

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

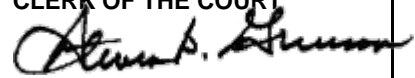
Leon Greenberg, Esq.
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Attorneys for Respondents

DATED this 5th day of August, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC



OPPM

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Attorneys for Defendants

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

Hearing Date: May 23, 2018
Hearing Time: 10:30 a.m.

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' DECLARATIONS; 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**

Defendants A Cab, LLC and Creighton J. Nady, by and through their attorneys of record,
ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., and MICHAEL K. WALL, ESQ., of
HUTCHISON & STEFFEN, LLC, hereby submit this opposition to Plaintiffs' Declarations requesting
various relief; 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 (hereinafter “*Plaintiffs’ Motion*”). This Opposition is made and based upon the papers and pleadings on file herein, and on the following points and authorities.

I.

POINTS AND AUTHORITIES

Plaintiffs have proceeded to file a barrage of documents in two District Courts (Department 1 and Department 25), as well as in the Supreme Court requesting various and duplicative forms of relief. In fact, both District Court judges directly asked Plaintiffs to explain the various filings, which have instead been answered with more filings further complicating the procedural posture of the cases. Accordingly, Defendants will strive to address the various issues as best can be ascertained.

It appears with the various declarations, Plaintiffs seek to have the Court:

1. Lift the stay, which the Court already stated it would do *sua sponte* and when appropriate¹;
2. Find Defendants in contempt for not making payments to the Special Master during the stay, and which the Court already addressed in its minute order “the Court GRANTS a temporary stay to resolve the Defendants’ claimed inability to pay the Special Master the initial \$25,000 required by previous court order”; *Minute Order of March 6, 2018*, p. 1, attached hereto as **Exhibit A**.
3. Hear its request for summary judgment for no less than a fourth time, and which this Court has always ruled upon. Plaintiffs continue to re-file the same motion not relenting until the Court will change its mind. Such behavior violates NRCP 60, EDCR 2.24, and is sanctionable as it merely causes Defendants to incur more fees and costs, and the Court to hear the arguments yet again after having issued its decision.
4. “Coordinate” the cases that are before District Court Judge Cory and District Court Judge Delaney.

...

¹ See Court *Minute Order of March 6, 2018*, p. 2, attached hereto as **Exhibit A**.

1 **A. The Present Stay of Proceedings in Department 1.**

2 Defendants requested a stay of proceedings pending the oral argument that was scheduled
3 before the Nevada Supreme Court on April 4, 2018. (*Defendants' Motion on OST for Stay of*
4 *Proceedings* filed March 2, 2018). In said motion, Defendants highlighted to the Court that it was
5 financially unable to make the initial \$25,000 deposit to a Special Master ordered by the Court. On
6 the eve of trial, Department 1 ordered the appointment of a Special Master over the objections of
7 Defendants. The Court further ordered that Defendants were required to pay the estimated
8 \$250,000 fees of the Special Master. The Court ordered that it would not entertain any motion for
9 reconsideration of this order.

10 Defendants stated that given the appellate arguments that were pending before the Nevada
11 Supreme Court to reverse an injunction that was prohibiting them from settling many of the claims
12 in Department 25, that the work of the Special Master may become moot, and change the
13 disposition of the matter in Department 1. Accordingly, a stay of proceedings was appropriate.

14 The Honorable Court in Department 1 did indeed grant the stay, indicating that the Court
15 had health considerations, but at the same time a stay of all proceedings would allow Defendants
16 additional time to accumulate monies for a deposit to a Special Master. The Court ordered the
17 Special Master to cease all work. *Minute Order of March 6, 2018, Exhibit A*, p. 1.

18 Since that time, on April 6, 2018, the Nevada Supreme Court has indeed reversed the
19 injunction prohibiting Defendants from resolving many of the minimum wage claims; and the work
20 and scope of the Special Master must therefore be readdressed by the Court. However, the Court
21 indicated it would lift the stay when appropriate and when *the Court* was ready to do so; not when
22 *Plaintiffs* deem it is appropriate.

23 **B. Defendants are not in contempt per the Court's instruction and orders.**

24 Plaintiffs have misrepresented to both District Court departments that Defendants are
25 currently in contempt of the Court's orders by not making payments to the Special Master. As
26 detailed above (and documented in the Court's Minute Order), when Defendants were unable to
27 financially pay the deposit to the Special Master, Defendants sought relief from the Court in the
28 form of a stay. The Court granted the relief, and a stay remains in place. Therefore, Plaintiffs'

inaccurate statements to both District Courts are nonsensical and false.

C. Plaintiffs' motion for summary judgment has already been denied on several occasions, and should not be re-heard again.

Plaintiffs have merely replicated the same motion they have previously brought before Department 1 on numerous occasions. See *Order Denying Plaintiffs' Motion for Partial Summary Judgment*, 7/17/17, **Exhibit B**. Plaintiffs continue to file the same motion. The Court denied the request a second time in December 2017. *Minute Order December 14, 2017*, **Exhibit C**. Plaintiffs refiled the same motion copying word for word from their prior motion, but labeling it in the form of a motion in limine.

The current relief sought is the very same contained in *Plaintiffs' Omnibus Motion in Limine #1-25* filed on December 22, 2017 (hereinafter "*Plaintiffs' Omnibus Motion*"). Contained within that motion is the same request to the Court to strike Defendants' affirmative defenses. The only difference is that with the prior motion there was an attempt to comply with NRS 48.035, the meet and confer requirement. With the present motion, there has been no such compliance with that rule either, but rather it has been ignored altogether by Plaintiffs.

The deadline for filing of dispositive motions has long passed, and Plaintiffs' current motion is untimely. Further, it is only just that if the Court is moving forward in hearing this late filed motion by Plaintiffs, that the Court equally move forward in setting for hearing and oral argument *Defendants' Motion in Limine to Exclude the Testimony of Plaintiffs' Experts* which was timely filed on December 22, 2017, and scheduled for hearing on January 25, 2018, but not decided by the Court. That motion has been pending for over four months now, and is ripe for hearing.

4. Plaintiffs' Motion and Declarations to "Coordinate" Cases Seek To Circumvent the Supreme Court's Decision; and the Decisions of District Court Department 25.

Plaintiffs have known of and followed the case of *Dubric v. A Cab* since its filing nearly three years ago on July 7, 2015. In all that time, Plaintiffs have never moved to consolidate the cases. In fact, Plaintiffs only sought to intervene in the other matter after the case was settled in Department 25 through the mandatory settlement program with Hon. Jerry Wiese.

Accordingly, District Court Department 25 denied Plaintiffs' requested intervention, finding

1 they had not met the standard required for intervention as laid out in NRCP 24. *Order Denying*
2 *Motions for Intervention and Other Relief*, **Exhibit D**. After being denied intervention in the
3 *Dubric* matter, in February 2017 Plaintiffs then requested the injunction from Department 1 to
4 prohibit Defendants from finalizing the *Dubric* settlement achieved under Judge Wiese. Plaintiffs
5 acquired said injunction from Department 1, but the Nevada Supreme Court has reversed this
6 decision.

7 Plaintiffs now seek a new method to take the jurisdiction away from Department 25 of the
8 District Court in moving forward in closing the case in Department 25, which is exactly what the
9 Nevada Supreme Court ordered should not be done.

10 Further, Plaintiffs offer no authority in support of a “coordination” of cases. There is no
11 procedure under NRCP 23 governing class claims that indicates that cases must be coordinated.
12 Moreover, Plaintiffs do not offer any explanation as to why they have waited until one of the cases
13 is settled to attempt to “coordinate” the cases. This is simply a clever argument in attempt to
14 circumvent the Order issued by the Supreme Court.

15 Plaintiffs have also already requested “emergency relief” from the Supreme Court to
16 intervene in Department 25's case (*Plaintiffs’ Emergency Motion For Stay of District Court*
17 *Proceedings Pending Writ Proceedings Resolution*). (See **Exhibit E**, received via email after
18 hours at approximately 7:00 p.m., Friday, May 25, 2018 without a file stamp.)

19 Accordingly, it appears Plaintiffs are seeking relief on the intervention issue before the
20 Nevada Supreme Court; and its request for this Court to “coordinate” cases would be rendered
21 moot. It is also unsupported by any authority for this Court to grant such a request.

22 II.

23 CONCLUSION

24 Based on the foregoing, Defendants respectfully request that this Court deny in its entirety
25 *Plaintiffs’ Motion and Declarations* as untimely, not in compliance with the Court’s scheduling
26 orders, and duplicative of *Omnibus Motion in Limine #1-25*. If the Court is so inclined to consider

27 ...

28 ...

1 Plaintiffs' motion, Defendants respectfully request that, prior to hearing Plaintiffs' untimely filed
2 motion, this Court hear *Defendants' Motion in Limine to Exclude the Testimony of Plaintiffs'*
3 *Experts* which was timely filed on December 22, 2017, and previously scheduled for hearing on
4 January 25, 2018. It is Defendants' position that Plaintiffs in this matter have failed to meet their
5 burden and should be subject to dismissal.

6 DATED this 20th day of May, 2018.

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

8
9 /s/ Esther C. Rodriguez, Esq.
10 Esther C. Rodriguez, Esq.
11 Nevada State Bar No. 006473
12 10161 Park Run Drive, Suite 150
13 Las Vegas, Nevada 89145
14 *Attorneys for Defendants*

15 **CERTIFICATE OF SERVICE**

16 I HEREBY CERTIFY on this 20th day of May, 2018, I electronically filed the foregoing
17 with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will
18 send a notice of electronic service to the following:

19 Leon Greenberg, Esq.
20 Leon Greenberg Professional Corporation
21 2965 South Jones Boulevard, Suite E4
22 Las Vegas, Nevada 89146
23 *Co-Counsel for Plaintiffs*

24 Christian Gabroy, Esq.
25 Gabroy Law Offices
26 170 South Green Valley Parkway # 280
27 Henderson, Nevada 89012
28 *Co-Counsel for Plaintiffs*

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

EXHIBIT A

EXHIBIT A

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

March 06, 2018

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

March 06, 2018

Minute Order

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

JOURNAL ENTRIES

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

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

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

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

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

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

PRINT DATE: 03/06/2018

Page 1 of 2

Minutes Date: March 06, 2018

AA007072

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

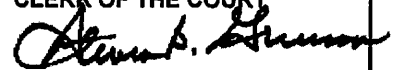
The court anticipates setting a hearing date to accomplish the following:

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

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

EXHIBIT B

EXHIBIT B



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Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

NOTICE OF ENTRY OF ORDER DENYING PLAINTIFFS'

MOTION FOR PARTIAL SUMMARY JUDGMENT

PLEASE TAKE NOTICE that an Order Denying Plaintiffs' Motion for Partial Summary

...

...

...

...

...

...

1 Judgment was entered by the Court on July 14, 2017. A copy is attached hereto.

2 DATED this 17th day of July, 2017.

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

4 /s/ Esther C. Rodriguez, Esq.

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

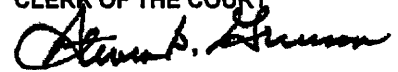
10 **CERTIFICATE OF SERVICE**

11 I HEREBY CERTIFY on this 17th day of July, 2017, I electronically filed the foregoing
12 with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will
13 send a notice of electronic service to the following:

14 Leon Greenberg, Esq.
15 Leon Greenberg Professional Corporation
16 2965 South Jones Boulevard, Suite E4
17 Las Vegas, Nevada 89146
18 *Counsel for Plaintiff*

19 /s/ Susan Dillow

20 An Employee of Rodriguez Law Offices, P.C.

**ODM**

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DISTRICT COURT**CLARK COUNTY, NEVADA**

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

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

ORDER DENYING PLAINTIFFS'**MOTION FOR PARTIAL SUMMARY JUDGMENT**

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

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

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

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

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

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

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

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

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

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

Murray, et al. v. A Cab, LLC; Case A-12-669926-C

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

All other trial deadlines remain as previously set.

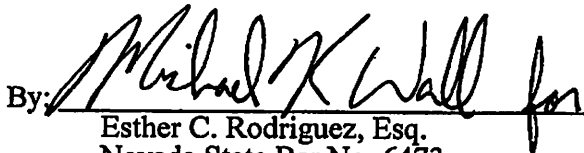
IT IS SO ORDERED.

DATED this 30 day of June, 2017.


DISTRICT COURT JUDGE

Submitted by:

RODRIGUEZ LAW OFFICES, P. C.

By: 

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

Approved as to form and content:

LEON GREENBERG PROFESSIONAL CORPORATION



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EXHIBIT C

EXHIBIT C

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New Calendar Search](#) [Refine Search](#) [Close](#)
Location : All Courts [Help](#)**REGISTER OF ACTIONS**

CASE No. A-12-669926-C

Michael Murray, Plaintiff(s) vs. A Cab Taxi Service LLC,
Defendant(s)§
§
§
§
§
§
§
Case Type: Other Civil Filing
Subtype: Other Civil Matters
Date Filed: 10/08/2012
Location: Department 1
Cross-Reference Case Number: A669926
Supreme Court No.: 72691
PARTY INFORMATION

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

EVENTS & ORDERS OF THE COURT

12/14/2017 Motion for Partial Summary Judgment (9:00 AM) (Judicial Officer Cory, Kenneth)
Plaintiff's Motion for Partial Summary Judgment And Motion to Place Evidentiary Burden on Defendants to Establish Lower Tier Minimum Wage and Declare Nac 608.102(2)(B) Invalid

Minutes

12/05/2017 9:00 AM

12/14/2017 9:00 AM

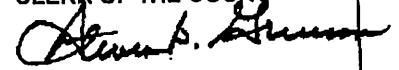
- Mr. Greenberg argued as to factual issue of wages and listed the three facts. Ms. Rodriguez argued the plaintiff's argument is relied upon inadmissible evidence and argued Rule 56(e). The experts used by the plaintiff do not meet the Hallmark requirement and their reports are not admissible. Further arguments by counsel. COURT ORDERED, Plaintiff's Motion for Partial Summary Judgment and Motion to Place Evidentiary Burden on Defendants to Establish Lower Tier Minimum Wage and Declare NAC 608.102(2)(B) Invalid DENIED as to Motion to Place Evidentiary Burden on Defendants to Establish Lower Tier Minimum Wage and Declare NAC 608.102(2)(B) Invalid and GRANTED only to the extent Plaintiff has established the liability claim; the only thing left are the damages. Mr. Greenberg to prepare the Order.

[Parties Present](#)[Return to Register of Actions](#)

AA007082

EXHIBIT D

EXHIBIT D



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

8 vs.

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

12 Defendant(s).
13

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

23 **THE COURT FINDS AS FOLLOWS:**

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

RECEIVED
DISTRICT JUDGE
KATHLEEN E. DELANEY
MAY 16 2018
CLERK OF THE COURT

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

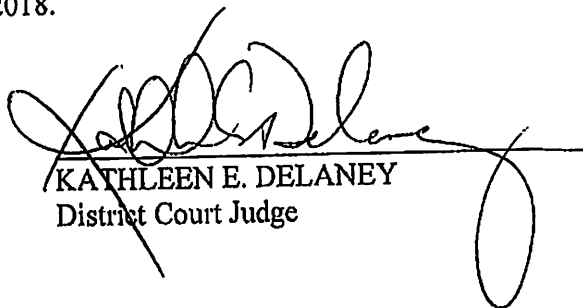
25 Regarding Murray Counsel's Motion to Intervene and Have Hearing of May 15,
26 2018 Continued on an Order Shortening time, filed May 10, 2018, the Court determined it
27

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.

19
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21 
22 KATHLEEN E. DELANEY
23 District Court Judge
24
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28

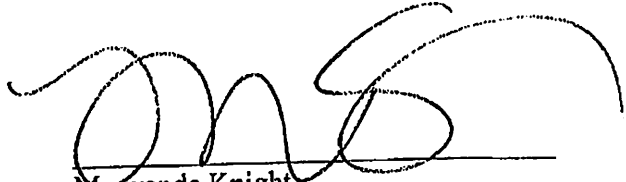
CERTIFICATE OF SERVICE

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:

Trent L. Richards, Esq. – Bourassa Law Group
(trichards@bourassalawgroup.com)

Esther C. Rodriguez, Esq. – Rodriguez Law Offices
(info@rodriguezlaw.com)

Leon Greenberg, Esq. – Leon Greenberg Professional Corporation
(lcongreenberg@overtimelaw.com)



Marwanda Knight
Judicial Executive Assistant

KATHLEEN E. DELANEY
DISTRICT JUDGE
DEPARTMENT XXV

EXHIBIT E

EXHIBIT E

IN THE SUPREME COURT OF NEVADA

-----X
MICHAEL MURRAY and
MICHAEL RENO, 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, District Judge
Kathleen E. Delaney,

Respondents,

AND

JASMINKA DUBRIC, A CAB LLC,
A CAB SERIES LLC, EMPLOYEE
LEASING COMPANY,
CREIGHTON J. NADY and DOES 3
through 20,

Real Parties in Interest

Sup. Ct. No.

Dist. Ct No.: A-15-721063-C

Dept.:

EMERGENCY MOTION FOR
STAY OF DISTRICT COURT
PROCEEDINGS PENDING WRIT
PROCEEDINGS RESOLUTION AS
PER NRAP 8(a) AND NRAP 27(e)

EMERGENCY MOTION UNDER NRAP 27(e)

Action Needed on or by May 24, 2018

NRAP 27(e) CERTIFICATE

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

1. The telephone numbers and office addresses of the attorneys for all of the parties are the following:

AA007089

Petitioners Michael Murray and Michael Reno:

Leon Greenberg and Dana Sniegocki, Attorneys
Leon Greenberg Professional Corporation
2965 South Jones Boulevard, Suite E-3
Las Vegas, NV 89146
(702) 383-6085

Real Party in Interest Jasminka Dubric:

Mark J. Bourassa and Trent L. Richards, Attorneys
Bourassa Law Group
8868 Spring Mountain Road - Suite 101
Las Vegas, NV 89117
(702) 851-2180

Real Parties in Interest A Cab LLC, A Cab Series LLC,
Employee Leasing Company, Creighton J. Nady:

Esther C. Rodriguez, Esq.
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
702 320-8400

2. The facts showing the existence and nature of the claimed emergency:

As discussed in the Writ Petition submitted with this motion, on February 10, 2016, the Murray Petitioners were appointed as class representatives for a certified class under NRCP Rule 23(b)(2) and (b)(3) in *Michael Murray v. A-Cab Taxi Service LLC and A Cab LLC*, Case no. A-12-669926-C by Judge Kenneth Cory of Department 1 of the Eighth Judicial District Court. PA 18-34. District Court Judge Delaney, of Department 25 of the Eighth Judicial District Court, on May 16, 2018 issued an Order denying the Murray Petitioners' motion to intervene in *Jasminka Dubric v. A Cab LLC*, Case no. A-15-721063-C, Department 25, of the Eighth Judicial District Court. PA 630-632. Judge Delaney has set a hearing for May 24, 2018 to grant class certification and preliminary class settlement approval in *Dubric* for the same claims already subject to class action certification

in *Murray*. As stated in her Order of May 16, 2018 she will not hear any opposition from the Murray Petitioners to that class action settlement, on the basis that she has denied them intervention. That settlement, if entered as a final judgment, will destroy the class claims the Murray Petitioners were appointed to represent in *Murray*.

It is my belief irreparable harm will arise to the interests of the class members the Murray Petitioners represent if opposition to the proposed class action settlement is not considered in *Dubric* at the May 24, 2018 hearing. While it is conceivable this Court might intervene at a later date to correct the injury to the class members arising from the hearing on May 24, 2018, such intervention is highly likely to be unable to fully cure such injury. That is because upon the conclusion of that hearing, and the grant of preliminary class action settlement approval, the class members will be misled and misinformed by the notice that will be dispatched to the class about that settlement and the nature of their class claims. That misleading understanding by the class members cannot be fully remedied. Such notice, and class settlement, being the product of process that did not consider the views of the class members' already appointed NRCP Rule 23 class representatives, the Murray Petitioners, will have to be set aside. Significant resources, that will no longer be available to satisfy the class members' claims, will be dissipated by Real Party in Interest A-Cab's pursuit of that improper settlement. As a result, conservation of the class members' ability to secure a monetary remedy for the class claims will be needlessly impaired if a stay is denied and the May 24, 2018 hearing proceeds.

3. When and how counsel for the other parties were notified and whether they have been served with the motion:

This motion was sent by email to counsel for all of the parties on May 18,

2018, prior to its filing with the Nevada Supreme Court.

4. Whether the relief sought in the motion was available in the district court and whether all grounds in support of the relief were presented to the district:

I requested on May 15, 2018 that the district court continue the hearing scheduled for May 24, 2018 or otherwise stay proceedings in the district court so that a petition for intervention by this Court could be filed in the normal course and to avoid the need for this emergency motion. I presented all grounds that I could in support of that request. That request was denied by District Court Judge Delaney.

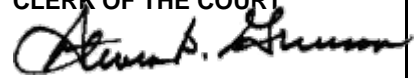
ADDITIONAL REASONS FOR THE GRANT OF THE STAY

The requested stay would overwhelmingly advance the interests of justice and inure to the detriment of no one. The Real Parties in Interest have no interest in securing the expedited approval of the proposed class action settlement *except* to avoid the proper deliberative process required by NRCPC Rule 23 and the consideration of the concerns of the Murray Petitioners. If the Murray Petitioners' concerns are found, after proper consideration, to be without merit, the Real Parties in Interest will secure the class settlement they seek in due course. Any delay in that process would be immaterial. On the other hand, the risk of injury to the class members if the district court proceeds without considering the concerns of the Murray Petitioners is manifest. Accordingly, the stay should be granted.

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

Affirmed this 18th day of May, 2018

/s/ Leon Greenberg
Leon Greenberg



RPLY
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DANA SNIEGOCKI, ESQ., SBN 11715
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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 A
CAB AND NADY'S
OPPOSITION TO
PLAINTIFFS' MOTION FOR
MISCELLANEOUS RELIEF**

Hearing Date: May 23, 2018
Hearing Time: 10:30 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 defendants A Cab and Nady to plaintiffs' motion on an OST for the

AA007093

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

5
6 **THE SCOPE OF THE MAY 23, 2018 HEARING SHOULD BE**
7 **LIMITED TO THE EDCR 2.50 COORDINATION REQUEST**

8 Defendants Nady and A Cab were most graciously indulged by Judge Cory who
9 continued, at their request, to May 4, 2018, the April 27, 2018 hearing plaintiffs' OST
10 motion filed on April 17, 2018 involving EDCR Rule 2.50 coordination, and other
11 issues, doing so over the objections of plaintiffs' counsel (Ex. "A" Order of April 26,
12 2018). Those objections, communicated in a letter to Judge Cory (Ex. "B") that is
13 mentioned in the April 26, 2018 Order, concerned only the EDCR Rule 2.50
14 coordination portion of the OST, warning, prophetically, that defendants would use
15 any delay in granting coordination to subvert the orderly proceedings in this long
16 running, trial ready, and near conclusion, Rule 23 Class Action certified case.
17 Tragically, Judge Cory's wife passed away unexpectedly on April 30, 2018,
18 precipitating Judge Cory's absence from the bench. A-Cab and Dubric have used that
19 tragic circumstance, and delay, to have Department 25 on May 15, 2018, for reasons
20 known only to Judge Delaney, schedule a Rule 23 class action certification and
21 settlement hearing for May 24, 2018.

22 As discussed in plaintiffs' counsel's supplemental declaration filed on May 16,
23 2018 it is requested that Department 1 take immediate action on the portions of
24 plaintiffs' OST motion filed on April 17, 2018 seeking to lift the stay and granting
25 EDCR Rule 2.50 coordination in Department 1. The other issues raised by that motion
26 can await Judge Cory's return to the bench. They clearly should do so given Judge
27 Cory's extensive experience with this long running, and protracted, class action
28 litigation.

ARGUMENT

I. DEFENDANTS OFFER NO FACTUAL OR LEGAL SUPPORT FOR DENYING THE EDCR 2.50 COORDINATION REQUEST

A. The purpose of EDCR 2.50 coordination is to promote judicial efficiency, avoid conflicting decisions in related cases, and fairly protect the interests of all litigants.

A Cab, just like Dubric, offers no explanation of how its interests are unfairly impinged if the EDCR Rule 2.50 coordination request is granted. A Cab and Dubric will be free to propose their Rule 23 class action settlement in Department 1 to Judge Cory who, having granted class action certification in 2016 in *Murray*, is very familiar with the class claims. If that settlement is deserving of approval they should have no problem securing the same from Department 1. Having Department 1 hear and determine both cases will prevent A Cab from exploiting any conflict between the parties claiming to champion the class members' interests (Murray and Dubric). Or, at a minimum, having the Judge most familiar with this dispute make rulings in both cases will moot any possibility of different rulings regarding the same class claims being made in two different cases by two different District Court judges.

B. The EDCR 2.50 coordination request violates no provision of the Nevada Supreme Court's recent order nor is it rendered moot by Murray's writ petition to the Nevada Supreme Court.

A Cab claims the EDCR 2.50 coordination request seeks to "circumvent" the Nevada Supreme Court's decision to dissolve Judge Cory's 2017 injunction against A Cab. That decision (Ex. "C") did not find Department 25 could proceed with the Rule 23 class action certification and settlement proposed by A Cab and Dubric. Nor did it find Judge Cory was without the power to issue that overturned injunction. It dissolved the injunction because of a lack of specific findings sufficient to support its issuance. The Nevada Supreme Court made no finding that Department 25 "should not" have its jurisdiction over the *Dubric* case taken away (either via EDCR 2.50 coordination or in any other fashion) by Department 1, A Cab's assertion it did so (p. 5, l. 7-10 opposition) is completely untrue.

1 While there is no impediment to Department 1 issuing a new injunction,
2 supported by sufficient and specific findings (dealing with the class action settlement
3 “reverse auction” concern articulated by Judge Cory in connection with the original
4 injunction, Ex. “D” supplemental order of February 17, 2017), there is also no
5 impediment to resolving this situation via EDCR 2.50 coordination. Nor does
6 plaintiffs’ request for writ relief to the Nevada Supreme Court “moot” the EDCR 2.50
7 request. If that writ relief is granted it would only require Department 25, if it was to
8 proceed as Judge Delaney has directed, to hear the Rule 23 class action representatives
9 appointed in *Murray* before granting any Rule 23 class action certification or
10 settlement approval in *Dubric*. Judge Delaney would still be free to approve, after
11 hearing those concerns, the exact class action relief sought by *Dubric* and A Cab.¹ The
12 Nevada Supreme Court’s granting of that writ relief would not cure the inefficiency
13 and conflict posed by having Rule 23 class proceedings in two related cases pending
14 before two different district court judges.

15
16 ¹ Judge Delaney has not precisely stated on the record (Ex. “E” transcript of
17 May 15, 2018) whether she will approve that class action settlement proposal, though
18 her denial of intervention to the *Murray* plaintiffs ensures there will be no opposition
19 to that approval. But there is no reason to doubt that she will grant preliminary class
20 action certification and settlement approval, as Judge Delaney stated, on the record,
21 that her previous review of the proposed settlement determined “...the fact that there
22 was no reason to believe the settlement wasn’t fairly reached, that it couldn’t
23 adequately address the class needs.” *Id.*, p. 30, l. 20-24. She also demonstrated an
24 extremely unusual priority in scheduling such approval to come before her on an
25 expedited basis despite her very large docket stating “[b]ut this case needs to move
26 forward. I think this case needed to move forward long before now.” (*id.*, p. 33, l. 14-
27 16); her imploring responses to the ambiguous statements of *Dubric*’s counsel about
28 that scheduling (*id.*, p. 23, l. 14-22) where she stated about that ambiguity that “I don’t
get it” and reassured *Dubric*’s counsel that there had been an opening of the door “to
the [class] resolution of the parties it [sic] [the parties] previously proposed” (*id.*, p.
24, l. 20-23); and her refusal to continue such hearing and insistence on scheduling it
only nine later despite a caution by her law clerk (a *sotto voce* notation in the
transcript and thus not transcribed) that three motions to dismiss scheduled for that
day may largely consume her hearing time (*id.* P. 31, l. 25- p. 32, l. 8).

1 **II. DEFENDANTS' OTHER ARGUMENTS ARE IRRELEVANT**
2 **AND BASED UPON INCORRECT ASSERTIONS OF FACT**

3 **A. The stay should be lifted so EDCR**
4 **Rule 2.50 coordination can be granted.**

5 No urgent request to lift the stay in this case and grant EDCR 2.50 coordination
6 would be made if defendants and Dubric were not using Judge Cory's tragic absence
7 from the bench as an excuse to subvert the orderly process of justice. Defendants
8 proffer no reason to keep that stay in place and prevent a granting of coordination.

9 **B. Defendants are in contempt of the Court's**
10 **Order Appointing a Special Master.**

11 While the Court stayed the work of the Special Master during the stay imposed
12 by the March 6, 2018 Minute Order (Ex. "A" of opposition) *it did **not** stay A-Cab's*
13 *overdue compliance with the \$25,000 deposit due the Special Master.* The March 6,
14 2018 order contemplated a three week stay of proceedings owing to Judge Cory's
15 medical condition. A Cab has not paid that \$25,000 during those three weeks or in
16 response to plaintiffs' motion on OST filed April 17, 2018. Even once the stay is
17 lifted, and contempt relief granted to plaintiffs pursuant to their motion on OST, A Cab
18 would likely be afforded some brief opportunity (be it five days or some other period)
19 to purge their contempt by making that overdue \$25,000 payment (and all other
20 necessary payments) to the Special Master. The Court should, when it reaches that
21 issue, make such an Order.

22 **C. Plaintiffs' motion for partial summary judgment**
23 **has NOT been denied, it is pending and awaiting a**
24 **decision based upon supplemental briefings directed at**
25 **the last hearing held on the same on January 2, 2018.**

26 Plaintiff's motion on OST does not, as A Cab falsely claims, seek to "re-
27 present" a "denied" motion for partial summary judgment. That motion was last
28 before Judge Cory on January 2, 2018 and extensively discussed with him at that time
and Judge Cory directed supplemental briefings. Ex. "F" transcript, pages 49 to 62.
Those supplemental briefings were filed on January 9, 2018 (see docket). Plaintiffs'

1 motion on OST filed on April 17, 2018 implores the Court to grant that motion on the
2 already submitted briefings, supplemental briefings, and argument, it does not “re-
3 present” that motion or make any new or additional arguments.

4 **CONCLUSION**

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

6
7 Dated: May 21, 2018

LEON GREENBERG PROFESSIONAL CORP.

8 /s/ Leon Greenberg
9 Leon Greenberg, Esq.
10 Nevada Bar No. 8094
11 2965 S. Jones Boulevard - Ste. E-3
12 Las Vegas, NV 89146
13 Tel (702) 383-6085
14 Attorney for the Plaintiffs
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Plaintiffs' Reply to a Cab and Nady's Opposition to Plaintiffs' Motion for Miscellaneous Relief.

TO:

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

Dana Sniegocki

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

AA007101

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.

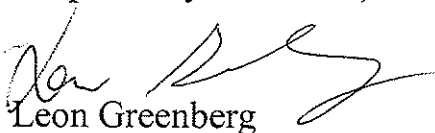
I urge Your Honor to *not* defer the April 24, 2018 hearing. In the alternative, I implore Your Honor to issue an immediate Order granting the portion of plaintiffs' pending motion lifting the stay in this case and coordinating this case with the *Dubric* case per EDCR Rule 2.50. This Court need *not* 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.

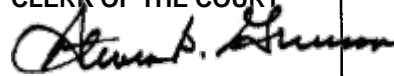
Respectfully submitted,


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 "A"



NOTC

MARK J. BOURASSA, ESQ.
Nevada Bar No. 7999
TRENT L. RICHARDS, ESQ.
Nevada Bar No. 11448
THE BOURASSA LAW GROUP
2350 W. Charleston Blvd., #100
Las Vegas, Nevada 89102
Telephone: (702) 851-2180
Facsimile: (702) 851-2189
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

AA007109

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 “B”

[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

AA007114

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](#)

AA007115

ELECTRONICALLY SERVED
4/25/2018 10:37 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 25, 2018

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

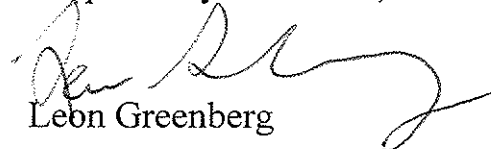
Via Fax 702-671-4323, Email and Wiznet System

Re: Murray v. A Cab A-12-669926-C
Error in my letter of April 24, 2018 in respect to April 27, 2018 hearing

Dear Judge Cory:

I apologize for the typographical error in my letter of yesterday referring twice to the scheduled April 24, 2018 hearing in this matter. That hearing is, of course, the one scheduled for April 27, 2018 at 10:00 a.m. as I was advised of yesterday by Kevin.

Respectfully submitted,


Leon Greenberg

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

EXHIBIT "C"

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB TAXI SERVICE, LLC; A CAB,
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vs.
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RENO, INDIVIDUALLY AND ON
BEHALF OF OTHERS SIMILARLY
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Respondents.

No. 72691

FILED

APR 06 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

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Gibbons, J.
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Pickering, J.
Pickering

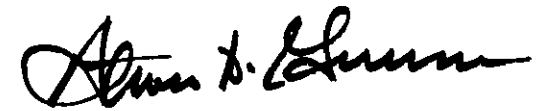
Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

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

EXHIBIT “D”



CLERK OF THE COURT

SUPPL

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL MURRAY,

Plaintiffs,

vs.

A CAB TAXI SERVICE, LLC, et al.,

Defendants.

CASE NO. A669926

DEPT NO. I

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

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

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

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

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

10

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

14

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

19

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

25

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

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

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

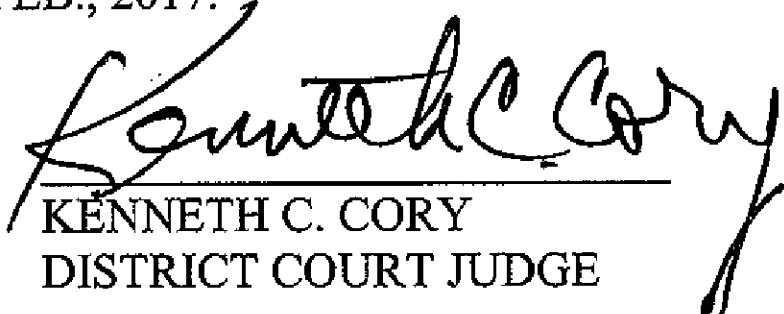
19 Andrew S. Weinstein, *Avoiding the Race to Res Judicata: Federal Antisuit*
20 *Injunctions of Competing Class Actions*, 75 N.Y.U. L. Rev. 1085, 1085-1091
(2000).

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

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

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

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

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

10
11
12 **CERTIFICATE OF SERVICE**

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

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

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

19
20 
21 JOAN LAWSON
22 JUDICIAL EXECUTIVE ASSISTANT
23
24
25
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EXHIBIT "E"

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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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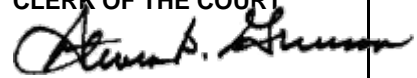
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EXHIBIT “F”



TRAN

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

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

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

TRANSCRIPT RE:
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

APPEARANCES:

For the Plaintiffs: LEON GREENBERG, ESQ.

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

ALSO PRESENT: CREIGHTON J. NADY

RECORDED BY: Lisa Lizotte, Court Recorder

AA007169

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

2 * * * * *

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

5 THE COURT: We saved the best for last.

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

9 THE COURT: Good morning.

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

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

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

14 THE COURT: Yes, that would be good.

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

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

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

4 THE COURT: Uh-huh.

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

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

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

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

1 MS. RODRIGUEZ: Correct.

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

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

12 THE COURT: Uh-huh.

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

20 THE COURT: Uh-huh.

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

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

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

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

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

14 MS. RODRIGUEZ: Correct. Correct.

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

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

21 THE COURT: Uh-huh.

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

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

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

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

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

8 THE COURT: Well, wait a minute.

9 MS. RODRIGUEZ: Yes.

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

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

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

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

16 THE COURT: Uh-huh.

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

23 THE COURT: Uh-huh.

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

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

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

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

22 THE COURT: Uh-huh.

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

1 basis of their claim --

2 THE COURT: Yeah.

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

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

6 MS. RODRIGUEZ: Correct. Correct.

7 THE COURT: Okay. Okay.

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

14 THE COURT: Uh-huh.

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

22 THE COURT: Uh-huh.

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

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

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

7 MS. RODRIGUEZ: Right.

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

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

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

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

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

21 MR. GREENBERG: Yes, Your Honor.

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

24 THE COURT: What about the decertify class?

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

4 THE COURT: Uh-huh.

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

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

23 THE COURT: Okay.

24 MS. RODRIGUEZ: Thank you, Your Honor.

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

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

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

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

10 THE COURT: Is it Wal-Mart?

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

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

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

14 THE COURT: Oh.

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

18 THE COURT: Uh-huh.

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

23 THE COURT: Uh-huh.

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

1 standard to certify --

2 THE COURT: Uh-huh.

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

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

7 THE COURT: Uh-huh.

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

15 THE COURT: Uh-huh.

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

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

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

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

10 THE COURT: That would be a good idea.

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

14 THE COURT: Uh-huh.

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

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

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

14 THE COURT: Uh-huh.

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

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

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

5 THE COURT: Uh-huh.

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

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

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

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

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

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

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

5 THE COURT: Yeah.

6 MR. GREENBERG: We're addressing this.

7 THE COURT: Uh-huh. Yeah.

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

21 THE COURT: Yeah.

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

23 THE COURT: No.

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

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

3 MR. GREENBERG: Yes.

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

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

7 THE COURT: Of yours?

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

11 THE COURT: Yeah.

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

17 THE COURT: Uh-huh.

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

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

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

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

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

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

3 THE COURT: Uh-huh.

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

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

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

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

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

7 THE COURT: So it would only be --

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

11 THE COURT: So --

12 MR. GREENBERG: Yes?

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

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

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

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

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

20 THE COURT: Uh-huh.

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

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

6 THE COURT: Okay. Uh --

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

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

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

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

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

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

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

13 THE COURT: Okay.

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

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

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

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

16 THE COURT: Uh-huh.

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

20 THE COURT: Uh-huh.

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

1 Mr. Nady does not dispute --

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

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

7 THE COURT: Uh-huh.

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

12 THE COURT: Uh-huh.

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

18 THE COURT: Okay. Uh-huh.

19 MR. GREENBERG: -- between the two.

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

21 MR. GREENBERG: Well, Your Honor --

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

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

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

12 THE COURT: Uh-huh.

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

18 THE COURT: No.

19 MR. GREENBERG: Thank you, Your Honor.

20 THE COURT: Thank you. All right.

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

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

5 THE COURT: Uh-huh.

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

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

20 MS. RODRIGUEZ: The exhibits?

21 THE COURT: -- the exhibits with it.

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

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

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

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

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

10 THE COURT: Okay.

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

13 THE COURT: Okay.

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

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

23 MR. GREENBERG: Well --

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

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

7 THE COURT: Uh-huh.

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

10 THE COURT: Do you have that there?

11 MS. RODRIGUEZ: I do, Your Honor.

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

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

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

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

3 MR. GREENBERG: Yes, Your Honor.

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

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

7 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

12 THE COURT: Okay.

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

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

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

20 THE COURT: Right.

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

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

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

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

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

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

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

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

14 THE COURT: Yes.

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

18 THE COURT: Yeah.

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

20 THE COURT: Okay.

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

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

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

4 MS. RODRIGUEZ: Okay.

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

6 MS. RODRIGUEZ: Uh-huh.

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

9 MS. RODRIGUEZ: Right.

10 THE COURT: Okay.

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

22 THE COURT: Correct.

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

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

3 THE COURT: Uh-huh.

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

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

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

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

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

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

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

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

21 MS. RODRIGUEZ: Unpaid hours.

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

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

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

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

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

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

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

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

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

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

3 THE COURT: Teflon.

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

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

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

14 THE COURT: Uh-huh.

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

16 THE COURT: Yeah.

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

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

24 THE COURT: Okay, thank you.

1 MS. RODRIGUEZ: Thank you.

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

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

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

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

1 THE COURT: Okay.

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

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

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

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

11 THE COURT: Okay.

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

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

14 (The Court confers with the clerk)

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

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

1 and you're also liable --

2 THE COURT: Hold on just one second.

3 MR. GREENBERG: Yes.

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

7 MR. GREENBERG: Thank you, Your Honor.

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

10 MR. GREENBERG: I don't know.

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

13 Are you familiar with that, December 14th?

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

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

16 THE CLERK: Uh-huh.

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

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

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

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

22 THE COURT: Yeah.

23 MR. GREENBERG: Your Honor --

24 THE COURT: Hang on one second.

1 MR. GREENBERG: Yes, let me wait.

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

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

6 THE COURT: Uh-huh.

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

13 THE COURT: Uh-huh.

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

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

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

9 THE COURT: Uh-huh.

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

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

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

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

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

20 THE COURT: Uh-huh.

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

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

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

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

7 MS. RODRIGUEZ: Right.

8 THE COURT: -- liability --

9 MS. RODRIGUEZ: Right.

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

11 MS. RODRIGUEZ: Absolutely.

12 THE COURT: -- of the damages?

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

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

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

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

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

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

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

12 MS. RODRIGUEZ: Right.

13 THE COURT: -- on --

14 MS. RODRIGUEZ: The tool.

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

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

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

23 MS. RODRIGUEZ: Well --

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

1 THE COURT: I'm sorry?

2 MR. GREENBERG: The QuickBooks records.

3 THE COURT: The QuickBooks records.

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

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

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

11 THE COURT: The Discovery Commissioner.

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

17 THE COURT: Certain portions of the QuickBooks?

18 MS. RODRIGUEZ: Yes. So --

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

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

21 THE COURT: Okay.

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

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

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

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

3 THE COURT: Yeah.

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

12 THE CLERK: The motions in limine?

13 MS. RODRIGUEZ: Yes, ma'am.

14 THE CLERK: The 23rd.

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

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

19 MS. RODRIGUEZ: February 5th.

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

23 MS. RODRIGUEZ: Yes. February 5th.

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

1 MS. RODRIGUEZ: The trial date.

2 THE COURT: Yeah.

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

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

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

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

10 THE COURT: Yeah, go ahead.

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

15 THE COURT: Uh-huh.

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

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

1 MR. GREENBERG: Well, Your Honor --

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

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

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

16 MS. RODRIGUEZ: From the trip sheets.

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

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

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

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

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

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

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

20 THE COURT: Yeah.

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

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

1 MS. RODRIGUEZ: Uh-huh.

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

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

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

15 MS. RODRIGUEZ: Uh-huh.

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

17 MS. RODRIGUEZ: Right.

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

19 MR. NADY: No.

20 THE COURT: No?

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

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

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

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

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

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

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

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

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

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

16 THE COURT: Well --

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

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

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

21 MS. RODRIGUEZ: It's different.

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

23 MR. GREENBERG: Yes.

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

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

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

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

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

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

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

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

3 THE COURT: You're saying that --

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

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

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

8 THE COURT: Okay.

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

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

12 MS. RODRIGUEZ: Uh-huh.

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

15 MS. RODRIGUEZ: Uh-huh.

16 THE COURT: That he changed those hours?

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

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

2 MR. GREENBERG: The defendant, Your Honor.

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

4 THE COURT: Well --

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

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

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

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

14 MS. RODRIGUEZ: Abso--

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

17 MS. RODRIGUEZ: Uh-huh.

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

19 MS. RODRIGUEZ: Uh-huh.

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

22 MS. RODRIGUEZ: Uh-huh.

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

1 MS. RODRIGUEZ: Your Honor --

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

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

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

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

20 MS. RODRIGUEZ: Right.

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

22 MR. GREENBERG: There isn't.

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

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

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

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

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

7 MR. GREENBERG: Your Honor --

8 THE COURT: You got that handy?

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

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

11 MR. GREENBERG: Yes.

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

14 MR. GREENBERG: Of course.

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

17 MR. GREENBERG: Okay.

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

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

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

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

11 THE COURT: All right.

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

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

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

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

1 do with a document that purports to be --

2 MS. RODRIGUEZ: Uh-huh.

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

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

7 THE COURT: No.

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

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

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

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

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

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

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

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

7 THE COURT: Yeah.

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

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

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

15 THE COURT: Okay.

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

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

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

23 THE COURT: 23rd.

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


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

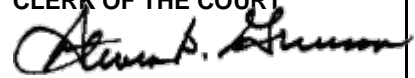
1 THE COURT: Thank you.
2 MS. RODRIGUEZ: Thank you, Judge.
3 THE COURT: You're going to do the order from today.
4 MR. GREENBERG: I will, Your Honor.
5 THE COURT: Okay.
6 MR. GREENBERG: And I should have it circulated to defense counsel no
7 later than Monday.
8 THE COURT: Very good.
9 MR. GREENBERG: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

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

13 * * * * *

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

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



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7 (702) 383-6085
8 (702) 385-1827(fax)
9 leongreenberg@overtimelaw.com
10 dana@overtimelaw.com
11 Attorneys for Plaintiffs

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

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

13 Plaintiffs,

14 vs.

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

17 Defendants.

Case No.: A-12-669926-C

Dept.: I

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

**Re: Status of Special Master
Assignment and Defendants'
Delay of that Assignment**

Hearing Date: June 1, 2018
Hearing Time: 10:00 a.m.

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

20 1. I am one of the attorneys representing the class of plaintiffs in this matter.
21 I submit this declaration in connection with the Court's hearing scheduled for June 1,
22 2018 at 10:00 a.m.

23 **CURRENT STATUS OF SPECIAL MASTER**

24 2. On May 24, 2018 I corresponded by email with Dr. Saad, the Special
25 Master, also copying all counsel on that correspondence. Ex. "A." As documented
26 therein, Dr. Saad now advises that "if an acceptable assurance of future payment" is
27 arranged he would need 5 to 10 days to "restart the project" and estimates it would
28 take an additional 45 days thereafter to complete his assignment. He envisions such an
arrangement requiring an "escrow account be established with sufficient funds to

AA007232

insure” payment for all *future* work, not just payment for his past due work totaling \$41,000. *Id.*

**THE AMOUNT OF DELAY IN THE SPECIAL MASTER’S WORK
CREATED BY DEFENDANT’S VIOLATION OF THE COURT’S ORDER**

3. I urge the Court to take cognizance of the length of delay in the Special Master’s work created by defendant’s violation of the Court’s prior order. Such consideration is particularly warranted if defendant is refusing, as expected, to extend the very pressing NRCP Rule 41(e) disposition time limit for this case for at least the period of such delay they have occasioned.

4. The Court’s Order of February 13, 2018 appointing Dr. Saad (Ex. “B”) by reference to the Court’s prior Order (Ex. “C”) required the deposit by A Cab of \$25,000 with the Special Master by February 28, 2018, ten days later excluding non-judicial days per NRCP Rule 6(a). No additional time for “service” of that Order was applicable to such compliance as the February 13, 2018 Order directed compliance from its entry, not from its service. That deposit was not made and this case was subsequently stayed by the Court on March 6, 2018.

5. The stay in this case was lifted on May 22, 2018 and there is no indication that defendants’ have deposited with the Court the \$41,000 due Dr. Saad, though they were instructed on May 23, 2018 to do so prior to the June 1, 2018 hearing.

6. Excluding the period of time from March 6, 2018 to May 21, 2018 that this case was stayed, it appears certain, that as of today, defendants’ failure to comply with the Court’s Order of February 13, 2018 has delayed, and will delay, the completion Dr. Saad’s Special Master assignment by at least 17 days. That number is obtained by examining the delay from February 28, 2018 to the stay issuance of March 6, 2018 (Dr. Saad should have received payment of \$25,000 on February 28, 2018 but

1 did not) and Dr. Saad's inability to proceed further in any capacity until sometime after
2 the June 1, 2018 hearing when the Court will decide how to address the defendants'
3 violation of the February 13, 2018 Order. In reality, the completion of Dr. Saad's
4 Special Master assignment work has been delayed by defendants in excess of 17 days,
5 likely 30 days or more. That is because even if he receives an appropriate assurance of
6 payment and can then promptly resume such work it is going to take some period of
7 time, even if just a few days, after June 1, 2018 for those assurances to be put in place.
8 In addition, he advises he has also "lost" between 5 to 10 days as a result of his
9 cessation of work, which was occasioned by defendants' stay request, and the need to
10 now "restart" the project. *See*, Ex. "A."

11 7. The defendants should not be afforded the benefit of the delay in the
12 Special Master's completion of his assignment that they have secured by violating the
13 Court's February 13, 2018 Order. If the Court declines to grant a default judgment, as
14 I have urged, and affords defendants an opportunity to purge their contempt of the
15 February 13, 2018 Order, defendants should also be compelled, as part of that process,
16 to consent to extend the NRCP Rule 41(e) deadline by at least 30 days.

17
18 I have read the foregoing and affirm the same is true and correct.
19 Affirmed this 30th day of May, 2018

20
21
22 /s/ Leon Greenberg
Leon Greenberg

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PROOF OF SERVICE

The undersigned certifies that on May 30, 2018, she served the within:

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

/s/ Dana Sniegocki

Dana Sniegocki

EXHIBIT "A"

Subject: RE: special master assignment in Murray v. A Cab

From: Ali Saad <ASaad@resecon.com>

Date: 5/24/2018 2:31 PM

To: Christian Gabroy <christian@gabroy.com>, 'Leon Greenberg' <wagelaw@hotmail.com>, 'Dana Sniegocki' <dana@overtimelaw.com>

CC: "'Esther C. Rodriguez'" <esther@rodriguezlaw.com>, 'Gabroy Law Assistant' <assistant@gabroy.com>, "'Michael K. Wall, Esq.'" <mwall@hutchlegal.com>, 'Kaine Messer' <kmesser@gabroy.com>, Jonathan Wilson <JWilson@resecon.com>, Emil Czechowski <ECzechowski@resecon.com>

Mr. Greenberg -

If an acceptable assurance of future payment arrangement is established I would be able to restart the project at the same level of intensity which was used previously, and would be able to complete the work within 45 days of the work actually commencing, but would need 5 to 10 additional days to put the project infrastructure back in place.

Thank you,

Ali Saad

From: Christian Gabroy [mailto:christian@gabroy.com]

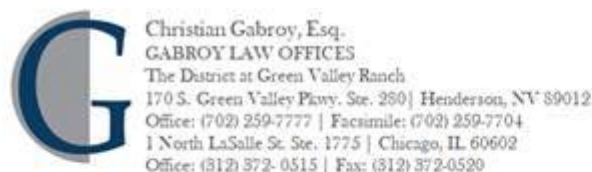
Sent: Thursday, May 24, 2018 1:50 PM

To: Ali Saad; 'Leon Greenberg'; 'Dana Sniegocki'

Cc: 'Esther C. Rodriguez'; 'Gabroy Law Assistant'; 'Michael K. Wall, Esq.'; 'Kaine Messer'

Subject: RE: special master assignment in Murray v. A Cab

Please include my associate Kaine and assistant Katie on all these communications. Thank you Dr. Saad.



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From: Ali Saad <ASaad@resecon.com>

Sent: Thursday, May 24, 2018 1:31 PM

To: Leon Greenberg <wagelaw@hotmail.com>; 'Dana Sniegocki' <dana@overtimelaw.com>

Cc: Esther C. Rodriguez (esther@rodriguezlaw.com) <esther@rodriguezlaw.com>; Michael K. Wall, Esq. (mwall@hutchlegal.com) <mwall@hutchlegal.com>; Christian Gabroy <christian@gabroy.com>

Subject: RE: special master assignment in Murray v. A Cab

AA007237

Mr. Greenberg:

I will get back to you with a response once I have a chance to check into it. Also, given the difficulty with payment experienced thus far, our firm would request that an escrow account be established with sufficient funds to insure we could be paid for any further work. We cannot start the project again without this or a similar arrangement.

Thanks,

Ali Saad

From: Leon Greenberg [<mailto:wagelaw@hotmail.com>]

Sent: Thursday, May 24, 2018 12:25 PM

To: Ali Saad; 'Dana Sniegocki'

Cc: Esther C. Rodriguez (esther@rodriguezlaw.com); Michael K. Wall, Esq. (mwall@hutchlegal.com); Christian Gabroy

Subject: Re: special master assignment in Murray v. A Cab

Dear Dr. Saad:

I write in this matter because Judge Cory has returned to overseeing this case from a leave that he took and the attorneys for the parties are scheduled to see him on June 1, 2018. He has instructed A Cab to present proof to him at that time that A Cab has deposited, with the Court, the \$41,000 you mention below that your firm is owed, to date, for its services. It is my expectation if that money is so deposited Judge Cory will, at that time, direct it be paid to your firm. And if it is not so deposited I expect he will take other action he deems suitable. But, of course, my expectations do not control what Judge Cory will decide to do, that is up to him.

I am also expecting Judge Cory on June 1 2018 to instruct the parties about a schedule to resolve this case, including possibly a date for trial in the not too distant future. Your work as Special Master may have a significant impact on the resolution of this case and the timing of that resolution and/or trial. Accordingly, please give me your best estimate of the soonest you can have your Special Master assignment completed after June 1st if you receive suitable payment for your services. I understand you have ceased all work on this assignment and I am NOT asking you to resume further work at this time, Judge Cory is aware of the problem with your firm being paid for your work and directed in an Order issued in March that you cease further work. But please do give your best estimate as to when you can complete the assignment if you resume work on June 1, 2018 AND also advise if you need any further materials from A Cab to complete your work (I understand that they have provided certain materials to you, if you are lacking needed records from them please advise). Please also "reply all" to this email so the attorneys for all parties are in receipt of your response and we can avoid any confusion.

Do not contact the court (email Dept01LC@clarkcountycourts.us <Dept01LC@clarkcountycourts.us>) with communication about this, unless you believe that is necessary. Communications by you with the attorneys in this case should not be automatically sent to the Court which is, of course, quite busy.

Thank you.

On 3/2/2018 2:20 PM, Ali Saad wrote:

To the Court and Judge Cory:

AA007238

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

Respectfully,

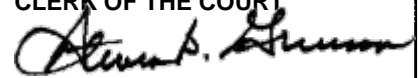
Ali Saad

Ali Saad, Ph.D.
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Member of Nevada, California, New York,
New Jersey and Pennsylvania Bars

AA007239

EXHIBIT “B”



ORDR

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

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

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

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

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

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


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

14 **IT IS SO ORDERED.**

15 
16 Honorable Kenneth Cory
17 District Court Judge

Feb 13, 2018
Date

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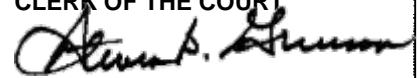
2/13/18
Date

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EXHIBIT "C"



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DISTRICT COURT

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A CAB TAXI SERVICE LLC, A CAB, LLC,
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Defendants.

Case No.: A-12-669926-C

Dept.: I

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

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

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

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

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

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

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

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

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

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

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

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


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

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

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

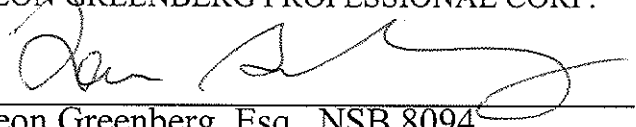
15 IT IS FURTHER ORDERED that the Court will not be entertaining a motion for
16 reconsideration of this order by the defendants.

17
18 **IT IS SO ORDERED.**

19
20 
21 Honorable Kenneth Cory
22 District Court Judge

23 2-7-18
Date

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29 2/6/18
Date

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