

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 XXXIV of LII**

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

HUTCHISON & STEFFEN, PLLC

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

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

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

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

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

CERTIFICATE OF SERVICE

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

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

Attorneys for Respondents

DATED this 5th day of August, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

1 computer files or portions of those files. That process would not involve any
2 "export" of information from Quickbooks into Excel in the manner I have described.
3
4 That sort of "file copying" process is not something I can advise about but can be
5 performed by someone with suitable knowledge of the Quickbooks files, the sorts of
6 information contained in those files, and the relationships between those files.
7

8 9. In the event the personnel at A-Cab who use their Quickbooks
9 software would have difficulty understanding the process of producing an Excel file in
10 the form annexed at Exhibit "3" or otherwise need assistance in properly exporting
11 into Excel their relevant Quickbooks payroll information, I can come to the offices of
12 A-Cab and assist in the production of that Excel file. My standard hourly rate for
13 such services is \$125.00 an hour. I have been paid that rate for the time I have spent
14 speaking with plaintiffs' attorney about this matter and preparing, signing and
15 reviewing this declaration and its attached Exhibits. I have no personal relationships
16 with plaintiffs' attorneys nor any of the parties to this case and no personal interest in
17 the outcome of this case. I have never acted as a consultant or witness for plaintiffs'
18 attorneys in any prior matter.
19
20
21
22

23 I have read the foregoing and affirm under penalty of perjury that the same is
24 true and correct.

25 Nancy Whissel

26 Nancy Whissel

27 5/17/16

28 Date

EXHIBIT "1"

EXHIBIT "1"

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				-26.55	-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	1,467.64		

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

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: 07/26/2014
Earnings and Hours		Qty	Rate	Current	YTD Amount		
Minimum Wage Subsidy		22.81	4.06	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		

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

12613

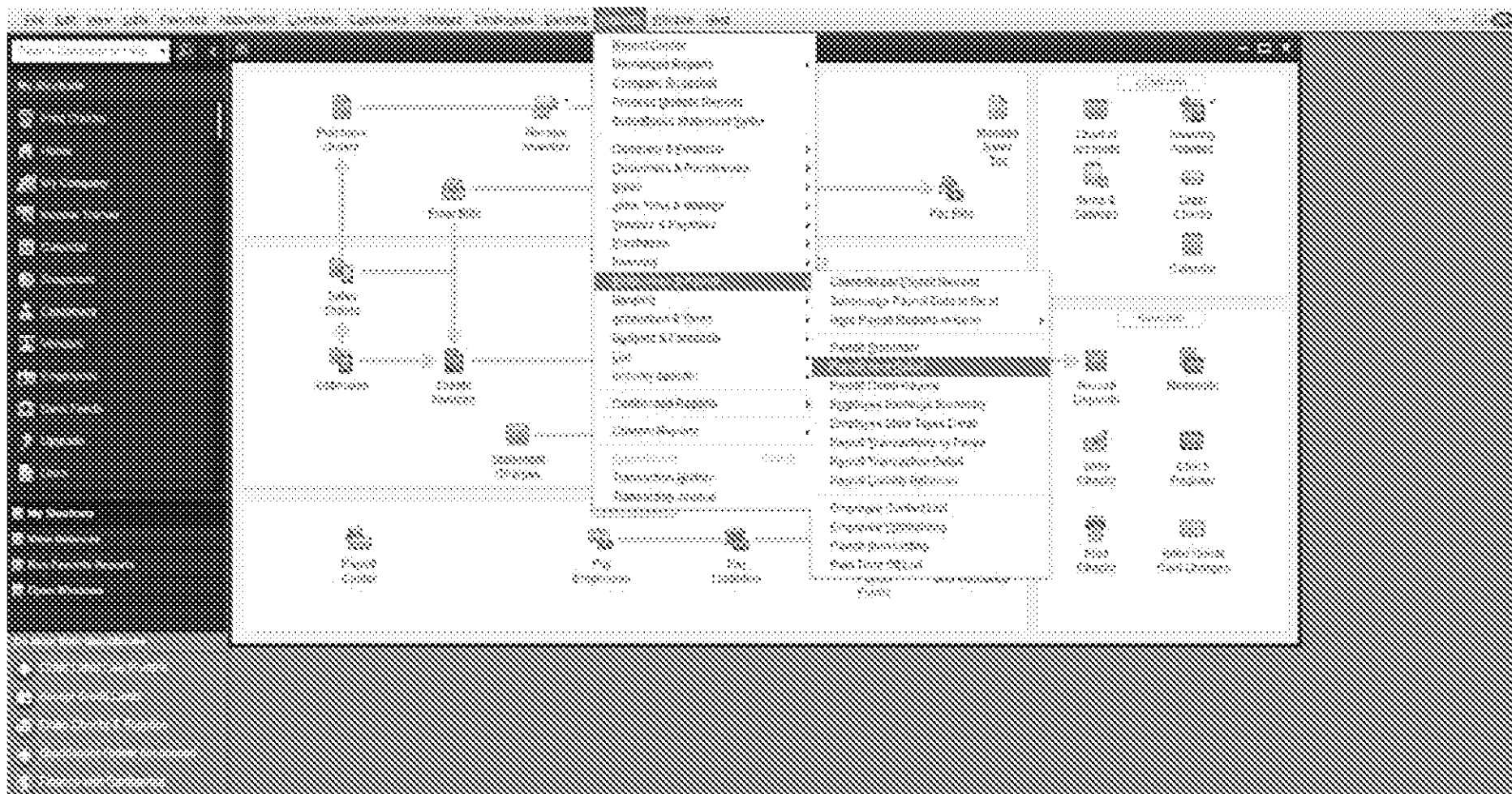
Employee					SSN	Status (Fed/State)	Allowances/Extra
Michael C. Sargeant, 2001 Ramrod Ave. #2215, Henderson, NV 89014					***-**-5207	Single/(none)	Fed-1/0/NV-0/0
					Pay Period: 06/21/2014 - 07/04/2014		Pay Date: 07/11/2014
Earnings and Hours		Qty	Rate	Current	YTD Amount		
Minimum Wage Subsidy		54.78	2.57	140.78	339.89		
Driver Commission		1.00	251.45	251.45	998.00		
Incentive #5			5.00	5.00	11.00		
Tips Supplemental				56.44	221.08		
Supervisor Counseling Pay				0.00	1.45		
		54.78		453.67	1,571.42		
Taxes				Current	YTD Amount		
Federal Withholding				-22.00	-89.00		
Social Security Employee				-28.13	-97.43		
Medicare Employee				-6.58	-22.79		
				-56.71	-209.22		
Adjustments to Net Pay				Current	YTD Amount		
Tips Out				-56.44	-221.08		
Net Pay				340.52	1,141.12		

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

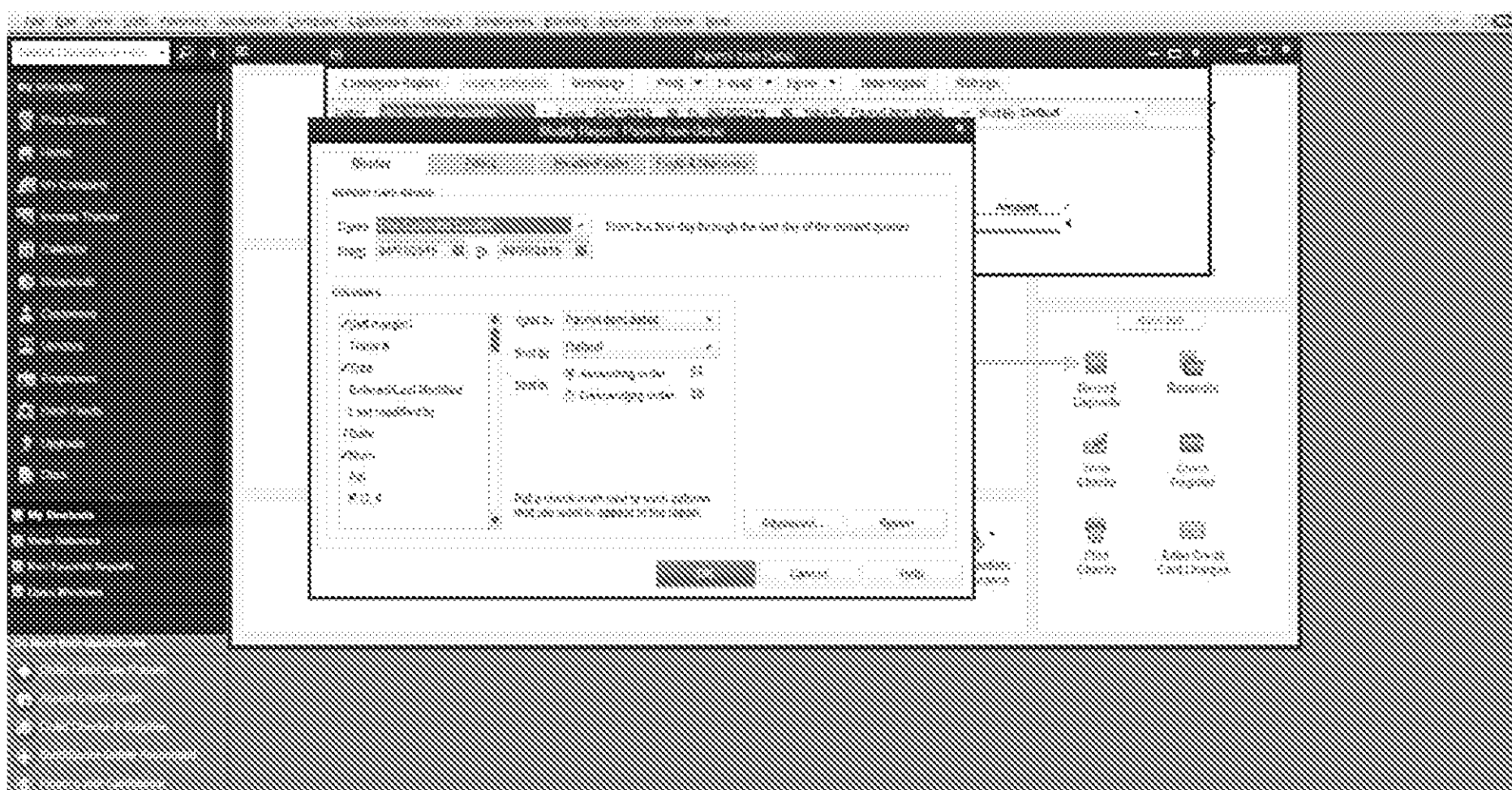
EXHIBIT "2"

EXHIBIT "3"

1. Run Payroll Item Detail Report



2. Click on Customize Report



3. Choose the desired date range.
4. In the Columns section, Uncheck (left margin), Type and Wage Base.
5. In the Columns section, Check Qty (represents Hours), Sales Price (represents Wage Rate), Pay Period Begin Date, Pay Period End Date.

6. The resulting report will contain the paycheck detail for all employees grouped by Payroll Item Detail. It will show all of the check dates with the first wage rate grouped together with a total and then the next wage rate grouped together with a total and so on for each Payroll Item.

Custom Design Pallets & Crates - Q1/Q2/Q3/Q4/Annual 2015

File Edit View Layout Features Accounting Company Customers Vendors Employees Settings Reports Window Help

Search Custom Layout or Item

Payroll Item Detail

Custom Design Pallets & Crates
Payroll Item Detail
January through December 2015

Buttons: Customize Report, Show Template, Memorize, Print, Layout, Excel, Hide Header, Refresh

Employee: Adrian S. Lopez

Active Employees

Item	Rate	Source Name	Payroll Item	Wage Base	Qty	Sales Price	Amount	Pay Period Begin Date	Pay Period End Date
Salary									
1211	01/02/2015	First Last	Salary	0.00		500.00	500.00	12/27/2014	01/02/2015
1212	01/13/2015	First Last	Salary	0.00		500.00	500.00	01/03/2015	01/09/2015
1480	01/21/2015	First Last	Salary	0.00		500.00	500.00	01/10/2015	01/19/2015
1487	01/27/2015	First Last	Salary	0.00		500.00	500.00	01/17/2015	01/23/2015
1488	02/03/2015	First Last	Salary	0.00		500.00	500.00	01/24/2015	01/30/2015
1505	02/10/2015	First Last	Salary	0.00		500.00	500.00	01/31/2015	02/06/2015
1531	02/17/2015	First Last	Salary	0.00	40	550.00	550.00	02/07/2015	02/13/2015
1533	02/24/2015	First Last	Salary	0.00		500.00	500.00	02/14/2015	02/20/2015
1545	03/03/2015	First Last	Salary	0.00		500.00	500.00	03/01/2015	03/07/2015
1554	03/10/2015	First Last	Salary	0.00		500.00	500.00	03/02/2015	03/09/2015
1555	03/17/2015	First Last	Salary	0.00		500.00	500.00	03/07/2015	03/13/2015
1576	03/25/2015	First Last	Salary	0.00		500.00	500.00	03/14/2015	03/20/2015
1567	03/31/2015	First Last	Salary	0.00		500.00	500.00	03/21/2015	03/27/2015
1568	04/07/2015	First Last	Salary	0.00		500.00	500.00	03/28/2015	04/03/2015
1605	04/14/2015	First Last	Salary	0.00	40	550.00	550.00	04/04/2015	04/10/2015
1617	04/21/2015	First Last	Salary	0.00	40	550.00	550.00	04/09/2015	04/17/2015
1626	04/28/2015	First Last	Salary	0.00	40	550.00	550.00	04/18/2015	04/24/2015
1659	05/05/2015	First Last	Salary	0.00	40	550.00	550.00	04/25/2015	05/01/2015
1667	05/12/2015	First Last	Salary	0.00	40	550.00	550.00	05/02/2015	05/08/2015

7. Click the Excel button that is just above the report in the window. Choose Create New Worksheet.

Custom Design Pallets & Crates - Q1/Q2/Q3/Q4/Annual 2015

File Edit View Layout Features Accounting Company Customers Vendors Employees Settings Reports Window Help

Search Custom Layout or Item

Payroll Item Detail

Custom Design Pallets & Crates
Payroll Item Detail
January through December 2015

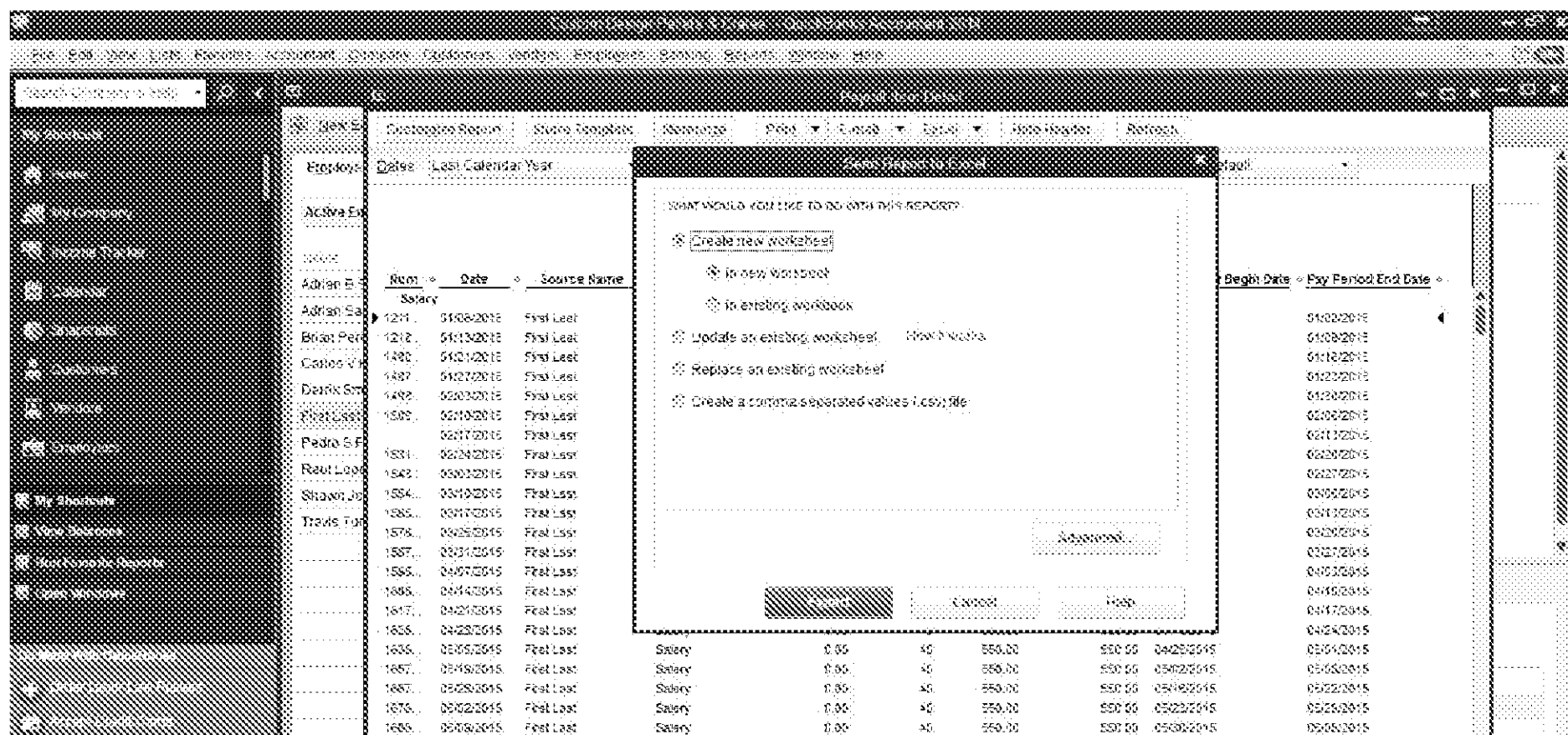
Buttons: Customize Report, Show Template, Memorize, Print, Layout, Excel, Hide Header, Refresh

Employee: Adrian S. Lopez

Active Employees

Item	Rate	Source Name	Payroll Item	Wage Base	Qty	Sales Price	Amount	Pay Period Begin Date	Pay Period End Date
Salary									
1211	01/02/2015	First Last	Salary	0.00		500.00	500.00	12/27/2014	01/02/2015
1212	01/13/2015	First Last	Salary	0.00		500.00	500.00	01/03/2015	01/09/2015
1480	01/21/2015	First Last	Salary	0.00		500.00	500.00	01/10/2015	01/19/2015
1487	01/27/2015	First Last	Salary	0.00		500.00	500.00	01/17/2015	01/23/2015
1488	02/03/2015	First Last	Salary	0.00		500.00	500.00	01/24/2015	01/30/2015
1505	02/10/2015	First Last	Salary	0.00		500.00	500.00	01/31/2015	02/06/2015
1531	02/17/2015	First Last	Salary	0.00	40	550.00	550.00	02/07/2015	02/13/2015
1533	02/24/2015	First Last	Salary	0.00		500.00	500.00	02/14/2015	02/20/2015
1545	03/03/2015	First Last	Salary	0.00		500.00	500.00	03/01/2015	03/07/2015
1554	03/10/2015	First Last	Salary	0.00		500.00	500.00	03/02/2015	03/09/2015
1555	03/17/2015	First Last	Salary	0.00		500.00	500.00	03/07/2015	03/13/2015
1576	03/25/2015	First Last	Salary	0.00		500.00	500.00	03/14/2015	03/20/2015
1567	03/31/2015	First Last	Salary	0.00		500.00	500.00	03/21/2015	03/27/2015
1568	04/07/2015	First Last	Salary	0.00		500.00	500.00	03/28/2015	04/03/2015
1605	04/14/2015	First Last	Salary	0.00	40	550.00	550.00	04/04/2015	04/10/2015
1617	04/21/2015	First Last	Salary	0.00	40	550.00	550.00	04/09/2015	04/17/2015
1626	04/28/2015	First Last	Salary	0.00	40	550.00	550.00	04/18/2015	04/24/2015
1659	05/05/2015	First Last	Salary	0.00	40	550.00	550.00	04/25/2015	05/01/2015
1667	05/12/2015	First Last	Salary	0.00	40	550.00	550.00	05/02/2015	05/08/2015
1667	05/26/2015	First Last	Salary	0.00	40	550.00	550.00	05/18/2015	05/22/2015
1670	05/30/2015	First Last	Salary	0.00	40	550.00	550.00	05/24/2015	05/29/2015
1682	06/06/2015	First Last	Salary	0.00	40	550.00	550.00	05/30/2015	06/05/2015
1683	06/13/2015	Raul Lopez	Salary	0.00		400.00	400.00	06/05/2015	06/05/2015

8. Click the blue Export button.



9. The result will be as shown below:

	Num	Date	Source Game	Payroll Item	Wage Base	Qty	Sales Price	Amount	Pay Period Begin Date	Pay Period End Date
2	Salary									
3		121172	01/06/2015	First Last	Salary	0.00	500.00	500.00	01/07/2015	01/13/2015
4		121835	01/13/2015	First Last	Salary	0.00	500.00	500.00	01/13/2015	01/19/2015
5		145051	01/21/2015	First Last	Salary	0.00	500.00	500.00	01/19/2015	01/19/2015
6		143710	01/27/2015	First Last	Salary	0.00	500.00	500.00	01/19/2015	01/23/2015
7		145543	02/03/2015	First Last	Salary	0.00	500.00	500.00	01/24/2015	01/30/2015
8		150804	02/10/2015	First Last	Salary	0.00	500.00	500.00	01/31/2015	02/06/2015
9		152491	02/17/2015	First Last	Salary	0.00	40.00	550.00	02/07/2015	02/13/2015
10		153491	02/24/2015	First Last	Salary	0.00	500.00	500.00	02/14/2015	02/20/2015
11		154344	03/03/2015	First Last	Salary	0.00	500.00	500.00	02/21/2015	02/27/2015
12		155447	03/10/2015	First Last	Salary	0.00	500.00	500.00	02/28/2015	03/06/2015
13		156510	03/17/2015	First Last	Salary	0.00	500.00	500.00	03/07/2015	03/13/2015
14		157562	03/24/2015	First Last	Salary	0.00	500.00	500.00	03/14/2015	03/20/2015
15		158738	03/31/2015	First Last	Salary	0.00	500.00	500.00	03/21/2015	03/27/2015
16		159843	04/07/2015	First Last	Salary	0.00	500.00	500.00	03/28/2015	04/05/2015
17		160801	04/14/2015	First Last	Salary	0.00	40.00	550.00	04/04/2015	04/10/2015
18		161744	04/21/2015	First Last	Salary	0.00	40.00	550.00	04/11/2015	04/17/2015
19		162680	04/28/2015	First Last	Salary	0.00	40.00	550.00	04/18/2015	04/24/2015
20		163558	05/05/2015	First Last	Salary	0.00	40.00	550.00	04/25/2015	05/01/2015

EXHIBIT "I"

DISTRICT COURT
CLARK COUNTY, NEVADA

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

RECORDED DEPOSITION OF ROBERT SCOTT LESLIE

Taken on October 10, 2017

At 1:16 p.m.

GABROY LAW OFFICES

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

AA006876

1 APPEARANCES:

2 For the Plaintiffs: LEON GREENBERG, ESQ.

3 LEON GREENBERG PROFESSIONAL CORPORATION

4 2965 South Jones Blvd, Suite E3

5 Las Vegas, Nevada 89146

6

7 CHRISTIAN GABROY, ESQ.

8 LIZA ARONSON, LAW CLERK

9 GABROY LAW OFFICES

10 170 South Green Valley Parkway

11 Suite 280

12 Henderson, Nevada 89012

13

14 For the Defendants: ESTHER RODRIGUEZ, ESQ.

15 RODRIGUEZ LAW OFFICES, P.C.

16 10161 Park Run Drive, Suite 150

17 Las Vegas, Nevada 89145

18

19 Owner of A Cab: Creighton J. Nady

20

21

22

23

24

25

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

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

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

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

17 MR. LESLIE: I do.

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

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

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

1 A: Generally, yes.

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

5 A: Okay.

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

11 A: Yes.

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

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

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

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

5 A: It seems like--

6 MS. RODRIGUEZ: Objection.

7 A: Okay.

8 MS. RODRIGUEZ: Misstates prior testimony.

9 Q: Please answer the question.

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

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

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

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

23 MS. RODRIGUEZ: Objection. Lacks
24 foundation.

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

1 think it's in maybe two of the same thing. One is
2 that it relies on bad assumptions and two, it doesn't
3 perform the testing it needs to be done to come to
4 the conclusions that you're trying to come to.

5 **Q: By testing, what do you mean?**

6 A: I think what we're testing right above
7 this is what I call the 10% rule of determining
8 whether an employee needs to be paid at the higher
9 wage rate as opposed to lower minimum wage rate. You
10 have to do a look-back calculation. There doesn't
11 seem to be anything in the model that performs that
12 look-back calculation. That's what I mean.

13 **Q: So, it's performing a correct**
14 **calculation but the wrong calculation for what is**
15 **supposed to be determined. Is that correct?**

16 A: It's performing calculation that
17 mathematically works. Yeah, but I don't think it...
18 that's why I said but it doesn't actually give you an
19 answer that you are looking for.

20 **Q: It's not the calculation necessary to**
21 **answer the question posed?**

22 A: I believe so. Yes.

23 **Q: So, would you agree that the A Cab OLE**
24 **spreadsheet, if it had incorporated the proper**
25 **assumptions regarding the hours worked by the drivers**

1 and the proper assumptions, the proper calculations
2 to be made when the higher tier should be applied
3 would properly calculate the minimum wages owed to A
4 Cab taxi drivers?

5 A: I don't know that it does and I'll tell
6 you why. Unless you come up with a way, and I say
7 this in report, unless you come up with a way to
8 actually measure the number of hours worked by the
9 cab drivers as opposed to using this standard amount
10 for everybody, for every shift, I don't know that
11 you're going to come up with the right answer. I
12 mean you can either come up with a too high number or
13 too low number.

14 Q: Right. Well, my question to you is that
15 if we agreed that we knew what the average, not what
16 the average, but what the actual hours worked, every
17 single pay period for each driver, for all of the pay
18 periods covered in the A Cab OLE Excel file--

19 A: Yes.

20 Q: --and we were to put them in the A Cab
21 Excel file and otherwise run the calculations in the
22 file the way it's set up, would we get the amount of
23 minimum wages owed to the drivers using those correct
24 hours? For purposes of my question, I'm not talking
25 about the higher tier. Let's just start with...

1 **let`s say...**

2 A: At the minimum tier?

3 **Q: At the 7.25 tier.**

4 A: If you had all the—

5 MS. RODRIGUEZ: Hold on. I`m waiting for
6 him to finish his question.

7 A: I`m sorry. Okay.

8 MS. RODRIGUEZ: Are you finished?

9 **Q: Yes.**

10 MS. RODRIGUEZ: Okay. I`m going to object.
11 It was a longer stated question but it was the same
12 question, so it`s been asked and answered.

13 **Q: Please answer the question.**

14 A: Okay. If you are able to get every hour
15 that the employee worked, and we`re not doing any of
16 the higher tier testing, then you would properly come
17 up with a correct answer, if you got the right hours.

18 **Q: Now, we just discussed a bit about the A**
19 **Cab OLE Excel file. There is a separate Excel file**
20 **that Dr. Cloretti refers to which is the 2013-2015**
21 **payroll analysis Excel file. Did you examine that**
22 **file as well?**

23 A: I think it`s part of the same work pay
24 sheet. I believe it`s in the same worksheet.

25 **Q: Well, there is a separate Excel file**

1 that was produced with Dr. Cloretti's report, which
2 covers just the 2013-2015 period and it does not have
3 any variable function in it. It simply runs the same
4 analysis as in the A Cab OLE file but does it just on
5 the payroll records. Do you recall examining that
6 file?

7 A: No.

8 Q: So, your one or two questions ago I
9 believe you just testified that you think that the
10 information in the 2013/2015 payroll analysis file is
11 actually a tab or portion of the A Cab OLE Excel
12 file. Would you have state that because you believe
13 that the same information appears in the A Cab OLE
14 Excel file?

15 A: I think it's another tab in the A Cab
16 OLE file. If there's a separate file, I don't
17 remember seeing it.

18 Q: Now, did you examine the tabs in the A
19 Cab OLE file that say 2013-2015 per EE and--

20 A: That's what I think--

21 Q: --per EE, which is 2010-2012?

22 A: That's what I think that you're
23 referencing.

24 Q: Okay. Those tabs--

25 A: I believe.

1 Q: --contain a compilation of the amount of
2 all the pay periods that are calculated owed to each
3 employee. Do you recall looking at sheets that had
4 that information?

5 A: I recall looking at that, those pages
6 where you have everybody listed together and you come
7 up with a number, a total number [0:27:28 inaudible]
8 for employee--

9 Q: Right.

10 A: --and total hours or something.

11 Q: One line for employee with total amounts
12 that are calculated as owed using the A Cab OLE Excel
13 file.

14 A: Yes.

15 Q: Do you recall looking at those sheets?

16 A: Yes.

17 Q: Okay. Did you determine there was any
18 arithmetical errors in those per EE sheets?

19 A: Not that I know of. I don't think I
20 tested it a great deal. I looked at it.

21 Q: You have no reason to doubt that those
22 per EE sheets contain the totals of the 2013-2015 or
23 the 2010-2012 sheets in the A Cab OLE Excel file
24 totals by employee?

25 A: Yeah. I think they're the other two

1 spreadsheets, just summarized differently.

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

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

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

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

20 A: Yes.

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

25 MS. RODRIGUEZ: Objection. Asked and

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

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

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

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

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

1 period. Do you understand that?

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

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

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

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

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

16 A: Yes.

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

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

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

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

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

9 Q: What is more generous to employees?

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

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

18 A: Yes.

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

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

1 asking the same question. You've asked him that four
2 times already and I think you...

3 Q: Counsel, I haven't. This is a different
4 question. The witness needs to answer.

5 MS. RODRIGUEZ: Well, my objection is it's
6 been asked and answered on four prior occasions
7 already and I think you're being abusive to the
8 witness.

9 A: The math will foot through.

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

17 MS. RODRIGUEZ: Objection. Asked and
18 answered on five prior occasions. I believe you're
19 badgering the witness at this point.

20 A: I think the math works. I think it's a
21 legal question as to what the right amount of hours
22 are. I think you could probably recalculate at the
23 statutory rate and get a slightly different answer
24 but as an accountant, I would say that I don't know
25 what the law would actually say.

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

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

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

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

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

1 CERTIFICATE OF RECORDER

2 STATE OF NEVADA)

3 COUNTY OF CLARK)

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

5 I, Jared Marez, a duly commissioned

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

7 certify: That I recorded the taking of the

8 deposition of the witness, Robert S. Leslie,

9 commencing on 10/10/2017.

10 That prior to being examined the witness was

11 duly sworn to testify to the truth.

12 I further certify that I am not a relative or

13 employee of an attorney or counsel of any of the

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

15 counsel involved in said action, nor a person

16 financially interested in the action.

17 IN WITNESS WHEREOF, I have hereunto set my

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

19 Nevada, this 10/10/2017.

20

21

22 Jared Marez Notary

23

24

25

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

EXHIBIT “J”

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

Exhibit "A"

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

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

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

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

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

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

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

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

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

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

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

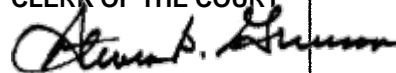
Plaintiffs have performed 14,199 additional fully accurate calculations on 14,199 additional pay periods, in the same fashion as detailed above, by using an Excel file (the “2013-2015 Payroll Analysis” file). That Excel file was provided to the Court with an explanation of how it can be examined to verify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

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

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

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

A: Yes.



1 **OPP**

MARK J. BOURASSA, ESQ.

Nevada Bar No. 7999

TRENT L. RICHARDS, ESQ.

Nevada Bar No. 11448

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Attorneys for Plaintiff

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.

RELATED CASE:

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

Plaintiff,

vs.

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

Defendant.

Case No.: A-12-669926-C

Dept. No.: I

Filed concurrently in Case A-15-721063-C

**PLAINTIFF JASMINKA DUBRIC'S
OPPOSITION TO MICHAEL MURRAY
AND MICHAEL RENO'S MOTION FOR
MISCELLANEOUS RELIEF**

Date of Hearing: April 27, 2018

Time of Hearing: 10:00 a.m.

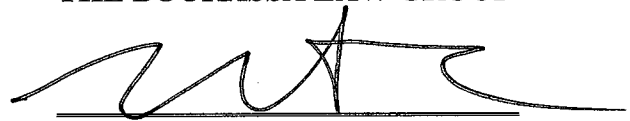
1 **PLAINTIFF JASMINKA DUBRIC'S OPPOSITION TO**
2 **MICHAEL MURRAY AND MICHAEL RENO'S**
3 **MOTION FOR MISCELANEOUS RELIEF**

4 Plaintiff JASMINKA DUBRIC ("Dubric"), by and through her counsel of record, Mark J. Bourassa,
5 Esq. and Trent L. Richards, Esq. of The Bourassa Law Group, hereby submit this Opposition to the motion
6 for miscellaneous relief filed by non-parties Michael Murray and Michael Reno ("Murray/Reno), by and
7 through their counsel of record, Leon Greenberg and Dana Sniegocki of the Leon Greenberg Professional
8 Corporation, entitled Plaintiffs' Motion on OST to Lift Stay, Hold Defendants in Contempt, Strike Their
9 Answer, Grant Partial Summary Judgment, Direct a Prove Up Hearing, and Coordinate Cases (the
10 "Murray/Reno Motion").

11 This Opposition is made and based upon the attached Memorandum of Points and Authorities, the
12 exhibits attached to this Opposition, all pleadings and papers on file in this action, and upon such further
13 oral or documentary evidence as may be presented at the time of the hearing in this matter.

14 Dated this 20th day of April 2018.

15 **THE BOURASSA LAW GROUP**

16 

17 **MARK J. BOURASSA, ESQ.**

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Attorneys for Plaintiff

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Dubric matter (case no. A-15-721063-C) arises out of the employment of Plaintiff Ms. Dubric
4 by A Cab, LLC, A Cab Series LLC, and Creighton J. Nady (collectively, "Defendants") as a cab driver,
5 road supervisor, and driver supervisor. Plaintiff has been granted a summary judgment in her case (case
6 no. A-15-721063-C) as against Defendants for Defendants' failure to pay the statutorily designated
7 minimum wage as required by Article 15, Section 16 of the Nevada Constitution. Plaintiff is awaiting a
8 final determination from the Court regarding the amount of damages to be awarded Ms. Dubric.

9 Non-parties to this litigation, Michael Murray and Michael Reno, by and through their counsel of
10 record, Leon Greenberg and Dana Sniegocki of the Leon Greenberg Professional Corporation, have
11 previously, and at numerous times, made inappropriate attempts to influence or intervene in Ms. Dubric's
12 litigation. Ultimately, the Murray/Reno Plaintiffs were able to secure an injunction in their litigation
13 (case no. A-12-669926-C), enjoining Defendants from settling the litigation with Ms. Dubric. On April
14 6, 2018, the Nevada Supreme Court entered an Order of Reversal, reversing the district court's order
15 granting the preliminary injunction. A copy of the Order of Reversal is attached hereto as Exhibit 1.

16 On April 18, 2018, Murray/Reno filed the Murray/Reno Motion seeking a number of different
17 reliefs from the court, including coordination of the Murray/Reno case with the Dubric case. Plaintiff
18 herein, Ms. Dubric, opposes any consolidation or coordination. Alternatively, Ms. Dubric moves for her
19 counsel, The Bourassa Law Group, to be appointed class counsel in the event the two cases are
20 consolidated or coordinated.

21 **II. APPLICABLE PROCEDURAL HISTORY**

- 22 • On July 7, 2015, Plaintiff filed her Class Action Complaint against Defendant A Cab, LLC alleging
23 two causes of action on behalf of both Plaintiff and a class of similarly-situated individuals.
24

- 1 • On August 4, 2015, Defendant A Cab, LLC filed its Answer to that Complaint.
- 2 • On October 5, 2016, Ms. Dubric and Defendants attended a settlement conference before the Hon.
- 3 Jerry A. Wiese.
- 4 • As a result of the October 5, 2016 settlement conference, Ms. Dubric and Defendants reached an
- 5 agreement whereby the parties would stipulate and agree to class certification, and prepare a Joint
- 6 Stipulation and Order for Class Certification. The settlement agreement was subject to and
- 7 contingent upon the Court's approval of the class certification and other terms.
- 8 • On November 30, 2016, Ms. Dubric and Defendants filed a Stipulation and Order to File a First
- 9 Amended Complaint to amend the operable complaint to include A Cab Series LLC, Employee
- 10 Leasing Company and Creighton J. Nady in the place and stead of two Doe defendants.
- 11 • Also on November 30, 2016, Ms. Dubric filed a First Amended Class Action Complaint in this
- 12 matter including A Cab Series LLC, Employee Leasing Company and Creighton J. Nady as
- 13 Defendants in this litigation.
- 14 • On December 20, 2016, Defendants filed their Answer to Amended Complaint.
- 15 • On January 24, 2017, Ms. Dubric and Defendants filed their Joint Motion for an Order (1)
- 16 Conditionally Certifying Settlement Class; (2) Appointing Class Counsel; (3) Preliminary
- 17 Approval of Class Settlement Agreement (4) Directing that Notice be Sent to Class Members; and
- 18 (5) Scheduling a Final Fairness Hearing (the "Joint Motion")
- 19 • On February 14, 2017, the Hon. Kenneth Cory in the case entitled *Murray v. A Cab Taxi Service*
- 20 *et al.*, Clark County, Nevada District Court Case No. A-12-669926-C (the "*Murray case*") issued
- 21 an order prohibiting and enjoining Defendants from entering into any settlement on a class action
- 22 basis through the use of NRCP Rule 23 with any of their current or former taxi driver employees
- 23 for claims under Article 15, Section 16, of the Nevada Constitution, the Nevada Minimum Wage
- 24

1 Amendment ... in any other proceeding now pending before or in the future filed in the Courts of
2 the State of Nevada , including, but not limited to, Defendants' join motion filed on January 24,
3 2017 in this case.

- 4 • The February 14, 2017 Order further commanded Defendants request a withdrawal of the Joint
5 Motion in the litigation.
- 6 • Defendants complied with Judge Cory's Order, and withdrew the January 24, 2017 Joint Motion
7 in this litigation.
- 8 • Unable to proceed with the class wide settlement of her claims, Ms. Dubric subsequently brought
9 a Motion for Summary Judgment before the Court regarding her individual claims.
- 10 • On September 12, 2017, the Court granted Ms. Dubric's Motion for Summary Judgment, taking
11 under advisement the issue of the precise damages to be awarded Ms. Dubric.
- 12 • On April 6, 2018, the Nevada Supreme Court entered an Order of Reversal, reversing the district
13 court's order granting the preliminary injunction. A copy of the Order of Reversal is attached
14 hereto as Exhibit 1.

15 **III. LEGAL ARGUMENT**

16 **A. Opposition to the Murray/Reno Motion.**

17 As part of the Murray/Reno Motion, the Murray/Reno parties seek coordination of their case with
18 Ms. Dubric's case pursuant to EDCR 2.50. The Murray/Reno Motion is premised upon the assumption
19 by counsel for Murray/Reno that "Defendants will soon renew their efforts to secure a conflicting class
20 certification order in Dubric." See, Murray/Reno Motion at pg 4, ln 2-4.

21 However, the Murray/Reno parties completely ignore the fact that on September 12, 2017,
22 following a hearing on Plaintiff's Motion for Summary Judgment, the Honorable Court Granted
23 Plaintiff's motion for summary judgment, and took under advisement the issue of how much is owed this
24

1 particular employee (Ms. Dubric). See, September 12, 2017 Minute Order attached hereto as Exhibit 2.
2 The parties are awaiting the Court's determination of the precise amount of damages Ms. Dubric is owed
3 in this matter for her individual claims. Such an order in the Dubric matter would, presumably, be a final
4 order.

5 The procedural posture of the Dubric matter came about because once the Murray/Reno Court
6 issued its injunction barring Defendants from resolving any class claims with Ms. Dubric, Ms. Dubric
7 proceeded to pursue her claims in an individual capacity. The Dubric matter has progressed to an entirely
8 different place in litigation than the Murray/Reno matter currently stands. Therefore, the case posture of
9 Ms. Dubric's case is very different from that of the Murray/Reno case, and there is no basis for
10 coordinating the two cases under EDCR 2.50(b).

11 Additionally, as the Murray/Reno counsel sets out in the Motion, the Murray/Reno matter is
12 facing an upcoming Rule 41(e) deadline (5-year rule) of August 3, 2018. Counsel for Murray/Reno
13 further concede that the possibility of the 5-year rule running is a real possibility. Therefore, to
14 consolidate Ms. Dubric's with that of the Murray/Reno litigation would be prejudicial to Ms. Dubric in
15 that she is suddenly faced with a fast approaching Rule 41(e) deadline. As a result of the prejudice that
16 might result to Ms. Dubric, consolidation or coordination should be denied.

17 **B. Representations by Counsel for Murray/Reno.**

18 Ms. Dubric would like to take the opportunity to point out some inappropriateness.

19 Counsel for Murray/Reno has repeatedly made inflammatory and improper representations to the
20 Court, and to counsel for Ms. Dubric, that are unbecoming an officer of this Court and demonstrate an
21 unfitness for them to stand as a class counsel in this matter.

22 Counsel for Murray/Reno state in his Declaration of Counsel in Support of an OST in the
23 Murray/Reno Motion that the "presence of the Dubric counsel during the appeal argument ... establishes
24

1 defendants and plaintiffs' counsel in Dubric will still pursue their collusive, and improper, class action
2 settlement." See, Murray/Reno Motion at pg 5, ln 16-19 (emphasis added). Counsel for Murray/Reno
3 then continues on in his declaration to drag Ms. Dubric through the mud so to speak, by referencing an
4 unrelated claim Ms. Dubric brought in federal court relating to harassment. The Murray/Reno Motion is
5 replete with other inflammatory language, such as referring to Ms. Dubric's attempts to resolve her claims
6 amicably and on a class wide basis as a "collusive 'reverse auction' settlement." See, Murray/Reno
7 Motion at pg 6, ¶ 11. The at-issue settlement was reached at a settlement conference before the Hon.
8 Jerry A. Wiese in October of 2016. It was neither collusive, nor reverse, nor improper.

9 The inflammatory and improper actions and language by counsel for Murray/Reno have no place
10 in this Court. Ms. Dubric respectfully suggests that different class counsel would be more appropriate in
11 the event there is any consolidation or coordination of the cases.

12 1. Designation of The Bourassa Law Group as Class Counsel.

13 In determining whether the named plaintiffs and counsel will prosecute the action vigorously on
14 the behalf of the class, the courts in the Ninth Circuit consider the competency and qualifications of
15 counsel. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998); *Lerwill v. Inflight Motion*
16 *Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). The Bourassa Law Group satisfies these requirements.

17 Here, Ms. Dubric's counsel carefully investigated potential claims in this action. This
18 investigation included significant pre-litigation investigation, as well as extensive written discovery and
19 the deposition of Defendant, Creighton J. Nady. The Bourassa Law Group is an active practitioner in the
20 areas of both class actions and employment claims, and will protect the interests of the class. Ms.
21 Dubric's counsel has prosecuted numerous employment and wage and hour claims, on both the plaintiff
22 and defense sides. In addition, Ms. Dubric's counsel has initiated several class action matters for
23 violations of federal and state consumer protection and wage laws, as well as Nevada construction defect
24

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

10 2. Propensity of The Bourassa Law Group to Resolve the Case.

11 Ms. Dubric, and her counsel, have demonstrated a willingness and ability to resolve the wage and
12 hour dispute that is at issue herein with Defendants. Dubric and her counsel have already attended one
13 fair and impartial settlement conference before the Hon. Jerry A. Wiese in October of 2016, wherein they
14 were able to secure an agreement-in-concept with Defendants for a just, speedy, and fair resolution of the
15 claims at issue on a class wide basis. That agreement-in-concept ultimately failed to work out, through
16 no fault of Ms. Dubric.

17 Comparatively, it does not appear that Murray/Reno or their counsel have similar goals or
18 methodologies. Ms. Dubric respectfully suggests that the putative class, whether in the Murray/Reno
19 matter or the Dubric matter, would be better served by appointing The Bourassa Law Group as class
20 counsel.

21 **IV. CONCLUSION**

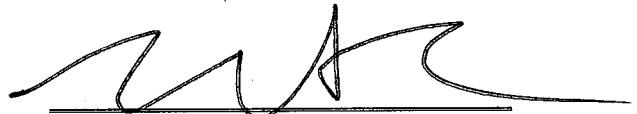
22 Plaintiff Ms. Dubric opposes any consolidation or coordination of her case with Murray/Reno
23 matter based upon the reasons stated herein, including that Ms. Dubric has already secured summary
24

1 judgment as to her own claims as against Defendants in her case.

2 Alternatively, Ms. Dubric moves for her counsel, The Bourassa Law Group, to be appointed class
3 counsel in the event the two cases are consolidated or coordinated, believing that The Bourassa Law
4 Group would be better able to handle the class claims, in addition to her own.

5 Dated this 20th day of April 2018.

6 **THE BOURASSA LAW GROUP**

7 

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Nevada Bar No. 7999

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13 *Attorneys for Plaintiff*

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Esther C. Rodriguez, Esq.
 RODRIGUEZ LAW OFFICES, P.C.
 10161 Park Run Dr., Suite 150
 Las Vegas NV 89145
Counsel for Defendants

Michael K. Wall, Esq.
HUTCHISON & STEFFEN
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Defendants

AA006907

EXHIBIT 1

Order of Reversal

EXHIBIT 1

Order of Reversal

AA006908

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

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

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 2

Minute Order

EXHIBIT 2

Minute Order

AA006912

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Location : District Court Civil/Criminal Help

REGISTER OF ACTIONS

CASE No. A-15-721063-C

Jasminka Dubric, Plaintiff(s) vs. A Cab LLC, Defendant(s)

§
§
§
§
§
§

Case Type: **Employment Tort**

Date Filed: **07/07/2015**

Location: **Department 25**

Cross-Reference Case Number: **A721063**

PARTY INFORMATION

Defendant **A Cab LLC**

Lead Attorneys
ESTHER RODRIGUEZ
Retained
7023208400(W)

Defendant **A Cab Series LLC Employee Leasing Company**

ESTHER RODRIGUEZ
Retained
7023208400(W)

Defendant **Nady, Creighton J.**

ESTHER RODRIGUEZ
Retained
7023208400(W)

Plaintiff **Dubric, Jasminka**

Mark J. Bourassa
Retained
702-851-2180(W)

EVENTS & ORDERS OF THE COURT

09/12/2017 **All Pending Motions** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)

Minutes

09/12/2017 9:00 AM

- DEFT'S. OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR DISMISSAL...PLTF'S. MOTION FOR SUMMARY JUDGMENT DEFT'S. OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR DISMISSAL Ms. Rodriguez stated at the last hearing she requested what are the parties doing as to the remaining class members; nothing has been filed with the Court asking for a voluntary dismissal of the remaining class members. Ms. Rodriguez requested she be allowed the opportunity to request attorney's fees and costs for defending the class action law suit. Mr. Richards stated the Deft. now seeks dismissal of the entire action including that against Ms. Dubric because Ms. Dubric has filed her Motion for Summary Judgment seeking damages less than \$10,000.00. Mr. Richards argued regarding the standard for a Motion to Dismiss. Adding, the Motion to Dismiss should be denied, it isn't whether a party ultimately succeeds in recovering more than \$10,000.00, it is whether the Compliant should be before the Court. Additional argument by Ms. Rodriguez regarding the Court's jurisdiction. COURT FINDS this Court does still have jurisdiction over the matter, and STATED ITS FINDINGS. The COURT will RECOGNIZE the voluntary dismissal of the class members. The Court will entertain any well pled motion regarding attorney's fees and costs. PLTF'S. MOTION FOR SUMMARY JUDGMENT Argument by counsel regarding the Motion for Summary Judgment. Mr. Richards argued there is no dispute as to any material facts, both sides use the same data; it is simply how as a matter of law this Court determines the math should be calculated and how the language in the statute regarding per hour work applies to this situation. Furthermore, if the Motion to Dismiss is granted the Rule 23 claims as to the punitive claims should also be dismissed. Ms. Rodriguez inquired if Pltf. is seeking a voluntary dismissal under Rule 41. Ms. Rodriguez argued the Motion for Summary Judgment is not appropriate as there is a dispute as to what the calculation should be. Further arguing, Pltf was a commissioned employee not an hourly employee. Furthermore, the calculation Pltf. provided for their calculation was not provided during discovery. Additional argument by counsel regarding the wage calculation. COURT STATED IT'S

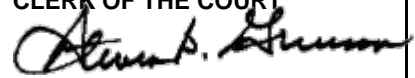
AA006913

FINDINGS regarding the issue of dismissal. It does appear that the dismissal that would be effectuated through the Motion for Summary Judgment is that both Rule 23(e) and Rule 41 are applicable. COURT STATED FURTHER FINDINGS, The COURT is DETERMINING this as Rule 41 DISMISSAL of the class members, subject to Rule 23 (e) requirements which requires a Court Order. COURT FURTHER DETERMINES the Motion for Summary Judgment should be GRANTED, the Court does believe this is a question of law not a question of fact; the facts are undisputed as to what occurred to this particular employee, the issue becomes what amount is owed. COURT STATED the it will take UNDER ADVISEMENT that final determination and issue an Order after a final review of all the applicable case law and facts. COURT RECOGNIZES the voluntary DISMISSAL and ORDERS, the members of the class may be DISMISSED in this case. COURT STATED ADDITIONAL FINDINGS, and FURTHER ORDERED, Trial date VACATED, Deft's. Counter Motion for Dismissal DENIED.

Parties Present

Return to Register of Actions

AA006914



1 **DECL**
2 LEON GREENBERG, ESQ., SBN 8094
3 DANA SNIEGOCKI, ESQ., SBN 11715
4 Leon Greenberg Professional Corporation
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(702) 385-1827(fax)
leongreenberg@overtimelaw.com
dana@overtimelaw.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

10 Plaintiffs,

11 vs.

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

Case No.: A-12-669926-C

Dept.: I

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

Re: Court's Minute Order of
April 26, 2018

16 **RELATED CASE:**

17 JASMINKA DUBRIC,

18 Plaintiffs,

19 vs.

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

24 Defendants.

Case No.: A-15-721063-C

Dept.: XXV

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

28 1. I am one of the attorneys representing the class of plaintiffs in this matter.

I submit this declaration in response to the Court's minute order of April 26, 2018

AA006915

1 finding that the Court would benefit from an explanation regarding the circumstances
2 of duplicate filings (two clerk filed copies and a chambers copy) with varying captions
3 of the plaintiffs' motion on OST for various relief, initially set for April 27, 2018 and
4 continued to May 4, 2018.

5 2. The multiple filings referred to by the Court in its minute order sought no
6 different or multiple relief and were not performed to effectuate any result except
7 compliance (in what proved to be a confusing fashion) with the Court and its Clerk's
8 filing requirements. Because that OST concerned a coordination request for two cases
9 under EDCR Rule 2.50 it required filing in two actions and service upon all counsel in
10 both actions. After the OST's initial filing in the *Murray* case on April 17, 2018 (under
11 a *Murray* "single caption") its filing was rejected in the *Dubric* case by the Clerk's
12 office on April 17 and 18, 2018 during four attempts. At Ex. "A" are copies of
13 communications about those attempted filings, including one in which the Clerk's
14 office states the filing was improperly rejected. My office only succeeded in having
15 the filing accepted in *Dubric* (on its 5th attempt) by submitting it with a "dual caption"
16 on April 18, 2018. I believe all of those filings were made prior to my office being
17 advised the April 27, 2018 hearing date had been continued to May 4, 2018, there was
18 never any intention to maintain the April 27, 2018 hearing through such filings.

19 3. While the foregoing sequence of events was performed by my paralegal,
20 that person operates under my direction and I am fully responsible for what occurred
21 and the resulting confusion. I apologize to the Court for the burden that has caused.

22 4. The Court's minute order notes Ms. Rodriguez communicated with the
23 Court shortly after the OST was served to request and secure a continuance of the
24 hearing from April 27, 2018 to May 4, 2018. Mr. Rodriguez did **NOT** contact my
25 office in advance of making that request and I had no knowledge of such
26 communication, or her request, until I received Ms. Rodriguez's letter of April 24,
27 2018. I would be unconcerned about that continuance *except* that in the interim, on
28 April 23, 2018, Ms. Rodriguez, and plaintiffs' counsel in *Dubric*, have confirmed that

1 they are seeking to have Department 25, once again, approve a collusive and improper
2 class action settlement to derail the proceedings in this case. They have demonstrated
3 that intent by filing a "status check" request in Department 25 which includes the
4 Supreme Court's recent Order in this case. (Ex. "B"). That request, which states the
5 Supreme Court's Order "may impact this [the *Dubric*] litigation" makes no sense
6 *except* to the extent defendants and plaintiff's counsel in *Dubric* will renew their
7 application for class settlement approval in Department 25.

8 5. My concern, perhaps poorly articulated in my letter to the Court of April
9 24, 2018, is that Department 25 will undertake the improper course of conduct sought
10 by defendants on an expedited basis and cause great injury to the class members. That
11 concern is rooted in the history of those proceedings, which progressed, from an initial
12 OST filed by defendants in *Dubric* on January 24, 2017 through a series of expedited
13 hearings denying my office's motion on an OST to intervene and continue the class
14 settlement approval hearing so opposition could be considered, Department 25
15 scheduling its hearing to enter that approval order, without opposition, for the
16 afternoon of February 14, 2017. That incredibly, and inexplicably, swift course of
17 proceedings, in a span of 21 days, would have had grave consequences for the class
18 members if not for this Court's injunction, issued in the morning of February 14, 2017.
19 There is every reason to fear Department 25 will again act in a matter of days and prior
20 to May 4, 2018 and issue the approval Order deferred on February 14, 2017. It is for
21 this reason I urge the Court to enter an immediate Order granting only the portion of
22 plaintiffs' pending OST seeking to lift the stay and coordinate the *Dubric* case with
23 this case, as per EDCR 2.50 and as it is empowered to do per EDCR 2.23(c).

24 I have read the foregoing and affirm the same is true and correct.

25 Affirmed this 26th day of February, 2018

26
27 
28 Leon Greenberg

CERTIFICATE OF MAILING

The undersigned certifies that on April 26, 2018, she served the within:

Declaration of Counsel, Leon Greenberg, Esq.

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

Mark J. Bourassa
Trent L. Richards
THE BOURASSA LAW GROUP
2350 W. Charleston Blvd. #100
Las Vegas, NV 89102

/s/ Dana Sniegocki

Dana Sniegocki

EXHIBIT "A"

Subject: Filing Returned for Envelope Number: 2435735 in Case: A-15-721063-C, Jasminka Dubric, Plaintiff(s)vs.A Cab LLC, Defendant(s) for filing Notice of Motion - NOTM (CIV)

From: efilingmail@tylerhost.net

Date: 4/18/2018 7:39 AM

To: leongreenberg@overtimelaw.com



Filing Returned

Envelope Number: 2435735

Case Number: A-15-721063-C

Case Style: Jasminka Dubric, Plaintiff(s)vs.A
Cab LLC, Defendant(s)

The filing below has been reviewed and has been returned for further action. **Please refile with the corrections outlined below.** Please, contact the appropriate court help center for further information.

Return Reason(s) from Clerk's Office	
Court	Eighth Judicial District Court
Returned Reason	Rejected
Returned Comments	I apologize that this was rejeccted a second time as that reason was not correct however; As i stated in my first rejection, we need the Motion itself filed into this case, you are welcome to do this Notice after but we need the Motion filed first as it puts on record you are trying to coordinate the two cases. Please do leave a note though when you submit it, i would hate for someone to reject it again not realizing it is related to the other case. Sorry for the inconvenience. Thank you.

Document Details	
Case Number	A-15-721063-C
Case Style	Jasminka Dubric, Plaintiff(s)vs.A Cab LLC, Defendant(s)
Date/Time Submitted	4/17/2018 5:42 PM PST
Filing Type	Notice of Motion - NOTM (CIV)
Filing Description	Notice of 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
Activity Requested	EFileAndServe
Filed By	leon greenberg
Filing Attorney	Leon Greenberg

AA006920

Subject: Filing Returned for Envelope Number: 2433202 in Case: A-15-721063-C, Jasminka Dubric, Plaintiff(s)vs.A Cab LLC, Defendant(s) for filing Notice of Motion - NOTM (CIV)
From: efilingmail@tylerhost.net
Date: 4/17/2018 4:10 PM
To: leongreenberg@overtimelaw.com



Filing Returned

Envelope Number: 2433202
 Case Number: A-15-721063-C
 Case Style: Jasminka Dubric, Plaintiff(s)vs.A Cab LLC, Defendant(s)

The filing below has been reviewed and has been returned for further action. **Please refile with the corrections outlined below.** Please, contact the appropriate court help center for further information.

Return Reason(s) from Clerk's Office	
Court	Eighth Judicial District Court
Returned Reason	Two or more documents submitted together as one document
Returned Comments	Please seperate the documents and resubmit, we do need the Motion in this case as well for the record of the coordination. Thank you

Document Details	
Case Number	A-15-721063-C
Case Style	Jasminka Dubric, Plaintiff(s)vs.A Cab LLC, Defendant(s)
Date/Time Submitted	4/17/2018 2:08 PM PST
Filing Type	Notice of Motion - NOTM (CIV)
Filing Description	Notice of 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
Activity Requested	EFileAndServe
Filed By	leon greenberg
Filing Attorney	Leon Greenberg

AA006921

Subject: Filing Returned for Envelope Number: 2438959 in Case: A-15-721063-C, Jasminka Dubric, Plaintiff(s)vs.A Cab LLC, Defendant(s) for filing Order Shortening Time - OST (CIV)
From: efilingmail@tylerhost.net
Date: 4/18/2018 12:36 PM
To: leongreenberg@overtimelaw.com



Filing Returned

Envelope Number: 2438959
Case Number: A-15-721063-C
Case Style: Jasminka Dubric, Plaintiff(s)vs.A
Cab LLC, Defendant(s)

The filing below has been reviewed and has been returned for further action. **Please refile with the corrections outlined below.** Please, contact the appropriate court help center for further information.

Return Reason(s) from Clerk's Office	
Court	Eighth Judicial District Court
Returned Reason	Party names/Case Number on pleading don't match case submitted to
Returned Comments	No rejection comment was provided. Please contact the court into which you are filing for more information.

Document Details	
Case Number	A-15-721063-C
Case Style	Jasminka Dubric, Plaintiff(s)vs.A Cab LLC, Defendant(s)
Date/Time Submitted	4/18/2018 12:14 PM PST
Filing Type	Order Shortening Time - OST (CIV)
Filing Description	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
Activity Requested	EFileAndServe
Filed By	leon greenberg
Filing Attorney	

AA006922

Subject: Filing Returned for Envelope Number: 2435582 in Case: A-15-721063-C, Jasminka Dubric, Plaintiff(s)vs.A Cab LLC, Defendant(s) for filing Notice of Motion - NOTM (CIV)
From: efilingmail@tylerhost.net
Date: 4/17/2018 5:25 PM
To: leongreenberg@overtimelaw.com



Filing Returned

Envelope Number: 2435582
Case Number: A-15-721063-C
Case Style: Jasminka Dubric, Plaintiff(s)vs.A
Cab LLC, Defendant(s)

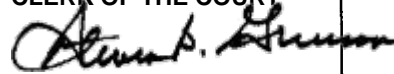
The filing below has been reviewed and has been returned for further action. **Please refile with the corrections outlined below.** Please, contact the appropriate court help center for further information.

Return Reason(s) from Clerk's Office	
Court	Eighth Judicial District Court
Returned Reason	Rejected
Returned Comments	Motion on OST attached is for a different case number, A-12-669926-C. Thank you.

Document Details	
Case Number	A-15-721063-C
Case Style	Jasminka Dubric, Plaintiff(s)vs.A Cab LLC, Defendant(s)
Date/Time Submitted	4/17/2018 5:10 PM PST
Filing Type	Notice of Motion - NOTM (CIV)
Filing Description	Notice of 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
Activity Requested	EFileAndServe
Filed By	leon greenberg
Filing Attorney	Leon Greenberg

AA006923

EXHIBIT "B"



NOTC

MARK J. BOURASSA, ESQ.
Nevada Bar No. 7999
TRENT L. RICHARDS, ESQ.
Nevada Bar No. 11448
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mbourassa@blgwins.com
trichards@blgwins.com
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,)

vs.)

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

Defendant.)

Case No.: A-15-721063-C

Dept. No.:

NOTICE OF ENTRY OF ORDER

AND

JOINT REQUEST FOR STATUS CHECK

Plaintiff JASMINKA DUBRIC ("Plaintiff"), by and through her counsel of record, Mark J. Bourassa, Esq. and Trent L. Richards, Esq. of The Bourassa Law Group, and Defendants A CAB, LLC, A CAB SERIES LLC, EMPLOYEE LEASING COMPANY and CREIGHTON J. NADY ("Defendants"), by and through their counsel of record, Esther C. Rodriguez, Esq. of Rodriguez Law Offices, P.C., hereby submit this Notice of Entry of Order, providing notice to this Court of the entry of an Order of Reversal by the Nevada Supreme Court in a related matter that may impact this litigation.

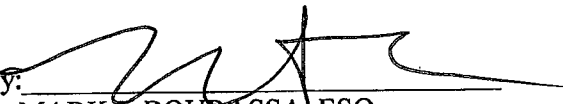
\\

1 Plaintiff and Defendants further jointly request a status check with this Court, at the Court's
2 convenience, to discuss the status of this litigation.

3 Respectfully submitted:

4 DATED this 23rd day of April 2018.

5 **THE BOURASSA LAW GROUP**

6 By: 
7 MARK J. BOURASSA, ESQ.
8 Nevada Bar No. 7999
9 TRENT L. RICHARDS, ESQ.
10 Nevada Bar No. 11448
2350 W. Charleston Blvd., #100
Las Vegas, Nevada 89102
Attorneys for Plaintiffs

DATED this 23 day of April 2018.

RODRIGUEZ LAW OFFICES, P.C.


By: 
ESTHER C. RODRIGUEZ, ESQ.
Nevada Bar No. 6473
10161 Park Run Dr., Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendants

EXHIBIT 1

Order of Reversal

EXHIBIT 1

Order of Reversal

AA006927

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

Pickering, J.
Pickering

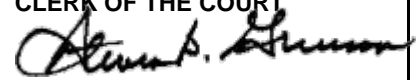
Parraguirre, J.
Parraguirre

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

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



RPLY
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leongreenberg@overtimelaw.com
dana@overtimelaw.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' REPLY TO
JASMINKA DUBRIC'S
OPPOSITION TO
PLAINTIFFS' MOTION FOR
MISCELLANEOUS RELIEF**

Hearing Date: April 27, 2018

Hearing Time: 10:00 a.m.

RELATED CASE:

JASMINKA DUBRIC,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-15-721063-C

Dept.: XXV

Plaintiffs, through their attorneys, class counsel, Leon Greenberg and Dana
Sniegocki of Leon Greenberg Professional Corporation, hereby file this reply to the
opposition of Jaminka Dubric to plaintiffs' motion on an OST for the expedited

AA006931

1 issuance of an Order lifting the stay in this case, holding defendants in contempt,
2 striking defendants' answer, granting plaintiffs' pending partial summary judgment
3 motion, directing a prove up hearing, and coordinating the later filed case of *Dubric v.*
4 *A Cab*, A-15-721063-C, with this case pursuant to EDCR Rule 2.50.

5 **SUMMARY OF REPLY**

6 There is no basis to deny coordination of *Dubric* with this case. The only
7 concern of Ms. Dubric, the sole plaintiff in that case, is the amount of her individual
8 damages which remain to be calculated, she having already been granted summary
9 judgment. Having elected to secure such individual relief, she no longer has standing
10 to represent any class of claimants (she is no longer "typical" of the class she purports
11 to represent). She is also not a competent class representative, as discussed in the
12 moving papers, being a judgment debtor of defendants for an amount in excess of
13 \$50,000.

14 The only reason Ms. Dubric's counsel opposes coordination is so they can enter
15 into a collusive class action settlement with defendants and receive a handsome fee for
16 doing so (and perhaps see their client, Jasminka Dubric, also awarded some additional
17 compensation from that process). Department 1 has been overseeing these
18 proceedings for a considerable amount of time and has entered very important Orders
19 to safeguard and advance the class members' interests and the just disposition of this
20 case. Allowing *Dubric* to proceed in an uncoordinated fashion, and serve as a vehicle
21 for defendants to subvert the Orders entered in *Murray* and the class resolution of the
22 *Murray* case, would be a gross miscarriage of justice. And to the extent that
23 defendants have any proper resolution to propose of the class members' claims there is
24 no reason for their failure to propose that resolution in the *Murray* case and
25 demonstrate its suitability to Department 1. They need not secure the endorsement or
26 assistance of the *Murray* class counsel to do so.

ARGUMENT

I. DUBRIC'S REMAINING LITIGATION ISSUES ARE EASILY RESOLVED, IF NOT BETTER RESOLVED, IN A COORDINATED FASHION IN DEPARTMENT 1 WITH THE *MURRAY* CASE

As Dubric's counsel concedes, Ms. Dubric was granted summary judgment in September of 2017, with a final order setting forth damages not yet issued over seven (7) months later. Why Department 25 has failed to do so, and Ms. Dubric's counsel have not asked it to do so, pose interesting questions. In any event, Department 1 can easily review the claims of Ms. Dubric in respect to the proper amount of a damages award and render the same. In addition, Ms. Dubric may benefit from the Special Master's review of the class member trip sheets in determining the amount of money she is owed (that review will quantify the hours of work and arrive at minimum wage deficiency calculations for all of A-Cab's taxi drivers).

II. DUBRIC'S COUNSEL'S ADVOCACY FOR A COLLUSIVE AND IMPROPER CLASS SETTLEMENT IS ESTABLISHED

Dubric's counsel is indisputably incompetent to be appointed class counsel given their support for a proposed class settlement in *Dubric* that had no basis whatsoever and was the product of no scrutiny or due diligence by such counsel.

Dubric's counsel, when it moved for preliminary approval of a class settlement in Department 25 in January of 2017, had conducted no meaningful investigation of the class claims. They had obtained and reviewed no individual payroll records of the class members or other individual class member records from the defendants (or none that they identified). They had retained no independent expert to analyze the defendants' records or arrive at any conclusions regarding the class damages.

They presented, in support of that motion for preliminary approval, as the sole supporting material, a two page letter from Nicole Omps of BETA consultants, a CPA retained "jointly" by Dubric's counsel and defendants (though who paid for Ms. Omps's services is unknown). Ex. "A." That letter performs simple arithmetic and

1 calculates that 2.161585% of the class payroll for various periods through July of 2014
2 creates the \$224,529 settlement fund amount proposed by *Dubric's* counsel

3 While Omps is a CPA, she offers no professional opinion of any kind. Her letter
4 at Appendix "A" recites her mathematical calculations (application of the 2.161585%
5 to the gross payroll amounts, something that does not require the expertise of a CPA)
6 and otherwise states:

7 Assumptions:

8 Based upon a Department of Labor Wage-Hour Investigation A-Cab for
the time period October 2010 to October 2012, it was determined that A
Cab, LLC underpaid Drivers at a rate of 2.161585% of total gross pay.

9
10 No determination that A-Cab underpaid its drivers in such a percentage was
11 actually made by the Department of Labor and that assumption by Omps, no doubt
12 based upon what she was told by Dubric and A-Cab's counsel, is in error. Such
13 percentage is derived from what those under payments were settled for by the
14 Department of Labor (\$139,998.80), not what they were "determined" to be. Dubric's
15 counsel made no effort (or none that they disclosed) to determine those under
16 payments. They relied upon a misstatement given to Omps as an "assumption" which
17 was then used to justify the proposed settlement. Nor did Dubric's counsel explain
18 why, or secure any reason to believe, that extrapolation (if it was based upon a
19 "determined" amount of underpayments as Omps was told and not a "settlement"
20 amount) is sound basis for a class settlement. The Court can scrutinize the numerous
21 other deficiencies in the settlement advanced by Dubric's counsel at Ex. "B."

22 The United States Department of Labor ("USDOL"), based upon a detailed
23 investigation and analysis of the hours worked, and wages paid to, the A-Cab taxi
24 drivers, concluded that A-Cab owed \$2,040,530.05 in unpaid minimum wages under
25 federal law for the time period October 2, 2010 through October 1, 2012. Ex. "C,"
26 excerpts of the USDOL's investigative file and report obtained through a Freedom of
27 Information Act request. The USDOL proposed to A-Cab that such claims be settled
28 for that amount and prepared a settlement agreement doing so. *Id* (emphasis added).

1 Subsequent to making that \$2,040,530.05 unpaid minimum wage determination,
2 for unknown reasons not stated in the records provided by the USDOL in their FOIA
3 response request, a settlement between the USDOL and A-Cab was arranged for
4 \$139,988.80 for 460 employees. Ex. “D,” “Addendum” signed by Richard Quezada,
5 Assistant District Director of USDOL, and directing distribution of such sum to
6 employees based upon a division of that original finding of \$2,040,530.05, at a rate of
7 6.86%, or less than 7 cents of each dollar found by the USDOL to be owed.

8 As a government agency, the USDOL was free to prosecute, or not prosecute,
9 A-Cab for federal minimum wage violations. It had unfettered discretion to settle
10 those violations for whatever amounts it deemed appropriate and in the interest of the
11 USDOL and its mission, including conserving that agency’s resources for other
12 activities besides litigation against A-Cab. Its decision to do so, and settle the
13 minimum wage violations it found for less than 7% of the value it determined them to
14 hold, provides no basis for the proposed settlement advanced by Dubric’s counsel. It
15 shows just the opposite: That the proposed settlement is not within the range of
16 settlements that this Court can approve and Dubric’s counsel is not competent to
17 represent the class.

18 Even assuming Dubric’s counsel was correct, and the proper settlement formula
19 should be based upon a “percentage of payroll” metric (for reasons they never
20 explain), Dubric’s counsel woefully failed to apply that metric. If they had given the
21 correct facts to Omps for use in her assumption, that \$2,040,530.05 had been
22 determined to be underpaid by the USDOL for the October 2010 to October 2012
23 period, the “underpay” rate/percentage in her calculations would be 31.50809%
24 (\$2,040,530.05 divided by gross pay of \$6,476,209.51), not the 2.161585% rate that
25 she used. Her assumption involved the application of such an “underpay”
26 rate/percentage to the total gross payroll for the period April 2009 through June 2014,
27 which is \$11,263,431. Applying the correct 31.50809% “underpay” rate based upon
28 the USDOL’s actual “determination” to that gross wages number means the minimum

1 settlement amount would have to be \$3,408,903 (\$3,548,891 minus the \$139,988.80
2 paid in the USDOL settlement) under the formula used by Omps and embraced by
3 Dubric and A-Cab.

4 **III. DUBRIC'S COUNSEL AND A-CAB ARE BOTH TRAFFICKING**
5 **IN A PERCEIVED HOSTILITY BY JUDGE DELANEY TO THE**
6 **MURRAY CLASS COUNSEL**

7 Dubric's counsel and A-Cab's counsel both believe Judge Delaney in
8 Department 25 has hostile inclinations towards the *Murray* class counsel and as a
9 result will approve a collusive settlement that rewards such counsel and defendants but
10 will not respect the class members' interests. They have gained that understanding
11 based upon the *Murray* counsel's pursuit of a successful mandamus petition against
12 Judge Delaney for failing to act in a timely fashion on a class certification motion in
13 *Tesema v. Lucky Cab*, Eighth Judicial District Court, 12-A-660700-C. Those
14 mandamus proceedings were before the Nevada Supreme Court under Case No.
15 70763, *Tesema v. Eighth Judicial Dist. Ct.* On September 29, 2016, the Nevada
16 Supreme Court issued an Order stating that "respondent district court judge [Judge
17 Delaney], as well as the parties in interest, shall have 30 days from the date of this
18 order to file and serve answers..." Ex. "C." Subsequently the Nevada Supreme Court
19 issued an Order on February 21, 2017 noting Judge Delaney never filed an answer in
20 response to its September 29, 2016 Order and directing Judge Delaney to decide that
21 motion within 15 days. Ex. "D."

22 **CONCLUSION**

23 The motion for coordination under EDCR Rule 2.50 should be granted.

24 Dated: April 26, 2018

25 LEON GREENBERG PROFESSIONAL CORP.

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

CERTIFICATE OF MAILING

The undersigned certifies that on April 26, 2018, she served the within:

**Plaintiffs' Reply to Jasminka Dubric's Opposition to Plaintiffs' Motion
for Miscellaneous Relief**

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

Mark J. Bourassa
Trent L. Richards
THE BOURASSA LAW GROUP
2350 W. Charleston Blvd. #100
Las Vegas, NV 89102

/s/ Dana Sniegocki

Dana Sniegocki

EXHIBIT "A"

BETA Consultants LLC

**Dubric v. A Cab LLC
Case No. A-15-721063-C**

**Estimate of Wage and Hour Settlement,
April 1, 2009 to September 30, 2016**

Prepared by: Nicole S. Omph, CPA

**Prepared for: Trent L. Richards, Esq.
and Esther C. Rodriguez, Esq.**

Report Date: October 4, 2016

Summary

I, Nicole S. Ompps, was engaged by The Bourassa Law Group and A Cab, LLC to review amounts paid to class members as compared to amounts that should have been paid, prepare a summary of findings and provide claim support during the Alternative Dispute Resolution Process and Mediation of Dubric v. A Cab LLC.

Procedures performed during this engagement do not constitute a compilation, review, or audit of financial records or financial statements.

Objectives, Scope and Observations

The objective of this engagement is to assist the parties in reaching a fair settlement amount. I have reviewed and analyzed documentation provided by the defendant, A Cab LLC, in order to identify an estimation of a fair settlement amount for the period of April 1, 2009 to September 30, 2016.

I have identified an estimated settlement range of \$224,529 to \$471,651, which is detailed in Appendix A - Estimate of Wage and Hour Settlement. This schedule is supported by my review of relevant documentation and calculations, including gross payroll detail and includes assumptions as outlined in the schedule.

Limitations and Restrictions

Findings are based on information readily available as of the date of this report. Various time constraints, availability of documentation and reporting parameters may have imposed unforeseeable limits on the scope and procedures performed. Due to the limited nature and scope of this engagement it cannot be relied upon to discover all documents and other information or provide all analyses, which may have importance to this matter.



Nicole S. Ompps, CPA
BETA Consultants LLC

10/4/16

Date

Appendix A

A Cab, LLC
Estimate of Wage and Hour Settlement
April 2009 through September 2016

Time Period	Total Gross Pay	DOL Audit % of Gross Pay	Estimated Under Payment
April 2009 - September 2010	4,149,175.16	2.161585%	89,687.95
October 2010 - September 2012	6,476,209.51	2.161585%	139,988.80
October 2012 - June 2014	6,238,047.77	2.161585%	134,840.70
July 2014 - September 2016	11,432,466.24	2.161585%	247,122.48
Total April 2009 - September 2016			611,639.93
DOL Audit Consent Judgment Paid			(139,988.80)
Adjusted April 2009 - September 2016			471,651.13
Minimum Wage Requirements Met			(247,122.48)
Total April 2009 - June 2014			224,528.65

Based on the calculations of above I have identified an estimated settlement range of:
\$224,258.65 to \$471,651.13

Assumptions:

Based on a Department of Labor Wage-Hour Investigation A Cab for the time period October 2010 to October 2012, it was determined that A Cab, LLC underpaid Drivers at a rate of 2.161585% of total gross pay.

Gross Pay	6,476,209.51
Judgement	139,988.80
Rate	2.161585%

The calculations above use this over the entire period from April 2009 through September 2016.

June 26, 2014 Nevada Supreme Court decision in Thomas v. Yellow Cab maintains that taxicab drivers are not exempt from minimum wage requirements. A Cab, LLC asserts from this point forward all minimum wage requirements were met.

EXHIBIT “B”

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

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

RECITALS

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

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

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

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

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

2. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

2.11 "Plaintiff" means and refers to Jasminka Dubric.

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

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

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

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

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

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

Representatives, brokers, consultants, heirs, and assigns.

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

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

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

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

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

3. SETTLEMENT PURPOSES ONLY

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

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

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

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

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

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

4. CONDITIONS OF SETTLEMENT

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

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

Agreement.

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

5. JURISDICTION

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

6. COURT APPROVAL OF THE SETTLEMENT

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

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

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

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

7. CLASS NOTICE PROCEDURES

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

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

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

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

8. RIGHT OF EXCLUSION

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

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

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

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

9. SETTLEMENT TERMINATION AND/OR MODIFICATION

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

9.2 Termination Prior To Final Approval. This Agreement is expressly

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

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

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

10. SETTLEMENT PAYMENTS

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

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

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

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

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

11. PROTOCOL FOR ADMINISTERING SETTLEMENT

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

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

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

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

12. CLASS ATTORNEYS' FEES AND COSTS

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

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

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

13. RELEASES

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

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

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

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

14. NOTICES

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

Class Counsel:

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

Counsel for Defendants:

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

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

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

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

13. MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

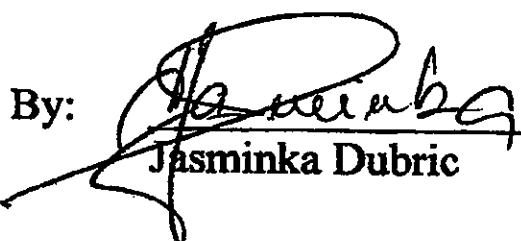
13.12 Fair, Adequate and Reasonable Settlement. The Parties believe this Settlement is a fair, adequate and reasonable settlement of the Action and have arrived at

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

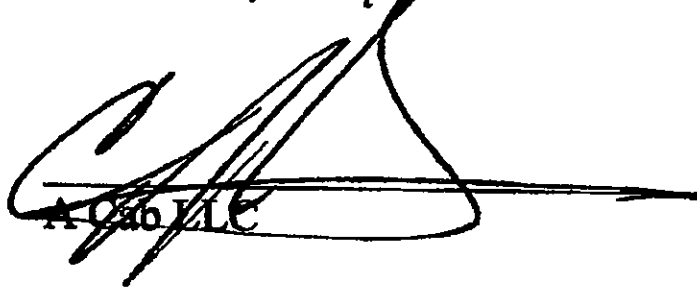
13.14 Voluntary Agreement. This Agreement is executed voluntarily and without duress or undue influence on the part or on behalf of the Parties, or of any other person or entity.

AGREED TO AND ACCEPTED.

DATED: 12/28/16

By: 
Jasminka Dubric

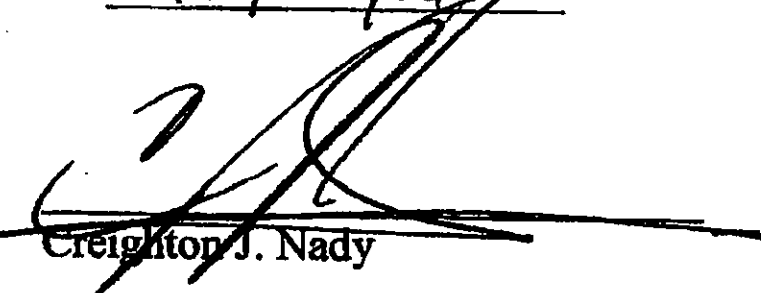
DATED: 12/28/16

By: 
A Cab LLC

DATED: 12/28/16

By: 
A Cab Series LLC, Employee
Leasing Company


DATED: 12/28/16

By: 
Creighton J. Nady

APPROVED AS TO FORM AND CONTENT:

DATED: 12/28/16

BOURASSA LAW GROUP, LLC

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

DATED: 12/28/16

RODRIGUEZ LAW OFFICES, PC


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

EXHIBIT "C"

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

EIN: 88-0470590

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FAIR LABOR STANDARDS ACT NARRATIVE REPORT

COVERAGE:

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

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

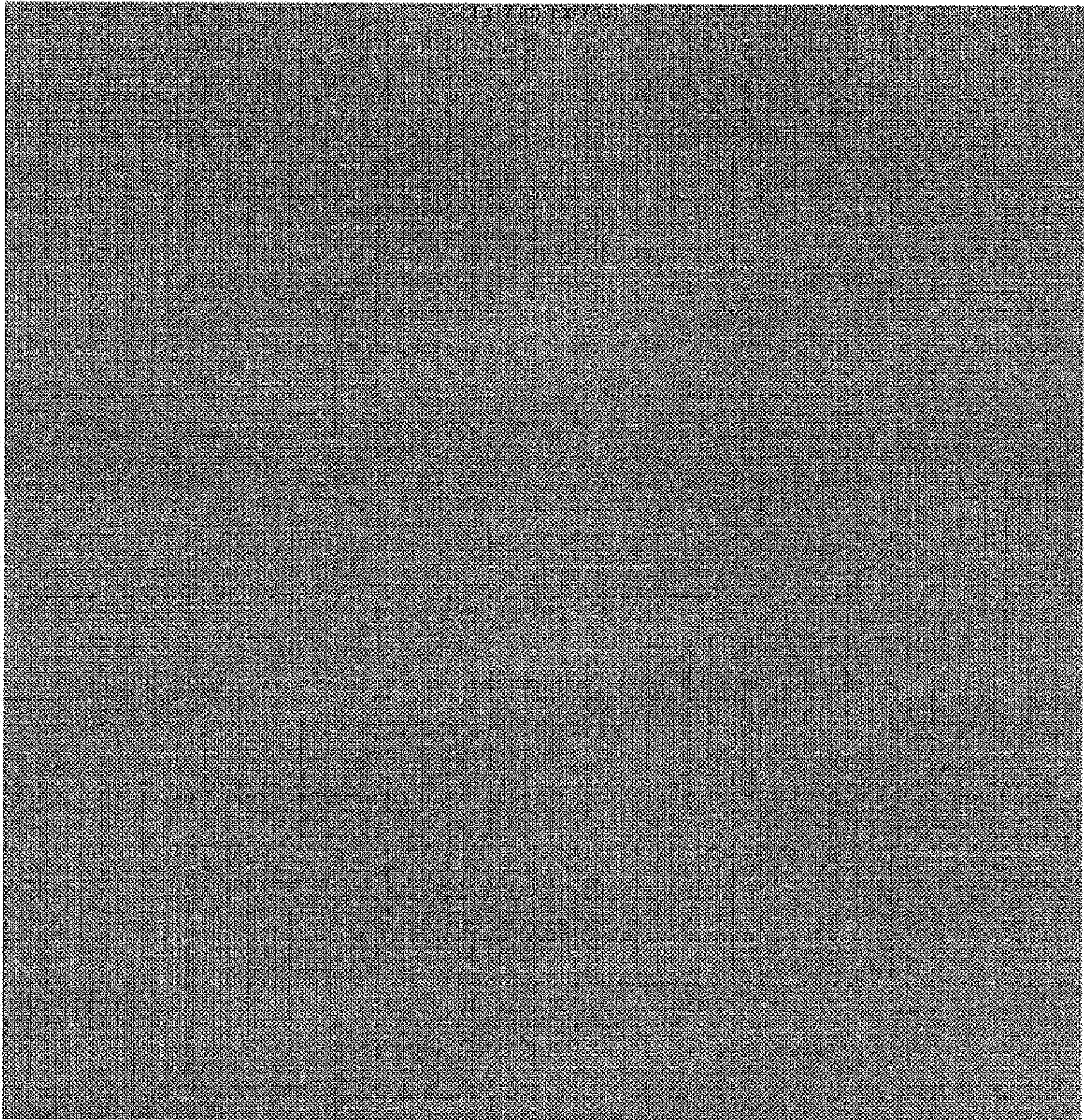
Enterprise coverage is applicable [REDACTED]
[REDACTED] Gross annual dollar volume (ADV) is [REDACTED] (CY 2009), [REDACTED] (CY 2010), and [REDACTED] (CY 2011). The owner refused to provide ADV for CY 2012 but confirmed the firm grossed over \$500,000 (Exb. D-36-a). Subject firm handles goods and materials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

This investigation is limited to cab drivers.

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

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

STATUS OF COMPLIANCE:



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

[REDACTED]

This investigation is limited to cab drivers.

EXEMPTIONS:

The employer did not claim any exemptions.

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

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

E

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

Method of computations

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

Due to the lack of accurate time records, hours worked per workweek were reconstructed from

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

In addition [REDACTED] cab drivers will work 12 hour shifts between 4 or 5 days a week, which also averages to 54 hours a week;

$$12 \text{ hours/workday} * (4.5 \text{ workdays/week}) = 54 \text{ hrs/wk}$$

The information above confirms the gathered [REDACTED] i.e., the 54 hour average and the reality of cab drivers not taking breaks.

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

Total Hours Worked: Average hours worked in biweekly pay period (108 hours) reconstructed [REDACTED]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Supplies: Deduction for map guide

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

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

Regular Rate: Gross Cash Wages Paid / Total Hours Worked

MW Diff per Hour: \$ 7.25 – Regular Rate

BW Due: MW Diff per Hour * Total Hours Worked

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

Section 11: A recordkeeping violation was found.

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

when the driver begins working. This information was provided by Mr. Nady on 11/28/2012 at the employer establishment to WHIs [REDACTED] Mr. Nady confirmed this again at the final conference.

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

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

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

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

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

Due to:

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

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

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

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

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

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

Section 12: No violations were found for child labor.

FMLA Policy Review: Review of firm's FMLA policy disclosed compliance. The firm has the appropriate FMLA postings in the establishments and provides information on employee FMLA rights [REDACTED] (Exb. D-71).

Case Chronology:

Case file is assigned to WHI [REDACTED] on 10/05/2011.

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

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

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

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

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

On 07/31/2012, case file is reassigned to WHI [REDACTED]

On 09/27/2012, while at the employer's establishment, WHI [REDACTED] requests in person from general manager Jon Gathright additional payroll records through October 2012 and records pertaining to employee loans for the past 24 months.

On 10/05/2012, WHI [REDACTED] calls and leaves a voicemail for Mr. Gathright requesting for the additional payroll records again.

On 10/09/2012, WHI [REDACTED] makes several calls to Mr. Gathright's cell phone with no answer. WHI [REDACTED] is the main office line and leaves a message for Mr. Gathright [REDACTED]. Approximately 10 minutes later, attorney Ms. Rodriguez calls WHI [REDACTED] asking why additional records are needed. She asks him to make the request for additional records in writing. WHI [REDACTED] emails a written request to Ms. Rodriguez the same day.

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

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

On 10/16/2012, Ms. Rodriguez calls ADD Ramos. ADD Ramos explains the statute of limitations and the need for additional records due to a lack of a tolling agreement. Case file is reassigned to WHI [REDACTED]

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

On 11/28/2012, WHI [REDACTED] meet with attorney Ms. Rodriguez, owner Creighton J. Nady, general manager Jon Gathright, [REDACTED] WHI [REDACTED] requests additional loans records, contact information for approximately 160 employees who were missing from the employee list, and social security numbers for all former and current employees for the past 24 months. The employer agrees to provide loans records and contact information but challenges the request for social security numbers. WHI [REDACTED] and the employer agreed to revisit the issue of social security numbers at the final conference. After the meeting, WHI [REDACTED] explains the tolling agreement and asks Mr. Nady if is willing to sign it. He refuses.

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

On 12/21/2012, WHI [REDACTED] schedules a final conference for 01/08/2013 with attorney Ms. Rodriguez.

DISPOSITION:

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

WHI [REDACTED] notified the employer of a recordkeeping violation.

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

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

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

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

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

Both the attorney and the owner strongly opposed WHD [REDACTED] reconstruct hours worked because they maintain the trip sheets are accurate.

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

Due to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

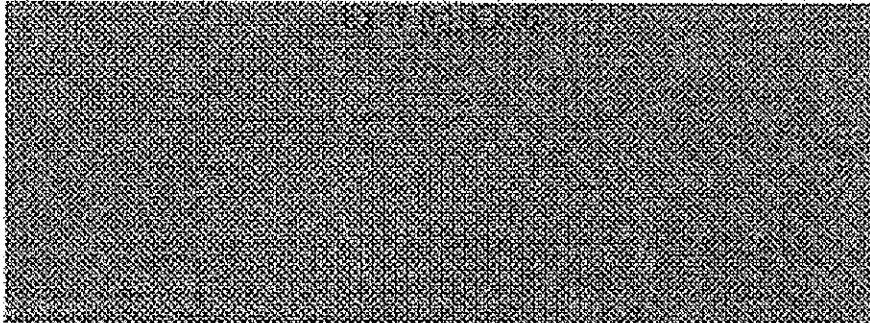
As the employer has not agreed to comply, this case file is being submitted as a refusal to comply and a refusal to pay.

Recommend second level review and JRC for potential litigation [REDACTED]

(Exb. D-180).

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

On 01/30/2013, WHI [REDACTED] mailed the FLSA HRG (ENG/SP) to both attorney Esther C. Rodriguez and A Cab, LLC.

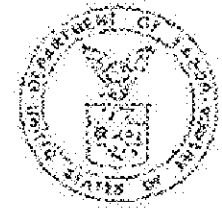


Wage & Hour Investigator
01/30/2013

U.S. Department of Labor

Wage and Hour Division
600 Las Vegas Blvd., S.
Suite 550

Las Vegas, NV 89101-6654
702-388-6001
702-388-6103



UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

IN THE MATTER OF: :

A Cab, LLC

Case ID 1611567

BACK WAGE COMPLIANCE AND PAYMENT AGREEMENT

This agreement is entered into January 30, 2013 by and between the Secretary of Labor, United States Department of Labor, (hereinafter referred to as "the Secretary"), and A Cab, LLC (hereinafter referred to as "the employer").

The Secretary, through Investigator [REDACTED] of the Wage and Hour Division, United States Department of Labor, conducted an investigation of the employer's business under FLSA. The investigation covered the employer's operations from 10/02/2010 to 10/01/2012.

As a result of that investigation monetary violations were found resulting in 508 due back wages in the amount of \$2,040,530.05.

In order to resolve this matter, the parties to this Agreement stipulate and agree to the following:

1. The employer represents that it is presently in full compliance with all applicable provisions of the FLSA, and will continue to comply therewith in the future.
2. The employer agrees to pay the back wages due the employees in question in the amounts shown for the periods indicated on the Summary of Unpaid Wages attached hereto and made a part hereof.
3. A Cab, LLC agrees to pay directly to the employees the amounts due (less legal payroll deductions) on or before 02/08/2013 and to deliver to the Secretary's representative by 02/15/2013 evidence of payment including any signed WH-58 receipt forms the Employer has received at that time.
4. The Employer agrees to provide the Secretary's representative with a listing of all unlocated employees, their last known address, social security number (if possible), and their gross and net amounts due no later than 03/10/2013. The District Office will notify the Employer when a person has been located to issue a check.
5. In the event that any employees cannot be located, or refuse to accept the back wages, the employer agrees to deliver to the Secretary's representative a cashier's or certified check, payable to "Wage and Hour Division - Labor" to cover the total net due all such employees on or before 05/09/2013. After three years, any monies which have not been distributed because of inability to locate the proper persons or because of their refusal to accept payment shall be covered into the Treasury of the United States as miscellaneous receipts.
6. The employer agrees to provide the Secretary's representative no later than 05/09/2013 any remaining signed WH-58 receipt forms not yet provided to Wage and Hour or a cancelled check (or some reasonable facsimile) for every person the employer has paid per this agreement.

7. The employer hereby waives all rights and defenses which may be available by virtue of statute of limitations, including but not limited to section 6 of the Portal-to-Portal Act (29 U.S.C. 255).
8. Any defaulted balance shall be subject to the assessment of interest and penalty interest at rates determined by the U. S. Treasury as required by the Debt Collection Improvement Act of 1996 (Public Law 104-134) published by the Secretary of the Treasury in the Federal Register and other delinquent charges and administrative costs shall also be assessed.
9. In the event of default, the Department intends to pursue additional collection action that may include, but is not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, and/or the Department of Justice.
10. Any rights to challenge or contest the validity of this Agreement are hereby waived.
11. By entering into this agreement, the Wage Hour Division does not waive its right to conduct future investigations under the Fair Labor Standards Act and to take appropriate enforcement action, including assessment of civil money penalties, with respect to any violations disclosed by such investigations.

Approved by the following parties

A Cab, LLC
BY ITS OFFICER

UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

Name: _____

Gaspar Montañez

Title _____

District Director

Dated: _____

Dated: _____

EXHIBIT “D”

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELAKU TESEMA; MINALE M.
ABEBE; METASEBIA MILLION; AND
ACMETHAY GEBERSECASA,
INDIVIDUALLY AND ON BEHALF OF
OTHERS SIMILARLY SITUATED,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
KATHLEEN E. DELANEY, DISTRICT
JUDGE,

Respondents,

and

LUCKY CAB CO.; AND LUCKY
TRANSPORTATION, INC.,
Real Parties in Interest.

No. 70763

FILED

FEB 21 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER GRANTING IN PART AND DENYING
IN PART PETITION FOR WRIT OF MANDAMUS*

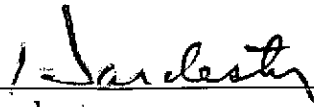
This original petition for a writ of mandamus seeks a declaration that the underlying matter has been stayed for purposes of NRCP 41(e).

Having considered the parties' arguments and the record, we are persuaded that our intervention is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). In particular, the district court's delay in resolving petitioners' motion for class certification appears to be preventing petitioners from attempting to bring their action to trial within NRCP 41(e)'s five-year time frame. Moreover, the district court's failure to answer this court's September 29, 2016, order renders meaningful consideration of this petition impracticable.


Accordingly, we partially grant petitioners' request for writ relief, insofar as we direct the district court to enter an order deciding

petitioners' motion for class certification within 15 days from the date of this order. Petitioners shall notify this court if the district court fails to do so within the allotted time frame. We decline to consider within the confines of this writ petition whether to adopt a rule consistent with out-of-state law that would allow for tolling of NRCP 41(e)'s five-year time frame during the period in which a district court's inaction has prevented a party from bringing an action to trial.¹ In that respect, petitioners' request for writ relief is denied. Consistent with the foregoing, we

ORDER the petition PARTIALLY GRANTED and direct the clerk of this court to issue a writ of mandamus directing the district court to decide petitioners' motion for class certification within 15 days from the date of this order.²


Hardesty, J.

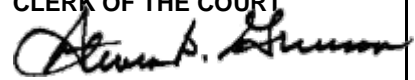

Parraguirre, J.


Stiglich, J.

cc: Hon. Kathleen E. Delaney, District Judge
Leon Greenberg Professional Corporation
Lovato Law Firm, P.C.
Eighth District Court Clerk

¹In this regard, we note petitioners' reliance on *Moran v. Superior Court*, 673 P.2d 216 (Cal. 1983), *City of Pasadena v. City of Alhambra*, 207 P.2d 17 (Cal. 1949), and *Pacific Greyhound Lines v. Superior Court*, 168 P.2d 665 (Cal. 1946).

²Petitioners' motion for a stay is denied.



DECL
LEON GREENBERG, ESQ., SBN 8094
DANA SNIEGOCKI, ESQ., SBN 11715
Leon Greenberg Professional Corporation
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Las Vegas, Nevada 89146
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(702) 385-1827(fax)
leongreenberg@overtimelaw.com
dana@overtimelaw.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

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

Re: Defendants' scheduling of
of separate proceedings in
Dubric for class settlement
approval on 5/24/18, renewed
request for immediate order
lifting stay and granting
EDCR Rule 2.50
coordination.

RELATED CASE:

JASMINKA DUBRIC,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-15-721063-C

Dept.: XXV

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

AA006981

1. I am one of the attorneys representing the class of plaintiffs in this matter. I submit this declaration with great regret given the circumstance that has caused Judge Cory to suspend the holding of hearings in Department 1 since May 2, 2018. Unfortunately, the activities of defendants since May 2, 2018 will now, unless most promptly addressed by Department 1, or possibly by intervention via writ from the Nevada Supreme Court, greatly obstruct the proper administration of justice in this case. I submit this declaration in an attempt to advise the Court of such activities.

Defendants have renewed their “reverse auction” and collusive class settlement efforts in Department 25 which will grant preliminary approval to that effort on May 24, 2018.

2. The Court most graciously continued to May 4, 2018, at defendants’ request, the April 27, 2018 motion on OST hearing on class counsel’s motion seeking, among other things, an EDCR 2.50 Order of coordination that would prevent defendants’ from re-presenting their collusive “reverse auction” class settlement to Department 25 in the *Dubric* case. Ex. “A” Minute Order of April 26, 2018 discussing the granting of that continuance. As discussed in that Minute Order, I wrote a letter to the Court on April 24, 2018 expressing grave concerns about that continuance. Ex. “B” Letter of April 24, 2018 (without exhibits thereto). That concern was based upon defendants’ clearly established intent to “rush to class judgment” in Department 25 by renewing their collusive “reverse auction” class settlement in *Dubric*. I urged the Court to grant immediate partial relief on class counsel’s motion on OST, without any further hearing as authorized by EDCR 2.23(c), such relief being limited to a lifting of the stay of this case and the grant of only the portion of the OST seeking EDCR 2.50 coordination of *Dubric* in Department 1. *Id.*

3. Department 1 was unable to proceed on May 4, 2018 and Judge Delaney, in Department 25, on May 9, 2018, at the express request of defendants and *Dubric*’s counsel, entered a Minute Order vacating the prior grant of partial summary judgment to *Dubric* individually. Ex. “C,” May 9, 2018 Minute Order, Ex. “D” Minutes of September 12, 2017 hearing granting summary judgment to *Dubric* individually, but

1 reserving for finalization a damages finding, and recognizing such a disposition
2 terminated any possible Rule 23 class proceedings in *Dubric*. After so “reviving” the
3 potential class action claims in *Dubric* Department 25 set the *Dubric* case for a status
4 hearing on May 15, 2018.

5 4. I filed a motion on OST with Department 25 on May 10, 2018 requesting
6 that (1) Department 25 defer proceeding on any class action settlement request until
7 such time as Department 1 could hear and determine the EDCR 2.50 coordination
8 request continued from April 27, 2018 at defendants’ request; and (2) If Department
9 25 was not inclined to continue such proceedings to grant me leave to intervene and
10 present opposition to the proposed class settlement. Ex. “E” copy of motion on OST
11 without Exhibits thereto. On May 15, 2018 I appeared in Department 25. Judge
12 Delaney, who advised she was fully aware of the motion on OST filed in Department 1
13 and originally scheduled for hearing on April 27, 2018, denied both of my requests.
14 She then set a hearing for May 24, 2018 at 10 a.m. for the preliminary approval of the
15 *Dubric* collusive class settlement proposal. It is clear that such approval will be
16 granted on May 24, 2018. There is no opposition to that approval and Judge Delaney
17 is refusing to consider my opposition. She also opined, more than once during the
18 course of that hearing, that she viewed that proposed settlement as appropriate and that
19 the class claims should be promptly disposed of in the *Dubric* proceedings. I am
20 currently obtaining an expedited transcript of those proceedings and hope to provide
21 them to Department 1 within the next one or two days.

22 5. As I previously, and painfully, advised the Court in my still pending
23 motion on OST, defendants, and the plaintiffs’ counsel in *Dubric*, are trafficking in
24 Judge Delaney’s perceived hostility toward the *Murray* class counsel. Such counsel
25 pursued a mandamus writ against Judge Delaney for failing to act in a timely fashion
26 on a class certification motion in *Tesema v. Lucky Cab*, Eighth Judicial District Court,
27 12-A-660700-C. On September 29, 2016, the Nevada Supreme Court issued an Order
28 in connection with those proceedings stating that “respondent district court judge
[Judge Delaney], as well as the parties in interest, shall have 30 days from the date of

1 this order to file and serve answers..." Ex. "F." The Nevada Supreme Court granted
2 that writ on February 21, 2017 noting Judge Delaney never filed an answer in response
3 to its September 29, 2016 Order and directed Judge Delaney to decide that motion
4 within 15 days. Ex. "G."

5 **The Court is urged to act in Chambers and issue an**
6 **EDCR Rule 2.50 consolidation order prior to May 24, 2018.**

7 6. I apologize for burdening the Court with the renewed request, first voiced in
8 my letter of April 24, 2018, for the immediate issuance in Chambers, without further
9 hearing, of an Order partially granting the pending OST motion only to the extent of
10 lifting the stay in this case and directing EDCR 2.50 coordination. Such an Order, if
11 immediately entered, will prevent the collusive class settlement approval that will
12 otherwise occur on May 24, 2018. It is deplorable that I should be compelled to
13 burden Judge Cory with such a request at this time. I only make that request because
14 of the extraordinary circumstances presented and because of the grave injustice and
15 injury to the class members' interests that will occur if nothing is done to prevent the
16 collusive settlement of the class members' claims. Alternatively, I am preparing to
17 seek writ relief in the Nevada Supreme Court, but whether that Court will elect to
18 intervene at this time is unknown. And even if it does (or does not so intervene now
19 but only at some later stage to correct such injustice) the injury to the class members'
20 interests will be manifest and extreme. Defendants' continued actions to evade justice
21 in this case threaten to dissipate all resources that might satisfy the class members'
22 claims and, through sheer attrition and exhaustion of class counsel, render the
23 continued proper prosecution of those claims impossible.

24 I have read the foregoing and affirm the same is true and correct.
25 Affirmed this 16th day of May, 2018

26 /s/ Leon Greenberg
27 Leon Greenberg
28

CERTIFICATE OF SERVICE

The undersigned certifies that on May 16, 2018, she served the within:

SUPPLEMENTAL DECLARATION OF CLASS COUNSEL, LEON GREENBERG, ESQ.

Re: Defendants' scheduling of separate proceedings in Dobric for class settlement approval on 5/24/18, renewed request for immediate order lifting stay and granting EDCR Rule 2.50 coordination.

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

Mark J. Bourassa
Trent L. Richards
THE BOURASSA LAW GROUP
2350 W. Charleston Blvd. #100
Las Vegas, NV 89102

/s/Sydney Saucier

Sydney Saucier

AA006985

EXHIBIT "A"

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

April 26, 2018

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

April 26, 2018 1:30 PM Minute Order

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

COURT CLERK: Michele Tucker

JOURNAL ENTRIES

On April 17, 2018, Plaintiffs filed 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. The Court signed an Order Shortening Time, setting the matter for hearing on April 27, 2018, nine days later, admittedly a shortened setting. Shortly after notifying counsel of the hearing, chambers received a telephone call from Esther Rodriguez advising that she would be out of the country, having reset a vacation which she had earlier canceled due to an earlier trial setting in this matter. Notwithstanding EDCR 2.22, the Court acted upon that request and reset the hearing for May 4, 2018, believing that a fuller response to this admittedly complex motion could be had.

After the matter had been continued to May 4, Plaintiffs caused to be filed the same motion, bearing the caption of this case and the case sought to be coordinated by the motion: A721063, Jasminka Dubric v A Cab, et al. That motion bore the previous OST which set the hearing once again on April 27, 2018. On the next day, April 19, 2018, this Court received an un-filed chamber s copy of the same motion, this time bearing the caption of and Dubric v A Cab, A721063, which reflected that it was pending in Department 25. However, Odyssey does not reflect a filing of this document.

Needless to say, the rapid-fire filing and service of these motions caused considerable confusion and consternation, not only for Defendants' counsel but also for the Court.

The Court decided to proceed on the April 27 hearing pertaining to the second, double-captioned version of the motion, simply for the purpose of having Plaintiffs' counsel explain the intentions of the Plaintiffs. Accordingly, the Court determined that Ms. Rodriguez' presence was not required and telephonically notified associate counsel, Michael Wall, to be present. Mr. Wall protested that he was

PRINT DATE: 04/26/2018

Page 1 of 2

Minutes Date: April 26, 2018

AA006987

on the case only as appellate counsel.

Subsequently, on April 24, the Court receive a letter of strong objection from Ms. Rodriguez pertaining to the Court's going forward with any hearing on April, 27 (See Left Side Filing, Counsels' facsimiles), which apparently prompted Mr. Greenberg to send a missive, pleading with the Court to proceed on April 27 on the entire motion ((See Left Side Filing, Counsels' facsimiles).

To avoid complicating this matter further, the Court will continue the hearing on the second filed double-captioned version of the motion to May 4. In the meantime, the Court would appreciate an explanation from Mr. Greenberg in a pleading filed with the Court as to why there are two court filings and one chambers copy of the same motion with three different captions. While the court believes that Plaintiffs' effort was simply to make clear to all parties in both cases the coordination-of-cases aspect of the motion, further explanation would be appreciated. The Court will take up the matter on May 4, 2018.

5/4/18 9:00 AM 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

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

EXHIBIT “B”

ELECTRONICALLY SERVED
4/25/2018 10:05 AM
LEON GREENBERG
Professional Corporation
Attorneys at Law
2965 South Jones Boulevard • Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085

Fax: (702) 385-1827

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

April 24, 2018

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

Via Fax 702-671-4323, Email and Wiznet System

Re: Murray v. A Cab A-12-669926-C
Defendants' Counsel's Correspondence of Today's Date to Your Honor

Dear Judge Cory:

Please be advised that when I spoke earlier today (before 1:00 p.m.) with your law clerk, Kevin, he advised me that **he, directly, would advise defendants' counsel of your direction that all counsel appear on April 24, 2018 and there was no need for me to do so.** I undertook to advise Mr. Bourassa's office directly of that hearing as Kevin advised me he did not intend to communicate with that office.

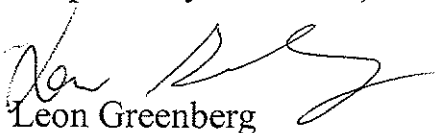
I urge Your Honor to *not* defer the April 24, 2018 hearing. In the alternative, I implore Your Honor to issue an immediate Order granting the portion of plaintiffs' pending motion lifting the stay in this case and coordinating this case with the *Dubric* case per EDCR Rule 2.50. This Court need *not* hold a hearing or receive further briefings from the parties for it to do so. *See*, EDCR Rule 2.23(c) which expressly authorizes Your Honor to grant motions without further hearing or briefings if Your Honor deems it advisable.

Defendants are acting with great speed, with the assistance of the plaintiff's counsel in *Dubric*, to defeat the proper administration of justice in this case. Those efforts will be enabled by any delay in granting the EDCR Rule 2.50

coordination request. Today defendants' counsel and the plaintiff's counsel in *Dubric*, in light of the Supreme Court's recent Order, filed a joint request for a "status check" in Department 25 (copy attached at Ex. "A"). This request confirms their intention to speedily renew their application to Department 25 for a collusive "reverse auction" settlement of the class claims certified for Rule 23 disposition in this case. That request, which states the Supreme Court's Order "may impact this [the *Dubric*] litigation" makes no sense *except* to the extent defendants and plaintiff's counsel in *Dubric* will renew such application in Department 25.¹

I cannot stress enough the need for speedy action by Your Honor, as discussed *supra* and in plaintiffs' moving papers, to avoid the gross miscarriage of justice that defendants, with the assistance plaintiff's counsel in *Dubric*, are attempting. Your Honor should most promptly issue an Order, if need be without any further hearing, lifting the stay in this case and granting plaintiffs' Rule EDCR 2.50 coordination request. The balance of the issues raised in plaintiffs' motion also require prompt attention from Your Honor but are of a slightly less urgent nature.

Respectfully submitted,


Leon Greenberg

cc: Esther Rodriguez, Esq., Michael Wall, Esq., Bourassa Law Office

¹ The absolute impropriety of plaintiffs' counsel and defendants in *Dubric* proceeding in such a fashion is demonstrated by the *Dubric* motion hearings of September 12, 2017. On that date plaintiff's counsel in *Dubric* advised Department 25 that Ms. Dubric, the lone plaintiff in that case, was abandoning all of her class claims and sought, and was granted, summary judgment solely on her individual claim. Ex. "B" minutes of hearing and order. Yet because no full final order was entered in Department 25 on the Exhibit "B" findings Ms. Dubric and her counsel now intend to resurrect those class claims (despite her avowed abandonment of them) so she can enter into a collusive class settlement and her counsel handsomely rewarded for serving as defendants' agent for the same.

EXHIBIT "C"

A-15-721063-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

May 09, 2018

A-15-721063-C Jasminka Dubric, Plaintiff(s)
vs.
A Cab LLC, Defendant(s)

May 09, 2018 3:00 AM Minute Order: Setting Further Proceedings

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 03F

COURT CLERK: Shelley Boyle

REPORTER: Not Reported

PARTIES No Parties Present
PRESENT:

JOURNAL ENTRIES

- Minute Order Setting Further Proceedings

The Supreme Court, by Order of Reversal dated April 6, 2018, having REVERSED the District Court's Order GRANTING preliminary injunction in Case No. A-12-669926-C, which injunction purported to preclude Defendant, A Cab LLC, from entering into a settlement agreement in the instant case; there being no present impediment to the parties proceeding substantively in the instant case; the parties jointly requesting via chambers conference call to withdraw two matters previously taken under advisement and to RESET the matter on the Court's calendar for Further Proceedings; and good cause appearing; COURT ORDERS matter placed on calendar on Tuesday, May 15, 2018 at 11:00 a.m. for FURTHER PROCEEDINGS; the matters previously under advisement WITHDRAWN as MOOT.

CLERK'S NOTE; A copy of this minute order provided electronically to Trent L. Richards, Esq., attorney for Plaintiff, and Esther C. Rodriguez, Esq., attorney for Defendants. A courtesy copy of this minute order also provided electronically to Leon Greenberg, Esq., attorney for Plaintiffs in Case No. A-12-669926-C. / sb 05/09/18

PRINT DATE: 05/09/2018

Page 1 of 1

Minutes Date: May 09, 2018

AA006993

EXHIBIT “D”

[Skip to Main Content](#) [Logout My Account](#) [Search Menu](#) [New District Civil/Criminal Search](#) [Refine Search](#) [Close](#)

Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE NO. A-15-721063-C

Jasminka Dubric, Plaintiff(s) vs. A Cab LLC, Defendant(s)

§
§
§
§
§
§

Case Type: **Employment Tort**

Date Filed: **07/07/2015**

Location: **Department 25**

Cross-Reference Case Number: **A721063**

PARTY INFORMATION

Defendant	A Cab LLC	Lead Attorneys ESTHER RODRIGUEZ <i>Retained</i> 7023208400(W)
Defendant	A Cab Series LLC Employee Leasing Company	ESTHER RODRIGUEZ <i>Retained</i> 7023208400(W)
Defendant	Nady, Creighton J.	ESTHER RODRIGUEZ <i>Retained</i> 7023208400(W)
Plaintiff	Dubric, Jasminka	Mark J. Bourassa <i>Retained</i> 702-851-2180(W)

EVENTS & ORDERS OF THE COURT

09/12/2017 **All Pending Motions** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)

Minutes

09/12/2017 9:00 AM

- DEFT'S. OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR DISMISSAL...PLTF'S. MOTION FOR SUMMARY JUDGEMENT DEFT'S. OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR DISMISSAL Ms. Rodriguez stated at the last hearing she requested what are the parties doing as to the remaining class members; nothing has been filed with the Court asking for a voluntary dismissal of the remaining class members. Ms. Rodriguez requested she be allowed the opportunity to request attorney's fees and costs for defending the class action law suit. Mr. Richards stated the Deft. now seeks dismissal of the entire action including that against Ms. Dubric because Ms. Dubric has filed her Motion for Summary Judgment seeking damages less than \$10,000.00. Mr. Richards argued regarding the standard for a Motion to Dismiss. Adding, the Motion to Dismiss should be denied, it isn't whether a party ultimately succeeds in recovering more than \$10,000.00, it is whether the Compliant should be before the Court. Additional argument by Ms. Rodriguez regarding the Court's jurisdiction. COURT FINDS this Court does still have jurisdiction over the matter, and STATED ITS FINDINGS. The COURT will RECOGNIZE the voluntary dismissal of the class members. The Court will entertain any well pled motion regarding attorney's fees and costs. PLTF'S. MOTION FOR SUMMARY JUDGEMENT Argument by counsel regarding the Motion for Summary Judgment. Mr. Richards argued there is no dispute as to any material facts, both sides use the same data; it is simply how as a matter of law this Court determines the math should be calculated and how the language in the statute regarding per hour work applies to this situation. Furthermore, if the

AA006995

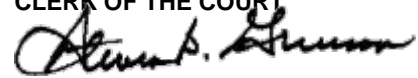
Motion to Dismiss is granted the Rule 23 claims as to the punitive claims should also be dismissed. Ms. Rodriguez inquired if Pltf. is seeking a voluntary dismissal under Rule 41. Ms. Rodriguez argued the Motion for Summary Judgment is not appropriate as there is a dispute as to what the calculation should be. Further arguing, Pltf was a commissioned employee not an hourly employee. Furthermore, the calculation Pltf. provided for their calculation was not provided during discovery. Additional argument by counsel regarding the wage calculation. COURT STATED IT'S FINDINGS regarding the issue of dismissal. It does appear that the dismissal that would be effectuated through the Motion for Summary Judgment is that both Rule 23(e) and Rule 41 are applicable. COURT STATED FURTHER FINDINGS, The COURT is DETERMINING this as Rule 41 DISMISSAL of the class members, subject to Rule 23 (e) requirements which requires a Court Order. COURT FURTHER DETERMINES the Motion for Summary Judgment should be GRANTED, the Court does believe this is a question of law not a question of fact; the facts are undisputed as to what occurred to this particular employee, the issue becomes what amount is owed. COURT STATED the it will take UNDER ADVISEMENT that final determination and issue an Order after a final review of all the applicable case law and facts. COURT RECOGNIZES the voluntary DISMISSAL and ORDERS, the members of the class may be DISMISSED in this case. COURT STATED ADDITIONAL FINDINGS, and FURTHER ORDERED, Trial date VACATED, Deft's. Counter Motion for Dismissal DENIED.

[Parties Present](#)

[Return to Register of Actions](#)

AA006996

EXHIBIT “E”



ORIGINAL

1 **OST**
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 CLASS COUNSEL IN *MURRAY V.*
12 *A-CAB*, Case # A-12-669926-C

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

15 JASMINKA DUBRIC,
16 Plaintiffs,

17 vs.

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

25 Defendants.

Case No.: A-15-721063-C

Dept.: XXV

**MOTION TO INTERVENE
AND HAVE HEARING OF
MAY 15, 2018 CONTINUED
ON AN ORDER SHORTENING
TIME**

DEPARTMENT XXV

NOTICE OF HEARING

DATE 05/15/18 TIME 11:00am

APPROVED BY MK

19 The requested intervenors, the certified class of over 1,000 persons in the case
20 of *Murray v. A-Cab*, Case # A-12-669926-C, (the "*Murray* class") pending before this
21 Court, through their attorneys and class counsel, Leon Greenberg Professional
22 Corporation, hereby move this Court for an order continuing the hearing scheduled for
23 May 15, 2018 in this matter and alternatively pursuant to Nev. R. Civ. P. 24 (a) and (b)
24 granting intervention by Michael Murray, Michael Reno and Michael Sargeant,
25 individually and on behalf of the class of plaintiffs and considering their objections to
26 the proposed preliminary class action settlement proposed in this case and denying the
27 requested approval of that class settlement.

28 This motion is made based on the combined declaration of counsel and

1 memorandum of points and authorities submitted with this motion, the attached
2 exhibits, and the other papers and pleadings in this action.

3 **ORDER SHORTENING TIME**

4 It is hereby Ordered, that the foregoing **MOTION TO HAVE HEARING OF**
5 **MAY 15, 2018 CONTINUED AND ALTERNATIVELY TO GRANT**
6 **INTERVENTION AND DENY PRELIMINARY APPROVAL OF PROPOSED**
7 **CLASS ACTION SETTLEMENT ON AN ORDER SHORTENING TIME** shall

8 be heard on 15th day of May, 2018, at the hour of 11:00 am or as
9 soon as the matter may be heard by the Court in Dept. XXV. A COPY OF THIS MOTION AND
10 OST MUST BE SERVED BY 3:00 P.M., FRIDAY, MAY 11, 2018. WRITTEN OPPOSITION IS NOT
11 REQUIRED, BUT ANY WRITTEN OPPOSITION, IF FILED, MUST BE SUBMITTED BY 3:00 P.M., MONDAY,
12 MAY 14, 2018. NO REPLY WILL BE PERMITTED. COUNSEL MUST PROVIDE COURTESY COPIES OF ALL
13 Dated this 10th day of May, 2018. DOCUMENT TO THE COURT CONTEMPORANEOUS
14 WITH FILING. (RED)

15 
16 District Court Judge

17 **COMBINED DECLARATION OF COUNSEL AND MEMORANDUM**
18 **OF POINTS AND AUTHORITIES IN SUPPORT OF AN OST**

19 1. The undersigned has been appointed class counsel in *Murray v. A-Cab*,
20 Case # A-12-669926-C, pending in Department 1. Ex. "A" Order. The Court is
21 familiar with the interrelationship between this case and *Murray* as reflected in certain
22 hearings conducted during January and February of 2017 regarding a proposal by the
23 parties in this case to have a class action settlement (the "*Dubric* proposal") granted
24 preliminary approval by Department 25. Ex. "B," copy of *Dubric* proposal and
25 motion. On February 14, 2017 Department 25 denied from the bench my client's prior
26 motion to intervene (minutes of hearing indicate denial and direct the submission of
27 order, but no order has been submitted, signed and entered) and scheduled a hearing
28 on February 16, 2017 to consider the *Dubric* proposal. That hearing was vacated
owing to an injunction issued in *Murray* against defendants. While the Court's
minutes of May 9, 2018 are not that detailed, they appear to indicate that the *Dubric*
proposal will be heard and determined on May 15, 2018. Ex. "C."

Additional Events Have Transpired that the Court Should Consider

2. I submit this OST request to address the *Dubric* proposal, and for leave to intervene on behalf of the *Murray* class, because there have been very significant developments that have transpired since February of 2017 of which the Court in this case is unaware. Those circumstances overwhelmingly establish that the *Dubric* proposal should not be considered, and potentially granted approval, by Department 25 on May 15, 2018. Or at least it should not be so considered without a grant of intervention to the *Murray* class members and a delay to await consideration of the pending parallel proceedings in *Murray* in Department 1 and the detailed objections of the *Murray* class to the *Dubric* proposal. These recent developments include:

- (a) **Jasminka Dubric had a judgment entered against her in April of 2017 for over \$51,000 in favor of defendant A-Cab disqualifying her from acting as a class representative.**

In April of 2017 Jasminka Dubric, the sole proposed class representative for the *Dubric* proposal, had a judgment entered against her and in favor of defendants in the amount of \$51,664.55 in attorneys' fees and costs as a result of her unrelated, and unsuccessful, Title VII lawsuit against defendants. Ex. "D." That judgment has not been appealed. It is impossible for Ms. Dubric, as a substantial judgment debtor of defendants, to serve as a non-conflicted and competent class representative in any litigation against the defendants.

- (b) **Department 1 was to consider a motion to consolidate this case with *Murray* on April 27, 2018, that hearing being delayed at defendants' request and by the death of Judge Cory's wife.**

On April 16, 2018 Judge Cory signed an OST directing a hearing on whether this case should be consolidated or coordinated in Department 1 with *Murray* as per EDCR 2.50. That hearing was initially scheduled for April 27, 2018 (Ex. "E" hearing notice) and graciously continued by Judge Cory at defendants' request until May 4, 2018. Judge Cory's wife passed away just prior to the May 4, 2018 hearing and on May 2, 2018 that hearing was deferred (as were all of Judge Cory's imminent hearings) without a new date. I inquired with Judge

1 Cory's chambers staff who advised me that the funeral of Judge Cory's wife is
2 set for May 12, 2018 and they do not know when Judge Cory will return to the
3 bench but that it is expected the deferred May 4, 2018 hearing will be promptly
4 reset when he returns.

5 (c) **Defendants are in contempt of Orders entered in February of**
6 **2018 directing a Special Master review defendants'**
7 **records and provide an accurate analysis of the class**
8 **members' unpaid minimum wages.**

9 In the *Murray* case, orders were entered by Department 1 directing that
10 defendants admittedly accurate records be examined by a Special Master to
11 determine the amount of unpaid minimum wages owed to A-Cab's taxi drivers
12 (the class members in *Murray* and under the *Dubric* proposal). Ex. "F." That is
13 an extremely laborious process involving the examination of over 200,000 paper
14 trips sheets (each recording the working hours of one shift of work for one taxi
15 driver). *Id.* Defendants have not sought writ relief in respect to those Orders
16 and have failed to pay the appointed Special Master a now overdue initial
17 retainer of \$25,000 under those Orders or any of their accrued fees of \$41,000
18 and the Special Master has ceased work on that assignment. Ex. "G." As a
19 result of such contempt, at the now deferred May 4, 2018 OST hearing,
20 Department 1 was to consider striking defendants' answer and entering a default
21 judgment against A-Cab and in favor of the class members.

22 (d) **Department 1 has heard a motion for partial summary**
23 **judgment in favor of the class for \$174,839 and indicated at**
24 **hearings in December of 2017 and January of 2018 that it**
25 **would grant that motion in respect to liability and very likely**
26 **in respect to that requested amount of damages as well.**

27 On November 2, 2017 plaintiffs in *Murray* filed a motion for partial summary
28 for an award of at least \$174,839, plus interest and attorney's fees, for the class
members. Ex. "H." The minutes from Department 1's December 14, 2017
hearing on that motion, directed a granting of that motion as to liability, Ex. "I,"
though its actual holding was not finalized, as reflected in the hearing transcript
of December 14, 2017 and subsequent hearing of January 2, 2018, Ex "J" and

1 “K.” Further supplements on that motion were submitted and it is awaiting a
2 final ruling (part of the deferred OST hearing of May 4, 2018, Ex. “B”).

3 **There is no reason to consider the *Dubric* proposal at this time.**

4 3. No party to this action will be prejudiced by deferring consideration of
5 the *Dubric* proposal from May 15, 2018. Considering, and granting, that proposal at
6 that time has great potential to damage the very interests of the class members
7 (whether the ones already certified in *Murray* or sought to be included in the *Dubric*
8 proposal) this Court, whether acting in Department 1 or Department 25, has a duty to
9 safeguard. The conduct of the defendants, in securing a deferral of the April 27, 2018
10 hearing that would have considered EDCR 2.50 consolidation in Department 1, and
11 their now submission of the *Dubric* proposal as a result of the delay that they secured
12 in the Department 1 hearing, standing alone, warrants a continuance of the May 15,
13 2018 hearing. The appearance of impropriety, and judge shopping by defendants are
14 manifest.

15 4. As discussed, *supra*, there is every reason to conclude that defendants are
16 seeking to use Department 25, and the *Dubric* proposal, to further their course of
17 contemptuous conduct. The pending relief being sought in Department 1 for the
18 class, if not delayed by defendants from the April 27, 2018 hearing, would greatly
19 exceed any arguable value to the class from the *Dubric* proposal. The highly probable
20 grant of partial summary judgment in *Murray* for \$174,839 plus interest plus
21 attorney’s fees for a minority portion of the class claims, would *exceed the benefit to*
22 *the entire class* under the *Dubric* proposal (which would pay of \$224,529 over one
23 year to settle **all class claims** minus \$57,500 in fees and costs to plaintiff *Dubric*’s
24 counsel minus \$5,000 to *Dubric* personally for a net payment to the class members of
25 only \$162,029).

26 5. Sending notice of a proposed class settlement to persons already subject
27 to the class certification in *Murray*, as provided for in the *Dubric* proposal and as
28 required under NRCP Rule 23(b)(3), will spread chaos. The proceedings in *Murray*

1 are well on their way to reaching a final class judgment well in advance of any
2 possible final class judgment being entered under the *Dubric* proposal. Class
3 members' interests will be subjected to competing proceedings, competing races to
4 final class judgments, that serve no interest whatsoever, except possibly defendants (if
5 they evade the Department 1 Orders and proceedings) and Ms. Dubric and her counsel
6 personally. Indeed, defendants' contempt of the Department 1 Orders are highly likely
7 to result in the entry of a very substantial judgment in favor of the class in a summary
8 fashion in *Murray*. It is senseless for Department 25 to allow such a circumstance to
9 develop by proceeding on May 15, 2018. While I would anticipate seeking writ relief
10 if Department 25 so proceeds, and seeking further relief in *Murray* as well as filing
11 objections in Department 25 to final approval of the *Dubric* proposal, and then
12 appealing any final judgment based upon the *Dubric* proposal, there is absolutely no
13 reason for such a course of events to evolve. Assuming, *arguendo*, there is merit to
14 the *Dubric* proposal's consideration, it can wait a brief period of time, as requested, so
15 that the proceedings in Department 1, scheduled for April 27, 2018 but delayed by the
16 defendants, can conclude and/or intervention can be granted and full, and proper,
17 opposition to the *Dubric* proposal presented and considered.

18 **The *Dubric* proposal by its own reasoning requires**
19 **a settlement fund of \$3,408,903 not the \$224,529 proposed.**

20 6. I do not have adequate time to fully document to the Court in this
21 submission, and prior to May 15, 2018, why the *Dubric* proposal is not within the
22 "range of possible approval" that warrants preliminary class settlement approval.¹ Nor

23
24 ¹ The Court cannot grant preliminary approval of a class action settlement upon
25 the unexamined assertions of the parties. "The first step in district court review of a
26 class action settlement is a preliminary, pre-notification hearing to determine whether
27 the proposed settlement is 'within the range of possible approval.'" *Gautreux v.*
28 *Pierce*, 690 F.2d 616, 620, n. 3. (7th Cir. 1982) quoting *Manual for Complex Litigation*
§ 1.46, at 53-55 (West 1981). While that "within the range of possible approval"
standard is not a heightened standard of scrutiny, "...preliminary approval is not
simply a judicial 'rubber stamp' of the parties' agreement." *In re National Football*

1 do I have any reason to believe, given the prior proceedings in this case, that the Court
2 will even consider such documentation until the time, if any, that my clients are
3 granted intervention, which was previously denied.

4 7. The only basis submitted for the Court to approve the *Dubric* proposal
5 (except for completely unexplained assertions of counsel for the parties) is a two page
6 letter from Nicole Omps of BETA consultants, a CPA retained “jointly” by Dubric’s
7 counsel and defendants (though who paid for Ms. Omps’s services is unknown). This
8 is at Ex. “L” That letter performs simple arithmetic and calculates that 2.161585% of
9 the class payroll for various periods through July of 2014 equals the \$224,529
10 settlement fund amount proposed by *Dubric*’s counsel. While Omps is a CPA, she
11 offers no professional opinion of any kind. Her letter at Appendix “A” recites her
12 mathematical calculations (application of the 2.161585% to the gross payroll amounts,
13 something that does not require the expertise of a CPA) and otherwise states:

14 Assumptions:

15 Based upon a Department of Labor Wage-Hour Investigation A-Cab for
16 the time period October 2010 to October 2012, it was determined that A
Cab, LLC underpaid Drivers at a rate of 2.161585% of total gross pay.

17 8. The foregoing statement by Omps is incorrect. No determination that A-
18 Cab underpaid its drivers in such a percentage was made by the Department of Labor
19 and that assumption by Omps, no doubt based upon what she was told by Dubric and
20 A-Cab’s counsel, is in error. Such percentage is derived from what those under
21 payments were *settled for* by the Department of Labor (\$139,998.80), not what they
22 were “determined” to be. Dubric’s counsel made no effort (or none that they disclose)
23 to determine the amount of those under payments. They relied upon a misstatement
24 given to Omps as an “assumption” which was then used to justify the proposed
25 settlement. Nor did Dubric’s counsel explain why, or secure any reason to believe,
26 that extrapolation (if it was based upon a “determined” amount of underpayments as

27
28 *League Players Concussion Injury Litigation*, 961 F. Supp 2d. 708, 714 (E.D. Pa.
2014).

1 Omps was told and not a “settlement” amount) is a sound basis for a class settlement.

2 9. The United States Department of Labor (“USDOL”), based upon a
3 detailed investigation and analysis of the hours worked, and wages paid to, the A-Cab
4 taxi drivers, concluded that A-Cab owed \$2,040,530.05 in unpaid minimum wages
5 under federal law for the time period October 2, 2010 through October 1, 2012. Ex.
6 “M”, true and correct excerpts of the USDOL’s investigative file and report obtained
7 by my office through a Freedom of Information Act request.

8 10. Subsequent to making that \$2,040,530.05 unpaid minimum wage
9 determination, for unknown reasons not stated in the records provided by the USDOL
10 in their FOIA response request, a settlement between the USDOL and A-Cab was
11 arranged for \$139,988.80 for 460 employees. Ex. “N,” “Addendum” signed by
12 Richard Quezada, Assistant District Director of USDOL, and directing distribution of
13 such sum to employees based upon a division of that original finding of
14 \$2,040,530.05, at a rate of 6.86%, or less than 7 cents of each dollar found by the
15 USDOL to be owed. As a government agency, the USDOL was free to prosecute, or
16 not prosecute, A-Cab for federal minimum wage violations. It had unfettered
17 discretion to settle those violations for whatever amounts it deemed appropriate and in
18 the interest of the USDOL and its mission, including conserving that agency’s
19 resources for activities other than litigation against A-Cab. Its decision to do so, and
20 settle the minimum wage violations it found for less than 7% of the value it
21 determined them to hold, provides no basis for the *Dubric* proposal. It shows just the
22 opposite: That the proposed settlement is not within the range of settlements that this
23 Court can approve and Dubric’s counsel is not competent to represent the class.

24 11. Even assuming Dubric’s counsel was correct, and the proper settlement
25 formula should be based upon a “percentage of payroll” metric to determine a
26 settlement fund (for reasons they never explain), Dubric’s counsel failed to apply that
27 metric. If they had given the correct facts to Omps for use in her assumption, that
28 \$2,040,530.05 had been determined to be underpaid by the USDOL for the October

1 2010 to October 2012 period, the “underpay” rate/percentage in her calculations would
2 be 31.50809% (\$2,040,530.05 divided by gross pay of \$6,476,209.51), not the
3 2.161585% rate that she used. Her assumption involved the application of such an
4 “underpay” rate/percentage to the total gross payroll for the period April 2009 through
5 June 2014, which is \$11,263,431. Applying the correct 31.50809% “underpay” rate
6 based upon the USDOL’s actual “determination” to that gross wages number means
7 the minimum settlement amount would have to be \$3,408,903 (\$3,548,891 minus the
8 \$139,988.80 paid in the USDOL settlement) under the formula used by Ompps and
9 embraced by Dubric and A-Cab.

10 12. If Department 25 approves the *Dubric* proposal it will do so contrary to
11 the very logic that supposedly supports the proposal. Numbers do not lie. If, as the
12 parties’ claim, a settlement fund should equal the percentage of payroll found to have
13 been underpaid by the U.S. Department of Labor investigation (though they offer no
14 explanation of why that is so) the settlement fund must equal \$3,408,903 not the
15 proposed \$224,529.

16 13. The Court would commit a grave error by approving the *Dubric* proposal.
17 It has no rational basis and, as discussed, under its own reasoning is providing a
18 grossly inadequate, and unacceptable, settlement of the class members’ claims.

19 14. This Motion, brought on an expedited basis, is brought in good faith and
20 in accordance with the unique and unusual circumstances, discussed *supra*. It is
21 requested that this motion be set for hearing at the same time as the hearing set for
22 May 15, 2018 on the *Dubric* proposal as failing to do so will render this motion
23 irrelevant.

24 ///

25 ///

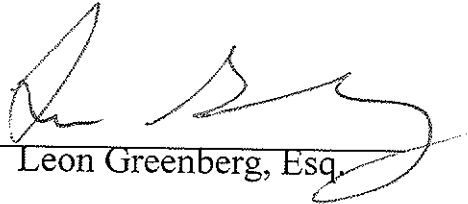
26 ///

27 ///

28 ///

1 15. This Motion will be served via the Odyssey system and emailed directly
2 to plaintiffs' and defendants' counsel on the same judicial day of the Court's signing
3 of the OST and its receipt by my office.

4
5 Affirmed this 9th day of May, 2018.


Leon Greenberg, Esq.

6
7
8 **CONCLUSION**

9 Wherefore, the motion should be granted in its entirety.

10
11 Dated: May 9, 2018

12 LEON GREENBERG PROFESSIONAL CORP.

13 /s/ Leon Greenberg
14 Leon Greenberg, Esq.
15 Nevada Bar No. 8094
16 2965 S. Jones Boulevard - Ste. E-3
17 Las Vegas, NV 89146
18 Tel (702) 383-6085
19 Attorney for the Plaintiff Class
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

The undersigned certifies that on May 10, 2018, she served the within:

**Motion to Intervene and Have Hearing of May 15, 2018 Continued on
an Order Shortening Time**

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

Trent Richards, Esq.
Mark J. Bourassa, Esq.
The Bourassa Law Group
8668 Spring Mountain Road - Suite 101
Las Vegas, Nevada 89117

/s/ Dana Sniegocki

Dana Sniegocki

AA007008

EXHIBIT “F”

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELAKU TESEMA; MINALE M.
ABEBE; METASEBIA MILLION; AND
ACMETHAY GEBERSECASA,
INDIVIDUALLY AND ON BEHALF OF
OTHERS SIMILARLY SITUATED,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK;
AND THE HONORABLE KATHLEEN E.
DELANEY, DISTRICT JUDGE,
Respondents,
and
LUCKY CAB CO.; AND LUCKY
TRANSPORTATION, INC.,
Real Parties in Interest.

No. 70763

FILED

SEP 29 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DIRECTING ANSWERS

This original petition for a writ of mandamus seeks a declaration that the underlying matter has been stayed for purposes of NRCP 41(e) pending the district court's resolution of petitioners' motion for class certification. Having reviewed the petition, it appears that answers may assist this court in resolving this matter. Therefore, respondent district court judge, as well as real parties in interest, shall have 30 days from the date of this order to file and serve answers, including authorities, against issuance of the requested writ. Petitioners shall have 15 days from service of the last-filed answer to file and serve any reply.

It is so ORDERED.

 C.J.

cc: Hon. Kathleen E. Delaney, District Judge
Leon Greenberg Professional Corporation
Lovato Law Firm, P.C.
Eighth District Court Clerk



EXHIBIT "G"

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELAKU TESEMA; MINALE M.
ABEBE; METASEBIA MILLION; AND
ACMETHAY GEBERSECASA,
INDIVIDUALLY AND ON BEHALF OF
OTHERS SIMILARLY SITUATED,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
KATHLEEN E. DELANEY, DISTRICT
JUDGE,

Respondents,

and

LUCKY CAB CO.; AND LUCKY
TRANSPORTATION, INC.,
Real Parties in Interest.

No. 70763

FILED

FEB 21 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER GRANTING IN PART AND DENYING
IN PART PETITION FOR WRIT OF MANDAMUS*

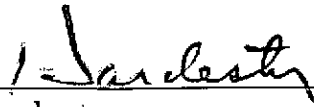
This original petition for a writ of mandamus seeks a declaration that the underlying matter has been stayed for purposes of NRCP 41(e).

Having considered the parties' arguments and the record, we are persuaded that our intervention is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). In particular, the district court's delay in resolving petitioners' motion for class certification appears to be preventing petitioners from attempting to bring their action to trial within NRCP 41(e)'s five-year time frame. Moreover, the district court's failure to answer this court's September 29, 2016, order renders meaningful consideration of this petition impracticable.


Accordingly, we partially grant petitioners' request for writ relief, insofar as we direct the district court to enter an order deciding

petitioners' motion for class certification within 15 days from the date of this order. Petitioners shall notify this court if the district court fails to do so within the allotted time frame. We decline to consider within the confines of this writ petition whether to adopt a rule consistent with out-of-state law that would allow for tolling of NRCP 41(e)'s five-year time frame during the period in which a district court's inaction has prevented a party from bringing an action to trial.¹ In that respect, petitioners' request for writ relief is denied. Consistent with the foregoing, we

ORDER the petition PARTIALLY GRANTED and direct the clerk of this court to issue a writ of mandamus directing the district court to decide petitioners' motion for class certification within 15 days from the date of this order.²


Hardesty, J.

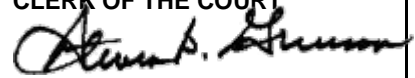

Parraguirre, J.


Stiglich, J.

cc: Hon. Kathleen E. Delaney, District Judge
Leon Greenberg Professional Corporation
Lovato Law Firm, P.C.
Eighth District Court Clerk

¹In this regard, we note petitioners' reliance on *Moran v. Superior Court*, 673 P.2d 216 (Cal. 1983), *City of Pasadena v. City of Alhambra*, 207 P.2d 17 (Cal. 1949), and *Pacific Greyhound Lines v. Superior Court*, 168 P.2d 665 (Cal. 1946).

²Petitioners' motion for a stay is denied.



1 **DECL**
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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

10 Plaintiffs,

11 vs.

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

14 Defendants.
15 _____
16
17
18

Case No.: A-12-669926-C

Dept.: I

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

Re: Defendants' scheduling of
of separate proceedings in
Dubric for class settlement
approval on 5/24/18, renewed
request for immediate order
lifting stay and granting
EDCR Rule 2.50
coordination, **submission
of Department 25 hearing
transcript and Order.**

19 **RELATED CASE:**

20 JASMINKA DUBRIC,

21 Plaintiffs,

22 vs.

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

26 Defendants.
27 _____
28

Case No.: A-15-721063-C

Dept.: XXV

Leon Greenberg, an attorney duly licensed to practice law in the State of

AA007015

1 Nevada, hereby affirms, under the penalty of perjury, that:

2 1. I am one of the attorneys representing the class of plaintiffs in this matter.
3 I submit this declaration as per my supplemental declaration submitted on May 16,
4 2018.

5 2. Attached as Ex. "A" is a copy of the order entered by Judge Delaney in
6 Department 25 on May 16, 2018 as a result of the May 15, 2018 hearing discussed in
7 my declaration submitted on May 16, 2018. Attached as Ex. "B" is a copy of the
8 transcript of the hearing held in Department 25 on May 16, 2018. The Court may find
9 these materials useful and informative in respect to considering the circumstances
10 discussed in my declaration submitted on May 16, 2018 and the request made therein
11 for judicial action and they are submitted for that purpose.

12 I have read the foregoing and affirm the same is true and correct.
13 Affirmed this 18th day of May, 2018

14
15 /s/ Leon Greenberg
16 Leon Greenberg
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28

PROOF OF SERVICE

The undersigned certifies that on May 18, 2018, she served the within:

**Second Supplemental Declaration of Class Counsel, Leon
Greenberg, Esq.**

by court electronic service to:

TO:

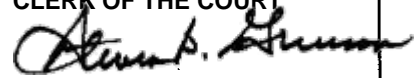
Esther C. Rodriguez, Esq.
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

Trent Richards, Esq.
Mark J. Bourassa, Esq.
The Bourassa Law Group
8668 Spring Mountain Road - Suite 101
Las Vegas, Nevada 89117

/s/ Dana Sniegocki

Dana Sniegocki

EXHIBIT "A"



1 ODM

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 JASMINKA DUBRIC, individually and on
5 behalf of those similarly situated,

Case No.: A-15-721063-C
Dept. No.: XXV

6 Plaintiff(s),

7 vs.

8 A CAB, LLC, a Nevada Limited Liability
9 Company; A CAB SERIES LLC, EMPLOYEE
10 LEASING COMPANY, a Nevada Series
11 Limited Liability Company; CREIGHTON J.
12 NADY, an individual; and DOES 3 through
13 20,

Defendant(s).

14 **ORDER DENYING MOTIONS FOR INTERVENTION AND OTHER RELIEF**

15 The matter of the Motion for Intervention filed by Leon Greenberg, Esq., on behalf
16 of Plaintiffs Michael Murray and Michael Reno in Case No. A-12-669926-C ("Murray
17 Counsel") having come before the Court on February 14, 2017; the subsequent matter of
18 the Motion to Intervene and Have Hearing of May 15, 2018 Continued on an Order
19 Shortening Time filed by Murray Counsel having come before the Court on May 15, 2018;
20 after due consideration of the arguments of counsel and the briefs and papers submitted by
21 counsel and the record of these proceedings; and good cause appearing,

22 **THE COURT FINDS AS FOLLOWS:**

23 Plaintiffs Michael Murray and Michael Reno are the named Plaintiffs in Case
24 A-12-669926-C pending in Department I of this Court, purporting to represent a class of
25 persons, namely other taxicab drivers requesting payment of minimum wages. Murray
26
27
28

KATHLEEN E. DELANEY
DISTRICT JUDGE
DEPARTMENT XXV
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1 Counsel sought intervention in the instant case by first filing a Motion for Intervention on
2 January 18, 2017, seeking to intervene to oppose the parties' Motion for an Order
3 Conditionally Certifying Settlement Class and other relief filed on January 24, 2017 (the
4 "Settlement Motion"). Murray's Counsel asserted, among other things, that there was no
5 subject matter jurisdiction in this case to grant such motion because of the prior class
6 certification order entered in the Department I case.
7

8 The Court found it did have subject matter jurisdiction to consider the Settlement
9 Motion. The Court found that Murray and Reno are not properly heard in this case unless
10 they are granted intervention pursuant to NRCP 24. The Court found that Murray and
11 Reno have not met the standard required under NRCP 24 to demonstrate that intervention
12 is proper by them in this case and the Motion for Intervention was DENIED.
13

14 The Court's stated basis for its denial of intervention included a determination that
15 Murray and Reno did not timely move for intervention, as the instant action had been
16 pending for over a year before filing. The Court also based its finding on a determination
17 that the proposed class members' interests are adequately protected by counsel currently
18 representing Plaintiff, Jasminka Dubric, in this case and who are now proposed to act as
19 class counsel for the class of proposed plaintiffs in the Settlement Motion. The Court also
20 based that finding upon its determination that if the Court decides to grant the preliminary
21 class action settlement approval sought in the Settlement Motion, the interests of Murray
22 and Reno will be adequately protected by their opportunity to exclude themselves from the
23 proposed settlement prior to final settlement approval and final judgment.
24

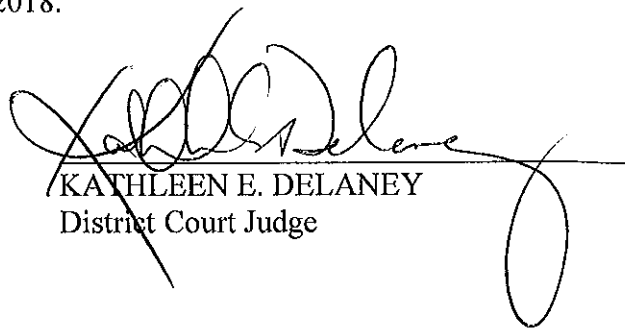
25 Regarding Murray Counsel's Motion to Intervene and Have Hearing of May 15,
26 2018 Continued on an Order Shortening time, filed May 10, 2018, the Court determined it
27
28

1 was the law of the case that intervention was not warranted. The Nevada Supreme Court
2 has emphasized the extraordinary nature of the relief being sought once again by Murray
3 Counsel: “[o]nly in very rare instances in which new issues of fact or law are raised
4 supporting a ruling contrary to the ruling already reached should a motion for rehearing be
5 granted.” *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976)
6 (emphasis added). Additionally, “[a] district court may reconsider a previously decided
7 issue if substantially different evidence is subsequently introduced or the decision is clearly
8 erroneous.” *Masonry and Tile Contractors Ass’n v. Jolley, Urga & Wirth, Ltd.*, 113 Nev.
9 737, 741, 941 P.2d 486, 489 (1997). Here Murray Counsel has made no showing to justify
10 the Court’s reversal of its prior intervention determination.
11

12 Finally, regarding Murray Counsel’s oral request to stay proceedings, including
13 issuance of this Order, pending filing and determination of a Writ of Prohibition with the
14 Nevada Supreme Court, the Court finds such a stay is not warranted and denies said
15 request.
16

17 **IT IS SO ORDERED**

18 This 16th day of May, 2018.

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21 
22 KATHLEEN E. DELANEY
23 District Court Judge
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CERTIFICATE OF SERVICE

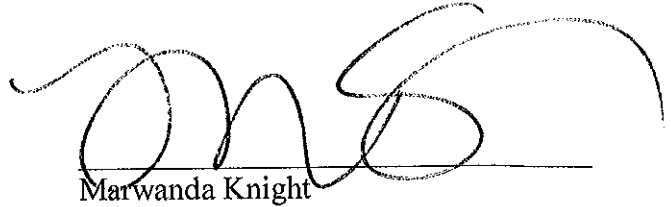
I hereby certify that on or about the date filed, this **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR DISCOVERY**

was E-Served, mailed, or a copy placed in the attorney folders in the Clerk's Office to:

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Marwanda Knight
Judicial Executive Assistant

KATHLEEN E. DELANEY
DISTRICT JUDGE
DEPARTMENT XXV

EXHIBIT “B”

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DISTRICT COURT
CLARK COUNTY, NEVADA

JASMINKA DUBRIC,)	
)	
Plaintiff,)	
)	Case No. A-15-721063-C
vs.)	Dept. No. XXV
)	
A CAB LLC,)	
)	
Defendant.)	

Before the Honorable KATHLEEN E. DELANEY
Tuesday, May 15, 2018, 9:00 A.M.
Reporter's Transcript of Proceedings

Michael Sargeant, Michael Reno and Michael Murray's
Motion to Intervene and have Hearing of May 15, 2018,
Continued on an Order Shortening Time

APPEARANCES:

For the Plaintiff:	TRENT L. RICHARDS, ESQ. Attorney at Law
For the Defendants:	ESTHER RODRIGUEZ, ESQ. Attorney at Law
For Others:	LEON GREENBERG, ESQ. Attorney at Law

REPORTED BY: RENEE SILVAGGIO, C.C.R. No. 122

1 Las Vegas, Clark County, Nevada

2 Tuesday, May 15, 2018, 9:00 A.M.

3 P R O C E E D I N G S

4 THE COURT: Calling Dubric versus A Cab.

5 MS. RODRIGUEZ: Good morning, Your Honor.

6 Esther Rodriguez with the defendants. And with me I have
7 Creighton J. Nady, owner of A Cab, and his wife, who is
8 present, Lori Nady.

9 THE COURT: Good morning.

10 MR. TRENT: Good morning. Trent Richards for
11 the plaintiff.

12 THE COURT: Good morning.

13 MR. GREENBERG: Good morning, Your Honor. Leon
14 Greenberg for the intervenors for the class counsel in
15 Murray --

16 THE COURT: Okay. So, good morning.

17 So I just want to sort of orient us for the time
18 and space here.

19 Prior to, Mr. Greenberg, you filing the Motion
20 to Intervene and to want to continue this hearing -- assuming,
21 I think, from your perspective that this hearing would be
22 potentially substantive going into revisiting matters that had
23 previously been enjoined -- you had filed something in the case
24 that was not set on calendar, that still bore the other -- I
25 printed it out but now I'm trying to put my hands on it and of

1 course -- that for the other case number first and then this
2 case number second, which was styled as a Motion on OST to lift
3 stay, hold defendants in contempt, strike the answer, grant
4 partial summary judgment, direct a prove-up hearing according
5 to case.

6 I reviewed that filing as it was filed in the
7 Judge Cory case, A669926, and saw it filed there. I saw the
8 procedural history of that, that at this point, as I understand
9 the procedural history -- I didn't revisit it again by the way
10 of this morning, but when I looked at it last week in terms of
11 setting this matter on the calendar, it did appear that that
12 had been vacated ultimately by Judge Cory due to his
13 unavailability unexpectedly, but also prior to that had
14 directed counsel to make a filing to help explain what sort of
15 was happening here and why in terms of that motion in that
16 case.

17 And I did not see, as of last week, any filing
18 responsive to Judge Cory's minute order.

19 That said, whatever is happening over there is
20 or will happen over there.

21 What we know has happened for this case is that
22 the Appellate Court ordered that the injunction be removed, and
23 the parties have asked to have a status check really, but
24 ultimately, as I understand it, the possibility of moving
25 forward with sort of, again, where we left off, with the Court

1 being asked to consider the possibility of settlement and
2 resolution on behalf of the plaintiff and ultimately others.

3 That then -- and the Court, when it did set the
4 matter on calendar, did as a courtesy copy Mr. Greenberg,
5 understanding that Mr. Greenberg would have an interest in
6 this. And then what followed was Mr. Greenberg's Motion to
7 Intervene and have a hearing on May 15th, 2018, continued on an
8 order shortening time.

9 I'd like to start with the Motion to Intervene
10 because I honestly think that this is relatively quickly
11 disposed of. Because is it not, Mr. Greenberg, already the law
12 of this case that the Court made findings that intervention
13 would not be appropriate and it's certainly not clear to the
14 Court at this time what facts or circumstances would have
15 changed to change that outcome?

16 I appreciate that an order was not filed. I
17 also appreciate, in going back through and reviewing the JAVs
18 recording of that hearing, that I directed you to prepare that
19 order.

20 You -- obviously your time, you felt, was better
21 spent getting the relief that you got out of Judge Cory. And,
22 of course, once the case was enjoined the case was enjoined.

23 But there still was finding by the Court that
24 Motion to Intervene was not appropriate to grant.

25 And I'm wondering on what basis you ask to

1 revisit that ruling at this late date?

2 MR. GREENBERG: Your Honor, I do not want to
3 consume the Court's time unnecessarily. And Your Honor's view
4 that intervention should be denied and also that intervention
5 is a prerequisite for me to be heard in respect to the issue of
6 preliminary approval of the class settlement in this case is on
7 the record. I appreciate that part. And I appreciate
8 Your Honor's attention and review of what's been filed in this
9 case and before Judge Cory.

10 I apologize that I didn't settle the order on
11 the intervention. I was directed to do that. I can certainly
12 have that submitted -- well, I don't know about today, but
13 certainly tomorrow. I don't have a problem with that. It's
14 relatively simple, Your Honor.

15 THE COURT: It was just more the -- I realized
16 technically that there isn't an order. And technically orders
17 can be revisited at any time with or without an order. But
18 when there isn't actually an order in the case, it's not
19 official minutes, don't constitute an order.

20 So that was kind of my point there is it is
21 technically able to be revisited.

22 The question is: Should it be based on the
23 Court's findings?

24 MR. GREENBERG: I would submit that it should
25 be, Your Honor. And actually the Court is very busy and my

1 request, Your Honor, would be simply to defer this matter, even
2 just two weeks, to allow Judge Cory to hear the pending matters
3 before him.

4 He had a request before him to coordinate. It
5 was to be heard April 27th. It was continued specifically at
6 defendant's request by Judge Cory. It's almost an
7 extraordinary request that his knowledge is in the minute order
8 that you were referring to, Your Honor.

9 His wife passed away on May 2nd.

10 THE COURT: I thought I printed out those
11 minutes. But go ahead.

12 MR. GREENBERG: Yes. That's in Exhibit E of my
13 submission, Your Honor. That is an amended order from
14 Judge Cory where he discusses the circumstances involved in the
15 continuance of the April 27th hearing --

16 THE COURT: Did you make the filing that he
17 asked you to make?

18 MR. GREENBERG: Yes, I did, Your Honor. And I
19 could certainly get that to you. It should be filed here as
20 well, but there is a pending coordination request.

21 But in terms of Judge Cory's concern, this is
22 the clerical confusion at my office regarding the captions of
23 these cases, and for some reason it wasn't getting accepted
24 through the WizNet system. And, I'm responsible for that,
25 Your Honor.

1 But there is no -- there's no additional
2 substance behind that, Your Honor. It's simply just a clerical
3 issue, a filing issue.

4 THE COURT: Hold on one second, Mr. Greenberg.

5 MR. GREENBERG: Sorry, Your Honor.

6 (Sotto voce at this time.)

7 THE COURT: I'm sorry. Go ahead. My clerk was
8 printing something out and I wanted to just eyeball something
9 real quick. And I didn't want to not hear what you were
10 saying.

11 MR. GREENBERG: Yes, Your Honor.

12 THE COURT: While I can multitask sometimes with
13 the best of them, I want to be clear on this argument.

14 MR. GREENBERG: Under -- under the circumstances
15 present here, Your Honor, it is really senseless and I would
16 submit inefficient and inappropriate for the Court in this
17 department to consider at this point the application for
18 preliminary approval of a class action settlement when
19 Judge Cory was to consider the coordination of these two cases
20 to insure that there was no possible conflict or cross purposes
21 between these cases.

22 THE COURT: Let me --

23 MR. GREENBERG: I'm sorry, Your Honor.

24 THE COURT: No. I'm interrupting you, and I
25 apologize. But I really want to get to the heart of this.

1 You -- you didn't ask to consolidate the cases.
2 You asked to coordinate the cases. And what exact benefit does
3 that bring us?

4 I mean, my findings, you say you recognize that
5 they're there and my findings that discuss specifically as to
6 the class. And while there could be some overlap, that there
7 could be distinct folks and that there could be and there
8 already was, and what was proposed by counsel, the ability to
9 opt out. So that really shouldn't have impacted that case over
10 there with Judge Cory.

11 What exactly are we coordinating? What exactly
12 are we trying to do?

13 MR. GREENBERG: Your Honor, under EDCR 2.50,
14 those questions are before Judge Cory. He has the earlier
15 filed case. The request for coordination is to be argued and
16 determined by him.

17 I would submit that proper decorum and
18 functioning in this Court compels Your Honor to defer those
19 findings to him.

20 THE COURT: Well, proper decorum and functioning
21 in this Court wasn't to have one of my colleagues enjoin my
22 case. But he choose to do so, and then he didn't articulate
23 specifically how and why he thought he was entitled to do that.

24 And the Supreme Court or the Appellate Court --
25 I actually don't know if it was before the Supreme Court, this

1 client now, anyway Appellate Court saw fit to say you can't do
2 that.

3 And so I'm not -- you know, at the end of the
4 day it was what it was. I anticipated perhaps counsel in this
5 case would come back here and, shall we say, try to fight that
6 battle. They instead choose to focus their attention over
7 there and that was their choice.

8 But now that the Appellate Court has weighed in
9 and has said, you know, that's not how that works or that's not
10 how we're going to allow that to go, you're now asking
11 Judge Cory to coordinate something where this case can be done
12 and over. There's nothing to coordinate.

13 What I think is happening here is another effort
14 to try to have Judge Cory direct both cases. And I don't see
15 the appropriateness of that.

16 So you don't have to argue that here, but if you
17 want me to consider some basis for either your intervention or
18 your ability to have some input on this case, you letting me
19 know what is valuable and efficient about him coordinating
20 something when this case could be resolved and there is nothing
21 that needs to be coordinated might help.

22 MR. GREENBERG: Your Honor, findings need to be
23 made in respect to the resolution of any class action.

24 The findings will have to be made here. They
25 will have to be made in Department 1, Your Honor. Judge Cory

1 has been dealing with this matter for an extensive period of
2 time.

3 You've denied me intervention and my
4 understanding is your position is, without a grant of
5 intervention, I have no basis to address the Court as to the
6 substantive infirmities of the proposed preliminary approval.

7 This Court is not a rubber stamp, not for
8 myself, Your Honor, not for any party that appears before it.
9 And I -- I respect this is your courtroom, Your Honor. And I'm
10 not here to lecture you or to -- to talk down to you. Quite
11 the contrary.

12 You are the one who is here to instruct me as an
13 officer of the Court for proper conduct of matters before this
14 Court, Your Honor.

15 So I'm not going to argue with you regarding the
16 propriety of deferring to the hearing scheduled before
17 Judge Cory and allowing this matter to be continued at least a
18 couple weeks so the coordination request can be heard by
19 Judge Cory.

20 If you --

21 (Sotto voce at this time.)

22 THE COURT: Go ahead.

23 MR. GREENBERG: If you are declining to continue
24 any proceedings in this to allow Judge Cory reasonable
25 opportunity to hear the coordination request and rule on it,

1 than that is your determination, Your Honor. Again, rules of
2 the Eighth District Court here clearly give that power to
3 Judge Cory.

4 If Judge Cory had misused his power previously
5 in these proceedings, well, then he has, Your Honor. But that
6 has nothing to do with local rules of this Court and the fact
7 that the coordination request is properly pending before him.

8 The defendants' adjourned that, then
9 Judge Cory's wife died. They're not going to consent to a
10 continuance. It's quite obvious what they're doing here,
11 Your Honor.

12 I'm asking Your Honor to direct a continuance --

13 THE COURT: Sorry, Mr. Greenberg, hang on a
14 second.

15 MR. GREENBERG: Yes.

16 (Sotto voce at this time.)

17 THE COURT: I asked my clerk to see if he could
18 find what it was that you filed in response to -- and I'm
19 reading directly from Judge Cory's minutes dated April 26th in
20 which he says: To avoid complicating this matter further, the
21 Court will continue the hearing on the second file double
22 captioned version of the motion to May 4.

23 In the meantime, the Court would appreciate an
24 explanation from Mr. Greenberg in the pleading filed with the
25 Court as to why there are two Court filings and one chambers

1 copy of the same motion with three different captions.

2 And I just asked my clerk if he saw it and he
3 indicated to me he did not.

4 Do you see it now?

5 (Sotto voce at this time.)

6 MR. GREENBERG: It is a declaration.

7 THE COURT: What's the date?

8 MR. GREENBERG: It is --

9 (Sotto voce at this time.)

10 THE COURT: So it looks like it was filed that
11 same date later. Okay. I just was trying to verify that it
12 was in there.

13 MR. GREENBERG: Yes.

14 THE COURT: And have an opportunity to try to
15 see what that was.

16 So you have tried to or ultimately have perhaps
17 cleared that up.

18 Now, obviously, we know there was a subsequent
19 minute order by Judge Cory following his wife's unfortunate
20 passing, and that vacated that hearing. It did not reset that
21 hearing.

22 So has that hearing been reset?

23 MR. GREENBERG: As of, I guess it was Thursday
24 last week when I submitted the OST to Your Honor, I did
25 communicate with chambers. They advised me at that time

1 Judge Cory's wife's funeral was set for Saturday. Today is
2 Tuesday. They did not have an exact schedule at that time for
3 Judge Cory's return to the bench.

4 They did expect he would be returning soon.

5 I was also advised that this matter was under
6 his attention and would be, to their understanding at least,
7 promptly reset for hearing on his return to the bench.

8 And, again, Your Honor, my -- my first request,
9 and I would encourage the Court to simply do this at this point
10 and let us defer everything else, is to continue further
11 proceedings in this case for even two weeks. There's no
12 prejudice to any of the parties from doing so, Your Honor.

13 And, again, Judge Cory was extremely gracious to
14 continue the proceedings before him at defendant's request. We
15 would have had this matter heard on April 27th. We didn't.
16 And then his wife passed away.

17 In the interim, defendants come before
18 Your Honor to -- to bring this back before Your Honor when,
19 again, this was coordinated before Judge Cory. They have the
20 same opportunity for hearing before him. This is not going to
21 prejudice their rights.

22 So what purpose is served, Your Honor, by having
23 two jurists consider competing issues? I've documented in the
24 OST that was presented to Your Honor that there are other
25 pending proceedings that have taken place over the last year.

1 And this starts to touch on this whole issue as to whether the
2 Court is going to hear me substantively in respect to the
3 matter of the preliminary approval request, but I've outlined
4 these to Your Honor.

5 The defendants are in contempt of orders before
6 Judge Cory. Judge Cory is to consider entering default
7 judgment at this point.

8 He's heard and his pending decision for partial
9 summary judgment for an amount that would exceed the proposed
10 settlement that is before Your Honor for preliminary approval.

11 They're in default of orders appointing a
12 special master to determine the amount of money that's owed to
13 the class members. These proceedings before Judge Cory are
14 extremely well developed.

15 Your Honor was stating that you thought that
16 perhaps expediency and speed would be valued here by proceeding
17 in this case because it would get the disposition and benefit
18 the class. Well, Your Honor, given what we see pending before
19 Judge Cory, I don't see that that's a reasonable conclusion.

20 Certainly two weeks for a continuance here is
21 not going to impair the interests of justice in any respect.
22 And, again, I would implore the Court to grant that.

23 I can continue, Your Honor, but I don't know
24 what Your Honor wants to hear from me. And, again, it is my
25 job, as an officer of the court to be respectful of the Court's

1 time and not just simply burden you with my recitation of my
2 views and beliefs as to how the Court should proceed or should
3 be done.

4 So perhaps the Court wants to give me some
5 instruction in terms of what would be appropriate for me to
6 further address. I'm just not consuming your time --

7 THE COURT: I think we've addressed many things.
8 And we may come back to you, Mr. Greenberg, but I think I want
9 to turn to Ms. Rodriguez.

10 I do want you to understand I understand why
11 that matter continued in front of Judge Cory. You were on
12 vacation that had been scheduled. And that made sense, and
13 nobody expected there to be the, you know, loss of Judge Cory's
14 family that occasioned a further continuation.

15 But -- you know, and this Court admittedly did
16 not connect immediately to these parties requesting to come
17 back here and have a -- show -- status check to -- to discuss
18 where we go with this case.

19 But I guess -- I throw this out to you this way,
20 Ms. Rodriguez. I don't want to be back here in the same
21 situation we were in before, where Judge Cory makes a decision
22 and nobody in this case seeks to fight the battle here, if that
23 makes sense.

24 You know, I think this case could have and
25 should have been long over, but it wasn't.

1 Now, that is focusing on the fact that I was
2 ready to go before on the settlement and the resolution. I get
3 it that we sat on when that was kind of all said and done and
4 being dealt with over there. I get it that the Court did not
5 get back to everybody quickly with its decisions on -- on the
6 motions that were pending that we've since --

7 MS. RODRIGUEZ: Well, I think that's worked out
8 actually.

9 THE COURT: And that kind of has worked out.

10 MS. RODRIGUEZ: Yeah.

11 THE COURT: So I guess what I'm asking now is
12 where is the benefit to proceeding now?

13 MS. RODRIGUEZ: Okay. Let me try to fill in a
14 couple of things. I was trying to take notes on several of
15 these issues.

16 But going back to at the time of the injunction,
17 defendants were prohibited, under threat of sanction, from
18 doing anything in this courtroom. And so that's why we had to
19 appeal it to the Supreme Court.

20 And it was ultimately the Supreme Court, not the
21 Appellate -- it's the Supreme Court that reversed the
22 injunction.

23 And my understanding at that time was that the
24 plaintiffs --

25 THE COURT: The sanctions by who? Judge Cory,

1 who put on the injunction without explaining it any way?

2 MS. RODRIGUEZ: Yes, yes, yes.

3 THE COURT: Fair enough.

4 MS. RODRIGUEZ: So that was --

5 THE COURT: I'm not saying if I was in your
6 shoes I wouldn't have done the same thing. I might have
7 done -- no. I don't even want to try to second guess you. I
8 might have done exactly what you did. I was just somewhat
9 frustrated that we couldn't proceed here.

10 MS. RODRIGUEZ: Right.

11 So that's why we to joint -- we had to
12 withdraw -- defendants had to withdraw the joint motion that
13 was before this Court for class approval and for the
14 settlement.

15 And that was the -- currently that's the request
16 jointly from the parties, now that the injunction has been
17 reversed, is to go ahead and move forward before this
18 department.

19 And so that's why we jointly requested a status
20 check because it was my understanding, when Mr. Richards and I
21 both were on the phone with your law clerk, was that we were in
22 agreement that we were both going to withdraw our pending
23 motions before this Court, which was his Motion for Summary
24 Judgment and my motions for sanctions as well.

25 And we were going to move forward in just asking

1 Your Honor to put us back on your calendar for the -- the joint
2 motion that was previously filed.

3 We weren't intending to argue or do the prove-up
4 hearing or anything of that sort. We just wanted to get the
5 Court's inclination of how -- how it was best to do that and
6 what your preferences were.

7 THE COURT: Okay.

8 MS. RODRIGUEZ: In terms of some of the
9 representations that were made --

10 THE COURT: How quickly could we go forward if
11 we were to go forward?

12 MS. RODRIGUEZ: The motion has been filed. We
13 just need it back on your calendar.

14 THE COURT: Okay.

15 MS. RODRIGUEZ: So -- but I want the Court to
16 understand a couple of things that maybe is not evident in the
17 review of the docket, is that we are under a stay in front of
18 Judge Cory, at the defendant's request.

19 We requested a stay, and that stay is still in
20 place, regardless of the things that have happened as far as my
21 vacation and Judge Cory's wife's passing, that type of thing.

22 We were under stay waiting for a decision from
23 the Supreme Court. And then what happened, once the Supreme
24 Court issued its decision, is that Mr. Greenberg immediately
25 filed all these motions that he's representing to the Court

1 that we are currently -- that defendants are currently in
2 contempt and that they're subject to summary judgment.

3 Those are just motions that he has filed. That
4 is a misrepresentation to the Court to say that defendants are
5 currently in contempt of Court before Judge Cory, because they
6 are not.

7 These are just things that he asked for on order
8 shortening time in order to, again, beat the time before we
9 could get before this department.

10 So it's kind of a race. He's in a hurry to make
11 sure that Judge Cory coordinates the case. He's really just
12 found another way to get around the Supreme Court ruling to try
13 to take jurisdiction away from this Court, move it back before
14 Judge Cory.

15 One other thing I did want to mention is that I
16 went back to try to see why there was not an order in place
17 because it was my understanding, on the Motion for
18 Intervention, which was in February of 2017 -- it was my
19 understanding that Mr. Greenberg was supposed to prepare that
20 order.

21 But then when I looked at the minutes, then it
22 said Ms. Rodriguez to prepare the order. So when I went back
23 and I saw that Mr. Greenberg had prepared an order and
24 Mr. Bourassa, his firm, had already made some comments on it, I
25 also have prepared an order. And I think, it just fell between

1 the cracks.

2 So I do have copies of both of those orders
3 that -- I have copies for counsel too. But I think what I did
4 was I took the two together and hopefully we have an order on
5 the denial of his Motion to Intervene.

6 Would the Court be interested in seeing either
7 one of these?

8 THE COURT: You can bring them up. We'll review
9 them, and see if we need to execute either.

10 MS. RODRIGUEZ: Okay. So I have Mr. Greenberg's
11 order with the -- with Mr. Bourassa's comments and then I have
12 my proposed order.

13 (Sotto voce at this time.)

14 THE COURT: I did note that the pleading that
15 was filed in this case without a Court date, that is actually
16 the motion to lift stay, et cetera, filed in Judge Cory's case,
17 that it started off with a lift stay.

18 And so that did flag for me that there was still
19 a stay --

20 MS. RODRIGUEZ: Right.

21 THE COURT: -- in place.

22 MS. RODRIGUEZ: Right.

23 And so I -- and part of that is all this special
24 master appointment and everything else that -- that is
25 transpiring there.

1 We were actually set for trial before Judge Cory
2 and then that got vacated as well. That's why I had to cancel
3 the first vacation in February. We had a date certain to go
4 forward in front of Judge Cory, and then he reversed things and
5 decided he wanted to appoint a special master to actually
6 basically start all over again with that particular case.

7 So that's -- that's a whole 'nother mess that
8 I'm sure this Court is not interested in hearing, but I don't
9 know what else -- can I answer anything else for the Court?

10 THE COURT: No.

11 MS. RODRIGUEZ: All right. Thank you.

12 THE COURT: Mr. Richards, did you want to --

13 MR. RICHARDS: Thank you, Your Honor. I'm
14 really just here for the status check.

15 THE COURT: Yeah. Understood.

16 MR. RICHARDS: Following the Court granting the
17 order of reversal, we did a stipulation -- a -- we jointly
18 requested the status check, and attached a copy of that order
19 for Your Honor.

20 THE COURT: Yeah. I think it got lost in the
21 shuffle. And I printed out everything today so I would have
22 them all handy. Of course I'm having a hard time putting my
23 hands on it now. But I did that.

24 But I think because it was filed as an notice of
25 entry of order and joint request for status check, somehow it

1 just didn't get a date.

2 MR. RICHARDS: I understand.

3 THE COURT: You know, they get a date when they
4 have a blank in them and they go through master calendar and
5 then they get a date. We don't look in the file necessarily.

6 We knew about the reversal because we had been
7 served with that. But it hadn't occurred to us where to go
8 next, and what was happening over there, and I was just kind of
9 waiting to get a cue from the parties.

10 So the call, joint call, that came through for
11 scheduling purposes to try to get back on the calendar helped
12 us immensely move that along.

13 MR. RICHARDS: And that was really the point.

14 I think the call got a little -- offhand a
15 little -- a little -- it went a little awry.

16 As of the call and even as I stand here today,
17 my client is not agreeing to withdraw the matter -- her matter
18 that is under advisement. That -- my client's position may
19 change, but as I stand here before Your Honor, it's our
20 position that that's still out there.

21 THE COURT: Well, I kind of issued a minute
22 order based on my understanding of that. If we needed to get
23 it put back on the calendar, I suppose we could. But maybe we
24 don't.

25 MR. RICHARDS: I understand.

1 THE COURT: It depends somewhat on what happens
2 today.

3 MR. RICHARDS: As far as what Mr. Greenberg
4 seems to be very concerned about, any sort of proceeding on
5 the -- on the class certification type of structure, the joint
6 motion that was previously brought before Your Honor was
7 withdrawn.

8 So my understanding is that would either need to
9 be renewed or refiled as a new motion with a new hearing date
10 that would be set in normal course and it will all be in front
11 of Your Honor to argue the merits.

12 THE COURT: And that wasn't the joint counsel's
13 purpose in getting --

14 MR. RICHARDS: -- getting a status check.

15 THE COURT: -- the status check?

16 MR. RICHARDS: Just a status check.

17 THE COURT: But -- but by way of that status
18 check, that's not an oral motion to renew and get on calendar
19 to go forward substantively or it is?

20 MR. RICHARDS: It was not my intention to go
21 forward substantively with that motion. It was just my
22 intention to have a status check.

23 (Sotto voce at this time.)

24 THE COURT: Okay.

25 MR. RICHARDS: And I apologize.

1 THE COURT: But I may be misunderstanding what
2 you are saying to me now, Mr. Richards, so I apologize for
3 that. It's been a long morning and, yes, we do need to kind of
4 wrap it up here --

5 MR. RICHARDS: I understand.

6 THE COURT: -- to get everybody out the door.

7 But at the time of the call and/or as of today,
8 are you asking this Court, on behalf of your client, to reset,
9 to renew the prior joint motion and get it on calendar to be
10 heard substantively?

11 MR. RICHARDS: I'm not, Your Honor.

12 I am here just asking for a status check to make
13 sure the Court is aware of the order that came back from the
14 Supreme Court and making sure that we are clear to proceed if
15 we want to.

16 THE COURT: So --

17 MR. RICHARDS: It sounds like the answer to all
18 of those is yes.

19 (Sotto voce at this time.)

20 THE COURT: I don't get it. I'm sorry. I don't
21 get it. I'm sorry. Because with the injunction being lifted,
22 it opens the door to the resolution of the parties it
23 previously proposed.

24 I understood from communications to chambers to
25 put it on the calendar, that we wouldn't be going forward

1 substantively today but the intention of both parties was to
2 come on calendar today for the purpose of asking for a date to
3 go forward substantively with the prior joint motion.

4 And so in fairness to Mr. Greenberg, I wanted to
5 make sure that he was aware that we were going to have that
6 status check to -- to do that with there being then anticipated
7 a next step out of that status check.

8 I anticipated Mr. Greenberg would not want that
9 to happen and that he would attempt to file something to
10 address that, and we wanted to give that fair reading.

11 But I'm confused by the position here today of:
12 I just want a status check. I just want to know if the Court's
13 okay for us to do something if we want to.

14 Like, you know, if the Court says: Yes, it's
15 okay to do something you want to, then the Court wants to do
16 that thing.

17 MR. RICHARDS: Uh-huh.

18 THE COURT: Get a date and go.

19 Are you saying that somehow you have to go back
20 to your client again to see if that's something that they want
21 to do?

22 MR. RICHARDS: I -- we -- I would be happy to
23 accept a date from this Court so that we can come back in front
24 of Your Honor and argue that motion before we get -- I think
25 that motion needs to be noticed and us to come back and ready

1 to substantively argue it.

2 THE COURT: The joint motion?

3 MR. RICHARDS: Yes.

4 THE COURT: Okay. I mean I -- the Court
5 understood that it still needed to make findings and it still
6 needed to do something in order for there to ever be an outcome
7 of that joint motion. I get that.

8 MR. RICHARDS: Correct.

9 THE COURT: So that's what you're -- you are
10 okay with that being said, if the Court is so inclined.

11 MR. RICHARDS: To give us a date when we can
12 come back.

13 THE COURT: Okay.

14 MR. RICHARDS: We're getting a little -- getting
15 a little far ahead of where I was coming into this situation,
16 which is a status check because we got the -- the order back
17 from the Supreme Court.

18 THE COURT: Fair enough.

19 Last word to Mr. Greenberg on the Motion to
20 Intervene.

21 And I will say, as I give you this last word,
22 Mr. Greenberg, that I do perceive, based on the Court's prior
23 ruling and its position then and what I think is the correct
24 position today, that unless you are allowed to intervene, that
25 you do not have the ability to substantively argue in relation

1 to what occurs in this case and subsequent argument on that
2 motion.

3 So, yes, you would need to intervene, I believe,
4 to go there.

5 MR. GREENBERG: Yes, Your Honor.

6 And the form of order submitted by
7 Ms. Rodriguez -- which I was given a copy of Your Honor to take
8 a look at -- on Page 2 it proposes the Court make a finding
9 that there is no basis for my client, what you refer to as
10 Murray and Reno, from the other case, that you heard in this
11 case absent an order of intervention.

12 If that's going to be Your Honor's finding,
13 that's going to be Your Honor's finding. I don't want to
14 debate that with Your Honor, because that ultimately if you
15 ordered --

16 THE COURT: Well, the Court made prior findings
17 I think exactly to that regard.

18 MR. GREENBERG: I think -- I -- I concede,
19 Your Honor. The proposed order by Ms. Rodriguez on that point
20 is consistent with my understanding of what Your Honor found
21 from the bench when we were here over a year ago. And I'm not
22 here to debate that, Your Honor.

23 If that's the order to be entered, that is the
24 order that will be entered.

25 What I would request that Your Honor do is that

1 if Your Honor's going to set a hearing on the Motion For
2 Preliminary Approval, grant me at least 14 days after service
3 of this order with notice of entry on the intervention to seek
4 written relief from the Supreme Court.

5 Because I believe I should be heard on the
6 preliminary approval motion and it would be unjust to proceed
7 with that without me being able to substantively explain to the
8 Court why the preliminary approval should not be granted.

9 And I -- I'm not eager to proceed in that
10 fashion, Your Honor, but Your Honor makes the findings you
11 believe are best and I need to respect those findings. So I do
12 not want to debate with the Court over the finding that
13 Your Honor appears to be abiding by here that I should not be
14 heard on the preliminary approval.

15 But I would like to have the opportunity to seek
16 written relief in advance of that hearing. I need a little
17 time to do that, obviously.

18 THE COURT: So a couple of places in which you,
19 I think, are wanting to be heard. And I just want to
20 distinguish them.

21 The next step, if the Court were to deny your
22 intervention and request to hold off on this matter until
23 Judge Cory makes his ruling at whatever point that gets reset
24 because we can see at this point it has not yet been reset. If
25 we were to deny that, the next step here would be we would be

1 placing these folks on calendar for a date to determine if that
2 joint motion is, you know -- to argue that joint motion and
3 whether or not things will proceed from there.

4 The Court would not necessarily on that date --
5 nothing's going to be final in this case, I don't believe, on
6 that date.

7 But you're asking, I believe, to be heard, not
8 on that date, but at a subsequent date, or are you asking to be
9 heard that date?

10 MR. GREENBERG: I would like to be heard on the
11 Motion For Preliminary Approval, Your Honor. But, as I
12 understand it, Your Honor is not going to hear me based on the
13 intervention finding that you've made and seem to be
14 articulating as well today.

15 And, again, I don't want to debate that issue
16 with Your Honor.

17 THE COURT: Right. Understood.

18 MR. GREENBERG: You've obviously made up your
19 mind about that.

20 But I would like to have an opportunity to
21 address that finding regarding the intervention and my ability
22 to be heard at the preliminary approval hearing through --
23 through a writ application. And I would need some time to do
24 that, Your Honor.

25 THE COURT: So here's what I'm going to do:

1 The -- the Court -- let me address -- so the motion as you
2 styled it that's on the calendar today, Mr. Greenberg, is a
3 Motion to Intervene and have the hearing of May 15th, 2018,
4 continue on an order shorting time.

5 That motion is denied. That motion is denied
6 because it is, in fact, the law of this case that the Court has
7 made findings that intervention is not proper in this case.

8 I don't intend to go back and read through the
9 entire statements that I made at the prior hearing, but the
10 court did say at the time of the prior hearing, which took
11 place on February 14th, 2017, that the Court believed that the
12 intent to and effort to intervene at that time was not proper,
13 that the standard had not been met under NRCP 24, that the
14 case -- parties in this case were adequately represented by
15 counsel.

16 It also discussed or we also discussed at that
17 time that there wasn't any basis upon which this case needed to
18 be stopped or stayed or changed or anything else, as I -- as I
19 put it.

20 We focused on the fact that there was no reason
21 to believe that the settlement wasn't fairly reached, that it
22 couldn't adequately address the class needs. And to the extent
23 that the class members could opt out, that there was that
24 protection as well.

25 I indicated why I allowed, you know, that

1 argument that day. And we actually went so far as to have a
2 full Evidentiary Hearing on that, if I recall correctly, or at
3 least a separately set full argument that day before I
4 ultimately made those findings.

5 I did also indicate that I thought the
6 timeliness at that point was problematic and did influence my
7 decision.

8 And, again, nothing about that has been
9 revisited, nor do I think at this time it should be revisited.
10 This is not a -- you know, you've got your case over there and
11 we've got our case here.

12 I thoroughly vetted the issue of whether or not
13 the intervention was proper in this case and I made findings
14 that it was not. And I'm not inclined to revisit them, and I
15 have not been given any new or substantially different law or
16 factual basis upon which to revisit that. So intervention will
17 not be allowed.

18 And it is this Court's opinion that as an
19 intervention it would not be proper to hear you on the matter
20 that the Court was set, which is, at this time, the Court's
21 intention is to see if this case can and should move forward
22 with the prior joint motion.

23 That still needs to be argued, that still needs
24 to be heard, and there still needs to be a determination made.

25 I will set that matter on, assuming counsel's

1 availability, the morning of May 24th.

2 I have another matter on that day. It could, I
3 don't think necessarily be terribly lengthy, but there could be
4 some time involved.

5 (Sotto voce at this time.)

6 THE COURT: So we have three Motions to Dismiss
7 in a large case that I anticipate to be relatively quickly
8 argued, but I will set this matter on at 10:00 o'clock.

9 The reason I'm not going to the next Tuesday
10 calendar is I don't think that gives time if Mr. Greenberg
11 seeks to writ this matter. I don't think you need written
12 entry of order to be able to writ this matter.

13 But to the extent that you need that, I will
14 direct -- I'm trying to think of how best to do this -- I've
15 got the orders that are proposed by counsel as far as the prior
16 decision on the Motion For Intervention, and this is really
17 just a subsequent decision on the Court's part to not revisit
18 that.

19 If I could have both counsel provide me
20 electronic versions through my law clerk, we will issue the
21 order. We will issue it today. So you will have it.

22 And, no, there will not be any stay granted at
23 this level, which under the NRAP rules you don't have to have a
24 denial of a Motion to Stay, you simply have to have some reason
25 to believe that the Court would not grant a stay for any

1 purposes at this level, and -- and we won't.

2 But if you are going to get writ relief, you can
3 do it on an emergency basis and you should be able to have that
4 filed and reviewed by this Court before we come back on the
5 24th.

6 Does the 24th date work for you all?

7 MS. RODRIGUEZ: I think so, Your Honor.

8 MR. RICHARDS: Yes.

9 THE COURT: So we'll set an arraignment -- I'll
10 set it to 10:00. We may not start exactly at 10:00. But I'll
11 set it at 10:00 just to get that other matter the opportunity
12 to be heard and see where we go with that.

13 And -- and we'll see what happens.

14 But this case needs to move forward. I think
15 this case needed to move forward long before now. It didn't,
16 fair enough.

17 And I really base that here, Mr. Greenberg,
18 again, on my very sincere opinion that there are parties in
19 this case and there are parties in that case, but they are not
20 having to be identical. That you still have the ability to do
21 what you need to do there. We have the ability to potentially
22 resolve this case here. People can opt out. It is what it is.

23 But I just, again, didn't see then and I don't
24 see now the basis to have things change.

25 There's also the possibility that Judge Cory

1 could get back on the calendar on the coordination and feel
2 otherwise. I don't know what's going to happen there. And I
3 respect my colleague.

4 And as much as I was surprised by and somewhat
5 taken aback by the injunction previously and how it was
6 obtained and how it was issued, at the end of the day, it was
7 what it was.

8 But we are here, we are now, and this case needs
9 to go forward. And I want this case to go forward to the best
10 of our ability. So that's the Court's ruling today.

11 Give me your electronic versions of the order
12 please by 1:00 o'clock to give me an opportunity --

13 MS. RODRIGUEZ: The prior --

14 THE COURT: No, it's 12:25. By 2:00 o'clock if
15 we can.

16 MS. RODRIGUEZ: The order based on today?

17 THE COURT: No. Just these versions -- your
18 electronic versions of what you've already drafted. You don't
19 have to do anything else. I will adapt it into my own order
20 and issue my own order.

21 MS. RODRIGUEZ: I understand.

22 THE COURT: Okay?

23 I appreciate everybody's time.

24 MS. RODRIGUEZ: Thank you, Your Honor.

25 MR. GREENBERG: Thank you, Your Honor.

(Proceedings concluded.)

* * * * *

ATTEST: Full, true and accurate transcript of proceedings.

/S/Renee Silvaggio
RENEE SILVAGGIO, C.C.R. 122

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