement, any negotiations or proceedings related hereto, the implementation hereof, and any papers submitted in support of the motions for approval hereof (collectively, the "Settlement Proceedings") shall not be construed as, or deemed to be evidence of, any admission or concession by any of the Parties or any other Person regarding liability, damages, or the appropriateness of class treatment, and shall not be offered or received in evidence in any action or proceeding for any purpose whatsoever; provided, however, that this Agreement and the

Settlement Proceedings may be presented to the Court in connection with the implementation or enforcement of this Agreement, or as may be necessary or appropriate to further the purposes sought to be achieved by this Agreement.

3.4 Denial Of Liability. By entering into this Agreement, it is understood that the Released Parties, including Defendants, do not admit and, to the contrary, expressly deny that they have breached any duty, obligation, or agreement; that they have engaged in any illegal, tortious, or wrongful activity; that they are liable to Class members or any other Person; and/or, that any damages have been sustained by any Class Member or by any other Person in any way arising out of or relating to the conduct alleged in the Class Action. Defendants expressly reserve all rights to challenge Plaintiff's claims on all factual and procedural grounds, including but not limited to the assertion of any and all defenses.

4. CONDITIONS OF SETTLEMENT

Performance by Defendants of the obligations set forth in this Agreement is subject to all of the following material conditions:

- a. The delivery to counsel for Defendants of this Agreement, fully executed by all Plaintiffs and by Class Counsel.
- b. Execution and filing by the Court of the Preliminary Approval Order.
- c. Mailing and publication of the notices, described in Section 7 below.
- d. The Court conducting a Fairness Hearing.
- e. Execution and filing by the Court of the Final Approval Order.
- f. Execution and entry of Judgment by the Court.
- g. Mailing of the notice following Final Approval.
- h. Funding of the Settlement in accordance with the terms of this

Agreement.

The Parties hereby covenant and agree to cooperate reasonably and in good faith for the purpose of achieving occurrence of the conditions set forth above, including, without limitation, timely filing of all motions, papers and evidence necessary to do so, and refraining from causing or encouraging directly or indirectly any appeal or petition for writ proceedings seeking review of any Order contemplated by this Agreement. Class Counsel represent and warrant that they have authority to take all such actions required of them pursuant to this Agreement, and that by doing so they are not in breach or violation of any agreement with any Plaintiff or any third party.

5. JURISDICTION

The Parties agree that the Court has, and shall continue to have, jurisdiction to make any orders as may be appropriate to effectuate, consummate, and enforce the terms of this Agreement, to approve awards of attorney's fees and costs pursuant hereto, and to supervise the administration of and the distribution of money funded pursuant to this Agreement. Except for those matters specifically identified in this Agreement as being subjects for decision by a neutral third party, and any other matters which counsel for Plaintiffs and Defendants later agree in writing to refer to any neutral third party, any dispute or question relating to or concerning the interpretation, enforcement, or application of this Agreement shall be presented to the Court for resolution.

6. COURT APPROVAL OF THE SETTLEMENT

6.1 Preliminary Approval And Notice. Promptly after execution of this Agreement, the Parties, through their counsel, shall, by stipulation, jointly move the Court for an order certifying the class for settlement purposes and granting preliminary approval of this Agreement under the legal standards relating to the preliminary approval of class action settlements. In connection therewith, the Parties, through their counsel, shall submit to the Court a mutually acceptable proposed Preliminary Approval Order

and Notice Order, which shall provide, among other things, for the conditional certification for purposes of settlement only of the Class as to damages, and the approval of the Parties' proposed notice program as set forth in Section 7 below and their proposed claim form. The Parties shall also cooperate in the preparation and filing of a Motion for Final Approval.

6.2 Objection And Opt-Out Periods. The Preliminary Approval Order shall specify that Settlement Class members shall have until an agreed date certain, which shall be approximately forty-five (45) days from the commencement of the notice program pursuant to Section 7 below, to affirmatively request to be excluded from this Settlement or file and serve objections to this Agreement.

6.3 Final Approval. After the expiration of the Opt-Out Period, if the Agreement has not been validly terminated under Section 8 below, the Court shall conduct a hearing regarding final approval of this Agreement. The Final Approval Hearing shall be set one hundred and five (105) days after the Opt-Out Period expires, subject to the schedule of the Court. In connection therewith, the Settlement Class, through their counsel, shall file a motion for final approval and submit a mutually acceptable proposed Final Approval Order, which shall provide, among other things, for the final approval of this Agreement, certification of the Settlement Class, and a complete release of the Released Parties of and from all Settled Claims, and then take all steps necessary to terminate the Class Action with prejudice.

7. CLASS NOTICE PROCEDURES

7.1 Mailed Notice To Settlement Class. Promptly after entry of the Preliminary Approval Order and the Notice Order, Class Counsel or their designee shall send to the Class by first class postage prepaid a mailed notice in a form approved by the Parties and by the Court. In a good faith effort towards cooperation, counsel for Defendants shall review Defendants' records and use their best efforts, consisting of a

diligent search and reasonable inquiry of the records in its possession and believed to hold such information, to provide to Class Counsel a list containing as many names and addresses of such Class members that Defendants is able to identify in Microsoft Excel format. The first date of the issuance of these notices shall be deemed the commencement date for the purposes of this Agreement.

7.2 Remailing of Notices. Any notices to Class Members returned as “undeliverable” will be promptly skip-traced by Class Counsel or their designee and re-mailed using any additional information obtained in the skip-tracing process.

7.3 Records Of Notice. Class Counsel or their designee shall keep records of all notices, and the cost thereof, and any remailing thereof. Promptly upon request, Class Counsel or its designee shall make such records available for inspection and shall provide a sworn proof of mailing that identifies each address where class notice was mailed and/or re-mailed, as applicable.

8. RIGHT OF EXCLUSION

8.1 Procedure. Any member of the Class may request to be excluded from the Settlement Class at any time during the Opt-Out Period. The Notice sent to the Class Members pursuant to Section 7 will include a mutually-agreeable form that Class Members can use to request exclusion. A Class member may also submit any written request to exclude himself or herself from this Agreement, provided that the request shall contain, at a minimum, the Settlement Class member’s name, address, telephone number, and email address (if available). Such requests for exclusion must be sent by regular U.S. mail to the Claims Administrator, and must be postmarked on or before the end of the Claims Period. All Class members who do not request exclusion in accordance with this Agreement during the Claims Period will be deemed Settlement Class members for all purposes under this Agreement and will be irrevocably bound by this Agreement except as otherwise provided herein. Any Person who timely and properly seeks exclusion shall

not be entitled to any individual relief under this Agreement and shall not be deemed a party to this Agreement.

8.2 Withdrawal Of Election To Be Excluded. Prior to the entry of the Final Approval Order, any Person who has elected to be excluded may withdraw that election by notifying the Claims Administrator by telephone (to be confirmed in a letter and copied to other counsel identified in Section 14) or in writing that he or she wishes to be a member of the Settlement Class. The Claims Administrator shall each maintain records of all withdrawn exclusions, and shall provide such information to the Parties and to the Court. At any time after the entry of the Final Approval Order, any Person who has elected to be excluded from this Agreement may withdraw that election only upon receiving the written consent of Defendants, through its counsel, and Court approval.

8.3 Persons To Be Expressly Excluded. Michael Murray, Michael Reno, and Michael Sargent are plaintiffs in a separate action entitled *Murray et al. v. A Cab Taxi Service LLC et al.*, Clark County Nevada District Court Case No. A-12-669926-C, which also alleges claims of unpaid minimum wages against A Cab Taxi Service LLC, A Cab LLC, and Creighton J. Nady, as well as associated penalties pursuant to NRS 608.040. These individuals are expressly excluded from this Settlement for all purposes.

9. SETTLEMENT TERMINATION AND/OR MODIFICATION

9.1 Termination Prior To Funding. This Agreement, and each of the obligations set forth herein, are subject to and expressly conditioned upon the funding on terms and conditions acceptable to Defendants, as set forth in Section 10 below. If such funding is not fully performed as set forth in this Agreement, and such non-performance is not cured within twenty-one (21) business days following notice given by Class Counsel, either of which deadline(s) may be extended upon an agreement of the Parties, through their counsel, this Agreement shall be voidable.

9.2 Termination Prior To Final Approval. This Agreement is expressly

conditioned upon Court approval of all aspects of this Agreement, and the entry of the Preliminary Approval Order and the Final Approval Order, all in accordance with the terms of this Agreement. If the Court declines to enter any of the Orders identified in this Section 9.2, or modifies in what any Party reasonably determines to be a material way any aspect of this Agreement or of such Orders, such Party may declare this Agreement null and void by giving written notice to counsel for the other Parties within twenty (20) days after such refusal or modification. Prior to giving such notice, the Parties shall consult with the Court on the issue of whether there is a reasonable way to avoid any Party exercising its right to declare this Agreement void under this Section; the twenty-day period is tolled during any such consultations.

9.3 Termination After Appeal. If a court declares unenforceable, reverses, vacates, or modifies on appeal any aspect of this Agreement, in what any Party reasonably determines to be a material way, such Party may declare this Agreement null and void by giving written notice to counsel for the other Parties within twenty days after notice of such ruling. Prior to giving such notice, the Party seeking to terminate this Agreement shall consult with the trial court on the issue of whether there is any reasonable way to avoid exercising its right to declare this Agreement null and void under this Section.

9.4 Procedures For Settlement Termination. In the event that a Party gives proper notice of termination pursuant to the terms of this Agreement, all monies paid into the Settlement Account (except for notice and/or administration costs already expended) shall be returned to Defendants, and none of the Parties shall have any further obligations under this Agreement.

10. SETTLEMENT PAYMENTS

10.1 Settlement Amount. Defendants agree to pay a total sum of Two Hundred Twenty-Four Thousand Five Hundred Twenty-Nine Dollars (\$224,529.00 USD)

as a fund for the Class. Defendants shall have no further obligation to make any payment or to provide any benefit referenced in this Agreement or relative to the Class Action except as expressly set forth herein. Any remaining portion of the Settlement Fund following payments referenced under in Section 11 below shall revert to Defendants.

10.2 Funding Commitment. Defendants shall use their best efforts to fund the obligations of this Agreement in accordance with the procedures set forth herein.

10.3 Funding Upon Preliminary Approval. Beginning no later than thirty (30) days of the entry of the Preliminary Approval Order, Defendants shall deposit the total amount of Two Hundred Twenty-Four Thousand Five Hundred Twenty-Nine Dollars (\$224,529.00) in twelve (12) equal monthly installments of Eighteen Thousand Seven Hundred Ten Dollars and Seventy-Five Cents each (\$18,710.75). The checks shall be delivered to the attention of Mark J. Bourassa, Esq. and deposited into Class Counsel's Trust Account.

10.4 Interest On The Settlement Fund. If the Final Approval Order is issued (and not reversed on appeal, if any), all interest, if any, generated by the Settlement Fund shall accumulate and shall be the property of the Settlement Class. If the Final Approval Order is not issued, all interest generated by the monies in the Settlement Fund Joint Account shall accumulate and shall be the property of Defendants.

11. PROTOCOL FOR ADMINISTERING SETTLEMENT

11.1 Allocation of Settlement Fund. The Settlement Fund shall be allocated to the Class Members based upon the number of workweeks each Class Member worked during the statutory period. Within thirty (30) days of the issuance of the Order granting Preliminary Approval of the Settlement, Defendants shall provide Class Counsel and Nicole Omps, CPA of Beta Consulting and provide Class Counsel and Ms. Omps with sufficient information to determine the number of workweeks for each Class Member, and Ms. Omps with be responsible for calculating the amount due to each Class Member.

11.2 Payment of Settlement Amount. Upon the Final Approval of the Settlement by the Court and receipt from Defendants of the total Settlement Amount, Class Counsel shall issue checks from the Settlement Fund in amounts calculated pursuant to Section 11.1 of this Agreement to all Class Members who did not elect to exclude themselves from this settlement as set forth in Section 8 of this Agreement. Any checks that are returned as undeliverable will be skip-traced and remailed. All checks not negotiated within 180 days of the last date of mailing will be considered null and void.

11.3 Ineligible Settlement Class Members. Notwithstanding this Section 11, or any other provision of this Agreement, the following Settlement Class members are not entitled to receive any benefit under this Agreement: (a) Persons who previously settled, adjudicated, dismissed with prejudice, assigned any or all rights and/or claims relating to or arising out of an alleged failure to pay minimum wage with Defendants, and/or previously received a payment in connection with an alleged claim against Defendants; and (b) those persons specifically set forth in Section 8.3 of this Agreement.

11.7 Maintenance Of Records. Class Counsel shall maintain complete, accurate, and detailed records regarding the administration of the Settlement Fund, including: any and all written requests for exclusion; any objection to proposed benefits and the resolution thereof; and any and all receipts by and disbursements from the Settlement Amount.

12. CLASS ATTORNEYS' FEES AND COSTS

12.1 Plaintiff's Attorney Fees And Costs. Class Counsel shall submit a petition to the Court, in connection with the motion for final approval, seeking approval of an award of attorneys' fees and seeking approval of an award for reimbursement of all necessary and reasonable costs and other expenses incurred by counsel for the Settlement Class. Plaintiff shall be entitled to seek an award of reasonable attorneys' fees, costs, or

other expenses claimed by Class Counsel relative to the Action separate from the Settlement Amount up to the total amount of Fifty-Seven Thousand Five Hundred Dollars (\$57,500.00). Any award of attorneys' fees and costs shall be due and payable within thirty (30) days after notice of entry of order awarding the fees and costs.

12.2 Incentive Payment. Class Counsel shall submit a request to the Court, in connection with the motion for final approval, seeking approval for an award of an incentive payment in the amount of Five Thousand Dollars (\$5,000.00) for Plaintiff, to be paid from the Settlement Fund. Defendants will not oppose such a request. The incentive award from the Court, if any, shall be paid to Plaintiff concurrently with any disbursement to her from the Settlement Fund as set forth in Section 11 above.

13. RELEASES

13.1 Final Approval Order. The Final Approval Order shall include a full, general release by the Releasing Parties of Defendants and the other Released Parties defined above from any and all Settled Claims.

13.2 Release of Defendants by Settlement Class. Except for the obligations and rights created by this Agreement, and upon Final Approval of the Settlement, the Settlement Class hereby releases and absolutely and forever discharges Defendants and each of its predecessors, successors, subsidiaries, parent companies, affiliates, assigns, agents, directors, officers, employees, representatives, trustees, beneficiaries, and associates from any and all Settled Claims.

13.3 Mutual Releases. The Releasing Parties acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those now known or believed to be true with respect to the subject matter of this Agreement and/or the Settled Claims. The Releasing Parties acknowledge that they intend to and will fully, finally, and forever settle and release any and all Settled Claims described herein, whether known or unknown, suspected or unsuspected, which

now exist, hereinafter may exist, or heretofore may have existed. In furtherance of this intention, the releases contained in this Agreement shall be and remain in effect as full and complete releases of the Settled Claims by the Releasing Parties without regard to the subsequent discovery or existence of such different or additional claims or facts. Furthermore, upon the expiration of the Claims Period, each and every Releasing Party and all successors in interest shall be permanently enjoined and forever barred from prosecuting any and all Settled Claims against Defendants, and each of its predecessors, successors, subsidiaries, parent companies, affiliates, assigns, agents, directors, officers, employees, representatives, trustees, beneficiaries, and associates.

14. NOTICES

14.1 Designated Recipients. Unless otherwise specified in this Agreement or agreed to in writing by the party receiving such communication, all notices, requests, or other required communications hereunder shall be in writing and shall be sent by one of the following methods: (a) by registered or certified, first class mail, postage prepaid; (b) by facsimile, with the original by first class mail, postage prepaid; or (c) by personal delivery (including by Federal Express or other courier service). All such communications shall be sent to the undersigned persons at their respective addresses as set forth herein.

Class Counsel:

Mark J. Bourassa, Esq.
The Bourassa Law Group
8668 Spring Mountain Road, Suite 101
Las Vegas, NV 89117
702-851-2180 (tel.)
702-851-2189 (fax)

Counsel for Defendants:

Esther C. Rodriguez, Esq.
Rodriguez Law Offices, PC
10161 Park Run Dr, Suite 150

Las Vegas, Nevada 89145
702-320-8400 (tel.)
702-320-8401 (fax)

Notice shall be deemed effective: (1) if given by mail or personal delivery, when signed for or when delivery is refused; and (2) if given by facsimile, when received as evidenced by a confirmation or evidence of delivery.

14.2 Changes In Designated Recipients. Any Party may re-designate the Person to receive notices, requests, demands, or other communications required or permitted by this Agreement by providing written notice to the other Parties, the Claims Administrator, and the Court.

13. MISCELLANEOUS

13.1 Entire Agreement. This Agreement supersedes and replaces any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or in writing, between the Parties with respect to the subject matter hereof. The Parties acknowledge that no representations, inducements, promises, or statements, oral or otherwise, have been made or relied upon by any of the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference herein, and further agree that no other covenant, representation, inducement, promise or statement not set forth in writing in this Agreement shall be valid or binding.

13.2 Modification Or Amendment. This Agreement may not be modified or amended except in a writing signed by counsel for Plaintiff and Defendants, respectively, and approved by the Court.

13.3 Execution In Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

13.4 Headings. The headings of the sections, paragraphs, and subparagraphs of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

13.5 Corporate Status. If any Party is or becomes during the Settlement Proceedings a suspended, forfeited, merged, or dissolved corporation, it is herein represented that that Party's authorized agent enters this Agreement on that Party's behalf to the full extent of the applicable laws.

13.7 Gender. Whenever in this Agreement the context so requires, the neuter gender shall refer to and include the masculine or feminine, and the singular shall refer to and include the plural.

13.8 Further Acts. The Parties shall perform such further acts and execute such further documents as may be reasonably necessary or appropriate to effectuate the terms and purposes of this Agreement.

13.9 Heirs, Successors, And Assignees. This Agreement shall be binding upon and shall inure to the benefit of the Parties' respective heirs, successors, and assignees.

13.10 Choice Of Law. This Agreement in all respects shall be interpreted, enforced, and governed by and under the laws of the State of Nevada applicable to instruments, persons, and transactions which have legal contacts and relationships solely within the State of Nevada. Any action pertaining to the terms of this Agreement shall be brought in the Court defined herein.

13.11 Warranty Regarding Advice. Class Counsel represents and warrants that the Individual Plaintiffs have been fully advised of and agree to the terms of this Agreement. The Parties hereby acknowledge that they have been represented by independent legal counsel throughout all negotiations which preceded the execution of this Agreement, and that this Agreement has been executed with the consent and on the advice of said counsel.

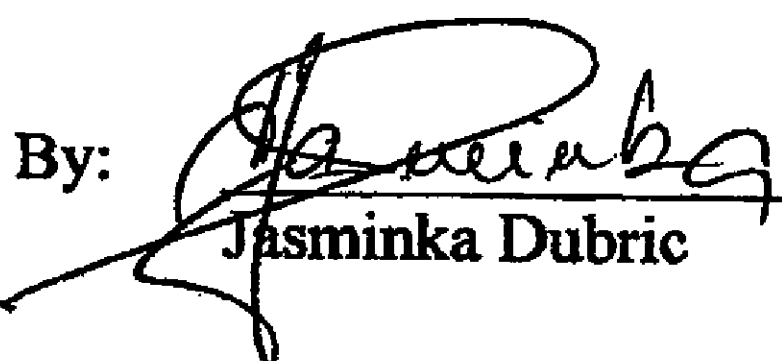
13.12 Fair, Adequate and Reasonable Settlement. The Parties believe this Settlement is a fair, adequate and reasonable settlement of the Action and have arrived at

this Settlement in arms-length negotiations, taking into account all relevant factors, present and potential. This Settlement was reached after a settlement conference before Judge Jerry A. Wiese II with the assistance of a neutral CPA, Nicole Omps of Beta Consulting.

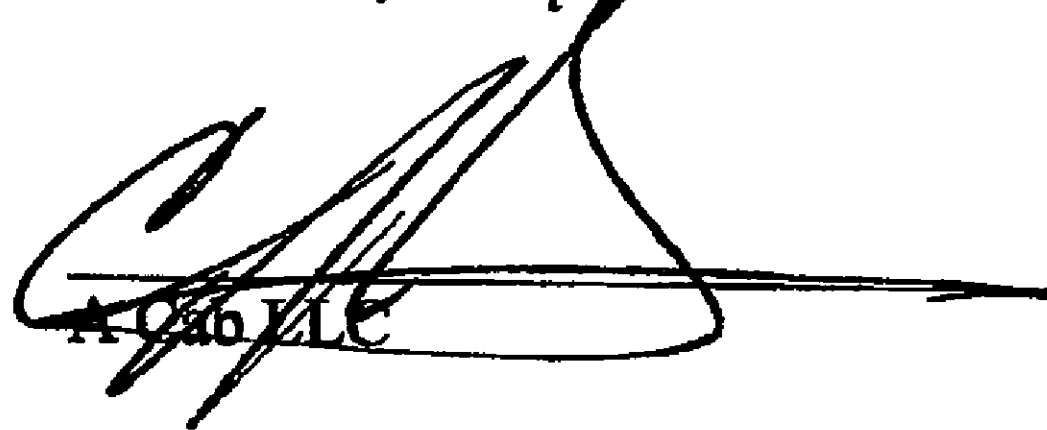
13.14 Voluntary Agreement. This Agreement is executed voluntarily and without duress or undue influence on the part or on behalf of the Parties, or of any other person or entity.

AGREED TO AND ACCEPTED.

DATED: 12/28/16

By: 
Jasminka Dubric

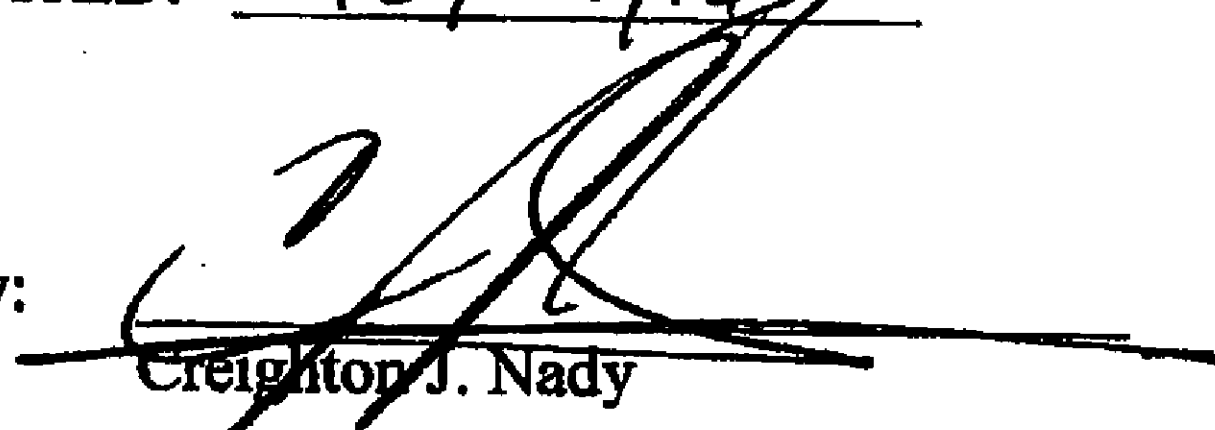
DATED: 12/28/16

By: 
A Cab LLC

DATED: 12/28/16

By: 
A Cab Series LLC, Employee
Leasing Company


DATED: 12/28/16

By: 
Creighton J. Nady

APPROVED AS TO FORM AND CONTENT:

DATED: 12/28/16

BOURASSA LAW GROUP, LLC

By: 
Mark J. Bourassa, Esq.
Attorneys for Plaintiff

DATED: 12/28/16

RODRIGUEZ LAW OFFICES, PC


By: 
Esther C. Rodriguez, Esq.
Attorneys for Defendants

EXHIBIT B

Notice of Proposed Class Action Settlement

Notice of Proposed Class Action Settlement

EXHIBIT B

NOTICE OF PROPOSED SETTLEMENT AND RIGHT TO OPT OUT

Dubric v. A Cab, LLC, et al.

A Nevada Court authorized this Notice. This is not a solicitation from a lawyer.

**TO: DRIVERS EMPLOYED BY A CAB, LLC, A CAB SERIES LLC,
EMPLOYEE LEASING COMPANY AS HOURLY PAID DRIVERS AT ANY
TIME BETWEEN April 1, 2009 AND September 30, 2016.**

- PLEASE READ THIS NOTICE CAREFULLY.
- IF YOU WISH TO COMMENT IN FAVOR OF THE SETTLEMENT OR OBJECT TO THE SETTLEMENT, YOU MUST FOLLOW THE DIRECTIONS IN THIS NOTICE.
- YOU MAY BE ELIGIBLE TO RECEIVE A PAYMENT FROM THE SETTLEMENT OF THIS LAWSUIT.
- YOUR LEGAL RIGHTS MAY BE AFFECTED BY THIS LAWSUIT OR THE FILING OF A CLAIM FORM.
- IF YOU RECEIVED THIS NOTICE ON BEHALF OF A CLASS MEMBER WHO IS DECEASED, YOU SHOULD PROVIDE THIS NOTICE TO THE AUTHORIZED LEGAL REPRESENTATIVE OF THAT CLASS MEMBER.

A proposed settlement has been reached between the parties in this class action pending in the Eighth Judicial District Court brought on behalf of all persons described above (the “settlement class”). On **[DATE]**, the Court preliminarily approved the settlement, the terms of which are set forth in the Settlement Agreement. You have received this Notice because records show that you are a member of the settlement class. This Notice explains the principal terms of the settlement, how you can participate, exclude yourself from or object to the settlement. If the settlement is finally approved, it will be binding upon you, even if you object to the settlement, except as explained below. On **[DATE]** at **[TIME]** in **[LOCATION]**, the Court will hold a hearing on whether the settlement should be finally approved (“fairness hearing”).

The settlement class consists of all current and former drivers employed by A Cab, LLC and/or A Cab Series LLC, Employee Leasing Company in Las Vegas, Nevada at any time from April 1, 2009 to September 30, 2016.

NOTICE OF PROPOSED SETTLEMENT AND RIGHT TO OPT OUT

Dubric v. A Cab, LLC, et al.

A Nevada Court authorized this Notice. This is not a solicitation from a lawyer.

What is the class action about?

The claims in this action involve a potential class of about 210 current and former hourly paid drivers who allege that A Cab, LLC and/or A Cab Series LLC, Employee Leasing Company violated Nevada state law by crediting tips earned by hourly paid drivers toward the calculation of minimum wage. A Cab, LLC and/or A Cab Series LLC, Employee Leasing Company deny any liability or wrongdoing. The parties entered the settlement to avoid additional and costly litigation. The Court has not decided which side is right in this lawsuit.

What are my rights?

You have the following choices:

DO NOTHING AND STAY IN THE SETTLEMENT CLASS	If you wish to participate in the settlement, you need not do anything at this time. You will be sent a check for your portion of the settlement. Any federal and/or state law claims for unpaid minimum wages will be released and you will be legally bound by judgments and orders of the Court, unless you elect to opt out of the settlement.
OPT OUT OF THE SETTLEMENT CLASS Postmark deadline: [45 days after Notice mailed]	You may elect to opt out of the settlement class. If you opt out, you will <i>not</i> (i) receive any payments under the settlement, (ii) be giving up any legal claims you may have against A Cab, LLC, et al., and (iii) be bound by any orders or judgments of the Court. To opt out, you must send a signed letter to <i>Dubric v. A Cab, LLC, et al.</i> Settlement Administrator, c/o The Bourassa Law Group, 8668 Spring Mountain Road, Suite 101, Las Vegas NV 89117. The letter must state that you want to opt out of the settlement and include your name, address, and last four digits of your social security number.
OBJECT AND GO TO A HEARING	You must submit in writing any objections that you have to the settlement to the settlement administrator at the address below and also state whether you intend to attend the fairness hearing. You may not object to the settlement if you opt out. Your objections should

NOTICE OF PROPOSED SETTLEMENT AND RIGHT TO OPT OUT

Dubric v. A Cab, LLC, et al.

A Nevada Court authorized this Notice. This is not a solicitation from a lawyer.

Postmark deadline: [45 days after Notice mailed]	<p>be sent by first class mail, postage prepaid, or delivery service or overnight mail to:</p> <p style="text-align: center;"><i>Dubric v. A Cab, LLC, et al.</i> c/o The Bourassa Law Group 8668 Spring Mountain Road, Suite 101 Las Vegas NV 89117</p> <p>You must also send a copy of your objections to:</p> <p>For the settlement class: Mark J. Bourassa, Esq. and Trent L. Richards, Esq., The Bourassa Law Group, 8668 Spring Mountain Road, Suite 101, Las Vegas, NV 89117</p> <p>For defendants: Esther C. Rodriguez Esq., Rodriguez Law Office, PC, 10161 Park Run Dr, Suite 150, Las Vegas NV 89145</p> <p style="text-align: center;"><i>The complete rules for objecting and appearing at the fairness hearing are contained in the Preliminary Approval Order.</i></p>
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Do I have a lawyer in the lawsuit?

The Court has appointed attorneys for the settlement class (“class counsel”). You will not be required to pay class counsel from your settlement payment. Rather, their compensation will be paid from the gross settlement amount, and they will submit a motion requesting that the Court award them up to Fifty-Seven Thousand Five Hundred Dollars (\$57,500.00) in attorney’s fees and litigation expenses.

If you want to be represented by your own lawyer, you may hire one at your own expense. If you do so, your lawyer must file an appearance in the action.

What will I receive from the settlement?

The gross settlement amount is \$224,529.00. This is the maximum amount A Cab, LLC, et al. is obligated to pay under the settlement. This amount includes (i) up to \$57,500.00 for attorney’s fees and litigation costs; (ii) up to \$5,000 to be paid to

NOTICE OF PROPOSED SETTLEMENT AND RIGHT TO OPT OUT

Dubric v. A Cab, LLC, et al.

A Nevada Court authorized this Notice. This is not a solicitation from a lawyer.

Jasminka Dubric; (iv) settlement administration costs; and (v) the remainder to compensate settlement class members who submit valid claims.

The precise amount of your individual payment cannot be determined at this time. However, your share will be paid based upon any unpaid minimum wages due to you as calculated by an independent Certified Public Accountant, Nicole Oomps of Beta Consulting.

What do I give up as a result of the settlement?

In consideration for your eligibility to receive a portion of the settlement, you will be releasing defendants and their prior and present affiliates, subsidiaries, officers, and representatives from any liability for all claims under federal and state wage and hour laws based upon alleged violations of federal and state wage and hour laws and any other claims that could have been asserted based upon the factual contentions in the complaint from April 1, 2009 through the date the court enters an order finally approving the settlement.

When will the Court decide whether to give final approval to the settlement?

The Court will hold a fairness hearing to consider whether to approve finally the settlement at [TIME] on [DATE], in [LOCATION]. The Court will review the request for approval of the settlement submitted by the parties and any objections to the settlement, and hear from any properly noticed witnesses. The Court will decide either at, or after, the fairness hearing whether to grant final approval to the settlement and will issue a written order of its decision.

May I attend the final fairness hearing?

Yes, any settlement class member may attend the fairness hearing. If you object to the settlement, you may submit your objections, as explained above, together with any supporting information, and declare your intent to appear at the hearing, either personally or through an attorney, to the Court by the deadline stated above.

What happens if the Court does not give final approval?

If the Court denies the parties' joint request for final approval of the settlement, no payments will be made under the settlement and this lawsuit will revert to its status immediately before execution of the settlement agreement.

NOTICE OF PROPOSED SETTLEMENT AND RIGHT TO OPT OUT

Dubric v. A Cab, LLC, et al.

A Nevada Court authorized this Notice. This is not a solicitation from a lawyer.

If the settlement is approved when will I receive my settlement check?

If the Court grants final approval of the settlement, it will become effective after expiration of the time period for all appeals from the order granting final approval of the settlement or, if an appeal is filed, a final determination that the settlement should be approved. If you are eligible to receive a settlement amount, it will be distributed to you within 30 days after the settlement becomes effective.

How will my settlement amount be distributed to me?

If you are eligible for a settlement payment, the settlement administrator will send you a check. You will receive an IRS Form W-2 for this payment.

Who is responsible for paying the taxes on my settlement amount?

You are solely responsible for paying all taxes based on the receipt of a settlement payment. You should consult with a tax advisor if you have questions concerning the tax consequences of your individual settlement payments.

How can I get a copy of the Settlement Agreement, the Court's preliminary approval order, and other documents in this lawsuit?

This Notice is only a summary of your legal rights. A full copy of the Settlement Agreement, the Court's Preliminary Approval Order, and a full copy of this Notice and all other filings in this lawsuit may be examined during regular business hours in the Clerk's Office of the Eighth Judicial District, 200 Lewis Ave, Las Vegas NV 89191.

What if I have questions about this notice or my individual settlement amount?

You should contact the settlement administrator at *Dubric v. A Cab, LLC, et al.*, c/o The Bourassa Law Group, 8668 Spring Mountain Road, Suite 101, Las Vegas NV 89117. You may also contact class counsel at:

The Bourassa Law Group, 8668 Spring Mountain Road, Suite 101, Las Vegas NV 89117

You should not contact the Court if you have questions about the settlement or this Notice.

EXHIBIT C

Nicole Omps Report

Nicole Omps Report

EXHIBIT C

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.

1 **DECL**

2 MARK J. BOURASSA, ESQ.

3 Nevada Bar No. 7999

4 TRENT L. RICHARDS, ESQ.

5 Nevada Bar No. 11448

6 **THE BOURASSA LAW GROUP**

7 8668 Spring Mountain Road, Suite 101

8 Las Vegas, Nevada 89117

9 Telephone: (702) 851-2180

10 Facsimile: (702) 851-2189

11 *Attorneys for Plaintiffs*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 JASMINKA DUBRIC, individually and on behalf)
15 of those similarly situated,)

16 Plaintiff,)

17 vs.)

18 A CAB, LLC, a Nevada Limited Liability)
19 Company; A CAB SERIES LLC, EMPLOYEE)
20 LEASING COMPANY, a Nevada Series Limited)
21 Liability Company; CREIGHTON J. NADY, an)
22 individual; and DOES 3 through 20)

23 Defendant.)

Case No.: A-15-721063-C

Dept No.: XXV

24 **DECLARATION OF ESTHER C.**
25 **RODRIGUEZ, ESQ. IN SUPPORT OF**
26 **JOINT MOTION FOR AN ORDER:**
27 **(1) CONDITIONALLY CERTIFYING**
28 **SETTLEMENT CLASS;**
(2) APPOINTING CLASS COUNSEL;
(3) PRELIMINARY APPROVAL OF
CLASS SETTLEMENT AGREEMENT;
(4) DIRECTING THAT NOTICE BE SENT
TO CLASS MEMBERS; AND
(5) SCHEDULING A FINAL FAIRNESS
HEARING; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF

29 I, ESTHER C. RODRIGUEZ, ESQ., hereby declare and state as follows:

30 1. I am an attorney of Rodriguez Law Office, P.C., and I am the attorney responsible for
31 representing Defendants A Cab, LLC, A Cab Series LLC, Employee Leasing Company, and Creighton
32 J. Nady's (collectively the "Defendants") in this action. I am duly licensed to practice law in the State of
33 Nevada and before this Court. The facts set forth herein are of my own personal knowledge and if sworn
34 I could and would testify competently thereto.

35 2. This declaration is being submitted in support of Plaintiff Jasminka Dubric's and
36 Defendants' (collectively the "Parties") Joint Motion for an order (1) conditionally certifying the

1 settlement class; (2) appointing class counsel; (3) preliminarily approving class action settlement;
2 (4) directing mailing of class notice; and (5) scheduling a final fairness hearing.

3 3. Defendants' counsel carefully investigated potential claims in this action both prior to
4 filing this lawsuit and thereafter. This investigation included significant pre-litigation investigation, as
5 well as extensive written discovery and the deposition of Defendant Creighton J. Nady.

6 4. I attended the settlement conference of this matter on October 5, 2016, before the
7 Honorable Jerry A. Wiese II. During the settlement conference, the parties agreed to settlement terms
8 with respect to Plaintiff's and the putative Class members' claims in this matter. A true and correct
9 copy of the fully executed copy of the parties' Class Action Settlement Agreement and Release (the
10 "Settlement Agreement") is attached to the concurrently filed Declaration of Mark Bourassa ("Bourassa
11 Decl.") as Exhibit "A."

12 5. The Settlement Agreement provides that, subsequent to this Court granting preliminary
13 approval of the settlement, notice shall be sent to members of the Class. A true and correct copy of the
14 Parties' proposed Notice of Proposed Class Action Settlement is attached to the concurrently filed
15 Bourassa Decl. as Exhibit "B."

16 6. The Settlement Agreement further provides, Class members shall have an agreed date 45
17 days from commencement of the notice program to affirmatively request to be excluded from the
18 Settlement or file and serve objections to the Settlement Agreement. Upon final approval of the
19 settlement from the Court and receipt of the total Settlement Amount from Defendants, Class Counsel
20 shall issue checks from the Settlement Fund to all Class Members who did not elect to exclude
21 themselves.

22 7. On information and belief, and based upon my review of Defendants' business records,
23 the proposed settlement Class is approximately 210 Drivers employed by Defendants.

24 8. On information and belief, and based upon my review of the records and report of Nicole
25 Omps, CPA of Beta Consulting, the proposed Settlement Fund in this case is within the settlement range
26 determined to be sufficient to allocate lost wages to all Class Members and cover administration
27 expenses. A true and correct copy of Nicole Omps report is attached to the concurrently filed Bourassa
28 Decl. as Exhibit "C."

9. The Rodriguez Law Office, P.C. has extensive experience with wage and hour actions, and employment claims, and will protect the interests of the class.

10. Based upon my experience with both employment claims and class actions, I believe that the proposed settlement of the claims in this matter, as set forth in detail in Exhibit A attached to the Bourassa Decl., is fair, reasonable and in the best interest of the class.

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

Dated this 17 day of January, 2017.


ESTHER C. RODRIGUEZ, ESQ.

EXHIBIT “C”

LEON GREENBERG
Professional Corporation
Attorneys at Law
2965 South Jones Boulevard • Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085

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

Fax: (702) 385-1827

ELECTRONICALLY SERVED
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February 3, 2017

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

Via Court Electronic Service

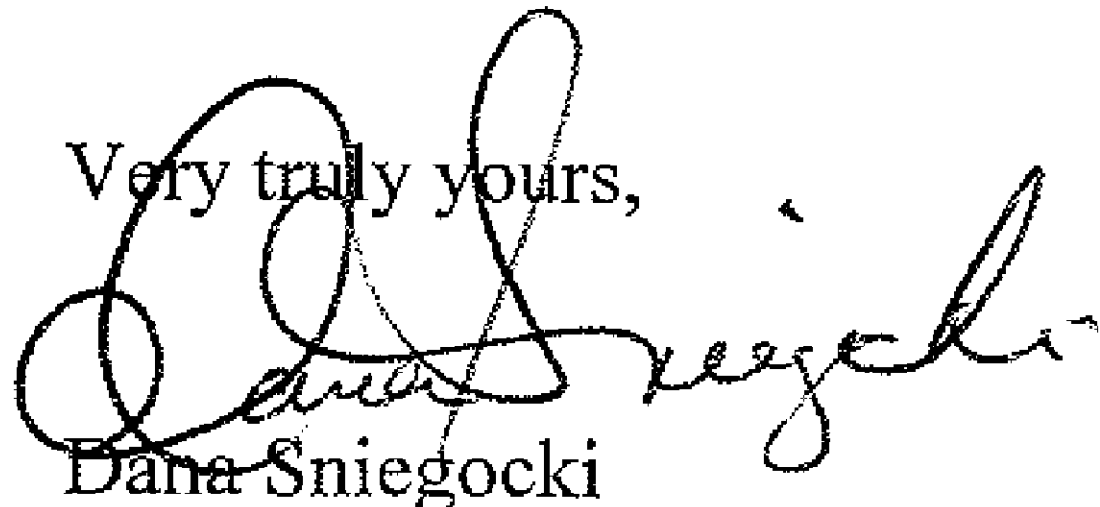
Re: Murray v. A-Cab

Dear Ms. Rodriguez:

Pursuant to Nev. R. Civ. P. 11(c)(1), plaintiffs are serving a copy of the attached Proposed Plaintiffs' Motion for Sanctions under NRCP Rule 11(c). No exhibits are attached as defendants are in possession of all such exhibits.

In the event defendants do not withdraw their Motion for Leave to Amend Answer to Assert a Third-Party Complaint, which was filed on January 27, 2017, plaintiffs intend to file the attached motion on February 27, 2017 with the accompanying exhibits.

Very truly yours,



Dana Sniegocki

cc. Michael K. Wall, Esq

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

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

Served, but not filed, on
February 3, 2017

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

21 February 3, 2017

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

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Dated: February 3, 2017

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

MEMORANDUM OF POINTS AND AUTHORITIES

OVERVIEW

DEFENDANTS' COUNSEL HAS FILED A FRIVOLOUS PLEADING SEEKING TO COMMENCE AN IMPLADER ACTION AGAINST CLASS COUNSEL FOR CHAMPERTY AND INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS WHILE KNOWING FULL WELL THOSE CLAIMS ARE IMPOSSIBLE AS A MATTER OF LAW

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

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

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

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

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

21 ARGUMENT

22 I. DEFENDANTS’ MOTION FOR LEAVE TO FILE A PROPOSED THIRD 23 PARTY COMPLAINT IS VEXATIOUS, FRIVOLOUS, AND MADE IN 24 BAD FAITH AND SHOULD BE SUBJECT TO SANCTIONS UNDER 25 NRCP RULE 11

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

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

We conclude that there was no secure basis for the district court to predict that the Nevada Supreme Court would recognize a common-law tort cause of action for damages or equitable relief asserted by a stranger to an allegedly

1 champertous agreement. The Nevada Supreme Court stated a century ago that
2 “[t]he great weight of authority is to the effect ... that the rule rendering
3 contracts void for champerty, cannot be invoked except between the parties to
4 the champertous agreement in cases where such contract is sought to be
5 enforced.” *Del Webb Communities, Inc. v. Partington*, 652 F.3d 1145, 1154 (9th
6 Cir. 2011) citing and quoting *Prosky v. Clark*, 32 Nev. 441, 109 P. 793, 794
7 (1910).

8 Defendants’ citations to and quotations from *Vosberg Equipment v. Zupanic*,
9 737 P.2d 522, 523 (Nev. Sup. Ct. 1987) and *Schwartz v. Eliades*, 939 P.2d 1034, 1036
10 (Nev. Sup. Ct. 1997) are absolutely frivolous and improper. Both case concerned the
11 only civil law situation where champerty has any place: as a defense to the
12 enforcement of a contract. There is nothing in either decision suggesting the
13 conclusion drawn by *Del Webb Communities* from *Prosky* is in error or that any legal
14 rights are bestowed upon persons who were never a party to a champertous agreement.

15 To the extent any issue of champerty might even exist in respect to class
16 counsels’ relationship with the named plaintiffs and the class members, that is an issue
17 for the Nevada State Bar to deal with. Or criminal prosecution. Defendants’ citations
18 and quotations from *Vosberg* and *Schwartz* confirm the criminal liability that attaches
19 to those who engage in champerty and defendants should file a criminal complaint
20 accordingly. They have no standing to pursue a non-existent (and never actually
21 existing, such as the now long abolished common law claim for breach of promise to
22 marry) civil claim for champerty.

23 Similarly, nowhere do defendants allege class counsel’s advertisements or
24 communications with the class members, that are alleged to have improperly fomented
25 this litigation, were illegal or contrary to the State Bar’s rules (they were not). Nor
26 does defendants’ counsel wish to risk the displeasure of the State Bar by filing such
27 frivolous complaints of champerty or false advertising, particularly since the State Bar
28 is not going to waste class counsel’s time responding to such complaint. Instead
29 defendants’ counsel asserts the absurd concept that principles of champerty allow *any*
30 *defendant* in *any case* where the plaintiff’s counsel is compensated on a contingency
31 (whether through a fee shifting statute or percentage of recovery) basis to make a

1 claim against such plaintiff's counsel. Under defendants' counsel's theory, the mere
2 presence of such a personal financial interest in the outcome of a case, something
3 possessed by every contingency fee compensated plaintiffs' counsel in every litigation,
4 generates a "champerty" claim by a defendant against such plaintiff's counsel. And it
5 does so despite the State Bar's express authorization of contingency fee agreements
6 between attorneys and clients.

7 **B. Plaintiffs' counsel has not "tortiously interfered" with any legally**
8 **recognized contractual relations belonging to the defendants**

9 Defendants' counsel's additional vexatious, harassing, and frivolous proposed
10 claim against class counsel is based upon their alleged "tortious interference" with
11 defendants' contractual relations. In support of this proposed claim, defendants'
12 counsel asserts two unexplained and legally unsound bases that supposedly give rise to
13 such claim: 1) plaintiffs' counsel, through the use of "blackmail, threats, and/or
14 influence" coerced defendants' former payroll and benefits managers, Wendy
15 Gagliano, into providing a sworn affidavit in support of the class members' claims;
16 and 2) again, through the use of "blackmail, threats, and/or influence," plaintiffs'
17 counsel have somehow attempted to influence a non-class member, Jasminka Dubric,
18 to breach her contract.

19 **i. The Gagliano contract interference claim is frivolous**
20 **as a contract to prevent a witness from testifying in a**
21 **court case is illegal and void.**

22 Defendants assert that plaintiffs' use of a testifying witness, Wendy Gagliano,
23 who provided sworn testimony of her own free will, resulted in a "breach of contract"
24 by Ms. Gagliano of her "contract" with defendants. *See*, Defendants' Motion at 4:14-
25 18. Defendants fail to present the "contract" that forms the basis of the alleged
26 "breach of contract," presumably because none exists. But even if such a written
27 "contract" was signed by Gagliano purporting to prevent her from giving testimony in
28 this or any litigation matter, such contract is *void ab initio* and unenforceable.

Under Nevada law, unless "otherwise required by the Constitution of the United

1 States or of the State of Nevada, and except as otherwise provided in this title or title
2 14 of NRS, or NRS 41.071, no person has a privilege to: (d) Prevent another from
3 being a witness or disclosing any matter or producing any object or writing.” N.R.S.
4 49.015(1)(d). Thus, despite whatever clauses may exist in defendants’ mystery
5 contract with Ms. Gagliano, such provisions are unenforceable under Nevada law. Ms.
6 Gagliano enjoys a right to provide whatever truthful testimony she wishes to in this
7 proceeding and no “tortious interference with contractual relations” can result from
8 such testimony.

9 ii. **The *Dubric* contract interference claim is frivolous**
10 **as defendants have no enforceable contract right**
11 **to secure the supposed class settlement they seek in *Dubric*.**

12 As discussed in *Kronos, Inc. v. AVX Corp.*, 81 N.Y.2d 90, 94 (N.Y. Court of
13 Appeals, 1993):

14 The tort of inducement of breach of contract, now more broadly known as
15 interference with contractual relations, consists of four elements: (1) the
16 existence of a contract between plaintiff and a third party; (2) defendant's
17 knowledge of the contract; (3) defendant's intentional inducement of the third
18 party to breach or otherwise render performance impossible; and (4) damages to
19 plaintiff (*Israel v. Wood Dolson Co.*, 1 N.Y.2d 116, 120, 151 N.Y.S.2d 1, 134
20 N.E.2d 97; see generally, Restatement [Second] of Torts § 766; 4 Lee and
21 Lindahl, Modern Tort Law § 45.02, at 20 [rev ed.]). Since damage is an
22 essential element of the tort, the claim is not enforceable until damages are
23 sustained.

24 Nevada law is the same as the New York law discussed in *Kronos*, a widely
25 cited case, on this issue. *See, Sutherland v. Gross*, 772 P.2d 1287, 1290 (Nev. Sup. Ct.
26 1989) (“To establish intentional interference with contractual relations, the plaintiff
27 must show: (1) a valid and existing contract; (2) the defendant's knowledge of the
28 contract; (3) intentional acts intended or designed to disrupt the contractual
relationship; (4) actual disruption of the contract; and (5) resulting damage.”)

 Even if defendants’ proposed complaint alleged facts that could establish
damages (as discussed, *infra*, it does not), defendant’s complaint fails the foregoing
pleading requirements as it **never alleges any “actual disruption of the contract”**
giving rise to their claim. There is simply no allegation, anywhere, that any contract

1 has actually been breached or “ actually disrupted” by anyone. Instead, defendants’
2 bare-boned and conclusory allegations in respect to the alleged interference with the
3 *Dubric* contract state:

- 4 (1) On December 28, 2016 an agreement was entered into between
5 defendants and Dubric to resolve certain claims;
- 6 (2) Third -Party Defendants have engaged in tortious interference with
7 contract rights wherein they have *attempted to convince* Dubric to breach
8 her contract with Third-Party Plaintiffs through the use of blackmail,
9 threats, and/or influence and/or other means;
- 10 (3) As a result of such intentional acts by Third-Party Defendants, Third-
11 Party Plaintiffs *have been damaged*. Proposed Third-Party Complaint at
12 ¶¶ 37-40 (emphasis added).

13 The foregoing paragraphs comprise the entirety of defendants’ claims that
14 plaintiffs’ counsel has acted so egregiously by “tortiously interfering” with their
15 contractual allegations. They provide no facts about when and how such contract
16 between Dubric and defendants was breached or actually interrupted. They fail to do
17 so because such allegations are nonsense and no such “actual interruption” or breach
18 of their “contract” with Dubric has occurred. **Moreover, no such contract even**
19 **exists.**

20 Defendants are free to settle the *Dubric* case with Ms. Dubric, the lone party to
21 that litigation. The alleged “contract” forming the basis of such interference claim is a
22 proposal *to settle a class of claims for a class of persons besides Dubric if approved*
23 *by the Court* (as required in any class action case). Ex. “C” the alleged December 28,
24 2016 “contract” referred to by defendants. *See, also* ¶ 9.2 thereto, expressly
25 confirming such “agreement” was conditioned on its approval by the Court and void if
26 not so approved.

27 The sheer inanity of defendants’ assertions is shocking. The *Dubric* parties had
28 no jurisdiction to engage in any such class settlement (those class claims are already

1 certified for disposition in this case). It is absurd to claim that anyone who objects to a
2 proposed class settlement on behalf of the class members is “interfering with a
3 contract” to settle the class claims. It is even more ludicrous to assert such a claim
4 when the objections are made **by the attorneys already appointed as counsel for the**
5 **class** who have a *legal obligation* to protect the class members’ interests by objecting
6 to such a void and sham settlement of the class claims. But even setting all of those
7 things aside, defendants have, **by their own express agreement, no contract creating**
8 **any legally enforceable rights since the judge in *Dubric* has yet to approve such**
9 **claimed “contract.”**

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

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

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

27 On November 17, 2016, this Court had submitted on its chamber’s calendar
28 class counsel’s motion for an injunction, award of attorney’s fees, and other relief,
related to defendants’ counsel’s improper attempt to bypass the class certification
order in this case and secure a class settlement in *another* case pending in this Court.
Ex. “D” motion papers. Defendants’ counsel acted in direct violation of this Court’s

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

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

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

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

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

25 I understand depositions are very difficult for lay people, and certain
26 personalities don't always work very well with this deposition process, but that's
something the lawyer has to be able to deal with.

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

1 in what he's-- how he's answering questions. Ex. "F" p. 2-3.

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

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

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CONCLUSION

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

Dated: February 3, 2017

Respectfully submitted,

/s/ Leon Greenberg
Leon Greenberg, Esq. (Bar # 8094)
A Professional Corporation
2965 S. Jones Blvd., Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085
Attorney for Plaintiffs

LEON GREENBERG
Professional Corporation
Attorneys at Law
2965 South Jones Boulevard • Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085

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

Fax: (702) 385-1827

ELECTRONICALLY SERVED
02/08/2017 03:46:36 PM

February 8, 2017

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

Via Court Electronic Service

Re: Murray v. A-Cab
Defendants' Motion for Leave to File Amended Answer
Response in Opposition due on 2/13/17

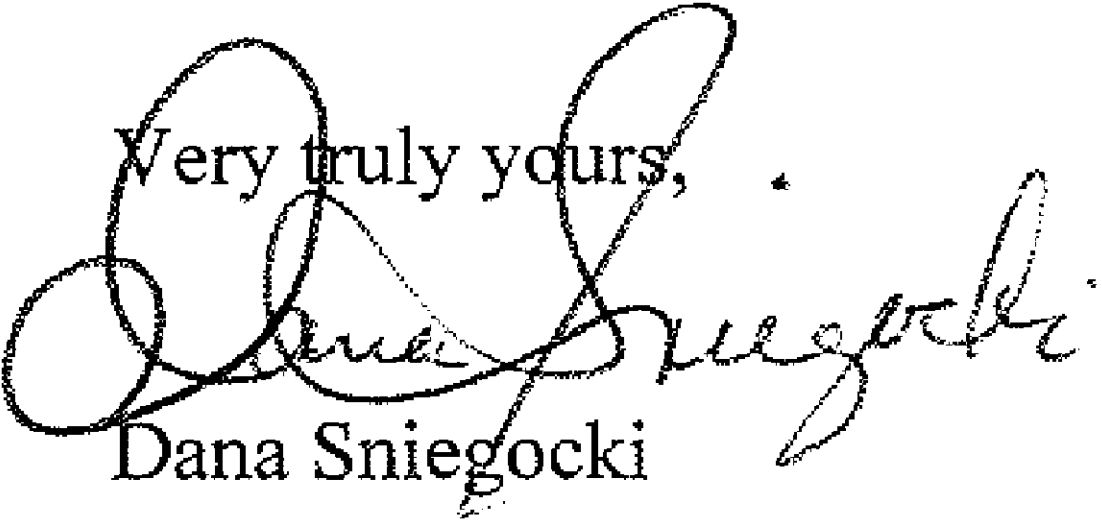
Dear Ms. Rodriguez:

I am requesting that you agree to an enlargement of time for plaintiffs to respond to defendants' Motion for Leave to File Amended Answer until February 27, 2017. I am making this request so that plaintiffs' counsel can abide by the 21 day "advance notice" provisions of NRCP Rule 11(c) so that plaintiffs may properly interpose such proposed Motion for Sanctions under Rule 11 as a countermotion in response. Such proposed Motion for Sanctions under Rule 11 was served on your office on February 3, 2017 and under NRCP 11, cannot be filed with the Court until February 27, 2017. Alternatively, defendants can agree to waive the 21 day "advance notice" requirement, in which case plaintiffs could properly countermove under Rule 11 on February 13, 2017, the current deadline for responding to defendants' motion.

As stated in plaintiffs' proposed motion, defendants and their counsel would be well advised to immediately withdraw their motion seeking to amend their

Answer as well. Such a voluntary withdrawal of that improper request may limit, to some degree, the size of a proper sanctions award against your office and your client.

Since defendants' motion is set to be heard on the Court's chambers calendar (currently on for 2/27/17), granting the continuance requested herein would impose no burden on either of the parties to continue the chambers decision. Please most promptly advise as to your agreement (or non-agreement) with this request.

Very truly yours, .

Dana Sniegocki

cc. Michael K. Wall, Esq

ELECTRONICALLY SERVED
02/10/2017 04:35:15 PM

February 10, 2017

Via Electronic Service

Dana Sniegocki, 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 Ms. Sniegocki:

I am in receipt of your request for an enlargement of time for Plaintiffs' to respond to the Motion for Leave to File Amended Answer in the above matter. Alternatively, you request for Defendants to waive the 21 day advance notice period under Rule 11. I am not in agreement with waiving the notice requirements provided for in the rules of civil procedure.

Sincerely,

RODRIGUEZ LAW OFFICES, P.C.

EC Rodriguez

Esther C. Rodriguez, Esq.

ECR:srd

cc: Michael Wall, Esq.

LEON GREENBERG
Professional Corporation
Attorneys at Law
2965 South Jones Boulevard • Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085

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

Fax: (702) 385-1827

ELECTRONICALLY SERVED
02/10/2017 05:02:49 PM

February 10, 2017

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

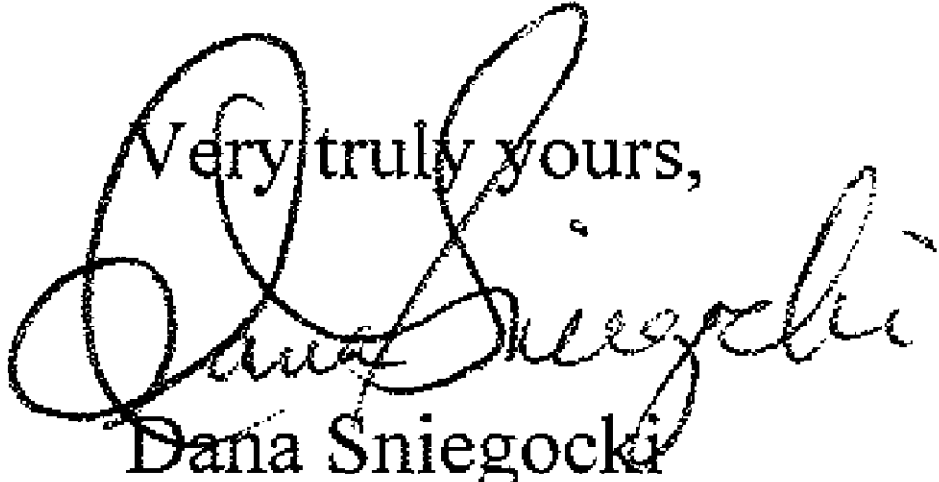
Via Court Electronic Service

Re: Murray v. A-Cab
Defendants' Motion for Leave to File Amended Answer
Response in Opposition due on 2/13/17

Dear Ms. Rodriguez:

Your letter of today's date states that you are "not in agreement with waiving the notice requirements provided for in the rules of civil procedure." Your letter does not state whether you will agree to an enlargement of time, until February 27, 2017, for plaintiffs to file their response in opposition, which is currently due on February 13, 2017. Will you agree to such enlargement of time?

Please let me know most promptly as such response is due in one business day.

Very truly yours,

Dana Sniegocki

cc. Michael K. Wall, Esq

ELECTRONICALLY SERVED
02/13/2017 12:46:46 PM

February 13, 2017

Via Electronic Service

Dana Sniegocki, 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 Ms. Sniegocki:

I am in receipt of your correspondence of Friday evening in the above matter indicating that your opposition to Defendants' Motion for Leave to Amend Answer is due today. By my calculations, your opposition is due February 16, 2017. As the motion is currently set for decision on February 27th, I cannot agree to an extension allowing your opposition to be filed that day as it leaves no time for a reply.

Sincerely,

RODRIGUEZ LAW OFFICES, P.C.

EC Rodriguez

Esther C. Rodriguez, Esq.

ECR:srd

cc: Michael Wall, Esq.

LEON GREENBERG
Professional Corporation
Attorneys at Law
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ELECTRONICALLY SERVED
02/13/2017 01:34:14 PM

February 13, 2017

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

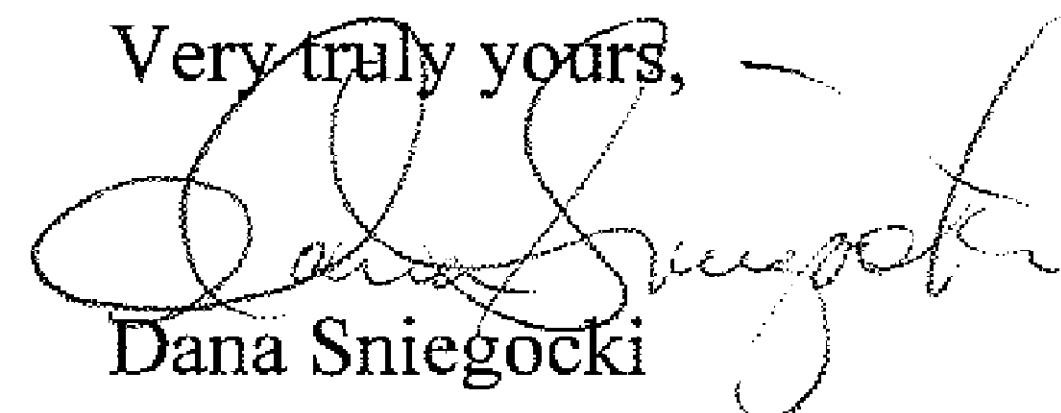
Via Court Electronic Service

Re: Murray v. A-Cab
Defendants' Motion for Leave to File Amended Answer
Response in Opposition due on 2/13/17

Dear Ms. Rodriguez:

Your calculation is wrong. Plaintiffs' Response in Opposition is due today. You are also intimately familiar with the procedure of continuing hearings/chambers decision dates when one party seeks an extension to file a response or reply brief. It requires a simple letter to the Court's staff indicating the agreement of both parties to the extension, and is granted as a matter of course. Nevertheless, you are unwilling to agree to a reasonable extension for plaintiffs to file their Response so that they may comply with the Rule 11 notice provisions. Your unwillingness to extend a professional courtesy that our office has extended to yours on numerous occasions is unwarranted. We intend to note that in our filing today with the Court.

Very truly yours,



Dana Sniegocki

cc. Michael K. Wall, Esq

EXHIBIT “D”

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

7 **DISTRICT COURT**
CLARK COUNTY, NEVADA

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

10 Plaintiffs,)

11 vs.)

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

13 Defendants.)
14)
15)

Case No.: A-12-669926-C

Dept.: I

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

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

18 1. I have been appointed by the Court as class counsel in this matter. I am
19 offering this declaration to explain to the Court the amount of time my firm has
20 expended in connection with preparing a Motion for Sanctions under Nev. R. Civ. P.
21 11 and opposing defendants' **SECOND** Motion for Leave to Amend Answer to File
22 Third-Party Complaint. All of the time expended in connection with that drafted, but
23 not yet filed, Rule 11 motion was necessary to, and such work product was
24 incorporated in, the opposition of class counsel to defendants' **SECOND** motion to
25 bring a third party claim against class counsel and class counsel's counter-motion for
26 sanctions, submitted herewith.

27 2. In my December 16, 2016 declaration submitted to the Court in connection
28 with my review, at that time, of the contemporaneous time records that I have

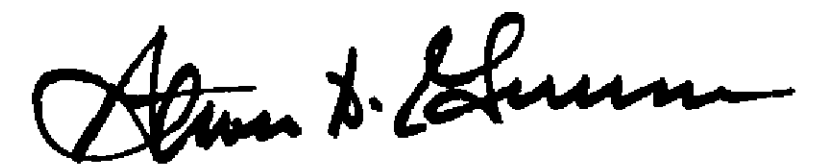
AA003740

1 personally maintained, and those of my associate, Dana Sniegocki, I indicated that I
2 had spent no fewer than 7.3 hours of time and Dana Sniegocki has spent no fewer than
3 3.6 hours in connection with defendants' **FIRST** abusive Motion for Leave to Amend
4 Answer to File Third-Party Complaint. Additional time has now been expended, at
5 least 1.3 hours of my time and 2.1 hours of Dana Sniegocki's time as a result of
6 defendants **SECOND** abusive Motion for Leave to Amend Answer to File Third-Party
7 Complaint. Those additional time expenditures include reviewing defendants'
8 **SECOND** abusive Motion for Leave to Amend Answer to File Third-Party Complaint,
9 legal research, drafting a proposed Rule 11 motion, drafting correspondence to
10 defendants' counsel in connection with the same, and drafting the annexed Opposition.

11 Affirmed this 13th day of February, 2017

12 /s/ Leon Greenberg
13 Leon Greenberg, Esq.
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EXHIBIT “E”



CLERK OF THE COURT

1 DCRR

2 LEON GREENBERG, ESQ.

Nevada Bar No.: 8094

3 DANA SNIEGOCKI, ESQ.

Nevada Bar No.: 11715

4 Leon Greenberg Professional Corporation

2965 South Jones Boulevard - Suite E-3

5 Las Vegas, Nevada 89146

(702) 383-6085

6 (702) 385-1827(fax)

leongreenberg@overtimelaw.com

7 dana@overtimelaw.com

Attorneys for Plaintiffs

8
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

14 Plaintiffs,

15 vs.

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

Defendants.

Case No.: A-12-669926-C

DEPT.: I

18
19 **DISCOVERY COMMISSIONER'S**
20 **REPORT AND RECOMMENDATION**

21
22 Hearing Date: November 18, 2015

23 Hearing Time: 9:00 a.m.

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

25
26 Leon Greenberg Professional Corporation

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

I.

FINDINGS

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

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

2.

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

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26
27 3. Defendants have not complied with their obligation to respond to
28 discovery requests timely and in accordance with NACF 161. A
plaintiffs' discovery requests in an informed, good faith, and appropriate manner. The

1 defendants' principal, Creighton J. Nady, ^{told} ~~misrepresented~~ to the Court at the March 18,
2 2015 hearing the difficulties defendants' faced in producing the information originally
3 sought by plaintiffs in February 2015 and specifically that burdensome computer
4 "code" would have to be written to produce such information. ^{This representation} ~~A conclusion that such~~
5 ~~was incorrect.~~ ^{was incorrect.}
6 ~~misrepresentation was intentional is supported by the course of events in this case.~~
7
8 ~~Even if that misrepresentation was not intentional it was, by defendants' own~~
9 ~~admission, uninformed, not the product of appropriate due diligence, and without any~~
10 ~~actual basis in fact.~~ ^{was} Despite having a duty to do so, defendants never inquired with
11 any knowledgeable person, which clearly should have been their computer consultant
12 James Morgan, about what would be necessary to produce such information. ~~Such~~
13 ~~dereliction of their responsibility to cooperate with the discovery process, or their~~
14 ~~affirmative misrepresentation, resulted in the need for plaintiffs' counsel to conduct a~~
15 ^{A previous}
16 Rule 34 inspection that was terminated early by defendants, ^{and} ultimately resulted in
17 ^{the Discovery Commissioner recommending the Plaintiffs take the}
18 ~~the unnecessary~~ deposition of non-party James Morgan. The foundational information
19 ^{to determine the accessibility of the information at issue.}
20 secured from James Morgan on the Cab Manager system during that deposition was
21 always available to defendants. Defendants should have ^{been able to consult} ~~complied with their duty to~~
22 ^{inquire} ~~inquire~~ with James Morgan about producing the information sought by plaintiffs and
23 taken appropriate action to produce such information. There was no need for the
24 deposition of James Morgan.
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1 4. Defendants' non-compliance with their obligation to respond to
2 plaintiffs' discovery request in an informed, ~~good faith~~^W, and appropriate manner, was
3 also manifested in the deposition held of defendants' principal, Creighton J. Nady as
4 an NRCP Rule 30(b)(6) witness. ~~That deposition was required for the same reason,~~
5 ~~defendants' failure to comply with their discovery obligations as specified in~~
6 ~~paragraph 3, supra, as the unnecessary deposition of James Morgan. Many or most of~~
7 ~~the NRCP Rule 30(b)(6) subjects inquired about at that deposition were unnecessary~~
8 ~~for the same reasons the James Morgan deposition was unnecessary.~~ In addition the
9 conduct of Mr. Nady at the deposition was ~~highly inappropriate and~~^W inexcusable. He
10 ~~was not a proper NRCP Rule 30(b)(6) deposition witness as he conceded he made no~~
11 ~~attempt to inform himself as to certain noticed deposition topics, that he was not~~
12 ~~informed about those topics, and indicated other personnel of the defendants, known~~
13 ~~to him, had knowledge about those topics.~~ He was abusive to examining counsel,
14 ~~and Plaintiffs' position is that he was also~~
15 ~~evasive and confrontational beyond any appropriate or allowable boundaries, and was~~
16 ~~uninformed as to several & pre areas, which has not~~
17 ~~not cautioned or counseled to curb his behavior by defendants' counsel.~~ ^{Conduct} ~~yet been~~
18 ~~Unfortunately, it does not appear~~ ^{specifically}
19 ~~based on a review of the record Mr. Nady was~~ ^{addressed. to}

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

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II.

RECOMMENDATIONS

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

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

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

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

9 No other information contained within defendants' Quickbooks system, such as
10 defendants' internal business or accounts payable records, are being compelled in this
11 Report and Recommendation, provided that defendants produce the information as
12 specified in paragraph 2 of the Findings. If they fail to do so, or assert they cannot
13 extract such information, the *Discovery Commission will likely require*
14 ~~Court will require the parties to enter into a suitable~~
15

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

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

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

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

5 *Costs and fees will be due and owing within 30 days after this Report*
6 IT IS FURTHER RECOMMENDED that based upon paragraphs 3 and 4 of the *Recommendation*

7 Findings the imposition of additional fees and costs upon defendants in connection *is signed by me*
8 with plaintiffs' motion to compel, including but not limited to the deposition of *District Court Judge M.*

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

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

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

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

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

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

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

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

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

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8.

trial date of 1-4-16 is vacated. M

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

Case No. A-12-669926-C

Hearing Date: November 18, 2015

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

DATED: December 11, 2015.



DISCOVERY COMMISSIONER

Respectfully submitted:

Approved as to form and content:



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

~~NOT APPROVED~~
ESTHER C. RODRIGUEZ, ESQ.
NV Bar 006473
RODRIGUEZ LAW OFFICES,
P.C.
10161 Park Run Drive.
Suite 150
Las Vegas, NV 89145
Tel: (702) 320-8400
Fax (702) 320-8401
info@rodriguezlaw.com
Attorney for Defendant

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NOTICE

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

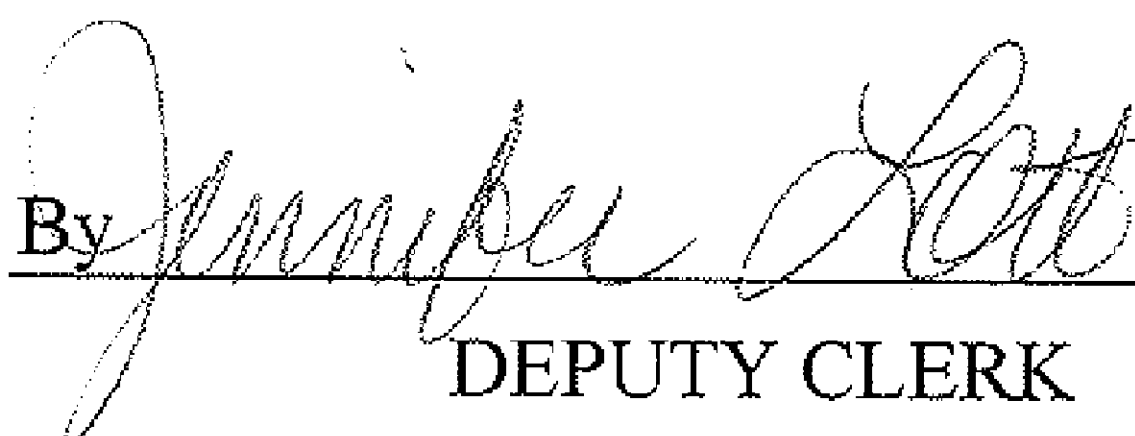
[Pursuant to E.D.C.R. 2.34(f), an objection must be filed and served no more than five (5) days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing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

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

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

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

STEVEN D. GRIERSON

By 
DEPUTY CLERK

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

Case No. A-12-669926-C

Hearing Date: November 18, 2015

ORDER

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

_____ The parties having waived the right to object thereto,

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

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

☒ AND

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

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

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

Dated this 29 day of Feb, 2015.


DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

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

Order on Discovery Commissioner's Report and Recommendation

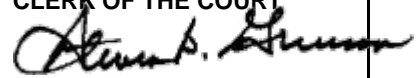
by court electronic service to:

TO:

Esther C. Rodriguez, Esq.
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Las Vegas, NV 89145

/s/ Dana Sniegocki

Dana Sniegocki



TRAN

EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA

MICHAEL MURRAY, et al,)	CASE NO. A-12-669926
)	
Plaintiffs,)	DEPT. NO. I
)	
vs.)	
)	
A CAB TAXI SERVICE, LLC, et al,)	
)	
Defendants.)	

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE
TUESDAY, FEBRUARY 14, 2017

TRANSCRIPT RE:
PLAINTIFFS' MOTION ON OST TO EXPEDITE ISSUANCE OF ORDER
GRANTING MOTION FILED ON 10/14/16 TO ENJOIN DEFENDANTS FROM
SEEKING SETTLEMENT OF ANY UNPAID WAGE CLAIMS INVOLVING
ANY CLASS MEMBERS EXCEPT AS PART OF THIS LAWSUIT
AND FOR OTHER RELIEF AND FOR SANCTIONS

APPEARANCES:

For the Plaintiffs:	LEON GREENBERG, ESQ.
For the Defendants:	MICHAEL K. WALL, ESQ.

RECORDED BY: Lisa Lizotte, Court Recorder

AA003755

1 LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 14, 2017, 9:06 A.M.

2 * * * * *

3 THE CLERK: Page 12, Michael Murray versus A Cab Taxi. Case Number
4 A669926.

5 MR. GREENBERG: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. GREENBERG: Leon Greenberg for plaintiffs.

8 MR. WALL: Good morning, Your Honor. Michael Wall for defendants.
9 Esther Rodriguez, who is primary counsel for defendants, is before Judge Delaney
10 right now, because these matters are scheduled over each other.

11 THE COURT: Okay. Well, do you want to argue the whole thing? Do you
12 want the lay of the land? Or how do you guys want to proceed?

13 MR. WALL: I'm prepared to go forward, Your Honor.

14 THE COURT: I'm sorry?

15 MR. WALL: I am prepared to go forward, Your Honor.

16 THE COURT: All right.

17 MR. WALL: Although it would seem to make sense, since counsel for Dubric
18 and counsel for -- and Esther are before Judge Delaney at the moment, it would
19 make sense to find out what she's going to do first.

20 THE COURT: Okay. Mr. Greenberg, it's your motion.

21 MR. GREENBERG: Your Honor, I take it the Court has reviewed the situation
22 and why this was brought before the Court on an expedited basis. I actually hoped
23 to have this before Your Honor last week, but Your Honor of course has been busy
24 with other matters.

1 THE COURT: Uh-huh.

2 MR. GREENBERG: What's going on here, Your Honor, as I'm sure the Court
3 can appreciate, is something in complete derogation of what the Court has ordered
4 in this case. These class claims are before this Court. Your Honor, in June of last
5 year, signed an order certifying these class claims. And the defendants, unhappy
6 with Your Honor's order and the result of facing the prosecution of these class
7 claims in this case, are now going to Judge Delaney in a case that was filed two
8 and a half years later, entering into a collusive agreement with the single plaintiff
9 there, and convincing Judge Delaney that she should also certify the class claims
10 for purposes of settlement.

11 And, Your Honor, there's no reason for this. I mean, I filed a reply
12 on Friday. They do not present to the Court a scintilla, not even the slightest thread
13 of reasoning to justify their conduct in doing that, Your Honor. They say, well, you
14 know, this is in the interest of the class, etcetera. Well, Your Honor, if they want
15 to settle this case, they can come to Your Honor. They don't need my permission.
16 I'm not the gatekeeper here of what they're trying to do before Judge Delaney.

17 There is no reason for them to be proceeding in this fashion, except,
18 quite honestly, Your Honor, to make the prosecution of this case and the vindication
19 of the class members' interest properly in a fair procedure in the light of day where
20 the Court can scrutinize any resolution of those interests as difficult for me as
21 possible. I have consumed now 50 hours of my time running before Judge Delaney,
22 who, for whatever reason, has not ascertained her lack of subject matter jurisdiction,
23 or if she has, she hasn't stated it in the record in the Dubric proceedings so far.
24 She clearly doesn't have subject matter jurisdiction over these claims.

1 THE COURT: Because?

2 MR. GREENBERG: Because Your Honor certified the class in this case.

3 It's as if the plaintiffs said, well, I don't like Your Honor -- I don't like the case I have
4 with Your Honor, so I'm going to go file another case with another judge two and
5 a half years later and see if I can get a better result in that case. Your Honor,
6 when you certified these claims, specified and enjoined the class members from
7 any settlement of the class claims until another order was issued in this case.
8 They can come here, Your Honor, and ask for that order to be issued.

9 They speak of the interest of Ms. Dubric, who was excluded from
10 the class claims here because she had filed her own litigation individually while
11 certification was pending before Your Honor. That motion was pending for a long
12 time, Your Honor, and they opposed it. And Your Honor eventually reached a
13 decision on the merits and certified the class. But if for some reason they feel they
14 have an interest, they can intervene here. They can come before Your Honor. They
15 can say, hey, Mr. Greenberg, Ms. Sniegocki are not representing the class interests
16 properly. Your Honor can certainly entertain that. They can entertain this proposal
17 for settlement. This is going to cause chaos, Your Honor. If Judge Delaney --

18 THE COURT: In the other case --

19 MR. GREENBERG: Yes?

20 THE COURT: Let me ask you a question. In the other case is the class
21 described the same as the class in our case?

22 MR. GREENBERG: Yes, it is, Your Honor. They are seeking to certify for
23 disposition a damages class under Rule 23(b)(3) for disposition of all claims from
24 2009 through date of judgment. Your Honor has certified in this case a damages

1 class through December 31st, 2015. I have a pending motion, Your Honor, to
2 extend the class certification --

3 THE COURT: Right.

4 MR. GREENBERG: -- on damages to the present date. This was all delayed
5 because of the transfer of this case last month inadvertently. We were supposed to
6 be here on January 3rd to argue all of this, Your Honor, and what happened is --

7 THE COURT: Let me just ask Mr. Wall something.

8 MR. GREENBERG: Yes.

9 THE COURT: Do you agree that the class to be certified or the class as it
10 may be certified is the same in both cases?

11 MR. WALL: No, I do not, Your Honor. We don't even know what class will
12 be certified there because there isn't a class certified there.

13 THE COURT: Is there a motion to certify?

14 MR. WALL: At this point there's a motion that is pending. I'm not involved
15 in the Dubric case at all.

16 THE COURT: Okay.

17 MR. WALL: My understanding is that there are proceedings on-going there
18 to certify a class there. That hasn't happened yet. I don't --

19 THE COURT: Well, let me put the onus on you then, Mr. Wall, who I have
20 known many years and respect a lot. Why would we have two cases, two class
21 action cases running at the same time if the classes are identical?

22 MR. WALL: Competing class action cases are common in class action
23 litigation, Your Honor. And before there's a judgment there's no res judicata effect
24 of one Court's order over another's. And so the arguments -- all of the arguments

1 of Mr. Greenberg say this is axiomatic, this is axiomatic, what he says is it's
2 axiomatic that I own the clients and that I own the law and that I own the courthouse.
3 But there's not one single case or citation of any kind of legal authority whatsoever
4 in his motion and the reason is because he's just wrong.

5 The reason he's wrong is because Judge Delaney most certainly
6 does have subject matter jurisdiction over the matter. Subject matter jurisdiction is
7 conferred by statute and the commencement of an action. Anybody can commence
8 an action. You can even have two competing actions at the same time. That may
9 be a basis for a judge in a later action to hold an action in abeyance or to do some
10 other act, but it's not -- it doesn't take away the subject matter jurisdiction of that
11 court to proceed.

12 THE COURT: Okay. And I'm less concerned about that than I am having
13 two lawsuits at the same time in court with identical classes. I mean, all of the
14 advantages of judicial economy, etcetera, etcetera that stem from the use of a
15 class action go right out the window if you've got more than one class, doesn't it?

16 MR. WALL: Those are good arguments to make in an argument to Judge
17 Delaney to hold her action in abeyance while this one proceeds. But this Court
18 has no jurisdiction over Judge Delaney. It has no jurisdiction over Dubric. It has
19 no jurisdiction over --

20 THE COURT: I'm not saying I do.

21 MR. WALL: -- the action that's going there.

22 THE COURT: I'm not saying I do. I'm asking you why would -- what sense
23 does it make to --

24 MR. WALL: It makes perfect sense because the classes are not the same

1 and because Mr. Greenberg doesn't own the class.

2 THE COURT: Ahh. Okay.

3 MR. WALL: He doesn't own the people in the class. And even if his is an
4 opt out class and nobody has opted out, that doesn't mean he owns those clients
5 and they can't bring their own actions and do whatever they want. What it means
6 is if they don't opt out that they will be bound by a decision of this Court, if and when
7 that decision is ever entered, but at the present time they certainly are not. And it
8 makes all the sense in the world --

9 THE COURT: You just said something that intrigues me.

10 MR. WALL: So, Mr. Dubric can bring his own action. What Mr. Greenberg
11 doesn't have in this action --

12 THE COURT: Okay. Keep going.

13 MR. WALL: -- is a class representative. Both of his class representatives
14 have claims that pre-date the statute of limitations. So he can't even proceed with
15 this action. He doesn't have a class representative. He certainly doesn't represent
16 Dubric. He certainly doesn't represent anybody or bring a class representative to
17 extend the date. He just throws that in as a paragraph --

18 THE COURT: Can I ask you --

19 MR. WALL: -- oh, the time has passed, we should extend the date.

20 THE COURT: Mr. Wall, can I ask you a question?

21 MR. WALL: Yes, sir.

22 THE COURT: Now I've forgotten what it was. Hang on a second. You say
23 that the classes are not the same?

24 MR. WALL: I don't know that they will be the same because they haven't

1 been certified yet. And --

2 THE COURT: Well, let's assume that the motion which is to be argued this
3 morning, I gather, is a motion to certify in front of Judge Delaney. Okay, so how
4 would the putative class differ from the class in this lawsuit?

5 MR. WALL: They might be exactly the same. And if they are exactly the
6 same, that would be a basis for asking Judge Delaney to delay her action because
7 -- in preference to this action which existed first --

8 THE COURT: Yeah.

9 MR. WALL: -- but she would not be compelled to do so.

10 THE COURT: Okay.

11 MR. WALL: But there are differences in the two. I don't understand exactly
12 what they are because I haven't been involved in that one. The times are different.
13 There might be some different parties. But even assuming they were the same,
14 even if they were the same there would be no basis for an injunction.

15 THE COURT: Maybe I missed it. Do you -- did you cite authority that says
16 that you can have identical classes split up into two different courts?

17 MR. WALL: I didn't do the papers, Your Honor. And there's no authority
18 cited because the authority or the discussion there is about this being premature
19 and in the wrong court. But I recall a case from the time when -- from years back
20 where a party filed an action and then had problems with service issues, and so
21 filed an identical action. It had nothing to do with class action but filed an identical
22 action. I was counsel in that. And there was a motion brought to dismiss the
23 identical action because it was an identical action.

24 THE COURT: Uh-huh.

1 MR. WALL: And the court dismissed that identical action. And the supreme
2 court issued a writ against that court, saying there wasn't a basis for dismissal and
3 they had every right to pursue the exact same action twice. They could sanitize
4 their record because there was no statute of limitations problem. And the court
5 could refuse to go forward on it, but there wasn't a basis to dismiss it because there
6 was no jurisdictional issue.

7 And that's exactly what we have here. Judge Delaney most definitely
8 has personal jurisdiction over Mr. Dubric. She has subject matter jurisdiction over
9 the matter that is brought before her. And the argument that she should not go
10 forward because of judicial economy and all of those other things should be being
11 made to Judge Delaney and that should be her choice and then it's based on she
12 can consider what's been going on, whether it makes sense to do that as a matter
13 of equity. She can consider a lot of circumstances. She can consider which one
14 was filed first. But it's not just a race to the courthouse that carries the day on that
15 kind of an argument. She can consider whether the classes are the same or not
16 the same; whether there has been any shecanery, a collusive action.

17 All of the pejorative phrases that get thrown at us, there's no basis
18 for them because there's no law supporting the argument that this Court should
19 be enjoining Judge Delaney or enjoining the defendants in this matter from taking
20 action in a different matter. They're defendants in there, but you can't enjoin Dubric
21 from going forward.

22 THE COURT: Well, I'm not really speaking -- analyzing this in terms of
23 injunctive relief. I am just -- I'm clear back before you get to the injunctive relief.
24 I'm back to if the classes are identical, what kind of judicial economy does that

1 make to have two different departments doing the same lawsuit?

2 MR. WALL: Well, it doesn't, Your Honor. And judicial economy there would
3 be served by arguing to the court, which is the second court, that it should not go
4 forward because that would not be -- it would not be judicially economic. However,
5 the point is then that court could consider -- because judicial economy is an
6 important issue but it's not the only issue. If you have an action which is being
7 mishandled, and that's what we've argued in our papers, and where the price is --
8 where the cost is being driven up, where it's attorney driven and they don't even
9 have a class representative, where it is being handled in the abusive way that this
10 class is being handled by Mr. Greenberg, you can go to a different court and you
11 can argue all of those equities to that other court.

12 THE COURT: So now we have -- now we have you asking for Judge Delaney
13 to do something to my case that you say is improper for me to order for the other
14 case.

15 MR. WALL: I'm not asking Judge Delaney to do anything to your case,
16 but what I am saying is that if --

17 THE COURT: What did you just say, then?

18 MR. WALL: -- if Judge --

19 THE COURT: You talked about making arguments of the improper --
20 impropriety of what's going on in this case.

21 MR. WALL: I talked about making arguments to Judge Delaney, telling
22 her what she should do in her own case, not in this case, because of improprieties
23 that are going on in this case. He's not asking you to do something in this case.
24 He's asking you to do something in that case, and that's where you don't have

1 jurisdiction, Your Honor, to do it --

2 THE COURT: Uh-huh.

3 MR. WALL: -- with all due respect. That's what I'm talking about.

4 THE COURT: What is he asking me to do in that case?

5 MR. WALL: And Judge Delaney may be completely convinced by his
6 arguments that this matter should go forward. But if -- once there's a judgment, that
7 judgment may or may not have some effect on another action in that way. And then
8 the remedy, if there is a remedy to be sought, is from a court that has jurisdiction
9 over Judge Delaney, and that's the Nevada Supreme Court. And whatever she
10 does, if it's wrong as a matter of law, the axiomatic law that hasn't been cited to us
11 in any of the papers, if that's wrong he's got his remedy and that remedy is at the
12 Nevada Supreme Court. But what he doesn't have is the remedy that he's seeking
13 here, the remedy to have this Court attempt to intervene in an action that's pending
14 in a sister court of the same court.

15 THE COURT: Okay. Let's hear from Mr. Greenberg again.

16 MR. GREENBERG: Your Honor --

17 THE COURT: Mr. Greenberg, let me tell you that the lay of the land is I'm
18 not leaning towards granting an injunction in this case. But that does not mean that
19 I disagree with all of your reasoning and arguments about the difficulty and waste
20 that's involved in running two separate class actions that appear to have identical
21 classes.

22 MR. GREENBERG: Your Honor, Your Honor has jurisdiction over the parties
23 to this case --

24 THE COURT: Yeah.

1 MR. GREENBERG: -- which include the defendants. It is perfectly within
2 Your Honor's power to restrain the defendants from proceeding in any other forum,
3 before any other judge in any other case to settle the claims of the class members.
4 The class members' claims are also before Your Honor. Your Honor has asserted
5 jurisdiction over them. You have a guardianship role here, Your Honor, to protect
6 the interests of the class, okay.

7 Your Honor, these proceedings are causing incredible harm to the
8 class members' interests. If they proceed with their proposed preliminary settlement
9 approval and Judge Delaney, who hasn't said she's going to, sends notice to the
10 class members, what kind of chaos is this going to cause? The class members
11 have already received notice of the pendency of this litigation. None of them agreed
12 to exclude themselves. I am their counsel. I have been appointed to represent
13 them by you, Your Honor, okay. You cannot allow the defendants to subvert Your
14 Honor's order. If you issue the injunction as I am requesting -- you've already
15 enjoined the class members from any settlement.

16 THE COURT: Uh-huh.

17 MR. GREENBERG: So the class members can't actually settle their claims
18 with the defendants without a further order from Your Honor because they've
19 elected to join this case. None of them have excluded themselves from this case.
20 So they can't actually participate in another class action before Judge Delaney as
21 defendants are proposing.

22 If Your Honor allows this to proceed and Judge Delaney elects to
23 proceed as she is being asked to by defendants, I'm going to -- yeah, I'm going
24 to have to go to the supreme court and seek a writ of prohibition, perhaps on an

1 emergency basis. And again, this is going to distract me off from the purposes of
2 devoting my time and energy to the prosecution of this case, which, Your Honor,
3 is exactly what the defendants want. Your Honor may be aware, I'm now being
4 subject to two different motions to implead me personally as a third party defendant
5 in these litigations. The defendants are saying that I have to indemnify them for
6 the class damages that they're going to have to pay under various theories. We're
7 going to be in front of Your Honor on the 28th on those claims, okay.

8 THE COURT: Okay.

9 MR. GREENBERG: This is a pattern of conduct by the defendants to
10 obstruct the progress of this case. Your Honor, to preserve the class members'
11 interests, needs to put an end to this. Issue the injunction not to restrain Judge
12 Delaney but to restrain the defendants. If the defendants feel Your Honor doesn't
13 have the power to issue such an injunction, let them go and file the writ with the
14 supreme court, Your Honor, instead of giving them what they want, which is to
15 consume my time and divert my efforts from the prosecution of the class claims.
16 We have a motion for partial summary judgment on these class claims before
17 Your Honor on March 7th. That partial summary judgment motion is for a minority
18 of the claims in an amount that exceeds the entirety of the proposed settlement
19 that they are bringing before Judge Delaney for the class claims.

20 I understand Your Honor is reluctant to get involved in a conflicting
21 situation. And quite honestly and candidly, Your Honor, I have no idea why Judge
22 Delaney has not referred the matter brought to her to Your Honor and made clear to
23 the parties, the Dubric counsel and to the defendants that they need to come before
24 this Court in this case to propose the class settlement. They're free to do that, Your

1 Honor. I don't know why and it's not my role to criticize her, but I'm asking --

2 THE COURT: I understand when you're saying that you're not saying that
3 Ms. Dubric has to participate in this case.

4 MR. GREENBERG: She's been excluded from this case by your order
5 from June because she had already filed her own individual case while the class
6 certification motion was pending. It took about eight or nine months for that motion
7 to be decided. In the interim, she filed her own individual case. I spoke with her
8 counsel at that time. I invited them to cooperate in the prosecution of this case.
9 They declined to communicate with me. They declined to let me speak with their
10 client. And so they were excluded.

11 So she can proceed individually. I'm not asking that they be restrained
12 in respect to their rights, Ms. Dubric's rights before the court. Of course her rights
13 are preserved. And it's not about restraining what Judge Delaney is going to do. It's
14 about, again, Your Honor, preserving the integrity of the judicial process and Your
15 Honor's own order on class certification in this case. Your Honor has jurisdiction
16 over the parties. You have jurisdiction over the defendants.

17 I gave Your Honor a proposed order with my motion. I have that order.
18 I also have a much shorter form of order that I would ask Your Honor to sign. It
19 simply enjoins the defendants from proceeding with any settlement of any of the
20 class members' claims that have been certified in this case under the Nevada
21 Constitution until further order from Your Honor. They could bring their settlement
22 proposal to Your Honor. If they want to proceed in the fashion they're asking Judge
23 Delaney to authorize, they can bring that to Your Honor. There's never been an
24 impairment for them to do that.

1 I think Your Honor understands my point, and I understand Your
2 Honor's reluctance to get involved in this situation and to issue an injunction. And
3 your caution, of course, is coming from a wise place, Your Honor. I don't disagree
4 with that. But this is a very unusual situation. We have a party here to this litigation
5 that is determined to do everything it can to obstruct the progress of this litigation.
6 This case is very old. They're looking to get a 5-year rule dismissal later this year.
7 And again, they're trying to delay and to consume my time with these collateral
8 matters, Your Honor.

9 This is not serving the class members' interests. And that's what I
10 would really ask Your Honor to contemplate here in terms of issuing the injunction.
11 How would it possibly hurt the class members' interests to grant the injunction I am
12 asking? It will not. But it will definitely harm the class members' interests to allow
13 the defendants to keep carrying on this way. It won't harm the class members'
14 interests because everything defendants are alleging about my incompetence,
15 my misconduct, the inadequacy of the class representatives in this case, the value
16 and virtue of the settlement they're proposing to Judge Delaney, all of those things
17 can be brought before Your Honor for a determination on the merits and the class
18 members' interests adequately reviewed in respect to all of those allegations. But
19 if Your Honor fails to issue an injunction and cause that all to be brought here and
20 Judge Delaney does proceed without jurisdiction and notice goes out to the class
21 members, I have to go burden the supreme court with a writ of prohibition.

22 Your Honor, this is not going to serve the class members' interests.
23 There is no way that is going to advance them. Even if I'm wrong, Your Honor,
24 let's say defendants are completely right and I should not be representing the class

1 interests, I'm not doing it in an appropriate manner, the settlement they propose
2 is in the interest of the class members, if that's all true then bring all of that before
3 Your Honor, which they can do, and Your Honor can chart the right course to
4 protect the class members' interests.

5 So what I'm saying is Your Honor has a difficult role here and I implore
6 you to be assertive as a guardian of the class members' interest. This isn't about
7 me or the defendants per se, it's about the interests of all of the individuals who are
8 relying on the Court to look out for what's in their interest. And there is no reason to
9 deny the injunction and to allow this sort of chaos to proceed, because that clearly
10 is not going to be in the interest of the class members.

11 THE COURT: All right.

12 MR. WALL: Your Honor, may I respond to a few things?

13 THE COURT: No, because we're already -- we've got a whole courtroom
14 of people and we've done both sides. Here's the ruling. I'm going to take it under
15 advisement. I'm not going to make a ruling today. You may tell Judge Delaney that
16 I agree with your -- with the gist of your motion, not as to the injunction itself, but
17 as to the question of whether or not there should be two competing classes in two
18 different courtrooms; that I am of the view that judicial economy and a host of other
19 reasons would seem to dictate that the case either be in her court or mine. And
20 as you've already said, mine is, what, two and a half years further ahead?

21 MR. GREENBERG: That is correct, Your Honor.

22 THE COURT: Okay.

23 MR. GREENBERG: We have a motion for partial summary judgment pending.
24 We're working towards a trial. Your Honor is familiar with the issues intimately here.

1 I've been appointed counsel for the class. I represent these individuals, Your Honor.

2 THE COURT: Understood.

3 MR. GREENBERG: You haven't relieved me as class counsel, Your Honor.

4 THE COURT: Understood.

5 MR. WALL: But, Your Honor, those things are not true, and I didn't get to
6 respond to them because his argument was interrupted in the middle.

7 THE COURT: Do you want me to make a ruling today, then?

8 MR. WALL: No, I do not, Your Honor.

9 THE COURT: All right.

10 MR. WALL: I just wanted to say --

11 THE COURT: Then let's move on.

12 MR. WALL: Thank you, Your Honor.

13 MR. GREENBERG: Your Honor --

14 THE COURT: Because I have read this through and thought it through
15 as much as a judge needs to in order to make a ruling. I've stated what I believe is
16 the appropriate course. But I'm not going to be engaged in a road race with Judge
17 Delaney to see who gets to have the case. I think that in all likelihood or what I
18 would suggest is that Judge Delaney also simply take the matter under advisement.
19 But at any rate, I don't -- I'm not going to issue an injunction this morning. There is
20 an answer to your argument about the problem with having two classes, but I don't
21 believe the answer lies in a race to the courthouse. And for that reason, I tell you
22 that I agree with most of the reasoning that's in your motion. The only thing that
23 I'm not agreeing is that it's up to this Court to tell another court that they can't go
24 forward.

1 MR. GREENBERG: Your Honor, I'm not asking you to issue an injunction
2 against Judge Delaney, it's against the defendants' actions.

3 THE COURT: Well, I understand that you're not, but as Mr. Wall has argued
4 and as is in their motion work -- I'm sorry, the opposition work, it sure kind of comes
5 down to that because you're telling another judge that, no, you can't certify a class
6 if it's the same as this class. And I don't think that's the appropriate way for a court
7 to do. So what you can do is give her the lay of the land. I'm taking it under
8 advisement because I refuse to be caught up in a -- sort of a -- I don't know what
9 you'd call it, a kingdom race between two judges.

10 MR. GREENBERG: I understand, Your Honor, and I appreciate Your
11 Honor's caution. Again, though, this is not a race. These parties are before Your
12 Honor. I mean, this Court has jurisdiction in this case. It is the defendants who are
13 engaging in a race here. And if I have to file a writ of prohibition with the supreme
14 court, Your Honor understands I will have to proceed in that fashion. I was hoping
15 to avoid that. This is very badly impacting the interests of the class members,
16 regardless.

17 THE COURT: Uh-huh.

18 MR. GREENBERG: And that's --

19 THE COURT: I believe that it is.

20 MR. GREENBERG: And as I said, Your Honor, on the merits there is no
21 reason for Judge Delaney to proceed in the fashion that is contemplated.

22 THE COURT: Well, that's an argument you need to raise down to her
23 courtroom and make it there.

24 MR. GREENBERG: I understand, Your Honor. Your Honor, I also drafted

1 a very short form of injunction order, along with the longer form I submitted.

2 THE COURT: Okay. If you want to submit that, because I am going to take
3 this under advisement.

4 MR. GREENBERG: This is the short form, Your Honor. This is the long form
5 that was previously given to Your Honor.

6 THE COURT: All right.

7 MR. GREENBERG: Your Honor might prefer the short form. I would urge
8 Your Honor to act on the request as quickly as possible, and perhaps you and
9 Judge Delaney could confer and reach a consensus between the two of you. But
10 let me not take up more of your time.

11 MR. WALL: Now he's been able to make that argument three times without
12 response, and I just want to be on the record to say that argument is legally incorrect
13 as a matter of law --

14 THE COURT: Which argument?

15 MR. WALL: -- because he doesn't own the class members.

16 THE COURT: Which argument?

17 MR. WALL: The argument that the class members can't do anything because
18 they didn't opt out of his class and that they are enjoined from settling.

19 THE COURT: Okay.

20 MR. WALL: They're enjoined from settling this action.

21 THE COURT: Okay.

22 MR. WALL: This Court couldn't enjoin them from settling any other action.

23 THE COURT: Okay. I'm putting it under advisement for -- when's the next
24 hearing in front of me on this?

1 MR. GREENBERG: On the 28th we are scheduled for a hearing, Your Honor.
2 That's two weeks from today.

3 THE COURT: All right.

4 MR. GREENBERG: I would certainly be eager to appear before Your Honor
5 on this further at the earliest available time.

6 THE COURT: I will put this on next Monday's chambers calendar.

7 MR. WALL: Thank you, Your Honor.

8 MR. GREENBERG: And if Your Honor issues an order, as soon as it gets
9 dispatched to counsel we would appreciate it.

10 THE COURT: All right. Thank you.

11 MR. GREENBERG: Thank you, Your Honor.

12 THE CLERK: It will be Tuesday, February 21st.

13 MR. WALL: Thank you, Your Honor.

14 THE COURT: All right.

15 (PROCEEDINGS CONCLUDED AT 9:35 A.M.)

16 * * * * *

17

18 ATTEST: I do hereby certify that I have truly and correctly transcribed the
19 audio/video proceedings in the above-entitled case to the best of my ability.

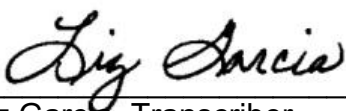
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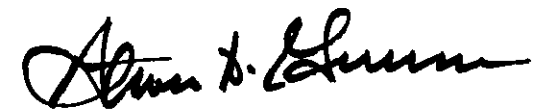
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Liz Garcia, Transcriber
LGM Transcription Service



CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

15 Plaintiffs,

16 vs.

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

19 Defendants.

Case No.: A-12-669926-C

Dept.: I

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

20 Plaintiffs filed their Motion to Enjoin Defendants from Seeking Settlement of
21 Any Unpaid Wage Claims Involving Any Class Members Except as Part of this
22 Lawsuit and for Other Relief on October 14, 2016; defendants filed a response in
23 opposition on November 4, 2016 with plaintiffs filing a Reply on November 10, 2016;
24 the Court also considering the plaintiffs' Plaintiffs' Motion on OST to Expedite
25 Issuance of Order Granting Motion Filed on 10/14/2016 to Enjoin Defendants from
26 Seeking Settlement of Any Unpaid Wage Claims Involving Any Class Members
27 Except as Part of this Lawsuit and for Other Relief and for Sanctions, filed with the
28 Court on February 1, 2017, with the Court holding a hearing on February 14, 2017
and at that time considering the arguments of counsel. After due and proper

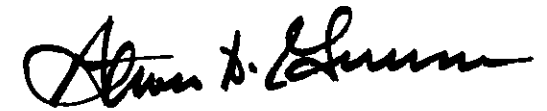
deliberation, the Court hereby grants certain relief on the motion as follows:

IT IS ORDERED that the defendants are, upon entry of this Order, prohibited and enjoined from entering into any settlement on a class action basis through the use of NRCPP Rule 23 with any of their current or former taxi driver employees for claims under Article 15, Section 16, of the Nevada Constitution, the Nevada Minimum Wage Amendment, whether styled as a claim for breach of contract, conversion, or under any other theory of recovery. The foregoing settlement prohibition can only be amended or removed by a further order issued in this case. The foregoing settlement prohibition bars the defendants from seeking approval for a settlement under NRCPP Rule 23 of any such persons' claims on a class action basis in any other proceeding now pending before or in the future filed in the Courts of the State of Nevada, including, but not limited to, their joint motion filed on January 24, 2017 requesting preliminary class settlement approval and class certification in the case of *Dubric v. A Cab LLC et al.* A-15-721063-C currently pending in Department 25 of this Court. Defendants are commanded to within one judicial day of the service of this Order with Notice of Entry to file with this Court in the *Dubric* case a request for withdrawal of that joint motion and make all available efforts to have that motion withdrawn and proceed no further with the same. This Order does not limit the defendants' ability to settle the claims of the named plaintiff Jasminka Dubric, only, in *Dubric v. A Cab LLC et al.* A-15-721063-C.

The foregoing is without prejudice to the grant of further relief by the Court on the motion and the Court intends to issue a subsequent Order addressing the same.

IT IS SO ORDERED this 16th day of Feb, 2017


HONORABLE JUDGE KENNETH CORY
DISTRICT COURT, CLARK COUNTY



CLERK OF THE COURT

SUPPL

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL MURRAY,

Plaintiffs,

vs.

A CAB TAXI SERVICE, LLC, et al.,

Defendants.

CASE NO. A669926

DEPT NO. I

**SUPPLEMENT TO ORDER
FOR INJUNCTION FILED ON
FEBRUARY 16, 2017**

The Court takes this opportunity to explain some considerations in addition to those expressed in the Motion and Injunction itself. The Court finds it necessary to do so under the circumstances of one Nevada District Court effectively enjoining the further proceedings in a sister District Court. Only the considerations expressed in both the injunction motion work and this Supplement to Order for Injunction would prompt this Court to take such unusual action.

The problem of competing class actions is not new in this country. It has more often been expressed when federal courts have enjoined competing class actions in state courts. However, the reasoning is the same. Thus, recourse to articles and cases discussing the interplay between federal court jurisdiction and state courts in relation to class actions is illuminating.

1
2
3 From an article primarily aimed at the unique interplay between federal and state
4 courts dealing with competing class actions, the following points are no less *apropo*
5 when the federal conundrum is absent, and state courts are wrestling with class actions:
6

7 Through their redundancy and the "reverse auction" dynamic they engender,
8 competing class actions compromise the efficiency and fairness goals that
9 justify the class action device and impose unnecessary costs on class
members, defendants, the courts, and society at large.

10
11 The goal of class actions in general, and of Rule 23(b)(3) class actions in
12 particular, is the unitary resolution of numerous common claims in an efficient
13 and fair manner. Class actions achieve efficiency by resolving multiple
controversies in one litigation; they achieve fairness by providing the
consistent resolution of common claims and the opportunity to resolve claims
that would not be viable if litigated on an individual basis.

14
15 Competing class actions undermine the efficiency and fairness goals of the
16 class action mechanism in two ways. First, the proliferation of competing
17 class actions and the resulting duplication of efforts waste the resources of
18 defendants and courts and deprives courts of effective jurisdiction over their
dockets. Second, plaintiffs' attorneys, in their race to the finish line with its
windfall award of fees, can settle the class's claims for a suboptimal price,
engaging in a so-called "reverse auction" and thereby compromising their
clients' interests and those of society at large.

19
20 Duplicative litigation imposes unnecessary burdens on defendants and the
21 courts. Parallel actions are very expensive for defendants, as they find
22 themselves litigating on several fronts at once. According to one estimate,
23 multitrack litigation has increased the cost of pretrial proceedings by thirty-
24 three percent. Moreover, the proliferation of competing actions only
exacerbates the disruption of business associated with the massive discovery
involved in such complex litigation. Eventually, defendants may end up
seeking a plaintiff's attorney willing to resolve all outstanding claims in one
global settlement, with negative ramifications for absent class members.

25
26 Due to the sophisticated nature of class actions and the attenuated agency
27 relationships involved, plaintiffs' attorneys wield enormous control over the
28 commencement and direction of complex class litigation. Given that there are
as many potential named plaintiffs as there are class members, plaintiffs'
attorneys, motivated by the desire to reap huge attorneys' fees, have great

1 flexibility in determining where to file a competing class action and at what
2 level, federal or state. At the same time, the rules of res judicata and collateral
3 estoppel dictate that the parallel action that first reaches final judgment--or,
4 more often than not, settlement--binds the others, regardless of the resources
invested or the relative merits of the respective cases.

5
6 The combination of plaintiffs' attorneys' eagerness to settle first, their
7 flexibility in plaintiff and forum shopping, and the defendant's desire to reach
8 a global settlement creates a collusive environment that sacrifices class
9 members' interests as well as those of society at large. Plaintiffs' attorneys will
10 bring a suit for settlement purposes in state court in order to underbid the team
11 of attorneys actively litigating a similar case in federal court. As a result,
12 defendants can set the terms and play teams of plaintiffs' attorneys off one
13 another, leading to a "reverse auction." Plaintiffs' attorneys, working on
14 contingency fees and knowing that others are in line to settle if they do not,
15 accept the defendant's offered terms in order to ensure a profitable return on
16 their investment in the litigation. In some cases, the plaintiffs' attorneys in the
17 state suit will negotiate an overall smaller settlement than that on the table in
18 the federal suit but, either out of greed or in an effort to buy off class counsel
for the objectors in the federal action, will allocate a larger portion of the total
for attorneys' fees. The primary losers in this situation are the absent class
members, who receive a suboptimal remedy for their claims, whether in the
form of token monetary damages or potentially worthless coupons. Ex post
efforts to challenge these settlements on adequacy of representation grounds
ultimately have been rejected. Thus, the relentless race for attorneys' fees
betrays the fairness objectives of the class action mechanism. Furthermore, by
encouraging collusion and minimizing damage awards, competing class
actions impact society at large, which relies on effective class litigation to
provide deterrence against illegal and tortious corporate behavior.

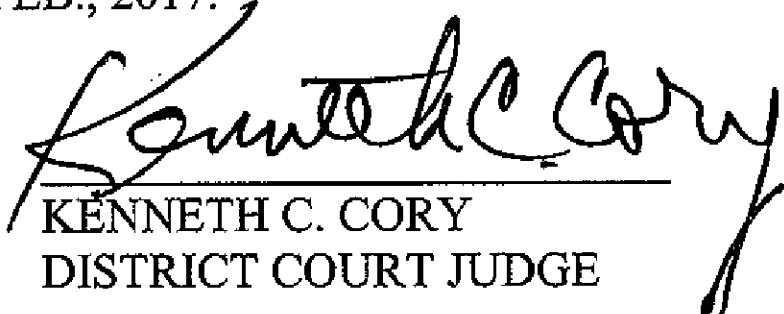
19 Andrew S. Weinstein, *Avoiding the Race to Res Judicata: Federal Antisuit*
20 *Injunctions of Competing Class Actions*, 75 N.Y.U. L. Rev. 1085, 1085-1091
(2000).

21 The Court should add that above references to plaintiff counsel and defendants in
22 competing cases is wholly without reference to parties or attorneys in either of the present
23 competing cases. The problem is systemic not specific.

24 These are problems which no state district Court judge can resolve with any finality.
25 These are problems which only our state Supreme Court can resolve. It is hoped that the
26 /

1
2 granting of an injunction effectively stopping a conclusion by settlement in a separate district
3 court may prompt such resolution in our Supreme Court.

4 DATED this 17th day of FEB., 2017.

5
6 
7 KENNETH C. CORY
8 DISTRICT COURT JUDGE
9

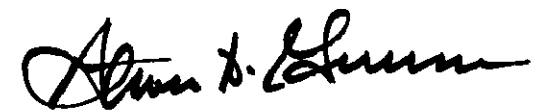
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11
12 **CERTIFICATE OF SERVICE**

13
14 I hereby certify that on the date filed, this document was emailed, mailed or a copy
15 of this Order was placed in the attorney's folder in the Clerk's Office or mailed to the proper
16 person as follows:

17 Leon Greenberg, Esq., leongreenberg@overtimelaw.com

18 Esther C. Rodriguez, Esq., info@rodriguezlaw.com

19
20 
21 JOAN LAWSON
22 JUDICIAL EXECUTIVE ASSISTANT
23
24
25
26
27
28



CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

DEPT.: XVIII

Hearing Date: January 24, 2017
Hearing Time: 11:00 a.m.

**Order Granting in Part and Denying in Part Plaintiffs' Motion to Have Case
Reassigned to Department I per EDCR Rule 1.60 and Designated as Complex
Litigation per NRCP Rule 16.1(f)**

Plaintiffs filed the above-entitled motion on January 18, 2017 on an Order
Shortening Time. Defendants filed their Response in Opposition on January 23, 2017.
Plaintiffs thereafter filed a limited Reply in support of their motion also on January 23, 2017.
This matter, having come before the Court for hearing on January 24, 2017, and after due
consideration of the parties' respective briefs, and all pleadings and papers on file herein,
and good cause appearing, therefore,

IT IS HEREBY ORDERED:


For the reasons specified in plaintiffs' brief, plaintiffs' motion is **GRANTED in part and DENIED in part**. The Motion is GRANTED to the extent that the Court believes it is in the interest of judicial economy to reassign this case to Department 1 which has overseen the proceedings in this matter for more than four years. The motion is DENIED to the extent that designating the case as complex litigation pursuant to Nev. R. Civ. P. 16.1(f) is a matter that should be considered by Department 1 and not this department.

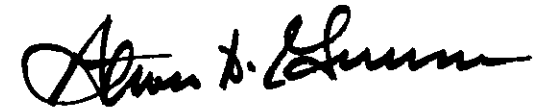
IT IS SO ORDERED.

Barry Welch
District Court Judge *pu*

1-26-17
Date

Respectfully submitted:


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CLERK OF THE COURT

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' REPLY TO
DEFENDANTS' OPPOSITION
TO PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation,
hereby submit this reply to defendants' opposition to plaintiffs' motion for partial
summary judgment.

OVERVIEW

**Defendants do not dispute the operative facts with
admissible evidence and make a slew of unsupported,
unexplained, irrelevant and clearly erroneous factual assertions.**

Defendants do not submit any sworn declaration or any documentary evidence
controverting any of the facts upon which plaintiffs seek partial summary judgment.
What they do make are numerous assertions, through their counsel in their nine page
memorandum, that are incongruous with reality. They vow at page 5, lines 11 to 13, of
their memorandum to demonstrate in their opposition through "...the reliable
documentation of the tripsheets and the paystubs..." that the plaintiffs' wage

1 underpayment figures are wrong yet they never do so in any fashion. The below is
2 intended to correct, in a summary fashion, some of the untrue assertions made by
3 defendants:

4 ● All of plaintiffs' factual assertions are corroborated: Defendants, at page 3 of
5 their memorandum, misquote the sentences at the introduction to plaintiffs' motion
6 (they remove the introductory phrase of such section which states: "As detailed
7 herein....") to claim that plaintiffs' assertions are without any citation "whatsoever."
8 As detailed in the body of plaintiffs' motion, every factual assertion is documented.

9 ● Defendants have produced what they claim are accurate payroll records: The
10 Excel files produced by defendants were, as per this Court's prior Order, the full set of
11 information defendants maintained starting 1/1/13 on the class members' hours of
12 work, and wages paid, in their Quickbooks payroll system. They were required by the
13 Court to produce those materials, they have never disputed they did so, and their
14 opposition does not claim there is a single identified error or lack of accurate
15 information in the records so produced.

16 ● Defendants swore under oath that the Quickbooks hours worked information
17 relied upon by plaintiffs was fully accurate: Plaintiffs' motion is based upon the
18 Quickbooks hours of work information that defendants recorded starting 1/1/13 and
19 used for their payroll. As detailed, *infra*, defendant Nady explained at his deposition
20 such hours worked information was recorded, *more accurately*, in the Quickbooks
21 (payroll) system than in the class members' trip sheets and such Quickbooks payroll
22 hours information fully incorporated the trip sheet information. Based upon
23 defendants' own testimony, there is no need to examine the trip sheets to ascertain the
24 class members' hours of work after 1/1/13 and plaintiffs' reliance on the Quickbooks
25 records is proper.

26 ● Plaintiffs' motion does not rely upon "electronic data" from defendants
27 "dispatching system": Plaintiffs' motion does not rely upon, and does not even
28 mention the existence of, "electronic data" from defendants' "dispatching system"

(this is the “Cab Manager” system and data) that defendants were required to produce in discovery. Plaintiffs’ motion, as it clearly states, relies solely upon defendants’ own payroll records. It is deplorable that defendants seek to mislead, and confuse, the Court by claiming plaintiffs are relying upon some other sort of materials.

● Plaintiffs' motion does not rely upon any "expert opinion" but upon defendants' own records, which they claim are accurate, of the hours worked and wages paid to the class members: Charles Bass, who has summarized the payroll period records of defendants (hours worked/wages paid for each pay period), offers no "expert opinion" or "expert testimony." He has performed a summarization of the defendants' voluminous payroll records for the class members (involving over 16,000 payroll checks) contemplated by NRS 52.275. While plaintiffs' motion is based entirely upon those records, the calculations underlying that motion and the requested award of minimum wages are not matters requiring "expert" knowledge or "expert" assistance to be understood. They are simple arithmetic calculations dividing the wages paid by the hours worked in the payroll period and the resulting deficiency in pay (if any) under the applicable minimum wage rate is stated. They could have been performed by a large number of unskilled clerks, manually, using old style ledger sheets or pencils and paper and not a computer software Excel file.

ARGUMENT

I. DEFENDANTS SUBMIT NO ADMISSIBLE EVIDENCE SUPPORTING A DENIAL OF PARTIAL SUMMARY JUDGMENT

“[I]n order to defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.” *Cuzze v. Univ. & Cmty. College Sys.*, 123 Nev. 598, 603 (2007) *citing* *Wood v. Safeway Inc.* 121 Nev. 724, 732 (2005). Defendants introduce no “specific facts” either by “affidavit” or any other form of “admissible evidence” contradicting the conclusion that defendants’ payroll records of wages paid and hours worked document minimum wage violations. While they,

generally, assert plaintiffs' summary of those records, and the resulting minimum wage violations shown by that summary, is in error they **do not** submit any affidavit or other admissible evidence setting forth "specific facts" that would allow for the conclusion (1) Such records are in error (that they do not, in fact, set forth the hours worked and wages paid to the class members every pay period after 1/1/13); or (2) That such summary of those records is in error; or (3) That the calculations made upon that summarized information (the minimum wage deficiencies shown) are in error.

Defendants, having failed to dispute through a competent evidentiary submission the accuracy of their payroll records, the accuracy of plaintiffs' summary of those records, or the accuracy of the calculations made upon that summary, have consented to the granting of the requested partial summary judgment based upon those payroll records.

II. THE DEFENDANTS HAVE ADMITTED THE ACCURACY OF THEIR QUICKBOOKS HOURS OF WORK INFORMATION FOR THE PERIOD AFTER JANUARY 1, 2013

A. Defendants have admitted that the "QTY" amount recorded as the "Minimum Wage Subsidy" item in their Quickbooks payroll records is the hours of work of each class member for each payroll period after January 1, 2013.

As discussed in plaintiffs' moving papers defendants admit that the amount recorded as the "QTY" number for the "Minimum Wage Subsidy" item in their payroll is the hours the defendants deemed each class member to have worked each pay period. Ex. "A," deposition testimony of defendant Nady, from 8/18/15, p. 150, l. 25 - p. 153, l. 14. ("So A Cab in making that calculation [of Minimum Wage Subsidy pay] has figured that this person worked 57.08 hours [as appearing in the "Qty" column of such line] for that pay period?" "That's correct.")¹. Plaintiffs seek summary

¹ As discussed in plaintiffs' errata filed on February 21, 2017 owing to a clerical error these pages from the Nady deposition of 11/22/16 were erroneously filed

1 judgment based solely upon those hours of work records (“Minimum Wage Subsidy”
2 item and “QTY” amounts). Defendants have admitted that those hours of work were
3 the amounts of time that the defendants deemed each class member to have worked
4 each pay period. Accordingly, they should now be estopped from arguing that those
5 hours of work amounts are in error (not that they even introduce any competent,
6 admissible, evidence that would allow them to do so).

7 **B. Defendants have admitted that the hours of work recorded in their**
8 **Quickbooks records are *more accurate* than the class members’ trip**
sheets and incorporates all of the trip sheet information.

9 Defendants’ assertion that plaintiffs cannot rely upon the Quickbooks hours of
10 work per pay period information, and they must rely upon the hours of work recorded
11 in the class members’ trip sheets, is rendered baseless by the defendants’ own
12 testimony. As defendant Nady explained at his 2016 deposition, the Quickbooks
13 (payroll hours) record of hours worked by the class members was *more accurate* than
14 the trip sheet records because defendants were *adding* additional “working time” to
15 their payroll calculations for the class members, time that the class members were
16 working that was *not* recorded in the trip sheets:

17 Q.My question isn’t whether A Cab was going to do that or trying
18 to do that; my question was, what records of that working time did A Cab
understand it needed to keep?

19 A: Trip sheets.

20 Q: Did it have any understanding as to any other records that it needed to
21 keep?

22 A: Well, the trip sheets didn’t reflect when they came in and dinked
23 around for 5 minutes or 10 minutes or when they come in and dinked
24 around for 5 minutes or took the stuff out of their cab and put it in
their car on the way in to start to do their manipulation on the
computer or the time it took them to do the inspection, so we

25 with the moving papers. No prejudice to defendants was caused by such clerical error,
26 which was apparent on its face, not objected to by defendants (if they were even aware
27 of the same) and irrelevant, as the testimony was quoted in the plaintiffs’
28 memorandum and the full transcript of such deposition was previously furnished to
defendants and filed with the Court in this case.

1 estimated that time. We met with a good portion of drivers. We're
2 going to pay you six minutes for this and six minutes for that, and then we
3 raised it to eight minutes about a few months later when we started timing
4 it. So what records do we keep? We keep records based on when they
5 start and then we just allow time for it. That's the best we have. I don't
6 think we can do it any better. It's an honest effort to do so.
7 Ex. "B" deposition of 11/22/16, p. 128, l. 14 - p. 129, l. 11.

8 Defendant Nady reiterated that he was "...sure that we [A-Cab] are using the
9 timestamps from their trip sheets for their [payroll hours] time" and that "...we also add
10 eight minutes to the beginning and end of the shift [as recorded in the trip sheets]..."
11 for payroll purposes. *See*, Ex. "B" p. 66, l. 9-20.

12 Defendant Nady also duplicatively testified, with reference to certain discussed
13 payroll period records (pay stubs) issued in 2014, that such hours of work records were
14 derived from (incorporated the information from) the class members' trip sheets and
15 added additional "counseling" time that would not be recorded on the trip sheets. *See*,
16 Ex. "B," pages 117-124, confirming at p. 117, l. 18 - p. 118, l. 10 and p. 120, l. 5-8,
17 among other things, that drivers would be recorded as working, and paid for,
18 "counseling" time that was not recorded by their trip sheet time stamps.

19 **III. DEFENDANTS CANNOT DISPUTE THAT THEY HAVE**
20 **PRODUCED AN ACCURATE COPY OF THEIR**
21 **QUICKBOOKS PAYROLL RECORDS FOR THE CLASS**

22 Defendants' assertion that the Quickbooks data extract they produced to
23 plaintiffs is unreliable, and somehow "manipulated" by plaintiffs, is not only
24 unsupported, it is nonsensical. Such argument is also barred from consideration
25 because (1) Defendants were Ordered to produce such information in an accurate
26 form; and (2) Defendants expressly refused to provide a complete copy (full "mirror
27 image") of their entire set of Quickbooks data and instead insisted on producing just
28 an excerpt of the class members' payroll records.

29 This Court's Order entered March 4, 2016 directed production of the
30 Quickbooks payroll records after a protracted series of discovery abuses and
31 unnecessary depositions forced by defendants that also resulted in sanctions of
32 \$3,238.95 being imposed upon defendants. Ex. "E" moving papers. Even after that

1 Order, defendants insisted that they did not know how to produce just the “payroll
2 excerpt” of the Quickbooks records and did not want to turn over their entire set of
3 Quickbooks computer files containing other financial information not germane to this
4 lawsuit. Such insistence by the defendants, and their refusal to engage in a “bulk”
5 production of their Quickbooks records, forced *plaintiffs* to document to the Discovery
6 Commissioner (at considerable expense) a protocol from a skilled consultant for such a
7 “Quickbooks payroll data only” production. *See*, Ex. “C” letter of May 18, 2016 to
8 Discovery Commissioner Bulla with Declaration of Quickbooks consultant Nancy
9 Whissel. Defendants ultimately complied with the Court’s Order to produce the
10 Quickbooks payroll records by following the protocol set forth in Ex. “C.” They
11 raised no objections to doing so. And they now provide not one whit of evidence to
12 support their belated and specious assertion that such process did not accurately
13 produce to plaintiffs a complete copy of defendants’ payroll records or that such
14 produced records have been “manipulated” by plaintiffs. *See, also*, Ex. “D”
15 defendants’ supplemental opposition to motion to compel of 11/17/15, p. 7-8,
16 explaining defendants wanted such a protocol to be provided by plaintiffs and would
17 not produce the Quickbooks data in its entirety. And they now provide not one whit of
18 evidence to support their belated and specious assertion that such process did not
19 accurately produce to plaintiffs a complete copy of defendants’ payroll records or that
20 such produced records have been “manipulated” by plaintiffs.

21 **IV. DEFENDANTS’ CLAIM THAT THE CLASS REPRESENTATIVES**
22 **ARE INADEQUATE BECAUSE OF THEIR TIME PERIOD OF**
23 **EMPLOYMENT IS SPECIOUS AND RELIES UPON MISSTATED**
24 **FACTS**

25 **A. Michael Sargeant is a class representative appointed**
26 **by the Court who worked for defendants in 2014.**

27 The Court’s Order granting class certification (copy at Ex. “E” of opposition)
28 appointed Michael Sargeant as a class representative in this case (p. 11, l. 10-13) along
with the named plaintiffs Murray and Reno. Michael Sargent was employed by
defendants in 2014 (paystub at Ex. “B” of Leon Greenberg’s declaration in support of

1 the motion) and is owed unpaid minimum wages to be awarded to him by the motion
2 for partial summary judgment. Accordingly, defendants' assertion no class
3 representative has a claim for the period at issue in the motion (1/1/13 to 12/31/15) is
4 untrue.

5 **B. The "adequacy" requirement of class representation does**
6 **not require a "temporal mirror" between the class**
representative's claim and the claims of every class member.

7 Defendants are asserting that a class representative must, personally, possess a
8 claim that is identical, in temporal scope, to every class members' claim. It is for this
9 reason they assert recovery for class damages occurring in 2013 or later is improper if
10 the class representatives, such as Murray and Reno, individually have no claims for
11 damages arising during that time period because they terminated their employment at
12 an earlier date. They vacuously, and falsely, claim *Wal-Mart Stores, Inc. v. Duke*, 131
13 S.Ct. 2541, 2550 (2011) supports their position. It does not. *Wal-Mart* concluded that
14 for purposes of a Rule 23(b)(2) class for *injunctive* or equitable type relief, Article III
15 of the United States Constitution requires a current employee representative and a
16 former employee is not an adequate representative in such a class action.

17 The plaintiffs' motion seeks a damages award for a Rule 23(b)(3) class, not
18 injunctive or other Rule 23(b)(2) type relief, as in *Wal-Mart*.² The adequacy of a
19 "former employee" class representative in a Rule 23(b)(3) damages class action that
20 includes the damages claims of current employees is well established. *See, Sarviss v.*
21 *General Dynamics*, 663 F. Supp. 2d 883, 911 (C.D. Cal. 2009). There is no "mirror
22 image" requirement of "temporal identity" between class representative and class
23 member claims for the Rule 23(b)(3) damages class action.

24 **V. THE COURT SHOULD EITHER EXTEND THE CLASS**
25 **CERTIFICATION UNDER NRCP RULE 23(B)(3) THROUGH 2016**
26 **OR AWARD PARTIAL SUMMARY JUDGMENT THROUGH**

27 ² *Wal-Mart* is also inapplicable to this Court as Nevada's Courts do not apply
28 the same Article III "case or controversy" standing limitations as the federal courts,
but that is an issue outside the scope of this motion.

1 **DECEMBER 31, 2015**

2 Defendants' opposition notes that the period of time for which partial summary
3 judgment is sought extends through May 20, 2016 and the Court's class certification
4 order certified an NRCP Rule 23(b)(3) class for unpaid minimum wages owed prior to
5 January 1, 2016. Plaintiffs' motion to extend the class certification period past May
6 20, 2016 was filed on October 14, 2016 and heard on February 14, 2017, but not yet
7 fully decided. It was anticipated that motion would be granted by the time this motion
8 was heard. The Court should either (A) Grant that extension of the class certification
9 period and award the full measure of damages sought on the partial summary judgment
10 motion as filed³; or (B) Grant partial summary judgment for the reasons already stated
11 and documented in the moving papers but only for minimum wages owed through
12 December 31, 2015, as per the current class certification order.

13 Because the record already contains a "per pay period by per pay period"
14 summary of the amounts owed to the class members (covering 625 printed pages and
15 over 16,800 pay periods) for the period 1/1/13 through 5/20/16, the defendants are not
16 prejudiced by "reducing" the summary judgment award to a "cut off" at 12/31/15.
17 They are in possession of all of the germane information and calculations in the
18 moving papers. Plaintiffs are currently preparing a supplement detailing that
19 "reduced" award amount through 12/31/15 which will be a less than 10% reduction in
20 the amount owed to the class under all three proposed award standards (at just \$7.25
21 an hour,⁴ at \$8.25 an hour for all hours, and at \$8.25 an hour just for insurance
22

23 ³ There are 65 persons who would only become members of the Rule 23(b)(3)
24 damages class upon the granting of that motion (because they only worked after
25 12/31/15). Such persons would have be provided notice and an opportunity to
26 exclude themselves from the class. Any award of damages owed to such persons
27 pursuant to the partial summary judgment motion would be held in abeyance pending
28 that notice and exclusion process.

⁴ The reduction in amounts owed at \$7.25 an hour from the amount claimed in
the moving papers is \$22.06, or effectively zero, if the 12/31/15 cut off date is used as

1 “waiting period” time). That supplemental, and slightly reduced damages total,
2 summary will be served and filed prior to the hearing date of this motion.

3
4 **V. PLAINTIFFS’ CALCULATIONS OF THE AMOUNTS**
5 **OWED UNDER THE \$8.25 AN HOUR RATE FOR**
6 **INSURANCE “WAITING PERIODS” ARE PROPER**

7 Defendants’ assertion that no award can be made, in any fashion, to any class
8 member, under the “higher tier” and “no insurance provided” \$8.25 an hour rate is
9 incorrect. Plaintiffs, by calculating the applicable “waiting time” period (after a class
10 member’s “hire date”) for insurance availability, has made such an award indisputably
11 proper and required. For those time periods, where no insurance of any kind was an
12 enrollment option for the class members, the \$8.25 an hour rate must be paid. Their
13 status as single, married, or with dependents, is irrelevant for that time period.
14 Defendants’ contention such a finding is not mandated by the *MDC Restaurant* case is
15 unexplained and in error.

16 Plaintiffs believe, given the protective nature of the minimum wage right
17 afforded by the Nevada Constitution, and its legal primacy, it *should* be the
18 *defendants’ burden* to show that health insurance was properly “available” during each
19 pay period for defendant to pay the lower, \$7.25 an hour, minimum wage rate for that
20 pay period. Defendants have utterly failed to do so for even a single class member.
21 But if the Court disagrees with the approach urged by plaintiffs, it should at least
22 award damages at the \$8.25 an hour rate for the periods (the post hire 60 or 90 day
23 “waiting time”) where no insurance of any kind was made available.

24 **VI. THE COURT SHOULD MAKE AN INTERIM AWARD**

25
26 by 1/1/16 defendants were always paying \$7.25 an hour in wages. The class damages
27 at \$7.25 an hour, for class members owed at least \$10.00 a piece, is \$174,445.45
28 through 5/20/16 (stated in the moving papers, Ex. “3” to the Bass Dec.) and
\$174,423.39 if through 12/31/15. That \$22.06 reduction results from certain rounding
of payments made by defendants and is of no consequence.

1 **OF ATTORNEY'S FEES TO CLASS COUNSEL**

2 The defendants' opposition to an interim award of attorney's fees consists of
3 personal attacks on class counsel. They offer no explanation of why class counsel, if
4 the motion is granted, should not be awarded even a modest, reduced, interim amount
5 of attorney's fees for the many hundreds of hours of work they have expended on
6 behalf of the class. The Court's failure to award any attorneys fees currently in this
7 case, and defer that issue, in its entirety, to a post-final judgment hearing, would be a
8 grave injustice. Class counsel, as defendants are well aware, cannot easily, or maybe
9 even at all, afford to keep working on this case and take it to trial without receiving
10 any interim fee payment whatsoever for their work in light of defendants' extensive
11 litigation obstructions.

12 **CONCLUSION**

13 For all the foregoing reasons, plaintiffs' motion should be granted in its entirety
14 together with such other further and different relief that the Court deems proper.

15 Dated: February 22, 2017

16 LEON GREENBERG PROFESSIONAL CORP.

17 _____
18 */s/ Leon Greenberg*
19 Leon Greenberg, Esq.
20 Nevada Bar No. 8094
21 2965 S. Jones Boulevard - Ste. E-3
22 Las Vegas, NV 89146
23 Tel (702) 383-6085
24 Attorney for the Class
25
26
27
28

CERTIFICATE OF MAILING

The undersigned certifies that on February 22, 2017, she served the within:

**Plaintiffs' Reply to Defendants' Opposition to
Plaintiffs' 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/ Dana Sniegocki

Dana Sniegocki

EXHIBIT "A"

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 MICHAEL MURRAY, and MICHAEL)
5 RENO, individually and on)
6 behalf of others similarly)
7 situated,) CASE NO: A-12-669929-C
8)
9 Plaintiffs,) DEPT NO: I
10 vs.)
11)
12 A CAB TAXI SERVICE LLC, and)
13 A CAB, LLC,)
14)
15 Defendants.)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

11
12
13 DEPOSITION OF CREIGHTON NADY
14 LAS VEGAS, NEVADA
15 TUESDAY, AUGUST 18, 2015
16
17
18
19
20
21
22
23
24 REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926
25 JOB NO.: 261171

1 two tenths of an hour. So we gave him a buck 45 for his
2 time that he spent with somebody reviewing his trip
3 sheet. But we paid them while they were doing that.

4 Is that -- understand what I'm trying to say? So
5 yes. I'm just trying to explain before you ask me what
6 each one of these are.

7 Q. Now, each of the pieces of information that
8 appears at an intersection of a column and row on these
9 pay stubs, some of those intersections are blank, but
10 some of those intersections contain numbers.

11 You understand that?

12 A. Some are blank?

13 Q. Some are blank, sir, and some contain numbers.

14 You understand that?

15 A. Yep.

16 Q. Okay. Now QuickBooks would be able to produce to
17 me in electronic form, to the extent that those files
18 were preserved, all of the numbers that appear at those
19 intersections; correct?

20 A. To the -- with that reservation or with that
21 caveat, yes.

22 Q. Are you familiar with QuickBooks' ability to
23 produce reports in Excel?

24 A. No.

25 Q. Now on this document at the top, it says QTY, and

1 that intersects that column with the line minimum wage
2 subsidy. And the number 57.08 appears at that
3 intersection.

4 A. Right.

5 Q. What does that number 57.08 refer to?

6 A. Well, minimum wage subsidy is based on the fact
7 that our total number of his total wages were not
8 enough; that if we did his calculation based on the
9 number of hours that he had, it was -- that his rate of
10 pay would have been 4.27 an hour. Wait a second. Let
11 me make sure of what I speak here. So we had to -- he
12 had 57.8 hours of hours, and we subsidized it from 4.27.
13 So I think if you add those two together, and you
14 multiply one times the other, you get that. His
15 commission was -- wait a minute here. I'm going to
16 guess, so I don't want to do that right now. It's been
17 so long.

18 Q. I don't want you to guess, Mr. Nady.

19 A. All right. Then I don't know.

20 Q. My question though was limited to the number that
21 appears at that intersection of minimum wage subsidy in
22 QTY where it says 57.08.

23 Does that number refer to the number of hours
24 this person worked during a pay period?

25 A. I just said a minute ago. This will be twice

1 now. I don't know. This is not a current paycheck, so
2 I don't know. But I will grant you this: I think it
3 has something to do with the number of hours, but it
4 might be something else.

5 Q. Well, just to be clear, Mr. Nady, you obviously
6 wouldn't know personally whether this individual worked
7 57.08 hours during the pay period discussed by that pay
8 stub.

9 My question, to you to be more precise, is
10 whether that 57.08 is the number that A Cab uses in
11 terms of its calculations for how many hours this person
12 worked during that pay period?

13 A. Here's one way to figure it out. If you take a
14 look at the current, the 4 -- or the 243.73 and divide
15 it by 4.27, you might get 57.08.

16 Q. And if those numbers do add up as you are
17 saying --

18 A. Would you like me to try it?

19 Q. I will represent to you that they do, Mr. Nady.

20 A. What?

21 Q. I have done that calculation.

22 A. Oh.

23 Q. They do reach --

24 A. There you go.

25 Q. They do reach that result that you've just

1 hypothesized.

2 A. Well, thank you.

3 Q. Are you telling me that because it -- well, you
4 tell me. Go ahead what you're trying to get through
5 from this observation.

6 A. I'm telling you that those two equal that we
7 supplemented his wage by \$243.73 to the commissions that
8 he earned that week in order for him to make minimum
9 wage.

10 Q. So --

11 A. And -- go ahead. I'll stop.

12 Q. So A Cab in making that calculation, has figured
13 that this person worked 57.08 hours for that pay period?

14 A. That's correct.

15 Q. Now, on this pay stub as well you will see that
16 there is an amount that says tips supplemental, and
17 further on down that same column, it says tips out.
18 Both of those numbers are the same except one is
19 negative and one is positive.

20 Do you understand why those numbers appear that
21 way? Could you explain to me why they do?

22 A. Yes.

23 Q. And why do they appear that way?

24 A. We assume -- and we have a contract with the
25 drivers or we did, whether we do now or not, I don't

1 STATE OF NEVADA)
) SS:
 2 COUNTY OF CLARK)

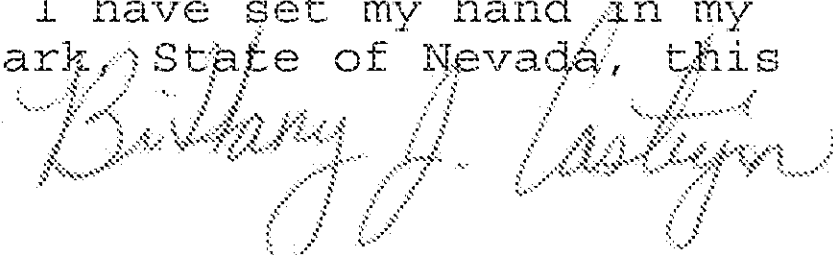
3 CERTIFICATE OF REPORTER

4 I, Brittany J. Castrejon, a Certified Court
 5 Reporter licensed by the State of Nevada, do hereby
 6 certify: That I reported the DEPOSITION OF CREIGHTON
 7 NADY, on Tuesday, August 18, 2015, at 11:13 a.m.;

8 That prior to being deposed, the witness was duly
 9 sworn by me to testify to the truth. That I thereafter
 10 transcribed my said stenographic notes into written
 11 form, and that the typewritten transcript is a complete,
 12 true and accurate transcription of my said stenographic
 13 notes. That the reading and signing of the transcript
 14 was requested.

15 I further certify that I am not a relative,
 16 employee or independent contractor of counsel or of any
 17 of the parties involved in the proceeding; nor a person
 18 financially interested in the proceeding; nor do I have
 19 any other relationship that may reasonably cause my
 20 impartiality to be question.

21 IN WITNESS WHEREOF, I have set my hand in my
 22 office in the County of Clark State of Nevada, this
 31st day of August, 2015.



24 Brittany J. Castrejon, CCR NO. 926

25

EXHIBIT "B"

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY, and MICHAEL RENO,) Case No.: A-12-669926-C

Individually and on behalf of) Dept. No.: I

Others similarly situated,)

Plaintiff,)

vs

A CAB TAXI SERVICE LL, A CAB, LLC)

And CREIGHTON J. NADY,)

Defendants.)

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

LLC

CREIGHTON NADY

Taken on November 22, 2016

At 9:41 a.m.

Evolve Downtown

400 South 4th Street, Suite 300

Las Vegas, Nevada 89101

1 Q: Mr. Nady, just again, just to be
2 clear, and I apologize for having to continue with
3 this because I don't think your testimony is
4 completely clear, you're not really sure if there's
5 any different system used by A Cab now to keep track
6 of the time the drivers are working besides
7 information that's on those trip sheets. Is that
8 correct?

9 A: I am sure that we are using the
10 timestamps from the trip sheets for their time.

11 Q: For their working time?

12 A: Yes, sir.

13 Q: Now, do you know if that time
14 simply remains recorded on the trip sheets or is it
15 taken off the trip sheets and recorded somewhere
16 else?

17 A: It's not... we also add eight minutes
18 to the beginning and end of the shift.

19 Q: Who does that?

20 A: Whoever does their payroll.

21 Q: Donna? Anybody else?

22 A: Donna does that. Just add it on.

23 Q: Does anybody else do that?

24 A: If Donna is not there to do
25 payroll, I would have to do most of it myself.

1 looking at the second of the two on this sheet...

2 A: I'm sorry?

3 Q: There are two pay stubs on the
4 first sheet of this document. You were reviewing the
5 bottom one and you were referring to the 22.81
6 number, which is at the intersection of minimum wage
7 subsidies, and QTYs referencing the hours. For
8 payroll purposes, for that payroll period, if we go
9 to the one at the top, the intersection of those two
10 are 57.08, which would indicate in that payroll
11 period 57.08 were the hours that Mr. Sergeant was
12 paid to have been working for payroll purposes by A
13 Cab?

14 A: Right. Correct.

15 Q: Thank you.

16 A: Thank you for your help on that. I
17 sort of screwed it up.

18 Q: Now, Mr. Nady, do you have any
19 knowledge as to how A Cab in those two numbers, 57.08
20 and 22.81, arrived at those decimal amounts, the 0.08
21 or the 0.81 amounts?

22 A: I think it has to do with the
23 minutes that they had, most likely when they came in,
24 because his book had a pretty health \$135 below
25 minimum wage. He probably had a counseling with

1 somebody to say, "Hey, your book is pretty lousy
2 here," so during that time we give him.. we adjust his
3 time by a certain number of minutes. And how it
4 comes up with the seconds is we divide it somehow,
5 and I don't know what the formula is.

6 Q: Well, whoever was keeping track of
7 the time Mr. Sergeant was working for counseling or
8 whatever it may be is recording it in minutes,
9 correct?

10 A: Yes.

11 Q: And then those minutes are put into
12 a total hours amount like we see here on this page?

13 A: That would probably be 1/12 of a
14 minute.. Let's see. 1/12 of an hour, so how much is
15 1/12 of an hour? It's divided by 6, so that would be
16 2 minutes or something or 12 minutes, understand?

17 Q: Well...

18 A: 08, I would imagine having seen
19 this before that it's 57.0833, which is .0833 equals
20 1/12, so 1/12 is five minutes. Do you understand
21 that?

22 Q: Yes. Do you know if in fact these
23 numbers we've been discussing, the 57.08 and the
24 22.81 were rounded from a thousandths of a decimal?

25 A: I didn't a thousandths from a

1 decimal. You're making some assumptions...

2 Q: No, I didn't say you said it. I'm
3 asking if you know...

4 A: I don't know if it's made from a
5 thousandths or not, but I can tell you that 0.08 is
6 1/12 and 1/12 of an hour is 5 minutes, so I would
7 imagine they gave him 5 minutes on that. Somewhere
8 along the line where we calculated his time, it ended
9 in five minutes.

10 Q: Is there a minimum interval that
11 whoever is recording the time for Mr. Sergeant uses,
12 a minimum of five minutes? Do they record one-minute
13 or two-minute intervals? Do you have any knowledge
14 as to how it's recorded?

15 A: Well, I think if we take the
16 minutes from the trip sheets and the minutes from the
17 counseling, we keep track of them.

18 Q: Well, the minutes from the trip
19 sheet are taken from, you stated, the time record,
20 correct, on the punches? So if I'd say 12:33...

21 A: What's a punch?

22 Q: Well, a timeclock, scan...

23 A: Timeclock, right.

24 Q: So that would be to an exact
25 minute, 12:33, 10:37, whatever it might be?

1 A: Correct.

2 Q: Okay. When time is also credited
3 to Mr. Sergeant here, for example for counseling as
4 you were hypothesizing about, how is that time
5 recorded? It's not recorded through looking at the
6 intervals between two timestamps as on the trip
7 sheets.

8 A: Right.

9 Q: Do you have any knowledge of how
10 that time is recorded?

11 A: Well, that... in this particular time
12 we only had five different classifications, so it
13 would simply be added to it.

14 Q: Right, but the person who is
15 reporting that time to have it added to his payroll
16 record, do they report it in minimum increments of
17 1/10 of an hour, 5 minutes...

18 A: I think the minimum was five
19 minutes, but I'm not sure. I thought it was six
20 minutes, to be honest with you. I thought they'd get
21 1/10 of an hour if they have to have counseling.

22 Q: If we go to page 2 of... or actually
23 it would be page 3 of this document, which is
24 Sergeant 4 at the bottom, the number that has the
25 intersection of minimum wage subsidy and QTY has the