

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 XXVIII 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 XXVIII of LII** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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Dana Sniegocki, Esq.
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Attorneys for Respondents

DATED this 5th day of August, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

1 A: I did read it. And I remember
2 reading it.

3 Q: Okay. Did A Cab make any changes
4 in how it was complying with the minimum wage
5 requirements of the law in between February of 2013
6 and June of 2014?

7 A: I think we were pretty much in
8 compliance then.

9 Q: Are you aware that during that 15-
10 month time period A Cab continued to calculate
11 minimum wages that it paid to taxi drivers including
12 a tip credit?

13 MS. RODRIGUEZ: Objection; assumes
14 facts not in evidence.

15 A: In accordance with the state law,
16 counselor. We paid them in accordance with the state
17 law, and there was no supreme court ruling at the
18 time, and I also spoke with...

19 Q: Mr. Nady...

20 A: No, you cannot interrupt me while
21 I'm answering your question.

22 Q: Mr. Nady, you're not answering my
23 question.

24 A: The end was Keith Sackelhyde, the
25 labor commissioner...

1 **Q: Counsel...**

2 MS. RODRIGUEZ: You have to give him a
3 chance to answer the question.

4 A: ... gave us that idea, so I was doing
5 what I was told by the state. I have authority to do
6 so from them.

7 **Q: That's not my question, Mr. Nady.**

8 MS. RODRIGUEZ: Mr. Greenberg, you have
9 to allow him...

10 **Q: Strike as non-responsive.**

11 MS. RODRIGUEZ: ... to answer the
12 question.

13 A: Oh, Mr. Greenberg, what was your
14 question?

15 **Q: My question again...**

16 A: You want me to answer my question
17 in a certain way to what you want to hear. Mistakes?
18 No. I answered your question.

19 **Q: Mr. Nady, my question was very**
20 **simple. It's a yes or a no answer. Between February**
21 **of 2013 until the Thomas decision was issued in 2014,**
22 **did A Cab for purposes of complying with the minimum**
23 **wage law continue to credit tips that employees**
24 **received against its minimum wage obligation?**

25 A: Yes.

1 Q: Thank you.

2 A: According to the state law, it was
3 legal.

4 Q: The meeting that you referred to
5 with Mr. Sackelhyde, was that after February of 2013?

6 A: I don't recall, as when you asked
7 three times earlier.

8 Q: And were you the one who made the
9 decision to continue to not change A Cab's policies
10 regarding minimum wage compliance until the Thomas
11 decision in 2014?

12 A: I was the one who made the decision
13 to comply with the state law.

14 Q: As you understood it...

15 A: As I understood the state law, as
16 it was written that day.

17 Q: Did you discuss between February of
18 2013 and June of 2014 changing how...

19 A: No.

20 Q: ... A Cab has been in comply with the
21 minimum wage law?

22 A: Whoa.

23 MS. RODRIGUEZ: Objection. Are you
24 talking about... hold on. Are you asking again with
25 counsel?

1 CERTIFICATE OF RECORDER

2 STATE OF NEVADA)

3 COUNTY OF CLARK)

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

5 I, Shaynelle McCalister, a duly commissioned

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

7 certify: That I recorded the taking of the

8 deposition of the witness, Creighton Nady,

9 commencing on 11/22/2016.

10 That prior to being examined the witness was

11 duly sworn to testify to the truth.

12 I further certify that I am not a relative or

13 employee of an attorney or counsel of any of the

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

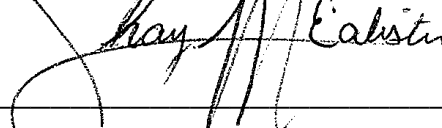
15 counsel involved in said action, nor a person

16 financially interested in the action.

17 IN WITNESS WHEREOF, I have hereunto set my

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

19 Nevada, this 11/22/2016.

20 
21 _____

22 Shaynelle McCalister Notary

23

24

25

EXHIBIT “H”

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4
5 MICHAEL MURRAY, and MICHAEL) Case No.: A-12-669926-C
6 RENO, individually and on) Dept. No.: I
7 Behalf of others similarly)
8 Situated,)
9 Plaintiffs,)
10 vs)
11 A CAB TAXI SERVICE LLC, A CAB,)
12 LLC and CREIGHTON J. NADY,)
13 Defendants.)
14 _____)

15
16
17
18 RECORDED DEPOSITION OF CREIGHTON J. NADY
19 Taken on June 16, 2017
20 At 1:10 p.m.
21 Evolve Downtown
22 400 South 4th Street, 3rd Floor
23 Las Vegas, Nevada 89101
24
25

Evolve Deposition and Trial Services

7473 West Lake Mead Blvd, Suite 100
Las Vegas, Nevada 89128
(Main) 702-421-DEPO (3376)



1 MS. RODRIGUEZ: Objection. Vague and
2 ambiguous.

3 A: That is so vague that I don't know
4 if I can answer that question, Mr. Greenberg. What
5 kind of decisions? I make every kind of decisions
6 that come up.

7 **Q: Well, what type of decisions do you**
8 **not make at A Cab?**

9 A: That's very vague and ambiguous
10 also and I don't think I can answer that by anything
11 that would be a complete answer. What kind of do I
12 not make? I don't make decision what time it is. I
13 don't make a decision as to what other people should
14 wear. I don't make decisions about all sorts of
15 things and I think it's too broad to really be
16 answered correctly.

17 **Q: Well, you make a broad range of**
18 **decisions. Some are more important, more**
19 **significant. Others are less important, less**
20 **significant. Would you agree with that?**

21 A: I agree with that.

22 **Q: Do you think it would be fair to**
23 **say that you're the one who makes the most**
24 **significant decisions about how A Cab runs its**
25 **business?**

1 A: I think that would a be a fair
2 answer most of the time.

3 Q: Well, when you say ``most of the
4 time,`` are there significant decisions that are made
5 at A Cab that you don't make?

6 A: I'm sure that there are some.

7 Q: Could you tell me what they would
8 be?

9 A: I don't know because I'm not there.

10 Q: Well, is there anyone at A Cab who
11 can overrule a decision that you make?

12 A: I don't believe so, no.

13 Q: Who makes the decisions at A Cab
14 about how taxi drivers are paid? By that, I mean how
15 much they are paid?

16 A: I do.

17 Q: And who's responsible at A Cab for
18 seeing that the taxi drivers are paid at least the
19 legally required minimum wage?

20 A: I am. So are we going now on a
21 personal basis or questions about the company, Mr.
22 Greenberg?

23 Q: Do you review and approve the
24 procedures A Cab has used to be sure that its taxi
25 drivers are paid at least the legally required

1 minimum wage?

2 A: I do.

3 Q: Does A Cab use the same minimum
4 hourly wage rate for all taxi drivers to determine if
5 they are being paid at least the minimum wage?

6 A: No.

7 Q: What minimum wage rates does it use
8 if it uses more than one wage rate?

9 A: Ask the question again please.

10 Q: My original question, Mr. Nady, was
11 does A Cab when determining whether a taxi driver or
12 all the taxi drivers have been paid the proper
13 minimum wage use a single hourly rate to make that
14 determination or they use different hourly rates for
15 different taxi drivers?

16 MS. RODRIGUEZ: And for clarification,
17 you're talking currently, right? This is in the
18 present stance?

19 Q: At the current time, yes.

20 A: No.

21 Q: What hourly rates does it use at
22 the current time to determine if taxi drivers are
23 being paid proper minimum wages?

24 A: That's a complex question. Ask
25 that again and I'll tell you why it's a bit

1 **this case.**

2 MS. RODRIGUEZ: That`s not what you
3 said in your question.

4 **Q: Mr. Nady, there is a corporate**
5 **defendant that is named a LLC defendant. A single**
6 **identified entity that is identified by name in this**
7 **case as defendant. You are aware of that?**

8 MS. RODRIGUEZ: And that, I`m going to
9 object that that misstates the record.

10 **Q: Are you aware of that, Mr. Nady?**

11 A: I forgot the question.

12 **Q: Mr. Nady, are you aware that A Cab**
13 **LLC is named as a defendant in this case?**

14 A: I think it is.

15 **Q: And if a judgment in this case is**
16 **rendered against A Cab LLC, do you believe that the**
17 **various assets that are titled to the cells you`ve**
18 **described such as the 102 vehicles, each of which is**
19 **titled to a separate cell, will be subject to that**
20 **judgment?**

21 MS. RODRIGUEZ: Objection. Calls for a
22 legal conclusion.

23 A: It sure does.

24 **Q: Mr. Nady, you need to answer my**
25 **question as to your belief. I`m not asking you to**

1 tell me what the law is. What do you believe will
2 happen in that situation?

3 MS. RODRIGUEZ: Same objection.

4 A: I think you've sued the wrong
5 entities, Mr. Greenberg.

6 Q: And I've sued the wrong entities
7 because?

8 A: I don't know why you did it.

9 MS. RODRIGUEZ: Object to the form of
10 the question.

11 Q: Okay.

12 A: You did it because you don't know
13 what an LLC is, that's why.

14 Q: Okay. What would be the right
15 entities to sue, Mr. Nady?

16 A: I wouldn't want to give you legal
17 advice, Mr. Greenberg.

18 Q: Well, you say you believe that the
19 wrong entities are sued. Is that because a judgment
20 against A Cab LLC in this case will not be
21 enforceable against the property of the cells you've
22 described such as the 102 cars?

23 MS. RODRIGUEZ: Objection. Calls for a
24 legal conclusion, and calls for speculation, and
25 lacks foundation.

1 A: Should I answer it?

2 Q: You need to answer the question,
3 Mr. Nady.

4 A: Yeah, that's what I think.

5 Q: Has the cell that is the Employee
6 Leasing Company you described changed over time?

7 A: Yes.

8 Q: When?

9 A: I don't recall when, Mr. Greenberg.

10 Q: What were the names that were used
11 for the Employee Leasing Company's cell?

12 A: I think we had Employee Leasing
13 Company and then Employee Leasing Company II... I
14 think we've got three of them over the years.

15 Q: And why did the name change?

16 A: To a legal advice.

17 Q: And what was that legal advice?

18 MS. RODRIGUEZ: Objection. Calls for
19 attorney-client information.

20 A: Mr. Greenberg, I don't think that I
21 have to give you my legal advice.

22 Q: I just want to be clear on the
23 record, counsel, he --

24 A: I'm invoking my legal counsel.

25 Q: Okay. The witness is invoking an

1 a defendant. I think I became a defendant after they
2 sued me, my company.

3 Q: Okay. I think I gave you the wrong

4 --

5 MS. RODRIGUEZ: Is that the wrong one.

6 Q: -- the wrong document. I think

7 this is --

8 MS. RODRIGUEZ: Okay. Well, I wrote on
9 that one. Sorry.

10 Q: This is what I`m supposed to be
11 giving you. Counsel, the witness. Okay.

12 MS. RODRIGUEZ: Did you mark the right
13 one then? This is number four?

14 Q: Yeah, it`s number four.

15 MS. RODRIGUEZ: It`s the stipulation in
16 order to file a first amended complaint, okay.

17 A: Holding back again. Go ahead.

18 MS. RODRIGUEZ: Can we take a quick
19 bathroom break here?

20 Q: It`s fine.

21 MS. RODRIGUEZ: All right. Thank you.

22 Q: Let`s go off the record. We can
23 take a break.

24 MR. HELLMAN: We`re going off the
25 record in the matter of Michael Murray versus A Cab

1 Taxi. The time is 3:25 p.m. We're going back on the
2 record in the matter of Michael Murray versus A Cab
3 Taxi. The time is 3:27. Just a point of
4 clarification, we went off the record at 3:21 p.m.,
5 not 3:25. Please proceed.

6 Q: Mr. Nady, who is your business
7 lawyer?

8 A: For what type of advice?

9 Q: For advices to how you should
10 organize your businesses. I'm not talking about
11 anyone who represents you in an actual court case,
12 sir. I'm talking about people you would consult
13 about something for your business, not litigation.

14 A: I suppose I have four or five other
15 lawyers that I pay.

16 Q: Can you identify them?

17 A: Bill Crane, Gretchen Jacobs, Dan
18 Migliore, Steve Oshins, probably a couple others that
19 I can't recall at the time.

20 Q: And you do not have to answer this
21 question if you do not wish to, I understand, but I'm
22 not going to ask it anyway. You tell me that you're
23 refusing based on privilege, that's fine. Did you
24 seek advice from any of those lawyers about how A
25 Cab's business should be changed in terms of its

1 legal structure after this lawsuit was started?

2 MS. RODRIGUEZ: I think I'm going to
3 object based on the guidance provided by the
4 discovery commissioner.

5 Q: The objection is fine. I just want
6 it to come from the witness, counsel.

7 A: Are you asking me if I sought legal
8 counsel after?

9 Q: From any of the business lawyers
10 you identified, did you seek advice from them about
11 changing the legal structure --

12 A: About the changing the structure?

13 Q: Yes.

14 MS. RODRIGUEZ: Hold on. Let him
15 finish his question.

16 Q: Of changing the structure. For
17 instance, you mentioned A Cab at one time was a one-
18 person LLC. It became a Series LLC. Changing the
19 legal structure of A Cab after this lawsuit was
20 started and in response to this lawsuit.

21 MS. RODRIGUEZ: Same objection based on
22 the guidance provided by the discovery commissioner
23 in our conference.

24 A: I'll invoke the privilege there.

25 Q: Okay. The privilege has been

1 CERTIFICATE OF RECORDER

2 STATE OF NEVADA)

3 COUNTY OF CLARK)

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

5I, Peter Hellman, a duly commissioned

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

7 certify: That I recorded the taking of the

8 deposition of the witness, Creighton Nday,

9 commencing on 06/16/2017.

10That prior to being examined the witness was

11 duly sworn to testify to the truth. That I thereafter

12 transcribed or supervised transcription from Recorded

13 Audio-and-Visual Record and said deposition is a complete,

14 true and accurate transcription.

15I further certify that I am not a relative or

16 employee of an attorney or counsel of any of the

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

18 counsel involved in said action, nor a person

19 financially interested in the action.

20IN WITNESS WHEREOF, I have hereunto set my

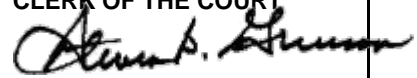
21 hand in my office in the County of Clark, State of

22 Nevada, this 06/16/2017.

23

24_____

25Peter J. Hellman Notary (12-9031-1)



TRAN

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

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

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE
THURSDAY, DECEMBER 14, 2017

TRANSCRIPT RE:
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION
TO PLACE EVIDENTIARY BURDEN ON DEFENDANTS TO ESTABLISH
LOWER TIER MINIMUM WAGE AND DECLARE NAC 608.102(2)(b) INVALID

APPEARANCES:

For the Plaintiffs: LEON GREENBERG, ESQ.

For the Defendants: ESTHER C. RODRIGUEZ, ESQ.

ALSO PRESENT: CREIGHTON J. NADY

RECORDED BY: Patricia Slattery, Court Recorder

AA005451

1 LAS VEGAS, NEVADA, THURSDAY, DECEMBER 14, 2017, 9:12 A.M.

2 * * * * *

3 THE CLERK: Michael Murray versus A Cab Taxi Service. Case Number
4 A669926.

5 THE COURT: Good morning.

6 MS. RODRIGUEZ: Good morning, Your Honor.

7 THE COURT: Do you want to enter your appearances?

8 MS. RODRIGUEZ: Esther Rodriguez for the defendants, present with
9 Creighton J. Nady, owner of A Cab.

10 THE COURT: Good morning.

11 MR. GREENBERG: Leon Greenberg for plaintiff, Your Honor.

12 THE COURT: Good morning.

13 We have the three motions to deal with here. I think what would be
14 helpful to me, while there is some inter-operability of these motions, it would make
15 the most sense to me if we argue them separately. So I would propose to give each
16 side ten minutes -- ten minutes to argue, ten minutes opposition and five minutes
17 for reply to each of the three motions. How does that strike you?

18 MR. GREENBERG: That's fine, Your Honor. I am a little confused when
19 you mention three motions. What are those identified as, Your Honor?

20 THE COURT: Well, three issues.

21 MR. GREENBERG: Three issues. Okay.

22 MS. RODRIGUEZ: I'm the same way.

23 MR. GREENBERG: Well, it's true, I did present a motion to the Court
24 addressing different issues. That is true, Your Honor.

1 THE COURT: Yeah. Yeah. The motion for partial summary judgment,
2 then the motion to shift the evidentiary burden and then the motion to declare
3 NAC 608.102(2)(b) invalid.

4 MR. GREENBERG: Yes, Your Honor. And if that's how the Court would
5 like to proceed, that's fine. I think, you know, ten minutes --

6 THE COURT: It's not mandatory to take the ten minutes.

7 MR. GREENBERG: I understand, Your Honor.

8 THE COURT: What I don't want to happen is for us to get carried away
9 in any way that we don't wind up getting done in the allotted time here.

10 MR. GREENBERG: I understand, Your Honor. And I would just ask the
11 Court, first of all, do you prefer to have these issues addressed in any particular
12 order? We have three issues to address.

13 THE COURT: I would think just the way they were presented in your motion.

14 MR. GREENBERG: Yes, Your Honor.

15 THE COURT: However, if you have a preference --

16 MR. GREENBERG: No, Your Honor.

17 THE COURT: -- I don't think it matters.

18 MR. GREENBERG: I would address the request for partial summary
19 judgment first, Your Honor.

20 THE COURT: Okay.

21 MR. GREENBERG: And in respect to that motion -- that issue and the other
22 issues, I really view my presence here as of course to assist the Court as its servant.
23 And I really tried very hard and I apologize for the length, to some extent, of the
24 submission.

1 THE COURT: Uh-huh.

2 MR. GREENBERG: It is longer than I would desire and it takes a long time
3 probably to read through it and understand it, Your Honor. But I'd really like to focus
4 on answering the Court's questions if it has any questions. I don't really want to just
5 recite everything that's in the submission.

6 THE COURT: Uh-huh.

7 MR. GREENBERG: I can summarize it a little bit. But I would like to begin
8 by asking the Court if there's any particular questions that come to the Court's mind
9 that I could assist with.

10 THE COURT: Yeah. No, there is not; not that sticks out. But I think if you
11 at least summarize your motion there may -- we may come up with some question.

12 MR. GREENBERG: Okay. Well, Your Honor, in respect to the partial
13 summary judgment -- and this goes to the nature of a claim for minimum wages.
14 When we're looking at a claim for minimum wages, we're looking at three factual
15 issues. Everything else flows as a matter of law from the determination of what
16 those three factual issues are. And what I mean as a matter of law, I mean as a
17 matter of legally imposed arithmetical calculations, which is we need to know how
18 much was the employee paid during the relevant pay period, a week, two weeks,
19 how many hours did he work during that pay period for that compensation and what
20 was the minimum wage rate that was applied. Those are the three facts we need
21 to know. Once we know those facts it's a matter of law whether the individual was
22 paid enough to meet the minimum wage requirement or he wasn't paid enough to
23 meet the minimum wage requirement. So it's really a very straightforward sort of
24 limited universe of facts we're looking at here.

1 And as I tried to emphasize to the Court in the submissions, there is
2 no dispute by plaintiffs in respect to what they were paid. We are a hundred percent
3 relying on the defendants' payroll records. The defendants kept these QuickBook
4 records which indicated the nature of what they paid the individuals. In their
5 submissions to the Court they have not disputed that those records contain the
6 correct amounts that the plaintiffs were paid. It's not a question of the plaintiffs
7 saying we never got this money or the defendants saying, well, no, we actually
8 paid these people more than what's in the records, so that issue is not disputed
9 factually between the parties.

10 So the remaining issue, if we set aside the tier issue, there is this
11 7.25, 8.25 tier issue, if we set that issue aside initially at least and we just look at the
12 lower tier, which of course must apply, the only remaining issue in dispute is how
13 many hours these individuals worked in exchange for the wages that they received,
14 which the parties agree are in the QuickBooks records.

15 Now, the partial summary judgment motion is limited to this very set
16 three year period where the defendants have gone on the record through their
17 deposition testimony, which they have not disputed in their submissions to the
18 Court -- not that they could at this point, Your Honor -- that those payroll records,
19 those QuickBook records contain an accurate statement of the hours each of these
20 individuals worked in exchange for the wages they received in each of those pay
21 periods. That is this minimum wage adjustment QTY number that is indicated in
22 each pay period in the QuickBooks records.

23 So, in connection with the motion, Your Honor, we have 14,200 pay
24 periods that we have assembled the information from the QuickBooks records the

1 total wages paid each pay period. We've taken the hours that those same records
2 indicate the individual worked in that pay period and we've divided the hours into the
3 wages. If that equals at least 7.25 an hour for that pay period, the individual is owed
4 nothing. If it is less than 7.25 an hour, we've calculated the deficiency for the pay
5 period. This has been done for 14,200 pay periods using a spreadsheet. That is
6 the 2013-2015 payroll analysis file, which I did provide a copy to Your Honor and
7 perhaps Your Honor has tried to examine that yourself.

8 So there is no factual dispute here, Your Honor, because, again, we
9 have amounts paid that everybody agrees were paid. We have hours worked that
10 defendants insist are correct that were in those QuickBooks records. And we have
11 an arithmetical computation which is the one that has to be performed as a matter
12 of law. So the only potential issue the defendants could raise, since they're not
13 disputing the accuracy of their own records, the other possible issue they could raise
14 is that there is some flaw in the computational process that I have presented to the
15 Court in that spreadsheet. They do not in fact point to any flaw in their opposition.
16 They make various assertions that, well, we think that plaintiffs' counsel may have
17 manipulated these numbers. They seem to make a representation that somehow
18 they have an expert who is going to dispute the accuracy of the calculations.

19 And then they -- unfortunately, they vary off into a bunch of other
20 issues which could be germane to this litigation but have nothing to do with the
21 partial summary judgment motion because we have other time periods, we have
22 other data that the parties dispute, such as what they call dispatch records, which
23 are these cab manager records. It's sort of an in and out system. And we have this
24 question of, well, can we assume that there was a certain amount of time everybody

1 worked each pay period, which you have a motion for bifurcation. And I'm not going
2 to address that because the Court isn't asking to address it, but we're asking the
3 Court to consider that as a trial issue. But that has nothing to do with this motion,
4 Your Honor. This motion is strictly based upon the defendants' records, which they
5 have affirmed and sworn are in fact correct. And if they can't point to some error
6 in the calculation process here that we've presented to the Court -- and they've had
7 the opportunity to do it. Their expert, in fact, confirms -- he says the math is good.
8 He vouched for Dr. Clauretie's review of the spreadsheet. I mean, this is discussed
9 in the reply, Your Honor, which hopefully Your Honor has had an opportunity to
10 review.

11 What I want to point out, and this was not emphasized in the briefings,
12 Your Honor, but I think it would be helpful for the Court to understand, this was just
13 discussed at footnote 1 on page 9, which is that -- of the reply, Your Honor -- which
14 is that when you look at the actual example I gave Your Honor of the paystub, to
15 illustrate in sort of a non-paper, real world type of analysis if we went through this
16 step by step without relying on a formula calculation, the amount that is owed for
17 that pay period is in fact identical to the tip supplemental amount, okay, because
18 what was going on here, when we look at the 7.25 an hour deficiency, defendants
19 were creating records, a payroll system that demonstrated compliance with the
20 federal minimum wage standard because under the federal minimum wage
21 standard they can take those tips, they can apply them to their 7.25 an hour liability.

22 THE COURT: Uh-huh.

23 MR. GREENBERG: As Your Honor probably recalls, there was separate
24 litigation involving the United States Department of Labor. There was a consent

1 order entered in this case. And so the defendants adopted, quite sensibly,
2 procedures to comply with what the U.S. Department of Labor was asking of
3 them. The problem for defendants is that those procedures didn't comply with
4 Nevada law because Nevada law doesn't allow a tip credit.

5 So when we talk about this deficiency, it really results from this issue
6 when we talk at the 7.25 an hour rate. When we talk about the 8.25 an hour rate,
7 they were never looking to comply with the 8.25 an hour rate, so that involves
8 different issues. I did not put in the record here, I certainly could provide it to Your
9 Honor if Your Honor wanted it in a supplement, but there was deposition testimony
10 about this issue by Mr. Nady --

11 THE COURT: Uh-huh.

12 MR. GREENBERG: -- and he conceded that, yes, that was what was going
13 on, that they were taking the tips and applying them to the minimum wage and using
14 that to create their compliance that they were using, which is reflected in these
15 payroll records from 2013 through 2015. Now, that problem disappears after June
16 of 2014 because we have the decision from the Nevada Supreme Court and the
17 defendants at that point, even though Your Honor had ruled 15 months earlier on
18 the issue, defendants at that point elected to no longer give themselves the tip credit
19 and fully complied with the 7.25 an hour standard under State law.

20 I haven't gone quite ten minutes, Your Honor, but I don't really want
21 to take up your time unnecessarily. I think Your Honor understands the issues.

22 THE COURT: Uh-huh. Okay.

23 MR. GREENBERG: And if there's something further that would be helpful
24 for me to explain or emphasize to the Court --

1 THE COURT: Not at this point. Not at this point.

2 MR. GREENBERG: Thank you, Your Honor.

3 THE COURT: All right. Ms. Rodriguez.

4 MS. RODRIGUEZ: Good morning, Your Honor. Thank you.

5 THE COURT: Good morning.

6 MS. RODRIGUEZ: As I indicated in the briefs our primary opposition to this,
7 and I mentioned this when I asked for a continuance of this particular hearing to
8 hear -- for the Court to hear it after the motions in limine were heard, is that the
9 entirety of Mr. Greenberg's motion is based on unreliable and inadmissible
10 evidence. And the Court the last time we were here indicated that that was one
11 of the first things that you wanted to address was whether a summary judgment
12 had to be based on admissible evidence. And so I did do some further research
13 on that and I would point the Court to Rule 56(e), which specifically addresses that
14 the evidence must be admissible. It says: "Supporting and opposing affidavits shall
15 be made on personal knowledge, shall set forth such facts as would be admissible
16 in evidence and shall show affirmatively that the affiant is competent to testify to
17 the matters stated therein."

18 I did some further research on this to find a couple of cases that
19 are right on point, and I have copies for the Court, that says -- that stand for the
20 proposition that evidence introduced in support of a motion for summary judgment
21 must be admissible evidence. And that's the Collins v. Union Federal Savings &
22 Loan Association case, 99 Nev. 284, a 1983 case.

23 THE COURT: Well, if you've got new cases that I haven't considered before,
24 then I need -- I would have to have something, you know, with a written -- with the

1 citation written out so that we can look at it.

2 MS. RODRIGUEZ: I have copies of it for Your Honor. I just want to put
3 them on the record. And the Henry Products, Inc. v. Tarmu case. I have copies
4 for the Court, as well as for Mr. Greenberg. But that was one of the questions that
5 Your Honor asked just a couple weeks ago when we were here when I asked for
6 the continuance due to being out of the country and Mr. Wall's absence as well.
7 So I did go back to verify the Court's question and the case law is clear that the
8 evidence has to be admissible. And our opposition is that --

9 THE COURT: Where is the plaintiffs' motion deficient in that?

10 MS. RODRIGUEZ: Well, the first part that -- asking for the motion for partial
11 summary judgment on the 176,000 range --

12 THE COURT: Uh-huh.

13 MS. RODRIGUEZ: -- what he is depending upon is the same motion that
14 was brought, I believe in May, and at that time Your Honor said, well, you need
15 expert witnesses to support this type of claim. And so now he's basically brought
16 the same motion again with the experts rubber-stamping his prior numbers. And
17 I will be filing motions in limine --

18 THE COURT: If they agree, what's wrong with that?

19 MS. RODRIGUEZ: I'm sorry?

20 THE COURT: If the experts agree, if that is their opinion --

21 MS. RODRIGUEZ: Well, several things.

22 THE COURT: -- what's wrong with that?

23 MS. RODRIGUEZ: One, one of the experts says he's not rendering opinions,
24 it's not his opinion, it's what Mr. Greenberg instructed him to do. That's Charles

1 Bass. The second expert comes in, Terrence Clauretie, and says, well, I've looked
2 at the math that Mr. Bass did and it looks right to me. So these are not expert
3 opinions. These are not experts that will qualify under the Hallmark v. Eldridge
4 case. And as I mentioned, Your Honor, I think it's going to be very clear that these
5 experts are not appropriate. They don't qualify under the case law or under the
6 rules and they should be stricken. So, first of all, the Court needs to consider
7 whether these expert reports and these expert opinions are even going to come in
8 in the first place --

9 THE COURT: Uh-huh.

10 MS. RODRIGUEZ: -- because if they're not admissible, then there is
11 absolutely nothing to support Mr. Greenberg's motion for partial summary judgment.

12 THE COURT: So that the -- so that then the calculation of damages would
13 be in question --

14 MS. RODRIGUEZ: Absolutely.

15 THE COURT: -- all the way through it?

16 MS. RODRIGUEZ: Absolutely. First of all, the experts indicated that they
17 were not calculating actual damages, they were only calculating estimates. And
18 Mr. Greenberg indicated that -- kind of that we were thinking about getting this
19 expert to oppose their expert opinions. We're not thinking about it. There is
20 absolutely an expert report and he's taken the deposition of Mr. Scott Leslie, who
21 is the only CPA in this matter, who did a thorough report. It's about 35 pages long.
22 I brought it with me in case the Court wants it. But Mr. Leslie is going to testify
23 and he has submitted an expert report outlining the problem with the methodology
24 and with the tool that they are relying upon in proposing this number.

1 THE COURT: Did you say he's going to submit an expert report?

2 MS. RODRIGUEZ: No, no, Your Honor.

3 THE COURT: Oh.

4 MS. RODRIGUEZ: We timely submitted it with the Court's deadline.

5 THE COURT: Okay.

6 MS. RODRIGUEZ: No. No.

7 THE COURT: Okay.

8 MS. RODRIGUEZ: And Mr. Greenberg has already taken his deposition.

9 THE COURT: All right.

10 MS. RODRIGUEZ: So, Mr. Leslie went through and said there's a number
11 of problems with this methodology. And he's the only one that actually pulled the
12 paystubs, pulled the trip sheets, pulled examples of what Charles Bass did and
13 said, look, these don't add up, these numbers are wrong.

14 So his motion to the Court --

15 THE COURT: You know that a lot of what the plaintiff says is you're going
16 behind your own QuickBooks, which you've represented are accurate.

17 MS. RODRIGUEZ: Well, that's incorrect --

18 THE COURT: Okay.

19 MS. RODRIGUEZ: -- because what Mr. Greenberg is representing to the
20 Court is that this is actual data from the defendant, and what it actually is is his
21 interpretation of the data. And that's why Mr. Leslie looked at it and said, no, you
22 can't manipulate the data this way, because if you look at the actual trip sheets and
23 you look at the actual paystubs, the numbers don't add up; here's some examples
24 of why they don't add up. And each of these experts as well, Dr. Clauretie and

1 Mr. Bass, indicated --

2 THE COURT: That seems to me to be another way of saying that no
3 fact-finder can rely upon the QuickBooks.

4 MS. RODRIGUEZ: No.

5 THE COURT: No?

6 MS. RODRIGUEZ: You can rely upon the QuickBooks, but not select
7 portions.

8 THE COURT: Not select portions.

9 MS. RODRIGUEZ: You can't just not even consider breaks, for example.
10 You cannot not consider the time that a driver was a road supervisor being paid
11 \$15 an hour. You can't just ignore drivers that were in fact paid in full minimum
12 wage. With his table --

13 THE COURT: And all of that is reflected within the QuickBooks?

14 MS. RODRIGUEZ: No, Your Honor.

15 THE COURT: It's not?

16 MS. RODRIGUEZ: Parts of it are. But you would have to take that in
17 conjunction with the trip sheets. You would have to --

18 THE COURT: So what I hear you saying is that you really can't calculate
19 what the appropriate payment should have been --

20 MS. RODRIGUEZ: Right.

21 THE COURT: -- by looking at the QuickBooks?

22 MS. RODRIGUEZ: Correct. And this is something that has been represented
23 to the Discovery Commissioner for three years now, that what Mr. Greenberg was
24 attempting to do to try to get -- let me back up and be clear that we were always

1 willing to turn over the records that are kept in the normal business course.

2 THE COURT: Uh-huh.

3 MS. RODRIGUEZ: What Mr. Greenberg has insisted throughout the course
4 of discovery is that there be some type of download into an Excel spreadsheet,
5 and so we did have to hire people to figure out how to do this, to download portions
6 of the data. Then he's taken that data, select portions, ignored other portions, and
7 then come up with this tool from Mr. Bass to now say, well, this automatically will
8 calculate minimum wage. Well, it doesn't. And our expert went through and said
9 this is why it doesn't. And each of his experts, when I deposed them, when I asked
10 them are you calculating actual damages, they said no, this is estimates and this
11 is taking into consideration a lot of assumptions, an assumption that drivers are
12 working certain amounts of shifts, certain amounts of hours, certain breaks. They're
13 taking in a lot of assumptions.

14 And so whether that evidence is even admissible is the first question,
15 but secondly we should have an opportunity if that's the dispute, that they're saying
16 our method is reliable and we're saying no, it's not reliable, that clearly is a question
17 of fact. So that's why I argued that it's not appropriate for summary judgment and
18 the Court at the minimum should entertain the motions in limine concerning the
19 experts so that the Court will have an understanding as to why these expert opinions
20 and their expert reports are not reliable. Those have not been set by the Court.
21 I anticipate they will be set sometime in January because the deadline for filing the
22 motions in limine are December 28th.

23 Let me just check on -- there's a couple of other things I just wanted
24 to mention on the summary judgment. We did argue that the time period that he's

1 asking for as well, the 2013 through the 2015, he does not have a representative
2 plaintiff for that time period. He's only got Michael Sergeant, who worked a two
3 month time period within that, so I think the Court needs to consider that as well.
4 And then --

5 THE COURT: And what should be the effect of that then?

6 MS. RODRIGUEZ: Well, he has to have a representative plaintiff and --

7 THE COURT: So therefore -- therefore what should --

8 MS. RODRIGUEZ: It should -- the motion should be denied on that, Your
9 Honor.

10 THE COURT: On that basis.

11 MS. RODRIGUEZ: His primary plaintiffs, Mr. Murray and Mr. Reno, were
12 gone by 2012; 2011, I believe.

13 THE COURT: Uh-huh.

14 MS. RODRIGUEZ: And here Mr. Greenberg is asking for 2013 through 2015.

15 THE COURT: Okay.

16 MS. RODRIGUEZ: Oh. So, Your Honor, may I submit these to the Court?
17 I do have copies for Mr. Greenberg as well.

18 THE COURT: Yes. Are those the cases?

19 MS. RODRIGUEZ: It's the Collins case --

20 THE COURT: Are those the cases?

21 MS. RODRIGUEZ: Yes, Your Honor.

22 THE COURT: Yes. Yes, we'll take that. And then that concludes your
23 ten minutes.

24 MS. RODRIGUEZ: Thank you, Your Honor.

1 THE COURT: Except I have one further question. When you say -- so it's
2 not that you're saying the QuickBooks are not admissible, you're saying that you
3 have to have more information in order to come up with an accurate calculation?

4 MS. RODRIGUEZ: Absolutely. I'm not -- I hadn't contemplated a motion
5 in limine on the QuickBooks.

6 THE COURT: Yeah. Okay.

7 MS. RODRIGUEZ: No, the QuickBooks in and of itself, I'm not sure Mr.
8 Greenberg has produced the entirety of the QuickBooks in his tool. Again, he's just
9 picked certain portions to use in that, and that's what his experts have conceded to.

10 THE COURT: Okay. All right, back to you, Mr. Greenberg, for five minutes.

11 MR. GREENBERG: Your Honor, what defendants are saying about the
12 need for summary judgment to be based on admissible evidence, I don't dispute
13 that, okay. But the evidence here, again, is defendants' records, okay.

14 THE COURT: Uh-huh.

15 MR. GREENBERG: In my declaration in support in paragraph 2, I identify
16 the precise files that were given to me by defendants. They were given to Mr. Bass
17 to do his technical analysis, which he did. He processed the data into the 2013-
18 2015 --

19 THE COURT: Are you saying that you made a specific request for any data
20 that the defendants relied on to dispute your calculation and they only gave you the
21 QuickBooks? Is that what you're saying?

22 MR. GREENBERG: Your Honor, the QuickBooks records are the records
23 for this time period, 2013-2015. For the purposes of this motion they contain both
24 what the class members were paid --

1 THE COURT: Okay.

2 MR. GREENBERG: -- and how many hours they worked.

3 THE COURT: Okay.

4 MR. GREENBERG: So, defendants produced QuickBooks data for a much
5 longer period, but we're only talking about the 2013 to 2015 period here, okay.

6 THE COURT: Uh-huh.

7 MR. GREENBERG: Those original files were given to me. There were two
8 very large data files given to me. I gave them to Mr. Bass in the same form. This
9 is in the record before the proceedings in paragraph 2 of my declaration. Mr. Bass
10 has a declaration which was previously before the Court. It's incorporated into
11 Dr. Clauretie's report where he acknowledges receiving those two files and explains
12 the process he went through to put that information together.

13 THE COURT: Are you saying that they did not assert that the QuickBooks
14 alone would not be sufficient to do the calculation until some later period?

15 MR. GREENBERG: They are coming in in opposition to this motion in oral
16 argument right now making that assertion to Your Honor, but they provide absolutely
17 nothing to support that assertion. They've had the analysis that was done.

18 THE COURT: Uh-huh.

19 MR. GREENBERG: In their opposition they do not point to an error in a
20 single line. They have the original QuickBooks data. If we assembled that data
21 in some improper, manipulative form which is going to create improper results --
22 let's say we processed the data so that it would show people were paid less in a
23 pay period than what's actually in the QuickBooks records. Well, that would tend
24 to inflate the minimum wages that someone was owed if they were paid less; right?

1 They haven't pointed to any such manipulation or error in the 14,200 payroll periods
2 that have been analyzed in the spreadsheet. They don't point to any error, Your
3 Honor, in anything.

4 Now, in terms of how the experts relied -- they made assumptions.
5 There were two assumptions that the experts made, that Mr. Bass made and
6 that Dr. Clauretie discusses in his report in respect to their processing of the
7 QuickBooks data. They assumed that that intersection of the QTY, minimum wage
8 adjustment number, there's a number that goes in there, is the hours worked. And
9 that is based upon defendants' testimony at their deposition, that that was how they
10 recorded the hours the individual worked for the pay period.

11 THE COURT: Uh-huh.

12 MR. GREENBERG: The other assumption is that they took -- they excluded
13 the tip supplemental amount as tips, so they took that out of the pay period
14 compensation. But Dr. Clauretie, in his report he spent about 20 pages in his report
15 specifically going through every step that was performed by Mr. Bass in taking the
16 raw data that was given to us, the raw QuickBooks data, and placing it into that
17 spreadsheet upon which we base the partial summary judgment calculations, Your
18 Honor. He vets that every single element of that process was performed correctly.
19 The other -- and those are the only --

20 THE COURT: And you're also saying that their opposition does not present
21 any either evidence or I suppose opinion evidence that it's -- that that is not a sound
22 basis to calculate the damages?

23 MR. GREENBERG: Your Honor --

24 THE COURT: Is that what you're saying?

1 MR. GREENBERG: Their expert disputes -- what defendants are saying, and
2 I think Your Honor latched onto this, all their expert is saying that they're pointing to
3 is that we can't rely on anything but the trip sheets, okay. Their expert engaged in
4 a review of a bunch of trip sheets, came up with certain calculations. He says you
5 can't assume a constant 11 hours per shift, that would be improper to calculate
6 damages, so forth and so on. That has nothing to do with this motion. Their expert
7 does not offer any opinion about the 2013 to 2015 --

8 THE COURT: Well, why does that have nothing to do with the motion if it
9 says that -- essentially that he disputes that the opinion evidence based on the
10 QuickBooks from the plaintiffs' side presents the appropriate calculation? Why
11 does that not create an issue of fact?

12 MR. GREENBERG: Because he doesn't dispute the analysis of the payroll
13 records for 2013 to 2015 is arithmetically correct. We have his deposition testimony
14 where he was specifically asked, okay, and this is discussed in the reply, you have
15 the excerpts --

16 THE COURT: Uh-huh.

17 MR. GREENBERG: -- where he was specifically asked whether these
18 calculations were correct. And he states -- this is at page 10 of -- at page 10 and
19 page 11. He says I think the math works. The math foots through.

20 THE COURT: Uh-huh.

21 MR. GREENBERG: He also stated: "Dr. Clauretie's review of the math I think
22 is good." Okay. He was not -- what Mr. Leslie says is that -- he says nothing about
23 the 2013 to 2015 payroll period records. He did a review of the trip sheets.

24 THE COURT: Uh-huh.

1 MR. GREENBERG: He comes up with some different findings based on the
2 trip sheets. But the point, Your Honor, is that the defendants -- and this again is
3 discussed in the reply and this is at page 5 -- the defendants have affirmed under
4 oath at their deposition that for this time period, 2013 to 2015, the QuickBooks hours
5 of work record is more accurate than the trip sheets --

6 THE COURT: Okay.

7 MR. GREENBERG: -- because we added in additional time.

8 THE COURT: Okay.

9 MR. GREENBERG: So for this limited piece of the situation we're looking at,
10 the 2013-2015 period based strictly on the QuickBooks records, the defendants have
11 sworn that the hours in those records are accurate. They've already affirmed that.
12 So the fact that Leslie has gone and looked at trip sheets and has drawn various
13 conclusions about them has nothing to do with this partial summary judgment motion.

14 THE COURT: Okay.

15 MR. GREENBERG: And then when you start talking about other time periods
16 or other assumptions --

17 THE COURT: Because you're asking for partial summary judgment that does
18 not represent the final calculation. Is that right?

19 MR. GREENBERG: Well, that's correct, Your Honor. We're going to have
20 issues to try here. We're going to have issues to try as to the time period before
21 2013. We're going to have an issue to try as to whether those payroll records
22 understated the hours worked for 2013 to 2015.

23 THE COURT: When you say payroll records, are you talking about the
24 QuickBooks?

1 MR. GREENBERG: I'm talking about the QuickBooks. I apologize, Your
2 Honor.

3 THE COURT: All right.

4 MR. GREENBERG: There is an issue as to whether the 2013 to 2015
5 QuickBooks records are in fact accurate from plaintiffs' perspective. Defendants
6 have already gone on the record in saying these are a hundred percent accurate.
7 They show everything everyone was paid. They show everything everyone worked,
8 the hours they worked for this three year period, 2013 through 2015. It is on that
9 basis that the partial summary judgment should be granted, Your Honor. Defendants'
10 expert does not dispute that the way we have reviewed that three year piece of the
11 QuickBooks records and presented it to Your Honor --

12 THE COURT: Uh-huh.

13 MR. GREENBERG: -- is arithmatically correct. He doesn't dispute it.
14 Defendants don't dispute it in their submissions.

15 THE COURT: No. He just -- he says -- he doesn't dispute that part. He
16 disputes, apparently, that you can get an accurate answer by simply relying on the
17 QuickBooks. Is that right? Is that what he does?

18 MR. GREENBERG: Well, he opines that the way to do this is to look at the
19 trip sheets, okay.

20 THE COURT: Yeah.

21 MR. GREENBERG: Although he also opines otherwise in his deposition that
22 that would be completely impractical on a class-wide basis. But that has to do with
23 the bifurcation motion, which is not before Your Honor right now.

24 THE COURT: Yeah.

1 MR. GREENBERG: But he does not dispute that if we accept those payroll
2 records, those QuickBook records for 2013 to 2015 as accurate --

3 THE COURT: Uh-huh.

4 MR. GREENBERG: -- the calculations performed by plaintiffs are correct.
5 He doesn't dispute any of that.

6 THE COURT: Okay.

7 MR. GREENBERG: And defendants can't come in now and say that the
8 hours worked in the QuickBooks records are not accurate, when they've stated
9 under oath they are accurate.

10 THE COURT: And where they stated under oath that they are accurate
11 was at the time they submitted them or in a deposition?

12 MR. GREENBERG: In the deposition at page 5 we have an excerpt from
13 this. This is in the reply, Your Honor.

14 THE COURT: Yeah. Uh-huh.

15 MR. GREENBERG: Mr. Nady is testifying that when the trip sheets came in
16 we did use them to track the time and put it in the payroll system, but we also added
17 additional time because the trip sheets didn't reflect the full time that the drivers
18 were working.

19 THE COURT: Okay.

20 MR. GREENBERG: So they can't come in now and say that the hours that
21 are in the QuickBooks records are not in fact valid for this time period.

22 THE COURT: Okay. Okay.

23 MR. GREENBERG: They've admitted it. And again, Your Honor, to repeat
24 myself, they could have attacked the math for that time period, but they haven't.

1 THE COURT: I've taken this beyond the time frame.

2 MR. GREENBERG: Okay. I apologize, Your Honor. We are --

3 THE COURT: No, that's my fault. I had a burning question.

4 All right. Let's pass to the second motion or second part of the motion.

5 MS. RODRIGUEZ: Your Honor, was it your instruction that I would not have
6 an opportunity to reply to his last -- a couple of his --

7 THE COURT: No. It's always the movant, the opponent, and then the last --

8 MS. RODRIGUEZ: Even if I promise not to be lengthy on the next two parts?

9 THE COURT: No. No, we will never finish if we don't hold to -- and let me
10 say this, too. I think this is an instance where the written work in the motions is quite
11 complete. I mean, you could -- I'm not saying I would suggest it, but you almost
12 could have just submitted this in chambers.

13 MS. RODRIGUEZ: Yeah.

14 MR. GREENBERG: Your Honor, I apologize, there is just one other element
15 on the partial summary judgment motion and this is discussed at page --

16 THE COURT: Well, wait, wait, wait, wait now.

17 MR. GREENBERG: Your Honor, all this has to do with is with their expert
18 report. Their expert --

19 THE COURT: No, no, no. Wait, wait, wait.

20 MR. GREENBERG: Yes.

21 THE COURT: You can point out what it is you want me to look at in your
22 motion --

23 MR. GREENBERG: Yes, Your Honor.

24 THE COURT: -- but let's not have more argument.

1 MR. GREENBERG: No, there's nothing more. I just -- because Your Honor
2 may have taken notes as to the issues to be ruled upon.

3 THE COURT: Yeah.

4 MR. GREENBERG: The only other issue that was not discussed is -- and
5 this is discussed at page 14 of the reply, which is that their expert had found that
6 \$2,700 or \$2,800 in unpaid minimum wages is owed --

7 THE COURT: Okay.

8 MR. GREENBERG: -- to certain individuals.

9 THE COURT: Okay. Understood.

10 MR. GREENBERG: They don't dispute that. I just want the Court to --

11 THE COURT: I was aware of that, yes. Thank you.

12 MR. GREENBERG: Okay. That's all, Your Honor.

13 THE COURT: Yeah.

14 MS. RODRIGUEZ: Your Honor, and I would just like to point to where I would
15 ask the Court to review because Mr. Greenberg made the statement that Mr. Leslie
16 did not address the time period that he's talking about. And I did attach the expert
17 report as Exhibit 5 and he does say he's reviewing 2013 to 2015. And I would just
18 ask the Court to review --

19 THE COURT: Okay.

20 MS. RODRIGUEZ: -- the final conclusions as to why --

21 THE COURT: Okay.

22 MS. RODRIGUEZ: -- the methodology is unreliable.

23 THE COURT: All right, thank you. Now let's move to the next motion.

24 MR. GREENBERG: To move along, Your Honor, yes.

1 THE COURT: Let's move to the next step, the next part of the motion.

2 MR. GREENBERG: Yes. Okay.

3 MS. RODRIGUEZ: Well, Your Honor, I mean, you indicated you were going
4 to give him five minutes. He took over ten and --

5 THE COURT: Well, I dragged it into the ten because I had some questions
6 beyond that. But I don't know that I would say that --

7 MR. GREENBERG: I will be -- I promise I will be briefer at this point, Your
8 Honor.

9 MS. RODRIGUEZ: I understand, Your Honor. But the only item I wanted to
10 mention is that their complaint still remains -- their complaint alleges that A Cab did
11 not keep accurate records. And now he's arguing to the Court that A Cab should
12 rely -- that he should rely on --

13 THE COURT: Is that in your -- is that in your opposition?

14 MS. RODRIGUEZ: Yes, it is. Yes, it is, Your Honor.

15 THE COURT: Then it's covered.

16 MS. RODRIGUEZ: Thank you.

17 THE COURT: All right. The next item on the list.

18 MR. GREENBERG: Your Honor, there's this question of whether the burden
19 of proof should be placed upon the defendants --

20 THE COURT: Yeah.

21 MR. GREENBERG: -- to establish the entitlement to the lower tier minimum
22 wage, Your Honor.

23 THE COURT: Uh-huh.

24 MR. GREENBERG: And I will concede Your Honor doesn't have any sort of

1 absolute, clear guidance on this issue from any other decisions that I'm aware of,
2 okay. I think Your Honor understands the analysis that I am essentially saying
3 the Court should adopt in respect to this is that given the protective nature of the
4 constitutional amendment and the fact that it is really putting forth this standard,
5 which is supposed to be a raised standard above the federal level, that what we
6 really should be assuming is that, yes, the employer has the option to pay this lower
7 rate, but if it's going to pay that lower rate it has to prove its entitlement to that
8 option. It has to prove that it took that extra step to make those health insurance
9 benefits available to the worker.

10 And, you know, I try to analogize the situation to some extent, Your
11 Honor, to the precedents involving the Fair Labor Standards Act and the availability
12 of the tip credit, which is a similar scheme under the federal minimum wage law
13 where an employer has to pay the 7.25, but if they agree to certain compliance
14 regarding employee tips, they promise to let the employees keep the tips, so forth
15 and so on, they can pay less. But the burden is on the employer to establish that
16 they have in fact met those requirements. I would submit that the same issue
17 should rule here, okay.

18 Now, in shifting the burden, Your Honor, I'm not saying defendants
19 should be denied any opportunity to establish that they are in fact only required
20 to pay the 7.25 an hour.

21 THE COURT: Uh-huh.

22 MR. GREENBERG: What I am asking is that judgment be entered at this
23 point based upon an 8.25 an hour rate for everyone in the class, but defendants will
24 have an opportunity to then -- to the extent they wish to, to then come in and say,

1 well, for this individual, this individual, this individual, you know, we have evidence
2 that they in fact, you know, were receiving the insurance or had the --

3 THE COURT: So what kind of a judgment -- what kind of a judgment would
4 you call that when you say you should enter judgment but we all know it's not going
5 to be final, it's just sort of a -- it's a temporary judgment?

6 MR. GREENBERG: Well, I would envision there being two elements to the
7 judgment that would be entered, Your Honor. Clearly at the 7.25 an hour rate that
8 would have to be -- those would have to be final amounts. There's no reason that
9 they wouldn't be. In respect to the 8.25 an hour rate, the defendant would have to
10 deposit that money with the court or perhaps the Court, if it wished, could give the
11 defendant a 60-day period or some limited period in which to deposit the amounts
12 that it is not disputed. I mean, defendants should have the burden of coming in here
13 and showing the Court that, well, these individuals made this amount of money, this
14 is what the insurance cost them, and therefore the insurance was available to them,
15 you know, for these number of months or however long it was, within the confines
16 of the requirement. I would submit that the defendants should have to deposit the
17 entire amount with the court and it would be held simply in trust pending a potential
18 return of some portion of the money to the defendants after they've had an
19 opportunity to engage in this process.

20 I mean, Your Honor, I'm trying to propose a process that would give
21 the defendants an opportunity to do this. Quite honestly, I don't think they really
22 should be entitled to the opportunity. I think it would be perfectly appropriate for the
23 Court to simply say, look, you haven't come in in opposition to this particular motion
24 and provided any evidence that any of these individuals are only entitled to 7.25

1 and judgment should be entered against them for the 8.25 amount on that basis and
2 it should be final for all. I am not -- I'm not stepping away from that position. I think
3 that is actually the most appropriate way to approach it. But I'm trying to give the
4 Court an opportunity to chart a middle course here because I know the defendants
5 are insisting that this would be unfair to them. I think they've had the opportunity
6 to make their case already during the course of these proceedings on that issue,
7 and if it is a burden-shifting requirement, they should have already made their case.
8 They haven't. But nonetheless, the Court could still give them the opportunity to do
9 that in some post-judgment situation that the Court would define.

10 I've given Your Honor a couple suggestions. I'm sure there's other
11 ways it could be set up. In the motion to bifurcate I had mentioned a process
12 whereby the defendants post judgment can come in and actually what would
13 happen is we would have the plaintiffs who claim that they were entitled to the
14 minimum wage because -- the higher minimum wage, Your Honor, because they
15 had dependents. That's a big issue in terms of the tiers because the cost for the
16 dependent coverage exceeds the requirements of the constitutional amendment.
17 So basically if I have a child that I'm -- or a spouse, I'm going to have to get paid
18 8.25 as a minimum at all times because the cost to me for the insurance will exceed
19 the ten percent amount, okay.

20 So we could have the plaintiffs simply present claims and say, well,
21 I was entitled, I had a child, I was married during the period, so I'm entitled to the
22 8.25. If the defendants dispute that, they could go to the public records. I mean,
23 the plaintiffs could say, well, my child was born here in this jurisdiction on this date,
24 I was married in this location at this date. Defendants could then go and verify that

1 from the public records, and if they found out the plaintiffs were lying then the Court
2 would say no, you're not entitled to the 8.25.

3 But the point is the defendants ultimately should bear the burden
4 here. I'm trying to give the Court some ideas or some means to really bend over
5 backwards here to provide an opportunity for the defendants to benefit from this
6 lower minimum tier rate. I don't think it's justified, but these are ways the Court
7 could approach the issue.

8 I've taken -- I told you I'd be briefer here, Your Honor.

9 THE COURT: Okay.

10 MR. GREENBERG: Unless you have more questions or there's something
11 more?

12 THE COURT: I do not.

13 MR. GREENBERG: Thank you.

14 THE COURT: And I am prepared to rule on this motion. I have to decline
15 your invitation to chart new territory. I just don't see where I have the authority or
16 the -- I mean, I just don't see where there's -- I just don't see there's a basis for me
17 to adopt that as a procedure. If that's going to happen, I think it has to come from
18 upstairs. Well, it used to be upstairs, now it's across the street. It's going to have
19 to come from the supreme court because I think I must work within the confines of
20 the authority, present authorities that are proffered to me. So that part of the motion
21 I think must be denied.

22 MS. RODRIGUEZ: Thank you, Judge.

23 THE COURT: The last part.

24 MR. GREENBERG: Yes, Your Honor. I understand and let us move on.

1 The remaining issue, Your Honor, is this question of the regulation, 608.102(2)(b).
2 What the Labor Commissioner has done here is they set up this framework whereby
3 insurance that is not available to the employee because they can't actually benefit
4 from it, it's impossible for them to benefit from it because they're on this waiting
5 period for 60, 90 days, six months, whatever it is, is nonetheless deemed to be
6 available within the confines of the Minimum Wage Act of the Constitution --

7 THE COURT: Uh-huh.

8 MR. GREENBERG: -- and therefore entitling the employer potentially to pay
9 a lower rate based upon that ten percent criteria still has to be met. The problem
10 with this, Your Honor, is that the supreme court, unlike in our prior issue, has spoken
11 pretty clearly on what the standard is here under the Constitution in respect to the
12 insurance issue. It has to be available to the employee. They don't have to enroll
13 in it, but it has to be available. They have to have the option, okay. The impetus
14 to benefit from the insurance or the ability to benefit from the insurance must be
15 within the employee's power. That's the analysis and the standard that they gave
16 us. In essence, obtaining relief rests with the workers. That was the actual
17 language from the MDC decision.

18 Now, in this situation where I'm 30 days, 60 days into my employment,
19 I don't have any power within myself to secure that insurance because I'm on a
20 waiting period for six months, which under the Labor Commissioner's regulation is
21 permissible.

22 THE COURT: Is that -- do we know what the waiting period is in this --

23 MR. GREENBERG: The waiting period in this case has varied from a year
24 to -- I believe currently it's 60 days or slightly longer than 60 days, depending on

1 when the first of the month because of the -- the ACA requirements have changed
2 that in recent years, Your Honor, but historically it was as long as a year. I mean,
3 Your Honor, I can't really explain more about this. I think Your Honor understands
4 the issue.

5 THE COURT: What is the analysis? In other words, are you saying that the
6 regulation passed by or promulgated by the Labor Commissioner is invalid because
7 it's constitutionally infirm because it violates one of the -- you know, due process?
8 We're used to dealing with those kinds of considerations. What's the analytical
9 framework for deciding that this regulation or this part of the code cannot be
10 enforced?

11 MR. GREENBERG: Well, the constitutional language says that the employer
12 must pay -- and this is actually discussed at page 14 of the moving papers. Oh,
13 no, I'm sorry, I apologize, that's not where it's discussed. It's actually at page 12.
14 It says: "Each employer shall pay a wage to each employee of not less than the
15 hourly rate set forth in this section. The rate shall be \$5.15" -- now 7.25 -- "per hour
16 worked if the employer provides health benefits."

17 THE COURT: Uh-huh.

18 MR. GREENBERG: So it's conditional -- "7.25 if the employer provides
19 health benefits as described herein or 8.25 per hour if the employer does not
20 provide such benefits." So provide benefits in the MDC case was ruled to mean
21 not actually enrollment by the employee. We don't have to see that the employee
22 is participating in the insurance, but he has to have the insurance available to them.
23 They have to have the option to participate in the insurance.

24 THE COURT: I understand that part of your argument. Where I'm trying to

1 get to is what -- you're saying that it is therefore -- because the MWA is not in a
2 statute, it's in the Constitution of the State of Nevada --

3 MR. GREENBERG: Yes, Your Honor.

4 THE COURT: -- that therefore a regulation such as the Labor Commissioner
5 promulgated is inconsistent with the Constitution, but does it therefore violate
6 due process? I mean, what is -- what's wrong with it being inconsistent with the
7 Constitution?

8 MR. GREENBERG: Well, the Labor Commissioner can issue any regulation
9 he wants, but does it have the force of law? What I'm saying is here it doesn't
10 because what it is purporting to do is to say an employer during the waiting period
11 when it is not in fact making insurance accessible to the employee for that 60 days,
12 six months, whatever it is, nonetheless can pay the lower minimum wage,
13 nonetheless is deemed to be --

14 THE COURT: I understand that part, but I'm saying, okay, so it's not the
15 same and it seems to be at odds with what's provided in the Constitution. So what?
16 What is the legal argument or analysis or why can't you do that?

17 MR. GREENBERG: Well, because a constitutional command is not within
18 the realm of being modified by the Labor Commissioner. The Labor Commissioner
19 can't step in and say, well, yes, the Constitution says you get to pay a lower
20 minimum wage rate during periods of time you make this insurance available, but
21 we're going to say you can do it even though you're not making it available, it's not
22 accessible for these six months.

23 THE COURT: So therefore the regulation itself is -- violates due process?

24 MR. GREENBERG: Well, you could -- it is due process in terms of it's a

1 substantive protection that Nevada's Constitution extends. It's a substantive due
2 process issue. You could look at it that way. When we talk about due process,
3 Your Honor, we're typically talking about Fourteenth Amendment issues --

4 THE COURT: Uh-huh.

5 MR. GREENBERG: -- so the terminology may be a little bit sort of not typical
6 in terms of this particular issue. We're talking about the State Constitution and this
7 particular constitutional amendment, Your Honor. In the MDC case the supreme
8 court looked at this analogous issue with the Labor Commissioner's regulations.
9 In that case they examined the subsection 3, not subsection 2 of that reg. And
10 subsection 3, what it said was when we're figuring this 10 percent limit for the
11 insurance premium, you can include the employee's tips and then figure 10 percent
12 of wages plus tips because that's gross income to the employee. And the language
13 of the Constitution on that issue says 10 percent of the income received from the
14 employer. And the Nevada Supreme Court in MDC said that regulation is invalid
15 because the tips don't come from the employer. That's not gross income from the
16 employer. The Labor Commissioner was essentially adopting the income standard
17 of the Internal Revenue Service. The Internal Revenue Service of course uses tips
18 as income to an employee. But that's not what the Constitution said. It didn't say
19 10 percent of the employee's income, it said 10 percent of the employee's income
20 from tips. So they invalidated that regulation in the MDC decision and said no,
21 this does not apply.

22 It's the same issue here, Your Honor. Defendants can't seek shelter
23 under this regulation and say for the first three months or six months of the
24 employment when there's this waiting period we can potentially pay these individuals

1 7.25 an hour. They can't do it because the insurance isn't available. It's not
2 available -- it can't be accessed by the employee. Again, in essence obtaining
3 relief rests with the workers. The employee can't obtain that relief, which is actually
4 secure the benefits of the insurance during that three month or six month period, so
5 the regulation cannot control the employer's liability under the Constitution because
6 they're not providing the insurance. If I tell the employee, well, I'm going to give you
7 insurance every year from June through December, okay, then from June through
8 December I give you insurance and potentially I can pay you 7.25. But if every year
9 from January to May I decide, no, there's not going to be any insurance that you can
10 have for those months, then I'm going to have to pay you 8.25. It's the same thing
11 here, Your Honor, because the insurance is not available to the employee during
12 the waiting period.

13 I don't want to belabor the point, Your Honor. If there's something
14 further I can assist with in terms of helping the Court understand the issue?

15 THE COURT: No, I don't think so.

16 MR. GREENBERG: Thank you.

17 THE COURT: Thank you.

18 Ms. Rodriguez, same question to you.

19 MS. RODRIGUEZ: Thank you, Your Honor. Well, just a couple of --

20 THE COURT: What kind of analysis would have to take place in order for
21 the Court to say, well, the regulation doesn't seem to comport with the constitutional
22 provision? What sort of analysis must be applied before the Court could say
23 therefore it is declared to be invalid?

24 MS. RODRIGUEZ: You know, it reminds me of where we started with this

1 case at the very beginning when we were looking at whether the amended minimum
2 wage in the Constitution was in conflict with the minimum wage statutes way back
3 in the beginning of this case and we tried to see, can those two statutes live together
4 or can those two regulations co-exist or do they directly conflict with each other.
5 And I don't think that that was necessarily the argument in Mr. Greenberg's brief,
6 and so I didn't necessarily address it in that manner, either, so I'm just kind of
7 thinking at this point. But in re-reading it, both the constitutional amendment and the
8 statutes, there's nothing in the constitutional amendment that doesn't -- that directly
9 prohibits a waiting period.

10 And in answer to the Court's question, the time period that we're
11 talking about, 2013 to 2015, I'm relatively sure and I tried to confer with Mr. Nady
12 that during that entire time period we're only talking about a 60-day waiting period.
13 So we're not even talking a six month waiting period where the employee is deprived
14 of health insurance, as Mr. Greenberg is painting that picture. And the 60-day
15 waiting period is actually even less than the probationary period for an employee.

16 My problem with a lot of this is why has -- this is an issue that appears
17 to be important and why have the plaintiffs sat on it for five years during this
18 litigation? Because if the Court is now going to rule that the 60-day waiting period
19 is invalidated, then we need to go back and do recalculations from his experts,
20 recalculations from my experts, and we're well past those deadlines. So I would
21 definitely ask the Court to consider that. And it's my understanding --

22 THE COURT: Thank you. That reminds me, I was going to ask the same
23 question to Mr. Greenberg, so we'll revisit that when we come back. What would
24 be the effect of the Court agreeing with him that it's invalid?

1 MS. RODRIGUEZ: Right. And, you know, I think we're well past all those
2 deadlines. It's my understanding that plaintiffs were even reprimanded as of
3 yesterday from Judge Israel in not wanting to reopen discovery because that's
4 what would have to happen in this case if the Court were to then reopen the 60-day
5 waiting period. We'd have to go back, do discovery, give up our February 5th trial
6 date to do a recalculation on these people that have always been offered appropriate
7 health insurance. And one thing I would mention --

8 THE COURT: Well, what if the Court interpreted it -- you know, bought the
9 argument from Mr. Greenberg entirely that under the MWA there can be no waiting
10 period --

11 MS. RODRIGUEZ: Right.

12 THE COURT: -- because of the force of the -- so would there really need
13 to be more discovery or would you just say, well, they're all entitled to the upper
14 amount for that -- I don't know, for the six month period or for 60 days or something?

15 MS. RODRIGUEZ: Well, again what we're doing then, it's a burden shifting.
16 It's shifting the burden back to the defendants, then, to go back and to show that
17 these folks were -- in their waiting period were making more than 8.25 at that point.
18 And the problem all along is that, one, as the Court has noted, there is no authority
19 to shift the burdens to the defendants to prove a negative.

20 THE COURT: Uh-huh.

21 MS. RODRIGUEZ: Two, plaintiffs have never conducted any discovery
22 whatsoever on this issue that they now raise about the waiting periods. So they
23 haven't looked at it, we haven't looked at it. The only time that this came up was
24 when the defendant was requested to produce thousands of W-4 hard copies of

1 each employee's file, which we pulled. It took a couple of weeks with full-time staff
2 to pull those and turned them over to the plaintiffs. When I deposed their experts,
3 their experts said they never even looked at one piece of paper. So in answer to
4 the question from the Court, we don't know what the status is on all these people
5 because no discovery was ever done on that particular issue on their dependents,
6 their spouse and where they were for the first 60 days of their employment.

7 THE COURT: Do we know how the Labor Commissioner hit upon six months
8 as being an allowable gap?

9 MS. RODRIGUEZ: No, I don't know how that was determined, Your Honor.
10 I think that's the -- probably the standard throughout the wage regulations, but I
11 don't know how the Labor Commissioner determined the six month waiting period.

12 THE COURT: We have the adopted regulation of the Labor Commissioner
13 and when you look at what was done it appears that there were -- what did we
14 figure, there were seven people who had input on how long that period should be
15 and they were allowed to give input afterwards. Where did we pick that up at?

16 (Colloquy between the law clerk and the Court)

17 THE COURT: So you had a number of people who came to the hearing,
18 but -- and were allowed to make submission on it, but as far as I can tell, at least,
19 there's no -- we don't know exactly what their input was or how it was utilized by
20 the Labor Commissioner, so we're kind of at a loss to know how you -- you know,
21 why is six months okay but nine months is not or a year is not.

22 MS. RODRIGUEZ: Right. Right, or 60 days.

23 THE COURT: Or 60 days, which would tend to make one think that any
24 variation from the mandate of the Constitution would be illegal, but you'd have to

1 know why it's illegal.

2 MS. RODRIGUEZ: Uh-huh.

3 THE COURT: And so far I don't have that.

4 MS. RODRIGUEZ: And the Constitution doesn't address it one way or
5 another as to whether a waiting period would be legal or illegal or prohibited. It's
6 silent on that issue.

7 THE COURT: That is true. It doesn't contemplate a waiting period. It says
8 it must be available. And it doesn't say it can be available some time in the future,
9 whether that be 60 days or six months. It says it has to be available.

10 MS. RODRIGUEZ: Right.

11 THE COURT: I tend to agree with the argument that there is no provision --
12 there is nothing to illustrate why six months is reasonable and still comports with
13 the supreme court interpretation of what this whole passage means, that it must
14 be available. And if you simply look at, you know, applying -- interpreting the MWA,
15 it seems more clear -- it seems more clear to say, well, it doesn't allow for any
16 waiting period.

17 But I am -- we don't just take off and decide, oh, this is inconsistent so
18 we won't validate it. There must be some constitutional analysis for why a regulation
19 which is arguably inconsistent with the Constitution of the State, why it cannot be
20 applied. And I don't think it's enough to say, at least in the jurisprudence I'm familiar
21 with, I don't think there's enough to say, well, it's inconsistent so it has to go. You
22 have to have some -- you know, and maybe I'm wrong. Maybe our supreme court
23 doesn't require that. But where you say that a law, which is the regulation here,
24 cannot be applied because it's inconsistent with the Constitution, there has to be

1 more. You're talking about what is the power of the Labor Commissioner to take
2 away something which arguably at least the Constitution grants. There has to be
3 a violation of the people's constitutional right. And that always, in my experience,
4 is subject to an analysis by -- with resort to available authorities on how far, for
5 example, a Labor Commissioner might vary a regulation from what appears to be
6 the concept before you have a violation of basic constitutional rights, and so far
7 I don't have that.

8 I guess if you don't have anything more, I'll go back to Mr. --

9 MS. RODRIGUEZ: I just would mention one other point, Your Honor, and
10 perhaps it is in those notes on the Labor Commissioner meetings, but logistically
11 in reality you could not offer health insurance to an employee the day they walk in.
12 You know, the paperwork has to be completed. It has to be submitted to a health
13 insurance company. It has to be approved. And so there's just -- logistically there
14 has to be -- I think that's how A Cab has determined a 60-day waiting period
15 because it takes that long to even get the person onto the books.

16 THE COURT: In that --

17 MS. RODRIGUEZ: And so that may be reflected in the --

18 THE COURT: Oh, it may be reflected in the --

19 MS. RODRIGUEZ: In the Labor Commissioner notes that your law clerk
20 was looking at.

21 THE COURT: I don't see it in there. I don't think we found it.

22 (Speaking to the law clerk) Did you see anything like that in there?

23 MS. RODRIGUEZ: As to how they came up with the six months. It would
24 be a reasonable time period in which to process the employee to make them eligible

1 for health insurance because, I mean, you can't start a job and the first day be under
2 a healthcare policy.

3 THE COURT: I would think that -- well, at any rate it doesn't -- you know,
4 we don't have to belabor this. Anything else?

5 MS. RODRIGUEZ: No. Thank you, Your Honor.

6 THE COURT: Mr. Greenberg, how do I do that? How do I get from point A
7 to point B?

8 MR. GREENBERG: Your Honor --

9 THE COURT: I can't just say, well, this appears to be inconsistent so it's
10 invalid.

11 MR. GREENBERG: Well, Your Honor, the Nevada constitutional amendment
12 does not give the Labor Commissioner any authority to vary its terms. In fact, it
13 doesn't even give the Legislature any authority to vary its terms. So the regulation
14 that's issued by the Labor Commissioner, to the extent that it conflicts with a
15 command of the Constitution must be preempted, Your Honor. To the extent that
16 it is applying a lesser benefit to the employee, it cannot stand. It cannot be used --
17 if the regulation didn't exist, Your Honor, and we just looked at the Constitution's
18 language alone, we wouldn't be arguing about this. The employer would have to
19 meet the standard from day one of employment, okay.

20 THE COURT: Or --

21 MR. GREENBERG: Or?

22 THE COURT: Pay the higher rate.

23 MR. GREENBERG: Right. Well, it would have to meet the standard of
24 paying the higher rate. Exactly. There would be no free ride, so to speak --

1 THE COURT: Uh-huh.

2 MR. GREENBERG: -- once the employee is hired where they don't have
3 to have the insurance available. I mean, if this regulation did not exist under MDC,
4 if the employee did not have the right to enroll on day one, clearly they're going to
5 be entitled to the 8.25 an hour. Nobody would dispute that. Analytically you can't
6 dispute it. The Labor Commissioner comes in, he issues a regulation and says
7 but if it's going to be available six months after the guy starts working, then you can
8 pay the lower rate. So the Labor Commissioner's regulation has the effect here
9 of diluting the force of the constitutional command. The Labor Commissioner has
10 no authority to do that. The Legislature doesn't have any authority to do it. It's true
11 the Constitution --

12 THE COURT: Who says -- who says he doesn't?

13 MR. GREENBERG: You can read the constitutional amendment. It doesn't
14 grant the Legislature authority to enact any legislation --

15 THE COURT: Okay.

16 MR. GREENBERG: -- to vary it. I mean, some constitutional provisions
17 do bestow upon the Legislature the authority to enact implementing legislation
18 or otherwise. This constitutional amendment does not give that power to the
19 Legislature, Your Honor. The fact that the constitutional amendment is silent on
20 this issue of a waiting period, this harkens back to what we were here at the initial
21 stages of this case, the fact that there was a statutory exemption for taxi drivers
22 that pre-existed the constitutional amendment. The constitutional amendment was
23 silent as to whether taxi drivers were exempt. The argument being made by the
24 industry was, well, from the silence we're going to infer that this was not changed,

1 that they are still exempt.

2 And a number of jurists agreed with that. You did not. The supreme
3 court adopted the view you took at that time, which is that silence doesn't mean
4 anything in terms of a constitutional command. If a constitutional command is silent
5 as to an issue, it must be applied with the full force of what it does say. And what
6 the constitutional amendment here does say is that you can pay one rate if you
7 make the insurance available, you pay a second rate if you don't make it available.
8 To make it available, we know from MDC what that means, the employee has to
9 be able to enroll. So if the employee can't enroll and receive the benefit, it's not
10 available. It's that simple, Your Honor.

11 THE COURT: Let's assume I agreed with you. How would you possibly --
12 I mean, how would that simplify your burden? Where would you go with that?
13 Would you not have to have some kind of additional discovery at this point in order
14 to establish --

15 MR. GREENBERG: Absolutely not, Your Honor. We don't need any further
16 discovery on this issue. Absolutely not. Your Honor, the 2013-2015 spreadsheet
17 that Your Honor was provided with already calculates the amounts owed during the
18 waiting periods. Defendants' counsel has made an incorrect representation to the
19 Court, saying no discovery was conducted on this. Relevant discovery on this
20 issue regarding the waiting period was conducted because defendants gave us
21 interrogatory answers as to what the waiting periods were during each time period.
22 They were more recently 60 days; six months, a year going further back. We know
23 exactly what the waiting periods were. Defendants were also directed to provide
24 by the Discovery Commissioner and did provide hire dates for the class members.

1 So we know when the class members started working. We can also ascertain that
2 from the payroll records themselves because we can see when somebody starts
3 working and receiving a paycheck in the payroll records.

4 THE COURT: So where do you go from there in terms of granting relief now?

5 MR. GREENBERG: Your Honor, it's a question of --

6 THE COURT: Or are you really asking the Court to go that far? Are you
7 simply asking the Court to declare the regulation invalid?

8 MR. GREENBERG: Well, Your Honor, if the regulation is not valid for
9 purposes of the partial summary judgment motion, just to explain where we are
10 going, the amount of damages that would be awarded to the class members
11 wouldn't be the \$174,839, it would be \$274,000. It would be another hundred
12 thousand dollars, basically, because employee turnover is fairly high over a three
13 year period at this employer, so you have a lot of people who had this 60 or 90-day
14 period, whatever it was.

15 THE COURT: And how do you get from the one figure to the other?

16 MR. GREENBERG: Because the 8.25 rate applies to that 60 or 90 day, that
17 initial -- that initial waiting period. Do you understand, Your Honor? So individuals
18 who are owed something at 7.25 are going to be owed an extra dollar an hour
19 because the rate is 8.25. Some individuals who are owed nothing at 7.25 will prove
20 to be owed something at the 8.25 an hour rate. That's why when we look at these
21 14,000 or so pay periods over three years and we look at just these waiting period
22 times -- again, that's all we're talking about, the first 60 days, 90 days. Again, this
23 is detailed in Dr. Clauretje's report. It's in the spreadsheet that was produced.
24 We get this increased item of damages, Your Honor.

1 This idea that somehow defendants are surprised by this or that they
2 didn't know about this and that they need to do further discovery, there's no further
3 discovery they need to do as to this issue as to the waiting period. They were
4 aware that we were claiming these damages. This was raised in the January
5 partial summary judgment motion that Your Honor deferred at that time. That's
6 at -- Exhibit G is eighth supplemental disclosures from May of this year. That's in
7 the reply. In our eighth supplemental disclosures we specifically gave Rule 16.1
8 estimates referring to our claim that we were going to be seeking these damages
9 for the waiting periods at this higher 8.25 an hour rate. And we have Dr. Clauretie's
10 report from July where on page 21 he discusses -- that's at Exhibit B of the moving
11 papers, his report, he discusses this claim.

12 So defendants have been aware all along that plaintiffs were making
13 this assertion that this regulation did not give defendants a free ride from exposure
14 to the higher tier during the waiting period. They can't act as if insurance was
15 available when the employee couldn't actually enroll in it and receive benefits during
16 the waiting period. So this is not a surprise issue, Your Honor.

17 I understand Your Honor is trying to be diligent and cautious here,
18 but again, you're dealing with a regulation of an administrative agency which --
19 it's not a statute, it is an administrative regulation. And administrative regulations
20 obviously are only within the scope of the power confined to the administrator. The
21 administrator is given no power whatsoever under the Nevada Constitution, this
22 administrator, to do anything in terms of defining anything in respect to a waiting
23 period, in respect to, you know, what will constitute available health insurance or
24 what won't. The Constitution is completely silent on this issue.

1 So given that framework, Your Honor, to the extent that there is a
2 conflict -- and I don't think there's a dispute here that reading the constitutional
3 language when it talks about make available and we look at MDC in terms of telling
4 us what make available means, there is clearly a conflict between what the Labor
5 Commissioner has interpreted this as by reading into it a waiting period which the
6 Constitution is completely silent on. This is no different than reading into the
7 Constitution an exemption for taxi drivers based upon a prior legislative enactment,
8 which Your Honor quite correctly found was invalid and contrary to the constitutional
9 command. It's the same thing here, Your Honor.

10 Again, I don't want to belabor the point. I know we've taken up a good
11 amount of your time this morning. Your Honor has many other matters to deal with.

12 THE COURT: Yes.

13 MR. GREENBERG: So if there's something more I can assist with, I certainly
14 want to, Your Honor.

15 THE COURT: No. I think that does it. The ruling on this last one I think has
16 to be that it is denied again. And, you know, as I said a few minutes ago, I simply
17 cannot say, look, this seems to be at variance and that's it; therefore the result that
18 you ask for, to me, and maybe I'm just a little slow, I don't know, but I am not aware
19 of analyzing issues of constitutional dimension and simply saying -- boiling it down
20 to one provision is at variance with the other, therefore it must go. It has more to
21 do with whatever the power of the Labor Commissioner is to issue a law which is
22 seeming to be in conflict with the words of the Constitution.

23 So, while I think you're on to something there, I don't -- because,
24 you know, I cannot harmonize the language of the MWA in the Constitution with

1 the waiting period that is -- a six month waiting period provided by the regulation.

2 But I am unable to say that you can prevail with nothing more than that. So the
3 motion must be denied. Perhaps this is something that gets revisited at the close
4 of plaintiffs' case-in-chief, I don't know, but I don't see that I can grant it at this point.

5 I can, however, and I do grant the motion for partial summary judgment,
6 but only to this extent, that it seems to me that the plaintiff has established the
7 liability portion of their claim and that the only remaining issue is the amount of
8 damages. And to that extent I think the plaintiff has prevailed in showing that, that
9 there is no -- there is no reason and no remaining issue of material fact as to the
10 liability portion of the lawsuit. And so partial summary judgment is granted as to that
11 and the remaining issue, that of damages, must await trial.

12 MR. GREENBERG: Your Honor --

13 THE COURT: Yes?

14 MR. GREENBERG: I am confused. If liability has been established, that
15 means that minimum wages are owed and it's been established to be owed for
16 some particular amount.

17 THE COURT: I think that's established. Their own expert says that some
18 are owed.

19 MR. GREENBERG: Well, Your Honor, the request at the 7.25 an hour rate is
20 for the entry of this \$174,000, approximately -- \$174,839 that are owed to specified
21 individuals.

22 THE COURT: It does not -- it doesn't make sense to me to enter a partial
23 summary judgment for a stated dollar amount and then say but that's not really
24 a judgment, that's just a number out there and we're going to either add to it or

1 subtract from it at trial.

2 MR. GREENBERG: Your Honor, there's no basis to subtract to it. There
3 are additional amounts -- that's my problem, Your Honor.

4 THE COURT: Okay.

5 MR. GREENBERG: The defendants have not disputed the number, Your
6 Honor. So that's why --

7 THE COURT: Okay. So then let's go with it that way. If that's an amount
8 out there but it's not really the final amount, you're going to add to it, that does
9 not seem to simply the issues to me at trial to say I therefore award damages in
10 X amount and then but I really don't because that's still subject to additional proof
11 and argument at trial.

12 MR. GREENBERG: These damages -- Your Honor, if liability has been
13 established, as Your Honor is saying, then it's been established for something -- for
14 this amount. I mean, the order could simply state that liability is established for the
15 \$174,839 for the specified three hundred or so persons. This is all detailed in the
16 moving papers. And that issue has been determined judgment to be entered after
17 time of trial. If Your Honor is going to defer entry of the judgment for the requisite
18 amount that you found is liable, you can do that.

19 THE COURT: Well, so if I do that, are you going to say, okay, fine, that's it,
20 we'll go away? No. You want additional damages.

21 MR. GREENBERG: We do want additional damages, but it's a question of
22 what is -- we have to prepare this case for trial, Your Honor, okay.

23 THE COURT: Right.

24 MR. GREENBERG: And we need to know what issues are going to be heard

1 at trial and determined, okay. Now, if this issue that \$174,839 is owed based upon
2 these records, based upon your ruling that we've established liability --

3 THE COURT: Uh-huh.

4 MR. GREENBERG: -- then that's not going to be an issue that we're going
5 to be arguing about at trial, Your Honor, in respect to this amount being owed based
6 upon the QuickBooks records.

7 THE COURT: So this would be a discrete amount from -- separate and
8 discrete from additional damages to be awarded at trial?

9 MR. GREENBERG: Potentially. Maybe none will be proved. But potentially
10 there could be additional damages. If Your Honor wishes --

11 THE COURT: And carry the -- carry the -- a syllogism, but carry the process
12 out, why do we arrive at a hundred and seventy-four?

13 MR. GREENBERG: We arrive at \$174,839 because Your Honor has ruled
14 that we've established liability in connection with our motion. Our motion is based
15 upon the payroll records, the QuickBook records that we've discussed, the hours
16 worked in the records, the wages paid --

17 THE COURT: Uh-huh.

18 MS. RODRIGUEZ: The expert reports.

19 MR. GREENBERG: -- and the amount that is shown to be owed at the 7.25
20 an hour rate is that amount and it's owed to these specifically identified -- 319 class
21 members were owed at least ten dollars, okay.

22 THE COURT: Uh-huh.

23 MR. GREENBERG: So, Your Honor, if Your Honor is not going to enter
24 judgment now for those amounts, but we've established our claim to liability, then

1 those amounts are owed to these individuals and this should not be an issue for
2 trial, Your Honor.

3 THE COURT: And I think I know what you're going to say to that, Ms.
4 Rodriguez, but --

5 MS. RODRIGUEZ: Well, I'm going to say a couple of things. First of all,
6 his motion had nothing to do with liability. His motion was for damages only. My
7 motion for summary judgment, which is scheduled on January 2nd, addresses
8 liability. So I would ask that the Court not preclude my motion for summary
9 judgment from going forward at the beginning of the year, as well as the motions
10 in limine, because he's back to arguing -- he just said out of his mouth that these
11 are based on Dr. Clauretie's, the expert's reports. And I need an opportunity to
12 say why this Court cannot rely upon those expert reports.

13 THE COURT: Why would that dislodge a finding that the plaintiff has at least
14 prevailed to establish that there is liability here?

15 MS. RODRIGUEZ: I don't know -- we didn't even argue liability, Your Honor,
16 so I'm actually quite confused as to why you are ruling in favor of liability because
17 my motion --

18 THE COURT: How would I rule on damages if we haven't established
19 liability?

20 MS. RODRIGUEZ: That's a very good question, Your Honor.

21 THE COURT: I didn't see --

22 MS. RODRIGUEZ: And that's why I brought my motion in January. He
23 skipped right over liability. That was one of my points is that he jumped over liability.
24 He didn't even say which defendant this is targeted to. He just came in and said

1 I want damages.

2 THE COURT: Well, I'll tell you what.

3 MS. RODRIGUEZ: Based on my spreadsheet, I want damages.

4 THE COURT: I'll tell you what. That is going to be the order of the Court.
5 That does not preclude you from making further argument in your motion that's
6 already scheduled, you said?

7 MS. RODRIGUEZ: Yes. I believe it's January 2nd. I know it's in the first
8 weeks of January.

9 THE COURT: But for purposes of this motion, it seems to me that there
10 has not shown to be an issue of material fact as to liability.

11 MR. GREENBERG: Your Honor, it's a little confusing in this situation with
12 a minimum wage claim because liability and damages are the same thing, Your
13 Honor. If the employer does not pay the minimum wage they're liable, and they're
14 liable in the amount they didn't pay. It is the exact same issue. So for Your Honor
15 to say that we've established --

16 THE COURT: And it is that thing right there, in the amount that they didn't
17 pay. So the question is how much did they not pay?

18 MS. RODRIGUEZ: If any.

19 MR. GREENBERG: Well --

20 MS. RODRIGUEZ: That was my argument, Your Honor, that he did not have
21 one client where he showed actual damages. Everything is an estimate.

22 THE COURT: Okay. We're not going to -- we're not going to devolve into
23 interrupting. You have the floor, Mr. Greenberg.

24 MR. GREENBERG: Thank you, Your Honor. What I'm saying is for Your

1 Honor to make a finding that liability has been established consistent with the
2 motion for partial summary judgment, Your Honor is making a finding that plaintiffs
3 have established amounts that are owed. And the amounts that are owed that are
4 the basis for the partial summary judgment motion, setting aside this whole issue
5 of the tier, just looking at the 7.25 tier, again is this \$174,839. That's what the
6 liability is for because that was what was underpaid. You can't -- this is not a case
7 of establishing negligence and then later proving the damages that the plaintiff
8 incurred from the negligence based upon whatever additional evidence may come
9 in. It's the same -- it's the same evidence --

10 THE COURT: So --

11 MR. GREENBERG: -- that bears on both, Your Honor. That is my problem
12 with understanding the Court's order. I don't want to perplex the Court. I'm not
13 trying to be difficult, Your Honor.

14 THE COURT: I understand that.

15 MR. GREENBERG: It's just if there's a liability finding we cannot in this
16 circumstance separate the liability found from the partial summary judgment motion
17 from the damages.

18 THE COURT: What if the Court agreed -- what if the Court agreed with the
19 defense expert that the total is some thirty-four hundred dollars or twenty-seven
20 or whatever that number is?

21 MR. GREENBERG: That amount is based upon -- is based upon his review
22 of trip sheets and judgment presumably should be entered for that amount. That's
23 for a handful of individuals for a hundred or so pay periods. I'm talking about
24 14,000 pay periods based upon the record that's been produced to Your Honor.

1 The defendants, again, have not introduced any competent evidence to dispute
2 the payroll-by-payroll period analysis. I know defendants' counsel was interrupting,
3 saying we haven't established that anybody in fact is owed anything. In the reply,
4 again, Your Honor, I produced the paystubs. I tried to give the Court a walk-
5 through, you know, in writing showing each step of the arithmetic process using the
6 actual documentary record, which then of course is being done for an additional
7 14,000 pay periods in the spreadsheet. I think Your Honor understands this.

8 So, for Your Honor to say that we've submitted sufficient competent
9 evidence here to be granted a finding of liability consistent with the partial summary
10 judgment motion means that the amount that's detailed in the spreadsheet that
11 was given to Your Honor in the ledger, so to speak, the analysis of those 14,200
12 pay periods shows that this \$174,839 is owed to the plaintiffs.

13 THE COURT: No, it means that the defendant has at least put forward
14 enough evidence to prevent the Court from finalizing the number, even that number.
15 The most that the defendant agrees that they would owe is some thirty-four hundred
16 dollars. So beyond that, they have their own methodology for showing damages
17 or countering a showing of damages.

18 MR. GREENBERG: Your Honor, it is your prerogative to make the ruling
19 you're going to make. If that's going to be your ruling, then that's going to be your
20 ruling. If what you're saying is nothing is established by this partial summary
21 judgment motion except the defendants' admission from their expert that they owe
22 this thirty-four hundred dollars or three thousand dollars, then that's your ruling. If
23 you're ruling that I have established some greater measure of liability, then that is
24 your ruling as well, Your Honor. I do take issue and I apologize, Your Honor, but

1 again, the defendants' expert has never opined anything about the payroll records
2 upon which this partial summary judgment motion is based. Counsel -- defendants'
3 counsel asserts that they do and they will. They point to nothing in the expert's
4 report which is before the Court. They cite to no section of it. You have his
5 deposition testimony. There is nothing contested about the analysis of the 14,200
6 payroll periods that Your Honor was given.

7 THE COURT: So you're saying that their expert -- there's no evidence that
8 their expert did agree that there was some relatively minor amount that was due
9 and owing?

10 MR. GREENBERG: The expert conducted an independent review of trip
11 sheets. Based on his independent review of trip sheets he arrives at this conclusion
12 for 120 pay periods that he examined.

13 THE COURT: I'm asking if for purposes of this motion are you saying that
14 there was nothing offered by the defense to the effect that their expert had agreed
15 that some thirty-four hundred dollars was due and owing?

16 MR. GREENBERG: Nothing offered by the defendants to the effect that
17 some thirty-four hundred dollars is due. Their --

18 THE COURT: Is that correct, Ms. Rodriguez?

19 MS. RODRIGUEZ: It doesn't sound right, Your Honor. Mr. Leslie's --

20 THE COURT: Because I thought I saw that in there and I thought that was --

21 MS. RODRIGUEZ: I think I saw it in his reply, too, saying that Mr. Leslie
22 had conceded to thirty-four hundred dollars. But I think that's being taken out of
23 context. Mr. Leslie's report is critical of the methodology, whether it's 2012, 2013,
24 2015. So, I know that Mr. Greenberg is just trying to piecemeal and say, well,

1 Mr. Leslie was only addressing this part, not this other part. His report, which is in
2 our papers, is very clear that he is critical of the entire methodology that was used
3 by Charles Bass and Dr. Claurette.

4 THE COURT: Uh-huh.

5 MS. RODRIGUEZ: So, no, we are disputing --

6 THE COURT: But that he does -- he does agree that there is some amount
7 owed?

8 MS. RODRIGUEZ: I don't -- I don't believe that's contained in his report,
9 Your Honor. And I know that this issue has been raised, again, before Judge Israel.
10 I believe it's up on appeal. Because it sounds like what Your Honor is indicating is
11 a finding -- and I hesitate to use this word, if the Court has a better word for it, it's a
12 finding of strict liability, basically, that if there's any amount owed, anything, a dollar,
13 two dollars, it's going to be a violation of the Nevada amended constitution or the
14 amended constitution -- a violation of the minimum wage. And I think that's what
15 Your Honor is indicating this morning, and now the only thing that will go forward is,
16 well, is it two dollars or is it \$600,000? Am I understanding the Court's direction
17 on this?

18 THE COURT: I don't know about the first part, but it does seem to me that
19 the issue at trial is how much --

20 MS. RODRIGUEZ: Uh-huh.

21 THE COURT: -- is owed; how much in damages.

22 MR. GREENBERG: Your Honor, to directly address Mr. Leslie's report,
23 on page 11 of the moving papers Mr. Leslie reviewed 123 pay periods. He found
24 \$3,847 was owed in unpaid minimum wages, based on his review of those trip

1 sheets. He looked at the hours --

2 THE COURT: Uh-huh.

3 MR. GREENBERG: -- that were shown by those trip sheets and he looked
4 at the amount --

5 THE COURT: Uh-huh.

6 MR. GREENBERG: -- that was paid for those 123 pay periods. This is set
7 forth in Exhibit I, which is his report, the relevant excerpts and his exhibits. So, he
8 identified that this amount is owed.

9 THE COURT: Uh-huh.

10 MR. GREENBERG: So presumably they don't dispute that he identified that
11 these amounts are owed. So presumably summary judgment should be entered
12 for those amounts, Your Honor. If Your Honor disagrees, then that's the scope of
13 Your Honor's ruling. I just want to be clear what's in the record before the Court,
14 Your Honor.

15 THE COURT: It seems to me that -- why would you want the Court to enter
16 that dollar amount if that is a dollar amount that you don't agree with and you want
17 to show more? Why is it not appropriate or what's wrong with the Court simply
18 finding that the showing of there being liability here has been established?

19 MR. GREENBERG: Your Honor, the problem is that -- and this really goes
20 back to the nature of the partial summary judgment motion. Defendants have
21 admitted that the payroll records are accurate. We've shown from examining
22 the 14,000 payroll periods in the payroll records, the QuickBook records, that this
23 \$174,000 is owed. Defendants have not disputed that calculation. They don't
24 dispute the underlying information. I understand we claim more is owed. Your

1 question is why should the Court enter a damages judgment at this point? To
2 answer your question, Your Honor --

3 THE COURT: Uh-huh.

4 MR. GREENBERG: -- these individuals are entitled to this money.
5 Defendants are going to continue to defend this case. They will spend their
6 resources defending this case. They very likely may declare bankruptcy or go
7 out of business or evade a judgment at time of trial. These individuals are clearly
8 owed this money. They've been waiting five years to get paid it. The \$174,839
9 is clearly owed to them. There's no reason to defer entering a judgment in their
10 favor and at least have that judgment entered so the defendants will be due to
11 pay it now.

12 THE COURT: Would they be able -- would they be able to execute on such
13 a judgment?

14 MR. GREENBERG: Why not? If defendants decline to pay it, then they
15 will face the consequences of failing to pay it. If they want to bond it, they can
16 bond it and appeal it. But the point is that amount will at least be secured for these
17 minimum wage workers, Your Honor. We've been litigating this case for years now.

18 THE COURT: It seems to me that that amount is a smattering of the amount
19 that you're contending in this class action lawsuit is due and owing to all the
20 members of the class. It does not make sense to me to enter some amount which
21 I'm not even sure would be enforceable. And if it were, then why -- if it's enforceable,
22 it must be a final judgment.

23 MR. GREENBERG: Your Honor --

24 THE COURT: I don't know.

1 MR. GREENBERG: Your Honor, look, I don't -- I --

2 THE COURT: That's going to be my ruling. That's as good as I can do,
3 folks.

4 MR. GREENBERG: Your Honor, just one or two more questions. I
5 apologize, Your Honor. I want to see an order. If you're going to ask us to --
6 if you're going to ask us to work on an order, I'd like to be sure we understand
7 what the order should provide.

8 There was one other issue that I did not address with you, which is
9 that there's a request made here for an interim award of class counsel fees.

10 THE COURT: Uh-huh.

11 MR. GREENBERG: And to the extent that we are prevailing here on liability
12 or a finding of damages of some sort, Your Honor, there is a basis to award that.
13 I asked the Court to award that. And if Your Honor is simply not going to or you
14 want to address it, I would ask the Court to address it. But we haven't discussed it,
15 so that's why I'm mentioning it to the Court, along with understanding, again, what
16 the order is going to say in respect to a liability finding because I am not completely
17 clear how Your Honor would want that to be put in an order and how that would
18 affect the issues for trial. And in respect to the issues for trial, Your Honor, Your
19 Honor may want to examine the bifurcation motion, which was fully submitted to
20 chambers on the 7th and perhaps consider that in conjunction with the finding you're
21 making today and how this is going to impact the presentation of the issues at trial.

22 (Colloquy between the Court and the law clerk)

23 THE COURT: I will do that much. I will look to see the -- we've been through
24 the bifurcation motion but there's additional work we need to do.

1 MS. RODRIGUEZ: May I ask when the bifurcation is set for -- it's chambers
2 calendar, right?

3 THE COURT: Right.

4 MS. RODRIGUEZ: Is it in January?

5 THE COURT: I think the date has already come and gone, has it not?

6 MR. GREENBERG: It was December 7th, Your Honor.

7 MS. RODRIGUEZ: Oh, okay.

8 THE COURT: December 7th. Pearl Harbor Day. I will take a look at it and
9 see if that alters what I have said to this point.

10 MR. GREENBERG: So, should we simply wait --

11 THE COURT: In other words, I will see whether or not that does anything
12 about -- well, all I can tell you is I will look at it and see whether -- what the Court
13 thinks is the best way to proceed and I'll enter an order accordingly.

14 MS. RODRIGUEZ: And if I recall, Your Honor, that bifurcation was a
15 suggestion that we just plug in a number to his expert's spreadsheet. So, again,
16 I would ask the Court to allow me to argue why those spreadsheets are inadmissible
17 and unreliable.

18 THE COURT: Well, you filed an opposition to the motion, correct?

19 MS. RODRIGUEZ: I did. And I probably indicated that in there --

20 THE COURT: Yeah. So --

21 MS. RODRIGUEZ: -- that the Court should wait to consider that.

22 THE COURT: Whatever is in the motion and opposition will be considered.
23 Okay, that's as far as I'm going to say. Anything I say seems to spawn interminable
24 more arguments from both sides.

1 MR. GREENBERG: I apologize, Your Honor.

2 MS. RODRIGUEZ: I've been quiet. Your Honor asked me not to interrupt.
3 I haven't opened my mouth for the last thirty minutes here.

4 THE COURT: Okay.

5 MR. GREENBERG: Your Honor, so we will wait to hear more from the Court
6 regarding the disposition of the partial summary judgment motion, and either the
7 Court will issue an order or will give us directions as to the form of order --

8 THE COURT: Correct.

9 MR. GREENBERG: -- that should be entered and hopefully address clearly
10 these issues we've been discussing. Thank you, Your Honor.

11 THE COURT: All right.

12 MR. GREENBERG: I apologize for taking so much of your time.

13 MS. RODRIGUEZ: Thank you, Your Honor.

14 THE COURT: Thank you.

15 (PROCEEDINGS CONCLUDED AT 10:48 A.M.)

16 * * * * *

17

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

19

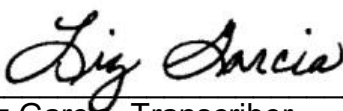
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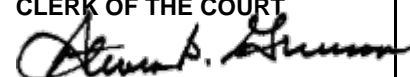
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DISTRICT COURT
CLARK COUNTY, NEVADA

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 IN LIMINE TO EXCLUDE THE TESTIMONY
OF PLAINTIFFS' EXPERTS

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, hereby respectfully move the Court for an Order in Limine as
described below, before trial, excluding the testimony of Plaintiffs' Experts Charles Bass and
Terrence Clauretie pursuant to NRS 50.275.

This Motion is based upon the pleadings and papers on file, the attached Memorandum of

Points and Authorities, and any oral argument that may be entertained at the hearing of this Motion.

DATED this 22nd day of December, 2017.

RODRIGUEZ LAW OFFICES, P. C.

/s/ Esther C. Rodriguez, Esq.
Esther C. Rodriguez, Esq.
Nevada State Bar No. 006473
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Attorneys for Defendants

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendants will bring the foregoing Motion in Limine on for
hearing before this Court on the 23 day of Jan., 2018, or as soon thereafter as
counsel may be heard.

DATED this 22nd day of December, 2017.

RODRIGUEZ LAW OFFICES, P. C.

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

AFFIDAVIT OF ESTHER C. RODRIGUEZ, ESQ.

STATE OF NEVADA)
COUNTY OF CLARK) ss.

ESTHER C. RODRIGUEZ, ESQ., being first duly sworn, deposes and says:

1. That I am an attorney at law duly licensed to practice in the State of Nevada.
2. That I am co-counsel for Defendants, along with Attorney Michael K. Wall.
3. That pursuant to E.D.C.R. 2.47(b), I conducted a meaningful conference with Plaintiffs' counsel, Leon Greenberg, Esq., on December 19, 2017, to discuss the motion in limine herein.
4. That the instant motion was necessary because Mr. Greenberg would not stipulate to the motion herein. After thoughtful discussion of said issues, the remaining issues were not resolved.
5. That this motion is made in good faith and not for any improper purpose or to protect litigation, but rather is made to narrow the scope of the relevant issues and save the parties involved time and cost.

FURTHER AFFIANT SAYETH NAUGHT

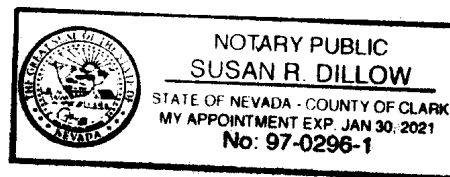
RODRIGUEZ LAW OFFICES, P. C.

By: *EC Rodriguez*
Esther C. Rodriguez, Esq.
Nevada State Bar No. 006473
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

Subscribed and sworn to before me

This 22 day of December 2017

Susan R. Dillow
NOTARY PUBLIC, in and for said
County and State



I.

POINTS AND AUTHORITIES

As this Court is quite familiar with the nature of this case, as well as the procedural history, it will not be re-stated herein. The only point which will be emphasized to the Court is that the expert deadline has been repeatedly extended by the Discovery Commissioner in this matter at the request of the Plaintiffs. Most recently, it was extended again by the Court itself after Plaintiffs' presentation before the Court requesting partial summary judgment based upon a spreadsheet of numbers which was not persuasive to the Court. This occurred at the May 18, 2017 hearing in which the Court extended the deadlines for Plaintiffs to obtain an expert in support of their requested relief. **Exhibit 1, Order Denying Plaintiffs' Motion for Partial Summary Judgment.**

At the hearing, the Court noted that the time for designation of experts and their reports on both sides had passed, but that there was time to reopen expert discovery and to still maintain the presently scheduled February trial date. Therefore, on the Court's own motion, the Court reopened discovery for the purposes solely of having both sides have an opportunity to designate experts and file reports, and to designate rebuttal experts if deemed necessary. **Exhibit 1, para. 7.**

Following this time, Plaintiffs retained and disclosed 2 experts, both of which do not meet the minimum threshold for this Court to admit their testimonies nor their reports. This is certainly not to disparage these two gentlemen nor their careers. The problems lie with the assignment which each was given; the sources upon which each relies; and the "opinions" which do not qualify under the Nevada Rules of Civil Procedure nor the guidance provided by our Supreme Court. In sum, each expert concedes they were really rubber stamping an opinion and a theory created by Plaintiffs' counsel. Surely, this Court will recognize that is not the purpose of an expert witness.

1. Legal Standard

It is in the discretion of the trial court to determine whether a particular witness is qualified and should be permitted to testify as an expert. *Brant v. State*, 130 Nev.Adv.Op. 97, 340 P.3d 576, 579 (2014) (citing *Higgs v. State*, 126 Nev. 1, 18, 222 P.3d 648, 659 (2010)). Under Nevada law, an expert's opinion must be relevant and the product of a reliable methodology. *Hallmark v. Eldridge*, 124 Nev. 492, 500, 189 P.3d 646, 651 (2008). For expert testimony to be admissible (1)

the witness must be qualified by special knowledge, skill, experience, training, or education and must opine to matters within the scope of his or her specialized knowledge, (2) the witness's testimony must be based upon reliable underlying methodology, and (3) the witness's testimony must assist the trier of fact in understanding the evidence or to determine a fact in issue. *Williams v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark*, 127 Nev. 518, 525-26, 262 P.3d 360, 365 (2011) (citing *Staccato v. Valley Hospital*, 123 Nev. 526, 530-31, 170 P.3d 503, 506 (2007)); NRS 50.275. In addition, the party seeking damages has the burden of proving the amount of damages. *Mort Wallin v. Commercial Cabinet*, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989). While damages need not be proven with mathematical exactitude, there must be some evidentiary basis grounded in actual facts for the fact finder to determine a reasonable amount of damages. *Id.* As discussed below, the testimony of Charles Bass and Terrence Clauretie fail to meet each of these requirements.

2. Motion to Strike Plaintiffs' Expert Charles Bass

In trying to avoid the obvious that Mr. Bass is neither qualified as an expert to give testimony in this matter, nor did he do the work of an expert in this matter, Plaintiffs have danced around the issue of his expert designation and tried to "hide the ball."

To date, Plaintiffs have remained noncommittal as to whether they are designating Charles Bass as an expert or not. Prior to the filing of Plaintiffs' motion for partial summary judgment, Plaintiffs disclosed a series of reports prepared by Mr. Bass but in the forms of "declarations," rather than as expert reports. Plaintiffs' 7th Supplemental Disclosures remained cagey and unclear as to whether Mr. Bass was an expert or not stating: "In the event that the materials prepared by Charles Bass for plaintiff are deemed by the Court to constitute the work product of an expert witness, plaintiffs so designate him as an expert witness." **Exhibit 2**, Plaintiffs' 7th Supplemental Disclosures.

Following the Court's order denying Plaintiffs' motion for partial summary judgment, Plaintiffs produced a 9th Supplemental Disclosure entitled, "Expert Witness Report and Designation." **Exhibit 3**, Plaintiffs' 9th Supplemental Disclosures. In this disclosure, Plaintiffs again remained non-committal as to whether Mr. Bass is an expert or not stating:

1 “Plaintiffs had previously designated Charles Bass as an expert witness in the event
2 his summarization of, and calculations made upon, the defendants records’, now
3 contained in the two Excel files ACAB-All and 2013-2015 Payroll Analysis, were
4 deemed to constitute materials requiring expert testimony for their consideration by
5 the Court. Because Dr. Clauretie has now been designated as an expert witness, and
6 furnished an expert report based upon those two Excel files, plaintiffs designate as
7 an expert witness, and reserve the right to have testify at trial, Charles Bass, whose
8 testimony, if called to testify at trial, will concern his work contained in the two
9 Excel files ACAB-All and 2013-2015 Payroll Analysis and upon which Dr.
10 Clauretie’s report is based.” **Exhibit 3**, p. 2.

11 Therefore, while Plaintiffs remain secretive as to whether they intend to utilize Mr. Bass to testify
12 at the trial of this matter, Defendants are forced to bring this issue to obtain this Court’s order that
13 the testimony of Mr. Bass should be precluded.

14 **a. Charles Bass is an interested party as a Plaintiff in the companion Nevada Yellow Cab**
15 **case.**

16 Mr. Bass was not retained as an independent expert witness to perform an analysis and to
17 render opinions that would be helpful to the trier of fact. Rather, as admitted in his deposition
18 testimony, he is an active claimant in the companion minimum wage case before Judge Israel as a
19 former taxicab driver for Yellow Cab. The matter is entitled *Thomas v. Nevada Yellow Cab Corp.*,
20 District Court Case No. A-12-661726 which is in active and ongoing litigation before Department
21 28.

22 Q. How did you come to your understanding of -- or your knowledge of the Cab Manager system
23 that you've just expressed?

24 A. I drove a cab for a year, and I know the systems and how they work.

25 Q. When -- when did you drive a cab?

26 A. 2010, 2011. And everybody uses the same metering system.

27 Q. Okay. And who did you drive a cab for?

28 A. Yellow Cab. **Exhibit 4**, *Deposition of Charles Bass*, 69:17-70:1.

1 Q. Do you know if you're a member of the class action litigation that is currently pending against
2 Yellow Cab?

3 A. If there's a class action that covered that period of time that I drove, then I would be part of
4 the class. *Id.* 71:7-12.

5 Q. Do you think that you're owed minimum wage from your time working as a cab driver, an
6 underpayment of minimum wage?

7 A. I received a check several years ago, actually quite a few years ago, that came out of
8 nowhere a year after I drove. It was a -- it was a settlement with the Department of Labor. *Id.*
9 72:11-17.

10 Not only are Mr. Bass' opinions biased, based upon his participation as a Plaintiff in the
11 minimum wage case, he admits he bases his opinions upon his experience at that job at Yellow Cab
12 as a taxicab driver!

13 Q. Okay. So based on your experience working for Yellow Cab, you became familiar with Cab
14 Manager?

15 A. I became -- I became familiar with the systems of how rides are tracked and checking in,
16 checking out, that type of thing.

17 Q. Okay.

18 A. I didn't know the name of the system that they used, but I know that that existed because
19 that's -- when you punched in, that's when you -- you hit the meter. So I assume it was Cab
20 Manager. Whether that was the same for every company, I don't know.

21 Q. Okay. So I'm just trying to understand then based on your -- you based your experience as
22 working as a cab driver for 13 months and what you learned from that --

23 A. Mm-hmm.

24 Q. -- and assumed that A Cab's procedures would be the same?

25 A. Well, everybody had the same meter which is provided by the State. So every cab company
26 had the same metering system. So I'm assuming the Cab Manager -- and I don't know for a fact.
27 I'm assuming Cab Manager tied into the -- the system that actually did the metering in order to
28 record those date/time stamps. So whether everybody used Cab Manager or a system like Cab

1 Manager. But the column headings, the dates, I mean, you can look at the columns, the data that
2 came in, and see what those dates -- what those dates mean.

3 Q. Okay. And I appreciate your -- your honesty and your assumptions that you've out -- laid --
4 laid

5 out in your testimony. But in addition to that, did you do any independent research or inquiry to
6 confirm those assumptions that you've just stated?

7 A. I did not. *Id.*, 73:14-74:24.

8 Expert opinion testimony should "not be received if it is shown to rest upon assumptions
9 rather than facts" or if it is the "result of guesswork or conjecture." *Wrenn v. State*, 89 Nev. 71, 73,
10 506 P.2d 418, 419 (1973) (citing *Choat v. McDorman*, 86 Nev. 332, 335, 468 P.2d 354 (1970);
11 *Beasley v. State*, 81 Nev. 431, 436, 404 P.2d 911 (1965)).

12 **Mr. Bass bases his opinions regarding underpayment of wages on unsubstantiated**
13 **speculation and unreliable methodology.**

14 Mr. Bass' opinions must be excluded because they are not based on facts particular to the
15 Plaintiffs (nor the Defendants for that matter) and rely on an unreliable methodology. Mr. Bass'
16 opinions in sum all arise from a tool which was conceptualized by Mr. Greenberg, and presumably
17 used in all of his minimum wage cases. It relies upon a number of assumptions where numbers are
18 merely plugged in to a spreadsheet which will allegedly yield a damages result. It is a tool which
19 selects certain data for input, ignoring other data all at the discretion of the user or person doing the
20 data input -- in this case, Mr. Bass. In his deposition testimony, Mr. Bass concedes he is merely
21 regurgitating the information provided to him by Mr. Greenberg; and essentially just plugged in
22 numbers as instructed.

23 To determine whether an expert's opinion is based upon reliable methodology, as opposed
24 to impermissible guesswork, a trial court should consider whether the opinion is "based more on
25 particularized facts rather than assumption, conjecture, or generalization." *Hallmark*, 124 Nev. at
26 500-02, 189 P.3d at 651-52.

27 Mr. Bass' has never been admitted as an expert in this area or to opine on such
28 generalizations.

1 Q. Have you ever served as an expert witness in Nevada?

2 A. Nope. **Exhibit 4**, Deposition of Charles Bass, 10:11-13

3 Q. Is it your understanding that you've been designated as an expert in this matter?

4 A. Yes. *Id.* 18:20-22.

5 Q. Did you do an expert report in this matter?

6 A. No. Just did a spreadsheet. *Id.* 20:6-7.

7 Q. So is it your opinion that your expert -- I call them opinions but you're indicating you're not
8 giving an opinion in this matter?

9 A. No. Because all I'm doing is taking the numbers that were given and adding and subtracting
10 those numbers together to create another number. *Id.* 20:12-17.

11 Q. So basically you don't have any opinions.

12 A. Nope.

13 Q. And you don't have any conclusions.

14 A. Nope.

15 Q. You've just created a -- a model that would be outlined in the declarations as well as the
16 supporting spreadsheets?

17 A. Correct. The -- the model, which I'm sure you've seen, is a spreadsheet that brings the
18 information that came in from the payroll system and Cab Manager and calculates damages based
19 on those numbers with a variable that allows both sides to adjust up or down those assumptions,
20 and that was designed, I would assume, for negotiations. *Id.* 21:18-22:7.

21 He starts with a series of assumptions provided by Mr. Greenberg, and then based on these
22 unreliable numbers, he then calculates alleged underpayments by guessing at an average shift
23 length. There are no actual numbers for any driver. In fact, Mr. Bass concedes he never actually
24 looked at one tripsheet nor one paystub nor any source document. None of the estimates have been
25 verified by any actual facts particular to A Cab or its drivers. Without any actual facts to anchor the
26 analysis, the result is gross speculation.

27 Mr. Bass' deposition testimony supports that none of his estimates are supported by any
28 competent evidence, and they should be excluded from trial.

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

3 A. No, I did not.

4 * * *

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

8 A. No, I did not.

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

11 A. No, I did not.

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

14 A. No, I did not.

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

17 A. I have no idea who they are.

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

19 A. No.

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

22 A. No, I did not.

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

24 A. No, I did not.

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

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

28 Q. Okay. So did you ever have an opportunity to review that amendment to the Nevada

1 constitution pertaining to minimum wage?

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

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

5 A. Did not.

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

8 A. Did not.

9 Q. How about Michael Sergeant?

10 A. Nobody.

11 Q. Did you --

12 A. **My conversation has been with Mr. Greenberg.**

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

15 A. I did not.

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

18 A. **That's fair, yes.** *Id.*, 28:22-31:17.

19 An expert's opinion must be relevant and the product of a reliable methodology. *Hallmark*,
20 124 Nev. at 500. Given that all of Mr. Bass' sources of information were piecemealed and
21 provided by Mr. Greenberg, it is not only unreliable, but Plaintiffs had to hire a second expert for
22 the sole purpose of stating Mr. Bass' arithmetic is reliable.

23 c. **Mr. Bass is not qualified to offer his opinion regarding underpayment of minimum**
24 **wage, which is based on unreliable methodology, irrelevant, and restricted under the**
25 **caselaw.**

26 Over a decade ago, the Nevada Supreme Court allowed an expert economist to testify to the
27 monetary value of Plaintiff's loss of enjoyment of living as a component of pain and suffering in
28 *Banks v. Sunrise*, 120 Nev. 822, 837-838, 102 P.3d 52 (2004). *Banks* involved a medical

malpractice suit, and not a wage case, making it distinguishable on its facts. Regardless, the Nevada Supreme Court has since adopted more stringent standards for admitting such expert testimony when it subsequently issued its opinion in *Hallmark*. Under this more rigorous standard, in order to determine if a methodology is reliable the court should consider whether the methodology is: “(1) within a recognized field of expertise; (2) testable and has been tested; (3) published and subjected to peer review; (4) generally accepted in the scientific community...and (5) based more on particularized facts rather than assumption, conjecture, or generalization.” *Hallmark*, 124 Nev. at 500-02, 189 P.3d at 651-52. Based on these standards and considerations similar to those of *Hallmark*, this Court should reject the opinions of Mr. Bass. His opinions do not and cannot meet any of these requisites. See also, *McGuire v. City of Santa Fe*, 954 F. Supp. 230, 232-33 (D.N.M. 1996) (a case finding under Daubert, hedonic damage testimony is neither testable nor generally accepted) and *Hein v. Merck & Co.*, 868 F. Supp. 230 (M.D. Tenn. 1994) (rejecting hedonic damages testimony as insufficiently reliable or valid to meet the requirements of Daubert). These Courts reject a type of damages, hedonic, as insufficiently reliable.

Here, Mr. Bass purports to offer damages testimony (1) not within a recognized field of expertise; (2) not testable and has not been tested; (3) not published nor subjected to peer review; (4) not generally accepted in the scientific community...and (5) not based more on particularized facts rather than assumption, conjecture, or generalization.” Further, any “report” he prepared was actually prepared by Mr. Greenberg.

Q. Did someone ask you to prepare this declaration?

A. Yes. Mr. Greenberg.

Q. Now, did you actually write this declaration or?

A. I wrote a stab at a declaration, and Mr. Greenberg put it in legal form for me.

Q. Okay. And did you keep a draft of the declaration that you originally authored?

A. No.

* * *

Q. Okay. Well, do you remember what parts -- well, did Mr. Greenberg revise your declaration -- your -- your proposed declaration?

1 A. I think what he did was he put it in language that would be more understandable to the Court as
2 opposed to me being a mathematical junkie and writing in formulas as opposed to paragraphs. *Id.*,
3 50:7-51:1.

4 It should be noted that Defendants could not ascertain which parts of the expert report were
5 written by Mr. Bass and which parts written by Mr. Greenberg, as Plaintiffs objected to the
6 disclosure of the expert file and communications as being privileged. **Exhibit 5, Plaintiffs’**
7 ***Objections to Subpoena Duces Tecum Served on Terrence M. Clauretie and Charles Bass.***

8 **3. Motion to Strike Plaintiffs’ Expert Terrence Clauretie.**

9 Plaintiffs have disclosed Dr. Terrence Clauretie, who performed no individual work in this
10 matter, but rather merely reviewed and checked the work completed by Charles Bass. The
11 testimony and report of Dr. Clauretie is inadmissible Under NRS § 50.275. NRS § 50.275
12 establishes qualifications for expert witnesses to testify in Nevada. First, the witness must be
13 qualified in an area of “scientific, technical or other specialized knowledge” (the qualification
14 requirement).¹ Second, the witness must be able to “assist the trier of fact” in understanding the
15 evidence at issue (the assistance requirement).² And third, the witness may only testify as to
16 “matters within the scope” of the witness’ expertise (the limited scope requirement).³

17 Dr. Clauretie does not meet the “qualification requirement” as he is merely checking the
18 work of an excel program and formulas; there is no indication he is an expert in this area. The
19 focus of this analysis, however, is the second prong of NRS § 50.275 — the assistance requirement.
20 Expert testimony will only assist the jury if that testimony is relevant.⁴ The concept of relevancy is
21 basic to the law of evidence as it circumscribes admissibility.⁵ Evidence is relevant if it has “any
22 tendency to make the existence of any fact that is of consequence to the determination of the action
23

24 ¹ See Hallmark v. Eldridge, 189 P.3d 646, 650 (Nev. 2008) (citing NRS §50.275).

25 ² Id.

26 ³ Id.

27 ⁴ See id. at 651.

28 ⁵ See NRS § 48.025 (only relevant evidence is admissible).

1 more or less probable than it would be without the evidence.”⁶ Testimony grounded in guess,
2 surmise, or conjecture — not being regarded as proof of a fact — is irrelevant since it has no
3 tendency to make the existence of a fact more or less probable.⁷ It follows that expert opinions
4 based upon the witness’s guess, speculation, or conjecture must also be inadmissible.⁸

5 Here, Plaintiffs attempt to have Dr. Clauretie serve as an expert to merely regurgitate the
6 work of another person. He conceded in his deposition he performed no independent work in this
7 matter. It simply cannot be said that his testimony would assist the trier of fact, in having an expert
8 who is merely adopting opinions that he did not even formulate. It would be a waste of this Court’s
9 time to have Dr. Clauretie attempt to testify as to opinions he quite frankly is not qualified to give.
10 As he attests to in his deposition, he did not prepare any calculations, any spreadsheets, any
11 analysis other than a review of Mr. Bass’ work.

12 A. ... My assignment was not to opine on the relevance of the scenarios themselves. For example,
13 he [Bass] made once an area where he assumed that everybody's minimum wage should have been
14 7:25 an hour, and he then made another calculation that everybody should have a minimum wage of
15 \$8.25 an hour. My assignment was not to consider the reasonableness of those particular
16 calculations but **were they done mathematically correctly. That's about it. Were they done**
17 **mathematically correctly**, were they reliable estimates given the data that was available to
18 him provided by the defendants. **Exhibit 6, Deposition of Terrence Clauretie, 36:16-37:2.**

19 II.

20 CONCLUSION

21 For the foregoing, Plaintiffs respectfully request that this Court enter an Order before trial
22 excluding the expert testimony of Charles Bass and Dr. Terrence Clauretie because each is not

23 ...

24 ...

25 ⁶ NRS § 48.015; see also *Desert Cab Inc. v. Marino*, 108 Nev. 32, 35, 823 P.2d 898, 899-900 (1992).

26 ⁷ See *Modelski v. Navistar Intern. Transp. Corp.*, 707 N.E.2d 239, 245 (Ill. Ct. App. 1999).

27 ⁸ See *Gordon*, 91 Nev. at 643, 541 P.2d at 534 (trial court committed reversible error by allowing accident
28 reconstructionist to testify based on conjecture).

1 qualified to offer his proffered opinions and otherwise did not employ reliable scientific or medical
2 methodology in coming to his opinion.

3 DATED this 22nd day of December, 2017.

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

5
6 /s/ Esther C. Rodriguez, Esq.
7 Esther C. Rodriguez, Esq.
8 Nevada State Bar No. 006473
9 10161 Park Run Drive, Suite 150
10 Las Vegas, Nevada 89145
11 *Attorneys for Defendants*

12 **CERTIFICATE OF SERVICE**

13 I HEREBY CERTIFY on this 22th day of December, 2017, I electronically filed the
14 foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System
15 which will send a notice of electronic service to the following:

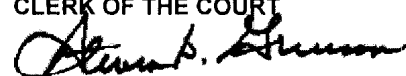
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20 *Counsel for Plaintiff*

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23 170 South Green Valley Parkway # 280
24 Henderson, Nevada 89012
25 *Counsel for Plaintiff Pending Order of Court*

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

EXHIBIT 1

EXHIBIT 1



ODM

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

ORDER DENYING PLAINTIFFS'

MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs' Motion for Partial Summary Judgment came on for hearing before this Court on May 18, 2017, at 10:15 a.m., and for follow-up argument following additional briefing on May 25, 2017, at 1:00 p.m. Plaintiffs were represented at both hearings by their attorneys, Leon Greenberg and Dana Sniegocki of Leon Greenberg Professional Corporation. Defendants were represented at both hearings by their attorneys, Esther C. Rodriguez of Rodriguez Law Offices, P.C., and Michael K. Wall of Hutchison & Steffen, LLC.

Having considered the pleadings and motion papers on file herein, and the arguments of counsel at the hearings, the Court denies plaintiffs' motion for partial summary judgment for the following reasons:

1. Plaintiffs motion seeks partial summary judgment regarding the amount of some of the damages that plaintiffs claim defendants have admitted is due to them based on the Minimum Wage Act ("MWA") for past, unpaid minimum wages for the time period January 1, 2013, through December 31, 2015. Plaintiffs' argument is based on records obtained from defendants during discovery, and the deposition testimony of defendant Creighton J. Nady. Plaintiffs' witness, Charles Bass, has analyzed these numbers, and has provided what plaintiffs characterize as a summary that satisfies NRS 52.275. Defendants dispute that Bass' declaration qualifies as a summary under the statute. Plaintiffs have neither disclosed Mr. Bass as an expert witness nor provided a report from him.

2. Plaintiffs claim that no expert witness is necessary to grant their motion for partial summary judgment because the records review and calculations of Mr. Bass are simple arithmetic, and his conclusion are just a compilation of the data available from the records and a "summary" contemplated by NRS 52.275. Defendants counter that expert testimony is required to determine the amount of damages, that no amount of damages has been conceded, that plaintiffs have presented numerous and conflicting damages figures based on Mr. Bass' "arithmetic," that Mr. Bass' methodologies are flawed and his calculations are incorrect, and that the amount of damages is a factual issue that cannot be resolved on summary judgment based on the records now before this Court.

3. At the first hearing, the Court concluded that Mr. Bass had not been disclosed as an expert witness, and that it was not clear to the Court whether Mr. Bass' conclusions were expert in nature, or merely mathematical calculations, as argued by plaintiffs. The Court requested and received supplemental briefing and materials related to this issue.

4. Having reviewed the materials presented, including the sample figures provided by plaintiffs' counsel allegedly showing how the damages could be calculated as a matter of mathematics, the Court concludes that it cannot grant the motion for partial summary judgment. The Court notes that from the presentation made by plaintiffs in the last letter from plaintiffs' counsel and the attachments, the Court could not arrive at a simple calculation and could not understand how Mr. Bass' damages numbers were accomplished. It appeared to the Court that it would require the services of an expert to help the Court or the trier of fact to understand the calculations.

5. The Court concludes that there are genuine issues of fact remaining for trial to a trier of fact, among other things, to determine what the correct calculation would be under any of the scenarios that have been put forward by the plaintiffs. Specifically, plaintiffs have presented numbers in their claimed "summary" of defendants' records which plaintiffs claim can be arrived at by simple mathematics. There is dispute from defendants about whether plaintiffs can even use those numbers and arrive at correct calculations, but plaintiffs have argued that defendants should not be heard to complain if plaintiffs use defendants' numbers from their own documents. But even were the Court to accept that argument, when the Court goes to the calculation, the Court cannot get from the raw numbers provided by Mr. Bass and by counsel to a final calculation.

6. The Court concludes that getting to a final calculation takes more in the form of an evidentiary nature, more of an evidentiary presentation than simply taking numbers off of this column and that column and performing simple arithmetic.

7. At the hearing, the Court noted that the time for designation of experts and their reports on both sides had passed, but that there was time to reopen expert discovery and to still maintain the presently scheduled February trial date. Therefore, on the Court's own motion, the Court reopened discovery for the purposes solely of having both sides have an opportunity to designate experts and file reports, and to designate rebuttal experts if deemed necessary.

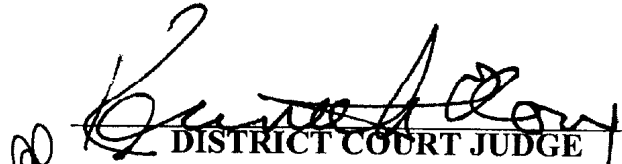
THEREFORE, plaintiffs' motion for partial summary judgment is denied without prejudice. Expert discovery is reopened as indicated above, and the following deadlines are established:

- (a) Initial Expert Designations are due on or before June 30, 2017.
(b) Rebuttal Expert Designations are due on or before July 31, 2017.
(c) Discovery will close on September 29, 2017.
(d) Dispositive Motions are due on or before October 30, 2017.

All other trial deadlines remain as previously set.

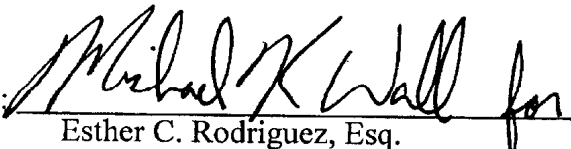
IT IS SO ORDERED.

DATED this 30 day of June, 2017.


DISTRICT COURT JUDGE

Submitted by:

RODRIGUEZ LAW OFFICES, P. C.

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

Approved as to form and content:

LEON GREENBERG PROFESSIONAL CORPORATION



LEON GREENBERG, ESQ.
Nevada Bar No.: 8094
DANA SNIEGOCKI, ESQ.
Nevada Bar No.: 11715
2965 South Jones Boulevard, Suite E3
Las Vegas, Nevada 89146
Attorneys for Plaintiffs

EXHIBIT 2

EXHIBIT 2

LEON GREENBERG, ESQ., SBN 8094
 DANA SNIEGOCKI, ESQ., SBN 11715
 Leon Greenberg Professional Corporation
 2965 South Jones Blvd- Suite E-3
 (702) 383-6085
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leongreenberg@overtimelaw.com
dana@overtimelaw.com

Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

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

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

Reservation of Expert Witness;

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

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

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

20
21 Dated: January 27, 2017

22 Leon Greenberg Professional Corporation

23 By: /s/ Leon Greenberg

24 Leon Greenberg, Esq.

25 Nevada Bar No.: 8094

26 2965 South Jones Boulevard - Suite E3

27 Las Vegas, Nevada 89146

28 (702) 383-6085

Attorney for Plaintiff

1 CERTIFICATE OF SERVICE

2

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

4

5 **PLAINTIFFS' SEVENTH SUPPLEMENTAL DISCLOSURES**

6 **UNDER NEV. R. CIV. P. 16.1**

7 by court electronic service to:

8 TO:

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

12

13

14 /s/ *Dana Sniegocki*

15 Dana Sniegocki

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EXHIBIT 3

EXHIBIT 3

1 LEON GREENBERG, ESQ., SBN 8094
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7 leongreenberg@overtimelaw.com
8 dana@overtimelaw.com

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, and A
18 CAB, LLC,

19 Defendants.

Case No.: A-12-669926-C

Dept.: I

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

Re: Expert Witness
Report and Designation

20 Plaintiffs, as and for their compliance with the provisions of Nev. R. Civ. P.
21 16.1(a)(2) hereby provide the following supplemental disclosures:

22 **Expert Witness Designation and Report**

23 The Curriculum Vitae of Terrence M. Clauretie, PH.D, C.P.A., is provided along
24 with his report of July 18, 2017 which is 46 pages in length including the materials
25 annexed thereto. Also provided is a list of prior testimony given by Dr. Clauretie.
26 Sent by mail on a DVD are the materials discussed in, and relied upon, in his report,
27 the Excel files ACAB-ALL and 2013-2015 Payroll Analysis. Also provided with this
28 report is the declaration of Charles Bass of July 17, 2017, which details certain
information contained in the foregoing two identified Excel files that form the basis for
Dr. Clauretie's report and Dr. Clauretie's schedule of fees charged and invoice for
work performed.

Dr. Clauretie is expected to give testimony at trial as discussed in his report on

AA005535

1 the damages of the class members and the proper methodology to determine the class
2 members' damages.

3 Plaintiffs had previously designated Charles Bass as an expert witness in the
4 event his summarization of, and calculations made upon, the defendants records', now
5 contained in the two Excel files ACAB-ALL and 2013-2015 Payroll Analysis, were
6 deemed to constitute materials requiring expert testimony for their consideration by the
7 Court. Because Dr. Clauretie has now been designated as an expert witness, and
8 furnished an expert report based upon those two Excel files, plaintiffs designate as an
9 expert witness, and reserve the right to have testify at trial, Charles Bass, whose
10 testimony, if called to testify at trial, will concern his work contained in the two Excel
11 files ACAB-ALL and 2013-2015 Payroll Analysis and upon which Dr. Clauretie's
12 report is based. He has no separate report or other expected testimony to offer.

13 The Curriculum Vitae and other relevant information concerning Charles Bass
14 has previously been provided.

15
16 Dated: July 19, 2017

17 Leon Greenberg Professional Corporation

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

1 CERTIFICATE OF SERVICE

2

3 The undersigned certifies that on July 19, 2017, she served the within:

4

5 **PLAINTIFFS' NINTH SUPPLEMENTAL DISCLOSURES UNDER**
6 **NEV. R. CIV. P. 16.1**

7 by court electronic service to:

8 TO:

9 Esther C. Rodriguez, Esq.
10 RODRIGUEZ LAW OFFICES, P.C.
11 10161 Park Run Drive, Suite 150
12 Las Vegas, NV 89145

13

14 */s/ Sydney Saucier*

15 Sydney Saucier

16

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EXHIBIT 4

EXHIBIT 4

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 MICHAEL MURRAY and MICHAEL)
4 RENO, Individually and on)
5 behalf of other similarly)
6 situated,)
7 Plaintiffs,) Case No.: A-12-669926-C
8 vs.) Dept. No.: I
9 A CAB TAXI SERVICE LLC and A)
10 CAB, LLC, and CREIGHTON J.)
11 NADY,)
12 Defendants.)
13 _____)

14 VIDEOTAPED EXPERT DEPOSITION OF CHARLES M. BASS
15 Taken on THURSDAY, OCTOBER 19, 2017
16 By a Certified Court Reporter
17 At 1:38 p.m.
18 Held at 3770 Howard Hughes Parkway, Suite 300
19 Las Vegas, Nevada
20
21
22
23

24 Reported by: Amber M. McClane, NV CCR No. 914
25 Job No.: 423068

1 not -- there's a stack of documents here. It looks
2 like about 100 pages. I have not actually examined
3 these hundred pages of documents.

4 THE WITNESS: Right.

5 MR. GREENBERG: The stack itself Mr. Bass has
6 sort of brought to my attention and also the time frame
7 of what he's referring to. So I'm aware of that.

8 Q. (By Ms. Rodriguez) Okay. Well, since --
9 well, have you ever been deposed in Nevada?

10 A. No.

11 Q. Have you ever served as an expert witness in
12 Nevada?

13 A. Nope.

14 Q. Okay. Well, let me -- let me cover a few
15 ground rules --

16 A. Sure.

17 Q. -- as to what's going to happen this
18 afternoon. Hopefully within -- we'll try to get this
19 wrapped up within two to three hours hopefully, the
20 max.

21 MR. GABROY: Yes. Thank you.

22 MS. RODRIGUEZ: Mr. Gabroy is cheering --

23 THE WITNESS: Thank you.

24 MS. RODRIGUEZ: -- at the end of the table.

25 Q. (By Ms. Rodriguez) I will do my best to

1 record -- has not been designated as an -- as an expert
2 consultant or witness to testify in any other matters
3 for me. Okay? To the extent that I'm relying on him
4 as a consultant in other matters where he's not been
5 designated in litigation, I'm instructing him not to
6 discuss those matters because that would be
7 confidential. Okay?

8 Q. (By Ms. Rodriguez) Have you ever been
9 retained by Mr. Greenberg on any matter as a consultant
10 prior to the A Cab matter?

11 A. I don't know the timing of it, but A Cab was,
12 if not the first, was one of the first. They were --
13 all happened around the same time about a year ago.

14 Q. And you've not been -- to your knowledge,
15 you've not been designated as an expert by
16 Mr. Greenberg in any other case; is that --

17 A. Correct.

18 Q. -- correct?

19 A. Correct.

20 Q. Is it your understanding that you've been
21 designated as an expert in this matter?

22 A. Yes.

23 MS. RODRIGUEZ: I'm going to go off the
24 record for one second because I think I'm going to fall
25 out of this chair.

1 A. I did.

2 Q. When did you do that?

3 A. It was done last fall, some of it the spring
4 as data became available because data came in
5 different -- different stages and stuff.

6 Q. Did you do an expert report in this matter?

7 A. No. Just did a spreadsheet.

8 Q. I'm sorry, could you repeat that?

9 A. Just the spreadsheets.

10 Q. Okay.

11 A. That was my final product.

12 Q. So is it your opinion that your expert -- I
13 call them opinions but you're indicating you're not
14 giving an opinion in this matter?

15 A. No. Because all I'm doing is taking the
16 numbers that were given and adding and subtracting
17 those numbers together to create another number.

18 Q. Okay.

19 A. So, I mean, I'm not giving an opinion whether
20 that's good, bad, high, low, whatever. It's -- that's
21 what the numbers are.

22 Q. So is there a word that we can agree upon
23 that I can refer to them in -- in questioning you? If
24 they're not opinions, are they conclusions?

25 A. No. That's even worse, I think. The word

1 would be just to prepare a report based on the numbers.

2 Not a report but a calculation.

3 Q. Okay.

4 MR. GREENBERG: I might suggest model,
5 Counsel.

6 THE WITNESS: Model's a good one.

7 Q. (By Ms. Rodriguez) Okay. So is it your
8 opinion that -- or is it your position, I should say.
9 Is it your position that your model would be contained
10 in the declarations that you've signed in this matter?

11 A. Yes.

12 Q. And the underlying spreadsheets accompany
13 those -- that dec -- those declarations; is that
14 correct?

15 A. Correct.

16 Q. Okay.

17 A. And that is the model, the spreadsheet.

18 Q. Okay. So basically you don't have any
19 opinions.

20 A. Nope.

21 Q. And you don't have any conclusions.

22 A. Nope.

23 Q. You've just created a -- a model that would
24 be outlined in the declarations as well as the
25 supporting spreadsheets?

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. Clauretje? Did you receive any
19 input from Dr. Clauretje in finalizing your model?

20 A. None. Actually, my model was finalized
21 before Dr. Clauretje 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 calculations?

2 A. The day? Probably not. I could give you a
3 range.

4 Q. Okay. Did someone ask you to prepare this
5 declaration?

6 A. Yes. Mr. Greenberg.

7 Q. Now, did you actually write this declaration
8 or?

9 A. I wrote a stab at a declaration, and
10 Mr. Greenberg put it in legal form for me.

11 Q. Okay. And did you keep a draft of the
12 declaration that you originally authored?

13 A. No.

14 Q. Would you believe that to be contained in an
15 e-mail that you may still have?

16 A. It may be. I mean, I may have a copy of it,
17 too. I don't know. But it really wasn't relevant
18 because it wasn't anything that was actually submitted
19 at that point.

20 Q. Okay. Well, do you remember what parts --
21 well, did Mr. Greenberg revise your declaration --
22 your -- your proposed declaration?

23 A. I think what he did was he put it in language
24 that would be more understandable to the Court as
25 opposed to me being a mathematical junkie and writing

1 in formulas as opposed to paragraphs.

2 Q. Okay. And if you turn to page 3, as an
3 example, throughout your declaration you indicate words
4 such as what's on page 3, line 12, that -- is referring
5 to column D, "I'm advised that this is the payroll
6 check or payroll transaction date," and then line 16,
7 referring to column E says, "I'm advised that the
8 number in this column corresponds to an employee's
9 name." The bottom of that page you say, "I'm a" --

10 A. Yeah, basically a description of each column.

11 Q. Hold on, sir.

12 A. I'm sorry.

13 Q. At the bottom of the page you say, "I'm
14 advised that those names and account numbers correspond
15 to the name account number."

16 When you are indicating those words throughout
17 your declaration, "I am advised," who is it that you're --
18 who is advising you?

19 A. Mr. Greenberg.

20 Q. And as far as the information that you're
21 receiving from Mr. Greenberg, did you keep any notes of
22 that?

23 A. He gave the data to me either on a CD or an
24 e-mail, but mostly it was with CD. So those are the
25 original files I think were provided by the -- by the

1 between where they picked up a fare and dropped off a
2 fare.

3 So if you look at a Cab Manager record, you
4 should be able to see how long each fare took, where the
5 locations went, and the time in between would be the gap
6 time where the driver's actually waiting for fares. If
7 you go out to any of the hotels, you'll see lines of cabs,
8 people in line waiting. That's that blank spot in
9 between.

10 Q. Did you have any familiarity with the Cab
11 Manager system prior to your involvement with the A Cab
12 matter?

13 A. Not Cab Manager, no.

14 Q. Have you ever had any communications with
15 James or Jim Morgan, the creator of Cab Manager?

16 A. No. Did not.

17 Q. How did you come to your understanding of --
18 or your knowledge of the Cab Manager system that you've
19 just expressed?

20 A. I drove a cab for a year, and I know the
21 systems and how they work.

22 Q. When -- when did you drive a cab?

23 A. 2010, 2011. And everybody uses the same
24 metering system.

25 Q. Okay. And who did you drive a cab for?

1 A. Yellow Cab.

2 Q. Yellow Cab here in Las Vegas?

3 A. Yes.

4 Q. Because you know there's a separate Yellow
5 Cab up in Reno.

6 A. Oh, there's Yellow Cabs --

7 Q. Right.

8 A. -- in every city of the world.

9 Q. Right. But you --

10 A. Here's an interesting point. In New York,
11 every cab has to be painted yellow, whether it's Yellow
12 or whatever.

13 Q. So you were an employee of
14 Yellow-Checker-Star company --

15 A. I was, yes.

16 Q. -- between 2010 and 2011?

17 A. Correct.

18 Q. And are you a plaintiff in the current --

19 A. No.

20 Q. Hold on, sir. Let me finish the question.
21 We're going to drive our court reporter crazy.

22 Are you a claimant in -- or a plaintiff in
23 the current minimum wage case against Yellow --
24 Yellow-Checker or Star companies?

25 A. I guess I could be since I drove during those

1 periods of time.

2 Q. Okay. So you don't -- do -- do you know if
3 you're --

4 A. Did I file --

5 Q. -- a claimant?

6 A. -- a complaint? No.

7 Q. Do you know if you're a member of the class
8 action litigation that is currently pending against
9 Yellow Cab?

10 A. If there's a class action that covered that
11 period of time that I drove, then I would be part of
12 the class.

13 Q. Do you know if you're represented in that
14 case?

15 A. Do I know if -- if I'm represented?

16 Q. (Nods head.)

17 A. There is a case. Right? I don't have an
18 attorney of my own that I've hired. So if there is a
19 case that you're alluding to and it covers that time
20 period, then I am a member of that class. But I'm not
21 -- I guess I'm represented by whoever's suing -- filing
22 suit against Yellow-Checker-Star.

23 Q. Okay. Well, I haven't checked the court
24 docket lately, but it's my understanding that
25 Mr. Greenberg is the attorney for the class action case

1 against Yellow Cab.

2 A. Right.

3 Q. So are you being represented by Mr. Greenberg
4 in that case to your knowledge, or do you have any
5 knowledge of that?

6 A. I'm not being represented by Mr. Greenberg.
7 I mean, if I'm part of that class, as is thousands of
8 other drivers. You know, I've had no communications
9 about any lawsuits that are going on, anything like
10 that.

11 Q. Do you think that you're owed minimum wage
12 from your time working as a cab driver, an underpayment
13 of minimum wage?

14 A. I received a check several years ago,
15 actually quite a few years ago, that came out of
16 nowhere a year after I drove. It was a -- it was a
17 settlement with the Department of Labor.

18 Q. Okay. So you received a check from the
19 Department of Labor or from Yellow Cab?

20 A. No. From Yellow.

21 Q. So it's your understanding that Yellow
22 reached a settlement with the Department of Labor, and
23 as a result of that you received a check?

24 A. Yes.

25 Q. For the time period --

1 A. That I drove.

2 Q. -- that you worked?

3 So did you work one or two years for them?

4 A. I worked 13 months that covered that period
5 of time. It was in the recession, and you do what you
6 got to do to pay your bills.

7 Q. Had you ever worked for a taxicab company
8 other than the -- the employment that you just
9 mentioned?

10 A. No, never.

11 Q. Have you ever worked for any other
12 transportation company in Nevada?

13 A. Nope.

14 Q. Okay. So based on your experience working
15 for Yellow Cab, you became familiar with Cab Manager?

16 A. I became -- I became familiar with the
17 systems of how rides are tracked and checking in,
18 checking out, that type of thing.

19 Q. Okay.

20 A. I didn't know the name of the system that
21 they used, but I know that that existed because
22 that's -- when you punched in, that's when you -- you
23 hit the meter. So I assume it was Cab Manager.
24 Whether that was the same for every company, I don't
25 know.

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

6 Attorneys for Plaintiffs

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

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

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' OBJECTIONS
TO SUBPOENA DUCES
TECUM SERVED ON
TERRENCE M. CLAURETIE
AND CHARLES BASS**

17
18
19 PLAINTIFFS hereby make the following objections to the Subpoena Duces
20 Tecum served on Terrence M. Clauretie and Charles Bass:

21 To the extent that the subpoena calls for plaintiffs or the non-party
22 witnesses to reproduce, and provide back to the defendants, the materials furnished by
23 defendants in discovery in this case, the subpoena is objected to on the basis it is
24 unduly burdensome. In responding to the subpoena such materials will be identified,
25 but not copied and produced back to the defendants as all such materials originated
26 with, and are in the possession of, defendants;
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1
2 To the extent that the subpoena calls for plaintiffs or the non-party witnesses to
3 provide copies of notes or written communications including email communications
4 that record communications between Terrence M. Clauretie and/or Charles Bass and
5 plaintiffs' counsel such materials, which do exist, will not be provided as they
6 constitute privileged attorney-client communications as communications between the
7 plaintiffs' counsel and such persons that are confidential and undertaken in furtherance
8 of the plaintiffs' counsel's representation of the plaintiffs and/or privileged attorney
9 work product and trial preparation materials that contain the mental impressions of
10 plaintiffs' counsel produced for the purposes of the prosecution of this lawsuit.
11

12 DATED this 3rd of October, 2017
13
14

15 Leon Greenberg Professional Corporation

16 By: /s/ Dana Sniegocki
17 Dana Sniegocki, Esq.
18 Nevada Bar No.: 11715
19 2965 South Jones Boulevard - Suite E3
20 Las Vegas, Nevada 89146
21 Tel (702) 383-6085
22 Fax (702) 385-1827
23 dana@overtimelaw.com
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned certifies that on October 3, 2017, she served the within:

**Plaintiffs' Objections to Subpoena Duces Tecum Served
on Terrence M. Clauretie and Charles Bass**

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 6

EXHIBIT 6

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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY and MICHAEL RENO,)
individually and on behalf of)
others similarly situated,)
)
Plaintiffs,)
)
vs.) CASE NO.
) A-12-669926
A CAB TAXI SERVICE, LLC and A)
CAB, LLC., and CREIGHTON NADY,)
)
Defendants.)
_____)

DEPOSITION OF TERRENCE CLAURETIE, PH.D.

LAS VEGAS, NEVADA

TUESDAY, OCTOBER 17, 2017

REPORTED BY: DONNA E. MIZE, CCR NO. 675, CSR 11008

JOB NO: 423067

1 the data that he had on the number of hours in each of
2 the pay periods, did he do that? Did his calculations
3 consist of dividing one number by another number, and
4 I'm assuming here that there is no glitch in the Excel
5 programs provided by Microsoft, did, in fact, the
6 formulas do that, go and make sure they did that.

7 Then do the calculations do the correct
8 subtractions. Did they subtract from what should have
9 been paid versus what was actually paid and come up
10 with a number. Basically do that and then indicate
11 that to the extent that the data that he used was the
12 data provided him by the defendants, make those
13 calculations using good judgment, good math and come up
14 with estimate of damages under different scenarios.
15 That was my assignment.

16 My assignment was not to opine on the
17 relevance of the scenarios themselves. For example, he
18 made once an area where he assumed that everybody's
19 minimum wage should have been 7:25 an hour, and he then
20 made another calculation that everybody should have a
21 minimum wage of \$8.25 an hour.

22 My assignment was not to consider the
23 reasonableness of those particular calculations but
24 were they done mathematically correctly. That's about
25 it. Were they done mathematically correctly, were they

1 reliable estimates given the data that was available to
2 him provided by the defendants.

3 Q. How did you go about verifying whether they
4 were done mathematically correctly?

5 A. It is in my report. I started off as an
6 example with one individual. Very important for you to
7 realize that I'm looking at one individual. This is
8 not a sample. Mr. Bass told me that for everybody in
9 the population, he did the calculations exactly the
10 same way so we are not looking at a sample in that
11 sense.

12 We are not looking at one person as a sample
13 to judge if other people were like him in terms of
14 hours and so forth, we are looking at them to see if
15 the calculations were done correctly and, therefore, if
16 they are applied to the other people, then all the
17 calculations were done correctly.

18 I selected a fellow by the name of Arnold, I
19 believe is his last name, and said what's the first
20 thing we want to look at. Talked to Mr. Bass and he
21 said well, we need the compensation over that time
22 period, and I said what did you do. He said I looked
23 at information given to me by the defendants from
24 payroll.

25 Quite frankly, when you get that information,

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 Clauretie, 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.

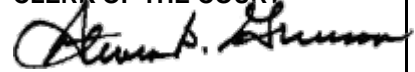
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24

25



DONNA E. MIZE, CCR NO. 675



1 MILM

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11 Attorneys for Plaintiffs

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

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

12 Plaintiffs,

13 vs.

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

16 Defendants.

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' OMNIBUS
MOTION IN LIMINE # 1-25**

Trial Date: February 5, 2017

Hearing date:
Hearing time:

17
18
19 Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation,
20 hereby move this Court in limine, for an order excluding certain evidence and
21 admitting certain evidence from trial herein. This Motion is made and based on the
22 following points and authorities, the papers and pleadings on file herein, and any oral
23 argument to be made before the court at the time of hearing on this motion.
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Dated: December 21, 2017

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

1
2
3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **BACKGROUND**

5 **Claims made**

6 This is a class action case for unpaid minimum wages owed to the current and
7 former taxi drivers of A-Cab. Additional claims are made for a subclass of those taxi
8 drivers who are former employees and seek the 30 day severance pay penalty
9 provided for under NRS 608.040. Certain claims are made against defendant Nady
10 but all such claims have been bifurcated for separate trial as per this Court's Order of
11 July 17, 2017 and are not addressed in this motion.

12 **Relief Sought**

- 13 1. Unpaid minimum wages;
14 2. For NRS 608.040 subclass members 30 days pay at the minimum wage
15 rate;
16 3. Punitive damages;
17 4. Attorney's fees and costs to class counsel;
18 5. Injunctive relief, to the extent necessary to enforce the rights of the class
19 members to minimum wages, and as determined by the Court.

20 **Compliance with Court Rules, Conferral with Defense Counsel**

21 At Ex. "Q" is the declaration of plaintiffs' counsel detailing their attempt to
22 resolve in limine issues with defendants' counsel.

23 **LEGAL ARGUMENT**

24 The primary purpose of a motion in limine is to prevent prejudice at trial. *Hess*
25 *v. Inland Asphalt Co.*, 1990 WL 51164, 19901 Trade Cases P 68,954 (E.D. Wash.,
26 Feb 20, 1990). The court has authority to issue a preliminary ruling on the
27 admissibility of evidence. The decision to do so is vested with the sound discretion
28 of this court. *United States v. Kennedy*, 714 F.2d 968, 975 (9th Cir. 1983), *cert.*

1 *denied*, 465 U.S. 1034 (1984). The court's discretion will not be overturned on
2 appeal absent a showing of a clear abuse-of-discretion. *See Tabish v. State*, 119 Nev.
3 293, 304, 72 P.3d 584, 591 (2003). Such motions are designed to simplify the trial
4 and avoid prejudice that often occurs when a party is forced to object in front of the
5 jury to the introduction of evidence. *Fenimore v. Drake Construction Co.*, 549 P.2d
6 483 (Wash. 1976).

7 NRS 48.025(2) provides that "evidence which is not relevant is not
8 admissible." Relevant evidence is defined by NRS 48.015 as "evidence having any
9 tendency to make the existence of any fact that is of consequence to the
10 determination of the action more or less probable than it would be without the
11 evidence." Under NRS 48.035(2), "relevant evidence may be excluded if its
12 probative value is substantially outweighed by the danger of unfair prejudice,
13 confusion of issues, or misleading the jury, or by considerations, or needless
14 presentation of cumulative evidence."

15 When the proffered testimony or evidence is not relevant, its prejudicial effect
16 outweighs its relevance. Because the substance of such proffered testimony or
17 evidence is collateral to the issues at trial, and would only serve to confuse and
18 mislead the jury, the evidence must be excluded. *See e.g., Larsen v. State*, 102 Nev.
19 448, 725 P.2d 1214 (1986).

20 **SUBJECTS AND MATERIALS TO BE EXCLUDED**

21 **#1 - Materials or Testimony Related to any "good faith"** 22 **or "reliance on government advice" defense.**

23 **Nature of Issue:**

24 Defendants claim they should be excused from liability for any unpaid
25 minimum wages based upon their good faith belief they were in compliance with
26 Nevada's minimum wage laws. They also articulate the closely related claim that
27 they should be excused because they relied on the advice of government officials,
28

1 including those employed by the Nevada Labor Commissioner.

2 **Why these materials and claims should be excluded:**

3 The Nevada Constitution, Article 15, Section 16 (the “MWA”), by its express
4 language imposes a strict liability for unpaid minimum wages. It requires no proof of
5 intent, knowledge, negligence, or the violation of any duty of care. An employer’s
6 knowledge (or lack of knowledge) of the MWA, their good faith, bad faith, animus,
7 lack of animus, are all irrelevant in respect to the minimum wage liability imposed by
8 the MWA. This is absolutely clear from the MWA’s language.

9 The federal minimum wage imposed under the Fair Labor Standards Act (the
10 “FLSA”) is subject, via the later enacted Portal to Portal Act, to a very narrow “safe
11 harbor” defense. Under that defense employers can be relieved of their FLSA
12 minimum wage liability if they “plead and prove” they acted “in good faith” and “in
13 reliance” on a written administrative regulation, order, ruling or interpretation of the
14 U.S. Department of Labor or a policy of that agency towards a “class of employers”
15 to which they belong. *See*, 29 U.S.C. § 259. This statute was enacted 11 years after
16 the FLSA was enacted for the express purpose of limiting the otherwise absolute
17 liability imposed by the FLSA for unpaid federal minimum wages. The MWA does
18 not, for the purposes of Nevada law, provide for any analogous sort of limitation on
19 its liability. A recent Order from Judge Israel was issued on this exact point and
20 reached this precise holding in the *Thomas v. Yellow Cab* case. Ex. “A.”

21 **Affirmative Defenses Raising Subjects to Be Stricken/Prohibited:**

22 **Third** - This defense alleged the plaintiffs’ damages were caused by
23 “others.” In defendants’ response to Interrogatories (#19, relevant excerpt at Ex.
24 “B”) defendants identify these others (besides the plaintiffs themselves) as the
25 “federal and state representatives identified in Defendants’ list of witnesses and
26 documents.” All such persons are Nevada or federal government officials upon
27 whom defendants claim they relied upon to believe they were complying with their
28

1 obligations to pay minimum wages. *Id.*

2 **Twenty-First and Twenty-Second** - These defenses both rely upon
3 defendants' claimed "good faith" either in respect to their dealings with the plaintiffs
4 or as a basis for finding they did not breach any duty to the plaintiffs and to excuse
5 their liability.

6 **Twenty-Sixth** - This defense asserts "plaintiffs' claims are barred as
7 defendants based its [sic] actions upon information provided by the pertinent state
8 and/or federal agencies."

9 **Materials, Argument and Testimony to be Excluded:**

10 All materials, testimony and argument regarding defendants' being
11 informed that they were in compliance with the MWA; their alleged efforts to
12 comply with the MWA; their attempts to locate information about their duties under
13 the MWA; that Nevada exempted taxi drivers from its minimum wage requirements
14 prior to the enactment of the MWA; and that there was no uniform view among
15 jurists about whether that prior minimum wage exemption was abolished by the
16 MWA until the Nevada Supreme Court decision in *Thomas v. Yellow Cab* was issued
17 in June of 2014.

18 **Specific previously identified**
19 **Materials/witnesses to be excluded:**

- 20 (a) Testimony and declaration of Keith Sakelhide, former
21 acting Nevada Labor Commissioner;
22 (b) Testimony of Melvin DeLaCruz or "PMK" of U.S.
23 Department of Labor;
24 (c) Statewide Ballot Information MWA (A-Cab 90-98);
25 (d) Nevada Federal & State Authority addressing the minimum
26 wage issue (A-Cab 99-165);
27 (e) Nevada State Labor Commissioner Rules to be Observed
28 by Employers (A-Cab 1719);
 (f) Information from Nevada Labor Commissioner Website as
 of October 1, 2015 (A-Cab 1723-1729);

- 1 (g) NRS Chapter 608 as of October 1, 2015 (A-Cab 1730-
2 1741);
3 (h) Documents from subpoena of Nevada Labor Commissioner
4 (A Cab 1742-1836);
5 (i) Photographs of Federal and State Notices (A Cab 1860-66);

6 **Materials allowable but cannot be used to support any
7 claims that defendants should be relieved of any
8 Minimum wage liability:**

- 9 (a) The parties agree that a certain 2009 investigative
10 memorandum from the United States Department of Labor,
11 identified by defendants as A Cab 1924-1932 in their 16.1
12 disclosures, can be introduced. But the bar upon those
13 materials being used by defendants to support any
14 testimony, argument, or claim that they should be relieved
15 of any minimum wage liability based upon that document
16 should remain.

17 **#2 - Materials and Testimony Related to any “failure to mitigate” or
18 “failure to perform job duties” or “fraud or theft” or “low
19 productivity” by the plaintiffs.**

20 **Nature of Issue:**

21 Defendants claim they should be excused from liability entirely, or have their
22 liability reduced, for any unpaid minimum wages based upon the plaintiffs’ failure to
23 mitigate their damages or take other action they should have taken. They claim in
24 their interrogatory responses that “plaintiffs failed to generate enough revenue on a
25 shift to earn a minimum wage deliberately, consistently, and without basis or
26 justification.” (#20, relevant excerpt at Ex. “D”). These facts are alleged to also
27 provide a basis to preclude the plaintiffs’ recovery under a theory of equitable
28 estoppel. Defendants raise closely related defenses that the plaintiffs’ claims are
barred by their inequitable actions, fraud and theft.

Why these materials and claims should be excluded:

The MWA by its express language imposes a strict liability for unpaid
minimum wages. An employee’s state of mind or poor job performance is irrelevant
to the obligations imposed by the MWA. Defendants were free to fire any taxi driver

1 they found was inadequate (as they did to class representative Michael Sargeant after
2 two months of employment). Poor job performance is no excuse for a failure to pay
3 minimum wages.

4 Similarly, to the extent defendants have been injured by any alleged “fraud” or
5 “theft” or other illegal acts they had remedies available to them by bringing an action
6 against the plaintiffs committing such acts for their damages. They did not (nor have
7 they made any such counter-claim in this case). An employer cannot defend, as
8 defendants are attempting, a minimum wage claim by appealing to some sort of
9 equitable doctrine or establishing the employee’s independent liability to the
10 employer for some other injury. Minimum wages are a non-negotiable and
11 “minimum” right of the employee, they are not subject to diminution based upon
12 other conduct by the employee. If they were, they would no longer be “minimum”
13 wages.

14 **Affirmative Defenses Raising Subjects to Be Stricken/Prohibited:**

15 **Second** - This defense alleges the plaintiffs “failed to mitigate” their
16 damages;

17 **Fifth** - This defense alleges the plaintiffs’ “own actions were the
18 proximate cause” of their damages;

19 **Fourteenth** - This defense alleges the plaintiffs’ claims “are barred by
20 unclean hands / in pari delecto / illegality”;

21 **Fifteenth** - This defense alleges the plaintiffs’ claims “are barred by
22 fraud / theft”;

23 **Sixteenth** - This defense alleges the plaintiffs’ claims “are barred by
24 equitable estoppel”;

25 **Specific previously identified**
26 **Materials/witnesses to be excluded:**

- 27 (a) Productivity records of plaintiff Michael Sargeant (A Cab
28 2302-2303)

1 **Testimony to be excluded:**

2 All testimony on whether the plaintiffs or any other taxi cab drivers were more
3 or less productive than other taxi drivers or average taxi drivers. All testimony as to
4 the plaintiffs' experience as taxi drivers or their skill, or lack of skill, in locating
5 passenger fares. All testimony that plaintiffs engaged in fraud or theft of funds of A-
6 Cab by transporting passengers without activating the taxi meter or in any other
7 fashion.
8

9
10 **#3 - Claims and testimony related to any "ratification" by the plaintiffs**
11 **of A-Cab's practice of paying less than minimum wage or their**
12 **knowledge that they were, or were not, being paid less than**
13 **minimum wages.**

14 **Nature of Issue:**

15 Defendants claim they should be excused from liability entirely, or have their
16 liability reduced, on the basis that the plaintiffs consented to being paid less than the
17 minimum wage. They also may seek to elicit testimony or argue that the plaintiffs
18 either knew, or did not know, they were getting paid less than the minimum wage.

19 **Why these claims and testimony should be excluded:**

20 The MWA by its express language imposes a strict liability for unpaid
21 minimum wages that cannot be waived by any employee (only, potentially, by a labor
22 union through a collective bargaining agreement). Employees have no power to
23 consent to or agree to be paid less than the minimum wage. The plaintiffs'
24 knowledge or lack of knowledge of their minimum wage rights would be similarly
25 confusing to a jury and irrelevant. Such evidence may cause an implication or
26 understanding to the jury that the plaintiffs have consented to be paid less than the
27 minimum wage or waived their rights to minimum wages.

28 **Affirmative Defenses Raising Subjects to Be Stricken/Prohibited:**

Nineteenth - This defense alleges the plaintiffs "ratified through their

1 respective acts, omissions and/or failure(s) to act, any act alleged to have been done
2 or committed by the Defendants.”

3 **Testimony to be excluded:**

4 All testimony on whether the plaintiffs were aware or unaware of their
5 minimum wage rights. All testimony on whether the plaintiffs agreed to work for A-
6 Cab for the compensation that they were actually paid. All testimony on the
7 plaintiffs’ failure to complain or assert (prior to this lawsuit) that they were ever
8 being paid less than the minimum wage.

9
10 **#4 - Claims and testimony related to any failure by the plaintiffs to**
11 **pursue an administrative remedy or communicate with government**
12 **agencies about their unpaid minimum wages.**

13 **Nature of Issue:**

14 Defendants claim they should be excused from liability because the plaintiffs
15 have failed to exhaust their administrative remedies. They also may seek to elicit
16 testimony or argue that the plaintiffs had the ability to seek such an administrative
17 remedy or assistance from government officials but declined to do so.

18 **Why these claims and testimony should be excluded:**

19 The MWA by its express language authorizes enforcement of minimum wage
20 claims by a direct lawsuit in this court, it imposes no administrative pre-requisite.
21 The plaintiffs’ contacts or lack of contacts with government agencies, or that they
22 could have sought to collect their minimum wages with the assistance of a
23 government agency, would be confusing to a jury and irrelevant. Such evidence may
24 cause an implication or understanding to the jury that the plaintiffs should have
25 brought their claims to a such an agency and not this Court.

26 **Affirmative Defenses Raising Subjects to Be Stricken/Prohibited:**

27 **Fourth -** This defense alleges the plaintiffs’ claims “are not ripe in this
28

1 forum.”

2 **Sixth** - This defense alleges the plaintiffs “have failed to exhaust
3 administrative remedies as required by Nevada law.”

4 **Testimony to be excluded:**

5 All testimony on whether the plaintiffs were aware or unaware that they could
6 secure assistance in collecting unpaid minimum wages from a government agency.

7 All testimony on whether the plaintiffs had or did not have communications with any
8 such agency, including the Nevada Labor Commissioner or the United States
9 Department of Labor.

10
11 **#5 - Claims and testimony related to any resolution of the plaintiffs’**
12 **claims in this case, or reduction in the amount of their claims, from**
13 **any other lawsuit including the one brought by the United States**
Department of Labor or any other “non-payroll” payments made.

14 **Nature of Issue:**

15 Defendants claim they should be excused from liability entirely, or have their
16 liability reduced, on the basis of collateral estoppel or res judicata. They also seek to
17 reduce their liability based upon other payments they have made to the plaintiffs,
18 outside their normal payroll payments, in connection with the U.S. Department of
19 Labor lawsuit under the Federal Fair Labor Standards Act (the “FLSA”) and consent
20 judgment against A-Cab.

21 **Why these claims, materials and testimony should be excluded:**

22 The liability imposed by the MWA is independent of the FLSA and the
23 resolution of certain FLSA claims against A-Cab does not bar the MWA claims, if
24 any, are established. *See*, 29 U.S.C. § 218(a). A-Cab’s potential entitlement to a set
25 off of, or reduction, of MWA damages as a result of its payments under the consent
26 judgment should be determined after trial. It claims such an entitlement in its
27 interrogatory responses (#22, #23, #26, Ex. “C”). Plaintiffs do not dispute the
28

1 financial terms of the consent judgment or that the amount recited thereunder
2 (\$139,988.80) was actually paid by A-Cab to satisfy FLSA minimum wages owed to
3 certain identified class members (and paid in known identified amounts to each such
4 person) for work performed during the two year period from October 1, 2010 through
5 October 1, 2012. Introduction of such evidence and arguments will needlessly
6 complicate this case and confuse and burden the jury with trying to apply an offset of
7 that amount towards whatever damages it determines are owed.

8 Defendants also make a related claim that an “accord and satisfaction”
9 of their liability was created by the plaintiffs’ failure to accept a Rule 68 offer of
10 judgment and/or make a demand for resolution or their refusal of offers of resolution
11 (Interrogatory response #26 Ex. “C”). These claims are improper and evidence of
12 offers of settlement or rejection of offers of settlement are not properly heard by the
13 jury.

14 **Affirmative Defenses Raising Subjects to Be Stricken/Prohibited:**

15 **Seventh** - This defense alleges the plaintiffs’ claims are barred by res
16 judicata.

17 **Eighth** - This defense alleges the plaintiffs’ claims are barred by
18 collateral estoppel.

19 **Seventeenth**- This defense alleges the plaintiffs’ claims are barred or
20 limited by an offset/setoff/ or payments already made;

21 **Twenty-Third** - This defense alleges the plaintiffs’ claims are barred
22 by an accord and satisfaction;

23 **Twenty-Fifth** - This defense alleges plaintiffs’ claims “are barred as
24 plaintiffs have received payment in full.”
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1 and unjustifiably delayed the assertion of their purported claims.”

2 **Testimony to be excluded:**

3 All testimony that the amount of damages that may be determined to be owed
4 by A-Cab should be reduced as result of any delay by the plaintiffs in asserting their
5 claim or by any failure for those claims to be made at an earlier date.

6
7 **#7 - Claims that any monies owed to the plaintiffs**
8 **are not owed by defendant A-Cab but by a non-party.**

9 **Nature of Issue:**

10 Defendants claim they should be excused from liability entirely because the
11 plaintiffs’ damages were caused by the conduct of others.

12
13 **Why these claims, materials and testimony should be excluded:**

14 This claim was made in defendant’s third affirmative defense. Plaintiffs
15 served an interrogatory (#19 Ex. “B”) seeking the identification of the “others”
16 whom A-Cab asserted were liable, instead of A-Cab, for such damages:

17 **Interrogatory No. 19:**

18 Identify the name and address of each of the “others,” besides defendant A Cab
19 LLC, whose “conduct” defendants allege caused the class members’ damages
20 as alleged in their Third Affirmative Defense.

21 **Answer:**

22 Defendants assert that they took all steps to comply with all federal and state
23 laws, meeting with both federal and state representatives as identified in
24 Defendants' List of Witnesses and Documents. Each of these representatives
25 informed Defendants of the sufficiency of their compliance and/or gave
26 guidance to Defendants and/or admitted that they themselves were unclear
27 regarding the effects of the amendment to the Nevada Constitution. Further,
28 each driver has within their control the amount of money they make; and in
fact make substantially more on an hourly basis than is reflected in their
paystubs.

Defendants identified no such responsible “others” besides “federal and state

1 representative” and the plaintiffs themselves. The need for an *in limine* order barring
2 claims or evidence that those persons are responsible for the plaintiffs’ damages is
3 discussed, *supra*, at #1 and #2. Defendants, having failed to identify the alleged
4 “others” responsible for the plaintiffs damages cannot now be allowed to put on
5 arguments or evidence about such persons or their liability.

6
7 **Specific previously identified
Materials/witnesses to be excluded:**

- 8
9 (a) Testimony of Steven J. Oshins, business attorney for
10 defendants, who has been identified as the person preparing
the “series” LLC entities defendants may argue are the
“others” responsible for the plaintiffs’ damages.

11 **Testimony and evidence to be excluded:**

12 All testimony and evidence that the damages, if any are determined to be owed
13 in this matter, are owed to the plaintiffs by other than the corporate defendant, A Cab
14 LLC.

15
16 **#8 - Evidence on plaintiffs’ sources of
17 income besides wages paid by A-Cab.**

18 **Nature of Issue:**

19 Plaintiffs’ income from other sources, including tips they received from
20 customers, is irrelevant to whether A-Cab paid them the required minimum wages.

21 **Why these claims, materials and testimony should be excluded:**

22 Introduction of this evidence will only confuse the jury or improperly cause
23 them to believe the plaintiffs are not entitled to minimum wages because they
24 received tips or have other sources of income.

25 **Testimony and evidence to be excluded:**

26 All testimony and evidence on other income sources of the plaintiffs including,
27 but not limited to, tips they received or “door fees” they were paid for delivering
28 customers to gentlemen’s clubs in Las Vegas.

1
2 **#9 - Plaintiffs' failure to declare tip income**
3 **on their income tax returns with the IRS.**

4 **Reason for Exclusion:**

5 As discussed in #8, tip income is irrelevant. Allowing testimony or evidence
6 on the plaintiffs filing of tax returns related to that income is unduly prejudicial to the
7 plaintiffs and its probative value is outweighed by its prejudice and potential for
8 confusion.

9 **#10 - Exclusion of report of Nicole Omps or any testimony from her.**

10 **Reason for Exclusion:**

11 Nicole Omps is a CPA who has been designated as an expert witness and for
12 which a two page report (Ex. "E," A Cab 1919-1921) has been provided. That report
13 is solely confined to opining on the proper range of a settlement of the MWA claims
14 of the class of A-Cab taxi drivers proposed for class certification, and settlement, in
15 the case *Dubric v. A-Cab*. The report contains no opinion or analysis of any damages
16 actually owed to any class or group of A-Cab taxi drivers. It is solely confined to an
17 opinion on a settlement in *Dubric* based upon the U.S. Department of Labor FLSA
18 settlement entered into with A-Cab. Both the report and testimony from Omps
19 should be excluded under the rule prohibiting settlement information or proposals
20 from evidence.

21
22 **#11 - Exclusion of testimony or evidence on non-wage benefits**
23 **provided by A-Cab to the plaintiffs and allowing evidence**
24 **on health insurance benefits only to the extent raised by**
plaintiffs.

25 **Reason for Exclusion:**

26 A-Cab has provided other incidental benefits for plaintiffs, such as weekly or
27 occasional barbecues or meals with food provided to the plaintiffs by A-Cab without
28 charge. It may have also provided other non-cash items of value, such as sporting

1 event or entertainment event tickets. Such non-cash benefits are irrelevant to
2 whether A-Cab has complied with the MWA. Their value cannot be considered as a
3 payment towards the cash wages required under the MWA. They should be excluded
4 based both on their irrelevancy and the danger they may cause the jury to treat their
5 value as a contribution towards A-Cab's minimum wage responsibilities to the
6 plaintiffs.

7 To the extent plaintiffs raise issues regarding the providing of health insurance
8 benefits to the class members (something not yet determined), for the purpose of
9 determining the proper minimum wage "tier" or rate under the MWA, A-Cab should
10 be able to introduce evidence or testimony on that subject. Otherwise it is irrelevant
11 and should be excluded.

12 **#12 - Exclusion of testimony about other MWA lawsuits against**
13 **other Las Vegas Taxi Companies or representative plaintiff**
14 **Michael Sargeant's participation in those lawsuits.**

15 **Reason for Exclusion:**

16 That other lawsuits have been brought under the MWA against other taxi
17 companies is irrelevant to the facts to be determined by the jury in this lawsuit. That
18 class representative Michael Sargeant has participated in these lawsuits, successfully
19 or unsuccessfully, is also irrelevant. Evidence of such participation by him may
20 unfairly prejudice or confuse the jury or otherwise incline them to believe that he has
21 received or will receive compensation in other lawsuits and therefore should be
22 denied any damages in this lawsuit.

23 **#13 - Exclusion of testimony about class representative receiving**
24 **any class service award or other benefit beyond the minimum**
25 **wages they are owed from this lawsuit.**

26 **Reason for Exclusion:**

27 Whether the class representatives will, if this case is won by plaintiffs, receive
28 any additional award, beyond the minimum wages they are owed just like any other
class member, is speculative. While they may receive some sort of "class service

award” for assisting in the prosecution of this case no such award is assured even if plaintiffs’ prevail and the probative value of such information, if any, is outweighed by its potential to prejudice the jury.

#14 - Exclusion of testimony or evidence by defendants’ expert Leslie on the “earlier spreadsheets” or “February 2017” spreadsheets in violation of the mediation and settlement communication privilege.

Reason for Exclusion:

Defendants had their expert, Scott Leslie, either intentionally or inadvertently, review certain excel files that were provided to defendants under a mediation and settlement privilege. Such expert, in his report, then denoted those spreadsheets as the “February 2017 spreadsheet” or “earlier spreadsheets” and opines on how those spreadsheets are inconsistent with the actual expert report spreadsheet, A-CAB ALL, provided with Dr. Clauretie’s report in July of 2017. This improper use of mediation and settlement materials was brought to defendants’ counsel’s attention via a letter of October 5, 2017 (Ex. “F”) advising that a motion to strike Scott Leslie’s report and testimony mentioning such issues would be filed. Defendants counsel has neither disputed the origin of those materials commented upon by Leslie nor have they agreed to exclude them and those comments from these proceedings.

#15 - Exclusion of FOIA document bates 2324

Reason for Exclusion:

This document was produced on June 25, 2017 after all depositions (except expert depositions) were concluded and with discovery closing on June 27, 2017 (with only expert discovery allowed after that date). It is dated April 28, 2017. Ex. “G.” It should be precluded as untimely and unfair given defendants’ delay in producing it.

1 **#16 - Exclusion of testimony about work by**
2 **plaintiffs at other Las Vegas taxi companies.**

3 **Reason for Exclusion:**

4 The experiences of the plaintiffs working at other Las Vegas taxi companies is
5 irrelevant to the claims against A-Cab. Similarly, whether they did, or did not,
6 receive minimum wages while working at those companies is irrelevant. For
7 example, jurors may be inclined to conclude that if plaintiffs did not receive
8 minimum wages for work at another taxi company, or did not seek to collect
9 minimum wages for that work, they should not be allowed to collect minimum wages
10 from A-Cab. Such testimony should be excluded because of its irrelevancy, its
11 potential for confusion, and its likelihood to cause prejudice.

12
13 **#17 - Exclusion of U.S. Department of Labor**
14 **“Certificate of Appreciation” or testimony on the same.**

15 **Reason for Exclusion:**

16 This document is at Ex. “H.” It was issued to defendant Nady and states it “is
17 in recognition of your personal and significant contribution to the National
18 Occupational Information Network (O*NET) Data Collection Program, our Nation’s
19 primary source of occupational information.” Defendant Nady’s participation and
20 contribution to this program is irrelevant to whether A Cab owes minimum wages to
21 the plaintiffs. Introduction of this document, sought by defendants to somehow
22 imply they have assisted the U.S. Department of Labor, will be unduly prejudicial
23 and confusing given its irrelevancy, as it may somehow improperly lead the jury to
24 believe A Cab was in compliance with its MWA obligations.

25 **#18 - Testimony of Steve Essakow Designated as a Witness on 6/25/17**

26 **Reason for Exclusion:**

27 This person was designated as a witness on June 25, 2017 after all depositions
28 (except expert depositions) were concluded and with discovery closing on June 27,

1 2017 (with only expert discovery allowed after that date). The testimony should be
2 precluded as untimely and unfair given defendants' delay in making this designation.

3
4
5 **#19 - Testimony of Steven J. Oshins Esq. designated on 6/6/17**

6
7 **Reason for Exclusion:**

8 This person was designated as a witness on June 6, 2017 and with discovery
9 closing on June 27, 2017 (with only expert discovery allowed after that date). It
10 should be excluded as untimely and unduly delayed. This person was also identified
11 by defendant Nady as his personal business attorney. Ex. "I" deposition excerpt. He
12 refused to be examined about his communications with his business attorneys,
13 including Oshins, invoking an attorney-client privilege. Such testimony, which is
14 expected to concern defendants' use of a "serial" LLC to avoid liability in this case,
15 should also be excluded based upon both its irrelevancy (see #7, *supra*) and Nady's
16 refusal to discuss the subject matter at his deposition.

17
18 **#20 - Exclusion of testimony by defendant witnesses on the "average**
19 **working time" per shift by taxi drivers as A Cab's designated**
20 **NRCP 30(b)(6) deposition witness stated A Cab lacked that**
knowledge and any testimony by defendants that the 2013-2015
payroll records do not accurately set forth the hours of work.

21 **Reason for Exclusion:**

22 Defendants have identified various A Cab employees as potential witnesses.
23 None of those persons were produced as witnesses at A Cab's NRCP 30(b)(6)
24 depositions. Those depositions involved important topics, including A Cab's record
25 keeping practices and the hours worked by its taxi drivers. Defendant Nady was
26 designated as the sole NRCP 30(b)(6) witness. He testified extensively on those
27 topics, including the nature of the records kept by A Cab and the average working
28 time of each A Cab driver during each shift they worked. That testimony by him
under NRCP Rule 30(b)(6) (Notice at Ex. "J") included the following topic:

- 1
2
3 2. The average amount of time taxi drivers employed by the defendant
4 worked each shift to which they were assigned. This means the amount
5 of time from the beginning of their shift to the end of their shift that each
6 taxi driver was, on average, working and not on a break (a break being a
7 period of time during which the taxi driver was not working and was
fully relieved of all work responsibilities). This includes defendant's
knowledge of the amount of break time taxi drivers employed by
defendant usually, on average, took each work shift and how defendant
has acquired that knowledge.

8 When produced at the NRCP Rule 30(b)(6) deposition, Nady testified that no
9 such average amount of time could be provided and any answer to a question about
10 that would just be a "guess":

11 Q: Well, I don't need you to guess,
12 sir. And I...

13 A: That would be a guess if I answered
14 that. So I shan't.

15 Q: I don't want to have you do that,
16 sir. I just want to be clear, Mr. Nady, because
17 we've been talking about this estimate to the amount
18 of time on average drivers drive each day that they
19 are working, and you gave me what you called an
estimate. I've also heard the term 'guess' used in
our discussion of that subject. **Do you really have
an estimate you can give me, or do you think you
would just be guessing to give me an average
amount of time per shift that taxi drivers are
working?**

20 A: **It would be a guess.**

21 Ex. "K," relevant deposition excerpt.

22 A Cab should now be bound by such testimony and precluded from offering
23 testimony that varies from that given by Nady. This would include barring any
24 testimony that purports to provide information that Nady was asked about but unable
25 to provide at his NRCP 30(b)(6) deposition on behalf of A Cab. A Cab should be
26 explicitly barred from offering testimony from any witnesses about the average
27 working time per shift of its taxi drivers. Similarly, as detailed in the plaintiffs'
28 motion for partial summary judgment, defendants have insisted in their sworn

1 testimony that their payroll records for the 2013-2015 period contain an accurate
2 statement of all hours worked by the class members. They should be precluded from
3 introducing contrary evidence at trial.

4 **Specific Testimony to be Precluded:**

5 Including, but not limited to, any testimony by defendants on the average
6 working time of each A Cab driver during each shift except to the extent it is
7 submitted at trial by Nady's testimony or through his deposition and limited solely to
8 showing that A Cab does not know, and is not able to state, such an average. Any
9 testimony by defendants that the hours of work set forth in A Cab's payroll
10 (Quickbooks) records for the 2013-2015 period are not accurate.

11
12 **#21 - Exclusion of testimony about plaintiffs' counsel's
13 improper "seeking of profit" from this case.**

14 **Reason for Exclusion:**

15 Defendants in their supplemental response to interrogatory 19 make the
16 following assertion:

17 In addition to those named in the above Answer No. 19, Defendants
18 assert that Plaintiffs' counsel Leon Greenberg, Esq., and Dana
19 Sniegocki, Esq., have caused and escalated Plaintiffs' claimed damages,
20 seeking to profit from the continued litigation of others.

21 These claims are improper and should not be allowed.

22 **#22 - Exclusion of testimony how plaintiffs came
23 to retain an attorney to bring this case.**

24 **Reason for Exclusion:**

25 How plaintiffs came to retain an attorney, or become aware of their rights
26 under the MWA, are irrelevant to what, if anything, they are owed under the MWA.
27 Testimony about the plaintiffs only responding to advertising by their attorneys, or
28 importuning that they only brought this litigation at the beckoning of their counsel, is
improper and irrelevant. Such testimony would also support the unfairly prejudicial

1 conclusion by the jury that the plaintiffs are entitled to nothing under the MWA as
2 they were content to not exercise their MWA rights prior to contact with their
3 counsel.

4 MATERIALS SOUGHT TO BE ADMITTED

5 #23 - United States Department of Labor Narrative 6 Report Dated January 30, 2013

7
8 This item, Bates DOL 40 to 52, Ex. "L," records various observations made
9 by, and conclusions drawn by, the United States Department of Labor during the
10 course of its investigation of A-Cab's compliance with the federal minimum wage
11 required by the FLSA. Such information should be available to the jury when it
12 considers whether A-Cab complied with the MWA which involves many of the same
13 factual issues (specifically the hours worked by A-Cab's taxi drivers). It should be
14 admitted for the following reasons:

- 15 (a) It is a government agency report and thus not barred as hearsay;
- 16 (b) Judicial notice supports its admission;
- 17 (c) Defendants have in their Rule 16.1 disclosures identified the prior
18 U.S. Department of Labor Report (Ex. "M") from 2009 (A Cab
19 1924-1932). In the interests of fairness and completeness this
20 later report from the same agency should also be admitted;
- 21 (d) It complies with the authentication requirements of NRS 52.015
22 which requires "evidence of other showing sufficient to support a
23 finding that the matter in question is what its proponent claims."
24 As detailed in the declaration of Dana Sniegocki, Ex. "N," and the
25 correspondence attached thereto from such agency, these
26 documents were provided by the U.S. Department of Labor in
27 response to a freedom of information act (FOIA) request. No
28 basis exists to doubt their authenticity and defendants have no
reason to question that they are what they purport to be. As NRS

1 52.015(2) states, the provisions of NRS 52.025-52.105, are only
2 illustrative, not restrictive, examples of authentication
3 requirements. Under these circumstances, these materials should
4 be deemed sufficiently authenticated and admissible.¹

5 **#24 - Portion of One Page Remaining “Summary”**
6 **Of Trips Sheet Review Performed in Connection**
7 **With U.S. Department of Labor Audit.**

8 This one page summary, provided by defendants, is annexed as Ex. “O.” This
9 document purports to show the results of a review conducted by defendants of the
10 trips sheets for 6,326 work shifts and the hours worked, as shown by those trip
11 sheets, for those shifts. Defendant Nady testified extensively at his deposition about
12 this trip sheet review. This document, according to defendants, accurately sets forth
13 information on the “number of shifts” and “total number of hours” worked for such
14 shifts during four two payroll periods, based upon that review of 6,326 trip sheets
15 (for example 12-10-2011 to 12-23-2011 shows 1565 shifts and 13693.75 hours).

16 This document should be admitted with the three columns “Gross Wages
17 Excluding Tips” and “MinWage” and “MinWage less Gross Wages” redacted.
18 These columns do not contain germane factual information and are used to create an
19 erroneous calculation of minimum wages owed. “Gross Wages Excluding Tips”
20 references tips, something irrelevant to this case. The “MinWage” column purports
21 to perform calculations on the minimum wages owed based on the hours (for
22 example for 12-10-2011 to 12-23-2011 it shows \$99,279.69 which is \$7.25 an hour
23 times 13693.75 hours). That number is then used to create an amount of minimum
24 wages purportedly owed, which is “MinWage Less Gross Wage” (for example for
25

26 ¹ The U.S. Department of Labor, apparently in a recent policy change, will no
27 longer issue a certification to its FOIA responses such as the one contemplated under
28 NRS 51.125. An undesirable alternative would be to have this Court issue a trial
subpoena to a supervising person at such office to compel their attendance at trial to
authenticate the document. That process is unduly burdensome for all involved.

1 12-10-2011 to 12-23-2011 it shows \$14,002.85 which is the \$99,279.69 of
2 “MinWage” amount minus the “Gross Wages Excluding Tips” amount of
3 \$85,276.84). **This calculation erroneously claims that the minimum wages owed**
4 **for the pay period is properly based on all wages paid to all drivers and all**
5 **hours of work performed by all drivers as a group (not per each driver’s hours**
6 **worked and individual wages paid). This allows the amounts “over” the**
7 **minimum wage earned by some drivers to be claimed as an offset against the**
8 **amounts “under” the minimum wage that are owed to other drivers. This**
9 calculation is erroneous, irrelevant, and unduly prejudicial, it may lead the jury to
10 believe it should perform such an erroneous “group” calculation in determining
11 damages in this case.

12 The document should also have the three lines “Totals” and “Average” and
13 “Projection” redacted for the same reason. Those three lines purport to arrive at a
14 total of minimum wages owed using the same improper “group” calculations. They
15 compound that problem by also granting A Cab a credit against its minimum wage
16 liability for the amounts it paid in excess of the minimum wage (\$30,752.29,
17 expressed as a negative number) during the 3-30-2013 to 4-12-2013 pay period.

19 **#25 - Excel Spreadsheets “ACAB ALL” and**
20 **“Damages 2007 to 2010” should be admitted.**

21 These two spreadsheets perform calculations on defendants’ payroll records.
22 Specifically, they allow for an assumption to be made about the working hours of the
23 class members (for the period prior to 2013 that assumption would be a single,
24 uniform, average working time per shift, for the period after 2013 the spreadsheet
25 allows the use of “Cab Manager” recorded time or payroll records recorded time) and
26 calculated the amounts owed, if any, to the class members for minimum wage
27 purposes based upon those working hours.

28 Defendants have been provided with these spreadsheets and neither they nor
their expert have disputed that (1) They contain fully accurate information from

1 defendants' payroll records of the gross wages, excluding tips, paid every one or two
2 week pay period to every class member; and (2) That they accurately calculate what
3 they purport to calculate, the amount of minimum wages owed, if any, for every pay
4 period based upon the hours of work assumed for the pay period. At his deposition
5 defendants' expert confirmed the arithmetical correctness of the calculations made by
6 those spreadsheets and the data they contained (though not endorsing any particular
7 assumptions about how that data should be used). He states of the A-CAB ALL (a
8 phonetic error transcribes it as "A Cab OLE") file "...it seems to calculate, as you
9 say, within itself everything. The math seems to be right." See, Ex. "P," p. 19-20.
10 He also expressly confirms that it performs accurate minimum wage calculations
11 based upon the hours worked assumptions put into the spreadsheet. *Id.*, p. 26-29.
12 He also confirms that he has examined the A-CAB ALL spreadsheet in different
13 aspects and "has no reason to believe there was any inaccurate information" placed
14 into the spreadsheet from A-Cab's records. *Id.*, p. 31-37, p. 36, l. 13 - p. 37, l.14.
15 Accordingly, they should be admitted.

16 Their admission is also proper as provided for under NRE 52.275 that provides
17 for the admission of summaries of voluminous records presented in the form of a
18 "chart, summary or calculation" which is precisely what is done by these
19 spreadsheets for approximately 40,000 pay period records of A Cab.

20 CONCLUSION

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

23 Dated: December 20, 2017

24 LEON GREENBERG PROFESSIONAL CORP.

25
26 /s/ Leon Greenberg
27 Leon Greenberg, Esq.
28 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 December 22, 2017, she served the within:

PLAINTIFFS' OMNIBUS MOTION IN LIMINE # 1-25

by court electronic service to:

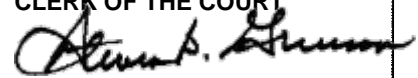
TO:

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"



ORDR

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EIGHTH JUDICIAL DISTRICT COURT

IN AND FOR CLARK COUNTY, STATE OF NEVADA

CHRISTOPHER THOMAS, an individual, and
CHRISTOPHER CRAIG, an individual; all on
behalf of themselves and all similarly-situated
individuals,

Plaintiffs,

vs.

NEVADA YELLOW CAB CORPORATION;
NEVADA CHECKER CAB CORPORATION;
and STAR CAB CORPORATION,

Defendants.

Case No. A-12-661726-C

Dept. No.: XXVIII

**ORDER GRANTING PLAINTIFFS'
MOTION TO STRIKE AFFIRMATIVE
DEFENSES**

Plaintiffs filed their Motion on an Order Shortening Time to Strike Affirmative Defenses on September 20, 2017, with Defendants filing an opposition on September 25, 2017 and Plaintiffs filing a reply on September 26, 2017. Said motion was heard on October 3, 2017 with Leon Greenberg, Esq., arguing on behalf of all plaintiffs and Tamer B. Botros, Esq. on behalf of

AA005593

1 Defendants. Following the arguments of counsel, and after due consideration of the parties'
2 respective briefs, and all pleadings and papers on file herein, and good cause appearing, therefore:

3 **THE COURT FINDS**

4 The Defendants' Twenty-Seventh Affirmative Defense asserted in Defendants' Answer to
5 Plaintiffs' Second Amended Complaint filed on December 22, 2015, alleging that Defendants
6 should be relieved of all liability under Article 15, Section 16, of the Nevada Constitution, the
7 Minimum Wage Act (the "MWA"), if it pleads and proves that it "followed the law [in respect to
8 the MWA] that was being enforced by the Nevada Labor Commissioner" is stricken. An
9 employer's liability for unpaid minimum wages owed pursuant to the terms of the MWA is not
10 excused by their compliance, in good faith or otherwise, with the policies or practices of the
11 Nevada Labor Commissioner or any other government agency or officer. Nor is an employer's
12 liability for unpaid minimum wages owed pursuant to the terms of the MWA subject to any other
13 defense based upon a good faith belief they had complied with the MWA's minimum wage
14 payment requirements or their knowledge or lack of knowledge of those minimum wage payment
15 requirements. As the Nevada Supreme Court has made clear in the appeal of this very case, the
16 MWA imposes a liability that supersedes the requirements of Nevada's statutes and is only subject
17 to the limitations expressly set forth in the MWA itself. The MWA, contains no language
18 recognizing the sort of defense set forth in the Twenty-Seventh Affirmative Defense and
19 accordingly it is stricken.

20 The Defendants' Tenth-Affirmative Defense asserted in Defendants' Answer to Plaintiffs'
21 Second Amended Complaint filed on December 22, 2015, alleging that Defendants should be
22 relieved of all possible liability for punitive damages under the MWA, if they plead and prove that
23 they "at all times had a good faith and reasonable belief that they had compensated the Plaintiffs
24 in accordance with Nevada law" will be stricken if Defendants do not provide discovery on the
25 legal advice and information they received about the requirements of "Nevada law" and their
26 efforts to obtain an understanding about such requirements. Defendants in raising this affirmative
27 defense are relying upon their alleged "good faith and reasonable belief" about what Nevada's law
28 (the MWA) required of them. By raising that defense Defendants are placing at issue the basis for

1 their alleged "good faith and reasonable belief" about their legal duties. Having placed at issue
2 their beliefs about Nevada law, and their knowledge and efforts to secure knowledge of Nevada
3 law, Defendants must either provide discovery about such knowledge and efforts or this
4 affirmative defense will be stricken. Defendants, if they maintain this affirmative defense,
5 cannot, under the cloak of attorney-client privilege, deny plaintiffs "access to the very
6 information," the advice Defendants actually received or sought to receive about their legal
7 obligations, needed to refute such defense. *See, Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156,
8 1162-63 (9th Cir. 1992), *citing United States v. Bilzerian*, 926 F.2d 1285, 1292 (2nd Cir. 1991).

9 The Defendants' Sixth Affirmative Defense asserted in Defendants' Answer to Plaintiffs'
10 Second Amended Complaint filed on December 22, 2015, alleging that the MWA only applies
11 prospectively to taxi drivers; the Defendants' Thirteenth Affirmative Defense, that the Plaintiffs
12 have no right to minimum wages under the MWA; and the Defendants' Fourteenth Affirmative
13 Defense, that the "Plaintiffs were employed in a position that was exempt from minimum wages
14 under Nevada law" have all been resolved by the Nevada Supreme Court's decisions in this case.
15 Defendants do not assert otherwise. Accordingly, the Sixth, Thirteenth and Fourteenth
16 Affirmative Defenses are also stricken.

17 ///

18 ///

19 ///

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27 ///

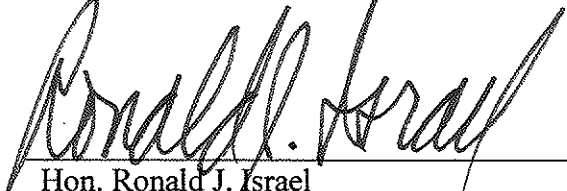
28 ///

1 **IT IS HEREBY ORDERED:**

2 Plaintiffs' Motion is GRANTED for the reasons stated. The Defendants' Sixth, Thirteenth,
3 Fourteenth and Twenty-Seventh Affirmative Defenses are hereby stricken. The Defendants' Tenth
4 Affirmative Defense, as it applies solely to punitive damages, will be stricken unless Defendants
5 provide discovery about their knowledge of the law and efforts to obtain such knowledge, as
6 alleged in that affirmative defense, if Defendants choose to invoke the attorney-client privilege to
7 shield such information from disclosure, the Tenth Affirmative Defense will be stricken.

8 IT IS SO ORDERED.

9 Dated this 10 day of October 2017.


Hon. Ronald J. Israel
District Court Judge

10
11 (24) Case No. A-12-661726-C
12 Document Title: ORDER GRANTING
13 PLAINTIFFS' MOTION TO STRIKE
14 AFFIRMATIVE DEFENSES

14 Submitted:

15 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

THIRD SUPPLEMENTAL ANSWERS TO PLAINTIFFS' FIFTH SET OF
INTERROGATORIES TO DEFENDANTS

Defendants, by and through their attorneys of record, and pursuant to NRCP 33, hereby
supplement their prior responses to Plaintiffs' Fifth Set of Interrogatories as follows:

INTERROGATORY NO. 7:

Identify and set forth separately the gross amount, in dollars and cents, of each payment
made by the United States Department of Labor pursuant to the terms of the consent judgment to
each person listed on Exhibit "A" of the attached consent judgment. This request seeks the

1 amount defendants' claim as part of their Seventeenth Affirmative Defense that "Plaintiffs' claims
2 are barred or otherwise limited by offset/setoff/or payments that have already been made to the
3 amounts in question." In answering this request, the defendants are to specify the amount of each
4 claimed offset, setoff, and payment amount, as alleged in the affirmative defense, in respect to each
5 class member's claim.

6 **ANSWER NO. 18:**

7 See attached. Defendants reserve the right to supplement as discovery is continuing.

8 **INTERROGATORY NO. 19:**

9 Identify the name and address of each of the "others" besides defendant A Cab, LLC, whose
10 "conduct" defendants allege caused the class members' damages as alleged in their Third
11 Affirmative Defense.

12 **ANSWER NO. 19:**

13 Defendants assert that they took all steps to comply with all federal and state laws, meeting
14 with both federal and state representatives as identified in Defendants' List of Witnesses and
15 Documents. Each of these representatives informed Defendants of the sufficiency of their
16 compliance and/or gave guidance to Defendants and/or admitted that they themselves were unclear
17 regarding the effects of the amendment to the Nevada Constitution. Further, each driver has within
18 their control the amount of money they make; and in fact make substantially more on an hourly
19 basis than is reflected in their paystubs, and therefore each has the ability to control, minimize or
20 escalate their claimed damages.

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

SUPPLEMENTAL ANSWER NO. 19:

In addition to those named in the above Answer No. 19, Defendants assert that Plaintiffs' counsel Leon Greenberg, Esq., and Dana Sniegocki, Esq., have caused and escalated Plaintiffs' claimed damages, seeking to profit from the continued litigation of others.

DATED this 30th day of December, 2016.

RODRIGUEZ LAW OFFICES, P.C.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 30th day of December, 2016, I electronically *served* the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

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

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

VERIFICATION

STATE OF NEVADA
COUNTY OF CLARK

I, the undersigned, state that I am the Manager of A Cab, LLC, the Defendant in the above-entitled action, that I have read the foregoing **Defendants' Third Supplemental Answers to Plaintiffs' Fifth Set of Interrogatories** and know the contents thereof; that the same is true of my own knowledge, except for those matters therein stated upon information and belief, and as to those matters, I believe them to be true.


Executed under penalty of perjury under the laws of the State of Nevada this 30 day of December, 2016.

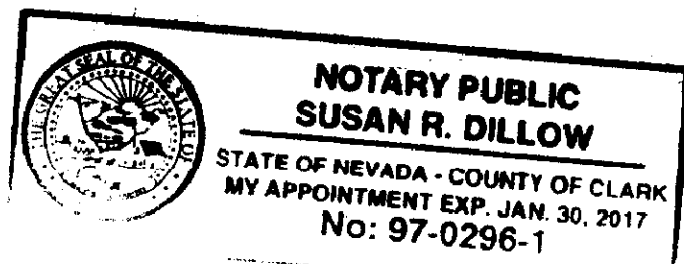
A Cab, LLC

By: 

Creighton J. Nady, Manager

Subscribed and sworn to before me
this 30 day of December, 2016
by Creighton J. Nady.


Notary Public in and for said
County and State



VERIFICATION

STATE OF NEVADA
COUNTY OF CLARK

I, the undersigned, state that I am the Manager of A Cab, LLC, the Defendant in the above-entitled action, that I have read the foregoing **Defendants' Third Supplemental Answers to Plaintiffs' Fifth Set of Interrogatories** and know the contents thereof; that the same is true of my own knowledge, except for those matters therein stated upon information and belief, and as to those matters, I believe them to be true.


Executed under penalty of perjury under the laws of the State of Nevada this 30 day of December, 2016.

A Cab, LLC

By: 

Creighton J. Nady, Manager

Subscribed and sworn to before me
this 30 day of December, 2016
by Creighton J. Nady.


Notary Public in and for said
County and State

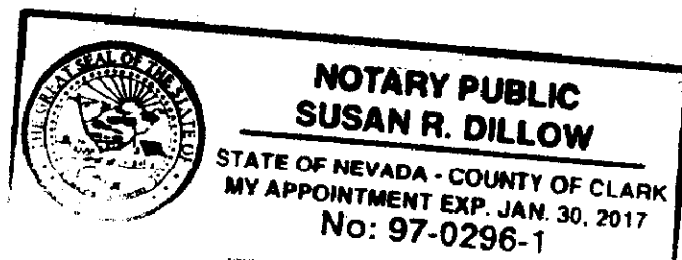


EXHIBIT "C"

RESP

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

**ANSWERS TO PLAINTIFFS' SIXTH SET OF
INTERROGATORIES TO DEFENDANTS**

Defendants, by and through their attorney, ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ
LAW OFFICES, P.C., and pursuant to NRCP 33, hereby respond to Plaintiffs' Sixth Set of
Interrogatories as follows:

INTERROGATORY NO. 20:

Set forth the factual details on which defendants base their Second Affirmative Defense that
plaintiffs have failed to mitigate their damages. Such response shall include all particulars relating

1 to what actions, if any, defendants allege plaintiffs should have taken to mitigate their damages but
2 which plaintiffs did not, the extent to which, if such actions were taken, plaintiffs damages would
3 have been mitigated, and all other events, transactions, and circumstances that defendants believe
4 support such claim by defendants.

5 **ANSWER NO. 20:**

6 Objection, compound, vague and ambiguous, and Defendants reserve the right to amend this
7 response as the individual members of the class have not been identified who have accepted
8 representation and/or opted out; and discovery is continuing. Without waiving said objections, A
9 Cab drivers control their own schedules, as well as the factors pertaining to their ability to earn
10 more compensation or less compensation. In certain circumstances, individual plaintiffs failed to
11 generate enough revenue on a shift to earn a minimum wage deliberately, consistently, and without
12 basis or justification. Additionally, if or when there are errors in the calculation of pay, individual
13 plaintiffs failed to make management aware so that the pay could be corrected. Prior to the
14 initiation of the lawsuit herein, Plaintiffs never made any demand for payment of minimum wage or
15 underpayment. Plaintiffs failed to accept offers of resolution far in excess of the value of their
16 respective claims; failed to make a demand for a resolution; and have refused offers to resolve,
17 meet, or to engage in mediation or alternative dispute resolution; thereby deliberately escalating the
18 damages claimed.

19 **INTERROGATORY NO. 21:**

20 Set forth the factual details on which defendants base their Fifth Affirmative Defense that
21 plaintiffs claims are barred because plaintiffs own actions were the proximate cause of their
22 damages. Such response must identify the nature of such actions (e.g., what it is that the plaintiffs
23 did or did not do that defendants claim is the proximate cause of the plaintiffs' damages). Such
24 response, to the extent known to defendant, must also detail every event and transaction, its
25 participants, location, date and time, that such actions or lack of action occurred.

26 **ANSWER NO. 21:**

27 Objection, compound, vague and ambiguous, and Defendants reserve the right to amend this
28 response as the individual members of the class have not been identified who have accepted

representation and/or opted out; and discovery is continuing. Without waiving said objections, A Cab drivers control their own schedules, as well as the factors pertaining to their ability to earn more compensation or less compensation. In certain circumstances, individual plaintiffs proximately caused their own damages by failing to generate enough revenue on a shift to earn a minimum wage deliberately, consistently, and without basis or justification. Additionally, when there are errors in the calculation of pay, individual plaintiffs failed to make management aware so that the pay could be corrected. Plaintiffs are responsible for their own book and well as accurate reporting of their times to Defendants. Prior to the initiation of the lawsuit herein, Plaintiffs never made any demand for payment of minimum wage or underpayment. Plaintiffs failed to accept offers of resolution far in excess of the value of their respective claims; failed to make a demand for a resolution; and have refused offers to resolve, meet, or to engage in mediation or alternative dispute resolution; thereby deliberately escalating the damages claimed.

INTERROGATORY NO. 22:

Set forth the factual details on which defendants base their Seventh Affirmative Defense that plaintiffs' Complaint is barred by the doctrine of res judicata. Such response must identify every judicial or quasi judicial proceeding or adjudication creating the claimed *res judicata*. Such response must include all particulars of such proceedings and adjudications, including the parties to the same, the court or other tribunal in which such action took place, and the judicial or other official who allegedly made the decision creating such *res judicata* status. Such response must also include a statement of how defendants believe each such proceeding or adjudication created *res judicata*.

ANSWER NO. 22:

Objection, compound, vague and ambiguous, and Defendants reserve the right to amend this response as the individual members of the class have not been identified who have accepted representation and/or opted out; and discovery is continuing. Without waiving said objections, matters contained within Plaintiffs' Complaint have been resolved and/or adjudicated in *Perez v. A Cab, LLC*, U.S. District Court Case No. 2:14-cv-1615, as well as through those claims that have been adjudicated and/or resolved through the Nevada Office of the Labor Commissioner.

INTERROGATORY NO. 24 (sic):

Set forth the factual details on which defendants base their Eighth Affirmative Defense that plaintiffs' Complaint is barred by the doctrine of collateral estoppel. Such response must include all particulars of such proceedings and adjudications, including the parties to same, the court or other tribunal in which such action took place, and the judicial or other official who allegedly made the decision creating such collateral estoppel status. Such response must also include a statement of how defendants believe each such proceeding or adjudication created collateral estoppel.

ANSWER NO. 24 (sic):

Objection, compound, vague and ambiguous, and Defendants reserve the right to amend this response as the individual members of the class have not been identified who have accepted representation and/or opted out; and discovery is continuing. Without waiving said objections, matters contained within Plaintiffs' Complaint have been resolved and/or adjudicated in *Perez v. A Cab, LLC*, U.S. District Court Case No. 2:14-cv-1615, as well as through those claims that have been adjudicated and/or resolved through the Nevada Office of the Labor Commissioner. Further, Defendants' organizational status was brought before the State of Nevada Taxicab Authority after proper notice, and no objection was received. The driver tip agreement was resolved with the Internal Revenue Service, and no objection was received.

INTERROGATORY NO. 25:

Set forth the factual details on which defendants base their Sixteenth Affirmative Defense that plaintiffs' Complaint is barred by equitable estoppel, including every event, transaction, and circumstance that defendants believe support such claim, including what actions defendants allege were taken by the plaintiffs which formed the basis for plaintiffs to be equitably estopped from asserting the claims they have asserted in this case.

ANSWER NO. 25:

Objection, compound, vague and ambiguous, and Defendants reserve the right to amend this response as the individual members of the class have not been identified who have accepted representation and/or opted out; and discovery is continuing. Without waiving said objections, A Cab drivers control their own schedules, as well as the factors pertaining to their ability to earn

1 more compensation or less compensation. Defendants assert that Plaintiffs' voluntary conduct may
2 be an action, silence, acquiescence, or concealment of material facts. In certain circumstances,
3 individual plaintiffs failed to generate enough revenue on a shift to earn a minimum wage
4 deliberately, consistently, and without basis or justification. Additionally, if or when there are
5 errors in the calculation of pay, individual plaintiffs failed to make management aware so that the
6 pay could be corrected. Prior to the initiation of the lawsuit herein, Plaintiffs never made any
7 demand for payment of minimum wage or underpayment. Plaintiffs failed to accept offers of
8 resolution far in excess of the value of their respective claims; failed to make a demand for a
9 resolution; and have refused offers to resolve, meet, or to engage in mediation or alternative dispute
10 resolution; thereby deliberately escalating the damages claimed.

11 **INTERROGATORY NO. 26:**

12 Set forth the factual details on which defendants base their Twenty-Third Affirmative
13 Defense that plaintiffs' Complaint is barred by the doctrine of accord and satisfaction. Such
14 response should reference all monetary payments made to the plaintiffs and members of the
15 certified class which form the basis for accord and satisfaction, including the amount of such
16 payments, the dates on which such payments were made, whether the basis for such payments were
17 explained in writing and agreed to by plaintiffs and, if so, all contents of those written
18 communications, who provided such payments to the plaintiffs, whether defendants possess any
19 documentary records evidencing the existence that such payments were made which form the basis
20 for the accord and satisfaction, and the contents of all such documents.

21 **ANSWER NO. 26:**

22 Objection, compound, vague and ambiguous, and Defendants reserve the right to amend this
23 response as the individual members of the class have not been identified who have accepted
24 representation and/or opted out; and discovery is continuing. Without waiving said objections,
25 matters contained within Plaintiffs' Complaint have been resolved and/or adjudicated in *Perez v. A*
26 *Cab*, LLC, U.S. District Court Case No. 2:14-cv-1615, as well as through those claims that have
27 been adjudicated and/or resolved through the Nevada Office of the Labor Commissioner.
28 Additionally, see documents provided in Defendants' "Responses to Plaintiffs' Eleventh (sic)

Request for Production of Documents,” and the form 941s provided to Plaintiffs and all supplements thereto. Plaintiffs failed to accept formal offers of resolution pursuant to NRCP 68 far in excess of the value of their respective claims; failed to make a demand for a resolution; and have refused offers to resolve, meet, or to engage in mediation or alternative dispute resolution; claimed damages have been satisfied including those for attorney fees, costs, and interest.

INTERROGATORY NO. 27:

Set forth the factual basis on which defendants base their Twenty-Sixth Affirmative Defense that plaintiffs’ claims are barred as Defendant based its actions upon information provided by the pertinent state and/or federal agencies, and not in ignorance/violation of the law. Such response shall include the content of all information provided by every pertinent state and/or federal agency who provided such information to the defendants, the dates on which such information was provided, the persons from whom such information was provided, whether defendants possess any documentary evidence that such information was provided by such state and federal agencies, and if so, the contents of all such documentary evidence.

ANSWER NO. 27:

Objection, compound, vague and ambiguous, and Defendants reserve the right to amend this response as discovery is continuing. Without waiving said objections, Defendants respond that they were provided guidance by both state and federal agencies, both solicited and unsolicited, as to proceeding appropriately and properly under all federal and state laws. Such guidance included but was not limited to meeting and receiving information from the Nevada Office of the Labor Commissioner; meeting and receiving information on more than one occasion with local Wage and Hour personnel; meeting and receiving information on more than one occasion with Federal agents including from the Department of Justice and the Internal Revenue Service; as well as receiving guidance from the Nevada Supreme Court on many of the issues contained within Plaintiffs’ complaints. Documentary evidence includes but is not limited to the affidavit of Keith Sakelhide which has been produced; the clean audit from the Department of Labor indicating “no violations” which has been produced; and the Consent Judgment in *Perez v. A Cab* indicating that Defendants enter into a settlement denying the allegations of the complaint.

record for each such person.

ANSWER NO. 30:

Objection, this request is overbroad in terms of scope of information requested in light of the guidance provided by the Nevada Supreme Court in 132 Nev. Advance Opinion 76, which holds that employers need only to offer a qualifying health benefit plan in order to pay a lower-tier minimum wage. Furthermore, this issue was discussed at the Discovery Conference of December 9, 2016 in which the Discovery Commissioner ruled that Plaintiffs are not entitled to this information; DCR&R is pending.

DATED this 12th day of December, 2016.

RODRIGUEZ LAW OFFICES, P.C.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 12th day of December, 2016, I electronically *served* 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
(702) 385-1827

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

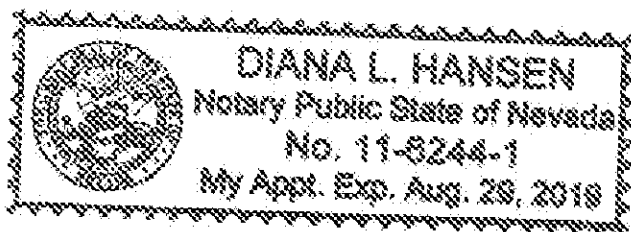
VERIFICATION

STATE OF NEVADA

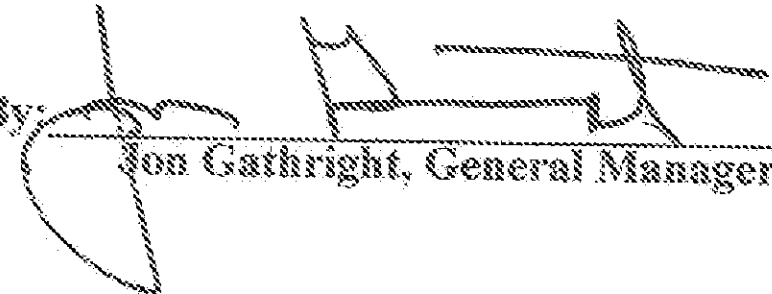
COUNTY OF CLARK

I, the undersigned, state that I am the General Manager of A Cab, LLC, the Defendant in the above-entitled action, that I have read the foregoing Defendants' Answers to Plaintiffs' Sixth Set of Interrogatories and know the contents thereof; that the same is true of my own knowledge, except for those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

Executed under penalty of perjury under the laws of the State of Nevada this ____ day of December, 2016.



A Cab, LLC

By: 
Jon Gathright, General Manager

Subscribed and sworn to before me
this 12 day of DECEMBER, 2016.



Notary Public in and for said
County and State

EXHIBIT “D”

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

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

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THOMAS E. PEREZ, Secretary of)	Case No.:
Labor, United States Department of)	
Labor,)	
)	CONSENT JUDGMENT AGAINST
Plaintiff,)	ALL DEFENDANTS
v.)	
)	
A CAB, LLC; and,)	
CREIGHTON J. NADY an individual,)	
)	
Defendants.)	
_____)	

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this _____ day of _____, 2014.

UNITED STATES DISTRICT JUDGE

Consented to By:

For Plaintiffs:

M. PATRICIA SMITH
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

SUSAN SELETSKY
FLSA Counsel

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

Dated: October 1, 2014

For Defendants:

Dated: September 30, 2014

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

Approved as to Form:

ESTHER C. RODRIGUEZ, Esq.
Rodriguez Law Offices, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada, 89145

GREGORY J. KAMER
Kamer-Lucker Abbott
3000 West Charleston Blvd., Suite 3
Las Vegas, NV 89102

Attorneys for Defendants

Consent Judgment

EXHIBIT "E"

BETA Consultants LLC

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

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

Prepared by: Nicole S. Omph, CPA

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

Report Date: October 4, 2016

Summary

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

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

Objectives, Scope and Observations

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

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

Limitations and Restrictions

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



Nicole S. Ompps, CPA
BETA Consultants LLC



Date

Appendix A

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

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

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

Assumptions:

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

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

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

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

EXHIBIT “F”

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

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

Fax: (702) 385-1827

October 5, 2017

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

Via First Class Mail and Wiznet Service

Re: Murray v. A-Cab
Request for Cooperation in Amendment of Expert Report
Of Scott Leslie, CPA, Improper Disregard of Settlement and
Mediation Privileged Communications

Dear Ms. Rodriguez:

In reviewing the report of defendants' expert, Scott Leslie, CPA, I have found an improper reliance upon and incorporation into that report of settlement and mediation protected privileged documents.

Mr. Leslie at page 9 of his report references two Excel files he states were produced by this office in February of 2017 "to the Court and defendants" with the names "Damages 1-1-13-12-31-15" and "Damages 10-8-10 - 12-31-12." The basis for that assertion is not detailed in his report, though he also claims in footnote 16 of his report that Dr. Clauretie's report at page 5 relies on those Excel files. That assertion is untrue, as Dr. Clauretie refers in his report at page 5 to the declaration of Charles Bass from February of 2017, not any Excel file that Dr. Clauretie identifies from February of 2017.

Page 1 of 2

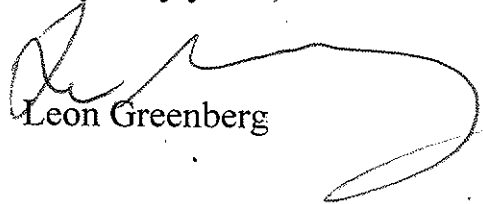
The two files "Damages 1-1-13-12-31-15" and "Damages 10-8-10 - 12-31-12" with creation dates of April 4, 2017 were provided to you via my letter of April 6, 2017 and expressly furnished for mediation and settlement purposes and not for use in litigation. I would also note that defendants, when furnishing Leslie Scott's expert report and the materials furnished by defendants to him and relied upon by him, did *not* produce these Excel files or identify them and indicate they were already in the plaintiffs' counsel's possession. Presumably that failure is just an oversight and this entire situation is not one of willful deception or improper use of these materials by defendants and their expert but just confusion.

I expect to hear from you most promptly, by 3 p.m. tomorrow, October 6, 2017 about this. Defendants must agree to strike from Leslie Scott's report any reference to these materials and he cannot offer testimony in reliance upon those materials. Presumably a strong argument exists Leslie Scott's report and expert testimony should be stricken in its entirety as result of this misconduct, irrespective of whether such misconduct was inadvertent or intentional. If defendants refuse to properly resolve this situation cooperatively I will present a motion to the Court seeking appropriate relief.

In the event you wish to reschedule the deposition of Mr. Scott in light of this problem, currently set for October 10, 2017, please advise immediately. I am open to doing so.

I remain,

Very truly yours,


Leon Greenberg

cc.: Michael Wall, Esq.

EXHIBIT "G"



April 28, 2017

FOIA Public Portal

You can now track the status of FOIA requests you have submitted to DOL. The status information includes the following:

- Date on which the agency originally received your request.
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Please refer to your FOIA request acknowledgment letter to enter the individualized tracking number assigned to your request.

Tracking Number:

823374

Search FOIA Request

Tracking Number	Date of Receipt in DOL	Estimated Date to Complete Action	Responding Office	Status	Date of Completion	Summary
823374	01/23/2017	02/28/2017	WHD/MW	Decision Made	03/02/2017	Tracking Number: 823374 Date of Receipt in DOL: 02/28/2017 Estimated Date to Complete Action: 02/28/2017 Responding Office: WHD/MW Status: Decision Made Date of Completion: 03/02/2017
823374	01/23/2017	04/28/2017	WHD/NO	In Progress	NULL	Tracking Number: 823374 Date of Receipt in DOL: 04/28/2017 Estimated Date to Complete Action: 04/28/2017 Responding Office: WHD/NO Status: In Progress Date of Completion: NULL

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U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USA-DOL (1-866-487-2365)

TTY: 1-877-889-5627

[Contact Us](#)

ACA005627

EXHIBIT “H”

U.S. Department of Labor

Certificate of Appreciation

Presented to

Jay Nady

April 6, 2011

*This Certificate of Appreciation is in recognition of your personal and significant contribution to the National Occupational Information Network (O*NET) Data Collection Program, our Nation's primary source of occupational information.*



Jane Oates

JANE OATES
Assistant Secretary
Employment and Training Administration

O*net[®]

EXHIBIT "I"

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4
5 MICHAEL MURRAY, and MICHAEL) Case No.: A-12-669926-C
6 RENO, individually and on) Dept. No.: I
7 Behalf of others similarly)
8 Situated,)
9 Plaintiffs,)
10 vs)
11 A CAB TAXI SERVICE LLC, A CAB,)
12 LLC and CREIGHTON J. NADY,)
13 Defendants.)
14 _____)
15
16
17

18 RECORDED DEPOSITION OF CREIGHTON J. NADY
19 Taken on June 16, 2017
20 At 1:10 p.m.
21 Evolve Downtown
22 400 South 4th Street, 3rd Floor
23 Las Vegas, Nevada 89101
24
25

Evolve Deposition and Trial Services

7473 West Lake Mead Blvd, Suite 100
Las Vegas, Nevada 89128
(Main) 702-421-DEPO (3376)



1 Taxi. The time is 3:25 p.m. We're going back on the
2 record in the matter of Michael Murray versus A Cab
3 Taxi. The time is 3:27. Just a point of
4 clarification, we went off the record at 3:21 p.m.,
5 not 3:25. Please proceed.

6 Q: Mr. Nady, who is your business
7 lawyer?

8 A: For what type of advice?

9 Q: For advices to how you should
10 organize your businesses. I'm not talking about
11 anyone who represents you in an actual court case,
12 sir. I'm talking about people you would consult
13 about something for your business, not litigation.

14 A: I suppose I have four or five other
15 lawyers that I pay.

16 Q: Can you identify them?

17 A: Bill Crane, Gretchen Jacobs, Dan
18 Migliore, Steve Oshins, probably a couple others that
19 I can't recall at the time.

20 Q: And you do not have to answer this
21 question if you do not wish to, I understand, but I'm
22 not going to ask it anyway. You tell me that you're
23 refusing based on privilege, that's fine. Did you
24 seek advice from any of those lawyers about how A
25 Cab's business should be changed in terms of its

1 legal structure after this lawsuit was started?

2 MS. RODRIGUEZ: I think I`m going to
3 object based on the guidance provided by the
4 discovery commissioner.

5 Q: The objection is fine. I just want
6 it to come from the witness, counsel.

7 A: Are you asking me if I sought legal
8 counsel after?

9 Q: From any of the business lawyers
10 you identified, did you seek advice from them about
11 changing the legal structure --

12 A: About the changing the structure?

13 Q: Yes.

14 MS. RODRIGUEZ: Hold on. Let him
15 finish his question.

16 Q: Of changing the structure. For
17 instance, you mentioned A Cab at one time was a one-
18 person LLC. It became a Series LLC. Changing the
19 legal structure of A Cab after this lawsuit was
20 started and in response to this lawsuit.

21 MS. RODRIGUEZ: Same objection based on
22 the guidance provided by the discovery commissioner
23 in our conference.

24 A: I`ll invoke the privilege there.

25 Q: Okay. The privilege has been

1 invoked. Thank you. Plaintiff`s Exhibit 4, Mr.
2 Nady. This document is a stipulation and order.
3 Stipulation is a legal agreement in a litigation.
4 This is in the Dubric case that I was questioning you
5 about before.

6 A: Excuse me please for chewing. I`m
7 sorry.

8 MS. RODRIGUEZ: Is there a question?

9 Q: I`m describing the document to Mr.
10 Nady. Mr. Nady, I had asked you previously why you
11 had agreed to be named as a defendant in the Dubric
12 case. And if you look at the page following the page
13 that says Exhibit 1 of this document, you will see a
14 first amended class action complaint listing Jasminka
15 Dubric, the plaintiff, and your name appears there,
16 Creighton J. Nady as the defendant. Do you see that?

17 MS. RODRIGUEZ: I don`t see that. I`m
18 sorry, sir. What are you looking at?

19 Q: Exhibit 1 to the document.

20 A: Yes, I see my name here.

21 Q: Now, the first two pages of this
22 document is an agreement to allow that first amended
23 complaint to be filed. And you can see on page two,
24 paragraph seven of the document, it says, ``The
25 parties here stipulate and agree to the filing of the

1 CERTIFICATE OF RECORDER

2 STATE OF NEVADA)

3 COUNTY OF CLARK)

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

5I, Peter Hellman, a duly commissioned

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

7 certify: That I recorded the taking of the

8 deposition of the witness, Creighton Nday,

9 commencing on 06/16/2017.

10That prior to being examined the witness was

11 duly sworn to testify to the truth. That I thereafter

12 transcribed or supervised transcription from Recorded

13 Audio-and-Visual Record and said deposition is a complete,

14 true and accurate transcription.

15I further certify that I am not a relative or

16 employee of an attorney or counsel of any of the

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

18 counsel involved in said action, nor a person

19 financially interested in the action.

20IN WITNESS WHEREOF, I have hereunto set my

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

22 Nevada, this 06/16/2017.

23

24_____

25Peter J. Hellman Notary (12-9031-1)

EXHIBIT “J”

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

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

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

12 Plaintiffs,

13 vs.

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

16 Defendants.

Case No.: A-12-669926-C

Dept.: I

**NOTICE TO TAKE
DEPOSITION**

17 PLEASE TAKE NOTICE that pursuant to Nevada Rules of Civil Procedure § 26
18 and § 30(b)(6), plaintiffs, by their attorneys, Leon Greenberg Professional Corporation,
19 will take the deposition of defendants, A CAB TAXI SERVICE LLC, and A CAB,
20 LLC. (hereafter “defendant”) by a person(s) that it designates as possessing and having
21 acquired prior to such deposition the best knowledge of such corporate defendant as to
22 the following specified subjects.
23

24 **TIME FRAME TO BE COVERED BY REQUESTED TESTIMONY**

25
26 The testimony requested for the below subjects concerns the time frame from
27 July 1, 2007 through the date of the deposition.
28

TESTIMONY REQUESTED

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

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

- 17
18 4. The amount of time during each assigned work shift that taxi driver
19 employees of defendant were allowed under defendant's policies to take
20 as break time, including but not limited to the taking of lunch or other
21 meal breaks. Such testimony will include all policies that defendant had
22 as to the taking of lunch breaks by taxi drivers and all other breaks from
23 work that taxi drivers were authorized by defendants to take during their
24 work shift. Such testimony will include all policies requiring taxi drivers
25 to use their radios or cell phones to report to defendants that they were
26 going to, or sought permission to, commence a break and all records kept
27 by the defendants of such break times. Such testimony will include the
28 policy on break time set forth at A Cab 00601, including whether that