

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB, LLC; AND A CAB SERIES,
LLC,

Appellants,

v.

MICHAEL MURRAY; AND
MICHAEL RENO, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Respondents.

) Supreme Court No. 77050

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

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

HUTCHISON & STEFFEN, PLLC

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

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DATED this 5th day of August, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

1 THE COURT: And then what they would have available in order to do that
2 would be the complaint.

3 MR. GREENBERG: They would have the complaint, which would identify
4 the parties and counsel.

5 THE COURT: Uh-huh. All right. Okay, does that answer -- thank you.

6 Does that answer your question?

7 MS. RODRIGUEZ: To an extent. Part two of that is how Mr. Greenberg
8 found this person. Does he have a prior relationship with him? Because the
9 problem here is that the special master is being used, as Your Honor has heard
10 my arguments before, as an expert in this. So I think that needs to be disclosed as
11 well, is what is the relationship with current plaintiffs' counsel in this matter between
12 Mr. Greenberg's firm and Dr. Saad.

13 THE COURT: Perhaps we should have done that with all -- with everyone
14 and had both sides do that, but we did not.

15 MR. GREENBERG: Your Honor, I have no relationship with Resolution
16 Economics or Dr. Saad. I have never consulted with them. I have never contacted
17 them in a previous matter about possibly retaining them as an expert. I found
18 them on-line, as I did another Los Angeles-based firm that was also submitted
19 as a nominee for Your Honor. I found them because this is an area that they have
20 a history of doing work on regarding wage and hour litigation and consulting and
21 records review. Essentially I went to Google and I just searched on-line for
22 expertise using those sort of key words and this was one of the firms that came up.
23 That was how I contacted them. I would note, by the way, Your Honor, that if you
24 review their C.V. and history they have largely worked as consultants for employers

1 in these sorts of litigations, not for plaintiffs.

2 THE COURT: I'm sorry? They have --

3 MR. GREENBERG: They have largely worked for employers, for defendants
4 in wage and hour litigations.

5 THE COURT: Okay.

6 MR. GREENBERG: They are not someone who, for lack of a better term,
7 is somehow a plaintiff's --

8 THE COURT: Yeah.

9 MR. GREENBERG: -- you know, expert, as people might think sometimes
10 of certain experts. So I have no -- again, I have no relationship with them. I had no
11 prior contact with them until I guess January 25th. I mean, we came here, we saw
12 Your Honor and I got to work as Your Honor instructed. That day or the next day
13 I started reaching out --

14 THE COURT: Okay.

15 MR. GREENBERG: -- to potential special masters.

16 THE COURT: All right. Ms. Rodriguez.

17 MS. RODRIGUEZ: Your Honor, in the hearing Mr. Greenberg's response in
18 terms of -- it appears that he's asked Dr. Saad to do his conflicts check, but we have
19 to hear it exactly from Mr. Saad. So what dawns on me, with the Court's permission,
20 is perhaps I can ask Dr. Saad in a letter to go ahead and put it in writing to all the
21 parties that he has in fact run a conflicts check and that that will not be an obstacle
22 in moving forward, just so that we have it clear and it doesn't turn out later there is
23 a problem with one of the parties. Would that be acceptable to the Court? And I will
24 cc Mr. Greenberg on it, with a very brief saying this is a discussion today; can you

1 make sure that you've run a conflicts check?

2 THE COURT: I will do that. However, I think it strikes me that I don't want
3 the impression to remain, if there is such an impression, that if anyone in the special
4 master's business operation has some relationship with someone who has ever
5 been a cab driver for A Cab that that disqualifies them. I'm satisfied, frankly, that
6 given that this individual Donahue is not a member of the class, for reasons most
7 recently pointed out by Mr. Greenberg in his letter of -- I don't recall which date, but
8 I don't view that anyone who knows somebody or is even related to someone who
9 has ever been a cab driver or even ever been a cab driver for A Cab automatically
10 disqualifies the special master. I'm trying to --

11 MS. RODRIGUEZ: I don't think we're taking that position, either, Your Honor.

12 THE COURT: I'm sorry?

13 MS. RODRIGUEZ: We're not taking that position, either.

14 THE COURT: Okay.

15 MS. RODRIGUEZ: I think this is a little bit -- a few steps higher.

16 THE COURT: All right. Well, that seemed to be, if nothing else, a sub rosa
17 issue between counsel in your exchange of letters. At any rate, my purpose here
18 today is not to try and deal with every single potential issue or question that could
19 arise. My purpose here today is to give opportunity to make a record regarding the
20 things that have transpired here and to make clear that I expect to move forward
21 with this special master. He's being given a very short period of time to do a
22 significant amount of work and I don't want anything to interfere with that. My one
23 concern about either side contacting Dr. Saad -- I think it's Doctor, maybe it's Mister,
24 I don't know -- Mr. Saad and raising questions is that he will stop the work that

1 is to be done and do this instead, and I don't want that to happen. So --

2 MS. RODRIGUEZ: Your Honor, I would think a conflicts check takes like
3 five minutes.

4 THE COURT: Well, maybe so, but the conflicts check of which you have
5 spoken has thus far with the previous special master embroiled us in, you know,
6 days if not weeks worth of questioning and raising of issues. This needs to get --

7 MS. RODRIGUEZ: And I would like that clarified, Your Honor. I tried to do
8 that in my letter because I think the implication was that somehow the defendants
9 -- I want that to be clear as well -- that we've been sitting on your order, but we
10 haven't. It was the special master who gave this last late disclosure. And the same
11 day that he indicated I have this conflict or I have this potential issue --

12 THE COURT: Uh-huh.

13 MS. RODRIGUEZ: -- I addressed it immediately --

14 THE COURT: Well, certainly.

15 MS. RODRIGUEZ: -- and then I've been waiting to hear from Mr. Rosten, but
16 all I got was your minute order. That's why I'm just asking the Court to appreciate
17 the limited response that I'm getting from both the special master -- nothing, which is
18 nothing, and then just getting -- receiving the Court's minute order saying, you know,
19 the parties have been sitting on this and I'm concerned that it's not moving along.
20 And that's why I'm raising these issues now. It's like let's get Dr. Saad to make
21 sure there's not a conflict, and part two of that, what I raised with the Court is, okay,
22 now we're going out of state because of plaintiffs' representations that I'm going
23 to have a conflict with everybody in town, which I'm telling you is a stretch because
24 I managed to find three that don't have a conflict.

1 THE COURT: No. No, that's not the reason we're going out of state. Not
2 that only, as I already indicated. My reason for doing that was what I saw in both
3 of your letters, that there was a potential that one side or the other was either going
4 to have some contact, some relationship which would cause us then to stop the
5 process, the deliberative process, and go through an entire issue within the issue.
6 And I didn't want to do that and that's why I went out of state.

7 MS. RODRIGUEZ: Well, let me tell you where my concern is.

8 THE COURT: Let's do this. If you want to write a letter, that would be fine.
9 I would ask you to send a draft of it to Mr. Greenberg before you send it and give at
10 least a day for Mr. Greenberg to register any objection, which he hopefully will not
11 have to such a letter, so that we at least, you know, ventilate this stuff before the
12 question is even put to the special master.

13 Meanwhile, I do not want the work of the special master to stop. I do
14 not want to wait to transmit the materials to the special master --

15 MS. RODRIGUEZ: That's what I was getting to, Your Honor.

16 THE COURT: -- while we make this further inquiry.

17 MS. RODRIGUEZ: This is why -- and I apologize, you can see I'm anxious to
18 tell you part two of this as to why I'm asking about why we're going to an out-of-state
19 firm, and it's because we're going to run into a problem, as I see it, maybe not, with
20 an out-of-state firm in that, yes, I have the trip sheets ready to mail to him on an
21 external hard drive which encompasses the time period of 2010 forward, as well as
22 all of the QuickBooks data which I can put on a hard drive as well. That stuff can be
23 mailed to Los Angeles. But for the three years prior to that the Court has ordered,
24 the 2007 period on, those trip sheets are in banker's boxes, large banker's boxes.

1 And we anticipated that the special master would do exactly what the Department
2 of Labor did, which is come to the A Cab premises. Of course, we can deliver them
3 locally to an office if that was going to be the case, because these are -- there's
4 probably like ten banker's boxes per year, so that's an additional maybe thirty boxes
5 per month.

6 THE COURT: Well, it may well be that the special master has to come here.

7 MS. RODRIGUEZ: Well, so that was my concern, Your Honor. What are
8 we going to do? Put a special master up for a month here in Las Vegas and --

9 THE COURT: Well, perhaps so, but all I can say is if your client had complied
10 fully with the law -- and I'm not saying he has violated the law that's in issue here, but
11 we already know that there was non-compliance with the federal law in this respect.
12 Had he kept the records that he was supposed to, we wouldn't be having this difficult
13 assignment for a special master.

14 MS. RODRIGUEZ: I'm sorry, Your Honor. You said that he -- there's notice
15 that he's violated federal law?

16 THE COURT: Was that not the conclusion of the federal agency, Department
17 of Labor, that the records had not been kept in the --

18 MS. RODRIGUEZ: No. Absolutely not, Your Honor.

19 THE COURT: -- format?

20 MS. RODRIGUEZ: No. We have that audit that says there's no record-
21 keeping violations.

22 THE COURT: Okay. All right. At any rate, it is because your client chooses
23 to keep the records in the format --

24 MS. RODRIGUEZ: Right.

1 THE COURT: -- that he has kept them that we are left with this. To me --
2 of course I'm not used to doing the work of a special master, but to me it's a
3 Herculean task.

4 MS. RODRIGUEZ: It is.

5 THE COURT: And so that, I'm afraid, is of your client's own doing.

6 MS. RODRIGUEZ: But it's an additional very large expense to either ship
7 100 banker's boxes or whatever it's going to be to Los Angeles or to put the special
8 master up in a hotel for 45 days in Los Angeles (sic) at -- I don't know what he's
9 going to bill. I think he's said \$700 an hour or something in his proposal, or maybe
10 that was Mr. Rosten. And that's why I'm asking, are we having to go out of state
11 based on plaintiffs' representations that we can't find a local firm that doesn't have
12 a conflict?

13 THE COURT: It is not plaintiff's statements alone which have caused me
14 to believe that we need to go out of state. It is both of you. It is the fact that we are
15 still here at this point arguing about the --

16 MS. RODRIGUEZ: The brother of the shareholder.

17 THE COURT: What's the word I'm looking for? Arguing about details that
18 don't have to do with the actual work of getting the calculations done.

19 MS. RODRIGUEZ: Your Honor, I'm happy to move on. I have everything
20 ready to go.

21 THE COURT: Okay.

22 MS. RODRIGUEZ: But that was a major conflict. And I'm sorry that the
23 Court doesn't see that that way, that the current taxicab driver being the brother of
24 the shareholder does not in the least pass the smell test.

1 THE COURT: All I've said is that I have made no conclusion that someone
2 who is not a member of the class has a -- automatically presents a conflict for the
3 special master.

4 MS. RODRIGUEZ: I understand that. And I guess what I'm trying to ask the
5 Court is that the Court take into consideration I believe that having an out-of-state
6 firm is probably going to even double the price. We've seen the estimates at a
7 quarter to a half a million dollars as estimates, projected estimates. I think if we
8 have to have a special master travel to Las Vegas for 45 days or we have to ship
9 everything out, we're looking at a substantial increase. And I do believe that there
10 are well-qualified local firms, either submitted by myself or Mr. Greenberg, that are
11 not going to have a conflict that could do this job. So I'm just asking the Court to
12 consider that.

13 THE COURT: All right. I've considered it and I do not agree that it makes
14 sense for us to essentially remain in Las Vegas. If there's a potential for conflict
15 based upon the large number -- relatively large number of members of the class
16 and the possibility that if any of them have any relationship at all with someone on
17 the special master's team, that automatically that knocks out the special master.
18 I'm trying to do away with that issue. And it seems to me that the best way, the
19 cleanest way to do that is to go outside of our community and to bring in somebody
20 who's less likely -- we don't know, but it's less likely that someone from out of state
21 is going to run into those kinds of relationships.

22 Mr. Greenberg.

23 MR. GREENBERG: Your Honor, you made your decision clear. Just to flesh
24 out the record here a little bit, in respect to this issue of certain trip sheets for the

1 earlier period allegedly not being available in PDF format but being in boxes on
2 paper, any special master who's going to do this work would much prefer to have
3 it in PDF in an image format because the review process will run far quicker than
4 looking at paper copies. So it is in defendants' interest, whether it's a local person
5 or an out-of-state person, to get all of those materials scanned, which can be done in
6 an automated fashion and put into PDF files and given to whoever the special master
7 is. And it's very easy to send a single hard drive PDF file to L.A. rather than 100
8 banker's boxes.

9 So the problem that they are complaining about, Your Honor, is really
10 one that they're going to have to deal with whoever the special master is. And it
11 certainly isn't in their interest to see the special master have to spend twice as much
12 time reviewing materials because they're in paper form than whether they were
13 provided in PDF form. It is in their interest to convert those paper materials into
14 electronic form, which they can do. And as Your Honor has pointed out, this is really
15 their burden under the circumstances. We don't need to discuss this further, Your
16 Honor. I just want to make clear on the record sort of the totality of the circumstance
17 that they're raising.

18 THE COURT: So I'm going to tell you what I want to tell you but I don't want
19 you to respond to it.

20 MR. GREENBERG: Thank you, Your Honor. The only other suggestion
21 I would have is we can call Dr. Saad right now and try to get him on the phone and
22 see if he will clarify this issue in respect to a conflicts check. I have no problem if
23 defendants' counsel wants to call them directly on the phone and talk to them, too,
24 if we can't reach him right now or if the Court doesn't want to even try to do that right

1 now, and satisfy themselves that he has investigated this. I don't think Your Honor
2 is anticipating Dr. Saad or any special master to actually go through a list of
3 potentially a thousand or twelve hundred or eight hundred names of people, you
4 know, who are class members in this case and then vet each one of those against
5 their staff of fifty employees in their firm. You understand what I'm saying, Your
6 Honor.

7 THE COURT: I understand.

8 MR. GREENBERG: So by all means I have no problem if defendant wants
9 to satisfy themselves that there's no further with this. As Your Honor is expressing,
10 I want to get this moving ahead.

11 THE COURT: Do you prefer to make a phone call or do it in writing, Ms.
12 Rodriguez?

13 MS. RODRIGUEZ: I'd prefer to have it in writing, Your Honor.

14 THE COURT: All right. So it will be submitted to you. Please, if you have
15 objection to the letter, please register it immediately so that we can deal with this.

16 MR. GREENBERG: Could we have a commitment from defendants to
17 overnight these materials to Dr. Saad, the ones they already have available, so
18 he'll be in receipt of them by Friday? With the understanding that they need to
19 satisfy themselves regarding any conflict issues. They have a day to do that.
20 They can send him a letter right now today. I don't need to see the letter in
21 advance. They can just copy me on it. I don't need to approve it, Your Honor.
22 But I'd like to see --

23 THE COURT: No. In light of these issues, I want it submitted to you first.

24 MR. GREENBERG: Yes, Your Honor.

1 THE COURT: And you can do a quick turn-around. You can notify defense
2 counsel you have no objection immediately and then we'll go forward. But yes,
3 the materials do need to be transmitted to Mr. or Dr. Saad, and can you do that by
4 overnight mail?

5 MS. RODRIGUEZ: Well, we're talking about the external hard drives, but
6 how are we going to handle the box issue? That's my concern is how do we handle
7 -- I mean, I can go to A Cab right now and figure out how many boxes we're talking,
8 but I think it's over 100 banker's boxes. And to suggest that now they all be
9 scanned in, I've priced that out before and they run anywhere from 50 cents to
10 \$1.00 per page to scan, so that's another 300,000; several hundred thousand
11 dollars just to get them scanned, as Mr. Greenberg is suggesting, to get even them
12 put on a hard drive. And that's going to delay the process as well. So I as well don't
13 want to delay the process and I think it's very easy for a special master -- I mean,
14 I'm a paper person rather than -- those PDF files, you have to open each PDF file
15 to go through them, and this is -- they'll pull out the sheets, they'll see the front and
16 the back and see all the start times that we're asking them to look at. So, the paper
17 is very easy to work with.

18 THE COURT: Well, then perhaps you need to put in your letter that you --
19 to state those facts to him and determine --

20 MS. RODRIGUEZ: What his preference is?

21 THE COURT: Yeah. How he's going to do that.

22 MS. RODRIGUEZ: Okay. That makes sense, Your Honor.

23 THE COURT: But I don't want any of this to stop the progress, so I expect
24 what you do have to be overnighted to Dr. Saad.

1 MS. RODRIGUEZ: I can do that.

2 THE COURT: Anything else?

3 MR. GREENBERG: No, Your Honor. Your Honor has directed we proceed
4 as I was requesting, and most of the materials will be in Dr. Saad's possession
5 tomorrow if they're overnighted today.

6 THE COURT: Okay.

7 MR. GREENBERG: And I understand there is a question of these earlier
8 materials and that will have to be dealt with, as Your Honor has been discussing.

9 THE COURT: All right.

10 MS. RODRIGUEZ: I have to kind of back up a little bit because when he
11 asked for things to be overnighted, you indicated -- the Court indicated you wanted
12 this conflicts thing done first. So do you want that conflicts done today and then
13 we'll get it overnighted?

14 THE COURT: I don't expect even the -- at this point --

15 MS. RODRIGUEZ: Uh-huh.

16 THE COURT: -- I don't expect even the conflicts check to hold up the
17 progress of getting this on the road. So I want the materials that you have, which
18 I assume is the QuickBooks, to be overnighted to Dr. Saad.

19 MS. RODRIGUEZ: Okay. No problem.

20 THE COURT: At the same time, you're going to transmit a letter which
21 inquires of him what conflicts check he's done. Okay?

22 MS. RODRIGUEZ: I understand, Your Honor. Thank you.

23 MR. GREENBERG: Thank you, Your Honor. And just to clarify for the
24 record, the materials that are available immediately to overnight are both the

1 QuickBooks payroll information and the October 2010 later trip sheets, because
2 those are electronic.

3 THE COURT: And those are also on the hard drive, are they?

4 MS. RODRIGUEZ: What I have are the trip sheets. All of the 300,000,
5 I believe it's like 300,000 on an external hard drive that can be overnighted to him.
6 Do I have an address for him on his proposal?

7 MR. GREENBERG: Yes, there is an address that's on the -- it's at Exhibit B
8 of --

9 MS. RODRIGUEZ: Just so Your Honor is aware, exporting those onto the
10 external hard drive is in itself not an easy task. A Cab has had to hire a third party,
11 Mr. Morgan, to go back and extract all of that and to put it onto the hard drive. So
12 again, I just want to emphasize to the Court we've been attempting to comply and
13 doing what we can --

14 THE COURT: Good.

15 MS. RODRIGUEZ: -- until we got further direction from the Court, and that's
16 why it's ready to go. The QuickBooks is also -- I'm hoping that they can finish
17 copying that onto a separate external hard drive today and I can overnight it -- what
18 is today, Thursday -- tonight as well. Otherwise, it will -- also, it could probably go
19 out first thing in the morning tomorrow and he can receive it on a Saturday delivery
20 or Monday delivery. I'm not sure. I can try to overnight it in the morning as well.

21 THE COURT: All right.

22 MR. NADY: That will shut down our computer while we do that.

23 MS. RODRIGUEZ: Yeah.

24 THE COURT: All right. Thank you.

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MR. GREENBERG: Yes, Your Honor.

THE COURT: We then are finished and this hearing is concluded.

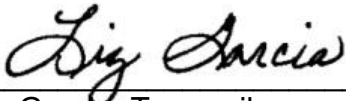
MS. RODRIGUEZ: Thank you.

MR. GREENBERG: Thank you, Your Honor.

(PROCEEDINGS CONCLUDED AT 11:02 A.M.)

* * * * *

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



Liz Garcia, Transcriber
LGM Transcription Service

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB TAXI SERVICE, LLC; A CAB, LLC;
AND CREIGHTON J NADY,
Appellants,
vs.
MICHAEL MURRAY; AND MICHAEL RENO,
INDIVIDUALLY AND ON BEHALF OF
OTHERS SIMILARLY SITUATED,
Respondents.

Supreme Court No. 72691
District Court Case No. A669926

FILED

MAY 07 2018

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"We reverse the district court's order granting the preliminary injunction."

Judgment, as quoted above, entered this 6th day of April, 2018.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
May 01, 2018.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

A - 12 - 669926 - C
CCJV
NV Supreme Court Clerks Certificate/Judgr
4744087



6


IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB TAXI SERVICE, LLC; A CAB,
LLC; AND CREIGHTON J NADY,
Appellants,
vs.
MICHAEL MURRAY; AND MICHAEL
RENO, INDIVIDUALLY AND ON
BEHALF OF OTHERS SIMILARLY
SITUATED,
Respondents.

No. 72691

FILED

APR 06 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting an injunction in a constitutional minimum wage action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Appellants A Cab Taxi Service, LLC, A Cab, LLC, and Creighton J. Nady (collectively, ACTS) and respondents Michael Murray and Michael Reno (collectively, Murray) are parties to a class action which involves claims under the Minimum Wage Amendment of the Nevada Constitution. In the order certifying the class, the district court excluded another individual, Jaminska Dubric, from participating in the class.

Dubric later filed a separate action against ACTS (the Dubric action), alleging that ACTS was not paying employees the constitutionally mandated minimum wage. In the Dubric action, ACTS and Dubric were in settlement negotiations and jointly moved the district court to be certified as a class. While the motion to certify was pending, Murray filed a motion to enjoin ACTS from entering into a settlement agreement with Dubric. The district court granted the injunction, precluding ACTS from entering a

settlement with Dubric and requiring ACTS to withdraw the motion to certify. ACTS appeals the order granting the injunction.

The decision to grant an injunction is within the district court's discretion, and we will not disturb that decision "absent an abuse of discretion or unless it is based on an erroneous legal standard." *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004); see also *Dixon v. Thatcher*, 103 Nev. 414, 417, 742 P.2d 1029, 1031 (1987) ("As a general rule, we will not overturn the district court's ruling on a preliminary injunction. However, where . . . we conclude that the district court erred, we will not hesitate to do so." (citation omitted)). "Before a preliminary injunction will issue, the applicant must show (1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy." *Nevadans for Sound Gov't*, 120 Nev. at 721, 100 P.3d at 187 (internal quotation marks omitted). NRCP 65(d) requires the district court's order granting a preliminary injunction to "set forth the reasons for its issuance; . . . be specific in terms; [and] describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." However, "the lack of a statement of reasons does not necessarily invalidate a permanent injunction, so long as the reasons for the injunction are readily apparent elsewhere in the record and are sufficiently clear to permit meaningful appellate review." *Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 118, 787 P.2d 772, 775 (1990).

Here, the district court's order enjoining ACTS in the Dubric action fails to satisfy the minimum requirements to support injunctive relief under NRCP 65(d). Moreover, our review of the record demonstrates that

the reasons for the injunction are not readily apparent or sufficiently clear. Thus, we conclude that the district court's grant of a preliminary injunction was an abuse of discretion. Accordingly, we reverse the district court's order granting the preliminary injunction.

Douglas, C.J.
Douglas

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

cc: Hon. Kenneth C. Cory, District Judge
Ara H. Shirinian, Settlement Judge
Rodriguez Law Offices, P.C.
Hutchison & Steffen, LLC/Las Vegas
Leon Greenberg Professional Corporation
Eighth District Court Clerk

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: May 1, 2018

Supreme Court Clerk, State of Nevada

By Angela Deputy

AA006462

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB TAXI SERVICE, LLC; A CAB, LLC;
AND CREIGHTON J NADY,
Appellants,
vs.
MICHAEL MURRAY; AND MICHAEL RENO,
INDIVIDUALLY AND ON BEHALF OF
OTHERS SIMILARLY SITUATED,
Respondents.

Supreme Court No. 72691
District Court Case No. A669926

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: May 01, 2018

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Kenneth C. Cory, District Judge
Hutchison & Steffen, LLC/Las Vegas
Rodriguez Law Offices, P.C.
Leon Greenberg Professional Corporation

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on MAY 07 2018.

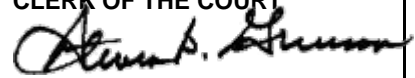
HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
APPEALS

MAY 07 2018

CLERK OF THE COURT

Pages AA006464-AA006680 intentionally omitted.



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

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

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

12 Plaintiffs,

13 vs.

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

16 Defendants.

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' MOTION ON
OST TO LIFT STAY, HOLD
DEFENDANTS IN
CONTEMPT, STRIKE THEIR
ANSWER, GRANT PARTIAL
SUMMARY JUDGMENT,
DIRECT A PROVE UP
HEARING, AND
COORDINATE CASES**

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18
19 Plaintiffs, through their attorneys, class counsel, Leon Greenberg and Dana
20 Sniegocki of Leon Greenberg Professional Corporation, hereby move this Court on an
21 OST for the expedited issuance of an Order lifting the stay in this case, holding
22 defendants in contempt, striking defendants' answer, granting plaintiffs' pending
23 partial summary judgment motion, directing a prove up hearing, and coordinating the
24 later filed case of *Dubric v. A Cab*, A-15-721063-C, with this case pursuant to EDCR
25 Rule 2.50.

26
27
28 Plaintiffs' motion is made and based upon the annexed declaration of class
counsel, the memorandum of points and authorities submitted with this motion, the

AA006681

1 attached exhibits, and the other papers and pleadings in this action.

2 Dated: April 13, 2018

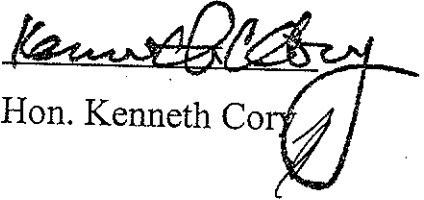
3 LEON GREENBERG PROFESSIONAL CORP.

4
5 /s/ Leon Greenberg
6 Leon Greenberg, Esq.
7 Nevada Bar No. 8094
8 2965 S. Jones Boulevard - Ste. E-3
9 Las Vegas, NV 89146
10 Tel (702) 383-6085
11 Attorney for the Class
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3 **ORDER SHORTENING TIME**

4 It is hereby ordered, that the foregoing **MOTION TO LIFT STAY, HOLD**
5 **DEFENDANTS IN CONTEMPT, STRIKE THEIR ANSWER, GRANT**
6 **PARTIAL SUMMARY JUDGMENT, DIRECT A PROVE UP HEARING, AND**
7 **COORDINATE CASES** shall be heard on the 27th day of April, 2018, at
8 the hour of 10:00 am/pm or as soon as the matter may be heard by the Court in
9 Dept. I.

10
11 Dated this 16 day of April, 2018.

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14 Hon. Kenneth Cory
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DECLARATION OF COUNSEL IN SUPPORT OF AN OST

**Defendants will soon renew their efforts to secure a
conflicting class certification order and collusive class
settlement in *Dubric* and are in violation of this Court's Orders.**

Leon Greenberg, an attorney duly licensed to practice law in the State of Nevada, and plaintiffs' class counsel in this case, hereby affirms, under penalty of perjury, that:

1. The Court is too familiar with the tortured history of this litigation. I only recite the current, relevant, facts that require urgent attention by the Court to this case.

2. Via Orders entered on February 7, 2018 and February 13, 2018, the Court directed the appointment of a Special Master in this case including a proviso that defendants were to pay such Special Master a deposit of \$25,000 and all necessary additional monies for his work. Ex. "A."

3. Via a minute Order entered on March 6, 2018, the Court acknowledged that defendants had failed, owing to claims of financial hardship, to comply with the Court's Orders respecting the Special Master appointment and had not paid the required \$25,000 to the Special Master even though the time for them to do so had expired. Ex. "B." As a result, the Special Master has now ceased his work because he has not been paid, he is currently owed about \$41,000, and he has budgeted his assignment for a total cost of \$180,000. Ex. "C" email of Special Master Ali Saad, 3/2/18, to counsel and the Court.

4. The Court, owing to Judge Cory's medical issues, and defendants' claim of "temporary inability" to pay the needed \$25,000 to the Special Master, also issued a stay of this case in its March 6, 2018 Order. Ex. "B." It anticipated during that stay, which was to be of a short, but indefinite, duration, the defendants would obtain that \$25,000 payment for the Special Master. *Id.*

5. The defendants have not, as of the date of this declaration, made the \$25,000 payment to the Special Master nor advised my office when that payment will

1 be made.

2 6. Despite their professed financial inability to comply with the Court's
3 Orders appointing a Special Master, defendants have continued to pay their counsel to
4 prosecute their appeal of this Court's injunction order, and supplemental order, issued
5 on February 16, 2017 and February 17, 2017, Ex. "D," restraining defendants from
6 continuing to attempt to secure a collusive class action settlement in the *Dubric* case.
7 That appeal was argued before the Nevada Supreme Court on April 4, 2018 and the
8 defendants paid their counsel a very substantial fee to proceed with that argument and
9 appeal, an amount that could be as much, or more, than the \$25,000 they have failed to
10 pay the Special Master because of a professed "financial inability."

11 7. I argued the appeal before the Nevada Supreme Court on April 4, 2018.
12 During that argument counsel for the defendants advised the Court that counsel for
13 Jasminka Dubric, the lone plaintiff in the *Dubric* case, was present (I observed him so
14 present) and urged the Nevada Supreme Court to set Ms. Dubric free to present her
15 proposed class action settlement in the *Dubric* case.

16 8. The presence of the *Dubric* counsel during the appeal argument, and
17 defendants' counsel's exhortations to the Supreme Court, and their continued
18 prosecution of that appeal, establishes defendants and plaintiffs' counsel in *Dubric*
19 will still pursue their collusive, and improper, class action settlement. That they
20 would do so is even more outrageous, under the current circumstances, than it was
21 when this Court issued its injunction in February of 2017. That is because in April of
22 2017 defendants secured a judgment against Jasminka Dubric for \$51,664.55 in
23 attorneys' fees and costs as a result of her unrelated, and unsuccessful, Title VII
24 lawsuit against defendants. Ex. "E." That judgment has not been appealed. It is
25 impossible for Ms. Dubric, as a substantial judgment debtor of defendants, to serve as
26 a non-conflicted and competent class representative in any litigation against the
27 defendants.

28 9. On April 6, 2018 the Nevada Supreme Court, without addressing Ms.

1 Dubric's competency to represent any class in litigation against the defendants, or
2 whether it was within the power of the district judge assigned the *Dubric* case to
3 proceed with any proposed class action settlement, issued an order reversing this
4 Court's injunction. Ex. "F." It did not, as defendants argued in their appeal, find this
5 Court, in this case, lacked jurisdiction to issue such an injunction. Rather, it did so *sua*
6 *sponte* on the basis the injunction order itself did not adequately recite the findings and
7 basis for the injunction.

8 10. The Rule 41(e) deadline for this case to proceed to trial was August 3,
9 2018, but that time has now been suspended from running since March 6, 2018 as a
10 result of this Court's stay order.

11 11. It is apparent, in light of the foregoing current situation, and the history of
12 this case, that defendants will soon, again, seek to enter into a collusive class action
13 settlement with plaintiff's counsel in *Dubric* so as to evade the Court's Orders in this
14 case. The foregoing also makes clear that defendants have willfully violated this
15 Court's Orders appointing a Special Master and have no intention of abiding by those
16 Orders. They will continue to violate those Orders and delay this case to pursue an
17 imminent Rule 41(e) "five year rule" dismissal. They also will not abide by those
18 Orders as long as they believe they can bypass the orders issued in this case by
19 engaging in *Dubric* in a collusive "reverse auction" settlement of the class claims
20 being litigated in this case. Accordingly, the interests of justice require that
21 appropriate, and expedited, relief issue in this case, such relief to include:

- 22 (A) An Order lifting the stay issued by the Court on March 6, 2018; and;
- 23 (B) An Order pursuant to EDCR Rule 2.50(b) directing that the *Dubric* case
24 be coordinated in Department 1 with this case, to ensure that there can be
25 no improper "reverse auction" of the class member claims already
26 certified for class action treatment in this case and any proposed class
27 settlement of those claims, whether presented in this case or *Dubric*, is
28 overseen by a single fully informed jurist; and;

1 (C) An Order granting plaintiffs' briefed, argued, but not yet ruled upon
2 motion for partial summary judgment and striking defendants' answer and
3 granting a default judgment against the defendants as a sanction for their
4 contempt of the Court's Orders appointing a Special Master; setting this
5 case for a prove up hearing on the class damages and entry of a final
6 judgment in favor of the class in an amount certain in damages within the
7 next 30 days; granting class counsel leave to submit all documentation in
8 support of the amount of damages to be so awarded 10 days before such
9 hearing date with defendants granted 5 days thereafter to respond; and
10 precluding defendants from disputing, in respect to any damages award
11 that the Court may grant, that (1) Every class member worked at 9.21
12 hours every shift, which is the average amount of hours per shift shown in
13 A-Cab's records from 2013 through 2015 when it purported to keep such
14 records; and (2) That the Excel files produced by plaintiffs' counsel in
15 this litigation and furnished to defendants' counsel, ACAB-ALL and
16 Damages 2007-2010, correctly calculate the minimum wages owed to
17 each class member at \$7.25 an hour for each work week, and in total, if
18 the foregoing 9.21 hours in length work shift is applied.

19 12. I appreciate that the foregoing requested relief is unusual but it is
20 warranted given the extreme circumstance and defendants' contemptuous conduct. To
21 the extent the Court might fashion some form of alternative relief, such as granting
22 defendants one final opportunity to cure their contempt of the Court's Orders
23 appointing a Special Master instead of striking their answer, it should not do so unless
24 (1) Defendants immediately pay the Special Master a \$200,000 retainer, subject to a
25 partial refund depending upon the ultimate cost of the Special Master's work, as the
26 defendants clearly will not timely pay the Special Master whose work has already
27 exceeded the \$25,000 deposit they have failed to remit; and (2) Defendants agree to
28 extend the Rule 41(e) deadline for trial in this case by at least 180 additional days.

1 13. I intend to present a form of proposed Order granting this motion for the
2 Court's consideration at, or prior to, the hearing date of this OST and will forward a
3 copy of the same to defendants' counsel, and plaintiffs' counsel in *Dubric*, prior to its
4 submission to the Court.

5 14. This Motion, brought on an expedited basis, is brought in good faith and
6 in accordance with the unique and unusual circumstances, discussed *infra* and *supra*,
7 of this case. The Court is implored to direct a hearing on this motion as soon as
8 possible and this motion will be served upon defendants' counsel, and plaintiffs'
9 counsel in *Dubric*, within one judicial day of the Court's signing of the OST.

10
11 Affirmed this ^{13th} ~~12~~th day of April, 2018.

12
13 
Leon Greenberg, Esq.

14
15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. THE COURT SHOULD USE ITS POWER UNDER**
17 **EDCR 2.50 TO REMOVE ANY THREAT OF A "REVERSE**
18 **AUCTION" OF THE CLASS CLAIMS OCCURRING**

19 **A. Department 1 can assume jurisdiction over *Dubric*.**

20 Rule 2.50(b)(1) of the Rules of Practice for the Eighth Judicial District Court
21 provides:

22 (b) Coordinated cases.

23 (1) Motions for the handling of two or more cases in a coordinated fashion or
24 for consolidation for less than all purposes must be heard by the judge assigned
to the case first commenced. If coordination is granted, the coordinated case will
be heard before the judge ordering coordination.

25 This case was commenced 18 months prior to the *Dubric* case. Accordingly,
26 this Department of this Court, in this case, has the power, pursuant to EDCR 2.50, to
27 assume jurisdiction over the *Dubric* case and resolve that case, and this case, in a
28 coordinated fashion.

1 **B. Justice, fairness, and judicial efficiency, require**
2 **that *Dubric* be coordinated with this case in this Department.**

3 The need to coordinate the proceedings in *Dubric*, which asserts the same class
4 action claims on behalf of the same class as already certified in this case, is well
5 understood by the Court and was the basis for its prior injunction. The purpose of that
6 injunction was to “coordinate” *Dubric* in a fashion that would prevent any conflict
7 with the class action proceedings in this case (while, of course, allowing Ms. Dubric,
8 who has not become a member of the class in this case, to proceed with her claim
9 individually). This sort of “coordination” of potentially conflicting class action
10 lawsuits is one of the central purposes of the federal judicial panel on multidistrict
11 litigation (the “MDL” court) established under 28 U.S.C. § 1407. The MDL court
12 acts, within the federal judicial system, to prevent the exact sort of problems (the
13 “reverse auction” situation) that this Court was addressing in its prior injunction. This
14 Department can function in the same fashion as the federal MDL court in this situation
15 by coordinating, pursuant to EDCR 2.50, the *Dubric* case with this case.

16 Coordinating *Dubric* with this case will protect, and advance, the interests of the
17 class already certified in this case, by preventing any “reverse auction” class
18 settlement. It will also advance the interests of Ms. Dubric, individually. In the event
19 defendants comply with this Court’s Order respecting the appointment of a Special
20 Master, Ms. Dubric will, individually, benefit from that Special Master’s work. A
21 determination of the hours she worked, and the amounts she was paid, based upon
22 defendants’ records, would be created, for her use in her case, by the Special Master.
23 She would remain free to separately litigate her claim in this Department, but her
24 common factual issue with the class, what defendants’ records show in respect to her
25 minimum wage claim, would be established in these coordinated proceedings. In
26 addition, the discovery furnished by defendants in this action includes various
27 valuable computer data records from A-Cab that would assist Ms. Dubric in the
28 prosecution of her individual case.

1 **II. THE COURT SHOULD LIFT THE STAY**

2 If Judge Cory has returned from medical leave the stay of this case should be
3 lifted as no reason exists to continue that stay.

4 **III. THE COURT SHOULD STRIKE DEFENDANTS' ANSWER, GRANT A DEFAULT JUDGMENT, AND PROMPTLY PROCEED TO ENTER FINAL JUDGMENT FOR THE CLASS DAMAGES**

5
6 **A. Defendants' contemptuous conduct is manifest and warrants the striking of their answer and a default judgment.**

7 **1. Defendants are willfully violating the Court's Orders.**

8 The Court has exercised extraordinary patience with the defendants.
9
10 Defendants' claim, made solely through their counsel and without a scintilla of
11 corroboration such as a sworn declaration of defendants, that they "lack the funds" to
12 pay the \$25,000 Special Master deposit, have no basis in reality. Defendants are
13 ***making a choice to not pay that money and violate the Court's Orders.*** Confidential
14 financial documents produced in this case (and kept under seal, they can be filed under
15 seal with the Court) amply demonstrate that A-Cab has the financial resources to pay
16 the Special Master. Defendants' violation of the Court's Order, and their failure to pay
17 the \$25,000 deposit to the Special Master, is intentional and inexcusable. And at this
18 point paying that \$25,000 would not even compensate the Special Master for the work
19 already performed or allow him to complete his assignment. See, Ex. "C" email of
20 March 2, 2018 of the Special Master to the Court and all parties, indicating current
21 expenditures are \$41,000, the assignment is budgeted for \$180,000 in total costs, and
22 advising he is ceasing all work on the assignment until he receives "assurances my
23 firm will be paid for our work."

24 **2. The Court may strike defendants' answer in response to their non-compliance with its Orders and their "unresponsive and abusive litigation practices."**

25 This Court has the power, in its discretion, to strike a defendant's answer, and
26 enter a default judgment, when the defendant has failed to obey a discovery order or is
27 "unresponsive and engage[s] in abusive litigation practices that cause interminable
28

delays.” See, *Foster v. Dingwall*, 227 P.3d 1042, 1048 (Nev. Sup. Ct. 2010), citing
Young v. Johnny Ribeiro Building, 787 P.2d 777, 780 (Nev. Sup. Ct. 1990) and
Temora Trading Co. v. Perry, 645 P.2d 436, 437 (Nev. Sup. Ct. 1982).

3. **Defendants’ “unresponsive and abusive litigation practices” causing “interminable delays” are overwhelmingly documented, longstanding, and justify striking their answer.**

The defendants’ current intentional violation of the Court’s Special Master Orders is only the most recent manifestation of their long history of “unresponsive and abusive litigation practices” that have caused “interminable delays.” That conduct also pre-dates defendants’ abusive attempt in February of 2017 to bypass this Court’s class certification Order and secure a collusive “reverse auction” class settlement in *Dubric*¹ and their motion filed in November 2016, later withdrawn, to implead class counsel as a third party defendant. Such conduct began no later than March of 2015, when defendant Nady personally represented to the Discovery Commissioner incorrect, and non-existent, obstacles to the production of certain computer data files. Ex. “G” Order entered March 4, 2016 on DCCR, ¶ 3, p. 3-4, finding of Discovery Commissioner adopted by the Court. Those false representations resulted in the holding of a completely unnecessary deposition in July of 2015 and various other proceedings that did not result in the production of those materials until over one year later. *Id.* The defendant Nady also gave a deposition during that course of events where he was found to be abusive, acted in an inexcusable manner, and not cautioned or counseled by his attorneys to curb such behavior. *Id.*, ¶ 4, p. 5. Such conduct by the defendants resulted in the imposition of a \$3,238 award of sanctions against

¹ Defendants’ argument that they were always free to seek such a class settlement in *Dubric*, and that the Supreme Court’s recent decision confirms they acted appropriately in doing so, are specious. The Supreme Court never made any determination that *Dubric* had subject matter jurisdiction to grant the class settlement defendants were seeking. It clearly did not, as this Court’s class certification order of June 7, 2016 assumed jurisdiction over the class claims and prohibited any such settlement except pursuant to a further order in this case. Ex. “H”, p. 12, l. 16-20.

1 defendants. *Id.* p. 8, l. 5.

2 The situation before the Court does not involve only one, or even two,
3 questionable, perhaps uninformed, unintentional, or ill thought out, actions by a party.
4 Defendants have engaged in a continuing course of abusive litigation conduct. Their
5 abject, and intentional, evasion and violation of the Court's Special Master Orders is
6 only the latest installment of such conduct. The Court is implored to make it the final
7 chapter of such conduct and strike defendants' answer and enter a default judgment.

8
9 **III. THE COURT SHOULD APPROPRIATELY LIMIT**
10 **DEFENDANTS' ABILITY TO CONTEST THE CLASS**
11 **MEMBERS' DAMAGES AS A RESULT OF DEFENDANTS'**
12 **VIOLATION OF THE COURT'S ORDERS**

13 **A. Defendants' violation of the Court's Order appointing**
14 **a Special Master, the purpose of which was to ascertain the**
15 **class members hours of work, should also be remedied by**
16 **restricting defendants' ability to present evidence on that issue.**

17 The Court appointed a Special Master to review A-Cab's records and make a
18 determination of the hours worked by, and minimum wages owed to, the class
19 members based upon those records. It did so in response to A-Cab's failure to
20 maintain the proper records required by NRS 608.115. *See*, Ex. "A." In light of
21 defendants' failure to remedy their violation of NRS 608.115 by complying with the
22 Ex. "A" Orders, the Court should similarly limit defendants' ability to contest the class
23 members' damages at the prove up hearing it will hold pursuant to NRCP Rule
24 55(b)(2). The ability of this Court to limit a parties' right to present evidence at a
25 prove up hearing is well established. *See, Foster*, 227 P.3d at 1050 ("....where a
26 district court determines that an NRCP 55(b)(2) prove-up hearing is necessary to
27 determine the amount of damages, the district court has broad discretion to determine
28 how the prove-up hearing should be conducted and the extent to which the offending
party [who violated the courts prior orders and provoked the default judgment] may
participate.) *citing Hamlett v. Reynolds*, 963 P.2d 457, 459 (Nev. Sup. Ct. 1998). The
District Court is specifically empowered to impose such limitations against a party in a

1 manner that reflects their litigation misconduct. *See, Blanco v. Blanco*, 311 P.3d 1170,
2 1176 (Nev. Sup. Ct. 2013) (“At such a hearing [the equivalent of an NRCP 55(b)(2)
3 prove up hearing upon a default in a divorce case], the district court has broad
4 discretion to limit the offending party's presentation of evidence in line with the
5 discovery violation [causing entry of the default judgment sanction].”) *citing Foster*,
6 227 P.3d at 1050.

7 The litigation abuse at issue in this case, defendants’ refusal to proceed with the
8 Special Master process Ordered by the Court, should trigger the same sort of
9 “appropriately tailored” evidence presentation limitation recognized in *Blanco*.
10 Defendants, having prevented the ascertainment of relevant information respecting the
11 hours worked by the class members, and their resulting damages, should be
12 appropriately restricted from fully contesting the amounts so owed and the evidence
13 presented in support of such claims. Indeed, failing to impose *any* such restriction
14 would *reward* defendants for their failure to allow the Special Master to complete his
15 work! There would be no results contemplated by the Court from the Special Master’s
16 appointment and the defendants would remain able, in full, to contest *any* assessment
17 of damages, and *any* evidence the class would present on their damages in the absence
18 of the Special Master’s completed assignment. Such a result would be highly unjust.

19
20 **B. Defendants should be precluded from disputing damages that**
21 **are calculated based upon (1) The class members’ average shift**
22 **length as found in the 2013-2015 records that A-Cab has sworn**
23 **contain accurate statements of hours worked; (2) The lower tier**
\$7.25 an hour rate; and (3) The Excel files ACAB-ALL and
Damages 2007-2010.

24 **1. The Court should grant plaintiffs’ long pending motion**
25 **for partial summary judgment based upon defendants’**
26 **own hours worked, and wages paid, records from their**
Quickbooks system for the 2013-2015 time period.

27 The plaintiffs’ partial summary judgment motion, in a nutshell, documents that a
28 total of \$174,839 is owed for years 2013-2015 in precise amounts to identified class

1 members, at the “lower tier” \$7.25 an hour minimum wage rate, **based upon A-Cab’s**
2 **own records of hours worked, and wages paid, contained in their Quickbooks**
3 **payroll system.** No disputed issue of fact exists in respect to that claim and the
4 calculations underlying it. This was fully discussed for the Court in plaintiffs’
5 supplemental briefing (submitted at the Court’s request on 1/9/18, copy at Ex. “I”²) A-
6 Cab is bound by the information contained in those Quickbooks records and has
7 repeatedly affirmed, under oath, that such information is accurate. Ex. “I”, p. 4-9.
8 Nor does A-Cab dispute the accuracy of the calculations made by plaintiffs and
9 submitted to the Court (375 pages examining 14,200 individual class member pay
10 periods) and their expert *confirms* the accuracy of those calculations. Ex. “I” p. 8-11.
11
12

13 **2. The Court should bar defendants from contesting a**
14 **damages assessment at \$7.25 an hour for the 2007-2012**
15 **period based upon the “average” shift work length shown**
16 **by A-Cab’s records for the 2013-2015 time period.**

17 The defendants, having failed to keep payroll records of the class members’
18 hours of work prior to 2013, and having refused to comply with the Court’s Special
19 Master Orders, should be barred from contesting the “lower tier” \$7.25 an hour
20 damages for the period *prior* to 2013 when the *defendants’ admitted work hours*
21 *average from 2013 and later* is applied. That work hours average is 9.21 “per shift”
22 for the 2013-2015 period, as recorded in defendants’ Quickbooks payroll records for
23 that period. Plaintiffs contend that “average” is *too far too low* and reflects an
24 intentional “under reporting” of work time by defendants in the Quickbooks payroll
25
26

27 ² While this was set for hearing on January 23, 2018 the Court did not proceed
28 with its resolution at that time. Instead the Court directed the parties to proceed with
the Special Master appointment and deferred further action on that motion.

1 records during the 2013-2015 period.³ But it should serve as a starting point for a
2 non-contested assessment of damages owed to the class.

3 Plaintiffs are proposing an equitable, fair, and “appropriately tailored,” as
4 discussed in *Blanco*, response to defendants’ contemptuous conduct. Assessing
5 damages against defendants at \$7.25 an hour, based upon the 9.21 “average shift”
6 length from the 2013-2015 period, will result in a judgment of \$804,000 for the 2007-
7 2012 period for all class members. That 9.21 “average shift length” is the information
8 that defendants have made available and insist is accurate for the 2013-2015 period.
9 In light of the defendants’ refusal to allow any more accurate accounting, by the
10 Special Master, of their records for the 2007-2012 period (an accounting that by all
11 indications would result in a *longer* average shift length and a *greater* assessment of
12 damages), it is appropriate that the Court prohibit defendants from contesting damages
13 for the 2007-2012 period using that 9.21 “average shift length” hours.

14 In respect to the “actual calculations” to be made using that 9.21 “average shift
15 length” and defendants’ Quickbooks records, defendants should be similarly barred
16 from contesting the accuracy of the calculations arrived at by the Excel files
17 ACABALL and Damages 2007-2010. Those files were compiled by plaintiffs from
18 the Quickbooks (payroll) and Cab Manager (number of shifts worked **not time**
19 **worked**) records provided by the defendants. In support of their submission for entry
20 of damages per NRCP 55(b)(2), plaintiffs will place in the record every pay period for
21

22 ³ Plaintiffs’ contention the 9.21 hours is far too low an hours worked per shift
23 assumption has substantial support in parallel “shift in/shift out” time records
24 maintained in defendants’ Cab Manager system records, which show an average shift
25 length of 11.03 hours per shift. Plaintiffs’ contention is also supported by
26 defendants’ own expert, who conducted a review of trip sheets for 72 work weeks
27 during that 2013-2015 period and found that the average shift length was 9.6 hours.
28 Instead of burdening the Court at this time with the Exhibits and other materials
necessary to establish these 9.21, 11.03, and 9.6 average shift length calculations the
plaintiffs will place that information in the record in its submission for entry of
damages per NRCP 55(b)(2).

1 every class member reviewed by those Excel files (approximately 29,000 pay periods
2 printed on approximately 800 pages) and the calculations performed by those Excel
3 files. Defendants will be free to review every one of those 29,000 pay period
4 calculations and bring to the Court's attention any errors in those calculations, in
5 respect to determining the minimum wages owed at \$7.25 an hour based upon the
6 information contained in those Excel files (no such errors exist). But defendants
7 *cannot* be allowed to contest whether the information assembled, and placed, in those
8 Excel files is correct. They have now had those files for over six months and have
9 never disputed, in a rebuttal expert report or any other fashion, that they contain an
10 accurate assembly of information from defendants' own records. In fact, defendants'
11 expert conceded that they *do* contain accurate information and that defendants *elected*
12 *not to* scrutinize that information by examining it against their original records. Ex.
13 "I," p. 8, l. 26 - p. 9, l. 6.

14 **IV. THE COURT SHOULD AT LEAST DIRECT A *CONDITIONAL*** 15 **DEFAULT JUDGMENT WITH OTHER APPROPRIATE TERMS**

16 If the Court, in its discretion, determines it should *still* allow defendants *one*
17 *final opportunity* to comply with its Orders, and spare them from having their answer
18 stricken, it should only do so under very carefully tailored terms. Those terms should
19 include compelling defendants to deposit \$200,000 with the Special Master (subject to
20 a partial refund if not needed) within ten (10) days or their answer will be stricken
21 without the entry of any further order. It needs to do so as it is apparent defendants
22 will default in paying the Special Master's future costs, given their willful failure to
23 pay the \$25,000 deposit ordered by the Court. The Court should also compel
24 defendants, in lieu of having their answer stricken, to waive for an additional 180 day
25 period their rights under Rule 41(e). Only by doing so can the Court stop the
26 defendants' continuing delaying conduct geared to securing a Rule 41(e) dismissal.
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CERTIFICATE OF SERVICE

The undersigned certifies that on April 17, 2018, she served the within:

**Plaintiffs' Motion on Ost to Lift Stay, Hold
Defendants in Contempt, Strike Their Answer, Grant
Partial Summary Judgment, Direct a Prove up
Hearing, and Coordinate Cases**

by court electronic service to:

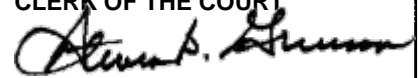
TO:

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

/s/ Sydney Saucier

Sydney Saucier

EXHIBIT "A"



ORDR

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DANA SNIEGOCKI, ESQ., SBN 11715
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

**ORDER MODIFYING COURT'S
PREVIOUS ORDER OF
FEBRUARY 7, 2018
APPOINTING A SPECIAL
MASTER**

On February 7, 2018, the Court entered an Order Granting Plaintiffs' Motion to Appoint a Special Master. That Order appointed as a Special Master in this case Michael Rosten of Piercy Bowler Taylor & Kerns in Las Vegas, Nevada. Since entry of that Order, the Court has received correspondence from Defendants' counsel, Esther Rodriguez, concerning a purported conflict of interest with the appointment of Mr. Rosten as Special Master. The Court has also received a responsive letter from Plaintiffs' counsel, Leon Greenberg.

As of this writing, it has been at least nineteen (19) days since the Court Ordered that a Special Master be appointed, and yet inadequate progress is being made toward implementation of that Order. The Court is extremely concerned with the passage of time in this matter for reasons previously expressed.

In order to prevent one more issue from injecting itself into these proceedings,

1 and in light of the possibility that any local firm may trigger another objection due to
2 purported conflicts of interest, the Court rescinds its appointment and its selection of
3 Michael Rosten and the firm of Piercy Bowler Taylor, & Kerns as Special Master and
4 selects Dr. Ali Saad and the firm of Resolution Economics to be the Special Master in
5 this case. Mr. Rosten and Piercy Bowler Taylor & Kerns may present their bill for
6 services rendered to the Defendant A Cab who shall have 10 days to pay the same and
7 this matter will proceed to its conclusion.


8 The Court's Order of February 7, 2018 appointing a Special Master is hereby
9 amended to substitute Dr. Ali Saad and the firm of Resolution Economics where that
10 Order referred to Michael Rosten and the firm of Piercy Bowler Taylor & Kerns. The
11 various time limits for action to be taken under that Order shall now commence from
12 the date of entry of this Order. All other terms of the Court's Order of February 7,
13 2018 in this case shall remain in effect.

14 **IT IS SO ORDERED.**

15 
16 Honorable Kenneth Cory
17 District Court Judge

Feb 13, 2018
Date

18 LEON GREENBERG PROFESSIONAL CORP.

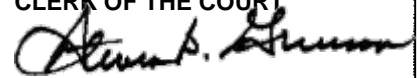
19 
20 Leon Greenberg, Esq. NSB 8094
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22 2965 S. Jones Boulevard - Ste. E-3
23 Las Vegas, NV 89146
24 Tel (702) 383-6085
25 Attorney for the Plaintiffs

2/13/18
Date

26 Approved as to Form and Content:

27 NOT Approved
28 Esther C. Rodriguez, Esq. NSB 6473
RODRIGUEZ LAW OFFICES P.C.
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Tel (702) 320-8400
Attorney for the Defendants

Date



ORDR

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

**ORDER GRANTING
PLAINTIFFS' MOTION TO
APPOINT A SPECIAL MASTER**

**Hearing Date: February 2, 2018
Hearing Time: 9:00 a.m.**

On January 25, 2018, with all the parties appearing before the Court by their respective counsel as noted in the record, the Court granted plaintiffs' motion for rehearing of plaintiffs' prior request to appoint a special master pursuant to Nev. R. Civ. P. 53, such request being made as part of Plaintiffs' Motion for Class Certification originally filed on May 19, 2015. Such request was originally denied by the Court in its Order entered on February 10, 2016. In revisiting that prior order and entertaining the argument of counsel for the parties at a continued hearing held on February 2, 2018, the Court hereby finds:

The parties do not dispute that the wages paid the class members every pay period are accurately set forth in the preserved Quickbooks records of defendant A-Cab. The parties cannot, at this time, present to the Court any agreed upon record of

1 the total hours worked during each of those pay periods by each class member.
2 Plaintiffs have maintained throughout this litigation that defendants failed to keep a
3 record of the total hours worked by each of the class members per pay period as
4 required under NRS 608.115. NRS 608.115 requires an employer to “establish and
5 maintain records of wages for the benefit of his or her employees, showing for each
6 pay period....[t]otal hours employed in the pay period by noting the number of hours
7 per day.” Defendants have maintained throughout this litigation that the only way to
8 determine the hours worked by the plaintiffs and the class members is to consult the
9 tripsheets. Defendants assert that those tripsheets set forth an accurate record of the
10 amount of time that the plaintiffs and the class members worked. Yet those tripsheets
11 do not show the “total hours employed in the pay period.” They record the time of day
12 a taxicab driver started their shift, the time of day they ended that shift, and the amount
13 of non-working break time that occurred during the shift.

14 In light of the above, the Court finds that the appointment of a Special Master is
15 the appropriate solution to determine the hours worked each pay period by each class
16 member and the amount of minimum wages, if any, that each one is owed based upon
17 A Cab’s records. The Special Master is being appointed to report on the hours
18 worked, and the wages paid, as documented in A Cab’s admittedly accurate records; to
19 what extent that information in those records demonstrates wages of less than the
20 minimum wage (that “lower tier” rate is \$7.25 an hour since July 1, 2010) were paid
21 during any pay periods; and the amount of any such minimum wage deficiencies for
22 each class member.

23 The Court finds such a Special Master appointment pursuant to NRCP Rule
24 53(b) is appropriate in respect to the class members’ claims that are established by the
25 records the Special Master will review. Such claims will not require any
26 determination by a jury and must be determined as a matter of law based upon those
27 records. The Court also finds that such a Special Master appointment is appropriate
28 under NRCP Rule 53(b) as the resolution of the class members’ claims present

1 complicated issues. Whether minimum wages are owed for any particular pay period
2 is quite simple when the relevant information (hours worked and wages paid) is
3 known. But in this case that information must be gathered from over 200,000 trip
4 sheets, a complex process. Similarly, performing that calculation on many thousands
5 of pay periods for approximately 1,000 class members is also complicated and
6 laborious.

7 The Court also finds a compelling imperative in so appointing a Special Master,
8 at defendants' expense at this time, to perform this task is found in the Nevada
9 Constitution, which provides for the most stringent protections for Nevada's
10 employees to ensure they are paid the required minimum wage. It also directs this
11 Court to grant all relief available to effectuate its purpose of securing the payment of
12 minimum wages owed to Nevada employees. The Court reserves a final
13 determination pertaining to which party will bear the costs or a portion thereof of the
14 Special Master following the final report of the Special Master.

15 THEREFORE IT IS HEREBY ORDERED that Michael Rosten and the firm of
16 Piercy Bowler Taylor & Kern of Las Vegas, Nevada, is appointed Special Master in
17 this case by the Court. The purpose of such Special Master appointment is to
18 determine for each class member, based upon the hours of work set forth in their trip
19 sheets for each pay period, and the wages they were paid in each such pay period as set
20 forth in A Cab's Quickbooks records, the unpaid minimum wages they are owed by A
21 Cab pursuant to Article 15, Section 16, of Nevada's Constitution (the "MWA") under
22 the "lower tier" or "health insurance provided" minimum wage rate. That
23 determination is to be made for all class members for all pay periods falling entirely
24 within the class period of October 8, 2010 through December 31, 2015. That
25 determination is also to be made for those class members who were granted a statute of
26 limitations toll pursuant to this Court's Order entered on June 7, 2017 for all pay
27 periods occurring entirely after the statute of limitations toll date listed for them in Ex.
28 "A" of that Order and prior to December 31, 2015; and

1 IT IS FURTHER ORDERED that in determining the hours of work shown by a
2 trip sheet, the Special Master shall accept as correct the characterization of time as
3 "breaks" or "meals" or non-working time in the trips sheet as accurate and subtract all
4 such time from the interval between the start and end time for the shift as recorded on
5 the trip sheet. The Special Master in their report shall also note the indicated start and
6 end time of "break" or "meal" time entry on each trip sheet. In the event that no shift
7 end time is recorded or fully legible on a trip sheet the Special Master shall indicate in
8 their report the times on that trip sheet's copy of the printed receipt that included
9 "Meter Details" and that trip sheet's copy of the printed fuel purchase receipt and use
10 the earlier of each time to arrive as a "shift end" time for purposes of calculating the
11 hours worked during the shift. If no legible "Meter Details" or fuel purchase receipt
12 time exists on that trip sheet the Special Master shall not calculate any hours of work
13 for that trip sheet and that shift and shall record that they are unable to arrive at a
14 working hours total, or perform a minimum wage underpayment calculation, for the
15 class member for the pay period including that trip sheet. In determining all wages
16 paid to a class member during a pay period the Special Master shall include all items
17 of taxable income paid by A Cab to the class member during the pay period as
18 recorded in A Cab's Quickbooks records but shall not include any amounts identified
19 as "Tips" or "Tips Supplemental." The Special Master shall rely on the parties'
20 stipulated agreement as to the wages paid to the class members each class period if the
21 parties so agree to stipulate.; and

22 IT IS FURTHER ORDERED that A Cab shall, forthwith, provide the Special
23 Master all records necessary for the performance of its appointment and as the Special
24 Master requests. The first meeting of the parties and the Special Master directed by
25 NRCF 53(d)(1) is dispensed with. The Special Master shall deliver the report of their
26 findings to the Court and the parties no later than 45 days from the Special Master's
27 receipt of the deposit specified in this Order.


28 The report so furnished shall state the total amount of unpaid minimum wages

1 so owed, if any, for each class member; the amount of hours each class member was
2 found to have worked each pay period for A Cab; and the amount of wages within the
3 meaning of the MWA they were paid each pay period by A Cab. The report shall also
4 indicate every pay period for every class member that the Special Master finds the
5 records reviewed contained incomplete or not fully legible information and for which
6 no determination on whether proper minimum wages were paid could be made. At the
7 request of any party, the Special Master shall provide the report's foregoing findings
8 in an Excel file.

9 IT IS FURTHER ORDERED that the costs of the Special Master shall be borne
10 by the defendant A Cab who shall, within 10 days of the entry of this Order deposit
11 with the Special Master the amount of \$25,000 for their services, the Court also
12 expressly reserving the possibility that it may in the future direct some portion of the
13 Special Master's cost be shifted to the plaintiffs if the Special Master's report
14 documents circumstances that the Court finds warrant it doing so.;

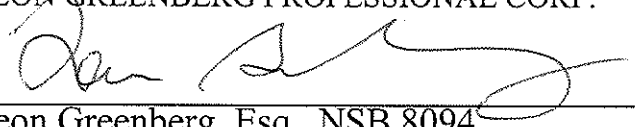
15 IT IS FURTHER ORDERED that the Court will not be entertaining a motion for
16 reconsideration of this order by the defendants.

17
18 **IT IS SO ORDERED.**

19
20 
21 Honorable Kenneth Cory
22 District Court Judge

23 2-7-18
Date

24 LEON GREENBERG PROFESSIONAL CORP.

25 
26 Leon Greenberg, Esq. NSB 8094
27 LEON GREENBERG PROFESSIONAL CORP.
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Attorney for the Plaintiffs

29 2/6/18
Date

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Approved as to Form and Content:

Not Approved

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Attorney for the Defendants

Date

EXHIBIT “B”

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

March 06, 2018

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

March 06, 2018

Minute Order

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

JOURNAL ENTRIES

The Court has reviewed Defendant s Motion on OST for Stay, received on March 2, 2018, Plaintiffs' Response to Defendant s Motion, Plaintiffs' Motion on OST to enforce the Court's Orders, and the e-mail correspondence from counsel and the Special Master, Dr. Saad.

For the reasons stated herein the Court GRANTS a temporary stay to resolve the Defendants' claimed inability to pay the Special Master the initial \$25,000 required by previous court order.

In addition to Defendants' protestations of their temporary inability to pay the initial \$25,000, the Court also GRANTS a temporary Stay due to health considerations of the Court. The Court has scheduled a necessary surgery for March 8, 2018, which surgery will require a relatively brief recuperation period. The Court is therefore entering an indefinite stay for both reasons, which the Court anticipates will not last longer than approximately 3 weeks.

The Court has considered whether it would make more sense to recuse from the case, and/or request a reassignment by the Chief Judge of the Eighth Judicial District Court. However, the duplication of the time and effort it would take for another judge to become adequately conversant with this case would likely protract this case yet again, and would likely cost the parties more in attorney fees; nor would it facilitate an economical and fair management of this litigation. Recusal or reassignment would necessitate such delay that it should only come as a last resort.

Inasmuch as the anticipated calendared surgery is laparoscopic in nature, the Court feels confident that it will be fully functional and able to proceed ahead within three weeks.

In the meantime, the Special Master is directed to cease all efforts to complete the task previously

PRINT DATE: 03/06/2018

Page 1 of 2

Minutes Date: March 06, 2018

AA006709

ordered by this Court until further order of this Court. Additionally, because there will be a breathing space of approximately three weeks the Defendants should well be able to set aside the initial \$25,000 deposit, and are ORDERED to do so.

The court anticipates setting a hearing date to accomplish the following:

1. Dissolve the stay;
2. Argue and rule on the various motions which have been filed; and
3. Reset the Rule 41(e), i.e., 5-year Rule, date by which this matter must be concluded.

CLERK S NOTE: The above minute order has been distributed to: Lean Greenberg, Esq. (leongreenberg@overtirnelaw.com), Esther Rodriguez, Esq. (esther@rodriguezlaw.com), Michael Wall, Esq. (mwall@hutchlegal.com) and Special Master Dr. Saad (ASaad@resecon.com). /mlt

EXHIBIT "C"

Subject: special master assignment in Murray v. A Cab

From: Ali Saad <ASaad@resecon.com>

Date: 3/2/2018 2:20 PM

To: "Dept01LC@clarkcountycourts.us" <Dept01LC@clarkcountycourts.us>

CC: "Leon Greenberg (wagelaw@hotmail.com)" <wagelaw@hotmail.com>, "Esther C. Rodriguez (esther@rodriguezlaw.com)" <esther@rodriguezlaw.com>, "Michael K. Wall, Esq. (mwall@hutchlegal.com)" <mwall@hutchlegal.com>

To the Court and Judge Cory:

I and my firm were selected to serve as a special master in the above referenced case. I was informed by court order that I was to be sent certain materials that would require data entry and the construction of a computerized database. I was informed that the deadline for completion was tight. I was further informed that a deposit of \$25,000 was ordered to be paid within 10 days of the order. At the request of the parties, and given the tight timeline, my firm began work on the project. It is now more than 10 days by my count from the date of the order, and no deposit has been paid. The parties are in disagreement over what "10 days" means under the applicable statute. I am in no position to know who is correct. However, the real issue facing me is that defendant's counsel has stated that she is unsure defendant can pay the deposit of \$25,000, let alone the full expected amount, which was budgeted in advance of selection for the assignment at \$180,000, give or take for unexpected contingencies. I have no choice at this time but to stop work on the project until I receive assurances my firm will be paid for our work. I am seeking the guidance of the Court as to the best course of action, and of course, my firm is able to restart the work should we be requested to do so. Also, The current state of our costs is approximately \$41,000 as of today, and regardless of the ultimate resolution of the wider issue, I would hope we would be compensated for this work.

Respectfully,

Ali Saad

Ali Saad, Ph.D.

Resolution Economics LLC

1925 Century Park East

15th Floor

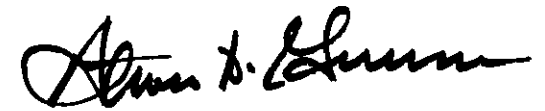
Los Angeles, CA 90067

(p) 310.275.9137

(f) 310.275.9086

AA006712

EXHIBIT “D”



CLERK OF THE COURT

SUPPL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MICHAEL MURRAY,

Plaintiffs,

vs.

A CAB TAXI SERVICE, LLC, et al.,

Defendants.

CASE NO. A669926

DEPT NO. I

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

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

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

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

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

10

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

14

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

19

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

25

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

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

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

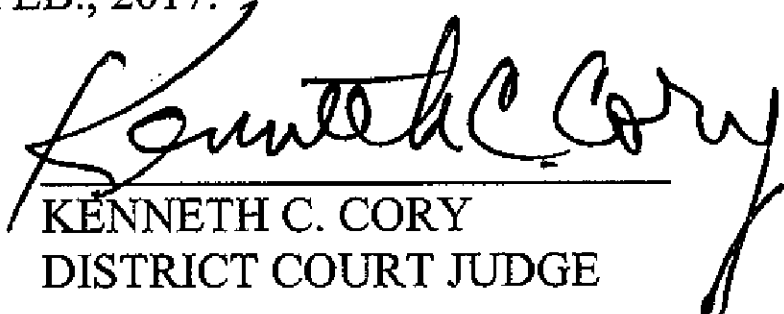
19 Andrew S. Weinstein, *Avoiding the Race to Res Judicata: Federal Antisuit*
20 *Injunctions of Competing Class Actions*, 75 N.Y.U. L. Rev. 1085, 1085-1091
(2000).

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

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

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

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

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

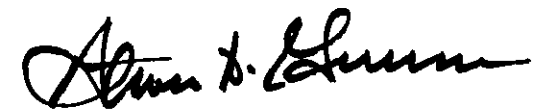
10
11
12 **CERTIFICATE OF SERVICE**

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

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

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

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



CLERK OF THE COURT

1 ORDR

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

15 Plaintiffs,

16 vs.

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

19 Defendants.

} Case No.: A-12-669926-C

} Dept.: I

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

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

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

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

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

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


HONORABLE JUDGE KENNETH CORY
DISTRICT COURT, CLARK COUNTY

EXHIBIT “E”

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JASMINKA DUBRIC,

Plaintiff,

vs.

A CAB, LLC et al.,

Defendants.

2:15-cv-02136-RCJ-CWH

ORDER

This Title VII employment discrimination case was tried to jury verdict on February 24, 2017. Now pending before the Court is Defendants' Motion for Attorney Fees. (ECF No. 96.) For the reasons given herein, the Court grants the motion in part.

I. FACTS AND PROCEDURAL BACKGROUND

Plaintiff Jasminka Dubric ("Dubric") began working for Defendant A Cab, LLC ("A Cab") in June 2013. Dubric alleged that from the beginning of her employment until May 26, 2015, Defendant Creighton J. Nady ("Nady") "made comments about Plaintiff's appearance and body" and hugged and touched her without permission. (Compl. ¶ 10, ECF No. 1.) Dubric alleged that in February 2015, Nady "grabbed her face and forcefully kissed her on the mouth," (*Id.* at ¶ 12; Dubric Dep. 49:1–50:16, ECF No. 40-2), and that on May 26, 2015, Nady grabbed Dubric's arm, pulled her toward him, and attempted to kiss her on the lips; however, Nady ended up kissing only Dubric's cheek after she turned her head and pulled away, (Compl. ¶ 13; Dubric

1 Dep. 88:10–89:18). On or about May 27, 2015, A Cab demoted Dubric from road supervisor to
2 taxi cab driver, and Dubric resigned. (Compl. ¶¶ 14–15.)

3 On November 6, 2015, Dubric filed this suit making three claims solely against A Cab:
4 (1) sexual harassment—hostile work environment in violation of Title VII; (2) sexual
5 harassment—quid pro quo in violation of Title VII; and (3) retaliation in violation of Title VII;
6 and two claims against both A Cab and Nady: (1) intentional infliction of emotional distress; and
7 (2) battery. In addition, Nady asserted a counterclaim against Dubric for defamation. On
8 December 8, 2016, the Court denied Defendants’ motion seeking defensive summary judgment
9 on Dubric’s claims and offensive summary judgment on Nady’s counterclaim. (Order, ECF No.
10 42.)

11 At trial, following Dubric’s case-in-chief, the Court partially granted Defendants’ Rule
12 50 motion for judgment as a matter of law. The Court dismissed Dubric’s Title VII claims of
13 hostile work environment and retaliation. However, the Court declined to dismiss the claims of
14 quid pro quo sexual harassment, intentional infliction of emotional distress, and battery. At the
15 close of evidence, the Court further narrowed Dubric’s claims, granting judgment in favor of A
16 Cab—but not Nady—on the state law claims of intentional infliction of emotional distress and
17 battery.

18 On February 24, 2017, the jury found against Dubric on all remaining claims. The jury
19 also found against Nady on his counterclaim for defamation.

20 A Cab and Nady have now filed a motion for attorneys’ fees under Section 706(k) of
21 Title VII. (ECF No. 96.) Defendants seek recovery of \$143,905.50 in fees to be distributed as
22 follows: \$86,397.50 to Rodriguez Law Offices, P.C. (“RLO”), \$18,080.00 to Kamer Zucker
23 Abbott (“KZA”), and \$39,428.00 to Mace J. Yampolsky, Ltd. (“MJY”). (Mot. Att’y Fees 4, ECF
24 No. 96.) These figures represent the total fees incurred in defense counsel’s litigation of the case.

II. LEGAL STANDARDS

In a Title VII case, “the court, in its discretion, may allow the prevailing party . . . a reasonable attorney’s fee. . . .” 42 U.S.C. § 2000e–5(k). While successful plaintiffs in civil rights actions are awarded attorneys’ fees as a matter of course, prevailing defendants are awarded fees only in “exceptional cases,” lest plaintiffs with legitimate claims be deterred from filing suit. *Harris v. Maricopa Cnty. Superior Court*, 631 F.3d 963, 968 (9th Cir. 2011). Accordingly, a prevailing defendant in a civil rights case is awarded attorneys’ fees only if the court finds that the plaintiff’s action was “frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so.” *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978).

“A case may be deemed frivolous only when the result is obvious or the arguments of error are wholly without merit.” *Gibson v. Office of Att’y Gen., State of California*, 561 F.3d 920, 929 (9th Cir. 2009) (citations and punctuation omitted). Whether an action is frivolous, unreasonable, or without foundation must be determined on a claim-by-claim basis, *see Christiansburg*, 434 U.S. at 422, and only those fees incurred in defending against the frivolous, unreasonable, or groundless claims are recoverable. *Harris*, 631 F.3d at 971.

“The fact that a plaintiff may ultimately lose his case is not in itself a sufficient justification for the assessment of fees.” *Hughes v. Rowe*, 449 U.S. 5, 14 (1980). Accordingly, courts must avoid engaging in “*post hoc* reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation.” *Christiansburg*, 434 U.S. at 421–22.

III. ANALYSIS

It will be helpful first to set the stage by clearing away some clutter. First, it is Title VII that authorizes an award of attorneys’ fees in this case. Therefore, any claims outside the

1 umbrella of Title VII cannot support an award of attorneys' fees. Accordingly, any fees incurred
2 in defending the claims of intentional infliction of emotional distress and battery or, of course, in
3 pursuing the counterclaim of defamation cannot be awarded here. Second, as a technical matter,
4 Dubric asserted her Title VII claims against A Cab only, and not Nady. Therefore, although the
5 instant motion is brought by both Defendants, attorneys' fees may only be awarded, if at all, to A
6 Cab. Although difficult to quantify, both of the foregoing considerations warrant some reduction
7 in the total amount of fees sought by Defendants.

8 Accordingly, the Court's task here is to evaluate the three Title VII claims asserted
9 against A Cab. If the Court finds that any claim was "frivolous, unreasonable, or groundless," it
10 will award reasonable attorneys' fees to A Cab on that claim.

11 A superficial look at the procedural history of this case would suggest that an award of
12 attorneys' fees is not appropriate. As an initial matter, the Ninth Circuit has implied that when a
13 judge denies a defendant's motion for summary judgment the case is not frivolous because the
14 judge apparently thought the plaintiff's case had enough merit to proceed to the next stage of
15 litigation. *See Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1041 (9th Cir. 1990). Here,
16 Defendants moved for summary judgment on Dubric's Title VII claims, and the Court denied the
17 motion in its entirety. (Order, ECF No. 42.) The Ninth Circuit has also suggested that the mere
18 fact a claim was submitted to a jury tends to indicate that the claim had some merit, because the
19 Court opted not to dispose of the claim as a matter of law. *See Jensen v. Stangel*, 762 F.2d 815,
20 818 (9th Cir. 1985). One of Dubric's Title VII claims, for quid pro quo sexual harassment, was
21 ultimately decided by jury verdict after the Court partially denied Defendants' Rule 50 motion.

22 Furthermore, the legal principles underlying the Court's decision to grant the Rule 50
23 motion on the other two Title VII claims—for hostile work environment and retaliation—do not
24 necessarily suggest that those claims were frivolous. The Court dismissed the hostile work

1 environment claim because, after allowing Dubric to put on her full case, the evidence presented
2 was not sufficient to establish the “severe and pervasive conduct” required by Ninth Circuit case
3 law. However, that is not to say it was not a reasonably close question. The alleged kiss and
4 attempted kiss are of the *kind* of acts that could plausibly support a claim of hostile work
5 environment, and if the evidence had indicated that the alleged incidents of harassment were
6 more severe, or more numerous, perhaps this claim would have survived the Rule 50 motion.
7 However, the evidence actually presented at trial, that Nady kissed Dubric on one occasion and
8 attempted to kiss her on another, simply did not rise to the level of a hostile work environment
9 under Title VII.

10 Likewise, the retaliation claim was dismissed because Dubric did not present evidence
11 that she had engaged in protected activity. Her theory was that the protected activity in this case
12 was her physical resistance to Nady’s advances. The Court ultimately disagreed that the mere
13 physical refusal of a sexual advance constitutes protected activity under Title VII. However, the
14 Court also noted that there was a circuit split on that very question. *See Ogden v. Wax Works,*
15 *Inc.*, 214 F.3d 999, 1007 (8th Cir. 2000) (holding that verbal refusal of sexual advances is “the
16 most basic form of protected activity”); *E.E.O.C. v. New Breed Logistics*, 783 F.3d 1057, 1067
17 (6th Cir. 2015) (affirming trial court which held protected activity “can be as simple as telling a
18 supervisor to stop”); *but see LeMaire v. Louisiana Dep’t of Transp. & Dev.*, 480 F.3d 383, 389
19 (5th Cir. 2007) (holding that merely rejecting sexual advances does not constitute protected
20 activity for purposes of Title VII retaliation). In light of the circuit split, and in the apparent
21 absence of applicable Ninth Circuit precedent, it cannot be said that Dubric’s legal theory was
22 unreasonable or obviously without merit, notwithstanding this Court’s final decision to dismiss
23 the retaliation claim.

24 ///

1 However, the unique circumstances of this case warrant further consideration. Here, the
2 Court cannot merely conclude that because Dubric's Title VII claims survived summary
3 judgment, the claims were per se reasonable. In ruling on a motion under Rule 50(a) or Rule 56,
4 courts are prohibited from weighing the evidence or considering the credibility of witnesses. *Kay*
5 *v. Cessna Aircraft Co.*, 548 F.2d 1370, 1372 (9th Cir. 1977). "The evidence must be viewed in
6 the light most favorable to the party against whom the judgment would be granted and all
7 inferences must be drawn in that party's favor." *Id.* Accordingly, the Court was required to
8 accept Dubric's evidence as true when ruling on both motions.

9 On a motion for attorneys' fees, therefore, the analysis is somewhat more complicated in
10 a case of pure "he said, she said" like this one, where there were no witnesses to the alleged
11 incidents of harassment and the dispute is essentially a matter of the plaintiff's word against the
12 defendant's. One can easily imagine how an unscrupulous plaintiff might simply lie his way past
13 summary judgment, all the way to a jury verdict, and then avoid paying his opponent's attorneys'
14 fees, despite his bad faith, by virtue of the fact that the Court was unable to dispose of his claims
15 as a matter of law. In such cases, courts should look beyond the motions for judgment as a matter
16 of law to assess whether awarding attorneys' fees to a prevailing defendant will "fulfill the
17 deterrent purposes of . . . 42 U.S.C. § 2000e-5(k)." *Miller v. Los Angeles Cty. Bd. of Educ.*, 827
18 F.2d 617, 621 (9th Cir. 1987). This Court is sensitive to the need for restraint in requiring Title
19 VII plaintiffs to pay their opponents' fees, based on the policy that plaintiffs with legitimate
20 claims should not be deterred from filing suit. *Salley v. Truckee Meadows Water Auth.*, No. 3:12-
21 cv-00306-RCJ, 2015 WL 1414038, at *3 (D. Nev. Mar. 27, 2015). This cautionary principle is
22 arguably even more important in the "he said, she said" context, where a plaintiff with a valid
23 Title VII claim may already be reluctant to file a complaint due to a lack of corroborating
24 evidence. However, "[t]he other side of this coin is the fact that many defendants in Title VII

1 claims are small- and moderate-size employers for whom the expense of defending even a
2 frivolous claim may become a strong disincentive to the exercise of their legal rights.”

3 *Christiansburg*, 434 U.S. at 422 n.20.

4 With the foregoing in mind, therefore, the Court will award attorneys’ fees to A Cab, not
5 simply because Dubric’s Title VII claims were unsuccessful, but because Dubric’s case was
6 based entirely on her own testimony, and the Court finds she lacked credibility. Her testimony at
7 trial was contradicted in multiple respects by video and audio recordings, documentary evidence,
8 and the testimony of several other witnesses, in particular Donna Burleson and Scott Dorsch,
9 whom this Court found to be much more credible and forthcoming. Dubric also failed to adduce
10 additional witnesses, including her own children and several coworkers, who, according to
11 Dubric, had knowledge that would have corroborated her testimony. Furthermore, the verdict
12 rendered in this case demonstrates that the jury reached the same conclusion as the Court—that
13 Dubric’s testimony was not believable.¹

14 Therefore, this Court’s determination that Dubric’s case was premised on prevarications
15 is sufficient to support an award of attorneys’ fees. *See, e.g., Carrion v. Yeshiva Univ.*, 535 F.2d
16 722, 728 (2d Cir. 1976); *Daramola v. Westinghouse Elec. Corp.*, 872 F. Supp. 1418, 1420 (W.D.
17 Pa. 1995); *E.E.O.C. v. Kip’s Big Boy, Inc.*, 424 F. Supp. 500, 503 (N.D. Tex. 1977). To the
18 extent Ninth Circuit precedent suggests otherwise, it is easily distinguishable from the
19 circumstances of this case. *See E.E.O.C. v. Bruno’s Restaurant*, 13 F.3d 285, 290 (9th Cir. 1993).
20 In *Bruno’s Restaurant*, the Ninth Circuit ruled that an award of attorneys’ fees was not proper
21

22
23 1 The jury’s finding against Dubric on the claim of battery is especially telling. Common law
24 battery requires only an intentional, unwanted, and offensive touching. *Humboldt Gen. Hosp. v.*
Sixth Jud. Dist. Ct., 132 Nev. Adv. Op. 53, 376 P.3d 167, 171 (2016). Therefore, to find for
Dubric, the jurors had only to conclude that Nady actually kissed her against her will. That the
jurors did not so find strongly indicates that they did not think Dubric’s testimony was truthful.

1 where it was based on the fact that plaintiff's witnesses were not credible, but only because the
2 district court did not specifically find that the plaintiff "should have anticipated at the outset that
3 none of its evidence of discriminatory conduct was credible." *Id.* Here, however, it was
4 plaintiff's own testimony that lacked credibility; surely she knew from the outset of her case
5 whether her own allegations were worthy of belief.

6 Finally, with respect to the reasonableness of the fees, the Court concludes that the fees,
7 as sought, are excessive. Only reasonable fees are recoverable. *Cunningham v. County of Los*
8 *Angeles*, 869 F.2d 427 (9th Cir. 1988). First, given their late engagement and minimal
9 contribution to this case, the Court finds that the rates and hours billed by KZA are not
10 reasonable. Accordingly, Mr. Kamer's rate will be reduced to \$350 per hour—more in line with
11 the rates charged by Ms. Rodriguez and Mr. Yampolsky, attorneys of similar stature and
12 experience—and Ms. Sarafina's rate will be reduced to \$225 per hour. Also, in light of the
13 significant amount of time spent on familiarizing themselves with the case and preparing for trial
14 (with which they did not actually assist), the total hours billed by KZA will be adjusted from 52
15 to 35. Furthermore, it is not reasonable that MJY, brought in as trial counsel at the eleventh hour,
16 spent an average of over sixteen hours per day on billable activities for the eight consecutive
17 days of their involvement in this case.² The Court agrees with Plaintiff's counsel that the
18 inefficiency of MJY's late association should not be passed on to Ms. Dubric. Therefore, MJY's
19 total hours billed will be adjusted from 149 to 90. The final calculation of MJY's billable hours
20 must also be reduced by an additional \$10,000 in fees already paid (which reduction is reflected
21 in MJY's invoice). Lastly, as noted above, an overall reduction in the fees of all defense counsel
22

23 2 Indeed, perhaps it is not even possible. Notably, it appears Mr. Yampolsky personally reported
24 30.3 hours billed on February 17, 2017. Anyone who has ever remarked that there just aren't
enough hours in the day should talk to Mr. Yampolsky. The Court seriously hopes that such
irregularities are not a recurring feature of MJY's billing practices.

1 is required because a substantial portion of the fees were necessarily incurred in defending and
2 pursuing non-Title VII claims.

3 **CONCLUSION**

4 IT IS HEREBY ORDERED that Defendants' motion for attorneys' fees (ECF No. 96) is
5 GRANTED IN PART. Consistent with the foregoing analysis, Defendant A Cab is hereby
6 awarded reasonable attorneys' fees in the amount of \$49,492.38.

7 IT IS SO ORDERED.

8 DATED: This 13th day of April, 2017.

9
10 
11 ROBERT C. JONES
12 United States District Judge
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EXHIBIT “F”

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB TAXI SERVICE, LLC; A CAB,
LLC; AND CREIGHTON J NADY,
Appellants,
vs.
MICHAEL MURRAY; AND MICHAEL
RENO, INDIVIDUALLY AND ON
BEHALF OF OTHERS SIMILARLY
SITUATED,
Respondents.

No. 72691

FILED

APR 06 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting an injunction in a constitutional minimum wage action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Appellants A Cab Taxi Service, LLC, A Cab, LLC, and Creighton J. Nady (collectively, ACTS) and respondents Michael Murray and Michael Reno (collectively, Murray) are parties to a class action which involves claims under the Minimum Wage Amendment of the Nevada Constitution. In the order certifying the class, the district court excluded another individual, Jaminska Dubric, from participating in the class.

Dubric later filed a separate action against ACTS (the Dubric action), alleging that ACTS was not paying employees the constitutionally mandated minimum wage. In the Dubric action, ACTS and Dubric were in settlement negotiations and jointly moved the district court to be certified as a class. While the motion to certify was pending, Murray filed a motion to enjoin ACTS from entering into a settlement agreement with Dubric. The district court granted the injunction, precluding ACTS from entering a

settlement with Dubric and requiring ACTS to withdraw the motion to certify. ACTS appeals the order granting the injunction.

The decision to grant an injunction is within the district court's discretion, and we will not disturb that decision "absent an abuse of discretion or unless it is based on an erroneous legal standard." *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004); *see also Dixon v. Thatcher*, 103 Nev. 414, 417, 742 P.2d 1029, 1031 (1987) ("As a general rule, we will not overturn the district court's ruling on a preliminary injunction. However, where . . . we conclude that the district court erred, we will not hesitate to do so." (citation omitted)). "Before a preliminary injunction will issue, the applicant must show (1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy." *Nevadans for Sound Gov't*, 120 Nev. at 721, 100 P.3d at 187 (internal quotation marks omitted). NRCP 65(d) requires the district court's order granting a preliminary injunction to "set forth the reasons for its issuance; . . . be specific in terms; [and] describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." However, "the lack of a statement of reasons does not necessarily invalidate a permanent injunction, so long as the reasons for the injunction are readily apparent elsewhere in the record and are sufficiently clear to permit meaningful appellate review." *Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 118, 787 P.2d 772, 775 (1990).

Here, the district court's order enjoining ACTS in the Dubric action fails to satisfy the minimum requirements to support injunctive relief under NRCP 65(d). Moreover, our review of the record demonstrates that

the reasons for the injunction are not readily apparent or sufficiently clear. Thus, we conclude that the district court's grant of a preliminary injunction was an abuse of discretion. Accordingly, we reverse the district court's order granting the preliminary injunction.

Douglas, C.J.
Douglas

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

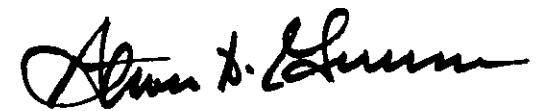
Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

cc: Hon. Kenneth C. Cory, District Judge
Ara H. Shirinian, Settlement Judge
Rodriguez Law Offices, P.C.
Hutchison & Steffen, LLC/Las Vegas
Leon Greenberg Professional Corporation
Eighth District Court Clerk

EXHIBIT "G"



CLERK OF THE COURT

1 DCRR

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Nevada Bar No.: 8094

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Attorneys for Plaintiffs

8
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

14 Plaintiffs,

15 vs.

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

Defendants.

Case No.: A-12-669926-C

DEPT.: I

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

21
22 Hearing Date: November 18, 2015

23 Hearing Time: 9:00 a.m.

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

25
26 Leon Greenberg Professional Corporation

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

I.

FINDINGS

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

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

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1 may also be communicated to the Cab Manager software. The trip sheets the taxi
2 drivers use also come with "start times" printed on them and those "start times" are
3 printed by the Cab Manager software. The times the defendants' taxi drivers
4 conducted the foregoing activities, and the printed "start times" on their trip sheets, if
5 preserved in the Cab Manager computer data records, are relevant and discoverable
6 information that should be produced. In addition, records showing that a particular
7 taxi cab was operated by a particular taxi driver on a particular day, along with the
8 attendant records, if any, of the times during such day such taxi cab was operated, and
9 placed into service and taken out of service, is relevant and discoverable information
10 that should be produced. *Based on the foregoing, A* Defendants are to produce the portion of the Cab Manager
11 computer data records containing the foregoing information for all of defendants'
12 taxicab drivers *and/or cabs in* from October 8, 2008 through the present. Additionally, plaintiffs'
13 request for electronic computer data records from defendants' Quickbooks software
14 system showing the wages paid (excluding tips actually received or credited as gross
15 income), shifts worked, and hours worked (or hours recorded for payroll purposes or
16 minimum wage compliance purposes as having been worked), of defendants' taxicab
17 drivers also seeks relevant information that can be produced and must be produced for
18 the time period of October 8, 2008 through the present.
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27 3. Defendants have not complied with their obligation to respond to
28 *discovery requests timely and in accordance with NACF 161. A*
~~plaintiffs' discovery requests in an informed, good faith, and appropriate manner. The~~

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

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

RECOMMENDATIONS

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

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

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

1 ~~turned over to plaintiffs' counsel who must then sort and extract the relevant~~
2 ~~information plaintiffs sought in their motion to compel.~~ *DM* Additionally, defendants
3 must also provide to plaintiffs' counsel, no later than December 31, 2015, electronic
4 computer data records in Excel spreadsheet or an otherwise searchable electronic
5 format from defendants' Quickbooks system as specified in paragraph 2 of the
6 Findings for the time period of October 8, 2008 through the present.
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9 No other information contained within defendants' Quickbooks system, such as
10 defendants' internal business or accounts payable records, are being compelled in this
11 Report and Recommendation, provided that defendants produce the information as
12 specified in paragraph 2 of the Findings. If they fail to do so, or assert they cannot
13 extract such information, the *Discovery Commission will likely require*
14 ~~Court will require the parties to enter into a suitable~~
15

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

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

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

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

5 *Costs and fees will be due and owing within 30 days after this*
6 *Report*

7 IT IS FURTHER RECOMMENDED that based upon paragraphs 3 and 4 of the *Recommendation*
8 Findings the imposition of additional fees and costs upon defendants in connection *is signed by me*
9 with plaintiffs' motion to compel, including but not limited to the deposition of *District Court Judge*

10 Creighton J. Nady, be reserved for further consideration and recommendations by the
11 Discovery Commissioner at the parties' next status check on January 13, 2016. *at*
12 *9:00 a.m. M*

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

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

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

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

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

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

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

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

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28 8.

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

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

Case No. A-12-669926-C

Hearing Date: November 18, 2015

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

DATED: December 11, 2015.



DISCOVERY COMMISSIONER

Respectfully submitted:

Approved as to form and content:



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NOTICE

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

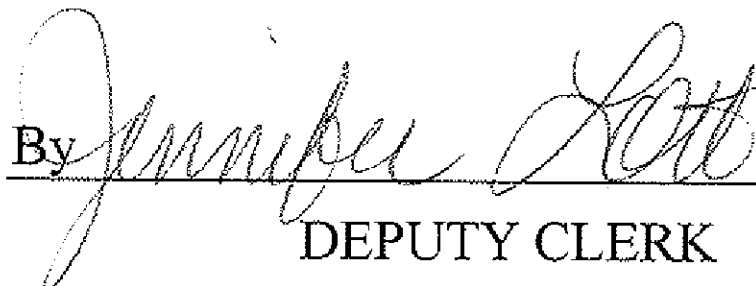
[Pursuant to E.D.C.R. 2.34(f), an objection must be filed and served no more than five (5) days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing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

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

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

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

STEVEN D. GRIERSON

By 
DEPUTY CLERK

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

Case No. A-12-669926-C

Hearing Date: November 18, 2015

ORDER

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

_____ The parties having waived the right to object thereto,

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

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

☒ AND

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

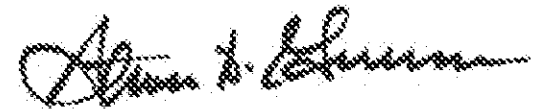
_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner:

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

Dated this 29 day of Feb, 2015.


DISTRICT COURT JUDGE

EXHIBIT “H”



CLERK OF THE COURT

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

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

13 Plaintiffs,

14 vs.

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

17 Defendants.

Case No.: A-12-669926-C

DEPT.: I

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

23 Plaintiffs filed their Motion to Certify this Case as a Class Action Pursuant to
24 NRCP 23(b)(3) and NRCP 23(b)(2), and appoint a Special Master, on May 19, 2015.
25 Defendants' Response in Opposition to plaintiffs' motion was filed on June 8, 2015.
26 Plaintiffs thereafter filed their Reply to defendants' Response in Opposition to
27 plaintiffs' motion on July 13, 2015. This matter, having come before the Court for
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1 hearing on November 3, 2015, with appearances by Leon Greenberg, Esq. and Dana
2 Sniegocki, Esq. on behalf of all plaintiffs, and Esther Rodriguez, Esq., on behalf of all
3 defendants, and the Court, having heard in Chambers on March 28, 2016 the
4 defendants' motion for reconsideration of the Order entered by this Court on February
5 10, 2016, granting in part and denying in part such motion by the plaintiffs, following
6 the arguments of such counsel, and after due consideration of the parties' respective
7 briefs, and all pleadings and papers on file herein, and good cause appearing, therefore
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10 **THE COURT FINDS:**
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12 That it had previously issued an Order on the aforesaid motion made by
13 plaintiffs, which Order was entered on February 10, 2016 and which Order is
14 now superseded and replaced by this Order as a result of the Court granting in
15 part Defendants' Motion for Reconsideration of the February 10, 2016 Order
16 which Motion for Reconsideration was heard in Chambers on March 28, 2016
17 and an Order on the same entered on April 28, 2016.
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20 In Respect to the Request for Class Certification

21 Upon review of the papers and pleadings on file in this matter, and the
22 evidentiary record currently before the Court, the Court holds that plaintiffs have
23 adequately established that the prerequisites of Nev. R. Civ. P. 23(b)(3) and 23(b)(2)
24 are met to certify the requested classes seeking damages and suitable injunctive relief
25 under Article 15, Section 16 of the Nevada Constitution (the "Minimum Wage
26 Amendment") and NRS 608.040 (those are the First and Second Claims for Relief in
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1 the Second Amended and Supplemental Complaint) and grants the motion in respect
2 to those claims. The Court makes no determinations of the merits of the claims
3 asserted nor whether any minimum wages are actually owed to any class members, or
4 whether any injunctive relief should actually be granted, as such issues are not
5 properly considered on a motion for class certification. In compliance with what the
6 Court believes is required, or at least directed by the Nevada Supreme Court as
7 desirable, the Court also makes certain findings supporting its decision to grant class
8 certification under NRCF Rule 23. *See, Beazer Homes Holding Corp. v. Eighth*
9 *Judicial Dist. Court.*, 291 P.3d 128, 136 (2012) (En Banc) (Granting writ petition,
10 finding district court erred in failing to conduct an NRCF Rule 23 analysis, and
11 holding that “[u]ltimately, upon a motion to proceed as a class action, the district
12 court must “thoroughly analyze NRCF 23's requirements and document its findings.””
13 Citing *D.R. Horton v. Eighth Judicial Dist. Court (“First Light II”)*, 215 P.3d 697,
14 704 (Nev. Sup. Ct. 2009).

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20 As an initial matter, the nature of the claims made in this case are of the sort for
21 which class action treatment would, at least presumptively, likely be available if not
22 sensible. A determination of whether an employee is owed unpaid minimum hourly
23 wages requires that three things be determined: the hours worked, the wages paid, and
24 the applicable hourly minimum wage. Once those three things are known the
25 minimum wages owed, if any, are not subject to diminution by the employee’s
26 contributory negligence, any state of mind of the parties, or anything else of an
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1 individual nature that has been identified to the Court. Making those same three
2 determinations, involving what is essentially a common formula, for a large group of
3 persons, is very likely to involve an efficient process and common questions. The
4 minimum hourly wage rate is set at a very modest level, meaning the amounts of
5 unpaid minimum wages likely to be owed to any putative class member are going to
6 presumptively be fairly small, an additional circumstance that would tend to weigh in
7 favor of class certification.
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10 In respect to granting the motion and the record presented in this case, the
11 Court finds it persuasive that a prior United States Department of Labor ("USDOL")
12 litigation initiated against the defendants resulted in a consent judgment obligating the
13 defendants to pay \$139,834.80 in unpaid minimum wages to the USDOL for
14 distribution to 430 taxi drivers under the federal Fair Labor Standards Act (the
15 "FLSA") for the two year period from October 1, 2010 through October 2, 2012. The
16 parties dispute the *collateral estoppel* significance of that consent judgment in this
17 litigation. The Court does not determine that issue at this time, inasmuch as whether
18 the plaintiffs are actually owed minimum wages (the "merits" of their claims) is not a
19 finding that this Court need make, nor presumably one it should make, in the context
20 of granting or denying a motion for class certification. The USDOL, as a public law
21 enforcement agency has a duty, much like a prosecuting attorney in the criminal law
22 context, to only institute civil litigation against employers when credible evidence
23 exists that such employers have committed violations of the FLSA. Accordingly,
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1 whether or not the consent judgment is deemed as a binding admission by defendants
2 that they owe \$139,834.80 in unpaid minimum wages under the FLSA for distribution
3 to 430 taxi drivers, it is appropriate for the Court to find that the Consent judgment
4 constitutes substantial evidence that, at least at this stage in these proceedings,
5 common questions exist that warrant the granting of class certification. The Court
6 concludes that the record presented persuasively establishes that there are at least two
7 common questions warranting class certification in this case for the purposes of
8 NRCP Rule 23(b)(3) ("damages class" certification) that are coextensive with the
9 period covered by the USDOL consent judgment and for the period prior to June of
10 2014.
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14 The first such question would be whether the class members are owed
15 additional minimum wages, beyond that agreed to be paid in the USDOL consent
16 judgment, and for the period covered by the consent judgment, by virtue of the
17 Minimum Wage Amendment imposing an hourly minimum wage rate that is \$1.00 an
18 hour higher than the hourly minimum wage required by the FLSA for employees who
19 do not receive "qualifying health insurance." The second such question would be
20 whether the class members are owed additional minimum wages, beyond that alleged
21 by USDOL for the period covered by the consent judgment, by virtue of the Minimum
22 Wage Amendment not allowing an employer a "tip credit" towards its minimum wage
23 requirements, something that the FLSA does grant to employers in respect to its
24 minimum wage requirements. It is unknown whether the USDOL consent judgment
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1 calculations include or exclude the application of any "tip credit" towards the FLSA
2 minimum wage deficiency alleged by the USDOL against the defendants.

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4 In respect to the "tip credit" issue plaintiffs have also demonstrated a violation
5 of Nevada's Constitution existing prior to June of 2014. Plaintiff has provided to the
6 Court payroll records from 2014 for taxi driver employee and class member Michael
7 Sargeant indicating that he was paid \$7.25 an hour but only when his tip earnings are
8 included. Defendant has not produced any evidence (or even asserted) that the
9 experience of Michael Sargeant in respect to the same was isolated and not common
10 to many of its taxi driver employees. The Nevada Constitution's minimum wage
11 requirements, unlike the FLSA, prohibits an employer from using a "tip credit" and
12 applying an employee's tips towards any portion of its minimum wage obligation.
13 The Sargeant payroll records, on their face, establish a violation of Nevada's
14 minimum wage standards for a certain time period and strongly support the granting
15 of the requested class certification.

16 The Court makes no finding that the foregoing two identified common
17 questions are the only common questions present in this case that warrant class
18 certification. Such two identified issues are sufficient for class certification as the
19 commonality prerequisite of NRCP Rule 23(a) is satisfied when a "single common
20 question of law or fact" is identified. *Shuette v. Beazer Homes Holdings Corp.*, 121
21 Nev. 837, 848 (2005). In addition, there also appear to be common factual and legal
22 issues presented by the claims made under NRS 608.040 for statutory "waiting time"
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1 penalties for former taxi driver employees of defendants.. Such common questions
2 are readily apparent as NRS 608.040 is a strict liability statute..
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4 The Court also finds that the other requirements for class certification under
5 NRCPL Rule 23(b)(3) are adequately satisfied upon the record presented. Numerosity
6 is established as the United States Department of Labor investigation identified over
7 430 potential class members in the consent judgment who may have claims for
8 minimum wages under the Minimum Wage Amendment. “[A] putative class of forty
9 or more generally will be found numerous.” *Skutumpah*, 122 Nev. at 847. Similarly,
10 adequacy of representation and typicality seem appropriately satisfied upon the record
11 presented. It is undisputed that the two named plaintiffs, who were found in the
12 USDOL consent judgment to be owed unpaid minimum wages under the FLSA, and
13 additional class representative Michael Sargeant, whose payroll records show, on their
14 face, a violation of Nevada’s minimum wage requirements, are or have been taxi
15 drivers employed by the defendants. Counsel for the plaintiffs have also
16 demonstrated their significant experience in the handling of class actions. The Court
17 also believes the superiority of a class resolution of these claims is established by their
18 presumptively small individual amounts, the practical difficulties that the class
19 members would encounter in attempting to litigate such claims individually and obtain
20 individual counsel, the status of many class members as current employees of
21 defendants who may be loath to pursue such claims out of fear of retaliation, and the
22 desirability of centralizing the resolution of the common questions presented by the
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1 over 430 class members in a single proceeding.

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

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

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

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

23 Plaintiffs have also requested the appointment of a Special Master under NRCP
24 Rule 53, to be paid by defendants, to compile information on the hours of work of the
25 class members as set forth in their daily trip sheets. The Court is not persuaded that
26 the underlying reasons advanced by plaintiffs provide a sufficient basis to place the
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1 entirety of the financial burden of such a process upon the defendants. Accordingly,
2 the Court denies that request without prejudice at this time.

3
4 Therefore

5 **IT IS HEREBY ORDERED:**

6 Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(3) is
7
8 **GRANTED.** The class shall consist of the class claims as alleged in the First and
9 Second Claims for Relief in the Second Amended and Supplemental Complaint of all
10 persons employed by any of the defendants as taxi drivers in the State of Nevada at
11 anytime from July 1, 2007 through December 31, 2015, except such persons who file
12 with the Court a written statement of their election to exclude themselves from the
13 class as provided below. Also excluded from the class is Jasminka Dubric who has
14 filed an individual lawsuit against the defendant A CAB LLC seeking unpaid
15 minimum wages and alleging conversion by such defendant, such case pending before
16 this Court under Case No. A-15-721063-C. The class claims are all claims for
17 damages that the class members possess against the defendants under the Minimum
18 Wage Amendment arising from unpaid minimum wages that are owed to the class
19 members for work they performed for the defendants from July 1, 2007 through
20 December 31, 2015 and all claims they may possess under NRS 608.040 if they are a
21 former taxi driver employee of the defendants and are owed unpaid minimum wages
22 that were not paid to them upon their employment termination as provided for by such
23 statute Leon Greenberg and Dana Sniegocki of Leon Greenberg Professional
24
25
26
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28

1 Corporation are appointed as class counsel and the named plaintiffs Michael Murray
2 and Michael Reno, and class member Michael Sargeant, are appointed as class
3 representatives. The Court will allow discovery pertaining to the class members and
4 the class claims.
5

6 **IT IS FURTHER ORDERED:**
7

8 Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(2) for
9 appropriate equitable and injunctive relief as authorized by Article 15, Section 16 of
10 Nevada's Constitution is **GRANTED** and the named plaintiffs Michael Murray and
11 Michael Reno, and class member Michael Sargeant, are also appointed as class
12 representatives for that purpose. The class shall consist of all persons employed by
13 defendants as taxi drivers in the State of Nevada at any time from July 1, 2007
14 through the present and continuing into the future until a further Order of this Court
15 issues.
16
17
18
19

20 **IT IS FURTHER ORDERED:**
21

22 (1) Defendants' counsel is to produce to plaintiffs' counsel, within 10 days
23 of the service of Notice of Entry of this Order, the names and last known addresses of
24 all persons employed as taxicab drivers by any of the defendants in the State of
25 Nevada from July 1, 2007 through December 31, 2015, such information to be
26 provided in an Excel or CSV or other agreed upon computer data file, as agreed upon
27
28

1 by counsel for the parties, containing separate fields for name, street address, city,
2 state and zip code and suitable for use to mail the Notice of Class Action ;
3
4

5 (2) Plaintiffs' counsel, upon receipt of the names and addresses described in
6 (1) above, shall have 40 days thereafter (and if such 40th day is a Saturday, Sunday or
7 holiday the first following business day) to mail a Notice of Class Action in
8 substantially the form annexed hereto as Exhibit "A" to such persons to notify them of
9 the certification of this case as a class action pursuant to Nev. R. Civ. P. 23(b)(3) and
10 shall promptly file with the Court a suitable declaration confirming that such mailing
11 has been performed;
12
13
14
15

16 (3) The class members are enjoined from the date of entry of this Order, until
17 or unless a further Order is issued by this Court, from prosecuting or compromising
18 any of the class claims except as part of this action and only as pursuant to such
19 Order; and
20
21
22

23 (4) Class members seeking exclusion from the class must file a written
24 statement with the Court setting forth their name, address, and election to be excluded
25 from the class, no later than 55 days after the mailing of the Notice of Class Action as
26 provided for in (2), above.
27

28 **IT IS FURTHER ORDERED:**

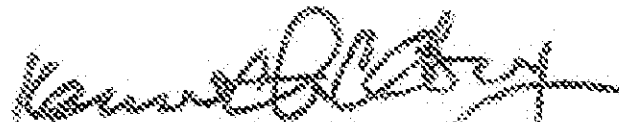
1 Plaintiffs' motion to appoint a Special Master under NRCP Rule 53 is denied
2 without prejudice at this time.
3
4

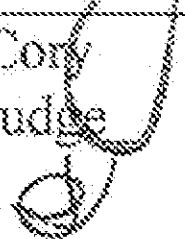
5 **IT IS FURTHER ORDERED:**

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

10 **IT IS SO ORDERED.**

11 Dated this 3rd day of June, 2016.
12
13



Hon. Kenneth Cory
District Court Judge


14 Submitted.

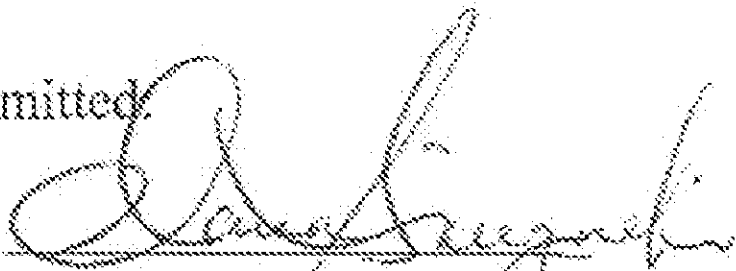
15 By: 
16 Leon Greenberg, Esq.
17 Dana Sniegocki, Esq.
18 LEON GREENBERG PROF. CORP.
19 2965 S. Jones Blvd., Ste. E-3
20 Las Vegas, NV 89146
21 Attorneys for Plaintiffs
22
23
24
25
26
27
28

EXHIBIT "A"

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF CLASS
ACTION
CERTIFICATION

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

NOTICE OF CLASS ACTION CERTIFICATION

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

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

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

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

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

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

NOTICE OF YOUR RIGHTS AS A CLASS MEMBER

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

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

THE COURT IS NEUTRAL

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

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

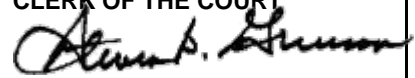
Nevada's Constitution protects you from any retaliation or discharge from your employment for participating in this case or remaining a member of the class. You cannot be punished by A-Cab or fired from your employment with them for being a class member. A-Cab cannot fire you or punish you if this case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

IT IS SO ORDERED

Date:

/s/ Hon. Kenneth Cory, District Court Judge

EXHIBIT "I"



1 **SUPP**

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

8 **DISTRICT COURT
CLARK COUNTY, NEVADA**

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

11 Plaintiffs,

12 vs.

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

15 Defendants.

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' SUPPLEMENT
IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

Hearing Date: 1/23/18
Hearing Time: 9:00 A.M.

17 Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation,
18 hereby file this supplement in support of the plaintiffs' motion for an Order granting
19 partial summary judgment as per the Court hearing held on January 2, 2018.

20 **REASON FOR SUPPLEMENT**

21 On December 14, 2017 the Court heard argument and stated it believed it would
22 grant partial summary judgment "only to the extent Plaintiff has established the
23 liability claim; the only thing left are the damages." Ex. "A" minutes. At that
24 hearing plaintiffs sought clarification of that statement, as a liability finding that
25 minimum wages are owed ("liability") **depends upon and cannot be separated from**
26 a finding that some specific amount of minimum wages are established as owed
27 ("damages"). Essentially, the damages and liability findings in a minimum wage case
28 are inseparable. The Court at the December 14, 2017 hearing indicated it was going to

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1 consider the issue further and clarify its ruling on this issue.

2 Because no further minute order was issued this matter was raised with the Court
3 again at the next hearing held in this case on January 2, 2018. At that hearing the Court
4 acknowledged the concern of plaintiffs' counsel and indicated it would further address
5 this issue. The filing of supplements by the parties by January 9, 2018 was directed
6 with the Court to hear further argument on January 23, 2018.

7
8 **NATURE OF SUPPLEMENT AND
QUESTIONS POSED BY THE COURT**

9 Plaintiffs seek partial summary judgment for unpaid minimum wages for the
10 period January 1, 2013 through December 31, 2015, at \$7.25 an hour, based upon:

- 11 1. Payroll records (Quickbooks computer files) produced by A Cab in
12 discovery that, as testified to by A Cab at an NRCP Rule 30(b)(6)
13 deposition, contain accurate information on (A) The wages paid to each
14 class member for each of 14,200 payroll periods and (B) The hours
15 worked by that class member during each of those payroll period;
16 and;
- 17 2. A calculation performed by an Excel file, verified as arithmetically correct
18 by plaintiffs' expert, Terrence Clauretie, Ph.D., (and, as discussed, *infra*,
19 by defendants' expert) on each of those 14,200 payroll periods which sets
20 forth the amount, if any, that the wages paid during the payroll period, as
21 shown by the A Cab payroll (Quickbooks) records were less than the
22 \$7.25 an hour minimum wage. That Excel file also sets forth the
23 cumulative amount so owed (if any) to each of the class members for all of
24 those pay periods.

25 At the January 2, 2018 hearing the Court advised it was seeking answers to the
26 following two questions so it could resolve this matter:

- 27 1. Was A Cab bound by the information contained in the Quickbooks
28 records and thus unable to dispute the accuracy of the wages paid, and

1 hours worked, as recorded in those records for 2013-2015?

2 and

- 3 2. Was the accuracy of the calculations presented by plaintiffs on the 14,200
4 payroll periods (Ex. “D” to plaintiffs’ motion filed November 2, 2017),
5 showing amounts owed at \$7.25 an hour, subject to any material factual
6 dispute?

7 A Cab cannot dispute the accuracy of the Quickbooks records as it has sworn at
8 a NRCP Rule 30(b)(6) that they are accurate. A Cab also raises no material factual
9 dispute regarding the accuracy of the plaintiffs’ calculations derived from those
10 records.¹ Accordingly, summary judgment must be granted for the \$174,839 owed in
11 amounts of at least \$10 (at the “lower tier” \$7.25 an hour minimum wage) to the 319
12 class members (identified with their respective amounts of unpaid minimum wages at
13 column “D” of Ex. “E” to plaintiffs’ motion filed November 2, 2017). Class counsel
14 should also be awarded interim fees and costs from A Cab pursuant to Article 15,
15 Section 16, of the Nevada Constitution of at least \$135,000.

16 **THE “TIP CREDIT” CAUSING THE MINIMUM WAGE VIOLATIONS**

17 During the 2013-2015 period at issue A-Cab, as documented by its Quickbooks
18 payroll records, complied with the *federal* \$7.25 an hour minimum wage. That is
19 because the \$7.25 an hour federal minimum wage A Cab had to pay was reduced by the
20 tips its taxi drivers received (the federal minimum wage “tip credit”). Nevada’s
21

22
23 ¹ At oral argument and in their briefs A Cab disputes **other proposed**
24 **calculations to be presented at trial that have nothing to do with the summary**
25 **judgment motion.** These involve certain dispatch (Cab Manager) records or an
26 estimated “average shift length” or whether health insurance was available. None of
27 those things have any bearing on the summary judgment motion which relies solely
28 upon the payroll (Quickbooks) records. The \$174,839 in minimum wages owed are
shown by the “face” of those records (the wages paid on those records were not
sufficient for the hours shown by those records to meet the “lower tier” \$7.25 an hour
minimum wage). A Cab does not dispute those “face of the records” calculations.

1 Constitution does not allow any such tip credit and A Cab had to pay the full \$7.25 an
2 hour Nevada minimum wage *not reduced* by the tips its taxi drivers received. The
3 \$174,839 owed and at issue arises because prior to July of 2014 A Cab, while
4 complying with federal minimum wage law, failed to comply with Nevada law. That
5 \$174,839 is the amount of tips from January 1, 2013 through June 30, 2014 that A Cab,
6 as shown by its own payroll records, improperly credited against its Nevada minimum
7 wage obligations.² Defendant Nady acknowledged at his deposition that such
8 improper tip credit was taken until the June 2014 *Thomas v. Yellow Cab* decision by
9 the Nevada Supreme Court.³

10 ARGUMENT

11 I. A CAB CANNOT DISPUTE THE ACCURACY OF THE 12 INFORMATION CONTAINED IN THE QUICKBOOKS 13 RECORDS IT PRODUCED

14 A. A Cab has sworn at its NRCP Rule 30(b)(6) deposition 15 that the Quickbooks records contain fully accurate 16 information on the wages paid to, and hours worked by, 17 the class members from 2013-2015.

18 A Cab, at a duly noticed NRCP Rule 30(b)(6) deposition, produced a witness to
19 testify about how it produced its paychecks for the class members and its retention of
20 all computer data files (Quickbooks records) of such payments. Ex. “B” deposition
21 notice, subject #3, directing testimony on specifically identified paystubs, copies at Ex.

22 ² A-Cab’s cessation of its violations of Nevada’s \$7.25 an hour “lower tier”
23 minimum wage, as shown by the “face” of their payroll records, after July 1, 2014 is
24 documented in column “K” of Ex. “D” of the moving papers. For pay periods starting
25 in July of 2014, as shown by that document, A Cab increased its minimum wage
26 subsidy payments and stopped taking a tip credit and stopped, based upon the hours it
27 recorded in its payroll records, violating Nevada’s \$7.25 an hour minimum wage.

28 ³ **Q: Mr. Nady, my question was very simple. It’s a yes or a no
answer. Between February of 2013 until the Thomas decision was issued in 2014,
did A Cab for purposes of complying with the minimum wage law continue to
credit tips that employees received against its minimum wage obligation?**

A: Yes.

Ex. “F” p. 274 l. 19-25.

1 “C.”⁴ That deposition was held on August 18, 2015 (excerpts Ex. “D”) where
2 defendant Nady, the designated NRCP 30(b)(6) witness testified that A Cab uses
3 Quickbooks to process its payroll for its taxi drivers.⁵ He further testified that the class
4 members’ paper paystubs, furnished with their paychecks and detailing what they have
5 been paid, are prepared from (printed from) information stored in Quickbooks.⁶ He
6 also agreed that all of the information printed on the paystubs (the “intersections” of
7 the table printed on the paystub itemizing the payments made, tax deductions, etc.)

8
9 ⁴ Item 3 of the notice commands testimony under NRCP 30(b)(6) on:

10
11 The information utilized to produce the numeric entries on the documents
12 produced in this case at BATES SARGEANT 1 to 4 including but not limited to the
13 numbers appearing at the intersection of the line ‘minimum wage subsidy’ and the
14 column “Qty” (which for example on BATES SARGEANT 2 have the numbers 22.81
15 and 57.08). Such witness will testify on all sources of information used to create all
16 numbers, whether appearing on BATES SARGEANT 1 to 4 or on other payroll
17 documents of defendants’ taxi cab driver employees or stored in other computer
18 records of the defendants. Such witness will also testify as to the reason such numbers
19 were so created or calculated by defendants and how they were so calculated. Such
20 witness will also testify as to the date when defendants started to create such numbers
and keep records of such numbers. Such witness shall also testify as to what computer
system (Quickbooks or other software) was used to create the printed records at
BATES SARGEANT 1 to 4 and where defendant keeps or has kept the computer data
files used by such computer system.

21 ⁵ Q. You mentioned the use of QuickBooks, Mr. Nady.

22 Is that the system that A Cab uses to process its
23 payroll for its taxi drivers?

24 A. Yes, it is.

25 Q. How long has it used that system for?

26 A. Since 2001.

Ex. “D” p. 90, l. 10-15.

27 ⁶ Q. And how are those pay stubs prepared?

28 A. Off of QuickBooks.

Q. So the information from QuickBooks is printed on
to the pay stub; correct?

A. Yep.

Ex. “D” p. 94, l. 1-5.

1 would be in the Quickbooks files, if those files were preserved.⁷

2 In addition to confirming that the Quickbooks records contained all of the
3 information on the payments made by A Cab to the class members,⁸ A Cab confirmed
4 that those records for the 2013-2015 period set forth the hours that each class member
5 was determined by A Cab to have worked in exchange for each paycheck. That
6 number of pay period hours was recorded as the “Qty” amount of the pay period’s
7 “Minimum Wage Subsidy” item on the printed paystub. Ex. “D” NRCP 30(b)(6)
8 deposition testimony of defendant Nady, 8/18/15, p. 150, l. 25 - p. 153, l. 14. (“So A
9 Cab in making that calculation [of Minimum Wage Subsidy pay] has figured that this
10 person worked 57.08 hours [as appearing in the “Qty” column of such line] for that pay
11 period?” “That’s correct.”).⁹ Ex. “C” Sargeant 2, top half, is this pay stub.

12
13 In subsequent testimony Nady, again as an NRCP 30(b)(6) witness (Ex. “E”
14 notice), insisted that the hours used by A Cab to pay the class members (the
15 Quickbooks recorded hours) were *more accurate* than the trips sheets maintained by
16 the drivers themselves and that arguably also constitute a record of their working time:

17
18
19 ⁷ **Q. Okay. Now QuickBooks would be able to produce to me in**
20 **electronic form, to the extent that those files were preserved, all of the**
21 **numbers that appear at those intersections; correct?**

22 A. To the -- with that reservation or with that caveat, yes.

23 Ex. “D” p. 150, l. 16-21.

24 ⁸ No dispute exists that the class members were paid by A Cab the amounts
25 indicated by their paystubs and the Quickbooks records. A Cab has never
26 asserted otherwise.

27 ⁹ Because these hours of work records (“Qty” amount of “Minimum Wage
28 Subsidy”) are only recorded in the 2013-2015 Quickbooks records
summary judgment was only sought for that period.

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

3 A: Trip sheets.

4 Q: Did it have any understanding as to any other records that it needed to
5 keep?

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

12 Nady further insisted that A Cab's payroll records documented *all* working hours
13 of the class members so they could be properly paid for all of those hours. He was
14 "...sure that we [A-Cab] are using the timestamps from their trip sheets for their
15 [payroll hours] time" and that "...we also add eight minutes to the beginning and end of
16 the shift [as recorded in the trip sheets]..." for payroll purposes. *See*, Ex. "F"
17 deposition 11/22/16, p. 66, l. 9-20.

18 Defendant Nady also duplicatively testified, with reference to certain discussed
19 payroll period records (pay stubs) issued in 2014, that such hours of work records were
20 derived from (incorporated the information from) the class members' trip sheets and
21 added additional "counseling" time that would not be recorded on the trip sheets. *See*,
22 Ex. "F" deposition 11/22/16 pages 117-124, confirming at p. 117, l. 18 - p. 118, l. 10
23 and p. 120, l. 5-8, among other things, that drivers would be recorded as working, and
24 paid for, "counseling" time that was not recorded by their trip sheet time stamps.

25 **B. A Cab was Ordered to produce the Quickbooks records**
26 **and cannot now claim such production is incomplete.**

27 Via its Order entered on March 4, 2016 the Court sanctioned A Cab's evasion of
28

1 its discovery obligations and Ordered A Cab to produce the Quickbooks records for the
2 period 2008 through December 31, 2015. Ex. “G” p. 7, l. 2-8. A Cab does not claim
3 the Quickbooks records it furnished to plaintiffs are incomplete or in error, rather its
4 counsel asserts that it “does not know” if such production was accurate. It insisted it
5 did not know how to produce those Quickbooks records and forced plaintiffs’ counsel,
6 at considerable expense, to hire a consultant to document a protocol for their
7 production. Ex. “H” letter of May 18, 2016 to Discovery Commissioner Bulla with
8 Declaration of Quickbooks consultant Nancy Whissel. In light of the Court’s express
9 Order directing this production A Cab, and A Cab’s election to follow the protocol
10 provided by plaintiffs’ counsel and not fashion a different method for its production, A
11 Cab should now be estopped from asserting that production was incomplete or
12 otherwise erroneous.

13 **C. A Cab does not claim there is a single error in the**
14 **Quickbooks materials they produced or plaintiffs’ summary**
15 **of the 14,200 payperiods from 2013-2015 into 14,200 lines**
of information.

16 As discussed in the moving papers (expert report of Dr. Clauretie, Ex. “B” of
17 moving papers including the declaration of Charles Bass incorporated therein) the
18 Quickbooks records for the 14,200 class member pay periods at issue have been
19 summarized. On each line of that summary the two necessary pieces of information
20 from the Quickbooks records appear: (1) The hours worked by the class member
21 during the pay period; and (2) The total amount of wages paid by A Cab to the class
22 member for the pay period (wages for minimum wage purposes under Nevada law not
23 including tips). Dr. Clauretie reviewed that summary prepared by Charles Bass and
24 the methodology he employed to create that summary from the Quickbooks records (at
25 Ex. “D” of the motion filed 11/2/17 and consisting of 375 pages). He confirmed it was
26 done correctly.

27 Defendants do not identify a single error, either in the Quickbooks records they
28 provided or the 375 page line by line summary of that data filed with the Court. Their

1 expert witness, Scott Leslie, CPA, who was paid over \$47,000 by A Cab, testified he
2 made no attempt to determine if that summary accurately set forth the Quickbooks data
3 provided by A Cab and offered the opinion he believed it was “fine.” Ex. “I”
4 deposition of Scott Leslie 10/10/2017 p. 35, l. 4-24 (“I did not go back [to the
5 Quickbooks records] to make sure that the numbers were correct. As I said I believe
6 that that part of the data you have in the file is fine.”).

7 **D. A Cab is barred by the “sham affidavit” rule from**
8 **contradicting its prior sworn testimony that the Quickbooks**
9 **records are accurate (not that they even offer such an affidavit).**

10 It is well established that a party cannot create a material issue of fact and defeat
11 summary judgment by contradicting its earlier sworn statement. *See, Aldabe v. Adams*,
12 402 P.2d 34, 36-37 (Nev. Sup. Ct. 1965), discussed and reaffirmed in *Sawyer v.*
13 *Sugarless Shops*, 792 P.3d 14, 16 (Nev. Sup. Ct. 1990). A Cab has sworn the
14 Quickbooks records are correct and accurately contain the 2013-2015 information
15 relied upon in plaintiffs’ partial summary judgment motion (the wages paid and hours
16 worked for 14,200 pay periods). They produced those records under Court Order,
17 meaning they represented under penalty of contempt those records were accurately and
18 completely produced. They cannot now contradict those facts. Nor do they even offer
19 such a “sham” affidavit or any other documentary evidence purporting to do so. They
20 simply proffer the unsupported assertions of their counsel.

21 **II. A CAB DOES NOT DISPUTE THE ACCURACY OF THE**
22 **CALCULATIONS MADE AT THE “LOWER TIER” \$7.25**
23 **AN HOUR RATE AND UPON WHICH PARTIAL SUMMARY**
24 **JUDGMENT IS SOUGHT**

25 **A. Partial Summary Judgment is only sought at**
26 **the “health insurance provided” lower tier \$7.25**
27 **an hour minimum wage rate.**

28 As originally presented, plaintiffs’ motion argued in favor of awarding partial
summary judgment at the “higher tier” \$8.25 an hour minimum wage rate. The Court
rejected the basis for those arguments. Accordingly, the only issue remaining is
whether partial summary judgment at the “lower tier” \$7.25 an hour (“health insurance

provided”) minimum wage rate is proper.

B. A Cab does not introduce any evidence that the summary’s calculation (wages paid divided by hours worked) is in error or that it fails to properly calculate the amounts owed to the class members as a result of A Cab’s failure to properly pay the lower tier \$7.25 an hour minimum wage rate.

A Cab does not dispute the arithmetic on even a single line of the Quickbooks records summarized into 14,200 lines (payroll periods) and upon which partial summary judgment is based (Ex. “D” of the partial summary judgment motion). It does not point to any error, of any sort, in the calculated amounts shown on those lines to be owed at the \$7.25 an hour rate: \$174,839 in total owed in varying amounts of at least \$10 to 319 class members (Column “D” to Ex. “E” to plaintiffs’ motion filed November 2, 2017). In their reply on the partial summary judgment motion plaintiffs illustrated, using a “manual” walk through and an actual “paper paycheck” stub, the accuracy of their calculations. (Ex. “J” hereto, excerpt of pages 8-10 of the reply).

A Cab’s expert also concurs that plaintiffs’ “math is good” and free of any errors in respect to the calculations they have made and upon which they seek partial summary judgment (Ex. “I” relevant deposition excerpts):

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

A: Yes.

Q: So, my question was when the A Cab OLE¹⁰ spreadsheet accepts those hours and uses those hours

¹⁰ “OLE” is a phonetic error by the transcriber, it should be “ALL.” Leslie refers to the “ACAB-ALL” Excel file while acknowledging during his deposition that the “2013-2015 Payroll Analysis” Excel file used for plaintiffs’ partial summary judgment motion summary was part of the “ACAB-ALL” Excel file. Ex. “I” p. 23-25.

1 recorded in the payroll records to calculate minimum
2 wages owed either at a constant 7.25 rate or the
3 constant 8.25 rate, using again those hours from the
4 payroll records, does it do so correctly?

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

7 A: The math foots through.

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

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

17 A: I think the math works.

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

20
21 **III. A CAB DOES NOT DISPUTE THAT AN INTERIM AWARD**
22 **OF ATTORNEY'S FEES AND EXPENSES SHOULD BE MADE**
23 **TO CLASS COUNSEL IF PARTIAL SUMMARY JUDGMENT**
IS GRANTED

24 Defendants do not dispute that an interim award of class counsel fees and
25 expenses is proper if partial summary judgment is granted. Nor do they argue that the
26 amount of fees and expenses sought (\$135,000) in the moving papers is excessive.
27 Their sole argument is that defendants have made unspecified and undetailed offers of
28 judgment in this case (they have not presented those offers as part of their opposition).

1 Defendants have made no offer of judgment, or any class settlement proposal to
2 the Court (they can make such a proposal without class counsel's support) exceeding
3 the \$174,839 indisputably due to the class members based upon A-Cab's payroll
4 records and its improper use of a "tip credit" prior to July of 2014. Class counsel
5 should receive the requested interim fee and expense award (they have incurred, as
6 documented in the moving papers, over \$35,000 in expenses including over \$27,000 in
7 expert costs to corroborate A Cab's minimum wage violations contained in its payroll
8 records, violations of which A Cab is clearly aware of but refuses to pay).

9 **CONCLUSION**

10 Plaintiffs' motion for partial summary judgment should be granted to the extent of
11 awarding \$174,839 in varying amounts of at least \$10 to 319 class members (Column "D"
12 of Ex. "E" to plaintiffs' motion filed November 2, 2017) along with interest thereon and
13 an interim award of class counsel fees and expenses of \$135,000 together with such other
14 further and different relief that the Court deems proper.

15 Dated: January 9, 2018

16 LEON GREENBERG PROFESSIONAL CORP.

17 /s/ Leon Greenberg
18 Leon Greenberg, Esq.
19 Nevada Bar No. 8094
20 2965 S. Jones Boulevard - Ste. E-3
21 Las Vegas, NV 89146
22 Tel (702) 383-6085
23 Attorney for the Class
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned certifies that on January 9, 2018, she served the within:

**PLAINTIFFS' SUPPLEMENT IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT**

by court electronic service to:

TO:

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

/s/ Sydney Saucier

Sydney Saucier

EXHIBIT "A"

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

December 14, 2017 09:00 AM 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

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Tucker, Michele

RECORDER: Lizotte, Lisa

REPORTER:

PARTIES PRESENT:

Creighton J Nady

Defendant

Esther C. Rodriguez

Attorney for Defendant

Leon Greenberg

Attorney for Plaintiff

JOURNAL ENTRIES

Mr. Greenberg argued as to factual issue of wages and listed the three facts. Ms. Rodriguez argued the plaintiff's argument is relied upon inadmissible evidence and argued Rule 56(e). The experts used by the plaintiff do not meet the Hallmark requirement and their reports are not admissible. Further arguments by counsel. COURT 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. Mr. Greenberg to prepare the Order.

EXHIBIT “B”

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

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

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

12 Plaintiffs,

13 vs.

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

16 Defendants.

Case No.: A-12-669926-C

Dept.: I

**NOTICE TO TAKE
DEPOSITION**

17 PLEASE TAKE NOTICE that pursuant to Nevada Rules of Civil Procedure §
18 26 and § 30(b)(6), plaintiffs, by their attorneys, Leon Greenberg Professional
19 Corporation, will take the deposition of defendants, A CAB TAXI SERVICE LLC,
20 and A CAB, LLC by the person(s) most knowledgeable as to the following specified
21 subjects.

22 **DEFINITIONS**

23 The following terms have the following meanings as used herein

24 1. The term “plaintiffs” refers to the individual named plaintiffs in the
25 complaint filed in this action and all persons similarly situated to the named plaintiffs,
26 meaning all persons employed as taxicab drivers by defendants from July 1, 2007
27 through the present.
28

1 The witness(es) produced by defendants shall be most knowledgeable about the
2 following for the time period from July 1, 2007 to the present:

3 1. All computer systems, computer software, and computer data files in the
4 possession of defendants, or previously in the possession of defendants, that, at least in
5 part, contain information, or have previously contained or been used to process
6 information, about any of the following things:

7 (A) The activities of defendants' taxicabs;

8 (B) The activities of defendants taxi cab drivers;

9 (C) The activities of the taxi meters used in defendants' taxicabs;

10 (D) The compensation paid to defendants' taxi cab drivers,
11 including how that compensation was calculated;

12 (E) The hours of work of the defendants' taxi drivers.

13
14 2. The information utilized to produce defendants' payroll statements and
15 paychecks, tax reporting (W-2 and similar documents) statements, and that is
16 otherwise used by defendants to calculate and keep track of the compensation paid to,
17 earned by and/or owed to defendants' taxicab drivers, including but not limited to the
18 document produced in this case bates stamped MURRAY RENO 000002. This
19 includes all information used to produce "Employee Pay Stub" statements and the
20 "Payroll Detail Report" at Bates Murray Reno 2 and/or the calculations of fares
21 collected and commissions, meaning wages, earned from those fares by taxi drivers
22 that are in turn used to arrive at any of the figures set forth on those payroll statements,
23 paycheck and tax reporting documents, samples of such "Employee Pay Stub"
24 documents being produced by defendants in this litigation at Bates Numbers "A Cab
25 0001-0081." Such person shall also be most knowledgeable of the computer system
26 used by defendants (Quickbooks or any other software) to create the foregoing
27 identified documents and defendants' procedure for using that computer system to do
28 so and gather the information used to do so. Such person shall also be most

1 knowledgeable about all computerized records of the wages paid by defendants to
2 their taxicab drivers, *e.g.*, their computerized payroll records, including, without
3 limitation, all computer software, such as Quickbooks or other computer software,
4 from which they can print reports on the payroll of any particular employee and/or
5 otherwise access historic information on an employee's paid wages. Such person shall
6 also be most knowledgeable about where the computer data files used by such
7 Quickbooks or other computer software are stored, the time period covered by those
8 data files, whether any such files that previously existed have been destroyed or have
9 been lost and the circumstances surrounding the destruction or loss of such computer
10 data files, and defendants' ability to produce copies of those computer data files still in
11 their possession. Such defendant shall also be most knowledgeable about how the
12 defendants' "Payroll Detail Report," sample at Bates Murray Reno 2 is produced,
13 defendants' ability to produce those reports, the information used to produced those
14 reports, and defendants' ability to export from their computer software the information
15 contained in those reports into a computer data file (Excel and all other computer data
16 formats).

17
18 3. The information utilized to produce the numeric entries on the documents
19 produced in this case at BATES SARGEANT 1 to 4 including but not limited to the
20 numbers appearing at the intersection of the line 'minimum wage subsidy' and the
21 column "Qty" (which for example on BATES SARGEANT 2 have the numbers 22.81
22 and 57.08). Such witness will testify on all sources of information used to create all
23 numbers, whether appearing on BATES SARGEANT 1 to 4 or on other payroll
24 documents of defendants' taxi cab driver employees or stored in other computer
25 records of the defendants. Such witness will also testify as to the reason such numbers
26 were so created or calculated by defendants and how they were so calculated. Such
27 witness will also testify as to the date when defendants started to create such numbers
28 and keep records of such numbers. Such witness shall also testify as to what computer

1 system (Quickbooks or other software) was used to create the printed records at
2 BATES SARGEANT 1 to 4 and where defendant keeps or has kept the computer data
3 files used by such computer system.

4
5 4. All aspects of the defendants' "Cab Manager" software system, including
6 but not limited to:

7 (a) The location of all computer hard drives containing the database files
8 used by the Cab Manager software;

9 (b) All the ways in which the Cab Manager software is used by
10 defendant;

11 (c) All information stored in or used by the Cab Manager system
12 including whether, how, and for how long, such system stores information from bar
13 code readings (whether of trip sheets, taxi driver cards, or other things), from taxi
14 meter uploads of data and drop safe activities and all other things and how that
15 information is used by the Cab Manager system;.

16 (d) All information that defendant has or can access in the Cab Manager
17 system, whether in a the form of an existing report that defendant can use or has access
18 to or in another fashion.

19 (e) The ability of the Cab Manager system to generate customized reports
20 containing particular information selected by a system user, whether for an individual
21 taxi driver, taxi cab, taxi meter, group of taxi drivers, or anything else.

22 (f) Whether any computer file stored information previously existing in or
23 available to the Cab Manager system has been overridden, erased or lost.

24 (g) All formats that the Cab Manager system can export information or
25 reports in (paper, PDF, Excel, CSV, etc.).

26 (h) All materials in defendants' possession, including without limitation,
27 instructions, handbooks, training manuals, in whatever form, that discuss the
28 capabilities of the Cab Manager system and/or how that system can be used.

1
2 5. Defendants' archiving, meaning preservation, of computer data files.
3 This includes defendants policies in respect to creating back up copies of computer
4 files and their storage of such back up files, including where such files are stored and
5 what such files are so stored. This includes what data files may have been so archived
6 at one time but are not longer in existence or cannot be located. This includes what
7 data files have never been so archived and which are now lost.

8
9 6. Defendants' use, in its computer system and all other fashions and forms,
10 and its retention in all forms, of the "check in" time that is obtained from a taxi
11 driver's "TA card" barcode scan or that is manually entered by a supervisor, as
12 explained in defendants' written "Check-In Procedure" in the document produced by
13 defendants in this litigation at Bates Number "A Cab 00649."

14
15 7. Defendants' use, in its computer system and all other fashions and forms,
16 and its retention in all forms, of the "meter readings" performed by their taxi drivers,
17 *e.g.*, all of the information that each of defendants' taxi drivers were responsible for
18 having transmitted from their assigned taxi cab to defendants' "servers for checkout"
19 at the end of each shift, as explained in defendants' written "Check-Out Procedure" in
20 the document produced by defendants in this litigation at Bates Number "A Cab
21 00649."

22 8. Defendants' use, in its computer system and all other fashions and forms,
23 and its retention in all forms, of the time and date of the "meter readings" that each of
24 defendants' taxi drivers were responsible for having transmitted from their assigned
25 taxi cab to defendants' "servers for checkout" at the end of each shift were so
26 transmitted, as explained in defendants' written "Check-Out Procedure" in the
27 document produced by defendants in this litigation at Bates Number "A Cab 00649"
28 the existence of such a record of such time and date of transmission being evidenced

1 by the receipts annexed to the taxi driver trip sheets produced by defendants in this
2 litigation, including at Bates Number "A Cab 00525."

3 9. Defendants' use, in its computer system and all other fashions and forms,
4 and its retention in all forms, of the record of the time and date a supervisor clocked
5 defendants' taxi drivers "back in" at the end of their shift once such taxi driver brought
6 their keys, tripsheet and medallion (if needed) to the supervisor shack, as explained in
7 defendants' written "Check-Out Procedure" in the document produced by defendants
8 in this litigation at Bates Number "A Cab 00649."

9 10. Defendants' use, in its computer system and all other fashions and forms,
10 and its retention in all forms, of the information indicating the time and date of the
11 computer "scan [of] the barcode near the top of their tripsheet" conducted at the end of
12 a taxi driver's work shift, as explained in defendants' written "Check-Out Procedure"
13 in the document produced by defendants in this litigation at Bates Number "A Cab
14 00650."

15 11. Defendants' use, in its computer system and all other fashions and forms,
16 and its retention in all forms, of the record setting forth a time and date which is
17 generated by the "Validated Drop" of cash performed by taxi drivers at the end of their
18 work shift, as explained in defendants' written "Check-Out Procedure" in the
19 document produced by defendants in this litigation at Bates Number "A Cab 00650"
20 the existence of such a record being generated by a "Validated Drop" being evidenced
21 by the receipts annexed to the taxi driver trip sheets produced by defendants in this
22 litigation, including at Bates Number "A Cab 00525."

23 12. Defendants' use, in its computer system and all other fashions and forms,
24 and its retention in all forms, of all details of each driver's "gross book" and the
25 calculations, and results of all calculations, done on each taxi driver's "gross book" to
26 determine the commissions paid to the driver, including but not limited to those used
27 to ensure or record that such commissions would "always be consistent with Nevada
28 State Minimum Wage Laws of \$7.25/hour" as explained in the document produced by

1 defendants in this ligation at Bates Numbers “A Cab 00651” and/or that otherwise
2 involve the application of the formula described in that document to each driver’s
3 “gross book” to calculate the commissions that were actually paid by the defendants to
4 their taxi drivers.

5 13. Defendants’ use, in its computer system and all other fashions and forms,
6 and its retention in all forms, of information on taxi drivers having “a prolonged period
7 of time without meter activation indicating a passenger has hired the Taxicab,” such
8 periods of time being subject to being considered “personal time” of the taxi driver by
9 the defendants and “excluded from any minimum wage computation,” as set forth in
10 defendants’ policy recited in the document produced by defendants in this ligation at
11 Bates Number “A Cab 00651.” This would include knowledge of all computer records
12 and other records, without limitation, that record periods of meter activation or
13 inactivity irrespective of whether defendants determined any “period of time without
14 meter activation” so recorded would be considered “personal time” as set forth in such
15 policy.

16 14. Defendants’ use, in its computer system and all other fashions and forms,
17 and its retention in all forms, of all information used by defendants in their application
18 of the “Tip Compliance Agreement with the IRS” which is set forth in the document
19 produced by defendants in this litigation at Bates Number “A Cab 00651.” This
20 would include, but not be limited to, knowledge of any such records that exist which
21 defendants use(d) or assist(ed) defendants in calculating and applying the “tip credit”
22 referenced in such document and how they complied with, or attempted to measure or
23 record their compliance with, the statement in such document that such “tip credit
24 allowed for tipped employees will not permit wages to be less than \$5.12 per hour.”
25 Such witness shall also be able to testify as to all details of this “Agreement with the
26 IRS” including its purpose (as best understood by defendants), when it was entered
27 into, and all details of such agreement and terms and circumstances surrounding its
28 creation and negotiation.

1 16. Defendants' use, in its computer system and all other fashions and forms,
2 and its retention in all forms, of all information related to all rides for hire performed
3 by each of defendants' taxicab drivers. Specifically, such person must have
4 knowledge on the use of the taxicab meters in defendants' taxicabs and the ability of
5 such meters to record activities conducted by taxicab drivers, meaning the time such
6 meters were "in use" or "activated," meaning fares were being recorded as being
7 charged in such meter. Moreover, such persons must be knowledgeable about the
8 connection between, the association with, or the interplay of, the taxi cab meters
9 located inside each of the taxicabs driven by defendants' taxicab drivers, such meters
10 being referenced in the document produced by defendants in this litigation at Bates
11 Number "A Cab 00649," and "Cab Manager" and all other computer software used by
12 defendants. Such person must be knowledgeable about the existence of computer data
13 files that contain information from such taxicab meters, such data consisting of
14 information on the number of hours and minutes such meters were "in use" or
15 "activated" and the total fares collected for each trip recorded by such taxicab meters
16 and all other information recorded by such taxicab meters. Such person must also be
17 most knowledgeable about all materials in defendants' possession, including without
18 limitation, instructions, handbooks, training manuals, in whatever form, that discuss
19 the capabilities of the taxi cab meters and/or how they can be used and the information
20 they generate, store, transmit and maintain.

21
22 17. Defendants' use, in its computer system and all other fashions and forms,
23 and its retention in all forms, of all information associated with and generated by
24 defendants' operation of "drop safes" including all records generated by such "drop
25 safes" when defendants' taxicab drivers performed a "cash drop" in such drop safes,
26 including, whether such information so generated is recorded, stored, archived,
27 maintained, and capable of being copied and/or reproduced. Such person must also be
28 most knowledgeable about all materials in defendants' possession, including without

1 limitation, instructions, handbooks, training manuals, in whatever form, that discuss
2 the capabilities of the “drop safes” and/or how they can be used and the information
3 they generate, store, transmit and maintain.

4
5 18. Defendants’ creation, in response to a United States Department of Labor
6 investigation, or for any other purpose, of summaries, compilations, or other computer
7 data files (“compilations” whether created in Excel form or any other form), of
8 information contained in its taxi drivers’ trip sheets, such compilations being intended
9 by defendants to contain the hours of work of taxi drivers as originally set forth on
10 such trip sheets. Such witness shall testify as to the form (Excel file or otherwise) and
11 scope (time frame, drivers information contained) of any such compilations, their use
12 by defendants and anyone else, to whom copies of such compilations have been made
13 available or provided, what conclusions defendants have arrived at from examining
14 such compilations in respect to the existence of any minimum wage violations under
15 the Fair Labor Standards Act and Nevada Law by the defendants, the location of such
16 compilations and the form (software and/or data format, such as Excel or CSV) in
17 which defendants can produce a copy of such compilations and if they cannot produce
18 a copy of such compilations why they cannot do so.

19
20 19. Defendants’ use, in its computer system and all other fashions and forms,
21 and its retention in all forms, of all information on the activities of the defendants’ taxi
22 medallions, including, but not limited to, those records they were required to submit to
23 the Nevada Taxi Commission in the Excel template set forth at the Nevada Taxi
24 Commission’s website. Additionally, such person shall also be knowledgeable about
25 all other computerized records that defendants relied upon or consulted with to create
26 those Excel templates that they submitted to the Nevada Taxi Commission and/or that
27 otherwise recorded, in part or in full, the information set forth in those Excel templates
28 that they submitted to the Nevada Taxi Commission. Such witness shall also be most

1 knowledgeable about whether any such computer files that previously existed have
2 been destroyed or have been lost and the circumstances surrounding the destruction or
3 loss of such computer data files, and defendants' ability to produce copies of such
4 computer data files still in their possession and if they cannot produce a copy of such
5 computer data files why they cannot do so.

6
7
8 20. Such person shall also be knowledgeable about all information contained
9 within computerized records, computer systems, and software, that was made available
10 for inspection to the United States Department of Labor's Wage and Hour Division.
11 This shall include the information contained within all computerized records compiled,
12 maintained, and/or created by defendants that were subsequently printed out on paper
13 or from which reports were generated which were in turn furnished or made available
14 to the United States Department of Labor's Wage and Hour Division even if such
15 office never actually inspected such computerized records, computer systems, or
16 software.

17
18 21. Such person shall be most knowledgeable about all efforts defendants
19 have made to produce computer records, whether from Quickbooks, Cab Manager, or
20 any other source, in response to requests for production made by the plaintiffs in this
21 litigation or in response to requests for information from the United States Department
22 of Labor or to otherwise ascertain whether any of the below information is contained
23 in computer records in the possession of the defendants. This will include all efforts
24 defendants have made to ascertain if any computer data files in their possession,
25 including but not limited to those used by the Cab Manager system, contain or
26 preserve any record of the following:

- 27 (i) "bar code" scans their taxi drivers were required to perform;
28 (ii) the times and dates that are printed on taxi driver trip sheets

1 and that appear in the “Time Start” identified box in the upper right
2 corner of such trip sheets as demonstrated in Bates A Cab 1690;
3 (iii) the date and time appearing on printed VALIDATED DROP
4 receipts such as the one depicted at Bates A Cab 1691;
5 (iv) the date and time appearing on printed METER DETAILS
6 receipts such as the one depicted at Bates A Cab 1693;
7 (v) the hours or time any taxi driver has worked in any particular
8 day, week or other time period;
9 (vi) any other computer data files containing a time and date that is
10 associated with any activity of any of defendants’ taxi drivers, taxi
11 medallions, taxi cabs or taxi meters, irrespective of whether such
12 time and date record is believed by defendants to be accurate or
13 inaccurate.
14

15 22. In respect to all information contained in computer data files in the
16 possession of defendants, including but not limited to those contained in or used by the
17 Cab Manager or Quickbooks software, all efforts defendants have made to ascertain
18 their ability to produce a copy of such information in computer file form, either in its
19 entirety or in part. This would include all conversations had by defendants with any
20 non-party about whether such computer file copies could be produced.
21

22 23. In respect to all representations made in this litigation by defendants’
23 counsel, or defendants, about the existence of information in computer data files in the
24 defendants’ possession and the ability or inability of defendants to produce copies of
25 that information or those computer files in a computer database usable file (such as
26 Excel, CSV, etc., and not PDF) format :
27

28 (A) The information provided to defendants’ counsel upon which

1 such counsel based those representations, whether made to the
2 Court or in a written response to a request for production, including
3 who provided that information, what information was provided if it
4 was provided orally, and what other materials were provided to
5 such counsel if such information was not provided orally;

6
7 (B) The basis for such representations by defendants, whether in
8 written responses to requests for production or as testified to by Jay
9 Nady to the Court on March 18, 2015.

10
11 The witness(es) is to be produced on the **18th day of August, 2015** at the hour of
12 **11:00 a.m.** or another agreed data and time at **Litigation Services, 3770 Howard**
13 **Hughes Parkway, Suite 300, Las Vegas, Nevada 89169** and will continue day to day
14 until completed. Such witness(es) will be examined as to all facts and circumstances
15 bearing upon any and all issues in this litigation. Such deposition shall be recorded by
16 audio or video means and may also be stenographically recorded.

17
18 Dated: August 12, 2015

19
20 LEON GREENBERG PROFESSIONAL CORP.

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

CERTIFICATE OF MAILING

The undersigned certifies that on August 12, 2015, she served the
within:

NOTICE OF DEPOSITION

by court electronic service to:

TO:

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

/s/ Sydney Saucier

Sydney Saucier

EXHIBIT "C"

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

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

A CAB, SERIES LLC Employee Leasing Company

12959

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

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

A CAB, SERIES LLC Employee Leasing Company

12959

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

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

A CAB, SERIES LLC Employee Leasing Company

12044

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

SARGEANT 4
AA006796

EXHIBIT “D”

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 MICHAEL MURRAY, and MICHAEL)
5 RENO, individually and on)
6 behalf of others similarly)
7 situated,) CASE NO: A-12-669929-C
8)
9 Plaintiffs,) DEPT NO: I
10 vs.)
11)
12 A CAB TAXI SERVICE LLC, and)
13 A CAB, LLC,)
14)
15 Defendants.)
16)
17)
18)
19)
20)
21)
22)
23)
24 REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926
25 JOB NO.: 261171

1 would be lying to me?

2 MS. RODRIGUEZ: Objection. Calls for
3 speculation. Lacks foundation.

4 THE WITNESS: They may not be lying. They
5 may have an ulterior motive to be saying that, but as
6 far as I know, and I think I know more about it than
7 most, it ain't possible. And if anyone told you that,
8 they're a damn liar.

9 BY MR. GREENBERG:

10 Q. You mentioned the use of QuickBooks, Mr. Nady.

11 Is that the system that A Cab uses to process its
12 payroll for its taxi drivers?

13 A. Yes, it is.

14 Q. How long has it used that system for?

15 A. Since 2001.

16 Q. And where are the data files for the QuickBooks
17 kept?

18 A. In my office.

19 Q. Is any copy made of those files?

20 A. No.

21 Q. Are those files maintained on a single computer
22 hard drive or on more than one computer hard drive?

23 A. On a single computer hard drive.

24 Q. Is any back up made of those files?

25 A. No.

1 Q. And how are those pay stubs prepared?

2 A. Off of QuickBooks.

3 Q. So the information from QuickBooks is printed on
4 to the pay stub; correct?

5 A. Yep.

6 Q. And your testimony is that you -- please correct
7 me if I'm wrong -- that A Cab has preserved the paper
8 pay stubs --

9 A. That's correct.

10 Q. -- from 2010?

11 A. Yes, sir, we have.

12 Q. But you don't know if A Cab has produced the
13 QuickBooks files that those pay stubs were printed from
14 going back to the same period of 2010?

15 A. I don't think we have to, and I don't think we
16 did. Why would I keep those, that data?

17 Q. Well, could you tell me why the pay stubs, the
18 paper pay stubs, would be preserved but not the
19 QuickBooks data files?

20 A. Data files are deleted automatically, and we kept
21 the pay stubs because somebody sued us.

22 Q. Well, when you --

23 A. Actually, we kept them in that particular time
24 period because we got a notice from the DOL. And then
25 after we got the DOL notice, we got your lovely letter.

1 two tenths of an hour. So we gave him a buck 45 for his
2 time that he spent with somebody reviewing his trip
3 sheet. But we paid them while they were doing that.

4 Is that -- understand what I'm trying to say? So
5 yes. I'm just trying to explain before you ask me what
6 each one of these are.

7 Q. Now, each of the pieces of information that
8 appears at an intersection of a column and row on these
9 pay stubs, some of those intersections are blank, but
10 some of those intersections contain numbers.

11 You understand that?

12 A. Some are black?

13 Q. Some are blank, sir, and some contain numbers.

14 You understand that?

15 A. Yep.

16 Q. Okay. Now QuickBooks would be able to produce to
17 me in electronic form, to the extent that those files
18 were preserved, all of the numbers that appear at those
19 intersections; correct?

20 A. To the -- with that reservation or with that
21 caveat, yes.

22 Q. Are you familiar with QuickBooks' ability to
23 produce reports in Excel?

24 A. No.

25 Q. Now on this document at the top, it says QTY, and

1 that intersects that column with the line minimum wage
2 subsidy. And the number 57.08 appears at that
3 intersection.

4 A. Right.

5 Q. What does that number 57.08 refer to?

6 A. Well, minimum wage subsidy is based on the fact
7 that our total number of his total wages were not
8 enough; that if we did his calculation based on the
9 number of hours that he had, it was -- that his rate of
10 pay would have been 4.27 an hour. Wait a second. Let
11 me make sure of what I speak here. So we had to -- he
12 had 57.8 hours of hours, and we subsidized it from 4.27.
13 So I think if you add those two together, and you
14 multiply one times the other, you get that. His
15 commission was -- wait a minute here. I'm going to
16 guess, so I don't want to do that right now. It's been
17 so long.

18 Q. I don't want you to guess, Mr. Nady.

19 A. All right. Then I don't know.

20 Q. My question though was limited to the number that
21 appears at that intersection of minimum wage subsidy in
22 QTY where it says 57.08.

23 Does that number refer to the number of hours
24 this person worked during a pay period?

25 A. I just said a minute ago. This will be twice

1 now. I don't know. This is not a current paycheck, so
2 I don't know. But I will grant you this: I think it
3 has something to do with the number of hours, but it
4 might be something else.

5 Q. Well, just to be clear, Mr. Nady, you obviously
6 wouldn't know personally whether this individual worked
7 57.08 hours during the pay period discussed by that pay
8 stub.

9 My question, to you to be more precise, is
10 whether that 57.08 is the number that A Cab uses in
11 terms of its calculations for how many hours this person
12 worked during that pay period?

13 A. Here's one way to figure it out. If you take a
14 look at the current, the 4 -- or the 243.73 and divide
15 it by 4.27, you might get 57.08.

16 Q. And if those numbers do add up as you are
17 saying --

18 A. Would you like me to try it?

19 Q. I will represent to you that they do, Mr. Nady.

20 A. What?

21 Q. I have done that calculation.

22 A. Oh.

23 Q. They do reach --

24 A. There you go.

25 Q. They do reach that result that you've just

1 hypothesized.

2 A. Well, thank you.

3 Q. Are you telling me that because it -- well, you
4 tell me. Go ahead what you're trying to get through
5 from this observation.

6 A. I'm telling you that those two equal that we
7 supplemented his wage by \$243.73 to the commissions that
8 he earned that week in order for him to make minimum
9 wage.

10 Q. So --

11 A. And -- go ahead. I'll stop.

12 Q. So A Cab in making that calculation, has figured
13 that this person worked 57.08 hours for that pay period?

14 A. That's correct.

15 Q. Now, on this pay stub as well you will see that
16 there is an amount that says tips supplemental, and
17 further on down that same column, it says tips out.
18 Both of those numbers are the same except one is
19 negative and one is positive.

20 Do you understand why those numbers appear that
21 way? Could you explain to me why they do?

22 A. Yes.

23 Q. And why do they appear that way?

24 A. We assume -- and we have a contract with the
25 drivers or we did, whether we do now or not, I don't

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

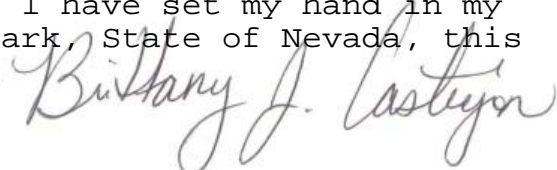
4 CERTIFICATE OF REPORTER

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

EXHIBIT "E"

1 **NOTC**
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2 DANA SNIEGOCKI, ESQ., SBN 11715
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dana@overtimelaw.com
6 Attorneys for Plaintiffs

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

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

12 Plaintiffs, }

13 vs. }

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

15 Defendants. }

Case No.: A-12-669926-C

Dept.: I

**NOTICE TO TAKE
DEPOSITION**

17 PLEASE TAKE NOTICE that pursuant to Nevada Rules of Civil Procedure § 26
18 and § 30(b)(6), plaintiffs, by their attorneys, Leon Greenberg Professional Corporation,
19 will take the deposition of defendants, A CAB TAXI SERVICE LLC, and A CAB,
20 LLC. (hereafter “defendant”) by a person(s) that it designates as possessing and having
21 acquired prior to such deposition the best knowledge of such corporate defendant as to
22 the following specified subjects.
23

24 **TIME FRAME TO BE COVERED BY REQUESTED TESTIMONY**

25
26 The testimony requested for the below subjects concerns the time frame from
27 July 1, 2007 through the date of the deposition.
28

TESTIMONY REQUESTED

1. The length of the work shifts to which taxi drivers employed by defendant were assigned, meaning the length of time from the beginning of the work shift to the end of the work shift, irrespective of whether the taxi driver may have been “off duty” or “on break” or “on personal time” during one or more periods of time between the beginning and the end of the work shift. If the length of time of such assigned work shifts was not consistent throughout the period covered by this litigation the witness shall state what that length of time was during each period (*e.g.*, that it was XXX hours during the dates DATE A to DATE B and was YYY hours during the dates DATE C to DATE D and so forth). If the length of time of such assigned work shifts was not the same for all taxi drivers the witness shall provide details as to the same.
2. The average amount of time taxi drivers employed by the defendant worked each shift to which they were assigned. This means the amount of time from the beginning of their shift to the end of their shift that each taxi driver was, on average, working and not on a break (a break being a period of time during which the taxi driver was not working and was fully relieved of all work responsibilities). This includes defendant’s knowledge of the amount of break time taxi drivers employed by defendant usually, on average, took each work shift and how defendant has acquired that knowledge.
3. The time(s) of day taxi drivers were expected by defendant to be present at the defendant’s place of business prior to beginning their work shift each day and the time(s) each day taxi drivers were expected by defendants to

1 end their work shift by returning their assigned taxi cab to defendant.
2 Such testimony will include how defendant calculated the start and stop
3 time of each taxi driver's work day for the purpose of recording the total
4 amount of hours a taxi driver worked, including the policies set forth in A
5 Cab bates 0577, how those policies were enforced, records relating to the
6 enforcement of those policies, and when that document was issued and
7 such policies were created. Such testimony shall include how the written
8 policy at A Cab 00633 directing cab drivers to report 15 minutes prior to
9 their scheduled shift was enforced and whether records were kept of its
10 enforcement and the duration of that policy if it was not in use
11 consistently by defendant. Such testimony will include whether the Check
12 In and Check Out procedures set forth at Bates A Cab 00650 were
13 followed by defendant and for what time periods they were so followed
14 and whether defendant recorded the start and stop of the work shift for
15 each taxi driver employee based upon such driver's start and end of those
16 procedures, and if it was so recorded in what fashion and where.

- 17
18 4. The amount of time during each assigned work shift that taxi driver
19 employees of defendant were allowed under defendant's policies to take
20 as break time, including but not limited to the taking of lunch or other
21 meal breaks. Such testimony will include all policies that defendant had
22 as to the taking of lunch breaks by taxi drivers and all other breaks from
23 work that taxi drivers were authorized by defendants to take during their
24 work shift. Such testimony will include all policies requiring taxi drivers
25 to use their radios or cell phones to report to defendants that they were
26 going to, or sought permission to, commence a break and all records kept
27 by the defendants of such break times. Such testimony will include the
28 policy on break time set forth at A Cab 00601, including whether that

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 22th 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 4th 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
25 Las Vegas, Nevada 89146
26 (702) 383-6085

27 Attorney for Plaintiffs
28

CERTIFICATE OF SERVICE

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

NOTICE OF DEPOSITION

by court electronic service to:

TO:

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

/s/ Sydney Saucier

Sydney Saucier

EXHIBIT “F”

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

CREIGHTON NADY

Taken on November 22, 2016

At 9:41 a.m.

Evolve Downtown

400 South 4th Street, Suite 300

Las Vegas, Nevada 89101

1 Q: Mr. Nady, just again, just to be
2 clear, and I apologize for having to continue with
3 this because I don't think your testimony is
4 completely clear, you're not really sure if there's
5 any different system used by A Cab now to keep track
6 of the time the drivers are working besides
7 information that's on those trip sheets. Is that
8 correct?

9 A: I am sure that we are using the
10 timestamps from the trip sheets for their time.

11 Q: For their working time?

12 A: Yes, sir.

13 Q: Now, do you know if that time
14 simply remains recorded on the trip sheets or is it
15 taken off the trip sheets and recorded somewhere
16 else?

17 A: It's not... we also add eight minutes
18 to the beginning and end of the shift.

19 Q: Who does that?

20 A: Whoever does their payroll.

21 Q: Donna? Anybody else?

22 A: Donna does that. Just add it on.

23 Q: Does anybody else do that?

24 A: If Donna is not there to do
25 payroll, I would have to do most of it myself.

1 looking at the second of the two on this sheet...

2 A: I'm sorry?

3 Q: There are two pay stubs on the
4 first sheet of this document. You were reviewing the
5 bottom one and you were referring to the 22.81
6 number, which is at the intersection of minimum wage
7 subsidies, and QTYs referencing the hours. For
8 payroll purposes, for that payroll period, if we go
9 to the one at the top, the intersection of those two
10 are 57.08, which would indicate in that payroll
11 period 57.08 were the hours that Mr. Sergeant was
12 paid to have been working for payroll purposes by A
13 Cab?

14 A: Right. Correct.

15 Q: Thank you.

16 A: Thank you for your help on that. I
17 sort of screwed it up.

18 Q: Now, Mr. Nady, do you have any
19 knowledge as to how A Cab in those two numbers, 57.08
20 and 22.81, arrived at those decimal amounts, the 0.08
21 or the 0.81 amounts?

22 A: I think it has to do with the
23 minutes that they had, most likely when they came in,
24 because his book had a pretty health \$135 below
25 minimum wage. He probably had a counseling with

1 somebody to say, "Hey, your book is pretty lousy
2 here," so during that time we give him.. we adjust his
3 time by a certain number of minutes. And how it
4 comes up with the seconds is we divide it somehow,
5 and I don't know what the formula is.

6 Q: Well, whoever was keeping track of
7 the time Mr. Sergeant was working for counseling or
8 whatever it may be is recording it in minutes,
9 correct?

10 A: Yes.

11 Q: And then those minutes are put into
12 a total hours amount like we see here on this page?

13 A: That would probably be 1/12 of a
14 minute.. Let's see. 1/12 of an hour, so how much is
15 1/12 of an hour? It's divided by 6, so that would be
16 2 minutes or something or 12 minutes, understand?

17 Q: Well...

18 A: 08, I would imagine having seen
19 this before that it's 57.0833, which is .0833 equals
20 1/12, so 1/12 is five minutes. Do you understand
21 that?

22 Q: Yes. Do you know if in fact these
23 numbers we've been discussing, the 57.08 and the
24 22.81 were rounded from a thousandths of a decimal?

25 A: I didn't a thousandths from a

1 decimal. You're making some assumptions...

2 Q: No, I didn't say you said it. I'm
3 asking if you know...

4 A: I don't know if it's made from a
5 thousandths or not, but I can tell you that 0.08 is
6 1/12 and 1/12 of an hour is 5 minutes, so I would
7 imagine they gave him 5 minutes on that. Somewhere
8 along the line where we calculated his time, it ended
9 in five minutes.

10 Q: Is there a minimum interval that
11 whoever is recording the time for Mr. Sergeant uses,
12 a minimum of five minutes? Do they record one-minute
13 or two-minute intervals? Do you have any knowledge
14 as to how it's recorded?

15 A: Well, I think if we take the
16 minutes from the trip sheets and the minutes from the
17 counseling, we keep track of them.

18 Q: Well, the minutes from the trip
19 sheet are taken from, you stated, the time record,
20 correct, on the punches? So if I'd say 12:33...

21 A: What's a punch?

22 Q: Well, a timeclock, scan...

23 A: Timeclock, right.

24 Q: So that would be to an exact
25 minute, 12:33, 10:37, whatever it might be?

1 A: Correct.

2 Q: Okay. When time is also credited
3 to Mr. Sergeant here, for example for counseling as
4 you were hypothesizing about, how is that time
5 recorded? It's not recorded through looking at the
6 intervals between two timestamps as on the trip
7 sheets.

8 A: Right.

9 Q: Do you have any knowledge of how
10 that time is recorded?

11 A: Well, that... in this particular time
12 we only had five different classifications, so it
13 would simply be added to it.

14 Q: Right, but the person who is
15 reporting that time to have it added to his payroll
16 record, do they report it in minimum increments of
17 1/10 of an hour, 5 minutes...

18 A: I think the minimum was five
19 minutes, but I'm not sure. I thought it was six
20 minutes, to be honest with you. I thought they'd get
21 1/10 of an hour if they have to have counseling.

22 Q: If we go to page 2 of... or actually
23 it would be page 3 of this document, which is
24 Sergeant 4 at the bottom, the number that has the
25 intersection of minimum wage subsidy and QTY has the

1 number 87.48. Do you see that?

2 A: Right.

3 Q: Which again would be the time that

4 A Cab recorded Mr. Sergeant was working for payroll

5 purposes...

6 A: Right.

7 Q: ... for this pay period? 0.48 of an

8 hour is 28.8 minutes.

9 A: Is it?

10 Q: Yes. Do you have any explanation

11 as to how he would arrive at 0.48 of an hour as

12 opposed to 0.4 or 0.5 of an hour?

13 A: Other than having different days

14 where they were different and the addition and

15 subtraction could've been inaccurate, but to answer

16 your questions, I don't know how that happened. But

17 it was input by someone at 48 it should've been 50,

18 most likely.

19 Q: Is information from Cab Manager

20 system ever used to record hours of work in

21 QuickBooks?

22 A: I don't think so.

23 Q: Well, when you say you don't think

24 so, do you know that?

25 A: I think you've asked this of me

1 three times in other depositions, and the same answer
2 I'll give you now is that I don't think so. If I
3 knew so, I would say no. If I thought yes, I would
4 say I think it is, but I don't think it is.

5 Q: Mr. Nady, if you can't answer that
6 you know, when you say, "I think so," you're going to
7 get another question from me, because your answer
8 really should be you don't know. So if you don't
9 know the answer to that question, you don't know. So
10 just again to be clear on the record, you don't know
11 if information from Cab Manager is ever used to
12 record time worked in QuickBooks. Is that correct?

13 MS. RODRIGUEZ: Objection; misstates
14 his testimony. You can answer. I'm sorry if you
15 did. I missed your answer.

16 A: Could you ask the question again?
17 I'm sorry. I thought you were chastising me and I
18 stopped listening.

19 Q: Mr. Nady, do you know if
20 information from Cab Manager was ever used to record
21 working time in QuickBooks?

22 A: I don't know.

23 Q: Does A Cab currently use a
24 timeclock system? By timeclock, Mr. Nady, I mean a
25 system whereby employees would each have a card or a

1 code that they would punch in to the system when they
2 start work each day and end work each day.

3 A: Yes, they have a timeclock.

4 Q: Is that timeclock system used for
5 taxi drivers?

6 A: No.

7 Q: Is there any reason it's not used
8 for taxi drivers?

9 A: I never thought of it.

10 Q: It didn't occur to you after the
11 department of labor investigations that it might be
12 good to have taxi drivers use that timeclock system?

13 A: They have a timeclock system. They
14 punch in and punch out.

15 Q: Well, I'm talking about the
16 timeclock you were just referring to that is used by
17 some employees but not taxi cab drivers at A Cab.
18 I'm referring to that timeclock system.

19 A: Yes.

20 Q: Did it ever occur to you after the
21 department of labor investigation to extend use of
22 that timeclock system to the taxi drivers?

23 A: And I've answered just about a
24 minute ago. I said no, because they already use a
25 timeclock. That's twice now. If you ask me again,

1 I'll wait.

2 Q: And by timeclock in that answer,
3 Mr. Nady, you're referring to the record that is kept
4 on the trip sheets, correct?

5 A: I am. I think that's in
6 compliance, don't you?

7 Q: Now, Mr. Nady, the meters that are
8 in the taxi cab upload information into the Cab
9 Manager system, correct?

10 A: Yes.

11 Q: So it will tell A Cab's computer
12 system the amount of fares that were recorded on the
13 meter during their shift, correct?

14 A: That's correct.

15 Q: Will it also record the individual
16 trips that were taken on the meter?

17 A: I don't know. I could say maybe,
18 but I don't know.

19 Q: Has A Cab ever considered having an
20 out-of-service recording feature to be available on
21 the taxi meters for the drivers?

22 A: I don't know if we have one or not.
23 I know that sounds bad, but I don't recall. I
24 haven't discussed it for so long. It might be on
25 there now, but I don't think so. It might... I think

1 preparing to work or gets ready, gets his cab ready,
2 until the moment he gets in and gets his work
3 completed, unless anytime when he specifically
4 reports that he has taken his cab for some personal
5 use or drives home or pulls into McDonald's or does
6 something that he reports on the trip sheet. We try
7 to pay them from the time they get there to the time
8 they leave.

9 Q: My question, Mr. Nady, was
10 different, which is, what is A Cab's understanding of
11 the kind of records it was required to keep of the
12 time the drivers were working as you've described?
13 And I understand A Cab indents to pay the drivers for
14 all of their working time, as you've described. My
15 question isn't whether A Cab was going to do that or
16 trying to do that; my question was, what records of
17 that working time did A Cab understand it needed to
18 keep?

19 A: Trip sheets.

20 Q: Did it have any understanding as to
21 any other records that it needed to keep?

22 A: Well, the trip sheets didn't
23 reflect when they came in and dinked around for 5
24 minutes or 10 minutes or when they come in and dinked
25 around for 5 minutes or took the stuff out of their

1 cab and put it in their car on the way in to start to
2 do their manipulation on the computer or the time it
3 took them to do the inspection, so we estimated that
4 time. We met with a good portion of drivers. We're
5 going to pay you six minutes for this and six minutes
6 for that, and then we raised it to eight minutes
7 about a few months later when we started timing it.
8 So what records do we keep? We keep records based on
9 when they start and then we just allow time for it.
10 That's the best we have. I don't think we can do it
11 any better. It's an honest effort to do so.

12 Q: Well, what you're describing is A
13 Cab has made and is making an effort to keep track of
14 the time the drivers are working. And..

15 A: Thank you.

16 Q: Has A Cab ever consulted with
17 anyone about the specific form that those records
18 should take?

19 A: Can you give me an example of who
20 you think we might've talked with, because maybe you
21 can tell me who I might've talked with?

22 Q: Mr. Nady, it's a question of
23 whether you have any knowledge of anyone at A Cab on
24 behalf of the company consulting with someone about
25 this issue.

1 **Q: Counsel...**

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

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

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

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

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

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

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

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

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

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

25 A: Yes.

1 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

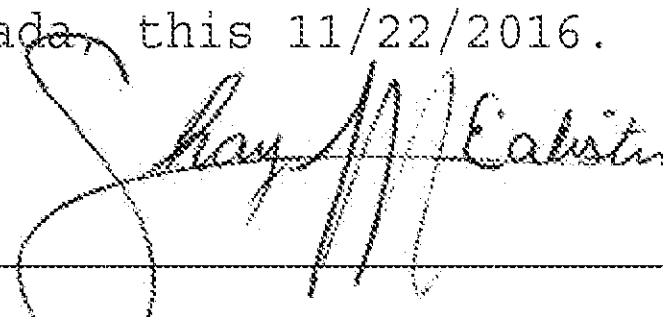
15 counsel involved in said action, nor a person

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 _____

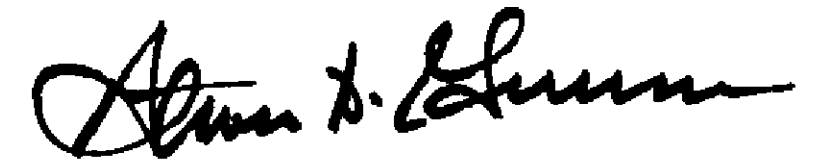
22 Shaynelle McCalister Notary

23

24

25

EXHIBIT "G"



CLERK OF THE COURT

1 DCRR

2 LEON GREENBERG, ESQ.

Nevada Bar No.: 8094

3 DANA SNIEGOCKI, ESQ.

Nevada Bar No.: 11715

4 Leon Greenberg Professional Corporation

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Attorneys for Plaintiffs

8
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

14 Plaintiffs,

15 vs.

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

Defendants.

Case No.: A-12-669926-C

DEPT.: I

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

21
22 Hearing Date: November 18, 2015

23 Hearing Time: 9:00 a.m.

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

25
26 Leon Greenberg Professional Corporation

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

I.

FINDINGS

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

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

2.

1 may also be communicated to the Cab Manager software. The trip sheets the taxi
2 drivers use also come with "start times" printed on them and those "start times" are
3 printed by the Cab Manager software. The times the defendants' taxi drivers
4 conducted the foregoing activities, and the printed "start times" on their trip sheets, if
5 preserved in the Cab Manager computer data records, are relevant and discoverable
6 information that should be produced. In addition, records showing that a particular
7 taxi cab was operated by a particular taxi driver on a particular day, along with the
8 attendant records, if any, of the times during such day such taxi cab was operated, and
9 placed into service and taken out of service, is relevant and discoverable information
10 that should be produced. *Based on the foregoing, A* Defendants are to produce the portion of the Cab Manager
11 computer data records containing the foregoing information for all of defendants'
12 taxicab drivers *and/or cabs in* from October 8, 2008 through the present. Additionally, plaintiffs'
13 request for electronic computer data records from defendants' Quickbooks software
14 system showing the wages paid (excluding tips actually received or credited as gross
15 income), shifts worked, and hours worked (or hours recorded for payroll purposes or
16 minimum wage compliance purposes as having been worked), of defendants' taxicab
17 drivers also seeks relevant information that can be produced and must be produced for
18 the time period of October 8, 2008 through the present.
19
20
21
22
23
24
25
26

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

1 defendants' principal, Creighton J. Nady, ^{told} ~~misrepresented~~ to the Court at the March 18,
2 2015 hearing the difficulties defendants' faced in producing the information originally
3 sought by plaintiffs in February 2015 and specifically that burdensome computer
4 "code" would have to be written to produce such information. ^{This representation} ~~A conclusion that such~~
5 ~~was incorrect.~~ ^{was incorrect.}
6 ~~misrepresentation was intentional is supported by the course of events in this case.~~
7
8 ~~Even if that misrepresentation was not intentional it was, by defendants' own~~
9 ~~admission, uninformed, not the product of appropriate due diligence, and without any~~
10 ~~actual basis in fact.~~ ^{was} Despite having a duty to do so, defendants never inquired with
11 any knowledgeable person, which clearly should have been their computer consultant
12 James Morgan, about what would be necessary to produce such information. ~~Such~~
13 ~~dereliction of their responsibility to cooperate with the discovery process, or their~~
14 ~~affirmative misrepresentation, resulted in the need for plaintiffs' counsel to conduct a~~
15 ^{A previous}
16 Rule 34 inspection that was terminated early by defendants, ^{and} ultimately resulted in
17 ^{the Discovery Commissioner recommending the Plaintiffs take the}
18 ~~the unnecessary~~ deposition of non-party James Morgan. The foundational information
19 ^{to determine the accessibility of the information at issue.}
20 secured from James Morgan on the Cab Manager system during that deposition was
21 always available to defendants. Defendants should have ^{been able to consult} ~~complied with their duty to~~
22 ~~inquire~~ ^{or} with James Morgan about producing the information sought by plaintiffs and
23 taken appropriate action to produce such information. There was no need for the
24 deposition of James Morgan.
25
26
27
28

1 4. Defendants' non-compliance with their obligation to respond to
2 plaintiffs' discovery request in an informed, ~~good faith~~^W, and appropriate manner, was
3 also manifested in the deposition held of defendants' principal, Creighton J. Nady as
4 an NRCP Rule 30(b)(6) witness. ~~That deposition was required for the same reason,~~
5 ~~defendants' failure to comply with their discovery obligations as specified in~~
6 ~~paragraph 3, supra, as the unnecessary deposition of James Morgan. Many or most of~~
7 ~~the NRCP Rule 30(b)(6) subjects inquired about at that deposition were unnecessary~~
8 ~~for the same reasons the James Morgan deposition was unnecessary.~~ In addition the
9 conduct of Mr. Nady at the deposition was ~~highly inappropriate and~~^W inexcusable. He
10 ~~was not a proper NRCP Rule 30(b)(6) deposition witness as he conceded he made no~~
11 ~~attempt to inform himself as to certain noticed deposition topics, that he was not~~
12 ~~informed about those topics, and indicated other personnel of the defendants, known~~
13 ~~to him, had knowledge about those topics.~~ He was abusive to examining counsel,
14 ~~and Plaintiffs' position is that he was also~~
15 ~~evasive and confrontational beyond any appropriate or allowable boundaries, and was~~
16 ~~not cautioned or counseled to curb his behavior by defendants' counsel.~~ ^{Conduct}
17 ~~uninformed as to several & pre areas, which has not~~
18 ~~yet been~~
19 ~~specifically~~
20 ~~addressed.~~

21 ^{Unfortunately, it does not appear}
22 ^{based on a review of the record Mr. Nady was}
23 ^{effectively}
24 5. An extension of the discovery schedule, as requested by the plaintiffs, is
25 also warranted in light of the plaintiffs' motion to compel the production of
26 documents which has been pending for eight months and the resolution of which was
27 delayed by defendants. Accordingly, the discovery deadlines in this matter will be
28 extended as specified below.

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II.

RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Case No. A-12-669926-C

Hearing Date: November 18, 2015

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

DATED: December 11, 2015.



DISCOVERY COMMISSIONER

Respectfully submitted:

Approved as to form and content:



LEON GREENBERG, ESQ.
DANA SNIEGOCKI, ESQ.
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~~NOT APPROVED~~
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Attorney for Defendant

1
2
3 **NOTICE**

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

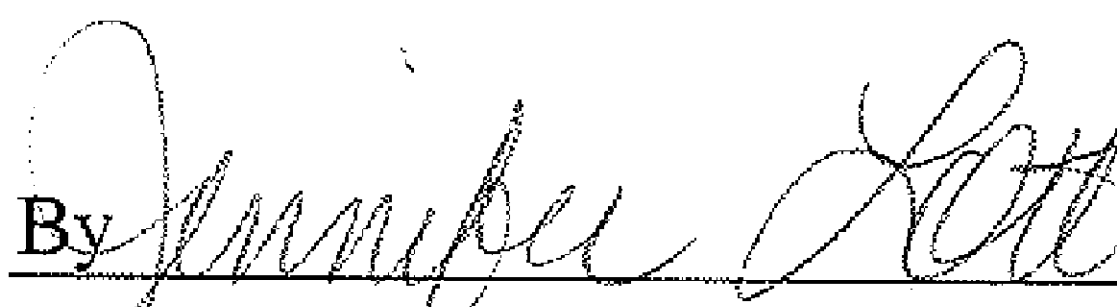
6 [Pursuant to E.D.C.R. 2.34(f), an objection must be filed and served no more
7 than five (5) days after receipt of the Discovery Commissioner's Report. The
8 Commissioner's Report is deemed received when signed and dated by a party,
9 his attorney or his attorney's employee, or three (3) days after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

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

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

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

18 STEVEN D. GRIERSON

19
20 By 
21 DEPUTY CLERK
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CASE NAME: *Murray et al. v. A Cab Taxi Service LLC., et al.*

Case No. A-12-669926-C

Hearing Date: November 18, 2015

ORDER

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

_____ The parties having waived the right to object thereto,

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

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

☒ AND

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

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

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

Dated this 29 day of Feb, 2015.


DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

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

Order on Discovery Commissioner's Report and Recommendation

by court electronic service to:

TO:

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

/s/ Dana Sniegocki

Dana Sniegocki

EXHIBIT “H”

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

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

Fax: (702) 385-1827

May 17, 2016

The Honorable Bonnie A. Bulla
Discovery Commissioner
200 Lewis Avenue, 5th Floor
Las Vegas, Nevada 89155

VIA HAND DELIVERY ON MAY 18, 2016

Re: Murray v. A Cab A-12-669926-C
**May 20, 2016 Status Check on Compliance with Discovery
Production - Quickbooks Payroll Information Production**

Dear Commissioner Bulla:

When counsel last appeared in this case on April 8, 2016 they were in conflict regarding the production of class member payroll information maintained by the defendants in Quickbooks. Your Honor reviewed the form of Quickbooks data furnished by defendants and considered my concerns with that production. While no formal Report and Recommendation was issued at that time, as the minutes from April 8, 2016 (attached) reflect, I believe Your Honor did understand there was a need to "...re-format the data from Quickbooks in a meaningful way." Your Honor directed counsel to cooperate in doing so and instructed that I "...put in writing to Defense counsel a letter re: what is necessary and an explanation, and courtesy copy Commissioner..." I believe that directive resulted from defendant's counsel's assertion that defendants did not know how to produce the Quickbooks data in an appropriate format and my pledge to Your Honor that I could provide written clarification about how to do so from a skilled Quickbooks professional.

With this letter I provide the declaration of Nancy Whissel, a "Certified ProAdvisor" of Quickbooks (that certification is conferred by Intuit, the creator of

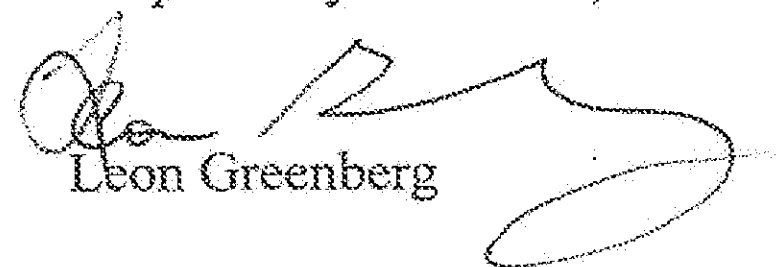
Quickbooks), which I delivered to the defendants' counsel today. Exhibit "3" of the declaration (previously provided to defendants' counsel on May 13, 2016) is an illustrated step by step process to produce the Quickbooks data in a suitable format. I believe Your Honor may gain a beneficial understanding about this issue by reviewing Ms. Whissel's declaration and the exhibits thereto in their entirety.

As of the date of this letter, I am unsure if the parties will reach an appropriate understanding about the Quickbooks data production.

I would also like to comment, briefly, about the fundamental background, and dynamics, of the Quickbooks data production. The Quickbooks information sought (class member payroll data) was maintained in that electronic fashion, within Quickbooks, in the first instance by the defendants in the normal course of their business. Such information, only after being so created, maintained, and inputted into Quickbooks, was then used to print defendants' paper paycheck stubs. Pursuant to NRCP Rule 34(b)(2)(E)(ii), governing the production of electronically stored information, a party "...must produce it [electronically stored information] in a form or forms which it is ordinarily maintained..."

The defendants "ordinarily maintained" the payroll data electronically in Quickbooks as part of a master "Quickbooks Company" file, which is akin to a complete "file cabinet" of company financial data. Defendants do not dispute they can easily make a complete copy of their "Quickbooks Company" file (Quickbooks has a built in "push the button" function to do so), something plaintiffs are willing to accept. Defendants do not want to produce that entire "Quickbooks Company" file (even subject to a protective order) since it would contain all of their Quickbooks stored financial information and include information plaintiffs do not seek or desire and have no use for. But I do not believe that under NRCP Rule 34 it should be plaintiffs' burden to remedy the defendants' purported lack of expertise on how to extract just that single "file drawer" containing the Quickbooks payroll data when the entire "file cabinet" (the Quickbooks Company file) is so easily produced. Notwithstanding that fact, I have incurred a considerable expense in securing the Whissel declaration and have expended a very considerable amount of time trying to provide such expertise to the defendants.

Respectfully submitted,


Leon Greenberg

cc: Esther Rodriguez, Esq. (Via Email)

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REGISTER OF ACTIONS

CASE No. A-12-669926-C

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

§
§
§
§
§
§

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

PARTY INFORMATION

Defendant	A Cab LLC	Lead Attorneys Esther Rodriguez <i>Retained</i> 7023208400(W)
Defendant	A Cab Taxi Service LLC	Michael K. Wall <i>Retained</i> 7023852500(W)
Defendant	Nady, Creighton J	Esther C. Rodriguez <i>Retained</i> 7023208400(W)
Plaintiff	Murray, Michael	Leon Greenberg <i>Retained</i> 7023836085(W)
Plaintiff	Reno, Michael	Leon Greenberg <i>Retained</i> 7023836085(W)

EVENTS & ORDERS OF THE COURT

04/08/2016 Further Proceedings (10:00 AM) (Judicial Officer Bulla, Bonnie)
Further Proceedings: Discovery Production / Deferred Ruling

Minutes
03/16/2016 10:00 AM

04/06/2016 10:00 AM
- Colloquy re: the District Court Judge has not made all Decisions, a stay is in place on the February 10th order, and a separate Motion is set to stay all proceedings. Commissioner is not inclined to Recommend further fees and costs today as Motions are pending. Colloquy. Ms. Rodriguez explained her attempts to comply with Commissioner's Recommendation.

Arguments by counsel. Print out of production provided from Mr. Greenberg to Commissioner in Open Court. Colloquy re: data disclosed. Discussion re: the Bahena Decision. Commissioner DENIED Mr. Greenberg's request for Defense counsel to correspond with him in writing. Colloquy re: providing information with a Motion pending. Ms. Rodriguez will re-format the data from Quickbooks in a meaningful way. Colloquy re: submission in camera. COMMISSIONER RECOMMENDED, produce 1) employees (absent names until the Court rules on class certification), 2) wage earned and hours, 3) pay period, and 4) any deductions and for what (including health deductions). Commissioner advised Mr. Greenberg to put in writing to Defense counsel a letter re: what is necessary and an explanation, and courtesy copy Commissioner. Ms. Rodriguez will identify employees by number and develop a key. No Report and Recommendation today. Commissioner expects better communication between counsel. COMMISSIONER RECOMMENDED, Status Check SET in 30 days. 5/20/16 10:00 a.m. Status Check: Status of Case

Parties Present

Return to Register of Actions

1 LEON GREENBERG, ESQ.
2 Nevada Bar No.: 8094
3 DANA SNIEGOCKI, ESQ.
4 Nevada Bar No.: 11715
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9 (702) 385-1827(fax)
10 leongreenberg@overtimelaw.com
11 dana@overtimelaw.com
12 Attorneys for Plaintiffs

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

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

14 Plaintiffs,

15 vs.

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

19 Defendants.

Case No.: A-12-669926-C

DEPT.: I

DECLARATION OF NANCY WHISSEL

20 Nancy Whissel, hereby affirms, under penalty of perjury, that:

21 1. I am the owner of Nevada Quickbooks Pro. My office, Nevada
22 Quickbooks Pro, provides services involving the use of Quickbooks to a variety of
23 businesses in Las Vegas. I have over 25 years of experience using Quickbooks
24 including the use of Quickbooks to maintain and process employee payroll
25 information. Quickbooks is the standard business software used by the vast majority
26 of small businesses to keep track of their finances, including their employee payroll.
27 The sort of employee payroll information that Quickbooks is used to keep track of and
28 process includes compensation paid (including various different kinds of

1 compensation), hours worked, and deductions made from an employee's pay. I am
2 highly familiar with the use of Quickbooks and the ability of Quickbooks to transfer
3 ("export") information into Excel (spreadsheets). I have received certification from
4 Intuit (the maker of Quickbooks software) as a "Certified ProAdvisor" in Quickbooks.
5

6 2. I have been asked by the plaintiffs' attorneys in this case to furnish a
7 statement explaining how information on printed employee paystubs, originally
8 printed from Quickbooks, can be exported (transferred) from Quickbooks into an
9 Excel computer file. The purpose of such a transfer of information from Quickbooks
10 to Excel would be to use the Excel software to easily determine if an employee was
11 paid at least the required minimum hourly wage for each of their pay periods.
12

13 Attached to this declaration, Exhibit "1," is a copy of what I am told are four
14 "paystubs" for one A-Cab employee. I am advised that those paystubs were prepared
15 (printed) from Quickbooks.
16

17 3. Attached to this declaration, Exhibit "2," is a "sample" form of Excel
18 spreadsheet containing some of the Exhibit "1" paystub information set up in a form
19 that would easily allow a determination of the hourly rate for this employee. Columns
20 "A" through "L" of Exhibit "2" contain the payroll information from the Exhibit "1"
21 paystubs with column "M" of Exhibit "2" being the "calculation" column showing
22 what the employee's hourly rate was for each of the four Exhibit "1" pay periods
23 (excluding tips from that calculation and assuming the number "Minimum Wage
24 Subsidy - Qty" represents the hours worked).
25
26
27
28

1 4. Having the payroll information for A-Cab, that is printed on the Exhibit "1"
2 paystubs, exported directly from Quickbooks into Excel, and placed into an Excel
3 spreadsheet in the form of Exhibit "2," allows the calculation of the hourly rate for
4 many thousands of different employee pay periods instantaneously (that is done by
5 inserting the column "M" calculation, as in Exhibit "2"). The Exhibit "2" sample
6 (Excel uses the term "worksheet" to refer to such a thing) has a "single line" format,
7 meaning all of the information for each single pay period (employee name, date, all
8 other particulars of the payroll) appear on a "single line." This single line format is
9 essential for easy analysis of the payroll information, as it allows the creation of the
10 Exhibit "2" column "M" calculation. The alternative to this sort of automated
11 analysis in Excel would involve having someone sit down with a calculator, and
12 determine, manually, for each individual pay period, the hourly rate from the printed
13 paystubs. That process, if it were to involve thousands of individual paychecks to
14 hundreds of employees, would be incredibly time consuming. In addition, although
15 not demonstrated in the attached Exhibit "2," the Excel software can easily and
16 instantaneously (by adding columns "N" and "O") calculate the amount of unpaid
17 minimum wages, if any, due the employee in a particular pay period depending on
18 whether the minimum wage rate was \$7.25 or \$8.25 an hour.

19 5. I have been asked whether the Quickbooks software, that produced the
20 Exhibit "1" paystubs, can easily transfer ("export" is the term used in Quickbooks) the
21 information in those printed paystubs into Excel in a manner that would either, when
22 3.

1 transferred, appear in the "single line" format of Exhibit "2" or in another fashion that
2 can easily be rearranged by Excel into that "single line" format. The answer to that
3 question is yes. I have also been asked how difficult it would be to perform that
4 transfer ("export") of information from Quickbooks into Excel. The answer to that
5 question is that the procedure is not very difficult. Attached to this declaration at
6 Exhibit "3" is a narrative I constructed that includes actual "screen shots" of
7 Quickbooks. It explains how to create a "payroll detail report" that will export into
8 Excel in a single line format one payroll item for all employees for a specified time
9 period. This procedure would have to be repeated for each relevant payroll item
10 appearing on the printed paystubs, there are 8 such payroll items in the paystubs at
11 Exhibit "1" (reproduced at columns "E" through "L" of Exhibit "2") meaning the
12 Exhibit "3" process would have to be repeated 8 times based upon the paystubs
13 provided. But that would be 8 times for *all employees* not each employee. The
14 process detailed in Exhibit "3" can also be easily filtered by "class." The "class"
15 designation in Quickbooks is typically used by employers to designate a particular
16 department of employees, such as in this case just its taxi drivers. Such a "taxi driver
17 class" filter, if included in the Exhibit "3" process, would limit the exported Excel
18 information to just A-Cab's taxi drivers.

25 6. In respect to the time needed to perform the export into Excel of the
26 Quickbooks information, as I describe in Exhibit 3 and discuss above in paragraph 5,
27 there is no reason for that process to consume more than a few hours of someone's
28

1 time. That is true even if 100,000 or 200,000 or more individual employee paychecks
2 were so processed. That is because actually performing the process I detail in Exhibit
3 "3" only takes a few minutes. While it may take 5 or 10 minutes for each of the 8
4 "executions" of that Quickbooks to Excel export process to run, the person entering
5 that process in the computer need not stand by the computer and can do other things
6 while the computer processes each Excel export. Any computer in use today can
7 rapidly process very large amounts of data in a very short amount of time. There is no
8 reason to believe it would take more than one day to export from Quickbooks into
9 Excel all of A-Cab's payroll records from 2008 through the present using the method I
10 detail in Exhibit "3" even if A-Cab was paying 200 employees every two weeks.
11

12 7. The process I describe in Exhibit "3" will, once performed, allow
13 the easy creation, within Excel, of the desired "single line" Excel worksheet that is
14 illustrated at Exhibit "2." That is because each outputted line of information from
15 Quickbooks, using the Exhibit "3" method, will have a common reference, a unique
16 check number, for each related payroll item. Through the use of formulas within the
17 Excel software making use of that common reference, the information exported from
18 Quickbooks into Excel using the Exhibit "3" process can be easily reconfigured into
19 the Exhibit "2" form of worksheet for analysis purposes.
20

21 8. It would also be possible to produce the information that appears
22 on the Exhibit "1" paystubs for all A-Cab taxi drivers by identifying the particular
23 computer files in Quickbooks that contain that information and just copying those
24