

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

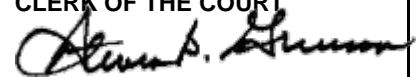
Leon Greenberg, Esq.
Dana Sniegocki, Esq.
Leon Greenberg Professional Corporation
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Facsimile: (702) 385-1827
leongreenberg@overtimelaw.com
Dana@overtimelaw.com

Attorneys for Respondents

DATED this 5th day of August, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC



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leongreenberg@overtimelaw.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

9 Plaintiffs,

10 vs.

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

13 Defendants.

Case No.: A-12-669926-C

Dept.: I

PLAINTIFFS' RESPONSE IN
OPPOSITION TO
DEFENDANTS' MOTION FOR
FOR DISMISSAL OF CLAIMS
ON AN ORDER SHORTENING
TIME

Hearing Date: Oct. 22, 2018
Hearing Time: 10:00 A.M.

14 Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation,
15 hereby submit this response to defendants' motion for dismissal on an order shortening
16 time.

SUMMARY

18 **Defendants' motion is completely duplicative of the meritless motion**
19 **to dismiss they have already filed and that has been fully briefed.**

20 No good faith basis exists for the filing of defendants' motion. The exact same
21 claim for dismissal, and the exact same arguments in support of that claim, have been
22 fully briefed to the Court and set for hearing on October 22, 2018 as part of
23 defendants' combined "motion for reconsideration, amendment, for new trial and for
24 dismissal of claims" filed on September 10, 2018 and fully briefed.

25 Because they are either not satisfied with the briefings already submitted on the
26 prior motion, or to harass plaintiffs' counsel, or both, defendants now move for the
27 same relief by OST. Their supporting papers for that OST add nothing new. They
28

1 recite the same argument presented in their motion filed on September 10, 2018, which
2 is that *Castillo* holds this Court lacks subject matter jurisdiction over the class
3 damages claims which lies in the Justice Court. They then go on to ignore the actual
4 controlling law and facts, which is that under *Edwards* this Court retained jurisdiction
5 over those damages claims even if it rejected all bonafide claims for equitable relief
6 made in this case, and in any event this Court *has* granted equitable and injunctive
7 relief.

8 **ARGUMENT**

9 **I. THE COURT HAS JURISDICTION OVER THE CLASS CLAIMS AND PROPERLY GRANTED CLASS CERTIFICATION**

10 **A. Subject matter jurisdiction over the class claims is proper as** 11 **this case sought, still seeks, and was granted, equitable relief.**

12 Defendants argue that the class claims made in this case do not involve any
13 legitimate request for equitable or injunctive relief. Or if they did at one time, they
14 ceased to do so when the plaintiffs sought a final judgment on damages for the class as
15 per NRCF Rule 23(b)(3). In either instance, according to defendants, there was no
16 subject matter jurisdiction over the class claims and such claims were improperly
17 granted class certification and no class damages judgment was properly entered.
18 Defendants are wrong, factually, procedurally, and as a matter of law.

19 First, the District Court's jurisdiction extends to all damages claims, of whatever
20 amount, when those claims are brought as part of an action seeking equitable relief.
21 And, once a claim for equitable relief is properly made, the District Court does NOT
22 lose subject matter jurisdiction over those damages claims also made in the same case
23 even if equitable relief is denied and those damages claims would need to have been
24 brought, if prosecuted solely on their own when the case was commenced, in Justice
25 Court. See, *Edwards v. Emperor's Garden Rest.* 122 Nev. 317, 326 (2006) ("When
26 the district court denied injunctive relief, however, it did not thereby lose its
27 jurisdiction to consider Edwards' claims for monetary damages.")
28

1 Second, plaintiffs in this case have always, legitimately, sought equitable and
2 injunctive relief. The Court has already ruled on that point by granting class action
3 certification under NRCP Rule 23(b)(2). Plaintiffs have a pending application for
4 equitable class relief in their pending counter-motion (to be heard October 22, 2018)
5 seeking the appointment of a receiver under NRS 32.010 for the benefit of the class.
6 They may also still seek other equitable relief not yet requested from the Court, such
7 as the appointment of an independent monitor to ensure defendants are complying with
8 the Nevada Constitution's Minimum Wage Amendment.

9 Third, plaintiffs have also secured, in their final judgment, certain measures of
10 equitable relief for the NRCP Rule 23(b)(2) class, including a continuing prohibition
11 on defendants securing judgment satisfactions from the class members without further
12 order of the Court ("Defendants, their agents, and their attorneys, are prohibited from
13 communicating with the class member judgment creditors about their judgments
14 granted by this Order or securing any release of satisfaction of those judgments
15 without first securing a further Order of this Court in this case.") The Court has also
16 appointed class counsel to engage in collection efforts on the judgment it has rendered
17 and is retaining continuing equitable jurisdiction to oversee the distribution of the
18 amounts collected on the judgment. The Court has granted that relief because it has
19 found that its continuing supervision, and exercise of its equitable powers, is necessary
20 to effectuate the class damages judgment. That the Court's final judgment for the Rule
21 23(b)(3) class damages only concluded certain damages claims of the class members
22 prior to December 31, 2015 did not terminate this Court's continuing exercise of its
23 equitable powers in this case. Defendants do not explain their contrary assertion.

24 Fourth, the holding of *Castillo v. United Fed. Credit Union*, 409 F.3d 54 (Nev.
25 Sup. Ct. 2018) is not supportive of the defendants' position. In a subsequent order in
26 that case (Ex. "A" page 2), the Nevada Supreme Court refused to confirm that under
27 *Castillo* a class action seeking only damages has to proceed in Justice Court even
28

1 when the total of class damages exceeded that court's jurisdictional limitations. It
2 stated any such conclusion from *Castillo* would be relying upon non-precedential
3 *dicta*. In any event, *Castillo* affirmed District Court jurisdiction over the class
4 damages claims in that case based upon simultaneous requests for equitable relief. It
5 also did not question the foregoing holding of *Edwards*.

6 Fifth, equitable relief requests are still pending on behalf of the class for the
7 now severed claims against defendant Nady (claims for alter ego liability, an equitable
8 remedy, and unjust enrichment). Defendants posture that the severance of those
9 claims, secured simultaneously with the NRCP Rule 23(b)(3) class damages judgment,
10 somehow now deprives the Court of jurisdiction over those same damages claims. No
11 basis exists to reach that conclusion which would be contrary to *Edwards*.

12 Sixth, defendants' claim, that somehow the class claims have been terminated,
13 in whole or in part, by a class settlement in the *Dubric* case, is, politely, highly
14 misplaced. No such settlement can exist without an actual Order of the Court so
15 stating and the defendants present no such Order (and none exists). Perhaps the
16 individual plaintiff in that case, Ms. Dubric, has settled her claim, but she is not even a
17 class member in this case.

18 CONCLUSION

19 For all the foregoing reasons, defendants' motion should be denied.

20 Dated: October 17, 2018

21
22 LEON GREENBERG PROFESSIONAL CORP.

23
24 /s/ Leon Greenberg
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Attorney for the Class

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Plaintiffs' Response in Opposition to Defendants' Motion for Dismissal of Claims on an Order Shortening Time

TO:

/s/ Dana Sniegocki

5

EXHIBIT "A"

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUCIA CASTILLO, AN INDIVIDUAL;
AND EDWIN PRATTS, AN
INDIVIDUAL,
Appellants,
vs.
UNITED FEDERAL CREDIT UNION, A
FEDERAL CREDIT UNION,
Respondent.

No. 70151

FILED

JUN 12 2018

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

ORDER DENYING MOTION TO DEPUBLISH

This appeal was resolved by panel opinion filed February 1, 2018. *See Castillo v. United Fed. Credit Union*, 134 Nev., Adv. Op. 3, 409 P.3d 54 (2018). After the time to petition for rehearing expired but before the remittitur issued, Progressive Leadership Alliance of Nevada (“PLAN”) moved for permission to appear as amicus curiae and to depublish the opinion or “for possible alternative relief.” PLAN does not disagree with the case outcome—the opinion reverses the district court’s jurisdictional dismissal of the plaintiff’s class-action complaint—but PLAN expresses concern with the section of the opinion discussing aggregation of damage claims in consumer class actions. *See id.* at 57-58.

This court granted PLAN amicus status and ordered the parties to respond to its motion to depublish. Appellant Lucia Castillo, who prevailed on appeal, does not oppose depublication, so long as it does not delay the remittitur. Respondent opposes the motion as untimely and not provided for by the NRAP, which authorize a non-party to file a motion to

reissue an order as an opinion but do not address depublication. *See* NRAP 36(f) (authorizing motions to reissue unpublished orders as opinions); *but cf. Quisano v. State*, Docket No. 66816 (June 24, 2016, Order Denying Petition for Review) (denying a petition for review and ordering a court of appeals opinion depublished). Additional amicus curiae, the Nevada Justice Association, filed a joinder to PLAN's motion.


As noted, PLAN does not challenge the disposition, only the aggregation discussion that precedes the dispositive sections of the opinion, where we reverse the district court's jurisdictional dismissal. *See Castillo*, 134 Nev., Adv. Op. 3, 409 P.3d at 58-59 (holding that the district court erred in not exercising subject matter jurisdiction based on appellant's injunctive relief request and combined statutory and deficiency claims). Because the aggregation discussion is not necessary to the disposition, it arguably constitutes dictum, not mandatory precedent. *See Argentina Consol. Mining Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 536, 216 P.3d 779, 785 (2009) (stating that "[d]icta is not controlling" and noting that a "statement in a case is dictum when it is unnecessary to a determination of the questions involved" (internal quotation marks omitted)), *superseded by statute as recognized in Fredianelli v. Fine Carman Price*, 133 Nev., Adv. Op. 74, 402 P.3d 1254, 1256 (2017). As such, PLAN's concern with the precedent established by the opinion appears overstated. We also note that, even depublished, the disposition would remain citable as non-mandatory precedent, making it doubtful that granting PLAN's motion would materially advance its cause. *See* NRAP 36(c)(2) & (3) (permitting citation of unpublished dispositions but specifying they do not establish mandatory authority).

We therefore deny the motion to depublish and for other alternative relief.

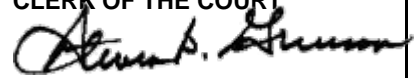
It is so ORDERED.

, C.J.
Douglas

, J.
Pickering

, J.
Gibbons

cc: Hon. Elliott A. Sattler, District Judge
Michael C. Lehnars
Law Office of Nathan R. Zeltzer
Robert W. Murphy
Howard & Howard Attorneys PLLC
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP/Las Vegas
Kemp, Jones & Coulthard, LLP
Washoe District Court Clerk



1 **NOEO**
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Attorneys for Plaintiffs

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

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

11 Plaintiffs,

12 vs.

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

15 Defendants.
16

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF ORDER

17 PLEASE TAKE NOTICE that the Court entered the attached Order on October
18 22, 2018.

19 Dated: October 22, 2018

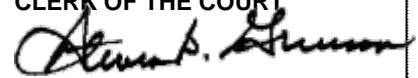
20 LEON GREENBERG PROFESSIONAL CORP.

21 /s/ Leon Greenberg

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AA009298



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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,

ORDER

vs.

A CAB TAXI SERVICE LLC and A CAB,
LLC,

Defendants.

Plaintiffs' Motion to Amend Judgment, filed on August 22, 2018, solely for the purpose of amending the judgment entered on August 21, 2018 to indicate it is against "A Cab Series LLC" as the current name of the originally summoned defendant and judgment debtor "A Cab LLC," came before the Court for hearing on October 22, 2018, with the appearances by counsel for the parties being duly noted on the record. Defendants' opposition to that motion filed on September 10, 2018, and plaintiffs' reply in support filed on September 20, 2018, were duly considered by the Court along with the arguments of counsel for the parties presented at the hearing.

It is hereby ORDERED, upon consideration of the arguments and submissions of the parties and after due deliberation by the Court, and upon good cause shown,

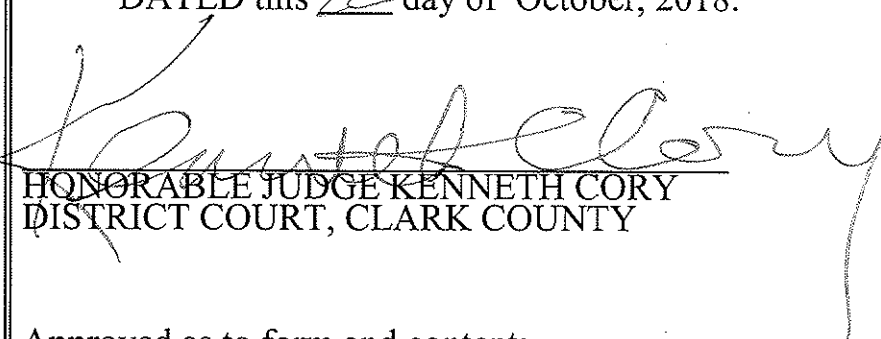
1 that the motion is GRANTED; and

2
3 It is further ORDERED that upon entry of this Order the Clerk of the Court
4 shall indicate on its records that the judgment originally entered by the Court on
5 August 21, 2018 in this case is also entered against A Cab Series LLC, the current
6 name of the originally summoned defendant and judgment debtor A Cab LLC; and

7 It is further ORDERED that plaintiffs' counsel, upon entry of this Order, may
8 proceed to enforce the judgment originally entered by the Court on August 21, 2018
9 in this case against property held in the name of A Cab Series LLC pursuant to the
10 terms set forth in the Order of August 21, 2018 entering such judgment.

11
12 **IT IS SO ORDERED.**

13 DATED this 22 day of October, 2018.

14
15 
16 HONORABLE JUDGE KENNETH CORY
17 DISTRICT COURT, CLARK COUNTY

18 Approved as to form and content:

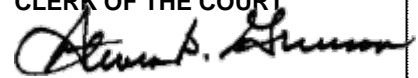
19
20 **RODRIGUEZ LAW OFFICES, P. C.**

**LEON GREENBERG
PROFESSIONAL
CORPORATION**

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22 By: _____

23 Esther C. Rodriguez, Esq.
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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,

ORDER

vs.

A CAB TAXI SERVICE LLC and A CAB,
LLC,

Defendants.

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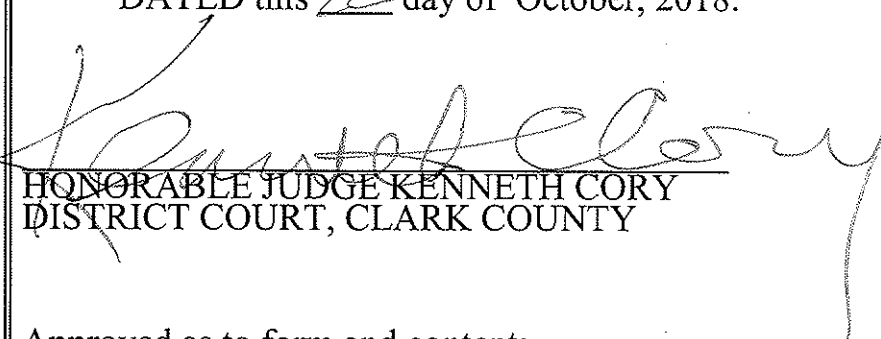
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3 It is further ORDERED that upon entry of this Order the Clerk of the Court
4 shall indicate on its records that the judgment originally entered by the Court on
5 August 21, 2018 in this case is also entered against A Cab Series LLC, the current
6 name of the originally summoned defendant and judgment debtor A Cab LLC; and

7 It is further ORDERED that plaintiffs' counsel, upon entry of this Order, may
8 proceed to enforce the judgment originally entered by the Court on August 21, 2018
9 in this case against property held in the name of A Cab Series LLC pursuant to the
10 terms set forth in the Order of August 21, 2018 entering such judgment.

11
12 **IT IS SO ORDERED.**

13 DATED this 22 day of October, 2018.

14
15 
16 HONORABLE JUDGE KENNETH CORY
17 DISTRICT COURT, CLARK COUNTY

18 Approved as to form and content:

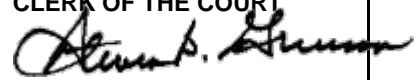
19
20 **RODRIGUEZ LAW OFFICES, P. C.**

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Attorneys for Plaintiffs



1 **TRAN**

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

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

11
12 BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE
13 MONDAY, OCTOBER 22, 2018

14 **TRANSCRIPT RE:**
15 **ALL PENDING MOTIONS**

16 **APPEARANCES:**

17 For the Plaintiffs: LEON GREENBERG, ESQ.
18 DANA SNIEGOCKI, ESQ.

19 For the Defendants: ESTHER C. RODRIGUEZ, ESQ.
20 MICHAEL K. WALL, ESQ.
21 JAY A. SHAFER, ESQ.

22 **ALSO PRESENT:** STEVEN J. OSHINS, ESQ.

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

AA009304

1 LAS VEGAS, NEVADA, MONDAY, OCTOBER 22, 2018, 10:16 A.M.

2 * * * * *

3 THE COURT: Here we are again.

4 THE CLERK: Page 1 and 2, Michael Murray versus A Cab Taxi Service.
5 Case Number A669926.

6 THE COURT: Would counsel please enter your appearances.

7 MR. GREENBERG: Leon Greenberg, Dana Sniegocki for plaintiff, Your
8 Honor.

9 MS. SNIEGOCKI: Good morning.

10 THE COURT: Good morning.

11 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez for the
12 defendants.

13 MR. WALL: Michael Wall for the defendants.

14 MR. SHAFER: Jay Shafer for defendants.

15 THE COURT: Good morning.

16 We have three motions to deal with today, as counsel are no doubt
17 aware. We have defendants' motion for reconsideration, amendment, for a new trial
18 and for dismissal of the claims. We have plaintiff's motion to amend the judgment
19 to include A Cab Series, LLC. And we have the defendants' motion filed on OST,
20 motion to dismiss the claims based upon jurisdiction, specifically subject matter
21 jurisdiction. It seems to make sense to me that we treat that motion first. If the
22 defendant is correct, then there's no need to go any further. I would toss out to be
23 considered as well the fact that on the 22nd or thereabouts the defendant filed a
24 notice of appeal, so that always raises the question of having filed a notice of appeal,

1 does this Court have jurisdiction to enter any order, or more specifically, to enter
2 an order that purports to grant any of the relief treated or asked for in these several
3 motions?

4 Mr. Wall.

5 MR. WALL: May I?

6 THE COURT: Please.

7 MR. WALL: Thank you, Your Honor. Let me address the issue of the notice
8 of appeal first that you have raised. At the present time that notice of appeal is
9 ineffective for any purpose and it does not divest this Court of any jurisdiction, is
10 my understanding. The reason that I filed that notice of appeal is to protect all
11 possible bases because the Nevada Supreme Court in its effort under what I call
12 the Parraguirre rule to create a situation where there would not be traps for the
13 unwary draftsman in the appellate arena kind of muddied up the waters as far as
14 notices of appeal are concerned. On the off chance that neither of the motions that
15 have been filed by the plaintiff or by the defendant post-judgment in this case is a
16 final judgment or qualifies as a tolling motion --

17 THE COURT: Uh-huh.

18 MR. WALL: -- the time for the notice of appeal came. There's also another
19 problem in this case with the argument or the position that we take, which is that
20 that final judgment is not a final judgment.

21 THE COURT: Uh-huh.

22 MR. WALL: If it's not a final judgment, then it's not tolled.

23 THE COURT: Uh-huh.

24 MR. WALL: Assuming it's a final judgment and assuming there's a tolling

1 motion, the notice of appeal is invalid at this point in time, but under the rule at the
2 time an order is entered granting or denying the pending motions, that notice of
3 appeal will become effective.

4 THE COURT: Now, is there case law that sets out all of these points along
5 the way?

6 MR. WALL: Yes. This is NRAP Rule 3 -- NRAP Rule 4 sets out this rule.

7 THE COURT: And is there any case law that backs up your interpretation
8 of these rules in that fashion?

9 MR. WALL: There's a lot of case law that backs it up, but not that I have on
10 the tip of my tongue, Your Honor.

11 THE COURT: Okay.

12 MR. WALL: But it's expressed in the rule itself, so it's very, very clear in the
13 rule. On the off --

14 THE COURT: Do we agree that it would be extremely important that parties
15 and the district court could be able to readily ascertain whether or not it had lost
16 jurisdiction to the supreme court? In other words, rules regarding jurisdiction should
17 be sufficiently clear that parties and counsel and the courts can readily determine
18 who has jurisdiction.

19 MR. WALL: I had this argument specifically with Judge Parraguirre and I
20 agree. I think that when they changed the rule what was a very clear rule before
21 so that the courts and the parties knew whether or not they had to file a notice of
22 appeal, in creating this limbo appeal which they created by amendment of Rule 4,
23 that has created this situation.

24 Assuming for purposes of argument that this isn't a final judgment,

1 that the motions do not toll and that it is a valid notice of appeal, when it was filed,
2 it would divest this Court of jurisdiction -- not to hear motions, the Court still has
3 jurisdiction to hear any motion that's brought. It divests this Court of taking action
4 that would affect the issues directly that are pending on appeal. So that, for
5 example, if this Court were to decide that it was going to dismiss the action, it could
6 do -- I believe it could just do an order dismissing it. It could also do an order to
7 cover all the bases under the Huneycutt rule, Huneycutt v. Huneycutt, which is
8 still good law for the few situations to which it would apply and this would be that
9 situation.

10 THE COURT: Uh-huh.

11 MR. WALL: This Court could grant the motion to dismiss, or in the alternative
12 if this Court doesn't have jurisdiction to grant it, certify to the supreme court that it is
13 inclined to grant it, at which time we would take that order to the supreme court and
14 the supreme court would take action on it.

15 THE COURT: Has declined to grant it because it believes it does not have
16 jurisdiction?

17 MR. WALL: But this Court always has jurisdiction to deny it. It only would
18 have a problem if it's inclined to grant it.

19 THE COURT: Well, is it in Huneycutt -- maybe we're getting a little far afield
20 here from the issues of the day, but is it also a requirement that the district court
21 give some indication to the supreme court that it would -- it might look favorably
22 upon the motion that's been filed?

23 MR. WALL: Well, the Court has two options under Honeycutt. I mean, either
24 way the Court is to hear the motion. If the Court denies it, it just denies it.

1 THE COURT: Uh-huh.

2 MR. WALL: If it's inclined to grant it, then it can certify to the supreme court --

3 THE COURT: Yeah.

4 MR. WALL: -- that it's inclined to grant it and the reasons why.

5 THE COURT: Yeah. Okay.

6 MR. WALL: But in this case assuming that that is a final judgment, which of
7 course we dispute -- that's why I had to file my notice of appeal to be certain that we
8 didn't lose any appellate rights. Assuming that it is a final judgment, we have tolling
9 motions and that notice of appeal doesn't affect this Court's ability to enter an order
10 one way or the other at this point on any of the pending motions.

11 THE COURT: Well, given the need for clarity in these matters of jurisdiction,
12 why would the court not -- when I say the court, I mean not just this Court but our
13 supreme court, why would they not say when you file a document that purports to
14 be the final judgment that, you know, dots the i's and crosses the t's, it's a final
15 judgment for purposes at least of determining whether you need to file a notice of
16 appeal to preserve your rights or not, why -- what I hear you saying, your argument
17 would require that we sort of dislodge the final judgment and say it's really not a final
18 judgment.

19 MR. WALL: I believe as an appellate lawyer who's been doing this for a long
20 time that that is probably the law, Your Honor. Nevertheless, in order to -- because
21 there is this grey area --

22 THE COURT: Yeah.

23 MR. WALL: -- in order to protect our right to an appeal --

24 THE COURT: Uh-huh.

1 MR. WALL: -- certainly if the judgment says it's a final judgment and there's
2 an appeal from the final judgment --

3 THE COURT: Uh-huh.

4 MR. WALL: -- that invokes the jurisdiction of the Nevada Supreme Court,
5 at least to the extent of determining whether or not it's a final judgment. If they
6 determine it's not a final judgment, notice of appeal becomes irrelevant because
7 they simply say we don't have any subject matter jurisdiction, which can be raised
8 at any time and should be raised by a court sua sponte when it's appropriate and
9 they would dismiss the appeal.

10 THE COURT: Okay.

11 MR. WALL: And that wouldn't affect anybody because there's going to be
12 a final judgment somewhere down the road and you file a new notice of appeal.
13 On the other hand, if it turns out to be a final judgment, then you've got your -- you
14 filed your appeal and you haven't missed your opportunity.

15 THE COURT: Yeah.

16 MR. WALL: So I filed that notice of appeal out of an abundance of caution
17 because there have been a number of situations in light of the change in the rule.
18 And there's another wrinkle in this. I'm sorry, we're getting far afield --

19 THE COURT: Yes.

20 MR. WALL: -- but the other wrinkle in this is that five years ago the Nevada
21 Supreme Court decided that -- I mean, in the past it was clear a motion that sought
22 reconsideration didn't toll; a motion that sought specific relief under certain rules
23 did toll. It was a bright line test. The Nevada Supreme Court said that was a trap
24 for the unwary and they said instead of a bright line test we're going to look at every

1 motion and decide what it is.

2 THE COURT: Uh-huh.

3 MR. WALL: So now when a motion is filed, I can't be certain as an appellate
4 lawyer whether or not it's going to toll. Again, I've had this argument with the
5 Nevada Supreme Court. They don't like the argument, obviously, because they
6 made the rules.

7 THE COURT: Yeah. Well, would that depend --

8 MR. WALL: I understand how that protects people's rights, but it also puts
9 appellate lawyers in a position of having to file notices of appeal to protect a record,
10 and that's all I've done.

11 THE COURT: Well, given that from what I hear you say we're not entirely
12 sure how the supreme court would view this entire situation, would the Court not be
13 safest in interpreting the rules regarding divestment of jurisdiction and passage of
14 the jurisdiction to our supreme court?

15 MR. WALL: And if that were the case, that would certainly be a safe
16 approach to take.

17 THE COURT: Would the Court not be well advised to plod step-by-step and
18 say I don't think I have jurisdiction, go find out?

19 MR. WALL: We can't --

20 THE COURT: And then if the court decided that, no, Mr. District Court, you
21 still have jurisdiction, then we'd come back and deal with whatever these issues are.

22 MR. WALL: There's not a way of doing that, Your Honor. That's why the
23 Honeycutt procedure is there.

24 THE COURT: Okay.

1 MR. WALL: Your Honor has jurisdiction to hear and decide the motion and
2 that's what's supposed to happen in every case.

3 THE COURT: Uh-huh.

4 MR. WALL: If there isn't jurisdiction, then an order granting the motion has
5 no effect until the supreme court accepts it.

6 THE COURT: Well, let me --

7 MR. WALL: But you're still supposed to do that.

8 THE COURT: Let me backtrack a little bit, since we're off into the netherlands
9 here. Is that how that country got named? Netherlands. Okay, let me pursue this
10 a little further because in just poking around what we could tell of the state of the law
11 on jurisdiction once a notice of appeal has been filed, we look at the 1993 case,
12 Smith v. Emery, and if you're interested we have the cite we'll give you later, it seems
13 to speak in fairly concrete terms that once a notice of appeal is filed, district court is
14 divested of jurisdiction. And in that case it was a motion for a new trial, which the
15 supreme court simply said no, you can't deal with that. And they cite to a 1987 case.
16 That was a '93 case, '87 was the Rust decision v. Clark County School District, in
17 which it brings out the need to have issues of jurisdiction between the two courts to
18 be clear so that everyone can know. And I know I'm just adding more fuel to your
19 fire, but is this a case where our supreme court is going to need to grapple with this
20 issue or are we just doing make work here?

21 MR. WALL: It's not an issue. It's a non-issue. The reason it's a non-issue is
22 because the Court has jurisdiction always, as Huneycutt makes clear, and that's still
23 the law. It always has jurisdiction to consider the motion and always has jurisdiction
24 to deny the motion. But if a court is to grant the motion, then it doesn't -- if it doesn't

1 have jurisdiction to do so then it can certify that if it had jurisdiction it would do so,
2 and that's what it's supposed to do. It's supposed to still make the decision so that
3 the decisions in district court don't remain in limbo for years while the matter is on
4 appeal. That's how it's supposed to be.

5 THE COURT: So are all these motions effectively Huneycutt motions --
6 governed by Huneycutt?

7 MR. WALL: No, because I drafted Rust.

8 THE COURT: Oh, I did not know that.

9 MR. WALL: Not only did I draft it, but it was -- I could give you a tremendous
10 history of that decision and Justice Mowbray's dissent in that case.

11 THE COURT: Uh-huh.

12 MR. WALL: Part of Justice Parraguirre's amendment of the Rule 3A was to
13 deal with what he thought was a too harsh, too bright line test --

14 THE COURT: Ahh.

15 MR. WALL: -- in Rust.

16 THE COURT: Equity.

17 MR. WALL: That's what he was addressing.

18 THE COURT: That equity will mess you up every time, you know.

19 MR. WALL: And so those cases -- I mean, Rust deals with a situation where
20 a notice of appeal was premature. A bright line was drawn. A notice of appeal that's
21 premature doesn't have effect now or ever.

22 THE COURT: Uh-huh.

23 MR. WALL: That was the bright line that was drawn and that's the bright line
24 approach that existed until ten years ago when they amended the rule. When they

1 amended the rule they accepted this not bright line test. You can file a premature
2 notice of appeal and it's of no effect whatsoever when you file it, but if finality ever
3 gets reached --

4 THE COURT: Uh-huh.

5 MR. WALL: -- it becomes effective. And the purpose of that is so that you
6 don't have a lawyer out there who's filed his notice of appeal and it was technically
7 premature and he didn't know that and then the technical prematurity disappears
8 and he doesn't know he needs to file a new notice of appeal and he doesn't do that.
9 That's the trap for the unwary draftsman.

10 THE COURT: Uh-huh.

11 MR. WALL: Justice Mowbray's dissent in the Rust case is all about that
12 problem. And in that case in Rust the notice of appeal was premature and Justice
13 Mowbray had a majority that said we're going to treat that as a technical defect. But
14 then Justice Gunderson didn't like that decision and he asked me to draft a different
15 decision. I drafted the Rust decision --

16 THE COURT: Okay.

17 MR. WALL: -- which says, in those days, that's not a technical defect, that's
18 a serious defect.

19 THE COURT: Uh-huh.

20 MR. WALL: And the line that was drawn was the courts need to know when
21 the notice of appeal is filed whether it's a valid notice of appeal or not.

22 THE COURT: Okay.

23 MR. WALL: We drew that as -- Justice Gunderson drew that as a bright line
24 test. That stayed until Justice Parraguirre prevailed on the court to pretty much

1 accept the dissent of Justice Mowbray and make that the law by amending the rule,
2 which puts me as an appellate lawyer in the position of not knowing whether to file
3 a notice of appeal or not, so every time there could be a notice of appeal time, I file
4 my notice of appeal. In my opinion that notice of appeal is not yet valid for any
5 purpose.

6 THE COURT: Okay.

7 MR. WALL: Then we get to the other problem, the Huneycutt problem. The
8 Huneycutt problem only existed in situations where a post-judgment motion was
9 filed and that post-judgment motion was not a tolling motion.

10 THE COURT: Uh-huh.

11 MR. WALL: If there was a tolling motion, it didn't matter.

12 THE COURT: Yeah.

13 MR. WALL: Because of the tolling motion, the notice of appeal was invalid
14 for any purpose ever.

15 THE COURT: Well, is it clear what are tolling motions and what are not?

16 MR. WALL: Well, it was clear until five years ago --

17 THE COURT: Uh-huh.

18 MR. WALL: -- that a motion that was brought under Rule 52, under Rule 59 --

19 THE COURT: Uh-huh.

20 MR. WALL: -- or under Rule 50(b) was a tolling motion. So when we were at
21 the court we didn't have to read the motion to see what it was. We had to see what
22 the authority was that was cited. If you cited the appropriate authority, that's a tolling
23 motion --

24 THE COURT: Yeah.

1 MR. WALL: -- because everybody should know what's a tolling motion and
2 what's not a tolling motion. If it didn't cite one of those three rules, it was not a
3 tolling motion. If it wasn't a tolling motion, you follow the Huneycutt procedure. But
4 then the first thing that happened was they expanded the rules to make it so that
5 there were fewer Huneycutt motions and more tolling motions. But five years ago
6 they kind of made that unclear because they said, hey, if you have this motion over
7 here and it doesn't cite the rule but it in essence in seeking the same relief, we're
8 going to treat it as a tolling motion. And, oh, by the way, if you bring a motion and
9 cite the rule but you're not seeking anything except reconsideration, we're not going
10 to treat that as a tolling motion.

11 So now I have to read the rule and guess whether or not the supreme
12 court is going to treat it as a tolling motion. I believe that the motions that have been
13 filed here are clearly tolling motions and the notice of appeal that I filed is invalid --

14 THE COURT: Now, does that mean --

15 MR. WALL: -- but I had to file it because if the court decides --

16 THE COURT: Is that why this is not a Huneycutt situation?

17 MR. WALL: If they're non-tolling motions, then this is a Huneycutt situation,
18 but I believe they're tolling motions and if they're tolling motions the rule is very
19 specific, it does not divest the district court of jurisdiction for any purpose. That's
20 the exact language of the rule.

21 THE COURT: Okay. All right. So this is -- none of these motions -- or some
22 one or more of these motions that have been filed are tolling motions, in your view?

23 MR. WALL: Both the original motion to amend the parties, because that's
24 amending judgment, and our motion which cites all of the rules --

1 THE COURT: Uh-huh.

2 MR. WALL: -- they're both tolling motions.

3 THE COURT: Okay.

4 MR. WALL: The motion to dismiss is not a tolling motion, but it doesn't
5 matter because there's no valid notice of appeal at this time that would affect the
6 Court's jurisdiction --

7 THE COURT: Okay.

8 MR. WALL -- if the tolling motions are still pending.

9 THE COURT: All right. Let me pause a moment here just to see, does the
10 plaintiff have any dispute with the notion that the situation we're in involves a tolling
11 motion, one or more tolling motions, and that the notice of appeal therefore is
12 ineffective?

13 MR. GREENBERG: Your Honor, I would certainly agree that the motion to
14 amend the judgment to name the proper -- the amended party is properly before the
15 Court in terms of jurisdiction. I am not disputing Mr. Wall's analysis, but I just want
16 to make clear I'm not necessarily agreeing it's correct because I haven't actually
17 taken the time to sit down and analyze it. I defer to the Court's determination as to
18 the jurisdictional issue. I do think there is an issue, perhaps, in a party who's filed
19 a notice of appeal then asking the district court for relief from the judgment after
20 they filed a notice of appeal. But is that -- that to me strikes me as somewhat
21 inappropriate, but is that a jurisdictional problem? I'm not going to tell the Court it
22 is because I don't know. So that's what I can tell the Court.

23 THE COURT: So basically you don't want to commit yourself to either side
24 of this argument at this juncture?

1 MR. GREENBERG: I'm not disagreeing with Mr. Wall's analysis. I don't
2 believe I could appropriately tell the Court I know otherwise. I'm just giving my view.
3 In respect to our motion to amend the judgment, it doesn't make sense that in the
4 context of getting -- not actually changing the judgment. We're not asking the Court
5 to do anything in respect to modifying the judgment. We're simply asking the Court
6 to get the judgment named against the same party who changed their name.

7 THE COURT: Uh-huh, uh-huh.

8 MR. GREENBERG: So, you know, from our perspective or from anybody
9 who's a judgement holder's perspective, the idea that a defendant has a judgment
10 against them, they could change their name just after the judgment is entered and
11 then appeal and divest the district court of any ability to amend the judgment for
12 that purpose, it just doesn't make sense. I mean, I don't see that there's -- and
13 defendants aren't claiming that that would exist, in any event. So that's our limited
14 interest in terms of what we've brought before the Court on amending the judgment.
15 I think I've made myself clear, Your Honor.

16 THE COURT: Yes. Does this mean that in your view are we in a Huneycutt
17 situation? Does the Court need to state what it would do and then send it on its
18 merry way up to the supreme court to determine whether the Court had jurisdiction?

19 MR. GREENBERG: I don't -- I don't see that it would. I mean, the time for
20 us to make that motion under Rule 59 is extremely short. I believe it's ten days.

21 MR. WALL: Ten days.

22 MR. GREENBERG: The rule actually envisions it being done in a very short
23 period of time. And this is similar in structure, for example, to the federal rules
24 which will allow a party to come before the court and seek amendment of a motion

1 promptly to correct the sort of issues that we're raising with the Court in respect to
2 the entry of the judgment. And again, why should our rights be limited because they
3 filed a notice of appeal? Perhaps if we filed a notice of appeal it would be a different
4 story. But to give the opposing party the power to do that is not consistent with just
5 fundamental principles of fairness and appropriate procedure. So, no, I do not
6 believe our motion presents a Huneycutt issue. I think clearly Your Honor has the
7 ability to amend the judgment in these circumstances to have it entered against
8 the name of the defendant who changed their name during the course of these
9 proceedings.

10 THE COURT: Do you have any position on behalf of the plaintiffs as to
11 whether or not the other motions, the two motions filed by the defendant, that the
12 Court should treat it as a Huneycutt, indicate what ruling it would make and go on,
13 or should the Court -- I mean, if you have a position. I realize that it may not -- this
14 is all -- we're a bit far afield, I recognize that.

15 MR. GREENBERG: Yes, Your Honor.

16 THE COURT: Do you have any position on whether the Court needs to treat
17 this, the defendants' motions as Huneycutt motions or whether the Court can accept
18 that it's a tolling motion and that the notice of appeal is ineffective?

19 MR. GREENBERG: Well, Your Honor, I do have to agree that what's good
20 for the goose is good for the gander here. I don't want to come before the Court in
21 a hypocritical or contradictory position. I believe defendants' motion -- not their OST
22 but their original motion seeking an amendment of the judgment was similarly filed
23 within -- under Rule 59 within the 10-day period.

24 THE COURT: Uh-huh.

1 MR. GREENBERG: And as I've told the Court -- I believe it was filed prior to
2 their notice of appeal being filed. I'm not --

3 THE COURT: It was.

4 MR. GREENBERG: Okay.

5 THE COURT: I think one or two days before.

6 MR. GREENBERG: Well, Your Honor, under the jurisdictional view I'm taking
7 with the Court, which is fairly limited, I'm not addressing all the issues, I can't very
8 well argue that what I'm asking the Court to adopt as the principle to apply to one
9 party doesn't apply to both parties in that situation.

10 THE COURT: All right, thank you.

11 MR. WALL: Then I will just say --

12 THE COURT: Let's go back to then --

13 MR. WALL: I'm sorry.

14 THE COURT: Yes, you had more on that?

15 MR. WALL: I was just going to say that I agree exactly with what Leon has
16 said -- [inaudible].

17 THE COURT: We should mark this down. This may be the first time that
18 both sides --

19 MR. WALL: It probably is.

20 THE COURT: -- have been able to agree on anything in this case.

21 MR. WALL: I think on the two motions there's no Huneycutt problem and
22 there's no problem with -- there's no chance that there's a problem with this Court's
23 jurisdiction.

24 THE COURT: Uh-huh.

1 MR. WALL: Only when that presents a possible Huneycutt problem, which
2 I don't think it does, is the motion on OST to dismiss.

3 THE COURT: Uh-huh.

4 MR. WALL: And in that case it could easily be drafted as it's granted, or in
5 the alternative, if I don't have jurisdiction I certify that I would grant it.

6 THE COURT: Uh-huh.

7 MR. WALL: And if it's denied, it's not a problem.

8 THE COURT: Uh-huh. Okay. All right, thank you. That does help the Court
9 to get clear at least the beginning stumbling blocks to arriving at a decision here.

10 Let's to then with the defendants' last filed, first to be considered
11 motion for dismissal of claims on order shortening time.

12 MR. WALL: Thank you, Your Honor. Subject matter jurisdiction is something
13 that exists in the court or it does not. If it does not exist, it can be raised at any time,
14 the issue, and it should be raised if it hasn't been raised by the parties or by the
15 court at any time, regardless of where we're at. You could not have a case more
16 on point or a more stronger statement of that than the Tarkanian case, which has
17 been cited to you in the papers. After years of litigation it got to the Nevada
18 Supreme Court. The issue there was whether the subject matter jurisdiction had
19 been defeated because a party who was a necessary party had not been joined.
20 That issue had never been raised by the parties. It was raised sua sponte by the
21 court and the court said all of the proceedings from the very beginning are void --
22 not voidable -- there was no jurisdiction, there's no subject matter jurisdiction.

23 In the first motion to dismiss in this case all the way back at the
24 beginning the defendants raised a subject matter jurisdiction question, this very

1 question that they could not get jurisdiction by aggregating their claims. At that
2 time we didn't have a decision from the Nevada Supreme Court confirming that
3 that is in fact the law in Nevada. And that is in fact the reason that we are re-raising
4 this issue now because we have this recent decision, Castillo v. United Federal
5 Credit Union, which just came down a couple of months ago, and the Nevada
6 Supreme Court said very clearly, after addressing the issue directly, you cannot
7 aggregate the claims in order to get district court jurisdiction. There's --

8 THE COURT: What about the point on Castillo that the plaintiff raises? In
9 a subsequent order in that case our supreme court apparently refused to confirm
10 that under that case that a class action seeking only damages has to proceed in
11 the justice court -- that's a simplification of the argument -- even when the total
12 class damages exceeded that court's jurisdictional limitation. I mean, why would
13 the supreme court say that, having already ordered Castillo?

14 MR. WALL: In the order that came after, in the unpublished order that comes
15 after, is that what we're talking about?

16 THE COURT: Yes. Uh-huh.

17 MR. WALL: Well, it's very unfortunate dicta about dicta from the Nevada
18 Supreme Court and I want to address that issue.

19 THE COURT: Okay. All right.

20 MR. WALL: A motion was brought to the panel to de-publish the decision
21 and in that a lot of arguments were made and one of the arguments was that the
22 conclusion that you can't aggregate claims might be a bad thing in the future. And
23 so the Nevada Supreme Court in an unpublished order, the kind that comes from
24 staff and goes, you know, through bunches of these things, said a number of

1 reasons why we're going to deny this motion to de-publish, one of which is there's
2 no rule allowing you to move to de-publish in the first place. You can move to
3 publish, but the rule is clear you can't move to de-publish. Why the court went
4 beyond that, because I've seen it a hundred times, I've done the order myself,
5 prepared it for signature so many times, you just can't bring this motion.

6 THE COURT: Uh-huh.

7 MR. WALL: But they decided they wanted to bolster the decision. And
8 there's a paragraph in there where they said, oh, by the way, we reversed on the
9 injunction ground only, so it wasn't necessary to our decision so it's just dicta
10 anyway. That's unfortunate. I'm not going to tell them that it's not dicta, although
11 in my view it wouldn't be because dicta is supposed to be some statement that's
12 made in a case. That really wasn't what they considered. And here, when you
13 read the opinion --

14 THE COURT: Some footnote along the way.

15 MR. WALL: -- the first thing it says is the first thing we have to decide is this.

16 THE COURT: Yeah.

17 MR. WALL: And just because we didn't reverse on this doesn't mean the
18 affirmance of that part wasn't necessary to the decision, it was, and they gave a long
19 discussion about it. Dicta or --

20 THE COURT: Castillo was at all times a full en banc matter, was it, or was it
21 a panel?

22 MR. WALL: No, it's a panel.

23 MR. GREENBERG: No, it was a panel decision, Your Honor.

24 THE COURT: It was a panel. Okay, thank you.

1 MR. WALL: It's a panel of three.

2 THE COURT: All right.

3 MR. WALL: And it's the same panel on the decision there. That's how it
4 would have to go through the process. You wouldn't have -- if it had been en banc,
5 you wouldn't have the three judge panel denying the motion.

6 THE COURT: So it's conceivable that regardless of what this Court does
7 and regardless of what the supreme court does about this decision, that it really
8 won't be final until we get some sort of en banc decision.

9 MR. WALL: Well, it's conceivable, that's true. And whether you label this
10 decision where they actually discussed the whole thing in some depth dicta or not,
11 I think it's highly unlikely that the Nevada Supreme Court is going to back away
12 from the decision that they made, which was very, very clearly stated, you can't
13 aggregate your claims in order to get district court jurisdiction.

14 THE COURT: Uh-huh.

15 MR. WALL: And there's a fundamental reason for that. There's a
16 fundamental reason why they have to recognize that you don't aggregate the claims,
17 and that is because justice courts have jurisdiction over class action suits as do
18 district courts, and justice courts have jurisdiction over equitable matters as do
19 district courts. And so we go back to a little more history; 1978. Before that district
20 courts and justice courts enjoyed concurrent jurisdiction over certain questions. Lots
21 of case law out there that you could cite. But if it's older than 1978, it's just wrong.

22 THE COURT: Uh-huh.

23 MR. WALL: In 1978, Article 6, Section 6 of the constitution was amended to
24 make it so that there can be no concurrent jurisdiction. Shortly thereafter, the Court

1 decided the KJB case where they made it absolutely clear that even though that
2 meant there had to be two actions for every eviction in the state of Nevada, one in
3 district court and one in justice court, they said that's really bad but that's what the
4 constitution requires.

5 THE COURT: Uh-huh.

6 MR. WALL: I drafted KJB for the court.

7 THE COURT: Uh-huh.

8 MR. WALL: That is still the law today. Now, the legislature got together --

9 THE COURT: And similarly --

10 MR. WALL: They amended the jurisdictional statutes --

11 THE COURT: Yeah.

12 MR. WALL: -- the legislature, to do away with the problem that was presented
13 in KJB, but the analysis of the constitution has not changed.

14 THE COURT: How could they do that if it was -- how could the legislature do
15 that if it was a constitutional principle?

16 MR. WALL: The legislature creates jurisdiction.

17 THE COURT: Okay.

18 MR. WALL: That's what the constitution says. And they hadn't created the
19 jurisdiction. That was the problem in KJB. They had created jurisdiction here and
20 jurisdiction here and there couldn't be concurrent jurisdiction.

21 THE COURT: So the jurisdiction was -- the legislature was catching up with
22 the constitution.

23 MR. WALL: They solved that problem by amending the jurisdiction statute.

24 THE COURT: All right.

1 MR. WALL: The legislature certainly had that power to do that. In fact, it
2 says in KJB --

3 THE COURT: Well, then --

4 MR. WALL: -- it asked the legislature --

5 THE COURT: I recognize we're going far afield again, but we're really not
6 with this. Does that --

7 MR. WALL: But we're not, Your Honor, because this is really important.

8 THE COURT: Well, okay, this is important, but it leaves the Court completely
9 in a quandary once again about whether it -- about how to proceed. In this case
10 we have not just an alleged violation of statute, but an alleged violation of our
11 constitution.

12 MR. WALL: That's correct, Your Honor.

13 THE COURT: Is this -- are you saying this is a situation where there's a gap
14 that has to be caught up with and that --

15 MR. WALL: No.

16 THE COURT: -- that the legislature needs to act to make more clear the
17 issue of does elevating a cause of action or a right to the constitution of the state
18 carry with it at least an implied argument of some sort that, well, if it's that important
19 then we would have the district courts deal with it?

20 MR. WALL: It certainly does not, Your Honor.

21 THE COURT: No?

22 MR. WALL: The justice court is as perfectly capable as the district court
23 and has jurisdiction, as does the district court, to enforce the constitution within the
24 parameters of its subject matter jurisdiction.

1 THE COURT: Well, let me tell you that looking back on this case, I have to
2 question that. In other words, as much as it has taken for the district court to deal
3 and grapple with these issues and effectively exercise any power or authority that
4 the Court has, I have to question whether any of our justice courts would have been
5 prepared to deal with these issues as well as the district court.

6 MR. WALL: And that's a structural problem for the voters to maybe address
7 or for the legislature to address, but the legislature creates jurisdiction and nobody
8 else can. Courts can't create their own jurisdiction.

9 THE COURT: Okay.

10 MR. WALL: And the legislature has created the jurisdiction here.

11 THE COURT: Uh-huh.

12 MR. WALL: This is where the argument of opposing counsel is incorrect over
13 and over and over again. He keeps saying we sought equitable relief in this court.

14 THE COURT: Yeah.

15 MR. WALL: Equitable relief, as though equitable relief and an injunction are
16 the same thing.

17 THE COURT: Yeah.

18 MR. WALL: Just because an injunction is a type of equitable relief doesn't
19 mean that any time you seek equitable relief the jurisdiction is in district court.

20 THE COURT: Okay.

21 MR. WALL: Article 6, Section 14 of the Nevada Constitution defines a civil
22 action as including both authority in equity and law.

23 THE COURT: Uh-huh.

24 MR. WALL: The justice courts exercise equitable powers all the time that are

1 given to them, and in fact they are specifically authorized to handle class action suits
2 where the amount in controversy, not aggregated, is less than \$15,000 per claim.
3 You have to have at least one claimant who has the \$15,000 to get to district court.
4 There are as many other constitutional rights which are equally important to us that
5 are protected in the justice court every single day in cases where the amount in
6 controversy is under \$15,000.

7 THE COURT: Uh-huh.

8 MR. WALL: The legislature gets to draw that line --

9 THE COURT: Uh-huh.

10 MR. WALL: -- and they drew the line. The reason that there's only
11 jurisdiction over injunctions in district court is because if you read in NRS 4.370
12 where the justice courts' jurisdiction is delineated, the justice court is not given
13 jurisdiction over injunctions.

14 THE COURT: Okay.

15 MR. WALL: And the way that the district court gets its jurisdiction
16 constitutionally from the legislature is the district court has jurisdiction in all civil
17 actions, that would include equitable and legal, in which the justice court does not
18 have jurisdiction.

19 THE COURT: Yep.

20 MR. WALL: If the justice court has jurisdiction, the district court does not.

21 THE COURT: Okay.

22 MR. WALL: In this case no matter how incompetent the justices of the
23 peace, no matter how incompetent their court to deal with this issue, the legislature
24 has created the jurisdiction over this case and it is in the justice court.

1 THE COURT: And that's when this was stirred up before, not in our case
2 but in previous cases, they looked outside the jurisdiction to see how other states
3 treated similar matters and found that --

4 MR. WALL: Well, they're always going to when they're trying to construe a
5 statute --

6 THE COURT: Yeah.

7 MR. WALL: -- but it's very clear in this state, it's very, very clear the Nevada
8 Constitution specifically says there is no concurrent jurisdiction between district
9 courts and justice courts. It doesn't exist; it can't exist. So all we have to do is look
10 at the statutes to see where the jurisdiction over this case lies.

11 THE COURT: Okay.

12 MR. WALL: And the Nevada Supreme Court has said you cannot aggregate
13 the claims of the claimants in order to get jurisdiction. It leave us with one possibility,
14 the possibility they've argued. The equitable stuff doesn't make any difference.

15 THE COURT: Including injunctive relief?

16 MR. WALL: Well, that's what I'm going to talk about now, injunctive relief.

17 THE COURT: Oh, okay.

18 MR. WALL: That's the one thing because they say, well, we're still trying to
19 seek equitable remedies against Jay Nady. You can't have it both ways, Your
20 Honor. That action is either severed and it's a separate action from this action or
21 it's not. Of course my argument has been that --

22 THE COURT: I'm sorry, I missed one word. They're seeking separate action
23 against --

24 MR. WALL: Jay Nady.

1 THE COURT: Mr. Nady. Yes. Okay. All right.

2 MR. WALL: In order to obtain the final judgment in this case --

3 THE COURT: Yeah.

4 MR. WALL: -- that judgment severs the claims against Jay Nady.

5 THE COURT: Yeah.

6 MR. WALL: As we discussed previously, there's a huge difference between
7 holding them in abeyance, bifurcating them, doing anything else. When you sever
8 them you make it into a separate case.

9 THE COURT: Uh-huh.

10 MR. WALL: You can't rely on I have finality because we severed that case --

11 THE COURT: Uh-huh.

12 MR. WALL: -- but, oh, by the way, that case is still pending and we have
13 claims there.

14 THE COURT: Uh-huh.

15 MR. WALL: The only claim that both in -- it was both in the Castillo case
16 and in the Edwards case that they relied on. The Nevada Supreme Court found
17 jurisdiction in the district court because there had been a claim for an injunction.
18 The district court, having had jurisdiction over the claim for an injunction had
19 ancillary jurisdiction over all of the remainder of the claims that were brought; both
20 cases.

21 THE COURT: And why is that not so in our case?

22 MR. WALL: Because in both of -- this is the difference between those cases
23 and this case. In both of those cases the Court said it has to be -- the injunction
24 thing works if they really sought an injunction in reality.

1 THE COURT: Yeah. Okay.

2 MR. WALL: In both of those cases they pleaded an injunction, a claim for
3 an injunction where they set out the elements of an injunction. And they brought
4 motions for injunctive relief and they had it either granted or denied by the district
5 court and it was treated -- they actually pleaded a claim for an injunction. The
6 plaintiffs in this case have never pleaded a claim for injunction. If you look at their
7 complaint, they pleaded two claims.

8 THE COURT: Have they pled as a remedy injunctive relief?

9 MR. WALL: They simply state it as a requested remedy. We want all
10 injunctive and equitable relief that may be available to us.

11 THE COURT: Okay.

12 MR. WALL: That's not a claim. They pleaded two claims.

13 THE COURT: Well, I agree with you it's not a claim, but is the process of
14 going for injunctive relief, is it a claim or is it a remedy?

15 MR. WALL: Injunction is a claim which you plead as a claim and you plead
16 all of the elements of an injunction.

17 THE COURT: Do we not have case law that --

18 MR. WALL: It is both a claim and a remedy.

19 THE COURT: Well, okay, but where is -- is there any authority that says any
20 time you ask for an injunction, because it is a claim you therefore must plead it in
21 your complaint --

22 MR. WALL: I think --

23 THE COURT: -- as a claim, as opposed to a request or a prayer for relief
24 that includes injunctive relief?

1 MR. WALL: I don't think that you can change every justice court complaint
2 into a district court complaint by throwing in a line in your prayer for relief that you
3 want injunctive relief.

4 THE COURT: Okay.

5 MR. WALL: In this case -- and that's why those cases say there has to have
6 been truly a real attempt to get there. They didn't bring a motion for an injunction.
7 They didn't plead an injunction. They simply asked for that as a remedy. I don't
8 think that that is sufficient to invoke the district court's jurisdiction. If that were the
9 case, you could get around it every single time.

10 And in fact, in this case they haven't asked for any injunction into the
11 future. They've never even sought that kind of relief. They have a deadline that
12 they set off, and we're looking for damages from this date to this date, which is a
13 date in the past. They have never come in here and asked Your Honor to enjoin
14 my client from taking some action which will have irreparable harm to people in the
15 future. That's what an action for an injunction is for and over which this Court has
16 jurisdiction. The fact that any order of the Court which orders somebody to do
17 something or not to do something may use the language injunction -- that's the other
18 thing they've relied on. We've got an order that says -- that certified the class and it
19 has the standard language in it enjoining the class members from doing something
20 outside of this action.

21 THE COURT: Yeah.

22 MR. WALL: That's not the kind of injunction that initially invokes the subject
23 matter jurisdiction in the district court. It has to be you're bringing an action for an
24 injunction, and that's not what they brought here. They brought an action here for

1 damages.

2 THE COURT: Well, what do you call the order of this Court, which you
3 successfully got reversed, that the defendants were enjoined for settling out the
4 Dubric case --

5 MR. WALL: Well, Your Honor --

6 THE COURT: -- until this case was resolved. Was that not an injunction?

7 MR. WALL: It was not -- it was not a pleading. You have to -- jurisdiction
8 comes from the pleadings, not from a motion three years or six years into the thing
9 asking Your Honor to enjoin somebody in the case from doing this or that or the
10 other thing. You don't get jurisdiction later on because somebody asked you to
11 enjoin someone. Number two, of course you understand my position that this Court
12 never had any authority to enjoin Judge Delaney in that matter.

13 THE COURT: Sure. Well, I didn't, as a matter of fact. But effectively it has
14 that result when you enjoin the parties in front of the judge.

15 MR. WALL: Exactly. And that's what I was saying. Just because along the
16 way in a case a court may take --

17 THE COURT: I still think the supreme court is wrong in that decision, by the
18 way --

19 MR. WALL: Well, they could be.

20 THE COURT: -- because of the things that I cited you're going to have --
21 and what they're going to claim here, if your client effectively settles out these issues
22 against a large segment of these people contained in the class action -- that's a long
23 way to say it -- I don't see how they will not be subject to the argument that they
24 have effectively hijacked the previous class action case.

1 MR. WALL: I've made my arguments, Your Honor --

2 THE COURT: Yeah, I know.

3 MR. WALL: -- and I understand your position.

4 THE COURT: I'm stating it for the record in case anybody is listening.

5 MR. WALL: But the point is -- the point is the fact that along the way the
6 Court orders the parties to do this or do that or do the other thing is not the
7 jurisdictional question. Jurisdiction --

8 THE COURT: Because that's really just a remedy?

9 MR. WALL: That's right. That's a remedy along the way. It could be -- all
10 kinds of things can up in a case, but subject matter jurisdiction is determined from
11 the pleadings.

12 THE COURT: And so the Court has no injunctive power unless it was pled
13 as a cause of action in the beginning in the complaint?

14 MR. WALL: I believe they have to plead it. And even if they didn't, I think
15 that if there was a case where it was pleaded as part of another cause of action but
16 they're saying there's irreparable harm and they're actually seeking an injunction
17 and they were to pursue that and you could find that in the pleading itself --

18 THE COURT: Uh-huh.

19 MR. WALL: -- that would invoke the subject matter jurisdiction of the Court.

20 THE COURT: Okay.

21 MR. WALL: But all we have here is a paragraph that says give us all the
22 injunctive and equitable relief that is available to us under the constitution.

23 THE COURT: I have a little trouble --

24 MR. WALL: That to me is a general prayer.

1 THE COURT: I have a little trouble with this whole concept, and that is it
2 comes from the idea that what I hear you saying is that even though -- I mean, I
3 guess I will say there's a supposition that out of this lawsuit when it was filed part
4 of what the plaintiffs were seeking was an order to the defendant or defendants to
5 quit violating the minimum wage act.

6 MR. WALL: No. By that time --

7 THE COURT: And that necessarily implicates an injunction for the future.

8 MR. WALL: They have to plead an injunction. They were seeking damages
9 for the violation. They didn't want it to continue on. There was still litigation going
10 on about what you had to do. There was a decision from the supreme court. There
11 has never been -- this Court hasn't been called upon either in the pleadings or
12 before to enjoin us and an affirmative injunction, start paying minimum wage now.

13 THE COURT: Uh-huh.

14 MR. WALL: By the time they came here, they were paying minimum wage.

15 THE COURT: Yeah.

16 MR. WALL: That's why we're trying to figure out what the damages are for
17 the periods of time that are covered by your Court's orders and they have a specific
18 start and end date. There's never been any time when somebody came in trying to
19 make the showing that is required for an injunction to -- for future conduct.

20 THE COURT: And therefore it was just window dressing in the beginning.
21 It does not qualify as a cause of action --

22 MR. WALL: I would say --

23 THE COURT: -- and therefore it does not boost jurisdiction into the district
24 court?

1 MR. WALL: I think that it's -- I don't think it's window dressing, I think it's
2 a request for whatever relief is available.

3 THE COURT: Okay.

4 MR. WALL: I think that's not sufficient to invoke jurisdiction. I think you have
5 to actually have a claim for an injunction to invoke subject matter jurisdiction. I think
6 that's why both of those cases have that language that says it has to be a real cause
7 of action for an injunction.

8 THE COURT: Uh-huh.

9 MR. WALL: Not just -- because you can have -- you can argue in every case,
10 as here --

11 THE COURT: Okay.

12 MR. WALL: -- everything that he thinks is equitable relief he's saying that
13 gives this Court jurisdiction. Equitable relief -- I mean, Article 6, Section 14 of the
14 constitution, we have one civil action where the courts have jurisdiction of both
15 equity and law. And that's true of this Court and it's true of the justice court.
16 And the amount in controversy here is not sufficient to invoke the subject matter
17 jurisdiction of this Court, and that issue can be and must be raised at any time when
18 it is recognized because if this Court has no subject matter jurisdiction, everything
19 has been void since day one and it has been.

20 THE COURT: And in fact, as you said, this is not just waking up and realizing
21 it. There was a claim or an argument raised in the beginning that the Court did not
22 have jurisdiction for the same reasons?

23 MR. WALL: That was raised with the first motion to dismiss, Your Honor.
24 We didn't -- of course we weren't able to make the Castillo argument because it

1 didn't exist yet.

2 THE COURT: Yeah.

3 MR. WALL: But we said at that time in the motion to dismiss that none of the
4 claimants could make the amount.

5 THE COURT: Uh-huh.

6 MR. WALL: And the argument was made that once you certify it as a class
7 you'll aggregate the amounts --

8 THE COURT: Uh-huh.

9 MR. WALL: -- which we were arguing was not appropriate. Now we have
10 a decision from the Nevada Supreme Court that says you can't aggregate the
11 amounts. I think that means this Court does not have subject matter jurisdiction to
12 proceed any further.

13 THE COURT: Did Castillo come down after the complaint was filed in this
14 matter?

15 MR. GREENBERG: Yes, it did, Your Honor.

16 THE COURT: I'm sorry?

17 MR. WALL: It came --

18 MR. GREENBERG: Yes. Castillo was issued in 2018, Your Honor.

19 THE COURT: Oh, yeah, yeah, yeah. Sure. Okay. Does that have any
20 relevance here, Mr. Wall? I mean, what you're saying is that the plaintiffs have
21 wasted everybody's time because they didn't see that the supreme court was going
22 to hold that.

23 MR. WALL: That's why I cite to you the Tarkanian case --

24 THE COURT: Okay.

1 MR. WALL: -- because after everybody's time was wasted and we got to
2 appeal --

3 THE COURT: Uh-huh.

4 MR. WALL: -- the Nevada Supreme Court said subject matter jurisdiction
5 exists on the day the case starts or it does not.

6 THE COURT: Yeah.

7 MR. WALL: The statute has not been changed which defines subject matter
8 jurisdiction in this case. The constitution has not been changed since that time.
9 When this case was filed, it was filed in the wrong court. And the fact that everyone
10 has wasted a lot of time on it doesn't change the fact that there was never subject
11 matter jurisdiction.

12 THE COURT: Uh-huh. Okay.

13 Mr. Greenberg, that's a lot to respond to.

14 MR. GREENBERG: Your Honor, the Edwards case is quite clear on this
15 issue and in Edwards -- and this is -- I do quote it in my papers. "When the district
16 court denied injunctive relief, however, it did not thereby lose its jurisdiction to
17 consider Edwards' claims for monetary damages."

18 THE COURT: Uh-huh.

19 MR. GREENBERG: Now, in Edwards the district court actually made a
20 finding, saying we're not going to give you any injunctive relief, so there was no
21 longer an injunctive relief claim before the court of any kind.

22 THE COURT: Uh-huh.

23 MR. GREENBERG: And then it went on and made its jurisdictional finding.
24 And Edwards was the same situation as Castillo. The damages were not within the

1 jurisdiction of the district court. And the supreme court reversed and said no, you
2 made a mistake here. Because you initially had jurisdiction, your jurisdiction did not
3 go away when you denied the injunctive relief.

4 THE COURT: Uh-huh.

5 MR. GREENBERG: You still had to hear the claim. And that was also a
6 class claim that was involving the exact same issues that were raised in Castillo
7 and the defendants are trying to raise here. Now, Edwards is dispositive of this
8 issue, Your Honor, and in fact we're far more advanced than Edwards because Your
9 Honor has in fact issued equitable injunctive relief. In fact, you still have claims for
10 injunctive relief and equitable relief pending before the Court. You certified a (b)(2)
11 class here and you retained jurisdiction to potentially issue further injunctive and
12 equitable relief. We haven't made a request to the Court for that because I think
13 the Court can understand we've been consumed in this litigation in trying to secure
14 the damages relief that we've agreed to limit -- present to the Court in a limited form
15 and the Court has agreed to grant us. There were other damages issues that were
16 raised in this case that ultimately we did not press the Court to rule on and were
17 not actually part of the Court's damages judgment, which raises another issue which
18 I think is --

19 THE COURT: Just before you go to that --

20 MR. GREENBERG: Yes, Your Honor.

21 (The Court confers with the law clerk)

22 THE COURT: All right, thank you. Go ahead.

23 MR. GREENBERG: As I was getting to, Your Honor, it raises another issue
24 which I bring to the Court's attention, not because I think it is really the primary

1 issue, but it may be of interest to the Court, which is that there was a comment by
2 Mr. Wall about how at least one of the plaintiffs, one of the class members needs
3 to present a claim within the jurisdictional limit of the court here. That jurisdictional
4 limit, by the way, was \$10,000 when this case was commenced, not the current
5 \$15,000 in respect to what's within the justice court jurisdiction. And Your Honor
6 actually awarded damages to some class members that are in excess of \$10,000.

7 And the damages claims that were presented on behalf of individual
8 class members for a significant number were in fact in excess of \$10,000 because,
9 again, we did not actually have the Court award damages on all the claims here.
10 There were, for example, claims regarding penalties that were due under 608.040
11 which we did not enter. There were questions of minimum wages that were due
12 under the \$8.25, the higher tier standard that the Court did not extend a judgment
13 on. So the question jurisdictionally, of course, is whether you present a damages
14 claim that is within the scope of the Court's jurisdiction, not ultimately what you get
15 awarded.

16 So -- although, again, I think this is really a secondary issue, I'm
17 bringing it to the Court's attention because the Court may view this as something
18 that it wishes to consider. Mr. Wall was primarily trying to bring to the Court's
19 attention the defendants' view that there is some division here between what it
20 means to have a claim for injunctive and equitable relief in the pleadings versus
21 making some sort of generalized non-specific claim. And there is nothing in
22 Edwards that supports this sort of very technical or narrow view of what constitutes
23 a claim for injunctive and equitable relief, but I will point out to the Court that in
24 plaintiffs' second amended complaint, this was filed in 2015, in paragraphs 20

1 and 21 the request is appropriate injunctive and equitable relief to make defendants
2 cease their violations of Nevada's constitution. And then in paragraph 21, a
3 suitable injunction and other equitable relief barring the corporate defendants from
4 continuing to violate Nevada's constitution.

5 So plaintiffs did not just recite, you know, a general request as many
6 pleadings do for equitable relief or injunction, but specifically regarding the
7 constitutional violations at issue, and these issues may still be before Your Honor.
8 You have certified the (b)(2) class. We have not come before the Court asking for
9 that relief. We do have in our counter motion, which Your Honor didn't mention
10 when you came to the bench but it was continued until today, we do have a request
11 for the Court for the appointment of a receiver and as part of that appointment of a
12 receiver we would ask that there be measures taken to insure that in fact Nevada's
13 constitutional minimum wage is complied with.

14 So we have not abandoned our request for injunctive or equitable
15 relief. Your Honor did in fact issue an injunction, as you pointed out, regarding the
16 Dubric matter, and Your Honor had the authority to do that. The supreme court's
17 reversal was not based upon that issue not being properly brought to Your Honor.
18 So the justice court would not have jurisdiction to grant the plaintiffs the relief that
19 they sought in this case legitimately, the equitable and the injunctive relief. And
20 under Edwards we don't actually have to secure it. Again, in Edwards the district
21 court made a proper finding that there wasn't going to be any such relief, but
22 nonetheless it erred in then declining jurisdiction over the class damages claims.

23 THE COURT: Excuse me just one second.

24 MR. GREENBERG: Yes.

1 (The Court confers with the law clerk)

2 THE COURT: All right, go ahead.

3 MR. GREENBERG: Yes, Your Honor. And Edwards was not an en banc
4 decision but rehearing was sought and it was denied in Edwards. And I think Your
5 Honor understands the configuration of the situation here. I don't know that I can
6 add anything further than what I've tried to explain to the Court. If there's questions
7 or there's something the Court is not clear upon, I'd certainly like to assist the Court.

8 THE COURT: You mean other than jurisdiction?

9 MR. GREENBERG: Well, I understand, Your Honor. The Castillo decision
10 does say what it says, as Your Honor pointed out, they did subsequently in their
11 order say, well, this is not really to be viewed upon as the determinative ruling here
12 because we reached the conclusion we reached based upon the presence of this
13 equitable relief. So, you know, our statement regarding non-aggregation is not
14 essential to the decision, so therefore it's not really properly held to be precedent
15 in that respect. But my point is, Your Honor, even if it is precedent it doesn't conflict
16 with Edwards, and it's precedent that also affirms that this Court has jurisdiction over
17 these claims and had jurisdiction to enter the damages judgment because there are
18 equitable and injunctive claims before this Court that could not possibly be within
19 the jurisdiction of the justice court. And as I mentioned, there are also --

20 THE COURT: Let me ask you a question.

21 MR. GREENBERG: Yes.

22 THE COURT: Did I hear you say a few minutes ago that when the supreme
23 court acted in relation to the Dubric case and overturned the Court's decision, this
24 Court's decision, was it upon a basis of jurisdiction? Was jurisdiction ever mentioned?

1 MR. GREENBERG: No, it was not, Your Honor. It was on the basis that they
2 felt your findings were not sufficiently detailed to support the exercise of the injunction.
3 Unfortunately, Your Honor, it was really my fault more than the Court -- you rely on
4 counsel to assist the Court -- in not coming to the Court with a more detailed set of
5 findings. I thought your findings were quite sufficient --

6 THE COURT: I like that.

7 MR. GREENBERG: -- but obviously the supreme court felt otherwise.

8 THE COURT: I like that thought that it's really your fault. I kind of like that.

9 MR. GREENBERG: Well, Your Honor, I could have come to you, and in
10 fact I have findings on your last order that are quite detailed which I passed to
11 defendants last week and which we're going to get to you soon. So again, Your
12 Honor, we don't have to actually prevail on our claims for equitable and injunctive
13 relief. That's clearly the lesson from Edwards. We just merely have to have them
14 before the Court in some legitimate, proper sense, and clearly we did. Defendant's
15 assertions that it has to be pleaded in some hyper-technical way is not supported by
16 Edwards. These claims were made in the pleading. Your Honor has in fact granted
17 us equitable and injunctive relief. So I can't really, you know, continue to go over it
18 without saying the same things, Your Honor.

19 THE COURT: Okay.

20 MR. GREENBERG: I don't want to take up the Court's time, you know, just
21 repeating myself.

22 THE COURT: I appreciate that.

23 MR. GREENBERG: Thank you.

24 THE COURT: All right. Mr. Wall.

1 MR. WALL: I'll be brief, Your Honor. I think --

2 THE COURT: Don't you love it when attorneys say that?

3 MR. WALL: Sorry, I'm never brief. I'll try to be brief, Your Honor.

4 THE COURT: Okay.

5 MR. WALL: I think opposing counsel put his finger on it exactly when he
6 said that the request for an injunction has to be before the Court in some legitimate,
7 proper sense. That's simply the crux of the argument here. It's absolutely clear
8 from both Edwards and Castillo that if an injunction is pleaded, whether the
9 injunction is -- the request is granted or denied, the Court has jurisdiction over
10 the whole case. We're not arguing that. Both of them have language in them
11 suggesting that it has to have actually been seeking an injunction, and an injunction
12 isn't available where there's not threatened immediate harm, where money
13 damages would be adequate to compensate. All of those are the kinds of things
14 that get litigated when you plead an injunction.

15 Just so it's clear, Your Honor, this is the only thing that it says in
16 the complaint about an injunction. It's paragraph 20 of the amended complaint.
17 "The named plaintiffs seek all relief available to them and the alleged class under
18 Nevada's constitution, Article 15, Section 16, including appropriate injunctive and
19 equitable relief to make the defendants cease their violations of the Nevada
20 Constitution and a suitable award of punitive damages."

21 THE COURT: When the plaintiff sought and obtained injunctive relief, at a
22 later point --

23 MR. WALL: He didn't --

24 THE COURT: -- did the defendants argue that --

1 MR. WALL: Oh, you mean with respect to the --

2 THE COURT: Dubric.

3 MR. WALL: -- the judge -- the matter in the other court?

4 THE COURT: Yes, Dubric. Yeah. Did the -- are you -- did the --

5 MR. WALL: Bringing a motion during a case --

6 THE COURT: Here's my question. Did the defendant raise the point that
7 they couldn't do it because they didn't have a cause of action for injunctive relief
8 specifically in their complaint?

9 MR. WALL: We argued that this Court did not have jurisdiction --

10 THE COURT: Uh-huh.

11 MR. WALL: -- to issue an injunction against another judge --

12 THE COURT: Uh-huh.

13 MR. WALL: -- and that enjoining the parties would be doing -- would be in
14 excess of this Court's jurisdiction.

15 THE COURT: Tantamount to doing the same. Yeah.

16 MR. WALL: This Court can enjoin all kinds of conduct during the middle of
17 a case and it doesn't have to do with the jurisdiction because now we're using that
18 word in two different senses. The fact that the Court orders people to do things
19 and motions are brought for things during a case once the Court has subject matter
20 jurisdiction --

21 THE COURT: Uh-huh.

22 MR. WALL: -- and we refer to that as an injunction is not the same thing as
23 a cause of action for an injunction which has elements which are established in
24 dozens and dozens of cases by the Nevada Supreme Court.

1 THE COURT: So my question is did you or your client argue that to the
2 Court when the Court granted the injunctive relief?

3 MR. WALL: Yes. I argued that the Court had no jurisdiction to grant that
4 injunctive relief.

5 THE COURT: Because they had not pled it in their complaint?

6 MR. WALL: I am certain if we were to look at that one of the things I would
7 have said is it hasn't been pleaded and it's not before the Court --

8 THE COURT: Okay.

9 MR. WALL: -- because you can't just come in and do it in this manner. You
10 can't just bring a motion in the middle.

11 THE COURT: Okay.

12 MR. WALL: I can't have a case go on for several years, realize there's no
13 subject matter jurisdiction and file a motion that will give subject matter jurisdiction
14 over the case retroactively back to the beginning of the case.

15 THE COURT: Uh-huh.

16 MR. WALL: That's not how it works.

17 THE COURT: Okay.

18 MR. WALL: The injunction that they would have to have to satisfy Edwards
19 and Castillo would have had to have been pleaded because that's where jurisdiction
20 -- when the pleadings are joined, that's where the jurisdiction comes from of the
21 court. That's the whole point of Rule 7. These are pleadings. I know we all refer
22 to motion papers and everything under the sun as pleadings, but they're not.
23 Pleadings are there for a specific purpose. They invoke the jurisdiction of the court
24 and join the claims that can be tried. We're talking about an injunction claim, not

1 just an order during the course of the action enjoining somebody to do this or to do
2 that in order to enforce a court's decision, prior decision or to keep control over the
3 case for whatever reason.

4 THE COURT: Uh-huh.

5 MR. WALL: So it's -- both the Edwards case and the Castillo case, in my
6 opinion, are very clear that you have to actually have invoked the jurisdiction of the
7 court seeking an injunction. Otherwise --

8 THE COURT: Well, not only that because the complaint here does that, but
9 it must be contained in a separate cause of action. That's what you're saying?

10 MR. WALL: I don't think it has to be in a separate cause of action. I said that
11 from the beginning. I think it has -- but it has to be leaded in a form -- because often
12 you see people, though, they will include the elements of an injunction within the
13 same causes of action.

14 THE COURT: Sure. Yeah.

15 MR. WALL: It has to be pleaded in a form that is far more than just a request
16 for relief. I'm requesting all the relief that's available to us, including injunctive relief.

17 THE COURT: It has to be done with specificity.

18 MR. WALL: I would suggest that that is not sufficient to invoke the jurisdiction
19 of the court.

20 THE COURT: Well, if it has to be done with specificity and it has not been,
21 then it would be subject to a Rule 9 motion, I suppose. I get those routinely where
22 someone pleads fraud and they don't do it with particularity.

23 MR. WALL: And if they don't do it with particularity and bring a motion, then
24 you give them a chance to re-pleaded or you dismiss.

1 THE COURT: Yeah.

2 MR. WALL: But the issue there isn't subject matter jurisdiction. If they
3 pleaded a claim of fraud and they haven't done a good job of it, the Court still has
4 subject matter jurisdiction over the claim of fraud and it can dismiss the claim or not
5 dismiss it. That's the difference. We're talking about what the Court has jurisdiction
6 over.

7 THE COURT: Okay. The power to entertain in any case?

8 MR. WALL: The power to entertain.

9 THE COURT: All right.

10 MR. WALL: And this Court clearly has the power to entertain an action for an
11 injunction. I'm just suggesting that this complaint doesn't bring that action. And now
12 he keeps saying injunction and equitable relief because he wants to combine the
13 two, although they have nothing to do with each other. After the fact --

14 THE COURT: They have nothing -- I thought the one was merely a specific
15 invocation of the general equitable powers.

16 MR. WALL: And injunction is a type of equitable relief --

17 THE COURT: Yeah, a remedy.

18 MR. WALL: -- over which only district courts have jurisdiction.

19 THE COURT: Yeah.

20 MR. WALL: Other types of equitable relief are related in the fact that there
21 used to be king's courts and bishop's courts and they've been combined. As far
22 as this jurisdictional question is concerned, the only kind of equitable relief that is
23 relevant is jurisdiction. The other types of equitable relief can be granted in the
24 justice court.

1 THE COURT: Uh-huh.

2 MR. WALL: Counsel says the justice court could not have granted me the
3 relief that I was seeking. He doesn't identify any relief that that court could not have
4 granted. It was counsel who selected the end date of the damages that they were
5 seeking and it was counsel who never actually pursued an injunction in this case,
6 other than this phrase. And now after the fact --

7 THE COURT: Well, then what was the order I entered that you got reversed
8 if it wasn't an injunction?

9 MR. WALL: That injunction was not sought in the complaint, Your Honor.

10 THE COURT: Well, sure. Sure.

11 MR. WALL: That is a matter that came up during the course of the thing.
12 We're talking about two different kinds of injunction.

13 THE COURT: Sure, but this is what I'm trying to get at. At some point you
14 argue, look, it's not a separate cause of action in the complaint so you can't consider
15 it. Other points you seem to be saying, look, they haven't seriously gone after it
16 anyway, so for that reason the Court should find in your favor.

17 MR. WALL: This is -- the injunction they went after --

18 THE COURT: But it seems to me -- is it not true that the only argument really
19 available to you on this matter has to do with whether or not you invoke specifically
20 and in terms that satisfy these various cases by virtue of a separate either cause of
21 action or at least stating all of the elements of a claim for injunctive relief clearly in
22 the complaint, as opposed to a throw away argument that, oh, and we also want
23 all injunctive and equitable relief we can get? Isn't that really what your argument
24 comes down to?

1 MR. WALL: The argument is that you have to invoke the subject matter
2 jurisdiction of the Court in the pleadings --

3 THE COURT: Uh-huh.

4 MR. WALL: -- and you don't invoke it later on by bringing a motion or
5 amending a complaint. I mean, you could amend a complaint because that's a
6 pleading if you're given permission to do it.

7 THE COURT: Did the supreme court as part of its order reversing my
8 injunction, did they say it was because the Court entertained no jurisdiction over
9 an injunctive matter in this case?

10 MR. WALL: They did not. Your Honor, the supreme court in characteristic
11 fashion will not reach a jurisdictional constitutional question if there's another basis
12 on which to decide, and they simply decided that the injunction itself was not
13 sufficient so they didn't have to reach that issue. I believe, based on their
14 comments that were made and based on the law that I cited that this Court did not
15 have jurisdiction. But the Nevada Supreme Court did not say that. They did not
16 reach that issue. Assuming this Court had jurisdiction, that motion --

17 THE COURT: Well, that motion --

18 MR. WALL: -- didn't end the pleadings.

19 THE COURT: Yeah. The motion itself was done in a very -- on an
20 emergency basis without consideration of all of the issues that we're bringing now.
21 So we certainly --

22 MR. WALL: It certainly didn't retroactively confer subject matter jurisdiction.

23 THE COURT: So -- and because we did not consider these issues at that
24 time, I suppose it doesn't surprise me that our supreme court didn't sua sponte

1 take it up, either.

2 MR. WALL: Well, these issues weren't presented to the supreme court. The
3 only issue that was presented to the supreme court was whether or not Your Honor
4 had jurisdiction to issue an injunction that in effect enjoined Judge Delaney.

5 THE COURT: Uh-huh.

6 MR. WALL: That was the only issue that we raised. They didn't address that
7 issue because they said the injunction itself wasn't sufficient --

8 THE COURT: Uh-huh.

9 MR. WALL: -- and they didn't have to address that issue.

10 THE COURT: Okay.

11 MR. WALL: Even if there was jurisdiction over that motion, that's not the kind
12 of injunction that would have invoked the subject matter jurisdiction of this Court
13 over the case at the beginning if the amount in controversy isn't sufficient.

14 THE COURT: Uh-huh.

15 MR. WALL: And nobody sought the kind of injunction that would invoke the
16 subject matter jurisdiction of this Court --

17 THE COURT: Yeah.

18 MR. WALL: -- at that time in the case. And yes, that is the issue that we
19 have presented, Your Honor.

20 THE COURT: Okay. I appreciate counsel going over with the Court at length
21 to delve into this issue. It's extremely helpful to the Court in formulating an opinion
22 or a decision on the matter. It appears this is sort of treacherous waters for anyone
23 to venture into and try to get it right. I see that it's nearly 11:30 now and I don't see
24 how we're really going to finish everything up by noon. I suggest that we move

1 forward and then if we don't get it all finished, then we may have to come back after
2 lunch. Does that interfere with anyone's plans?

3 MR. GREENBERG: Possibly, Your Honor. When would we conclude this
4 afternoon if we return? Would we conclude by three o'clock, say, or something?

5 THE COURT: Yeah, I would say we'd come back at 1:00 or 1:30 and finish
6 it out.

7 MR. GREENBERG: Yeah, as long as we can conclude by 3:00, I don't see
8 a problem in terms of my schedule, Your Honor.

9 THE COURT: Okay. All right, how about the defendants?

10 MS. RODRIGUEZ: I think we're fine, Your Honor.

11 THE COURT: All right. Okay, let's go to the plaintiff's -- or, no, wait. I guess
12 we want to go back to the defendants' other motion, do we not, at this point? Let
13 me get my notes to see which order I was considering. Yeah, the defendants'
14 motion for reconsideration, amendment, new trial and dismissal of claims. Who
15 speaks to that?

16 MS. RODRIGUEZ: I guess I will, Your Honor.

17 THE COURT: Ms. Rodriguez.

18 MS. RODRIGUEZ: Give me just a minute to find the right stack. Is Your
19 Honor going to defer the ruling on the subject matter jurisdiction --

20 THE COURT: Yes.

21 MS. RODRIGUEZ: -- and just go ahead and hear the rest of -- the remainder
22 of the motions?

23 THE COURT: Yeah. My intention after everything we've said, in light of
24 everything we've said, is to attempt to make a record here that will allow the supreme

1 court to best address these issues. It doesn't make sense to me to simply rule on
2 the OST motion to dismiss and send it up the pike and then it may well come back
3 and then deal with other issues. I think we would be better served, the parties would
4 be better served if I try to make a record on how I am or would be ruling on various
5 of these matters, so let's go forward with that.

6 MS. RODRIGUEZ: Well, I don't anticipate that I will be very lengthy --

7 THE COURT: Okay.

8 MS. RODRIGUEZ: -- on my oral argument here. I will just refresh the Court's
9 recollection.

10 THE COURT: Brevity is a virtue, so.

11 MS. RODRIGUEZ: I did file this motion for reconsideration. I asked for a
12 number of forms of relief. We asked for amendment, for a new trial and for dismissal
13 of the claims based on Rules 52, 59, 60, 12 and 41. And one of the reasons that
14 we are asking for dismissal and for reconsideration is it overlaps with some of the
15 arguments that my co-counsel Mr. Wall made this morning --

16 THE COURT: Uh-huh.

17 MS. RODRIGUEZ: -- in terms of the subject matter jurisdiction. As well,
18 I also cited to an ongoing case in a sister department before Chief Judge Linda Bell,
19 which is a duplicative case. The complaints basically mirror each other. And again,
20 I ask the Court to reconsider in looking at Judge Bell's findings where she found that
21 this type of lawsuit filed by Mr. Greenberg was not appropriate for class certification
22 under Rule 23.

23 THE COURT: Uh-huh.

24 MS. RODRIGUEZ: And I did attach that order to the moving papers.

1 THE COURT: Uh-huh.

2 MS. RODRIGUEZ: I also asked for relief under Rule 52 in terms of the fact
3 that the proposed order or the order that's been signed by this Court did not
4 reference any of the settled claims under the Dubric matter. The Court did entertain
5 some evidence in a hearing on that in which Mr. Richards, Trent Richards from the
6 Bourassa Law Group was here and presented to the Court the overlap of the claims
7 and specifically which claimants were going to be settled under the Dubric matter
8 and which claims would remain under the Murray/Reno matter. And that was not
9 referenced at all in the final order from this Court, so we asked that the judgment
10 reflect that at least to -- if the Court has made a finding that that's an invalid
11 settlement or that this judgment is going to override that, there needs to be some
12 type of reference. And there was no opposition from the plaintiffs in that to my
13 motion.

14 THE COURT: Would that -- if the Court were to do that, would that not seem
15 to run against at least the spirit, if not the letter of the decision the supreme court
16 gave us, you know, in response to my granting of an injunction that affected the
17 Dubric case?

18 MS. RODRIGUEZ: I don't think so, Your Honor, because if you'll recall the
19 order of events was that that order came back from the supreme court and it was
20 after that that Mr. Richards came in and explained to the Court what was intended
21 by the Dubric settlement. And so that's all we're asking is that if the Court did
22 receive that into evidence, which I believe you entered some pieces of evidence
23 into the record and saw his PowerPoint presentation of the time period of which
24 claimants were in the Dubric matter versus which claimants were here. And we're

1 just asking that that be referenced and included in the final judgment that's entered
2 into this case.

3 THE COURT: Okay.

4 MS. RODRIGUEZ: One of the items that I also mentioned in the motion was
5 there is an issue under Rule 41(e) in terms of the five-year rule and the plaintiffs
6 bringing this case, as well as the case against Mr. Nady that is presently stayed to
7 trial within that five-year rule. And I attached exhibits showing that although there
8 have been stays in this matter, the plaintiffs have violated those stays throughout
9 the stays and acted as if the stays were not in place by serving pleadings,
10 requesting responses to discovery, entering things on the e-filing system and
11 basically proceeding as if there was no stay. So our position is that you can't have
12 the best of both worlds. You can't act as if there is no stay ongoing and at the same
13 time want the protection of the five-year time period. So we've asked for the Court
14 to look at that as well, and if you need additional examples I'm happy to supply
15 those to the Court. I attached a few of those.

16 And finally, the last requested relief was for a new trial. Also, for
17 reconsideration to point out to the Court again that the defendants' rights to due
18 process have been violated with the Court not entertaining some of the motions
19 that were on calendar to be heard, specifically our motions to strike their experts --

20 THE COURT: Uh-huh.

21 MS. RODRIGUEZ: -- and to strike certain evidence that we believe is
22 necessary for them to prove their case. Those never came before the Court as
23 scheduled. And I also cited one of the things that we planned to present that there
24 was no plaintiff that had complied with NAC 608.155, which shows that they have

1 to make some kind of good effort, good faith effort with the employer to show any
2 shortfall in underpayment of wages before they ever bring any type of lawsuit such
3 as this. So these were just a few of the items that we had intended to present to
4 a trier of a fact and we've been deprived of that opportunity, surprisingly, with the
5 Court's summary judgment that went forward -- I don't even recall, prior to the
6 summer I believe is when we were here on a number of pretrial motions and then
7 all of a sudden we were looking at a summary judgment motion and a complete
8 turn of events.

9 So I think that's the gist of the claims that we've done in this post trial
10 motion or post summary judgment motion and we do consider this a tolling motion
11 as well, Your Honor. Do you have -- does the Court have any questions for me on
12 any of these issues?

13 THE COURT: No, not at this time.

14 MS. RODRIGUEZ: Thank you, Your Honor.

15 THE COURT: Mr. Greenberg.

16 MR. GREENBERG: Your Honor, I don't know that there's much I can add
17 that is not in our responding papers in respect to this. I will acknowledge in our
18 responding papers we did not discuss defendants' allegations regarding the Dubric
19 litigation and how that interfaces with this litigation and their pending motion for a
20 new trial and amendment of judgment. Candidly, Your Honor, we didn't address it
21 because there's nothing there. I mean, the Court is not actually presented with any
22 order, any document, any actual confirmation of any purported final resolution of
23 any class member's claims. I mean, there was discussion in that case, there was
24 an application to Judge Delaney. She indicated she was going to grant some kind

1 of relief. But there's never been an order, there's no order presented, so there's
2 really nothing for the Court to consider in respect to that issue, Your Honor.

3 In respect to the other issues raised by the defendants, these have
4 all been gone over with the Court repeatedly previously in these proceedings and
5 I don't want to take up the Court's time addressing them unless the Court has some
6 questions. I mean, the Court has, you know, rejected these issues that Judge Bell
7 felt the class certification in one of these taxidriver minimum wage cases wasn't
8 appropriate, was her discretionary judgment. Judge Williams, Judge Israel certified
9 these cases along with Your Honor for class action disposition. Every case is
10 different, it's a different record, different jurors considering it. I don't see how that's
11 germane to anything here before Your Honor.

12 Is there anything I can assist the Court with?

13 THE COURT: Well, let me put it this way. Of the various motions, and these
14 are -- this is a group of motions seeking different relief from the Court, is there
15 anything in any of those that you feel that it's important, knowing that you surely will
16 be in front of the supreme court on this matter, is there anything that you feel the
17 record is not sufficient for the Court to rule on? I think you've just intimated that to
18 some extent --

19 MR. GREENBERG: Yes, Your Honor.

20 THE COURT: -- but is there anything where you dispute the factual
21 allegations that are made in this motion?

22 MR. GREENBERG: Well, I mentioned in respect to the Dubric litigation
23 there's a representation that somehow there was a resolution there and there is
24 none in the record. There's a representation that somehow plaintiffs have violated

1 the stays that were in place in this case previously which somehow disturbed the
2 41(e) standard. I would dispute that. I mean, if plaintiffs had made requests to
3 defendants to comply with certain discovery, provide certain things, then that is not
4 a violation of the stay that would disturb the 41(e) period. The Court's orders are the
5 Court's orders. We as parties don't control the impact of them. Obviously plaintiff --
6 defendants had no obligation to respond to anything during the periods of the stay
7 and it's my recollection that they did not. I mean, they did not agree to that and if
8 they had voluntarily that was their election. We certainly never asked the Court to
9 compel anything or invoke the jurisdiction of the Court in violation of the stay periods
10 that were at issue here, so I would dispute that representation that seems to be
11 being made by the defendants in connection with that branch of their motion.

12 There's a representation that there wasn't compliance with NAC608.155
13 regarding -- somehow like a pre-suit presentation of claims by employees to the
14 employer. There is no such requirement. That refers to proceedings that are brought
15 to the Labor Commissioner administratively. It has no application in this case. Your
16 Honor has ruled on all the legal issues that have been raised by defendants in this
17 motion previously, so I don't want to take up the Court's time simply going over
18 history, so to speak.

19 THE COURT: You're satisfied that your written work in response to this
20 motion adequately covers --

21 MR. GREENBERG: I believe it does, Your Honor, with the exception as I
22 stated, I did not direct in my written response the issue of the Dubric proceedings
23 because, again, there is really nothing in the record there advising the Court of
24 orally; the Court is aware. But otherwise I believe I did respond in the written

1 submission to the defendants' claims. And again, all of these issues have been
2 raised previously with the Court and the Court has resolved them, so I don't think
3 I need at this point to make a further record. I've made my record in the previous
4 proceedings before the Court in respect to these issues.

5 THE COURT: Okay, back to you.

6 MS. RODRIGUEZ: Your Honor, just a couple things, just so that the Court is
7 aware of the status of the Dubric matter, is that we did go before Judge Delaney and
8 she did preliminarily approve the settlement, as well as the class. So I know there
9 was a reference in the plaintiff's response to say nothing has come of it and that's
10 just not true.

11 THE COURT: Do you not take the supreme court's order in regards to the
12 Dubric matter, in other words, in reversing this Court's granting of the injunction, that
13 this Court should not -- I mean, the district courts essentially cannot rule on or should
14 really have nothing to do with other similar cases?

15 MS. RODRIGUEZ: Respectfully, Your Honor, I think I disagree with the
16 Court's interpretation of the supreme court's order --

17 THE COURT: Okay.

18 MS. RODRIGUEZ: -- because I know that shortly after we all received the
19 supreme court's order we came back before Your Honor and I think you indicated
20 words to the effect that I can't hear anything about what's going on next door is how
21 I'm interpreting the supreme court.

22 THE COURT: Uh-huh.

23 MS. RODRIGUEZ: I shouldn't know what's happening before Judge Delaney.

24 THE COURT: Uh-huh.

1 MS. RODRIGUEZ: I don't think that's what the supreme court was saying
2 because I think definitely in any court if a plaintiff has already settled their claims
3 somewhere else, certainly a defendant can come before the sister department and
4 say why are we litigating that here; they've already settled their claim over there.
5 And immediately you could do a motion to dismiss --

6 THE COURT: Uh-huh.

7 MS. RODRIGUEZ: -- that you can't be filing duplicatively if you're already
8 resolved or agreed to resolve. You can always come in here waving a release and
9 say they've already released this claim. So that's all we're saying is that the Court
10 should take note that some of these claimants that are represented by the Bourassa
11 group have resolved their claims through the settlement conference program. It's
12 not like we went out and did some back-door dealings with the Bourassa group.
13 We had Judge Weiss to help us do the settlement conference and this is ultimately
14 a conference -- a settlement that was reached after negotiations and after discovery
15 and after all the pretrial litigation that is necessary.

16 I think on that case we were on the eve of trial as well when we
17 reached a settlement. And we have preliminary approval from Judge Delaney, so I
18 think that this Court can receive notification of that. And this Court did. That's what
19 I was referencing, that Mr. Richards came in and informed the Court these are the
20 people that we represent, these are the people that we are attempting to settle the
21 same claims, underpayment of minimum wage, with the defendants, and that's all
22 that we're asking be included in this particular part of the judgment.

23 The only other thing I would mention is as pertains to what Mr.
24 Greenberg indicated on the violations of the stays. I did attach some examples of

1 that at my Exhibit 4 in the pleadings. I know there was -- oh, the last thing I wanted
2 to mention is that I know that Mr. Greenberg is seeking to minimize this compliance
3 with NAC608.155, saying that's something that falls under the Labor Commissioner.
4 But as the Court will recall, one of the main issues in this case and the basis for the
5 Court going back to 2007 in extending the statute of limitations was a record-keeping
6 statute that falls under these same provisions. So I know that Mr. Greenberg doesn't
7 want the Court to entertain and say plaintiffs don't have to do this, but at the same
8 time he's the one that came in waving those same provisions under the Labor
9 Commissioner statutes holding the defendants' feet to the fire, saying based on this
10 record-keeping statute under the Labor Commissioner this Court should extend the
11 statute of limitations more than two years back to 2007. So I think this is a very
12 important statute that the Court needs to entertain.

13 Thank you, Your Honor.

14 THE COURT: What would prevent, in light of the supreme court's view about
15 highjacking of class action matters, what would prevent a plaintiff or a group of
16 plaintiffs from doing the same thing back to a defendant? What would prevent
17 them from going to federal court, which carries a decidedly different view about the
18 highjacking of class action matters, from going there and filing a later class action
19 which includes many of the plaintiffs or members of the class that the defendant had
20 included -- or not that the defendant included, but the plaintiff, a different plaintiff's
21 counsel had included in its second complaint filed?

22 MS. RODRIGUEZ: Well, I think that's actually happening right now, Your
23 Honor. It's my understanding that there is a similar wage claim filed by Mr.
24 Greenberg against Western Cab Company in the Eighth Judicial District Court that --

1 that's the same one, actually. I believe that was Judge Bell's. When she refused to
2 certify the class there only remained like four individual plaintiffs which Western Cab
3 proceeded to settle. So that case is gone, it's closed. Mr. Greenberg took the same
4 class claim and went and refiled it in federal court and actually naming one of the
5 plaintiffs that is named in this case, and I forget which one it is. I have to think if it's
6 Murray, Reno, Sergeant or Brucelli (phonetic). I'm thinking -- and Mr. Greenberg
7 can probably speak to that. But exactly the scenario that you just painted is what
8 has actually happened, is that he has filed the same claims against Western Cab
9 but now in federal court. I haven't kept up with the rulings, so I'm assuming that
10 Western Cab will be moving to dismiss, saying that's already been adjudicated here
11 in the Eighth Judicial District Court, but I'm not sure where that stands. But there
12 is -- so far there's nothing to prevent that. You just have to go defend it in federal
13 court as well.

14 THE COURT: Does that not draw a question to the lack of, apparently, any
15 remedy for -- and I'm not just speaking about plaintiffs but speaking of the court, the
16 supreme court, to make sure that matters that are raised get resolved on their merits
17 as opposed to being hijacked out?

18 MS. RODRIGUEZ: Well, I don't really see the scenario here and I'm not sure
19 what the Court is referencing in terms of the word hijacking because the claim that
20 was resolved with the Dubric matter, and I think when we came in and presented the
21 evidence to Your Honor and we presented it in front of Judge Delaney was showing
22 that it was a legitimate settlement and in fact it was a settlement that was reached
23 at a higher rate than the norm of the settlements that were reached in comparable
24 cab companies in Las Vegas. In other words, there were larger cab companies that

1 were ending up paying less than Mr. Nady, a smaller company was paying. So
2 it was a good settlement for all purposes and that's what we had to come in and
3 present to Judge Delaney. We had to put on testimony to show it wasn't just, like
4 I indicated, some settlement reached on the corner street where we were saying,
5 okay, we're going to pay two dollars instead of two hundred dollars or something
6 like that. It has to be a valid settlement that is approved and then there has to be
7 an opt out period where people will know, just like as in this one --

8 THE COURT: Yeah.

9 MS. RODRIGUEZ: -- do they want to be a part of this or do they want to
10 opt out. And in this instance --

11 THE COURT: As in fact Ms. Dubric did.

12 MS. RODRIGUEZ: Correct. And in this instance as well then they can opt
13 into this one. They can proceed for any of the overlap time. Any of those people
14 that were represented by Mr. Greenberg didn't have to accept any kind of settlement
15 under Ms. Dubric's class action. So the hope is that, yes, we will get some finality
16 in both of these cases with all of these claimants, at least through -- in this case
17 through December of 2015 and Ms. Dubric's case went on into the year 2016.
18 And then it was either Your Honor or the Discovery Commissioner that told Mr.
19 Greenberg if he wanted anything after December 2015, he would need to refile for
20 those people if he felt that there were still ongoing violations after December 2015.

21 But I think that unless, as I've represented to the Court per my client,
22 if there's any underpayments currently, they're just merely typographical errors
23 because there is an attempt to have full compliance ever since the Thomas decision
24 in June of 2014. There's been an attempt to have full compliance, excluding tips,

1 in the calculation of underpayments and there's no reason to think that there is
2 any ongoing underpayment of minimum wage or that there's any reason for Mr.
3 Greenberg to refile. In fact, I think that's why he chose to stop in December of 2015,
4 was there really were -- if there was anything there it was under ten dollars or it was,
5 you know, some errors, and I don't think it was worth his time or the defendants or
6 the special master going through boxes and boxes to find ten bucks that was an
7 error. So, I'm sorry, I've probably -- I'm not sure if I --

8 THE COURT: Well, what I'm sort of -- the question I'm asking is about the
9 practicality of resolving these suits and what you're telling me has to deal with that.

10 All right, thank you.

11 MS. RODRIGUEZ: Thank you.

12 THE COURT: And finally, plaintiff's motion to amend.

13 MR. GREENBERG: Your Honor, this motion is really quite simple and
14 documented by the public record. You can see attached to my moving papers
15 Exhibit A. We have an amendment to articles of organization and it says the name
16 is now A Cab Series, LLC, whereas in part one it said A Cab, LLC. A Cab, LLC
17 was the entity sued. It was the entity against which the judgment was entered.

18 THE COURT: What was the date of filing of that one?

19 MR. GREENBERG: This amendment?

20 THE COURT: Yes.

21 MR. GREENBERG: This amendment was filed on January 5th, 2017, Your
22 Honor.

23 THE COURT: Okay.

24 MR. GREENBERG: So there's a representation made in the opposing

1 papers which I hate to take issue with counsel. I mean, it's not appropriate for me to
2 do so, but I do take issue with the representation. This is on page 2. "A Cab Series,
3 LLC is a different defendant than A Cab Taxi Service and from A Cab, LLC." Now,
4 A Cab Taxi Service is a non-entity. We all agree on this. They were named but
5 there is in fact no such entity. But this representation that A Cab Series, LLC is
6 a different entity than A Cab, LLC, there is no basis for this representation to the
7 Court. And the amendment that's sought, it's simply a change of name. It's the
8 same entity, Your Honor. They can't evade the force of the judgment simply by
9 changing their name.

10 And I need to have this done because, as Your Honor understands,
11 I am proceeding with judgment enforcement and it is definitely going to complicate
12 my ability to enforce the judgment if the company is now legally known as A Cab
13 Series, LLC and I'm trying to, you know, attach property or whatever it is. In fact,
14 I submitted an order, a very brief order when I filed this motion. I was hopeful Your
15 Honor would perhaps resolve it without hearing. I have an order right here, I'd like
16 the Court to sign it. In their opposition there's essentially a great deal of discussion,
17 well, Mr. Nady was examined about how the series that were issued by A Cab
18 functioned and the relationship. I think Your Honor understands we're just talking
19 about a name of the actual registered entity here. We're not talking about the
20 function of the series that that entity has issued and that was subject to our last
21 appearance before Your Honor regarding the Wells Fargo account.

22 Is there something else I can assist the Court with on this issue?

23 THE COURT: I don't have in front of me right here the one filed in 2017. It
24 basically accomplishes that A Cab --

1 MR. GREENBERG: Would you like -- I can approach, Your Honor. I have --

2 THE COURT: All right, fine.

3 THE COURT: But let me ask you this question, though. Does it simply say
4 that the organization known as -- thank you --

5 MR. GREENBERG: There you go, Your Honor.

6 THE COURT: -- A Cab will henceforth -- A Cab, LLC will henceforth be
7 known as A Cab Series, LLC?

8 MR. GREENBERG: Well, Your Honor can see it right there. And this is --
9 I mean, I got this certified by the Secretary of State. My declaration, you know,
10 explains that I got this for the purposes of authenticating it to the Court. And you
11 can see it says: Name of limited liability company, A Cab, LLC. That's in part one.
12 And then it says, three: The articles have been amended as follows. There's no
13 change in function, structure. It just says the name is now A Cab Series, LLC. So
14 as of January 5th, 2017 the entity registered itself with the Secretary of State under
15 this name, but it is the same entity, Your Honor.

16 THE COURT: Okay.

17 MR. GREENBERG: It's not a different defendant, it's not a different
18 corporation.

19 THE COURT: And is it not also a fact that whatever the name may be that
20 A Cab, LLC has been A Series, LLC since 2012?

21 MR. GREENBERG: That is correct. It's had those powers to issue those
22 series because in 2012 it adopted changes to its articles of organization that granted
23 it those powers, but that has nothing to do with this motion, Your Honor.

24 THE COURT: Okay. All right, anything else on that one? Or let me see if

1 I have a question for you on that. And you're saying that you filed this lawsuit
2 against A Cab, LLC?

3 MR. GREENBERG: And that was the entity's name at the time, Your Honor.

4 THE COURT: Uh-huh.

5 MR. GREENBERG: Until January 5th --

6 THE COURT: Was --

7 MR. GREENBERG: Yes?

8 THE COURT: Was the date you filed the lawsuit after the 2012 --

9 MR. GREENBERG: It was after --

10 THE COURT: -- Amended and Restated Articles of Organization of A Cab?

11 MR. GREENBERG: It was, Your Honor. At the time I filed this lawsuit,
12 A Cab, LLC had acquired the powers to issue series. But again, that does not have
13 to do with the identification or the jurisdiction of the Court or the change of the name
14 of the entity --

15 THE COURT: Okay.

16 MR. GREENBERG: -- which is what I need to correct the judgment to reflect
17 the current name. It is the same entity, Your Honor.

18 THE COURT: Uh-huh. Let's see what other questions I might have. Okay,
19 I believe that's all.

20 MR. GREENBERG: Thank you, Your Honor.

21 THE COURT: Okay. Ms. Rodriguez.

22 MS. RODRIGUEZ: Thank you, Your Honor. As the Court has noted, it's
23 confusing to me as to why Mr. Greenberg or the plaintiffs would rely upon the filing
24 in the Secretary of State from last year when they've had this filing, as the Court

1 noted, as of February 16, 2012, which was -- this also was available to them. This
2 is public knowledge. This was eight months before they filed their complaint. Their
3 complaint was filed in October of 2012. This was filed February 2012 and lays out
4 the fact that A Cab is a series limited liability company. So they had this available.
5 Why they didn't name that entity in all of these years --

6 THE COURT: Which entity?

7 MS. RODRIGUEZ: A Cab Series --

8 THE COURT: But that's not --

9 MS. RODRIGUEZ: A Cab Series, Limited -- Yes.

10 THE COURT: But that's not the name of it, is it?

11 MS. RODRIGUEZ: Well --

12 THE COURT: By virtue of 2012, the change?

13 MS. RODRIGUEZ: Yes, it is, according to what is filed. The Certificate to
14 Accompany Restated Articles or Amended and Restated Articles that is filed with
15 the Secretary of State.

16 THE COURT: Uh-huh.

17 MS. RODRIGUEZ: And what is attached to it is the Amended and Restated
18 Articles of Organization of A Cab, LLC. And it says both in the front where it says
19 name of Nevada entity as last recorded in this office was A Cab, LLC, and then the
20 attachment says that this is a series limited liability company. That was the change
21 as of 2012. And what I've also attached --

22 THE COURT: It says -- does it not say that the name -- look at Article 1.

23 MS. RODRIGUEZ: Correct.

24 THE COURT: The name of limited liability company.

1 MS. RODRIGUEZ: Correct.

2 THE COURT: The name of this limited liability company is A Cab, LLC.

3 MS. RODRIGUEZ: My interpretation of that, Your Honor, and I think the
4 intent of this was just as it says on page 1, that that is the former name. It is now
5 being organized as a Series LLC. And if there was any doubt as to this, that's why
6 I attached the deposition of Mr. Nady that Mr. Greenberg has known about this
7 at least for over a year, never sought to amend or to add. This is not a motion to
8 amend a judgment under Rule 59, as he's indicating. This is basically a Rule 15
9 where he's trying to add someone new and he hasn't gone through the proper
10 procedures. And what I'm asking the Court to look at --

11 THE COURT: How is it somebody -- how is it someone new if it's the same --
12 all they did was change the name, did they not?

13 MS. RODRIGUEZ: Because --

14 THE COURT: In 2017, I mean.

15 MS. RODRIGUEZ: -- from our hearings, our most recent hearings here the
16 intent of this motion is not to just recognize a name change to A Cab Series, LLC.
17 What Mr. Greenberg's intent with this, and correct me if I'm wrong because I'd like to
18 hear otherwise, is that he believes by changing it to A Cab Series, LLC now that that
19 encompasses what he has painted to the Court as the master and all the mini series.
20 He thinks by saying A Cab Series, LLC that he gets everything, he gets all assets
21 and he can proceed to garnish all assets of any of those other series. And so that's
22 why if the Court is -- what he's doing is still not even naming the appropriate party.
23 As we were here before trying to explain to the Court, the people who or the series
24 that pays the drivers is A Cab Employee Leasing Company.

1 THE COURT: Uh-huh.

2 MS. RODRIGUEZ: And I know I haven't said the whole, full name, but the
3 gist of it --

4 THE COURT: Yeah.

5 MS. RODRIGUEZ: -- is the Employee Leasing Company. He's still not
6 asking to amend to include that series. He's wanting to just say A Cab Series, LLC,
7 which the plaintiff is under the belief that that will be an umbrella to collect all of the
8 series, the mini series assets underneath that.

9 THE COURT: Okay.

10 MS. RODRIGUEZ: And that's why this time we were fortunate enough to
11 have Mr. Oshins available to answer some of the concerns of the Court that were
12 raised at the last hearing in terms of the formation of these series, the individual
13 series and how they stand independently from each other. I know that the Court
14 had a lot of questions about those items and Mr. Shafer was doing the presentation
15 on -- I think that was on our motion to quash the writ. But those go hand in hand
16 with what is being sought here, again, Your Honor, because by now just amending
17 A Cab, LLC to A Cab Series, LLC, the intent of the motion then is to -- I'm trying to
18 think -- pierce -- I couldn't -- I was thinking perforate --

19 THE COURT: Yeah.

20 MS. RODRIGUEZ: -- pierce into all of the individual Series LLCs, which is
21 not appropriate. But the basis for my opposition was that it was not a proper Rule
22 15 and I think I cited to the case that showed that the plaintiffs had been dilatory in
23 terms of waiting to amend this. They knew about the name change, if that's what
24 it's being characterized as is a name change, but they waited until the Court entered

1 judgment. Four hours later they moved to amend the judgment. So based on the --
2 I'll find the appropriate case here, Your Honor. I cited it in my brief. Oops, I'm
3 looking at Mr. Greenberg's motion, that's why I can't find it.

4 THE COURT: What's that, some authority he cited?

5 Well, if I accept your line of reasoning and your argument that you do
6 have to essentially sue each of the separately named series corporations in order
7 to be able to go after their assets -- in other words, you really need to name them
8 at the front end of the case, how does an individual know? How does -- would
9 there not be some requirement under the Series LLC legislation that a business
10 do business then publicly, such as by getting a license, a business license to do
11 business?

12 MS. RODRIGUEZ: Yes, Your Honor. And that's why we do have Mr. Oshins
13 here to speak to that. But one of the other items that Your Honor asked for the last
14 time was how does an employee know who they're working for. Who do they know
15 who to sue?

16 THE COURT: Yeah.

17 MS. RODRIGUEZ: And so I did bring some paystubs today to show -- and
18 I'm just going to sneak and actually get my cheat sheet of the notes of when the
19 paystubs commenced reflecting this. The paystubs do indicate Employee Leasing
20 Company on each one of the paystubs as of March 1st of 2014.

21 THE COURT: So that the employer is Employee Leasing Company?

22 MS. RODRIGUEZ: Yes, Your Honor. A Cab Series --

23 THE COURT: Would you not expect an employee to know who they're
24 working for?

1 MS. RODRIGUEZ: They should. Yes, Your Honor.

2 THE COURT: By virtue -- even though they were not hired by a separate
3 individual in a company known as -- you know, a sign on the door or something, a
4 business license on the wall as Employee Leasing Company, but rather were hired
5 -- I mean, I don't know if Mr. Nady personally did all the hiring and firing --

6 MS. RODRIGUEZ: No.

7 THE COURT: -- but whoever that person would be. In other words, would it
8 not require, then, for any Series LLC for a successful plaintiff to come in and pierce
9 the corporate veil and be able to show that it was whoever you want to count as the
10 one calling the shots --

11 MS. RODRIGUEZ: Uh-huh.

12 THE COURT: -- the one who decided in this case to not have anything but
13 separate -- many thousands of separate trip sheets as a way of keeping track of
14 how much -- of compliance essentially with the MWA? Why would the Court -- I
15 mean, wouldn't a successful plaintiff -- I mean, wouldn't you have to have not only
16 for an MWA, assuming that you were able to qualify as -- well, it wouldn't matter
17 whether your were in justice court or district court, if you file a class action lawsuit
18 you not only need a class plaintiff, you need a class defendant.

19 MS. RODRIGUEZ: Correct.

20 THE COURT: But what I hear you saying is that -- well, what seems to me
21 to be a logical extension of your argument is that since you might not know who
22 even all these different entities are that you're really seeking relief from, that you
23 might have to name everybody you know of, go in and do research to figure out or
24 discovery to figure out who every single entity, series entity is and treat it as a class

1 action, is that -- and if so, if that's what you would argue is the case, is that what
2 our Legislature intended when they passed the Series LLC?

3 MS. RODRIGUEZ: Well, Your Honor, that's no different from any other
4 lawsuit. As a plaintiff, and I represent a lot of plaintiffs, you have to do your research
5 as to who is the property entity. And if you don't get it right the first time when you
6 serve it, that's why you usually name Does and Roes. You do discovery on the issue
7 and then you name them appropriately. You take PMK depositions, you do written
8 discovery and then you make sure you've got the right entity because you can be
9 there on the day of trial and find out you've named the wrong manufacturer --

10 THE COURT: Uh-huh.

11 MS. RODRIGUEZ: -- and you're out of luck. But here --

12 THE COURT: So your answer is yes, you would have to do that?

13 MS. RODRIGUEZ: You would have to find out and sue the appropriate party
14 as a defendant. There was no discovery done on that, other than the deposition
15 that Mr. Greenberg took. And the deposition at that time, he already knew the
16 answers. You can tell from the formation of the questions. He's asking Mr. Nady:
17 So, A Cab is set up as a series LLC? Mr. Nady's response: Yes. And he starts
18 going into the questions. And that's why I attached that because you could tell that
19 the plaintiff's counsel in taking the deposition already knows it's set up as a series
20 LLC.

21 THE COURT: And how would they know that? Would it be from going to
22 the --

23 MS. RODRIGUEZ: From a public document.

24 THE COURT: Okay. Does the public document name any of the series LLCs?

1 MS. RODRIGUEZ: It does not.

2 THE COURT: So it allows a company, then -- this interpretation allows a
3 company to break out all of its functioning and all of its sources of income as
4 separate series LLCs and not make the public aware of that through some means,
5 not either have a business license for each, some sort of requirement that would
6 require that, or perhaps require each series LLC to file something like this, Amended
7 Restated Articles of Organization, some public document. Now, when -- remind me,
8 if you would, when was the Series LLC legislation passed?

9 MS. RODRIGUEZ: Your Honor, I'm definitely not the expert on that area.

10 THE COURT: Well, fortunately you have --

11 MS. RODRIGUEZ: I do.

12 THE COURT: -- an authority here who is.

13 MR. OSHINS: It was 2005, I think.

14 MS. RODRIGUEZ: I do. And so I would like to -- you know, that's the gist
15 of my opposition on the motion to amend, but if there's some -- I think that it would
16 be beneficial to the Court to entertain some more information from Mr. Oshins.

17 THE COURT: Well, yeah. The first thing -- the only thing I need right now is
18 when did they pass it. I mean, we went through all of that when we dealt with this
19 issue at more length.

20 (Speaking to the law clerk) Do you recall? We looked it up. We
21 drafted everything we had on it.

22 Anybody know? Mr. Nady knows.

23 MR. OSHINS: It was either 2001 or 2005. I think 2005.

24 MS. RODRIGUEZ: 2005.

1 THE COURT: 2005? Okay.

2 MS. RODRIGUEZ: Correct.

3 THE COURT: So from 2005 forward in order to successfully prosecute this
4 kind of a case a group of plaintiffs would have to sue somebody and then do
5 discovery to see who were the actual parties.

6 MS. RODRIGUEZ: Who's the appropriate -- correct.

7 THE COURT: What would there be to prevent a party from afterwards
8 creating a new little widget, a new series LLC to conduct the same business function
9 that had previously been sliced out and handed to a named -- named but not
10 publicly, series LLC? I guess what I'm not saying very well, would you not then be
11 required to continue that type of basic discovery throughout the lawsuit? And since
12 you couldn't get the answer from public knowledge or anything within the public
13 domain, you would have to, I presume, continue doing either -- perhaps weekly or
14 monthly requests to produce or something.

15 MS. RODRIGUEZ: You do not, Your Honor.

16 THE COURT: Okay.

17 MS. RODRIGUEZ: You always have an ongoing obligation to supplement
18 your discovery responses. So if there is a discovery question to say who is the
19 employer of Michael Murray and Michael Reno and you answer the question A Cab
20 Employee Leasing Company, and at any point if that changes the defendant would
21 have an obligation to supplement that response and revise it. These issues
22 obviously haven't been litigated to that extent --

23 THE COURT: Right.

24 MS. RODRIGUEZ: -- to see if there was a fraudulent transfer then to avoid

1 liability or something, because I think that's kind of what the Court is envisioning.
2 But again, in reference to the Dubric matter, they did conduct discovery. They
3 asked who is Ms. Dubric's employer and the answer was Employee Leasing
4 Company, A Cab Series Employee Leasing Company. There was an amendment to
5 the complaint to name the proper party. So that is one of the reasons that we also
6 came before the Court and said there's different defendants because our position
7 was always that A Cab, LLC was an improper defendant in this case. In fact, that
8 was always a denial in every one of the answers that was filed on behalf of the
9 defendants to say A Cab, LLC is not the employer. And now changing it to A Cab
10 Series, LLC really doesn't do any -- it doesn't move the case along, either, because
11 that is not the employer of the drivers who are seeking underpayment.

12 THE COURT: Uh-huh.

13 MS. RODRIGUEZ: We're still not naming the appropriate parties in this
14 lawsuit. And my fear, as I indicated, was that there's this misconception that by
15 changing the names to A Cab Series, LLC that's just going to somehow gather all
16 of the series under that. You know, there is no reason to include the Maintenance
17 Company, the Valley Taxi Company, some of those things that we ran to before
18 because they have nothing to do with an underpayment of a minimum wage to a
19 driver.

20 THE COURT: Who is the human being behind each one of those limited or
21 series limited LLCs? Is it Mr. Nady?

22 MS. RODRIGUEZ: I would think -- I can't answer that in full, but I believe
23 that some of those entities are actually assigned to a trust and then I don't know the
24 extent of that because I haven't further researched that; if that's Mr. and Mrs. Nady

1 that are the beneficiaries of the trust or if that's their children, or who is actually
2 behind some of those further series that may not be related at all, like I referenced
3 the Valley Taxi company, because they are all set up differently. I'm sorry, Your
4 Honor, that's not my area in terms of asset formation and going into trusts and
5 assignments of the different series.

6 Again, I have Mr. Oshins here. I think Mr. Shafer was prepared to ask
7 him a few questions. I can do that, unless you wanted to.

8 THE COURT: Are you going to -- you mean like take evidence at this point?

9 MS. RODRIGUEZ: Correct, Your Honor, because I think Your Honor asked
10 some critical questions last time we were here. One was as it pertains to how does
11 an employee know who his employer is, so I brought the paystubs. One of the other
12 questions that the Court had was do all of these individual series have to have a
13 business license, because Mr. Greenberg was making that argument that every one
14 of these little series had to have a license through the Taxicab Authority or through
15 the Clark County Business Licensing. And, you know, Mr. Shafer and I went back
16 and did some further research on that and basically going to the expert on this as
17 to the answer to those questions.

18 So if those are still concerns for the Court as it pertains to these
19 motions as well as some of the other motions that are upcoming and may be on
20 chambers calendar, I'm not sure; the motion to conduct a debtor exam and things
21 like that, because I think that's asking to do a debtor exam for all the individual
22 series. So we need to address this concept of the individual series and their
23 independence at some point because it's intertwined through all of these motions.

24 Would you like Mr. Oshins to speak to at least the licensing?

1 THE COURT: Here's my view on that. We are at not even the tail end of a
2 lawsuit, we're somehow even beyond the tail end or what normally would be thought
3 of as the tail end of a lawsuit and many issues are being interjected at that point.
4 I'm happy to listen to anyone argue the motion that you wish. I don't think this is
5 the time to take evidence, frankly. And I say that with a view to what we said earlier,
6 I don't even know if I have jurisdiction at this point.

7 MS. RODRIGUEZ: Well, my concern was the last time the Court had these
8 questions about the statutes themselves, the record keeping for the independent
9 series, the licensing for the independent series, the EIN number that was shared.

10 THE COURT: Uh-huh.

11 MS. RODRIGUEZ: And Mr. Shafer and I were both trying to speak to that
12 and Mr. Wall I think was present as well, and we were from both sides just giving
13 you argument. So we brought the person who has the knowledge about that
14 particular area because, you know, the rest of us are litigation and appellate
15 attorneys, you know, just arguing what is before us. But Mr. Oshins has a
16 knowledge of these series that -- in terms of the regulations that the Court was
17 concerned with.

18 THE COURT: Is there any reason why the defendant or defendants did not
19 bring some sort of motion, even -- I don't know if it would have been viable at the
20 very beginning of the lawsuit, but some sort of notion -- motion to raise some of
21 these issues at a time when there was time for a court to do anything about it?
22 I just --

23 MS. RODRIGUEZ: In terms of the series?

24 THE COURT: I don't know how to deal with this at this point.

1 MS. RODRIGUEZ: In terms of the series?

2 THE COURT: Yeah. In reference to the fact that the -- under your theory,
3 I guess, the plaintiff continues harass defendant corporations --

4 MS. RODRIGUEZ: Uh-huh.

5 THE COURT: -- when they are not even the ones who are the employers
6 and therefore liable to pay the Minimum Wage Act or the minimum wage under the
7 constitution. I don't know, I just --

8 All right, anything else?

9 MS. RODRIGUEZ: Well, just in answer to Your Honor's questions, like I
10 indicated, you know, I have been the unfortunate beneficiary on the plaintiff's side
11 many times when -- you know, it's not the defendants' duty to prove the plaintiffs'
12 case, to prove they're suing the right people. This is the plaintiffs' duty to do that
13 research and especially when it's available to them, when it's a public document,
14 before they even file the lawsuit, when they take a deposition on this area and still
15 do no further discovery. So I think the Court has probably seen many motions to
16 dismiss come in at the last minute and say you've got the wrong people, and it's
17 not uncommon. And that's the case here.

18 THE COURT: Well, those aren't uncommon. The basis for such a motion is,
19 in my experience, uncommon because I just -- I have not been highly cognizant --
20 I haven't had other cases raise these issues and say, look, you've got the wrong
21 guy, it's a series LLC.

22 MS. RODRIGUEZ: They're becoming more commonplace in the personal
23 injury matters and I think we talked about that a little bit because one of the bases --
24 most of the cab companies are proceeding in this fashion to start making each of

1 the taxicabs an independent series with their own coverage, their insurance
2 coverage, and I think we talked about the registration and the insurance would be
3 for that particular cab so when a party is injured they will sue that cab. And that is
4 the limitation of the liability, it doesn't go beyond to sue A Cab Employee Leasing
5 Company because they have nothing to do with that particular cab. So when a
6 plaintiff is injured, they're going to sue cab A or cab B or whatever cab injures them.
7 So I think that's where they're becoming a little more commonplace. This is a little
8 different because this is in the wage area, but it's only different from the type of
9 case. The same structure should still hold in terms of the limitation of liability.

10 THE COURT: If I agree with all of that, not just in relation to some P.I. case
11 but in relation to the attempted enforcement of a constitutional provision, that
12 troubles me because what you're saying is that whatever the people of the state
13 have voted on and said is something more than just the statute, it is a right, entitled
14 to all those kinds of things that courts do when constitutional rights are raised as
15 either a defense or by a plaintiff. And that -- is there not some problem inherent in
16 allowing a business entity to avoid payment of a constitutionally mandated wage
17 by using this particular otherwise legitimate means of doing business and never --
18 never doing -- I don't know, make some public -- or when the lawsuit is filed bringing
19 it up?

20 MS. RODRIGUEZ: Your Honor, there's not --

21 THE COURT: Would there not at least -- given the fact that we're dealing
22 with the enforcement of a constitutional provision, does a defendant who wishes
23 to assert this as -- I don't know if you'd call it even a defense, as a diffusion of
24 defendants, a multiplicity of defendants, a confusion of -- I mean, to any plaintiff.

1 We're talking about minimum wage workers to know how to proceed, and the
2 defendant bears no responsibility for making that public?

3 MS. RODRIGUEZ: It has to be the correct defendant, Your Honor, and I think
4 that's what perhaps is the confusion is that all of these mini series, as I'm labeling
5 them, all start with the words A Cab --

6 THE COURT: Yeah.

7 MS. RODRIGUEZ: -- A Cab Limited Series, and then Employee Leasing or
8 Maintenance or whatever. But, you know, if this was -- I think there's been other
9 minimum wage cases that are against the restaurants in town and if a plaintiff was
10 going to go sue Pizza Hut but Pizza Hut really didn't even employ its own employees,
11 they used Sunshine Employment Service, the plaintiff doesn't really have any cause
12 of action against Pizza Hut. They have to use Sunshine Employment Service. They
13 don't have any action against the supplier of the pizza dough. They have nothing
14 to do with it. You know, there's all these different vendors or different independent
15 entities that are servicing to form a Pizza Hut, but the appropriate employer is the
16 Sunshine Employment Service.

17 That's the case here, is that there is a proper defendant. The proper
18 defendant is the Employee Leasing Company.

19 THE COURT: And so my question, my last question anyway, was in a case
20 involving the enforcement of a constitutionally protected right, there's no shifting of a
21 burden to a defendant to make a court and the parties know who the real defendant
22 should be, as opposed to allowing a defendant to rely upon the Series LLC statute
23 and to -- I mean, and all of this perhaps rests upon the premise, which may be
24 incorrect, that ultimately whether you sue the Employee Leasing Company or you

1 sue any other of the many series LLCs and you get down to talking about actions
2 which they as a business have taken, you're not dealing with the corporate entity
3 anymore. At some point you're going to get to a live human being. If that live
4 human being is Mr. Nady or is a small group of investors it would make no difference.
5 I guess I fear that we would be allowing legislation, relatively new legislation which
6 certainly has a legitimate business purpose, to be used as a shield against
7 enforcement of a constitutional right that was never envisioned at the least by the
8 people of this state when they made that, when they elevated that to a constitutional
9 provision. I'm troubled with this. I just don't -- I don't know how we get there.

10 MS. RODRIGUEZ: The only thing I would say in response to that, Your
11 Honor, is that I think there is a misconception that there is not a proper defendant
12 and that this is being used as a shield. There's nothing to indicate that there is not
13 a proper defendant employer. There's no indication that they're undercapitalized
14 or that they're not in a position to defend this and to fund any judgment that would
15 be lodged against them as the appropriate employer. That just hasn't been done.
16 You can't just group everybody in --

17 THE COURT: Well, are you saying that they have in fact done that? Are you
18 saying that Employee Leasing Series LLC had the money to withstand this lawsuit
19 for five, going on six years, or was in fact -- were all the shots being called by a very
20 limited group of people and perhaps one? And, you know, recognizing that the law
21 allows people to protect their liability or protect against liability by forming all manner
22 of corporate devices. Well, I don't know, I think I'm reaching the point of just sort of
23 talking to myself in the air.

24 MS. RODRIGUEZ: Well, I don't think, in answer to the Court's question --

1 you know, the question was is there something in the constitution that changes
2 somehow the burden --

3 THE COURT: The burden. Yeah.

4 MS. RODRIGUEZ: -- for the defendant to come forth and say you've got the
5 wrong guy, you sued the wrong party, this is the appropriate one.

6 THE COURT: Uh-huh.

7 MS. RODRIGUEZ: No, there is nothing in the constitution. This is still the
8 plaintiffs' burden to do some minimal discovery on this issue, which was not done
9 in this case. It's been right there and they've known it. It's very clear from the filing
10 four hours after the judgment comes out that they filed this motion. I think that in
11 itself is very suspect, Your Honor.

12 THE COURT: Uh-huh. Well, it's fair to ask Mr. Greenberg why. Why did
13 that come down that way if you had notice at least from the time of the deposition
14 of Mr. Nady that there really were separate entities here?

15 MR. GREENBERG: Your Honor, there's a supposition made here that's
16 presented to the Court that somehow the order that I am requesting is going to
17 extend to these arguably independent series entities that were formed by A Cab.
18 That is not the request of the motion. The request of the motion is extremely
19 narrow, Your Honor. The Court granted my clients a judgment against A Cab, LLC,
20 that single entity. All I'm asking the Court to do is just have that judgment recorded
21 as of record against the current name of that entity, which is a A Cab Series, LLC.

22 I am not asking for any other relief regarding any other arguable
23 entities. There is no ulterior motive. I'm being told that the purpose of my motion is
24 so that I can then somehow with force of this Court seize assets that belong to other

1 entities. There is no such request before this Court in connection with this motion.
2 I mean, accepting defendants' position as it is, which is that these series LLCs are
3 separate legal entities that can possess property in their own right, property that
4 would be beyond the judgment against A Cab, LLC, I'm not here to argue about
5 that, Your Honor. I mean, that's not the purpose of this motion. What I'm saying,
6 Your Honor, is I have a judgment against A Cab, LLC.

7 THE COURT: Uh-huh.

8 MR. GREENBERG: If there's property that's titled in that name to that entity --

9 THE COURT: Uh-huh.

10 MR. GREENBERG: -- I have a right to enforce the judgment against that
11 property. To the extent that the property is no longer recorded in the name of A Cab,
12 LLC but A Cab Series, LLC because that entity has changed its name, the judgment
13 should be conformed accordingly. That is the only issue we are here before this
14 Court. There is no dispute that the entity is the same entity that was summoned.
15 All of this discussion, Your Honor, regarding the status of the series LLC, Your Honor
16 is raising some very important points in this litigation and there's been an extensive
17 discussion for about twenty minutes regarding the issue of the status of these
18 allegedly issued series LLCs and how they fit into the judgment enforcement. I'm
19 not here to address any of that, Your Honor, okay. This is a very limited motion.

20 There's a duty -- I mean, where is the prejudice to defendants from
21 granting this requested amendment to the judgment? There is no prejudice. And
22 counsel, for example, in her discussion with you, Your Honor, you were asking
23 about, well, you know, if somebody with the series LLCs that had the employment
24 responsibility and then they changed, how would -- and counsel for defendant quite

1 correctly said, well, there would be a duty to continue with -- you know, supplement
2 discovery. Well, they had a duty here to appear in this case by the name that they
3 changed the corporation to, which was not A Cab, LLC but A Cab Series, LLC. They
4 never filed a notice of appearance in that name, Your Honor, once they changed
5 the name of the defendant.

6 THE COURT: Where is there a requirement to do that? Where is that found?

7 MR. GREENBERG: Well, Your Honor, I'm not saying that they're necessarily
8 required to do it, but I am simply picking up on what defendants were saying --

9 THE COURT: Okay.

10 MR. GREENBERG: -- that there's a duty to supplement their discovery.
11 Presumably if I'm a party before the Court and I change my name but I'm the same
12 entity, I'm the same party, I should have a duty to come before the Court and make
13 the public record reflect that accordingly. Essentially, Your Honor --

14 THE COURT: Even if there's no pending -- if there's been no attempt at
15 discovery that puts the question to them, list all of the names which you have used
16 or entities which you have used or however you want to phrase it --

17 MR. GREENBERG: This motion --

18 THE COURT: -- of doing business?

19 MR. GREENBERG: Your Honor, this motion doesn't address any of the
20 entities that have been formed by A Cab, LLC. It doesn't ask anything about the
21 series that it has formed. Allegedly --

22 THE COURT: I'm speaking of what you just posited, that they have a duty
23 to come forward.

24 MR. GREENBERG: Your Honor, what I'm saying is that this motion is simply

1 to get the name on the record --

2 THE COURT: Uh-huh.

3 MR. GREENBERG: -- of the judgment, reflect the name that was changed
4 after this entity was sued.

5 THE COURT: Okay.

6 MR. GREENBERG: Where is the prejudice to that entity, A Cab, LLC? I'm
7 not talking about any of the series that is issued. This judgment is not asking to be
8 entered against any of these supposed separate entities.

9 THE COURT: Yeah.

10 MR. GREENBERG: This is the same entity that was summoned in 2012 that
11 changed its name in 2017. That is the only purpose of the relief sought, Your Honor.
12 So the issues Your Honor has been discussing with counsel are very, very important
13 issues in the context of this case, but they have nothing to do with this motion, Your
14 Honor. I have -- the Court has rendered a judgment against A Cab, LLC. That entity
15 has changed its name to A Cab Series, LLC. I need to have the judgment name
16 reflect the current name of that single entity defendant, not any other alleged series
17 LLC defendants. I'm not asking the Court to address any of those issues. I have an
18 order here, Your Honor. In fact, I gave Your Honor an order with my motion which
19 is one paragraph. I have now another order that recites the appearance here today.
20 I would ask to approach and ask -- I'll give a copy to counsel and Your Honor can
21 enter it. This is a clerical issue, Your Honor.

22 THE COURT: Uh-huh.

23 MR. GREENBERG: This is not related at all to the issues that Your Honor is
24 raising with counsel and that counsel is discussing that Mr. Oshins was supposedly

1 here to give evidence on regarding the nature of the series relationship between
2 A Cab, LLC and the series it's issued. None of that is implicated by this order,
3 Your Honor. I think I've made myself clear.

4 THE COURT: Okay.

5 MR. GREENBERG: May I approach?

6 THE COURT: Uh, yeah, if you can give the other side copies of the same
7 thing.

8 MR. GREENBERG: There are two forms. Your Honor, this is just a very
9 summary form that was actually submitted with the motion. It does not recite the
10 appearance today. This is one that simply recites the appearance of counsel today,
11 that Your Honor held today.

12 THE COURT: All right. Okay, anything else on this motion, Mr. Greenberg?

13 MR. GREENBERG: I have nothing further to add, Your Honor.

14 THE COURT: All right.

15 MR. GREENBERG: I think Your Honor understands.

16 THE COURT: The rulings are as follows: Yes, no, yes, yes, no. Okay, trying
17 to put a little levity in here in what is a very serious matter for a host of reasons.

18 The ruling on the first motion which we addressed is that the Court
19 does not believe that it is devoid of jurisdiction in this matter for the reasons urged by
20 the defendants and accordingly that motion is denied. The plaintiffs -- or, I'm sorry,
21 the defendants' first filed motion for reconsideration, amendment, for a new trial and
22 for dismissal of claims is likewise denied. And the plaintiffs' motion to amend the
23 judgment from A Cab, LLC to A Cab Series, LLC is granted. I have made these
24 rulings for reasons, some of which you will no doubt ferret from our discussion, and

1 for the others I think you would have resort to the plaintiffs' arguments on the same
2 issues.

3 Clearly this is a matter which must to to the supreme court again,
4 so I think that it may be that a stay is warranted, and I would ask presumably the
5 defendants what manner of -- well, first of all, what does that do to the already filed
6 notice of appeal? Is it effective or not at this point, Mr. Wall?

7 MR. WALL: I believe the notice of appeal would become effective upon the
8 entry of the orders resolving the tolling motions.

9 THE COURT: All right. Then is there any need for the Court to -- I mean,
10 it's going to take somebody with more -- certainly more power and authority than
11 me to resolve these issues. How do we keep things as they are until that is done,
12 or is there a need to?

13 MR. GREENBERG: Your Honor --

14 THE COURT: I'm putting words in the mouth of the defendant. Does the
15 defendant request a stay or not? If they do, then we have to get into, you know,
16 on what basis and all of that.

17 MS. RODRIGUEZ: Well, I'll speak to that.

18 THE COURT: Yes, go ahead.

19 MS. RODRIGUEZ: We're passing the potato here.

20 THE COURT: Okay, go ahead.

21 MS. RODRIGUEZ: Absolutely, Your Honor, we do request a stay of the
22 proceedings pending appeal. As we indicated on Mr. Shafer's motion to quash the
23 writ, any further garnishments are jeopardizing the company's existence.

24 THE COURT: Uh-huh.

1 MS. RODRIGUEZ: Mr. Nady and A Cab have actively sought a bond
2 pending appeal and have been denied several times already. I can furnish copies
3 to the Court if there's any doubt as to my representations to the Court. They have
4 actively sought to obtain the appellate bond in order to request the further stay.
5 I was intending to brief a motion to stay under a hardship.

6 THE COURT: Uh-huh.

7 MS. RODRIGUEZ: I believe there's some authority to that effect. I don't
8 have that with me, but there is some case law that indicates when there is a
9 hardship on a defendant that the Court can grant a stay absent a bond. And I was
10 intending to go ahead and attach all of those denials. So as I mentioned in some
11 of the pleadings, I would ask the Court to consider that we are looking at payments
12 stemming to these drivers in nominal amounts that stem back to 2007. Most of
13 these people are not even employment with A Cab anymore. I know the
14 Department of Labor has had difficulty finding people to even make the payments
15 to. So I'm asking the Court to weigh that with trying to make payments to people
16 that cannot be found versus employees who are actively working at A Cab. If the
17 garnishments continue to the million dollars plus at this point, the company will shut
18 its doors and will be unable to -- we'll lay off several hundred people as a result.
19 So I would ask the Court to consider that in implementing a stay pending appeal to
20 the supreme court.

21 THE COURT: Let me ask you this. You know that it is not only a surety
22 bond that a court would consider. You can propose other things as well, properties,
23 etcetera, etcetera, and the Court certainly would consider that. I guess it comes
24 down to this in my thinking. If the Court were to put any kind of a long-term stay,

1 we would I think have to address it with further motion work, yet more motion work
2 because there are so many considerations that come to my mind already from both
3 sides that I don't think it would be wise to try and simply say, oh, well, we'll give
4 you a six month stay. But I think that with a case like this a relatively short stay
5 I certainly would be willing to entertain at this point right today.

6 MS. RODRIGUEZ: Thank you, Your Honor.

7 THE COURT: But I believe that if we get more than ten days, two weeks of
8 a stay, that should give you ample time to get to the supreme court and deal with
9 that matter further, or unless you file a motion in the meantime to extend the stay.

10 MS. RODRIGUEZ: Well, we were actually referred, just for the Court's
11 information, we were referred to the supreme court settlement conference and the
12 first judge they assigned couldn't hear us until February for a settlement conference.

13 THE COURT: Uh-huh.

14 MS. RODRIGUEZ: So we were all in agreement that that was -- again, in
15 agreement, miracle of all miracles, that that would be too long.

16 THE COURT: Yeah.

17 MS. RODRIGUEZ: And so it's been sent back. We now have another
18 settlement judge appointed, Kathleen Paustian I believe has been appointed, but
19 we don't have a date from her yet. So, I don't know, Mr. Wall would have a better
20 feel on how fast these things move in the appellate world.

21 THE COURT: Well, let's -- I think let's put it this way. For today I probably
22 would only make it like a ten day stay, assuming that in that time you would file a
23 motion with this Court first to warrant a further stay. And I don't know whether I'd
24 grant it or not. It depends. Again, you have on one side the desire not to kill the

1 goose that lays the golden egg, and on the other hand I'm dealing with constitutional
2 rights for these people.

3 Did you have an idea, Mister --

4 MR. GREENBERG: Yes. Your Honor, we don't want to kill the goose that
5 lays the golden egg here.

6 THE COURT: I'm sorry?

7 MR. GREENBERG: We don't want to kill the goose that lays the golden egg
8 here on our side, Your Honor. That's why you have a request before you for the
9 appointment of a receiver. The value of the judgment to my clients -- to be satisfied,
10 that is, Your Honor --

11 THE COURT: Uh-huh.

12 MR. GREENBERG: -- is really from the ongoing operations of the business.
13 I do not believe the liquidation value of the business would be sufficient, very likely,
14 to pay the judgment. But as an on-going business there's every reason to believe
15 that they can pay the judgment. I have monthly revenue numbers from the Nevada
16 Taxi Authority. A Cab had \$859,107 in fare revenue in September. They are
17 operating profitably, Your Honor. I have financials from 2015 and 2016 which show
18 the business clearly can pay this judgment and would over the course of a year,
19 if not be able to satisfy the entirety of the judgment from its profits, most of it. So,
20 Your Honor, there is no basis to grant a stay at this point if they're not going to put
21 up a bond.

22 THE COURT: Uh-huh.

23 MR. GREENBERG: They are determined, clearly, not to satisfy this
24 judgment. It is clear to me that they would rather spend their resources to appeal,

1 potentially lose that appeal and then at that point simply make the judgment
2 uncollectible. The representation made to the Court that the defendants have tried
3 in fact to secure a bond and they can't, well, I don't know, Your Honor. I mean, the
4 profits from these businesses were testified at Mr. Nady's deposition to have gone
5 to him over the years and then we have other evidence that was introduced to the
6 Court that in fact it had probably gone to a trust, so maybe the money is with a trust.
7 But there are resources out there that are under the control of Mr. Nady as the
8 principal of this business to be able to get a loan to post a bond.

9 The revenue of the business, as I said -- and by the way, the statistics
10 I gave you from the Taxi Commission indicate that trips were up 14 percent at A Cab
11 and the average fare was up 1.99 percent. And so if anything, the company is doing
12 better now than a year ago, from the limited public information we have available.
13 So there is no basis for this Court to grant a stay without the posting of a bond. And
14 in fact, I would submit that Your Honor probably doesn't have the authority to do it.
15 It's my understanding under the case law here that the Court really is not allowed
16 to do that unless they post a bond. I mean, I know there was litigation against the
17 Venetian where they waived the bond, but I think we understand that there --

18 THE COURT: Uh-huh.

19 MR. GREENBERG: -- the defendant was clearly able to show the Court
20 that it had the financial wherewithal to pay the judgment in the event that it was
21 unsuccessful on appeal. We don't have that demonstration here, Your Honor. But
22 I want to be respectful of the Court's attempt here to be deliberative and to be fair.
23 I understand Your Honor is struggling with these issues. There are issues raised
24 here of first impression for the Court, complex legal issues. As the Court has

1 indicated, these are clearly issues that the supreme court certainly could and would
2 benefit from clarifying the law. And I understand that, Your Honor, but nonetheless
3 there is a process here. If someone is aggrieved by Your Honor's determinations
4 of the law and the judgment that's entered, they post a bond. Otherwise they're
5 subject to the judgment that's been entered.

6 My clients have been waiting a long time for justice. I haven't been
7 paid anything for my representation of my clients. I have almost \$50,000 in
8 expenses in the prosecution of this case, Your Honor. I mean, defendants' conduct
9 in this litigation is really one aimed at exhausting my resources. And I'll be honest
10 with you, Your Honor, they're pretty much exhausted. I mean, at this point it's
11 very difficult for me to continue with this litigation. I have over 1,200 hours of time
12 devoted to this case. I mean, I have an application before Your Honor for an award
13 of fees --

14 THE COURT: Uh-huh.

15 MR. GREENBERG: -- which is on for next month in chambers. And, Your
16 Honor, I would prefer not to appear and argue that orally because that is time
17 consuming. But of course if the Court would like to see us and I can assist, I want
18 to assist the Court in its process. I understand Your Honor is doing your best with
19 a difficult situation here.

20 But again, Your Honor, under these circumstances there is no basis
21 to grant the defendants a stay. If Your Honor is inclined, as you were saying, to do
22 it for a very limited period of time, you mentioned something like ten days, I would
23 ask the Court to sign the order I gave you, one of the orders amending the
24 judgment, and if you're going to order -- you're going to enjoin me for ten days from

1 further activity regarding judgment enforcement, I will of course respect that and
2 I understand that.

3 THE COURT: You're asking me to use my injunctive powers again?

4 MR. GREENBERG: Well --

5 THE COURT: This time on the plaintiff. Okay.

6 MR. GREENBERG: Well, that's up to Your Honor's discretion.

7 THE COURT: Okay.

8 MR. GREENBERG: I think Your Honor understands my position.

9 THE COURT: Yes.

10 MR. GREENBERG: I don't want to repeat myself.

11 THE COURT: All right. The Court will interpose sua sponte a ten day stay
12 and that's the most that I can say. I am going to -- let me see, I better take a closer
13 look at this order. Okay, I am going to sign this order. That is the second one you
14 gave me that grants your motion to amend, and it's probably specifically because
15 of that that I think it would be appropriate for the Court to sua sponte enter a stay,
16 even if it's for a brief period.

17 MR. GREENBERG: May I approach, Your Honor?

18 MS. RODRIGUEZ: Which one, Your Honor, because I was handed two
19 versions.

20 MR. GREENBERG: The two page one.

21 MS. RODRIGUEZ: The two page one?

22 THE COURT: Yeah, the two page one. Yeah. So that's what we will do.
23 Your motion is granted, as I've already said.

24 MR. GREENBERG: Your Honor, when you speak of ten days, are you

1 speaking of ten calendar days from today or ten court days?

2 THE COURT: I think we'd better make it ten business days.

3 MR. GREENBERG: Okay. I understand, Your Honor.

4 THE COURT: In other words, two weeks from now.

5 MR. GREENBERG: Yes, Your Honor. And Your Honor did also have
6 continued the countermotion which was requesting judgment enforcement relief,
7 including appointment of a receiver. You did continue that to today.

8 THE COURT: Oh, yeah, that's right.

9 MR. GREENBERG: I don't know that Your Honor is going to want to spend
10 time on that in light of your ruling right now.

11 THE COURT: Yeah. That's -- and that's why. So I gather from what you're
12 saying that's still a live motion; you still want the Court to consider that.

13 MR. GREENBERG: I do want it considered by the Court. It doesn't have to
14 be today. If the Court -- you've given us a lot of your time, Your Honor.

15 THE COURT: Do you -- may that just be done in chambers or do you feel
16 the need to argue?

17 MR. GREENBERG: That could be -- I think the Court can certainly review
18 the submissions on that in chambers if the Court is comfortable with that.

19 THE COURT: Okay.

20 MS. RODRIGUEZ: I thought that was duplicative of the plaintiffs' motion to
21 take a judgment debtor exam.

22 THE COURT: That's -- now, is that what you're asking? That's not --

23 MR. GREENBERG: There is also another motion --

24 THE COURT: Yeah.

1 MR. GREENBERG: -- to take a judgment debtor examination, Your Honor.

2 THE COURT: We have --

3 MR. GREENBERG: That's in chambers.

4 THE COURT: We have a motion in chambers, hearing in chambers

5 calendared for November 8th and the 15th.

6 MR. GREENBERG: That is correct, Your Honor. One is a judgment debtor's

7 exam, one is the fee motion.

8 THE COURT: I'm going to put this on the chambers calendar for -- what's

9 the week after the 15th, the 22nd?

10 THE CLERK: November 15th?

11 THE COURT: Yeah, after November -- the week after that.

12 THE CLERK: That's Thanksgiving.

13 THE COURT: Oh.

14 THE CLERK: The 22nd.

15 THE COURT: No, I will not be here on Thanksgiving going over this.

16 THE CLERK: The 29th is the chamber calendar.

17 THE COURT: Okay, the 29th. We are really jammed, so I'm putting these in

18 over the top of what was already a blocked-off calendar for those days.

19 MR. GREENBERG: Okay. The Court is not asking for further appearance

20 on that calendar motion, correct?

21 THE COURT: No. No.

22 MR. GREENBERG: Thank you, Your Honor.

23 THE CLERK: So we're moving the chamber -- the three chamber calendars

24 to the 29th?

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(The Court confers with the clerk)

THE COURT: All right. We're going to have all of what now amounts to three motions on calendar for the 29th.

THE CLERK: November 29th.

THE COURT: Yeah. And these will be -- we'll just block off the rest and tell everybody else they'll have to wait. That's November 29th chambers.

MR. GREENBERG: That will be chambers, Your Honor. Thank you.

THE COURT: Yes. All right.

MR. GREENBERG: May I approach, Your Honor?

THE COURT: Show that -- Yes, show that to counsel, if you would. And I don't know whether they wish to sign as to form or not.

And also, since you'll be filing that and I've signed it in here, would you log it with my JEA after when we finish here? Oh, she may not be there, she may be out to lunch.

MR. GREENBERG: Would you like me to leave this with the Court or should I enter it in my office electronically, Your Honor?

THE COURT: No. You're going to have to go electronically file it, so.

MR. GREENBERG: Yes.

THE COURT: But all I'm saying is when you leave, if you would go through door number two and log that with my JEA.

MR. GREENBERG: Oh.

THE COURT: We keep track of everything I sign in court.

MR. GREENBERG: I will be sure we do that, Your Honor.

THE COURT: All right. Anything else?

1 MR. GREENBERG: Nothing, Your Honor.

2 THE COURT: I'm going to -- we had a big discussion on injunctions. I'm
3 going to enter some sort of injunction that this group of six lawyers will be enjoined
4 from bringing anything as complicated and gut-wrenching as this case for a good
5 long while.

6 MS. RODRIGUEZ: I'm sorry, Your Honor, I do have a question --

7 THE COURT: Yes.

8 MS. RODRIGUEZ: -- because I was just thinking about the three motions
9 that you set on calendar, chambers calendar. I know the Court is imposing a stay
10 for ten days, but I think I have responses due in some of those. So should I -- does
11 that -- is that applicable to my responses on some of those?

12 THE COURT: No. Thank you. Thank you. No, it's not my intention to stop
13 that deliberative process at all.

14 MS. RODRIGUEZ: The briefing process. Okay.

15 THE COURT: Yeah. It is simply to -- I mean, the Court is sitting here with
16 a bunch of money in the register, and so there's that plus any further proceedings
17 that could take place, and it's just my intention to allow a breathing space.

18 MS. RODRIGUEZ: Okay.

19 MR. GREENBERG: Just to clarify, Your Honor, the stay Your Honor is
20 issuing will -- includes today, of course, because I'm enjoined from acting on the
21 judgment as of today, and that stay is going to lift on November 6th. I am not
22 counting the 26th, which is Nevada Day, because that is a state holiday. So the
23 stay -- there will be no judgment enforcement issued by my office from today, the
24 22nd of October, until November 6th. On November 6th --

1 THE COURT: November 6th.

2 MR. GREENBERG: -- pursuant to your instruction judgment enforcement
3 may continue.

4 THE COURT: All right. That works. Now, that better be included in the order
5 for today, however.

6 MR. GREENBERG: Yes, Your Honor, we should submit an order. I guess
7 we could -- I think we could submit one further order to Your Honor as to including
8 that point, as well as the defendants' motions which were denied, correct?

9 THE COURT: Yeah, unless the defendant wishes to -- I mean, it's your
10 motion. If you want to --

11 MS. RODRIGUEZ: Draft the order on the summary judgment. Do we want
12 to do that?

13 THE COURT: I don't -- I'm not inviting you all to get in the battle after the
14 battle over what the form of the order will be, but can we -- is this one we can have
15 the plaintiff do and the defense -- or between the two of you --

16 MS. RODRIGUEZ: We'll draft the order.

17 THE COURT: -- agree on the wording of the order?

18 MS. RODRIGUEZ: On the subject matter jurisdiction issue?

19 THE COURT: On all three of these that were for today, yes.

20 MR. GREENBERG: Well, Your Honor signed the order on the motion to
21 amend, my motion, Your Honor. That's been resolved.

22 THE COURT: Yes, yes, yes. Thank you. Correct.

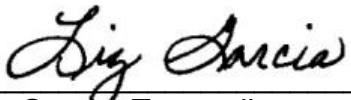
23 MR. GREENBERG: So it's defendants' motions that an order is necessary
24 on, Your Honor.

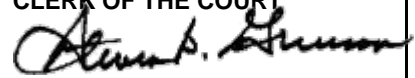
1 THE COURT: Yeah.
2 MS. RODRIGUEZ: We'll draft it.
3 THE COURT: Can you all agree on the language of those? All right.
4 MR. GREENBERG: We will. I'm confident we can, Your Honor.
5 THE COURT: Very good. That's what I will look forward to then. Thank you.
6 MR. GREENBERG: Thank you, Your Honor.
7 MS. RODRIGUEZ: Thank you.
8 MR. GREENBERG: You've been very patient with us.

9 (PROCEEDINGS CONCLUDED AT 12:58 P.M.)

10 * * * * *

11
12 ATTEST: I do hereby certify that I have truly and correctly transcribed the
13 audio/video proceedings in the above-entitled case to the best of my ability.

14 
15 Liz Garcia, Transcriber
16 LGM Transcription Service
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leongreenberg@overtimelaw.com
dana@overtimelaw.com
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' MOTION TO
FILE A SUPPLEMENT IN
SUPPORT OF AN AWARD OF
ATTORNEYS FEES AND
COSTS AS PER NRCP RULE
54 AND THE NEVADA
CONSTITUTION**

Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation, hereby move this Court pursuant to NRCP Rule 54, and Article 15, Section 16, of the Nevada Constitution (the Minimum Wage Amendment or "MWA") to file this supplement to their motion (Chambers hearing date of November 29, 2018) for an award of costs and attorneys fees. This Motion is made based upon the declaration of Leon Greenberg the attached exhibits, and the other papers and pleadings on file herein.

AA009401

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1 **THIS SUPPLEMENT IS LIMITED TO SEEKING \$1662.50**
2 **OF ERRONEOUSLY OMITTED 2018 COSTS OF LITIGATION**

3 2. It has come to my attention that plaintiffs' counsel's original motion filed
4 on October 12, 2018 relied upon a 2017 year end accounting in seeking an award of a
5 total of \$44,865.57 in litigation expenses. The following additional significant
6 litigation expenses were incurred by my office in 2018 that were necessary to the
7 prosecution of this case and should be recovered as part of a judgment against
8 defendant A Cab LLC (currently known as A Cab Series LLC):
9

10 \$1,275 for the work of Charles Bass, plaintiffs' counsels computer data
11 consultant. These amounts were charged in preparation for trial of
12 this case, his January 31, 2018 invoice, and for the processing of
13 information needed to have the Court enter its final judgment, the
14 June 30, 2018 invoice. Copies of both invoices are attached at
15 Exhibit "A."
16

17 \$387.50 for the securing of a transcript of the *Dubric v. A Cab*
18 proceedings in May of 2018, as needed to file a petition for a writ
19 to secure certain relief impacting the interests of the class members
20 in this case. The Nevada Supreme Court directed an answer to that
21 writ petition that it subsequently decided did not require a
22 resolution on its merits in light of the entry of a final judgment in
23 this case. That invoice and Order of the Nevada Supreme Court is
24 at Ex. "B."
25

26 3. The inclusion of these two previously omitted items increases the total
27 claim for litigation costs and expenses in this case by \$1,662.50 to a total of
28

1 \$46,528.07 (instead of the previously requested \$44,865.57). I apologize to the Court
2 for the oversight in the initial costs submission by my office. My law office is very
3 small. It has no dedicated accounting or bookkeeping staff and the expenses on this
4 case are far in excess of any other case handled by my office and have been difficult to
5 track in an “up to the minute” fashion. Indeed, in submitting this litigation expense
6 request there are hundreds of dollars of otherwise proper litigation expenses (for
7 example, Court e-filing charges for 2018) that I have not been able to itemize and
8 present to the Court. Plaintiffs’ counsel full, revised, itemized request for an award of
9 litigation costs and expenses is as follows:

Expense	Amount
Process Server, Runner, Overnight Delivery	\$358.06
Court Filing Fees Including Wiznet and Odyssey fees for filing documents	\$2,158.97
Transcripts of Court Hearings, Court Reporter Fees for Depositions, and \$990 Fee paid for Deposition Appearance of Defendants’ Expert	\$11,068.18
Fees paid to Experts and Computer Data Consultants to Assist in Prosecution of Case and Extracting Information from Defendants’ Computer Data Files	\$30,297
Class Notice Costs of Postage and Mailing Materials	\$1,491.59
Online Investigation Costs	\$168.19

Charges Paid to Defendant for Duplication of Defendants' Records (Trip Sheets) as Per Defendants' Insistence	\$918.34
Postage (partial, itemized amount)	\$9.74
Parking for Court Appearances	\$58.00
Copies (Numerous, but not itemized, not charged)	
TOTAL EXPENSES	\$46,528.07

4. As per the above, and as set forth in my office's motion filed on October 12, 2018, my office requests reimbursement of \$46,528.07 of necessary litigation costs.

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

Affirmed this 29th day of October, 2018

/s/ Leon Greenberg

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Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs as per NRCP Rule 54 and the Nevada Constitution

TO:

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

Dana Sniegocki

EXHIBIT "A"

Charles M. Bass

3418 Overo Ct.
North Las Vegas, NV 89032
phone 702-914-0100 cell 702-319-1063
email cbass@lvicc.com

INVOICE

INVOICE #144
DATE: JANUARY 31, 2018

TO:

Leon Greenberg
Attorney
2965 S. Jones Blvd
Las Vegas, NV 89146
702-383-6085

COMMENTS OR SPECIAL INSTRUCTIONS:

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
18.5 hours	Data Integration, Excel Spreadsheet consolidation and design for ACab lawsuit through January 31, 2018	50.00	925.00
SUBTOTAL			925.00
SALES TAX			0
SHIPPING & HANDLING			0
TOTAL DUE			925.00

AA009408

Charles M. Bass

3418 Overo Ct.
North Las Vegas, NV 89032
phone 702-914-0100 cell 702-319-1063
email cbass@lvicc.com

INVOICE

INVOICE #164
DATE: JUNE 30, 2018

TO:

Leon Greenberg
Attorney
2965 S. Jones Blvd
Las Vegas, NV 89146
702-383-6085

COMMENTS OR SPECIAL INSTRUCTIONS:

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
6.5 hours	Data Integration, Excel Spreadsheet consolidation and design for ACab lawsuit through June 30, 2018	50.00	325.00
SUBTOTAL			325.00
SALES TAX			0
SHIPPING & HANDLING			0
TOTAL DUE			325.00

AA009409

EXHIBIT “B”

Invoice: 18-0039

ACCUSCRIPTS
Renee Silvaggio, CCR 122
8983 Lilyhammer Court
Las Vegas, Nevada 89147
(702) 477-5191, Email: reneesilvaggio@cox.net

TO: Leon Greenberg, Esq. DATE: 05/17/18
leongreenberg@overtimelaw.com
702-383-6085

Please make check payable to:
RENEE CORPORATION
EIN #88-0219957

For Professional Services Rendered:

Re: DC 25 - Kathleen Delaney
DUBRIC v. A CAB, A-15-712063-C
05-15-18 -- EXPEDITED TRANSCRIPT

Reporting and Tran Prep total due: \$ 387.50

AA009411

IN THE SUPREME COURT OF THE STATE OF NEVADA

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
KATHLEEN E. DELANEY, DISTRICT
JUDGE,

Respondents,

and

JASMINKA DUBRIC; A CAB, LLC; A
CAB SERIES LLC; EMPLOYEE
LEASING COMPANY; AND
CREIGHTON J NADY,
Real Parties in Interest.

No. 75877

FILED

MAY 23 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER DIRECTING ANSWER AND
EXPEDITED RESPONSE TO MOTION FOR STAY*

This original petition for a writ of mandamus challenges a district court order denying petitioners' motion for leave to intervene. Having reviewed the petition and supporting documents, it appears that an answer may assist this court in resolving the petition. Therefore, real parties in interest, on behalf of respondents, shall have 20 days from the date of this order within which to file and serve an answer, including authorities, against issuance of the requested writ. NRAP 21(b)(1). Petitioners shall have 7 days from the date that the answer is served to file and serve any reply.

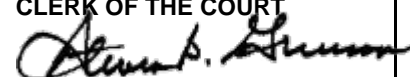
Further, petitioners have filed an emergency motion seeking to stay an upcoming hearing on real parties in interest's joint motion concerning class certification and preliminary approval of a proposed class settlement agreement. We defer ruling on that motion pending our receipt and consideration of any opposition. Real parties in interest shall have until 4:00 p.m. tomorrow, May 24, 2018, to file and serve a response to the motion for stay.¹ No extensions of time will be granted.

It is so ORDERED.

Cherry, A.C.J.

cc: Hon. Kathleen E. Delaney, District Judge
Leon Greenberg Professional Corporation
Rodriguez Law Offices, P.C.
Bourassa Law Group, LLC
Eighth District Court Clerk

¹For purposes of complying with the portion of this order directing an expedited response to the stay motion, we suspend the provisions of NRAP 25(a)(2)(B)(ii), (iii), and (iv), which provide that a document is timely filed if, on or before its due date, it is mailed to this court, dispatched for delivery by a third party commercial carrier, or deposited in the Supreme Court drop box. See NRAP 2. Accordingly, real parties in interest's response(s) shall be filed personally or by facsimile or electronic transmission with the clerk of this court in Carson City.



OPPM

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702-794-4411
jshafer@premierelegalgroup.com
Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

Hearing: November 29, 2018
Chambers

**OPPOSITION TO PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS FEES
AND COSTS PER NRCP RULE 54 AND THE NEVADA CONSTITUTION**

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., MICHAEL K. WALL, ESQ., of
HUTCHISON & STEFFEN, LLC, and JAY A. SHAFER, ESQ., of PREMIER LEGAL GROUP hereby submit

1 this Opposition to Plaintiffs' Motion for an Award of Attorneys Fees and Costs.

2 **1. Plaintiffs have failed to exceed Defendants' Offers of Judgment and must be denied**
3 **pursuant to NRCP 68.**

4 Nevada Rule of Civil Procedure 68 indicates:

5 "(f) Penalties for Rejection of Offer. If the offeree rejects an offer and fails to obtain a more
6 favorable judgment,

7 (1) the offeree cannot recover any costs or attorney's fees and shall not recover interest for
8 the period after the service of the offer and before the judgment; and

9 (2) the offeree shall pay the offeror's post-offer costs, applicable interest on the judgment
10 from the time of the offer to the time of entry of the judgment and reasonable attorney's fees, if any
11 be allowed, actually incurred by the offeror from the time of the offer. If the offeror's attorney is
12 collecting a contingent fee, the amount of any attorney's fees awarded to the party for whom the
13 offer is made must be deducted from that contingent fee." **NRCP 68(f).**

14 As this Court is aware from prior pleadings filed in this matter, Defendants engaged in a Rule
15 68 Offer of Judgment to the Plaintiffs more than 3 ½ years ago. The Plaintiffs have failed to obtain
16 a more favorable judgment than that which was offered, and are absolutely precluded from obtaining
17 "any costs or attorney's fees and shall not recover interest for the period after the service of the offer
18 and before the judgment."

19 See *Defendants' Motion to Dismiss and for Summary Judgment against Plaintiff Michael*
20 *Reno*, Exh. 4, filed September 21, 2015, attached hereto as **Exhibit 1**.

21 See *Defendants' Motion to Dismiss and for Summary Judgment against Plaintiff Michael*
22 *Murray*, Exh. 4, filed September 21, 2015, attached hereto as **Exhibit 2**.

23 On March 10, 2015, Defendants offered to accept judgment against it and in favor of Plaintiff
24 Michael Reno in the amount of \$15,000 as full and final settlement of this matter. See Exhibit 1. On
25 August 22, 2018, this Court entered judgment in favor of Plaintiff Michael Reno in the amount of
26 \$4,966.19. **Exhibit 3**, page 21 of the Order Granting Summary Judgment, Severing Claims, and
27 Directing Entry of Final Judgment. Said judgment of \$4,966.19 is not a more favorable judgment
28 than \$15,000.

On March 10, 2015, Defendants offered to accept judgment against it and in favor of Plaintiff Michael Murray in the amount of \$7,500 as full and final settlement of this matter. *See* Exhibit 2. On August 22, 2018, this Court entered judgment in favor of Plaintiff Michael Murray in the amount of \$770.33. **Exhibit 3**, page 18 of the Order Granting Summary Judgment, Severing Claims, and Directing Entry of Final Judgment. Said judgment of \$770.33 is not a more favorable judgment than \$7,500.

There was no class certification for nearly one year after these Rule 68 offers were made. Therefore, there was nothing precluding Plaintiffs from accepting these offers, other than their counsel (who now seeks fees) not communicating to them the existence of the offers. Class certification was not entered until the next year on February 10, 2016. At that time, it was pointed out to the court that it was in the Plaintiffs' best interest to be told about the offers, but it was not in Plaintiffs' counsel's best interest, as they could only profit by escalating the fees. As predicted, Plaintiffs Murray and Reno are now in a position with a substantially less recovery, while their attorney is seeking an exorbitant amount of fees which they will not share in.

Of note, at that time there was also no injunctive relief sought as Plaintiffs Murray and Reno were long gone from employment with A Cab. Defendants indicated at that time to the Court that both Plaintiffs were no where near the jurisdictional minimal limits to be in the District Court, and that each Plaintiff was required to meet subject matter jurisdiction. Defendants made good faith offers to each Plaintiff. This matter could have been put to rest at that time had Plaintiffs' counsel relayed the outstanding offers to his clients; or been ordered by the Court to do so.

2. Plaintiffs' fees are excessive.

Plaintiffs have failed to provide a copy of the fee agreements executed with any of their clients which most likely will indicate that they are already receiving fifty percent (50%) of the million dollar judgment entered by this Court. While the judgment calls for the actual drivers to receive nominal sums, the attorneys' fees in this matter will exceed 1 million dollars with this present request - not to mention that Plaintiffs have also filed a supplement to ask for more. Plaintiffs will collect 50% of the judgment in addition to the more than \$600,000 they are seeking.

At the minimum, this Court should order Plaintiffs to produce a copy of the fee agreements

1 executed with the representative Plaintiffs to ascertain the total amount Plaintiffs are seeking in fees.
2 While this Court has stressed its interest in having the drivers recover any underpayments they are
3 owed, it is Plaintiffs' counsel who solely stands to profit at the expense of closing down a Nevada
4 business and hundreds of employees losing their jobs. The unreasonableness and unjustness of this
5 scenario should be glaring.

6 **3. Plaintiffs have deliberately escalated the fees unnecessarily and for profit.**

7 As this Court is aware, Defendants brought to the Court's attention on more than one
8 occasion that Plaintiffs were deliberately increasing the fees for profit, and unnecessarily. In fact,
9 Defendants sought to file a third party complaint for such behavior, but was denied by the Court.
10 *See Defendants' Motion for Leave to Amend Answer to Assert a Third Party Complaint, filed*
11 *January 27, 2017*, attached hereto as **Exhibit 4**. The Minute Order denying Defendants' motion is
12 attached hereto as **Exhibit 5**.

13 At that time nearly two years ago, Defendants informed the Court that the evidence
14 demonstrated that the proposed Third-Party Defendants Greenberg, Leon Greenberg Professional
15 Corporation, and Sniegocki were not acting on behalf of their clients' interests, but rather were
16 seeking to profit themselves from prolonged litigation and a fee-shifting mechanism. The
17 depositions and discovery responses of the named Plaintiffs, Michael Murray and Michael Reno,
18 made it clear that both men had no interest in the litigation, had no understanding of the litigation,
19 and had merely signed up when solicited by the proposed Third-Party Defendants.

20 Further, when Defendants made a good faith attempt to resolve the claim, at a value
21 exceeding 10 times the value of the claim, the clients were not made aware of such offers. This
22 evidenced that the proposed Third-Party Defendants had no interest in what was best for the
23 Plaintiffs, but rather stood to obtain further financial gain by prolonging the litigation and escalating
24 attorney fees in a fee-shifting type case.

25 Also at that time, Plaintiffs' counsel Greenberg confirmed that he would not engage in any
26 mediation or alternative type of resolution, nor would he disclose a settlement demand. Also telling
27 at that time was that Plaintiffs' counsel had a pattern of dragging out the litigation asking for
28 extension after extension with the Court, indicating they need more time to prepare, and compelling

discovery which they in fact then did not utilize in any manner. In reality, Plaintiffs' counsel had been prolonging the litigation to continue advertising and attempting to recruit more clients by stating, "**there is no set deadline for this case to be finished.**" *Greenberg's website advertising page*, Exhibit 2 to Defendants' Motion to Amend Answer. *See* Exhibit 4.

At the end of the day now in 2018, Defendants' assertions that Plaintiffs were merely "running up the tab" proved correct, in that not one scintilla of the items that Plaintiffs argued were so important to their case was ever used by Plaintiffs. Specifically, Plaintiffs filed repeated motions to compel for items that their experts and they themselves admittedly never looked at! The purpose of Plaintiffs' motion practice was not to engage in discovery, but was to harass Defendants, and to escalate the fees, for which they now seek to be rewarded.

Plaintiffs continue to indicate that Defendants were sanctioned for a discovery issue in early 2016, but never reveal that the sanction arose from a dispute over the necessity of "pulling" cab manager data (which Defendants asserted to the Commissioner was burdensome and not relevant); ultimately such a representation was proven true by Plaintiffs' own experts indicating they never relied upon, or ever even looked at nor considered.

In their present request, Plaintiffs have attached absolutely no detail as to the hours they claim. Plaintiffs merely speak in generalities as to the hundreds of hours spent, even including 122 hours of paralegal time without any authority. At the minimum, this Court should order Plaintiffs to provide the detail as to the hours claimed, which will most likely demonstrate that the hours are quadruple-billed by multiple attorneys attending the same hearings. While it is typical in this case that 4 attorneys were in attendance on behalf of the Plaintiffs at most hearings, does the Court find that such billing is reasonable? Further, the detail will evidence that the hours billed were for items which were frivolous, and cannot be supported as reasonably incurred.

Defendants cannot oppose the specifics of the hours claimed, as none have been provided, other than "travel time."

4. Plaintiffs' request is untimely.

Nevada Rule of Civil Procedure 54(b) states: Unless a statute provides otherwise, the motion must be filed no later than 20 days after notice of entry of judgment is served; specify the judgment

1 and the statute, rule, or other grounds entitling the movant to the award; state the amount sought or
2 provide a fair estimate of it; and be supported by counsel's affidavit swearing that the fees were
3 actually and necessarily incurred and were reasonable, documentation concerning the amount of fees
4 claimed, and points and authorities addressing appropriate factors to be considered by the court in
5 deciding the motion. **The time for filing the motion may not be extended by the court after it**
6 **has expired.**

7 Notice of entry of order was entered August 22, 2018. Plaintiffs' motion for fees was not
8 filed until October 12, 2018, and must be denied in its entirety pursuant to NRCP 54. There is no
9 statute nor does the Constitution extend this time.

10 Nor have Plaintiffs complied with the requirements of this rule requiring documentation
11 concerning the amount of fees claimed. There is none attached nor addressed.

12 **5. Plaintiffs' request for costs must be denied.**

13 Plaintiffs' request for costs is not supported by a Verified Memorandum of Costs pursuant to
14 NRS 18.110, and cannot be considered. No supporting documentation has been attached as
15 required. Further, Plaintiffs are seeking in excess of \$29,000 for experts who were never utilized,
16 but more so were subject to being stricken as having not met the required standards for admissibility.
17 See *Defendants' Motion in Limine to Exclude Plaintiffs' Experts* filed December 22, 2017.

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CONCLUSION

Because Plaintiffs' motion is untimely and has not met the minimum requirements for an award, it should be denied in its entirety. Further, Plaintiffs have failed to obtain a judgment in excess of the NRCP 68 Offers which were served; and therefore must be denied. Counsels' 50% take of the million dollar judgment should be sufficient compensation for the hours of litigation which they themselves caused.

DATED this 1st day of November, 2018.

RODRIGUEZ LAW OFFICES, P. C.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 1st day of November, 2018, I electronically filed the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

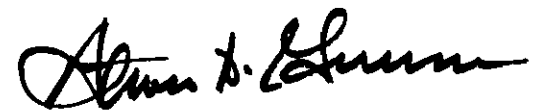
Leon Greenberg, Esq.
Leon Greenberg Professional Corporation
2965 South Jones Boulevard, Suite E4
Las Vegas, Nevada 89146
Co-Counsel for Plaintiffs

Christian Gabroy, Esq.
Gabroy Law Offices
170 South Green Valley Parkway # 280
Henderson, Nevada 89012
Co-Counsel for Plaintiffs

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

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

MDSM
Esther C. Rodriguez, Esq.
Nevada Bar No. 6473
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
702-320-8400
info@rodriguezlaw.com
Attorneys for Defendant A Cab, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

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

**DEFENDANT'S MOTION TO
DISMISS AND FOR SUMMARY
JUDGMENT AGAINST PLAINTIFF
MICHAEL RENO**

Defendant A Cab, LLC, by and through its attorney of record, ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRCP 12(b)(1), NRCP 12(b)(5) and NRCP 56(c) hereby respectfully moves this Honorable Court to dismiss the Claims for Relief of Plaintiff Michael Reno, and for summary judgment against Michael Reno. This Motion is based upon the pleadings and papers on file, the attached Memorandum of Points and Authorities, and any oral argument that may be entertained at the hearing of this Motion.

DATED this 21st day of September, 2015.

RODRIGUEZ LAW OFFICES, P.C.

By: /s/ Esther C. Rodriguez, Esq.
Esther C. Rodriguez, Esq.
Nevada Bar No. 6473
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendant A Cab, LLC

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendant will bring the foregoing Motion on for hearing before this Court on the 27 day of Oct, 2015, or as soon thereafter as counsel may be heard. @ 9 : 0 0 a m

DATED this 21st day of September, 2015.

RODRIGUEZ LAW OFFICES, P.C.

By: /s/ Esther C. Rodriguez, Esq.
Esther C. Rodriguez, Esq.
Nevada Bar No. 6473
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendant A Cab, LLC

POINTS AND AUTHORITIES

I.

FACTUAL BACKGROUND

Plaintiff Michael Reno ("Reno") is a former employee of Defendant A Cab, LLC ("A Cab"), who was terminated on September 26, 2012 for violation of company policy, insubordination, repeated company theft/drop shorts, and low productivity. **Exhibit 1.** Reno worked for A Cab for approximately 18 months from June 16, 2010 to September 26, 2012 as a taxicab driver. Prior to working for A Cab, Reno worked for various cab companies including the larger conglomerate, Frias Companies.

On August 25, 2015, Reno gave sworn deposition testimony indicating that was suing A Cab for various items including gas charges, penalties for not accepting radio calls, and other "illegal" activities such as the company forcing the driver to carry groceries into the customer's house. **Exhibit 2, Reno deposition**, 55:12-20; 58:3-6; 61:14 - 62:2. Reno said the basis of his claim is that he had determined that he was making less money at A Cab than he previously made at

1 Frias.¹

2 As this Court is aware, a primary purpose of a deposition is to allow an adverse party to
3 ascertain the basis of a claim. At no time during the deposition of Michael Reno, was there any
4 indication that he is either pursuing a minimum wage claim, nor that he has any basis to support
5 such a claim. In fact, from his testimony, Reno has very little concept of what he is suing for, or
6 even who he is suing.² Instead, Reno made clear in several pages of testimony that he believed and
7 he was told that the company was “stealing” from him, and that his proof was in the fact that he was
8 making less money than he had in the past. **Exhibit 2, Reno deposition**, 21:15-24; 27:14-19; 39:5-
9 40:20.

10 Moreover, as the Plaintiff has never indicated a value of his claim, a Department of Labor
11 determination was reviewed as valuing any possible underpayment to Reno as **\$1048.94**. **Exhibit**
12 **3**. Defendant made an offer to resolve this claim months ago to the Plaintiff in a formal pleading in
13 an amount 15 times the value of the case at **\$15,000.00**. **Exhibit 4**. Contrary to the Nevada Rules
14 of Professional Conduct, this information was never conveyed to Plaintiff Reno by his counsel.
15 Plaintiff was never informed of the offer on the table.³ **Nevada Rules of Professional Conduct**
16 **Rule 1.2 and Rule 1.4**.

17 There are 7 days left in which to conclude discovery, as the discovery deadline is October 1,
18

19 ¹ “I’m doing this 20 years, and I was with Frias for seven, Yellow for eight, A Cab for
20 two, Western for three. I’ve used all my trip sheets and I did almost the same amount of money
21 15 years ago as I do now, so I know how much the pay should be. You know, when one person
22 is paying you 800, another person is paying you 400, even though you can say they kept a little
23 bit of gas, a little bit of tips, it’s still not the same thing. You know they are taking something.”
Exhibit 2, Reno deposition, 12:2-11.

24 ² Q. Do you understand that you filed a complaint against A Cab?
A. Well, that’s -- that’s kind of a thing like the president, you sign a deal to get something, the
25 book has you giving up everything else. I went against A Cab. They got something going on
26 with Western because they are in, what, collusion you call it? That’s not my idea, but if their
27 shortness, too, and I’m working for them, of course I want that money, too. I just want fairness.
If another person is shorting them, another person is shorting them, then they are all in it. All of
28 their hands are dirty. **Exhibit 2, Reno deposition**, 25:7-18.

³ **Exhibit 2, Reno deposition**, 68:10-23

2015. To date, Plaintiff Reno has not produced any evidence to support his claims for relief as
pled, and thus A Cab is entitled to judgment as a matter of law. Reno's Complaint is one for
minimum wage underpayment, but the substance of his claims, per Reno himself, is for company
charges (which he believes are illegal), and company policies on customer service (which he asserts
are illegal).

II.

LEGAL ARGUMENT

A. Legal Standard.

Summary judgment shall be granted when there are no genuine issues of material fact and
the moving party is entitled to judgment as a matter of law. NRCP 56(c). The moving party
initially bears the burden of proving the absence of genuine issues of fact. *Butler v. Bogdanovich*,
101 Nev. 449, 705 P.2d 662 (1985). Once that burden has been carried, the responding party must
come forward with evidence creating genuine and triable issues of fact. *Bird v. Casa Royale*, 97
Nev. 67, 624 P.2d 269 (1981).

Seven (7) days remain in the discovery period; and to date, Plaintiff Reno has not produced
any evidence to support his claims for relief. Accordingly, A Cab is entitled to judgment as a
matter of law. "Although the party opposing a motion for summary judgment is entitled to all
favorable inferences from the pleadings and documentary evidence, the opposing party 'is not
entitled to build a case on the gossamer threads of whimsy, speculation and conjecture.'" *Collins v.*
Union Fed.Sav. & Loan Ass'n., 99 Nev. 284, 302; 662 P.2d 610, 621 (1983) (citing *Mullis v.*
Nevada National Bank, 98 Nev. 510, 654 P.2d 533 (1982), and *Hahn v. Sargent*, 523 F.2d 461, 468
(1st Cir. 1975), *cert. denied*, 425 U.S. 904 (1976)). In order to avoid the requested relief, Plaintiff
must come forward with specific facts on which this Court could rule in its favor on the issues
addressed in this motion. *Hickman v. Meadow Wood Reno*, 96 Nev. 782, 617 P.2d 871 (1980).
Here, the motion must be granted because there are no genuine issues of fact which remain for trial
and Defendant A Cab is entitled to judgment as a matter of law.

B. Dismissal

A motion to dismiss under Rule 12(b)(1) of the Nevada Rules of Civil Procedure may be

utilized when a lack of subject matter jurisdiction is apparent on the face of the complaint.⁴ Under Nevada law, the failure of a party to exhaust its administrative remedies prior to commencing an action in the district court divests the court of jurisdiction and mandates dismissal of the action.⁵ Similarly, a defendant is entitled to dismissal of a claim when a plaintiff fails to state a claim upon which relief can be granted.⁶

C. Plaintiff Reno Does Not Have an Actionable Claim Sufficient to Give Rise to a Justiciable Controversy.

If this Court grants Defendant's currently pending "Motion to Dismiss Plaintiff's First Claim for Relief" based on the prospective application of the *Thomas v. Yellow Cab* decision⁷, Michael Reno will be barred by the statute of limitations in this matter. The Supreme Court decision was issued and became effective on June 26, 2014. Reno's last date of employment at A Cab was nearly two years earlier on September 26, 2012.

Secondly, Reno testified in his deposition that the basis for his claim was that he was making less money at A Cab than he was at his prior employment with Frias Companies. He said on average he made about \$200 less per month, and therefore felt he was "owed" something from A Cab.⁸ Upon further reflection, he voluntarily conceded that other factors explain his smaller paycheck. The other factors included that he was now older, and wasn't as productive as in his youth; as well as the fact that there are more taxicabs on the road now yielding more competition for paying customers. **Exhibit 2, Reno deposition**, 105:1-25 - 106:1-4; 106:15-18; 106:24-107:1.

⁴*Girolla v. Rousille*, 81 Nev. 661,663, 408 P.2d 918, 919 (1965).

⁵*Nevada v. Scotsman Manufacturing Co.*, 109 Nev. 252, 255, 849 P.2d 317, 319 (1993).

⁶*See* NRCP 12(b)(5)

⁷ *Thomas vs. Nevada Yellow Cab Corporation*, 130 Nev., Adv. Op. 52 (2014).

⁸ Q. Do you have any idea what you believe that you are owed?

A. Yeah, about \$200 a month, at least, for two years, which is 4,800 plus all that \$6 crap that they added on and \$20 fees for radio calls and the interest for the money that should have been mine to begin with. Then there is aggravation, making us do stuff that wasn't legal. They wanted us to go into people's houses with groceries. **Exhibit 2, Reno deposition**, 55:12-20. *See Also*, 58:3-6; 61:14 - 62:2.

1 Whatever the reasons that explain Reno's smaller paycheck, this simply is not grounds for a
2 lawsuit. You don't sue a company simply because you make less money there. It is apparent from
3 the Plaintiff's own sworn testimony that this is his grounds for this frivolous claim.

4 Throughout his deposition testimony, Reno testified about multiple complaints he had about
5 his past employment with at A Cab. None of these had anything to with a claim for minimum
6 wage. Contrarily, his complaints were about penalties for his "drop shorts" (when he dropped less
7 money that he was supposed to based upon the documentation of his fares); penalties for not taking
8 radio calls (he said he was away from his cab and couldn't hear the radio call). **Exhibit 2, Reno**
9 **deposition**, 110:11-111:11. His testimony never mentioned minimum wage until after a prolonged
10 break during the deposition, which he took with his attorney. After which, he came back and
11 simply gave 1 word confirming answers to her questions that he was claiming a minimum wage.
12 **Exhibit 2, Reno deposition**, 115:3-14.

13 **D. Plaintiff's claim has been extinguished by an Offer that exceeds the value of any**
14 **legitimate claim.**

15 An offer of judgment was submitted to Plaintiff Reno in the amount of **\$15,000.00**, but was
16 never communicated to him by his counsel, per Reno. The value of any alleged underpayment to
17 Reno has already been resolved by the U.S. Department of Labor in the amount of **\$1,048.94**.
18 However, even by Plaintiff Reno's own extreme "guestimates" of what he is claiming (\$200 per
19 month for 24 months (despite that he only worked there 18 months)), his total demand is **\$4,800**,
20 and the offer to him by A Cab was **\$15,000.00**.

21 The purpose of this rule [NRCP 68] is to encourage settlement of lawsuits before trial.
22 *Morgan v. Demille*, 106 Nev. 671, 799 P.2d 561 (1990). This rule and NRS 17.115 are designed to
23 facilitate and encourage settlement. *Matthews v. Collman*, 110 Nev. 940, 878 P.2d 971 (1994).

24 In this instance, there was a complete failure on the part of Plaintiff's counsel to relay
25 Defendant's good faith offer to the client.

26 Q. Are you aware that A Cab offered you \$15,000 as an attempt to resolve any amounts that
27 you were owed?

28 A. I never heard anything. Nobody ever told me anything.

1 Q. Take a look at that document that I have just handed you, Mr. Reno.

2 A. I wonder why they wouldn't --

3 Q. Have you ever seen this document before, it's entitled A Cab LLC's Offer Of Judgment To
4 Plaintiff, Michael Reno?

5 A. No, ma'am.

6 Q. So you were unaware that there was a \$15,000 offer to you?

7 A. Yep. **Exhibit 2, Reno deposition**, 68:10-23.

8 "A lawyer shall abide by a client's decision whether to settle a matter." **Nevada Rules of**
9 **Professional Conduct Rule 1.2(a)**. "A lawyer shall promptly inform the client of any decision or
10 circumstance with respect to which the client's informed consent is required by these Rules."

11 **Nevada Rules of Professional Conduct Rule 1.4(a)(1)**.

12 It would go beyond the bounds of decency to allow a lawsuit to continue when a Defendant
13 has offered far *in excess* of that which is being claimed by the Plaintiff to resolve the claim.
14 Further, Defendant's offer to compensate Reno in an amount exceeding the independent valuation
15 of his claim (and more than that which Reno is even claiming) extinguishes and satisfies the claim
16 altogether. This Court lacks jurisdiction over a claim which has been satisfied. In this instance,
17 Plaintiff's counsel is merely prolonging litigation in an effort to continue to run up attorney fees
18 and costs in the hopes of passing these to the Defendant.

19 ...

20 ...

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28

III.

CONCLUSION

Based upon the foregoing points and authorities, Defendant A CAB, LLC respectfully requests this Honorable Court to enter an Order granting Defendant's Motion to Dismiss Plaintiff Michael Reno's Claims for Relief for failure to state a claim upon which relief can be granted.

DATED this 21st day of September, 2015.

RODRIGUEZ LAW OFFICES, P.C.

By: /s/ Esther C. Rodriguez, Esq.
Esther C. Rodriguez, Esq.
Nevada Bar No. 6473
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendant A Cab, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 21st day of September, 2015, I electronically *filed* the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

Leon Greenberg, Esq.
Leon Greenberg Professional Corporation
2965 South Jones Boulevard, Suite E4
Las Vegas, Nevada 89146
Counsel for Plaintiff

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

EXHIBIT 1

EXHIBIT 1



This is a notice of Termination from A Cab Taxi Service LLC.

Employee Name Michael A. Reno

Employee Number 3544

Date of Notice 9/28/12

Hire Date 6/16/12

Date of Termination 9/26/12

Last Day Worked 9/26/12

Reason(s) for Termination:

Violation of company policy.

Employee handbook: pg13 B 2.

Insubordination. Countermanding or neglecting a supervisor's orders.

Voluntary _____

Involuntary X

Eligible for re-hire? NO

Employee Signature _____

Supervisor _____

Final Check Due 10/1/12

Operations Manager Bob McCullough

General Manager Jim Benge

Taxicab Companies

Taxi Company Contact
Information

TAXI DRIVER TERMINATION FORM

Las Vegas Rated Best Taxi
City

Date: Friday, September 28, 2012

Company Name: A Cab Taxi LLC

Certificate Application
Process

Name of Driver: Michael A. Reno

T.A.#: 17799

Governing Laws &
Regulations

Date of Termination: Wednesday, September 26, 2012

Last Day Worked: Wednesday, September 26, 2012

Medallions

Reason for Termination:

Taxi Wraps

Violation of company policy.
Employee handbook: pg 13 B2.
Insubordination, Countermanding or neglecting a supervisor's orders.

Taxi Driver Termination
Form

Cab Company Complaint

Submit Form Reset

ADMIN

Letter from the Administrator
(pdf)
Mission Statement
Board Members
Board Meetings
Administrative Court
Statistics
Contact

COMPLIANCE

Letter from Chief Investigator
Investigations
Vehicle Inspections
Citation Bail Schedule
Administrative Court
Governing Laws & Regulations

PASSENGERS

Taxi Rider Information Program
Approximate Fare Information
Complaints
Contact Information and Office
Hours
Governing Laws & Regulations
Lost & Found
Senior Ride Program
Taxicab Company Contact
Information
Upcoming Events
Medallions
Taxi Wraps

DRIVERS

Driver Permit Requirements
Driver Permit Study Guide
Driver Testing
Driver's Awareness Training &
Driver Safety Training
Forms of Payment Accepted
(pdf)
Taxicab Authority Contact
Information and Office Hours
Medallions
Taxi Wraps
Administrative Court

COMPLAINTS

Complaint/Incident Affidavit
Lost & Found
Long Route Voluntary Witness
Statement (pdf)
Cab Company Complaint
Taxicab Contact Information

RESOURCES

Forms
Links
Statistics

TAXICAB COMPANIES

Taxi Company Contact
Information
Las Vegas Rated Best Taxi City
Certificate Application Process
Governing Laws & Regulations
Medallions
Taxi Wraps
Taxi Driver Termination Form
Cab Company Complaint

CONTACT

Date: 1-5-2012



A Cab Taxi Company, LLC

NOTICE OF UNSATISFACTORY PERFORMANCE: LOW BOOK

Name: Michael Reno

T.A. # 17799

On 1-3-2012 your shift average book was \$159.23. Your book for the day was \$123.10. You were 22.7% below the average.

This level of productivity is unacceptable and immediate improvement is required. Continued performance at this level may result in further disciplinary action including but not limited to suspension and or termination of your employment. This letter will be kept in your personnel file. If I can be of any assistance in solving this problem please don't hesitate to make an appointment to see me.

Sam Wood

This letter will be kept in your personnel file.

Employee Signature: Michael Reno Date: 1/6/2012

Assistant General Manager: Sam Wood Date: 1-5-12

Operations Manager:

Or

General Manager: [Signature] Date: 1-6-12

A Cab 00356

AA009433



This is a notice of an infraction of company policy.

Employee Name Michael Reno Date 9-12-12
Employee Number 17799
Date of Infraction 9-11-12

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

Standards of conduct:

...
*V. Failure to turn in entire book at the end of your shift.
Failure to do so may result in immediate termination.*

Amount Due: \$ 175.00
Amount Dropped: \$ 174.00
➤ Difference \$ 1.00
➤ \$5.00 +10% \$ 1.00
➤ Total \$ 2.00 Amount to be deducted from paycheck.

Employee Signature

Mike Reno

Verifier Signature

Nancy D.

General Manager

[Signature]



This is a notice of an infraction of company policy.

Employee Name Michael Reno Date 3-17-12
Employee Number 17799
Date of Infraction 3-16-12

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

7. Cash, Coupons and Charges:

- ...
- G. Drivers are required to turn their entire book at the end of every shift. Failure to do so may result in immediate termination.

Amount Due: \$ 234.00
Amount Dropped: \$ 214.00
➤ Difference \$ 20.00
➤ \$5.00 +10% \$ N/A
➤ Total \$ 20.00 Amount to be deducted from paycheck.

Employee Signature Michael Reno
Verifier Signature Nancy D.
General Manager John H.



This is a notice of an infraction of company policy.

Date

1/23/12

Employee Name

Reno, Michael

Employee Number

17799

Date of Infraction

1/23/12

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

7. Cash, Coupons and Charges:

...
G. Drivers are required to turn their entire book at the end of every shift.
Failure to do so may result in immediate termination.

Amount Due:

\$ 144.00

Amount Dropped:

\$ 140.00

➤ Difference

\$ 4.00

➤ \$5.00 +10%

\$ 5.00

➤ Total

\$ 9.00

Amount to be deducted from paycheck.

Employee Signature

Michael Reno

Verifier Signature

[Signature]

General Manager

[Signature]



This is a notice of an infraction of company policy.

Employee Name Michael Reno Date 9-24-11
Employee Number 17799
Date of Infraction 9-23-11

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

7. Cash, Coupons and Charges:

...
G. Drivers are required to turn their entire book at the end of every shift.
Failure to do so may result in immediate termination.

Amount Due: \$ 229.00
Amount Dropped: \$ 158.00
➤ Difference \$ 71.00
➤ \$5.00 +10% \$ 12.00
➤ Total \$ 83.00 Amount to be deducted from paycheck.

Employee Signature Michael Reno

Verifier Signature Nancy De

General Manager [Signature]



This is a notice of an infraction of company policy.

Employee Name Michael Reno Date 9-4-11
Employee Number 17799
Date of Infraction 9-3-11

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

7. Cash, Coupons and Charges:

...
G. Drivers are required to turn their entire book at the end of every shift.
Failure to do so may result in immediate termination.

Amount Due: \$ 197.00
Amount Dropped: \$ 191.00
➤ Difference \$ 6.00
➤ \$5.00 +10% \$ 6.00
➤ Total \$ 12.00 Amount to be deducted from paycheck.

Employee Signature

Michael Reno

Verifier Signature

Nancy D.

General Manager

Ben



This is a notice of an infraction of company policy.

Employee Name Michael Reno Date 7-30-11
Employee Number 17799
Date of Infraction 7-29-11

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

7. Cash, Coupons and Charges:

...
G. Drivers are required to turn their entire book at the end of every shift.
Failure to do so may result in immediate termination.

Amount Due: \$ 168.00
Amount Dropped: \$ 166.00
➤ Difference \$ 2.00
➤ \$5.00 +10% \$ 1.00
➤ Total \$ 3.00 Amount to be deducted from paycheck.

Employee Signature

Verifier Signature

General Manager

Nancy Dai
[Signature]



This is a notice of an infraction of company policy.

Employee Name Michael Reno Date 6-18-11
Employee Number 17799
Date of Infraction 6-17-11

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

7. Cash, Coupons and Charges:

- ...
- G. Drivers are required to turn their entire book at the end of every shift. Failure to do so may result in immediate termination.

Amount Due: \$ 180.00
Amount Dropped: \$ 170.00
➤ Difference \$ 10.00
➤ \$5.00 + 10% \$ 6.00
➤ Total \$ 16.00 Amount to be deducted from paycheck.

Employee Signature

Michael Reno

Verifier Signature

Nancy Di

General Manager

for Nancy



This is a notice of an infraction of company policy.

Employee Name Michael Reno Date 2-26-11
Employee Number 17799
Date of Infraction 2-25-11

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

7. Cash, Coupons and Charges:

- ...
- G. Drivers are required to turn their entire book at the end of every shift. Failure to do so may result in immediate termination.

Amount Due: \$ 125.00
Amount Dropped: \$ 124.00
➤ Difference \$ 1.00
➤ \$5.00 +10% \$ 6.00
➤ Total \$ 7.00 Amount to be deducted from paycheck.

Employee Signature _____

Verifier Signature _____

Notified General Manager on 2-26-11 at 3:00pm.
(date) (time)

General Manager _____

A-CAB, LLC

EMPLOYEE HANDBOOK

This document is for the sole use of clients of Kerner Zucker & Abbott who have obtained it in the course of their representation. A limited license to copy this document for internal use is granted to those clients. © 1994.

A CAB 00581

EX 4

AA009442

STANDARDS OF CONDUCT/DISCIPLINARY PROCEDURES

Standards of Conduct

In any organization certain rules and regulations must be observed by each employee for the benefit of everyone in the organization. We feel you will find our guidelines to be reasonable as well as necessary.

Commission of any one of the following acts may result in remedial actions which range from a verbal to a written reprimand, suspension from work without pay or immediate dismissal:

- A. Unlawful conduct which adversely affects the employee's relationship to his job, fellow employees, supervisor and/or damages A-CAB, LLC property, interests, reputation or goodwill in the community.
- B. Insubordination, including but not limited to:
 - 1. Refusing to carry out a reasonable work assignment given by a supervisor or other person in proper authority.
 - 2. Countermanding or neglecting a supervisor's orders.
 - 3. Using abusive, obscene or unprofessional language to another employee, customer or guest.
 - 4. Fighting, threatening or striking another person.
- C. Immoral or indecent conduct including but not limited to unwelcome sexual advances, requests for sexual favors, harassment or other verbal or physical conduct of a sexual nature.
- D. Unauthorized introduction, possession, sale, purchase or use of illegal or controlled substances.

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

DEPOSITION of MICHAEL RENO
Taken on Tuesday, August 25, 2015
At 1:58 p.m.
At 703 South Eighth Street
Las Vegas, Nevada

Reported by: Lori-Ann Landers, CCR 792, RPR

1 pay. I can always tell what was -- because I did the
2 same amount for all -- I'm doing this 20 years, and I was
3 with Frias for seven, Yellow for eight, A Cab for two,
4 Western for three. I've used all my trip sheets and I
5 did almost the same amount of money 15 years ago as I do
6 now, so I know how much the pay should be.

7 You know, when one person is paying you 800,
8 another person is paying you 400, even though you can say
9 they kept a little bit of gas, a little bit of tips, it's
10 still not the same thing. You know they are taking
11 something.

12 Q. Okay.

13 A. The supervisors at the company said they were
14 stealing from us, I said why didn't you help me. I was
15 in the office saying that they were taking from us, Tim,
16 the supervisor, and he didn't back me. He goes, well, I
17 will lose my job, but I never steal from you. What do
18 you want, the supervisor says they're stealing, too. He
19 was with Western. He came over after.

20 Q. Okay. Let me kind of figure out what you are
21 talking about here.

22 A. No, I'm just saying that we are here for -- they
23 are paying minimum wage or taking stuff out of the check,
24 I said I got the supervisor -- I didn't have him on tape,
25 I wish I did, but even he came in after he left A Cab,

1 us, and he agreed. I didn't show him anything.

2 Q. Okay.

3 A. I said I had the paperwork one time where I went
4 in, I showed the lady how many hours and she said, oh,
5 no. I said, you know, why didn't you ever, you know --

6 Q. Okay. We are just talking about Tim, right? I
7 just want to know about Tim, and I will ask you about the
8 lady in a minute.

9 But I want to make sure when you are telling me
10 that somebody is telling you something --

11 A. Right, Tim told me --

12 Q. Hold on, sir -- if we are talking about Tim or
13 if we are talking about the lady who gave you the payroll
14 report. So what is it that you are saying Tim told you?

15 A. I talked to Tim, he said, yeah, I know they were
16 stealing from you.

17 Q. Okay.

18 A. And like it was they were stealing from
19 everybody. It was his analysis. It wasn't just me, it
20 was everybody. And everybody to a man felt the same way.
21 I can get a guy right now who will be there one week,
22 they will say, damn, they're taking too much out of my
23 check. Everybody, not just me. Everybody knows that
24 they are taking the money.

25 Q. All right. Sir, in the conversation, because I

1 A. I don't know. I haven't filed anything.

2 Q. Well, you did file something against A Cab,
3 right?

4 A. You said any other --

5 Q. Right. Do you understand --

6 A. A Cab. Anything else? Yeah, just A Cab.

7 Q. Do you understand that you filed a complaint
8 against A Cab?

9 A. Well, that's -- that's kind of a thing like the
10 president, you sign a deal to get something, the book has
11 you giving up everything else. I went against A Cab.
12 They got something going on with Western because they are
13 in, what, collusion you call it?

14 That's not my idea, but if their shortness, too,
15 and I'm working for them, of course I want that money,
16 too. I just want fairness. If another person is
17 shorting them, another person is shorting them, then they
18 are all in it. All of their hands are dirty.

19 Q. But you have worked for other cab companies
20 other than Western and A Cab, right?

21 A. I thought they paid me fairly. Yellow Cab paid
22 me fairly, I thought.

23 Q. Let's start with Yellow Cab. What time did you
24 work for Yellow?

25 A. Let's start with Frias. I started with Frias.

1 A. No. Any of the years that I wasn't paid right
2 through minimum wage or whatever, I would like the money
3 back. It's just that simple. It's like I went to work
4 and you found a discrepancy in the payroll, okay, we
5 shorted you \$40, here is your \$40. That's all I'm doing.

6 Q. But that's what I'm asking you, sir, because you
7 have only worked for A Cab since 2010. So --

8 A. I was --

9 Q. Let me finish my question. Because I'm asking
10 you if you made a claim for anything prior to 2010.

11 A. I don't know because I don't know if I can
12 legally go against the other ones, Yellow Cab or Frias,
13 because I don't know when the thing started. But I know
14 legally I can go against A Cab because they were way out
15 of line on the pay.

16 Q. And what are you basing that on?

17 A. The hours that I worked and the pay that I got.
18 Anywhere else I get seven, 800, here I got 400. And they
19 did some other things, too.

20 Q. Before we get into the details of that let me
21 ask you a little bit more about your employment history.
22 When -- you worked for Frias, '96 to 2002, right?

23 A. Right.

24 Q. What was your job with them?

25 A. Cab driver.

1 A. Right.

2 Q. -- specific breaks, et cetera. So, you know,
3 you have given me an overview, but I need to know
4 specifically, and I'm going to walk you through each one.

5 Did you have an understanding of how you would
6 be paid at Frias?

7 A. Vaguely. I never understood any of their
8 paperwork. You would have to be a Ph.D. to figure it
9 out.

10 Q. Did you have an understanding of how you would
11 be paid when you were a driver at Yellow Cab?

12 A. Vaguely.

13 Q. Did you have an understanding of how you would
14 be paid when you came on board as a driver at A Cab?

15 A. Vaguely.

16 Q. Nothing -- you have no -- other than stating
17 vaguely, you had no idea how you would be paid?

18 A. That's what I said, a percentage of what I did.

19 Q. Do you know what that percentage was?

20 A. No, because it varied.

21 Q. Did you have an expectation when you came on
22 board with A Cab that you would at least get a minimum
23 wage?

24 A. I thought I would get the commission that I got.
25 Like I made six, seven, \$800 every pay period at the

1 other companies. I thought I would get pretty close to
2 the same with A Cab if I did the same amount of work, but
3 I didn't. And you people say, well, they had to pay for
4 gas, they don't take out for tips. It's the same thing.

5 Q. All right. So you were making approximately 6-
6 to \$700 when you previously worked at Yellow Cab?

7 A. Right.

8 Q. Did you make that amount when you worked at
9 Frias?

10 A. Yeah, I make about 6-, \$700. I never made 4-,
11 500.

12 Q. And it's your testimony, then, you were making
13 how much when you were working at A Cab?

14 A. They paid two weeks usually about \$500 average,
15 right around there.

16 Q. And what do you attribute that to?

17 A. I'm just saying they've taken out, in my
18 opinion, 100 to \$200 a pay period for whatever reason and
19 not paying me what I should have -- and there was a lot
20 of reasons. One of them they got you for accounting. If
21 you didn't count the -- we are not accountants, we are
22 cab drivers.

23 At Frias and Yellow the women would do the --
24 file paperwork, you give them the money. At Western and
25 A Cab, you do your own, which is fine. I took accounting

1 testimony. You can answer.

2 A. That's exactly right.

3 Q. Because it was your intention to just go to
4 court, right?

5 A. Yeah. I went once and she said, no, you're
6 wrong. So I didn't push it. If I pushed it, I'm fired.
7 So I said I will let it work itself out. And then when
8 it does, I will come back.

9 Like I said, it's confusing, all of these guys
10 do confusing accounting with the payroll. And if I am
11 wrong, I will owe an apology.

12 Q. Do you have any idea what you believe that you
13 are owed?

14 A. Yeah, about \$200 a month, at least, for two
15 years, which is 4,800 plus all that \$6 crap that they
16 added on and \$20 fees for radio calls and the interest
17 for the money that should have been mine to begin with.

18 Then there is aggravation, making us do stuff
19 that wasn't legal. They wanted us to go into people's
20 houses with groceries. They fired one girl, I can get
21 her statement, too. That's dangerous. They fired her.

22 They told her she was supposed to get groceries
23 from somebody's house. Young girl goes at night to
24 somebody's house, she gets raped. And they fired her and
25 called her all kinds of bad names.

1 check. They were doing stuff that was illegal. It's
2 like if we have cab drivers do that crap --

3 Q. Tell me what they did that was illegal.

4 A. Charging us \$6 for making a mistake when we are
5 not accountants on our paperwork. Charging us \$20 for
6 radio calls when you can't be in your cab all the time.
7 We are doing luggage, other things, we are doing our job,
8 yet they are charging us for not answering a radio call
9 because we didn't hear it. That's illegal, too. That's
10 just a made up amount.

11 Q. Why do you believe that those were illegal?

12 A. Well, okay, who is to say I don't charge you
13 \$50? How can you tell you that your job is to get
14 groceries and help people with groceries? You are
15 getting their groceries, I call you on the phone in your
16 car, and you don't hear it because you are getting
17 groceries; how can you be in two places at the same time?
18 How can you be -- legally say I'm charging you for not
19 being there when you are doing your job doing the
20 groceries or luggage or somebody is talking to you?

21 Q. Sir, you are making very strong allegations.

22 A. That's how crooked these people are.

23 Q. All right. When you are making accusations that
24 A Cab is engaging in illegal activities, A Cab is
25 corrupt, A Cab is crooked, I need to know what you are

1 America they feel like they are shorted on a check, they
2 go to a bookkeeper, or whatever, they say I think I got
3 the wrong amount of money, you got a right to do that.
4 That's all I'm doing.

5 And I think it went on for a two year period.
6 That's all I'm saying. I'm just trying to get my money
7 that's owed to me if I am right, and I think I'm right.

8 Q. And I'm asking you what money you think you are
9 owed --

10 A. I just told you, around \$200 a month --

11 Q. And how are you --

12 A. -- for a two year period which is 4,800, and
13 other stuff was aggravating, too.

14 Q. How are you coming up with \$200 a month for two
15 years?

16 A. Because I usually made 6- or 700 at A Cab -- I
17 mean at Western and everybody else. There I made, what,
18 4-, 500. So there is 300 right there right off the top.
19 How you figure it, it's \$300 less.

20 Q. Okay.

21 A. And I did the same amount of money.

22 Q. It's your allegation that because you made less
23 at A Cab than you were making a Yellow and Frias, by \$200
24 on average, that's what you are basing your claim on; is
25 that correct?

1 A. Something like that with the other stuff they
2 were doing.

3 Q. Okay. And then you mentioned the \$6 crap to
4 quote you --

5 A. The \$6 charges that I feel are illegal.

6 Q. Tell me what that is.

7 A. I just showed you right there. You make a
8 mistake on the accounting, they charge you for the amount
9 that you were wrong, plus the \$6 fee.

10 Q. Do you know how many \$6 charges you received?

11 A. At least 20 over a two year period. It wasn't
12 just me, it was the whole company.

13 Q. I'm just asking about you, sir. I don't need
14 you to testify about any other driver right now. I'm
15 just asking you specifically.

16 A. I probably had 10. Of course I'm guessing. It
17 was years ago.

18 MS. SNIEGOCKI: We don't want you to guess.

19 Q. I don't want you to guess. I do not want you to
20 guess.

21 A. It's pretty hard to remember 10 years.

22 Q. Hold on. Listen to the very important
23 instruction, okay? Do you understand the difference
24 between a guess and an estimate?

25 A. Estimate, maybe seven.

1 A. I don't know.

2 Q. Have you been contacted by the federal
3 government about receiving a check in that amount?

4 A. No.

5 Q. If you are contacted, do you intend to accept
6 that check?

7 MS. SNIEGOCKI: Objection. Calls for
8 speculation.

9 A. No.

10 Q. Are you aware that A Cab offered you \$15,000 as
11 an attempt to resolve any amounts that you were owed?

12 A. I never heard anything. Nobody ever told me
13 anything.

14 Q. Take a look at that document that I have just
15 handed you, Mr. Reno.

16 A. I wonder why they wouldn't --

17 Q. Have you ever seen this document before, it's
18 entitled A Cab LLC's Offer Of Judgment To Plaintiff,
19 Michael Reno?

20 A. No, ma'am.

21 Q. So you were unaware that there was a \$15,000
22 offer to you?

23 A. Yep.

24 Q. Let me hand you another document.

25 MS. RODRIGUEZ: I will have this one marked as

1 A. Well, it wasn't I was making so much less, it's
2 just they have a lot of drivers in front of you, too.
3 See, they changed the cab industry. When I first started
4 Frias, '96, there was no cabs in front of you. You can
5 do 40 rides a day. In fact, one day I did 53 rides. It
6 was almost impossible to do 53 rides, but I did, I got it
7 on the sheet.

8 You'd average 30 or 40, you'd turn the sheet
9 over because they had 29 rides, you'd turn it over and
10 the only thing stopping you was you would get tired of
11 taking people. I swear there would be 50 people in line,
12 and then you would drop them off and they would be
13 loading before you even got these other people out and
14 putting the luggage in. That's how good it was.

15 And then all of a sudden when Yellow Cab -- I
16 went from Frias to Yellow Cab in 2000, something like
17 that, 2002, 2001, they changed it. They used to be on
18 Tompkins, and they got that new facility. They went from
19 Tompkins by The Orleans to Post Road, 30 million tarp
20 facility, they went from like 400 drivers to like 2,000.
21 They had like 4,000 cabs. I never seen anything like
22 that. And I said, crap, what happened to the industry,
23 we are getting a third of the rides now.

24 You know, instead of getting a ride in maybe 10
25 minutes, you are waiting an hour, hour and-a-half for one

1 ride. That's what some of these guys at the airport are
2 doing. They're saying, wait a minute, I wait an hour
3 and-a-half, I got to make this cab a \$12 ride, a \$40 ride
4 to make up for this. See, that's what they are doing.

5 Q. By the time you worked for A Cab starting there
6 June 2010, how many drivers did you have on the road at
7 that point, or cabs I should say?

8 A. Oh, when I worked for A Cab?

9 MS. SNIEGOCKI: Objection. Calls for
10 speculation. You can answer if you know.

11 A. I really don't know. A Cab was the smallest --
12 one of the smallest companies. They only had like 200
13 cabs. But then again, I did all right with A Cab. I did
14 almost the same with them.

15 You got to remember, too, you can get burned out
16 on some of these companies. I had done it for 10, 15
17 years, 12 hours a day. You get older and you start
18 getting -- it beats you up.

19 When I was with A Cab it was 2010, I did, what,
20 15, 16 years. 12 hour shifts can -- I was thin as a
21 rail, I'm least 100 pounds overweight. I used to be in
22 shape and stuff. It shows you how much it beats you up
23 getting in and out of those cars, sitting 12 hours.

24 So I'm saying I almost did my average, but you
25 are bound to get a little bit less productive because I

1 was 35 in my prime, and now I'm 50.

2 Q. You start getting burned out?

3 A. I love my job. It's funny just because I like
4 people.

5 Q. I guess my question, too, is from what you are
6 describing it sounds like when you went from Frias to
7 Yellow, there were just a lot more cabs on the road by
8 that time?

9 A. Yeah, doubled.

10 Q. More competition?

11 A. Yeah. You had to work harder to make the same
12 amount of money. You know, you had to make the same
13 amount of money. You are actually getting less and less.

14 I read an article a week before I even got the
15 job -- a week before I got the job with that girl, I had
16 read in the paper where a driver said in '75 and '80, in
17 the '80s he wore a suit, but he would make \$40,000, and
18 he only had a few rides. It was easy. And now he has to
19 kill himself to make 30. It's true.

20 I mean, every year I'm making less and less, but
21 I'm trying harder and harder. And I know more than I did
22 before, and I make less money. Then with Uber coming
23 in -- see, I like them for their honesty, and they're not
24 the cheap people. That's a good thing. You want all
25 these crooks off the road.

1 wants two or \$3. I'm getting \$18 for every hundred.

2 That's no good.

3 Q. I told you I wouldn't keep you too much more.

4 Let me just make sure I got the sum. We went through
5 your damages and --

6 A. I wonder --

7 Q. Let me just ask you the question. Anything you
8 want to ask me in the presence of your attorney when we
9 get off the record, we will just finish up your
10 deposition, that will be fine.

11 I just want to make sure that I got a handle on
12 what you are claiming. You know, we went, roughly, we
13 went through the radio call penalties, the \$6 penalties
14 for being short, I have the documentation on some of
15 that, and then for basically the hours that you were
16 forced to write down that you believe you worked that
17 were -- you were not paid for.

18 MS. SNIEGOCKI: I'm going to object.

19 Q. Is that a fair statement?

20 MS. SNIEGOCKI: I object that it misstates
21 testimony, but you can answer if you understand the
22 question.

23 A. I don't know what to say.

24 THE WITNESS: You just objected.

25 MS. SNIEGOCKI: Yes, but you can answer the

1 question.

2 THE WITNESS: Whatever you said -- I don't know
3 what you said. I don't know what we are objecting about
4 if it doesn't matter for me to answer or not.

5 Q. Well, unless she tells you not to answer, you
6 are supposed to answer the question. If you don't
7 understand my question, I don't want you to answer it. I
8 want to make sure you understand.

9 A. Right, that's what I'm saying, I just said what
10 you said. I'm agreeing with what you said. That's what
11 I'm saying, what you just went over.

12 Q. Okay. Well, I thank you, Mr. Reno. I'm going
13 to pass you to your attorney for some questions if she
14 has any.

15 A. I want --

16 MS. SNIEGOCKI: Hang on. We are going to go off
17 the record. I'm going to take a couple of minutes and
18 then I'm not sure if -- I may have a few.

19 MS. RODRIGUEZ: I'm going to object to you
20 instructing him on your cross-examination on what to
21 answer. I think that's completely improper.

22 MS. SNIEGOCKI: Are you saying that I'm
23 instructing my client what to answer? I'm taking a
24 break. I don't know if I have any questions, but I may.
25 That's all.

1 Q. What did you refer to that as?

2 A. Breaks and lunch.

3 Q. So my question to you is, and just before we
4 looked at this just now, you had said you don't believe
5 that you were paid the minimum wage for all the hours
6 that you worked at A Cab, right?

7 A. Right.

8 Q. So my question to you is even if we were to
9 deduct this break time that appears on the bottom right
10 corner of the trip sheet, let's say we take that out, we
11 deduct it, we assume that those are valid breaks that you
12 took; do you believe even after taking out those breaks
13 that you were paid the minimum wage?

14 A. No.

15 MS. SNIEGOCKI: I'm concluded.

16 FURTHER EXAMINATION BY

17 MS. RODRIGUEZ:

18 Q. Mr. Reno, right before Ms. Sniegocki, the
19 attorney, just started her cross-examination, you guys
20 stepped out of the room for about 10 minutes to meet
21 privately, right?

22 A. I never talked to her. She was on the phone.

23 Q. I'm just asking the question whether you left
24 about 10 minutes to meet with Ms. Sniegocki outside the
25 room?

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, Lori-Ann Landers, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
certify:

That I reported the taking of the deposition
of the witness, MICHAEL RENO, at the time and place
aforesaid;

That prior to being examined, the witness
was by me duly sworn to testify to the truth, the whole
truth, and nothing but the truth;

That I thereafter transcribed my shorthand
notes into typewriting and that the typewritten
transcript of said deposition is a complete, true and
accurate transcription of my said shorthand notes taken
down at said time to the best of my ability.

I further certify that I am not a relative
or employee of an attorney or counsel of any of the
parties, nor a relative or employee of any attorney or
counsel involved in said action, nor a person financially
interested in the action; and that transcript review NRCP
30(e) was requested.

IN WITNESS WHEREOF, I have hereunto set my
hand in the County of Clark, State of Nevada, this 25th
day of August 2015.

LORI-ANN LANDERS, CCR 792, RPR

EXHIBIT 3

EXHIBIT 3

Summary of Unpaid Wages

U.S. Department of Labor
Wage and Hour Division

Office Address: Las Vegas District Office
600 Las Vegas Blvd., S.
Suite 550
Las Vegas, NV 89101-6654
702-388-6001

Investigator:
Richard Quezada

Date:
08/13/2015

Employer Fed Tax ID Number:

1. Name	2. Address	3. Period Covered by Work Week Ending Dates	4. Act(s)	5. BWs Due	Total
33		10/08/2010 to 10/05/2012	FLSA		
33		10/08/2010 to 10/05/2012	FLSA		
33		10/08/2010 to 10/05/2012	FLSA		
3		10/08/2010 to 10/05/2012	FLSA		
330. Reno, Michael		10/08/2010 to 10/05/2012	FLSA		
339		10/08/2010 to 10/05/2012	FLSA		
340. Reno, Michael	811 E. Bridger Ave. #363 Las Vegas, NV 89101	10/08/2010 to 10/05/2012	FLSA	\$1,048.94	\$1,048.94
341.		10/08/2010 to 10/05/2012	FLSA		
34		10/08/2010 to 10/05/2012	FLSA		

I agree to pay the listed employees the
amount due shown above by 12/30/2015

Employer Name and Address:
A Cab, LLC
A Cab, LLC
1500 Searles Ave
Las Vegas NV 89101

Subtotal:

Total:

Signed: _____

Date: _____

Form WH-56

Date: 08/13/2015 2:59:10 PM

Case ID: 1611567

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AA009466

EXHIBIT 4

EXHIBIT 4

OFFER

Esther C. Rodriguez, Esq.
Nevada Bar No. 6473
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
702-320-8400
info@rodriguezlaw.com
Attorneys for Defendant A Cab, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

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

A CAB, LLC'S OFFER OF JUDGMENT TO PLAINTIFF MICHAEL RENO

Defendant A Cab, LLC, by and through its attorney of record, ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRS 17.115, hereby offers to accept judgment against it and in favor of Plaintiff Michael Reno in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000.00) as full and final settlement of this matter. Said offer is inclusive of interest, costs and attorney's fees.

This offer shall not be construed as a waiver of any of Defendant's rights in this matter. This offer of judgment is made solely for the purposes specified in NRCP 68 and NRS 17.115 as a compromise offer of settlement only and shall not be deemed as an admission or introduced into evidence at the time of trial.

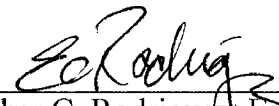
Pursuant to NRS 17.115 and NRCP Rule 68, if this offer is not accepted within ten (10) days after service, it will be deemed withdrawn. If this action is thereafter tried or arbitrated and Plaintiff fails to obtain a judgment in excess of this offer, Defendant will seek an award of costs, attorneys'

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fees, and interest that have been incurred from the time of this offer.

DATED this 9 day of March, 2015.

RODRIGUEZ LAW OFFICES, P.C.

By: 
Esther C. Rodriguez, Esq.
Nevada Bar No. 6473
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendant A Cab, LLC

RECEIPT OF COPY

RECEIPT OF COPY of A Cab, LLC'S Offer of Judgment to Plaintiff Michael Reno is hereby acknowledged this 10th day of March, 2015 by:

LEON GREENBERG PROFESSIONAL CORPORATION

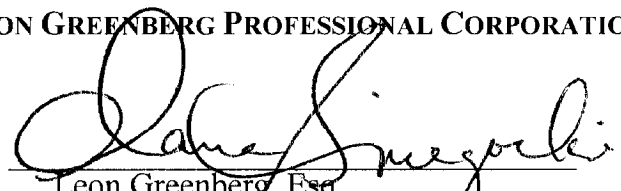
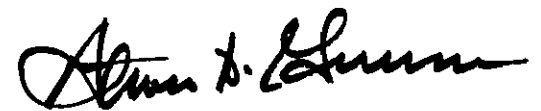
By: 
Leon Greenberg, Esq.
2965 South Jones Boulevard, Suite E4
Las Vegas, Nevada 89146
Counsel for Plaintiff

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

MDSM
Esther C. Rodriguez, Esq.
Nevada Bar No. 6473
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
702-320-8400
info@rodriguezlaw.com
Attorneys for Defendant A Cab, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

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

DEFENDANT'S MOTION TO
DISMISS AND FOR SUMMARY
JUDGMENT AGAINST PLAINTIFF
MICHAEL MURRAY

Defendant A Cab, LLC, by and through its attorney of record, ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRCP 12(b)(1), NRCP 12(b)(5) and NRCP 56(c) hereby respectfully moves this Honorable Court to dismiss the Claims for Relief of Plaintiff Michael Murray, and for summary judgment against Michael Murray. This Motion is based upon the pleadings and papers on file, the attached Memorandum of Points and Authorities, and any oral argument that may be entertained at the hearing of this Motion.

DATED this 21st day of September, 2015.

RODRIGUEZ LAW OFFICES, P.C.

By: /s/ Esther C. Rodriguez, Esq.
Esther C. Rodriguez, Esq.
Nevada Bar No. 6473
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendant A Cab, LLC

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendant will bring the foregoing Motion on for hearing before this Court on the 27 day of Oct, 2015, or as soon thereafter as counsel may be heard. @ 9 : 0 0 a m

DATED this 21st day of September, 2015.

RODRIGUEZ LAW OFFICES, P.C.

By: /s/ Esther C. Rodriguez, Esq.
Esther C. Rodriguez, Esq.
Nevada Bar No. 6473
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendant A Cab, LLC

POINTS AND AUTHORITIES

I.

FACTUAL BACKGROUND

Plaintiff Michael Murray ("Murray") is a former employee of Defendant A Cab, LLC ("A Cab"), who was terminated on April 6, 2011 for poor performance, continued low book and drop shorts/company theft. **Exhibit 1.** Michael Murray worked for A Cab from September 6, 2008 to April 6, 2011 as a road supervisor, dispatcher, and taxicab driver.

On August 26, 2015, Murray gave sworn deposition testimony indicating that was suing A Cab for hours worked and not paid. **Exhibit 2, Deposition of Michael Murray**, 133:5-8.

As this Court is aware, a primary purpose of a deposition is to allow an adverse party to ascertain the basis of a claim. At no time during the deposition of Michael Murray was he able to demonstrate a knowledge of his claim, or to support any type of claim of minimum wage or even if he is owed anything at all.¹ Rather, he outright refused to answer the questions by pleading the

¹ Q: So have you put a pencil to it? Have you figured out what you believe you're owed?
A: No. Q: Do you have a best estimate of -- or you just have no idea what -- A: I have no idea if I'm owed money because they didn't pay the minimum wage -- or they *were* paying minimum wage, but it was labeled as something else. (Emphasis added.) **Exhibit 2**, 52:18-25.

1 Fifth Amendment Right Against Self-Incrimination, or just outright refused to answer. When
2 reminded that he was under oath to tell the truth, Murray pled the Fifth Amendment under threat of
3 perjury during his deposition.

4 Moreover, as the Plaintiff has no indication as to value of his claim, a Department of Labor
5 determination was reviewed as valuing any underpayment to Murray as **\$130.70. Exhibit 3.**

6 Defendant made an offer to resolve this claim months ago to the Plaintiff in a formal pleading in an
7 amount 57 times the value of the case at **\$7,500.00. Exhibit 4.** Contrary to the Nevada Rules of
8 Professional Conduct, this information was not timely conveyed to Plaintiff Reno by his counsel.
9 **Nevada Rules of Professional Conduct Rule 1.2 and Rule 1.4.**

10 There are 7 days left in which to conclude discovery, as the discovery deadline is October 1,
11 2015. To date, Plaintiff Murray has not produced any evidence to support his claims for relief, and
12 thus A Cab is entitled to judgment as a matter of law.

13 II.

14 LEGAL ARGUMENT

15 A. Legal Standard.

16 Summary judgment shall be granted when there are no genuine issues of material fact and
17 the moving party is entitled to judgment as a matter of law. NRCP 56(c). The moving party
18 initially bears the burden of proving the absence of genuine issues of fact. *Butler v. Bogdanovich*,
19 101 Nev. 449, 705 P.2d 662 (1985). Once that burden has been carried, the responding party must
20 come forward with evidence creating genuine and triable issues of fact. *Bird v. Casa Royale*, 97
21 Nev. 67, 624 P.2d 269 (1981).

22 Seven (7) days remain in the discovery period; and to date, Plaintiff Murray has not
23 produced any evidence to support his claims for relief. Accordingly, A Cab is entitled to judgment
24 as a matter of law. “Although the party opposing a motion for summary judgment is entitled to all
25 favorable inferences from the pleadings and documentary evidence, the opposing party ‘is not
26 entitled to build a case on the gossamer threads of whimsy, speculation and conjecture.’” *Collins v.*
27 *Union Fed.Sav. & Loan Ass’n.*, 99 Nev. 284, 302; 662 P.2d 610, 621 (1983) (citing *Mullis v.*
28 *Nevada National Bank*, 98 Nev. 510, 654 P.2d 533 (1982), and *Hahn v. Sargent*, 523 F.2d 461, 468

(1st Cir. 1975), *cert. denied*, 425 U.S. 904 (1976)). In order to avoid the requested relief, Plaintiff must come forward with specific facts on which this Court could rule in its favor on the issues addressed in this motion. *Hickman v. Meadow Wood Reno*, 96 Nev. 782, 617 P.2d 871 (1980). Here, the motion must be granted because there are no genuine issues of fact which remain for trial and Defendant A Cab is entitled to judgment as a matter of law.

B. Dismissal.

A motion to dismiss under Rule 12(b)(1) of the Nevada Rules of Civil Procedure may be utilized when a lack of subject matter jurisdiction is apparent on the face of the complaint.² Under Nevada law, the failure of a party to exhaust its administrative remedies prior to commencing an action in the district court divests the court of jurisdiction and mandates dismissal of the action.³ Similarly, a defendant is entitled to dismissal of a claim when a plaintiff fails to state a claim upon which relief can be granted.⁴

C. Plaintiff Murray Does Not Have an Actionable Claim Sufficient to Give Rise to a Justiciable Controversy.

If this Court grants Defendant's currently pending "Motion to Dismiss Plaintiff's First Claim for Relief" based on the prospective application of the *Thomas v. Yellow Cab* decision⁵, Michael Murray will be barred by the statute of limitations in this matter. The Supreme Court decision was issued and became effective on June 26, 2014. Murray's last date of employment at A Cab was over three years earlier on April 7, 2011.

Secondly, Murray testified in his deposition that the basis for his claim was for hours worked for which he was not paid. Such is not a claim for minimum wage, but rather clearly a complaint that should be submitted to the Labor Commissioner for unpaid hours.

Q. ...sir, basically, your claim is for hours that you worked and were not paid

²*Girolla v. Rousille*, 81 Nev. 661,663, 408 P.2d 918, 919 (1965).

³*Nevada v. Scotsman Manufacturing Co.*, 109 Nev. 252, 255, 849 P.2d 317, 319 (1993).

⁴*See* NRCP 12(b)(5)

⁵ *Thomas vs. Nevada Yellow Cab Corporation*, 130 Nev., Adv. Op. 52 (2014).

1 for; is that correct?

2 A. Correct. **Exhibit 2, Deposition of Michael Murray**, 133:5-9. See Also,
3 **Exhibit 2, Deposition of Murray**, 82:17-20; 86:24-87:7; 89:15-90:11.

4 The remainder of his time in which Murray worked for A Cab, he worked as a Dispatcher in
5 which he was paid \$10 per hour. **Exhibit 2, Deposition of Murray**, 32:1-33:10. He was also
6 promoted to Road Supervisor in which he was paid \$15 per hour. **Exhibit 2, Deposition of**
7 **Murray**, 34:15-16. These rates are clearly above the State minimum wage, and supports A Cab's
8 request for summary judgment, as his claim is not actionable.

9 **D. Plaintiff's claim has been extinguished by an Offer that exceeds the value of any**
10 **legitimate claim.**

11 The value of any alleged underpayment to Murray has already been resolved by the U.S.
12 Department of Labor in the amount of **\$130.70**. Not only is he receiving a check directly from the
13 U.S. government for that amount, his attorney received the additional offer to resolve the matter in
14 full. An offer of judgment was submitted to Plaintiff Murray on March 10, 2015, in the amount of
15 **\$7,500.00**, but was not timely communicated to him by his counsel, per Murray.

16 Plaintiff Murray confirmed he had never seen the offer of judgment from A Cab until the
17 day of his deposition on August 26, 2015. He confirmed he learned of the offer two months later in
18 June 2015. **Exhibit 2, Deposition of Murray**, 56:20-59:5. As this Court is aware, an Offer of
19 Judgment must be accepted within ten (10) of service, and it was served on March 10, 2015.

20 Murray indicated he has no idea of what he is claiming from A Cab, and when pressed for
21 any details refused to answer further. When asked why he did not accept the offer from A Cab, and
22 after being cautioned by his own counsel, he pled the Fifth Amendment against Self Incrimination,
23 under threat of perjuring himself in his deposition.

24 Q: So in answer to why you didn't accept that, is it your testimony that you didn't think it was
25 enough?

26 Plaintiff's Counsel: I'm going to object. That has been asked and answered. I'm also going to just
27 caution you that you're not going to discuss or you're not going to testify as to any of the contents of
28 the communications you may have had with myself or your other counsel, Mr. Greenberg.

1 THE WITNESS: Okay.

2 MS. RODRIGUEZ: Can we have the question read back to the deponent, please. I thought there
3 was a question.

4 (Record read by reporter.)

5 MS. SNIEGOCKI: I'm going to assert the same objection. It's already in the record. And I'll again
6 caution you that you're not going to testify as to any communications you've had with myself or Mr.
7 Greenberg during the course of representation. You can answer the question.

8 **A: I'm going to cite the Fifth on that.**

9 Q: You're going to cite the Fifth on that?

10 A: Um-hmm.

11 Q: Is that a "yes"?

12 A: No.

13 Q: You have to say your answers verbally. I know you're nodding your head to me, but...

14 A: Yes.

15 Q: . . . when I asked you earlier if you didn't accept -- why you didn't accept this, and I
16 understood your testimony to say that you thought it wasn't enough, and I was trying to find
17 out if that's, indeed, what you said. And I know we got objections, and I will accept your
18 objections on the record. But now I'm asking you to confirm that. Is that what you said?

19 A: Yes.

20 Q: And you're asserting the Fifth?

21 A: Yes. That was my answer. **Exhibit 2, Deposition of Murray**, 61:4-63:3.

22 The purpose of this rule [NRCp 68] is to encourage settlement of lawsuits before trial.

23 *Morgan v. Demille*, 106 Nev. 671, 799 P.2d 561 (1990). This rule and NRS 17.115 are designed to
24 facilitate and encourage settlement. *Matthews v. Collman*, 110 Nev. 940, 878 P.2d 971 (1994).

25 In this instance, there was a complete failure on the part of Plaintiff's counsel to relay
26 Defendant's good faith offer to the client.

27 "A lawyer shall abide by a client's decision whether to settle a matter." **Nevada Rules of**
28 **Professional Conduct Rule 1.2(a)**. "A lawyer shall promptly inform the client of any decision or

1 circumstance with respect to which the client's informed consent is required by these Rules."

2 **Nevada Rules of Professional Conduct Rule 1.4(a)(1).**

3 It would go beyond the bounds of decency to allow a lawsuit to continue when a Defendant
4 has offered far *in excess* of that which is being claimed by the Plaintiff to resolve the claim.
5 Further, Defendant's offer to compensate Murray in an amount exceeding the independent
6 valuation of his claim extinguishes and satisfies the claim altogether.

7 **E. Murray's claim is moot, as it has been satisfied and he cannot delineate any**
8 **claim.**

9 Murray's claim is moot. This Court lacks jurisdiction over a claim which has been satisfied.
10 In this instance, Plaintiff's counsel is merely prolonging litigation in an effort to continue to run up
11 attorney fees and costs in the hopes of passing these to the Defendant.

12 Q: So as we sit here today, we're at the end of August, and is it your testimony that you
13 declined this offer --

14 A: Yes.

15 Q: -- in the June time frame?

16 A: Yes.

17 Q: Okay. If you didn't believe that the \$7,500 was enough, do you have a figure in your mind
18 as to what you're expecting from this case?

19 A: No.

20 Q: Well, when you file a complaint, you have to make a complaint for damages. Do you
21 understand that?

22 A: Yes.

23 * * *

24 Q: When you file a complaint against somebody, you normally ask for damages. You
25 understand that; right?

26 A: Yeah.

27 Q: And in this case, do you know what your damages are?

28 MS. SNIEGOCKI: Objection: Asked and answered. You can answer.

1 THE WITNESS: **I don't want to answer. Exhibit 2, Deposition of Murray, 63:7-64:10**

2 When questioned about any details of a claim for minimum wage on an 8 hour shift, he
3 simply again refused to answer:

4 Q: Okay. And is it your understanding, then, that at that point, the eight hours that are reflected
5 on the trip sheet and your pay stub, you would have been paid at least the minimum wage
6 for those eight hours?

7 MS. SNIEGOCKI: I'm going to object again and assert the same objection as the prior objection.
8 You can answer.

9 A: I think I've answered the question more than adequately, **and that's all I'm going to say on**
10 **that. Exhibit 2, Deposition of Murray, 92:12-23.**

11 **III.**

12 **CONCLUSION**

13 Based upon the foregoing points and authorities, Defendant A CAB, LLC respectfully
14 requests this Honorable Court to enter an Order granting Defendant's Motion to Dismiss Plaintiff
15 Michael Murray's Claims for Relief for failure to state a claim upon which relief can be granted.

16 DATED this 21st day of September, 2015.

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

18
19 By: /s/ Esther C. Rodriguez, Esq.
20 Esther C. Rodriguez, Esq.
21 Nevada Bar No. 6473
22 10161 Park Run Drive, Suite 150
23 Las Vegas, Nevada 89145
24 *Attorneys for Defendant A Cab, LLC*
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 21st day of September, 2015, I electronically *filed* the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

Leon Greenberg, Esq.
Leon Greenberg Professional Corporation
2965 South Jones Boulevard, Suite E4
Las Vegas, Nevada 89146
Counsel for Plaintiff

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

EXHIBIT 1

EXHIBIT 1



This is a notice of Termination from A Cab Taxi Service LLC.

Employee Name Michael P. Murray

Employee Number 2018

Date of Notice 4/7/11

Hire Date 9/6/08

Date of Termination 4/7/11

Last Day Worked 4/6/11

Reason(s) for Termination:
Poor performance.
Low book.

Voluntary _____

Involuntary X

Eligible for re-hire? NO

Employee Signature _____

Supervisor _____

Final Check Due 4/11/11

Operations Manager Bob McCullough

General Manager Jim Hargis



NOTICE OF UNSATISFACTORY PERFORMANCE

Date: 3-18-2010

Employee Name: Michael Murray

Employee Number: 2018

Performance Related Problem: (Be Specific)

On 3-17-10 Mr. Murray failed to write up an incident report when a rock was thrown at cab 1301. The rock made damages severe enough that the windshield of cab 1301 had to be replaced.

Corrective Action:

It is an A Cab policy for road supervisors to write up all incidents in a report. In the future Mr. Murray must follow these procedures.

Disciplinary Action Taken:

Mr. Murray will receive a written warning. Any further problems of this type may result in a demotion from the road supervisor position.

Assistant General Manager:

Operations Manager:

Employee Signature:

Warning

Your level of productivity is unacceptable. On 9-28
you worked \$ 9/5. You are suspended until you
see Sam Wood about this matter. Monday thru Friday
9:00am to 5:00pm
Employee Signature: Mike Murray

Warning

Warning

Your level of productivity is unacceptable. On 11-23
you booked \$ 123. You are suspended until you
see Sam Wood about this matter. Monday thru Friday
9:00am to 5:00pm

Employee Signatures: Mike Wilson



This is a notice of an infraction of company policy.

Employee Name Michael Murray Date 2-10-11
Employee Number 24453
Date of Infraction 2-9-11

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

7. Cash, Coupons and Charges:

...

G. Drivers are required to turn their entire book at the end of every shift. Failure to do so may result in immediate termination.

Amount Due: \$ 129.00
Amount Dropped: \$ 127.00
➤ Difference \$ 2.00
➤ \$5.00 +10% \$ 6.00
➤ Total \$ 8.00 Amount to be deducted from paycheck.

Employee Signature

Mike Murray

Verifier Signature

Nancy D.

Notified General Manager on

2-10-11 at 4:00pm

(date)

(time)

General Manager

John Hought



This is a notice of an infraction of company policy.

Date

1-5-11

Employee Name

Michael MURRAY

Employee Number

24453

Date of Infraction

1-4-11

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

7. Cash, Coupons and Charges:

...
G. Drivers are required to turn their entire book at the end of every shift.
Failure to do so may result in immediate termination.

Amount Due:

\$ 112.00

Amount Dropped:

\$ 111.00

➤ Difference

\$ 1.00

➤ \$5.00 +10%

\$ 6.00

➤ Total

\$ 7.00

Amount to be deducted from paycheck.

Employee Signature

Nancy D.

Verifier Signature

Notified General Manager on

1-5-11

(date)

at

4:30pm

(time)

General Manager

[Signature]



This is a notice of an infraction of company policy.

Employee Name Michael Murray Date 1-1-11
Employee Number 24453
Date of Infraction 12-31-10

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

7. Cash, Coupons and Charges:

...
G. Drivers are required to turn their entire book at the end of every shift.
Failure to do so may result in immediate termination.

Amount Due: \$ 179.00
Amount Dropped: \$ 170.00
➤ Difference \$ 9.00
➤ ~~\$0.00~~ +10% \$ 6.00
➤ Total \$ 10.00 Amount to be deducted from paycheck.

Employee Signature

Verifier Signature

Notified General Manager on

1-1-11 at 4:00pm
(date) (time)

General Manager

A Cab 00227

AA009487



This is a notice of an infraction of company policy.

Employee Name Michael Murray Date 10-28-10
Employee Number 24453
Date of Infraction 10-27-10

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

7. Cash, Coupons and Charges:

G. Drivers are required to turn their entire book at the end of every shift.
Failure to do so may result in immediate termination.

Amount Due: \$ 133.00

Amount Dropped: \$ 132.00

➤ Difference \$ 1.00

➤ +10% \$ 1.00

➤ Total \$ 2.00 Amount to be deducted from paycheck.

Employee Signature

Verifier Signature

Notified General Manager on 10-28-10 at _____
(date) (time)

General Manager



This is a notice of an infraction of company policy.

Date 8-14-10

Employee Name Michael MURRAY
Employee Number 24453
Date of Infraction 8-13-10

Infraction:

The employee named above has committed an infraction of the A Cab company policy regarding cash drop procedure as stated in the Employee New Hire Package:

7. Cash, Coupons and Charges:

- ...
- G. Drivers are required to turn their entire book at the end of every shift. Failure to do so may result in immediate termination.

Amount Due: \$ 154.00

Amount Dropped: \$ 106.00

➤ Difference \$ 48.00

➤ +10% \$ 5.00

➤ Total \$ 53.00 Amount to be deducted from paycheck.

Employee Signature _____

Verifier Signature

Nancy D.

Notified General Manager on 8-14-10 at _____
(date) (time)

General Manager

John H.

EXHIBIT 2

EXHIBIT 2

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and
A CAB, LLC,

Defendants.

CASE NO: A-12-669926-C

DEPT NO: I

DEPOSITION OF MICHAEL MURRAY

Taken at Depo International
703 South Eighth Street
Las Vegas, Nevada

on Wednesday, August 26, 2015
1:59 p.m.

Job No. 17723

Depo International - Las Vegas

Reported by: Andrea Martin, CSR, RPR, NV CCR 887

Certified Realtime Reporter

1 A No.

2 Q Have you ever made any kind of written
3 demand to A Cab, other than filing the lawsuit, to
4 ask for any unpaid wages?

5 A No.

6 Q Do you know specifically what you are
7 claiming against A Cab?

8 MS. SNIEGOCKI: Objection: Vague.
9 You can answer.

10 THE WITNESS: Pardon?

11 MS. SNIEGOCKI: You can answer.

12 A Basically, like I explained earlier, to my
13 knowledge, that -- there was supposed to be a
14 difference made up from low book to 220 --
15 BY MS. RODRIGUEZ:

16 Q Okay.

17 A -- and minimum wage.

18 Q So have you put a pencil to it? Have you
19 figured out what you believe you're owed?

20 A No.

21 Q Do you have a best estimate of -- or you
22 just have no idea what --

23 A I have no idea if I'm owed money because
24 they didn't pay the minimum wage -- or they were
25 paying minimum wage, but it was labeled as something

1 letter from the next year, August 15th, 2006, from
2 Jon Gathright.

3 Have you ever seen that letter before?

4 A Yes. I do recall this.

5 Q And there's an identification there that
6 says "Michael P. Murray, No. 2018."

7 A Um-hmm.

8 Q Does that -- is that associated with you?

9 A Yes.

10 Q What is that?

11 A That was my -- when you join the company,
12 you have a certain number issued to you, and you use
13 that for refueling at different places or -- it
14 designates an employee with an employee number.
15 That was my employee number.

16 Q Was that your employee number at all times
17 that you were working for A Cab, to your
18 recollection?

19 A Yes.

20 Q And this letter states that your pay rate
21 was increased from \$13, effective August 5th of
22 2006.

23 Do you have a recollection of your pay
24 rate being increased to that amount?

25 A Yes, because the other one at \$10 an hour,