

**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.

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) Supreme Court No. 77050

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Clerk of Supreme Court

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

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

Leon Greenberg, Esq.  
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*Attorneys for Respondents*

DATED this 5<sup>th</sup> day of August, 2020.

*/s/ Kaylee Conradi*

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An employee of Hutchison & Steffen, PLLC

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

9  
10 5. How defendant enforced any policies requiring taxi drivers to monitor  
11 their radio or respond to radio or cell phone calls. Such testimony will  
12 include whether taxi drivers were required by defendant to monitor their  
13 two way radio while on lunch breaks or other breaks, how they were  
14 expected by defendant to monitor those two way radios, and whether taxi  
15 drivers were required to remain in or at their taxi cabs during break  
16 periods so they could hear and monitor their two way radios. Such  
17 testimony will include how defendant enforced the policy set forth at A  
18 Cab Bates 00651 about defendant considering periods of time that taxi  
19 drivers could not be reached by radio or cell phone as "personal time,"  
20 what periods of time that policy was enforced, records of its enforcement,  
21 why that policy was implemented, who decided to implement, and if it  
22 was not implemented or used why no written communication was issued  
23 about defendant's decision to not implement or use that policy and why  
24 defendant's employee handbook was not updated to remove that policy.

25  
26 6. The means by which defendant determined if a taxi driver employee was  
27 maintaining "an average or above productivity rate" as specified in Bates  
28 A Cab 00635 including what defendant did if a taxi driver did not meet

1 that standard and how defendant made the determination as to whether  
2 that standard was, or was not, met.  
3  
4

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

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

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

26 10. All records maintained by the defendant of the hours worked during each  
27 pay period by each of defendant's taxi driver employees and the  
28 compensation they were paid and/or earned or were reported as earning

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

9  
10 11. All records maintained by the defendant of the hours  
11 worked during each workday by each of defendant's taxi driver  
12 employees. This includes all records of the break time that taxi drivers  
13 employed by defendant took during their work shifts.

14  
15 12. All computer systems and software used by defendant that recorded the  
16 activities of their taxi cabs and taxi drivers, including whether such  
17 computer systems and software created records of the dates and times that  
18 taxi cabs and their drivers were engaged in any specific activities, and if  
19 so, what records of such activities were created and whether such records  
20 still exist and if they do so exist for what time frame. This includes all  
21 computer records that indicate or record that a taxi driver did work on a  
22 particular day, such as a record of a "shift" of taxi driving being  
23 performed by a particular driver on a particular day, even if such computer  
24 records sets forth no record of the amount of time such taxi driver was  
25 working on that day.

26  
27 13. All written statements defendant has given to each of its taxi driver  
28 employees since June 1, 2007 advising the taxi driver employees of the



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

7  
8 14. All efforts defendant has made to ascertain what obligations it has under  
9 the law to maintain records of the hours worked by its employees,  
10 including but not limited to its taxi driver employees, and including the  
11 form of such records. This shall include all communications it had with  
12 legal counsel about such topic both prior to and after the commencement  
13 of this litigation and all changes, if any, it has made to its keeping of such  
14 records since the commencement of this lawsuit. This shall include  
15 defendant's understanding of what records it was legally obligated, under  
16 state and federal law, to keep of the total hours worked by its employees  
17 during each pay period and when it obtained such understanding (or if it  
18 has had different understandings of that obligation when it obtained each  
19 such understanding).

20  
21 15. Defendant's knowledge of the minimum wage requirements of the Fair  
22 Labor Standards Act prior to the commencement of this lawsuit and all  
23 efforts, if any, that it has made prior to and after the commencement of  
24 this lawsuit to comply with the same. Such testimony is to include all  
25 records, procedures or policies defendant has implemented, used, or relied  
26 upon any time in an attempt to monitor or ensure its compliance with  
27 those requirements.

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

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

24  
25 17. The health insurance benefits, if any, defendant's taxi driver  
26 employees were eligible to participate in by virtue of their status as  
27 employees of the defendant. Such information shall include:  
28

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

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

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

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

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

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

13  
14                  (c) Whether defendant was aware its method of compliance  
15                  with the minimum wage requirements of the Fair Labor  
16                  Standards Act, under which it included amounts received by  
17                  its taxi drivers as tips towards such minimum wage  
18                  requirements (its use of a "tip credit"), was not permitted for  
19                  purposes of its compliance with the minimum wage  
20                  requirements of the Nevada Constitution. Such testimony  
21                  will include when it first became aware of the same and why,  
22                  after becoming aware of the same, it did not, for any time  
23                  period after February 11, 2013, fully comply with the  
24                  minimum wage requirements of the Nevada Constitution and  
25                  pay its taxi drivers the minimum hourly wage required by  
26                  Nevada's Constitution not reduced by any "tip credit." Such  
27                  testimony will also include the identity of the person who  
28                  made such decision for the defendant to not comply with the

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

8  
9 (d) All procedures defendant currently uses, and has used  
10 since February 11, 2013, to ensure it pays its taxi driver  
11 employees the minimum wage required by Nevada's  
12 Constitution. This includes how defendant has determined  
13 what minimum wage rate it is required to pay under the  
14 Nevada Constitution to its taxi driver employees including  
15 the minimum wage rate it is currently paying those taxi driver  
16 employees, and if it has determined that rate is not the same  
17 for all of its employees how it has made that determination.  
18 Such testimony will include how defendant has determined,  
19 and currently determines, whether a taxi driver can properly  
20 be paid the minimum wage rate applicable to employees for  
21 whom "health benefits" are provided (currently a \$7.25 an  
22 hour rate) instead of the minimum wage rate applicable to  
23 employees for whom no "health benefits" (currently an \$8.25  
24 an hour rate) are provided. If defendant makes no such  
25 determination, and instead only assures all employees of a  
26 minimum wage equal to the "health benefits" rate (currently  
27 \$7.25 an hour) it shall so state.

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

9  
10  
11                   20.           All persons and entities, including defendants' counsel and  
12   agents, that have ever had possession of the Excel  
13   spreadsheet file created by defendant A-Cab and discussed at  
14   pages 228 to 239 of defendant Nady's deposition of August  
15   18, 2015. Defendant A-Cab shall also advise of the location  
16   of all computer hard drives where that Excel spreadsheet file  
17   has ever been placed on and the location of such computer  
18   hard drives. Defendant A-Cab shall also testify as to all  
19   efforts it has made to locate that Excel file and produce it in  
20   this litigation.

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

25  
26                   22.           **In respect to the defendants' maintenance of copies of the**  
27   **trip sheets of class members, whether all or some of those**  
28   **trip sheets are already in the possession of the defendants**

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

14  
15 23. In respect to the defendants' production of selected  
16 information from its Cab Manager software, including  
17 but not limited to its production of the computer file  
18 "DataExport 7-15-16.txt" it shall explain why for certain  
19 periods of time such information includes additional  
20 details, specifically why such produced information for  
21 certain taxi driver shifts includes a "Cab\_Start" time and  
22 a "Cab\_Finish" time but for other taxi driver shifts no  
23 such information has been provided. Such testimony will  
24 include all efforts made by defendants to produce Cab  
25 Manager information in this litigation, what they  
26 attempted to produce and how they attempted to produce  
27 it, and the contents of, and parties to, all communications  
28 about such production with any non-employees of



1 defendants who assisted defendants in providing such  
2 information. Such testimony will also include whether the  
3 defendants' Cab Manager stored information ever  
4 included a "Cab\_Start" time and a "Cab\_Finish" time for  
5 the taxi drivers' work shifts that defendants are now  
6 unable to produce such information for. Such testimony  
7 will also involve all uses of the Cab Manager stored  
8 information by the defendants including their use, if any,  
9 of such "Cab\_Start" time and a "Cab\_Finish" times.

10  
11 24. In respect to defendant's attempts to comply with  
12 plaintiffs' seventh request for production of documents  
13 items 1 to 3, with plaintiffs' third set of interrogatories,  
14 items 3 to 5, and to provide information on the health  
15 insurance benefits (the term "health insurance benefits"  
16 means medical insurance benefit plans such as those  
17 offered to class members and described in Ex. "A" hereto,  
18 which is only an example applicable to the certain limited  
19 periods detailed therein) offered to class members ("the  
20 health insurance information"), defendant shall advise:

21  
22 (1) Of the nature of all records maintained by the  
23 defendants that contain any of the information sought by  
24 class counsel in respect to the health insurance benefits  
25 offered by defendants to the class members. This would  
26 include, without limitation, the existence of originals or  
27 copies of all executed applications and contracts for  
28 health insurance and all documents (whether as part of

1 those applications or contracts or otherwise) detailing the  
2 nature of the health insurance secured by defendants  
3 through such contracts and the cost that would be paid by  
4 each participant in such insurance depending on the level  
5 of insurance coverage they elected; records of enrollment  
6 of class members in such health insurance plans; records  
7 of payments made by defendants for such health  
8 insurance plans; records of when class members became  
9 eligible to participate in such health insurance plans  
10 including the notifications they were given about such  
11 eligibility; and all other records in the defendants'  
12 possession that contain information on the eligibility of  
13 the class members to participate in its health insurance  
14 benefits and/or such eligibility standards and/or the  
15 insurance premium that would have to be paid by the  
16 class members depending upon their participation in such  
17 insurance under single (employee coverage only), married  
18 (employee and spouse coverage) and dependent (employee  
19 and children or employee, spouse and children coverage)  
20 coverage status.

21  
22 (2) In respect to the records identified in (1)  
23 immediately preceding, detail the nature of such  
24 records and how they are maintained, either in a  
25 computer file form or on paper, and their location and  
26 how they can be accessed; whether defendants maintain  
27 any record of class members' health insurance eligibility  
28 status in their computer system (in which event they must

1 specify how such information is recorded and can be  
2 accessed or retrieved) and how (including who is  
3 responsible for doing so) they keep track of that status  
4 and take steps to be sure they properly advise class  
5 members of that status.

6  
7 (3) Defendants must identify the name and address of all  
8 agents or insurance brokers who have assisted them or  
9 been involved in providing them with, and/or in their  
10 application for, health insurance that class members were  
11 eligible to participate in. Defendants shall also testify  
12 about all communications they have had with such agents  
13 or brokers about providing the health insurance  
14 information to defendants, and all other efforts they made  
15 to gather such health insurance information, both prior  
16 to, and after, asserting in their answer to Interrogatory  
17 number 3 that it would be “unduly burdensome” to  
18 provide such information. Defendants shall also state  
19 what efforts they made to collect the information set forth  
20 in response to plaintiff’s Interrogatories numbers 4 and 5,  
21 including who undertook those efforts and what they did  
22 to ascertain the information set forth in those  
23 interrogatory responses.

24  
25 (4) In respect to the “Employee Health Plan” summaries  
26 discussed in the affidavit of Creighton J. Nady dated  
27 September 21, 2016, defendants shall explain how such  
28 documents have previously been kept by defendants;

1 where they have been kept in the past by defendants; and  
2 all efforts made to locate additional "Employee Health  
3 Plan Summaries" that such affidavit says cannot be  
4 located, including the identity of all persons undertaking  
5 those efforts and what those efforts consisted of, the dates  
6 such efforts were undertaken and the results of such  
7 efforts including all contacts and communications made  
8 with defendants' insurance broker(s) about obtaining  
9 copies of the same.

10 The witness(es) is to be produced on the 22<sup>th</sup> day of November, 2016 at the hour  
11 of 9:30 a.m. or another agreed date and time at the office of plaintiffs' counsel,  
12 address below, and will continue day to day until completed. Such witness(es) will be  
13 examined as to the foregoing and all facts and circumstances bearing upon any and all  
14 issues in this litigation. Such deposition shall be recorded by audio and/or video  
15 and/or stenographically.

16  
17 Dated this 4<sup>th</sup> day of November, 2016.

18  
19 Leon Greenberg Professional Corporation

20  
21 By: /s/ Leon Greenberg

22 LEON GREENBERG, Esq.  
23 Nevada Bar No.: 8094  
24 2965 South Jones Blvd- Suite E3  
Las Vegas, Nevada 89146  
(702) 383-6085

25 Attorney for Plaintiffs  
26  
27  
28

# EXHIBIT “K”

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

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

CREIGHTON NADY

Taken on November 22, 2016

At 9:41 a.m.

Evolve Downtown

400 South 4th Street, Suite 300

Las Vegas, Nevada 89101

AA005656

1 APPEARANCES:

2 For the Plaintiffs: LEON GREENBERG, ESQ.

3 DANA SNIEGOCKI

4 LEON GREENBERG PROFESSIONAL CORPORATION

5 2965 South Jones Blvd, Suite E3

6 Las Vegas, Nevada 89146

7

8

9

10 For the Defendants: ESTHER RODRIGUEZ, ESQ.

11 RODRIGUEZ LAW OFFICES, PC

12 10161 Park run Drive, Suite 150

13 Las Vegas, Nevada 89145

14

15 MICHAEL WALL, ESQ.

16 HUTCHISON & STEFFEN

17 10080 Alta Drive, Suite 200

18 Las Vegas, Nevada 89145

19

20

21

22

23

24

25

1 Q: Well, I don't need you to guess,  
2 sir. And I...

3 A: That would be a guess if I answered  
4 that. So I shan't.

5 Q: I don't want to have you do that,  
6 sir. I just want to be clear, Mr. Nady, because  
7 we've been talking about this estimate to the amount  
8 of time on average drivers drive each day that they  
9 are working, and you gave me what you called an  
10 estimate. I've also heard the term 'guess' used in  
11 our discussion of that subject. Do you really have  
12 an estimate you can give me, or do you think you  
13 would just be guessing to give me an average amount  
14 of time per shift that taxi drivers are working?

15 A: It would be a guess.

16 Q: Do you know if A Cab ever undertook  
17 to conduct any study to determine what the average  
18 amount of time was that drivers work per shift?

19 A: I think the DOL forced us to do  
20 something like that.

21 Q: Do you remember what result was  
22 obtained from that study?

23 A: It, too, would be a guess, but my  
24 best recollection was about eight-and-a-quarter  
25 hours.



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

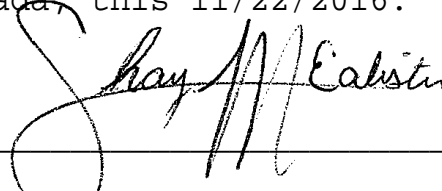
15 counsel involved in said action, nor a person

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 "L"

**A Cab, LLC**  
1500 SEARLES AVE.  
LAS VEGAS, NV 89101  
TEL. (702) 365-1900  
FAX (702) 365-9994

EIN: 88-0470590

**POINTS OF CONTACT**

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Rodriguez Law Offices, P.C.  
10161 PARK RUN DR. #150  
LAS VEGAS, NV 89145  
TEL 702.320.8400  
FAX 702.320.8401

Ex. 7 (c),  
Ex. 6 [erodriguezlaw.com](mailto:erodriguezlaw.com)

LAURA L. ROBERTSON, Attorney at Law  
Squire Sanders (US) LLP  
1 E. WASHINGTON ST., STE. 2700  
PHOENIX, AZ 85004  
TEL (602) 528-4137 / (602) 528-4000  
FAX (602) 253-8129  
[laura.robertson@squiresanders.com](mailto:laura.robertson@squiresanders.com)

**FAIR LABOR STANDARDS ACT NARRATIVE REPORT**

**COVERAGE:**

Subject firm operates a taxi service company. Subject firm operates one (1) location in Las Vegas, Nevada. Firm does not own or operate any other businesses. Firm was incorporated in Nevada on 05/01/2001.

The owner and official in charge is Creighton J. Nady (100% owner & CEO) (Exb. C-1, 5). Firm's day to day business operations are run by Creighton J. Nady and Jon Gathright (general manager). They are actively engaged in influencing the decision-making for the firm. Mr. Nady and Mr. Gathright are 3(d) employers.

Enterprise coverage is applicable Ex. 4  
Ex. 4 Gross annual dollar volume (ADV) is Ex. 4 (CY 2009), Ex. 4 (CY 2010), and Ex. 4 (CY 2011). The owner refused to provide ADV for CY 2012 but confirmed the firm grossed over \$500,000 (Exb. D-36-a). Subject firm handles goods and materials that have been moved in commerce, Ex. 4, Ex. 7 (e) This information was provided by the employer during the initial conference (Exb. C-1-a). As of 10/01/2012, subject firm employs a workforce of Ex. 4 of whom are cab drivers. Individual coverage is applicable to all cab drivers as they are permitted to drop off customers in other states, such as St. George, UT and Los Angeles, CA. The employer operates under a geographically restricted license from the Nevada Taxi Authority. Drivers may pick up customers only within the boundaries of Clark County and west of Interstate 15 (Exb. C-1-d, D-71 pg. ii).

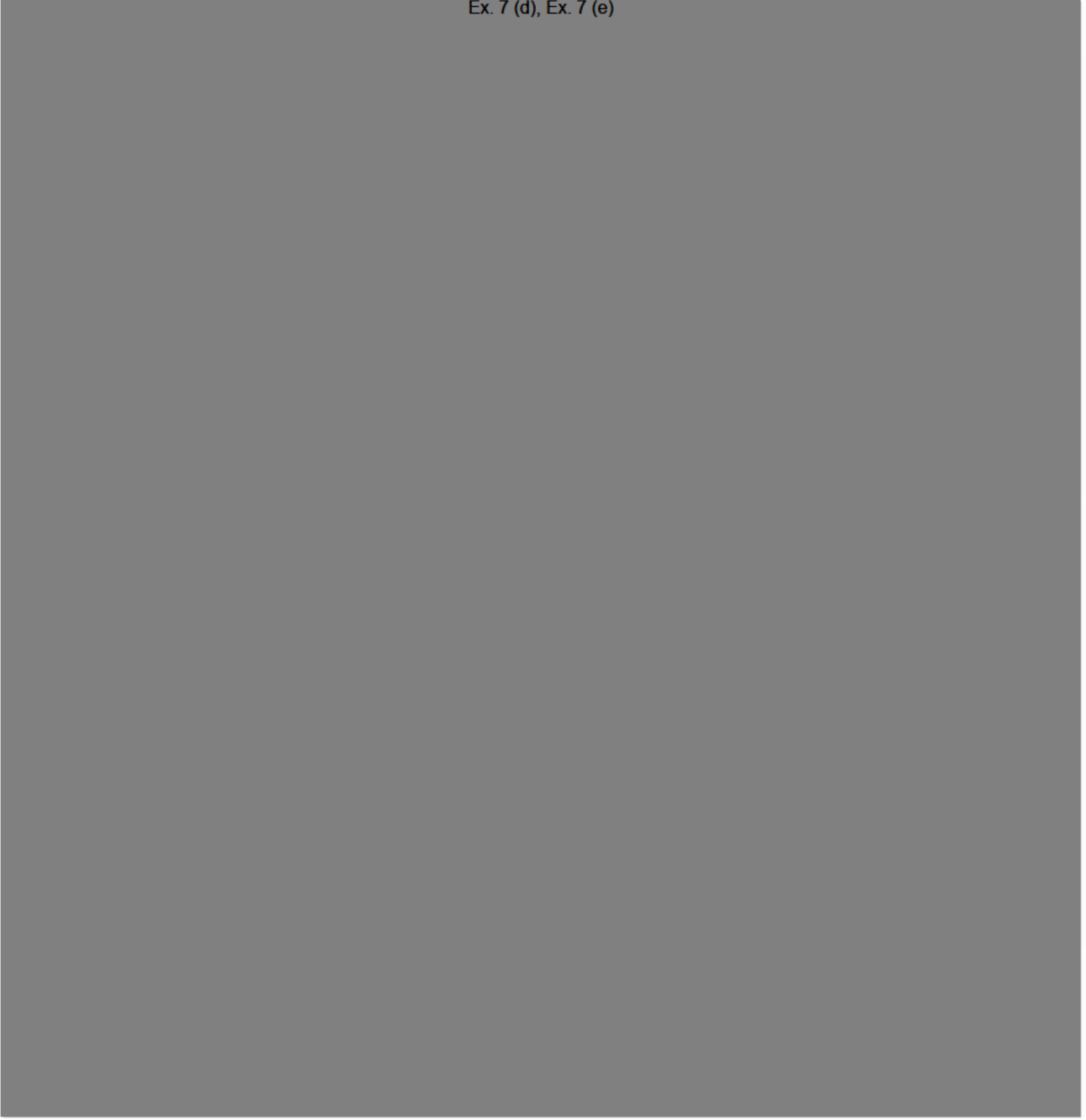
This investigation is limited to cab drivers.

**Period for this investigation** is from 10/02/2010 to 10/01/2012.

**MODO** is Las Vegas, NV. The employer is incorporated and headquartered in Las Vegas, NV (Exb. C-5).

**STATUS OF COMPLIANCE:**

Ex. 7 (d), Ex. 7 (e)



\$ 2,040,530.05 in back wages due 508 current / former employees.

This investigation is limited to cab drivers.

**EXEMPTIONS:**

The employer did not claim any exemptions.

**Section 6:** Minimum wage violations were found due 508 current / former employees totaling \$ 2,040,530.05.

Cab drivers are compensated on a commission basis. Drivers also receive non-discretionary bonuses called “incentives” and “bonus.” During several workweeks, drivers’ regular rates were below the applicable Federal minimum wage of \$7.25/hr. In addition, the employer made non-3(m) deductions which caused the regular rate to drop below or further drop below the Federal minimum wage. The deductions were for shortages of money submitted by the driver during the pay period (plus a penalty fee), administrative handling fees for paycheck advances and loans, interest fees for loans, and for supplies (map guides) required by the employer; see FOH 30c10(b) regarding voluntary assignment of wages, loans, and advances. All other deductions were made in compliance with 29 CFR 531.35-40.

E

This investigator determined the Tip Compliance Agreement between A Cab, LLC and IRS, which states that 5.5% of the gross book be reported as income for tax purposes, is NOT a valid FLSA tip credit agreement (Exb. D-73, 74. Exb. 71 pg. 70). Thus, tip credit could not be applied. Regional Solicitor Janet Herold confirmed this determination during a telephone advisory held on 12/12/2012.

**Method of computations**

Minimum wage back wages were computed by first determining the regular rate paid by the firm. The regular rate was determined by dividing total gross wages paid (including non-discretionary bonuses and excluding the non-3(m) deductions by total hours worked. If the regular rate paid by the firm was below the applicable Federal minimum wage rate, the difference was computed for each hour worked.

Due to the lack of accurate time records, hours worked per workweek were reconstructed from Ex. 4, Ex. 7 (d), Ex. 7 (e)

the average number of hours worked per week was 54 hours, or 108 hours per biweekly pay period (Exb. B-1 to 18, 20 to 26, 28 to 35, E-1).

In addition Ex. 4, Ex. 7 (e) cab drivers will work 12 hour shifts between 4 or 5 days a week, which also averages to 54 hours a week:

12 hours/workday \* (4.5 workdays/week) = 54 hrs/wk

The information above confirms the gathered Ex. 7 (d), Ex. 7 (e) i.e., the 54 hour average and the reality of cab drivers not taking breaks.

Explanation of WH-55 computation sheets (Exb. A-2 to 509):

**Total Hours Worked:** Average hours worked in biweekly pay period (108 hours) reconstructed  
Ex. 7 (d), Ex. 7 (e)

**Commission:** Gross Book \* 42% - Shift Charge  
Note: Shift Charge = \$1/trip (trip charge) + unpaid mile percentage<sup>1,2</sup>  
<sup>1</sup>Prius: driver pays 100% of fuel (pays all miles)  
<sup>2</sup>Van: driver receives 20% discount on unpaid mile percentage (Exb. E-6-b)

**Incentive #1:** Biweekly non-discretionary bonus for drivers who take at least 20% more trips per shift than the average, paid on Ex. 4 following the corresponding pay day (example shown on Exb. D-37-a,b)

**Incentive #2:** Biweekly non-discretionary bonus equal to \$1 per trip on the extra 6<sup>th</sup> or 7<sup>th</sup> day of work in the same week, paid on Ex. 4 following the corresponding pay day (Exb. D-37-b)

**Incentive #3:** Biweekly non-discretionary bonus paid at \$0.25 per credit card swipe, paid on the second payroll of the month (Exb. D-37-c)

**Incentive #4:** Annual non-discretionary bonus paid at the end of the year equal to \$1 for each accident-free day of work during the calendar year (Exb. D-37-c)

**Cash Drop Shorts:** Deduction of amount equal to shortage(s) of gross book submitted during the pay period + penalty fee

**EE "Draw" Handling Fee:** Deduction for administrative fee (separate from "draw" principle)

*\*Note: What the employer calls a "draw" is an advance. "Draws" and their respective fees are always paid back in full on the following paycheck. (Exb. D-18 to 20)*

**EE "Advance" Interest Fee:** Deduction of amount equal to 20% interest of total "advance" principle

*\*Note: What the employer calls an "advance" is a loan. "Advances" and their respective fees are always paid back in installments. Unlike "draws," "advances" are charged a 20% interest in addition to a handling fee. As the interest is calculated at the beginning of the loan and*

gradually amortized along with the loan principle and handling fee, this investigator had to separate the total loan deduction into repayments of the principle, interest, and handling fee. Only the repayments of the interest and handling fee were considered deductions that could illegally bring the employee below the applicable Federal minimum wage. (Exb. A-509, D-13 to 17)

Ex:    Principle = \$150  
         Interest = 20% \* \$150 = \$30  
         Handling Fee = \$20  
         Total Loan Amount (EE owes) = \$150 + \$30 + \$20 = \$200

Paycheck shows "Advance" deduction = \$50  
"Advance" Principle repayment =  $\$50 / \$200 * \$150 = \$37.50$   
"Advance" Interest Fee repayment =  $\$50 / \$200 * \$30 = \$7.50$   
"Advance" Handling Fee repayment =  $\$50 / \$200 * \$20 = \$5.00$

EE "Advance" Handling Fee: Deduction for administrative fee (separate from "advance" principle and interest fees)

Supplies:                      Deduction for map guide

*\*Note: Map guides are required by the employer for each driver. The driver is not specifically required to purchase from the employer, but the employer has copies available for sale. If the driver purchases from the employer, it is reflected as a deduction under this item on the payroll.*

Gross Wages Paid:    (Commission + Incentive #1 + Incentive #2 + Incentive #3 + Incentive #4 + Bonus) – (Cash Drop Shorts + EE "Draw" Handling Fee + EE "Advance" Interest Fee + EE "Advance" Handling Fee + Supplies)

Regular Rate:              Gross Cash Wages Paid / Total Hours Worked

MW Diff per Hour:    \$ 7.25 – Regular Rate

BW Due:                      MW Diff per Hour \* Total Hours Worked

**Section 7:** Overtime is not applicable to taxi cab drivers as they are subject to FLSA section 13(b)(17).

**Section 11:** A recordkeeping violation was found.

While the employer made available trip sheets showing "time start" and "time end," both times were inaccurate. The "time start" is an electronically printed time that corresponds to what time the trip sheet was printed, which is normally done before the start of the shift and not necessarily

when the driver begins working. This information was provided by Mr. Nady on 11/28/2012 at the employer establishment to WHIs Ex. 7 (c), Ex. 6 Mr. Nady confirmed this again at the final conference.

The "time end" is a time stamp. The driver supervisor time stamps the trip sheet for the driver as soon as the driver returns after completing his shift. Afterwards, however, the driver must still fill out the trip sheet, wait in line, and turn in his gross bookings and trip sheet (Exb. B-8, 14, 20; D-71 pg. 68-69). This results in post-shift hours worked off the record.

In addition, trip sheets are falsified to show breaks when in reality the drivers do not take breaks. On 09/26/2012, owner Creighton J. Nady claimed all drivers take a two (2) hour break during each twelve (12) hour shift, either one (1) hour or two (2) thirty minute breaks in the first six (6) hours of the shift, and then another one (1) hour or two (2) thirty minute breaks in the latter six (6) hours of the shift. Ex. 4

Ex. 7 (d), Ex. 7 (e)

(Exb. B-1 to 18, 20 to 26, 28 to 35). For example, the employer will require drivers to fill out break times on their trip sheet during times when the employee was actually waiting at the cab stand. The employer directs the driver to record on the trip sheet that he/she took a break(s) even if the driver did not take breaks (Exb. B-2 to 9, 11, 12, 15 to 17, 22 to 26, 30, 31 to 34). If a driver did not take a break and did not want to falsify his/her trip sheet, the employer threatened the driver's employment with the company. If a driver did not generate a minimum amount of gross book per shift (\$220), the employer directed the driver to record additional breaks on the trip sheet (Exb. B-1, 2, 3, 10, 11, 13, 23, 31 to 33). Therefore, there are instances where a trip sheet will show 4-5 hours worth of breaks over a 12 hour shift (Exb. B-1, 10, 23, 31 to 33; D-109, 124, 131).

The Nevada Taxicab Authority requires all drivers to record each trip's start/stop location, trip fare, and start/stop time of the trip. There are trip sheets where the break times overlap with trip times (Exb. B, 16; D- 93 to 97, 99, 100, 102 to 104, 108, 111, 114, 129, 130).

Furthermore, the firm did not keep a record of hours worked while on the "extra board" or for attendance at meetings required by the employer (ex. meetings for which the driver is called in to see the driver supervisor for performance, etc.). The extra board is when newer drivers wait at the establishment for the possibility of an available cab. If there is no available cab after a certain period of time, the driver is sent home. The driver is waiting on the employer's premises and the employer is well aware they are waiting. The driver is suffered and permitted to work (29 CFR 785.11) and is being engaged to wait (29 CFR 785.15, 778.223).

Due to:

1. the inaccuracy of both the start and stop times,
2. the falsification of break times, and
3. unrecorded hours worked on the "extra board" (engaged to wait) or for attendance at required meetings with the driver supervisor outside the driver's shift,



the trip sheets were not an accurate record of hours worked. Therefore, this investigator <sup>Ex. 7 (e), Ex. 7 (d)</sup> <sup>Ex. 7 (e), Ex. 7 (d)</sup> to reconstruct an average number of hours worked per week (Exb. B-1 to 18, 20 to 26, 28 to 35, E-1). Based on this method, this investigator computed back wages based on an average of 54 hours worked per week, or 108 hours biweekly.

In addition, the firm's trips sheets for the entire two year period of investigation show near the top:

"After meeting with UNITED STATES DEPARTMENT OF LABOR: ALL driver who work a 12-hour shift must take two 30-minute breaks and a 1-hour meal break." (Exb. D-93 to 115)

While an employer may require rest periods and/or meal breaks, neither is required by the FLSA or the U.S. Department of Labor.

The employer is in compliance with the posting of the appropriate FLSA posters at the establishment.

**Section 12:** No violations were found for child labor.

**FMLA Policy Review:** Review of firm's FMLA policy disclosed compliance. The firm has the appropriate FMLA postings in the establishments and provides information on employee FMLA rights <sup>Ex. 4</sup> (Exb. D-71).

### **Case Chronology:**

Case file is assigned to WHI <sup>Ex. 7 (c), Ex. 6</sup> on 10/05/2011.

WHI <sup>Ex. 7 (c), Ex. 6</sup> makes several requests for records on 10/24/2011, 10/27/2011, 11/02/2011, 11/16/2011, 11/17/2011, and 12/30/2011. However, the firm only provides individual trip sheets, individual pay stubs, and individual employee payroll files containing details of various deductions. Despite requests from WHI <sup>Ex. 7 (c), Ex. 6</sup> (written and verbal) and WHI <sup>Ex. 7 (c), Ex. 6</sup> <sup>Ex. 7 (c), Ex. 6</sup> (verbal) for a more accessible payroll format, owner Creighton J. Nady and attorney Esther C. Rodriguez refuse to provide anything else. WHI <sup>Ex. 7 (c), Ex. 6</sup> is left to match individual pay stubs with individual trip sheets. Oftentimes, additional wages in the form of non-discretionary bonuses are paid on separate checks on a separate day from payday. For an establishment employing approximately <sup>Ex. 4</sup> employees per pay period, this proved to be an extremely time consuming process.

When WHI <sup>Ex. 7 (c), Ex. 6</sup> asked the attorney over the phone whether the WHIs could view a comprehensive form of payroll on the computer, attorney Ms. Rodriguez stated that they would not remove employees from their work stations so WHD could take their place in front of their computers. WHI <sup>Ex. 7 (c), Ex. 6</sup> suggested viewing the records during non-business hours so the employees are not disrupted from their work. The attorney stated they were "not going to make

this easy” for WHD and that the employer has already provided all the information requested to WHD.

On 02/21/2012, WHI <sup>Ex. 7 (c), Ex. 6</sup> explains and presents a tolling agreement to attorney Ms. Rodriguez and requested the employer to sign it. On 02/24/2012, WHI <sup>Ex. 7 (c), Ex. 6</sup> calls Ms. Rodriguez and discusses the tolling agreement again. On 02/28/2012, WHI <sup>Ex. 7 (c), Ex. 6</sup> explains the tolling agreement to owner Creighton J. Nady at the establishment. Mr. Nady refuses to sign the tolling agreement (Exb. D-72).

ADD Gene Ramos mails the employer a 72-hour letter on 03/01/2012 requesting payroll detail journal and other pertinent records. On 03/05/2012, owner Creighton J. Nady delivers in person a CD disc to WHD, received by ADD Quezada, containing payroll records from 02/20/2010 through 02/17/2012.

On 07/31/2012, case file is reassigned to WHI <sup>Ex. 7 (c), Ex. 6</sup>

On 09/27/2012, while at the employer’s establishment, WHI <sup>Ex. 7 (c), Ex. 6</sup> requests in person from general manager Jon Gathright additional payroll records through October 2012 and records pertaining to employee loans for the past 24 months.

On 10/05/2012, WHI <sup>Ex. 7 (c), Ex. 6</sup> calls and leaves a voicemail for Mr. Gathright requesting for the additional payroll records again.

On 10/09/2012, WHI <sup>Ex. 7 (c), Ex. 6</sup> makes several calls to Mr. Gathright’s cell phone with no answer. WHI <sup>Ex. 7 (c), Ex. 6</sup> is the main office line and leaves a message for Mr. Gathright <sup>Ex. 7 (c), Ex. 6</sup>. Approximately 10 minutes later, attorney Ms. Rodriguez calls WHI <sup>Ex. 7 (c), Ex. 6</sup> asking why additional records are needed. She asks him to make the request for additional records in writing. WHI <sup>Ex. 7 (c), Ex. 6</sup> emails a written request to Ms. Rodriguez the same day.

On 10/11/2012, Ms. Rodriguez faxes a letter to the LVDO addressing her concerns regarding the request for additional records.

On 10/15/2012, ADD Ramos calls and leaves two (2) voicemail messages for Ms. Rodriguez.

On 10/16/2012, Ms. Rodriguez calls ADD Ramos. ADD Ramos explains the statute of limitations and the need for additional records due to a lack of a tolling agreement. Case file is reassigned to WHI <sup>Ex. 7 (c), Ex. 6</sup>

On 11/21/2012, WHI <sup>Ex. 7 (c), Ex. 6</sup> calls attorney Ms. Rodriguez and schedules a meeting for 11/28/2012. WHI <sup>Ex. 7 (c), Ex. 6</sup> requests additional records regarding loans and advances, missing names from employee list, and discusses a tolling agreement to freeze the new investigative period. On 11/26/2012, WHI <sup>Ex. 7 (c), Ex. 6</sup> follows up with Ms. Rodriguez in an email detailing the topics of discussion for the upcoming meeting, including a reference to a tolling agreement (Exb. D-28).

On 11/28/2012, WHI Ex. 7 (c), Ex. 6 meet with attorney Ms. Rodriguez, owner Creighton J. Nady, general manager Jon Gathright, Ex. 7 (c), Ex. 6

WHI Ex. 7 (c), Ex. 6 requests additional loans records, contact information for approximately 160 employees who were missing from the employee list, and social security numbers for all former and current employees for the past 24 months. The employer agrees to provide loans records and contact information but challenges the request for social security numbers. WHI Ex. 7 (c), Ex. 6 and the employer agreed to revisit the issue of social security numbers at the final conference. After the meeting, WHI Ex. 7 (c), Ex. 6 explains the tolling agreement and asks Mr. Nady if is willing to sign it. He refuses.

On 12/12/2012, ADD Quezada & WHI Ex. 7 (c), Ex. 6 hold a telephone advisory with Regional Solicitor Janet Herold. It is determined the Tip Compliance Agreement between A Cab, LLC and IRS, which states that 5.5% of all tipped employees total book be reported as time income for tax purposes (Exb. D-73, 74), is NOT a valid FLSA tip credit agreement. Thus, tip credit is not applied. It should be noted drivers retain all tips.

On 12/21/2012, WHI Ex. 7 (c), Ex. 6 schedules a final conference for 01/08/2013 with attorney Ms. Rodriguez.

#### **DISPOSITION:**

On 01/08/2012, a final conference was held at the U.S. Department of Labor, Wage and Hour Division's Las Vegas District Office. Present for the firm were attorney Esther C. Rodriguez, firm owner Creighton J. Nady, general manager Jon Gathright, Ex. 7 (c), Ex. 6  
Ex. 7 (c), Ex. 6 Present for WHD were ADD Gene Ramos and WHI Ex. 7 (c), Ex. 6

WHI Ex. 7 (c), Ex. 6 notified the employer of a recordkeeping violation.

While the firm made available trip sheets showing "time start" and "time end," both times were inaccurate. Ex. 7 (e), Ex. 7 (d) it was also determined drivers were not taking their required two (2) hour breaks Ex. 7 (d), Ex. 7 (e)

In addition, there are trip sheets where the break times clearly overlap with a trip. ADD Ramos stated drivers feel intimidated to fill in break times because otherwise, they fear there will be disciplinary consequences.

The owner did not believe this was true. He stated drivers could not be trusted to tell the truth, and that there is an incentive for them to lie to WHD because they think they will be receiving money. WHI Ex. 7 (c), Ex. 6 and ADD Ramos stated WHD never guarantees any back wages to employees at any point during an investigation.

WHI Ex. 7 (c), Ex. 6 explained the burden of accurate recordkeeping is on the employer and when accurate time records are unavailable, WHD will turn to the employees as the next best source of information. ADD Ramos also stated it was the duty of management to exercise control and see that its employees are not working if they do not want them to be working. The owner stated the

firm already does that by calling each driver every hour. He stated drivers know not to pick up the call if they are on a break. WHI Ex. 7 (c), Ex. 6 stated that simply because a driver fails to pick up the radio call does not confirm whether he is working or not. If the driver was indeed taking a break, it still does not confirm the length of the break.

Both the attorney and the owner strongly opposed WHD Ex. 7 (e) reconstruct hours worked because they maintain the trip sheets are accurate.

Furthermore, the firm did not keep a record of hours worked for the "extra board" or all meetings required by the employer (ex. meetings the driver is called in to see the driver supervisor for performance, etc.). The extra board is when newer drivers wait at the establishment for the possibility of an available cab. If there is no available cab after a certain period of time, the driver is sent home. The owner stated that the drivers are not required to be there. WHI Ex. 7 (c), Ex. 6 and ADD Ramos both informed the employer that even though the employer does not require the driver to wait, the employer has knowledge that the driver is waiting for work. WHI Ex. 7 (c), Ex. 6 explained the driver is therefore suffered and permitted to work (29 CFR 785.11) and is engaged to wait (29 CFR 785.15, 778.223).

Due to:

1. the inaccuracy of both the start and stop times,
2. the falsification of break times, and
3. unrecorded hours worked on the "extra board" (engaged to wait) or for attendance at required meetings with the driver supervisor outside the driver's shift,

the trip sheets were not an accurate records of hours worked.

In addition, the firm's trips sheets for the entire two year period of investigation show near the top:

"After meeting with UNITED STATES DEPARTMENT OF LABOR: ALL drivers who work a 12-hour shift must take two 30-minute breaks and a 1-hour meal break."

WHI Ex. 7 (c), Ex. 6 informed the employer that this was not true. An employer may require rest and/or meal breaks, but neither is required by the FLSA. The general manager stated that they have already ordered new trip sheets that correct the above statement.

The employer was informed of a minimum wage violation. During several workweeks, cab drivers were paid below the applicable Federal minimum wage of \$7.25 per hour and were not compensated for the difference. WHI Ex. 7 (c), Ex. 6 explained in detail the method of computations and notified the employer that tip credit was not applied because the Tip Compliance Agreement between A Cab, LLC and IRS, which states that 5.5% of gross book be reported as tip income for tax purposes, is NOT a valid FLSA tip credit agreement. WHI Ex. 7 (c), Ex. 6 provided Fact Sheet #15 and #15A to all participants in the final conference. WHI Ex. 7 (c), Ex. 6 specifically explained the

difference between a non-discretionary and a discretionary bonus (29 CFR 778.211), and illegal deductions (29 CFR 531.35-40). She also listed the specific deductions that caused employees to fall under the applicable Federal minimum wage.

Ex. 7 (c), Ex. 6 presented a sample of the firm's updated payroll system showing a separate line item for minimum wage subsidy. The new payroll also itemizes the loan deduction to show whether the deduction is for the principle or for the fees/interest (Exb. D-187 to 189). The owner requested to apply this method to all payrolls for the past 24 months. WHI Ex. 7 (c), Ex. 6 and ADD Ramos stated the employer cannot retroactively designate what part of the deduction was for repayment of principle and/or interest/fees.

At this time, the owner and the attorney maintained the firm has always been in compliance and disputed the violations found by WHD. They requested the total back wage amount. After conferring with DD Gaspar Montanez, ADD Ramos and WHI Ex. 7 (c), Ex. 6, informed the employer back wages were due 508 former/current hourly employees totaling \$ 2,040,176.84. WHI Ex. 7 (c), Ex. 6 explained how she arrived at an average of 54 hours per week and the method of back wage computations.

At this time, the owner and the attorney were very dissatisfied. They requested time to review the findings and conduct a self-audit to determine compliance or noncompliance. ADD Ramos granted the firm 30 days. WHI Ex. 7 (c), Ex. 6 provided the firm with a copy of the WH-55 computation sheets.

Later on 01/08/2013, the attorney emailed WHI Ex. 7 (c), Ex. 6 requesting an electronic copy of the WH-55 computation sheets. On 01/09/2013, WHI Ex. 7 (c), Ex. 6 emailed the computations to the attorney and also prepared a CD disc with the same information. At this time, WHI Ex. 7 (c), Ex. 6 adjusted one employee's back wages to reflect accurate loan deductions (Exb. A-509-j-). Accordingly, the total back wage amount increased to \$ 2,040,530.05 and WHI Ex. 7 (c), Ex. 6 notified the attorney in the same email.

On 01/15/2013, firm's attorney faxed a letter to the LVDO referencing the investigation and four (4) main areas of concern (Exb. D-57).

On 01/17/2013, firm's attorney forwarded a letter by firm owner Mr. Nady to ADD Ramos (Exb. D-58).

On 01/23/2012, a second conference was held at the U.S. Department of Labor, Wage and Hour Division's Las Vegas District Office. Present for the firm were attorney Esther C. Rodriguez, attorney Laura L. Robertson, and firm owner Creighton J. Nady. Present for WHD were ADD Richard A. Quezada, ADD Gene Ramos, and WHI Ex. 7 (c), Ex. 6. WHD addressed each of the concerns listed in Ms. Rodriguez's letter dated 01/15/2013. WHD stressed that an agreement to comply was necessary before any discussions of back wages could take place. WHD confirmed its position on tip credit and illegal deductions. WHD further stated it would be willing to consider lowering the number of hours used to compute back wages, eliminating initial/terminal workweeks, and/or eliminating workweeks during which a driver made below a certain dollar amount in commissions, but only if there was first an agreement to comply. It should be noted at

this time that for the purposes of future compliance, WHD agreed to consult with SOL regarding whether a cash drop short could be considered a bona-fide advance as long as there is a written agreement signed beforehand between the employee and the employer.

At this time, the owner requested three (3) additional weeks to complete a self-audit of (3) separate pay periods, one in each of the months of March, August, and December. The employer stated March was the best month for business, August as also generally a good month, and December as one of the slowest months. WHD agreed these months were a fair representation of the fluctuations in the taxi cab industry. However, WHD stated no additional time would be granted unless there was a signed tolling agreement. Pending the firm's agreement to sign a tolling agreement by COB 01/25/2013, WHD and the firm agreed to meet again on 02/13/2013. WHD stated a meeting on 02/13/2013 would be the last between LVDO and the firm, and that if an agreement could not be reached at that time, WHD would close the file as a refusal to comply and a refusal to pay. It should be noted at this time the firm has not agreed to comply. WHI Ex. 7 (c), Ex. 6 emailed a tolling agreement to Ms. Rodriguez and Ms. Robertson on 01/23/2013.

On 01/25/2013, attorney Ms. Robertson emailed and mailed a letter to WHI Ex. 7 (c), Ex. 6 requesting an additional two (2) weeks to consider the signing of the tolling agreement (Exb. D-64). WHI Ex. 7 (c), Ex. 6 initially presented the employer with the tolling agreement on 02/21/2012. WHI Ex. 7 (c), Ex. 6 specifically discussed with attorney Ms. Rodriguez the lack of a tolling agreement on 10/09/2012 when explaining the need for additional records to bring the investigative period to the most current pay period. WHI Ex. 7 (c), Ex. 6 again spoke with attorney Ms. Rodriguez over the phone on 11/21/2012 about a tolling agreement to lock in the new investigative period. On 11/26/2012, WHI Ex. 7 (c), Ex. 6 followed up with an email detailing the topics of discussion for the meeting, including a tolling agreement. On 11/28/2012, owner Mr. Nady again refused to sign the tolling agreement at the employer's establishment.

Based on the reasons above, WHI Ex. 7 (c), Ex. 6 called Ms. Robertson on 01/25/2013 and left a voicemail message stating WHD will not grant additional time for the consideration of signing the tolling agreement. Since WHD has not received an agreement to comply from the firm, WHI Ex. 7 (c), Ex. 6 further stated she will be submitting the case file as a refusal to comply and a refusal to pay with a recommendation for further action.

As the employer has not agreed to comply, this case file is being submitted as a refusal to comply and a refusal to pay.

Recommend second level review and JRC for potential litigation

Ex. 5

(Exb. D-186).

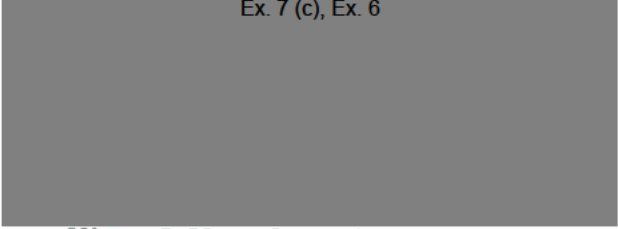
Ex. 7 (e), Ex. 7 (d)



The following publications (2 of each) were made available to the employer during the final conference on 01/08/2013: FS-15, FS-15A, WH-1088 (ENG/SP), WH-1420 (ENG/SP), 1462 (ENG/SP), 29 CFR 516, 29 CFR 531, 29 CFR 541, 29 CFR 778, WH-1325 (OT Non-Tech), 29 CFR 785, and WH-1330 (CL).

On 01/30/2013, WHI <sup>Ex. 7 (c),  
Ex. 6</sup> mailed the FLSA HRG (ENG/SP) to both attorney Esther C. Rodriguez and A Cab, LLC.

Ex. 7 (c), Ex. 6



**Wage & Hour Investigator**  
**01/30/2013**

# EXHIBIT "M"



A-CAB Taxi Services, LLC  
4444 S. Valley View  
Las Vegas, NV 89103  
702-365-1900  
EIN: 88-0470590

Attorney:

Esther Rodriguez, [REDACTED]

**NARRATIVE**

**COVERAGE**

Subject firm is a 24-hour taxi cab service company. The firm is a Nevada limited liability corporation that began operations and incorporated in 2001. (See Exhibit C-1). There are no other branches located in Nevada. The corporate officer is Creighton J. Nady (100% owner). Creighton J. Nady and Jon Gathright are 3(d) employers as they are acting directly in the day-to-day decision making as it relates to employees. ADV YTD 2009 is (as of 04-07-09)-[REDACTED] 2008 [REDACTED] and 2007-[REDACTED] Jon Gathright, General Manager provided ADV information.

The investigation period covers April 1, 2007 to April 09, 2009.

**EXEMPTIONS**

13(a) (1) is applicable to:

Creighton J Nady	Owner	\$455.00+	541.101
Jon Gathright	General Manager	\$55,000.00	541.102
[REDACTED]	[REDACTED]	[REDACTED]	541.201

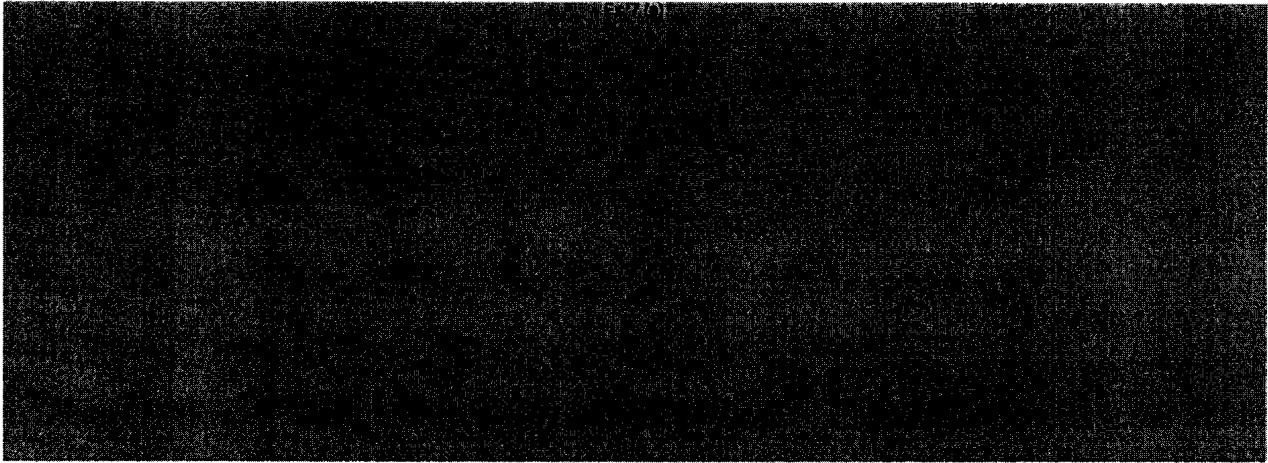
13(b) (17) All taxi cab drivers are overtime exempt.

All other non-taxi driver employees are paid by the hour. No other exemptions are applicable.

**STATUS OF COMPLIANCE**

Prior History: There was no prior enforcement action involving this firm.

MODO Instruction: The MODO is Phoenix, Arizona DO.



Section 6: There were no minimum wage violations found. The review of the payroll records resulted in a determination that the drivers are paid on a commission basis. While there is no record of actual hours worked, the drivers have scheduled hours and complete a trip sheets. The trip sheets have gaps in the hours worked. Using the scheduled hours worked from shift start time to shift end time, less an estimated period of time for a meal period, it was determined that in most workweeks, the drivers receive minimum wage based on the gross wage paid. Any short fall based on the scheduled hours worked could be offset by a less inclusive number of hours worked as indicated by the trip sheets. The drivers also receive tips in addition to the gross wage paid by the employer.

Section 7: No overtime violations found

Section 11: No record keeping violations found

Section 12: There were no Child Labor violations found during this investigation.

**DISPOSITION:**

On April 30, 2009, I conducted a final conference at the firm. The following firm representatives were present for the final conference: Esther Rodriguez, legal counsel, Creighton Nady, owner, Jon Gathright, General Manager and [REDACTED]. We discussed the findings of the investigation. The firm was advised that they must keep a record of actual hours worked and that the drivers, while exempt from overtime, must be paid at least the applicable minimum wage for all hours worked.

A-CAB Taxi Services LLC Case ID: 1528555

The firm was also advised that the State of Nevada minimum wage is currently \$6.85 per hour and that this investigation is being concluded with the firm's assurance of future compliance.



Date: 6-10-09

# EXHIBIT “N”

1 LEON GREENBERG, ESQ., SBN 8094  
2 DANA SNIEGOCKI, ESQ., SBN 11715  
3 Leon Greenberg Professional Corporation  
4 2965 South Jones Blvd- Suite E3  
5 Las Vegas, Nevada 89146  
6 (702) 383-6085  
7 (702) 385-1827(fax)  
8 [leongreenberg@overtimelaw.com](mailto:leongreenberg@overtimelaw.com)  
9 [dana@overtimelaw.com](mailto:dana@overtimelaw.com)  
10 Attorneys for Plaintiffs

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

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

18 Plaintiffs, )

19 vs. )

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

22 Defendants. )  
23  
24  
25  
26

Case No.: A-12-669926-C

Dept.: I

**DECLARATION OF  
PLAINTIFFS' COUNSEL,  
DANA SNIEGOCKI**

27 Dana Sniegocki, an attorney duly licensed to practice before this Court, hereby  
28 affirms, under penalty of perjury, the following:

1. I am one of the attorneys representing the plaintiffs in the above-entitled  
action and have been appointed class counsel.

2. On October 20, 2015, I dispatched a request under the Freedom of  
Information Act ("FOIA") to the United States Department of Labor ("DOL"). The  
request sought, in part, copies of narrative reports and associated exhibits of all wage  
and hour investigations of A Cab Taxi Service LLC and A Cab LLC from July 1, 2007  
through September 30, 2015. That request was later amended to seek only those  
investigations of A Cab covering the year 2012.

3. On February 17, 2016, I received a response to my FOIA request along with  
responsive documents. Attached as Ex. "1" is the response letter I received from the  
DOL.

AA005679

1           4. Page 2 of Ex. "1" indicates that 454 pages were being contemporaneously  
2 produced to my office. Those documents were produced on a CD.

3           5. Those 454 pages were produced to the defendants in this litigation Bates  
4 numbers DOL 1-454 as part of Plaintiffs' Fourth Supplemental Disclosures Under  
5 Nev. R. Civ. P. 16.1 on February 22, 2017. In addition, three additional pages of  
6 documents, DOL 455-457, the 2009 DOL narrative report, earlier obtained by my  
7 office from the DOL, were provided with that production.

8           6. As part of that 454 page document production by the DOL, plaintiffs  
9 received the documents that have been bates labeled DOL-40 through DOL-52 and  
10 produced in Plaintiffs' Fourth Supplemental Disclosures Under Nev. R. Civ. P. 16.1  
11 on February 22, 2017. That sequence of documents is discussed in the motion  
12 accompanying this declaration at Limine Item Number 23.

13  
14 Affirmed this 21<sup>st</sup> day of December, 2017.

15  
16 /s/ Dana Sniegocki  
Dana Sniegocki, Esq.

# EXHIBIT "1"



February 17, 2016

Dana Sniegocki  
Leon Greenberg Professional Corporation  
2965 South Jones Boulevard, Suite E3  
Las Vegas, NV 89146

RE: Freedom of Information Act Response Letter  
FOIA Tracking Number 789429

Dear Ms. Sniegocki,

The Department of Labor Wage and Hour Division (WHD) is responding to your Freedom of Information Act (FOIA) request dated 10/20/2015. Specifically, you asked for the following:

Copies of the narrative reports and associated exhibits to such narrative reports of all wage and hour investigations of the following Nevada entities for the time period July 1, 2007 through September 30, 2015:

- 1) Western Cab Company
- 2) A Cab Taxi Services LLC and A Cab, LLC
- 3) Lucky Cab Co Nevada.

On January 4<sup>th</sup> 2016, you agreed to amend your request and accept the case file to A Cab Services for the year 2012 and all the exhibits that we can provide.

Pursuant to Department's regulations 29 CFR § 70.21(d), we have included only those responsive documents existing as of the date the search began. The search began on 01/07/2016.

After performing an electronic search of the Wage and Hour Investigative Support and Reporting Database, this database revealed that the case file you requested is not part of an active investigation. Therefore, after completing our review of the responsive documents located, your request has been partially denied due to the following exemptions: Exemption 4, 5, 6, 7C, 7D, 7E.

Under Exemption 4, we have determined that certain information within these records is exempt from disclosure pursuant to the provisions of 5 United States Code (U.S.C.) § 552(b)4 which protects trade secrets and commercial or financial information that is privileged or confidential.

Under Exemption 5, we have determined that certain information within these records is exempt from disclosure pursuant to the provisions of 5 U.S.C. § 552(b)5, Exemption 5 as amended, protects information related to the deliberative process privilege.

Under Exemption 6, we have determined that certain information within these records is exempt from disclosure pursuant to the provisions of 5 U.S.C. § 552(b)6, Exemption 6 protects certain information within the responsive records such as social security numbers and special identifiers.

AA005682



Under Exemption 7C, we have determined that certain information within these records is exempt from disclosure pursuant to the provisions of 5 U.S.C. § 552(b)(7)(C), Exemption 7C protects from disclosure records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Under Exemption 7D, we have determined that certain information within these records is exempt from disclosure pursuant to the provisions of 5 U.S.C. § 552(b)(7)(D), Exemption 7D provides protection of records which could reasonably be expected to identify confidential sources.

Under Exemption 7E, we have determined that certain information within these records is exempt from disclosure pursuant to the provisions of 5 U.S.C. § 552(b)(7)(E), Exemption 7E information that would reveal techniques or procedures for law enforcement investigations or prosecution.

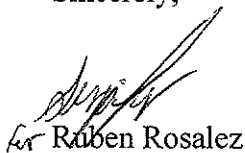
The responsive documents are protected by the Privacy Act of 1974 at 5 U.S.C. § 552a. Nevertheless, the Wage and Hour Division has determined that these documents may be released to you, pursuant to a routine use. Responsive documents withheld consist of a total of 883 pages. Responsive documents released consist of a total of 454 pages and have been enclosed.

Finally, due to our delayed response, no processing fee has been assessed

If you consider this an adverse determination, you have the right to file an administrative appeal. Your appeal must be received by the Solicitor of Labor within 90 calendar days of the date of this initial denial letter. Address your appeal to the following office: Solicitor of Labor, Division of Management and Administrative Legal Services, Room N-2420, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210.

Your appeal may also be sent by e-mail to [FOIAAppeal@dol.gov](mailto:FOIAAppeal@dol.gov). Appeals submitted to any other address will not be accepted. Your appeal must state in writing the grounds for the appeal. It should also include a copy of the original request, the response to your request, and any supporting statement or arguments. The appeal letter, the envelope, and the e-mail subject line, should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



for Ruben Rosalez  
Regional Administrator – Western Region

AA005683

# EXHIBIT "O"

Pay Period	Number of Shifts	Total Number of Hours	Gross Wages Excluding Tips	MinWage	MinWage less Gross Wage
12-10-2011 to 12-23-2011	1565	13693.75	\$85,276.84	\$99,279.69	\$14,002.85
11-24-2012 to 12-07-2012	1514	13247.50	\$89,259.81	\$96,044.38	\$6,784.56
06-23-2012 to 07-06-2012	1645	14393.75	\$112,092.71	\$104,354.69	-\$7,738.02
03-30-2013 to 04-12-2013	1602	14017.50	\$132,379.46	\$101,626.88	-\$30,752.59
Totals	6326	55352.50	\$419,008.82	\$401,305.63	-\$17,703.20
Average	1582	13838.13	\$104,752.21	\$100,326.41	-\$4,425.80
Projection (2 Years)	82238	719582.50	\$5,447,114.66	\$5,216,973.13	-\$230,141.54

# EXHIBIT "P"

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

RECORDED DEPOSITION OF ROBERT SCOTT LESLIE

Taken on October 10, 2017

At 1:16 p.m.

GABROY LAW OFFICES

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

AA005687

1 APPEARANCES:

2 For the Plaintiffs: LEON GREENBERG, ESQ.

3 LEON GREENBERG PROFESSIONAL CORPORATION

4 2965 South Jones Blvd, Suite E3

5 Las Vegas, Nevada 89146

6

7 CHRISTIAN GABROY, ESQ.

8 LIZA ARONSON, LAW CLERK

9 GABROY LAW OFFICES

10 170 South Green Valley Parkway

11 Suite 280

12 Henderson, Nevada 89012

13

14 For the Defendants: ESTHER RODRIGUEZ, ESQ.

15 RODRIGUEZ LAW OFFICES, P.C.

16 10161 Park Run Drive, Suite 150

17 Las Vegas, Nevada 89145

18

19 Owner of A Cab: Creighton J. Nady

20

21

22

23

24

25

1	INDEX		
2	Witness	Direct	Cross
3	MR. LESLIE	PAGE 7	
4	(BY MR. GREENBERG)		
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6			
7			
8			
9	EXHIBITS		
10	Number	Description	
11	Exhibit 1	Report	
12	Exhibit 2	Report	
13	Exhibit 3	Spreadsheet	
14	Exhibit 4	Trip Sheets	
15	Exhibit 5	Excel File	
16	Exhibit 6	Estimate of Wage and Hour Settlement	
17	Exhibit 7	Trip Sheets	
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1 A: Generally, yes.

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

5 A: Okay.

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

11 A: Yes.

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

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

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



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

5 A: It seems like--

6 MS. RODRIGUEZ: Objection.

7 A: Okay.

8 MS. RODRIGUEZ: Misstates prior testimony.

9 Q: Please answer the question.

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

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

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

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

23 MS. RODRIGUEZ: Objection. Lacks  
24 foundation.

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

1   spreadsheets, just summarized differently.

2                   Q:   Now, I asked you a little while ago if  
3   the A Cab OLE Excel file properly calculates the  
4   amount of minimum wages owed at 7.25 an hour at all  
5   times using the assumptions in the sheet itself  
6   regarding the hours worked and I believe your answer,  
7   please correct me if I`m wrong, was that it does. Is  
8   that true?

9                   MS. RODRIGUEZ:  Objection.  Misstates prior  
10   testimony.

11                  A:   Restate.  Could you please restate the  
12   question?

13                  Q:   My question was using the hours that it  
14   assumes the drivers worked, I`m not saying whether  
15   those hours are accurate.  I`m just saying the A Cab  
16   OLE Excel file has certain information in it or makes  
17   certain assumptions which actually can be changed  
18   about the hours employees worked each shift through  
19   each pay period.  Do you understand that?

20                  A:   Yes.

21                  Q:   Does the A Cab OLE Excel file accurately  
22   calculate the minimum wages owed at 7.25 an hour of  
23   every pay period using whatever assumed hours are put  
24   into the spreadsheet or already in the spreadsheet?

25                  MS. RODRIGUEZ:  Objection.  Asked and

1 answered. I believe that's the third time the  
2 question was asked.

3 A: I would again say that using the  
4 assumptions of the spreadsheet, it looks like it puts  
5 out the number correctly meaning it can take the  
6 hours times the rate and come to a number, but the  
7 hours are always the standard numbers based on shift.  
8 It's not what the actual hours worked are.

9 Q: Right. Okay. Now, would you give that  
10 same answer for how it calculates minimum wages using  
11 a constant 8.25 an hour rate using those assumptions?

12 A: Yes. You plug in any rate you want. I  
13 mean if you're going to assume there's a number of  
14 hours for each shift or each payroll period times  
15 whatever the rate is, 8.25, 15.25, whatever you want  
16 to use, you'll multiply it through.

17 Q: Okay. Well, but you understand the way  
18 the A Cab OLE Excel spreadsheet is set up is that it  
19 uses two rates, an 8.25 or 7.25 rate, and in addition  
20 to performing a conditional analysis, which you  
21 discussed before for example regarding the 10%  
22 insurance rule, it also has one analysis where it  
23 applies that 7.25 rating every pay period, to every  
24 worker, and it has a separate analysis where it  
25 applies the 8.25 rating to every worker for every pay

1 period. Do you understand that?

2 A: Yes, I think the 8.25 period is like the  
3 second of the analysis columns.

4 Q: Right. Okay. My question is just does  
5 that 8.25 column, using the assumptions in the A Cab  
6 OLE file, perform proper math in terms of reaching  
7 its results based on those assumptions?

8 MS. RODRIGUEZ: Objection. Asked and  
9 answered, the fourth time.

10 A: It looks to me like the math works given  
11 the assumptions in the model.

12 Q: Are you aware that the A Cab OLE file  
13 has a portion of it which calculates minimum wages  
14 based upon hours that are recorded independents  
15 payroll records for the period 2013 to 2015?

16 A: Yes.

17 Q: Okay. Does A Cab properly calculate the  
18 minimum wages that would be owed at the 7.25 and the  
19 8.25 rates using those hours in the payroll records?

20 A: It calculates something that's probably  
21 within tolerance, yes.

22 Q: Do you have any reason to believe that  
23 those calculations are not correct?

24 A: When I did the calculations on this, I  
25 tried to use what Nevada Revised Statute said for

1 breaks, which changes it a little bit. It's not  
2 material but they will give you like up to 30 minutes  
3 of break or 20 min- to 30 minutes of breaks that they  
4 pay for and you're only required to give them, given  
5 the employees worked 11 hours 20 minutes of breaks.  
6 So, in that respect, that's why I said it's within  
7 tolerance. It is actually more generous to  
8 employees.

9 Q: What is more generous to employees?

10 A: If you take less than 30 minutes, they  
11 pay you for the entire half hour instead of 10-minute  
12 paid breaks, so.

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

18 A: Yes.

19 Q: So, my question was when the A Cab OLE  
20 spreadsheet accepts those hours and uses those hours  
21 recorded in the payroll records to calculate minimum  
22 wages owed either at a constant 7.25 rate or the  
23 constant 8.25 rate, using again those hours from the  
24 payroll records, does it do so correctly?

25 MS. RODRIGUEZ: Objection. Leon, you're

1                   Q:   Okay.  Now, if the hours were to be  
2   different then the numbers, the calculations,  
3   resulting calculations would be different, correct?

4                   A:   Yes.

5                   Q:   Okay.  But I`m not asking about if the  
6   hours were different.  I`m just simply asking if we  
7   use the hours that are in the payroll records and  
8   they are calculated as the A Cab OLE spreadsheet  
9   calculates them, does the A Cab OLE spreadsheet,  
10   using those hours from the payroll records, properly  
11   calculate the minimum wages at a constant 7.25 and  
12   8.25 in those two columns we discussed?

13                  A:   For that—

14                  MS. RODRIGUEZ:  Same objections.  Asked and  
15   answered.

16                  A:   Yes.

17                  Q:   Thank you.

18                  MS. RODRIGUEZ:  I assume you`ve numbered the  
19   first one as Plaintiff`s 1, right?

20                  Q:   The witness has it.  Yes.

21                  A:   Yeah.

22                  MS. RODRIGUEZ:  Okay.  Well, you didn`t say  
23   it on the record.

24                  Q:   Oh, okay.

25                  MS. RODRIGUEZ:  So, I just wanted to make

1 sure and we`re going to name this one Plaintiff`s 2.

2 Q: Yes.

3 MR. MAREZ: There you go sir.

4 A: Thank you.

5 Q: The plaintiff`s Exhibit 2 is the report  
6 of Dr. Cloretti. This document I trust is familiar  
7 to you, sir?

8 A: It is.

9 Q: Okay. I`d ask you to take a look at  
10 pages 25 and on page 25, the second full sentence  
11 which begins, ``As discussed supra...`` Do you see  
12 that, sir?

13 A: Yes.

14 Q: Please read that to yourself and let me  
15 know when you`re done reading it.

16 MS. RODRIGUEZ: I`m sorry, Mr. Greenberg.  
17 Could you repeat what you`re asking him to look at?

18 Q: Second full sentence in the first  
19 paragraph.

20 MS. RODRIGUEZ: Thank you.

21 A: All right.

22 Q: Now, in that sentence, Dr. Cloretti is  
23 referring to the 2013-2015 payroll analysis file, not  
24 the A Cab OLE file.

25 A: Right.

1 Q: So, for the purposes of the question I'm  
2 going to ask you now, I want you to assume that the  
3 information in that file was the same for that time  
4 period--

5 A: Okay.

6 Q: --as in the A Cab OLE file. Now, if we  
7 exclude the last clause of Dr. Cloretti's report,  
8 which is where it says, ``and amounts between those  
9 figures using the three conditional calculations that  
10 I discussed.`` We're excluding that for purposes of  
11 my question. My question to you is do you believe  
12 that his statement that an amount of \$175,057  
13 accounts to 7.25 an hour minimum wage rate and  
14 \$651,567 that accounts to 8.25 an hour minimum wage  
15 rate are correct in the context of that sentence?  
16 Just to review with you, what the sentence was  
17 referring to is using the payroll records in payroll  
18 record time in the file to calculate the amounts of  
19 minimum wages they worked.

20 MS. RODRIGUEZ: I'm going to object to the  
21 form of the question.

22 Q: Okay.

23 A: All right.

24 MS. RODRIGUEZ: It's compound.

25 A: As we have said, the math probably...



1 the math works. I don't know where you're ever going  
2 to get 8.25 for the entire period for one thing and  
3 as I've said, the 7.25 an hour, we can always  
4 recalculate the amount of hours probably need to...  
5 or the amount of hours probably need to be looked at  
6 a bit, but yes. Otherwise, the math works because  
7 it's just more the math works. I think he said so in  
8 the next paragraph.

9 Q: Did you sample either the A Cab OLE file  
10 or the 2013-2015 payroll analysis file to determine  
11 if there were any errors in the calculations or the  
12 payroll data that appears in those files?

13 A: I believe you could probably say that.  
14 I sampled it. I did sample of like what is it, 30  
15 different records out of the 2000 or the A Cab OLE  
16 file and we looked at the payroll records and we  
17 looked at through the trip sheets and we... what was  
18 the second part of the question, did we look..?

19 Q: Well, the question involved two things.  
20 It was sampling those files to determine if there  
21 were errors in the calculations so let's answer that  
22 first. Did you sample those files to see if there  
23 were any calculation errors in the files themselves?

24 A: In the A Cab OLE file, I don't... We  
25 just put them in the computer. I didn't sample them.

1 I just put them as they were so I did not sample. I  
2 did not check the math. I assumed Dr. Cloretti and  
3 all that was fine. I assumed it was okay.

4 Q: Did you sample the payroll data? By  
5 payroll data, I'm referring to the hours that appear  
6 from 2013 to 2015 from payroll records. The amount  
7 paid that appears, the total wages paid is the term  
8 used in the A Cab OLE file. Those two pieces of  
9 information come from payroll records that A Cab  
10 produced in this litigation. Did you sample the A  
11 Cab OLE file to determine whether that information  
12 was accurately placed in the A Cab OLE file from A  
13 Cab's records?

14 MS. RODRIGUEZ: I'm going to object to the  
15 form of the question. It's compound and it's  
16 assuming facts not in evidence and it lacks  
17 foundation.

18 A: I used what was in the A Cab OLE file  
19 for the wages reported by A Cab from the employer. I  
20 just used what that was. I did not go back and check  
21 to make sure that the numbers were correct. As I  
22 said I believe that that part of the data that you  
23 have in the file is fine. Now, the second part is we  
24 looked at hours. We recalculated hours.

25 Q: I understand. Okay. There is also a

1 column that appears in the A Cab file that says  
2 shifts worked from cab manager records. Did you  
3 sample the A Cab OLE file and examine any source  
4 materials from A Cab to determine if the information  
5 that appears in that section of the A Cab OLE file is  
6 in fact accurate, an accurate extract from A Cab's  
7 original records?

8 A: I didn't use the A Cab, the cab manager  
9 information because it's just when the cab's checked  
10 out and when the cab's checked in. It's there. We  
11 just decided it wasn't a useful thing to look at. We  
12 looked at the actual time the employees were working.

13 Q: I understand. So, just confirm for me.  
14 Sitting here today, is there any basis that you have,  
15 any information you've obtained or any belief you've  
16 secured through your work on your report that any of  
17 the information taken from A Cab's original records  
18 and placed in the A Cab OLE file was not properly  
19 identified and placed in the A Cab OLE file?

20 MS. RODRIGUEZ: Objection. Lacks  
21 foundation.

22 A: I have no reason to believe there was  
23 any inaccurate information. As far as I can tell, it  
24 was transferred over but I did not do a lot of work  
25 on that.

1                   Q:   So, you understand that in Dr.  
2   Cloretti`s report, he discusses a process that  
3   Charles Bass went through to bring the information  
4   from the source files provided by A Cab into the  
5   Excel file that ultimately becomes the A Cab OLE  
6   file. Did you review that portion of Dr. Cloretti`s  
7   report?

8                   A:   Yes.   Yes.

9                   Q:   Do you have any reason to dispute Dr.  
10   Cloretti`s conclusion that that process performed by  
11   Charles Bass and that Dr. Cloretti described was  
12   correct and accurate?

13                  A:   To say correct and accurate... it seems  
14   like it was done properly, yes.

15                  Q:   I`d ask you to take a look at page 5 of  
16   Exhibit 1 which is your report. Now I would draw  
17   your attention to the last sentence of the paragraph  
18   that appears just before Roman Numeral IV.

19                  A:   Okay.

20                  Q:   Please read that sentence and then I`ll  
21   ask a question.

22                  A:   Okay.

23                  Q:   Now, when you say at the beginning of  
24   that sentence, ``testing on the model,`` you were  
25   referring to the calculation report earlier in that

1 CERTIFICATE OF RECORDER

2 STATE OF NEVADA )

3 COUNTY OF CLARK )

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

5 I, Jared Marez, a duly commissioned

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

7 certify: That I recorded the taking of the

8 deposition of the witness, Robert S. Leslie,

9 commencing on 10/10/2017.

10 That prior to being examined the witness was

11 duly sworn to testify to the truth.

12 I further certify that I am not a relative or

13 employee of an attorney or counsel of any of the

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

15 counsel involved in said action, nor a person

16 financially interested in the action.

17 IN WITNESS WHEREOF, I have hereunto set my

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

19 Nevada, this 10/10/2017.

20

21

22 Jared Marez Notary

23

24

25

A handwritten signature in dark ink, appearing to read 'Jared Marez', is written over a horizontal line. The signature is stylized with a large 'J' and a long, sweeping tail.

EXHIBIT "Q"

EXHIBIT "Q"

1 LEON GREENBERG, ESQ., SBN 8094  
2 DANA SNIEGOCKI, ESQ., SBN 11715  
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10 Attorneys for Plaintiffs

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

**DECLARATION OF  
PLAINTIFFS' COUNSEL,  
LEON GREENBERG**

Leon Greenberg, an attorney duly licensed to practice before this Court, hereby  
affirms, under penalty of perjury, the following:

1. I am one of the attorneys representing the plaintiffs in the above-entitled  
action and have been appointed class counsel.

2. On December 19, 2017, I had two telephone discussions with Esther  
Rodriguez, defendant's counsel, about the in limine issues. Prior to those discussions I  
sent her the attached letter listing the various issues that I thought should be discussed  
and resolved in connection with the same. She assured me during our discussion that  
she had reviewed my list. We did discuss several of these issues and managed to reach

1 an agreement as to two of these issues. In respect to the remaining issues, she advised  
2 me she would not agree and they would have to be resolved by the Court.

3  
4  
5  
6  
7 Affirmed this 21<sup>st</sup> day of December, 2017.

8  
9 /s/ Leon Greenberg  
Leon Greenberg, Esq.



**LEON GREENBERG  
Professional Corporation  
Attorney at Law  
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Las Vegas, Nevada 89146  
(702) 383-6085**

**Member Nevada, California  
New York, Pennsylvania and New Jersey Bars**

**Fax: (702) 385-1827**

December 18, 2017

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

VIA EMAIL ONLY

Re: Murray v. A-Cab  
Pretrial Order, Motion in Limine Issues

To facilitate our telephone conference on 12/19/17 at 3:00 p.m. as per EDCR 2.47 I provide, in advance, the following topics/issues for your consideration:

**Subject Matter, Testimony, and Documents to be Excluded at Trial**

1. Exclusion of testimony or information on wages or other sources of income of the plaintiffs and class members. This would include any mention of tax returns being filed that include disclosures of tip income.
2. Exclude testimony regarding amounts paid by A-Cab under U.S. DOL settlement.
3. Exclusion of testimony that would relate to any good faith or reasonable belief or reliance on government agency advice by defendants, as in the 22<sup>nd</sup> & 26<sup>th</sup> affirmative defenses

This would include (but not be limited to) testimony on NRS 608.250, the prior Taxi Cab minimum wage exemption or defendants' belief they were exempt or that they were exempt prior to the time at issue in this

lawsuit. This would exclude testimony from labor commissioner personnel or K. Sakelhide, all information from the Nevada Labor Commissioner. Any mention of the *Lucas* decision. Any mention of the *Thomas* decision, all claims made in interrogatory 27,

4. Exclude testimony from experts regarding settlement communications or bearing upon settlement. This would include any testimony from Nicole Ombs as her only proposed “expert” (or other) testimony concerns an evaluation of a proper settlement amount.
5. Exclude all testimony on attorney’s fees, either those paid by defendants or potentially to be paid to plaintiffs’ counsel or how plaintiffs’ counsel are being paid or amount of costs advanced by plaintiffs’ counsel.
6. Exclude all testimony regarding any other non-wage benefits provided by A-Cab (except, potentially for Health Insurance, which is also an issue to be addressed by the Court’s grant or denial of the bifurcation request). This would include any testimony regarding A-Cab providing food, meals, sporting event tickets, etc., to the taxi drivers.
7. Exclude testimony about other taxi companies being sued. This would include any discussion of Michael Sargeant being a participant in any of those other lawsuits.
8. Exclude any mention of class representatives potentially receiving any incentive or class service award payment for prosecuting this case.
9. Any questions about the plaintiffs’ conduct or earnings at other cab companies.
10. Any mention of criminal convictions of non-party witness Gagliano or any plaintiffs or class members. This includes any introduction of the Murray court documents produced by defendants at Bates 1837-1839 or any mention of the nature of that conviction or the nature of the accusations against Murray leading to that conviction.
11. Any introduction of the “Driver Statistics” documents for Michael Sargeant, Bates 02302-02303 produced on 6/25/17.

12. Any introduction of the "FOIA" document Bates 02324 produced on 6/25/17
13. All comments by Mr. Leslie regarding mediation materials (he refers to them as the "earlier spreadsheets" or "February 2017" spreadsheets) or any comparison between those materials and the spreadsheets (A-CAB ALL and Payroll Analysis 2013-2015) provided with Dr. Claurette's report. No portion of Leslie's report discussing those materials will be allowed.
14. Any updated or different employee manual or written employee directives, rules, etc., not previously produced.
15. Any introduction of the USDOL "Certificate of Appreciation" Bates 1720 or testimony about that document being issued to A-Cab.
16. Any testimony from Steve Essakow designated on 6/25/17 as a witness.
17. Any testimony from Steven J. Oshins designated 6/6/17 as a witness.
18. Any testimony from any A-Cab employees on any subject matter contained in plaintiffs' NRCP Rule 30(b)(6) deposition notice and for which defendant Nady, who was the designated witness for all such topics, was examined about. This includes all such matters that he stated he lacked knowledge about in response to such examination.
19. Documents (which relate to the foregoing issues) identified by the following numbers in the defendants' 23<sup>rd</sup> supplemental 16.1 disclosure:  
4, 5, 21 through 29, 31, 37
20. Any evidence in support of defendants' claimed 3<sup>rd</sup> affirmative defense alleging "others" besides A-Cab are responsible for plaintiffs' damages, who are claimed to be government agency personnel advising A-Cab in the answer to interrogatory 19.
21. Any evidence of any "set off" of plaintiffs' damages including any claim that the plaintiffs took passenger fares without turning on the

cab meter.

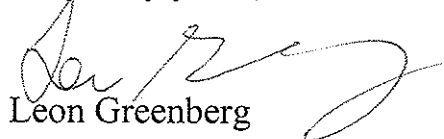
22. Any testimony or claim that the plaintiffs had the “ability to control, minimize or escalate” their claimed damages (as in 19<sup>th</sup> and 20<sup>th</sup> interrogatory response) or that any failure to earn minimum wages by the plaintiffs was due to their lack of skill and diligence in locating and transporting paying passengers or their poor job performance. This includes the 2<sup>nd</sup> and 5<sup>th</sup> and 16<sup>th</sup> affirmative defenses identified in the 20<sup>th</sup> and 21<sup>st</sup> and 16<sup>th</sup> interrogatory responses as alleging a failure to mitigate damages by failing to earn enough commissions to make minimum wages, that they failed to advise management that they were not making minimum wages, that they failed to ask for payment of unpaid minimum wages, that they failed to accept offers of resolution for amount far in excess of minimum wages owed.
23. Any testimony or claim that the plaintiffs’ counsel has “caused and escalated plaintiffs’ claimed damages, seeking to profit from the continued litigation of others.” (as in 19<sup>th</sup> interrogatory response)
24. Any testimony or claim as to how the plaintiffs’ claims are barred by prior resolution with the US Dept. of Labor lawsuit, res judicata, collateral estoppel, as resolved by the Nevada Labor Commissioner as claimed in the 7<sup>th</sup> and 8<sup>th</sup> and 23<sup>rd</sup> Affirmative defenses and interrogatory answers 22 and 23 and 26
25. Any testimony as to how the plaintiffs came to retain an attorney to prosecute this case or as to their communications or lack of communications with the Nevada Labor Commissioner.

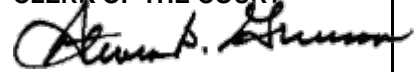
**Documents to be Admitted**

1. The reports of the United States Department of Labor, which are covered by the hearsay exception as government agency records.

We look forward to discussing the foregoing with you tomorrow.

Very truly yours,

  
Leon Greenberg



**RIS**  
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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: January 2, 2018  
Hearing Time: 9:00 a.m.

**DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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

...

...

...

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I.**

#### **1. Plaintiffs' Arguments Contradict Themselves.**

In opposition to dismissal, Plaintiffs argue that Defendants have “recast the Plaintiffs’ claim” into one for fraudulent break times and unpaid hours worked. *Plaintiffs’ Opposition*, 6:25-26. There is no re-casting; these are Plaintiffs’ words. This is what is specifically pled by Plaintiffs in their Second Amended Complaint which will go to trial in February 2018. See Specifically, *Plaintiffs’ Second Amended Complaint*, para. 17, filed August 19, 2015. These same allegations of fraud also serve as the basis of Plaintiffs’ claim for punitive damages. See *Plaintiffs’ Second Amended Complaint*, para. 19. Plaintiffs commence their Opposition to dismissal by altogether denying they are claiming fraud; and state the Defendants are “recasting” their claims. By the end of the Opposition, however, Plaintiffs do an about-face then arguing fraud in order to preserve their claims for punitive damages as well as claims against Defendant Nady. In sum, Plaintiffs argument to the Court is: “no, we are not pleading fraud for purposes of class certification” (otherwise Plaintiffs would have to concede the Court should dismiss the claims); and “yes, we are pleading fraud for purposes of punitive damages and claims against Defendant Nady” (otherwise Plaintiffs would have to concede the Court should dismiss these claims).

Plaintiffs want to assert and to rely upon fraud in each of their claims, but then back-away when they are confronted by the fact that a fraud claim is improper for a class action claim. The Nevada Supreme Court has made clear that a class suit to recover damages for fraud allegedly practiced upon numerous persons is not warranted. Cases collect. Annot., 114 A.L.R. 1015. *Johnson v. Travelers Ins. Co.*, 89 Nev. 467, 515 P.2d 68 (Nev. 1973). Therefore, in opposition to dismissal, Plaintiffs take the position that it is not a fraud claim.

Yet, to support their claim for punitive damages, Plaintiffs then write, “There is sufficient evidence in the record from which a jury could conclude that defendants have engaged in bad faith intentional conduct warranting an award of punitive damages.” *Plaintiffs Opposition*, 12:18-20. In support of this charge, Plaintiffs continue:

“A Cab acted willfully to violate the MWA by failing to keep accurate records of its

1 taxi drivers' hours of work is further supported by evidence that it directed taxi  
2 drivers to falsify their break time hours on their trip sheets. Ex "B" Murray Dec. The  
3 U.S. Department of Labor concluded that such falsification was occurring and  
4 confronted defendant Nady about it who denied it and insisted the driers were liars."  
5 *Plaintiffs' Opposition*, 13:8-14.

6 In simply arguing in contradiction to themselves, and not putting forth any admissible evidence,  
7 Plaintiffs cannot defeat a dismissal of this action.

8 **2. Plaintiffs Concede They Have No Representative Plaintiff for a 37 month period.**

9 In conceding they have no class representative for the time period sought in this lawsuit,  
10 Plaintiffs simply argue they have no requirement to have a "temporal mirror," but cite to **no**  
11 **authority** in support of this theory. *Plaintiffs' Opposition*, 7:21-23. In fact, the opposite is true and  
12 can be confirmed by simply reviewing the Nevada Rules of Civil Procedure 23 which indicates  
13 there must be a class representative, and obviously the representative must come from the class.  
14 Here, there is no one.

15 Plaintiffs have had 5 years to come up with a class representative and failed to do so. There  
16 is no representative driver for a period of 37 months or over 3 years for which damages are alleged.  
17 By Plaintiffs' own arguments, payroll procedures and calculations (the alleged foundation of this  
18 lawsuit) were different in 2011 (when Murray & Reno worked) versus 2015 (when no one worked).

19 Plaintiffs cite to no supporting authority allowing them to pursue a claim with no  
20 representative member of the class. Defendants have cited to the *Walmart v. Dukes* case in their  
21 request to the Court, which followed a series of federal decisions supporting this line: Rule 23(a)  
22 ensures that the named plaintiffs are appropriate representatives of the class whose claims they wish  
23 to litigate. The Rule's four requirements—numerosity, commonality, typicality, and adequate  
24 representation—"effectively 'limit the class claims to those fairly encompassed by the named  
25 plaintiff's claims.'" *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 156, 102 S.Ct.  
26 2364, 72 L.Ed.2d 740 (1982) (quoting *General Telephone Co. of Northwest v. EEOC*, 446 U.S. 318,  
27 330, 100 S.Ct. 1698, 64 L.Ed.2d 319 (1980)). "A class representative must be part of the class and  
28 'possess the same interest and suffer the same injury' as the class members." *East Tex. Motor*

1 *Freight System, Inc. v. Rodriguez*, 431 U.S. 395, 403, 97 S.Ct. 1891, 52 L.Ed.2d 453 (1977)  
2 (quoting *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 216, 94 S.Ct. 2925, 41  
3 L.Ed.2d 706 (1974)). *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2550 (2011).

4 How can Plaintiffs even present a witness to support this claim at trial when one has never  
5 been named in 5 years of discovery and disclosures? The 37 month time period in which there is no  
6 class representative must be dismissed as a matter of law.

7 **3. Plaintiffs Have Not Met the Minimum Threshold In Support of Punitive Damages to**  
8 **Defeat Summary Judgment.**

9 In opposition to Defendant's request for a dismissal of punitive damages, Plaintiffs offer no  
10 authority, be it regulations or caselaw, in opposition to *Sprouse*. They merely argue that case does  
11 not say what it clearly says. Plaintiffs refer to the Constitutional provision which specifies the  
12 relief which is available, but in fact makes no mention of punitive damages. Instead the  
13 Constitutional provision indicates "back pay, damages, reinstatement or injunctive relief."

14 *Plaintiffs' Motion*, 11:5-6. There is no indication that punitive damages were contemplated with  
15 the provision. Plaintiffs' argument that "When a constitutional provision's language is clear on its  
16 face, we will not go beyond that language in determining the voters' intent" in reality lends support  
17 that there was no intent to include punitive damages.

18 More importantly, Plaintiffs have not made a minimum showing of any evidence to support  
19 a claim for punitive damages rising to the level of malicious and/or fraudulent and/or oppressive  
20 conduct by the defendants. Instead, the evidence shows the contrary. The undisputed evidence  
21 demonstrates that A Cab: (1) received a clean bill from the Department of Labor audit with no  
22 minimum wage violations; (2) A Cab subsidized its drivers' pay in an attempt to pay the minimum  
23 wage; and (3) A Cab entered into an agreement with the United States government to resolve any  
24 underpayment when there were assurances the money would go into the pockets of the drivers.

25 The only item supporting Plaintiffs' claim for punitive damages is their fraud claim that  
26 drivers were forced to falsify tripsheets and enter fraudulent hours on their tripsheets - a claim  
27 which Plaintiffs now back away from. Plaintiffs argue that punitive damages are necessary to  
28 "incentivizing" employers to voluntarily pay, and to penalize those who get "caught". *Plaintiffs'*



1 *Motion*, 12:6-8. This argument supports why punitive damages are not appropriate in this instance.  
2 The documents themselves demonstrate that A Cab was already subsidizing its drivers' pay to  
3 ensure that the minimum wage was being paid. Further, as Nady testified in his sworn depositions,  
4 and the Nevada Deputy Labor Commissioner will confirm at trial, Nady met with him to ensure A  
5 Cab was doing everything to remain in full compliance with all State and Federal regulations and  
6 laws. Plaintiffs have not put forth 1 piece of documented evidence to demonstrate the contrary, nor  
7 1 witness who will contravene this.

8 Plaintiffs must come forward with evidence to defeat summary judgment. In their  
9 Opposition, Plaintiffs return to their fraud claim in citing and attaching a double hearsay document  
10 contained in the Department of Labor documents, wherein the investigator interviewed one of the  
11 claimant drivers who said he was forced to falsify break time hours. *Plaintiffs' Motion*, 13:8-14.  
12 This document is not admissible and does not defeat summary judgment on this issue. See Rule  
13 56(e). Evidence introduced in support or to oppose summary judgment must be admissible  
14 evidence. *Collins v. Union Federal Savings & Loan Ass'n*, 99 Nev. 284 (1983); *Henry Products,*  
15 *Inc. v. Tarmu*, 114 Nev. 1017 (1998).

16 Because Plaintiffs have not made a minimal showing of any malicious and/or fraudulent  
17 and/or oppressive conduct by the defendants, Plaintiffs' claims must be disposed of pursuant to  
18 NRS 42.005. Further, a claim for punitive damages is not available to Plaintiffs. NRS 42.005.  
19 Plaintiffs' claim for relief does not sound in tort as required by NRS 42.005 and *Sprouse*.  
20 Plaintiffs' allegations evidence an employment relationship, which under Nevada law is a  
21 contractual relationship governed by contract law and hence their allegations are not "sound in  
22 tort," but arise from an alleged breach of an obligation arising from a contractual relationship.  
23 Therefore, NRS 42.005 prohibits Plaintiffs from receiving any award for punitive damages.

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

26 **4. Plaintiffs' Claims Against Nady Must Be Dismissed.**

27 In their Opposition, Plaintiffs state "substantial evidence" exists to keep these claims alive.  
28 However, in support, Plaintiffs only offer an unanswered deposition response where improper

1 questioning delving into basic attorney-client communications was being sought. Further, the  
2 questioning was in contravention of that ordered by the Discovery Commissioner after a conference  
3 was necessitated due to Plaintiffs' insistence on asking for privileged communications. Plaintiffs  
4 now seek to use the invocation of the attorney-client privilege as evidence to defeat summary  
5 judgment, which is completely improper.

6 What Plaintiffs attach in support as their Exhibit H states as follows:

7 MR. GREENBERG:· Mr. Nady, who is your business lawyer?

8 A:· For what type of advice?

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

12 A:· I suppose I have four or five other lawyers that I pay.

13 Q:· Can you identify them?

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

16 Q:· And you do not have to answer this question if you do not wish to, I understand, but I'm  
17 not going to ask it anyway.· You tell me that you're refusing based on privilege, that's fine.· Did  
18 you seek advice from any of those lawyers about how A Cab's business should be changed in terms  
19 of its legal structure after this lawsuit was started?

20 MS. RODRIGUEZ:· I think I'm going to object based on the guidance provided by the  
21 discovery commissioner.

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

23 A:· Are you asking me if I sought legal counsel after?

24 Q:· From any of the business lawyers· you identified, did you seek advice from them about  
25 changing the legal structure --

26 A:· About the changing the structure?

27 Q:· Yes.

28 MS. RODRIGUEZ:· Hold on.· Let him finish his question.

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

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

A: I'll invoke the privilege there. *Deposition of Creighton J. Nady*, 113:6 - 114:24, attached as *Exhibit H to Plaintiffs' Motion*.

From this improper questioning (and against the Discovery Commissioner's ruling), Plaintiffs' counsel represents in their Motion that Nady admits he transferred A Cab's assets in response to this litigation to shield them from any judgment. *Plaintiffs' Motion*, 14:24-15:7. This is a complete misrepresentation of the evidence to the Court; and certainly does not meet the minimum required to defeat summary judgment.

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

The fact that Nady is a decision maker in the company does not subject him to personal liability. In Nevada, the contrary is true. Nevada protects its businesses, and the corporate structure cannot be pierced simply based on Plaintiffs' assertions that Nady "orchestrated and directed" decisions. Again, no admissible evidence has been put forth, and the claims against Nady must be dismissed as a matter of law.

## **II. Conclusion**

Plaintiffs have failed on several fronts to support actionable claims; and these claims must be dismissed by the Court as a matter of law.

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

2. Plaintiffs have failed to prove the bare minimum of liability as pled in their Complaint. Plaintiffs' claims are based on the assertion of fraudulent break times written into the tripsheets. No witnesses or documents support this assertion other than the Second Amended Complaint. Further, Plaintiffs now even back away from this pleading.

Plaintiffs' experts did not review any tripsheets or any documents to support this claim, and offer no opinions in support. It is undisputed that the employer has been actively calculating and supplementing drivers' pay with a minimum wage subsidy. Plaintiffs have provided nothing in contravention to indicate that A Cab has not been subsidizing its drivers to meet the minimum wage.

3. Plaintiffs are pursuing claims for a class, with no representative Plaintiff for a 37 month time period. This claim for damages should not be allowed to go to a jury.

4. Plaintiffs cannot meet their burden on general liability, much less against a specific Defendant.

5. The claims against Defendant Nady and for punitive damages must be dismissed as lacking any basis.

6. Decertification of the class is appropriate, as the basis of Plaintiffs' complaint is fraud, which is not appropriate for certification (*Cummings v. Charter Hospital*, 111 Nev. 639 (1995)).

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

DATED this 27<sup>th</sup> day of December, 2017.

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

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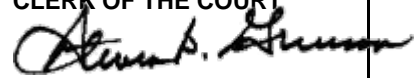
**CERTIFICATE OF SERVICE**

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

Leon Greenberg, Esq.  
Leon Greenberg Professional Corporation  
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/s/ Susan Dillow  
An Employee of Rodriguez Law Offices, P.C.



1 **TRAN**

2  
3 **EIGHTH JUDICIAL DISTRICT COURT**  
4 **CIVIL/CRIMINAL DIVISION**  
5 **CLARK COUNTY, NEVADA**

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

11  
12 BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE  
13 TUESDAY, JANUARY 2, 2018

14 **TRANSCRIPT RE:**  
15 **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

16 **APPEARANCES:**

17 For the Plaintiffs: LEON GREENBERG, ESQ.

18 For the Defendants: ESTHER C. RODRIGUEZ, ESQ.  
19 MICHAEL K. WALL, ESQ.

20 **ALSO PRESENT:** CREIGHTON J. NADY

21  
22  
23  
24 **RECORDED BY:** Lisa Lizotte, Court Recorder

**AA005720**

1 LAS VEGAS, NEVADA, TUESDAY, JANUARY 2, 2018, 10:20 A.M.

2 \* \* \* \* \*

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

5 THE COURT: We saved the best for last.

6 MS. RODRIGUEZ: Of course. Good morning, Your Honor. Esther  
7 Rodriguez and Michael Wall for the defendants, as well as Creighton J. Nady is  
8 present.

9 THE COURT: Good morning.

10 MR. GREENBERG: Leon Greenberg for plaintiffs, Your Honor.

11 THE COURT: Good morning. Well, it's your motion, so how do you want  
12 to argue it?

13 MS. RODRIGUEZ: Briefly, Your Honor. Would that please the Court?

14 THE COURT: Yes, that would be good.

15 MS. RODRIGUEZ: Okay. Well, Your Honor, I moved for summary judgment  
16 on behalf of A Cab on a number of issues -- on behalf of the defendants, I should  
17 say. The bottom line is I think we've been here before and there's been admissions  
18 and concessions from the plaintiffs and you'll hear further on my motions in limine,  
19 which I think are later in the month. But basically their experts, their evidence, their  
20 documents, there's been no calculation of actual damages. That's a crucial part  
21 of any case, there's liability and damages.

22 So I won't repeat all my arguments on that, but basically we believe  
23 that the Court should dismiss the case in its entirety because they have no evidence  
24 of actual damages for one individual, much less a class of individuals. But what

1 I primarily want to focus on, if the Court is not inclined to dismiss the matter in  
2 its entirety for that, is for the Court to consider a dismissal of the claims against  
3 Mr. Nady personally.

4 THE COURT: Uh-huh.

5 MS. RODRIGUEZ: There has been absolutely no evidence to support the  
6 plaintiffs' claims of civil conspiracy, aiding and abetting. There's some serious  
7 accusations that are in the complaint and which unless the Court dismisses will  
8 go before the jury.

9 THE COURT: On that point, would they really be going before this jury?  
10 Did we not grant a bifurcation?

11 MS. RODRIGUEZ: We did grant a bifurcation and at that time I tried to point  
12 out to the Court as well, because I think Mr. Greenberg's arguments were that any  
13 liability towards Mr. Nady would stem from any -- if there was any liability found  
14 against A Cab. And the Court agreed and said, okay, we'll try part two, if necessary,  
15 against Mr. Nady. But the way that it is currently pled are separate causes of action,  
16 those two being the civil conspiracy claim and the unjust enrichment claim. And  
17 so this isn't just a claim of alter ego and whether Mr. Nady -- if A Cab's liability is  
18 proven, whether there would be any further liability on Mr. Nady. That's not what  
19 we're talking about. We're talking about civil conspiracy and elements that have  
20 to be proven on that. And I think in the Court's ruling to bifurcate it wasn't a carte  
21 blanche or an open invitation to then start all over again and try to prove -- for the  
22 plaintiffs to come up with the evidence to prove those particular claims that they  
23 have against Mr. Nady.

24 THE COURT: In other words, carte blanche to like reopen discovery --



1 MS. RODRIGUEZ: Correct.

2 THE COURT: -- because, as you say, the discovery so far has been aimed  
3 at the liability of the company.

4 MS. RODRIGUEZ: Correct. Correct. And there's been -- they have --  
5 he argued in his response that they have conducted discovery on that issue  
6 because that's what I argued in my motion, that there was no discovery on this.  
7 Mr. Greenberg is arguing, yes, I did do discovery, but he hasn't come up with  
8 anything in that discovery for these particular claims. And in his response all  
9 he said is there's ample evidence, there's ample evidence of civil conspiracy and  
10 of unjust enrichment. But he fails to put anything in his response, as would be  
11 required to defeat summary judgment.

12 THE COURT: Uh-huh.

13 MS. RODRIGUEZ: So that's the first point is that I think the Court -- I would  
14 request that the Court consider a dismissal of those claims against Mr. Nady  
15 because the plaintiff is required to come forward with something to support a civil  
16 conspiracy or an unjust enrichment claim. Similarly, my other request to the Court  
17 is to consider a dismissal of the punitive damages claim. The same thing on this,  
18 we have not seen any evidence, any witnesses to support the level that is required  
19 for a punitive damages claim.

20 THE COURT: Uh-huh.

21 MS. RODRIGUEZ: I argued and I produced or cited to the Sprouse case,  
22 that this case is not even an appropriate case for punitive damages because this is  
23 not a case that sounds in tort. It's a contractual employment wage claim, so punitive  
24 damages aren't appropriate in the first place by law. But number two is that there

1 simply is no evidence of punitives to support malice, fraud. The only thing the  
2 plaintiffs --

3 THE COURT: Remind me what your response was to his argument that it  
4 is not simply a contract case but it involves violation of a constitutional principal  
5 and that therefore punitive damages might well be appropriate as to that.

6 MS. RODRIGUEZ: Well, what he did was cite to the actual amendment,  
7 the constitutional amendment, which did lay out the remedies for a claimant. And  
8 my response was, yes, the remedies are laid out and there is no indication that  
9 punitives were meant to be included in that, punitive damages or a new reading  
10 to include punitive damages if you're doing a straight reading of the amendment.

11 THE COURT: Okay. So if you were going to avoid your argument by  
12 claiming this is a constitutional, you're limited to the damages specified in the  
13 Constitution --

14 MS. RODRIGUEZ: Correct. Correct.

15 THE COURT: -- which does not include punitives.

16 MS. RODRIGUEZ: Correct. But I think the most important part, Your Honor,  
17 is that the only response that the plaintiffs put forward in their claim for punitive  
18 damages is this fraud claim, the accusation or the allegation that A Cab forced its  
19 drivers to write in fraudulent break times into the trip sheet. And at the same time  
20 they're arguing, well, this is not a fraud claim --

21 THE COURT: Uh-huh.

22 MS. RODRIGUEZ: -- because if they say it is a fraud claim then it's not  
23 appropriate by case law, the Johnson v. Travelers case, for class certification.  
24 The case law is very clear that fraud claims are not appropriate for class actions.

1 And so plaintiff is saying, well, it's not a fraud claim, but it is a fraud claim if it  
2 supports our claim for punitive damages. So they can't have it both ways, and my  
3 request to the Court would be that the punitive damages be stricken at this point  
4 because there is no evidence for that and by law they cannot proceed with that.

5 The third point I would ask the Court to consider --

6 THE COURT: Punitive damages as to both the corporation and Mr. Nady?

7 MS. RODRIGUEZ: Correct. Yes, all the defendants. And the third item --

8 THE COURT: Well, wait a minute.

9 MS. RODRIGUEZ: Yes.

10 THE COURT: Maybe I'm off there. That cause of action, would it include -- is  
11 the cause of action or actions which -- under which -- under Mr. Greenberg's theory  
12 might give rise to punitive damages, are any of those even aimed at Mr. Nady?

13 MS. RODRIGUEZ: Well, I'm looking at his complaint.

14 THE COURT: Or is it only limited to one defendant?

15 MS. RODRIGUEZ: His complaint is attached as Exhibit 1 to my motion --

16 THE COURT: Uh-huh.

17 MS. RODRIGUEZ: -- and in his complaint on page 4 when he's talking about  
18 punitive damages he is referring to the defendants, plural. And let me get to the  
19 actual further pleading on this. The second claim doesn't have anything to do  
20 with it. Third is against Mr. Nady and the fourth I believe is also against Mr. Nady.  
21 So the first cause of action is where he is alleging the punitive damages and I read  
22 it, since he names it throughout the pleading as defendants, plural --

23 THE COURT: Uh-huh.

24 MS. RODRIGUEZ: -- that it is alleged against all three of the defendants.

1 And the three defendants are two corporate ones, A Cab Taxi Service, LLC,  
2 A Cab LLC and Creighton J. Nady.

3 THE COURT: And yet he claims that the evidence of this -- actions by Mr.  
4 Nady, whether you consider it his personal actions or those of the corporation, to  
5 get the drivers to put in phony sheets, that evidence is not pertinent to the case and  
6 I assume that means we wouldn't be seeing any such evidence at trial. If the Court  
7 does not grant the motion, by virtue of the argument that you've put forward it seems  
8 to me that there would be no evidence at trial, at least this first trial, of any of this  
9 business of Mr. Nady getting -- or anyone else on his behalf getting the drivers to  
10 put in phony sheets, so that's something you're going to need to answer.

11 MS. RODRIGUEZ: Well, and that is the whole basis of the claim. That's why  
12 I've always argued that this isn't even a minimum wage claim, that it's a claim for  
13 unpaid hours. The way that the complaint currently stands and reads after being  
14 amended is the basis of the defendants not meeting the minimum wage because  
15 it's undisputed that the defendants always subsidized their drivers' pay to bring  
16 them up to minimum wage, but Mr. Greenberg's argument has always been, per  
17 the complaint, that A Cab or the defendants forced the drivers to write in fraudulent  
18 breaks. So instead of the calculation being 12 hours, it comes down to 9 or 10  
19 hours that they're being paid. And my argument has always been, well, that's not  
20 a minimum wage, that's your drivers are saying I wasn't paid for three hours that  
21 I should have been paid for.

22 THE COURT: Uh-huh.

23 MS. RODRIGUEZ: So I understand the Court's concern, then, in directing  
24 that to Mr. Greenberg that he's not going to bring in that evidence, but that is the

1 basis of their claim --

2 THE COURT: Yeah.

3 MS. RODRIGUEZ: -- is the fraudulent breaks.

4 THE COURT: And so your point is that if they don't, they may have no basis  
5 to prevail at trial?

6 MS. RODRIGUEZ: Correct. Correct.

7 THE COURT: Okay. Okay.

8 MS. RODRIGUEZ: And just a third item I would bring to the Court's attention  
9 is this rather large period of time that they do not have a representative plaintiff.  
10 We're talking about three out of -- three years, over three years. Thirty-seven  
11 months is the calculation. The main plaintiffs, Mr. Murray and Mr. Reno, stopped  
12 working in 2011 and 2012. The last one stopped in September of 2012, and this is  
13 a damages claim all the way through the end of 2015.

14 THE COURT: Uh-huh.

15 MS. RODRIGUEZ: So the only one who kind of throws a fly in the ointment  
16 there is Mr. Sergeant, who worked a period of two months in-between there in 2014.  
17 But other than that, even including the time period that Mr. Sergeant worked, it's still  
18 37 months, over three years that they are asking for damages. I don't even know  
19 how they can put a plaintiff on the stand to make the claim for damages when they  
20 don't have a representative plaintiff. And I've cited the case law that says you do  
21 have to have the commonality --

22 THE COURT: Uh-huh.

23 MS. RODRIGUEZ: -- and the plaintiffs have to have an appropriate  
24 representative and the representative must come from that class. So I would ask

1 the Court to reconsider the time period that is going to go forward before the Court.  
2 I think we need to use the time period in which they do -- they have shown a class  
3 representative and that would be through 2012.

4 THE COURT: You obviously don't buy into his federal district court opinion  
5 that says essentially that commonality doesn't necessarily require -- what is it called,  
6 a mirror image --

7 MS. RODRIGUEZ: Right.

8 THE COURT: -- of time; you know, time as a qualifier. You don't buy that  
9 one?

10 MS. RODRIGUEZ: No. I argued against that. I didn't see where he actually  
11 cited to anything on that.

12 THE COURT: I thought there was -- didn't you have a federal district court  
13 opinion that held that at least?

14 MR. GREENBERG: Yes, Your Honor. I had cited to the Court federal district  
15 authority which was most on point. I also am prepared today to advise the Court  
16 of Ninth Circuit authority that was relied upon by that district court decision which  
17 further develops the issue. It's on page 7 of the opposition, the Sarvas case.

18 THE COURT: The adequacy requirement does not require temporal mirror --  
19 yeah, that was it -- between the class representatives. Okay. All right, we'll get to  
20 yours in a minute here.

21 MR. GREENBERG: Yes, Your Honor.

22 MS. RODRIGUEZ: I'll submit with that, Your Honor, unless Your Honor has  
23 further questions on those issues.

24 THE COURT: What about the decertify class?

1 MS. RODRIGUEZ: Well, that goes hand in hand with my argument that --  
2 two of the arguments. If they are making the fraud claim, then it's not appropriate  
3 for Rule 23 class certification.

4 THE COURT: Uh-huh.

5 MS. RODRIGUEZ: So the Court can allow the trial to go forward on the  
6 individual claims that they do have, but then, you know, our argument has always  
7 been that the analysis that is required for these individual claims is very detailed,  
8 is very different for each one of these people. Whether we're talking about Mr.  
9 Reno or Mr. Murray, you need to get into, well, what were their actual hours, what  
10 were their health insurance issues, what's the issue with their break times, because  
11 they're all making different claims. And you can't do a broad sweep and just throw  
12 it in, especially now at the end of the day with what we're seeing that the plaintiffs'  
13 experts don't even have -- they've never looked at trip sheets, they've never looked  
14 at the documents. They've just come up with a tool to do an estimate of what they  
15 think in theory was an underpayment. But everything is in theory, there's no actual  
16 evidence.

17 And so that's why I said this is appropriate for decertification and let's  
18 get to the actual heart of the matter. Let's try Mr. Murray's case, let's try Mr. Reno's  
19 case, Mr. Sergeant's, and anybody else that Mr. Greenberg represents. But you  
20 can't look at it as a class action when there are so many individual factors that need  
21 to be considered by the trier of fact to get to actual damages that A Cab would or  
22 may be liable for.

23 THE COURT: Okay.

24 MS. RODRIGUEZ: Thank you, Your Honor.

1 THE COURT: All right. Mr. Greenberg, what say you?

2 MR. GREENBERG: Well, is there any particular issue the Court would like  
3 me to address first?

4 THE COURT: Well, of the ones that have been argued both in the pleadings  
5 and here, I'm -- let me put it this way. There are some that you would need to speak  
6 to. One is that no representative plaintiff for the class -- this notion of you don't have  
7 to have a temporal mirror. Was it not a federal district court opinion you cited for  
8 that?

9 MR. GREENBERG: Yes, it was, Your Honor. And again --

10 THE COURT: Is it Wal-Mart?

11 MR. GREENBERG: Well, no. Wal-Mart --

12 THE COURT: No, that's a supreme court case.

13 MR. GREENBERG: Wal-Mart deals with the (b)(2) class certification issue --

14 THE COURT: Oh.

15 MR. GREENBERG: -- where one is seeking equitable relief. Essentially in  
16 Wal-Mart they were trying to shoehorn a nationwide sex discrimination damages  
17 claim --

18 THE COURT: Uh-huh.

19 MR. GREENBERG: -- against the company for potentially hundreds of  
20 thousands of plaintiffs under a (b)(2) equitable relief under this concept that you  
21 could somehow put in this attendant, you know, damages jurisdiction with the  
22 equitable jurisdiction.

23 THE COURT: Uh-huh.

24 MR. GREENBERG: The supreme court said no, we're not going to use that



1 standard to certify --

2 THE COURT: Uh-huh.

3 MR. GREENBERG: -- what's really a (b)(3) damages class in that case.  
4 A very different set of circumstances and concerns were presented in Wal-Mart  
5 than in here where we're dealing with a (b)(3) case for damages, Your Honor.

6 The Sarvas case, which, again, I did cite on page 7 --

7 THE COURT: Uh-huh.

8 MR. GREENBERG: -- is relying on established Ninth Circuit authority and I  
9 have the authority here. I looked at this last night. I mean, the Ninth Circuit revisited  
10 this issue just last year in the Just Film case. I can give you the cite. And just to  
11 quote briefly, it says typicality -- because when we talk about representatives, the  
12 idea that the representatives' claim has to have some common nexus, it must be  
13 typical of the class, is tied to this question of adequacy of representation. They  
14 must be in a position --

15 THE COURT: Uh-huh.

16 MR. GREENBERG: -- to also advocate on behalf of the class effectively.  
17 And typicality, and I'm quoting, "focuses on the class representatives' claims but  
18 not the specific facts from which the claim arose and insures that the interest of the  
19 class representative, quotes, aligns with the interest of the class." They cite earlier  
20 Ninth Circuit authority, the Hanon case. "The requirement is permissive, such that  
21 representative claims are typical if they are reasonably coextensive with those of  
22 absent class members; they need not be substantially identical." Citing Parsons  
23 and Hanlon, which are also earlier Ninth Circuit decisions. "Measures of typicality  
24 include whether other members have the same or similar injury, whether the action

1 is based on conduct which is not unique to the named plaintiffs, and whether other  
2 class members have been injured by the same course of conduct.”

3 THE COURT: Do those -- do any of those Ninth Circuit cases get into this  
4 temporal mirror stuff? Or, in other words, do they directly address the question of  
5 how much of a claim -- a claim's time period does the representative plaintiff need  
6 to be able to cover in terms of having been employed? Any of those address that  
7 directly?

8 MR. GREENBERG: I understand your question, Your Honor, and I want to  
9 be perfectly honest with the Court, as I always should be.

10 THE COURT: That would be a good idea.

11 MR. GREENBERG: They do not, simply because it's not an issue that's  
12 raised or discussed in these decisions because this question of temporal or time  
13 frame identity that defendants are raising here --

14 THE COURT: Uh-huh.

15 MR. GREENBERG: -- has no basis in actual facts. If the defendants came  
16 before this Court -- let's say, for example, this was a discrimination case that  
17 involved a certain hiring application that was used by the employer for a two year  
18 period and then was stopped and was not used for another two year period and  
19 we were seeking relief for people who were denied jobs based upon use of this  
20 discriminatory application process. Then clearly in that situation you have a bright  
21 line chronologically in terms of the claim. So, somebody who came in in this later  
22 two year period, they wouldn't be in a position to claim that the application process  
23 in the earlier two year period was discriminatory because they weren't part of that  
24 situation, those set of facts, okay, Your Honor.

1 But we have nothing in this case or this record except defendants'  
2 assertions that somehow, well, the policies were different, so forth and so on, during  
3 various periods of time. There were different record keeping that was maintained by  
4 the employer, this is true. Starting in 2013 we had an asserted payroll record was  
5 keeping track of the hours per pay period, which did not exist before 2013 and we  
6 had an asserted policy by the defendants starting in 2013 to pay minimum wages.  
7 But the plaintiffs still assert that they were not in fact being paid for all of their hours  
8 of work under the minimum wage standard, that even in 2013 the records were  
9 not accurate. Prior to 2013 there are no records per payroll period, so their  
10 compensation every payroll period wasn't sufficient to meet the minimum wage.

11 So, Your Honor, the claims are the same, okay. There is no evidence  
12 here that there is any impairment to the typicality or the adequacy of representation  
13 requirements of the class action.

14 THE COURT: Uh-huh.

15 MR. GREENBERG: I would also point out that Mr. Sergeant, who they don't  
16 mention, was a -- has been appointed by this Court as a class representative. He  
17 worked in 2014, so he actually worked during the period of time when this different  
18 payroll record-keeping system was in place, Your Honor, that is at issue in this  
19 litigation. So even there, not that that should be a legitimate dividing line anyway  
20 for the certification question, but we have representatives who were present during  
21 both sets of record-keeping policies, Your Honor.

22 I mean, if Your Honor wants me to address this further, I would also  
23 point out the East Texas Motor Freight Systems case, which is cited by defendants.  
24 This is one of the leading United States Supreme Court cases dealing with this

1 question of adequacy and typicality of class representatives. Just to briefly quote  
2 from the decision and the supreme court in upholding the -- in finding that the class  
3 certification was granted in error -- the Court of Appeals in that case actually granted  
4 the class certification post --

5 THE COURT: Uh-huh.

6 MR. GREENBERG: -- post district court proceedings. The supreme court  
7 reversed it and they reversed it because in that case that was a discrimination case  
8 where there were claims of discrimination in promotion that were being brought  
9 supposedly on behalf of a class of bus drivers. I believe it was transit workers. And  
10 the supreme court said that these representatives, Rodriguez, Perez and Herrera  
11 were not members of the class of the discriminatees they purported to represent.  
12 The district court found that these plaintiffs lacked the qualifications to be hired as  
13 line drivers. They simply on the merits could not have qualified for these jobs that  
14 they said were being discriminatorily withheld from people of a certain ethnicity. So  
15 thus they could not have suffered -- they suffered no injury as a result of the alleged  
16 discriminatory practices. So --

17 THE COURT: You're talking about the East Texas Motor Freight case?

18 MR. GREENBERG: Yes, I am. I mean, where you have a situation where a  
19 representative has not sustained the injury that is alleged by the class, okay, where  
20 clearly on the record this representative has not been injured in the same fashion  
21 as the class injury, they can't be a representative. We understand that. That's  
22 what the Supreme Court is telling us in this case and in similar cases.

23 It's not the case here. I mean, in the motion for partial summary  
24 judgment, Your Honor, which I would just briefly remind we're still waiting for a

1 decision on, Your Honor. Your Honor took that under advisement and with trial  
2 approaching it would be helpful for us to hear --

3 THE COURT: You'd like an answer to that?

4 MR. GREENBERG: Well, I don't want to jump to that, Your Honor.

5 THE COURT: Yeah.

6 MR. GREENBERG: We're addressing this.

7 THE COURT: Uh-huh. Yeah.

8 MR. GREENBERG: But in connection with that motion we had documented  
9 and it was undisputed that Mr. Sergeant was shown by defendants' own records  
10 to be owed certain unpaid minimum wages, from defendants' own records. We  
11 have the assertions, and this is discussed at page 6 of the opposition, we have  
12 Mr. Murray's declaration that he was working on average 11 hours per shift. If  
13 Mr. Murray was working 11 hours per shift, then he's owed over \$2,000 in unpaid  
14 minimum wages based upon simple arithmetic in terms of the analysis, the table  
15 that was constructed by plaintiff's expert that, you know, we'll have testimony  
16 presented at trial of. So assuming the plaintiffs are able to make out their  
17 allegations, their allegations are accepted as factually correct, they have the injuries  
18 that are alleged to the class. This isn't the East Texas case where the facts were  
19 determined to show that the representatives had no injury that was common to the  
20 class. So I think I've adequately addressed this question.

21 THE COURT: Yeah.

22 MR. GREENBERG: Unless you have other questions --

23 THE COURT: No.

24 MR. GREENBERG: -- regarding the representative fitness, Your Honor.

1 THE COURT: No. Let's go to the claim that any punitive damages should  
2 be dismissed because --

3 MR. GREENBERG: Yes.

4 THE COURT: -- partly because it's not -- it's based on fraud claims which  
5 are not amenable to class treatment.

6 MR. GREENBERG: Well, Your Honor, on page 13 and page 14 there's --

7 THE COURT: Of yours?

8 MR. GREENBERG: -- of my opposition there's a discussion as to some  
9 of the reasons, and some of this overlaps with the question of Mr. Nady's liability  
10 individually --

11 THE COURT: Yeah.

12 MR. GREENBERG: -- as to why punitive -- why there's enough in the record  
13 here that a punitive damages finding could be warranted on the evidence that's  
14 before the Court, which is that as discussed at page 13 and this Court is aware, in  
15 February of 2013 Your Honor made a finding that these class members are subject  
16 to the minimum wage provided by Nevada's Constitution.

17 THE COURT: Uh-huh.

18 MR. GREENBERG: Defendants for another 15 months, and Mr. Nady  
19 testified about this at his deposition, did not comply with the requirements of Nevada  
20 law. Despite being aware of Your Honor's determination that coverage existed,  
21 they continued to take a tip credit, which was permissible under the federal law but  
22 not under state law, and as a result underpaid the drivers approximately \$170,000  
23 during that period of time because they were giving themselves a tip credit and  
24 offsetting their minimum wage requirements under their own records with those tips.

1 I mean, that goes back again to the partial summary judgment motion, Your Honor.  
2 So that -- I would submit that standing alone is sufficient to open a question of  
3 willfulness, intent and so forth that would allow a finding of punitive damages.

4 I mean, we also have -- and again, this is discussed at page 13, we  
5 have this history in 2009 of the defendants being told to keep proper records of the  
6 hours that people are working. The fact of the matter and the statute requires --  
7 608.115 requires the keeping of these hours worked per pay period records. They  
8 were not kept by the defendants until 2013. They were advised in 2009 to keep  
9 them. They promised the U.S. Department of Labor they would. They did not.  
10 The U.S. Department of Labor made a finding in 2013 that the defendants were  
11 manipulating the trip sheets and were forcing drivers to put in break time in their trip  
12 sheets that were false in an attempt to conceal the hours they were working. Now,  
13 I know defendants say this is multiple hearsay. Your Honor, the conclusions of the  
14 Department of Labor are not in fact hearsay. I mean, the fact that they were told  
15 this by other drivers may be hearsay, but it was a government agency, they reached  
16 that conclusion. So --

17 THE COURT: From that I conclude that you would be intending to introduce  
18 evidence during this stage of the proceedings, this trial, of those kinds of activities,  
19 notwithstanding your argument that it's not really necessary -- that that's not really  
20 the gravamen of the case anymore.

21 MR. GREENBERG: Your Honor, it's never been the gravamen of the case.  
22 We don't rely on the defendants' records to show the hours that were worked, okay.  
23 We agree the compensation records are accurate. The only thing that's agreed  
24 upon between the parties here is we know what these people were paid and nobody

1 disputes what they were paid. The question is how many hours did they work for  
2 that pay every week, every two week pay period?

3 THE COURT: Uh-huh.

4 MR. GREENBERG: That is the factual issue in dispute between the parties,  
5 Your Honor. The accuracy of the trip sheets or the accuracy of the payroll period  
6 records they started keeping in 2013 is an issue of fact for trial. The plaintiffs  
7 dispute the accuracy of those records, but their claim doesn't arise as a result of  
8 those records not being accurate. The plaintiffs are going to have to come in here  
9 and they're going to have to present their assertions regarding their hours of work.  
10 They are not going to rely upon the defendants' records, at least not solely. They  
11 assert that they worked more hours than whatever the defendant has recorded  
12 for them.

13 So the fact that they assert the records are inaccurate is not their  
14 cause of action. That's just an evidentiary issue. Defendants are free to come in  
15 and say, look, these are the records. Here we have this trip sheet from this plaintiff,  
16 he filled this out. The jury could agree that it's accurate or it could agree that the  
17 plaintiff -- the plaintiff testifies, well, I was forced to write this break time in because  
18 they told me I had to do it because they didn't want me to show I was working too  
19 many hours because they'd have to pay me more wages. That's just a factual  
20 issue.

21 THE COURT: So, failing that, if the defendants don't do that, what you just  
22 described, producing trip sheets and making an argument from that, is it true that  
23 you would not be bringing in evidence during this phase, this trial phase of the  
24 claims that Mr. Nady and/or his agents were importuning them to or forcing them



1 to fill out phony trip sheets? I'm trying to figure out --

2 MR. GREENBERG: I understand Your Honor's question. It's an interesting  
3 question, Your Honor, and I want to be very frank, as always, with the Court. In  
4 terms of their case-in-chief, if defendants do not intend to rely on the trip sheets,  
5 okay, the fact that the trip sheets are inaccurate is not something that the plaintiffs  
6 will bring up in their case-in-chief. If the trip sheets were not to be mentioned at all --

7 THE COURT: So it would only be --

8 MR. GREENBERG: -- then the plaintiffs have no reason to question their  
9 validity because it's not an issue, it's not a piece of evidence introduced in the case.  
10 In respect to --

11 THE COURT: So --

12 MR. GREENBERG: Yes?

13 THE COURT: -- it would only be essentially to impeach any defense witness  
14 who attempts to prove the contrary?

15 MR. GREENBERG: That is -- that is correct, Your Honor. It would be an  
16 attempt to either show the defendants' reliance on the trip sheets is not correct,  
17 and in addition, Your Honor, we have testimony already in the record here that  
18 those 2013 to 2015 payroll records which did purport to record the hours worked  
19 per pay period, that testimony is that those hours came from the trip sheets. So  
20 to the extent that defendants have maintained that those records are accurate,  
21 the question of the trip sheets' accuracy then comes in because they've testified  
22 that those computerized records were derivative of the trip sheets, Your Honor.

23 So that's the extent to which plaintiffs would be looking towards that  
24 issue, okay, but that's not where our cause of action lies. Our cause of action is

1 very simply, look, we worked these number of hours and what you paid us wasn't  
2 enough to meet the minimum wage for every pay period every week that we worked  
3 these hours. Some weeks they were. I mean, some weeks they were in compliance.  
4 There's no question that certain class members got paid minimum wages for some  
5 majority. In fact, there are probably some people who are class members in this  
6 case under Your Honor's order, which broadly certified the class as to all taxi drivers  
7 employed, who probably aren't owed any minimum wages.

8           This is one of the issues I raised in the bifurcation motion which Your  
9 Honor recently resolved and in resolving that -- not that I necessarily agree with Your  
10 Honor's approach or am completely clear on exactly how Your Honor envisions us  
11 moving forward with this case, but one of the things Your Honor did recognize is that  
12 the jury is going to have to be free to make an assessment, an inference based upon  
13 the evidence here as to the average hours that were worked because we don't have  
14 records per pay period. This discussion that defense counsel was engaging in with  
15 Your Honor about the need to make these individualized findings as to each single  
16 person in terms of how many hours they worked, Your Honor has clearly recognized  
17 in that order that that is not an appropriate way for us to proceed because essentially  
18 it would absolve an employer in this situation from any sort of reckoning on a class-  
19 wide basis --

20           THE COURT: Uh-huh.

21           MR. GREENBERG: -- for a large scale violation of the law by not keeping  
22 accurate records. I mean, this was the Mt. Clemens v. Anderson case and so forth,  
23 so the law on this is well established. Your Honor has recognized that. So we're  
24 going to have to go and have a jury empowered to make a broad finding of some sort

1 based upon the evidence presented about the hours worked. And then based upon  
2 that make an attendant finding about what may be owed to the class because, again,  
3 we know what they were paid. It's just a question of were they paid enough for the  
4 hours that they worked, and if they weren't, how much less, okay. And we have  
5 experts who will be prepared to testify as to that, Your Honor. But --

6 THE COURT: Okay. Uh --

7 MR. GREENBERG: Yes, Your Honor, question?

8 THE COURT: Your argument about the punitive damage that you're claiming  
9 here, part of it is, at least it's a fairly almost all encompassing argument about the  
10 punitive damage claim, but part of it is that this is not a breach of contract case,  
11 this is a violation of a constitutional right. Is there anything further that you want to  
12 say about that?

13 MR. GREENBERG: I would just respond to something that defendant was  
14 saying, that the constitutional amendment's language itself, it doesn't say anything  
15 about punitive damages. It authorizes a relief of damages. But -- and this is at  
16 page 11 of my opposition and this is the actual language in terms of talking about  
17 what can be secured by the employer. The employer, and then quote -- employee,  
18 quote, "shall be entitled to all remedies available under the law or in equity  
19 appropriate to remedy any violation of this section, including -- including but not  
20 limited to back pay damages, reinstatement or injunctive relief."

21 When it says damages, Your Honor, it doesn't say compensatory  
22 damages. It doesn't say punitive damages, either, I agree. It just says damages  
23 generally. But when you read this broad language, I don't see how you can read  
24 into this an interpretation that this precludes punitive damages. So I would submit

1 Your Honor needs to look beyond this language to the broader circumstances of  
2 this case, the broader policy implications, which I discuss in my brief, Your Honor,  
3 so I don't want to repeat what's in the brief, okay.

4 THE COURT: Okay. What about their argument that the only claims you  
5 have against Mr. Nady are -- sound in civil conspiracy, that there's been no discovery  
6 conducted of that and that should be dismissed at this point? And with your  
7 response to that, please also indicate would you be intending, once this trial phase  
8 is over, reopening discovery about Mr. Nady?

9 MR. GREENBERG: Well, Your Honor, Your Honor bifurcated the claims  
10 against Mr. Nady simply because if A Cab gets a finding of no liability or if there is  
11 a finding of liability against A Cab and A Cab satisfies that liability, there's no claim  
12 against Mr. Nady.

13 THE COURT: Okay.

14 MR. GREENBERG: So I would submit that in compliance with that we really  
15 shouldn't be spending your effort and time reviewing this issue at this point. In  
16 terms of the answer to your question, whether we would pursue additional discovery  
17 against Mr. Nady, we are prepared to proceed against Mr. Nady individually after  
18 stage one of this case if A Cab doesn't satisfy the judgment. I mean, we're not --  
19 we're not necessarily opposed to having further discovery, but we had no request  
20 for that. It was not contemplated. Mr. Nady did specifically give a deposition in his  
21 individual capacity. He gave that in June of last year, which was actually prior to  
22 your order in July which granted the bifurcation, okay.

23 In terms of why Mr. Nady would be in a position to be held personally  
24 liable if A Cab doesn't satisfy the judgment or liability here, this is discussed at

1 page 14 of the opposition. The issue is that Mr. Nady is the sole controller of the  
2 company. He is the sole beneficiary of the company. He's the sole decision maker.  
3 He's not an absentee owner. He profited substantially from the company's business.  
4 If the company had paid the minimum wage, if A Cab had paid the minimum wages  
5 during this period of time, we're talking hundreds of thousands of dollars, perhaps  
6 a million dollars or more, that would have decreased the profits of the business that  
7 Mr. Nady personally received by a like amount, okay.

8           This is -- it's not disputed that he received substantial income from the  
9 company. We have the financial records. They're, you know, under seal. I have not  
10 submitted them in camera. I don't think it's necessary because defendants are not  
11 disputing that the business was in fact profitable and Mr. Nady in fact did receive  
12 substantial profits from the business. If the business was never profitable, then I  
13 don't know that Mr. Nady could necessarily be held liable, you understand, because  
14 the nature of the liability, as in the fourth claim for relief, Your Honor, is also really  
15 in the nature of unjust enrichment.

16           THE COURT: Uh-huh.

17           MR. GREENBERG: And I would submit, Your Honor, actually that the claim  
18 against Mr. Nady, if it was to proceed, would really be a claim in equity, okay, under  
19 a theory of unjust enrichment or alter ego --

20           THE COURT: Uh-huh.

21           MR. GREENBERG: -- not a jury type damages claim, Your Honor. And we  
22 would stipulate to limit that claim at this point. I mean, I realize this has been a little  
23 vague so far in the proceedings, but we would agree that that would be the nature  
24 of the claim that would proceed against him at that point if necessary. And again,

1 Mr. Nady does not dispute --

2 THE COURT: So, when you say it would be on the basis of unjust  
3 enrichment, is that excluding, then, any claim or evidence of a civil conspiracy?

4 MR. GREENBERG: Well, Your Honor, the civil conspiracy or aiding and  
5 abetting claim is made here simply because Nevada law recognizes these concepts.  
6 But quite candidly, they're not well defined --

7 THE COURT: Uh-huh.

8 MR. GREENBERG: -- in the jurisprudence by our supreme court. And a  
9 question could be argued, well, is this really any different, an aiding and abetting  
10 or civil conspiracy claim, in these circumstances is it really any different than an  
11 alter ego or an unjust enrichment claim --

12 THE COURT: Uh-huh.

13 MR. GREENBERG: -- because Mr. Nady essentially is using the entity as his  
14 agent. You know, it's a conspiracy of himself with his agent. You understand what  
15 I'm saying. So, the claim is pleaded, Your Honor, because, again, the law is a bit  
16 unclear, but I don't know that there's any real distinction. You understand what  
17 I'm saying --

18 THE COURT: Okay. Uh-huh.

19 MR. GREENBERG: -- between the two.

20 THE COURT: Okay. How about decertifying the class?

21 MR. GREENBERG: Well, Your Honor --

22 THE COURT: Because it's essentially a fraud claim, not a -- anything to say  
23 more about that?

24 MR. GREENBERG: I really don't know how further to address that than I have,

1 Your Honor, except to say again that defendants are trying to make this claim into  
2 something that it isn't. The ultimate question is what hours did these people work?  
3 I mean, we know what they were paid. Was it sufficient to meet the minimum wage  
4 requirements? The reason that it wasn't sufficient is not germane to the minimum  
5 wage amendment. The minimum wage amendment doesn't care if it was a mistake,  
6 if there was an intentional record-keeping violation. Whatever the cause is irrelevant.  
7 The claim doesn't -- when we talk about fraud, we know -- you know, we study in  
8 law school common law, you know, fraud, misrepresentation, reliance, etcetera.  
9 There's no -- that doesn't enter into this question of liability here. It's not a question  
10 of misrepresentation. It's not a question of reliance. It's not a question of whether  
11 they told the truth or didn't tell the truth.

12 THE COURT: Uh-huh.

13 MR. GREENBERG: It's a question of, well, how much did you pay these  
14 people and how many hours did they work? And I think Your Honor understands  
15 that, so I'm repeating myself. You've been very generous with your time this  
16 morning, Your Honor, so I don't want to take up more than necessary, unless  
17 there's something else I can assist the Court with.

18 THE COURT: No.

19 MR. GREENBERG: Thank you, Your Honor.

20 THE COURT: Thank you. All right.

21 MS. RODRIGUEZ: Your Honor, I just want to reply to a few of the things  
22 that Mr. Greenberg stated. I'll start with the most recent, which has to do with  
23 the claims against Mr. Nady. I think I heard an admission -- at one point it was  
24 a stipulation as pertains to this conspiracy theory issue. I pointed out to the Court

1 that Mr. Greenberg keeps indicating that the defendants are trying to paint this  
2 picture of how -- of what the plaintiffs' case are intending to prove at trial. That's  
3 why I attached the complaint that we're using. The wording that I'm moving for  
4 summary judgment is right out of their complaint.

5 THE COURT: Uh-huh.

6 MS. RODRIGUEZ: Mr. Greenberg is dancing around the issue saying, well,  
7 no, now we're just talking about an unjust enrichment, we're not really talking about  
8 these other things. As it is, they still stand. The civil conspiracy -- and I know that  
9 he's arguing, well, it's kind of ambiguous, we really don't know what civil conspiracy  
10 is. We do know what civil conspiracy is. I briefed it. I laid out the elements on  
11 page 10 of what you must show for a civil conspiracy. They must show that each  
12 member of the conspiracy acted in concert, came to a mutual understanding,  
13 had an unlawful plan. One of them committed an overt act to further it. There  
14 are specific elements. And that was why I indicated there's been absolutely no  
15 evidence to support this claim. Again, Your Honor, their complaint is attached  
16 as my Exhibit No. 1. It's their third claim for relief, which is civil conspiracy, aiding  
17 and abetting, concert of action.

18 THE COURT: Do you happen to have a spare copy of that? I don't have --  
19 I have your motion but I don't have the --

20 MS. RODRIGUEZ: The exhibits?

21 THE COURT: -- the exhibits with it.

22 MS. RODRIGUEZ: I'm sorry, I don't, Your Honor. The only one I have is  
23 attached, but I can pull it out here, you know.

24 THE COURT: Yeah, let's just --



1 MS. RODRIGUEZ: Let me pull it out of my pleading.

2 THE COURT: We might as well take a minute and look at that because  
3 my question is going to be, Mr. Greenberg, does that mean that at this point you  
4 would agree to dismiss one or more claims? If you're going to proceed on unjust  
5 enrichment, what I don't know is if your claims against Mr. Nady are separated  
6 that way. Do you have a separate unjust enrichment and a civil conspiracy?

7 MR. GREENBERG: Yes, Your Honor. Unjust enrichment is pleaded as the  
8 fourth cause of action here, okay, which I would submit is really synonymous with  
9 this concept of the use of the corporate entity as an alter ego --

10 THE COURT: Okay.

11 MR. GREENBERG: -- or as an agent for that purpose, okay. The aiding,  
12 abetting, conspiracy claim is in the third cause of action, okay.

13 THE COURT: Okay.

14 MR. GREENBERG: Your Honor, I would -- if Your Honor is of the belief  
15 that there cannot be a civil conspiracy or an aiding and abetting claim, given the  
16 configuration here of this case, okay, because again, this is not a question of there  
17 being two independent-thinking separate defendants.

18 THE COURT: It's not a question of whether I have come to some conclusion  
19 that means that I would essentially prohibit you from proceeding on that cause of  
20 action anyway. That's not my question. My question is are you ready to the point --  
21 as you've already said, you're going to be relying on unjust enrichment. Does that  
22 mean we can drop a claim here --

23 MR. GREENBERG: Well --

24 THE COURT: -- and clean up what we're going to trial on?

1 MR. GREENBERG: I would with one caveat, Your Honor, that the third  
2 cause of action raises this allegation that the corporation is an alter ego of Mr. Nady.  
3 Is that even a separate civil claim, alter ego status? I don't know, Your Honor, okay.  
4 I believe it would be tied to this question of unjust enrichment, which is that it all  
5 comes back to Mr. Nady personally. It's not a question of him conspiring or aiding  
6 and abetting someone else's conduct or conspiring with someone else.

7 THE COURT: Uh-huh.

8 MR. GREENBERG: It's a question of his unjust enrichment and inequitable  
9 conduct of his control over the corporate entity. And I would be --

10 THE COURT: Do you have that there?

11 MS. RODRIGUEZ: I do, Your Honor.

12 THE COURT: Can I take a look at it?

13 MR. GREENBERG: I would be willing to limit the claims in that fashion,  
14 Your Honor, because ultimately it is a question of his unjust enrichment, in my view,  
15 based upon his misuse of the corporate form. And I apologize that the pleading  
16 may not be clear on this issue, but I would stipulate to the dismissal of the third  
17 cause of action and just proceed on the unjust enrichment on the fourth cause of  
18 action with the understanding, the caveat that to the extent that this alter ego status,  
19 this lack of independent status of the corporate entity -- if that is a separate legal  
20 issue and I'm not sure that it is, Your Honor -- would be encompassed within the  
21 fourth claim for unjust enrichment. I don't see that a conspiracy, a civil conspiracy  
22 claim in the conventional sense necessarily lies here, and I --

23 THE COURT: Well, what I'm hearing you say is that insofar as the third  
24 cause of action alleges a civil conspiracy, that you would be willing to withdraw any

1 such claim. But to the extent that the third cause of action asserts an alter ego  
2 claim --

3 MR. GREENBERG: Yes, Your Honor.

4 THE COURT: -- you would keep it in there.

5 MR. GREENBERG: That is correct. I would withdraw any claims in the  
6 third cause of action except the alter ego claim --

7 THE COURT: Okay.

8 MR. GREENBERG: -- because I believe that is really the essence of the  
9 claim against Mr. Nady is this question of misuse of the corporate form as an agent  
10 in what is an equitable sort of remedy of the alter ego status.

11 THE COURT: Well, that at least would sort of clean up what we're headed to  
12 trial on, except that we're not really talking about something that would be litigated  
13 in this first trial anyway, are we?

14 MR. GREENBERG: That is correct, Your Honor. I don't know that we need  
15 to deal with this, but I'm certainly pleased to help the Court by proceeding in that  
16 fashion as we've just discussed.

17 THE COURT: Well, I think we need to deal with it -- well, for one thing it  
18 causes me to ask the question which of these claims are we going to present to  
19 a jury now and which claims are we not going to present to the jury?

20 MR. GREENBERG: It is my position, Your Honor, and consistent with the  
21 July order on the bifurcation that the question of Mr. Nady's personal responsibility  
22 for anything that the company owes the drivers should not be determined at this  
23 stage. I mean, because that's contingent.

24 THE COURT: Okay, but that doesn't really address are we able to excise

1 any of the causes of action themselves from the consideration of the jury in this  
2 first phase trial?

3 MR. GREENBERG: I don't think the jury needs to consider whether the  
4 corporation was an alter ego of Mr. Nady or whether Mr. Nady was unjustly enriched  
5 by the violations that are alleged, assuming the jury finds violations.

6 THE COURT: So the third claim, then, would not be presented to this jury?

7 MR. GREENBERG: That is correct, Your Honor. Neither the third nor the  
8 fourth claim. And we would limit --

9 THE COURT: Neither the third or the fourth claims?

10 MR. GREENBERG: Right. And we would limit the third claim simply to be  
11 this question of an alter ego status.

12 THE COURT: Okay.

13 MS. RODRIGUEZ: I can appreciate that, Your Honor. And it sounds, again,  
14 although it's not confirmed, that the civil conspiracy cause of action is being dropped  
15 in its entirety and the only thing that we're possibly --

16 THE COURT: Except for alter ego out of that.

17 MS. RODRIGUEZ: Well, okay, but alter ego is actually part of the fourth one  
18 where he's alleging unjust enrichment. And unjust enrichment, I'm still moving for  
19 summary judgment on that because of a couple of reasons.

20 THE COURT: Right.

21 MS. RODRIGUEZ: Again, just because we're bifurcating and we're in part  
22 two, discovery is closed, we're done. We've had our experts. We've had everything  
23 that's going to be produced and there is no evidence to support unjust enrichment  
24 alter ego. First of all, unjust enrichment is a quasi-contract. We're talking about

1 contract again, a contract cause of action, which Mr. Greenberg has already just  
2 represented to the Court this is not a contract claim when it conveniences him.  
3 Now he's going back to a contractual claim alleging unjust enrichment. Part two  
4 of that is the only thing I heard from him --

5 THE COURT: Well, let me see if I understand the first part that you said.  
6 You're saying that any unjust enrichment claim is actually a contract?

7 MS. RODRIGUEZ: Arises -- correct. Arises from a contractual arrangement,  
8 which we've argued --

9 THE COURT: Okay. But you're not saying that an unjust enrichment claim  
10 necessarily requires that you first prove a breach of a contract?

11 MS. RODRIGUEZ: No, Your Honor. It is a --

12 (Speaking to Mr. Wall) Do you want to speak to this?

13 MR. WALL: May I, Your Honor, just briefly on that?

14 THE COURT: Yes.

15 MR. WALL: The term unjust enrichment gets bandied about as though if  
16 somebody gets unjustly enriched there's a cause of action. There's no such tort  
17 cause of action. It's quasi-contract. It exists when there should be a contract --

18 THE COURT: Yeah.

19 MR. WALL: -- that we imply --

20 THE COURT: Okay.

21 MR. WALL: -- and you have to prove a breach of that contract. That's the  
22 only recognized claim for unjust enrichment in Nevada.

23 THE COURT: All right. So based on that, we're not looking at saying --  
24 we're not limiting -- the fact that the defendant is not alleging an actual breach of

1 the contract, of the written contract or of a contract does not preclude the plaintiff  
2 from proceeding on alter ego -- no, I'm sorry, on unjust enrichment. I don't know  
3 if I clarified anything with that. Let's go back to --

4 MS. RODRIGUEZ: Okay.

5 THE COURT: Let's go back to that the -- well, to address your argument --

6 MS. RODRIGUEZ: Uh-huh.

7 THE COURT: -- that if -- based on what's just been said that there could be  
8 no unjust enrichment claim against Mr. Nady personally --

9 MS. RODRIGUEZ: Right.

10 THE COURT: Okay.

11 MS. RODRIGUEZ: Right. The only argument I heard from plaintiff, again,  
12 with no evidence to support it, but his only argument in support of that is that Mr.  
13 Nady was an involved owner, the sole decision maker in the company. That is not  
14 enough to do what plaintiffs are wanting to do with that, which is basically to pierce  
15 the corporate veil. And they are looking beyond satisfaction of a judgment. They're  
16 throwing out all kinds of things in their response, saying, oh, the company may not  
17 be able to satisfy the judgment, they might declare bankruptcy, we need to have  
18 Mr. Nady as a back-up. What they've presented thus far is not sufficient to pierce  
19 the corporate veil or to argue this alter ego or this unjust enrichment at this point,  
20 and we're at the point where we're within 30 days of trial. Granted that the Court  
21 is not going to hear those first set of issues --

22 THE COURT: Correct.

23 MS. RODRIGUEZ: -- but I would expect or envision that when we finish  
24 part one we're going to go into part two because the Court did not authorize, again,

1 a whole reopening, now let's start proving these causes of action of alter ego and  
2 unjust enrichment.

3 THE COURT: Uh-huh.

4 MS. RODRIGUEZ: So I think at this stage the Court, with the plaintiff failing  
5 to come forward with anything to support that, should dismiss Mr. Nady entirely from  
6 this action. There is nothing to allow them to pierce the corporate veil or to argue  
7 unjust enrichment or alter ego at this stage.

8 THE COURT: I would resist the invitation to dismiss those claims at this  
9 point. I would not do so, you know, with prejudice. I think that in order to really rule  
10 on that motion it is -- it would be very instructive or useful or helpful to the Court to  
11 arrive at the proper decision to have the first phase of the trial done and away and  
12 then be able to look and see if with what remains is there a claim that they could  
13 go forward on. So I would deny that part without prejudice.

14 Okay, anything more on the rest of the argument?

15 MS. RODRIGUEZ: Yes, Your Honor. On the punitive damages claim the  
16 complaint in this matter, as the Court is aware, was filed back in October of 2010,  
17 claiming -- making a claim for punitive damages. The only thing I heard from the  
18 plaintiffs in support of that claim for punitive damages was their argument that  
19 A Cab ignored a Court ruling three years later in 2013 when the issue was on  
20 appeal. Mr. Greenberg argued to the Court, saying that in itself should allow  
21 punitive damages to go forward. That's not the basis of this complaint and that's  
22 a stretch to say because A Cab was waiting on guidance in the Thomas decision  
23 from the supreme court for that to support punitive damages, and that's the only  
24 thing they've come forward with other than the fraud claims.

1                   So I would ask the Court to consider the punitives as a dismissal.  
2   There's -- everything that we've shown has been that A Cab -- I think it's undisputed  
3   A Cab was making efforts to subsidize the minimum wage. There was no intent  
4   to maliciously deprive the drivers. The records that have all been produced show  
5   that there is a minimum wage subsidy. There was efforts to do an appropriate  
6   calculation, so there's not a malicious intent to defraud the drivers.

7                   What I heard Mr. Greenberg say, and this kind of goes into the last  
8   point, what he indicated he was going to put on the stand, if I'm understanding him  
9   correctly, is the plaintiff saying this is what I got paid, but I wasn't paid for all of my  
10   hours. I'm alleging I worked 12 hours and defendants are alleging that I worked  
11   less than that. And, yes, we're going to put the trip sheets into evidence to say,  
12   well, didn't you basically sign off that you only worked 8 hours and your documented  
13   proof shows 8 hours? So the trip sheets are going to come into evidence. That's  
14   the plan. But if the Court would read into that, what we just heard from Mr.  
15   Greenberg is this is an admission that this is not a minimum wage claim. This is  
16   an hours worked claim.

17                  And the last point I would point out to the Court is the East Texas  
18   case, as well as the Wal-Mart case --

19                THE COURT: Before we move on to that, how does a claim that -- you just  
20   called it an hours worked claim, is that what --

21                MS. RODRIGUEZ: Unpaid hours.

22                THE COURT: Unpaid hours. How is that different from a minimum wage  
23   claim in the circumstance where their theory is that they don't dispute or contest  
24   what the amount was they were paid, they dispute or contest the number of hours



1 worked, which means if they prove the hours worked then you do have unpaid  
2 wages, do you not?

3 MS. RODRIGUEZ: I think they're two separate things, Your Honor. A  
4 minimum wage claim, as we are seeing with some of the other ones that are on-  
5 going in the state and federal courts, are a circumstance where the driver is simply  
6 getting paid \$5.00 an hour instead of 7.25 or 8.25 and the employer is deliberately  
7 not paying the minimum wage. That's not the case here. All of the records show  
8 that A Cab was subsidizing to bring the driver up to 7.25 or 8.25 where appropriate.

9 The plaintiffs' theory in this is that it wasn't enough because there's  
10 some fraud in there where whatever A Cab was relying upon to calculate the hours  
11 to come up with the subsidy, there was a mistake in the hours somewhere, whether  
12 it's the drivers writing in breaks that they didn't take or the company forcing the  
13 drivers to write in breaks, telling them you have to write in breaks. Even though you  
14 worked 12 hours, you need to say and sign that you only worked 10 hours. So what  
15 the drivers are alleging is I worked an additional 2 hours at 7.25 or 8.25 that I'm not  
16 being paid for and I want those hours. And they should have gone to the Labor  
17 Commissioner.

18 And one other thing that I would mention about that because Mr.  
19 Greenberg is saying, well, this is an impossibility, you're putting this burden upon the  
20 plaintiffs to, you know, look at the documents and figure out what each driver was  
21 owed. Every driver, every one of his clients is entitled to their documents by law.  
22 If you want your personnel record, you go to A Cab, you go to any employer and  
23 they have to turn over all your payroll records, your personnel file, your trip sheets.  
24 A Cab has always made those available and we turned those over immediately

1 pertaining to their representative plaintiffs. We turned them over for everybody,  
2 actually. They just didn't look at them. There's over 300,000 of documents  
3 available if any one of those individual people wanted to look at what was I actually  
4 paid, what do I think I'm owed.

5           And going back to the beginning of this case, Your Honor, when I took  
6 the depositions of their plaintiffs, nobody said anything about minimum wage. They  
7 were complaining I wasn't paid for a radio call, I was shorted because of my drop  
8 shorts. You know, I think I should have made more money at A Cab because I was  
9 making more money at Frias. There was a whole variety of samples that Mr. Murray  
10 and Mr. Reno were claiming. But nobody ever said anything about minimum wage.  
11 And what Mr. Greenberg has just said, it sounds like they're still not even going to  
12 say anything about minimum wage. They're going to say, you know, this bad  
13 employer forced me to write in breaks that I didn't take. And that's what this case is  
14 going to be about. That's what's going to be tried before the jury, is do they believe  
15 the driver or do they believe A Cab, that A Cab is forcing them to write in breaks  
16 that they didn't take.

17           So, that's my last point is that the Wal-Mart case and the East Texas  
18 case that Mr. Greenberg was talking about, I cited to those because they do support  
19 that you must have typicality from a class representative because Mr. Greenberg  
20 was talking about typicality and why it's important to have a representative from that  
21 time period. I'm trying to find, with Your Honor's indulgence to give me -- I've got  
22 my papers all in a mess here. But there was one other area I wanted to mention.  
23 I think it's page 11 of my motion, I hope.

24           THE COURT: Baldrige? That's on page 11. Deposition of the plaintiff.

1 MS. RODRIGUEZ: Give me one second, Your Honor. There's a couple of  
2 cases here that the courts were very clear about --

3 THE COURT: Teflon.

4 MS. RODRIGUEZ: -- that a theory -- a theory of -- such as what Mr.  
5 Greenberg is asserting is not enough to support class action when there is  
6 individualized analysis that is required. And I think it's become more and more  
7 clear that that's what we have here is an individualized analysis of the hours, the  
8 shifts, the health insurance, the number of dependents. All of that needs to be  
9 taken into consideration when determining whether a claimant has been underpaid  
10 at minimum age or not. (I think I was looking at the wrong motion).

11 THE COURT: At the wrong motion, did you say?

12 MS. RODRIGUEZ: Yeah, my wrong motion. Here it is. It's page 11 of my  
13 motion, Your Honor.

14 THE COURT: Uh-huh.

15 MS. RODRIGUEZ: "The presence of a common legal theory" --

16 THE COURT: Yeah.

17 MS. RODRIGUEZ: -- does not establish typicality for class certification  
18 purposes when proof of a violation requires individualized inquiry." This is that  
19 In re Teflon Products liability litigation. And also Your Honor was correct, the  
20 Baldrige case. And that's what we have here is individualized inquiry as to each  
21 claimant's claim for damages that in reality will have to be analyzed in order to  
22 determine what their claim damages, if any, exist.

23 I don't have anything further, Your Honor.

24 THE COURT: Okay, thank you.

1 MS. RODRIGUEZ: Thank you.

2 THE COURT: Some of these are -- it's not so much they're close calls, they  
3 just require an analysis of a difficult topic when we apply these causes of action to  
4 facts such as this. The best I can do is this. As to the failure to provide -- to prove  
5 any liability or damages, I would deny the motion as to that. As to no representative  
6 plaintiff, I would deny it as to that. I believe that there is sufficient authority, albeit  
7 predominantly federal authority, that would seem to indicate that they don't have  
8 to have all the same time period, as long as there is still typicality and commonality.  
9 As to the dismissal of punitive damages, I would deny that on the basis that this  
10 is a deprivation of a constitutional right claim and that the wording of that provision  
11 does not preclude punitive damages.

12 Anyway, so as to the dismissal of claims against Mr. Nady personally,  
13 I've already sort of adverted to that. I think it's appropriate to wait and see what  
14 happens with this trial before trying to address dismissal of the claims against Mr.  
15 Nady personally. Nor would I decertify the class on the basis that it's fraud, and you  
16 can't do a class action for a fraud claim because I am satisfied that Mr. Greenberg  
17 has demonstrated that the essential evidence at trial is not going to be about fraud  
18 but about the claims that their constitutional rights were deprived, that they were not  
19 paid the minimum wage when you do the calculation of how much they were paid  
20 and how many hours they worked. It's not an easy decision for me, but I think that's  
21 the best I can do.

22 Mr. Greenberg, you will prepare the order and pass it by counsel.

23 MR. GREENBERG: I will get to that. I hope if not this week, on Monday,  
24 Your Honor --

1 THE COURT: Okay.

2 MR. GREENBERG: -- because we don't have a lot of time. I appreciate that.

3 MS. RODRIGUEZ: Your Honor, do we have a -- I thought we had a  
4 stipulation at least on the civil conspiracy issue. Is Your Honor still holding that one  
5 in abeyance?

6 THE COURT: Well, yeah, that's a good point. To the extent that the third  
7 cause of action alleges anything beyond alter ego, that part of the motion to dismiss  
8 against Mr. Nady would be granted. The Court will not dismiss, however, the third  
9 claim insofar as it alleges only an alter ego cause of action.

10 MR. GREENBERG: That is fine, Your Honor.

11 THE COURT: Okay.

12 MR. GREENBERG: That's consistent with my representation to the Court.

13 THE COURT: Now, I need -- before you leave, I need to know something.

14 (The Court confers with the clerk)

15 THE COURT: Mr. Greenberg, you indicated that the Court has not ruled on  
16 the partial summary judgment motion?

17 MR. GREENBERG: Yes, Your Honor. We had some extensive argument  
18 with you about this last month and a conclusion you had from the bench indicated  
19 a finding of liability being established, but it wasn't clear what that meant because  
20 liability in the context of a partial summary judgment motion meant a finding that  
21 those payroll records established a certain number of hours worked and therefore  
22 a certain amount of wages owed based on those hours worked. And you needed  
23 to consider this further because in essence in a case like this, Your Honor, liability  
24 and damages are intertwined. If you haven't paid for the hours, then you're liable

1 and you're also liable --

2 THE COURT: Hold on just one second.

3 MR. GREENBERG: Yes.

4 THE COURT: We're printing it now to see if this -- because I thought I had  
5 already tried not to drag this consideration out; try and get it done. My crack staff  
6 is producing it for us right now.

7 MR. GREENBERG: Thank you, Your Honor.

8 THE COURT: It's a minute order of December 14th. Are you familiar with  
9 that?

10 MR. GREENBERG: I don't know.

11 THE COURT: Let me get you to take a look at it and see if that still leaves  
12 open the issue you're talking about or if that represents the ruling on it.

13 Are you familiar with that, December 14th?

14 MS. RODRIGUEZ: I don't think so, Your Honor.

15 THE COURT: Okay. Can you pump out another one? A couple more.

16 THE CLERK: Uh-huh.

17 MR. GREENBERG: This -- yeah. Your Honor, is it possible I could just  
18 briefly address this? I have not seen this before, Your Honor.

19 THE COURT: Okay. It does resolve the issue, does it not?

20 MR. GREENBERG: Well, it leaves it where --

21 MS. RODRIGUEZ: Can I have a chance to see it before he addresses it?

22 THE COURT: Yeah.

23 MR. GREENBERG: Your Honor --

24 THE COURT: Hang on one second.

1 MR. GREENBERG: Yes, let me wait.

2 THE COURT: All right. Mr. Goldberg -- sorry -- Mr. Greenberg.

3 MR. GREENBERG: Yes, Your Honor. It's really the last two lines here  
4 dealing with -- and this is where we left this when we saw you on December 14th,  
5 Your Honor.

6 THE COURT: Uh-huh.

7 MR. GREENBERG: You said you believed that we had established,  
8 plaintiffs, that there was no material issue of fact and that liability was established.  
9 My question to you at that point, well, was liability for what? And you said you were  
10 going to consider this further because as I was explaining to you a few minutes ago,  
11 Your Honor, the claim was that approximately 172 or 177 thousand dollars was  
12 owed --

13 THE COURT: Uh-huh.

14 MR. GREENBERG: -- at 7.25 an hour, based on defendants' records, which  
15 defendants assert are fully accurate records. And we submitted, you know, a pay  
16 period by pay period analysis. It ran about 600 pages for something like 12,000  
17 pay periods for 500 class members or whatever it was. I actually have a copy of  
18 the papers here, Your Honor, and it established that this amount was owed. So if  
19 liability is established based upon the records, then the amount is also established,  
20 is what I'm trying to communicate to Your Honor. I mean, I don't know what we  
21 would be trying as to that issue if we've shown that there's no disputed issue of fact  
22 that, well, these are the records for this period. The parties agree this was what  
23 these people were paid or there's no material issue that these people were paid  
24 this much and there's --

1 THE COURT: You don't want to dress it up with some expert that did the  
2 calculations and says that if liability is established this is what the number is?

3 MR. GREENBERG: Well, Your Honor -- Your Honor declined to invalidate  
4 the regulation which would have applied an 8.25 an hour rate. You declined to  
5 place the burden as to the health insurance on the defendants. That was very clear.  
6 We left on the 14th of December knowing that, okay. The issue, though, was that,  
7 again, you had found that -- you were saying that we had established that there  
8 was liability.

9 THE COURT: Uh-huh.

10 MR. GREENBERG: And there's at least \$174,839 that are owed that is at  
11 least \$10 to each of the class members specified in the motion for partial summary  
12 judgment. That's at the 7.25 an hour rate. That was what there's no material issue  
13 of fact that was established based upon the records, Your Honor. So if we've  
14 established the liability based on those records, based upon defendants' admission  
15 that those hours of work are accurate and the parties' agreement that the records  
16 reflect what people were actually paid and Your Honor's finding that there's no  
17 material issue of fact, then we should have a finding. I mean, we had discussed  
18 having immediate judgment entered for that amount on December 14th, but if Your  
19 Honor would defer entry of judgment, then that's fine, okay. But my question is,  
20 is this question resolved?

21 THE COURT: What is the -- I don't know if you called it an admission, but  
22 the agreement with the defendants or by the defendants that there is no -- what  
23 was that part you said? You don't contest the calculation itself.

24 MR. GREENBERG: The defendants' expert did not contest the calculation



1 at his deposition. They did not in their opposition to the partial summary judgment  
2 point to a single payroll period that was analyzed that was in error. They contested  
3 the application of the 8.25 an hour rate and Your Honor denied any application of  
4 the 8.25 an hour rate in connection with the motion. So the only portion of the  
5 motion that we established under Your Honor's finding was the amount owed at  
6 7.25. And as I've explained before, Your Honor, this is really owed because they  
7 were applying this tip credit for this 15-month period when they shouldn't have been  
8 doing it.

9           So I would ask the Court to allow entry of a determination. Again, it  
10 doesn't have to -- if Your Honor doesn't wish to enter an immediate judgment, that's  
11 Your Honor's discretion. I don't want to argue the merits of that with the Court.  
12 You've been very patient with us today. I mean, I think that would be appropriate,  
13 but if Your Honor is going to defer entering any judgment until final judgment in the  
14 case in its entirety, that's your decision to make, Your Honor. I would just ask the  
15 Court to make the finding that the \$175,839 is owed to the identified class members.  
16 There are 319 class members. They're owed at least \$10, okay. If they're owed  
17 less than \$10 it would be de minimis and we don't need to be bothered with it.  
18 I would ask that be incorporated into Your Honor's order because that is what  
19 Your Honor found.

20           THE COURT: Uh-huh.

21           MR. GREENBERG: I don't understand how we could have a finding of  
22 liability without that attendant finding as to what the liability was for, Your Honor.

23           THE COURT: Well, let me ask Ms. Rodriguez, do you -- is any of your  
24 evidence going to contest the calculation itself?

1 MS. RODRIGUEZ: Absolutely, Your Honor. We argued this extensively.  
2 We were here a couple hours. I think Your Honor gave us an hour and a half. So  
3 I'm not really sure -- one, I'm objecting because this isn't on calendar this morning.  
4 Two, he's arguing for reconsideration of what we've already argued, This is the  
5 third time that we're here. We have our experts contesting the calculations.

6 THE COURT: Okay. So they contest the actual -- I'm not talking about --

7 MS. RODRIGUEZ: Right.

8 THE COURT: -- liability --

9 MS. RODRIGUEZ: Right.

10 THE COURT: -- but they contest the actual calculation --

11 MS. RODRIGUEZ: Absolutely.

12 THE COURT: -- of the damages?

13 MS. RODRIGUEZ: Absolutely. And I asked --

14 THE COURT: What do they contest? What do they --

15 MS. RODRIGUEZ: They -- my expert is the only one who did testing  
16 comparing the calculations, the tool that they produced with actual review of the trip  
17 sheets and the paystubs and, you know, looking at the actual data and showed this  
18 is where it's wrong, this is where it's wrong. We had Mr. Greenberg come in this  
19 morning and say the majority of the drivers are not even owed anything. Now he's  
20 saying, well, they're owed at least \$10. So -- and Your Honor considered this the  
21 last time and said no, this is what needs to go before the jury; I can't just pick some  
22 random number.

23 THE COURT: That's what I had in mind, Mr. Greenberg, that just because  
24 the Court says there is liability, you still do have a necessary step to calculate the

1 damages. And if the defendants are going to say you can't -- the calculation is  
2 wrong.

3 MR. GREENBERG: Your Honor, they haven't said that. That's the problem  
4 is in their opposition in the record in response to the partial summary judgment  
5 motion they say their expert says you should look at the trip sheets, okay. We're  
6 looking at the payroll records. The partial summary judgment motion is based on  
7 the payroll records. Defendants testified at their 30(b)(6) deposition the payroll  
8 records for 2013 to 2015 --

9 THE COURT: So, Ms. Rodriguez, are you saying that the impact or import  
10 of the testimony you would produce or evidence you would produce is that you have  
11 to use the trip sheets in order to arrive at -- in other words, you can't rely --

12 MS. RODRIGUEZ: Right.

13 THE COURT: -- on --

14 MS. RODRIGUEZ: The tool.

15 THE COURT: -- the evidence which was turned over from the defendants  
16 to the plaintiffs as a way to calculate the damages?

17 MS. RODRIGUEZ: Well, that's one part of it, Your Honor. One, we are  
18 arguing you need to look at the source documents rather than this abstract tool  
19 for the appropriate calculation.

20 THE COURT: How can I let you still make that argument if I have essentially  
21 said that they are entitled to rely upon the evidence produced by the defendant in  
22 the form of -- you're going to have to help me out.

23 MS. RODRIGUEZ: Well --

24 MR. GREENBERG: The QuickBooks records, Your Honor.

1 THE COURT: I'm sorry?

2 MR. GREENBERG: The QuickBooks records.

3 THE COURT: The QuickBooks records.

4 MS. RODRIGUEZ: That was always our argument was that what we were  
5 ordered, what A Cab was ordered to produce by the Discovery Commissioner was  
6 nothing that was kept in the normal course, and it was pieces of data that Mr.  
7 Greenberg specifically wanted. He wanted certain parts of the data and then --

8 THE COURT: Okay. But didn't -- wasn't that argument overruled?

9 MS. RODRIGUEZ: No, Your Honor, it wasn't. Your Honor agreed with it. If  
10 you're talking about the Court, or are you talking about the Discovery Commissioner?

11 THE COURT: The Discovery Commissioner.

12 MS. RODRIGUEZ: Yes. She said you have to give him what he wants.  
13 You have to go back and you have to produce all this, the different sets, Excel  
14 spreadsheets and things like that. We gave that to him. He's used certain portions.  
15 By his own expert's admissions they've only used certain portions. They've ignored  
16 other portions to come up with their own figures.

17 THE COURT: Certain portions of the QuickBooks?

18 MS. RODRIGUEZ: Yes. So --

19 THE COURT: What have they -- and let's make it to --

20 MS. RODRIGUEZ: Hours. The big question is hours.

21 THE COURT: Okay.

22 MS. RODRIGUEZ: That's where the big dispute is.

23 THE COURT: And they -- what else in the QuickBooks have they ignored?

24 MS. RODRIGUEZ: I can't tell you off the top of my head, Your Honor. Again,

1 I wasn't prepare to re-argue this. I can go back and look at my notes from -- because  
2 I know I have a very large stack from the last time we were here.

3 THE COURT: Yeah.

4 MS. RODRIGUEZ: But one thing that I would mention, Your Honor, and I was  
5 going to ask the Court when our motions in limine are actually set because I do have  
6 motions on these particular issues, on both Dr. Clauretie's opinions and Mr. Bass'  
7 opinions as to whether they're even proper for consideration because whether they're  
8 proper -- and this is what we argued the last time, whether the Court will deem them  
9 admissible or not, admissible evidence. He has to have admissible evidence for you  
10 to rule in his favor on summary judgment that he's asking you to jump over and rule  
11 again this morning. So, I --

12 THE CLERK: The motions in limine?

13 MS. RODRIGUEZ: Yes, ma'am.

14 THE CLERK: The 23rd.

15 MS. RODRIGUEZ: The 23rd of January. And we have our pretrial and  
16 calendar call on the 18th? Because I was going to ask Your Honor what all you  
17 expect us to bring at that -- what the expectation is for our calendar call on the 18th.

18 THE COURT: What's our trial date, then?

19 MS. RODRIGUEZ: February 5th.

20 THE COURT: Well, it's certainly not an ideal way, but I don't really want to  
21 change the timing of those. If we have -- if you come to calendar call and we set  
22 the -- you know, we -- is it a fixed date? Is it a set date?

23 MS. RODRIGUEZ: Yes. February 5th.

24 THE COURT: Okay. So we know that it's going to go forward.

1 MS. RODRIGUEZ: The trial date.

2 THE COURT: Yeah.

3 MR. GREENBERG: For the stack, Your Honor. Yes.

4 THE CLERK: It's just on the stack.

5 THE COURT: All right. So the only thing that's subject to is whatever  
6 happens as a result of your motions in limine and what the impact of that is, which  
7 will have to be sorted out completely before we start this trial. Nothing in this case  
8 seems to go according to the norm.

9 MR. GREENBERG: I understand, Your Honor. If I could --

10 THE COURT: Yeah, go ahead.

11 MR. GREENBERG: Your Honor, in respect to the issue of the calculations  
12 that were presented, the \$174,000 or so I was mentioning to Your Honor in the  
13 partial summary judgment motion, again, defendants' expert reviewed the data that  
14 was compiled --

15 THE COURT: Uh-huh.

16 MR. GREENBERG: -- and summarized from the QuickBooks. His testimony  
17 was: "Dr. Clauretie's review of the math I think is good." Okay. He examined the  
18 spreadsheet, he examined the A Cab all file, the payroll analysis that was done.  
19 It's in the record before the Court.

20 THE COURT: I think we're talking about apples and oranges. When I say  
21 to Ms. Rodriguez, do you contest the calculation, she goes back to, yes, we think  
22 you have to use the trip sheets. But what I really meant by that -- you're talking just  
23 calculation of the math and you're saying, look, there's no contrary evidence, and  
24 I think as to that you're probably correct.

1 MR. GREENBERG: Well, Your Honor --

2 THE COURT: So what I think is missing in all this is the impact of my ruling  
3 because I think that essentially what I'm saying is that the defendant -- I mean, the  
4 plaintiff is entitled to rely upon for the calculation of damages the QuickBooks that  
5 were produced by the defendant. I understand that the defendant believes that the  
6 trip sheets must be consulted, but in this kind of a case I think that it is appropriate  
7 where you have a Discovery Commissioner that has ordered you to produce what  
8 the records -- you know, a compilation of what the records indicate is the calculation,  
9 is the math, is the numbers.

10 MS. RODRIGUEZ: But the only thing in the QuickBooks, Your Honor, is the  
11 pay. That's why we come back to when you actually test the source documents,  
12 test the trip sheets like our expert did, then you show there was an adequate -- this  
13 subsidy was enough to meet the driver -- to meet the driver's pay.

14 THE COURT: But isn't the QuickBooks -- the pay is dependent upon the  
15 hours that are also used in the calculation, is it not?

16 MS. RODRIGUEZ: From the trip sheets.

17 MR. GREENBERG: For 2013 through 2015, the QuickBooks records hours  
18 worked for each driver for every two week pay period. This is documented in the  
19 presentation to the Court. It is in the spreadsheet that was relied upon and it was  
20 reviewed by defendants' expert, Your Honor. So the hours for this period are in the  
21 QuickBooks records, along with the compensation that was paid every pay period,  
22 Your Honor. So the calculation flows as a matter of course, therefore, Your Honor.

23 MS. RODRIGUEZ: And his reference to our expert saying, yes, the math is  
24 right, this was after asking the question ten times and it was a very limited admission.

1 He basically asked the expert, well, if you use A and you use B, isn't it true that that  
2 will come up with C? And what Mr. Leslie ended up saying was, well, yeah, if you  
3 use those factors one plus one is going to equal two. The math was right using the  
4 source that Mr. Greenberg was using. But what Mr. Leslie said was, but no, if you  
5 actually look at reality rather than theory, the numbers don't add up. The numbers  
6 are not right. And I will give you specific examples, which his experts did not.  
7 His experts never looked at a source document to come up with their numbers.  
8 Everything is a theory. It's an estimate, by their own admissions. Our expert looked  
9 at actual documents, did a calculation, came up with different numbers entirely,  
10 and Your Honor considered this.

11 THE COURT: Then why weren't those different numbers used for the  
12 calculation, for the math calculation that was in the QuickBooks?

13 MS. RODRIGUEZ: The QuickBooks don't -- you have to go to the trip sheets  
14 to actually look at the breaks, to actually look at the actual hours, and those  
15 documents are there. Those documents --

16 THE COURT: Well, here's what I'm asking you.

17 MS. RODRIGUEZ: They were used for the QuickBooks. They were used  
18 for the QuickBooks, Your Honor. I know what you're asking me. I'm trying to  
19 answer it --

20 THE COURT: Yeah.

21 MS. RODRIGUEZ: -- because I can see what you're picturing. But that's  
22 why I'm saying the QuickBooks are only --

23 THE COURT: I'm picturing that if you produce something that is in response  
24 to a discovery request that says --



1 MS. RODRIGUEZ: Uh-huh.

2 THE COURT: -- based on the documents we have here's the calculation  
3 of the hours and here's the calculation of the hourly wage.

4 MS. RODRIGUEZ: No. What we gave per order and in compliance with  
5 what the Discovery Commissioner ordered, she ordered an external hard drive  
6 to contain all of those trip sheets and turn that over to -- we had them all copied,  
7 thousands and thousands of PDFs onto an external hard drive, the actual source  
8 documents as well as the paystubs, give those to Mr. Greenberg. We gave those  
9 to Mr. Greenberg. Then he wanted other things, and actually the timing was the  
10 other way around. First he wanted the QuickBooks' pay rather than the paystubs.  
11 We gave to him in electronic format. Then we came back and gave him the paper  
12 documents.

13 THE COURT: Okay. None of that changes the fact that this was a  
14 QuickBooks document analysis --

15 MS. RODRIGUEZ: Uh-huh.

16 THE COURT: -- that came from the defendants to the plaintiffs --

17 MS. RODRIGUEZ: Right.

18 THE COURT: -- that included hours worked and the pay.

19 MR. NADY: No.

20 THE COURT: No?

21 MS. RODRIGUEZ: No. That's what I'm telling you, Your Honor. That does  
22 not have --

23 MR. NADY: It says when they came and when they left.

24 THE COURT: Well, Mr. Greenberg, does it include the hours worked or not?

1 MR. GREENBERG: Your Honor, it did, and this was briefed. I can read  
2 you Mr. Nady's deposition testimony that was part of -- it was part of the motion  
3 for summary judgment. Mr. Nady testified --

4 THE COURT: I assume this whole thing comes out in a spreadsheet.

5 MR. GREENBERG: Well, yes, Your Honor. That was ultimately what was  
6 processed and provided because we --

7 THE COURT: And one of the columns is the hours worked?

8 MR. GREENBERG: That is correct, Your Honor. There was a figure that  
9 was kept every payroll period that was minimum --

10 THE COURT: And that hours worked column was information supplied by  
11 the defendant?

12 MR. GREENBERG: It was supplied by the defendant. And Mr. Nady testified  
13 that that information was more accurate than the trip sheets. Quote: "While the trip  
14 sheets didn't reflect when they came in and dinked around five or ten minutes or  
15 when they came in and dinked around for five minutes."

16 THE COURT: Well --

17 MR. GREENBERG: We put that time -- he was testifying that we put that  
18 extra time into those payroll records from 2013 to 2015.

19 THE COURT: What is the effect of that, then?

20 MR. GREENBERG: Well, according to Mr. Nady's testimony --

21 MS. RODRIGUEZ: It's different.

22 THE COURT: Here's what I -- let me finish.

23 MR. GREENBERG: Yes.

24 THE COURT: What is the effect of them giving you a document that purports

1 to be something that includes the hours worked and the pay -- you know, what the  
2 resulting pay is?

3 MR. GREENBERG: The effect is they're bound by it because they never  
4 disputed that it was accurate, Your Honor. Under oath they asserted that it was  
5 accurate.

6 THE COURT: What authority do you rely on to say they're bound by it?  
7 In other words, here's what I'm getting at. Is there still room in this trial for them  
8 to dispute that, the accuracy?

9 MR. GREENBERG: No, there isn't, Your Honor. They produced a 30(b)(6)  
10 witness who was specifically instructed to testify as to the accuracy of these records.  
11 He testified that they were accurate. He testified they were more accurate than the  
12 trip sheets in terms of what they recorded as to the hours worked. In opposition --

13 THE COURT: Then why would we allow -- why would we allow countervailing  
14 testimony? Why would we allow countervailing testimony?

15 MS. RODRIGUEZ: He's taking that completely out of context, Your Honor,  
16 and I can pull multiple transcripts before the Discovery Commissioner where we  
17 went before the Discovery Commissioner with Mr. Nady even present, indicating  
18 the source documents show the hours, show the start times, show what he just  
19 mentioned about the drivers showing up ahead of time, they get an extra six  
20 minutes, the break times. All of that has to be reviewed right out of the source  
21 documents. And we told the Discovery Commissioner this way back when and she  
22 still ordered the production over to Mr. Greenberg of the electronic data that does  
23 not capture all of that information. And she cautioned him as well to be careful  
24 on how he was going to use that because this is where we're at. He's picked and

1 chosen certain parts to advocate that this is the proper number. But that's why  
2 we got an expert --

3 THE COURT: You're saying that --

4 MS. RODRIGUEZ: -- to say no, this is not the proper number.

5 THE COURT: You're saying that he has taken the material, and this was in  
6 what, on a hard drive? The QuickBooks spreadsheet was what?

7 MS. RODRIGUEZ: Uh, it's been in a number of fashions because it's so big.

8 THE COURT: Okay.

9 MS. RODRIGUEZ: We've had to do like drop files.

10 THE COURT: So he took -- you're saying he took that and although it said --  
11 when you gave it to him --

12 MS. RODRIGUEZ: Uh-huh.

13 THE COURT: -- it had certain -- for a given individual a certain number of  
14 hours worked.

15 MS. RODRIGUEZ: Uh-huh.

16 THE COURT: That he changed those hours?

17 MS. RODRIGUEZ: Oh, I don't know if he changed those hours, Your Honor,  
18 because what his experts, who created the document said, was that they just  
19 plugged in hours as instructed by Mr. Greenberg, okay. And that's why I -- and  
20 I cited to their deposition. That's why I'm referencing my hearing on the motions  
21 in limine because the actual tool itself, the spreadsheet, what they're calling a tool  
22 is unreliable. It should never even come into this case, into this trial. And that's  
23 what they're relying upon for summary judgment. That's why we hired an expert  
24 to show --

1 THE COURT: Who has the legal obligation to keep those records?

2 MR. GREENBERG: The defendant, Your Honor.

3 MS. RODRIGUEZ: The defendant has those records, Your Honor.

4 THE COURT: Well --

5 MS. RODRIGUEZ: And again, I need to come back to this because he made  
6 a representation to the Court that the employer was admonished by, you know,  
7 federal agencies for not keeping records. That's absolutely not true. We go back  
8 to the --

9 THE COURT: Okay. Well, I don't -- right now I don't care about that. That's  
10 not the issue.

11 MS. RODRIGUEZ: Okay. Well, it's not true. The records are there.

12 THE COURT: The question in my mind right now is whether or not you  
13 would be precluded from bringing at trial evidence to dispute the accuracy of the --

14 MS. RODRIGUEZ: Abso--

15 THE COURT: Just a minute. The accuracy of the hours worked if it is true  
16 that that is in a document that you gave to the defense -- I mean, to the plaintiff --

17 MS. RODRIGUEZ: Uh-huh.

18 THE COURT: -- in response to a request for that.

19 MS. RODRIGUEZ: Uh-huh.

20 THE COURT: And if you have testimony from Mr. Nady -- if you do, that --  
21 I mean, you know --

22 MS. RODRIGUEZ: Uh-huh.

23 THE COURT: -- this is assuming this -- testimony that that is more accurate  
24 than the trip sheets.

1 MS. RODRIGUEZ: Your Honor --

2 THE COURT: If that's the case, then the question in my mind is do you even  
3 get to put on countervailing testimony?

4 MS. RODRIGUEZ: Well, Your Honor, from day one I, as their representative,  
5 as well as Mr. Nady, have come into this court and come repeatedly before the  
6 Discovery Commissioner, repeatedly over and over and over saying the trip sheets  
7 are the most reliable document that capture hours. We've never said anything to  
8 the contrary. It's Mr. Greenberg who is always wanting to rely on this electronic  
9 manipulation, for lack of a better term. The Discovery Commissioner said I don't  
10 like you using the word manipulation because I kept telling her that, that he was  
11 manipulating numbers to come up with a final number and it wasn't necessarily  
12 what was captured in the normal business course.

13 MR. GREENBERG: Your Honor, this was all documented in the record on  
14 the partial summary judgment. Your Honor arrived at a finding that there were no  
15 material issues in dispute sufficient for plaintiff to establish --

16 THE COURT: Yeah. And the reason -- part of the reason for that is the  
17 belief that if this is a document, a product, a piece of evidence produced from  
18 the defense to the plaintiff purporting to be the hours worked and the calculation  
19 therefrom --

20 MS. RODRIGUEZ: Right.

21 THE COURT: -- then I didn't see how there could be, then, a factual dispute.

22 MR. GREENBERG: There isn't.

23 MS. RODRIGUEZ: Your Honor, and that's what -- you know, Mr. Wall was  
24 redirecting -- I guess I'm missing the focus of your question, so let me clarify and

1 maybe he may want to speak to this because I missed the actual question.

2 No, the defendants did not purport that. We were ordered to produce a certain  
3 amount of information. And I've said the opposite. We've never said that those  
4 are the accurate representation of the pay -- or, excuse me, of the hours.

5 THE COURT: Well, he's claiming that Nady said that in his deposition.

6 MS. RODRIGUEZ: Well, no, Nady didn't say that.

7 MR. GREENBERG: Your Honor --

8 THE COURT: You got that handy?

9 MR. GREENBERG: Yes. Yes, I do, Your Honor.

10 THE COURT: All right, here's what I want.

11 MR. GREENBERG: Yes.

12 THE COURT: I want you to submit to me that deposition. I don't want to  
13 go hunt it up.

14 MR. GREENBERG: Of course.

15 THE COURT: The portion where he says that it's more accurate than the  
16 trip sheets.

17 MR. GREENBERG: Okay.

18 THE COURT: I want any authorities from either of you about how we're to  
19 handle that issue at trial. Is it something where the -- that plaintiff is correct that you  
20 can't dispute at trial the mathematical accuracy because you don't have witnesses  
21 who will, if your expert says the math is correct and if Mr. Nady says that that's  
22 accurate, that that's more accurate than the trip sheets.

23 Secondly, if you have that do you get to present countervailing  
24 evidence or is that -- or should the order on this motion be that since you do not

1 have any evidence that the math is wrong, that the motion itself is granted, partial  
2 summary judgment for the lesser amount and that issue is removed from trial?  
3 That's what I need from both of you, authorities on how we're to handle that at trial.  
4 Is that a done deal or can the defendant come in and contest the accuracy of the  
5 product that they submitted? I need the Discovery Commissioner's order in order  
6 to know whether that order is -- leads to the conclusion that this was accurate or  
7 whether it was clouded, as the defendant indicates, that they never agreed that it  
8 would be an accurate accounting.

9 MR. GREENBERG: Okay. Your Honor, this was all addressed in the briefs  
10 that were submitted. If your law clerk were to review them --

11 THE COURT: All right.

12 MR. GREENBERG: -- I'm sure they could --

13 THE COURT: Okay. If you're content to rest on that, that's fine, we'll do that.  
14 I will take a look at it.

15 MS. RODRIGUEZ: I would like to submit, Your Honor, because I would like  
16 to pull the Discovery Commissioner's orders and transcripts and our representations  
17 repeatedly about this information. I think it's important based on the Court's  
18 inclination to not allow the defendant to dispute this because I thought we went  
19 through all of this the last time and the Court was persuaded this was an issue for  
20 the jury, and so I'm not really sure why we're back to square one.

21 THE COURT: It may be -- it may still be, but it may be that there's a jury  
22 instruction that says that this -- the jury may take this as an admission by the  
23 defendant, and yet still allow you to put on some evidence as to the calculation,  
24 that it's an inaccurate calculation. I have to do something to figure out what do you



1 do with a document that purports to be --

2 MS. RODRIGUEZ: Uh-huh.

3 THE COURT: -- produced by the defense in response to this order and  
4 purports to be, if Mr. Greenberg is correct, by Mr. Nady that this is more accurate.

5 MS. RODRIGUEZ: Would Your Honor be inclined to hear this at the same  
6 time as our motions in limine issue because they go hand in hand --

7 THE COURT: No.

8 MS. RODRIGUEZ: -- with the problem with his expert's calculations. It's  
9 the very same question.

10 THE COURT: No. If you want to get something to me, you need to do it in  
11 very short order and I need to get this resolved. We're not getting issues that must  
12 be resolved in order for both sides to prepare for trial and the Court to prepare for  
13 trial.

14 MS. RODRIGUEZ: But, Your Honor, his whole tool was created by these two  
15 experts and there's some major problems with these two experts. And that's what  
16 the Court is going to hear on the 23rd, I believe. That's why I'm arguing that they're  
17 the same.

18 THE COURT: Well, there's nothing that says that whatever I decide, based  
19 on the authorities that you're going to give me and that I already have from Mr.  
20 Greenberg, could still be subject to whatever the Court decides on the 23rd if the --  
21 No, I take it back. You're right. It would be better to simply resolve it on the 23rd.

22 MR. GREENBERG: We then should be prepared to address it at that time.  
23 And I think Your Honor is correct, there are two fundamental issues here. Is the  
24 information provided accurate for making a resolution before the Court and are the

1 calculations based on that information in fact undisputed. So -- and I think Your  
2 Honor needs to examine those --

3 THE COURT: Well, and I think probably an important issue is whether it was  
4 purported to be accurate.

5 MR. GREENBERG: Well, right. Is it in fact something that should bind the  
6 parties here --

7 THE COURT: Yeah.

8 MR. GREENBERG: -- and are the calculations made on that information  
9 accurate? I think Your Honor understands --

10 THE COURT: Well, either to bind or at least to be admissible with some sort  
11 of instruction that indicates that when you have an order out of the Court to do this  
12 and you produce that, it's an admission.

13 MR. GREENBERG: Your Honor, the issues you were raising are addressed  
14 at pages 3 to 5 and 10 to 11 of the reply on the partial summary judgment --

15 THE COURT: Okay.

16 MR. GREENBERG: -- if that would assist your clerk. Those are the pages  
17 where you will find the discussion as to the corroboration of the records' authenticity  
18 and the correctness of the calculations that were presented that we were discussing.

19 THE COURT: Okay. I would still like to get anything you're going to submit  
20 in short order.

21 MR. GREENBERG: Okay. We will be prepared to address this, you said  
22 on the 22nd, is that it?

23 THE COURT: 23rd.

24 MR. GREENBERG: The 23rd. Okay. When would Your Honor like --


1 THE COURT: But I don't -- yeah, I don't want to wait 'til then --  
2 MR. GREENBERG: Yes.  
3 THE COURT: -- to get the authorities.  
4 MR. GREENBERG: When would Your Honor like to have anything submitted  
5 in connection with this?  
6 THE COURT: I think probably a week should do it.  
7 MR. GREENBERG: So that would be by the 20th, we'll say. Okay.  
8 THE COURT: No. No, no. A week.  
9 MR. GREENBERG: Not by the 20th. I apologize. The 17th.  
10 THE COURT: No. A week from now.  
11 THE CLERK: One week is the 9th.  
12 MR. GREENBERG: A week from now. Oh, okay, I understand. The 9th.  
13 That's fine, Your Honor.  
14 THE COURT: All right. A week from now any additional authorities you're  
15 going to submit.  
16 MR. GREENBERG: We will --  
17 THE COURT: And I'm not asking for a complete rehash. Based on what I've  
18 said, I think you know where I'm going and the question I need to know is for some  
19 reason is there not a record -- something in the record to warrant such -- (inaudible).  
20 MS. RODRIGUEZ: Uh-huh. I will, Your Honor.  
21 MR. GREENBERG: I will have something submitted on the 9th. I will try to  
22 keep it brief, Your Honor.  
23 THE COURT: All right. Okay.  
24 MR. GREENBERG: Thank you, Your Honor.

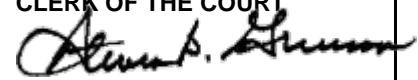
1 THE COURT: Thank you.  
2 MS. RODRIGUEZ: Thank you, Judge.  
3 THE COURT: You're going to do the order from today.  
4 MR. GREENBERG: I will, Your Honor.  
5 THE COURT: Okay.  
6 MR. GREENBERG: And I should have it circulated to defense counsel no  
7 later than Monday.  
8 THE COURT: Very good.  
9 MR. GREENBERG: Thank you, Your Honor.  
10 MS. RODRIGUEZ: Thank you.  
11 THE COURT: Thank you.

12 (PROCEEDINGS CONCLUDED AT 12:04 P.M.)

13 \* \* \* \* \*

14  
15 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
16 audio/video proceedings in the above-entitled case to the best of my ability.

17   
18 Liz Garcia, Transcriber  
19 LGM Transcription Service  
20  
21  
22  
23  
24



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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

Case No.: A-12-669926-C

Dept. No. I

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

**DEFENDANTS' SUPPLEMENT AS ORDERED BY THE COURT ON JANUARY 2, 2018**

Defendants, by and through their attorneys of record, hereby submit this Supplemental information as ordered by the Court on January 2, 2018. At the scheduled hearing on Defendants' Motion for Summary Judgment, Plaintiffs' counsel addressed the issue of Plaintiffs' Motion for Partial Summary Judgment that had been previously heard on December 14, 2017. As a result of that prior hearing, the Court had already ordered 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 DENIED as to Motion to Place Evidentiary Burden on Defendants to Establish Lower Tier Minimum Wage and Declare NAC 608.102(2)(B) Invalid and

GRANTED only to the extent Plaintiff has established the liability claim; the only thing left are the damages. (*Court Minutes*, 12/14/17.)

At the January 2, 2018 hearing on Defendants' Motion for Summary Judgment, and the unilateral reopening of arguments on Plaintiffs' Motion for Summary Judgment by Plaintiffs' counsel, Leon Greenberg, the Court ordered that Defendants should provide additional authority as to why they should be allowed to contest the accuracy of the data and numbers prepared by Plaintiffs at the upcoming trial.

### **POINTS AND AUTHORITIES**

#### **I. OVERVIEW IN RESPONSE:**

Since the commencement of this action, over 5 years now, Defendants have consistently maintained that the source documents are the most accurate documents for any calculation of hours and wages for each employee. Defendants have never swayed from this position. The source documents, by law, have always been available to any employee who requests a copy of his/her own information. A Cab keeps all source documents in compliance with all State and Federal laws. *See* NRS 706.8844.<sup>1</sup> Contrary to Plaintiffs' statements to the Court, A Cab has not been found to be in

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<sup>1</sup> NRS 706.8844 Trip sheets.

1. A certificate holder shall require the certificate holder's drivers to keep a daily trip sheet in a form to be prescribed by the Taxicab Authority, including, without limitation, in electronic form.

2. At the beginning of each period of duty the driver shall record on the driver's trip sheet:

(a) The driver's name and the number of the taxicab;

**(b) The time at which the driver began the period of duty by means of a time clock provided by the certificate holder;**

\*\*\*

4. At the end of each period of duty the driver shall record on the driver's trip sheet:

**(a) The time at which the driver ended the period of duty by means of a time clock provided by the certificate holder; (NRS 706.8844) *emphasis added***

1 violation of record keeping laws by state and federal agencies.

2 Plaintiffs, to the contrary, have argued that they needed every variety of data, documents, and  
3 information - most of which was not kept in the normal business course - but had to be created to  
4 appease Plaintiffs. At great expense to the company, both in terms of manpower hours to complete  
5 the tasks and the sheer number of copies, thousands of documents have been copied in paper form  
6 and electronically and provided to Plaintiffs' counsel in this matter. As confirmed by the Plaintiff  
7 representatives and the Plaintiffs' experts all efforts and expenditures by A Cab were for naught, as  
8 nothing was ever even reviewed by the requesting party. (The Court has the excerpts and citations  
9 in prior briefing, to the depositions of Plaintiffs' experts wherein they concede their lack of review.)

10 Of note is the inconsistency before the Court wherein Plaintiffs have repeatedly argued  
11 against their current position, that **A Cab did not keep accurate records**. See Plaintiffs'  
12 Complaint: "Defendants intentionally acted to not institute **any** system that would keep an express,  
13 confirmed and **accurate record** of the hours worked by such taxi driver employees..." *Second*  
14 *Amended and Supplemental Complaint*, ¶ 17. Plaintiffs now make a 180 degree turn, asking the  
15 Court to accept as definitive the number of hours their experts offer of the "hours worked" based  
16 upon select portions of Defendants' records.

17 Following Plaintiffs' most recent oral request for reconsideration, the Court is now indicating  
18 its inclination to tie the Defendants' hands at trial from demonstrating *actual* hours worked, as  
19 opposed to Plaintiffs' estimates. Already Defendants are in the position of having to disprove a  
20 negative of estimates, when the burden of proof should be borne by the Plaintiffs. In support of their  
21 failure to acquire actual hours, Plaintiffs argue the records are too voluminous for review. Had  
22 Plaintiffs commenced looking at even 1 record 5 years ago, the task at hand would be manageable.  
23 Further, each Plaintiff is in a position to review his/her own record, and determine if he or she has  
24 actually been underpaid. No one has bothered to do that. As confirmed in their depositions, the  
25 representative Plaintiff merely signed up for a class action with the attitude of "if I get something, I  
26 get something."

27 Now on the eve of trial, Plaintiffs present a very limited set of data which they request the  
28 Court to accept as "undisputed," but which has been shown to be unreliable by the only expert who

1 actually tested the data, Scott Leslie.

2 The Court indicated that if Defendants had provided sworn discovery responses indicating  
3 that the data provided to Plaintiffs represented hours worked by each driver, then they should be  
4 precluded from disputing this fact at trial. In response, a thorough search was conducted for any  
5 discovery response indicating such a statement; and there is none. To the contrary, the following  
6 examples support that A Cab has disputed the accuracy of presenting the limited information  
7 provided by Plaintiffs for the proposition which they say it represents.

8 **II. Discovery Responses:**

9 The issue of time records was addressed in August 2013 before certification, and the  
10 response referenced the tripsheets as the source document for ascertaining hours. In the Response to  
11 Plaintiffs' First Request for Production of Documents, Defendant indicated that the information of  
12 time a driver worked was contained in the daily tripsheets:

13 Request No. 4. TIME RECORDS - Produce copies of all documents that set forth the amount  
14 of time the named plaintiffs and all persons similarly situated to the named plaintiffs were working  
15 for defendants each day or each week while they were employed by the defendants from October 8,  
16 2008 through the present. This request includes production of all records such as "punch clock"  
17 entries and taxicab meter records, indicating times of day that such person performed, started, or  
18 ended, particular activities during any workday they were employed by defendants, whether or not  
19 defendants considered such times to be part of the time such persons were "working," including, but  
20 not limited to, the times such persons arrived at or left defendants' business location or the times  
21 they started or ended rest or meal breaks. This information, if created, kept or maintained and fully  
22 available in computer file form, is sought in that form and you should contact plaintiff's counsel to  
23 arrange for production of such computer file(s) in an appropriate format. In the event that such  
24 materials are not available in computer file form, the information sought in paper form would  
25 include, but not be limited to, copies of ledgers, time clock punch cards, or reconciliations or other  
26 writings reflecting the amounts of time each such employee was working, or that records other  
27 activities including activities that the defendants may have not deemed to be work, during each such  
28 person's workday(s) while they were employed by the defendants.



**RESPONSE NO. 4:** Objection, this request is overbroad in terms of time pursuant to NRS 608.260; requests information that would invade the privacy of individuals not a party to this litigation; and is vague and ambiguous. This request also calls for proprietary information as *the information is contained on A Cab's trip sheets*. This Request also seeks information the discovery of which is overly burdensome to Defendant as there are approximately 46,080 trip sheets per year which are not kept by name of employee. Without waiving these objections, Defendant will make a diligent search for responsive documents, and will copy and produce those within 30 days. (**Exhibit 1**, Response to Plaintiffs' First Request for Production of Documents dated August 26, 2013, emphasis added.)

In Plaintiffs' request above, it is clearly stated that "In the event that such materials are not available in computer file form, the information sought in paper form would include, but not be limited to, copies of ledgers, time clock punch cards, or reconciliations or other writings reflecting the amounts of time each such employee was working, or that records other activities including activities that the defendants may have not deemed to be work, during each such person's workday(s) while they were employed by the defendants."

Defendants have always maintained that this information is only available on the tripsheets, and is not in a computer file form. Defendants have provided Plaintiffs with hard copies of all the tripsheets for both named Plaintiffs. Defendants have also provided Plaintiffs with scanned copies (PDF files) of all tripsheets for the class period. To address the Court's inquiry, Defendants have never sworn in a discovery response that the time records are kept in the Quickbooks electronic data which Plaintiffs now seek to rely upon. This is no secret kept from Plaintiffs; they have known this from every discovery response, discovery hearing, and depositions that they should commence review of source documents; and yet insisted on choosing this route.

### **III. Deposition Transcripts:**

Each of A Cab's management employees who were deposed referred Plaintiffs to the accuracy of the trip sheets for determining hours worked; not to any information contained in Plaintiffs' electronic data.

...

1. **Deposition of Jon Gathright, General Manager:**

BY MR. GREENBERG:

Q. To your knowledge, has A Cab ever kept records of the hours its taxi drivers work **besides the information that is recorded in their trip sheets?**

A. No. (**Exhibit 2**, Deposition of Jon Gathright, p. 55:3-7, emphasis added.)

Q. What would the trip sheets tell A Cab that would help them reach the conclusion that they were seeking about whether the drivers were or were not paid minimum wage?

A. They had a time in and a time out.

Q. So it is correct that A Cab engaged in this review of the trip sheets for the purpose of determining the hours that the cab drivers had worked in particular --

A. That's correct.

Q. -- time periods?

A. Yes. (**Exhibit 2**, Deposition of Jon Gathright, p. 56:21 - 57:6.)

2. **Deposition of Edwin Borowski, Shift Supervisor:**

BY DANA SNIEGOCKI:

Q. You don't know how you know drivers work eleven hour shifts?

A. By looking at their time that they come in I put them up, but I don't know if they work, how many hours they work.

Q. You mentioned looking at the time when they come in. What is their time when they come in? What does that mean?

A. It's the time is when they clock out.

Q. How do they clock out?

A. With a time clock.

Q. How do they operate that time clock?

A. They do it. I don't know.

Q. Well, you said you would look at their time that they clock out?

A. Yeah. *It's on the back of trip sheet.*

Q. So there's a time on the back of the trip sheet?

1 A. Yes.

2 Q. How does that time get there?

3 A. The driver puts it on there.

4 Q. And he does that by using a time clock?

5 A. Uh-huh. (**Exhibit 3**, Deposition of Edwin Borowski, p. 68:13 - 69:10, emphasis added.)

6 **3. Deposition of Sam Wood, Supervisor:**

7 BY LEON GREENBERG:

8 Q. Did you review those trip sheets when you were a manager, I mean after they were  
9 completed by the drivers and turned back into A Cab?

10 A. I would check them for legibility.

11 Q. Would you check them for anything else?

12 A. Validity.

13 Q. What would you check to see was valid?

14 A. Rides. There was no certain way to prove it or anything but if something looked out of  
15 order and their rides or their break time, if it overlapped, say, a trip, you know, we would  
16 have to -- there would be something wrong. (**Exhibit 4**, Deposition of Sam Wood, p. 32:5-  
17 16.)

18 Q. What would you find on a trip sheet that was incorrect or not making sense when you  
19 reviewed it as a manager that you would then do something about?

20 A. **The times.**

21 Q. What do you mean by times?

22 A. If a break or a ride they have the end time and the out time, in time and out time, if they  
23 interfered with each other it would be -- it would need to be corrected.

24 Q. So if the trip sheet indicated a driver was simultaneously on a break while also transporting a  
25 passenger that would be an inconsistency that you would take note of; correct?

26 A. Yes.

27 Q. What would you do in that situation?

28 A. I would have the driver correct it. Ask him to correct it so that we can more clearly read the

1 sheet. (**Exhibit 4**, Deposition of Sam Wood, p. 33:1-19, emphasis added.)

2 **4. Deposition of Creighton J. Nady, Owner**

3 Mr. Nady's deposition was taken on three occasions by Plaintiffs in this matter, over the  
4 objections of defense counsel. The Discovery Commissioner allowed his additional depositions to  
5 be taken with the instruction that there would be different lines of questioning, not to re-ask the same  
6 questions yet again. In his first deposition taken on August 18, 2015, Mr. Nady was asked  
7 pertaining to hours on tripsheets and in Quickbooks:

8 Q. [D]oes she [payroll person] actually enter into the QuickBooks system a number of hours per  
9 shift?

10 A. No. I think she puts it on the trip sheet. (**Exhibit 5**, Deposition of Creighton J. Nady, 8/18/15  
11 p. 119:22-24.)

12 Q. Since the institution of this lawsuit, has it [A Cab] been keeping that information, the total  
13 number of hours of each driver during each pay period?

14 A. I think -- I think you'll find **if you look at the trip sheets**, you'll find how many hours was on  
15 that paycheck. I think if you look at the trip sheets as they're stapled together, there will be a  
16 note on each one of those weeks for every person how many hours there was. It's either on a  
17 big thing on each page, or it's on a tape from an adding machine with the number of hours  
18 added up there. And you could see then the tape where we added 8, 12, 10, 11, 5, 4, 6, 7,  
19 whatever we had. We would put that on the tape, put them together, and that would be what  
20 we would use as -- when we were calculating payroll. That's the way it was.

21 Q. Okay. So what you're telling me is that if a driver worked ten shifts in a payroll period, the  
22 person responsible for payroll would take those ten trip sheets from those shifts, go through  
23 each one of them, manually add them up with a calculator for pay period total of hours based  
24 upon those ten trip sheets and then staple that piece of paper from the adding machine to  
25 those ten trip sheets; is that correct?

26 A. That's how we used to do it, yes. *Id.*, 122:18-123:16.

27 Later in this first deposition, Mr. Nady was asked repeatedly about the number which is  
28 reflected in one of the Quickbooks columns, which has now been taken out of context. Mr. Nady

1 indicated more than 5 times that he did not know what that number reflected, and would not confirm  
2 that it reflected what Plaintiff's counsel desperately wanted him to confirm. As this Court is aware,  
3 basic deposition practice dictates that the question should not be asked more than once after it has  
4 been answered by the witness. Further, Plaintiffs' counsel was instructed by the Discovery  
5 Commissioner on this issue to ask the question once, and to move on. Here, the line of questioning  
6 reflects a badgering of the witness after he indicated he did not have knowledge as to what Plaintiff  
7 was seeking:

8 Q. What does that number 57.08 refer to?

9 A. Well, minimum wage subsidy is based on the fact that our total number of his total wages  
10 were not enough; that if we did his calculation based on the number of hours that he had, it  
11 was -- that his rate of pay would have been 4.27 an hour. Wait a second. Let me make sure  
12 of what I speak here. So we had to -- he had 57.8 hours of hours, and we subsidized it from  
13 4.27. So I think if you add those two together, and you multiply one times the other, you get  
14 that. His commission was -- wait a minute here. **I'm going to guess, so I don't want to do**  
15 **that right now.** It's been so long.

16 Q. I don't want you to guess, Mr. Nady.

17 A. All right. **Then I don't know.**

18 Q. My question though was limited to the number that appears at that intersection of minimum  
19 wage subsidy in QTY where it says 57.08. Does that number refer to the number of hours  
20 this person worked during a pay period?

21 A. **I just said a minute ago. This will be twice now. I don't know.** This is not a current  
22 paycheck, so **I don't know.** But I will grant you this: I think it has something to do with the  
23 number of hours, but it might be something else. *Id.*, 151:5-152:4.

24 Despite these answers from the witness indicating he did not know what the number  
25 represented, Plaintiffs' counsel continued questioning the witness with calculations which the  
26 witness confirmed he did not know what they represented, until he eventually became confused:

27 Q. So the number that appears at that intersection of QTY and minimum wage subsidy on these  
28 pay stubs is the hours worked that A Cab has maintained for this person in their records for

this pay period; correct?

A. Right.

Q. On the pay stubs that A Cab currently produces, do they identify a specific number on those pay stubs that they give the employee as the amount of hours that A Cab has determined they worked during the pay period?

A. I think it's the -- **I don't know, remember?**

Q. Okay. Has A Cab ever given employees pay stubs that indicate the amount of hours by identifying it as hours or time worked for the pay period?

A. **I don't know.** I would estimate -- I would guess that they know what it is. If it's applicable. *Id.*, 152:5-156:15.

The Discovery Commissioner allowed two additional depositions of Mr. Nady for new lines of questioning. Any reference to the same questions from this first deposition being asked again in deposition number 2 and 3 are improper and should not be considered by the Court. The purpose of a deposition is to get to the truth of the matter, not to beat a witness into submission by repeating the same question until a different answer is had.

**IV. Plaintiffs' Experts Admit They Have Not Calculated Any Actual Damages**

Plaintiffs seek to have their calculation of hours and damages to remain undisputed by Defendants. Yet Plaintiffs' own experts have both indicated they have not calculated **actual** damages. Both experts stated they have only provided a tool for the fact finder to plug in what they may ascertain to be damages, if any. In this instance, Plaintiffs' counsel is acting as the fact finder, seeking Court approval for the numbers he has selected, and the methodology he has selected.

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1 Plaintiffs chose to rely upon electronic data rather than source documents. Defendants  
2 should not be precluded from presenting evidence to demonstrate the issues and errors in Plaintiffs'  
3 methodology. Further, as this Court is aware, Plaintiffs' expert report is a hearsay document that  
4 cannot serve as a basis for summary judgment. It would be an error for this Court to grant summary  
5 judgment on this issue, when Plaintiffs have not even demonstrated a representative Plaintiff for this  
6 time period, much less any liability or actual damages for any such person.

7 DATED this 9<sup>th</sup> day of January, 2018.

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

9  
10 /s/ Esther C. Rodriguez, Esq.  
11 Esther C. Rodriguez, Esq.  
12 Nevada State Bar No. 006473  
13 10161 Park Run Drive, Suite 150  
14 Las Vegas, Nevada 89145  
15 *Attorneys for Defendants*

16 **CERTIFICATE OF SERVICE**

17 I HEREBY CERTIFY on this 9<sup>th</sup> day of January, 2018, I electronically filed the foregoing  
18 with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will  
19 send a notice of electronic service to the following:

20 Leon Greenberg, Esq.  
Leon Greenberg Professional Corporation  
2965 South Jones Boulevard, Suite E4  
Las Vegas, Nevada 89146  
*Co-Counsel for Plaintiffs*

Christian Gabroy, Esq.  
Gabroy Law Offices  
170 South Green Valley Parkway # 280  
Henderson, Nevada 89012  
*Co-Counsel for Plaintiffs*

21  
22 /s/ Susan Dillow  
23 An Employee of Rodriguez Law Offices, P.C.  
24  
25  
26  
27  
28

# EXHIBIT 1

# EXHIBIT 1



**RESP**  
Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
RODRIGUEZ LAW OFFICES, P.C.  
10161 Park Run Drive, Suite 150  
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702-320-8400  
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*Attorneys for Defendant A Cab, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

**RESPONSE TO PLAINTIFFS' FIRST REQUEST**

**FOR PRODUCTION OF DOCUMENTS**

Defendant A CAB, LLC, by and through its attorney, ESTHER C. RODRIGUEZ, ESQ., of  
RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRCP 34, hereby responds to Plaintiffs' First  
Request for Production of Documents as follows:

1. AMOUNTS PAID AND EARNINGS DOCUMENTS - Produce copies of all  
documents that set forth amounts paid to and/or earned by the named plaintiffs and all persons  
similarly situated to the named plaintiffs while they were employed by the defendants from October  
8, 2008 through the present. This information, if created, kept or maintained and fully available in  
computer file form, is sought in that form and you should contact plaintiff's counsel to arrange for  
production of such computer file(s) in an appropriate format. In the event that such materials are  
not available in computer file form, the information sought would include, but not be limited to,  
copies of pay checks vouchers (pay stubs), ledgers or pay check statements containing any

1 itemization or information detailing the amounts paid, deductions from and the calculation of the  
2 same, and to whom they were paid. Only in the event such information (the amounts paid by each  
3 check) is not otherwise available in another form, copies of cancelled checks showing such  
4 payments should be produced.

5 **RESPONSE NO. 1:** Objection. This request seeks production of confidential information that is  
6 not available to the public and that is not reasonably calculated to lead to the discovery of  
7 admissible evidence. See *Schlatter v. Eighth Judicial District Court*, 93 Nev. 189, 561 P2d 1342  
8 (1977). Such a request is not made to lead to relevant admissible evidence but such request is made  
9 to embarrass, harass and annoy. This request is overbroad in terms of time pursuant to NRS  
10 608.260, and requests information that would invade the privacy of individuals not a party to this  
11 litigation. Further, the request is vague and ambiguous. Without waiving said objections, see First  
12 Supplement to Defendant A Cab, LLC's ECC Statement, A Cab 0001 to A Cab 0081.

13 2. W-2 FORMS - Produce copies of all W-2 forms issued to the named plaintiffs and  
14 all persons similarly situated to the named plaintiffs, or filed with the Internal Revenue Service  
15 about such persons, while they were employed by the defendants from October 8, 2008 through the  
16 present. This may be produced in the form of a computer file, if maintained in that fashion and  
17 originally filed with the Internal Revenue Service in that fashion, rather than by furnishing actual  
18 physical copies of paper W-2 forms.

19 **RESPONSE NO. 2:**

20 Objection. This request seeks production of confidential information that is not available to  
21 the public and that is not reasonably calculated to lead to the discovery of admissible evidence. See  
22 *Schlatter v. Eighth Judicial District Court*, 93 Nev. 189, 561 P2d 1342 (1977). Such a request is  
23 not made to lead to relevant admissible evidence but such request is made to embarrass, harass and  
24 annoy. This request is overbroad in terms of time pursuant to NRS 608.260, and requests  
25 information that would invade the privacy of individuals not a party to this litigation. Further, the  
26 request is vague and ambiguous. Without waiving said objections, see First Supplement to  
27 Defendant A Cab, LLC's ECC Statement, A Cab 0082 to A Cab 0086.

28 3. COMPENSATION CALCULATION DOCUMENTS - Produce copies of all

documents that set forth how it was determined by defendants to pay the amounts actually paid to the named plaintiffs and all persons similarly situated to the named plaintiffs while they were employed by the defendants from October 8, 2008 through the present. This would include all documents setting forth how the earnings of such employees of the defendant were calculated, whether or not such earnings were actually paid to such employees. This information, if created, kept or maintained and fully available in computer file form, is sought in that form and you should contact plaintiff's counsel to arrange for production of such computer file(s) in an appropriate format. In the event that such materials are not available in computer file form, the information sought would include, but not be limited to, copies of ledgers or reconciliations or other writings reflecting how the amounts paid to such employees and/or their earnings were calculated. This request includes production of all records that set forth the total amount of passenger fares collected by each such person each day they were employed by defendant and how such fares were divided between the defendant and each such person. Such records need **not** be produced as copies of original daily reconciliations or scratch sheets or other paper documents if one or more computer files exist that contain all of such information that is set forth in such paper records, in which event such computer files should be produced.

**RESPONSE NO. 3:** See Response No. 1.

4. TIME RECORDS - Produce copies of all documents that set forth the amount of time the named plaintiffs and all persons similarly situated to the named plaintiffs were working for defendants each day or each week while they were employed by the defendants from October 8, 2008 through the present. This request includes production of all records such as "punch clock" entries and taxicab meter records, indicating times of day that such person performed, started, or ended, particular activities during any workday they were employed by defendants, whether or not defendants considered such times to be part of the time such persons were "working," including, but not limited to, the times such persons arrived at or left defendants' business location or the times they started or ended rest or meal breaks. This information, if created, kept or maintained and fully available in computer file form, is sought in that form and you should contact plaintiff's counsel to arrange for production of such computer file(s) in an appropriate format. In the event that such

1 materials are not available in computer file form, the information sought in paper form would  
2 include, but not be limited to, copies of ledgers, time clock punch cards, or reconciliations or other  
3 writings reflecting the amounts of time each such employee was working, or that records other  
4 activities including activities that the defendants may have not deemed to be work, during each such  
5 person's workday(s) while they were employed by the defendants.

6 **RESPONSE NO. 4:** Objection, this request is overbroad in terms of time pursuant to NRS  
7 608.260; requests information that would invade the privacy of individuals not a party to this  
8 litigation; and is vague and ambiguous. This request also calls for proprietary information as the  
9 information is contained on A Cab's trip sheets. This Request also seeks information the discovery  
10 of which is overly burdensome to Defendant as there are approximately 46,080 trip sheets per year  
11 which are not kept by name of employee. Without waiving these objections, Defendant will make a  
12 diligent search for responsive documents, and will copy and produce those within 30 days.

13 5. COMPENSATION AGREEMENT OR RULES DOCUMENTS - Produce copies of  
14 all documents that set forth or explain how the named plaintiffs and all persons similarly situated to  
15 the named plaintiffs were to be compensated for the work they performed while they were employed  
16 by the defendants from October 8, 2008 through the present. This would include all written  
17 contracts or agreements explaining the nature of the compensation arrangement that the parties  
18 agreed upon for the purpose of compensating such persons for their services as employees of  
19 defendants. This would also include all other writings setting forth any changes to any such  
20 contracts or agreements or that otherwise contain any statements, rules or formulas showing or  
21 discussing how such person's compensation was being calculated or would be calculated in the  
22 future. This would include all writings setting forth how taxi passenger fares collected by such  
23 persons were to be divided between the defendants and such persons including but not limited to the  
24 percentage of such fares that such persons were to be paid as compensation by defendants and how  
25 that percentage was to be calculated. This would include the amount of any "trip charge" or fuel or  
26 other deductions that were made by the defendants from such persons' total daily collected  
27 passenger fares or any calculated percentage share of such fares for the purposes of calculating the  
28 compensation to be paid to such persons by defendants.

1 **RESPONSE NO. 5:** Objection, this is a compound request, and is vague and ambiguous. Further,  
2 this request is overbroad in terms of time pursuant to NRS 608.260; requests information that would  
3 invade the privacy of individuals not a party to this litigation; and calls for proprietary information.  
4 Without waiving said objections, A Cab drivers are at-will employees not contracted employees.  
5 Defendant will make a diligent search for responsive documents, and will copy and produce those  
6 within 30 days.

7 6. EMPLOYMENT AGREEMENT AND HANDBOOK DOCUMENTS - Produce  
8 copies of all documents that set forth or explain the employment relationship between the named  
9 plaintiffs and all persons similarly situated to the named plaintiffs and the defendants, from October  
10 8, 2008 through the present. This would include all personnel manuals or employee handbooks or  
11 other written statements about the terms and conditions of such persons' employment with the  
12 defendants, as such terms and conditions were in effect from October 8, 2008 through the present.

13 **RESPONSE NO. 6:** See Response 5.

14 7. RELEASE OF CLAIMS FOR UNPAID WAGES - Produce copies of all releases,  
15 waivers of claims, or settlement agreements that purport to release or settle any actual or potential  
16 claim of any taxicab driver of the defendants for unpaid wages earned but not paid from October 8,  
17 2008 through the present.

18 **RESPONSE NO. 7:** Objection. This request seeks production of confidential information that is  
19 not available to the public and that is not reasonably calculated to lead to the discovery of  
20 admissible evidence. See *Schlatter v. Eighth Judicial District Court*, 93 Nev. 189, 561 P2d 1342  
21 (1977). Such a request is not made to lead to relevant admissible evidence but such request is made  
22 to embarrass, harass and annoy. This request is overbroad in terms of time pursuant to NRS  
23 608.260, and requests information that would invade the privacy of individuals not a party to this  
24 litigation. Further, the request is vague and ambiguous.

25 8. TRIP SHEETS - Produce copies of the trip sheets and other records of the trips (taxi  
26 passenger transports) performed by each of the named plaintiffs and those persons similarly situated  
27 to the named plaintiffs from April 25, 2006 through the present. For the purpose of this request, the  
28 term "trip" refers to the driving of passengers by a taxicab driver for which a fare was collected.

1 This information, if created, kept or maintained and fully available in computer file form, is sought  
2 in that form and you should contact plaintiff's counsel to arrange for production of such computer  
3 file(s) in an appropriate format.

4 **RESPONSE NO. 8:** See Response No. 4.

5 9. AFFIRMATIVE DEFENSE DOCUMENTS AND OTHER DOCUMENTS TO BE  
6 RELIED UPON - For each affirmative defense asserted by the defendants, separately identify and  
7 produce all documents relevant to the defense. Identify and produce all documents which  
8 heretofore have not been produced, but which relate to or support the defendants' affirmative  
9 defenses or contradict the claims made in plaintiffs' complaint or that the defendants reserve the  
10 right to rely upon at the time of trial.

11 **RESPONSE NO. 9:** See First Supplement to Defendant A Cab, LLC's ECC Statement and all  
12 supplements thereto. Further, Defendant reserves the right to rely upon the documents produced by  
13 the other parties in this matter.

14 10. NAMES AND ADDRESS OF WITNESSES AND PUTATIVE CLASS MEMBERS  
15 - Produce documents which set forth the names and addresses of all persons similarly situated to the  
16 plaintiffs who were employed by the defendants from October 8, 2008 through the present. This  
17 information, if created, kept or maintained and fully available in computer file form, is sought in  
18 that form and you should contact plaintiff's counsel to arrange for production of such computer  
19 file(s) in an appropriate format. If such information is not available in that form, or as a list or other  
20 unified document already in defendants' possession, defendants are to produce the portions of the  
21 other documents in their possession, which could be W-2 forms, employment applications, or other  
22 documents, that will contain the names and addresses of each such person.

23 **RESPONSE NO. 10:** Objection. This request seeks production of confidential information that is  
24 not available to the public and that is not reasonably calculated to lead to the discovery of  
25 admissible evidence. See *Schlatter v. Eighth Judicial District Court*, 93 Nev. 189, 561 P2d 1342  
26 (1977). Such a request is not made to lead to relevant admissible evidence but such request is made  
27 to embarrass, harass and annoy. This request is overbroad in terms of time pursuant to NRS  
28 608.260, and requests information that would invade the privacy of individuals not a party to this

1 litigation. Further, the request is vague and ambiguous. Finally, this Complaint has not made a  
2 minimum showing of *any* compensation owed for the two named Plaintiffs, much less any that  
3 would be owed on a class wide basis.

4 11. NAMES AND ADDRESSES OF WITNESSES WHO ARE FORMER  
5 SUPERVISORS, MANAGERS OR DISPATCHERS OF DEFENDANTS - Produce documents  
6 which set forth the names and addresses of all persons employed by the defendants from April 25,  
7 2006 through the date of this request but who are no longer employed by the defendants and who  
8 were managers, supervisors or dispatchers employed by defendants. This information, if created,  
9 kept or maintained and fully available in computer file form, is sought in that form and you should  
10 contact plaintiff's counsel to arrange for production of such computer file(s). If such information is  
11 not available in that form, or as a list or other unified document already in defendants' possession,  
12 defendants are to produce the portions of the other documents in their possession, which could be  
13 W-2 forms, employment applications, or other documents, that will contain the names and  
14 addresses of each such person.

15 **RESPONSE NO. 11:** Objection. This request seeks production of confidential information that is  
16 not available to the public and that is not reasonably calculated to lead to the discovery of  
17 admissible evidence. See *Schlatter v. Eighth Judicial District Court*, 93 Nev. 189, 561 P2d 1342  
18 (1977). Such a request is not made to lead to relevant admissible evidence but such request is made  
19 to embarrass, harass and annoy. This request is overbroad in terms of time pursuant to NRS  
20 608.260, and requests information that would invade the privacy of individuals not a party to this  
21 litigation. Further, the request is vague and ambiguous.

22 12. INSURANCE POLICIES AND BOND DOCUMENTS - Produce copies of all  
23 insurance policies and/or bonds that may be available to pay damages sought by the plaintiffs in  
24 their complaint.

25 **RESPONSE NO. 12:** American Country Insurance, Commercial General Liability Policy, a copy  
26 of which will be produced.

27 13. PRIOR LAWSUITS OR INVESTIGATIONS CONCERNING CLAIMS FOR  
28 UNPAID WAGES - Besides documents originating in this lawsuit, produce copies of all documents

1 relating to or mentioning any investigation, inquiry, or lawsuit involving the defendants and that  
2 claims defendants have breached their contracts with their employees who are taxi drivers to pay  
3 such persons certain wages and/or violated the requirements of either the Fair Labor Standards Act  
4 or Nevada's statutes or constitution in respect to the payment of wages to such persons. This  
5 request includes the production of all documents generated as a result of, or used in connection  
6 with, any audit conducted by or of the defendants by the United States Department of Labor or the  
7 Nevada Labor Commissioner in connection with any claims for, or determination of, whether  
8 unpaid minimum wages or any other wages were owed by defendants' to its employees performing  
9 taxicab driving services. This request is not limited to any time frame.

10 **RESPONSE NO. 13:** Objection. This request seeks production of confidential information that is  
11 not available to the public and that is not reasonably calculated to lead to the discovery of  
12 admissible evidence. See *Schlatter v. Eighth Judicial District Court*, 93 Nev. 189, 561 P2d 1342  
13 (1977). Such a request is not made to lead to relevant admissible evidence but such request is made  
14 to embarrass, harass and annoy. This request is overbroad in terms of time pursuant to NRS  
15 608.260, and requests information that would invade the privacy of individuals not a party to this  
16 litigation. Further, the request is vague and ambiguous.

17 14. DOCUMENTS RELATING TO THE NAMED PLAINTIFFS - Identify and produce  
18 all documents that mention or contain any reference to the plaintiffs. This would included (*sic*) all  
19 personnel files and records on the named plaintiffs.

20 **RESPONSE NO. 14:** Objection, this request is vague and ambiguous and overbroad. Without  
21 waiving said objections, the personnel files will be copied and produced within the next 30 days.

22 15. STATEMENTS - Produce copies of all statements gathered since the  
23 commencement of this litigation, such statements bearing on any facts and circumstances contained  
24 in the complaint filed in this action, and such statements gathered in connection with the defense of  
25 this plaintiffs' claims in this action.

26 **RESPONSE NO. 15:** Objection, this request is overbroad, vague and ambiguous, and calls for  
27 attorney client privileged information, and attorney work product. Without waiving said objections,  
28 there are no documents responsive to this request.




1 20. (sic) ATTENDANCE RECORDS - Produce copies of all attendance records for the  
2 plaintiffs and those persons similarly situated to the plaintiffs for the four years preceding the filing  
3 of the complaint in this matter through the present, such records demonstrating whether any of such  
4 persons were present or absent at the defendants' facilities on a particular work day.

5 **RESPONSE NO. 20 (sic):** Objection, this request is overbroad in terms of time pursuant to NRS  
6 608.260, and requests information that would invade the privacy of individuals not a party to this  
7 litigation. Further, the request is vague and ambiguous. Without waiving said objections, see  
8 Response No. 4.

9 DATED this 26 day of August 2013.

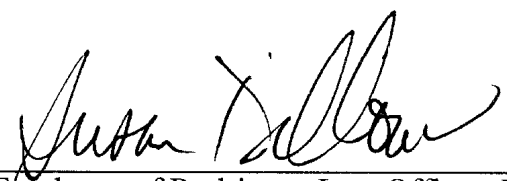
10 **RODRIGUEZ LAW OFFICES, P.C.**

11   
12 \_\_\_\_\_  
13 Esther C. Rodriguez, Esq.  
14 Nevada Bar No. 6473  
15 10161 Park Run Drive, Suite 150  
16 Las Vegas, Nevada 89145  
17 Attorneys for Defendant A Cab, LLC

18 **CERTIFICATE OF SERVICE**

19 **I HEREBY CERTIFY** a true and correct copy of the foregoing **Response to Plaintiffs'**  
20 **First Request for the Production of Documents** was served by placing same, postage prepaid, in  
21 the U.S. Mail this 26 day of August, 2013 to:

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

27   
28 \_\_\_\_\_  
An Employee of Rodriguez Law Offices, P.C.

# EXHIBIT 2

# EXHIBIT 2

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs, )

vs. )

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

Defendants. )

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

DEPOSITION OF JON GATHRIGHT

Taken at the Offices of

DEPO INTERNATIONAL  
703 South Eighth Street  
Las Vegas, Nevada

On Tuesday, September 29, 2015  
At 10:56 a.m.

Reported by: Rachel Anstee Mann, CCR No. 816

1 MS. RODRIGUEZ: Same objections.

2 THE DEPONENT: No.

3 BY MR. GREENBERG:

4 Q. To your knowledge, has A Cab ever kept records  
5 of the hours its taxi drivers work besides the information  
6 that is recorded in their trip sheets?

7 A. No.

8 Q. Are you aware that in 2012, the Department of  
9 Labor commenced an additional investigation of A Cab?

10 A. Yes.

11 Q. And how did you become aware of that?

12 A. Again, they sent people to the office to look at  
13 trip sheets.

14 Q. Did you have any meetings with any  
15 representative from the Department of Labor?

16 A. No.

17 Q. Do you know anyone at A Cab who did?

18 A. Jay Nady.

19 Q. Do you know anyone else who met with the  
20 Department of Labor representatives?

21 A. No.

22 Q. Are you aware of anyone who was involved in  
23 providing information to the Department of Labor  
24 representatives?

25 A. No. No one else.

1 Q. By "no one else," you mean except Jay Nady, to  
2 your knowledge?

3 A. Except Jay Nady, yes.

4 Q. Did you have any discussions with Mr. Nady about  
5 that Department of Labor investigation once you became  
6 aware of it?

7 A. We discussed, at one point, the bringing in of  
8 extra people to cover -- to inspect all the trip sheets  
9 that were done during whatever period of time that that  
10 investigation was for.

11 Q. You're referring to A Cab doing its own review  
12 of those trip sheets?

13 A. Yes.

14 Q. And what was the purpose of that review of the  
15 trip sheets?

16 A. The purpose of it, I guess, was to find out if,  
17 in fact, we were not paying minimum wage.

18 Q. Well, would the trip sheets say how much the  
19 drivers were paid?

20 A. No.

21 Q. What would the trip sheets tell A Cab that would  
22 help them reach the conclusion that they were seeking  
23 about whether the drivers were or were not paid minimum  
24 wage?

25 A. They had a time in and a time out.

1 REPORTER'S CERTIFICATE

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

4 I, Rachel Anstee Mann, CCR No. 816, do hereby  
5 certify:

6 That I reported the taking of the deposition of  
7 Jon Gathright, commencing on Tuesday, September 29, 2015,  
8 at the hour of 10:56 a.m.

9 That prior to being examined, the deponent was  
10 by me duly sworn to testify to the truth, the whole truth,  
11 and nothing but the truth. That I thereafter transcribed  
12 my said shorthand notes into typewriting and that the  
13 typewritten transcript is a complete, true, and accurate  
14 transcription of my said shorthand notes.

15 I further certify that I am not a relative or  
16 employee of counsel of any of the parties, nor a relative  
17 or employee of the parties involved in the action.

18 Transcript review pursuant to NRCP 30(e) and  
19 FRCP 30(e) was requested.

20 IN WITNESS WHEREOF, I have set my hand in my  
21 office in the County of Clark, State of Nevada, this  
22 \_\_\_\_\_ day of, \_\_\_\_\_, \_\_\_\_\_.

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RACHEL ANSTEE MANN, CCR No. 816

# EXHIBIT 3

# EXHIBIT 3

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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-C

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

Defendants. )

DEPOSITION OF EDWIN BOROWSKI

Taken at Depo International  
703 South Eighth Street  
Las Vegas, Nevada 89101

Wednesday, September 30, 2015  
12:59 P.M.

Reported by: Angela Campagna, CCR #495



1           A.    Yes.

2           Q.    How would you know if a driver is  
3 working a ten hour shift?

4           A.    I wouldn't know unless it was written.

5           Q.    And you also testified that drivers  
6 work eleven hour shifts. How would you know that?

7           A.    I really don't know.

8           Q.    But you do know that they do work  
9 eleven hour shifts?

10          A.    Yes.

11          Q.    And you have no idea why you know that?

12          A.    I don't know.

13          Q.    You don't know how you know drivers  
14 work eleven hour shifts?

15          A.    By looking at their time that they come  
16 in I put them up, but I don't know if they work, how  
17 many hours they work.

18          Q.    You mentioned looking at the time when  
19 they come in. What is their time when they come in?  
20 What does that mean?

21          A.    It's the time is when they clock out.

22          Q.    How do they clock out?

23          A.    With a time clock.

24          Q.    How do they operate that time clock?

25          A.    They do it. I don't know.

1 Q. Well, you said you would look at their  
2 time that they clock out?

3 A. Yeah. It's on the back of trip sheet.

4 Q. So there's a time on the back of the  
5 trip sheet?

6 A. Yes.

7 Q. How does that time get there?

8 A. The driver puts it on there.

9 Q. And he does that by using a time clock?

10 A. Uh-huh.

11 MS. RODRIGUEZ: Is that a yes?

12 THE WITNESS: Yes.

13 MS. RODRIGUEZ: Thank you.

14 THE WITNESS: Yes.

15 BY MS. SNIEGOCKI:

16 Q. Is every driver required to put that  
17 time clock time on the back of their trip sheet?

18 A. Yes.

19 Q. So the only way that you would know or  
20 one of the ways you would know if a driver worked an  
21 eleven hour shift would be by reviewing their trip  
22 sheet; is that right?

23 A. By glancing.

24 Q. Right. Because you don't review the  
25 trip sheets, you only glance at them?

REPORTER'S CERTIFICATE

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

I, Angela Campagna, a certified court reporter in Clark County, State of Nevada, do hereby certify:

That I reported the taking of the deposition of the witness, EDWIN BOROWSKI, on Wednesday, September 30, 2015, commencing at the hour of 12:59 p.m.

That prior to being examined, the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but 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 shorthand notes taken down at said time.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 7th day of October 2015.

ANGELA CAMPAGNA, CCR #495

# EXHIBIT 4

# EXHIBIT 4

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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-C

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

Defendants. )

DEPOSITION OF SAM WOOD

Taken at Depo International  
703 South Eighth Street  
Las Vegas, Nevada 89101

Wednesday, September 30, 2015  
2:26 P.M.

Reported by: Angela Campagna, CCR #495

1 Q. Does anyone at A Cab check those trip  
2 sheets after they are completed and turned in by the  
3 drivers?

4 A. I don't know.

5 Q. Did you review those trip sheets when  
6 you were a manager, I mean after they were completed  
7 by the drivers and turned back into A Cab?

8 A. I would check them for legibility.

9 Q. Would you check them for anything else?

10 A. Validity.

11 Q. What would you check to see was valid?

12 A. Rides. There was no certain way to  
13 prove it or anything but if something looked out of  
14 order and their rides or their break time, if it  
15 overlapped, say, a trip, you know, we would have to  
16 -- there would be something wrong.

17 Q. And who told you to do that?

18 A. My supervisor.

19 Q. Who is your supervisor?

20 A. Mr. Nady.

21 Q. Did you have any other supervisor?

22 A. No.

23 Q. Do you have any other supervisors  
24 currently besides Mr. Nady?

25 A. No. I've always with him.

1 Q. What would you find on a trip sheet  
2 that was incorrect or not making sense when you  
3 reviewed it as a manager that you would then do  
4 something about?

5 A. The times.

6 Q. What do you mean by times?

7 A. If a break or a ride they have the end  
8 time and the out time, in time and out time, if they  
9 interfered with each other it would be -- it would  
10 need to be corrected.

11 Q. So if the trip sheet indicated a driver  
12 was simultaneously on a break while also  
13 transporting a passenger that would be an  
14 inconsistency that you would take note of; correct?

15 A. Yes.

16 Q. What would you do in that situation?

17 A. I would have the driver correct it.  
18 Ask him to correct it so that we can more clearly  
19 read the sheet.

20 Q. And how would the driver correct it?

21 A. That's on them.

22 Q. What if the driver said he can't  
23 correct it?

24 A. Then nothing you can do.

25 Q. Did that ever happen?

REPORTER'S CERTIFICATE

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

I, Angela Campagna, a certified court reporter in Clark County, State of Nevada, do hereby certify:

That I reported the taking of the deposition of the witness, SAM WOOD, on Wednesday, September 30, 2015, commencing at the hour of 2:26 p.m.

That prior to being examined, the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but 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 shorthand notes taken down at said time.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 7th day of October 2015.

ANGELA CAMPAGNA, CCR #495



# EXHIBIT 5

# EXHIBIT 5

1	DISTRICT COURT		
2	CLARK COUNTY, NEVADA		
3	MICHAEL MURRAY, and MICHAEL	)	
4	RENO, individually and on	)	
5	behalf of others similarly	)	
	situated,	)	CASE NO: A-12-669929-C
6	Plaintiffs,	)	DEPT NO: I
7	vs.	)	
8	A CAB TAXI SERVICE LLC, and	)	
9	A CAB, LLC,	)	
10	Defendants.	)	

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11

12

13 DEPOSITION OF CREIGHTON NADY

14 LAS VEGAS, NEVADA

15 TUESDAY, AUGUST 18, 2015

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24 REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926

25 JOB NO.: 261171

1 A. I don't know. Remember I said I don't know.

2 Q. Well, I just want to be clear what you mean by  
3 migrate that that would be a possibility?

4 A. It's a possibility, but I don't know.

5 Q. And who would know that?

6 A. Donna would probably know.

7 Q. Now, in preparing the QuickBooks payroll, was any  
8 information entered about the hours that taxi drivers  
9 work in a pay period?

10 A. Yes.

11 Q. Where does that information come from?

12 A. From the trip sheets.

13 Q. And when you say from the trip sheets, is there a  
14 specific statement on the trip sheets as to the total  
15 amount of time the driver worked during each shift?

16 A. No. It's -- we calculate it by looking at the  
17 trip sheet.

18 Q. And who calculates that?

19 A. Donna. Whoever is doing the payroll.

20 Q. And how does she do that?

21 A. With a pencil.

22 Q. And what formula does she use to do that?

23 A. There's no formula. You just count the number of  
24 hours.

25 Q. So she simply refers to the information on the

1 trip sheet, and that tells her the total amount of time  
2 for each shift that a driver should be credited with;  
3 correct?

4 A. Exactly.

5 Q. She doesn't modify that information on the trip  
6 sheet in any fashion?

7 A. No, nope. It's not her job.

8 Q. So if I'm looking at a trip sheet and it shows a  
9 driver started at 10:00 and he stopped at 8:00 and he's  
10 listed for one hour break, I would write down if I was  
11 Donna that he worked nine hours for that shift; correct?

12 A. Yes, I assume. That's what I would do when I was  
13 doing payroll.

14 Q. So, again, there's no other formula or  
15 modification she uses. It is literally a translation  
16 from what's on the trip sheet into the QuickBooks;  
17 correct?

18 A. I think she puts that on -- yes.

19 Q. Now, you say she uses a pencil and paper.

20 A. I didn't say paper.

21 Q. I'm sorry. She uses a pencil. Well, what  
22 does -- does she actually enter into the QuickBooks  
23 system a number of hours per shift?

24 A. No. I think she puts it on the trip sheet.  
25 That's what I did anyway. I'm not sure how she does it,

1 but I think she puts it on the trip sheet.

2 Q. Well, the number of hours per payroll period is  
3 used by A Cab in preparing the payroll; correct?

4 A. Of course.

5 Q. Has A Cab always examined the number of hours  
6 worked per pay period in preparing its payroll for the  
7 cab drivers?

8 A. Not always. I think we started after our first  
9 audit. I can't remember the name of the auditor, but he  
10 recommended we keep track of every hour.

11 Q. And --

12 A. And we kept track of hours then also, but we  
13 didn't keep records of all of them. So I mean, we had  
14 to go back. He didn't like having to go back and look  
15 at each trip sheet any more than you will about trying  
16 to figure out how many hours they actually worked or any  
17 more than the DOL when they did audit us for three and a  
18 half years. They kept those things, and they went over  
19 every one of them.

20 Q. Well, it's your testimony then that since the  
21 time of that audit, A Cab has always examined the number  
22 of hours a taxi driver worked during a payroll period in  
23 calculating their pay for the period?

24 A. I believe we have, yes.

25 Q. But A Cab has not always kept a record of that

1 A. Yes.

2 Q. So it had to create a total hours worked for the  
3 cab driver for that pay period; correct?

4 A. Yes.

5 Q. But it has not actually preserved that total  
6 number of hours worked that it calculated; correct?

7 MS. RODRIGUEZ: Objection. Misstates prior  
8 testimony.

9 THE WITNESS: No. I don't think -- even  
10 though it's misstated, I don't think we kept those.

11 BY MR. GREENBERG:

12 Q. Has A Cab kept that total that it calculated  
13 starting at any particular point in time going forward?

14 A. Yes.

15 Q. When did it start keeping --

16 A. Don't know. And if you ask me to narrow it down,  
17 I'm going to say I don't know.

18 Q. Since the institution of this lawsuit, has it  
19 been keeping that information, the total number of hours  
20 of each driver during each pay period?

21 A. I think -- I think you'll find if you look at the  
22 trip sheets, you'll find how many hours was on that  
23 paycheck. I think if you look at the trip sheets as  
24 they're stapled together, there will be a note on each  
25 one of those weeks for every person how many hours there

1 was. It's either on a big thing on each page, or it's  
2 on a tape from an adding machine with the number of  
3 hours added up there. And you could see then the tape  
4 where we added 8, 12, 10, 11, 5, 4, 6, 7, whatever we  
5 had. We would put that on the tape, put them together,  
6 and that would be what we would use as -- when we were  
7 calculating payroll. That's the way it was.

8 Q. Okay. So what you're telling me is that if a  
9 driver worked ten shifts in a payroll period, the person  
10 responsible for payroll would take those ten trip sheets  
11 from those shifts, go through each one of them, manually  
12 add them up with a calculator for pay period total of  
13 hours based upon those ten trip sheets and then staple  
14 that piece of paper from the adding machine to those ten  
15 trip sheets; is that correct?

16 A. That's how we used to do it, yes.

17 Q. And were those stapled trip sheets with those  
18 pieces of paper from the calculator preserved?

19 A. We gave them all to the DOL.

20 Q. Including those stapled --

21 A. We gave all of them to the DOL for the time  
22 period that we're discussing here. We gave them all to  
23 them.

24 Q. And have they been returned?

25 A. Maybe half and maybe they're not put together and

1 that intersects that column with the line minimum wage  
2 subsidy. And the number 57.08 appears at that  
3 intersection.

4 A. Right.

5 Q. What does that number 57.08 refer to?

6 A. Well, minimum wage subsidy is based on the fact  
7 that our total number of his total wages were not  
8 enough; that if we did his calculation based on the  
9 number of hours that he had, it was -- that his rate of  
10 pay would have been 4.27 an hour. Wait a second. Let  
11 me make sure of what I speak here. So we had to -- he  
12 had 57.8 hours of hours, and we subsidized it from 4.27.  
13 So I think if you add those two together, and you  
14 multiply one times the other, you get that. His  
15 commission was -- wait a minute here. I'm going to  
16 guess, so I don't want to do that right now. It's been  
17 so long.

18 Q. I don't want you to guess, Mr. Nady.

19 A. All right. Then I don't know.

20 Q. My question though was limited to the number that  
21 appears at that intersection of minimum wage subsidy in  
22 QTY where it says 57.08.

23 Does that number refer to the number of hours  
24 this person worked during a pay period?

25 A. I just said a minute ago. This will be twice



1 now. I don't know. This is not a current paycheck, so  
2 I don't know. But I will grant you this: I think it  
3 has something to do with the number of hours, but it  
4 might be something else.

5 Q. Well, just to be clear, Mr. Nady, you obviously  
6 wouldn't know personally whether this individual worked  
7 57.08 hours during the pay period discussed by that pay  
8 stub.

9 My question, to you to be more precise, is  
10 whether that 57.08 is the number that A Cab uses in  
11 terms of its calculations for how many hours this person  
12 worked during that pay period?

13 A. Here's one way to figure it out. If you take a  
14 look at the current, the 4 -- or the 243.73 and divide  
15 it by 4.27, you might get 57.08.

16 Q. And if those numbers do add up as you are  
17 saying --

18 A. Would you like me to try it?

19 Q. I will represent to you that they do, Mr. Nady.

20 A. What?

21 Q. I have done that calculation.

22 A. Oh.

23 Q. They do reach --

24 A. There you go.

25 Q. They do reach that result that you've just

1 hypothesized.

2 A. Well, thank you.

3 Q. Are you telling me that because it -- well, you  
4 tell me. Go ahead what you're trying to get through  
5 from this observation.

6 A. I'm telling you that those two equal that we  
7 supplemented his wage by \$243.73 to the commissions that  
8 he earned that week in order for him to make minimum  
9 wage.

10 Q. So --

11 A. And -- go ahead. I'll stop.

12 Q. So A Cab in making that calculation, has figured  
13 that this person worked 57.08 hours for that pay period?

14 A. That's correct.

15 Q. Now, on this pay stub as well you will see that  
16 there is an amount that says tips supplemental, and  
17 further on down that same column, it says tips out.  
18 Both of those numbers are the same except one is  
19 negative and one is positive.

20 Do you understand why those numbers appear that  
21 way? Could you explain to me why they do?

22 A. Yes.

23 Q. And why do they appear that way?

24 A. We assume -- and we have a contract with the  
25 drivers or we did, whether we do now or not, I don't

1 remember, but that they agreed to for us via an  
2 agreement with the IRS that would absolve them from  
3 audit if they -- if we inputted 5.5 percent of their  
4 book as additional earned income.

5 So we add that in so that at the end of the day,  
6 we have -- we have a total amount of 460.45 as for  
7 calculating how much withholding tax we should withhold  
8 from that.

9 So we base the withholding tax based on that, and  
10 as you can see, the taxes below the federal withholding,  
11 the Social Security, and the Medicare, those are taken  
12 out.

13 So it would appear that within -- we took that  
14 much taxes out and put them into his Medicare account on  
15 his behalf, and from that we -- then we deducted the  
16 amount that we added in as a calculation only because he  
17 already got that from his tips, and he also paid a loan  
18 of \$10.

19 So we reduced his pay by that amount, \$346.52.  
20 In other words, I lent the guy ten bucks, which was nice  
21 to get back.

22 Q. The pay stub version that you're looking at there  
23 in Exhibit 3, that's the version that is currently used  
24 by A Cab?

25 A. No.

1 Q. Could you explain to me how the version currently  
2 used by A Cab differs from that version?

3 A. No.

4 Q. Well, what makes you think that Exhibit 3 from  
5 2014 is different than the version used now?

6 A. Because it's changing all the time.

7 Q. Well, what additional --

8 A. I don't know.

9 Q. -- itemized information --

10 A. I don't know what the additional is without  
11 having one. And since I don't have one in front of me,  
12 I can't answer that.

13 Q. But you believe that there is a difference in  
14 terms of the itemized information that appears on the  
15 current pay stubs?

16 A. I am certain there's a difference.

17 Q. Now, the version of the pay stub you're looking  
18 at in Exhibit 3 does not include any number that is  
19 expressly identified as hours worked during the payroll  
20 period.

21 Do you see that?

22 A. Well, it is if you know where to look.

23 Q. Well, when you say it is, what do you mean, sir?

24 A. Well, I mean, it obviously -- you did the  
25 calculations. It says 57.08.

1 Q. So the number that appears at that intersection  
2 of QTY and minimum wage subsidy on these pay stubs is  
3 the hours worked that A Cab has maintained for this  
4 person in their records for this pay period; correct?

5 A. Right.

6 Q. On the pay stubs that A Cab currently produces,  
7 do they identify a specific number on those pay stubs  
8 that they give the employee as the amount of hours that  
9 A Cab has determined they worked during the pay period?

10 A. I think it's the -- I don't know, remember?

11 Q. Okay. Has A Cab ever given employees pay stubs  
12 that indicate the amount of hours by identifying it as  
13 hours or time worked for the pay period?

14 A. I don't know. I would estimate -- I would guess  
15 that they know what it is. If it's applicable.

16 See, only about half of our drivers actually have  
17 to have a subsidy. Half. Only about 16 drivers last  
18 week out of a bunch, out of 200 -- only 16 needed a  
19 subsidy. And the week before that -- or the two weeks  
20 before that, it was less than 16. I mean, the number of  
21 people we have to subsidize is a minuscule number as of  
22 the total.

23 Q. Going back to Exhibit 2. That's not Exhibit 2.  
24 The other one.

25 A. Oh.

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

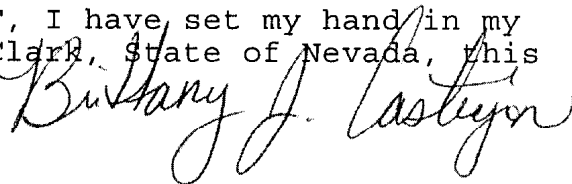
4 CERTIFICATE OF REPORTER

5 I, Brittany J. Castrejon, a Certified Court  
6 Reporter licensed by the State of Nevada, do hereby  
7 certify: That I reported the DEPOSITION OF CREIGHTON  
8 NADY, on Tuesday, August 18, 2015, at 11:13 a.m.;

9 That prior to being deposed, the witness was duly  
10 sworn by me to testify to the truth. That I thereafter  
11 transcribed my said stenographic notes into written  
12 form, and that the typewritten transcript is a complete,  
13 true and accurate transcription of my said stenographic  
14 notes. That the reading and signing of the transcript  
15 was requested.

16 I further certify that I am not a relative,  
17 employee or independent contractor of counsel or of any  
18 of the parties involved in the proceeding; nor a person  
19 financially interested in the proceeding; nor do I have  
20 any other relationship that may reasonably cause my  
21 impartiality to be question.

22 IN WITNESS WHEREOF, I have set my hand in my  
23 office in the County of Clark, State of Nevada, this  
24 31st day of August, 2015.



25 Brittany J. Castrejon, CCR NO. 926