

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 XXVI 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 XXVI 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
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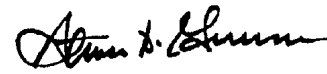
Attorneys for Respondents

DATED this 5th day of August, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

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CLERK OF THE COURT

ORDR

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Attorneys for Defendant Henderson Taxi

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

HENDERSON TAXI,

Defendant.

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

**ORDER GRANTING MOTION FOR
ATTORNEYS' FEES**

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

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

FINDINGS OF FACT

1. Sargeant filed this action on February 18, 2015, alleging that Henderson Taxi failed to pay its taxicab drivers the minimum wage required by the Nevada Constitution.

2. On May 27, 2015, Sargeant filed a motion seeking to certify this case as a class action ("Motion to Certify").

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

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

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

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

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

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

21 CONCLUSIONS OF LAW

22 I. Recoverability of Attorneys' Fees

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

25 2. NRS 18.010(2)(b) provides that attorneys' fees should be awarded to a prevailing
26 party "when the court finds that the claim ... was brought or **maintained** without reasonable
27 ground or to harass the prevailing party." (Emphasis added.)
28

1 3. Furthermore, "it is the intent of the Legislature that the court award attorney's fees
2 pursuant to [NRS 18.010(2)(b)] ... in all appropriate situations to punish for and deter frivolous or
3 vexatious claims and defenses because such claims and defenses overburden limited judicial
4 resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in
5 business and providing professional services to the public." NRS 18.010(2)(b).

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

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

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

19 7. ~~This case did not present novel issues of law.~~ It is well-settled that unions may act on
20 behalf of their members and that agents may settle claims for their principals. *See, e.g., May v.*
21 *Anderson*, 121 Nev. 668, 674-75, 119 P.3d 1254, 1259-60 (2005) ("Schwartz had authority to
22 negotiate on behalf of the Mays and accepted the offer in writing. ... The fact that the Mays refused
23 to sign the proposed draft release document is inconsequential to the enforcement of the
24 documented settlement agreement. The district court ... properly compelled compliance by
25 dismissing the Mays' action."); *see also, e.g., St. Vincent Hospital*, 320 NLRB 42, 44-45 (1995)
26 ("as a matter of law, when the parties by mutual consent have modified at midterm a provision
27 contained in their collective-bargaining agreement, that lawful modification becomes part of the
28

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

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

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

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

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

18 **II. Reasonableness of Fees**

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

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

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

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

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

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

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

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

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

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

ORDER

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

DATED this 21 day of June 2016.


DISTRICT COURT JUDGE

Sr. J. Bonaventura

Respectfully submitted by:

HOLLAND & HART LLP

By 

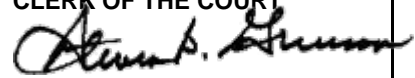
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

Hearing Date:
Hearing Time:

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants A Cab, LLC and Creighton J. Nady, by and through their attorneys of record,
ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., and MICHAEL K. WALL, ESQ., of
HUTCHISON & STEFFEN, LLC, and pursuant to NRCP 56(c), hereby respectfully move this

...

...

...

...

Honorable Court for summary judgment and to dismiss Plaintiffs' Complaint in its entirety.

DATED this 27th day of November, 2017.

RODRIGUEZ LAW OFFICES, P.C.

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

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendants will bring the foregoing Motion for Summary Judgment on for hearing before this Court on the 2 day of **Jan. 2018** **at 9:00 am**, ~~2017~~, or as soon thereafter as counsel may be heard.

DATED this 27th day of November, 2017.

RODRIGUEZ LAW OFFICES, P. C.

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

MEMORANDUM OF POINTS AND AUTHORITIES

I.

A. Legal Standard & Summary.

A party against whom a claim is asserted may at any time move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof. NRCP 56(c). Summary judgment shall be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. NRCP 56(c). The moving party initially bears the burden of proving the absence of genuine issues of fact. *Butler v. Bogdanovich*, 101 Nev. 449, 705 P.2d 662 (1985). Once that burden has been carried, the responding party must come

forward with evidence creating genuine and triable issues of fact. *Bird v. Casa Royale*, 97 Nev. 67, 624 P.2d 269 (1981).

In this instance, discovery has been repeatedly extended at the Plaintiffs' request, expert deadlines extended to allow Plaintiffs' additional opportunities to work up their case; and Plaintiffs have still failed on several fronts to support actionable claims.

1. Plaintiffs have failed to prove any actual damages for any individual Plaintiff, much less actual damages for a class of individuals. There are no documents or witnesses who support an underpayment of minimum wages; and both of Plaintiffs experts admit they have no opinions on actual damages.

2. Plaintiffs have failed to prove the bare minimum of liability as pled in their Complaint. Plaintiffs' claims are based on the assertion of fraudulent break times written into the tripsheets. No witnesses or documents support this assertion. Plaintiffs' experts did not review any tripsheets or any documents to support this claim, and offer no opinions in support. It is undisputed that the employer has been actively calculating and supplementing drivers' pay with a minimum wage subsidy. Plaintiffs have provided nothing in contravention to indicate that A Cab has not been subsidizing its drivers to meet the minimum wage.

3. Plaintiffs are pursuing claims for a class, with no representative Plaintiff.

4. There is no evidence supporting punitive damages; and Plaintiffs' claims must be disposed of pursuant to NRS 42.005.

5. Plaintiffs cannot meet their burden on general liability, much less against a specific Defendant. Further, the claims against Defendant Nady must be dismissed as lacking any basis.

6. Decertification of the class is appropriate.

B. Legal Argument

1. Plaintiffs have failed to prove any actual damages, and cannot support their theory for liability.

From the commencement of this action, through the pending Second Amended Complaint, Plaintiffs have asserted an underpayment of minimum wage based upon a theory of "forced fraudulent breaks." *See Second Amended and Supplemental Complaint*, para. 17, attached hereto as

Exhibit 1. Discovery has now concluded, and Plaintiffs have uncovered no evidence to support this claim. It is undisputed that A Cab subsidized its drivers to bring their pay up to minimum wage. See **Exhibit 2**, paystubs of Michael Sargeant. Plaintiffs' claims of a violation of the Constitutional Amendment stem solely from this notion that drivers were forced to write in breaks which they did not take. Specifically, stretching from page 4 to 7 of Plaintiffs' Complaint is paragraph 17, the heart of Plaintiffs' causes of action from which all remaining claims spring. This paragraph asserts that A Cab violated the Constitution by the following:

- failing to advise drivers of the new Amendment (para 17a);
- ignoring a Nevada Attorney General opinion (para 17b);
- failing to take steps to contest the Amendment (para 17c);
- and being subject to a federal audit that resulted in forcing drivers to write in fraudulent break times (17d).

Subsections "a thru c" are not actionable and fail to state a claim upon which relief can be granted. NRCP 12(b). These subsections are inflammatory fluff inserted into the complaint, with no asserted or associated damages arising therefrom; they are not actionable in and of themselves. The only substantive subsection which Plaintiffs could have legitimately pursued is contained in subsection "17d," the claim that A Cab forced its drivers to write in fraudulent breaktimes following an audit. This is the sole basis for Plaintiffs' theory of liability for underpayment of minimum wage.

At the end of the day, there is no evidence to support this claim of fraudulent breaktimes. Plaintiffs have not produced any documents or any witness whatsoever who can support this claim. Plaintiffs hired two experts in support of their claims, and neither rendered any opinion or any support of this claim. Plaintiffs' first expert is Charles Bass who did not even produce an expert report in compliance with this Court's Order nor the rules of civil procedure. His opinions are completely devoid of addressing anything remotely supportive of Plaintiffs' assertions.

Plaintiffs' second expert is Terrence Clauretie, whose expert report is attached hereto as **Exhibit 3**. Again, Dr. Clauretie offers no opinions in support of Plaintiffs' claims of fraudulent breaks or any under-calculation of hours worked.

1 As admitted during their respective depositions, neither expert reviewed any tripsheets nor
2 any documents nor conducted any investigation to support this claim.

3 ***Testimony of Charles Bass:***

4 Q. The defendants provided over 2,000 W-4s to the plaintiffs in this matter. Did you ever review
5 any of those W-4s that were produced by the defendants?

6 A. No, I did not.

7 * * *

8 Q. . . In -- earlier in -- in February, on February 8 of 2017, the defendants in this matter produced
9 over 235,000 trip sheets to the plaintiff on an external hard drive. Did you ever have an
10 opportunity to review any of those trip sheets?

11 A. No, I did not.

12 Q. Did you conduct any interviews or speak with any current A Cab employees in this matter in
13 formulating your model?

14 A. No, I did not.

15 Q. Did you conduct any interviews or speak with any former A Cab employees in formulating
16 your model?

17 A. No, I did not.

18 Q. And that would include persons such as Wendy Gagliano (phonetic) or Bonnie Whittig
19 (phonetic). Did you ever speak with those ladies?

20 A. I have no idea who they are.

21 Q. Did you review any deposition transcripts in this matter?

22 A. No.

23 Q. You mentioned some of the minimum wage issues. Did you ever review any of the statutes or
24 regulations pertaining to minimum wage in Nevada?

25 A. No, I did not.

26 Q. Did you ever review the complaint prepared by the plaintiffs in this matter?

27 A. No, I did not.

28 Q. Do you have an understanding that this matter pertains to an amendment to the Nevada

1 constitution relevant to payment of minimum wage?

2 A. No, I'm not really aware of what it is.

3 Q. Okay. So did you ever have an opportunity to review that amendment to the Nevada
4 constitution pertaining to minimum wage?

5 A. No. It wasn't my job to issue an opinion on one or the other.

6 Q. In preparing your model or finalizing your model, did you ever receive any input from plaintiff
7 Michael Murray in this matter?

8 A. Did not.

9 Q. Same question in terms of formulating your final model or any of the underlying spreadsheets.
10 Did you ever receive any input from the plaintiff Michael Reno?

11 A. Did not.

12 Q. How about Michael Sergeant?

13 A. Nobody.

14 Q. Did you –

15 A. My conversation has been with Mr. Greenberg.

16 Q. Okay. Okay. So let me ask the final question then. Did you receive any input from any
17 plaintiff class member in this case in formulating your model?

18 A. I did not.

19 Q. So it would be fair to say that all of the sources -- sources of information that you relied upon
20 in formulating your model were provided from Mr. Greenberg?

21 A. That's fair, yes. **Exhibit 4, Deposition of Charles Bass, 28:22 - 31:17.**

22 **Testimony of Terrence Clauretie:**

23 Q. The defendants in this matter produced to the plaintiffs over 235,000 trip sheets in this matter
24 on a hard drive, an external hard drive. Are you aware of that fact?

25 A. No.

26 Q. Did you ever have occasion to review any of those trip sheets in preparation of your opinions in
27 this matter?

28 A. No.

1 Q. Also, in May and June of this year 2017, the Defendants A Cab produced over 2000 W-4s for
2 each of their drivers. Did you review any of those W-4s for any of A Cab drivers in preparation of
3 your opinions in this matter?

4 A. I don't think so. I don't think so. Furthermore, I don't know what a W-4 is. **Exhibit 5,**
5 *Deposition of Clauretie*, 45:15 to 46:5.

6 The Defendants in this matter have been actively calculating and supplementing its drivers'
7 pay with a minimum wage subsidy. Plaintiffs have provided nothing in contravention to indicate
8 that A Cab has not been subsidizing its drivers to meet the minimum wage; nor that it forced its
9 drivers to manufacture fraudulent break times to create a lower amount of hours to be subsidized.
10 Further, in reality, this allegation that fraudulent breaks were forced upon drivers, is not even a
11 minimum wage claim - it is a claim for unpaid hours worked.

12 “Although the party opposing a motion for summary judgment is entitled to all favorable
13 inferences from the pleadings and documentary evidence, the opposing party ‘is not entitled to
14 build a case on the gossamer threads of whimsy, speculation and conjecture.’” *Collins v. Union*
15 *Fed.Sav. & Loan Ass’n.*, 99 Nev. 284, 302; 662 P.2d 610, 621 (1983) (citing *Mullis v. Nevada*
16 *National Bank*, 98 Nev. 510, 654 P.2d 533 (1982), and *Hahn v. Sargent*, 523 F.2d 461, 468 (1st Cir.
17 1975), *cert. denied*, 425 U.S. 904 (1976)). In order to avoid the requested relief, Plaintiff must
18 come forward with specific facts on which this Court could rule in its favor on the issues addressed
19 in this motion. *Hickman v. Meadow Wood Reno*, 96 Nev. 782, 617 P.2d 871 (1980). Here, the
20 motion must be granted because there are no genuine issues of fact which remain for trial and
21 Defendant A Cab is entitled to judgment as a matter of law.

22 Here, Plaintiffs have merely supplied a “model” whose source, per Plaintiffs’ experts, has
23 all been Plaintiffs’ counsel, manufactured to *estimate* damages based upon pure speculation. There
24 are two parts to a case - liability and damages. Here, Plaintiffs have failed to meet the minimum
25 threshold for either.

26 **2. Plaintiffs are pursuing claims with no representative Plaintiff in contravention to**
27 **NRCP 23.**

28 There is no indication that Plaintiffs' counsel represents any client that worked at A Cab

anytime after September 2012. Michael Murray was no longer employed as of April 7, 2011; and Michael Reno was no longer employed as of September 26, 2012. The last representative Plaintiff, Michael Sergeant, did not become employed until May 22, 2014, and then only for 2 months to July 23, 2014, as both a driver and supervisor. Plaintiffs are pursuing claims through December 31, 2015. There is no representative Plaintiff from September 27, 2012 through May 22, 2014 (20 months); and also no one from July 24, 2014 to December 31, 2015 (17 months). This is a period of 37 months with no working driver representative in this class.

The *Wal-Mart v. Dukes* case supports the position that Plaintiffs' counsel cannot represent a class of these members, when he has no representative Plaintiff in this time frame for which he seeks damages. *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2550 (2011):

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

3. Punitive damages must be dismissed summarily.

In their Second Amended Complaint attached hereto as **Exhibit 1**, Plaintiffs allege: "The defendants' violation of Article 15, Section 16, of the Nevada Constitution involved malicious

and/or fraudulent and/or oppressive conduct by the defendants sufficient to warrant an award of punitive damages.” **Exhibit 1**, para. 17. A claim for punitive damages is not available to Plaintiffs. NRS 42.005 states:

Except as otherwise provided in NRS 42.007, in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant.

NRS 42.005 provides for an award of punitive damages only in an action for the breach of an obligation not arising from contract. An award of punitive damages is not available to a plaintiff if the claim for relief upon which the award of punitive damages is sought does not “sound in tort.” *Sprouse v. Wentz*, 105 Nev. 597, 603, 181 P.2d 1136, 1139 (1989). As stated in *Sprouse*, “If the punitive damage award is not based upon a cause of action sounding in tort, the award must be stricken on appeal.” *Id.* at page 1138.

Plaintiffs’ claims are based on Defendants’ alleged failure to pay Plaintiffs a minimum wage while working for Defendants. Plaintiffs’ claim for relief does not sound in tort as required by NRS 42.005 and *Sprouse*. Plaintiffs’ allegations evidence an employment relationship, which under Nevada law is a contractual relationship governed by contract law and hence their allegations are not “sound in tort,” but arise from an alleged breach of an obligation arising from a contractual relationship. Therefore, NRS 42.005 prohibits Plaintiffs from receiving any award for punitive damages. Further, Plaintiffs have uncovered no evidence remotely supporting this claim.

4. Plaintiffs have not proven liability, much less met a minimum threshold against a specific Defendant.

As a Third and Fourth claim for relief, Plaintiffs allege “civil conspiracy, aiding and abetting, concert of action”, alter ego, and unjust enrichment against Defendant Nady. Plaintiffs have yielded nothing from discovery on any of these issue, and have produced no documents or witness which can support these claims against Defendant Nady.

As this Court is aware, each of these claims has specific elements which must be proven, and in which Plaintiffs bear the burden of proof. For example, civil conspiracy is another claim which sounds in tort, and is improperly asserted by the Plaintiffs. “Conspiracy is not a cause of

1 action, but a legal doctrine that imposes liability on persons who, although not actually committing
2 a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration.
3 By participation in a civil conspiracy, a co-conspirator effectively adopts as his or her own the torts
4 of other coconspirators within the ambit of the conspiracy. In this way, a co-conspirator incurs tort
5 liability co-equal with the immediate tortfeasors. Standing alone, a conspiracy does no harm and
6 engenders no tort liability. It must be activated by the commission of an actual tort.” *Applied*
7 *Equipment Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal.4th 503, 510-511, 869 P.2d 454 (Cal. 1994).

8 Because civil conspiracy is so easy to allege, plaintiffs have a weighty burden to
9 prove it. They must show that each member of the conspiracy acted in concert and
10 came to a mutual understanding to accomplish a common and unlawful plan, and
11 that one or more of them committed an overt act to further it. It is not enough that
12 the conspiring officers knew of an intended wrongful act, they had to
13 agree—expressly or tacitly—to achieve it. Unless there is such a meeting of the
14 minds, ‘the independent acts of two or more wrongdoers do not amount to a
15 conspiracy.’” *Choate v. County of Orange*, 86 Cal.App.4th 312, 333, 103
16 Cal.Rptr.2d 339 (Cal.Ct. App. 4th Dist. 2000).

17 Plaintiffs have altogether failed to meet their burden of demonstrating civil conspiracy, aiding and
18 abetting, concert of action, alter ego, and unjust enrichment against Defendant Nady. Accordingly,
19 this Court should dismiss these claims which are not supported.

20 **5. This Court Should Summarily Decertify the class, and address any individual claims**
21 **that remain for the representative plaintiffs.**

22 The basis of Plaintiffs’ complaint is fraud, which is not appropriate for certification
23 (*Cummings v. Charter Hospital*, 111 Nev. 639 (1995)). Plaintiffs’ factual allegations are for unpaid
24 hours based upon alleged fraudulent break times. **Exhibit 1**, paragraph 17. A common course of
25 conduct is not enough to show predominance, as would support class certification in a fraud action,
26 because a common course of conduct is not sufficient to establish liability of the defendant to any
27 particular plaintiff. *Moore v. PaineWebber, Inc.*, 306 F.3d 1247 (2nd Cir. 2002). Accordingly,
28 Plaintiffs’ alleged claims that A Cab’s procedure of forcing “false breaks” upon its drivers is not

1 sufficient to support certification.

2 The presence of a common legal theory does not establish typicality for class certification
3 purposes when proof of a violation requires individualized inquiry. *In re Teflon Products Liability*
4 *Litigation*, 254 F.R.D. 354 (S.D.Iowa 2008). Commonality requirement for class certification
5 requires that class members suffer common deprivation; it is not sufficient that class members share
6 common circumstance. *Baldrige by Stockley v. Clinton*, 139 F.R.D. 119 (E.D.Ark.1991).

7 All time records pertaining to the named Plaintiffs have been produced by A Cab. With the
8 documents pertaining to the named Plaintiffs, Plaintiffs cannot prove any type of wage violation.
9 The only evidence supporting any type of violation are the self-serving declarations from the
10 disgruntled former employees who claim they never took a break in a 12 hour shift. The federal
11 government came in and investigated the work hours, and found no such evidence of 12 hour shifts,
12 nor fraudulent breaks as alleged in the affidavits.

13 Plaintiff Michael Reno for example, testified in his deposition that the basis for his claim
14 was that he was making less money at A Cab than he was at his prior employment with Frias
15 Companies. He said on average he made about \$200 less per month, and therefore felt he was
16 “owed” something from A Cab.¹ Upon further reflection, he voluntarily conceded that other factors
17 explain his smaller paycheck. The other factors included that he was now older, and wasn’t as
18 productive as in his youth; as well as the fact that there are more taxicabs on the road now yielding
19 more competition for paying customers. **Exhibit 6, Reno Deposition**, 105:1-25 - 106:1-4; 106:15-
20 18; 106:24-107:1.

21 Whatever the reasons that explain Reno’s smaller paycheck, this simply is not grounds for a
22 class action lawsuit. Throughout his deposition testimony, Reno testified about multiple complaints
23 he had about his past employment with at A Cab. None of these had anything to with a claim for

24
25 ¹ Q. Do you have any idea what you believe that you are owed?
26 A. Yeah, about \$200 a month, at least, for two years, which is 4,800 plus all that \$6 crap that
27 they added on and \$20 fees for radio calls and the interest for the money that should have been
28 mine to begin with. Then there is aggravation, making us do stuff that wasn't legal. They wanted
us to go into people's houses with groceries. **Exhibit 6, Reno Deposition**, 55:12-20. *See Also*,
58:3-6; 61:14 - 62:2.

1 minimum wage. Contrarily, his complaints were about penalties for his “drop shorts” (when he
2 dropped less money that he was supposed to based upon the documentation of his fares); penalties
3 for not taking radio calls (he said he was away from his cab and couldn’t hear the radio call).

4 **Exhibit 6, Reno Deposition**, 110:11-111:11. His testimony never mentioned minimum wage until
5 after a prolonged break during the deposition, which he took with his attorney. After which, he
6 came back and simply gave 1 word confirming answers to her questions that he was claiming a
7 minimum wage. **Exhibit 6, Reno Deposition**, 115:3-14.

8 In the complaint itself, Plaintiffs’ allegations center on fraud by using phrases such as
9 “malicious and/or fraudulent and/or oppressive.” In *Johnson v. Travelers Ins. Co.*, the Nevada
10 Supreme Court stated:

11 As a general proposition, it is fair to state that a class suit to recover damages for
12 fraud allegedly practiced upon numerous persons is not warranted. Cases collect.
13 Annot., 114 A.L.R. 1015. *Johnson v. Travelers Ins. Co.*, 89 Nev. 467, 515 P.2d 68
14 (Nev. 1973).

15 **II.**

16 **CONCLUSION**

17 Based upon the foregoing points and authorities, Defendants respectfully requests this
18 Honorable Court to enter an Order granting Defendants’ Motion for Summary Judgment dismissing
19 this matter in its entirety.

20 DATED this 27th day of November, 2017.

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

22
23 /s/ Esther C. Rodriguez, Esq.
24 Esther C. Rodriguez, Esq.
25 Nevada State Bar No. 006473
26 10161 Park Run Drive, Suite 150
27 Las Vegas, Nevada 89145
28 *Attorneys for Defendants*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 27th day of November, 2017, I electronically filed the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

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

Christian Gabroy, Esq.
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170 South Green Valley Parkway # 280
Henderson, Nevada 89012
Counsel for Plaintiff Pending Order of Court

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

EXHIBIT 1

EXHIBIT 1


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

**SECOND AMENDED AND
SUPPLEMENTAL
COMPLAINT**

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

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

JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

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

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

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

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

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 were not inflated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (d) NADY by personally enriching himself with additional
18 distributions, dividends, salary or other earnings and profits from
19 the corporate defendants that he would not have received, and
20 could not have received, if the corporate defendants had taken
21 proper steps to comply with the Court's January 17, 2013 ruling has
22 rendered the corporate defendants financially insolvent and unable
23 to pay the minimum wages owed to the class members for their
24 work performed after January 17, 2013.
25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 aforesaid.

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

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

5
6 Leon Greenberg Professional Corporation

7
8 By: /s/ Leon Greenberg

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

CERTIFICATE OF MAILING

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

SECOND AMENDED AND SUPPLEMENTAL COMPLAINT

by court electronic service to:

TO:

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

/s/ Dana Sniegocki

Dana Sniegocki

EXHIBIT 2

EXHIBIT 2

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

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

A CAB, SERIES LLC Employee Leasing Company

12959

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

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

EXHIBIT 3

EXHIBIT 3



REVIEW OF THE CALCULATION
OF DAMAGES: MICHAEL MURRY
AND MICHAEL RENO

V.

A CAB TAXI SERVICE LLC. ET. AL.

Lawrence M. Chumley, Ph.D.

July 11, 2017

I. ASSIGNMENT

I have been asked by Ms. Sharon Nelson and Mr. Leon Greenberg to review the calculation of damages made in this case by Mr. Charles Bass. The purpose of the review will be to indicate if, in my opinion, the calculations have been made appropriately, within a standard of reasonableness for such calculations, to produce results that may be relied upon for a court in determining damages, and if I have suggestions for any modifications to the results obtained by Mr. Bass.

II. PURPOSE OF THE BASS CALCULATIONS

It is my understanding the plaintiffs in this action allege an underpayment of wages by the defendants to their employees in violation of minimum wage legislation in the State of Nevada. Mr. Charles Bass was retained to calculate the alleged underpayment. He has done so by taking information from the defendants' wage payment records regarding the amount of wages paid to those employees each pay period and by applying various assumptions and calculations to those records. One portion of his calculations covers approximately 583 employees (cab drivers) and, as he advised me, examines every complete two week payroll period for those taxi drivers that started on or after January 1, 2013 and that ended on or prior to December 31, 2015.¹ Those calculations are contained in the "2013-2015 Payroll Analysis" Excel file that I discuss, *infra*, and that I am providing with this report. I am advised during all of the

¹ Damage calculations were also made on approximately 527 drivers in the 2010 to 2012 time period.

time periods discussed in this report the State of Nevada required employers to pay a minimum wage of \$7.25 per hour to those employees for whom the employer made available certain health insurance and \$8.25 per hour to those employees for whom such health insurance was not made available. Furthermore, I have been told by counsel in this case that a “shortage” of pay below the minimum requirements for a particular employee for a particular “pay period” cannot be offset by an “overage” in a previous or subsequent pay period. It is also my understanding that employees did not have available from the employer any health insurance for an initial “probationary” or waiting period of time.²

To reach conclusions about the amount of unpaid minimum wages owed to the drivers Mr. Bass used Excel software. He created various Excel spreadsheets to perform certain calculations on information taken from the defendants' payroll records, from information provided by defendants and plaintiffs' attorneys, and from information taken from the computer files created from the Cab Manager software used by the defendants. As discussed, *infra*, during certain years reviewed the Cab Manager records contain information that infers the times drivers started and ended each of their work days. It also, for the entire 2010 through 2015 time period reviewed, indicates if a driver drove, or was recorded as being assigned to drive, a particular taxi cab on a particular date. It is my understanding that all of the information and computer files used by Mr. Bass were acquired from the defendants

² I am not in a position to opine on the assumptions made by Mr. Bass on the length of such waiting period.

during the discovery process in this case. Ultimately Mr. Bass placed the information he collected and processed into two different Excel files that I examined and that provide the basis for the conclusions I make in this report.

One of the Excel files that Mr. Bass created and that I have used to reach the conclusions in this report is the "ACAB-ALL" file. Mr. Bass advises that file contains all of the information he collected for the taxi drivers for the time period October 8, 2010 through December 31, 2015. That file is constructed to allow a calculation of the minimum wages owed, if any, to each driver for each pay period in several different ways:

(1) For the period January 1, 2013 through December 31, 2015 (in the "2013-2015" tab) it performs that calculation based upon the hours recorded for each pay period for each driver in the payroll records and also does so based upon the times it is inferred from the Cab Manager system's records that the driver began and ended each work shift;

[2] For the period January 1, 2013 through December 31, 2015 it can perform that calculation based upon the driver's shift length times as inferred from the records of the Cab Manager system with each shift's length either increased, or decreased, by a uniform amount as specified in Cell O2 (the "O2 Variable") of the spreadsheet in the 2013-2015 tab. This allows such a calculation (which appears in columns Z through AD) to incorporate an assumption that drivers did not actually work for 1 hour, or some other uniform period of time, during

each shift because they were taking a 1 hour meal break or other amount of non-working break time between their Cab Manager inferred shift start and end times;

(3) For the period January 1, 2013 through December 31, 2015, and separately for the period October 8, 2010 through December 31, 2012, it can perform that calculation by applying a uniform shift length to each shift the taxi driver is recorded to have worked in the Cab Manager records, *e.g.*, by assuming every shift worked during the pay period by the employee was the same constant length. This calculation is performed by specifying the desired shift length to be assumed in cell N2 of the "2010-2012" tab and by specifying the desired shift length to be assumed in cell N2 of the 2013-2015 tab (the "N2 Variable"), which generates those calculations in columns Z through AD in the 2013 to 2015 tab and T through X in the 2010 to 2012 tab.

The "ACAB-ALL" file also compiles, from the 2013-2015 and 2010-2012 tabbed spreadsheets "per employee" totals that appear in the spreadsheets tabbed at "2013-2015 per EE" and "2010-2012 per EE." Those two latter spreadsheets are linked, respectively, to the 2013-2015 and 2010-2012 tabbed spreadsheets and update their compiled per employee calculations based upon any changes to the N2 or O2 Variables.

The other Excel file created by Mr. Bass and upon which I rely is the "2013-2015 Payroll Analysis" Excel file. Mr. Bass advises me this file includes the information from defendants' payroll records for the period January 1, 2013 through December 31, 2015. That file calculates the unpaid minimum wages (if any) owed to each driver for each pay period (except for drivers and pay periods that are excluded, as detailed *infra*) at \$7.25 an hour, at \$8.25 an hour, and at a combination of both rates, based defendant's payroll records and, to the extent it uses both of those rates, certain assumptions about when each of those rates should be used for a particular pay period. Those calculations appear at columns T through X of the spreadsheet at the "2013-2015" tab of that file and the spreadsheet at the "2013-2015 per EE" tab of that file compiles at columns D through H for each employee the totals of columns T through X, respectively, of the "2013-2015" tabbed spreadsheet for that employee's pay periods.

The 2013-2015 Payroll Analysis file indicates that if the hours of work each pay period in the payroll records are assumed to be accurate the drivers, collectively, for the pay periods reviewed, are owed \$175,057 at a constant \$7.25 an hour minimum wage rate, \$651,567 at a constant \$8.25 an hour minimum wage rate, and amounts between those figures under various assumptions that Mr. Bass has used to apply those two rates during different time periods. I understand that Mr. Bass, in a declaration submitted to the Court in February of 2017, further examined the records he summarized in the 2013-2015 Payroll Analysis file and determined that if drivers owed less than \$10.00 were excluded from that analysis, the remaining drivers were

collectively owed \$174,423 at a constant \$7.25 an hour minimum wage rate and \$648,521 at a constant \$8.25 an hour minimum wage rate.

As discussed in more detail, *infra*, I have examined the 2013-2015 Payroll Analysis Excel file and the calculations (formulas) that Mr. Bass has embedded into that file. Based upon that examination I can state that (1) The arithmetical results set forth in columns T through X of the spreadsheet at the "2013-2015" tab of that file are accurate calculations of the minimum wage amounts owed, if any, based upon the other information in that spreadsheet, for the payroll period examined on each line at \$7.25 an hour, at \$8.25 an hour, and under the assumptions used by Mr. Bass that apply either a \$7.25 or \$8.25 an hour rate during the pay period; and (2) The arithmetical results set forth in columns D through H of the spreadsheet at the "2013-2015 per EE" tab of that file accurately compiles the totals, for the employee identified on each line of such spreadsheet, of the minimum wage amounts calculated to be owed, if any, and contained in columns T through X, respectively, of that file's "2013-2015" tabbed spreadsheet for that same employee for all of that employee's pay periods analyzed in the latter spreadsheet.

As discussed in more detail, *infra*, I have examined the ACAB-ALL Excel file and the calculations (formulas) that Mr. Bass has embedded into that file. Based upon that examination I can state, as I have in respect to the 2013-2015 Payroll Analysis Excel file, that the arithmetical results set forth in that file are accurate. By that statement I mean the formulas used by Mr. Bass in that file (both in the per pay period

spreadsheets at the "2013-2015" and "2010-2012" tabs and the per employee compilation spreadsheets at the "2010-2012 per EE" and "2013-2015 per EE" tabs) perform the proper calculations on the information contained in those files. That also means any information that may be inserted into the N2 or O2 variables will be linked to and recalculate the per employee values in the EE files.

III. DECLARATION OF MR. CHARLES BASS

Mr. Bass provided a declaration to the court on January 11, 2017 whereby he outlined the steps and assumptions for his calculation of damages as well as summary tables of damages for each employee that are now in the 2013-2015 Payroll Analysis Excel file. The declaration sans tables is attached to this report. The steps and assumptions in the calculations contained in the declaration can be summarized as follows: Mr. Bass utilized three essential files provided by the defendants to create the calculations he discusses in that declaration. Two files contained payroll information, including employee identification numbers, paycheck information such as time period covered, compensation amounts, deductions, and so forth, but not the names of the employees. These two files covered a time period from October 10, 2012 through June 27, 2014 and June 28, 2014 through May 27, 2016. I have been advised by plaintiffs' counsel that the foregoing records for the payroll periods commencing after January 1, 2013 contain "QTY" amounts which are recorded as the Payroll Item "Minimum Wage Subsidy" in those files. I am further advised by plaintiffs' counsel

that defendants claim such QTY amounts are the hours the employee worked during the corresponding payroll period. A third file was a "Driver Contact" file that, essentially identified drivers by name and identification number and allowed the information in the two payroll files to be assigned to a particular named employee. He then utilized information from these three files in a series of steps that involved merging files, sorting and merging relevant data, purging irrelevant data, applying assumptions regarding health insurance coverage, and making and summarizing calculations of damages for the period starting in January of 2013 based solely upon the payroll records and the hours of work per pay period stated in those payroll records. The series of steps are outlined in the declaration. Also, as stated, included in the declaration is the final table of damages. Not included in the declaration are the "intermediate" tables created by the steps summarized in the declaration.

IV. REVIEW PLAN

To fulfill my assignment I met with Mr. Bass four times. On those occasions he and I, having access to his entire work product, went over the steps included in his declaration. I reviewed the steps, the reasons for the steps, the resulting "intermediate" tables, the reasonableness of the intermediate calculations, and the reasonableness of the final calculation of damages. At each stage I include in this report representative segments of the "intermediate" table of results.

A. First Visit: July 5, 2017

STEP ONE; REVIEW OF THE TWO INITIAL EXCEL FILES; 10-10-12 thru 6-27-14xlsx
and 06-28-14 thru 05-27-16xlsx.

Figure one shows a segment of one of the two files.

FIGURE ONE

C	D	E	F	G	H	I	J	K	L
Num	Date	Name Account #	SSN/Tax ID	Payroll Item	Qty	Sales Price	Amount	Pay Period Begin Date	Pay Period End Date
25371	10/19/2012	3824	***-**-6329	Driver Commission	1.00	660.36	660.36	09/29/2012	10/12/2012
25372	10/19/2012	3806	***-**-6626	Driver Commission	1.00	689.02	689.02	09/29/2012	10/12/2012
25373	10/19/2012	15068	***-**-9599	Driver Commission	1.00	862.67	862.67	09/29/2012	10/12/2012
25374	10/19/2012	1076	***-**-9681	Driver Commission	1.00	825.05	825.05	09/29/2012	10/12/2012
25375	10/19/2012	3281	***-**-4942	Driver Commission	1.00	708.86	708.86	09/29/2012	10/12/2012
25376	10/19/2012	3523	***-**-4259	Driver Commission	1.00	124.25	124.25	09/29/2012	10/12/2012
25377	10/19/2012	2826	***-**-2469	Driver Commission	1.00	869.30	869.30	09/29/2012	10/12/2012
25378	10/19/2012	3265	***-**-1707	Driver Commission	1.00	601.02	601.02	09/29/2012	10/12/2012
25379	10/19/2012	3525	***-**-9509	Driver Commission	1.00	568.40	568.40	09/29/2012	10/12/2012
25380	10/19/2012	3812	***-**-6567	Driver Commission	1.00	822.78	822.78	09/29/2012	10/12/2012

It shows the data as explained in the first step of the Bass declaration. The important information is driver ID³, the payroll item and the dollar amount, and the dates for the pay period beginning and end. There are approximately 136,000 lines in this file. There are approximately sixty different “payroll items” (column G, see exhibit) with their own section in the spreadsheet, some of which do not represent compensation to the drivers. A particular driver will occur on several of these “payroll items.”. However, some of the “payroll items” are irrelevant to the task at hand which was to determine the total gross earnings, excluding tips, of the employee during each pay period. Examples of irrelevant entries include: Federal withholding, unemployment

³ As indicated above, data from the “driver contact” file can be used to match the driver ID with a name.

insurance, loan advances to a driver, deductions for loan advances, deductions for child support, wage garnishments, dental plans, Nevada and Federal unemployment deductions, and so forth. The typical payroll sections that were included in compensation are: Bonus, minimum wage subsidy, overtime, driver commission, credit card swipe, incentive #1, #2, #4, #5, and driver reimbursements. A complete list, according to Mr. Bass is included in the second exhibit of column G to this report (payroll items included in compensation).

These two files were basically the same except for the time period. Mr. Bass indicated in his declaration and to me that he combined the two tables in single file, for the purpose of constructing the 2013-2015 Payroll Analysis Excel file and ACAB-ALL Excel file. For his construction of the 2013-2015 Payroll Analysis Excel file he eliminated dates (column D) earlier than January 1, 2013. In his construction of both of those Excel files he eliminated all lines for which he could not match the driver ID# with a driver name from the "driver contact" file. He also eliminated all lines for which the "payroll" item was not a part of the driver's gross earnings for the pay period. This exclusion also included the payroll item "tips supplemental" because it was his understanding that the Nevada minimum wage law indicates that any "shortfall" in minimum wage payments from an employer cannot be made up from the employee's tip income. I am advised by plaintiffs' counsel that defendants have confirmed that the payroll item "tips supplemental" corresponds to the amount of tips the employee received, or was credited with receiving, during the payroll period.

On this first visit with Mr. Bass we went over these adjustments to the first two tables and reviewed the resulting table. The resulting table had approximately 64,000 lines (driver payroll dates). Figure two shows a selection from this table for a particular individual, Mr. Peter S. Arnold who worked for the company from September 2014 through January 30, 2015. The seventh column shows the various income items from the payroll data that were considered to determine the total income. For example, for the pay period ending 10/17/2014 he had three income items: credit card swipes for \$1.00, driver commission for \$273.74 and minimum wage subsidy for \$11.04 for a total of \$285.78 (line three).⁴ The start date and, if appropriate, an end date for each driver was provided by the defendant in this case. Figure three shows a section of the list of approximately 583 cab drivers that includes the Peter Arnold start and end dates. These dates are consistent for him with those dates in Figure Two.

⁴ The value of "9" in a row marks the end to the pay period in question.

FIGURE TWO

14425	10/1/2014	8812 Arnold, Peter S	Arnold	Peter	CC Swap @ 0.25	1.00	1.00	1.00	1.00	08/27/2014	10/10/2014	\$1.00	\$1.00
14425	10/1/2014	8812 Arnold, Peter S	Arnold	Peter	Driver Commission	1.00	273.74	273.74		08/27/2014	10/10/2014	\$174.74	\$174.74
14425	10/1/2014	8812 Arnold, Peter S	Arnold	Peter	Minimum Wage Subsidy	39.44	0.28	11.04		08/27/2014	10/10/2014	\$285.78	\$285.78
14687	10/3/2014	8812 Arnold, Peter S	Arnold	Peter	Driver Commission	1.00	157.88	157.88		10/11/2014	10/24/2014	\$157.88	\$157.88
14687	10/3/2014	8812 Arnold, Peter S	Arnold	Peter	Incentive #5	1.00	4.00	4.00		10/11/2014	10/24/2014	\$161.88	\$161.88
14687	10/3/2014	8812 Arnold, Peter S	Arnold	Peter	Minimum Wage Subsidy	22.45	0.04	0.90		10/11/2014	10/24/2014	\$162.78	\$162.78
14943	11/1/2014	8812 Arnold, Peter S	Arnold	Peter	Driver Commission	1.00	304.37	304.37		10/25/2014	11/07/2014	\$304.37	\$304.37
14943	11/1/2014	8812 Arnold, Peter S	Arnold	Peter	Incentive #5	1.00	3.00	3.00		10/25/2014	11/07/2014	\$307.37	\$307.37
14943	11/1/2014	8812 Arnold, Peter S	Arnold	Peter	Minimum Wage Subsidy	38.71		0.00		10/25/2014	11/07/2014	\$307.37	\$307.37
15194	11/28/2014	8812 Arnold, Peter S	Arnold	Peter	CC Swap @ 0.25	1.00	5.00	5.00		11/08/2014	11/21/2014	\$5.00	\$5.00
15194	11/28/2014	8812 Arnold, Peter S	Arnold	Peter	Driver Commission	1.00	54.50	54.50		11/08/2014	11/21/2014	\$59.50	\$59.50
15194	11/28/2014	8812 Arnold, Peter S	Arnold	Peter	Incentive #5	1.00	4.00	4.00		11/08/2014	11/21/2014	\$63.50	\$63.50
15194	11/28/2014	8812 Arnold, Peter S	Arnold	Peter	Minimum Wage Subsidy	9.80	0.77	7.55		11/08/2014	11/21/2014	\$71.05	\$71.05
15451	12/1/2014	8812 Arnold, Peter S	Arnold	Peter	Driver Commission	1.00	90.46	90.46		11/22/2014	12/05/2014	\$90.46	\$90.46
15451	12/1/2014	8812 Arnold, Peter S	Arnold	Peter	Incentive #5	1.00	1.00	1.00		11/22/2014	12/05/2014	\$91.46	\$91.46
15451	12/1/2014	8812 Arnold, Peter S	Arnold	Peter	Minimum Wage Subsidy	18.96	2.43	45.07		11/22/2014	12/05/2014	\$137.53	\$137.53
15712	12/26/2014	8812 Arnold, Peter S	Arnold	Peter	CC Swap @ 0.25	1.00	2.75	2.75		12/06/2014	12/19/2014	\$2.75	\$2.75
15712	12/26/2014	8812 Arnold, Peter S	Arnold	Peter	Driver Commission	1.00	166.90	166.90		12/06/2014	12/19/2014	\$169.70	\$169.70
15712	12/26/2014	8812 Arnold, Peter S	Arnold	Peter	Incentive #5	1.00	2.00	2.00		12/06/2014	12/19/2014	\$171.70	\$171.70
15712	12/26/2014	8812 Arnold, Peter S	Arnold	Peter	Minimum Wage Subsidy	19.93		0.00		12/06/2014	12/19/2014	\$171.70	\$171.70
15958	01/09/2015	8812 Arnold, Peter S	Arnold	Peter	Driver Commission	1.00	116.38	116.38		12/20/2014	01/02/2015	\$116.38	\$116.38
15958	01/09/2015	8812 Arnold, Peter S	Arnold	Peter	Incentive #5	1.00	2.00	2.00		12/20/2014	01/02/2015	\$118.38	\$118.38
15958	01/09/2015	8812 Arnold, Peter S	Arnold	Peter	Minimum Wage Subsidy	19.54	1.19	23.25		12/20/2014	01/02/2015	\$141.63	\$141.63
16210	01/23/2015	8812 Arnold, Peter S	Arnold	Peter	CC Swap @ 0.25	1.00	2.00	2.00		01/03/2015	01/16/2015	\$2.00	\$2.00
16210	01/23/2015	8812 Arnold, Peter S	Arnold	Peter	Driver Commission	1.00	169.63	169.63		01/03/2015	01/16/2015	\$171.63	\$171.63
16210	01/23/2015	8812 Arnold, Peter S	Arnold	Peter	Incentive #5	1.00	2.00	2.00		01/03/2015	01/16/2015	\$173.63	\$173.63
16210	01/23/2015	8812 Arnold, Peter S	Arnold	Peter	Minimum Wage Subsidy	19.72		0.00		01/03/2015	01/16/2015	\$173.63	\$173.63
16473	02/06/2015	8812 Arnold, Peter S	Arnold	Peter	Driver Commission	1.00	150.45	150.45		01/17/2015	01/30/2015	\$160.45	\$160.45
16473	02/06/2015	8812 Arnold, Peter S	Arnold	Peter	Incentive #5	1.00	2.00	2.00		01/17/2015	01/30/2015	\$162.45	\$162.45
16473	02/06/2015	8812 Arnold, Peter S	Arnold	Peter	Minimum Wage Subsidy	20.07		0.00		01/17/2015	01/30/2015	\$182.45	\$182.45

FIGURE THREE- START AND END DATES

2:51 PM
11/16/16

A Cab, LLC
Employee Contact List

Abarca, Enrique	01/17/2013	06/17/2013
Anon, Nelson B	08/05/2015	03/15/2016
Antoine, Albert J.	04/20/2006	10/02/2007
Aparicio, Reynaldo C	08/19/2015	09/30/2015
Apodaca, Orlando J	04/15/2015	04/18/2016
Appel, Howard J.	10/30/2007	05/25/2011
Applegate, Angela M	11/10/2010	12/14/2010
April, Richard P.	01/04/2007	01/12/2007
Araissi, Ahmed L.	05/06/2008	07/08/2008
Arana, Simeon A.	11/16/2007	12/20/2007
Arar, Isam K	07/27/2011	
Arathoon, Eric A	06/01/2009	09/07/2009
Araya, Binyam R.	04/25/2006	08/07/2006
Archer, Bert J	11/29/2013	01/21/2014
Archuleta, Alex	03/18/2008	01/06/2010
Arega, Asefa D.	07/10/2008	02/13/2009
Arell, Roger D	06/15/2011	06/30/2011
Arellano, Miguel A	03/09/2011	01/15/2014
Arena, Francis J	11/07/2012	02/10/2013
Arfa, Mohsen	09/05/2007	10/30/2007
Argirov, Aleksandar D.	11/21/2005	08/25/2006
Armendinger, Shane P.	03/25/2015	11/20/2015
Armstrong, Eva R.	11/14/2007	03/18/2008
Arnold, Peter S	09/25/2014	02/10/2015

Once the gross earnings are calculated for each driver for each two-week pay period it is necessary to obtain the number of hours worked during each of those pay periods to determine if the driver is owed any unpaid minimum wages. There are two sources of such "hours worked" data provided by the defendant. One is the work hours that defendants claim were accurately recorded in the payroll records (the "QTY amounts of the "Minimum Wage Subsidy") starting in January of 2013. That is the hours worked information that was used by Mr. Bass to create the 2013-2015 Payroll Analysis file.

The other source of hours worked information used by Mr. Bass, and that he incorporated into the ACAB-ALL Excel file, is derived from the Cab Manager records. Mr. Bass advises that the Cab Manager files he reviewed for the time period starting October 8, 2010 and through December 31, 2015 contain information on 205,953 shifts of taxi cab operation, with each such shift record also indicating the identity (name and/or employee ID number) of the driver associated with that taxi's operation.

Mr. Bass also advises that the Cab Manager records, for the time period after January of 2013 and through December of 2015 contained, for each shift worked, certain time note information from which he has inferred a start and end time, and calculated a resulting shift length, for the employee's work shift. He has done so by using as the shift start time the "initial print" time for the shift in the Cab Manager record, on the basis that "print" activity (the printing of a trip sheet) was performed when the driver first reported for work. On some occasions the Cab Manager record lacked that time, and in those circumstances he used the "Cab Start" time for the shift,

which he understands was the time the cab was turned on for the shift, as the shift start time. If neither of those times were available he used the first "Trip Start" time, which he understands was the time Cab Manager recorded the driver as starting to transport their first paying fare for the shift. For the shift end times he used the time recorded in the Cab Manager records as the "Driver Checkout" time, which he understood to be the time the driver had finished all of his duties for the shift and was free to leave; if that time was not available he used the "Cab Finish" time, which he understands to be the time the cab was turned off for the shift; and if neither of those two times were available he used the last "Trip Finish" time recorded, which he understands to be the time the shift's last fare paying passenger concluded their taxi ride.

As I discuss, *infra* and *supra*, by using the Cab Manager "shift" data, meaning the "shifts worked per pay period" which exists for the entire 2010 through 2015 period, and the "inferred shift length" data which exists for the 2013 through 2015 time period, the ACAB-ALL Excel file allows one to calculate the minimum wages owed to the taxi drivers in a variety of arithmetically sound methods.

B. Second Visit: July 7, 2017

On this second visit we went over the two sources of the per driver hours reported by the defendant for the period January 1, 2013 through December 31, 2015. The file containing hours of work recorded in the payroll records (the QTY amounts recorded as a “minimum wage subsidy” payroll item) contained about 71,500 lines for which there was a driver’s name. Figure four shows the payroll data for Mr. Peter Arnold. For the period ending 10/10/2014 it indicates that he worked 39.44 hours.⁵ For the period ending 10/24/2014 the record indicates he worked 22.45 hours. For the period ending 11/01/2014 the record indicates that the hours worked was 38.71. The earnings and hours worked for these pay periods are used, for each driver, to determine the hourly compensation (compensation divided by hours worked). If the estimated hourly compensation is below the relevant minimum wage then the “shortfall” can be calculated as damages. If it is greater than the relevant minimum wage then the damages are calculated as zero.

***FIGURE FOUR-PARTIAL LIST FOR MR. PETER ARNOLD-
HOURS RECORDED IN THE PAYROLL RECORDS***

⁵ As discussed, supra, I have been advised by plaintiffs' counsel that the defendants have identified the QTY amounts listed as Minimum Wage Subsidy is the record of hours worked for the pay period as recorded in the payroll records.

Check No	Date	Account #	Last Name	First Name	SSN/Tax ID	Payroll Item	Qty	Sales Price	Amount	Pay Period Begin Date	Pay Period End Date	Total PP
14405	10/17/2014	8812	Arnold	Peter	***.**-9916	CC Swipe @ 0.25		1.00	1.00	9/27/14	10/10/14	\$1.00
14405	10/17/2014	8812	Arnold	Peter	***.**-9916	Driver Commission	1.00	273.74	273.74	9/27/14	10/10/14	\$274.74
14405	10/17/2014	8812	Arnold	Peter	***.**-9916	Z_Minimum Wage Subsidy	39.44	0.28	11.04	9/27/14	10/10/14	\$285.78
14687	10/31/2014	8812	Arnold	Peter	***.**-9916	Driver Commission	1.00	157.88	157.88	10/11/14	10/24/14	\$157.88
14687	10/31/2014	8812	Arnold	Peter	***.**-9916	Incentive #5		4.00	4.00	10/11/14	10/24/14	\$161.88
14687	10/31/2014	8812	Arnold	Peter	***.**-9916	Z_Minimum Wage Subsidy	22.45	0.04	0.90	10/11/14	10/24/14	\$162.78
14943	11/14/2014	8812	Arnold	Peter	***.**-9916	Driver Commission	1.00	304.37	304.37	10/25/14	11/7/14	\$304.37
14943	11/14/2014	8812	Arnold	Peter	***.**-9916	Incentive #5		3.00	3.00	10/25/14	11/7/14	\$307.37
14943	11/14/2014	8812	Arnold	Peter	***.**-9916	Z_Minimum Wage Subsidy	38.71		0.00	10/25/14	11/7/14	\$307.37
15194	11/28/2014	8812	Arnold	Peter	***.**-9916	CC Swipe @ 0.25		5.00	5.00	11/8/14	11/21/14	\$5.00
15194	11/28/2014	8812	Arnold	Peter	***.**-9916	Driver Commission	1.00	54.50	54.50	11/8/14	11/21/14	\$59.50
15194	11/28/2014	8812	Arnold	Peter	***.**-9916	Incentive #5		4.00	4.00	11/8/14	11/21/14	\$63.50
15194	11/28/2014	8812	Arnold	Peter	***.**-9916	Z_Minimum Wage Subsidy	9.80	0.77	7.55	11/8/14	11/21/14	\$71.05
15451	12/12/2014	8812	Arnold	Peter	***.**-9916	Driver Commission	1.00	90.46	90.46	11/22/14	12/5/14	\$90.46
15451	12/12/2014	8812	Arnold	Peter	***.**-9916	Incentive #5		1.00	1.00	11/22/14	12/5/14	\$91.46
15451	12/12/2014	8812	Arnold	Peter	***.**-9916	Z_Minimum Wage Subsidy	18.96	2.43	46.07	11/22/14	12/5/14	\$137.53
15712	12/26/2014	8812	Arnold	Peter	***.**-9916	CC Swipe @ 0.25		2.75	2.75	12/6/14	12/19/14	\$2.75
15712	12/26/2014	8812	Arnold	Peter	***.**-9916	Driver Commission	1.00	166.95	166.95	12/6/14	12/19/14	\$169.70
15712	12/26/2014	8812	Arnold	Peter	***.**-9916	Incentive #5		2.00	2.00	12/6/14	12/19/14	\$171.70
15712	12/26/2014	8812	Arnold	Peter	***.**-9916	Z_Minimum Wage Subsidy	19.93		0.00	12/6/14	12/19/14	\$171.70
15958	01/09/2015	8812	Arnold	Peter	***.**-9916	Driver Commission	1.00	116.38	116.38	12/20/14	1/2/15	\$116.38
15958	01/09/2015	8812	Arnold	Peter	***.**-9916	Incentive #5		2.00	2.00	12/20/14	1/2/15	\$118.38
15958	01/09/2015	8812	Arnold	Peter	***.**-9916	Z_Minimum Wage Subsidy	19.54	1.19	23.25	12/20/14	1/2/15	\$141.63
16210	01/23/2015	8812	Arnold	Peter	***.**-9916	CC Swipe @ 0.25		2.00	2.00	1/3/15	1/16/15	\$2.00
16210	01/23/2015	8812	Arnold	Peter	***.**-9916	Driver Commission	1.00	169.83	169.83	1/3/15	1/16/15	\$171.83
16210	01/23/2015	8812	Arnold	Peter	***.**-9916	Incentive #5		2.00	2.00	1/3/15	1/16/15	\$173.83
16210	01/23/2015	8812	Arnold	Peter	***.**-9916	Z_Minimum Wage Subsidy	19.72		0.00	1/3/15	1/16/15	\$173.83

Figure five, which is an excerpt from an Excel table created by Mr. Bass, shows the hours worked inferred from the Cab Manager files on a reoccurring 7 day (weekly) basis, again for Mr. Peter Arnold. I have discussed and reviewed with Mr. Bass how he created that Excel table. The methodology he documented to me in respect to its creation was sound and free from any arithmetical errors. That methodology resulted in the placement in figure five in the column titled "Week Hours" that appears as the second most left listed column of the hours worked by Mr. Arnold for the weeks ending 09/30/2014 and 10/07/2014 as 23.77 and 23.25 respectively. The total of those hours for the two-week period is 47.02. We will show that in the final calculation of damages, Mr. Bass used the payroll hours and inferred cab manager work hours to calculate two different sets of loss numbers for this individual.

FIGURE FIVE-NEXT PAGE

Employee eID	Last Name	First Name	Shift Date	Initial Print	First Shift Calc	Last Shift Calc	First Shift	Last Shift	Day Trip		Week +1	Weeknum	Shift Hours	Week		Avg Hrs per Shift	Week		Avg Hrs per Shift
									Count	Week				Count	Hours		Count	Hours	
8812 Arnold	Peter	Peter	9/30/14	9/30/14 12:00	9/30/14	9/30/14	9/28/14	9/30/14	15	4	4	40	11.77	1	11.77	11.77	1	23.77	11.86
8812 Arnold	Peter	Peter	10/7/14	10/7/14 12:00	10/7/14	10/7/14	10/5/14	10/7/14	18	4	4	41	11.50	1	11.50	11.50	1	23.25	11.62
8812 Arnold	Peter	Peter	10/14/14	10/14/14 12:00	10/14/14	10/14/14	10/14/14	10/14/14	4	4	4	42	2.60	1	2.60	2.60	1	2.60	2.60
8812 Arnold	Peter	Peter	10/21/14	10/21/14 12:00	10/21/14	10/21/14	10/19/14	10/21/14	19	4	4	43	11.95	1	11.95	11.95	1	23.85	11.93
8812 Arnold	Peter	Peter	10/30/14	10/30/14 12:01	10/30/14	10/30/14	10/26/14	10/30/14	19	6	6	44	11.82	1	11.82	11.82	1	23.55	11.77
8812 Arnold	Peter	Peter	11/6/14	11/6/14 12:00	11/6/14	11/6/14	11/2/14	11/6/14	19	6	6	45	11.67	1	11.67	11.67	1	23.18	11.59
8812 Arnold	Peter	Peter	11/16/14	11/16/14 12:02	11/16/14	11/16/14	11/16/14	11/16/14	15	2	2	47	11.80	1	11.80	11.80	1	11.80	11.80
8812 Arnold	Peter	Peter	11/23/14	11/23/14 12:00	11/23/14	11/23/14	11/23/14	11/23/14	15	2	2	48	11.72	1	11.72	11.72	1	11.72	11.72
8812 Arnold	Peter	Peter	11/30/14	11/30/14 12:02	11/30/14	11/30/14	11/30/14	11/30/14	14	2	2	49	11.23	1	11.23	11.23	1	11.23	11.23
8812 Arnold	Peter	Peter	12/7/14	12/7/14 12:00	12/7/14	12/7/14	12/7/14	12/7/14	16	2	2	50	11.88	1	11.88	11.88	1	11.88	11.88
8812 Arnold	Peter	Peter	12/14/14	12/14/14 12:01	12/14/14	12/14/14	12/14/14	12/14/14	14	2	2	51	12.00	1	12.00	12.00	1	12.00	12.00
8812 Arnold	Peter	Peter	12/21/14	12/21/14 12:00	12/21/14	12/21/14	12/21/14	12/21/14	12	2	2	52	11.83	1	11.83	11.83	1	11.83	11.83
8812 Arnold	Peter	Peter	12/28/14	12/28/14 12:01	12/28/14	12/28/14	12/28/14	12/28/14	15	2	2	53	11.72	1	11.72	11.72	1	11.72	11.72

We now turn to the final calculation of damages file from Mr. Bass, ACAB-ALL. In this file Mr. Bass calculates damages for the period 2010-2012 and 2013-2015 in two separate spreadsheets. Here, again I focus on the calculation for the first pay periods for Mr. Peter Arnold.

Figure Six shows the calculation of the damages for Mr. Arnold employing the hours set forth in the payroll records. First, note that for the two-week period ending 10/07/2014 the total work hours set forth in the payroll records is 39.44. This amount comes from line three in figure four above. The total compensation for this period is \$285.78. This is consistent with line three of figure two. Had he been paid a minimum wage of \$7.25 per hour his total compensation should have been \$285.94 ($=7.25 \times 39.44$). He was actually paid \$285.78 or sixteen cents less as indicated in the column "Minimum Wage Owed at \$7.25 an Hour for all Hours."

The ACAB-ALL Excel file, in addition to properly calculating the amount of minimum wages owed to Mr. Arnold for all hours of his work based upon the information contained in that file, at either a \$7.25 or \$8.25 an hour rate, also makes three other minimum wage calculations that assume *either* a \$7.25 an hour or an \$8.25 an hour rate depending upon certain conditions. Those three "conditional" calculations (they are "conditional" because they will result in the application of the \$7.25 an hour rate unless certain conditions based upon other information contained in the file are met, in which event they use the \$8.25 an hour rate), which I discuss below, are arithmetically correct. Those three conditional calculations are also presented, with the same column descriptions, in the 2013-2015 Payroll Analysis

Excel file, they are also arithmetically correct in that file and function in that file in the exact same fashion as I discuss below.

The column entitled "Minimum Wages Owed at \$8.25 an Hour for Pay Periods Prior to Date Qualified for Insurance and at \$7.25 an Hour after that date" uses a formula that references the date contained in Column "F" of the same line. The Column "F" date, which is titled "Date Became Qualified for Health Insurance" (the "Qualification Date") is the date that Mr. Bass, using information provided to him, has determined is the earliest date at which the employee could participate in the defendants' health insurance plan. The formula used in the column "Minimum Wages Owed at \$8.25 an Hour for Pay Periods Prior to Date Qualified for Insurance and at \$7.25 an Hour after that date" examines whether the pay period was entirely before the Qualification Date. If it was entirely before the Qualification Date the amount (if any) of minimum wages owed that appears in that column is calculated at \$8.25 an hour, if it was not that number is calculated at \$7.25 an hour.

The column entitled "Minimum Wages Owed at \$8.25 an Hour for All Pay Periods where Insurance Premium Cost for Employee Only Coverage was More than 10% of Wages and at \$7.25 an Hour for all Other Pay Periods" uses a formula that compares whether a specified amount is more than 10% of the "Total Wages Paid" amount that appears on that same line. Mr. Bass advises that such specified amount in that formula is the insurance premium the employee was required to pay to receive "employee only" health insurance coverage under the employer's insurance plan. If that specified amount is more than 10% of that line's "Total Wages Paid" amount the amount (if any) of minimum wages owed that appears in that column is calculated at

\$8.25 an hour. If that specified amount is less than 10% of that line's "Total Wages Paid" amount, the amount (if any) of minimum wages owed that appears in that column is calculated at \$7.25 an hour.

In the case of Mr. Arnold, for the period examined in Figure Six, he fails both of those conditional (insurance qualification and insurance premium cost) tests that I discuss in the foregoing two paragraphs. As a result, he is shown as owed \$39.60 under both conditions, just as if it was assumed he had to be paid \$8.25 an hour irrespective of any such conditions.

The third and final conditional calculation performed by the ACAB-ALL Excel file is in the column titled "Net Minimum Wage Owed When Both Insurance Qualification Date and Insurance Premium Cost Considered." The number that appears in this column is the greater of the other two conditional calculations performed on the same line and that I discuss above. In Mr. Arnold's case for the period examined in Figure Six this is again \$39.60, the same number that appears under both the first and second conditions since he has failed both conditions and been determined under all of the assumptions used to be entitled to \$8.25 an hour for the pay period.

FIGURE SIX NEXT PAGE

Payroll Records Employee Account Number	Last Name	First Name	Date Became Qualified for Health Insurance	Pay Period Start Date	Pay Period End Date	Cab Manager Shifts	Shifts Worked From Cab Manager Records	Hours For Pay			Hours for Pay Period from Cab Manager Records	Running Cab Manager Hours	Hours For Pay Period if One Hour's Subtracted from Each Cab Manager Shift	Hours for Pay Period from Cab Manager Records	Total Wages Paid	Cab Manager Avg Hrs per Shift	Total Cab Manager Hours Minus Payroll Hours	Minimum Wages Owed at \$7.25 an Hour for all Hours	Minimum Wages Owed at \$8.25 an Hour for all Hours	Minimum Wages Owed at \$9.60 an Hour after that Hour	Periods Prior to Date Qualified for Insurance and at \$7.25 an Hour after that Hour	Periods where Insurance Premium Cost for Employee Only Coverage was More than 10% of Wages and at \$7.25 an Hour for all Other Pay Periods	Minimum Wages Owed at \$8.25 an Hour for All Pay Periods where Insurance Premium When Both Insurance Qualification Date and Insurance Premium Cost Considered
								Hours for Pay Period From Cab Manager	Hours For Period From Cab Manager Records	Adjusted Hours													
8812 Arnold	Peter		9/28/14	9/30/14	2	2	2	23.77	23.77		23.77	11.88											
8812 Arnold	Peter		10/5/14	10/7/14	2	4	4	23.25	23.25	47.02		11.62											
8812 Arnold	Peter		12/1/14	9/27/14	1	4	4			47.02	39.44	\$285.78			7.58	\$0.16	\$39.60	\$39.60	\$39.60				
8812 Arnold	Peter		10/14/14	10/14/14	1	1	1	2.60	2.60			2.60											
8812 Arnold	Peter		10/19/14	10/21/14	2	3	3	23.85	23.85	26.45		11.93											
8812 Arnold	Peter		12/1/14	10/11/14	1	3	3				22.45	\$162.78			4.00	\$0.00	\$22.43	\$22.43	\$22.43				
8812 Arnold	Peter		10/26/14	10/30/14	2	2	2	23.55	23.55			11.77											
8812 Arnold	Peter		11/2/14	11/6/14	2	4	4	23.18	23.18	46.73		11.59											
8812 Arnold	Peter		12/1/14	10/25/14	1	4	4			46.73	38.71	\$307.37			8.02	\$0.00	\$11.99	\$11.99	\$11.99				

Figure seven shows the calculation of damages using the hours from the Cab Manager file. For the first two-week period for Mr. Arnold, recall the total hours from this file was 47.02.

***FIGURE SEVEN-CALCULATION OF DAMAGES FOR HOURS
FROM CAB MANAGER***

Minimum Wages Owed at \$7.25 an Hour for all Hours	Minimum Wages Owed at \$8.25 an Hour for all Hours	Minimum Wages Owed at \$8.25 an Hour for Pay Periods Prior to Date Qualified for Insurance and at \$7.25 an Hour after that date	Minimum Wages Owed at \$8.25 an Hour for All Pay Periods where Insurance Premium Cost for Employee Only Coverage was More than 10% of Wages and at \$7.25 an Hour for all Other Pay Periods	Net Minimum Wages Owed When Both Insurance Qualification Date and Insurance Premium Cost Considered
\$55.09	\$102.11	\$102.11	\$102.11	\$102.11
\$28.88	\$55.43	\$55.43	\$55.43	\$55.43
\$31.46	\$78.18	\$78.18	\$78.18	\$78.18

So, assuming the loss is based on a minimum wage of \$7.25 per hour the total compensation should be $47.02 \times \$7.25 = \340.89 . The actual compensation was \$285.78 leaving a shortfall of \$55.09. Assuming a minimum wage of \$8.25 per hour the total compensation should have been $47.02 \times \$8.25 = \387.91 resulting in a shortfall of \$102.11. Figure seven applies the same conditional calculations that I fully

discuss above in reference to figure six. Those conditional calculations at figure seven are also arithmetically correct. As discussed, *supra*, and documented in the 2013-2015 Payroll Analysis file, assuming that the defendant's payroll records are fully accurate in respect to the hours the drivers worked each pay period for the defendants, and are also fully accurate in respect to the total amount of gross earnings (excluding tips) they earned from the defendants each pay period, the drivers are, collectively, owed, with mathematical certainty, \$175,057 at a constant \$7.25 an hour minimum wage rate, \$651,567 at a constant \$8.25 an hour minimum wage rate, and amounts between those figures using the three conditional calculations that I discuss, *supra*. I qualify the foregoing statement to make clear I am referring to the drivers and payroll periods actually examined by the 2013-2015 Payroll Analysis file, as Mr. Bass advises certain pay periods and drivers (identified in that file by the spreadsheets under the tabs Excluded, NoPayroll, NoCabManager and OneHourPayroll) have been excluded from that calculation.

In respect to the foregoing statements, and all of the statements in this report, I am opining only on (1) The arithmetical correctness of the calculations performed in the two Excel files I am relying upon for my conclusions; and (2) The correctness of the methodology that Mr. Bass has explained to me and used to place various information into those two Excel files from their source materials and how he has performed his calculations. I cannot offer any opinion on whether the source materials that are incorporated into those two Excel files are accurate records. Nor do I offer any opinion on the correctness of the assumptions used by Mr. Bass in the two conditional calculations I discuss in reference to figure six, *e.g.*, the "insurance

qualification date" and "insurance premium cost" assumptions. I only attest to the arithmetical correctness of the calculations he has performed using those assumptions.

C. Third Visit: July 11, 2017

On this third visit Mr. Bass and I went over the calculations that involved the health insurance provisions. I have discussed those calculations above in my discussion of figure six.

As explained in my discussion at figure six, first, note that there are five calculations in the ACAB-ALL Excel file for each of the two sets of hours worked: payroll department and cab manager. In each of the five sets the first two calculations are, essentially, not calculations of damages. They are illustrative numbers as if the damages were calculated only on the basis of a minimum wage of \$7.25 per hour for all driver-pay periods (first number) and as if the damages were calculated at \$8.25 per hour for all driver pay period (second number). However, since the proper calculation of damages will often reflect a combination of damages at \$7.25 for some hours and \$8.25 for some hours (when no health insurance is available to the employee) the calculation of damages represented by the two conditional calculations (insurance qualification date and insurance premium cost) which I discuss above are the proper minimum wages damages that should be used. In addition, the truly proper measure of damages is the one that considers the *greater* effect of each condition during each pay period. This is because during certain pay periods the employee may be "qualified" to receive the health insurance but the

premium cost may be too great (or vice versa). Accordingly, the ultimate and proper full measure of damages, under both of the Excel files that I am relying upon for this report, is set forth in the "third" conditional calculation, the one entitled "Net Minimum Wage Owed When Both Insurance Qualification Date and Insurance Premium Cost Considered." Using that most proper, and full measure, of damages, it is established, from the defendants' payroll records, that it is mathematically certain the drivers whose circumstances are examined in the 2013-2015 Payroll Analysis file are owed \$317,250, as also detailed in the 2013-2015 employee (EE) detail file for the payroll periods reviewed in that file and set forth in the spreadsheet at the "2013-2015" tab of that file.

***V. COMPARISON OF CALCULATION OF LOSS IN THE
2010-2012 VERSUS 2013-2015 TIME PERIODS AND
CALCULATING DAMAGES BASED UPON MODIFIED SHIFT
LENGTHS OR CONSTANT ASSUMED SHIFT LENGTHS***

Mr. Bass indicated to me that there was no data from the defendants regarding the number of hours worked by each driver for the period prior to January 1, 2013, either from the perspective of the payroll records or the cab manager records. As a result he built into the ACAB-ALL Excel file a variable that would assume, for each driver, a constant number of hours for each shift they worked, as shown by the Cab Manager Records. This variable (at Cell N2 of the spreadsheet at the 2010-2012 tab

of the file) also allows the insertion of the average hours per shift from the Cab Manager data for the period 2013-2015, which was 11.03 hours. The use of average hours per shift to calculate damages in the earlier period (2010-2012) could result in a biased estimate of damages. This is because the loss attributed to drivers that worked less than the assumed average could be increased with no commensurate offset from drivers that worked more than the average. To test this possibility I recalculated the damage estimates in the 2013-2015 period (for the cab manager data) assuming for each driver shift the average hours (11.03) for all driver shifts in this time frame. Figure nine shows these re-calculations.

***FIGURE NINE-RECALCULATION OF DAMAGES ASSUMING
EACH DRIVER-SHIFT COMPRISED THE AVERAGE FOR ALL
DRIVERS- 11.03 HOURS FROM CAB MANAGER DATA***

TOTAL MINIMUM WAGES OWED USING AS HOURS WORKED 11.03 HOURS FOR EVERY SHIFT				
\$1,040,103.36	\$1,945,074.50	\$1,178,714.53	\$1,127,394.13	\$1,248,094.89
Minimum Wages Owed at \$7.25 an Hour for all Hours	Minimum Wages Owed at \$8.25 an Hour for all Hours	Minimum Wages Owed at \$8.25 an Hour for Pay Periods Prior to Date Qualified for Insurance and at \$7.25 an Hour after that date	Minimum Wages Owed at \$8.25 an Hour for All Pay Periods where Insurance Premium Cost for Employee Only Coverage was More than 10% of Wages and at \$7.25 an Hour for all Other Pay Periods	Net Minimum Wages Owed When Both Insurance Qualification Date and Insurance Premium Cost Considered

Table one shows the comparison of assuming the average of 11.03 hours per shift to using the actual Cab manager hours per shift. The results indicate very little bias from assuming the average hours. For the last three damage calculations the use of average hours increased the estimate of damages by 1.22%, 2.07%, and 1.50% respectively. The last column in table one shows the 2010-2012 damage calculations adjusted for the use of averages.

TABLE ONE COMPARISON OF DAMAGE CALCULATIONS: 2013-2016 AVERAGE HOURS PER SHIFT VS. ACTUAL HOURS PER SHIFT CAB MANAGER HOURLY DATA					
DAMAGE CALCULATION	2013-2015		11.03 RATIO	2010-2012	
	ACTUAL HOURS	AVERAGE HOURS			ADJUSTED
1	\$1,021,854	\$1,040,103	1.01785872	\$1,250,701	\$1,228,757
2	\$1,932,169	\$1,945,075	1.00667954	\$2,032,265	\$2,018,780
3	\$1,164,454	\$1,178,715	1.01224694	\$1,535,583	\$1,517,004
4	\$1,104,554	\$1,127,394	1.02067803	\$1,466,280	\$1,436,574
5	\$1,229,607	\$1,248,095	1.0150357	\$1,654,459	\$1,629,952

As discussed, *supra*, the ACAB-ALL Excel file contains two variables on the 2013-2015 tabbed spreadsheet and one variable for the 2010-2012 spreadsheet. The 2013-2015 variable in Cell O2 modifies by the inserted positive or negative amount the length of the shifts that have been inferred from the Cab Manager data, which then causes a like adjustment (greater if shift length is increases, smaller if it is decreased) in the damages calculated by the spreadsheet. The remaining two variables work to assign a "uniform" length to every shift for every pay period and cause a recalculation of damages based upon that assumed, and universal, shift length.

The use of the foregoing described variables would allow a fully accurate damages calculation to be made using the ACAB-ALL Excel file based upon a determination by the Court at trial of either (1) The average length of every single shift worked by every taxi driver; and/or (2) An amount by which every inferred shift working time taken from the 2013-2015 Cab Manager should be increased or decreased. All that would be necessary would be to insert the trial Court's findings on those issues into the appropriate cell on the spreadsheets and the resulting damages, under those findings, will be calculated as I have described elsewhere in this report.

I have also examined the formulas and other referenced information used to arrive at the figure of 9.21 set forth in Cell A1 and the figure 11.03 set forth in Cell A2 of the ACAB-ALL Excel file 2013-2015 tabbed spreadsheet, which figures are described, respectively, as "Average Hours per Shift in Payroll Records" and "Average Hours per Shift in Cab Manager." That examination verifies that such numbers are the correct average shift lengths for the total of the Cab Manager shifts reviewed in that spreadsheet (122,452, as set forth at Cell K2) as taken from Column "L" ("Hours for Pay Period From Cab Manager Records"), which average is in Cell A2, and as taken from Column "P" ("Hours for Pay Period From Payroll Records"), which average is in Cell A1.

VI. SUMMARY

My review of the calculations of damages in this case leads me to believe that the calculations were made consistent with the assumptions regarding the application of the State of Nevada minimum wage laws. I find that the calculation of damages were reasonable given the data provided by the defendant and the methodology followed by Mr. Charles Bass. The calculation of damages based on the cab manager data for hours worked is greater than those base on the payroll department for the simple reason that the hours worked are greater for the former than for the latter. Thus, for any given amount of compensation in a given pay period, the per hour calculation of compensation would be less using the greater number of hours worked. And, of course, the shortfall from the minimum wage would be commensurately greater.

VII. COMPENSATION

I charge \$350 per hour for all non-testimony work and \$450 per hour for all testimony. I have allocated eighteen hours to this report.

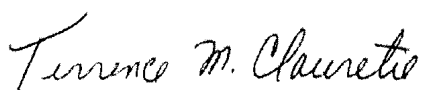
VIII. ATTACHMENTS

In addition to the materials relied upon I have attached:

1. Curriculum Vitae
2. Case History
3. Invoice

Respectfully Submitted,

Dated: July 18, 2017



Terrence M. Clauretie, Ph.D.

EXHIBIT 4

EXHIBIT 4

1	DISTRICT COURT		
2	CLARK COUNTY, NEVADA		
3	MICHAEL MURRAY and MICHAEL)	
	RENO, Individually and on)	
4	behalf of other similarly)	
	situated,)	
5)	
	Plaintiffs,)	Case No.: A-12-669926-C
6)	Dept. No.: I
	vs.)	
7)	
	A CAB TAXI SERVICE LLC and A)	
8	CAB, LLC, and CREIGHTON J.)	
	NADY,)	
9)	
	Defendants.)	
10	_____)	
11			
12			
13	VIDEOTAPED EXPERT DEPOSITION OF CHARLES M. BASS		
14	Taken on THURSDAY, OCTOBER 19, 2017		
15	By a Certified Court Reporter		
16	At 1:38 p.m.		
17	Held at 3770 Howard Hughes Parkway, Suite 300		
18	Las Vegas, Nevada		
19			
20			
21			
22			
23			
24	Reported by: Amber M. McClane, NV CCR No. 914		
25	Job No.: 423068		

1 couple, that type of thing. But basically those are
2 the two other items, would be what the -- what the
3 premium rates were that were charged to the employee
4 and then also what the minimum wage rates were at
5 different time frames.

6 Q. Okay. And I think you mentioned that your
7 last declaration was in September of 2017?

8 A. Correct.

9 Q. Since you prepared your last declaration in
10 September of 2017, have you been provided any
11 additional documents for review by the plaintiffs?

12 A. No.

13 Q. Have you modified any of your
14 conclusions/thoughts since this last September
15 declaration that you've produced?

16 A. No.

17 Q. Okay. In May and in June of 2017, earlier
18 this year, the defendants --

19 And you understand who I'm referring to when I
20 say "the defendants." Correct?

21 A. Correct.

22 Q. The defendants provided over 2,000 W-4s to
23 the plaintiffs in this matter. Did you ever review any
24 of those W-4s that were produced by the defendants?

25 A. No, I did not.

1 Q. Okay. Do you need -- do you need a minute,
2 sir?

3 A. No, I'm good.

4 Q. Okay.

5 A. I have allergies.

6 Q. That's quite common.

7 A. This time of year.

8 Q. Yeah. I'll start choking in a minute, too.

9 Okay. In -- earlier in -- in February, on
10 February 8 of 2017, the defendants in this matter
11 produced over 235,000 trip sheets to the plaintiff on
12 an external hard drive. Did you ever have an
13 opportunity to review any of those trip sheets?

14 A. No, I did not.

15 Q. Did you conduct any interviews or speak with
16 any current A Cab employees in this matter in
17 formulating your model?

18 A. No, I did not.

19 Q. Did you conduct any interviews or speak with
20 any former A Cab employees in formulating your model?

21 A. No, I did not.

22 Q. And that would include persons such as Wendy
23 Gagliano (phonetic) or Bonnie Whittig (phonetic).

24 Did you ever speak with those ladies?

25 A. I have no idea who they are.

1 Q. Did you review any deposition transcripts in
2 this matter?

3 A. No.

4 Q. You mentioned some of the minimum wage
5 issues. Did you ever review any of the statutes or
6 regulations pertaining to minimum wage in Nevada?

7 A. No, I did not.

8 Q. Did you ever review the complaint prepared by
9 the plaintiffs in this matter?

10 A. No, I did not.

11 Q. Do you have an understanding that this matter
12 pertains to an amendment to the Nevada constitution
13 relevant to payment of minimum wage?

14 A. No, I'm not really aware of what it is.

15 Q. Okay. So did you ever have an opportunity to
16 review that amendment to the Nevada constitution
17 pertaining to minimum wage?

18 A. No. It wasn't my job to issue an opinion on
19 one or the other.

20 Q. In preparing your model or finalizing your
21 model, did you ever receive any input from plaintiff
22 Michael Murray in this matter?

23 A. Did not.

24 Q. Same question in terms of formulating your
25 final model or any of the underlying spreadsheets. Did

1 you ever receive any input from the plaintiff Michael

2 Reno?

3 A. Did not.

4 Q. How about Michael Sergeant?

5 A. Nobody.

6 Q. Did you --

7 A. My conversation has been with Mr. Greenberg.

8 Q. Okay. Okay. So let me ask the final
9 question then. Did you receive any input from any
10 plaintiff class member in this case in formulating your
11 model?

12 A. I did not.

13 Q. So it would be fair to say that all of the
14 sources -- sources of information that you relied upon
15 in formulating your model were provided from
16 Mr. Greenberg?

17 A. That's fair, yes.

18 Q. How about Dr. Claurette? Did you receive any
19 input from Dr. Claurette in finalizing your model?

20 A. None. Actually, my model was finalized
21 before Dr. Claurette got involved.

22 Q. Did you ever read the report prepared by
23 Mr. Scott Leslie in this matter?

24 A. No, I did not.

25 Q. Did you ever review the report prepared by

CERTIFICATE OF REPORTER

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STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Amber M. McClane, a duly commissioned and
licensed court reporter, Clark County, state of Nevada,
do hereby certify: That I reported the taking of the
expert videotaped deposition of the witness, CHARLES M.
BASS, commencing on Thursday, October 19, 2017, at 1:38
p.m.;

That prior to being examined, the witness
was, by me, duly sworn to testify to the truth. That I
thereafter transcribed my said shorthand notes into
typewriting and that the typewritten transcript of said
deposition is a complete, true, and accurate
transcription of said shorthand notes.

I further certify that I am not a relative or
employee of an attorney or counsel or any of the parties,
nor a relative or employee of an attorney or counsel
involved in said action, nor a person financially
interested in the action; that a request ([] has) ([X]
has not) been made to review the transcript.

IN WITNESS THEREOF, I have hereunto set my hand
in my office in the County of Clark, state of Nevada, this
15th day of November, 2017.

Amber M. McClane

/S/ Amber M. McClane, NV CCR No. 914

EXHIBIT 5

EXHIBIT 5

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 MICHAEL MURRAY and MICHAEL RENO,)
5 individually and on behalf of)
6 others similarly situated,)
7 Plaintiffs,)
8 vs.) CASE NO.
9 A CAB TAXI SERVICE, LLC and A) A-12-669926
10 CAB, LLC., and CREIGHTON NADY,)
11 Defendants.)
12
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15
16 DEPOSITION OF TERRENCE CLAURETIE, PH.D.
17
18 LAS VEGAS, NEVADA
19 TUESDAY, OCTOBER 17, 2017
20
21
22
23
24 REPORTED BY: DONNA E. MIZE, CCR NO. 675, CSR 11008
25 JOB NO: 423067

1 Q. But no bad experiences, no good experiences,
2 no --

3 A. I wouldn't know. I think that was what your
4 question was all about.

5 Q. Yes.

6 A. Have I had any prejudices or favoritism and
7 the answer is no.

8 Q. I just need to know if you hate A Cab for
9 some reason or anything of that sort?

10 A. No.

11 Q. Do you know Mr. Nady?

12 A. No, sir.

13 Q. Do you know Mr. Leslie?

14 A. Never met him.

15 Q. My question was, the defendants in this
16 matter produced to the plaintiffs over 235,000 trip
17 sheets in this matter on a hard drive, an external hard
18 drive. Are you aware of that fact?

19 A. No.

20 Q. Did you ever have occasion to review any of
21 those trip sheets in preparation of your opinions in
22 this matter?

23 A. No.

24 Q. Also, in May and June of this year 2017, the
25 Defendants A Cab produced over 2000 W-4s for each of

1 their drivers. Did you review any of those W-4s for
2 any of A Cab drivers in preparation of your opinions in
3 this matter?

4 A. I don't think so. I don't think so.
5 Furthermore, I don't know what a W-4 is. Oh, that
6 would be the document provided by the cab drivers in
7 seeking employment, no, I didn't look at any of those.
8 I thought you meant W-2s. No, I didn't look at any
9 W-4s, never.

10 Q. Did you conduct any interviews of any current
11 A Cab employees in this matter in formulating your
12 opinions?

13 A. I have not.

14 Q. Did you conduct any interviews of any former
15 A Cab employees in this matter in formulating your
16 opinion?

17 A. I have not.

18 Q. Did you review any deposition transcripts in
19 this matter?

20 A. Yes, I reviewed the deposition transcript of
21 Mr. Leslie.

22 Q. When did you review that?

23 A. Last night -- yesterday morning and last
24 night.

25 Q. Other than the transcript of Mr. Leslie, did

1 STATE OF NEVADA)
COUNTY OF CLARK)

2

3

CERTIFICATE OF REPORTER

4 I, Donna E. Mize, a licensed court reporter,
5 Clark County, State of Nevada, do hereby certify:

6 That I reported the taking of the deposition of
7 Terrence Clauretje, Ph.D., commencing on October 17,
8 2017, at the hour of 1:40 p.m.;

9 That the witness was, by me, duly sworn to
10 testify to the truth and that I thereafter transcribed
11 my shorthand notes into typewriting, and that the
12 typewritten transcript of said deposition is a
13 complete, true, and accurate transcription of said
14 shorthand notes;

15 I further certify that I am not a relative or
16 employee of any of the parties involved in said action,
17 nor a person financially interested in said action;

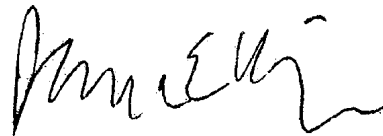
18 That the reading and signing of the transcript
19 was not requested.

20 IN WITNESS WHEREOF, I have hereunto set my hand
21 in my office in the County of Clark, State of Nevada,
22 this 24th day of October 2017.

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DONNA E. MIZE, CCR NO. 675

EXHIBIT 6

EXHIBIT 6

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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY and)
MICHAEL RENO,)
Individually and on)
behalf of others) Case No. A-12-669926-C
similarly situated,)
)
Plaintiffs,)
)
vs.)
)
A CAB TAXI SERVICE LLC)
and A CAB, LLC,)
)
Defendants.)
)

DEPOSITION of MICHAEL RENO
Taken on Tuesday, August 25, 2015
At 1:58 p.m.
At 703 South Eighth Street
Las Vegas, Nevada

Reported by: Lori-Ann Landers, CCR 792, RPR

1 testimony. You can answer.

2 A. That's exactly right.

3 Q. Because it was your intention to just go to
4 court, right?

5 A. Yeah. I went once and she said, no, you're
6 wrong. So I didn't push it. If I pushed it, I'm fired.
7 So I said I will let it work itself out. And then when
8 it does, I will come back.

9 Like I said, it's confusing, all of these guys
10 do confusing accounting with the payroll. And if I am
11 wrong, I will owe an apology.

12 Q. Do you have any idea what you believe that you
13 are owed?

14 A. Yeah, about \$200 a month, at least, for two
15 years, which is 4,800 plus all that \$6 crap that they
16 added on and \$20 fees for radio calls and the interest
17 for the money that should have been mine to begin with.

18 Then there is aggravation, making us do stuff
19 that wasn't legal. They wanted us to go into people's
20 houses with groceries. They fired one girl, I can get
21 her statement, too. That's dangerous. They fired her.

22 They told her she was supposed to get groceries
23 from somebody's house. Young girl goes at night to
24 somebody's house, she gets raped. And they fired her and
25 called her all kinds of bad names.

1 check. They were doing stuff that was illegal. It's
2 like if we have cab drivers do that crap --

3 Q. Tell me what they did that was illegal.

4 A. Charging us \$6 for making a mistake when we are
5 not accountants on our paperwork. Charging us \$20 for
6 radio calls when you can't be in your cab all the time.
7 We are doing luggage, other things, we are doing our job,
8 yet they are charging us for not answering a radio call
9 because we didn't hear it. That's illegal, too. That's
10 just a made up amount.

11 Q. Why do you believe that those were illegal?

12 A. Well, okay, who is to say I don't charge you
13 \$50? How can you tell you that your job is to get
14 groceries and help people with groceries? You are
15 getting their groceries, I call you on the phone in your
16 car, and you don't hear it because you are getting
17 groceries; how can you be in two places at the same time?
18 How can you be -- legally say I'm charging you for not
19 being there when you are doing your job doing the
20 groceries or luggage or somebody is talking to you?

21 Q. Sir, you are making very strong allegations.

22 A. That's how crooked these people are.

23 Q. All right. When you are making accusations that
24 A Cab is engaging in illegal activities, A Cab is
25 corrupt, A Cab is crooked, I need to know what you are

1 America they feel like they are shorted on a check, they
2 go to a bookkeeper, or whatever, they say I think I got
3 the wrong amount of money, you got a right to do that.
4 That's all I'm doing.

5 And I think it went on for a two year period.
6 That's all I'm saying. I'm just trying to get my money
7 that's owed to me if I am right, and I think I'm right.

8 Q. And I'm asking you what money you think you are
9 owed --

10 A. I just told you, around \$200 a month --

11 Q. And how are you --

12 A. -- for a two year period which is 4,800, and
13 other stuff was aggravating, too.

14 Q. How are you coming up with \$200 a month for two
15 years?

16 A. Because I usually made 6- or 700 at A Cab -- I
17 mean at Western and everybody else. There I made, what,
18 4-, 500. So there is 300 right there right off the top.
19 How you figure it, it's \$300 less.

20 Q. Okay.

21 A. And I did the same amount of money.

22 Q. It's your allegation that because you made less
23 at A Cab than you were making a Yellow and Frias, by \$200
24 on average, that's what you are basing your claim on; is
25 that correct?

1 A. Something like that with the other stuff they
2 were doing.

3 Q. Okay. And then you mentioned the \$6 crap to
4 quote you --

5 A. The \$6 charges that I feel are illegal.

6 Q. Tell me what that is.

7 A. I just showed you right there. You make a
8 mistake on the accounting, they charge you for the amount
9 that you were wrong, plus the \$6 fee.

10 Q. Do you know how many \$6 charges you received?

11 A. At least 20 over a two year period. It wasn't
12 just me, it was the whole company.

13 Q. I'm just asking about you, sir. I don't need
14 you to testify about any other driver right now. I'm
15 just asking you specifically.

16 A. I probably had 10. Of course I'm guessing. It
17 was years ago.

18 MS. SNIEGOCKI: We don't want you to guess.

19 Q. I don't want you to guess. I do not want you to
20 guess.

21 A. It's pretty hard to remember 10 years.

22 Q. Hold on. Listen to the very important
23 instruction, okay? Do you understand the difference
24 between a guess and an estimate?

25 A. Estimate, maybe seven.

1 A. Well, it wasn't I was making so much less, it's
2 just they have a lot of drivers in front of you, too.
3 See, they changed the cab industry. When I first started
4 Frias, '96, there was no cabs in front of you. You can
5 do 40 rides a day. In fact, one day I did 53 rides. It
6 was almost impossible to do 53 rides, but I did, I got it
7 on the sheet.

8 You'd average 30 or 40, you'd turn the sheet
9 over because they had 29 rides, you'd turn it over and
10 the only thing stopping you was you would get tired of
11 taking people. I swear there would be 50 people in line,
12 and then you would drop them off and they would be
13 loading before you even got these other people out and
14 putting the luggage in. That's how good it was.

15 And then all of a sudden when Yellow Cab -- I
16 went from Frias to Yellow Cab in 2000, something like
17 that, 2002, 2001, they changed it. They used to be on
18 Tompkins, and they got that new facility. They went from
19 Tompkins by The Orleans to Post Road, 30 million tarp
20 facility, they went from like 400 drivers to like 2,000.
21 They had like 4,000 cabs. I never seen anything like
22 that. And I said, crap, what happened to the industry,
23 we are getting a third of the rides now.

24 You know, instead of getting a ride in maybe 10
25 minutes, you are waiting an hour, hour and-a-half for one

1 ride. That's what some of these guys at the airport are
2 doing. They're saying, wait a minute, I wait an hour
3 and-a-half, I got to make this cab a \$12 ride, a \$40 ride
4 to make up for this. See, that's what they are doing.

5 Q. By the time you worked for A Cab starting there
6 June 2010, how many drivers did you have on the road at
7 that point, or cabs I should say?

8 A. Oh, when I worked for A Cab?

9 MS. SNIEGOCKI: Objection. Calls for
10 speculation. You can answer if you know.

11 A. I really don't know. A Cab was the smallest --
12 one of the smallest companies. They only had like 200
13 cabs. But then again, I did all right with A Cab. I did
14 almost the same with them.

15 You got to remember, too, you can get burned out
16 on some of these companies. I had done it for 10, 15
17 years, 12 hours a day. You get older and you start
18 getting -- it beats you up.

19 When I was with A Cab it was 2010, I did, what,
20 15, 16 years. 12 hour shifts can -- I was thin as a
21 rail, I'm least 100 pounds overweight. I used to be in
22 shape and stuff. It shows you how much it beats you up
23 getting in and out of those cars, sitting 12 hours.

24 So I'm saying I almost did my average, but you
25 are bound to get a little bit less productive because I

1 was 35 in my prime, and now I'm 50.

2 Q. You start getting burned out?

3 A. I love my job. It's funny just because I like
4 people.

5 Q. I guess my question, too, is from what you are
6 describing it sounds like when you went from Frias to
7 Yellow, there were just a lot more cabs on the road by
8 that time?

9 A. Yeah, doubled.

10 Q. More competition?

11 A. Yeah. You had to work harder to make the same
12 amount of money. You know, you had to make the same
13 amount of money. You are actually getting less and less.

14 I read an article a week before I even got the
15 job -- a week before I got the job with that girl, I had
16 read in the paper where a driver said in '75 and '80, in
17 the '80s he wore a suit, but he would make \$40,000, and
18 he only had a few rides. It was easy. And now he has to
19 kill himself to make 30. It's true.

20 I mean, every year I'm making less and less, but
21 I'm trying harder and harder. And I know more than I did
22 before, and I make less money. Then with Uber coming
23 in -- see, I like them for their honesty, and they're not
24 the cheap people. That's a good thing. You want all
25 these crooks off the road.

1 wants two or \$3. I'm getting \$18 for every hundred.

2 That's no good.

3 Q. I told you I wouldn't keep you too much more.

4 Let me just make sure I got the sum. We went through
5 your damages and --

6 A. I wonder --

7 Q. Let me just ask you the question. Anything you
8 want to ask me in the presence of your attorney when we
9 get off the record, we will just finish up your
10 deposition, that will be fine.

11 I just want to make sure that I got a handle on
12 what you are claiming. You know, we went, roughly, we
13 went through the radio call penalties, the \$6 penalties
14 for being short, I have the documentation on some of
15 that, and then for basically the hours that you were
16 forced to write down that you believe you worked that
17 were -- you were not paid for.

18 MS. SNIEGOCKI: I'm going to object.

19 Q. Is that a fair statement?

20 MS. SNIEGOCKI: I object that it misstates
21 testimony, but you can answer if you understand the
22 question.

23 A. I don't know what to say.

24 THE WITNESS: You just objected.

25 MS. SNIEGOCKI: Yes, but you can answer the

1 question.

2 THE WITNESS: Whatever you said -- I don't know
3 what you said. I don't know what we are objecting about
4 if it doesn't matter for me to answer or not.

5 Q. Well, unless she tells you not to answer, you
6 are supposed to answer the question. If you don't
7 understand my question, I don't want you to answer it. I
8 want to make sure you understand.

9 A. Right, that's what I'm saying, I just said what
10 you said. I'm agreeing with what you said. That's what
11 I'm saying, what you just went over.

12 Q. Okay. Well, I thank you, Mr. Reno. I'm going
13 to pass you to your attorney for some questions if she
14 has any.

15 A. I want --

16 MS. SNIEGOCKI: Hang on. We are going to go off
17 the record. I'm going to take a couple of minutes and
18 then I'm not sure if -- I may have a few.

19 MS. RODRIGUEZ: I'm going to object to you
20 instructing him on your cross-examination on what to
21 answer. I think that's completely improper.

22 MS. SNIEGOCKI: Are you saying that I'm
23 instructing my client what to answer? I'm taking a
24 break. I don't know if I have any questions, but I may.
25 That's all.

1 Q. What did you refer to that as?

2 A. Breaks and lunch.

3 Q. So my question to you is, and just before we
4 looked at this just now, you had said you don't believe
5 that you were paid the minimum wage for all the hours
6 that you worked at A Cab, right?

7 A. Right.

8 Q. So my question to you is even if we were to
9 deduct this break time that appears on the bottom right
10 corner of the trip sheet, let's say we take that out, we
11 deduct it, we assume that those are valid breaks that you
12 took; do you believe even after taking out those breaks
13 that you were paid the minimum wage?

14 A. No.

15 MS. SNIEGOCKI: I'm concluded.

16 FURTHER EXAMINATION BY

17 MS. RODRIGUEZ:

18 Q. Mr. Reno, right before Ms. Sniegocki, the
19 attorney, just started her cross-examination, you guys
20 stepped out of the room for about 10 minutes to meet
21 privately, right?

22 A. I never talked to her. She was on the phone.

23 Q. I'm just asking the question whether you left
24 about 10 minutes to meet with Ms. Sniegocki outside the
25 room?

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
) ss
3 COUNTY OF CLARK)

4 I, Lori-Ann Landers, a duly commissioned
5 Notary Public, Clark County, State of Nevada, do hereby
certify:

That I reported the taking of the deposition
7 of the witness, MICHAEL RENO, at the time and place
aforesaid;

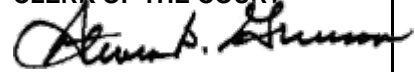
9 That prior to being examined, the witness
was by me duly sworn to testify to the truth, the whole
truth, and nothing but the truth;

That I thereafter transcribed my shorthand
11 notes into typewriting and that the typewritten
transcript of said deposition is a complete, true and
12 accurate transcription of my said shorthand notes taken
down at said time to the best of my ability.

I further certify that I am not a relative
14 or employee of an attorney or counsel of any of the
parties, nor a relative or employee of any attorney or
15 counsel involved in said action, nor a person financially
interested in the action; and that transcript review NRC
16 30(e) was requested.

17 IN WITNESS WHEREOF, I have hereunto set my
hand in the County of Clark, State of Nevada, this 25th
18 day of August 2015.

19 LORI-ANN LANDERS, CCR 792, RPR



OPPM

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Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

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

Hearing Date: December 7, 2017
Hearing Time: Chambers

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR BIFURCATION

AND/OR TO LIMIT ISSUES FOR TRIAL PER NRCP 42(b)

Defendants, by and through their attorneys of record, hereby submit this Opposition to Plaintiffs' Motion for Bifurcation and/or to Limit Issues for Trial Per NRCP 42(b). This Opposition is based upon NRCP 42(b), and the Points and Authorities herein.

POINTS AND AUTHORITIES

1. Applicable Rules.

NRCP 42(b) governs separation of trials. A District Court abuses its discretion in bifurcating a trial where the issues of liability and damages are inextricably intertwined. *Verner v.*

1 *Nevada Power Co.*, 101 Nev. 551, 706 P.2d 147 (1985). Rule 42 indicates that this rule may be
2 utilized by the court in furtherance of convenience or **to avoid prejudice**. NRCP 42(b). Here, the
3 opposite holds true: Plaintiffs advocate for the complete prejudice against Defendants, seeking to
4 deprive them of the jury trial on all primary issues. In their motion, Plaintiffs seek a jury trial
5 “limited to determining the hours worked.” *Plaintiffs’ Motion*, 1: 20-21. This means the Plaintiffs
6 seek to have this Court accept in full the manufactured “model” spreadsheet, created at the sole
7 direction of Plaintiffs’ counsel, as both the basis for a finding of liability and also a finding of
8 damages adverse to Defendants.¹

9 **2. Plaintiffs’ “model” is unreliable and subject to exclusion.**

10 Plaintiffs’ intended trial “model” is ripe with problems and unreliable. Defendants have
11 produced the expert report of CPA Scott Leslie who enumerates and details the problems with the
12 “model,” and why it cannot be relied upon. **Exhibit 2**, *Expert Report of Scott Leslie*. Secondly, the
13 “model” is based solely upon “assumptions” provided at the direction of Plaintiffs’ counsel (see
14 footnote 1). Thirdly, Plaintiffs’ experts admit the model does not depict actual damages.²

15 Plaintiffs continue to rely upon these unsubstantiated “assumptions” by making
16 representations to this Court as if they were established facts (which they are not). For example,
17 Plaintiffs’ motion commences by stating as a matter of fact:

18 “Except for the 2013-2015 period, A Cab preserved no records of the total hours
19 _____

20 ¹ Q. So it would be fair to say that all of the sources -- sources of information that you
21 relied upon in formulating your model were provided from Mr. Greenberg?

22 A. That's fair, yes. **Exhibit 1**, *Deposition of Charles Bass*, 28:22 - 31:17.

23 ² Q. And are you rendering any type of opinion that this would represent actual
24 damages that the plaintiffs incurred?

25 A. **No**. I mean, it's -- is it reasonable, that's the question. **Exhibit 1**, *Deposition of*
26 *Bass*, 97:15-19.

27 Q. If you were able to review and analyze the actual trip sheets which contain the
28 break times, wouldn't that be an -- a more accurate representation of any underpayments as
opposed to just using an average?

A. **Absolutely**. *Id.*, 108:1-6

1 worked, each pay period, by each class member. They failed to do so even though
2 they are required by law to keep such records.” *Plaintiffs’ Motion*, 1:13-15.

3 This is an absolute falsehood. What Plaintiffs should state is that A Cab preserved all daily time
4 records for each employee as verified by federal and state agencies, but Plaintiffs’ counsel did not
5 want to put the work into review them. A Cab kept handwritten, signed tripsheets that documented
6 for and by each driver, each shift and the hours worked for each day.

7 A review of the obvious appears necessary at this point: Plaintiffs chose to file this matter.
8 Plaintiffs chose to litigate this matter as a class action matter. No one forced them to do so.
9 Certainly, A Cab did not force Plaintiffs to file a complaint urging them to take on more work than
10 they were willing to do. This would appear to be stating the obvious, but for Plaintiffs’ repeated
11 cries to the Court that reviewing the records is too much of a burden, followed by Plaintiffs’
12 repeated requests to make Defendants prove a negative. Plaintiffs argue they have had to pay a
13 consultant \$17,000 to construct two spreadsheets; therefore if Defendants dispute the calculations,
14 the Court should appoint a Special Master, paid for by defendants, to perform the necessary
15 calculations. *Plaintiffs’ Motion*, 6:7-21. This is not only an admission that Plaintiffs have not
16 performed the necessary calculations; but is *deja vu* in that Plaintiffs already asked the Court this
17 same request two years ago, and were denied. **Exhibit 3**, Minute Order of November 9, 2015: “*The*
18 *Court cannot grant Plaintiffs motion to appoint a special master. The underlying reasons*
19 *advanced by the Plaintiffs do not provide a sufficient basis for the Court to place the entire*
20 *financial burden of the requested work on the Defendants.*”

21 At that time two years ago, Plaintiffs had adequate notice from the Court that they would
22 bear the burden and should have commenced their preparation of proving liability and/or damages -
23 they did not. Instead, Plaintiffs had this “model” in mind, choosing this trial strategy over getting
24 into the trenches to back up their claims with legitimate hours and wages as documented. In other
25 words, a true proof of some liability and if so, the actual damages incurred by the driver.

26 Defendants have asserted in summary judgment that Plaintiffs’ chosen strategy of relying
27 upon a “model” to *estimate* alleged damages does not meet the minimum threshold to go forward to
28 a jury.

1 A review of Plaintiffs' request is telling in and of itself: "The trial of this case should be
2 limited to determining the **average** length (working time) of each shift worked by the class
3 members." *Plaintiffs' Motion*, 1:22-23. As we sit here on the eve of trial, it is evident that
4 Plaintiffs have no idea about the reality of the hours worked by drivers. Firstly, this is because they
5 have no representative Plaintiff to opine about the reality of the hours. Secondly, because they have
6 never bothered to review the relevant documents which demonstrate this information.

7 In support of their requests, Plaintiffs cite to caselaw where an employer has failed to keep
8 required records. These cases are not relevant, as A Cab has kept all proper documents and has
9 produced them in multiple versions as requested by Plaintiffs. In the normal course of business, A
10 Cab keeps paper copies of all hours worked. Plaintiffs did not want to view these, as offered since
11 the initiation of this lawsuit in 2012. Plaintiffs insisted on electronic data dumps; then scanned
12 PDF files; then Excel spreadsheets of additional data; then hard copies of more data that had to be
13 pulled and copied from every driver's employee file - all of which were prepared and produced at
14 great expense to the employer. Incredibly, Plaintiffs argue to the Court that A Cab did not keep
15 proper records! It is Plaintiffs who did not do anything with the information they kept insisting was
16 absolutely critical to a determination of their claims.

17 All the while moving to compel repeated documents and data, Plaintiffs had no intention of
18 utilizing any of A Cab's records. What Plaintiffs intended to rely upon at trial was a "model"
19 created to spit out a number which purports to represent damages, when the user plugs in a random
20 number of hours. If this was the intent at the end of the day - why all the hullabaloo? Why did
21 Plaintiffs counsel continue to insist on the production of tripsheets, of Cab Manager data, of W-4's
22 of each driver when they expected the trial to be one where a random number is plugged into a
23 spreadsheet, and that would be their anticipated verdict?

24 The Court cannot move forward with Plaintiffs' requested leaps for numerous reasons - the
25 first of which is that Plaintiffs' claims are subject to dismissal. See *Defendants Motion for*
26 *Summary Judgment*, not yet set for hearing. Secondly, as opined by CPA Scott Leslie, the "model"
27 is fraught with problems and not reliable. **Exhibit 2**, Report of Scott Leslie. Thirdly, Plaintiffs'
28 experts, who it is anticipated will attempt to bring this "model" in as evidence, are subject to

1 exclusion, as not meeting the minimum qualifications for admissibility under *Hallmark v. Eldridge*,
2 124 Nev. 492, 498, 189 P.3d 646, 650 (2008).

3 **3. There is no authority supporting this leap over liability, and reliance upon averages.**

4 Plaintiffs offer no Nevada caselaw nor any case anywhere near on point supporting their
5 theory that an average work shift should be utilized in determination of an alleged underpayment of
6 minimum wage, particularly when there are records available for each employee. Further, Plaintiffs
7 would have this Court skip over liability utilizing a strict liability standard that any underpayment is
8 an automatic violation of the Nevada Constitutional Amendment. For example, if the employer is
9 found to have subsidized 200 employees' pay properly to meet minimum wage, and has a
10 calculation error for 1 employee - is this an adverse finding of liability against Defendants? A jury
11 would most likely think not, but Plaintiffs would have the finding of liability completely removed
12 from the jury, with a substitution of an average. With this method, there is no accurate
13 measurement of damages nor of liability. Such a proposed bifurcation and limitation of issues are
14 completely prejudicial to Defendants.

15 Further, it is evident that in Plaintiffs' proposed trial summary contained at page 5 of their
16 motion, each step of the trial would involve Defendants proving a negative, or bearing the burden
17 of proof. First step, Defendants would have to prove hours worked per shift, as Plaintiffs have not
18 done so. Second step, Defendants would have to prove hours worked per payperiod, as Plaintiffs
19 have not done so. Interestingly, Plaintiffs propose to use Cab Manager data, which they know is
20 not a payroll program and which does not record break times. Therefore, Defendants would be
21 forced to prove the negative by demonstrating why the Cab Manager hours are not reliable, when
22 Plaintiffs have been informed of this from the beginning. The final step proposed by Plaintiffs is
23 "Defendant would have to prove that MWA compliant insurance was offered to a class member."
24 *Plaintiffs' Motion*, p. 5. This is one way of getting out of trial preparation - Defendants would bear
25 all burdens of proving what money is not owed to Plaintiffs.

26 Admittedly, Plaintiffs indicate in several areas that a "clerk (or team of clerks)" or a
27 "Special Master" (all paid by Defendants, of course) would need to review the actual "printed
28 ledger sheets" (a.k.a. tripsheets) to perform necessary calculations. *Plaintiffs' Motion*, 6:3-21. In

1 essence, the trial would be of no purpose, as post-trial a true review would have to be done to
2 determine if and what any liability and/or damages exist - at the expense of Defendants. Plaintiffs
3 are requesting this Court to order Defendants to perform the work Plaintiffs have failed to do for
4 over 5 years now.

5 Plaintiffs' final request is pertaining to the lower tier minimum wage issue, which has
6 repeatedly briefed before this Court, and is abusive in its repetition. This is Plaintiffs' repeated
7 attempt to shift the burden to Defendants pertaining to health care, and is set for hearing on
8 December 5, 2017, and therefore will not be briefed as duplicative herein.³

9 **CONCLUSION**

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

12 DATED this 27th day of November, 2017.

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

14 /s/ Esther C. Rodriguez, Esq.

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

20
21
22
23
24
25
26
27
28

³ Defense counsel has requested a continuance of this hearing on OST, as she will be out
of the country during that hearing date, and co-counsel is on medical leave.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 27th day of November, 2017, I electronically filed the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

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

Christian Gabroy, Esq.
Gabroy Law Offices
170 South Green Valley Parkway # 280
Henderson, Nevada 89012
Counsel for Plaintiff Pending Order of Court

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

EXHIBIT 1

EXHIBIT 1

1 couple, that type of thing. But basically those are
2 the two other items, would be what the -- what the
3 premium rates were that were charged to the employee
4 and then also what the minimum wage rates were at
5 different time frames.

6 Q. Okay. And I think you mentioned that your
7 last declaration was in September of 2017?

8 A. Correct.

9 Q. Since you prepared your last declaration in
10 September of 2017, have you been provided any
11 additional documents for review by the plaintiffs?

12 A. No.

13 Q. Have you modified any of your
14 conclusions/thoughts since this last September
15 declaration that you've produced?

16 A. No.

17 Q. Okay. In May and in June of 2017, earlier
18 this year, the defendants --

19 And you understand who I'm referring to when I
20 say "the defendants." Correct?

21 A. Correct.

22 Q. The defendants provided over 2,000 W-4s to
23 the plaintiffs in this matter. Did you ever review any
24 of those W-4s that were produced by the defendants?

25 A. No, I did not.

1 Q. Okay. Do you need -- do you need a minute,
2 sir?

3 A. No, I'm good.

4 Q. Okay.

5 A. I have allergies.

6 Q. That's quite common.

7 A. This time of year.

8 Q. Yeah. I'll start choking in a minute, too.

9 Okay. In -- earlier in -- in February, on
10 February 8 of 2017, the defendants in this matter
11 produced over 235,000 trip sheets to the plaintiff on
12 an external hard drive. Did you ever have an
13 opportunity to review any of those trip sheets?

14 A. No, I did not.

15 Q. Did you conduct any interviews or speak with
16 any current A Cab employees in this matter in
17 formulating your model?

18 A. No, I did not.

19 Q. Did you conduct any interviews or speak with
20 any former A Cab employees in formulating your model?

21 A. No, I did not.

22 Q. And that would include persons such as Wendy
23 Gagliano (phonetic) or Bonnie Whittig (phonetic).

24 Did you ever speak with those ladies?

25 A. I have no idea who they are.

1 Q. Did you review any deposition transcripts in
2 this matter?

3 A. No.

4 Q. You mentioned some of the minimum wage
5 issues. Did you ever review any of the statutes or
6 regulations pertaining to minimum wage in Nevada?

7 A. No, I did not.

8 Q. Did you ever review the complaint prepared by
9 the plaintiffs in this matter?

10 A. No, I did not.

11 Q. Do you have an understanding that this matter
12 pertains to an amendment to the Nevada constitution
13 relevant to payment of minimum wage?

14 A. No, I'm not really aware of what it is.

15 Q. Okay. So did you ever have an opportunity to
16 review that amendment to the Nevada constitution
17 pertaining to minimum wage?

18 A. No. It wasn't my job to issue an opinion on
19 one or the other.

20 Q. In preparing your model or finalizing your
21 model, did you ever receive any input from plaintiff
22 Michael Murray in this matter?

23 A. Did not.

24 Q. Same question in terms of formulating your
25 final model or any of the underlying spreadsheets. Did

1 you ever receive any input from the plaintiff Michael

2 Reno?

3 A. Did not.

4 Q. How about Michael Sergeant?

5 A. Nobody.

6 Q. Did you --

7 A. My conversation has been with Mr. Greenberg.

8 Q. Okay. Okay. So let me ask the final
9 question then. Did you receive any input from any
10 plaintiff class member in this case in formulating your
11 model?

12 A. I did not.

13 Q. So it would be fair to say that all of the
14 sources -- sources of information that you relied upon
15 in formulating your model were provided from
16 Mr. Greenberg?

17 A. That's fair, yes.

18 Q. How about Dr. Clauretjie? Did you receive any
19 input from Dr. Clauretjie in finalizing your model?

20 A. None. Actually, my model was finalized
21 before Dr. Clauretjie got involved.

22 Q. Did you ever read the report prepared by
23 Mr. Scott Leslie in this matter?

24 A. No, I did not.

25 Q. Did you ever review the report prepared by

1 the 10.04 to use in the prior calculation?

2 A. I don't know. I mean, and it may have been
3 different, you know, because somebody else may have
4 taken this spreadsheet and changed that number just to
5 see how it changes.

6 Q. Okay.

7 A. I mean, really it has no relevance.

8 Q. So in this spreadsheet, this is basically
9 utilizing 11 hours --

10 A. Per shift.

11 Q. -- per shift for each driver during this time
12 period?

13 A. Right. Again, because we had no -- there was
14 no hours supplied by the defendant.

15 Q. Okay. And are you rendering any type of
16 opinion that this would represent actual damages that
17 the plaintiffs incurred?

18 A. No. I mean, it's -- is it reasonable, that's
19 the question.

20 Q. Okay.

21 A. That's the whole thing. Is if -- if the
22 averages from the year after and the year after were 11
23 hours, then you put 11 here, that's reasonable. Is it
24 accurate? No. We don't know.

25 Now, the question I would have is does the

1 Q. If you were able to review and analyze the
2 actual trip sheets which contain the break times,
3 wouldn't that be an -- a more accurate representation
4 of any underpayments as opposed to just using an
5 average?

6 A. Absolutely. It would be much easier to use
7 it if you had payroll records or Cab Manager records.
8 Because to look at 100,000 pieces of paper, you can't
9 do it. I mean, you can't do it realistically. But
10 hopefully that -- that stuff is put into a computer
11 system somewhere, which is what Cab Manager's supposed
12 to do, and that will summarize what's on the trip
13 sheet. That's where trip sheet feeds into the Cab
14 Manager.

15 Q. So your understanding is that Cab Manager --
16 when you say that's what Cab Manager is supposed to do,
17 that Cab Manager is to serve as a payroll function?

18 A. No, not necessarily payroll because payroll
19 is dollar amounts that are earned. This is really what
20 the employee does during their shift and how much money
21 they collect. And in -- and in there in the -- in the
22 system, that's all entered manually by the person that
23 closes out. But it's basically tracking that meter
24 when you push that button that says start ride and end
25 ride and punch the clock starting and ending. It

CERTIFICATE OF REPORTER

1

2 STATE OF NEVADA)
) SS:
3 COUNTY OF CLARK)

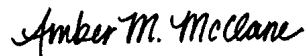
4 I, Amber M. McClane, a duly commissioned and
5 licensed court reporter, Clark County, state of Nevada,
6 do hereby certify: That I reported the taking of the
7 expert videotaped deposition of the witness, CHARLES M.
8 BASS, commencing on Thursday, October 19, 2017, at 1:38
9 p.m.;

10 That prior to being examined, the witness
11 was, by me, duly sworn to testify to the truth. That I
12 thereafter transcribed my said shorthand notes into
13 typewriting and that the typewritten transcript of said
14 deposition is a complete, true, and accurate
15 transcription of said shorthand notes.

16 I further certify that I am not a relative or
17 employee of an attorney or counsel or any of the parties,
18 nor a relative or employee of an attorney or counsel
19 involved in said action, nor a person financially
20 interested in the action; that a request ([] has) ([X]
21 has not) been made to review the transcript.

22 IN WITNESS THEREOF, I have hereunto set my hand
23 in my office in the County of Clark, state of Nevada, this
15th day of November, 2017.

24



25

/S/ Amber M. McClane, NV CCR No. 914

EXHIBIT 2

EXHIBIT 2

**District Court
Clark County, Nevada**

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

**Michael Murray and Michael Reno,
Individually and on behalf of all others similarly situated,
Plaintiffs**

v.

**A Cab, LLC and Creighton J. Nady
Defendants**

**Critique and Rebuttal to the Report
prepared by Terrence M. Clauretie, Ph.D. dated July 18, 2017**

by

**SCOTT LESLIE
CPA/ABV, CVA, CFF**

August 30, 2017

A CAB 02330

AA005140

I. Introduction

The taxi cab industry in Nevada had traditionally paid their tax cab drivers on a commission system based on the amount of fares they produced during a given shift. The amount of compensation paid by a cab company to a cab driver was specifically exempted by minimum wage rules under Nevada law¹.

A voter initiative was ratified in 2006 which increased the amount of the minimum wage. An interpretation of the initiative was that it did not just increase the minimum wage, but what employees were subject to the minimum wage. Since taxi cabs drivers were not specifically excluded under the initiative as they were under the statute, they were therefore now subject to the minimum wage rules.

A Cab LLC and related individuals and entities (collectively "A Cab") is a taxi cab company operating in Clark County, Nevada. Under the interpretation that taxi cab companies lost their minimum wage exemption as a result of the initiative, the Company was sued in 2012 by two former A Cab drivers for underpayment of wages². The attorney for the two cab drivers, Leon Greenberg ("Greenberg"), subsequently sought and was granted class action status in the case.

A Cab was one of several cab companies sued. In 2014, as a result of a class action lawsuit filed by taxi cab drivers of Yellow Cab, another cab company operating in Nevada, the Nevada Supreme Court agreed that the 2006 initiative did not specifically exempt taxi cab drivers and that they were subject to the minimum wage rules retroactively³.

For several years the A Cab lawsuit has been moving through the Court system. The period initially covered by the Greenberg lawsuit has been expanded. A Cab provided information on payroll to Greenberg's team for the period October 8, 2010 to December 31, 2015. The payroll records for this period are massive and Greenberg hired a technology expert, Charles Bass ("Bass"), to organize the data and calculate whether the class was underpaid.

¹ Nevada Revised Statutes, Section 608.250(2)(e).

² *Murphy and Reno v A Cab Taxi Service and A Cab LLC*, District Court, Clark County, Nevada, October 8, 2012.

³ *Christopher Thomas and Christopher Craig, Individually and on behalf of others similarly situated, Appellants, v. Nevada Yellow Cab Corporation; Nevada Checker Cab Corporation; and Nevada Start Cab Corporation, Respondents*; Supreme Court of the State of Nevada , No. 61681, June 16, 2014

Bass produced two Excel spreadsheets in February, 2017, one covering the period October 8, 2010 to December 31, 2012 (called "2010-2012 spreadsheet" or "2010-2012") and having 9,789 payroll records; and one covering the period January 1, 2013 to December 31, 2015 (called "2015 spreadsheet" or "2013-2015") and having 14,208 payroll records. (Together these two spreadsheets will be referred to as "the earlier spreadsheets".)

Greenberg also retained Terrence M. Clauretie, Ph.D. ("Dr. Clauretie") as an expert. Dr. Clauretie issued a report dated July 18, 2017 titled *Review of the Calculation of Damages: Michael Murray and Michael Reno v. A Cab Taxi Service LLC., et. al.* ("Calculation Report"). The Calculation Report assesses Bass's earlier report and as such covers the same time periods as Bass's February, 2017 spreadsheets. However, the Calculation Report uses what appear to be revised and reformatted versions of the earlier spreadsheets and adds another spreadsheet using the same data organized differently. To add a bit to the confusion, Dr. Clauretie makes references to the earlier spreadsheets as well as the later reports.

Dr. Clauretie's report purports to "indicate if...the calculations [included in the July, 2017 Calculation Report] have been made appropriately, within standards of reasonableness for such calculations, to produce results that may be relied upon for a court in determining damages".⁴

In addition to the class action law suit that is referred to above, the Federal Department of Labor audited A Cab for the period October 1, 2010 to October 1, 2012. The audit concluded that A Cab underpaid the Federal minimum wage by \$139,834.80 during the period. This underpayment was based on Federal minimum wage standards and not Nevada minimum wage standards. A Cab entered into an agreement whereby they paid the Department of Labor the assessed amount and the Department of Labor states that they will "allocate and distribute" the proceeds to the employees affected⁵.

II. Assignment

My assignment is to read and analyze the report prepared by Dr. Clauretie including an analysis of Mr. Bass's earlier and current spreadsheet analysis of the payroll of A Cab. I am to critique what Dr. Clauretie has stated and rebut the report, where and if appropriate.

It is assumed that the reader has access to Calculation Report and the earlier spreadsheet reports prepared by Mr. Bass. Therefore, no attempt is made here to reproduce those reports.

⁴ Clauretie, Terrence M., *Review of the Calculation of Damages: Michael Murry and Michael Reno v. A Cab Taxi Service LLC., et. al.*, p. 1.

⁵ *Thomas Perez, Secretary of Labor, Plaintiff v A Cab LLC and Creighton J. Nady, an individual*, United States District Court, District of Nevada, Case 2:14-cv-01615-JCH-VCF, dated October 1, 2014, pg 4.

The legal merits of the claims and counterclaims are matters of law that are to be argued by the legal experts and ultimately determined by the Court. I offer no opinion on the legal merits of the dispute.

III. Expert Opinion

My opinion is based on the work performed and analysis done as is detailed in subsequent sections of the report. My analysis has focused on three areas:

- a. What is Dr. Clauretie offering his opinion on?
- b. Does the report accurately model how minimum wage laws are affected by health insurance?
- c. Does the report accurately model the hours worked by cab drivers during the periods examined?

These three factors drive what is the goal of this critique which is to determine whether the Calculation Report can be relied upon to estimate the amount, if any, of minimum wage shortfall created when the Nevada Supreme Court changed the assumptions about the minimum wage for taxi cab companies.

What is Dr. Clauretie offering his opinion on?

As I discuss below, Dr. Clauretie repeatedly states in the body of the Calculation Report that he is assessing whether the math in the ACAB-ALL model accurately reflects the assumptions given to him⁶. He states at several points he is not opining on the assumptions made in the model. He never relates the model's calculations to Nevada labor laws or assesses assumptions about hours worked in the model. However, in the summary he states, in part "My review of the calculations of damages in this case leads me to believe that the calculations were made consistent with the assumptions regarding the application of the State of Nevada Minimum wage laws"⁷.

I do not believe his calculations are consistent with the application of the State of Nevada Minimum wage laws. Further, I do not believe that Dr. Clauretie has created a base from which to form such an opinion based on what he repeatedly states he is opining on in the report and on the information in his report.

Does the report accurately model how minimum wage laws are affected by health insurance?

The report does calculations on multiple scenarios that involve calculating the minimum wage under different conditions related to offering health insurance to the cab driver. The issue at hand in each of these calculations is whether the cab driver should be paid either

⁶ The ACAB-ALL model is also reformatted into a report called 2013-2015 payroll analysis. We are effectively addressing both spreadsheet when we reference the ACAB-ALL spreadsheet.

⁷ Calculation Report, p.30.

\$7.25 per hour (lower tier) or \$8.25 per hour (upper tier). Dr. Clauretie's opinion is the math in the spreadsheets is accurate and he states that it conforms to the assumptions given to him. The problem is again that Dr. Clauretie never relates his findings to what Nevada labor law and regulations state.

My analysis shows that the Calculation Reports assumption about the minimum wage payable during the waiting period for insurance is just not correct. Further, the Calculation Report attempts to determine if the upper tier wage is due if the cost of health insurance to the cab driver is more than 10% of his wages. The law and regulations require a look back or history of wages calculation which would require not only looking at electronic payroll data but also can involve looking at wage statements in the form of W-2's filed with the Federal Government. None of what is required to be done to determine if the upper tier is appropriate is in the model. Instead, the upper tier criteria appears to be based on current wages. This is just incorrect and there is no information in those calculations that, in my opinion, is useful in determining if the wage should be the upper tier or lower tier. Therefore, none of the calculations done to determine if the cab driver should be paid the higher tier wage rate are correct or usable.

Does the report accurately model the hours worked by cab drivers during the periods examined?

The third and final area of focus is on the hours worked. A lot of the Calculation Report is spent explaining the minutiae of how the spreadsheets in the report calculate the hours worked. This is necessary because up to the end of 2012 there is only very limited digital/electronic information on hours from a system called "Cab Manager" and it does not (or at the time did not) provide detailed information. There is better though not complete digital information about payroll for the period 2013 to 2015. The Calculation report tries to deal with this lack of complete electronic data by making assumptions about "uniform" hours worked by cab drivers for all shifts. Further, they anchor on about 11 hours per shift.

Dr. Clauretie never attempts to test the theory that 11 hours is reasonable or test if the assumptions about what Cab Manager is doing is what they think it is doing. Instead Dr. Clauretie assumes apparently that the assumptions provided him by the plaintiffs are correct and he analyzes the data from that perspective. Dr. Clauretie also appears to dance around the issue of why he did not attempt to test the assumptions behind the number of hours stating "*Mr. Bass indicted (spelling as shown in report) to me there was no data from the defendants regarding the number of hours worked by each driver for the period prior to January 1, 2013, either from the perspective of the payroll records or the cab manager records.*"⁸ While it is correct that they did not have digital/electronic payroll or cab manager records, he has ignored source data in the form of the trip sheets, that at least according to A Cab's counsel, were provided to Mr. Greenberg. Trip sheets have detailed information about hours worked. So, as is the pattern here, Dr. Clauretie accepts without question the assumptions designed by and provided by the plaintiffs.

⁸ Calculation Report, pp 27-29.

As I show in the report, I randomly tested 123 individual payroll periods by reviewing and calculating hours worked on each trip sheet. The results show that cab drivers work about 9.7 hours per shift and that workers who do not make the minimum wage threshold work about 9.5 hours. Further what I find is that overstating hours does not result in proportional increases to those subject to the minimum wage deficit. When hours are overstated for reasons discussed in the report, the resulting increase in estimated minimum wage skyrockets. Thus overstating hours worked does not just over state the minimum wage deficit it truly distorts what is due.

Further, in reading the Calculation Report descriptions of what models are trying to do, I do not believe that enough effort has been put into understanding how the trip sheets work in relation to the Cab Manager program. This leads to another conclusion about the methodology used in the Calculation Report: Developing an average hours calculation does not accurately capture the amount of minimum wage owed. That is because the way cab drivers operates for A Cab there is no uniform or standard amount of time that easily and accurately be used in a model.

At this point in the analysis, since the modeling for four of the five minimum wage estimates has been proven to fail, the only viable calculation of the minimum wage deficit available is the lower tier. Because the testing shows the spreadsheets used do not accurately reflect hours worked by cab drivers, the model used to calculate the \$7.25 per hour minimum wage estimate, the last of the estimates provided in the Calculation Report also fails to accurately calculate minimum wage.

Can the Calculation Report be relied upon to accurately model the potential minimum wage deficit for A Cab?

In my opinion, the Calculation Report prepared by Dr. Clauretie does not accurately calculate the potential minimum wage deficit for cab drivers under any of the scenarios provided in the report. The model fails to accurately address how to calculate when upper tier rates should apply. Testing on the model shows that it appears to overstate the minimum wage deficit because a) the amount of hours estimated per shift is not supported by testing of actual hours worked and b) by using a constant hours worked for all employees over all periods, material distortions occur that affect the calculation of the minimum wage deficit.

IV. Work performed

Prior to the issuance of Dr. Clauretie report I was retained to analyze the earlier two spreadsheets prepared by Mr. Bass in February, 2017 to determine if they represent a reasonable approximation of whether the employees of A Cab were not paid at least the minimum wage under the ruling of the Nevada Supreme Court and if that was the case, did the spreadsheet modeling make a reasonable approximation of the underpayment. After the report of Dr. Clauretie was issued in July, 2017, but before my report was completed, I was

asked to expand my analysis to include the modified spreadsheets prepared by Mr. Bass and included in Dr. Clauretie's report and to analyze Dr. Clauretie analysis and conclusions. Specifically:

- a. I read and reviewed the report titled *Review of the Calculation of Damages: Michael Murray and Michael Reno v. A Cab Taxi Service LLC., et. al.* prepared by Dr. Clauretie and dated July 18, 2017.
- b. I analyzed and otherwise reviewed the calculations developed in the spreadsheets used by Mr. Bass and released to the plaintiffs in February, 2017 and the spreadsheets used by Dr. Clauretie in his July, 2017 Calculation Report.
- c. I tested the spreadsheets developed by Mr. Bass and released to the plaintiffs in February, 2017 and the spreadsheets used by Dr. Clauretie in his July, 2017 Calculation Report. My tests were carried out to determine if, in my opinion, the spreadsheets accurately model to a reasonable degree compliance with the minimum wage standards and if the calculation of shortages, if any, are reasonable⁹.
- d. I reviewed various filings in the current lawsuit as well as the 2014 Supreme Court ruling.
- e. I analyzed original information on hours worked and breaks taken contained in trip sheets. The scope of the analysis, discussed in subsequent sections reviewed approximately 123 different payroll periods for individuals. These periods were selected using a random number generator to pick the individual payroll and period tested.
- f. I interviewed various personnel at A Cab including Creighton J. Nady (aka J. Nady), Mike Malloy (IT Manager), Nancy Davis, (Trip Sheet Verifier), Steve Essakow (Manager) and Donna Burelson (Director of Internal Affairs).
- g. I reviewed the relevant Nevada Revised Statutes and Nevada Department of Labor regulations. These were reviewed to provide guidance as to the terms and conditions for compliance with minimum wage requirements.
- h. I called the Nevada Department of Labor to get clarification on certain aspects of how the State interprets the law.

Review of Dr. Clauretie report

Our analysis focuses on four specific areas of Dr. Clauretie's report:

- a. What is Dr. Clauretie offering his opinion on?
- b. Do the Bass spreadsheets model the variations on what minimum wage is appropriate for a given situation?
- c. Do the Bass spreadsheets model the hours worked by cab drivers in a reasonable way?
- d. Ultimately, does the information modeled in the Calculation Report accurately calculate the potential shortage in minimum wage paid to employees?

⁹ The Bass spreadsheets released in February, 2017 were called "Damages 10-8-10-12-31-12 TEST" and "Damages 1-1-13-12-31-15 TEST". The spreadsheets released in the Calculation Report are called "ACAB-ALL" and "2013-2015 Payroll Analysis".

My analysis of the first area is based on statements made by Dr. Clauretie and not on any analysis of compliance with Nevada wage law, rules and regulation or analysis of the reasonability of the modeling. The other two areas perform an analysis of Bass's models based on relevant law, rules and regulations and on whether the models accurately reflect data to calculate the minimum wage.

The latter two analysis, as I will show, use data from testing we have done using original records in the form of A Cab's trip sheets and personnel records and comparing what those records show with what is assumed in Bass's model. The testing will be explained after I critique and comment on the first area of focus:

What is Dr. Clauretie offering his opinion on?

For this part of the analysis I utilize quotes from the Calculation report and then comment on them (quotes from Dr. Clauretie's reports are *in italics*):

"The purpose of the review will be to indicate if, in my opinion, the calculations [prepared by Mr. Bass of damages] have been made appropriately, within standards of reasonableness for such calculations, to produce results that may be relied upon for a court in determining damages, and if I have suggestions for any modification to the results obtained by Mr. Bass¹⁰".

Referring to the laws and regulations regarding when employees are subject to different minimum wage rates depending on waiting periods to receive health insurance, Dr. Clauretie states *"I am not in a position to opine on the assumptions made by Mr. Bass on the length of such waiting periods"*¹¹

During a discussion of the **one** payroll record the report covers in detail Dr. Clauretie states: *"The methodology he [Bass] documented to me in respect to its creation was sound and free from any arithmetical errors."*¹²

Describing the 2013-2015 Payroll analysis file (one of the files used in the Calculation Report) Dr. Clauretie states:

"I have examined the 2013-2015 Payroll analysis file and the calculations (formulas) that Mr. Bass has embedded into the file. Based upon that examination I can state that (1) the arithmetical results set forth in Columns T through X of the spreadsheet at the "2013-2015" tab of that file are accurate calculations of the minimum wage amounts owed, if any, based upon the other information in that spreadsheet...(2) The arithmetical results set forth in columns D through H of the "2013-2015 per EE" tab of that file accurately compiles the total, for the employee identified on each line of such spreadsheet, of the minimum wage amounts calculated to be owed, if any, and contained in columns T through X respectfully... I have examined the ACAB-ALL Excel File and the calculation (formulas) that Mr. Bass has embedded into that file. Based upon that examination I can state, as I have in

¹⁰ Calculation Report, p. 1..

¹¹ Calculation Report, footnote 2, p.3.

¹² Calculation Report, p. 17.

*respect to the 2013-2015 Payroll Analysis Excel filed, that the arithmetical results set forth in that file are accurate. By that statement I mean the formulas used by Mr. Bass in that file (both in the per pay period spreadsheets at the "2010-2015" and "2010-2012 tax and the per employee compilation spreadsheets at the "2010-2012 per EE" and "201-2015 per EE" tax) perform the proper calculations on the information contained in those files"*¹³

After reviewing the calculations in Bass's current spreadsheets Dr. Clauretie states:

*"I am opining only on (1) The arithmetical correctness of the calculations performed in the two Excel files I am relying upon for my conclusions; and (2) The correctness of the methodology that Mr. Bass has explained to me and used to place various information into those two Excel files from their source materials and how he performed his calculations. I cannot offer any opinion on whether the source materials that are incorporated into those two Excel files are accurate records. Nor do I offer any opinion on the correctness of the assumptions used by Mr. Bass in the two conditional calculations I discuss in reference to "the insurance qualification date" and "insurance premium cost" assumptions." I only attest to the arithmetical correctness of the calculations he has performed using the assumptions. [bold emphasis added]."*¹⁴

Analysis:

These passages from the Calculation Report indicate that Dr. Clauretie is evaluating and opining on the mathematical correctness of the reports produced by Mr. Bass. That is Dr. Clauretie is opining on the fact that the Excel spreadsheets add things up correctly based on assumptions used in preparing the spreadsheet by Mr. Bass. He is not separately evaluating whether the assumptions used by Mr. Bass are valid nor is he opining that the data used from A Cab is the appropriate information to use to provide answers to the minimum wage questions. He always mentions only that the calculations are correct given the assumptions presented to him by Mr. Bass. He never links the assumptions to relevant law, rules or regulations. And he never states if he has tested or reviewed the source data to determine if the data used by Mr. Bass captures what it is represented to capture.

Finally, in the Summary section, Dr. Clauretie states:

*My review of the calculations of damages in this case leads me to believe that the calculations were made consistent with the assumptions regarding the application of the State of Nevada minimum wage laws.*¹⁵

After spending the entire report emphasizing that his opinions apply only to the math used in the assumptions given to him and to the accuracy of how the spreadsheet calculates the logic of the math used, Dr. Clauretie then in the summary concludes that the calculations are consistent with the Nevada minimum wage laws. Only at the end is the Nevada Minimum

¹³ Calculation Report pp 6-7.

¹⁴ Calculation Report, p. 25.

¹⁵ Calculation Report, p. 31

wage laws mentioned. There is no effort to explain how the assumptions link to the minimum wage laws. There is no reasonable correlation between Dr. Clauretie's reiteration of the limited scope of his opinion in the body of the report and his overarching conclusion.

Consistency and integrity of the spreadsheets

Mr. Bass, as described earlier, has presented at least two versions of the main spreadsheets used to determine if the minimum wage for an employee for a period was met. The information he provided to the Court and defendants in February 2017 contained two separate Excel spreadsheets covering different periods of time. One spreadsheet was named *Damages 10-8-10 -12-31-12* and the other spreadsheet was named *Damages 1-1-13-12-31-15*. In the introduction section I refer to these two spreadsheets as "the earlier spreadsheets"¹⁶.

The primary spreadsheet analysis presented to Dr. Clauretie to be analyzed is called *ACAB-ALL*. *ACAB-ALL* and another spreadsheet which appears to sort the same data differently are what are primarily used in the Calculation Report. *ACAB-ALL* spreadsheet had several pages to it. One of the pages appears to be the *Damages 10-8-10 -12-31-12* spreadsheet from February, 2017. Another page appears to be *Damages 1-1-13-12-31-15* spreadsheet from February, 2017. The *ACAB-ALL* spreadsheet is what I refer to as the "current spreadsheet".

Both the *ACAB-ALL* and the earlier spreadsheets have several pages which appear to be eliminations of data from the file combinations described in Dr. Clauretie's report because of issues with it. These latter pages not described or analyzed further here.

The earlier spreadsheets and the *ACAB-ALL* spreadsheets for the same time frames at first glance look identical. However, these spreadsheets are massive and hard to compare line to line. We have noted unexplained differences between the two. All information here is meant to show the differences between what should be two identical reports.

Exhibit 1 shows that in the 2013 to 2015 period there are 572 less lines in the *ACAB-ALL* version and there are 1,789 fewer shifts recorded. In the 2010 to 2012 period, there are 34 fewer lines and 15 fewer shifts recorded in the *ACAB-ALL* version. The calculation of damages also changed significantly. For the 2013-2015 period they all were reduced in the \$23,000 to \$30,000 range. The 2010 to 2012 version shows increases of \$338,000 to \$868,000.

The damages calculations appear to use different assumptions and the Current spreadsheet adds a scenario that did not appear in the earlier version. However, the differences, since the earlier version was provided by Bass should be reconciled to the current version. Since it is not, I believe this calls into questions the validity the opinion by Dr. Clauretie that the spreadsheets are mathematically accurate.

¹⁶ The earlier spreadsheets should be evaluated here because Dr. Clauretie does reference them. For instance, on page 5 of the Calculation report.

Other changes to spreadsheets

Generally, the primary spreadsheets showed each payroll period for each employee as three distinct rows: The first row for the first week of the payroll period; the second row for the second week of the payroll period; and the third row shows the totals for the two week period. In the earlier spreadsheets I did note several instances where the payroll period either did not have three rows and it appeared that two records may have been combined¹⁷. Some of these issues continued in the Current Spreadsheet but I am not convinced they materially affect the calculations. Therefore, I note there may be issues present but are not going to pursue this further.

Do the Bass spreadsheets model the variations on what minimum wage is appropriate for a given situation?

To reach the various estimates of underpaid minimum wage Dr. Clauretie states that Mr. Bass assumes that employees did not have health insurance during their probationary period¹⁸. Further assumptions are made about how the minimum wage rate is affected by the amount of health insurance premium that must be paid by an employee. Bass uses different assumptions about calculating the minimum wage under different scenarios (see the differences in the calculated minimum wage deficit in Exhibit 1). He first uses a straight \$7.25 per hour rate for everyone. Then he uses a \$8.25 per hour rate for those in the probationary period and then uses three different conditional calculations which Dr. Clauretie interestingly, as described above, makes a point of saying only that they are "arithmetically correct"¹⁹.

- Condition 1: Minimum wage paid at \$8.25 per hours prior to date qualified for insurance.
- Condition 2: Minimum wage owed at \$8.25 per hour for all pay periods where insurance premium cost for employee only coverage was more than 10% of wages.
- Condition 3: Minimum wage owed when both insurance qualification date and insurance premium cost is considered.

Condition 1: Used the \$8.25 per hour for pay period prior to the date qualified for insurance and the \$7.25 per hour after that date. It is based on the earliest date the employee could qualify for health insurance²⁰.

Condition 2: Calculates whether the wage rate should be \$8.25 regardless of health insurance status because the Employee only coverage was more than 10% of wages and was \$7.25 per

¹⁷ See payroll records in the 2012 Bass spreadsheet starting at lines 9678, 11613, 13890 and 26835.

¹⁸ Review of Calculation, p 3.

¹⁹ Review of Calculation, ppg 21-22.

²⁰ Review of Calculation, p 21.

hour for all other periods. Mr. Bass advises that such a specified amount in that formula is the insurance premium the employee was required to pay to receive “employee only” health insurance coverage under the employer’s insurance plan.

Condition 3: Uses the higher of condition 1 or 2.

The three conditions are apparently based on what Nevada Revised Statutes and Nevada Administrative Code rules and regulations are. Therefore, to assess whether the assumptions about how the minimum wage interplays with health insurance availability is correct, the relevant sections of NRS and NAC must be reviewed. If this was done for the Calculation Report it is never discussed. I will discuss it here.

The minimum wage under Nevada Law has two tiers. Both tiers did not change during the period of this analysis. The lowest minimum wage under Nevada law is \$7.25 per hour (called “lower tier” here). That minimum applies generally if the employer offers the employee health insurance. If the employer does not offer health insurance to an employee, then the minimum wage is \$8.25 per hour (called “upper tier” here).

Several subsections of the regulations clarify different aspects of which minimum wage rate applies:

- a. If the waiting period is six months or less to start receiving health insurance then the lower rate applies during the waiting period²¹.
- b. The insurance must be offered by the employer, but does not have to be accepted by the employee to have the lower rate apply²²
- c. The rate tiers apply whether the employee is full time or part time or any other status²³

An exception to the general rules above apply to those employees who must pay for some portion of their health insurance. If the cost of health insurance to the employee exceeds 10% of the gross taxable wages of the employee attributable to the employer then the higher tier applies²⁴ (called here the “10% rule”).

The calculation of the 10% rule is somewhat complex and is described in NAC 608.104²⁵.

- If the employee has been issued a W-2 for the preceding year, divide the gross taxable income of the employee paid by the employer into the projected share of

²¹ NAC 608.102 (2)(b); NAC 608.108 and verified by telephone with the Nevada Department of Labor on June 23, 2017.

²² NAC 608.100 (1)(a).

²³ NAC 608.100.

²⁴ NAC 608.104.

²⁵ Note that NAC 608.104(2) has been rendered obsolete by the Supreme Court ruling according to a discussion held by telephone with the Nevada Department of Labor’s office in Carson City, Nevada on August 24, 2017.

the premium to be paid by the employee for health insurance for the current year²⁶.

- If the employee has not been given a W-2 but the employer has payroll information on the previous four quarters, divide the gross taxable income normally calculated from the payroll information from the four previous quarters into the projected share of premiums to be paid by the employee for the year²⁷.
- Where there is less than one aggregate year of payroll information:
 - Determine the combined total gross taxable income normally calculated from the total payroll information available for the employee and divide by the number of weeks the total payroll information represents and multiply the amount by 52 and divide the amount into the projected share of premiums to be paid²⁸.
 - For a new employee use the calculation above for the first two completed payroll periods²⁹.

Analysis

The assumptions of the model prepared by Bass do not support employee wages rates of \$8.25 per hour.

“Probationary” Period

The assumption made in the Calculation Report is that during the probationary period an employee is entitled to \$8.25 per hour. The actual rule quoted above states that if the “waiting period” (not probationary period) is six months or less than the lower tier rate applies. According to A Cab management, the waiting period is a maximum of 90 days³⁰. That means, based on the law, since the maximum wait time is less than six months that new hires are subject to the lower tier rate and never subject to the higher tier rate. Therefore, the entire test where Bass calculates a higher wage rate during the probation period is invalid. Further, if qualified insurance is offered to an employee and turned down, the lower tier rate applies no matter what³¹.

²⁶ NAC 608.104(1)(a) (paraphrased in part).

²⁷ NAC 608.104(1)(b) (paraphrased in part).

²⁸ NAC 608.104(c) (paraphrased in part)

²⁹ NAC 608.104(d) (paraphrased in part)

³⁰ The waiting period is 60 days but that terminology is modified to state 90 days because the waiting period generally starts at the beginning of the month following the date of employment and the waiting period is sixty days from that point. Therefore, if an employee is hired early in a month, he could wait that entire month before the waiting period starts thus he could wait 90 days to be covered.

³¹ Discussion by telephone with Nevada Labor Commissioner’s office in Carson City, Nevada on August 24, 2017.

Conditions testing and the 10% rule

The actual rules to apply the 10% rule condition test are not modeled at all in the ACAB-ALL spreadsheet nor are they modeled in the earlier spreadsheets. Both the earlier spreadsheet and the ACAB-ALL spreadsheet appear to look at a simple test of what happened in the current period to determine if the employee should receive the higher or lower tier minimum wage. As described above, that is invalid as the requirement is the look back calculation (also described above) and the only variation on the look back rule is how the test is modified based length of employment.

Therefore, for any of the health insurance condition testing in the ACAB-ALL spreadsheets to be usable, a complex calculation needs to be made. Since it is not, the assumptions made in the spreadsheet are not valid and the calculations while, in Dr. Clauretie's analysis may be mathematically correct, provide no useable information on what the minimum wage paid should be.

We note again that Dr. Clauretie never opines on the validity of the assumptions. He simply assumes they are correct and then opines on the math behind them.

We therefore note that of the various potential "damages" calculated in the Calculation Report, the only one that may have some validity is the amount calculated for the \$7.25 per hour column. We next analyze the assumptions behind the calculations for that scenario.

Testing of cab driver records

No matter what the Calculation Report and the two sets of spreadsheets produced to calculate minimum wage determine, it is essential that the information developed by Dr. Clauretie and Mr. Bass relate back to the actual cab driver experience. Otherwise, as was shown above in determining minimum wage rates, the analysis though impressive, is meaningless.

Table 1						
Number of shifts analyzed						
	From February, 2017 Spreadsheets			From July, 2017 ACAB ALL Report		
	Number of shifts analyzed	Total number of shifts	Pct.	Number of shifts analyzed	Total number of shifts	Pct.
2010-2012	344	83516	0.412%	80	83501	0.096%
2013-2015	573	124241	0.461%	137	122452	0.112%
	<u>917</u>	<u>207757</u>	<u>0.441%</u>	<u>217</u>	<u>205953</u>	<u>0.105%</u>
Total number of shifts analyzed						1134
Average shifts [a]						206855
Percent						0.548%
[a] Average shifts averages total total from the earlier and current spreadsheets						

The payroll records produced by A Cab included PDF files of the trip sheets according to A Cab's counsel. There are over 200,000 trip sheets (Table 1) and each trip sheet represents a shift worked by a cab driver during the period examined here. The shifts are broken into payroll periods by cab driver. There are almost 24,000 employee pay periods (Table 2) during the period examined³².

³² Note for both pay periods and work shifts there are slight differences between the earlier and current spreadsheets. As noted during the analysis of the structure of the spreadsheets, the differences are small and unexplained. However, here the total number of shifts and payroll periods are averaged to provide the reader with some sense of the totals and percentages involved.

Table 2						
Payroll periods analyzed						
	From February, 2017 Spreadsheets			From July, 2017 ACAB ALL Report		
	Payroll periods examined	Total payroll records	Pct.	Payroll periods examined	Total payroll records	Pct.
2010-2012	39	9789	0.398%	12	9759	0.123%
2013-2015	56	14208	0.394%	17	14200	0.120%
	<u>95</u>	<u>23997</u>	<u>0.396%</u>	<u>29</u>	<u>23959</u>	<u>0.121%</u>
Total Payroll periods examined						124
Average payroll periods [a]						23978
Percent						0.517%
[a] Average pay periods averages total pay periods from the earlier and current spreadsheets						

I tested the cab driver records by carrying out the following procedures. First, prior to receiving the Calculation Report, I had been provided the earlier spreadsheets and Bass's calculation of the minimum wage deficit. I randomly selected 100 records from the spreadsheets. That consisted of 100 employee biweekly payroll records which contained anywhere from two to up to thirteen shifts³³. The 100 records were split 40/60 between the 2010 to 2012 spreadsheet and the 2013-2015 spreadsheet. This is roughly the percentage of payroll for the period by the total payroll.

The A Cab staff pulled the trip sheets (see below) for the employee for that payroll period. The A Cab verifier reviewed the record to determine the correct starting and ending time. A manager recalculated breaks under A Cabs break policy. The human resource/payroll department reviewed the employee file and determined if the employee was offered health insurance; if he had health insurance or waived it; and if he (or his family) was eligible for the "10% rule" described above and subject to for the upper tier pay.

Subsequently the Calculation Report from Dr. Claretie was received. After determining that the records pulled from the initial test were still in the ACAB-ALL report we decided to expand testing to include test data drawn from the newest version of the payroll analysis. I

³³ We used the random number generator in Microsoft Excel that provides random numbers between two points RANDBETWEEN([a],[b]). The random number generated was a row number in the Excel spreadsheet. The three line payroll record associated with the row number becomes the test record.

chose another 30 payroll records using the same random technique we chose above. A Cab personnel performed the same procedures on the second test as they did on the first test.

The original selection of 100 records was modified as follows. Eleven of the records selected (11%) had issues that were found by A Cab personnel during the research process that lead us to exclude those records. The Exhibits provides the reason why the records could not be used but they all involve being able to have a complete record to assess.

I provided A Cab with a list of alternative random numbers to replace any unusable records they found. Initially, the eleven unusable payroll records were replaced with additional randomly selected records.

A Cab provided us with PDF files of the timesheets for those records as well as an analysis of insurance coverage for each of the employees selected. Of the revised list of 100 we found we could not use five additional records because we found additional completeness issues that were significant enough to cause us to exclude the record³⁴. Generally, these consisted of a missing trip sheet in the payroll period. The records we eliminated from at this point were not replaced. Therefore, the final test was 95 records from the original data.

The selection from the records in the Calculation Report used another 30 payroll period records (again broken out in a 40/60 ratio between 2010-2012 and 2013-2015). Two records were found to be unusable and I was left with 28 records from the second test.

Test of health insurance status

³⁴ For example, even though A Cab provided a file of the verified trip sheets for a given driver in a given payroll period the number of sheets provided did not agree to the number of shifts in the Bass spreadsheets. There could be several reasons for the difference, but due to time and resource constraints we deemed it best just to exclude the record.

Table 3: Analysis of Cab Driver Insurance Coverage				
	Employees			
	2010-2012	2013-2015	Total	Pct
In waiting period	7	11	18	14.6%
Part time (no insurance)	0	2	2	1.6%
Employee only insured	23	32	55	44.7%
Employee with spouse and/or dependents insured	0	1	1	0.8%
Insurance offered and waived	13	25	38	30.9%
Insurance offered after period and waived	2	0	2	1.6%
No waiver in file	4	2	6	4.9%
No waiver in file but copy of offer letter in file	1	0	1	0.8%
	<u>50</u>	<u>73</u>	<u>123</u>	<u>100.0%</u>

Table 3 above shows that most employees had either taken insurance for themselves only, had waived insurance or was in the waiting period to receive insurance. Of the sample only one employee elected to cover his/her spouse. No one elected to cover their family.

It is interesting to note that about 32% of total employees (which translates to about 40% of employees that had reached eligibility for insurance) chose to waive it. This fact further discredits the calculations for the different scenario damages. Assuming somehow that the assumptions about the law were correct in those scenarios (and they are not), there is still no adjustment to show a material portion of those eligible waive health insurance and therefore waive eligibility for the \$8.25 per hour. This is just another indication the modeling is flawed.

We can also use this information to determine what is the most appropriate minimum wage tier to use. I assigned the lower tier minimum wage to all employees other than cab drivers that either did not have a waiver in the file and had not been receiving health insurance, or had a waiver dated after the pay period. For those individuals, we assigned the upper tier minimum wage of \$8.25. There was only one individual who had a spouse on A Cab insurance and that driver was assigned the higher minimum wage tier using the assumption that with both on the insurance the premium exceeded 10% of the drivers wages over time³⁵. Finally, there were two part time drivers who were assigned the higher rate tier as they were not offered insurance.

³⁵ There were no cab drivers who elected to cover non-spouse dependents. The assumptions made here that this one driver fell under the 10% rule was made for expediency and to be conservative in my estimates. Since it was only one driver, we deemed it better to assume the higher rate than to spend significant time determining the look back calculation. Had there been a material number of drivers with spouses on the insurance plan then the 10% rule would have been addressed.

Analysis of hours worked by employees

The essence of the Calculation Report and the shortage of the minimum wages said to be owed by A Cab is the number of hours a cab driver works. That drives the average wage to test against the minimum wage and it drives the amount owed if the average falls below the minimum wage. I have performed tests on the calculations of hours in the earlier spreadsheets and in the current spreadsheet. The data used in the earlier spreadsheets I believe is usable because the same data appears in the current spreadsheet though on different lines. That is addressed further below.

The key to understanding how many hours a cab driver works is analyzing and understanding the trip sheet. A key to that is to understand that the trip sheet is part of a larger automated system called Cab Manager that has been evolving over the period examined here and beyond. By that I mean that incrementally the way a driver records his/her time has gone from writing everything down manually to today using an onboard computer, communications and GPS to measure every minute the cab is in the cab driver's hands.

How trip sheets work

Exhibit 2 explains how a trip sheet worked during the time periods involved. A Cab's policy was that a driver was expected to take a one hour meal break (not paid) and two thirty minute breaks during each shift. In the 2010 to 2012 timeframe the policy was that if the driver takes any less time than 30 minutes, the driver is paid for the entire break. Once a driver exceeded the break time they are not paid for additional breaks though they can take them unpaid. The labor law in Nevada states that they only need to be paid for two ten minute breaks (see next section). Therefore, A Cab tended to overpay drivers for breaks based on this policy.

The cab driver recorded all his/her activity on the trip sheet. All are to be recorded showing pick up and destination and time spent on the road. All breaks are recorded as well. It was up to the driver to record everything by hand.

After a shift, the driver turns in the trip sheet and the cab and driver are signed out of Cab Manager. All that means is that the driver is no longer assigned to the cab. The verifier goes over the hours on the trip sheet to make sure the sheet is filled out accurately. Once the verifier approves the trip sheet, it is turned over to a manager who calculates the break time based on A Cabs policy. Once these processes are done, the trip sheet is turned over to the human resource / payroll department to enter it into the payroll system.

Although expected to take at least two hours in breaks, a cab driver is not required to take any breaks so they can work the full shift and be paid for the full shift. There is also nothing preventing a cab driver from taking more than two hours of breaks. It should be noted if the

cab driver does not take a break there is no requirement to pay him/her an additional amount for breaks not taken. And, drivers are considered not working and are not paid for break time in excess of policy.

As Exhibit 2 shows the driver in this actual example took four and one half hours of breaks in one shift. In the case shown the driver worked only about 6.5 hours of an over 11 hour "shift".

Testing the hours assumptions of the Calculation Report

The Calculation report describes how ACAB-ALL calculates the minimum wage scenarios for the period January 1, 2013 to December 31, 2015³⁶. This appears to be the same as the earlier spreadsheets:

" [1] For the period January 1, 2013 through December 31, 2015 it [ALL-CAB] performs that calculation based upon the hours recorded for each pay period for each driver in the payroll records and also does so based upon the times inferred from Cab Manager system's records that the driver began and ended each work shift [emphasis added].

"[2] For the period January 1, 2013 through December 31, 2015 it can perform that calculation based upon the driver's shift length times as inferred from the record of the Cab Manager system with each shift's length either increased or decreased, by a uniform amount as specified in Cell 02 (the "02 Variable") in the spreadsheet. This allows such a calculation to incorporate an assumption that the drivers did not actually work for 1 hour, or some other uniform period of time during each shift because they were taking a 1 hour meal break or their amount of non-working break time between their Cab Manager inferred shift start and end times [emphasis added].

"[3] Both time periods in ACAB ALL can perform that calculation by applying a uniform shift length to each shift the taxi driver is recorded to have worked in the Cab Manager records, e.g., by assuming every shift worked during the pay period by the employee was the same constant length [emphasis added].

The Calculation Report determines the hours worked for the minimum wage calculation of cab drivers for the period October 8, 2010 to December 31, 2013 as follows:

Mr. Bass indicted (spelling as shown in report) to me there was no data from the defendants regarding the number of hours worked by each driver for the period prior to January 1, 2013, either from the perspective of the payroll records or the cab manager records. As a result he built into the ACAB-ALL Excel file a variable that would assume, for each driver a constant

³⁶ Pgs. 3-5

number of hours for each shift they worked, as shown by Cab Manager records. This variable also allows the insertion of the average hours per shift from the Cab Manager data for the period 2013 - 2015, which was 11.03 hours³⁷. The use of average hours per shift to calculate damages in the earlier period could result in a biased estimate of damages. This is because the loss attributed to drivers that worked less than the assumed average could be increased with no commensurate offset from drivers that worked more than average. To test this possibility I recalculated the damage estimates in the 2013-2015 period (for the cab manager data) assuming for each driver a shift the average hours (11.03) for all driver shifts in this time frame³⁸.

Assessing the hours a driver works

Assessing if the way that Dr. Clauretie and Bass calculated hours realistically models how hours are worked by cab drivers requires that the entire process of how a cab driver uses a cab and he/she records his/her time be understood. The key to understanding that process is to:

- Understand how a trip sheet works and how hours worked are calculated
- Understand what Cab Manager's reporting capabilities are at a given point in time and that the software has and is continuing to evolve over time
- Understand the independence level of cab drivers
- Understand how a cab operates during a shift
- Calculate hours worked per shift and per payroll period

An A Cab taxi cab driver checks out a cab for up to twelve hours. He may work twelve hours or he may work some other amount depending on the driver's needs and preferences. He may keep the cab for up to the maximum time but use personal time while in possession of the cab. He may also turn in the cab early. The point is the cab driver operates the cab as an independent entity during the time he/she has the cab. There are few uniform rules (relevant to this case) other than to tell the base if the cab is available for rides. Cab Manager prints out the trip sheet for the cab driver to track various aspects of his shift including hours worked. However, for the time periods included in here the Cab Manager does not record the hours actually worked or the breaks taken.

The payroll hours test

I used the 123 payroll periods described earlier to test if Dr. Clauretie's and Bass's assumptions are realistically valid. Continuing with our testing procedure, after the A Cab personnel completed their tasks they turned the data over to me. My procedures were as follows:

- a. I first calculated the implied minimum wage deficit from the Calculation Report for the sample of employees selected. I used the information from ACAB-ALL to determine which

³⁷ Calculation Report, p 27.

³⁸ Calculation Report, pp 27-29.

- of the samples were subject to the minimum wage adjustment using the Dr. Clauretie's and Bass's criteria³⁹.
- b. I reviewed each trip sheet for each payroll period for each sample selected. I recalculated the break times to conform to Nevada law using the provisions of NRS 608.145 and NAC 608.145⁴⁰. Under these provisions, I recalculated hours paid to include twenty minutes of break time IF the cab driver took breaks. If the cab driver chose not to take any breaks, we did not accrue any additional payments for missed breaks.
 - c. I calculated net time worked from the trip sheets (adjusted for a. above) in minutes for each shift. I added all the time from all the shifts in the payroll period to determine the total number of minutes worked. I divided the number of minutes by 60 to determine the number of hours worked to two decimal places (one-hundredth of an hour). This apparently conformed to the Bass calculations.
 - d. I then used the information developed in the HR/payroll department regarding employee status on health insurance to determine if they should be paid at the higher or lower tier.
 - e. I multiplied the number of hours worked by the appropriate minimum wage tier. This becomes the minimum wage threshold amount.
 - f. The minimum wage threshold amount was compared to the actual payroll paid. If the payroll actually paid was more than our minimum threshold amount, the cab driver was paid more than the minimum wage and no further action is taken. If the payroll paid less than the minimum threshold amount, the difference is recorded as an underpayment.

Analysis of the test results

Exhibits 3 through 6 shows the detailed results for the period. Exhibit 3 shows the results from the earlier spreadsheets (adjusted for ACAB-ALL assumptions) for the period 2010-2012. Exhibit 4 shows the detailed results for the 2013-2015 period that again were developed using the original Bass spreadsheets. Exhibits 5 and 6 shows the results from the additional testing I did when the new spreadsheets came out with the Calculation report. Exhibit 5 covers the 2010 -2012 period. Exhibit 6 covers the 2013 to 2015 period.

Observations:

- a. The first item noted is that in aggregate, wages in total exceed the minimum wage threshold. Therefore, the sample selections that do not exceed the minimum threshold should be isolated and reviewed.
- b. The average shift length (weighted for the number of observations per analysis) is 9.7 hours in the sample. It is 9.8 hours for those not subject to the minimum wage and 9.5

³⁹ The data from the earlier spreadsheets was as a base to random sample the trip sheets. However, since the ACAB-ALL spreadsheet used different criteria for calculating the minimum wage deficits, I used the ACAB-ALL amounts to determine the Calculation Report's estimate of minimum wage deficits for the sample. I also included in the Exhibits both the original and ACAB-ALL line numbers that the random samples were drawn from.

⁴⁰ Under these statutes and regulations, unless exempted, an employee is entitled to two 10 minute rest periods if they work 7 to 11 continuous hours. See the statute and regulations for breaks required working other hours.

hours for those subject to the minimum wage threshold (both using the SLA calculations of minimum wage hours).

Table 4 Weighted average shift lengths			
	Total	Shift average (not subject to minimum wage)	Shift average (subject to minimum wage)
Exh 3	3.1	3.2	3.0
Exh 4	4.3	4.4	4.2
Exh 5	0.9	0.9	0.9
Exh 6	1.4	1.4	1.3
Weighted Average	9.7	9.8	9.5
Note: Based on analysis by Scott Leslie			

- c. The estimated total payroll hours for the Calculation Report is about 11,574 hours or about 1,411 hours (or 13.9%) more than the hours I calculated using the trip sheets (10,162 hours).
- d. The estimated total payroll hours screened for drivers subject to the minimum wage threshold was about 2,374 hours more for the Calculation Report (or 58% more) than what I calculated this screen of hours to be (Exhibit 7).
- e. The suggested minimum wage adjustment (using the Calculation Report's \$7.25 minimum wage column) was about \$6,376 more (or 266% more) than what I calculated this screen of minimum wages to be (Exhibit 7). What this shows is that when the assumed hours are exaggerated (as they are here because shift length is overstated), the effect on the population of those subject to minimum wage threshold is leveraged higher which not only overstates but truly distorts the minimum wage deficit.

The reason why is this: The amount of wage paid is fixed. As you vary the number of hours worked the average wage rate relative to the fixed amount changes. The more hours you add the lower the average wage rate goes. The reduction of the average wage rate of the population not only adds amounts owed to the original cab drivers subject to the minimum wage threshold but also adds additional drivers that should not be part of the calculation. That is the leverage effect.

As an illustration, see Exhibit 8 which is a further analysis of information in Exhibit 6 and Exhibit 7. When the actual hours worked by cab drivers is used, three of the 17 drivers in the sample are subject to the minimum wage threshold. However, if Dr. Clauret's hours assumption is used, not only are the three subjects in my sample subject to the

minimum wage threshold, but another three now fall into the minimum wage threshold (because their "average wage" now drops below \$7.25 when their payroll amount is divided by more hours). So not only does the number of cab drivers that meet the minimum wage threshold double, the number of hours subject to the minimum wage increases by 266% and in this example the amount to the minimum wage increases by 626%. All of this because the hours worked is distorted.

- f. Exhibit 8 also illustrates the problem with using the idea of "average hours" and "uniform" work time for this industry. As this exhibit shows and as my general analysis revealed, there is nothing "average" about hours worked because there is so much independence given the drivers. The assumptions stated in the Calculation Report state that they use 11.04 hours for each shift. Our study of actual hours as reported above is 9.7 hours and the hours worked by those subject to the minimum wage threshold is 9.5 hours. That is one and one half hours less per shift (13.6%) than what the Calculation Report assumes.

If averages are used as they are in this report, it would be expected that a 13.6% difference in hours would add in the neighborhood of 13.6% to the minimum wage deficit. Except as this small sample shows it actually increased the minimum wage deficit adjustment by over 600%. As shown in Exhibit 7, similar though not as extreme results are shown for all of the test sample.

We therefore conclude that our final test shows the methodology used to estimate hours worked is not reliable. Therefore the methodology cannot be relied upon to produce a reasonable estimate of the minimum wage deficit for not only the lower tier test in the Calculation Report but any of the tests done in the Calculation Report.

Finally, we conclude that because of the way the A Cab tracked time during the examination period, the only reliable way to determine the minimum wage deficit of the cab drivers of A Cab during the period in question is to analyze the trip sheets. The trip sheets were provided to the Greenburg team and they chose instead to use this methodology to estimate the minimum wage deficit.

Prepare by:



Scott Leslie, CPA/ABV, CVA, CFF
Scott Leslie & Associates, Inc.

EXHIBIT 3

EXHIBIT 3

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

November 09, 2015

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

November 09, 2015 Chambers All Pending Motions

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

COURT CLERK: Michele Tucker

JOURNAL ENTRIES

- ALL PENDING

DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' FIRST CLAIM FOR RELIEF:
COURT ORDERED, Motion DENIED.

DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' SECOND CLAIM FOR RELIEF:
COURT ORDERED, Motion DENIED.

PLAINTIFF'S MOTION TO CERTIFY THIS CASE AS A CLASS ACTION PURSUANT TO NRCP
RULE 23 AND APPOINT A SPECIAL MASTER PURSUANT TO NRCP RULE 53

After oral argument and reviewing the authorities submitted in this matter, the Court finds that the Plaintiffs have adequately met the requirements of class certification and that the motion to certify the class should be granted. However, the Court cannot grant Plaintiffs motion to appoint a special master. The underlying reasons advanced by the Plaintiffs do not provide a sufficient basis for the Court to place the entire financial burden of the requested work on the Defendants. The Court must deny the motion to appoint a special master without prejudice at this time. Accordingly, COURT ORDERS, Plaintiffs Motion to Certify this Case as a Class Action Pursuant to NRCP Rule 23 and Appoint a Special Master Pursuant to NRCP Rule 53 GRANTED IN PART and DENIED IN PART. Plaintiffs are to prepare the order.

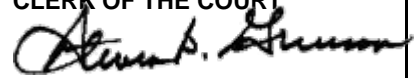
CLERK'S NOTE: The above minute order has been distributed to: Leon Greenberg, Esq. and Esther Rodriguez, Esq. via e-mail. /mlt

PRINT DATE: 01/08/2016

Page 1 of 1

Minutes Date: November 09, 2015

AA005165



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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
DEFENDANT'S OPPOSITION
TO PLAINTIFFS'
MOTIONS FOR PARTIAL
SUMMARY JUDGMENT AND
TO PLACE EVIDENTIARY
BURDEN ON DEFENDANTS
TO ESTABLISH "LOWER
TIER" MINIMUM WAGE AND
DECLARE NAC 608.102(2)(b)
INVALID**

Hearing Date: 12/5/17
Hearing Time: 9:00 A.M.

Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation, hereby file this reply to defendants' opposition to plaintiffs' motion for an Order granting partial summary judgment pursuant to Nev. R. Civ. P. 56(a) and ruling that defendants bear the burden of establishing that they only need to have paid the "lower tier" ("health benefits provided") minimum wage specified by Nevada's Constitution and that NAC 608.102(2)(b) is invalid.

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

AA005166

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1 by plaintiffs of unfounded “assumptions” regarding hours worked by the class
2 members.

3 Plaintiffs have not made any “assumptions” about the hours worked in their
4 partial summary judgment motion. The hours worked that are used to figure the unpaid
5 minimum wage owed are the work hours that defendants have placed in their payroll
6 records for the 2013-2015 period and that defendants insist are accurate (if they are
7 assumptions they are the defendants’ assumptions that they have sworn are correct).
8 Nor is plaintiffs’ motion dependent upon any “expert” opinion as to the correctness of
9 dividing wages paid by hours worked to determine if at least \$7.25 an hour was paid
10 for each of 14,200 pay periods. Dr. Clauretie, who is a well qualified expert, verified
11 the accuracy of the spreadsheet that performed the calculations on those 14,200 payroll
12 period records. Defendants do not dispute those calculations were performed with
13 proper arithmetical correctness and their expert at his deposition agreed that those
14 calculations are arithmetically correct.

15 Irrespective of how the Court may rule on the other issues raised (such as
16 whether an \$8.25 an hour minimum wage rate applies), there is no basis for it to deny
17 the partial summary judgment requested of \$174,839 in precisely identified amounts of
18 at least \$10 in unpaid minimum wages that are owed to 319 class members. Those
19 minimum wages are, under defendants’ own admission and their own records,
20 indisputably owed to such class members.

21 ARGUMENT

22 I. DEFENDANTS HAVE ADMITTED THEIR PAYROLL RECORDS 23 ARE ACCURATE AND SET FORTH THE TOTAL WAGES PAID 24 AND HOURS WORKED FOR EACH CLASS MEMBER FOR EACH TWO WEEK PAY PERIOD FROM 1/1/13 to 12/31/2015

25 A. Defendants’ admissions establishing the “undisputed 26 material fact” that their payroll records are accurate are set forth in the moving papers.

27 Without discussing any particular disputed facts, defendants insist that plaintiffs
28 have failed to properly place in the record their claimed “undisputed material facts” and

1 defendants dispute those facts. This is untrue. The only fact upon which plaintiffs'
2 partial summary judgment motion relies is the accuracy of defendants' payroll
3 (Quickbooks) records of wages paid and hours of worked per pay period. Otherwise,
4 the motion relies upon arithmetic and defendants do not dispute that $2+2=4$ or that the
5 arithmetic calculations performed on their records are in error.

6 Defendants have admitted in their deposition testimony the accuracy of their
7 records providing the basis for the partial summary judgment motion, relevant
8 deposition excerpts at Ex. "C" of the moving papers. In the interests of brevity,
9 plaintiffs did not discuss those essential admissions in their moving papers. They are
10 now discussed to lay bare the fallaciousness of defendants' assertion they have not
11 "admitted" the essential fact upon which summary judgment is based (which is that
12 their payroll records from 2013-2015 are accurate).

13 Dr. Clauretie in his report (Ex. "B" of moving papers) has extensively reviewed
14 and verified the accuracy of the spreadsheet assembled by Charles Bass that calculates
15 the minimum wage deficiencies for 14,200 pay periods in the 2013-2015 payroll
16 records produced by defendants. *Id.*, pages 7-25. As he notes during that review, the
17 amounts recorded in those records as the "QTY" of "Minimum Wage Subsidy" are, for
18 the purposes of those calculations, treated as the hours worked during the pay period.
19 *Id.*, page 16, n.5.

20 Defendants have confirmed, via their deposition testimony, that such "Qty"
21 amount recorded with a pay period's "Minimum Wage Subsidy" amount (on the same
22 line) was the hours worked by the class member during the pay period. Ex. "C" of
23 moving papers, deposition testimony of defendant Nady, 8/18/15, p. 150, l. 25 - p. 153,
24 l. 14. ("So A Cab in making that calculation [of Minimum Wage Subsidy pay] has
25 figured that this person worked 57.08 hours [as appearing in the "Qty" column of such
26 line] for that pay period?" "That's correct.").

27 Not only have defendants confirmed the existence of "hours of work per pay
28 period" amounts in their 2013-2015 payroll (Quickbooks) records, they adamantly

1 insist that those hours of work records are fully accurate. Defendant Nady at his
2 deposition stated the Quickbooks (payroll hours) record of hours worked by the class
3 members was *more accurate* than the trip sheet records because defendants were
4 *adding* additional “working time” to their payroll calculations for the class members,
5 time that the class members were working that was *not* recorded in the trip sheets:

6 Q.My question isn’t whether A Cab was going to do that or trying
7 to do that; my question was, what records of that working time did A Cab
understand it needed to keep?

8 A: Trip sheets.

9 Q: Did it have any understanding as to any other records that it needed to
10 keep?

11 A: **Well, the trip sheets didn’t reflect when they came in and dinked**
12 **around for 5 minutes or 10 minutes or when they come in and dinked**
13 **around for 5 minutes or took the stuff out of their cab and put it in**
14 **their car on the way in to start to do their manipulation on the**
15 **computer or the time it took them to do the inspection, so we**
16 **estimated that time.** We met with a good portion of drivers. We’re
going to pay you six minutes for this and six minutes for that, and then we
raised it to eight minutes about a few months later when we started timing
it. So what records do we keep? We keep records based on when they
start and then we just allow time for it. That’s the best we have. I don’t
think we can do it any better. It’s an honest effort to do so.
Ex. “C” moving papers, deposition 11/22/16, p. 128, l. 14 - p. 129, l. 11.

17 Defendant Nady reiterated that he was “....sure that we [A-Cab] are using the
18 timestamps from their trip sheets for their [payroll hours] time” and that “...we also add
19 eight minutes to the beginning and end of the shift [as recorded in the trip sheets]...” for
20 payroll purposes. *See*, Ex. “C” moving papers p. 66, l. 9-20.

21 Defendant Nady also duplicatively testified, with reference to certain discussed
22 payroll period records (pay stubs) issued in 2014, that such hours of work records were
23 derived from (incorporated the information from) the class members’ trip sheets and
24 added additional “counseling” time that would not be recorded on the trip sheets. *See*,
25 Ex. “C” moving papers, pages 117-124, confirming at p. 117, l. 18 - p. 118, l. 10 and p.
26 120, l. 5-8, among other things, that drivers would be recorded as working, and paid
27 for, “counseling” time that was not recorded by their trip sheet time stamps.

1 **B. Defendants’ assertions that plaintiffs have manipulated the**
2 **produced payroll records or fabricated their calculations**
3 **are untrue and lack even a scintilla of support.**

4 Defendants insist that plaintiffs’ counsel has somehow manipulated the produced
5 Quickbooks data for the 14,200 pay periods from 2013-2015 that were reviewed or
6 otherwise fabricated and falsified the calculations performed on that data. They
7 provide no support for that assertion. They do not demonstrate that the calculations
8 performed on even one of those 14,200 pay periods is wrong. Nor do they
9 demonstrate (through documentary evidence, a knowledgeable declaration, or anything
10 else) the data used (wages paid, hours worked) for those calculations is inaccurate for
11 even a single one of those 14,200 pay period (*e.g.*, that such data is *not* what
12 defendants’ payroll records memorialize as the amount paid and hours worked).

13 This Court’s Order entered March 4, 2016 directed production of the
14 Quickbooks payroll records after a series of discovery abuses by defendants that also
15 resulted in sanctions of \$3,238.95 upon defendants. Ex. “G” moving papers. Even
16 then, defendants insisted that they did not know how to produce just the “payroll
17 excerpt” of the Quickbooks records and declined to provide all of their Quickbooks
18 computer files containing information not germane to this lawsuit. Such insistence by
19 the defendants, and their refusal to engage in a “bulk” production of their Quickbooks
20 records, forced *plaintiffs* to document to the Discovery Commissioner (at considerable
21 expense) a protocol from a skilled consultant for such a “Quickbooks payroll data
22 only” production. *See*, Ex. “H” letter of May 18, 2016 to Discovery Commissioner
23 Bulla with Declaration of Quickbooks consultant Nancy Whissel. Defendants
24 ultimately complied with the Court’s Order to produce the Quickbooks payroll records
25 by following the Ex. “H” protocol. They raised no objections to doing so. They
26 cannot now be heard to complain that process did not properly, and fully, extract the
27 Quickbooks payroll data upon which plaintiffs’ motion relies. Nor do defendants
28 provide one whit of evidence to support such assertion or that plaintiffs have
 “manipulated” that data.

1 Although unnecessary, the Court can verify the correctness of the data used in
2 plaintiffs' calculations from the historical, documentary, record. Ex. "A" are copies of
3 four actual pay stubs produced by defendant A-Cab and given to class representative
4 Michael Sargeant during his employment. The "Qty" amount of "Minimum Wage
5 Subsidy" (hours worked) for Michael Sargeant for each of those pay periods on those
6 paystubs also appears in the calculation lines for Michael Sargeant submitted with the
7 motion (Ex. "D" moving papers, at p. 295, lines 11168 to 11172, column "I," the
8 "Hours for Pay Period from Payroll Records" amount). The "Total Wages Paid"
9 information (column "J") on those lines similarly matches up to the pay stubs once the
10 "Tips Supplemental" amounts are excluded (tips do not count towards Nevada's
11 minimum wage compliance). The following is a "paper trail" or "real world" manual
12 verification of the accuracy of plaintiffs' partial summary judgment calculations:

13
14 **SEE BELOW**



Employee Michael C. Sargeant, 2001 Ramrod Ave. #2215, Henderson, NV 89014					SSN ***-**-5207	Status (Fed/State) Single/(none)	Allowances/Extra Fed-1/0/NV-0/0
					Pay Period: 05/24/2014 - 06/06/2014		Pay Date: 06/13/2014
Earnings and Hours							
	City	Rate	Current	YTD Amount			
Minimum Wage Subsidy	87.48	1.43	125.10	125.10			
Driver Commission	1.00	416.41	416.41	416.41			
Tips Supplemental			92.79	92.79			
	87.48		634.30	634.30			
Taxes					Current	YTD Amount	
Federal Withholding			-42.00	-42.00			
Social Security Employee			-39.33	-39.33			
Medicare Employee			-9.20	-9.20			
			-90.53	-90.53			
Adjustments to Net Pay					Current	YTD Amount	
Tips Out			-92.79	-92.79			
Net Pay					450.98	450.98	

Exhibit "A"

3	Payroll Check Date	Payroll Records Account Number	Last Name	First Name	Date Became Qualified for Health Insurance	Pay Period Start Date	Pay Period End Date	Hours for Pay Period From Payroll Records	Total Wages Paid	Minimum Wages Owed at \$7.25 an Hour for all Hours	Minimum Wages Owed at \$8.25 an Hour for all Hours	Wages Owed at \$8.25 an Hour for Pay Periods Prior to Date Qualified for Insurance and at \$7.25 an Hour after that
	B	C	D	E	F	G	H	I	J	K	L	M
11158	6/14/2013	29769	Sans	Thomas	9/1/2013	5/25/2013	6/7/2013	88.43	\$542.49	\$98.63	\$187.06	\$187.06
11159	6/28/2013	29769	Sans	Thomas	9/1/2013	6/8/2013	6/21/2013	78.74	\$479.99	\$90.88	\$169.62	\$169.62
11160	7/12/2013	29769	Sans	Thomas	9/1/2013	6/22/2013	7/5/2013	86.48	\$554.82	\$72.16	\$158.64	\$158.64
11161	7/26/2013	29769	Sans	Thomas	9/1/2013	7/6/2013	7/19/2013	50.81	\$317.80	\$50.57	\$101.38	\$101.38
11162	8/9/2013	29769	Sans	Thomas	9/1/2013	7/20/2013	8/2/2013	66.37	\$415.22	\$65.96	\$132.33	\$132.33
11163	8/23/2013	29769	Sans	Thomas	9/1/2013	8/3/2013	8/16/2013	91.86	\$580.84	\$85.15	\$177.01	\$177.01
11164	9/6/2013	29769	Sans	Thomas	9/1/2013	8/17/2013	8/30/2013	91.93	\$585.18	\$81.31	\$173.24	\$173.24
11165	9/20/2013	29769	Sans	Thomas	9/1/2013	9/13/2013	9/13/2013	73.99	\$467.20	\$69.23	\$143.22	\$69.23
11166	10/4/2013	29769	Sans	Thomas	9/1/2013	9/14/2013	9/27/2013	56.25	\$364.28	\$43.53	\$99.78	\$43.53
11167	10/18/2013	29769	Sans	Thomas	9/1/2013	9/28/2013	10/11/2013	106.57	\$671.44	\$101.19	\$207.76	\$101.19
11168	6/13/2014	26687	Sargeant	Michael	9/1/2014	5/24/2014	6/6/2014	87.48	\$541.51	\$92.72	\$180.20	\$180.20
11169	6/27/2014	26687	Sargeant	Michael	9/1/2014	6/7/2014	6/20/2014	66.68	\$411.60	\$71.83	\$138.51	\$138.51
11170	7/11/2014	26687	Sargeant	Michael	9/1/2014	6/21/2014	7/4/2014	54.78	\$397.23	\$0.00	\$54.71	\$54.71
11171	7/25/2014	26687	Sargeant	Michael	9/1/2014	7/5/2014	7/18/2014	57.08	\$413.74	\$0.09	\$57.17	\$57.17
11172	8/8/2014	26687	Sargeant	Michael	9/1/2014	7/19/2014	8/1/2014	22.81	\$165.47	\$0.00	\$22.71	\$22.71
11173	10/16/2015	108509	Sattari	Ahmad	12/1/2015	9/26/2015	10/9/2015	11.61	\$111.09	\$0.00	\$0.00	\$0.00
11174	10/30/2015	108509	Sattari	Ahmad	12/1/2015	10/10/2015	10/23/2015	21.62	\$173.86	\$0.00	\$4.51	\$4.51
11175	3/20/2015	108213	Savino	Christopher	5/1/2015	2/28/2015	3/13/2015	22.06	\$159.88	\$0.06	\$22.12	\$22.12
11176	4/3/2015	108213	Savino	Christopher	5/1/2015	3/14/2015	3/27/2015	101.82	\$795.51	\$0.00	\$44.51	\$44.51
11177	4/17/2015	108213	Savino	Christopher	5/1/2015	3/28/2015	4/10/2015	92.20	\$706.05	\$0.00	\$54.60	\$54.60
11178	5/1/2015	108213	Savino	Christopher	5/1/2015	4/11/2015	4/24/2015	99.00	\$737.87	\$0.00	\$78.88	\$78.88
11179	5/15/2015	108213	Savino	Christopher	5/1/2015	4/25/2015	5/8/2015	105.28	\$763.77	\$0.00	\$104.79	\$0.00
11180	5/29/2015	108213	Savino	Christopher	5/1/2015	5/9/2015	5/22/2015	104.75	\$759.95	\$0.00	\$104.24	\$0.00
11181	6/12/2015	108213	Savino	Christopher	5/1/2015	5/23/2015	6/5/2015	104.88	\$760.48	\$0.00	\$104.78	\$0.00
11182	6/26/2015	108213	Savino	Christopher	5/1/2015	6/6/2015	6/19/2015	116.82	\$885.40	\$0.00	\$78.37	\$0.00
11183	7/10/2015	108213	Savino	Christopher	5/1/2015	6/20/2015	7/3/2015	113.54	\$866.64	\$0.00	\$70.07	\$0.00
11184	7/24/2015	108213	Savino	Christopher	5/1/2015	7/4/2015	7/17/2015	103.02	\$760.27	\$0.00	\$89.64	\$0.00
11185	8/7/2015	108213	Savino	Christopher	5/1/2015	7/18/2015	7/31/2015	62.35	\$525.88	\$0.00	\$0.00	\$0.00
11186	8/21/2015	108213	Savino	Christopher	5/1/2015	8/1/2015	8/14/2015	80.98	\$675.16	\$0.00	\$0.00	\$0.00
11187	9/4/2015	108213	Savino	Christopher	5/1/2015	8/15/2015	8/28/2015	92.79	\$789.29	\$0.00	\$0.00	\$0.00
11188	9/18/2015	108213	Savino	Christopher	5/1/2015	8/29/2015	9/11/2015	86.31	\$815.24	\$0.00	\$0.00	\$0.00
11189	10/2/2015	108213	Savino	Christopher	5/1/2015	9/12/2015	9/25/2015	88.34	\$837.75	\$0.00	\$0.00	\$0.00
11190	10/16/2015	108213	Savino	Christopher	5/1/2015	9/26/2015	10/9/2015	80.56	\$759.52	\$0.00	\$0.00	\$0.00
11191	10/30/2015	108213	Savino	Christopher	5/1/2015	10/10/2015	10/23/2015	78.92	\$715.98	\$0.00	\$0.00	\$0.00
11192	11/13/2015	108213	Savino	Christopher	5/1/2015	10/24/2015	11/6/2015	88.12	\$750.56	\$0.00	\$0.00	\$0.00
11193	11/27/2015	108213	Savino	Christopher	5/1/2015	11/7/2015	11/20/2015	92.35	\$874.17	\$0.00	\$0.00	\$0.00
11194	12/1/2015	108213	Savino	Christopher	5/1/2015	11/21/2015	12/4/2015	63.77	\$462.30	\$0.03	\$63.80	\$0.03
11195	12/25/2015	108213	Savino	Christopher	5/1/2015	12/5/2015	12/18/2015	62.94	\$456.10	\$0.22	\$63.16	\$0.22

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Ex. "D" to moving papers at p. 295

1
2 ● The Ex. “A” pay stub shows Michael Sargeant worked 87.48 hours that
3 pay period (the number appearing as the “QTY” and “Minimum Wage Subsidy”
4 intersection) (**shown above**).

5
6 ● That same 87.48 hours number for that same pay period appears at column
7 “I” of Exhibit, line 11168 produced at Ex. “D” of the moving papers, at p. 295 (**that**
8 **page reproduced with its column headings above**).

9
10 ● The total wages paid by A-Cab for that pay period, excluding tips as shown
11 on the pay stub (the \$92.79 in “Tips Supplemental” must be excluded), is \$541.51
12 (\$416.4 in commission + \$125.10 in “Minimum Wage Subsidy”).

13
14 ● That same \$541.51 number also appears on line 11168, column “J” of
15 Exhibit “D” of the moving papers as “Total Wages Paid” (**shown above**).

16
17 ● To determine the unpaid minimum wages owed for this pay period at \$7.25
18 an hour multiply **\$7.25** by the hours worked of **87.48**, which equals **\$634.23**.

19
20 ● As shown in Exs. “A” and “D” above, Mr. Sargeant was actually paid only
21 **\$541.51**, so he is owed the difference between \$634.23 and \$541.51, which is **\$92.72**.¹

22
23 ● That \$92.72 amount appears in column “K” of line 11168 of Ex. “D” page
24 295 of the moving papers as the amount owed for that pay period at a \$7.25 an hour
25 minimum wage (**shown above**).

26
27 ¹ The amount of \$92.72 that is owed is identical to the \$92.72 in tips earned by
28 Michael Sargeant as shown on the pay stub. This is because A-Cab was illegally
crediting the tips earned by him and the other class members against the \$7.25 an hour
minimum wage it owed, under its own record keeping system, until July of 2014.

HOURS	WAGES PAID	MATH PERFORMED
87.48	\$541.51	87.48 x \$7.25 = \$634.23
		\$634.23- \$541.51 = \$92.72

Plaintiffs have performed 14,199 additional fully accurate calculations on 14,199 additional pay periods, in the same fashion as detailed above, by using an Excel file (the “2013-2015 Payroll Analysis” file). That Excel file was provided to the Court with an explanation of how it can be examined to verify the correctness of its calculations on each of the 14,200 pay periods it examined. Ex. “B.” Defendants have not disputed, in any fashion, the proper functioning of that Excel file, which was provided to defendants months ago with Dr. Claudette’s report.

C. Defendants’ expert also confirms that the calculations performed on the 2013-2015 payroll data are accurate.

While defendants insist their expert has meaningful evidence to present that supports the denial of the plaintiffs’ partial summary judgment motion, they never present or explain that evidence. No such evidence exists and defendants’ expert concurs that the calculations performed in the “2013-2015 Payroll Analysis” file are arithmetically correct and accurate. The relevant deposition excerpts are annexed as Ex. “C” which also demonstrate defendants’ counsel’s most improper obstruction of the questioning of Mr. Leslie on this subject:

Q: My question was you understand that the payroll records from A Cab for the period of 2013 through 2015, for every pay period, have a stated amount of hours worked for the pay period by the employee?

A: Yes.

1 Q: So, my question was when the A Cab OLE²
2 spreadsheet accepts those hours and uses those hours
3 recorded in the payroll records to calculate minimum
4 wages owed either at a constant 7.25 rate or the
5 constant 8.25 rate, using again those hours from the
6 payroll records, does it do so correctly?

7 Improper objections and obstructions by defendants' counsel, Mr. Leslie is
8 directed to answer:

9 A: The math foots through.

10 Q: By foot through, you are confirming that
11 it is your understanding that when the A Cab OLE file
12 uses the hours from the payroll records for that
13 2013-2015 period and calculates amounts at minimum
14 wages that are owed at 7.25 and 8.25 an hour,
15 constantly for all pay periods in each scenario, it is doing so
16 correctly?

17 Improper objections and obstructions by defendants' counsel again, Mr.
18 Leslie is directed to answer:

19 A: I think the math works.

20 Ex. "C" p. 29, l. 13 - p. 30, l. 20. *See, also*, p. 19, l. 20-201 "Dr.
21 Cloretti's review of the math I think is good."

22 **II. DEFENDANTS' EXPERT REPORT DOES NOT DISCUSS
23 THE 2013-2015 PAYROLL RECORDS OR THE MINIMUM
24 WAGES ESTABLISHED TO BE OWED BY THOSE RECORDS**

25 **A. Defendants' expert's attack on the supposed "assumptions"
26 made as to hours worked is irrelevant as the motion makes
27 no such "assumptions" and relies on defendants' records.**

28 At page 7 of their opposition defendants discuss their expert, Mr. Leslie's,

29 ² "OLE" is a phonetic error by the transcriber, it should be "ALL." Leslie
30 phrased his discussion as being in reference to the "ACAB-ALL" Excel file while
31 acknowledging during his deposition that the "2013-2015 Payroll Analysis" Excel file
32 was an excerpted portion of the "ACAB-ALL" Excel file. Ex. "C" p. 23-25.

findings that plaintiffs' experts are in error for making assumptions in their "ACAB-ALL" model including using an "average hours [per shift] calculation" and performing "no testing" of Cab Manager data. Mr. Leslie's report attacks the propriety of using any *assumptions as to average hours worked per shift* as proposed by plaintiffs (such as assuming an 11 hours, average, length per shift). He does so, by among other things, examining trip sheets from drivers. Setting aside whether Mr. Leslie's opinion is germane to *anything* in this case it has no germaneness, and does not even purport to be germane, *to the accuracy of the defendants' 2013-2015 payroll record of hours worked*. Indeed, as noted, *supra*, Mr. Leslie confirms the analysis performed by plaintiffs of those 2013-2015 records is accurate. And, as already emphasized *ad nauseam*, plaintiffs' motion assumes nothing, it relies entirely on A-Cab's records.

III. DEFENDANTS MAKE ABSOLUTELY FALSE ASSERTIONS

A. **Defendants falsely assert plaintiffs are relying upon "dispatch system" data when they are not or that trip sheets must be relied upon when defendants have sworn that the payroll records for 2013-2015, not the trip sheets, have the proper hours of work information.**

Mr. Leslie's report discusses using trip sheet records to ascertain the time worked per pay period by each driver. Defendants then insist that plaintiffs' motion must be denied because it does not rely upon those trip sheet records for the hours worked. Yet, as discussed, *supra*, for the 2013-2015 time period for which partial summary judgment is sought, defendants have insisted, under oath, that the payroll records are derived, in the first instance, from the trip sheets and are constructed to contain *more accurate information* on the hours worked than the trip sheets!

Even more deplorable is defendants' insistence that plaintiffs have "apparently" in conjunction with the motion "offered to the Court their findings of what they believe are the hours worked for each driver" based upon electronic data from defendants' "dispatching system." *See*, p. 8, l. 21-24, opposition. This is an absolute and complete fabrication. While defendants have produced such information in discovery (presumably defendants mean their "Cab Manager" records, though they do not actually

1 identify the “dispatch system” records they refer to) such information has nothing to do
2 with the motion. Plaintiffs do not rely upon those records in any fashion in the motion
3 (though they may at trial) and defendants point to no such reliance.

4 **IV. DEFENDANTS’ CLAIM THAT THE CLASS REPRESENTATIVES
5 ARE INADEQUATE BECAUSE OF THEIR TIME PERIOD OF
6 EMPLOYMENT MISSTATES THE FACTS AND THE LAW**

7 That Michael Reno and Michael Murray did not work for defendants during the
8 2013 to 2015 time period at issue is irrelevant.

9 **A. Michael Sargeant is a class representative appointed
10 by the Court who worked for defendants in 2014.**

11 The Court’s Order granting class certification appointed Michael Sargeant as a
12 class representative in this case along with the named plaintiffs Murray and Reno. As
13 detailed, above, Michael Sargent was employed by defendants in 2014 and is
14 established, by defendants’ payroll records, to be owed unpaid minimum wages at issue
15 in this partial summary judgment motion. Accordingly, defendants’ assertion no class
16 representative has a claim for the period at issue is untrue.

17 **B. The “adequacy” requirement of class representation does
18 not require a “temporal mirror” between the class
19 representative’s claim and the claims of every class member.**

20 Defendants are asserting that a class representative must, personally, possess a
21 claim that is identical, in temporal scope, to every class members’ claim. It is for this
22 reason they assert recovery for class damages occurring in 2013 or later is improper if
23 the class representatives, such as Murray and Reno, individually have no claims for
24 damages arising during that time period because they terminated their employment at an
25 earlier date. They vacuously, and falsely, claim *Wal-Mart Stores, Inc. v. Duke*, 131
26 S.Ct. 2541, 2550 (2011) supports their position. It does not. *Wal-Mart* concluded that
27 for purposes of a Rule 23(b)(2) class for *injunctive* or equitable type relief, Article III of
28 the United States Constitution requires a current employee representative and a former
employee is not an adequate representative in such a class action.

The plaintiffs’ motion seeks a damages award for a Rule 23(b)(3) class, not

injunctive or other Rule 23(b)(2) type relief, as in *Wal-Mart*.³ The adequacy of a “former employee” class representative in a Rule 23(b)(3) damages class action that includes the damages claims of current employees is well established. *See, Sarviss v. General Dynamics*, 663 F. Supp. 2d 883, 911 (C.D. Cal. 2009). There is no “mirror image” requirement of complete temporal identity between class representative and class member claims in a Rule 23(b)(3) damages class action.

V. DEFENDANTS DO NOT OPPOSE PARTIAL SUMMARY JUDGMENT FOR THE \$2,796 IN UNPAID MINIMUM WAGES OWED DURING THE 2010-2012 PERIOD BASED ON THEIR EXPERT’S REPORT

Plaintiffs’ motion requested the Court direct defendants to identify the class members whom Mr. Leslie found are owed \$2,796 in unpaid minimum wages for the 2010-2012 period. Defendants have not opposed this branch of plaintiffs’ motion which should be granted. The Court should Order defendants to identify each of those class members and direct a judgment be entered for each of those class members in the amounts defendants, through their expert, have conceded is owed to them.

VI. SHIFTING THE BURDEN OF PROOF AS TO THE “HIGHER TIER” MINIMUM WAGE RATE WILL NOT UNFAIRLY PREJUDICE OR UNDULY BURDEN THE DEFENDANTS

A. The Court has not ruled on whether it will impose a presumption of “higher tier” MWA coverage upon the defendants or have them bear the burden of proving “lower tier” coverage.

Defendants’ opposition misrepresents the prior proceedings on this issue. The Court had initially *granted* plaintiffs’ motion on this issue via a minute order issued August 29, 2016 (Ex. “D” with first four pages of motion filed). Defendants omit this order from their opposition and fail to mention it. Instead, they submit the Court’s subsequent minute order of September 22, 2016 where the Court limited its August 29, 2016 minute order and elected to proceed in a more incremental fashion. It did not

³ *Wal-Mart* is also inapplicable to this Court as Nevada’s Courts do not apply the same Article III “case or controversy” standing limitations as the federal courts, but that is an issue outside the scope of this motion.

preclude imposing such a presumption or burden of proof in this case at a later date. It also warned the defendants that they seemed to not “appreciate the gravity that inures to a Plaintiffs case when alleging a denial of constitutional rights under the Nevada Constitution.” Defendants also omit the actual, full Order entered on this issue on November 21, 2016 (Ex. “E”) which makes clear the Court is not reaching “...the merits of plaintiffs’ request to shift the burden of proof on this issue and/or take other measures.” *Id.*, p. 4, l. 7-8. Nor did the Court’s prior Order, Ex. “9” of opposition, denying, without prejudice, plaintiffs’ earlier motion for partial summary judgment address this issue. Such Order makes no mention of the issue and is without prejudice (the Court issuing a subsequent minute order on September 5, 2017, Ex. “F” clarifying that without prejudice status in respect to a particular point and language).

B. Except for providing post-hire “insurance waiting period” information defendants have done nothing to clarify in any meaningful fashion the availability of health insurance.

Defendants have provided no precise statement of the periods of time each class member was eligible to receive benefits from A-Cab’s health insurance and the cost they had to pay to do so for themselves and their dependents. It has provided information on the post hire “waiting period” for newly hired employees to be eligible to participate in such insurance. Based upon that waiting period information, and the “hire dates” of the class members (defendants have provided hire dates for many of the class members), it is possible to ascertain the periods many class members had no insurance available because they were still “new hire” employees of A-Cab.

But even if A-Cab were to agree to the inferences regarding the insurance availability of “new hire” employees (there is no indication it will), that is only one part of the “insurance availability” issue. Insurance is also *not* properly deemed available under the Nevada Constitution if its cost to the employee, to cover both the employee and their dependents, exceeds 10% of the employee’s wages. A-Cab has provided no statement about the pay periods, if any, that each class member met such 10% standard. It is also apparent that the 10% cost standard would *never* be met for any employee with any dependent as the employee premium cost for dependent coverage was far too high.

Nor has A-Cab clarified for any class members the periods when they had no insurance available because they were working part time (health insurance is not available to employees who work less than 30 or 35 hours a week).

C. Defendants will have a fair opportunity to meet their burden of proof and avoid paying any improperly inflated minimum wage amounts during the claims administration process proposed in plaintiffs' motion to bifurcate.

The burden of proof placed upon the defendant should be resolved during the post-trial claims administration stage of this case, as discussed in the plaintiffs' motion to bifurcate and limit issues for trial (scheduled for the chambers calendar 12/7/17). The "higher tier" minimum wage will be owed to certain class members for certain periods because they had no insurance "available" during their "new hire" waiting periods. It is expected that issue, to the extent it is disputed, can be resolved by a Special Master entirely from defendants' records (the defendants' "first date employment" payroll record) and their known "waiting time" periods (from 12 months to 60 days during various years).

The remaining situations involving an entitlement to a "higher tier" minimum wage would be for those class members who had dependents or assert they were denied insurance because of their part time status. The class members, as discussed in the plaintiffs' motion to bifurcate, would be required to submit claim forms addressing those issues. Class members who do not claim they had dependents, or were never on part time employment status, would be treated accordingly (very likely only being entitled to the lower tier minimum wage, based upon a review of their gross wage records from A-Cab and the "single/employee only" insurance cost). Those claiming they had dependants would have to provide some identifying information, such as dates and places of marriage or names and dates and places of birth of dependant children. If A-Cab then wanted to dispute the existence of those claimed dependants (because it believed the class member was lying about their dependents to secure the higher tier minimum wage) it could independently verify that no such marriage or birth records existed and by doing so only have to pay the lower tier minimum wage. Similarly, if a

1 class member claimed they were a part time employee without access to health
2 insurance, A-Cab's records will show if that is untrue.

3 **D. The proposed burden of proof to be placed on defendants**
4 **is identical to what the defendants should have already done.**

5 Defendants insist that it is improper in a class action for the Court to fashion a
6 process whereby, in compliance with Nevada's Constitution, certain class member's
7 earnings, family status, and insurance eligibility, in every pay period, will potentially be
8 subject to review during a bifurcated damages calculation phase. Yet those are the
9 dictates of the Nevada Constitution in respect to its "two tier" and "health insurance
10 qualification" related minimum wage requirements. A-Cab during the course of every
11 single class member's employment, if it wished to pay the "lower tier" (\$7.25 an hour)
12 minimum wage, had to do each of the things it now insists are too burdensome: monitor
13 during each pay period the class member's family status, their gross wages, their
14 eligibility to participate in health insurance, and the cost to the class member of such
15 participation. Such is the command of Nevada's Constitution for the employer seeking
16 to avail themselves of that more advantageous, \$1.00 an hour lower, minimum wage
17 rate. Employers, such as A-Cab, who feel those monitoring requirements are too
18 burdensome, and not worth the effort, have easily available alternatives. They can pay
19 the extra \$1.00 an hour (pay the \$8.25 an hour minimum wage) to the employee and not
20 take on such burdens. Or they can make insurance available from the first day of
21 employment for no cost, or a nominal cost, for all full time employees and their
22 dependents (and pay part-time employees at least \$8.25 an hour) and also not bear such
23 monitoring burdens.

24 **VII. FINDING NAC 608.102(2)(B) INVALID WILL NOT UNFAIRLY**
25 **PREJUDICE THE DEFENDANTS AND DEFENDANTS MAKE**
26 **NO SOUND ARGUMENT SUPPORTING ITS VALIDITY**

27 **A. Defendants have no vested legal right to rely upon**
28 **NAC 608.102(2)(B) and have long known that plaintiffs**
will argue it is invalid.

Defendants cite no precedents supporting their claim that they are entitled to rely
upon NAC 608.102(2)(B) because plaintiffs have not, at an earlier point in this case,

sought a determination as to its invalidity.⁴ Defendants have no right to rely upon any Nevada regulation that has not previously been upheld as valid by the Nevada Supreme Court. Indeed, if defendants were concerned about relying on NAC 608.102(2)(B) they could have brought an affirmative proceeding, years ago and prior to this action even being filed, to verify its validity. Having failed to do so they cannot now complain if the Court finds, in this case, that the regulation is invalid.

Defendants have also long been aware of plaintiffs' contention that NAC 608.102(2)(B) is invalid and A-Cab must pay the "higher tier" minimum wage during all "new hire insurance waiting" periods of time since A-Cab's insurance cannot be accessed by the class member during that time. That claim was made in plaintiffs' prior motion for partial summary judgment filed on January 11, 2017; in their Eighth Supplemental Disclosures served on May 16, 2017 (Ex. "G" first 9 pages and Ex. "A" thereto relating to the 2013-2015 payroll records); and in the report of Dr. Clauretie served on July 19, 2017 (Ex. "B" of moving papers, p. 21, and elsewhere).

B. Defendants make no sound argument as to how NAC 608.102(2)(b) can be upheld as valid.

1. Defendants offer no explanation of how insurance can be "available" to an employee during a time period that they could not actually receive any insurance benefits.

The infirmity of NAC 608.102(2)(b) lies in its aspiration to define something, the "availability" of health insurance, in a fashion completely inconsistent with any reasonable or logical meaning of the word "available." Insurance that cannot actually provide any benefits to someone is not "available" to that person. Defendants make no attempt to explain how it can be deemed "available" in such a circumstance.

In respect to whether NAC 608.102(2)(b) is valid, the question is whether its terms are consistent with what the Nevada Constitution requires. The Labor

⁴ Contradictorily, defendants also assert plaintiffs' made this request in their earlier motion for partial summary judgment filed on January 11, 2017 and it was denied, such denial now being law of the case. No determination of this issue was made in the Order issued on that motion, which never discussed the issue and was, as discussed *supra*, wholly without prejudice.

Commissioner's apparent view that it is desirable, as a matter of policy, to allow for an insurance waiting period of up to six months to be considered "available" insurance is irrelevant. NAC 608.102(2)(b) is, on its face, nonsensical. It is not even consistent with a highly ethereal view of "available" insurance as meaning insurance "available" to the employee at some point in the future (after a six month waiting period) since it ignores the employee who never completes the waiting period and terminates their employment prior to having such insurance made "available." Defendants offer no explanation of how NAC 608.102(2)(b) can be valid or how an A-Cab taxi driver who does not remain employed long enough to reach the end of their waiting period, and receive insurance benefits, has ever had insurance made "available" to them by A-Cab.

2. MDC Rests. never examined NAC 608.102(2)(b)

Defendants insist that the Nevada Supreme Court, in *MDC Rests. LLC v. Eighth Judicial Dist. Ct.*, 383 P.3d 262 (2016), "evaluated the exact regulation which Plaintiffs ask this Court to invalidate" and the Nevada Supreme Court "declined to invalidate any portion" in the fashion "advocated by Plaintiffs herein." Defendants provide no citation to any particular portion of *MDC Rests.* wherein the validity of the six month waiting period term of NAC 608.102(2)(b) was examined. *MDC* never examined the validity of the waiting period term which was not an issue in that appeal.

As discussed in the moving papers, *MDC* determined what it means to make insurance "available" to an employee under the Nevada Constitution: an option to receive insurance benefits suffices, actual enrollment is not required. *MDC* also invalidated NAC 608.102(3), holding that the Labor Commissioner has no power to re-define the term "gross taxable income from the employer" in Nevada's Constitution to include employee tips given by customers. 383 P.3d at 267. That ruling strongly supports the conclusion that the Labor Commissioner, in NAC 608.102(2)(b), has engaged in a similarly invalid redefinition of a term of the Nevada Constitution.

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**VIII. DEFENDANTS INTERPOSE NO VALID OPPOSITION
TO CLASS COUNSEL’S REQUEST FOR AN INTERIM
AWARD OF ATTORNEY’S FEES AND EXPENSES**

Defendants do not dispute that an interim award of class counsel fees and expenses would, as a matter of law, be proper in a class action case such as this if partial summary judgment was granted. Nor do they argue that the amount of fees and expenses sought in the moving papers is excessive, if such an award was to be made. Their sole argument is that defendants have made unspecified and undetailed offers of judgment in this case (they have not presented those offers as part of their opposition). They allege those unknown offers of judgment “exceed even ‘the best case scenario’ calculations Plaintiffs believe they can recover” and as a result defendants are entitled to an award of fees, costs and interest.

Defendants have made no offer of judgment, or any class settlement proposal to the Court (they can make such a proposal without class counsel’s support) exceeding the \$174,839 indisputably due to the class members based upon A-Cab’s payroll records. Their claim a prior offer of judgment was made that bars an interim award of class counsel fees and expenses is not just unsupported, it is a complete fabrication.

CONCLUSION

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

Dated: November 27, 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 Class

CERTIFICATE OF SERVICE

The undersigned certifies that on November 29, 2017, she served the within:

Plaintiffs' Reply to Defendant's Opposition to Plaintiffs'
Motions for Partial Summary Judgment and to Place
Evidentiary Burden on Defendants to Establish "Lower
Tier" Minimum Wage and Declare Nac 608.102(2)(B)
Invalid

by court electronic service to:

TO:

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

/s/ Sydney Saucier

Sydney Saucier

EXHIBIT "A"

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

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

A CAB, SERIES LLC Employee Leasing Company

12959

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

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

A CAB, SERIES LLC Employee Leasing Company

12959

Employee				SSN	Status (Fed/State)	Allowances/Extra
Michael C. Sargeant, 2001 Ramrod Ave. #2215, Henderson, NV 89014				***-**-5207	Single/(none)	Fed-170/NV-0/0
				Pay Period: 07/19/2014 - 08/01/2014		
Earnings and Hours						
Minimum Wage Subsidy	Qty	Rate	Current	YTD Amount		
Driver Commission	22.81	4.08	93.06	676.68		
Tips Supplemental	1.00	72.41	72.41	1,235.42		
Supervisor Counseling Pay			17.90	285.69		
Incentive #5			0.00	1.45		
			0.00	16.00		
	22.81		183.37	2,215.24		
Taxes						
Federal Withholding			Current	YTD Amount		
Social Security Employee			0.00	-111.00		
Medicare Employee			-11.36	-137.34		
			-2.66	-32.12		
			-14.02	-280.46		
Adjustments to Net Pay						
Tips Out			Current	YTD Amount		
Cash loan			-17.90	-285.69		
			0.00	-10.00		
			-17.90	-295.69		
Net Pay			151.45	1,639.09		

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

SARAD005189

A CAB, SERIES LLC Employee Leasing Company

12044

Employee					SSN	Status (Fed/State)	Allowances/Extra
Michael C. Sargeant, 2001 Ramrod Ave. #2215, Henderson, NV 89014					***-**-5207	Single/(none)	Fed-1/0/NV-0/0
					Pay Period: 05/24/2014 - 06/06/2014		Pay Date: 06/13/2014
Earnings and Hours		Qty	Rate	Current	YTD Amount		
Minimum Wage Subsidy		87.48	1.43	125.10	125.10		
Driver Commission		1.00	416.41	416.41	416.41		
Tips Supplemental				92.79	92.79		
		87.48		634.30	634.30		
Taxes				Current	YTD Amount		
Federal Withholding				-42.00	-42.00		
Social Security Employee				-39.33	-39.33		
Medicare Employee				-9.20	-9.20		
				-90.53	-90.53		
Adjustments to Net Pay				Current	YTD Amount		
Tips Out				-92.79	-92.79		
Net Pay				450.98	450.98		

SA 11005100

EXHIBIT “B”

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Leon Greenberg
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New York, Pennsylvania and New Jersey Bars
Dana Sniegocki
Member Nevada and California Bars

Fax: (702) 385-1827

November 7, 2017

The Honorable Kenneth C. Cory
District Court Judge
200 Lewis Avenue, Courtroom 16A
Las Vegas, Nevada 89155

Via Hand Delivery

Re: Murray v. A Cab A-12-669926-C
Motion for Partial Summary Judgment and Other Relief
Hearing Set for December 5, 2017
**Submission of Excel File “2013-2015 Payroll Analysis” Discussed in
Motion**

Dear Judge Cory:

I submit with this letter a full Chambers copy of the above motion. Also submitted with this letter is a DVD that contains the Excel file “2013-2015 Payroll Analysis.” That Excel file is discussed in the motion and provides the basis for the award of partial summary judgment in the amounts discussed in the motion. Portions of that file are also printed out (consisting of almost 400 printed pages) and set forth at Exhibits “D” and “E” to the motion. Those printouts, and this Excel file, are discussed at ¶¶ 5-8 of my declaration in support of the motion.

I provide this Excel file in the interest of completeness and as a potential aid to the Court. As discussed in the motion, the amounts requested on the award of partial summary judgment are based upon arithmetical calculations required as a matter of law. The accuracy of the information placed into the “2013-2015 Payroll Analysis” Excel file is not disputed. Nor is the arithmetical accuracy of the calculations that Excel performs. Since the results of those calculations are already in the motion (printed out on paper and described in the motion) it is not

necessary for the Court to actually examine the Excel file itself.

If the Court wishes to examine this file, there are two tabs (spreadsheets) in the file germane to the motion and discussed in the motion. Those are the "2013-2015" tab/spreadsheet (the "per payroll period" table) and the "2013-2015 per EE" tab/spreadsheet (the "per employee" table). Only the calculations in columns "K," "L," and "M" of the "per payroll period" table are germane to the motion, columns "N" and "O" perform additional calculations that are not relevant to the motion.

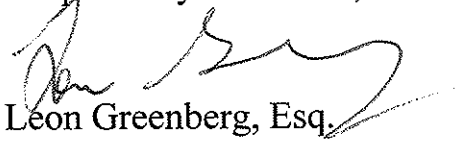
As noted in the motion, the arithmetic calculations performed in the Excel file, that calculate the minimum wage under payments for the 14,200 pay periods examined in the "per payroll period" table, are visible from the formulas present in that table and can be examined. By way of example, line 6, column "K" (cell K6) of the "per payroll period" table indicates \$61.15 is owed in minimum wages to Enrique Abarca at \$7.25 an hour for the pay period ending 3/1/2013 (that is the date indicated in column "H" of line 6). If the cursor (mouse pointer) is placed over cell K6 the formula " $=\text{MAX}(0, (I6 * 7.25) - J6)$ " appears in the formula bar area at the top of the screen above the table. What this formula directs is that cell K6 perform the following calculation and display the result (which is \$61.15). Specifically:

1. First, it multiplies the hours worked during the pay period in line 6, column "I," cell I6, which is 94.97 by \$7.25. This number is \$688.53, the amount of minimum wages that should have been paid for the pay period at \$7.25 an hour;
2. It then subtracts from that amount, \$688.53, the amount of wages actually paid, which appears in line 6, column J, which is cell J6, and is \$627.38. The resulting number is \$61.15, the amount of minimum wages owed at \$7.25 an hour;
3. Finally, the formula requires the display of the larger (the "MAX" operand) of the number 0 or the number generated at step 2. As a result, in pay periods where no minimum wages are owed \$0.00 is displayed, as at cell K15. Here, at cell K6, the amount of \$61.15 is larger than 0 and that amount, \$61.15, is displayed as the amount of minimum wages owed at \$7.25 an hour for

this pay period.

I hope the provided Excel file proves useful to Your Honor if you care to examine it.

Respectfully submitted,



Léon Greenberg, Esq.

cc: Esther Rodriguez, Esq. VIA E-MAIL
Michael Wall VIA E-MAIL

EXHIBIT "C"

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL MURRAY, and MICHAEL) Case No.: A-12-669926-C
RENO, Individually and on) Dept. No.: I
behalf of others similarly)
situated,)
 Plaintiffs,)
vs.)
A CAB TAXI SERVICE LLC, and A)
CAB, LLC,)
)
)
)
)
_____)

RECORDED DEPOSITION OF ROBERT SCOTT LESLIE

Taken on October 10, 2017

At 1:16 p.m.

GABROY LAW OFFICES

170 South Green Valley Parkway Suite 280,
Henderson, Nevada 89012

1 APPEARANCES:

2 For the Plaintiffs: LEON GREENBERG, ESQ.

3 LEON GREENBERG PROFESSIONAL CORPORATION

4 2965 South Jones Blvd, Suite E3

5 Las Vegas, Nevada 89146

6

7 CHRISTIAN GABROY, ESQ.

8 LIZA ARONSON, LAW CLERK

9 GABROY LAW OFFICES

10 170 South Green Valley Parkway

11 Suite 280

12 Henderson, Nevada 89012

13

14 For the Defendants: ESTHER RODRIGUEZ, ESQ.

15 RODRIGUEZ LAW OFFICES, P.C.

16 10161 Park Run Drive, Suite 150

17 Las Vegas, Nevada 89145

18

19 Owner of A Cab: Creighton J. Nady

20

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1		INDEX	
2	Witness	Direct	Cross
3	MR. LESLIE	PAGE 7	
4	(BY MR. GREENBERG)		
5			
6			
7			
8			
9		EXHIBITS	
10	Number	Description	
11	Exhibit 1	Report	
12	Exhibit 2	Report	
13	Exhibit 3	Spreadsheet	
14	Exhibit 4	Trip Sheets	
15	Exhibit 5	Excel File	
16	Exhibit 6	Estimate of Wage and Hour Settlement	
17	Exhibit 7	Trip Sheets	
18			
19			
20			
21			
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23			
24			
25			

1 MR. MAREZ: Job number 306411. We are
2 now on the record in the matter of Michael Murray
3 versus A Cab Taxi Service, LLC. My name is Jared
4 Marez. I am the videographer and officer. I work
5 for Evolve Deposition Services located at 10080 Alta
6 Drive, Suite 100, Las Vegas, Nevada 89145.

7 Today`s date is October 10th, 2017.
8 The time is 1:16 p.m. This deposition is being held
9 at Gabroy Law Offices, 170 South Green Valley
10 Parkway, Suite 280, Henderson, Nevada 89012. This is
11 the recorded deposition of Scott Leslie. Would you
12 please raise your right hand, sir?

13 Do you solemnly swear or affirm that
14 the testimony you`re about to give will be the truth,
15 the whole truth, and nothing but the truth to the
16 best of your knowledge?

17 MR. LESLIE: I do.

18 MR. MAREZ: You can lower your hand.
19 Can you please state your name with the spelling for
20 the record?

21 MR. LESLIE: Okay. It`s Robert Scott
22 Leslie. I go by Scott. The spelling is R-O-B-E-R-T
23 S-C-O-T-T L-E-S-L-I-E.

24 MR. MAREZ: Thank you. This deposition
25 is an audio and visual-recorded deposition. This

1 A: Generally, yes.

2 Q: I`d like you to turn to page 13 in the
3 report I gave you. I would draw your attention to
4 the last sentence of the last paragraph.

5 A: Okay.

6 Q: In that paragraph and sentence, I
7 believe you are discussing what you called the
8 calculation report which is the A Cab OLE Excel file
9 that Dr. Cloretti refers to in his report. Is that
10 true?

11 A: Yes.

12 Q: Okay. In that last sentence you state,
13 ``Otherwise, as shown above, in determining minimum
14 wage rates, the analysis though impressive is
15 meaningless.`` Why do you describe the analysis of
16 Dr. Cloretti`s report as impressive?

17 A: The spreadsheet. I do a lot of Excel
18 spreadsheet work. The spreadsheet with all its
19 sorting and different functions and stuff that is
20 used are impressive to me. Dr. Cloretti`s review of
21 the math I think is good. So I think it`s
22 impressive... in that sense, it`s an impressive
23 report.

24 Q: So, correct me if I`m wrong but you`re
25 saying it`s impressive because of it was performing

1 correct calculations. By correct, I mean
2 arithmetically correct, internally correct
3 calculations in that spreadsheet on a large amount of
4 information.

5 A: It seems like--

6 MS. RODRIGUEZ: Objection.

7 A: Okay.

8 MS. RODRIGUEZ: Misstates prior testimony.

9 Q: Please answer the question.

10 A: I am saying that it seems to calculate,
11 as you say, within itself everything. The math seems
12 to be right.

13 Q: So, you would agree that the arithmetic
14 that's performed in that A Cab OLE Excel file in
15 respect to the performance of the calculations in the
16 file is free from error?

17 A: As far as I could tell, if I'm
18 understanding your question.

19 Q: But you find, and correct me if I'm
20 wrong, that even though the A Cab OLE file is
21 performing correct calculations, it is relying on
22 wrong assumptions. Is that correct?

23 MS. RODRIGUEZ: Objection. Lacks
24 foundation.

25 A: Okay. I think there are two things. I

1 think it's in maybe two of the same thing. One is
2 that it relies on bad assumptions and two, it doesn't
3 perform the testing it needs to be done to come to
4 the conclusions that you're trying to come to.

5 **Q: By testing, what do you mean?**

6 A: I think what we're testing right above
7 this is what I call the 10% rule of determining
8 whether an employee needs to be paid at the higher
9 wage rate as opposed to lower minimum wage rate. You
10 have to do a look-back calculation. There doesn't
11 seem to be anything in the model that performs that
12 look-back calculation. That's what I mean.

13 **Q: So, it's performing a correct**
14 **calculation but the wrong calculation for what is**
15 **supposed to be determined. Is that correct?**

16 A: It's performing calculation that
17 mathematically works. Yeah, but I don't think it...
18 that's why I said but it doesn't actually give you an
19 answer that you are looking for.

20 **Q: It's not the calculation necessary to**
21 **answer the question posed?**

22 A: I believe so. Yes.

23 **Q: So, would you agree that the A Cab OLE**
24 **spreadsheet, if it had incorporated the proper**
25 **assumptions regarding the hours worked by the drivers**

1 and the proper assumptions, the proper calculations
2 to be made when the higher tier should be applied
3 would properly calculate the minimum wages owed to A
4 Cab taxi drivers?

5 A: I don't know that it does and I'll tell
6 you why. Unless you come up with a way, and I say
7 this in report, unless you come up with a way to
8 actually measure the number of hours worked by the
9 cab drivers as opposed to using this standard amount
10 for everybody, for every shift, I don't know that
11 you're going to come up with the right answer. I
12 mean you can either come up with a too high number or
13 too low number.

14 Q: Right. Well, my question to you is that
15 if we agreed that we knew what the average, not what
16 the average, but what the actual hours worked, every
17 single pay period for each driver, for all of the pay
18 periods covered in the A Cab OLE Excel file--

19 A: Yes.

20 Q: --and we were to put them in the A Cab
21 Excel file and otherwise run the calculations in the
22 file the way it's set up, would we get the amount of
23 minimum wages owed to the drivers using those correct
24 hours? For purposes of my question, I'm not talking
25 about the higher tier. Let's just start with...

1 **let`s say...**

2 A: At the minimum tier?

3 **Q: At the 7.25 tier.**

4 A: If you had all the—

5 MS. RODRIGUEZ: Hold on. I`m waiting for
6 him to finish his question.

7 A: I`m sorry. Okay.

8 MS. RODRIGUEZ: Are you finished?

9 **Q: Yes.**

10 MS. RODRIGUEZ: Okay. I`m going to object.
11 It was a longer stated question but it was the same
12 question, so it`s been asked and answered.

13 **Q: Please answer the question.**

14 A: Okay. If you are able to get every hour
15 that the employee worked, and we`re not doing any of
16 the higher tier testing, then you would properly come
17 up with a correct answer, if you got the right hours.

18 **Q: Now, we just discussed a bit about the A**
19 **Cab OLE Excel file. There is a separate Excel file**
20 **that Dr. Cloretti refers to which is the 2013-2015**
21 **payroll analysis Excel file. Did you examine that**
22 **file as well?**

23 A: I think it`s part of the same work pay
24 sheet. I believe it`s in the same worksheet.

25 **Q: Well, there is a separate Excel file**

1 that was produced with Dr. Cloretti's report, which
2 covers just the 2013-2015 period and it does not have
3 any variable function in it. It simply runs the same
4 analysis as in the A Cab OLE file but does it just on
5 the payroll records. Do you recall examining that
6 file?

7 A: No.

8 Q: So, your one or two questions ago I
9 believe you just testified that you think that the
10 information in the 2013/2015 payroll analysis file is
11 actually a tab or portion of the A Cab OLE Excel
12 file. Would you have state that because you believe
13 that the same information appears in the A Cab OLE
14 Excel file?

15 A: I think it's another tab in the A Cab
16 OLE file. If there's a separate file, I don't
17 remember seeing it.

18 Q: Now, did you examine the tabs in the A
19 Cab OLE file that say 2013-2015 per EE and--

20 A: That's what I think--

21 Q: --per EE, which is 2010-2012?

22 A: That's what I think that you're
23 referencing.

24 Q: Okay. Those tabs--

25 A: I believe.

1 Q: --contain a compilation of the amount of
2 all the pay periods that are calculated owed to each
3 employee. Do you recall looking at sheets that had
4 that information?

5 A: I recall looking at that, those pages
6 where you have everybody listed together and you come
7 up with a number, a total number [0:27:28 inaudible]
8 for employee--

9 Q: Right.

10 A: --and total hours or something.

11 Q: One line for employee with total amounts
12 that are calculated as owed using the A Cab OLE Excel
13 file.

14 A: Yes.

15 Q: Do you recall looking at those sheets?

16 A: Yes.

17 Q: Okay. Did you determine there was any
18 arithmetical errors in those per EE sheets?

19 A: Not that I know of. I don't think I
20 tested it a great deal. I looked at it.

21 Q: You have no reason to doubt that those
22 per EE sheets contain the totals of the 2013-2015 or
23 the 2010-2012 sheets in the A Cab OLE Excel file
24 totals by employee?

25 A: Yeah. I think they're the other two

1 spreadsheets, just summarized differently.

2 Q: Now, I asked you a little while ago if
3 the A Cab OLE Excel file properly calculates the
4 amount of minimum wages owed at 7.25 an hour at all
5 times using the assumptions in the sheet itself
6 regarding the hours worked and I believe your answer,
7 please correct me if I`m wrong, was that it does. Is
8 that true?

9 MS. RODRIGUEZ: Objection. Misstates prior
10 testimony.

11 A: Restate. Could you please restate the
12 question?

13 Q: My question was using the hours that it
14 assumes the drivers worked, I`m not saying whether
15 those hours are accurate. I`m just saying the A Cab
16 OLE Excel file has certain information in it or makes
17 certain assumptions which actually can be changed
18 about the hours employees worked each shift through
19 each pay period. Do you understand that?

20 A: Yes.

21 Q: Does the A Cab OLE Excel file accurately
22 calculate the minimum wages owed at 7.25 an hour of
23 every pay period using whatever assumed hours are put
24 into the spreadsheet or already in the spreadsheet?

25 MS. RODRIGUEZ: Objection. Asked and

1 answered. I believe that's the third time the
2 question was asked.

3 A: I would again say that using the
4 assumptions of the spreadsheet, it looks like it puts
5 out the number correctly meaning it can take the
6 hours times the rate and come to a number, but the
7 hours are always the standard numbers based on shift.
8 It's not what the actual hours worked are.

9 Q: Right. Okay. Now, would you give that
10 same answer for how it calculates minimum wages using
11 a constant 8.25 an hour rate using those assumptions?

12 A: Yes. You plug in any rate you want. I
13 mean if you're going to assume there's a number of
14 hours for each shift or each payroll period times
15 whatever the rate is, 8.25, 15.25, whatever you want
16 to use, you'll multiply it through.

17 Q: Okay. Well, but you understand the way
18 the A Cab OLE Excel spreadsheet is set up is that it
19 uses two rates, an 8.25 or 7.25 rate, and in addition
20 to performing a conditional analysis, which you
21 discussed before for example regarding the 10%
22 insurance rule, it also has one analysis where it
23 applies that 7.25 rating every pay period, to every
24 worker, and it has a separate analysis where it
25 applies the 8.25 rating to every worker for every pay

1 period. Do you understand that?

2 A: Yes, I think the 8.25 period is like the
3 second of the analysis columns.

4 Q: Right. Okay. My question is just does
5 that 8.25 column, using the assumptions in the A Cab
6 OLE file, perform proper math in terms of reaching
7 its results based on those assumptions?

8 MS. RODRIGUEZ: Objection. Asked and
9 answered, the fourth time.

10 A: It looks to me like the math works given
11 the assumptions in the model.

12 Q: Are you aware that the A Cab OLE file
13 has a portion of it which calculates minimum wages
14 based upon hours that are recorded independents
15 payroll records for the period 2013 to 2015?

16 A: Yes.

17 Q: Okay. Does A Cab properly calculate the
18 minimum wages that would be owed at the 7.25 and the
19 8.25 rates using those hours in the payroll records?

20 A: It calculates something that's probably
21 within tolerance, yes.

22 Q: Do you have any reason to believe that
23 those calculations are not correct?

24 A: When I did the calculations on this, I
25 tried to use what Nevada Revised Statute said for

1 breaks, which changes it a little bit. It's not
2 material but they will give you like up to 30 minutes
3 of break or 20 min- to 30 minutes of breaks that they
4 pay for and you're only required to give them, given
5 the employees worked 11 hours 20 minutes of breaks.
6 So, in that respect, that's why I said it's within
7 tolerance. It is actually more generous to
8 employees.

9 **Q: What is more generous to employees?**

10 A: If you take less than 30 minutes, they
11 pay you for the entire half hour instead of 10-minute
12 paid breaks, so.

13 **Q: My question was you understand that the**
14 **payroll records from A Cab for the period of 2013**
15 **through 2015, for every pay period, have a stated**
16 **amount of hours worked for the pay period by the**
17 **employee?**

18 A: Yes.

19 **Q: So, my question was when the A Cab OLE**
20 **spreadsheet accepts those hours and uses those hours**
21 **recorded in the payroll records to calculate minimum**
22 **wages owed either at a constant 7.25 rate or the**
23 **constant 8.25 rate, using again those hours from the**
24 **payroll records, does it do so correctly?**

25 MS. RODRIGUEZ: Objection. Leon, you're

1 asking the same question. You've asked him that four
2 times already and I think you...

3 Q: Counsel, I haven't. This is a different
4 question. The witness needs to answer.

5 MS. RODRIGUEZ: Well, my objection is it's
6 been asked and answered on four prior occasions
7 already and I think you're being abusive to the
8 witness.

9 A: The math will foot through.

10 Q: By foot through, you are confirming that
11 it is your understanding that when the A Cab OLE file
12 uses the hours from the payroll records for that
13 2013-2015 period and calculates amounts at minimum
14 wages that are owed at 7.25 and 8.25 an hour,
15 constantly for all pay periods in each scenario, it
16 is doing so correctly?

17 MS. RODRIGUEZ: Objection. Asked and
18 answered on five prior occasions. I believe you're
19 badgering the witness at this point.

20 A: I think the math works. I think it's a
21 legal question as to what the right amount of hours
22 are. I think you could probably recalculate at the
23 statutory rate and get a slightly different answer
24 but as an accountant, I would say that I don't know
25 what the law would actually say.

1 CERTIFICATE OF RECORDER

2 STATE OF NEVADA)

3 COUNTY OF CLARK)

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

5 I, Jared Marez, a duly commissioned

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

7 certify: That I recorded the taking of the

8 deposition of the witness, Robert S. Leslie,

9 commencing on 10/10/2017.

10 That prior to being examined the witness was

11 duly sworn to testify to the truth.

12 I further certify that I am not a relative or

13 employee of an attorney or counsel of any of the

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

15 counsel involved in said action, nor a person

16 financially interested in the action.

17 IN WITNESS WHEREOF, I have hereunto set my

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

19 Nevada, this 10/10/2017.

20

21

22 Jared Marez Notary

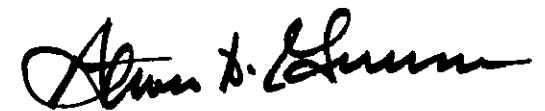
23

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25

A handwritten signature in dark ink, appearing to read 'Jared Marez', is written over a horizontal line. The signature is stylized with a large 'J' and a long, sweeping tail.

EXHIBIT “D”



CLERK OF THE COURT

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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

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

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

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

///

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///

NOTICE OF MOTION

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

Dated: July 25, 2016

Leon Greenberg Professional Corporation

/s/ Leon Greenberg

Leon Greenberg, Esq.

Nevada Bar No. 8094

2965 South Jones Boulevard - Suite E3

Las Vegas, Nevada 89146

(702) 383-6085

Attorney for Plaintiff

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

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

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

21 **SUMMARY OF RELIEF REQUESTED**

22 This motion seeks the following relief:

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

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

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

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

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

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

August 29, 2016

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

August 29, 2016

Motion to Continue Trial

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

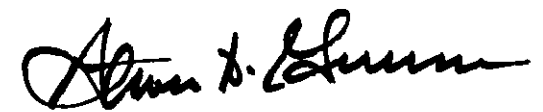
JOURNAL ENTRIES

-COURT ORDERS, Plaintiff's Motion to Continue Trial Date and Extend Discovery Schedule and for Other Relief GRANTED. Mr. Greenberg to prepare the Order.

Counsel are directed to prepare a EDCR 2.35 Stipulation and Order and submit to chambers.

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

EXHIBIT "E"



CLERK OF THE COURT

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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

DEPT.: I

Hearing Date: August 29, 2016

Hearing Time: Chambers

**Order Granting in Part and Denying in Part Plaintiffs' Motion to Continue Trial Date
and Extend Discovery Schedule and for Other Relief**

Plaintiffs' filed their Motion to Continue Trial Date and Extend Discovery Schedule
and for Other Relief on July 25, 2016. Defendants' Response in Opposition was filed on
August 15, 2016. Plaintiffs' Reply in Support of their Motion was filed on August 23, 2016.
This matter, having come before the Court for consideration in chambers on August 29,
2016, and after due consideration of the parties' respective briefs, and all pleadings and
papers on file herein, and good cause appearing, therefore,

1 **THE COURT FINDS:**

2 Plaintiffs' Motion sought a continuation of the current trial date and the discovery
3 schedule by a period of at least 60 days and for as much as 120 days or longer. The
4 Court finds such an extension and continuation is warranted.

5 Plaintiffs' Motion also sought an order deeming it defendants' burden to provide to
6 plaintiffs' counsel the information germane to determining whether, for each payroll period
7 of each class member's claim, the defendants were entitled to pay that class member the
8 "lower tier" (currently \$7.25 per hour) "health benefits provided" minimum wage. This
9 information would include, for each pay period, (1) whether the class member was eligible
10 to enroll in the health insurance benefits provided by defendants; (2) whether the class
11 member was actually in a "covered status," meaning they could actually receive benefits
12 from the health insurance for claims arising during the entire pay period; (3) the nature of
13 such benefits provided to the class member, including coverage limitations, co-pays, and
14 deductible amounts; and (4) the amount the class member had to pay per pay period or
15 month as an insurance premium contribution to receive such health insurance benefits,
16 including the amount they would have to pay not just to secure such insurance for
17 themselves but to obtain such insurance for their spouses and dependents. Plaintiffs
18 argue that if such materials are not provided by defendants for any class member for any
19 time period defendants should be barred from taking advantage of the "lower tier"
20 (currently \$7.25 per hour) "health benefits provided" minimum wage rate available to
21 employers under Nevada's Constitution for that class member and such time period.
22 Essentially, plaintiffs are arguing that the burden of proof relative to this issue under
23 Nevada's Constitution is properly placed upon employers, in this case the defendants.
24
25
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1 Plaintiffs do not cite any precedents holding such a burden of proof is properly placed
2 upon employers in respect to this issue. Nor is the Court aware of any such precedents.

3 The Court declines to address, at this time, whether plaintiffs' burden of proof
4 arguments should be adopted by the Court, which would deny defendants the right to pay
5 the Nevada Constitution's "lower tier" minimum wage rate for any period of time that
6 defendants failed to produce evidence germane to determining whether that "lower tier"
7 rate applied to a class member. But the Court is also concerned that defendants do not
8 seem to appreciate the gravity of the plaintiffs' claims made in this case, in that they arise
9 directly under Nevada's Constitution and the Court must afford them the highest level of
10 legal protection given their constitutional nature. So while the Court wants to move
11 cautiously, and for that reason will not issue the burden of proof ruling sought by the
12 plaintiffs at this time, it is also compelled to caution the defendants that taking a cavalier
13 attitude, or showing a less than grave concern, about the plaintiffs' allegations in this case
14 of a wholesale denial of constitutional rights by the defendants, is extremely unwise.

17 In respect to this portion of plaintiffs' motion, the Court finds that the allegations by
18 the plaintiffs, alleging a violation of their constitutional rights to minimum wage, are indeed
19 claims of a serious nature, and that a careful examination of those serious allegations and
20 the evidence that underlies them must be made by the Court. To the extent that plaintiffs
21 are unable to prove their allegations in the matter because defendants are in sole
22 possession of evidence plaintiffs would utilize, and barring some privilege that protects
23 disclosure of that evidence, it will not do for defendants to simply fail to produce the
24 evidence. In the event that defendants protest that they do not possess such evidence,
25 then it is the proper course for this Court to determine the truth of that position through all
26 means necessary and reasonable. At this time the Court believes it is best to allow
27
28

1 defendants' recently filed Motion for a Protective Order to proceed with the Discovery
2 Commissioner and will echo the request made by defendants in that motion that the
3 Discovery Commissioner give what time she can to the monitoring of the discovery
4 process in this area of controversy. Only after discovery discloses whether the
5 defendants could provide the already ordered discovery will the Court, if it is necessary,
6 reach the merits of plaintiffs' request to shift the burden of proof on this issue and/or take
7 other measures.
8

9 Plaintiffs' Motion also sought an Order granting class certification on the claims
10 made against defendant Nady in the Third and Fourth Claims for Relief in the Second
11 Amended Complaint. Those claims seek to impose liability against Nady based his
12 alleged misuse of the corporate defendant to illegally injure its employees, the class
13 members, and by such illegal actions unjustly enrich himself. The Court finds that those
14 claims asserted against Defendant Nady are completely derivative of the claims against
15 the corporate defendant already certified for class treatment by this Court, in that if the
16 class members were not injured by the corporate defendant they have no claim against
17 Nady. The Court also finds that the allegations upon which Nady's liability are based,
18 which exclusively concern his relationship with the corporate defendant, involve issues of
19 law and fact common to the class members. As a result, since the Court, in its Order
20 entered June 7, 2016, already found that the elements of class certification under Nev. R.
21 Civ. P. 23 have been satisfied in respect to the corporate defendant, the Court finds that
22 class certification of the Third and Fourth Claims for relief against defendant Nady is also
23 proper. Therefore,
24
25

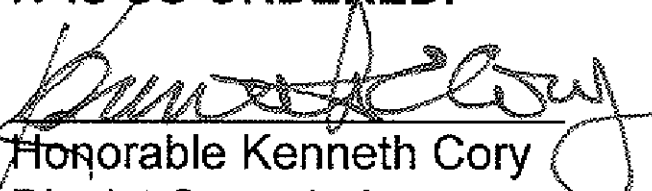
26 **IT IS HEREBY ORDERED** that Plaintiffs' Motion to Continue Trial Date and Extend
27 Discovery Schedule and for Other Relief is **GRANTED** in part and **DENIED** in part.
28

1 Plaintiffs' request to extend the discovery schedule in this matter and continue the trial
2 date is **GRANTED**. Plaintiffs' Motion for Class Certification as to the third and fourth
3 claims for relief is **GRANTED**. Plaintiffs request to shift the evidentiary burden of proof as
4 it relates to applicable minimum wage rate for the certified class of plaintiffs is **DENIED**
5 without prejudice and will, if necessary, be considered again by the Court consistent with
6 this Opinion.
7

8 Trial of this matter is reset to ~~May 3, 2016~~ ^{June 26, 2017} _{see}

9 In respect to continuing to extending the discovery schedule, the parties are
10 instructed to prepare an EDCR 2.35 Stipulation and Order and submit the same to
11 Chambers for approval.
12

13
14 **IT IS SO ORDERED.**

15 
16 Honorable Kenneth Cory
District Court Judge

11-9-16
Date

17
18 Respectfully submitted,

Approved as to Form and Content

19 
20
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EXHIBIT “F”

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

September 05, 2017

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

September 05, 2017 Chambers Motion

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

COURT CLERK: Michele Tucker

JOURNAL ENTRIES

Plaintiffs Motion for Partial Rehearing of Court's Order Entered on July 17, 2017

The Motion will be treated as a Motion to Modify or Clarify the Court's Order entered on July 17, 2017, and to that extent, the Motion is GRANTED to include the following to be inserted in paragraph 5, and after the first sentence:

This conclusion is without prejudice to Plaintiffs, through the use of experts or otherwise, to demonstrate to the court the lack of a genuine issue of fact regarding the calculation of damages.

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

EXHIBIT "G"

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9 Attorneys for Plaintiffs

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

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

15 Plaintiffs,

16 vs.

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

19 Defendants.

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' EIGHTH
SUPPLEMENTAL
DISCLOSURES UNDER NEV. R.
CIV. P. 16.1(a)(1)(C)**

20 Plaintiffs, as and for their compliance with the provisions of Nev. R. Civ. P.
21 16.1(a)(1)(c), hereby provide the following supplemental disclosures:

22 **Computation of Damages - Amounts of Unpaid Minimum Wages Owed to**
23 **Class Members**

24 Plaintiffs provide the following computations of damages owed to all of the
25 identified class members for unpaid minimum wages owed for the time period from
26 October 8, 2010 through December 31, 2015. These computations of damages are
27 subject to further revision based upon information and materials that defendants have
28 been Ordered to provide in this case but have failed to provide. Such revision, and
increase in the computed amount of such damages, will, unless rendered irrelevant by
a future Order of the Court as discussed below, be necessary based upon the identified
marital status of the class members as reported on their W-4 forms. Defendants were,
pursuant to the Court's Order entered on March 9, 2017, to provide that information

AA005228

1 but have not.

2 It is plaintiffs' contention that all class members are entitled to minimum wages
3 at the rate of \$8.25 an hour as defendants have, at all times, failed to provide
4 qualifying health insurance benefits to the class members as specified in Article 15,
5 Section 16, Paragraph "A" of the Nevada Constitution (the Minimum Wage
6 Amendment or "MWA"). Alternatively, plaintiffs contend that defendants must pay
7 the class members such \$8.25 an hour rate as defendants have not complied with the
8 Court's Order entered on March 9, 2017 and/or met their burden of showing they
9 provided qualifying health insurance benefits to any of the class members. Plaintiffs
10 intend to ask the Court to issue an Order confirming that all of the class members for
11 the time period October 8, 2010 to the present have been entitled to an \$8.25 an hour
12 minimum wage based upon either or both of the foregoing contentions.

13 At this time the plaintiffs provide the following computations of unpaid
14 minimum wage damages for the class members, all such computations relying upon
15 the record of wages paid to the class member each pay period that are in the
16 Quickbooks payroll records produced by defendants in discovery:

17
18 Exhibit "A" - This is a computation of the amount of minimum wage damages
19 owed to 583 class members for the time period January 1, 2013 through December 31,
20 2015 based upon the hours of work recorded in defendants' Quickbooks payroll
21 records produced in discovery. Column "D" shows the amount so owed to the class
22 member if only the \$7.25 an hour minimum wage rate is used; Column "E" shows the
23 amount so owed to the class member if only the \$8.25 an hour minimum wage rate is
24 used; Column "F" shows the amount so owed to the class member if the \$8.25 an hour
25 minimum wage rate is used during pay periods when the class member was not yet
26 qualified to participate in defendants' medical insurance program and the \$7.25 an
27 hour minimum wage rate for later pay periods; Column "G" shows the amount so
28 owed to the class member if the \$8.25 an hour minimum wage rate is used during pay