

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 L of LII**

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

HUTCHISON & STEFFEN, PLLC

Michael K. Wall (2098)
Peccole Professional Park
10080 Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorney for Appellants

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

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

Attorneys for Respondents

DATED this 5th day of August, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

1 we understand the way the business is organized --

2 THE COURT: Yeah.

3 MR. GREENBERG: -- we are not asking for relief in

4 the form that would prohibit transfers among the series, LLCs

5 or among the judgment debtor to the LLCs in the normal course

6 of business.

7 THE COURT: And that's not -- that's not my

8 intention to prohibit that.

9 MR. GREENBERG: But we -- but we would ask that the

10 Court -- if it -- if it did intend to do so, which was our

11 understanding, maintain a -- a restraining order from any

12 monies being taken out of the series, LLCs, or A Cab to Mr.

13 Nady or any trust that he is a trustor of or that his family

14 members are --

15 THE COURT: You want the Court --

16 MR. GREENBERG: -- beneficiaries of.

17 THE COURT: -- to stop the -- the order of business

18 as it now stands where it all goes --

19 MR. GREENBERG: Well --

20 THE COURT: -- to Mr. Nady?

21 MR. GREENBERG: -- if Your Honor doesn't -- it was

22 -- it was somewhat confusing to us what we -- what Your Honor

23 was saying. And we're just asking for clarification.

24 THE COURT: Okay.

25 MR. GREENBERG: We would support that, if Your Honor

1 does not wish to direct that specific --

2 THE COURT: Well, would that not bring --

3 MR. GREENBERG: -- prohibition --

4 THE COURT: -- the business to a standstill?

5 MR. GREENBERG: Well, Your Honor, I -- I don't know.

6 The testimony I read to you from Mr. Nady is that the -- is
7 that the revenue in the first instance is going into the trust
8 and then --

9 THE COURT: Yeah.

10 MR. GREENBERG: -- or to himself, or his counsel has
11 clarified the trust, and then the trust is returning the money
12 to the business to fund operations. If Your Honor is not
13 going to interfere with that function, then there's nothing
14 further to be ordered.

15 THE COURT: Not at this -- not at this juncture --

16 MR. GREENBERG: Okay.

17 THE COURT: -- no. I assumed that the -- that loose
18 end, so to speak, gets picked up by if the Court imposes a
19 Receiver that would be within the purview of the Receiver to
20 at least be able to report accurately to the Court of how much
21 is going in that fashion.

22 MR. GREENBERG: Yes, Your Honor.

23 THE COURT: And then if need be, if things don't get
24 resolved, then if need be the Court could expand the powers of
25 the Receiver to have the veto power on any funds leaving

1 accounts of the judgment debtors for other than normal
2 business expenses.

3 MR. GREENBERG: We understand, Your Honor.

4 THE COURT: All right.

5 MR. GREENBERG: And I'm not proposing that Your
6 Honor should direct anything different at this point.

7 THE COURT: All right.

8 MR. GREENBERG: We've taken up a lot of your time
9 and I thank you.

10 THE COURT: We'll see you Tuesday.

11 (Proceeding concluded at 12:03 P.M.)

12 * * * * *

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

Julie Lord

JULIE LORD, TRANSCRIBER
VERBATIM DIGITAL REPORTING, LLC

EXHIBIT "D"



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Class Action Settlement Administration

Estimate #	10144V4	Prepared By	Michael Sutherland
Estimate Date	1/3/2018	Direct Dial #	321-223-5957
Estimate Expiration Date	11/30/2018	Email	msutherland@simpluris.com

Attorney
Attorney/Client: Leon Greenberg
Firm: Leon Greenter Law
Email: <wagelaw@hotmail.com>

Defense Attorney
Attorney/Client:
Firm:
Email:

Case Name: Distribution

Simpluris distribution account

Anticipated Total Cost:	\$4,601
Professional Courtesy:	\$301
Estimated Fee:	\$4,300
Add Call Center support	\$300

Terms:

- 1) Estimated Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.
- 2) Mail all packets, check, w-2 to Client for distribution. Mail same to those who do not receive hand delivered package containing a check.
- 4) Release included in the Notice package will have a business reply envelope to return to Simpluris, pre paid postage. Mail by mid January 2019.

Total Possible Class Size:	550	Undeliverable Rate:	35%
Response Rate:	0%	Call Rate:	10%
Length of Response Period:	N/A	Fund Distribution:	Simpluris
Mailing Document Language:	N/A	Redistribution:	None
Reminder Post Card	No	States	CA

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports			
Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$75.00	1	\$75.00
Database Manager - Initial Data Analysis	\$140.00	1	\$140.00
Total			\$215.00

Distribution

Use Client Disbursement Account			
Print & Mail Checks to Class Members - No tax or tax reporting - File Reports with Appropriate Federal & State Taxing Authorities			
Account Management & Reconciliation			
Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	1	\$140.00
Disbursement Manager - Data Validation	\$75.00	1	\$75.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Mailing Supervisor	\$50.00	1	\$50.00
Print & Mail-Check-NO TAX FORMS	\$3.00	550	\$1,650.00
Postage	\$0.50	550	\$275.00
Process Returned Checks	\$0.50	193	\$96.25
Skip Trace Search Undeliverable Checks	\$3.00	0	\$0.00
Remail Checks	\$4.50	0	\$0.00
QSF Account Reconciliation	\$350.00	1	\$350.00
Individual Federal/State Tax Reporting	\$350.00	0	\$0.00
QSF Reporting/Declaration	\$300.00	0	\$0.00
QSF Annual Tax Preparation Fee	\$750.00	1	\$750.00
Reissuing Checks/Mailing	\$5.00	0	\$0.00
Reissuing W2s/1099s	\$5.00	0	\$0.00
Disbursement Agent	\$75.00	2	\$150.00
Responding to IRS, State, Agency Inquiries	\$75.00	0	\$0.00
Disbursement Manager	\$125.00	2	\$250.00
Total			\$4,086.25



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Class Action Settlement Administration

Case Wrap Up

Send Final Reports to Counsel			
Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	1	\$125.00
Clerical-Clean Up Any Misc	\$50.00	1	\$50.00
Project Manager-Wrap-up Final Issues	\$125.00	1	\$125.00
Total			\$300.00

Total Case Costs \$4,601.25

simpluris

Class Action Settlement Administration

800-779-2104 • www.simpluris.com
3176 Pullman Street, Suite 123
Costa Mesa, CA 92626

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 - Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 - Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

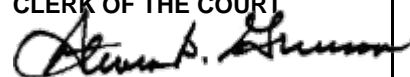
Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning



MOT

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

Michael K. Wall, Esq.
Nevada Bar No. 2098
HUTCHISON & STEFFEN, LLC
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
702-385-2500
mwall@hutchlegal.com

Jay A. Shafer, Esq.
Nevada Bar No. 006791
PREMIER LEGAL GROUP
1333 North Buffalo Drive, Suite 210
Las Vegas, Nevada 89128
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 Date: February 6, 2019
Hearing Time: 9:00 a.m.

DEFENDANTS' MOTION TO PAY SPECIAL MASTER

ON ORDER SHORTENING TIME

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

1 respectfully move this Court for Order to pay the Special Master Resolution Economics from
2 Defendants' funds presently being held by the Plaintiffs.

3 DATED this 16th day of January, 2019.

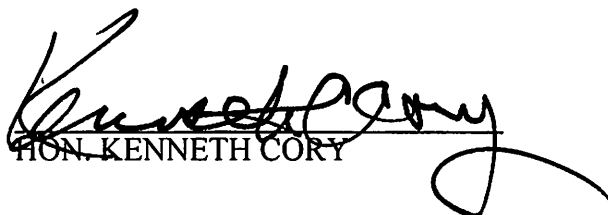
4 **RODRIGUEZ LAW OFFICES, P.C.**

5
6 /s/ Esther C. Rodriguez, Esq.
7 Esther C. Rodriguez, Esq.
8 Nevada Bar No. 6473
9 10161 Park Run Drive, Suite 150
10 Las Vegas, Nevada 89145
11 *Attorneys for Defendants*

12 **ORDER SHORTENING TIME**

13 It is hereby ordered, that the foregoing MOTION TO PAY SPECIAL MASTER ON ORDER
14 SHORTENING TIME shall be heard on the 6th day of February 2019, at the hour of 9
15 am/pm or as soon as the matter may be heard by the Court in Department I.

16 DATED this 17th day of January, 2019.

17 
18 HON. KENNETH CORY

19 *Opposition to be filed by Jan. 30, 2019.*
20 *Reply of no more than 5 pages by Feb. 4, 2019.*
21
22
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27
28

DECLARATION OF COUNSEL IN SUPPORT OF AN OST

1. The items which are the subject of this requested relief must be heard on an order shortening time due the Court's Order of December 18, 2018, ordering an expedited schedule for the work of the third Special Master George Swarts. Pursuant to that Order granting a Countermotion, Mr. Swarts is expected to gather all of his information and to submit a report to the Court before February 1, 2018.

2. Because of the Court's expedited Order to Special Master Swarts and to the Defendants setting a February 1, 2018 deadline, this matter must be heard on an expedited basis.

3. Defendants bring this Motion on an OST because Special Master Swarts is presently requesting extensive documentation on an expedited basis which are overly broad and not within the scope of what was anticipated by the Court in its Order. Such actions are infringing on the privacy and the property of third parties not affiliated nor part of this litigation.

4. With the present requested relief, it is within the power of the Court to meet its goal as addressed in the hearing of December 13, 2018, and to alleviate the need for the services of Special Master Swarts altogether.

5. Accordingly, this Court should hear this motion which seeks to meet the Court's goal of having Special Master #2 Resolution Economics paid, without running up additional fees and costs to yet another group of persons (Mr. Swarts and his counsel Steve Parsons, Esq.) which can be avoided altogether in a judicially sound economic fashion.

6. This Motion, brought on an expedited basis, is brought in good faith and in accordance with the circumstances discussed herein.

Affirmed this 16 day of January 2019.



Esther C. Rodriguez, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

There are now three Court-appointed Special Masters involved in this matter. This Motion addresses an expedient solution to the payment ordered to Special Master #2 Resolution Economics (“ResEcon”). This pending request for payment to Special Master #2 will also immediately result in dispensing with the necessity of Special Master #3 George Swarts, who has been appointed by the Court to get the previous special master paid.

At the most recent hearing of this matter, this Court heard “*Resolution Economics’ Application for Order of Payment of Special Master’s Fees and Motion for Contempt.*” At that time, the Court indicated that its prime objective and goal was to have Special Master #2 Resolution Economics paid. Specifically, the Court indicated:

“The prime objective of the receiver of Mr. Swarts, assuming that he’s the one that accepts this, will be to get the previous special master paid. I want to see that happen and I want to see it happen as a primary goal of the special master at this point. That is more important to me than pulling funds out to pay the judgment creditor.” **Exhibit 1, Transcript of December 13, 2018 hearing, 12:4-8.**

Echoing this sentiment and their desire to close their involvement in this case, counsel for Special Master ResEcon continued to repeatedly request: “Please get us paid so we can get out. That’s all I’m asking, Your Honor.” *Id.*, 26:16-18. Specifically, ResEcon counsel argued for payment of \$41,000 to be made immediately: “But under Nevada law you have to be purged of the contempt if they had already been found to be in willful violation of this Court’s order. That means purge, pay the \$41,000 plus attorney’s fees per statute and then that’s it. Then we can leave. We’ll be out of the picture.” *Id.*, 26:12-15.

There is a glaring and simple solution that lies before the Court in that funds which were previously held by the Clerk of Court now sit in the trust account of Plaintiffs’ counsel, and are readily available for disbursement to Special Master ResEcon. In fact, in Plaintiffs’ most recent filings (rejected by the Court Clerk), Plaintiffs are seeking release of the same funds to Special Master Swarts. This is nonsensical to advocate to pay Swarts, when he has been appointed to find funds to pay ResEcon. Why not just pay ResEcon and be done with it; and not incur another

1 \$20,000 other than for purposes of digging the knife in deeper wounding Defendants' financial well-
2 being?

3 The funds which are referenced were garnished from various bank accounts are readily
4 available to pay the amount ordered by the Court. Specifically, the following funds were garnished:

Accounts	Funds Taken
Acct ending #0133 - Series 87 (Cab Maint)	\$38,572.53
Acct ending #0158 - Series 89 (Cab Admin)	\$130,788.70
Acct ending #0158 - Series 89 (Cab Admin)	\$125.00
Acct ending #5755 - Taxi Leasing Company	\$33.60
Acct ending #4896 - EE Leasing Two	\$44,458.49
Acct ending #0635 - Series Medallions	\$100.00
Acct ending #0510 - Series CCards	\$19,541.22
Total funds taken:	\$233,619.54

13
14 As this Court has been informed, the series which employed the Plaintiffs in this matter is
15 limited to Employee Leasing Company, as well as Employee Leasing Two. Of the funds garnished
16 and listed above, \$44,458.49 was from an account belonging to Employee Leasing Two. Although
17 this series was never named in this lawsuit, Defendants assert that it would be appropriate to release
18 the payment to ResEcon from these funds; and to alleviate the need for further escalation of fees and
19 costs of a third Special Master (already seeking a \$20,000 deposit to do so) to find funds to pay
20 ResEcon. Defendants do not waive their continued objection to the appointment of ResEcon, a
21 matter which is presently on appeal to the Nevada Supreme Court; nor that any monies whatsoever
22 are owed from Employee Leasing Two. Nevertheless, this request is made for purposes to avoid
23 running up fees and costs in a wasteful fashion; and having yet another party enter the case escalating
24 the fees and costs when it is clearly unnecessary with the simple solution before this Court.

25 ...

26 ...

27 ...

28 ...

1 Accordingly, Defendants request an immediate order to release the funds to pay Special
2 Master ResEcon.

3 DATED this 16th day of January, 2019.

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

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

12 **CERTIFICATE OF SERVICE**

13 I HEREBY CERTIFY on this 17 day of January, 2019, I electronically filed the foregoing
14 with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will
15 send a notice of electronic service to the following:

16 Leon Greenberg, Esq.
17 Leon Greenberg Professional Corporation
18 2965 South Jones Boulevard, Suite E4
19 Las Vegas, Nevada 89146

Peter Dubowsky, Esq.
Dubowsky Law Office, Chtd.
300 South Fourth Street, suite 1020
Las Vegas, Nevada 89101
Counsel for Resolution Economics, LLC

20 Christian Gabroy, Esq.
21 Gabroy Law Offices
22 170 South Green Valley Parkway # 280
23 Henderson, Nevada 89012
24 *Co-Counsel for Plaintiffs*

25
26 
27 An Employee of Rodriguez Law Offices, P.C.
28

EXHIBIT 1

EXHIBIT 1

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TRAN

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

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

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE
THURSDAY, DECEMBER 13, 2018

TRANSCRIPT RE:
PLAINTIFFS' EX PARTE MOTION FOR A TEMPORARY RESTRAINING ORDER
AND MOTION ON AN ORDER REQUIRING THE TURNOVER OF CERTAIN
PROPERTY OF THE JUDGMENT DEBTOR PURSUANT TO NRS 21.320

APPEARANCES:

For the Plaintiffs:	LEON GREENBERG, ESQ. CHRISTIAN GABROY, ESQ. KAINE MESSER, ESQ.
---------------------	--

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

For Resolution Economics:	PETER DUBOWSKY, ESQ.
---------------------------	----------------------

ALSO PRESENT:	JONATHAN WILSON Resolution Economics CREIGHTON J. NADY
---------------	--

RECORDED BY: Lisa Lizotte, Court Recorder

1 see, let's make about four copies. My law clerk will run copies of that.

2 Let's -- while they're doing that, that kind of takes care of what -- on
3 my check-off sheet that takes care of two out of three. One is the appointment of
4 a receiver. I'm going to make that a special master for now. The prime objective
5 of the receiver of Mr. Swarts, assuming that he's the one that accepts this, will be to
6 get the previous special master paid. I want to see that happen and I want to see it
7 happen as a primary goal of the special master at this point. That is more important
8 to me than pulling funds out to pay the judgment creditor.

9 As to the contempt, I've already indicated I'm not going to hold Mr.
10 Nady -- well, I have held the defendants in contempt, but I'm not going to put Mr.
11 Nady into jail, until such time as he complies with the Court's order.

12 That leaves the final thing as being the temporary restraining order
13 not to sell items. Is there anything more that needs to be argued about that? I don't
14 see that it impedes the defendant's business to simply enter an order that says don't
15 sell any of the assets, whether they are the automobiles or anything else, any of the
16 assets without clearing it with the Court first.

17 Do defendants have problems with that?

18 MR. SHAFER: Our concern I think is just the transactional nature of this,
19 whether or not -- you know, when they -- if they dispose of a certain asset, whether
20 they have to get clearance from the Court to throw away a broken stapler or to --
21 you know, if a car is wrecked, to deal with that issue. We would probably put in
22 a request that anything be -- if there is a sale that it be for equivalent value and
23 records be maintained of that. So if they do sell that broken stapler, they donate it
24 to charity, there's a record of that, or if they have to -- if there is a wrecked car and

1 MR. DUBOWSKY: No. That is the exception -- Your Honor, we know what's
2 happening here because so far as to my client, which was brought in by Your Honor,
3 nothing you have ordered will change anything in the lives of the defendants or their
4 counsel. Nothing.

5 THE COURT: Uh-huh.

6 MR. DUBOWSKY: So it's come to this point. I want to get my client paid.
7 Our attorney's fees are also under statute, and then we just want to go. We were
8 brought in by the Court. We want to make sure Your Honor gets us paid. You
9 already found willful contempt. Respectfully, Your Honor, this is not going to do
10 anything for my client. You already see that. So, yes, if they were smart they
11 would have come in today with the money and say we want to purge ourselves of
12 contempt. But under Nevada law you have to be purged of the contempt if they had
13 already been found to be in willful violation of this Court's order. That means purge,
14 pay the \$41,000 plus attorney's fees per statute and then that's it. Then we can
15 leave. We'll be out of the picture. But, Your Honor, they're in contempt saying no,
16 we can't comply. Your Honor, please, that is -- I think Your Honor can see through
17 that. And again, another Court order is not going to help us. Please get us paid
18 so we can get out. That's all I'm asking, Your Honor.

19 THE COURT: Let's take five minutes or so and let you folks look at the order
20 and then we'll come back and I will make the decision on what we're going to do.

21 (Court recessed from 11:32 a.m. until 11:42 a.m.)

22 THE COURT: All right, please be seated. What I'm looking for, folks, here
23 is minor tweaks to this order if there's anything that would help make this process
24 work. I'm not looking for entire this is our position on the granting of an order. I'm

1 MR. GREENBERG: I don't wish to take up any more of the Court's time.

2 THE COURT: All right. Well, then if there's no other business, we will
3 adjourn. Thank you all.

4 MR. DUBOWSKY: Thank you, Your Honor.

5 THE COURT: I hope that you have good holidays.

6 MR. GABROY: Thank you, Your Honor. Happy Holidays.

7 MR. GREENBERG: Thank you, Your Honor. Yes, Happy Holidays to all.

8 THE COURT: And I trust that when we meet again it will be under slightly
9 happier circumstances.

10 MR. SHAFER: Thank you, Your Honor.

11 MR. GREENBERG: I hope so, Your Honor.

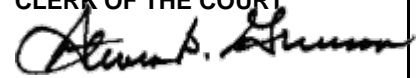
12 THE COURT: Thank you.

13 (PROCEEDINGS CONCLUDED AT 12:28 P.M.)

14 * * * * *

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

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



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

DISTRICT COURT
CLARK COUNTY, NEVADA

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' RESPONSE IN
OPPOSITION TO
DEFENDANTS' MOTION TO
PAY SPECIAL MASTER ON
AN ORDER SHORTENING
TIME**

AND

**COUNTER-MOTION FOR AN
ORDER TO TURN OVER
PROPERTY**

Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation, hereby submit this response in opposition to defendants' motion to pay special master on an order shortening time. Plaintiffs also move the Court for an order to turn over four vehicles belonging to the judgment debtor A Cab, LLC (also known as A Cab Series, LLC.) to the Sheriff for sale at auction. Plaintiffs's opposition and counter-motion is based upon the memorandum of points and authorities below, the attached exhibits, and the other papers and pleadings in this action.

AA010115

1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **ARGUMENT IN RESPONSE TO THE MOTION**
3 **NO BASIS EXISTS TO RELIEVE DEFENDANTS**
4 **OF PAYING SPECIAL MASTER RESOLUTION ECONOMICS**

5 **A. Defendants’ motion is predicated on a distortion of the**
6 **purpose of the Special Master appointment of George Swarts**
 and the history of this litigation.

7 Defendants, relying upon a one page excerpt of the transcript of the December
8 13, 2018 hearing, insist that the Court’s entire purpose in appointing George Swarts
9 was to have the prior Special Master, Resolution Economics, paid. Based on that
10 circumstance, they then argue that \$20,000 seized by plaintiffs via their judgment
11 execution should simply be paid to Resolution Economics so that Mr. Swarts need not
12 proceed with his Special Master work.

13 Not only are defendants’ claims about the nature of the appointment of Mr.
14 Swarts untrue, that claim is not even supported by that limited hearing excerpt
15 presented by defendants. Plaintiffs, in connection with their request to appoint a
16 receiver, also, in the alternative, supported, as suggested by Mr. Swarts, a more limited
17 initial appointment of a Special Master to formulate a plan of receivership.¹ As even
18 the one page excerpt relied upon by the defendants confirms, the Court was appointing
19 Mr. Swarts for the purpose of ultimately determining whether a receivership was
20 viable, the Court stating it was electing to appoint “a special master for now.” The
21 Court’s statement about the priority of having Resolution Economics paid was to place
22 them at the head of the line so to speak as to what the receivership would accomplish,
23 seeing that as “...more important to me than pulling funds out [of A Cab’s business] to
24 pay the judgment creditor.”

25 Defendants were Ordered by the Court to pay for Resolution Economic’s
26

27
28 ¹ This is discussed at pages 3 to 6 of the December 13, 2018 hearing transcript,
the entirety of that transcript is at Ex. “A.”

1 Special Master services *prior* to judgment. They violated that Order. Defendants
2 offer no reason (and none exists) as to why plaintiffs' commitment to fund \$20,000 for
3 the work of Mr. Swarts, to determine if a receivership is viable, should become a
4 commitment to pay \$20,000 of defendants' outstanding (and prior to judgment) debt to
5 Resolution Economics.

6
7 **B. Defendants' unclean hands are manifest and
no basis exists, as a matter of equity, to grant them relief.**

8 Defendants gloss over the fact that the funds from which they now ask the
9 Court to mandate plaintiffs to pay Resolution Economics, are the very *same* funds
10 which were seized from defendants' own bank accounts, and from which they could
11 have paid Resolution Economics in the first place.² Instead of doing so, defendants
12 misrepresented their financial status to the Court, claiming they could not pay a court-
13 ordered \$25,000 deposit to Resolution Economics without facing financial hardship,
14 when reality demonstrated they had over \$230,000 in available cash which, when
15 seized, did not cause a financial interruption of defendants' business or an immediate
16 bankruptcy filing. Defendants have always had the money to pay the Resolution
17 Economics and they have provided no proof to the Court that they do not have such
18 funds now. Indeed, it is apparent that defendants have consumed a vast amount of
19 money on legal fees (clearly more than they owe to Resolution Economics) in the post
20 judgment district court and appellate proceedings in this case.

21 Defendants' motion is also untimely, in that it seeks to shift a burden of paying
22 the Special Master Resolution Economics to *plaintiffs* over 11 months after the Court
23

24 ² Defendants also continue to provide false information to the Court.
25 Defendants' motion, at p. 5, states "the series which employed the Plaintiffs in this
26 matter is limited to Employee Leasing Company, as well as Employee Leasing Two."
27 As plaintiffs have previously pointed out this is just flat wrong. *See*, Ex. "B" pay stub
28 of plaintiff Michael Reno (denoted as A Cab 0081 and produced *by defendants*),
which shows it was issued by A Cab, LLC, the judgment-debtor. The Court should
admonish defendants for this repeated false and misleading misrepresentation.

1 placed that burden on *defendants*. If defendants sought to have Resolution
2 Economics paid in some fashion other than as initially Ordered by the Court, they
3 should have made a more timely request to the Court for that relief, such as through
4 the normally made motion for rehearing or reconsideration to be filed within 10 days
5 of notice of entry of such order. *See*, EDCR 2.24(b).

6
7 **IN SUPPORT OF THE COUNTER-MOTION**

8
9 **I. THE COURT SHOULD ENTER AN ORDER REQUIRING THE**
10 **TURNOVER OF FOUR VEHICLES BELONGING TO A CAB**

11 **A. Defendants refuse to turn over vehicles to the Clark County Sheriff**
12 **and have indicated their intent to hide such vehicles from execution**

13 The Court was previously made aware that plaintiffs located four vehicles titled
14 to the judgment debtor A Cab and intended upon have such vehicles seized by the
15 Clark County Sheriff's office as part of the satisfaction of the judgment entered in this
16 case. On January 10, 2019, the Clark County Sheriff served four Writs of Execution
17 and attempted to seize the four identified vehicles. *See*, Ex. "C," Affidavits of Service
18 of Writs of Execution for three Toyota Corollas and one Toyota Camry. As
19 demonstrated in those Affidavits of Service, the Sheriff's deputy was told by
20 defendants' Systems Administrator, Mike Malloy, that he was given instructions by
21 the judgment-debtor owner, Jay Nady, not to call the vehicles back to the property, not
22 to cooperate, and that Mr. Nady intended to hide the vehicles. *See, id.* It is apparent
23 based upon this sworn statement by the Sheriff's deputy that the judgment-debtor,
24 under the direction of defendant Nady, will never cooperate in turning over property
25 for the purpose of satisfying the judgment in this case.

26 **B. An order requiring turnover of the vehicles is now necessary**

27 A request for a turnover order was previously made to the Court on November
28 26, 2018. The Court at that time declined to enter such an order and restrained

1 defendants from transferring the titles to such vehicles. Based upon defendants'
2 brazen actions in refusing to cooperate with the Sheriff's office, plaintiffs now renew
3 their request.

4 Pursuant to NRS 21.320, the court may order "any property of the judgment
5 debtor not exempt from execution" and that is "in the hands of the debtor" applied
6 "toward the satisfaction of the judgment." The Court should enter an order requiring
7 A Cab, LLC a/k/a A Cab Series, LLC to transfer the four motor vehicles for which
8 they possess title identified in the Ex. "C" Affidavits of Service. That order should
9 require transfer be made to the Sheriff for sale at auction and apply the proceeds so
10 earned to the judgment.

11 Time and again, defendants have put their disregard for the law on display for
12 the Court. Defendants have now unabashedly demonstrated them to the local law
13 enforcement authorities. Under these circumstances, the Court should use its powers
14 under NRS 21.320 and order the turnover of these vehicles or defendants will continue
15 to frustrate and obstruct the collection of the Court's judgment.

16 17 CONCLUSION

18 For all the foregoing reasons, defendants' motion should be denied in its entirety
19 and plaintiffs' counter-motion should be granted together with such other further and
20 different relief that the Court deems proper.

21 Dated: January 30, 2019

22 LEON GREENBERG PROFESSIONAL CORP.

23
24 /s/ Dana Sniegocki
25 Dana Sniegocki, Esq.
26 Nevada Bar No. 11715
27 2965 S. Jones Boulevard - Ste. E-3
28 Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Class

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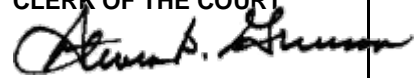
Plaintiffs' Response in Opposition to Defendants' Motion to Pay Special Master on an Order Shortening Time and Counter-motion for an Order to Turn Over Property

TO:

Jay Shafer, Esq.
Premier Legal Group
1333 North Buffalo Drive - Suite 210
Las Vegas, NV 89128

Dana Sniegocki

EXHIBIT "A"



TRAN

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

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

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE
THURSDAY, DECEMBER 13, 2018

TRANSCRIPT RE:
PLAINTIFFS' EX PARTE MOTION FOR A TEMPORARY RESTRAINING ORDER
AND MOTION ON AN ORDER REQUIRING THE TURNOVER OF CERTAIN
PROPERTY OF THE JUDGMENT DEBTOR PURSUANT TO NRS 21.320

APPEARANCES:

For the Plaintiffs:	LEON GREENBERG, ESQ. CHRISTIAN GABROY, ESQ. KAINE MESSER, ESQ.
For the Defendants:	ESTHER C. RODRIGUEZ, ESQ. MICHAEL K. WALL, ESQ. JAY A. SHAFER, ESQ.
For Resolution Economics:	PETER DUBOWSKY, ESQ.
ALSO PRESENT:	JONATHAN WILSON Resolution Economics CREIGHTON J. NADY

RECORDED BY: Lisa Lizotte, Court Recorder

AA010122

1 LAS VEGAS, NEVADA, THURSDAY, DECEMBER 13, 2018, 10:39 A.M.

2 * * * * *

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

5 THE COURT: Good morning.

6 COUNSEL IN UNISON: Good morning, Your Honor.

7 THE COURT: Will counsel enter your appearances, please.

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

9 MR. DUBOWSKY: Peter Dubowsky for the special master, Resolution
10 Economics. And my client is here also, Mr. Jonathan Wilson.

11 MR. GABROY: Christian Gabroy, Bar Number 8805, for the plaintiffs.

12 MR. MESSER: Kaine Messer also for the plaintiffs.

13 THE COURT: All right.

14 MR. SHAFER: Good morning, Jay Shafer for A Cab.

15 MS. RODRIGUEZ: Good morning. Esther Rodriguez for the defendants.

16 MR. WALL: And Michael Wall for the defendants.

17 THE COURT: Good morning. And I see that Mr. Nady is here.

18 All right. As it stands this morning, Mr. Greenberg, what is the
19 plaintiff's suggestion to the Court as to how to proceed?

20 MR. GREENBERG: Well, Your Honor, it was my understanding from our
21 appearance last week there were two issues Your Honor wished to address today.
22 One has to do with the TRO you signed.

23 THE COURT: Please be seated, folks.

24 MR. DUBOWSKY: Thank you.

1 MR. GREENBERG: The TRO you signed and the request for the transfer of
2 those motor vehicles or an order coordinating the transfer, so to speak, or assisting
3 me in having those motor vehicles transferred ultimately to the sheriff for sale on
4 judgment execution. And the other issue was this question of the appointment of
5 a receiver pursuant to what I understood to be your concerns last week. I did
6 submit, as you instructed, on Friday two different proposed orders for the Court's
7 consideration and some correspondence that Your Honor may have seen. I did
8 get a call yesterday from your law clerk, who asked me to provide those orders
9 in computer format, presumably for further review by the Court. I'm pleased to
10 address either of those issues or anything else I can help the Court with, but that's
11 my understanding as to what I'm supposed to be doing here today.

12 THE COURT: All right. We have this morning the matter of whether to
13 appoint a receiver, and if so, under what terms. You've seen the proposed order
14 submitted by the defendants, which modifies the order which you had proposed.
15 What is your view of that?

16 MR. GREENBERG: Well, Your Honor, I have two concerns regarding the
17 order that they are proposing on that issue. One is that they are removing the
18 provision that I had proposed to the Court. And just by way of background, Your
19 Honor, I had essentially proposed two approaches here consistent with my
20 understanding of the Court's concerns voiced last week. One would be really a
21 limited form of receivership which would allow the receiver to take possession of
22 assets that are under the control of the judgment debtor corporation, A Cab, LLC,
23 and hold those assets, potentially pay liabilities in his discretion if he thought it was
24 important to preserve the business, and to also gather information for a report to

1 the Court and a proposal, if possible, for actually managing the business in full for
2 the purposes of satisfying the judgment, Your Honor. He would not have the power,
3 essentially, to interfere or control any of the operations at this point, which is truly
4 what a receiver does in the normal course.

5 As part of that receiver proposal, he would have also had the authority
6 to withhold operation of the medallions which are possessed by the judgment debtor
7 from the Series, these cells to which I am sure they have all now been leased and
8 put in possession of who are generating revenue from them, not for the purpose
9 of doing anything with those medallions but simply to assure cooperation from
10 those cells in his work so that he can gather appropriate information. And if the
11 cells refuse to cooperate, the cells of course are all controlled by Mr. Nady. He
12 would have the authority to terminate those leases or if necessary ask the Taxi
13 Commission to terminate -- excuse me -- terminate the leases of those medallions
14 or ask the Taxi Commissioner to terminate the use of those medallions, essentially
15 just to give him the power so that he could, if necessary, coerce sufficient
16 cooperation so he can get the information he needs to do his job because as Your
17 Honor is aware, it is the position of the defendants that these 200 or so cells are
18 separate entities, they're not subject to o the judgment. We have no asked the
19 Court to, you know, go beyond or deal with that issue.

20 The other form of order I proposed to the Court was far more limited
21 and that was based on my discussion with Mr. Swarts last week, who said that
22 perhaps a special master appointment would be more appropriate here, and that
23 is far more limited. The special master would not actually take possession of any
24 assets of A Cab. He would have no authority to pay expenses. He would simply

1 be essentially in charge of obtaining the records and reviewing the books and have
2 access to the information of the company. He would have no coercive power in
3 respect to the taxi medallions as I was proposing for the limited receiver. And he
4 also would have a report to the Court with a proposal as to whether a receivership
5 could be managed and how it would be managed for the business.

6 Under the special master proposal, which is obviously the far more
7 limited of the two, that's the model the defendants have proposed a variation on
8 to Your Honor, okay. Their variation of that model does two things that I would be
9 strongly opposed to. First is it removes the provision that the special master would
10 provide to plaintiffs' counsel information as to assets he locates that are in the name
11 of the judgment debtor. The judgment is outstanding. I believe if there is going to
12 be a special master appointment we're not going to have a receiver who's actually
13 going to take possession of any assets. Plaintiff's counsel should be told, you know,
14 what assets the special master comes up with so we can take effective means, if
15 we can, to secure those assets for the benefit of our clients. They've removed that
16 power from their proposed special master appointment.

17 The other thing that they have done is they've capped the fee that
18 would be paid to the special master at \$5,000. That's clearly going to be an
19 inadequate amount for me to get anyone to be willing to accept the appointment.
20 I'm not pleased with seeing large amounts of money spent on a special master or
21 a receiver. I have, as I've told the Court, believed it would be appropriate to commit
22 some portion of the funds that have been attached in the Wells Fargo accounts
23 and I actually did submit an order to the Court, I believe it was two days ago, asking
24 Your Honor to direct the disbursement of those funds from the core \$10,000 to the

1 defendants, with the rest to go into my IOLTA account. This was ruled on last week
2 by Your Honor at the hearing. But \$5,000 is not going to be enough. Mr. Schwarz'
3 normal hourly fee is \$300 an hour. That is fairly substantial, although I suspect it's
4 probably within the range of people typical with his experience in this area. I'm not
5 eager to see, again, a large amount of money earmarked for a special master or a
6 receiver, but I suspect a commitment more in the range of \$20,000 probably needs
7 to be made to assure some kind of meaningful efforts are undertaken by anyone
8 who's appointed for a special master or a receiver.

9 And the way I structured both of the orders I proposed to Your Honor
10 is that the person so appointed would be earmarked such amount from the funds
11 collected that Your Honor believes is appropriate and in the event that they have,
12 you know, gone through 90 percent of that earmarked funds, they will at that point
13 sum up whatever they can and provide whatever report they can to the Court at that
14 point, even if it is a partial or incomplete report; the point being that we would like
15 to get some sort of completed result from this process of having a special master or
16 receiver appointed. Ultimately the cost of a receiver or special master really should
17 be borne by the defendants, Your Honor, not by my clients, but I understand the
18 problems we've had in this case and I cannot contemplate Mr. Swarts or anyone
19 else being willing to take on such an appointment, particularly given the history
20 we've had here, without an assurance that there are funds that have been dedicated
21 in advance to pay them for some measure of their work and also an assurance that
22 they will be relieved from doing unpaid work, which is why I tried to structure the
23 orders I presented to Your Honor in that fashion.

24 So I think that reviews what I've proposed to the Court, the thoughts

1 I have about this, the concerns I have with the alternative proposal that was given
2 yesterday by defendants. If the Court has questions, I'd like to help if I can.

3 THE COURT: All right, thank you. We are at this juncture, of course,
4 because of the refusal of the defendants, including Mr. Nady, to come forward with
5 funds necessary to pay the special master.

6 Mr. Nady, I asked you to be here -- well, more than that. I ordered you
7 to be here today and I indicated that I was seriously considering putting you in jail for
8 contempt of court. You might be asking, well, what brought that about? But when
9 I see that your attorneys are in her complaining that you simply can't pay -- first it
10 was \$25,000 and then it was \$41,000 to the special master to do the work that
11 really should have been done by you originally to make sure that the drivers were
12 receiving under the law the minimum wage and that, you know, secondarily, if it
13 wasn't done before there should have been evidence forthcoming from your side
14 as to what the appropriate amount was. And all we ever heard was it can't be done,
15 it can't be done; the trip sheets are the only accurate way to do it. And so we had
16 a way to accomplish that through the special master, admittedly an expensive
17 proposition, but that's what happens when you have to come back and clean up
18 somebody else's mess.

19 When I found that you, despite your protests in September and
20 October that you simply didn't have the money to pay the special master and then
21 the plaintiff effected a seizure of a bank account and there's some \$230,000 laying
22 in that bank account, I have become extremely immune to cries from an individual or
23 a company individual that they just don't have the money to pay the special master
24 to complete this work. And so it has resulted in the special master coming to the

1 Court and asking to be paid. It was the Court that appointed the special master
2 and I am certainly more than amenable to making sure that the special master gets
3 paid for the work that they've put into the project, up to the point where the Court
4 found that it was going to be so cumbersome and so expensive that it was better
5 to simply grant the plaintiffs' earlier motion for summary judgment that included
6 approximations. And according to the United States Supreme Court, those -- if
7 that's what you have, that's what you have and you can rely on those in a judgment.

8 So perhaps you can understand why it seemed to the Court that I
9 might have to just put you in jail in order to get your attention. Well, fortunately for
10 you and perhaps for all of us, rather than blow this matter up even further, there is
11 a way that I believe I can accomplish that without having to put you in jail. It gives
12 me no great pleasure to put you in jail, Mr. Nady, which is why I was so late coming
13 to the point of seriously considering doing that. It's my belief that with the proposals
14 that have been put forward by the plaintiff and been modified proposal by your
15 counsel that there is a way that we can get the special master paid, albeit it is a
16 way that will incur more fees that have to be paid.

17 I'm going to grant the relief that the plaintiffs have asked for in the
18 sense of having a special master appointed again. This time we're not going to use
19 the special master that previously was there. They have -- I wouldn't ask them to
20 continue on at this point, but I am highly likely in a few minutes -- I want to hear
21 from your attorney first, but I'm highly likely to appoint a special master, to have it
22 Mr. Swarts and to order the defendants and their agents, and at this point that's
23 where you come in, to give a full and complete disclosure of all the financial records
24 that pertain to the company.

1 I wanted to say that at this point because maybe it's just if you were
2 feeling nervous and if you have your toothbrush in your pocket, I wanted you to
3 realize that I'm not going to send you to jail today. Notwithstanding that, I hope that
4 out of all of this you will come to realize that the Court is very serious about having
5 this case proceed to its final resolution, including the payment of the judgments
6 which have been awarded.

7 So with that, Mr. Shafer, what do you have to say further? I have
8 received your opposition with your modifications of the proposed order by the
9 plaintiffs. One of those was for confidentiality, which I think is appropriate. Anything
10 which is revealed to the plaintiff should not be revealed to the public at large. I don't
11 assume that there's any problem with that from the plaintiffs. I am inclined, as I just
12 indicated, to not even make it an appointment of a receiver at this point, but I am
13 inclined to make it be a special master with a view towards, if need be, becoming a
14 receiver. Partly I have come to that conclusion because of your protests that when
15 it comes to those medallions, at least, that you can't have someone else running the
16 company or you run into problems. I don't know whether that is accurate, but I don't
17 propose to jump into the middle of that issue by literally turning the company over
18 to a receiver at this point. I agree with plaintiffs' counsel that to put a limit of \$5,000
19 for a special master at this point is not realistic for the job at hand. I may say that
20 my whole purpose in doing this -- immediate purpose is to get the previous special
21 master paid. Those are the things that I'm considering doing. What do you say?

22 MR. SHAFER: And I appreciate it, Your Honor. Obviously we've I think
23 addressed most of our big points in our opposition. I think that you've hit the nail
24 on the head that at least in our interpretation of the statutory authority appointment

1 of any operational control over A Cab would result in termination of its business or
2 at least the current operators would have to go to the Taxicab Authority and say
3 we can't operate anymore, which I think would cause problems for everybody.

4 As far as -- so we stand by our objection to the appointment of any
5 receiver or special master on the record, just because it's an extraordinary remedy.
6 They haven't even had a chance to look at our responses to their post-judgment
7 debtor request for production yet. I think we're a little premature on that. But given
8 that the Court's inclination is to appoint a receiver, we would like to make that as
9 limited as possible with the goal of accomplishing what the Court's concerns are,
10 and that's to maintain the assets to make sure we know what the current status is.

11 And I want to -- I'm glad the Court brought up the issue of the
12 \$230,000 or \$250,000 that was taken in September of this year. That was not
13 A Cab's money. As we briefed before the Court, and perhaps Mr. Dubowsky was
14 not aware of this when he filed his motion for the special master, a majority of that
15 money was held in trust either to pay employee tax provisions, the employer side
16 tax provisions, FICA, and to pay the State, the Taxicab Authority its revenue and
17 to pay the airport for its revenue. Those -- while those are collected daily, those
18 are remitted quarterly. So those funds, a large majority of those funds represents
19 payments that were held in escrow to be submitted to the State and its Authority.
20 So it's not like they had a quarter million dollars sitting in an account that was
21 available to pay whoever they wanted. That was already earmarked to be paid
22 and was owed to be paid for sales tax, transfer tax and other authority.

23 As far as the issue of the receiver, our goal should be to limit the
24 amount of costs that are incurred, the friction loss that is involved in this. My client

1 does not have the money to pay it. There is a limited amount of funds. And so
2 the more duplicative work that is done will decrease the return to the actual drivers.
3 As minimal as it is now, we would like to avoid that further.

4 So our request is just to limit it just to receipt and review of the
5 financial records of the company with the appropriate protective order. We put a
6 placeholder \$5,000, indicating our desire to have that be minimal. Whether or not
7 that's an accurate one, I don't know, but given the problem we had in this case of
8 the \$200,000 special master, we would like -- we have no objection to Mr. Swarts
9 being appointed, particularly if the Court is inclined to do that, but we would like it
10 to be limited. And if additional funds were needed to complete additional review, we
11 would rather them come back to the Court and ask for additional funds, rather than
12 being unlimited and all of a sudden we run up a \$20,000 bill within the first week
13 and not have additional funds later on. So that is why we put that placeholder, but
14 if you'll notice we left most of the blanks -- we left placeholders for most of the other
15 fees. But our goal is to have it as limited as possible and A Cab will cooperate to
16 provide the financial records to minimize the costs and expenses that it is being
17 forced to incur for the special master if the Court does grant that special master.

18 I think that's --

19 THE COURT: Let me do this. I have reworked the draft that was submitted
20 by the plaintiff and it's the short version. I've made some changes to it. This is
21 what I am considering ordering. I think it would be best maybe if we just took a few
22 minutes at least to let both sides see what's in the order that I'm thinking of signing
23 and seeing whether or not that covers the various needs and issues of the parties.
24 So why don't we run a couple of copies of this and let counsel have it and -- let's

1 see, let's make about four copies. My law clerk will run copies of that.

2 Let's -- while they're doing that, that kind of takes care of what -- on
3 my check-off sheet that takes care of two out of three. One is the appointment of
4 a receiver. I'm going to make that a special master for now. The prime objective
5 of the receiver of Mr. Swarts, assuming that he's the one that accepts this, will be to
6 get the previous special master paid. I want to see that happen and I want to see it
7 happen as a primary goal of the special master at this point. That is more important
8 to me than pulling funds out to pay the judgment creditor.

9 As to the contempt, I've already indicated I'm not going to hold Mr.
10 Nady -- well, I have held the defendants in contempt, but I'm not going to put Mr.
11 Nady into jail, until such time as he complies with the Court's order.

12 That leaves the final thing as being the temporary restraining order
13 not to sell items. Is there anything more that needs to be argued about that? I don't
14 see that it impedes the defendant's business to simply enter an order that says don't
15 sell any of the assets, whether they are the automobiles or anything else, any of the
16 assets without clearing it with the Court first.

17 Do defendants have problems with that?

18 MR. SHAFER: Our concern I think is just the transactional nature of this,
19 whether or not -- you know, when they -- if they dispose of a certain asset, whether
20 they have to get clearance from the Court to throw away a broken stapler or to --
21 you know, if a car is wrecked, to deal with that issue. We would probably put in
22 a request that anything be -- if there is a sale that it be for equivalent value and
23 records be maintained of that. So if they do sell that broken stapler, they donate it
24 to charity, there's a record of that, or if they have to -- if there is a wrecked car and

1 they get an insurance payoff, that there's an earmark or identification of that --

2 THE COURT: Uh-huh.

3 MR. SHAFER: -- which would -- and our concern is --

4 THE COURT: Well, in terms of a wrecked car, that's -- if the only prohibition
5 is from selling it -- oh, you're saying that it would be so wrecked you wouldn't be
6 fixing it.

7 MR. SHAFER: Yeah. And, you know, the insurance company would
8 probably require a sign-over of the wrecked vehicle in exchange for insurance
9 proceeds, I imagine. And I think that also deals with our other concern that exerting
10 control over the company might be considered exerting control over the operations
11 and would put us in violation of the statute.

12 THE COURT: Well, if it's a special master and he's given no power to control
13 at least initially, then that shouldn't be a problem, should it?

14 MR. SHAFER: I am not -- my concern is not reporting that to the special
15 master or not notifying the special master or not including that in the finances, but as
16 to the TRO and the Court exerting control over or precluding transfer or dealing with
17 those assets as they are in the ordinary course of business. That's our only objection
18 to that. We do not anticipate a sell-off of assets or otherwise deprive defendants of
19 any rightful recovery that they have. And so I think it is over-broad to require -- to
20 preclude them from transferring any asset, unless there is an exception --

21 THE COURT: Well, if we put a dollar amount in there and say something like
22 don't dispose of any assets of a value of \$500 or more without at least advising the
23 special master first --

24 MR. SHAFER: I think if the restriction is to reporting it to the special master,

1 I think that would probably be fine because that is -- you're not exerting control over
2 the operations of the business, just requiring disclosure of the financial records,
3 which is consistent with our position on the limitation and the nature of the special
4 master.

5 THE COURT: Well, but I'm talking about doing more than simply requiring
6 a reporting to the special master. I'm talking about saying don't dispose of assets.
7 Obviously we don't want to see the assets walking out the back door when we're in
8 a mode of trying to get a special master paid and then trying to get a plaintiff paid.
9 So I don't see that it's, you know, assuming any managerial role in the company
10 to have that kind of an order in place that the defendant is not to sell off assets.

11 MR. SHAFER: Our only caveat would be to -- if such an order is entered,
12 to be in the -- it's not to be sold off except in the ordinary course of business.
13 With that exception and with a notification requirement we can be assured that the
14 judgment creditor would receive equivalent value. Whether it's in a car or whether
15 it's in cash, it would make no difference to the judgment creditor. And would -- with
16 the notification requirement if a car is sold for a dollar and it is clearly a fraudulent
17 transfer, they would be notified of that transfer and would be able to recover it back.

18 THE COURT: All right. Then I'll go for that as long as there's some time
19 period of delay after notifying the special master before you actually dispose of the
20 assets. It doesn't do much good to tell the special master and then just go ahead
21 and sell the asset. If we say that, we haven't accomplished anything more than
22 the provisions that all the financial -- that the finances of the company be made
23 available to the special master.

24 MR. SHAFER: I understand. If I might have just one moment to --

1 THE COURT: Yeah.

2 MR. SHAFER: Your Honor, I would suggest five business days would be
3 an appropriate length of time.

4 THE COURT: All right, that will work. Let's make it say that no asset of a
5 value of more than \$500 will be disposed of, sold, given away, whatever, without
6 giving five days notice to the special master.

7 MR. SHAFER: Okay.

8 THE COURT: All right. Why don't we just take a few minutes while you guys
9 take a look at the order that I've handed out and then I'd like to hear from you again
10 before I finalize it.

11 Yes, sir?

12 MR. DUBOWSKY: May I address the issue of contempt, Your Honor?

13 THE COURT: Yes.

14 MR. DUBOWSKY: I understand Your Honor not putting Mr. Nady in
15 incarceration. I understand that. But Your Honor did adjudicate him in contempt.

16 THE COURT: Uh-huh.

17 MR. DUBOWSKY: Under Nevada law for a civil contempt is just to compel
18 compliance and whether this order addresses it or not, I'm not clear, but my client
19 has not been paid. They've been ordered to be paid. I think Your Honor needs to
20 -- in that you already made the order finding him guilty of contempt, just compel
21 compliance. Payment plus attorney's fees in order to comply with the Court order
22 by a date certain so we comply with the contempt rules. And whatever else needs
23 to be paid can be dealt with in the order, but Your Honor, you have found him to be
24 in contempt. Another order just saying that my client is going to be paid, we have

1 those orders already. So I'm going to ask Your Honor to make an order, which we
2 requested before, for civil contempt to do something that compels compliance.

3 THE COURT: In other words, that you be paid, your client be paid by a date
4 certain or else what, Mr. Nady goes to jail?

5 MR. DUBOWSKY: That's within Your Honor's discretion, but yes, there's
6 ways of dealing with that. But that would be one way, yes.

7 THE COURT: Uh-huh.

8 MR. DUBOWSKY: And under NRS 22.100, subsection 3, there's also
9 attorney's fees because we've had to spend a lot of attorney's fees just to ask the
10 Court --

11 THE COURT: Yeah.

12 MR. DUBOWSKY: -- to have him comply and we still can't get compliance.
13 And I can tell Your Honor that we have not been approached to say, listen, we don't
14 want to be in contempt. But under the Nevada rules he has to purge himself of
15 the contempt and that means compliance plus attorney's fees. And that has to be
16 addressed separately so that my client can be paid and we can be out of here. And
17 whatever else needs to be paid through this process, that's fine, but, Your Honor,
18 he is in contempt. He has to comply with the \$41,000 order.

19 MR. GREENBERG: Your Honor, if I may?

20 THE COURT: Uh-huh.

21 MR. GREENBERG: On behalf of my clients I do want to make clear on the
22 record that I respect Your Honor's authority and discretion to proceed however you
23 feel best within the confines of the law. And what you are proposing is within your
24 discretion. However, I want to make clear on the record that on behalf of my clients,

1 we definitely object to the idea that a special master should be appointed. The
2 funds that have been executed on my client's judgment should be earmarked to
3 pay that special master, with the purpose of that being really to try to locate funds or
4 come up with a further plan to pay the prior special master who was already ordered
5 to be paid by the Court. So to that extent we do not support the Court's direction
6 on that issue that you were voicing a little while ago, but I respect Your Honor's --

7 THE COURT: What is it that you don't support?

8 MR. GREENBERG: Well, Your Honor, as counsel for the special master who
9 has already been appointed was pointing out, they are due their funds pursuant to
10 a long-standing order of this Court. The defendants are properly held in contempt.
11 And candidly, Your Honor, I don't think that the defendants will comply with anything
12 unless they're coerced to do it. An order of contempt that was being proposed could
13 simply be that they either have to pay it by a date certain or Your Honor is going to
14 suspend the use of their medallions.

15 I mean, at this point, Your Honor, the judgment debtor in this case,
16 A Cab, LLC, I am sure has no assets except those medallions and the motor vehicles
17 that are still titled -- and titled inadvertently, no doubt, because Mr. Nady has made
18 it a point of transferring all of the assets to these various Series LLCs, the cells, as
19 he calls them. We did execute on those funds at the Wells Fargo. I have had
20 executions served on a variety of other banks. I was advised by Nevada State Bank
21 there was one dollar in an account there. No doubt the business is still running, but
22 they've acquired a new EIN number. They're running the operation through a new
23 legally-registered entity, whether it's one of the series with a Tax I.D. number or
24 something else. So --

1 THE COURT: Presumably that's something you will find out in your judgment
2 debtor examination.

3 MR. GREENBERG: I will, Your Honor. And as counsel for the defendants
4 have pointed out, well, if there's transfers of assets, you know, plaintiffs have their
5 remedy. We can proceed with fraudulent conveyance actions. And obviously we
6 may have to do that, Your Honor, but I don't wish to be involved in just a ceaseless
7 series of litigation here involving transfers of assets. It's not in the interest of my
8 clients. And defendants are essentially just working to exhaust my time, my
9 resources. I have other clients I'm committed to. I have other cases I have to
10 work on.

11 So ultimately the only way that anybody, my clients or the special
12 master may get paid is if this Court uses its coercive power and simply tells the
13 defendants, look, you either pay or the business is going to be shut down. Your
14 Honor clearly has the authority to suspend the use of those medallions. And that's
15 it. That's the only asset that the judgment debtor has and it only has that asset,
16 Your Honor, because they can't actually transfer the right to those medallions. It's
17 a limited franchise that's given to them under their CPCN. But they can lease them
18 out, they can direct the revenue from those medallions to, you know, Tom, Dick and
19 Harry, which is essentially what they've done here. I mean, this is the whole nature
20 of the financial operation that Mr. Nady has run with the business to evade this
21 judgment, to evade his creditors. So anything short of that --

22 THE COURT: Whose name are those medallions in?

23 MR. GREENBERG: The medallions are a limited license that's granted to
24 A Cab Series, LLC, the judgment debtor. And we have the CPCN, it's in the record

1 here. It's a one page document. They're authorized for 73 or 120 or 94 or whatever
2 it is medallions. And they are free -- they can't sell the medallions. They're not --
3 again, it's the nature of the license, but they can lease them, they are leasing
4 them. And ultimately unless some coercive power is applied to the use of those
5 medallions, I don't think the special master is going to get paid and I don't think my
6 clients are going to get paid by the judgment debtor because that's really the only
7 arrow we have left in the quiver here, Your Honor, against Mr. Nady because the
8 way the entire business is structured at this point, unless the Court is going to go --
9 and we may have to reach this point of proceeding with an examination of the legal
10 issues regarding the supposed separation of the cells, the Series LLCs from the
11 judgment debtor.

12 As Your Honor is aware, we do have an alter ego claim pending
13 against Mr. Nady which is currently stayed. Presumably the Court could some time
14 in the new year reconvene, proceed to trial on that, gather evidence, make findings.
15 I understand all of that, Your Honor, and perhaps that will have to be done at some
16 point as well. But I don't see that there's going to be any other way to get the very
17 substantial judgment rendered on behalf of my clients paid or the special master
18 paid unless some coercion is applied to the judgment debtor here and Mr. Nady's
19 business operations because essentially, Your Honor, the business is generating
20 a large amount of cash, \$50,000 or more a month. Mr. Nady is free to fund this
21 litigation, to fund the defense from the receipts of the business as long as he can
22 keep it going. I think he values having the business, as he should. He worked hard
23 to make the business and to keep it running, but he needs to respect the authority
24 of this Court.

1 And I'm trying to propose the simplest, most direct means, given the
2 posture of this litigation right now, for this Court to accomplish its objective, which
3 is to get the special master paid and to see that the judgment debtors (sic) are paid.
4 And short of hanging that prospect over the defendants that their medallions are
5 going to be suspended, that they're going to be shut down, I don't see that the Court
6 has any other authority; again, given the current posture of this case. If we go to
7 further proceedings and then we examine this whole issue of the alter ego claims
8 against Mr. Nady and the legal issues presented by the supposed existence of
9 these cells, that might be another avenue, Your Honor. But I think Your Honor
10 understands my point and I respect Your Honor's thoughtful efforts here to reach
11 an appropriate resolution and respect the interests of the parties.

12 THE COURT: Mr. Shafer, is this all a procedure that is going to wind up
13 without getting even the special master paid?

14 MR. SHAFER: I don't believe so. And if it is, it's because there's no money
15 to be paid and not out of any intent to avoid the judgment. And I understand --

16 THE COURT: Well, you know, to say that there's no money to pay is not
17 going to work because in that case then why wouldn't I cause the business to be
18 shut down and sell off whatever assets are left and --

19 MR. SHAFER: Well, I apologize, Your Honor. I tried to make my statement
20 conditional that if there is no money to be paid the result is the same. They receive
21 nothing. It is our argument that the Court's remedy in appointing a special master
22 to review the finances and conduct a review of the assets of A Cab would provide
23 some illumination both to this Court and to plaintiffs' counsel. As of now plaintiffs'
24 counsel is essentially making up out of whole cloth the financial condition of A Cab

1 and what A Cab does or does not do and the status of --

2 THE COURT: Well, I'm not so sure we can say that at this point, Mr. Shafer.
3 A Cab has been under a standing Court order since at least last September to pay
4 the special master and not one dime has gone to payment.

5 MR. SHAFER: And I will distinguish between the special master's request
6 for payment and the judgment collection. They are different and distinct. And
7 I appreciate that the Court -- as a special master they are subject to the Court's
8 review and discretion and they are essentially an adjunct to the Court and they
9 have their own set of limited remedies. The statute provides that if a special master
10 is not paid, they are entitled to a writ of execution.

11 THE COURT: Uh-huh.

12 MR. SHAFER: I don't believe that it is on that basis -- I think that the
13 appointment of the special master you've suggested to review the finances at least
14 on a limited basis would provide security both to the judgment creditor and to the
15 special master, as well as continuing the operations if they exist or are able to be --
16 if A Cab is able to continue on, then that will provide some illumination on that issue.
17 If the judgment creditor wants to shut down the company it has various methods
18 to do that. They can file for an involuntary bankruptcy. They can ask for other
19 extraordinary relief. But we are distinguishing between the judgment creditor and
20 the special master because there has been no contempt as to the judgment creditor.
21 It is limited only to the special master and the payment based on the Court's prior
22 order ordering the \$41,000 be paid. The Court will recognize we made objections,
23 but the Court issued that order. So there is a distinction between those two.

24 I do not think, responding to Mr. Dubowsky's point, that it is fair or

1 reasonable to impose a date certain by which a certain amount should be paid
2 because one of the important aspects in any contempt hearing is the ability. It has
3 not been established that as of now A Cab or Mr. Nady has the ability to pay, or
4 A Cab has the ability to pay the special master fees.

5 THE COURT: Well, if they don't -- if they don't, then why don't we just wind
6 up the business and pull out whatever assets to pay the judgment creditor -- I'm
7 sorry, to pay the special master and the judgment creditor whatever there is and
8 be done with it?

9 MR. SHAFER: Well, and that would be -- that would be subject to either
10 negotiation or some subsequent motion practice subsequently. But my point is
11 is that it is not --

12 THE COURT: Well, no, that kind of evades the question. I mean, what
13 you're telling me is that your client basically simply cannot pay, so therefore we don't
14 want to have any order that you must pay by a certain date or else because, gee,
15 now we have to have a trial after the trial to show that your client can pay. Well,
16 that's not my understanding of the way the process generally works. This is a
17 judgment. And --

18 MR. SHAFER: It is. And we have two competing claims on these funds.
19 Plaintiff's counsel took \$250,000 from our client, from A Cab. That money, most
20 of it, as we discussed before, was earmarked for other purposes which have
21 precedence to the State. But if there was any free funds, that could have been
22 used to pay Mr. Dubowsky's client, the special master. And so now we're in a
23 situation where my client does not have 1.6 million dollars to pay out of its ready
24 cash right now. Does that mean that they might not be able to pay a reasonable

1 amount over time? I don't know. I don't have personal knowledge of the finances
2 of the company. And even if I did, I'm not sure that the Court would believe me.

3 That's why I think it is imperative that the special master make the
4 report before any further recommendations be enacted -- certainly on the contempt.
5 If the special master determines that there is not sufficient funds nor sufficient
6 profits to pay off the special master and their award, then the Court will make its
7 determination based upon that when they make their report in thirty or whatever
8 reasonable amount of time they make their report. I don't presume to indicate what
9 time the special master would be able to complete that. But they would be no worse
10 off than they are today because of the Court's order precluding the transfer of
11 assets or the sale of assets according to the conditions that the Court has put in
12 place and the continued operations of the business. They will be no worse off than
13 they are today and they will still have the ability to recover those funds.

14 So I really seen no authority, also, to shut down the business. They
15 haven't cited to any case law or statute that permits a judgment creditor to shut
16 down a business or to preclude operations of its assets, except according to a
17 receiver or some other writ of execution. The certificates are not subject to a writ
18 of execution because they are not something that can be transferred. So, again,
19 that goes back to the most reasonable course of action at this point is to allow the
20 special master to conduct its review and to conduct the finances.

21 We are -- we have asked, as this Court knows, we asked for a stay
22 pending a resolution and settlement and an appeal. We are getting pummeled,
23 Your Honor, with the amount of motion practice and other procedures that are going
24 through as a result of the defendant and the special master. We're trying to get our

1 feet underneath us to negotiate a resolution. We asked the Court for a stay and
2 it wasn't inclined to issue that stay. We are now seeking an emergency stay with
3 the supreme court to try to resolve this so we can just figure out where everybody
4 stands and what the assets are and what resources would be available to pay the
5 judgment creditor and to work out a fair resolution. But I think that -- I understand
6 the Court's concerns about assets not being diminished and it certainly would never
7 be my intention to intentionally avoid any order of this Court or judgment debt that is
8 properly entered, but is also imperative that due process follow. And I think that the
9 imposition of the special master accomplishes all of the necessary goals to maintain
10 that the judgment creditor and the special master be paid, that the judgment debtor
11 also have its business assets not be unnecessarily disturbed.

12 THE COURT: All right.

13 MR. SHAFER: So that's -- I think we would object to any date certain be
14 paid.

15 MR. GREENBERG: Your Honor, if I might just clarify. On behalf of my
16 clients, the plaintiffs, the class members, I do not want to see the business close
17 because I don't think that's going to be in their interest in terms of getting paid.
18 My suggestion to the Court was in respect to the special master's claim that the
19 Court do issue an order with the course of power I was proposing, giving A Cab,
20 the defendants, a date certain to pay or to face the closure of their business. The
21 reason why I proposed that is the amount that is owed to the special master is of
22 a magnitude that I think they will definitely find the money to pay the special master
23 what he was awarded and that issue will be closed and done with. In terms of
24 appointing a special master going forward or a receiver, we've discussed this and

1 that is the avenue that I believe is in the interest of my clients. I think Your Honor
2 understands my position.

3 THE COURT: Uh-huh.

4 MR. GREENBERG: Mr. Dubowsky may want to address the Court.

5 THE COURT: Mr. Dubowsky.

6 MR. DUBOWSKY: Thank you, Your Honor. I don't understand Mr. Shafer's
7 argument. Number one, he can't just come into court when his client has already
8 been found in contempt and say we don't have the financial ability and it is the
9 burden of the plaintiff to put us in involuntary bankruptcy. Well, number one, I'm
10 no expert in bankruptcy, although I've worked alongside your brother for many
11 years in different bankruptcy cases. I believe you need three creditors to get into
12 an involuntary. But more important, in Your Honor's order, page 31, it says, "If
13 A Cab truly lacks the financial resources to comply with those orders" -- this is to
14 pay my client -- "it has a remedy under the United States Bankruptcy Code to
15 seek protection of the bankruptcy court and its power to relieve it of those orders,"
16 etcetera.

17 In other words, Your Honor, we are going through the same thing
18 again. It's the same song and dance. They're going to come in and say we don't
19 have the money. Your Honor, we're past that. If they don't have the money, they
20 have to file bankruptcy. And if they do, then everything gets resolved with the
21 bankruptcy courts. But as it is right now, as we stand here today, Your Honor
22 adjudicated them in contempt because they refuse to pay my client. And, yes,
23 a date certain to pay -- not if they have the ability.

24 THE COURT: Uh-huh.

1 MR. DUBOWSKY: No. That is the exception -- Your Honor, we know what's
2 happening here because so far as to my client, which was brought in by Your Honor,
3 nothing you have ordered will change anything in the lives of the defendants or their
4 counsel. Nothing.

5 THE COURT: Uh-huh.

6 MR. DUBOWSKY: So it's come to this point. I want to get my client paid.
7 Our attorney's fees are also under statute, and then we just want to go. We were
8 brought in by the Court. We want to make sure Your Honor gets us paid. You
9 already found willful contempt. Respectfully, Your Honor, this is not going to do
10 anything for my client. You already see that. So, yes, if they were smart they
11 would have come in today with the money and say we want to purge ourselves of
12 contempt. But under Nevada law you have to be purged of the contempt if they had
13 already been found to be in willful violation of this Court's order. That means purge,
14 pay the \$41,000 plus attorney's fees per statute and then that's it. Then we can
15 leave. We'll be out of the picture. But, Your Honor, they're in contempt saying no,
16 we can't comply. Your Honor, please, that is -- I think Your Honor can see through
17 that. And again, another Court order is not going to help us. Please get us paid
18 so we can get out. That's all I'm asking, Your Honor.

19 THE COURT: Let's take five minutes or so and let you folks look at the order
20 and then we'll come back and I will make the decision on what we're going to do.

21 (Court recessed from 11:32 a.m. until 11:42 a.m.)

22 THE COURT: All right, please be seated. What I'm looking for, folks, here
23 is minor tweaks to this order if there's anything that would help make this process
24 work. I'm not looking for entire this is our position on the granting of an order. I'm

1 going to sign this order.

2 So, the plaintiff.

3 MR. GREENBERG: Yes, Your Honor. My main concern is in paragraph 3.
4 It directs the special master to advise plaintiffs' counsel of property it identifies,
5 but then simultaneously restrains plaintiffs' counsel from performing any judgment
6 execution on any such property identified.

7 THE COURT: Uh-huh.

8 MR. GREENBERG: Candidly, Your Honor, that's counterproductive. I mean,
9 if I'm told about the property and then told I can't execute on it, it doesn't do me
10 any good in terms of the interest of my clients. I'd almost rather not be told by the
11 special master because if I found out about it myself presumably I wouldn't be
12 bound by the restraint in this order. The purpose -- I mean, when I had drafted this
13 originally that restraint was not in the draft.

14 THE COURT: That's correct.

15 MR. GREENBERG: I understand this was part of your thought process that
16 wound up putting that term in there, Your Honor.

17 THE COURT: Uh-huh.

18 MR. GREENBERG: Again, Your Honor, if the special master was not a
19 special master but was the form of limited receiver I was proposing and was actually
20 taking possession of the property, then that would safeguard my clients' interests.

21 THE COURT: Yeah.

22 MR. GREENBERG: But to the extent that there's property that is attachable
23 because it is solely in the name of the judgment debtor at the current time that the
24 judgment is entered against, my clients would like to preserve their right to proceed

1 with judgment execution, which is another issue we have with these motor vehicles,
2 Your Honor.

3 THE COURT: Uh-huh.

4 MR. GREENBERG: Candidly, I don't think there is any property, as we've
5 been discussing. But nonetheless, I think my clients should be entitled to execute
6 on it. So I would ask that that provision --

7 THE COURT: The reason -- there's one reason I did not and that is that if
8 you execute on it then you've got it, and my intention is to try and get the previous
9 special master paid.

10 MR. GREENBERG: I understand, Your Honor. And under the terms of the
11 existing judgment any amounts that I collect have to be held in trust. I cannot
12 disburse any of those funds without an order from Your Honor. I mean, that is the
13 existing --

14 THE COURT: Uh-huh.

15 MR. GREENBERG: -- limitation I am under in all respects, in respect to any
16 money that is collected on the judgment. So if Your Honor was of a mind to require
17 amounts that I collected on the judgment be paid over to the current special master
18 I would object to that, but that would clearly be within your power to do so.

19 THE COURT: Uh-huh.

20 MR. GREENBERG: And of course I have a duty currently to hold all those
21 funds in trust pending Your Honor's direction. So this additional provision is not
22 necessary to preserve that interest, so to speak, that Your Honor was concerned
23 about because it is already preserved under the current arrangement, the current
24 instructions accompanying the judgment, Your Honor.

1 THE COURT: All right. Mr. Dubowsky.

2 MR. DUBOWSKY: Thank you, Your Honor. Again, unless I'm misinterpreting,
3 is this supposed to address the contempt?

4 THE COURT: No.

5 MR. DUBOWSKY: Okay.

6 THE COURT: This really does not -- I mean, it only does in this sense. It is
7 an attempt to get you paid first and get you paid in full, but it does not address
8 specifically the contempt.

9 MR. DUBOWSKY: Will that be addressed, Your Honor? Because there is
10 a finding of contempt. Will that be addressed?

11 THE COURT: Well, I think probably then what we should do is you should
12 submit an order that does that separately because you are correct, the Court has
13 found the defendant to be operating in contempt of court. Before -- we'll revisit that
14 before we leave here.

15 Any minor tweaks?

16 MR. SHAFER: We do. I'll first respond to the issue on paragraph 3 that he's
17 addressed. I think that the Court's inclination on that is wise to preserve the status
18 quo. And I understand the concern that they have that if they identify the assets in
19 the report that they're barred from ever executing on them. While my client would
20 love that, we probably think that's probably not what the Court intended --

21 THE COURT: No.

22 MR. SHAFER: -- and think it would be --

23 THE COURT: My intention was to leave that in place until I get the report of
24 the special master.

1 MR. SHAFER: And I think if you added that additional term, shall not execute
2 it until after the special master's report is issued, that would both simultaneously
3 accomplish maintaining the status quo, not precluding them from executing and
4 allowing for the special master to get paid. I would echo that Mr. Greenberg brought
5 up the fact that the Court could order the \$80,000 or the \$40,000 be disbursed from
6 the monies that were already taken from A Cab. That would both simultaneously
7 cure the contempt of A Cab and satisfy the special master's concerns immediately.

8 THE COURT: Uh-huh.

9 MS. SHAFER: We do have some other concerns on some of the other
10 provisions.

11 THE COURT: Okay. Like what?

12 MR. SHAFER: Well, I think number two, Your Honor, and I hope this is not a
13 feature but rather a bug in part of the drafting. If we turn that, it requires the special
14 master -- it gives the special master powers to obtain records.

15 THE COURT: Uh-huh.

16 MR. SHAFER: And going down to lines -- well, 24, 25, 26, where it says,
17 "including but not limited to all such records involving (comma) and all of its
18 contracts or agreements with (comma) any other entity or person including any
19 Series LLC it has issued pursuant to the statute." Because of the commas it creates
20 a parenthetical phrase which you read by excluding that, which would mean that
21 they have the ability to get all such records involving any other person. And then
22 when you refer back to the prior sentence, that requires Mr. Nady and any other
23 Series LLC to provide any document it has concerning any other agreement with
24 anybody ever at any time. So if they wanted to find out Mr. Nady's --

1 THE COURT: Which language are you looking at again?

2 MR. SHAFER: So, yeah, the --

3 THE COURT: I'm looking at lines 23, 24.

4 MR. SHAFER: Yeah. So it says that -- if we look at the first part it says:
5 "The special master shall be provided by judgment debtor, including Creighton J.
6 Nady and any other agents of judgment debtors."

7 THE COURT: Uh-huh.

8 MR. SHAFER: And then it describes the type of documents: "Copies of all
9 electronic and paper financial business records of the judgment debtor" --

10 THE COURT: Right.

11 MR. SHAFER: -- "also known as A Cab Series, that the special master
12 deems advisable." No concerns with the provision on that, other than we do a little
13 bit to Mr. Nady as to his personal records. But the biggest concern is the part about
14 "including but not limited to," where it makes that exception.

15 THE COURT: Uh-huh.

16 MR. SHAFER: "Including but not limited to (comma) all such records
17 involving." And because of the parenthetical phrase that follows comma, and all
18 of its contracts or agreements with (comma), when you are reading that order you
19 have to exclude that clause for reading and interpreting the contract. So it's read
20 as including all such records involving any other entity or person --

21 THE COURT: Uh-huh.

22 MR. SHAFER: -- which would mean that that would entitle the special master
23 to review any marriage contracts, divorce records, contracts with attorneys,
24 contracts with -- communications. And I think it's probably not the Court's intention

1 to require that, but rather to all such records involving all of its contracts --

2 THE COURT: Does not "its" refer to the judgment debtor here or debtors?

3 MR. SHAFER: It does, Your Honor, but when you are reading that because
4 it is bracketed by commas you have to exclude that when you are interpreting the
5 scope of the documents because that --

6 THE COURT: Oh. All right. So take the comma out, then? Involving -- all
7 such records involving and all of its contracts or agreements with any other entity
8 or person, including any Series LLC. Is that what you're suggesting?

9 MR. SHAFER: All such records involving -- I would say all such records
10 involving it and all of its contracts or agreements with any other person.

11 THE COURT: Well, it says all of its contracts --

12 MR. SHAFER: Correct.

13 THE COURT: -- or agreements with.

14 MR. SHAFER: But it doesn't -- because of the comma, then, all such records
15 involving is not limited to the judgment debtor.

16 THE COURT: All right. Take the comma out. Anything else?

17 MR. SHAFER: Very quickly, on subparagraph 4A, which is on page 4, line --
18 I guess that would be 15.

19 THE COURT: Uh-huh.

20 MR. SHAFER: We would suggest that the -- it states: "that will allow the
21 profits from the operation of the taxi medallions authorized to it to be applied
22 towards satisfaction of plaintiffs' judgment." We would modify that to say "the
23 operation of the business of A Cab, LLC to be applied."

24 THE COURT: Let's see. So where does that pick up?

1 MR. SHAFER: So we would omit "taxi medallions authorized to it" and
2 substitute "business of A Cab, LLC." And the distinction then is to take the profits
3 of the company rather than the profits of an asset of the company.

4 MR. GREENBERG: Your Honor, may I? I have no problem including that,
5 along with the specification regarding the operation of the taxi medallions. The
6 business of A Cab, LLC has no profits. The business is structured to have no profits
7 because the profits, the revenue all flows to these supposed separate series entities
8 and then out of those entities into the trust. Your Honor is familiar with all of this.
9 So if the special master's authority is limited to proposing a plan relating to directing
10 the profits of A Cab Series LLC to the benefit of the judgment creditors, there will
11 be no plan. There will be no profits.

12 That's the reason why when I drafted this I referred to the operation
13 of the tax medallions that are authorized to A Cab Series LLC, because ultimately
14 those taxi medallions are the only asset of the business. They're the only asset of
15 the business -- of the judgment debtor that can't be transferred, as defendant's
16 counsel stated. So I have no problem inserting that additional language, but the
17 reference to the operation of the taxi medallions as part of the special master's
18 report to examine is critical here, Your Honor.

19 THE COURT: Okay. So where would you insert this language, Mr. Shafer?

20 MR SHAFER: I would substitute "he taxi medallions authorized to it" on lines
21 15 and 16 and substitute "business of A Cab LLC." And the reason is if revenue
22 from the medallions is seized before its workers are paid, there won't be continuing
23 to be, you know, a business, if they try to step ahead of the current costs and
24 expenses of operating that medallion.

1 THE COURT: We're talking about simply a proposed plan here to do this.

2 MR. SHAFER: Correct.

3 THE COURT: We're not talking about effecting any plan. I don't see a
4 reason to change that language. What else?

5 MR. SHAFER: The final change is in the last -- in the request to transfer
6 certain funds. Two parts. In line 10 of page 5 there is a request to -- well, I guess --
7 no, I apologize. I'll retract that one. My concern on the transfers, precluding
8 transfers to defendant Nady to any of his family members or to any trust which
9 Nady or his family members is a trust or trustee and beneficiary, my concern is that
10 that excludes any payment of salaries, any payment pursuant to any contracts that
11 are within the company or in the ordinary course of business. Mr. Nady is currently
12 continuing to operate the business and is entitled to and is being paid a salary for
13 that.

14 THE COURT: What is his salary?

15 MR. SHAFER: I do not know. And obviously that would be identified to the
16 special master that's being appointed. And in fact, I don't know that he is being
17 paid, but that's --

18 THE COURT: Mr. Nady, what is your salary?

19 MR. NADY: It varies by month. I couldn't tell you exactly what it is.

20 THE COURT: How is it calculated? Is it a percentage?

21 MR. NADY: No, sir. It's just whatever happens -- needs happen to come up.

22 MR. SHAFER: And I do not have an encyclopedic --

23 THE COURT: When you say the needs that happen, you mean personal
24 needs?

1 MR. NADY: Yes, sir.

2 THE COURT: Okay.

3 MR. SHAFER: So that would be our only concern is that that would preclude
4 that and put them in a very dire financial situation. I understand that it's the Court's
5 concern that all of the assets and profits will go out the back door and I think that our
6 proposal -- and this is kind of the first time seeing this -- is that it would be carveout
7 those exceptions and those exceptions would need to be explicitly identified to the
8 special master and would be subject to a reservation of rights, I presume.

9 THE COURT: My view is that if Mr. Nady needs to take less funds or no
10 funds as salary until the special master gets paid, the previous special master, that's
11 how -- one way to purge himself from the contempt of the court. At this moment
12 it's not the Court's concern to protect Mr. Nady in his need, personal need for salary
13 over the needs and rightful debt to the special master.

14 MR. SHAFER: And I respect that distinction, Your Honor. Unfortunately the
15 language in this proposed order does not make that distinction and precludes any
16 transfer until the judgment debtor is satisfied.

17 THE COURT: Yeah.

18 MR. SHAFER: And on that basis I think it is -- there is a distinction between
19 the two.

20 THE COURT: Well, it does -- the language says enjoined from transferring
21 any funds to defendant Nady or any of his family members. That's -- if that's what
22 it takes to get the special master paid, then that's what it's going to be.

23 MR. SHAFER: And, respectfully, I think is a distinction that is not reflected
24 in this order because it doesn't put a limit on --

1 THE COURT: Well, it says --

2 MR. SHAFER: Because it's referring --

3 THE COURT: It says enjoined from transferring any funds to defendant
4 Nady. How much -- how do we make that clearer?

5 MR. SHAFER: Because this order entered now continues on without end.

6 THE COURT: No. No, that's not necessarily so. Once I see that the
7 special master has been paid and once I get the report of the new special master,
8 Mr. Swarts, you know, all of the wording of this may be subject to being changed.

9 MR. SHAFER: If that's the Court's intention, we would suggest that that
10 language -- that limiting language be placed in this, that this will occur until the
11 special master is paid.

12 THE COURT: Well, I think we're past that. At this point we have someone
13 who's been found in contempt. As you yourself have said, Mr. Nady is the one
14 operating this business. It's under his control. If he chooses to get the special
15 master paid and off his back, then he can do so. If he would rather not do so and
16 he winds up violating this order, then we'll deal with it at that point.

17 MR. SHAFER: And perhaps my inartful speaking has not conveyed the point
18 I wish to convey, and that's that the remedy that you structured that Mr. Nady should
19 be precluded from being paid until the special master is paid is distinct from what
20 is here.

21 THE COURT: Well, let's put it this way. What Mr. Nady and the other
22 defendants have been found to be -- how they've been found to be in contempt
23 of court is they were ordered at one point to pay \$41,000 to the special master.
24 They didn't do so and they still haven't. So it is an ongoing contempt as far as I'm

1 concerned. If he wants to get some relief from the order of the Court, then obey
2 the order of the Court, pay the \$41,000 and then let's talk.

3 MR. SHAFER: And I understand your -- I believe I understand what the
4 Court is saying and all we're asking for is that that clause, that purge clause be
5 contained in this order that once the special master is paid that this restriction and
6 prohibition on Mr. Nady be excused.

7 THE COURT: No. We're past that, Mr. Shafer. We're past that. This Court
8 entered orders last September, October, and they've just -- to this point just been
9 blown off.

10 MR. SHAFER: And I understand.

11 THE COURT: So I'm not inclined to put those kinds of changes into this
12 order. Once I see that the Court's orders are being obeyed and that once we can
13 get the previous special master paid and out of this picture --

14 MR. SHAFER: So it is not --

15 THE COURT: -- that things can change.

16 MR. SHAFER: So it's not the intention of the Court to preclude payments
17 until the 1.6 million dollar judgment is satisfied?

18 THE COURT: No.

19 MR. SHAFER: Okay.

20 THE COURT: No.

21 MR. SHAFER: That is our concern because that's the way we interpret this
22 language being drafted. And if I'm incorrect --

23 THE COURT: I think Mr. Nady gets himself subject to this kind of language
24 when he commits contempt of court by just flat refusing to pay an amount that he

1 was ordered to be paid to the special master. That's all.

2 All right. Thank you for your input.

3 MR. GREENBERG: Your Honor, I have one additional suggestion. You
4 might want to include a provision in this order to prohibit A Cab Series, LLC from
5 issuing any additional Series LLCs without further order of the Court because
6 essentially that has been the gateway --

7 THE COURT: Uh-huh.

8 MR. GREENBERG: -- for them to avoid this Court's orders. And they are the
9 judgment debtor in this case. They ultimately are the one with the power to issue --

10 THE COURT: Yeah.

11 MR. GREENBERG: -- these supposed separate entities. I would ask Your
12 Honor to consider that and add a provision. I know I did not previously suggest that,
13 but I think it would be a meaningful restraint on sort of limiting what we've been
14 dealing with here in the future and appropriate under the circumstances.

15 THE COURT: All right, thank you. The Court is going to sign the order the
16 way that you see it, plus I don't know that -- did they get the one that shows the
17 confidentiality sits? We've included as paragraph 6 at the top of page 5, it now
18 says: "The information and records received by the special master shall be kept
19 confidential and subject to a protective order issued by the Court precluding
20 production to the general public, except as directed by the Court." So it does
21 include that confidentiality. The Court is going to say that the report of the special
22 master called for in paragraph number 4 -- I'm going to say February 1st. That is a
23 significant amount of time, but we do have the Christmas holidays in the meantime
24 so he'll need extra time. The Court is appointing George Swarts as the special

1 master. The amounts in paragraph 5 are going to be the sum shall not exceed
2 \$20,000 to pay for the special master's services. A fee not exceeding \$300 an hour.
3 And I will -- I am going to add the provision that the judgment debtors will not create
4 any further Series LLCs without further order of this Court.

5 MR. SHAFER: Your Honor, if I could just make a record on that very briefly?

6 THE COURT: Yeah.

7 MR. SHAFER: That is an issue that is of an extraordinary remedy because
8 it precludes their correct business operations and their liberty to engage in business.
9 It is not -- if they acquire a new taxicab, if there is another business that requires
10 them to set up a new Series LLC, there would be no basis to preclude that. It does
11 not -- creation of an LLC does not mean that any assets are being disbursed or are
12 otherwise being diverted. There is no benefit to the judgment creditor to have that
13 preclusion. There is no basis in law or in fact to preclude the entity from creating
14 a new business entity.

15 THE COURT: Now, that would be a business entity to do what?

16 MR.. SHAFER: I don't know, Your Honor and neither do they.

17 THE COURT: Well, then --

18 MR. SHAFER: And that's -- but this is a blanket prohibition. If you want to
19 include that they cannot create a Series LLC to receive assets of A Cab, LLC, that
20 might be a reasonable imposition.

21 THE COURT: Well, you just gave an example if there's a new taxicab. Is
22 that it?

23 MR. SHAFER: If there is a new taxicab or if there's some other reason they
24 need to create a new -- and the reason that they hold each taxicab is so if the taxi

1 is in an accident that liability doesn't spill over to the other assets of the corporation.

2 THE COURT: Uh-huh. Well, that doesn't say that they can never do it, it
3 just says without further order of the Court and that's going to be in there.

4 Yes?

5 MR. DUBOWSKY: Can we address the contempt, Your Honor?

6 THE COURT: Yes.

7 MR. DUBOWSKY: What is Your Honor going to do to order to purge -- to
8 have --

9 THE COURT: Well, as I've already stated verbally here, but it would probably
10 be good to have an order on file that the judgment debtors are found to be in
11 contempt of court by virtue of not having paid previous Court orders. One was
12 \$25,000 and then it was raised to \$41,000. That's the way it stands at this point.
13 I am not going to put a deadline in there at this point but I am considering doing that
14 once I get the report from the special master.

15 I recognize that it doesn't do what you're wanting the Court to do,
16 which is basically to enter an order and then if they don't pay it then they -- then
17 I guess you ask for the Court to arrest Mr. Nady or do something like that. I am
18 cognizant that in the statute that talks about payment of the special master it talks
19 about allowing the special master to attach and execute on the resources. I think
20 that is going to be closer to, assuming that there is some compliance by the time
21 we next meet. that may be the route that the Court would go. It is of a concern
22 to the Court and it hasn't been explained away how after being ordered to pay
23 those amounts, a short while later it's found that he's sitting on a bank account
24 with \$230,000 in it. And that has not been explained to the Court's satisfaction.

1 MR. DUBOWSKY: Your Honor, we're very concerned without a date certain
2 to pay my client. Again, we just want to get paid and get out.

3 THE COURT: I understand.

4 MR. DUBOWSKY: If this is wide open, we're back where we were in May
5 where Your Honor ordered the \$41,000. And then we have another order that they
6 have to pay it and now we don't even have any kind of date certain and we still have
7 the contempt that's up in the air. So I am going to ask Your Honor for some kind --

8 THE COURT: Well, he's looking at -- they're looking at losing control of their
9 business if the Court proceeds to implement a plan proposed by the special master
10 to make it be a receiver, notwithstanding their great concern that that's going to put
11 them in violation of other court statutes. I don't know that that's the case yet, but
12 that's the risk they take by further violation of this Court's orders. I think that is a
13 significant hatchet, if you will, hanging over your head to know that if you continue
14 to blow off Court orders you're going to lose control of your business.

15 MR. DUBOWSKY: I understand, Your Honor, but again I have to tell my
16 client when they're going to be paid. And if they're going to say, well, we don't still
17 have the money to pay, we need some kind of date certain for Your Honor, for
18 the dignity of the Court to have some kind of date certain how to purge them of
19 contempt to say, yes, by a certain date you have to pay the special master Your
20 Honor hired so we can at least have some certainty.

21 THE COURT: In other cases I would be willing to do so. In this case at this
22 juncture, given all of the competing interests, I am not willing to enter such an order.
23 When we come back on February 1st -- well, let's see. We'll see what that --
24 actually I guess it calls for the report to be made by February 1st. It isn't a court

1 date. So let's set a court date shortly after February 1st, at which we will take up
2 further, you know, generally these matters and specifically take up the matter of
3 the contempt of court.

4 MR. DUBOWSKY: One final issue, Your Honor. The order was for \$41,000,
5 however the fee is for \$85,280.56.

6 THE COURT: I'm sorry, say it again.

7 MR. DUBOWSKY: The order was for \$41,000.

8 THE COURT: Right.

9 MR. DUBOWSKY: However, the actual invoiced amount is for \$85,280.56.

10 THE COURT: Well, that is true, but I don't think that -- I mean, if I were
11 representing them, at least, let's put it that way, if it's for contempt of court on a
12 Court order, it's \$41,000. Then we deal with the rest of it.

13 MR. DUBOWSKY: Yes, Your Honor. So are you finding then that the
14 \$41,000 is the order, but they are due to be paid the \$85,000 that is in our motion
15 for fees?

16 THE COURT: The principal factor or goal of any plan that I put in place with
17 the special master or a receiver is to get your client paid first. It is fairly ludicrous
18 that after everything that's gone on in this case that the special master appointed
19 by the Court to effectuate the judgment can't even get paid, so that is upper most
20 in the Court's mind. But I'm still trying to do this in such a way that -- the defendants
21 seem to be saying that they would pay the judgment, given an appropriate plan to
22 do so. The plaintiffs seem to be saying we don't want to put them out of business,
23 we want them to pay the judgment. We'll see what comes out from the special
24 master and we'll see whether or not that's a workable goal or not.

1 MR. GREENBERG: Your Honor, in respect to scheduling for the
2 proceedings, I was going to suggest that Your Honor perhaps schedule a tentative
3 date towards the end of January, maybe within a week or two prior to when the
4 special master's report is due so that he could report to the Court if he's having
5 any obstacles in completing his report at that time. If he's moving ahead smoothly,
6 then we would cancel that and we would simply reconvene after the report is issued.
7 I think such a contingency might help move things along. Do you understand my
8 suggestion?

9 THE COURT: Well, I assume if the special master sees that he's not getting
10 cooperation and is running into problems that he will -- in other cases I have a
11 special master contact the Court and say I'm having this problem and then we
12 schedule something.

13 MR. GREENBERG: I understand. Then if Your Honor prefers to simply set
14 a date after the February 1st report, then that is of course appropriate.

15 THE COURT: Sure. I don't want -- for all I know, the special master may
16 come back right after January 1st and say this is not working.

17 MR. GREENBERG: Yes, Your Honor.

18 THE COURT: And if so, then we will meet again.

19 MR. GREENBERG: Very well, Your Honor. Your staff will propose to date
20 to us for February?

21 THE COURT: Yeah.

22 THE CLERK: February 6th at 9:00 a.m.

23 THE COURT: February 6th. If you'll submit an order, Mr. Dubowsky, holding
24 the defendants, including Mr. Nady, in contempt of court for failure to pay the

1 \$41,000 to the receiver -- I'm sorry, the special master, then I will be signing that.

2 MR. DUBOWSKY: Thank you, Your Honor. I can do that. I'm not sure
3 what the terms on how to purge them, but I can prepare that order. You made that
4 finding. But to clarify, the \$41,000 is what's ordered, but the invoice amounts are
5 for the \$85,000 figure which we presented. That is what is going to be paid in due
6 course, correct, Your Honor?

7 THE COURT: That is my intention, yeah.

8 MR. DUBOWSKY: Thank you, Your Honor.

9 MR. GREENBERG: Your Honor, the only other issue was the TRO and the
10 request for the turnover regarding those motor vehicles. I do have a proposed
11 order that would direct the defendants to cooperate with the sheriff in respect to
12 an execution. It would be my intent if Your Honor was to sign the order -- May I
13 approach?

14 THE COURT: Yes.

15 MR. GREENBERG: And this order is essentially the same as what I had
16 presented when we were here last week and I had given the defendants at that time.
17 It would be my intention if Your Honor signed this order to prepare the executions,
18 deliver them to the sheriff and the sheriff would then go through the normal process.
19 But the defendants would be bound by this order to cooperate with the process.
20 My concern is that without such an order the sheriff is simply not going to be able
21 to effectively seize the vehicles because we're talking about five vehicles among,
22 you know, a business that has maybe a hundred or more vehicles in use on their
23 property.

24 And again the way this order is set up is that if A Cab can demonstrate

1 that they are in fact not the sole titleholder on these vehicles, then obviously they're
2 not subject to execution. I've documented to the Court that we have the titles as
3 issued by the DMV for the first four. The fifth one, the Mercedes-Benz, is based
4 upon other information I have. But again, if they can produce documentation that
5 it's not titled to the judgment debtor, then it won't be subject to execution.

6 THE COURT: If we're going down the road which you indicated earlier that
7 on behalf of your clients you're not looking to put the defendants out of business,
8 you're looking to get the judgment paid, then if we start seizing the cabs that they
9 make their living with, are we --

10 MR. GREENBERG: Well, Your Honor, these vehicles are only titled to the
11 judgment debtor because obviously it was an oversight by them not to have had
12 them titled to one of the Series LLCs.

13 THE COURT: Uh-huh.

14 MR. GREENBERG: These are the only ones that I was able to identify. I did
15 do a thorough investigation from the sources available to me.

16 THE COURT: Okay.

17 MR. GREENBERG: This is it. I mean, the Wells Fargo account was attached.
18 There are not going to be any other bank accounts that are going to be attachable
19 at this point because defendants have shifted all of the liquid assets, the cash funds
20 into other entities, other registrations. The same thing with their motor vehicle fleet.
21 This is the only asset that is actually in the possession of A Cab, LLC are these
22 motor vehicles. There's nothing else, Your Honor.

23 THE COURT: So what are you saying? You want to go ahead and execute
24 on these?

1 MR. GREENBERG: I do. I do wish to go ahead and execute. I'm just trying
2 to explain to Your Honor in my view the impairment of the business by the seizure
3 of these assets is going to be nominal. It is some meaningful amount I can collect
4 for my clients. I think I'm duty bound to ask the Court to effectuate the seizure. If
5 the Court declines, the Court can decline to do so. You know, I could send it to the
6 sheriff without the Court's order. The Court restrained the transfer of these titles.
7 If the Court lifts that restraint, presumably those titles are going to be transferred
8 very quickly.

9 THE COURT: Well, I'm not -- I haven't lifted the restrain, have I?

10 MR. GREENBERG: You have not, Your Honor. I understand that. And if
11 Your Honor --

12 THE COURT: If I have, I certainly don't intend to. No.

13 MR. GREENBERG: I understand, Your Honor. And this is a request for
14 assistance by the Court. It is within your discretion, Your Honor --

15 THE COURT: Uh-huh.

16 MR. GREENBERG: -- either to proceed in the fashion I'm requesting or to
17 deny my request. I understand that.

18 THE COURT: Uh-huh.

19 MR. GREENBERG: And I don't want to belabor the point with the Court.
20 You were inquiring as to why we were proceeding in this fashion and our view, given
21 that I did advise the Court and I have repeatedly advised the Court that I think the
22 best way to get my clients paid is to see this business continue to operate over time
23 to pay them, and that ultimately is the big picture here. But in respect to this
24 particular issue, this is a very limited portion of the assets. It is the only asset that

1 I think I'm ever going to be able to attach directly of the judgment debtor at this point.
2 So absent the appointment of a receiver or absent we hold further proceedings and
3 the Court makes further findings regarding, you know, these Series LLCs, the alter
4 ego issues and so forth, Your Honor, this is probably the only other asset that I'm
5 going to be able to collect for my clients. That's why I'm asking the Court to let me
6 proceed in this fashion.

7 THE COURT: Well, it seems to me we're going down two -- trying to go down
8 two roads at the same time now. I'm not inclined to do that at this time. I am inclined
9 -- make no mistake, I consider these five vehicles to be under the Court's order that
10 they not be disposed of in any fashion, whether they're sold, given away, anything.
11 They're not to be disposed of. If it is possible to use these vehicles as part of a way
12 to get the plaintiff judgment creditors paid and the previous special master paid, then
13 they will be useful for that. But I'm not going to order them to be subject to execution
14 at this point unless we're just saying let's grab any assets we can.

15 MR. GREENBERG: Well, Your Honor, we have a right to execute on these
16 assets. I'm asking for the Court's assistance. If Your Honor declines to sign the
17 order in the form I've submitted, I can still go to the sheriff and ask the sheriff to use
18 his efforts to find them on the street and seize them. I'm trying to make that process
19 more streamlined here in the interest of my clients because the sheriff is going to
20 have to be paid for their efforts. If the sheriff possesses this order, he can go down
21 to the business premises and the defendants will be bound by the Court's order to
22 cooperate with that process. They're not necessarily bound to cooperate with the
23 sheriff terribly much in locating or turning over the assets. That's why I'm asking for
24 the Court's assistance, because we do have a right to seize these assets. They're

1 not exempt from execution.

2 So if Your Honor is not going to -- Your Honor has been very patient.
3 You've given us a lot of time today, as you have in this case continually, so I don't
4 want to belabor the point with the Court. But I do disagree with what you're telling
5 me. If Your Honor is not going to sign the order in the current form, I would ask
6 that Your Honor at least allow me to submit another order specifically prohibiting
7 the transfer of these vehicles' titles.

8 THE COURT: Yes, I would sign that. I would prohibit the transfer of these
9 specifically. They're already under the general order. But, you know, to clarify it
10 I would make it and make it very specific. I would sign an order that prohibits the
11 defendants from disposing of these five vehicles in any manner.

12 MR. GREENBERG: I understand, but there's nothing to keep them from
13 keeping them locked away or secreted somewhere where the sheriff will never find
14 them and I'll never be able to execute on them, either. Your Honor, you've made
15 your decision.

16 THE COURT: It sounds like you're inviting me to issue such an order.

17 MR. GREENBERG: Your Honor, you've made your decision. Let me not
18 take up more of your time. I said I was not.

19 THE COURT: All right.

20 MR. GREENBERG: I understand.

21 THE COURT: Okay. Anything else?

22 MR. SHAFER: Your Honor, just very briefly. The Mercedes identified does
23 not belong to A Cab. Let's make that for the record. It is titled to another entity.
24 So that's our only --

1 THE COURT: Okay. What entity?

2 MR. SHAFER: I do not know if it's -- the exact name. I believe it's the --

3 MR. NADY: I sold it.

4 MR. SHAFER: It's been sold. So obviously if it was titled to A Cab, that will
5 be part of it, but it wasn't. I don't know what information --

6 THE COURT: Mr. Nady, do you still have the four cabs -- these four Toyotas,
7 rather?

8 MR. NADY: They're -- excuse me, Your Honor. Two of them have liens
9 and two of them don't. We still have them. The answer to your question is yes,
10 we're still operating those cabs every day if they're not in a crash or anything.

11 THE COURT: When you say they have liens, what kind of liens?

12 MR. NADY: The bank owns them. The bank has the title to them.

13 THE COURT: Okay.

14 MR. NADY: I think the bank may own the title to all of them, but they do most
15 of them, but I don't know for sure.

16 THE COURT: All right. Do you know if they're in service? Are they being
17 used as taxis?

18 MR. NADY: They're probably in service. I have no reason to believe they're
19 not.

20 THE COURT: All right.

21 MR. NADY: They're part of my -- part of the operating.

22 THE COURT: Mr. Nady --

23 MR. NADY: Cabs get 100,000 miles a year. They have holes in the top
24 where the hats are held on. The retail value of a cab when it's done, we sell them

1 for about two hundred bucks. There's no great value in these cars that Mr.
2 Greenberg will actually (inaudible). They're -- we put a lot of hard miles on these
3 cars. To sell them, the return would be nil, honestly.

4 MR. GREENBERG: Your Honor, these are new vehicles so they do have
5 value. And I would be pleased to see them continue in operation with the business
6 if the revenue that they were generating or at least some portion of it was being
7 paid to satisfy my clients' judgments. I concur with Mr. Nady that would be a more
8 efficient economic use of them. The problem is that's not what they're being used
9 for. Essentially the revenue is being used to fund this litigation and obstruct the
10 collection of my clients' judgment, Your Honor --

11 THE COURT: Uh-huh.

12 MR. GREENBERG: -- in my view.

13 THE COURT: Well, I'm going to leave that as it is until we meet again.

14 MR. GREENBERG: Yes, Your Honor. I would just remind the Court I did
15 submit orders earlier in this week regarding the turnover of those funds from the
16 Clerk of the Court to my trust account and confirming the award of attorney's fees
17 that Your Honor had granted last week. Hopefully Your Honor and your staff will
18 be able to review those. There was also --

19 THE COURT: I'm sorry, say which order it is again.

20 MR. GREENBERG: There were two orders I submitted earlier this week.
21 One was submitted yesterday. I believe one was submitted on Tuesday. Your
22 Honor on our last meeting last week had granted the motion for the award of
23 attorney's fees to myself and Mr. Gabroy and costs.

24 THE COURT: Uh-huh.

1 MR. GREENBERG: I submitted that order for signature pursuant to your
2 findings last week. I had also submitted an order directing the Clerk of the Court
3 to release \$10,000 of the funds on deposit from the Wells Fargo execution to the
4 judgment debtor and to remit the rest of those funds to my trust account --

5 THE COURT: Yeah.

6 MR. GREENBERG: -- which Your Honor also ordered last week. So those
7 orders are with the Court. I would ask the Court in due course, hopefully soon, to
8 review those and have them signed. I would also just remind the Court there was
9 a fairly lengthy order involving some substantial findings regarding the motion to
10 quash the judgment execution. That was submitted more than 30 days ago. The
11 Court probably is still working on that. I'm just reminding the Court that we are
12 awaiting the Court's attention to that.

13 THE COURT: What was the thrust of that order?

14 MR. GREENBERG: Your Honor, we held two days of hearings regarding this
15 issue of the status of the Series --

16 THE COURT: What was the thrust of the order?

17 MR. GREENBERG: That the Wells Fargo accounts were properly executed
18 upon for various reasons, based upon the findings that Your Honor made. The
19 defendants had moved to quash the execution and Your Honor denied that.

20 THE COURT: Yeah.

21 MR. GREENBERG: I think it would be helpful for the record to have of
22 course that ultimately entered. It's just a reminder to the Court, that's all.

23 (The Court confers with the law clerk)

24 THE COURT: All right.

1 MR. GREENBERG: I don't wish to take up any more of the Court's time.

2 THE COURT: All right. Well, then if there's no other business, we will
3 adjourn. Thank you all.

4 MR. DUBOWSKY: Thank you, Your Honor.

5 THE COURT: I hope that you have good holidays.

6 MR. GABROY: Thank you, Your Honor. Happy Holidays.

7 MR. GREENBERG: Thank you, Your Honor. Yes, Happy Holidays to all.

8 THE COURT: And I trust that when we meet again it will be under slightly
9 happier circumstances.

10 MR. SHAFER: Thank you, Your Honor.

11 MR. GREENBERG: I hope so, Your Honor.

12 THE COURT: Thank you.

13 (PROCEEDINGS CONCLUDED AT 12:28 P.M.)

14 * * * * *

15

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

18

19

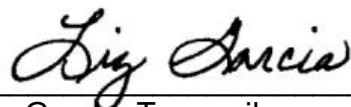
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Liz Garcia, Transcriber
LGM Transcription Service

EXHIBIT “B”

A Cab, LLC
1500 Searles Avenue

Michael A Reno
811 E. Bridger Ave. #363
Las Vegas, NV 89101

Employee Pay Stub		Check number: 25056		Pay Period: 09/15/2012 - 09/26/2012		Pay Date: 10/05/2012	
Employee				SSN	Status (Fed/State)	Allowances/Extra	
Michael A Reno, 811 E. Bridger Ave. #363, Las Vegas, NV 89101				***-**-8991	Single/(none)	Fed-1/0/NV-0/0	
Earnings and Hours		Qty	Rate	Current	YTD Amount		
Driver Commission		1.00	459.70	459.70	11,646.17		
Tips Supplemental				89.49	2,237.62		
Incentive #1					349.78		
Incentive #2					143.00		
Incentive #3					71.00		
		1.00		549.19	14,447.57		
Deductions From Gross				Current	YTD Amount		
Dental Ins. Amt pd by Employee				-12.24	-237.43		
Section 125 Medical				-49.21	-769.70		
				-61.45	-1,007.13		
Taxes				Current	YTD Amount		
Federal Withholding				-26.00	-941.00		
Social Security Employee				-20.49	-564.50		
Medicare Employee				-7.08	-194.89		
				-53.57	-1,700.39		
Adjustments to Net Pay				Current	YTD Amount		
Tips Out				-89.49	-2,237.62		
Cash loan					-31.00		
Reimb-Overpaid Cash Machine					78.00		
Reimb-Manual CC Not Entered					32.00		
Reimb-Taxipass Error					16.00		
				-89.49	-2,142.62		
Net Pay				344.68	9,597.43		

A Cab 0081

EXHIBIT "C"

**OFFICE OF THE SHERIFF
CLARK COUNTY DETENTION
CIVIL PROCESS SECTION**

MICHAEL MURRAY and MICHAEL RENO)

PLAINTIFF)

Vs)

A CAB TAXI SERVICE LLC, A CAB LLC, A
CAB SERIES LLC, et al.,)

DEFENDANT)

CASE No. A-12-669926-C

SHERIFF CIVIL NO.: 18009159

081781

AFFIDAVIT OF SERVICE

STATE OF NEVADA }

} ss:

COUNTY OF CLARK }

KENNETH ROSS, being first duly sworn, deposes and says: That he/she is, and was at all times hereinafter mentioned, a duly appointed, qualified and acting Deputy Sheriff in and for the County of Clark, State of Nevada, a citizen of the United States, over the age of twenty-one years and not a party to, nor interested in, the above entitled action; that on **1/10/2019**, at the hour of **9:45 AM**, affiant as such Deputy Sheriff served a copy/copies of **WRIT OF EXECUTION - PERSONAL PROPERTY** issued in the above entitled action upon the defendant **A CAB SERIES LLC** named therein, by delivering to and leaving with said **MIKE MALLOY, SYSTEMS ADMIN.** For defendant **A CAB SERIES LLC**, personally, at **1500 SEARLES AVENUE LAS VEGAS, NV 89101** within the County of Clark, State of Nevada, copy/copies of **WRIT OF EXECUTION - PERSONAL PROPERTY**.

NOTES: SERVED MIKE MALLOY, SYSTEMS ADMIN. PER JAY NADY OWNER, REFUSED TO CALL VEHICLES BACK TO OFFICE. STATED HE WOULD NOT COOPERATE. STATED HE WOULD HIDE VEHICLES. ASSISTED BY SGT. LOMBARDO and DEPUTY SHERIFF, DITUSA.

I, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAW OF THE STATE ON NEVADA THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: January 11, 2019.

SERVICE FEES - \$17.00

Joseph M. Lombardo, Sheriff

By: _____

KENNETH ROSS
Deputy Sheriff

JOSEPH LOMBARDO
Deputy Sheriff

NICHOLAS DITUSA
Deputy Sheriff

RECEIVED
CLARK COUNTY SHERIFF

2018 DEC 27 A 10:00

RECEIVED
CLARK COUNTY SHERIFF
2018 DEC 27 P 3:17

WRIT

Leon Greenberg Professional Corporation

(Name and Bar Number (if any))

Leon Greenberg, NV Bar No. 8094

(Address)

2965 South Jones Blvd., Suite E3

(City, State, Zip Code)

Las Vegas, Nevada 89146

(Telephone and Facsimile Number)

Tel: 702-383-6085; Fax: 702-385-1827

(E-mail Address)

☒ Attorney for (Name):

☒ Plaintiff, ☐ Counterclaimant, or ☐ Third-Party Plaintiff, In Proper Person

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY and MICHAEL RENO, et al.

Plaintiff(s),

vs.

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

Defendant(s).

Case No.: A-12-669926-C

Dept. No.: 1

WRIT OF EXECUTION

☐ EARNINGS

☐ BANK ACCOUNT

☒ OTHER PROPERTY

THE PEOPLE OF THE STATE OF NEVADA:

To the Sheriff of Clark County or the Constable for the Township of Las Vegas

Greetings:

☐ To Financial Institutions: This judgment is for the recover of money

On August 21, 20 18, a judgment was entered by the above-entitled court in the
above-entitled action in favor of Michael Murray, as Judgment
creditor and against A Cab LLC, A Cab Taxi Service LLC, and A Cab Series LLC, as Judgment Debtor, for:

\$ 900,317.34 Principal,

\$ 132,710.47 Pre-Judgment Interest,

\$ Attorney's Fees, and

\$ Costs, making a total amount of

\$ 1,033,027.81 The judgment as entered, and

1 **WHEREAS**, according to an affidavit or a memorandum of costs after judgment, or both, filed
2 herein, it appears that further sums have accrued since the entry of judgment, to wit:

3 \$ 0.00 Accrued Interest, and

4 \$ 0.00 Accrued Costs, together with

5 \$ _____ Fee, for the issuance of this writ, making a total of

6 \$ _____ **As accrued costs, accrued interest and fees.**

7 Credit must be given for payments and partial satisfactions in the amount of

8 \$ 233,619.54

9 which is to be first credited against the total accrued costs and accrued interest, with any excess credited
10 against the judgment as entered, leaving a net balance of

11 \$ 799,408.27

12 actually due on the date of the issuance of this writ, of which

13 \$ 799,408.27

14 bears interest at 7.00 percent per annum, in the amount of \$ 153.31 per day, from the date
15 of judgment to the date of levy, to which must be added the commissions and costs of the officer executing
16 this writ.

17 **NOW, THEREFORE, CONSTABLE/SHERIFF**, you are hereby commanded to satisfy this judgment with
18 interest and costs as provided by law, out of the personal property of the judgment debtor, except that for any
19 workweek, 82 percent of the disposable earnings of the debtor during that week if the gross weekly salary or wage
20 of the debtor on the date the most recent writ of garnishment was issued was \$770 or less, 75 percent of the
21 disposable earnings of the debtor during that week if the gross weekly salary or wage of the debtor on the date the
22 most recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage prescribed by
section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 *et. seq.*, and in effect at the time
the earnings are payable, whichever is greater, is exempt from any levy of execution pursuant to this writ, and if
sufficient personal property cannot be found, then out of the real property belonging to the debtor in the aforesaid
county, and make return to this writ within not less than 10 days or more than 60 days endorsed thereon with what
you have done.

23 Vehicle: 2018 Toyota Corolla, 4 door sedan, VIN: 2T1BURHE5JC081781

24 Title No. NV 010811782

25 Registered Owner: A Cab Series LLC

26 1500 Searles Ave, Las Vegas, NV 89101-1123

1 You are required to return this Writ from date of issuance not less than 10 days or more than 60
2 days with the results of your levy endorsed thereon.

3 STEVEN D. GRIERSON
4 CLERK OF COURT

5 By: [Signature] 11/8/2018
6 Deputy Clerk Date
7 Alexander Banderas

8 Issued at the direction of:

9 (Signature) [Signature]

10 ☒ Attorney for (Name):

11 ☒ Plaintiff, ☐ Counterclaimant, or ☐ Third-Party Plaintiff, In Proper Person

12 Name: Leon Greenberg, Esq.

Address: 2985 South Jones Blvd., Suite E2

City, State, Zip: Las Vegas, NV 89146

Phone: 702-383-6085

E-mail: leongreenberg@overimelaw.com

13 SHERIFF OR CONSTABLE INFORMATION

14 AMOUNTS TO BE COLLECTED BY LEVY:

15 NET BALANCE: 799,417.25

16 Garnishment Fee:

17 Mileage: 4.00

18 Levy Fee: 15.00

19 Postage: 2.00

Other:

20 Sub-Total: 799,438.25

21 Commission:

RETURN:

22 ☒ Not satisfied \$
23 ☐ Satisfied in sum of \$
24 ☐ Costs retained \$
25 ☐ Commission retained \$
26 ☒ Costs incurred \$ 17.00
27 ☐ Commission incurred \$
28 ☐ Costs received \$

22 REMITTED TO JUDGMENT CREDITOR:

23 \$

24 I hereby certify that I have this date returned the foregoing Writ of Execution with the results of the levy
25 endorsed thereon.

26 SHERIFF OF CLARK COUNTY or
27 ~~CONSTABLE FOR THE TOWNSHIP OF~~

28 By: [Signature]
Title

J. Lombardo
Sr. Deputy Sheriff
Sheriff's Civil Section

Date

11/11/19

NOTICE OF EXECUTION AFTER JUDGMENT

(Per NRS 21.075)

READ THIS NOTICE CAREFULLY

It provides information on how the law may allow you to protect your property or money from being attached to pay the judgment against you.

YOUR PROPERTY IS BEING ATTACHED OR YOUR WAGES ARE BEING GARNISHED

A court has determined that you owe money to the person or company (the "judgment creditor") listed on the Writ of Execution included with this Notice of Execution. The judgment creditor has begun the procedure to collect that money by garnishing your wages, bank account and other personal property held by third persons or by taking money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.
2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.
3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.

4. Proceeds from a policy of life insurance.
5. Payments of benefits under a program of industrial insurance.
6. Payments received as disability, illness or unemployment benefits.
7. Payments received as unemployment compensation.
8. Veteran's benefits.
9. A homestead in a dwelling or a mobile home, not to exceed \$550,000 unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.

10. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

11. A vehicle, if your equity in the vehicle is less than \$15,000.

12. Eighty-two percent of the take-home pay for any workweek if your gross weekly salary or wage was \$770 or less on the date the most recent writ of garnishment was issued, or seventy-five percent of the take-home pay for any workweek if your gross weekly salary or wage exceeded \$770 on the date the most recent writ of garnishment was issued, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.

13. Money, not to exceed \$1,000,000 in present value, held in:

(a) An individual retirement arrangement which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A, including, without limitation, an inherited individual retirement arrangement;

ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the *Civil Law Self-Help Center*, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, www.civillawselfhelpcenter.org.

(b) A written simplified employee pension plan which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408, including, without limitation, an inherited simplified employee pension plan;

(c) A cash or deferred arrangement plan which is qualified and maintained pursuant to the Internal Revenue Code, including, without limitation, an inherited cash or deferred arrangement plan;

(d) A trust forming part of a stock bonus, pension or profit-sharing plan which is qualified and maintained pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 259, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

15. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

16. Regardless of whether a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a contingent interest, if the contingency has not been satisfied or removed;

(b) A present or future interest in the income or principal of a trust for which discretionary power is held by a trustee to determine whether to make a distribution from the trust, if the interest has not been distributed from the trust;

(c) The power to direct dispositions of property in the trust, other than such a power held by a trustee to distribute property to a beneficiary of the trust;

(d) Certain powers held by a trust protector or certain other persons; and

(e) Any power held by the person who created the trust.

17. If a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a mandatory interest in which the trustee does not have discretion concerning whether to make the distribution from the trust, if the interest has not been distributed from the trust; and

(b) A present or future interest in the income or principal of a trust that is a support interest in which the standard for distribution may be interpreted by the trustee or a court, if the interest has not been distributed from the trust.

18. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

19. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

20. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

21. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

22. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

23. Payments received as restitution for a criminal act.

24. Personal property, not to exceed \$10,000 in total value, if the property is not otherwise exempt from execution.

25. A tax refund received from the earned income credit provided by federal law or a similar state law.

26. Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

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These exemptions may not apply in certain cases such as a proceeding to enforce a judgment for support of a person or a judgment of foreclosure of a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through:

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<http://www.lacsn.org>

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Las Vegas, NV 89101
(702) 229-6596
<http://www.snslp.org>

Nevada Legal Services
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Las Vegas, NV 89101
(702) 386-0404
<http://www.nslaw.net>

If you do not wish to consult an attorney or receive legal services from an organization that provides assistance to persons who qualify, you may obtain the form to be used to claim an exemption free of charge at the *Civil Law Self-Help Center*, 200 Lewis Avenue, on the first floor of the Regional Justice Center, downtown Las Vegas, Nevada, or on the Civil Law Self-Help Center's website at <http://www.civillawselfhelpcenter.org>.

PROCEDURE FOR CLAIMING EXEMPT PROPERTY

If you believe that the money or property taken from you is exempt, you must complete and file with the clerk of the court an executed claim of exemption. A copy of the claim of exemption must be served upon the sheriff, the garnishee and the judgment creditor within 10 days after the notice of execution or garnishment is served on you by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on. The property must be released by the garnishee or the sheriff within 9 judicial days after you serve the claim of exemption upon the sheriff, garnishee and judgment creditor, unless the sheriff or garnishee receives a copy of an objection to the claim of exemption and a notice for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt.

The objection to the claim of exemption and notice for the hearing to determine the issue of exemption must be filed by the judgment creditor within 8 judicial days after the claim of exemption is served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee not less than 5 judicial days before the date set for the hearing. The hearing to determine whether the property or money is exempt must be held within 7 judicial days after the objection to the claim of exemption and notice for the hearing is filed.

You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payments, copies of checks, records from financial institutions or any other document which demonstrates that the money in your account is exempt.

IF YOU DO NOT FILE THE EXECUTED CLAIM OF EXEMPTION WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.

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CHECKLIST FOR FILING A "CLAIM OF EXEMPTION"

- ☐ 1. Read the list of exemptions in this notice to determine whether any of your property or money is exempt from execution (in other words, protected from being taken to pay the judgment against you).
- ☐ 2. Obtain a "Claim of Exemption" form from the clerk at the court where the judgment against you was issued or from the Civil Law Self-Help Center, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, www.civillawselfhelpcenter.org.
- ☐ 3. Fill out the Claim of Exemption form in blue or black ink. If you have documentation that proves the exemptions you are claiming, attach the documentation to the Claim of Exemption form (but be sure to black out any personal information, such as Social Security numbers, bank account numbers, etc.).
- ☐ 4. Make three copies of the completed Claim of Exemption form.
- ☐ 5. Take the completed Claim of Exemption form and all copies to the court where the judgment against you was issued, and file the Claim of Exemption with the court clerk.

NOTE: You must file your Claim of Exemption with the court within ten days after the Sheriff or Constable serves the Writ of Execution or Writ of Garnishment on you by mail, identifying the specific property that is subject to execution or garnishment, or within ten days after your wages are withheld if you are being garnished.

NOTE: If you are filing your Claim of Exemption in the Las Vegas Justice Court, you must have an e-mail address because the court now electronically files all documents. If you do not have an e-mail address, you can obtain assistance in getting one at the Clark County Law Library, 309 South Third Street, Suite #400, Las Vegas, Nevada.

- ☐ 6. After your Claim of Exemption has been filed with the court, mail a copy of your Claim of Exemption to the following three parties:
 - ☐ The Constable or Sheriff who mailed you the Writ of Execution or served your bank or employer;
 - ☐ The judgment creditor's attorney (or the judgment creditor directly if no attorney is involved);
 - ☐ Any garnishee (likely your employer, if your wages are being garnished; your bank, if your bank account has been attached; or some other third-party, if money or assets in the third-party's possession have been executed against).
- ☐ 7. Watch your mail. After receiving your Claim of Exemption, the judgment creditor has eight days to file an objection. If an objection is filed, a hearing will be set. You will receive a copy of the objection and a notice of the hearing in the mail.
- ☐ 8. Attend the court hearing if one is set. Before the hearing, collect whatever documentation you need to show that you are entitled to the exemptions you have claimed. Take your documentation to the hearing, along with a proposed order for the judge to sign. (You can obtain a form order from the clerk of the court or on the Civil Law Self-Help Center's website, www.civillawselfhelpcenter.org. At the hearing, it will be your responsibility to prove to the judge that your claimed exemptions are appropriate. If the judge approves your exemptions, ask the judge to sign your order, which you will then file with the court and serve on the Constable or Sheriff and any garnishee.

ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the *Civil Law Self-Help Center*, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, www.civillawselfhelpcenter.org.

**OFFICE OF THE SHERIFF
CLARK COUNTY DETENTION
CIVIL PROCESS SECTION**

MICHAEL MURRAY and MICHAEL RENO)

PLAINTIFF)

Vs)

A CAB TAXI SERVICE LLC, A CAB LLC, A)

CAB SERIES LLC, et al.,)

DEFENDANT)

CASE No. A-12-669926-C

SHERIFF CIVIL NO.: 18009151

085153

AFFIDAVIT OF SERVICE

STATE OF NEVADA }

} ss:

COUNTY OF CLARK }

KENNETH ROSS, being first duly sworn, deposes and says: That he/she is, and was at all times hereinafter mentioned, a duly appointed, qualified and acting Deputy Sheriff in and for the County of Clark, State of Nevada, a citizen of the United States, over the age of twenty-one years and not a party to, nor interested in, the above entitled action; that on 1/10/2019, at the hour of **9:45 AM**, affiant as such Deputy Sheriff served a copy/copies of **WRIT OF EXECUTION - PERSONAL PROPERTY** issued in the above entitled action upon the defendant **A CAB SERIES LLC** named therein, by delivering to and leaving with **MIKE MALLOY, SYSTEMS ADMIN.** for said defendant **A CAB SERIES LLC**, personally, at **1500 SEARLES AVENUE LAS VEGAS, NV 89101** within the County of Clark, State of Nevada, copy/copies of **WRIT OF EXECUTION - PERSONAL PROPERTY**.

NOTES: SERVED MIKE MALLOY, SYSTEMS ADMIN. PER JAY NADY OWNER, REFUSED TO CALL VEHICLES BACK TO OFFICE. STATED HE WOULD NOT COOPERATE. STATED HE WOULD HIDE VEHICLES. ASSISTED BY SGT. LOMBARDO and DEPUTY SHERIFF DITUSA.

I, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAW OF THE STATE ON NEVADA THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: January 11, 2019.

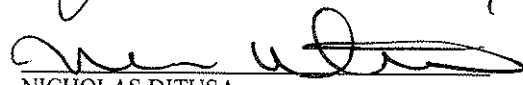
SERVICE FEES - \$17.00

Joseph M. Lombardo, Sheriff

By: 

KENNETH ROSS
Deputy Sheriff

 9565
JOSEPH LOMBARDO
Deputy Sheriff

 #9587
NICHOLAS DITUSA
Deputy Sheriff

RECEIVED
CLARK COUNTY SHERIFF

2018 DEC 27 A 9:57

WRIT

Leon Greenberg Professional Corporation

(Name and Bar Number (if any))

Leon Greenberg, NV Bar No. 8094

(Address)

2965 South Jones Blvd., Suite E3

(City, State, Zip Code)

Las Vegas, Nevada 89146

(Telephone and Facsimile Number)

Tel: 702-383-6085; Fax: 702-385-1827

(E-mail Address)

☒ Attorney for (Name):

☒ Plaintiff, ☐ Counterclaimant, or ☐ Third-Party Plaintiff, In Proper Person

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY and MICHAEL RENO, et al.

Plaintiff(s),

vs.

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

Defendant(s).

Case No.: A-12-669926-C

Dept. No.: 1

WRIT OF EXECUTION

☐ EARNINGS

☐ BANK ACCOUNT

☒ OTHER PROPERTY

THE PEOPLE OF THE STATE OF NEVADA:

To the Sheriff of Clark County or the Constable for the Township of Las Vegas

Greetings:

☐ To Financial Institutions: This judgment is for the recover of money

On August 21, 2018, a judgment was entered by the above-entitled court in the above-entitled action in favor of Michael Murray, as Judgment creditor and against A Cab LLC, A Cab Taxi Service LLC, and A Cab Series LLC, as Judgment Debtor, for:

\$ 900,317.34 Principal,

\$ 132,710.47 Pre-Judgment Interest,

\$ Attorney's Fees, and

\$ Costs, making a total amount of

\$ 1,033,027.81 The judgment as entered, and

1 **WHEREAS**, according to an affidavit or a memorandum of costs after judgment, or both, filed
2 herein, it appears that further sums have accrued since the entry of judgment, to wit:

3 \$ 0.00 Accrued Interest, and

4 \$ 0.00 Accrued Costs, together with

5 \$ _____ Fee, for the issuance of this writ, making a total of

6 \$ _____ **As accrued costs, accrued interest and fees.**

7 Credit must be given for payments and partial satisfactions in the amount of

8 \$ 233,619.54

9 which is to be first credited against the total accrued costs and accrued interest, with any excess credited
10 against the judgment as entered, leaving a net balance of

11 \$ 799,408.27

12 actually due on the date of the issuance of this writ, of which

13 \$ 799,408.27

14 bears interest at 7.00 percent per annum, in the amount of \$ 153.31 per day, from the date
15 of judgment to the date of levy, to which must be added the commissions and costs of the officer executing
16 this writ.

17 **NOW, THEREFORE, CONSTABLE/SHERIFF**, you are hereby commanded to satisfy this judgment with
18 interest and costs as provided by law, out of the personal property of the judgment debtor, except that for any
19 workweek, 82 percent of the disposable earnings of the debtor during that week if the gross weekly salary or wage
20 of the debtor on the date the most recent writ of garnishment was issued was \$770 or less, 75 percent of the
21 disposable earnings of the debtor during that week if the gross weekly salary or wage of the debtor on the date the
22 most recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage prescribed by
section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 *et. seq.*, and in effect at the time
the earnings are payable, whichever is greater, is exempt from any levy of execution pursuant to this writ, and if
sufficient personal property cannot be found, then out of the real property belonging to the debtor in the aforesaid
county, and make return to this writ within not less than 10 days or more than 60 days endorsed thereon with what
you have done.

23 **Vehicle: 2018 Toyota Corolla, 4 door sedan, VIN: 2T1BURHE7J085153**

24 **Title No. NV 010811782**

25 **Registered Owner: A Cab Series LLC**

26 **1500 Searles Ave, Las Vegas, NV 89101-1123**

1 You are required to return this Writ from date of issuance not less than 10 days or more than 60
2 days with the results of your levy endorsed thereon.

3 STEVEN D. GRIERSON
4 CLERK OF COURT

5 By: [Signature] 11/8/2018
6 Deputy Clerk Date
7 Alexander Banderas

8 Issued at the direction of:

9 (Signature) [Signature]

10 ☒ Attorney for (Name):

11 ☒ Plaintiff, ☐ Counterclaimant, or ☐ Third-Party Plaintiff, In Proper Person

12 Name: Leon Greenberg, Esq.

13 Address: 2065 South Jones Blvd., Suite E2

14 City, State, Zip: Las Vegas, NV 89146

15 Phone: 702-383-0085

16 E-mail: leongreenberg@overtimelaw.com

17 SHERIFF OR CONSTABLE INFORMATION

18 AMOUNTS TO BE COLLECTED BY LEVY:

19 NET BALANCE: 799,417.25

20 Garnishment Fee: _____

21 Mileage: 4.00

22 Levy Fee: 15.00

23 Postage: 2.00

24 Other: _____

25 Sub-Total: 799,438.25

26 Commission: _____

27 RETURN:

28 ☒ Not satisfied \$ _____

☐ Satisfied in sum of \$ [Signature]

☐ Costs retained \$ _____

☒ Commission retained \$ _____

☒ Costs incurred \$ 17.00

☐ Commission incurred \$ _____

☐ Costs received \$ _____

29 REMITTED TO JUDGMENT CREDITOR:

30 \$ [Signature]

31 I hereby certify that I have this date returned the foregoing Writ of Execution with the results of the levy
32 endorsed thereon.

33 SHERIFF OF CLARK COUNTY or
34 CONSTABLE FOR THE TOWNSHIP OF _____

35 By: [Signature]
36 Title

37 Date 11/11/19

38 J. Lombardo
Sr. Deputy Sheriff
Sheriff's Civil Section

NOTICE OF EXECUTION AFTER JUDGMENT

(Per NRS 21.075)

READ THIS NOTICE CAREFULLY

It provides information on how the law may allow you to protect your property or money from being attached to pay the judgment against you.

YOUR PROPERTY IS BEING ATTACHED OR YOUR WAGES ARE BEING GARNISHED

A court has determined that you owe money to the person or company (the "judgment creditor") listed on the Writ of Execution included with this Notice of Execution. The judgment creditor has begun the procedure to collect that money by garnishing your wages, bank account and other personal property held by third persons or by taking money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.
2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.
3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.

4. Proceeds from a policy of life insurance.
5. Payments of benefits under a program of industrial insurance.
6. Payments received as disability, illness or unemployment benefits.
7. Payments received as unemployment compensation.
8. Veteran's benefits.
9. A homestead in a dwelling or a mobile home, not to exceed \$550,000 unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.

10. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

11. A vehicle, if your equity in the vehicle is less than \$15,000.

12. Eighty-two percent of the take-home pay for any workweek if your gross weekly salary or wage was \$770 or less on the date the most recent writ of garnishment was issued, or seventy-five percent of the take-home pay for any workweek if your gross weekly salary or wage exceeded \$770 on the date the most recent writ of garnishment was issued, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.

13. Money, not to exceed \$1,000,000 in present value, held in:

(a) An individual retirement arrangement which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A, including, without limitation, an inherited individual retirement arrangement;

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(b) A written simplified employee pension plan which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408, including, without limitation, an inherited simplified employee pension plan;

(c) A cash or deferred arrangement plan which is qualified and maintained pursuant to the Internal Revenue Code, including, without limitation, an inherited cash or deferred arrangement plan;

(d) A trust forming part of a stock bonus, pension or profit-sharing plan which is qualified and maintained pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 259, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

15. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

16. Regardless of whether a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a contingent interest, if the contingency has not been satisfied or removed;

(b) A present or future interest in the income or principal of a trust for which discretionary power is held by a trustee to determine whether to make a distribution from the trust, if the interest has not been distributed from the trust;

(c) The power to direct dispositions of property in the trust, other than such a power held by a trustee to distribute property to a beneficiary of the trust;

(d) Certain powers held by a trust protector or certain other persons; and

(e) Any power held by the person who created the trust.

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(a) A present or future interest in the income or principal of a trust that is a mandatory interest in which the trustee does not have discretion concerning whether to make the distribution from the trust, if the interest has not been distributed from the trust; and

(b) A present or future interest in the income or principal of a trust that is a support interest in which the standard for distribution may be interpreted by the trustee or a court, if the interest has not been distributed from the trust.

18. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

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22. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

23. Payments received as restitution for a criminal act.

24. Personal property, not to exceed \$10,000 in total value, if the property is not otherwise exempt from execution.

25. A tax refund received from the earned income credit provided by federal law or a similar state law.

26. Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

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If you do not wish to consult an attorney or receive legal services from an organization that provides assistance to persons who qualify, you may obtain the form to be used to claim an exemption free of charge at the *Civil Law Self-Help Center*, 200 Lewis Avenue, on the first floor of the Regional Justice Center, downtown Las Vegas, Nevada, or on the Civil Law Self-Help Center's website at <http://www.civillawselfhelpcenter.org>.

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The objection to the claim of exemption and notice for the hearing to determine the issue of exemption must be filed by the judgment creditor within 8 judicial days after the claim of exemption is served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee not less than 5 judicial days before the date set for the hearing. The hearing to determine whether the property or money is exempt must be held within 7 judicial days after the objection to the claim of exemption and notice for the hearing is filed.

You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payments, copies of checks, records from financial institutions or any other document which demonstrates that the money in your account is exempt.

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CHECKLIST FOR FILING A "CLAIM OF EXEMPTION"

- ☐ 1. Read the list of exemptions in this notice to determine whether any of your property or money is exempt from execution (in other words, protected from being taken to pay the judgment against you).
- ☐ 2. Obtain a "Claim of Exemption" form from the clerk at the court where the judgment against you was issued or from the Civil Law Self-Help Center, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, www.civillawselfhelpcenter.org.
- ☐ 3. Fill out the Claim of Exemption form in blue or black ink. If you have documentation that proves the exemptions you are claiming, attach the documentation to the Claim of Exemption form (but be sure to black out any personal information, such as Social Security numbers, bank account numbers, etc.).
- ☐ 4. Make three copies of the completed Claim of Exemption form.
- ☐ 5. Take the completed Claim of Exemption form and all copies to the court where the judgment against you was issued, and file the Claim of Exemption with the court clerk.

NOTE: You must file your Claim of Exemption with the court within ten days after the Sheriff or Constable serves the Writ of Execution or Writ of Garnishment on you by mail, identifying the specific property that is subject to execution or garnishment, or within ten days after your wages are withheld if you are being garnished.

NOTE: If you are filing your Claim of Exemption in the Las Vegas Justice Court, you must have an e-mail address because the court now electronically files all documents. If you do not have an e-mail address, you can obtain assistance in getting one at the Clark County Law Library, 309 South Third Street, Suite #400, Las Vegas, Nevada.

- ☐ 6. After your Claim of Exemption has been filed with the court, mail a copy of your Claim of Exemption to the following three parties:
 - ☐ The Constable or Sheriff who mailed you the Writ of Execution or served your bank or employer;
 - ☐ The judgment creditor's attorney (or the judgment creditor directly if no attorney is involved);
 - ☐ Any garnishee (likely your employer, if your wages are being garnished; your bank, if your bank account has been attached; or some other third-party, if money or assets in the third-party's possession have been executed against).
- ☐ 7. Watch your mail. After receiving your Claim of Exemption, the judgment creditor has eight days to file an objection. If an objection is filed, a hearing will be set. You will receive a copy of the objection and a notice of the hearing in the mail.
- ☐ 8. Attend the court hearing if one is set. Before the hearing, collect whatever documentation you need to show that you are entitled to the exemptions you have claimed. Take your documentation to the hearing, along with a proposed order for the judge to sign. (You can obtain a form order from the clerk of the court or on the Civil Law Self-Help Center's website, www.civillawselfhelpcenter.org. At the hearing, it will be your responsibility to prove to the judge that your claimed exemptions are appropriate. If the judge approves your exemptions, ask the judge to sign your order, which you will then file with the court and serve on the Constable or Sheriff and any garnishee.

ADDITIONAL INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES in this matter may be obtained from the *Civil Law Self-Help Center*, which is located at the Regional Justice Center in downtown Las Vegas, or on its website, www.civillawselfhelpcenter.org.

**OFFICE OF THE SHERIFF
CLARK COUNTY DETENTION
CIVIL PROCESS SECTION**

MICHAEL MURRAY and MICHAEL RENO)

PLAINTIFF)

Vs)

A CAB TAXI SERVICE LLC, A CAB LLC, A
CAB SERIES LLC, et al.,)

DEFENDANT)

CASE No. A-12-669926-C

SHERIFF CIVIL NO.: 19000103

013542

AFFIDAVIT OF SERVICE

STATE OF NEVADA }

} ss:

COUNTY OF CLARK }

KENNETH ROSS, being first duly sworn, deposes and says: That he/she is, and was at all times hereinafter mentioned, a duly appointed, qualified and acting Deputy Sheriff in and for the County of Clark, State of Nevada, a citizen of the United States, over the age of twenty-one years and not a party to, nor interested in, the above entitled action; that on **1/10/2019**, at the hour of **9:45 AM**, affiant as such Deputy Sheriff served a copy/copies of **WRIT OF EXECUTION - PERSONAL PROPERTY** issued in the above entitled action upon the defendant **A CAB SERIES LLC** named therein, by delivering to and leaving with **MIKE MALLOY, SYSTEMS ADMIN.** For said defendant **A CAB SERIES LLC**, personally, at **1500 SEARLES AVENUE LAS VEGAS, NV 89101** within the County of Clark, State of Nevada, copy/copies of **WRIT OF EXECUTION - PERSONAL PROPERTY**.

NOTES: SERVED MIKE MALLOY, SYSTEMS ADMIN. PER JAY NADY OWNER, REFUSED TO CALL VEHICLES BACK TO OFFICE. STATED HE WOULD NOT COOPERATE. STATED HE WOULD HIDE VEHICLES. ASSISTED BY SGT. LOMBARDO and DEPUTY SHERIFF, DITUSA.

I, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAW OF THE STATE ON NEVADA THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: January 11, 2019.

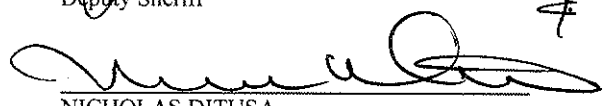
SERVICE FEES - \$21.00

Joseph M. Lombardo, Sheriff

By:  9534

KENNETH ROSS
Deputy Sheriff

 9565
JOSEPH LOMBARDO
Deputy Sheriff

 #9587
NICHOLAS DITUSA
Deputy Sheriff

WRIT

Leon Greenberg Professional Corporation

(Name and Bar Number (if any))

Leon Greenberg, NV Bar No. 8094

(Address)

2965 South Jones Blvd., Suite E3

(City, State, Zip Code)

Las Vegas, Nevada 89146

(Telephone and Facsimile Number)

Tel: 702-383-6085; Fax: 702-385-1827

(E-mail Address)

☒ Attorney for *(Name):*

☒ Plaintiff, ☐ Counterclaimant, or ☐ Third-Party Plaintiff, In Proper Person

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY and MICHAEL RENO, et al.

Plaintiff(s),

vs.

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

Defendant(s).

Case No.: A-12-669926-C

Dept. No.: 1

WRIT OF EXECUTION

☐ EARNINGS

☐ BANK ACCOUNT

☒ OTHER PROPERTY

THE PEOPLE OF THE STATE OF NEVADA:

To the Sheriff of Clark County or the Constable for the Township of Las Vegas

Greetings:

☐ To Financial Institutions: This judgment is for the recover of money

On August 21, 20 18, a judgment was entered by the above-entitled court in the above-entitled action in favor of Michael Murray, as Judgment creditor and against A Cab LLC, A Cab Taxi Service LLC, and A Cab Series LLC, as Judgment Debtor, for:

\$ 900,317.34 Principal,

\$ 132,710.47 Pre-Judgment Interest,

\$ Attorney's Fees, and

\$ Costs, making a total amount of

\$ 1,033,027.81 The judgment as entered, and

2019 JAN -4 A 9:51

CLARK COUNTY SHERIFF

1 **WHEREAS**, according to an affidavit or a memorandum of costs after judgment, or both, filed
2 herein, it appears that further sums have accrued since the entry of judgment, to wit:

3 \$ 0.00 Accrued Interest, and

4 \$ 0.00 Accrued Costs, together with

5 \$ _____ Fee, for the issuance of this writ, making a total of

6 \$ _____ **As accrued costs, accrued interest and fees.**

7 Credit must be given for payments and partial satisfactions in the amount of

8 \$ 233,619.54

9 which is to be first credited against the total accrued costs and accrued interest, with any excess credited
10 against the judgment as entered, leaving a net balance of

11 \$ 799,408.27

12 actually due on the date of the issuance of this writ, of which

13 \$ 799,408.27

14 bears interest at 7.00 percent per annum, in the amount of \$ 153.31 per day, from the date
15 of judgment to the date of levy, to which must be added the commissions and costs of the officer executing
16 this writ.

17 **NOW, THEREFORE, CONSTABLE/SHERIFF**, you are hereby commanded to satisfy this judgment with
18 interest and costs as provided by law, out of the personal property of the judgment debtor, except that for any
19 workweek, 82 percent of the disposable earnings of the debtor during that week if the gross weekly salary or wage
20 of the debtor on the date the most recent writ of garnishment was issued was \$770 or less, 75 percent of the
21 disposable earnings of the debtor during that week if the gross weekly salary or wage of the debtor on the date the
22 most recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage prescribed by
section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 *et. seq.*, and in effect at the time
the earnings are payable, whichever is greater, is exempt from any levy of execution pursuant to this writ, and if
sufficient personal property cannot be found, then out of the real property belonging to the debtor in the aforesaid
county, and make return to this writ within not less than 10 days or more than 60 days endorsed thereon with what
you have done.

23 **Vehicle: 2015 Toyota Camry, 4 door sedan, VIN: 4T1BF1FK7FU013542**

24 **Title No. NV 010811782**

25 **Registered Owner: A Cab Series LLC**

26 **1500 Searles Ave, Las Vegas, NV 89101-1123**

1 You are required to return this Writ from date of issuance not less than 10 days or more than 60
2 days with the results of your levy endorsed thereon.

3 STEVEN D. GRIERSON
4 CLERK OF COURT

5 By: [Signature] 1/2/2019
6 Deputy Clerk Date
7 Alexander Banderas

8 Issued at the direction of:

9 (Signature) [Signature]

10 ☒ Attorney for (Name):

11 ☒ Plaintiff, ☐ Counterclaimant, or ☐ Third-Party Plaintiff, In Proper Person

12 Name: Leon Greenberg, Esq.

Address: 2885 South Jones Blvd., Suite E2

City, State, Zip: Las Vegas, NV 89146

Phone: 702-383-5085

E-mail: leongreenberg@earthlink.net

SHERIFF OR CONSTABLE INFORMATION

AMOUNTS TO BE COLLECTED BY LEVY:

15 NET BALANCE: \$799,447.29

16 Garnishment Fee:

17 Mileage: 4.00

18 Levy Fee: 15.00

19 ^{ADV} Postage: 2.00

Other:

20 Sub-Total: 799,468.29

21 Commission:

RETURN:

22 ☒ Not satisfied \$
23 ☐ Satisfied in sum of \$ [Signature]
24 ☐ Costs retained \$
25 ☐ Commission retained \$
26 ☒ Costs incurred \$ 21.00
27 ☐ Commission incurred \$
28 ☐ Costs received \$

REMITTED TO JUDGMENT CREDITOR:

29 \$ [Signature]

30 I hereby certify that I have this date returned the foregoing Writ of Execution with the results of the levy
31 endorsed thereon.

32 SHERIFF OF CLARK COUNTY or
33 ~~CONSTABLE FOR THE TOWNSHIP OF~~

34 By: [Signature]
35 Title

36 J. Lombardo
37 Sr. Deputy Sheriff
38 Sheriff's Civil Section

39 Date

40 1/1/19

**OFFICE OF THE SHERIFF
CLARK COUNTY DETENTION
CIVIL PROCESS SECTION**

MICHAEL MURRAY and MICHAEL RENO)

PLAINTIFF)

Vs)

A CAB TAXI SERVICE LLC, A CAB LLC, A)

CAB SERIES LLC, et al.,)

DEFENDANT)

CASE No. A-12-669926-C

SHERIFF CIVIL NO.: 18009152

079328

AFFIDAVIT OF SERVICE

STATE OF NEVADA }

} ss:

COUNTY OF CLARK }

KENNETH ROSS, being first duly sworn, deposes and says: That he/she is, and was at all times hereinafter mentioned, a duly appointed, qualified and acting Deputy Sheriff in and for the County of Clark, State of Nevada, a citizen of the United States, over the age of twenty-one years and not a party to, nor interested in, the above entitled action; that on **1/10/2019**, at the hour of **9:45 AM.** affiant as such Deputy Sheriff served a copy/copies of **WRIT OF EXECUTION - PERSONAL PROPERTY** issued in the above entitled action upon the defendant **A CAB SERIES LLC** named therein, by delivering to and leaving with **MIKE MALLOY, SYSTEMS ADMIN.** for said defendant **A CAB SERIES LLC**, personally, at **1500 SEARLES AVENUE LAS VEGAS, NV 89101** within the County of Clark, State of Nevada, copy/copies of **WRIT OF EXECUTION - PERSONAL PROPERTY.**

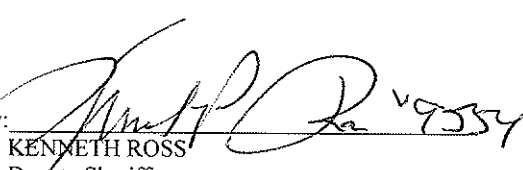
NOTES: SERVED MIKE MALLOY, SYSTEMS ADMIN. PER JAY NADY OWNER, REFUSED TO CALL VEHICLES BACK TO OFFICE. STATED HE WOULD NOT COOPERATE. STATED HE WOULD HIDE VEHICLES. ASSISTED BY SGT. LOMBARDO and DEPUTY SHERIFF DITUSA.


I, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAW OF THE STATE ON NEVADA THAT THE FOREGOING IS TRUE AND CORRECT.


DATED: January 11, 2019.

SERVICE FEES - \$17.00

Joseph M. Lombardo, Sheriff

By:  9534
KENNETH ROSS
Deputy Sheriff

 9545
JOSEPH LOMBARDO
Deputy Sheriff

 #9587
NICHOLAS DITUSA
Deputy Sheriff

WRIT

Leon Greenberg Professional Corporation

(Name and Bar Number (if any))

Leon Greenberg, NV Bar No. 8094

(Address)

2965 South Jones Blvd., Suite E3

(City, State, Zip Code)

Las Vegas, Nevada 89146

(Telephone and Facsimile Number)

Tel: 702-383-6085; Fax: 702-385-1827

(E-mail Address)☒ Attorney for *(Name):*☒ Plaintiff, ☐ Counterclaimant, or ☐ Third-Party Plaintiff, In Proper Person**EIGHTH JUDICIAL DISTRICT COURT****CLARK COUNTY, NEVADA**

MICHAEL MURRAY and MICHAEL RENO, et al.

Plaintiff(s),

vs.

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

Defendant(s).

Case No.: A-12-669926-C

Dept. No.: 1

WRIT OF EXECUTION☐ EARNINGS☐ BANK ACCOUNT☒ OTHER PROPERTY**THE PEOPLE OF THE STATE OF NEVADA:**To the Sheriff of Clark County or the Constable for the Township of Las Vegas

Greetings:

☐ To Financial Institutions: This judgment is for the recover of money

On August 21, 20 18, a judgment was entered by the above-entitled court in the
 above-entitled action in favor of Michael Murray, as Judgment
 creditor and against A Cab LLC, A Cab Taxi Service LLC, and A Cab Series LLC, as Judgment Debtor, for:

\$ 900,317.34 Principal,\$ 132,710.47 Pre-Judgment Interest,

\$ _____ Attorney's Fees, and

\$ _____ Costs, making a total amount of

\$ 1,033,027.81 The judgment as entered, and

CLARK COUNTY SHERIFF'S OFFICE
 210 DEC 27 A 9:59 AM
 210 DEC 27 P 3:10

ORIGINAL

WHEREAS, according to an affidavit or a memorandum of costs after judgment, or both, filed herein, it appears that further sums have accrued since the entry of judgment, to wit:

\$ 0.00 Accrued Interest, and

\$ 0.00 Accrued Costs, together with

\$_____ Fee, for the issuance of this writ, making a total of

\$ As accrued costs, accrued interest and fees.

Credit must be given for payments and partial satisfactions in the amount of

\$ 233,619.54

which is to be first credited against the total accrued costs and accrued interest, with any excess credited against the judgment as entered, leaving a net balance of

\$ 799,408.27

actually due on the date of the issuance of this writ, of which

\$ 799,408.27

bears interest at 7.00 percent per annum, in the amount of \$ 153.31 per day, from the date of judgment to the date of levy, to which must be added the commissions and costs of the officer executing this writ.

NOW, THEREFORE, CONSTABLE/SHERIFF, you are hereby commanded to satisfy this judgment with interest and costs as provided by law, out of the personal property of the judgment debtor, except that for any workweek, 82 percent of the disposable earnings of the debtor during that week if the gross weekly salary or wage of the debtor on the date the most recent writ of garnishment was issued was \$770 or less, 75 percent of the disposable earnings of the debtor during that week if the gross weekly salary or wage of the debtor on the date the most recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 *et. seq.*, and in effect at the time the earnings are payable, whichever is greater, is exempt from any levy of execution pursuant to this writ, and if sufficient personal property cannot be found, then out of the real property belonging to the debtor in the aforesaid county, and make return to this writ within not less than 10 days or more than 60 days endorsed thereon with what you have done.

Vehicle: 2018 Toyota Corolla, 4 door sedan, VIN: 2T1BURHE8JC079328

Title No. NV 010811782

Registered Owner: A Cab Series LLC

1500 Searles Ave, Las Vegas, NV 89101-1123

1 You are required to return this Writ from date of issuance not less than 10 days or more than 60
2 days with the results of your levy endorsed thereon.

3 STEVEN D. GRIERSON
4 CLERK OF COURT

5 By: [Signature] 11/8/2018
6 Deputy Clerk Date

7 Issued at the direction of: Alexander Banderas

8 (Signature) [Signature]

9 ☒ Attorney for (Name):
10 ☒ Plaintiff, ☐ Counterclaimant, or ☐ Third-Party Plaintiff, In Proper Person

11 Name: Leon Greenberg, Esq.
12 Address: 2865 South Jones Blvd., Suite E3
City, State, Zip: Las Vegas, NV 89146
Phone: 702-383-6085
E-mail: lconggreenberg@overimclaw.com

13 SHERIFF OR CONSTABLE INFORMATION

14 AMOUNTS TO BE COLLECTED BY LEVY:

14 RETURN:

15 NET BALANCE: 799,457.25

15 ☒ Not satisfied \$
16 ☐ Satisfied in sum of \$
16 ☐ Costs retained \$
17 ☐ Commission retained \$
17 ☒ Costs incurred \$ 17.00
18 ☐ Commission incurred \$
19 ☐ Costs received \$

16 Garnishment Fee: _____
17 Mileage: 4.00
18 Levy Fee: 15.00
18 Postage: 2.00
19 Other: _____
20 Sub-Total: 799,438.25
21 Commission: _____

22 REMITTED TO JUDGMENT CREDITOR:

23 \$ [Signature]

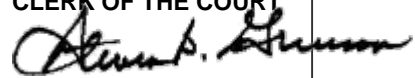
24 I hereby certify that I have this date returned the foregoing Writ of Execution with the results of the levy
25 endorsed thereon.

26 SHERIFF OF CLARK COUNTY or
26 ~~CONSTABLE FOR THE TOWNSHIP OF~~ _____

27 By: [Signature]
28 Title

Date 11/11/19

J. Lombardo
Sr. Deputy Sheriff
Sheriff's Civil Section



ORDR
Peter Dubowsky, Esq.
Nevada Bar No. 4972
Amanda Vogler-Heaton, Esq.
Nevada Bar No. 13609
DUBOWSKY LAW OFFICE, CHTD.
300 South Fourth Street, Suite 1020
Las Vegas, Nevada 89101
(702) 360-3500
Fax (702) 360-3515
Attorney for Special Master
Resolution Economics LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY, and MICHAEL RENO,) Case No.: A-12-669926-C
Individually and on behalf of others similarly) Dept No.: I
situated)

Plaintiff,

vs.

Date: December 11, 2018

A CAB TAXI SERVICE LLC, A CAB, LLC, and) Time: 9:00 a.m.
CREIGHTON J. NADY and DOES I-X and ROE) _____
CORPORATIONS I-X, inclusive)

Defendants

Date: December 13, 2018

RESOLUTION ECONOMICS LLC) Time 10:30 p.m.
)

Special Master,

vs.

A CAB TAXI SERVICE LLC, A CAB, LLC,)
and CREIGHTON J. NADY and DOES I-X and)
ROE CORPORATIONS I-X, inclusive)

Defendants

JUDGMENT AND ORDER GRANTING RESOLUTION ECONOMICS'
APPLICATION FOR ORDER OF PAYMENT OF SPECIAL MASTER'S FEES AND
ORDER OF CONTEMPT

1 Resolution Economics LLC ("Special Master") by and through its counsel of record,
2 Peter Dubowsky, Esq. of the DUBOWSKY LAW OFFICE, CHTD. having filed an Application
3 for an Order for the payment of its Special Master Fees in the amount of \$85,280.56, and an
4 Order of Civil Contempt; and this Court having heard the matter on December 11, 2018 and
5 December 13, 2018; and having heard the argument of counsel and statements of interested
6 parties, and good cause appearing therefor, the Court finds and orders as follows.

7 1. On February 7, 2018, this Court entered an Order Granting Plaintiffs' Motion to
8 Appoint a Special Master.

9 2. The February 7, 2018 Appointment Order stated in pertinent part the necessity of
10 the appointment of a Special Master:

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

20 3. The February 7, 2018 Order further commented on the complexity and
21 laboriousness of the Special Master's work:

22 Whether minimum wages are owed for any particular pay period is quite simple
23 when the relevant information (Hours worked and wages paid) is known. But in
24 this case the information must be gathered from over 200,000 trip sheets, a
25 complex process simile, performing the calculation on many thousands of pay
periods for approximate 1000 class members is also complicated and laborious.

4. This Court then went on to enumerate the "complicated and laborious" job
required of the Special Master.

5. On February 13, 2018, this Court entered an Order Modifying Court's Previous
Order of February 7, 2018 appointing a Special Master. The February 13, 2018 Modification
Order stated, in pertinent part:

1 The Court is extremely concerned with the passage of time in this matter for
 2 reasons previously expressed. In order to prevent one more issue from injecting
 3 itself into these proceedings, and in light of the possibility that any local firm may
 4 trigger another objection due to purported conflicts of interest, the Court rescinds
 its appointment and its selection of Mr. Rosten of Piercy Bowler Taylor & Kerns,
and selects Dr. Ali Saad of Resolution Economics to be the Special Master in this
case. (emphasis added)

5 6. On or around March 2, 2018, Defendants filed a Motion For Stay On an Order
 6 Shortening Time, claiming *inter alia*, an inability to pay the Special Master the initial \$25,000.00
 7 required by previous court order.

8 7. On March 6, 2018, this Court entered a Minute Order stating in pertinent part:

9 In the meantime [not longer than approximately 3 weeks] the Special Master is
 10 directed to cease all efforts to complete the task previously ordered by this Court
 11 until further order of this Court. Additionally, because there will be a breathing
 space of approximately three weeks the Defendants should well be able to set
aside the initial \$25,000 deposit, and are ordered to do so. (emphasis added)

12 8. On May 23, 2018 the Court Ordered:

13 This case needs to go forward and the Court is disinclined to hold up the matter
 14 for non-payment to the special master. COURT FURTHER ORDERED,
 15 \$41,000.00 MUST be posted with the Clerk of the Court and the defendant is to
be present at the next hearing to show proof of the posting. (emphasis added)

16 9. On August 21, 2018, this Court entered its Order Granting Summary Judgment,
 17 Severing Claims, and Directing Entry of Final Judgment ("Judgment Order), in which this Court
 18 reiterated the Defendants' failures to comply with its Orders. The Judgment Order stated in
 19 pertinent part:

20 The Court . . . via Orders entered on February 7, 2018 and February 13, 2018,
 21 appointed a Special Master . . . The Court directed that A Cab pay for such Special
 22 Master because of A Cab's failure to maintain proper records under NRS 608.115,
 and to deposit \$25,000 with the Special Master as a payment towards the cost of
 23 their work. . . . A Cab failed to make such payment within the time period
 specified by the Court. As a result, the Special Master advised the Court that they
 24 have incurred \$41,000 in costs towards their completion of their assignment and
 will not proceed further with that assignment until they are in receipt of sufficient
 25 assurances that they will be paid for their work. The Special Master has budgeted
 \$180,000 as the projected total cost to complete their assignment. (Judgment
 Order Page 7 lines 7-25)

1 10. The Judgment Order further stated that "A Cab proposed no cure for its violation
2 of the Court's Orders appointing the Special Master. It did not state when, if ever, it intended to
3 comply with those Orders." (Judgment Order Page 9 lines 1-3)

4 11. The Court went on to find that the Defendants were in contempt, "

5 [T]he Court finds that Defendants' persistent failure to comply with Court orders
6 . . . warrants holding defendants in contempt . . . (Judgment Order Page 28 lines
20-22)

7 The willfulness of A Cab in disregarding the Court's Orders appointing a Special
8 Master is apparent and A Cab's **** its failure to comply with those Orders is a
9 result of a financial inability to pay the Special Master cannot be properly
10 considered and its evidence to establish same is deficient. If A Cab truly lacks the
11 financial resources to comply with those Orders it has a remedy under the United
12 States Bankruptcy Code to seek the protection of the Bankruptcy Court which is
13 empowered to relieve it from those Orders and oversee the proper disposition of
whatever financial resources it does possess. It has declined to do so and
continues to do business and defend this case in this Court. Having elected to do
so, it must comply with this Court's Orders or face the consequences of its failure
to do so. (Judgment Page 31 lines 1-10)

14 12. In this case, as all counsel will recognize, probably painfully so, we have been at
15 pains to try and come to a resolution that was fair and just to both sides. All of this happens
16 within the framework or the context, in my mind, of a lawsuit that is filed to vindicate
17 constitutional rights. I've already commented before about -- what my opinion would be about
18 is it a good idea overall to include your minimum wage act in the constitution of the state. It
19 doesn't matter what I think. The people of this state determined that it was of sufficient
20 importance they put it in the constitution. Now, that means something to me and it also informs
21 the Court as to what powers it needs to exercise, both legal and equitable powers, in order to
22 determine if these rights have been violated, and secondarily to, as much as possible, undo the
23 violation and get them paid. At length the Court determined that the defendants simply were not
24 willing to produce any evidence on their own. At most every turn the response that I heard was,
25 well, it's only the time sheets, only the time sheets. But the defendant did not put forward any
calculations based on the time sheets, and so ultimately because of the passage of time in this

1 litigation the Court determined that we're going to have to go back and revisit a motion that had
2 been brought by the plaintiffs earlier, much earlier. And to say that the defendants were
3 blindsided by it I don't think is really accurate. It was argued, fully argued, briefed and argued
4 by both sides when it was first proposed by the plaintiff. Simply it was the case that it became
5 more obvious to the Court ultimately that something like that, as drastic and perhaps as expensive
6 as that was the only way that we were going to get down to having the best evidence, according
7 to the defendants, of what was owed. And so the Court ordered it and ordered that the defendant
8 would pay the cost because it was -- the Court had already at that point determined that there had
9 been a violation of the constitutional provisions regarding minimum wage; that there was indeed
10 liability and the question was what the amount of the damages would be. In preparing for today
11 I've gone back and looked at virtually all of the minute orders recounting the efforts of both sides
12 and the Court in this case for the last at least year or perhaps more, and what I see is that the
13 Court ordered the defendant to pay the first \$25,000. The defendant came and protested and said
14 that it couldn't and put some forward some figures, I believe, to try and show the Court that it
15 couldn't. Well, in hindsight what I see it was saying was that it couldn't afford to, that it didn't
16 fit in its budget to pay such fees. Before I -- well, ultimately the Court realized that the defendant
17 was simply refusing to pay it. They had the money. The Court ordered \$25,000 and then later
18 \$41,000 based upon an estimate, I believe. On March 6th the Court ordered that \$25,000 be paid.
19 On May 23rd, the Court ordered that \$41,000 be paid. Still, there was nothing from the
20 defendants to really show that the defendant was not able to pay. And as I said, ultimately I
21 concluded that what the defendant was really saying was not that they didn't have the money but
22 that they didn't want to pay it because they had other business expenses. Then on September 11th
23 a writ of execution was filed and lo and behold the defendants were in possession of somewhat
24 over \$233,000 in cash. It is frankly ludicrous for the defendants to claim that they do not have
25 the money. At that point that was clear. And while the defendants may argue, yeah, but that's all

1 gone, that was tied up, well, the defendant is still operating its business. It still has income coming
2 in. It has made -- this record is devoid of evidence that shows that the defendants could not pay
3 the money, that they did not have the money, and that's in the face of a Court order, several Court
4 orders. And as was already touched upon, there was a stay put in place. The Court was
5 constantly trying to -- I think my comment during one or more of the hearings was trying not to
6 kill the goose that lays the golden egg. And it has all come to naught and this Court cannot help
7 but find that in the course of protesting loudly having to pay anything, the defendant has just flat
8 violated Court orders and refused -- not that they couldn't -- they refused to pay the \$25,000 or
9 the \$41,000, or as was just argued by Mr. Dubowsky, in fact anything. Not a penny one has been
10 paid and tendered. This is a willful violation of a Court order.

11 13. The Court had the proper authority under N.R.C.P. 53 to appoint Resolution
12 Economics as Special Master. The Defendants incurred Special Master Fees of \$85,280.56,
13 which shall be deemed the amount fixed by this Court.

14 CONTEMPT OF COURT

15
16 Based on the foregoing, and upon answer and evidence taken, the Court finds Defendants,
17 both A CAB, TAXI SERVICE LLC, A CAB, LLC and CREIGHTON J. NADY individually,
18 guilty of contempt of Court for disobedience and/or resistance to this Court's lawful Orders to
19 pay the Special Master's compensation. This Court is reserving ruling on both the civil and
20 criminal penalties for Defendants' contempt. The Court reserves the right to hold Defendants in
21 Civil Contempt to coerce and/or compel the Defendants' future compliance. The Court reserves
22 the right to hold Defendants in criminal contempt and impose a fine on Defendants for \$500.00
23 and/or imprison Creighton J. Nady for up to 25 days.

24 ///

25 ///

///

JUDGMENT

Special Master, RESOLUTION ECONOMICS LLC, shall be awarded Judgment for compensation fixed by the Court, pursuant to N.R.C.P. 53, in the amount of \$85,280.56 against Defendants, A CAB TAXI SERVICE LLC, A CAB, LLC and CREIGHTON J. NADY individually, plus attorney's fees in the amount of \$9,500.00, pursuant to N.R.S. §22.100(3), with statutory interest accruing on the total foregoing until this Judgment is satisfied. The Special Master shall be entitled to all rights and remedies to enforce this Judgment against the delinquent Defendants, A CAB TAXI SERVICE LLC, A CAB, LLC and CREIGHTON J. NADY individually.

Dated: June 18, 2019


DISTRICT COURT JUDGE

Respectfully submitted,
DUBOWSKY LAW OFFICE, CHTD.

By: 

Peter Dubowsky, Esq.
Nevada Bar No. 4972
Amanda C. Vogler-Heaton, Esq.
Nevada Bar No. 13609
300 South Fourth Street, Suite 1020
Las Vegas, Nevada 89101
(702) 360-3500
Attorney for Special Master
Resolution Economics LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Other Civil Filing****COURT MINUTES****February 05, 2019**

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

February 05, 2019**Minute Order****HEARD BY:** Cory, Kenneth**COURTROOM:** RJC Courtroom 16A**COURT CLERK:** Michele Tucker**JOURNAL ENTRIES**

On December 19, 2018, the Court received a letter from Defendant's counsel relating that Defendants were re-submitting an order previously submitted but never signed by the Court. This order purports to be an order resolving Plaintiffs' motion on order shortening time to 1) lift stay, 2) hold Defendants in contempt, 3) strike their answer, 4) grant partial summary judgment, 5) direct a prove-up hearing, and 6) coordinate cases. Counsel is correct that the Court did not sign the order submitted on July 19, 2018. The Court will now make this record indicating why that proposed order, which purports that the entirety of "Plaintiffs' Motion for Miscellaneous Relief is DENIED," was never signed.

The bulk of Plaintiffs' rather omnibus motion was not denied. The only portion of Plaintiffs' "miscellaneous" motion resolved at the hearing on May 23, 2018 was that portion pertaining to the motion to coordinate cases, which was DENIED. The remainder of Plaintiffs' motion, submitted on OST, was ruled on as follows:

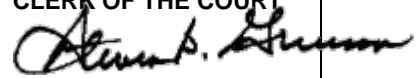
- 1) The Motion to Lift Stay. The stay was lifted on May 22, 2018 via minute order. Subsequently, after the bulk of Plaintiffs' compound motion was continued to June 5, 2018, there was colloquy regarding the stay and whether a stay would be appropriate. To be clear, the Court never imposed another stay. During the May 23, 2018 hearing, the Court made clear its intention NOT to hold up this case any longer and indicated this case needs to go forward. Thus, the Motion to Lift Stay was NOT denied.
- 2) The Motion to Hold Defendants in Contempt. As it is correctly indicated in the minutes from the May 23, 2018 hearing, that portion of Plaintiffs' Motion to Hold Defendants in Contempt was continued to June 1, 2018. During the June 1, 2018 hearing, the Court noted it is hesitant to hold Defendants in contempt for failure to pay, due to the affidavit and financial documents put forward by the Defendants. The Court directed Plaintiffs' counsel to provide case authority where a court has proceeded to hold a party in contempt for failure to make payments where the Defendant claims it does not and will not have

the money. The Court then advised it will revisit the issue at the upcoming court date, and indicated that if the issues are not resolved at that time the Court will hear the Motion for Partial Summary Judgment. The Court then continued the matter to the next hearing date, which was set for June 5, 2018. Thus, the Motion to Hold Defendants in Contempt was NOT denied on May 23, 2018.

- 3) The Motion to Strike Defendants' Answer. Similar to the contempt motion, this portion of Plaintiffs' omnibus motion was continued to June 1, 2018. Because this portion of the motion related back to the contempt motion, this portion was also continued from June 1, 2018 to June 5, 2018. On June 5, 2018, the Court GRANTED Plaintiffs' Motion for Partial Summary Judgment. The Order Granting Summary Judgment, Severing Claims, and Directing Entry of Final Judgment, heard on June 5, 2018, and filed August 21, 2018, provides, "given the deference this Court must give in enforcing the Constitution of the State of Nevada, the Court finds that Defendants' persistent failure to comply with Court orders, and for reasons stated herein, warrants holding defendants in contempt and striking their answer. . . While this Court has been at pains to resolve important issues without resort to sanctions, the Court cannot avoid the conclusion that if other, less drastic bases were not available, it would proceed by way of sanction, strike the answer, and award judgment to Plaintiffs." The Order then goes through the analysis of the sanction under Young v. Johnny Ribeiro 787 P.2d 777 (Nev. 1990), however, the Court stated "[d]espite plaintiffs' warranted request to hold defendants in contempt and strike their answer, the Court has not viewed this as warranted to remedy this point, and therefore has declined to do so. As an alternative ruling, the Court is prepared to do so now." Thus, the Motion to Strike Defendants' Answer was NOT denied on May 23, 2018, but was continued for further argument on June 1, 2018, June 5, 2018, and ultimately resolved via the order granting summary judgment.
- 4) The Motion to Grant Partial Summary Judgment. Similar to the analysis above, this portion of Plaintiffs' compound motion was continued to June 5, 2018 and ultimately GRANTED at the June 5, 2018 hearing. Thus, this portion of Plaintiffs' omnibus motion was NOT denied at the May 23, 2018 hearing.
- 5) The Motion to Direct a Prove-Up hearing. The same analysis above, regarding the Motion to Strike Defendants' Answer, applies here.
- 6) The Motion to Coordinate Cases. This portion of Plaintiffs' motion was resolved at the May 23, 2018 hearing. The Court DENIED Plaintiffs' Motion to Coordinate Cases.

The Court is clarifying the procedural history of the relief requested because the proposed orders submitted to chambers by both sides have not accurately identified and resolved all motions before the Court.

CLERK S NOTE: The above minute order has been distributed to: Lean Greenberg, Esq. (leongreenberg@tirnrelaw.com), Esther Rodriguez, Esq. (esther@rodriguezlaw.com), Michael Wall, Esq. (mwall@hutchlegal.com) Jay Shafer, Esq. (jshafer@premierlegallgroup.com) and via the eservice list./mlt



NOEJ
Peter Dubowsky, Esq.
Nevada Bar No. 4972
Amanda Vogler-Heaton, Esq.
Nevada Bar No. 13609
DUBOWSKY LAW OFFICE, CHTD.
300 South Fourth Street, Suite 1020
Las Vegas, Nevada 89101
(702) 360-3500
Fax (702) 360-3515
Attorney for Special Master
Resolution Economics LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY, and MICHAEL RENO,) Case No.: A-12-669926-C
Individually and on behalf of others similarly) Dept No.: I
situated)

Plaintiff,

vs.

A CAB TAXI SERVICE LLC, A CAB, LLC,))
and CREIGHTON J. NADY and DOES I-X and)
ROE CORPORATIONS I-X, inclusive)

Defendants

RESOLUTION ECONOMICS LLC

Special Master,

vs.

A CAB TAXI SERVICE LLC, A CAB, LLC,))
and CREIGHTON J. NADY and DOES I-X and)
ROE CORPORATIONS I-X, inclusive)

Defendants

NOTICE OF ENTRY OF ORDER

1 Please take notice that on February 4, 2019, a JUDGMENT AND ORDER
2 GRANTING RESOLUTION ECONOMICS' APPLICATION FOR ORDER OF
3 PAYMENT OF SPECIAL MASTER'S FEES AND ORDER OF CONTEMPT was entered
4 by the Clerk of the Court in the above-referenced matter. A true and correct copy of the
5 order is attached.

6 Dated: February 4, 2019

7
8 DUBOWSKY LAW OFFICE, CHTD.

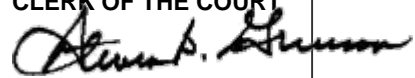
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10 By: /s/Peter Dubowsky
11 Peter Dubowsky, Esq.
12 Attorney for Plaintiff
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The undersigned acknowledges that on February 5, 2019, a NOTICE OF ENTRY OF ORDER was served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing Conversion Rules:

Esther C. Rodriguez, Esq.
Attorney for Defendant

- 3

AA010212



1 ORDR
Peter Dubowsky, Esq.
2 Nevada Bar No. 4972
Amanda Vogler-Heaton, Esq.
3 Nevada Bar No. 13609
DUBOWSKY LAW OFFICE, CHTD.
4 300 South Fourth Street, Suite 1020
Las Vegas, Nevada 89101
5 (702) 360-3500
Fax (702) 360-3515
6 Attorney for Special Master
Resolution Economics LLC

7
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 MICHAEL MURRAY, and MICHAEL RENO,) Case No.: A-12-669926-C
Individually and on behalf of others similarly
11 situated) Dept No.: I

12 Plaintiff,

13 vs.

) Date: December 11, 2018

14 A CAB TAXI SERVICE LLC, A CAB, LLC, and)
CREIGHTON J. NADY and DOES I-X and ROE)
15 CORPORATIONS I-X, inclusive)

) Time: 9:00 a.m.

16 Defendants

) Date: December 13, 2018

17 RESOLUTION ECONOMICS LLC

) Time 10:30 p.m.

18 Special Master,

19 vs.

20 A CAB TAXI SERVICE LLC, A CAB, LLC,)
21 and CREIGHTON J. NADY and DOES I-X and)
ROE CORPORATIONS I-X, inclusive)

22 Defendants

24 **JUDGMENT AND ORDER GRANTING RESOLUTION ECONOMICS'**
25 **APPLICATION FOR ORDER OF PAYMENT OF SPECIAL MASTER'S FEES AND**
ORDER OF CONTEMPT

DUBOWSKY LAW OFFICE, CHTD.

1 Resolution Economics LLC ("Special Master") by and through its counsel of record,
2 Peter Dubowsky, Esq. of the DUBOWSKY LAW OFFICE, CHTD. having filed an Application
3 for an Order for the payment of its Special Master Fees in the amount of \$85,280.56, and an
4 Order of Civil Contempt; and this Court having heard the matter on December 11, 2018 and
5 December 13, 2018; and having heard the argument of counsel and statements of interested
6 parties, and good cause appearing therefor, the Court finds and orders as follows.

7 1. On February 7, 2018, this Court entered an Order Granting Plaintiffs' Motion to
8 Appoint a Special Master.

9 2. The February 7, 2018 Appointment Order stated in pertinent part the necessity of
10 the appointment of a Special Master:

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

20 3. The February 7, 2018 Order further commented on the complexity and
21 laboriousness of the Special Master's work:

22 Whether minimum wages are owed for any particular pay period is quite simple
23 when the relevant information (Hours worked and wages paid) is known. But in
24 this case the information must be gathered from over 200,000 trip sheets, a
25 complex process simile, performing the calculation on many thousands of pay
periods for approximate 1000 class members is also complicated and laborious.

4. This Court then went on to enumerate the "complicated and laborious" job
required of the Special Master.

5. On February 13, 2018, this Court entered an Order Modifying Court's Previous
Order of February 7, 2018 appointing a Special Master. The February 13, 2018 Modification
Order stated, in pertinent part:

1 The Court is extremely concerned with the passage of time in this matter for
 2 reasons previously expressed. In order to prevent one more issue from injecting
 3 itself into these proceedings, and in light of the possibility that any local firm may
 4 trigger another objection due to purported conflicts of interest, the Court rescinds
 its appointment and its selection of Mr. Rosten of Piercy Bowler Taylor & Kerns,
and selects Dr. Ali Saad of Resolution Economics to be the Special Master in this
case. (emphasis added)

5 6. On or around March 2, 2018, Defendants filed a Motion For Stay On an Order
 6 Shortening Time, claiming *inter alia*, an inability to pay the Special Master the initial \$25,000.00
 7 required by previous court order.

8 7. On March 6, 2018, this Court entered a Minute Order stating in pertinent part:

9 In the meantime [not longer than approximately 3 weeks] the Special Master is
 10 directed to cease all efforts to complete the task previously ordered by this Court
 11 until further order of this Court. Additionally, because there will be a breathing
 space of approximately three weeks the Defendants should well be able to set
aside the initial \$25,000 deposit, and are ordered to do so. (emphasis added)

12 8. On May 23, 2018 the Court Ordered:

13 This case needs to go forward and the Court is disinclined to hold up the matter
 14 for non-payment to the special master. COURT FURTHER ORDERED,
 15 \$41,000.00 MUST be posted with the Clerk of the Court and the defendant is to
be present at the next hearing to show proof of the posting. (emphasis added)

16 9. On August 21, 2018, this Court entered its Order Granting Summary Judgment,
 17 Severing Claims, and Directing Entry of Final Judgment ("Judgment Order), in which this Court
 18 reiterated the Defendants' failures to comply with its Orders. The Judgment Order stated in
 19 pertinent part:

20 The Court . . . via Orders entered on February 7, 2018 and February 13, 2018,
 21 appointed a Special Master . . . The Court directed that A Cab pay for such Special
 22 Master because of A Cab's failure to maintain proper records under NRS 608.115,
 and to deposit \$25,000 with the Special Master as a payment towards the cost of
 23 their work. . . . A Cab failed to make such payment within the time period
 specified by the Court. As a result, the Special Master advised the Court that they
 24 have incurred \$41,000 in costs towards their completion of their assignment and
 will not proceed further with that assignment until they are in receipt of sufficient
 25 assurances that they will be paid for their work. The Special Master has budgeted
 \$180,000 as the projected total cost to complete their assignment. (Judgment
 Order Page 7 lines 7-25)

1 10. The Judgment Order further stated that “A Cab proposed no cure for its violation
2 of the Court's Orders appointing the Special Master. It did not state when, if ever, it intended to
3 comply with those Orders.” (Judgment Order Page 9 lines 1-3)

4 11. The Court went on to find that the Defendants were in contempt, “

5 [T]he Court finds that Defendants' persistent failure to comply with Court orders
6 . . . warrants holding defendants in contempt . . . (Judgment Order Page 28 lines
7 20-22)

8 The willfulness of A Cab in disregarding the Court's Orders appointing a Special
9 Master is apparent and A Cab's **** its failure to comply with those Orders is a
10 result of a financial inability to pay the Special Master cannot be properly
11 considered and its evidence to establish same is deficient. If A Cab truly lacks the
12 financial resources to comply with those Orders it has a remedy under the United
13 States Bankruptcy Code to seek the protection of the Bankruptcy Court which is
14 empowered to relieve it from those Orders and oversee the proper disposition of
15 whatever financial resources it does possess. It has declined to do so and
16 continues to do business and defend this case in this Court. Having elected to do
17 so, it must comply with this Court's Orders or face the consequences of its failure
18 to do so. (Judgment Page 31 lines 1-10)

19 12. In this case, as all counsel will recognize, probably painfully so, we have been at
20 pains to try and come to a resolution that was fair and just to both sides. All of this happens
21 within the framework or the context, in my mind, of a lawsuit that is filed to vindicate
22 constitutional rights. I've already commented before about -- what my opinion would be about
23 is it a good idea overall to include your minimum wage act in the constitution of the state. It
24 doesn't matter what I think. The people of this state determined that it was of sufficient
25 importance they put it in the constitution. Now, that means something to me and it also informs
the Court as to what powers it needs to exercise, both legal and equitable powers, in order to
determine if these rights have been violated, and secondarily to, as much as possible, undo the
violation and get them paid. At length the Court determined that the defendants simply were not
willing to produce any evidence on their own. At most every turn the response that I heard was,
well, it's only the time sheets, only the time sheets. But the defendant did not put forward any
calculations based on the time sheets, and so ultimately because of the passage of time in this

1 litigation the Court determined that we're going to have to go back and revisit a motion that had
2 been brought by the plaintiffs earlier, much earlier. And to say that the defendants were
3 blindsided by it I don't think is really accurate. It was argued, fully argued, briefed and argued
4 by both sides when it was first proposed by the plaintiff. Simply it was the case that it became
5 more obvious to the Court ultimately that something like that, as drastic and perhaps as expensive
6 as that was the only way that we were going to get down to having the best evidence, according
7 to the defendants, of what was owed. And so the Court ordered it and ordered that the defendant
8 would pay the cost because it was -- the Court had already at that point determined that there had
9 been a violation of the constitutional provisions regarding minimum wage; that there was indeed
10 liability and the question was what the amount of the damages would be. In preparing for today
11 I've gone back and looked at virtually all of the minute orders recounting the efforts of both sides
12 and the Court in this case for the last at least year or perhaps more, and what I see is that the
13 Court ordered the defendant to pay the first \$25,000. The defendant came and protested and said
14 that it couldn't and put some forward some figures, I believe, to try and show the Court that it
15 couldn't. Well, in hindsight what I see it was saying was that it couldn't afford to, that it didn't
16 fit in its budget to pay such fees. Before I -- well, ultimately the Court realized that the defendant
17 was simply refusing to pay it. They had the money. The Court ordered \$25,000 and then later
18 \$41,000 based upon an estimate, I believe. On March 6th the Court ordered that \$25,000 be paid.
19 On May 23rd, the Court ordered that \$41,000 be paid. Still, there was nothing from the
20 defendants to really show that the defendant was not able to pay. And as I said, ultimately I
21 concluded that what the defendant was really saying was not that they didn't have the money but
22 that they didn't want to pay it because they had other business expenses. Then on September 11th
23 a writ of execution was filed and lo and behold the defendants were in possession of somewhat
24 over \$233,000 in cash. It is frankly ludicrous for the defendants to claim that they do not have
25 the money. At that point that was clear. And while the defendants may argue, yeah, but that's all

1 gone, that was tied up, well, the defendant is still operating its business. It still has income coming
2 in. It has made -- this record is devoid of evidence that shows that the defendants could not pay
3 the money, that they did not have the money, and that's in the face of a Court order, several Court
4 orders. And as was already touched upon, there was a stay put in place. The Court was
5 constantly trying to -- I think my comment during one or more of the hearings was trying not to
6 kill the goose that lays the golden egg. And it has all come to naught and this Court cannot help
7 but find that in the course of protesting loudly having to pay anything, the defendant has just flat
8 violated Court orders and refused -- not that they couldn't -- they refused to pay the \$25,000 or
9 the \$41,000, or as was just argued by Mr. Dubowsky, in fact anything. Not a penny one has been
10 paid and tendered. This is a willful violation of a Court order.

11 13. The Court had the proper authority under N.R.C.P. 53 to appoint Resolution
12 Economics as Special Master. The Defendants incurred Special Master Fees of \$85,280.56,
13 which shall be deemed the amount fixed by this Court.

14 CONTEMPT OF COURT

15
16 Based on the foregoing, and upon answer and evidence taken, the Court finds Defendants,
17 both A CAB, TAXI SERVICE LLC, A CAB, LLC and CREIGHTON J. NADY individually,
18 guilty of contempt of Court for disobedience and/or resistance to this Court's lawful Orders to
19 pay the Special Master's compensation. This Court is reserving ruling on both the civil and
20 criminal penalties for Defendants' contempt. The Court reserves the right to hold Defendants in
21 Civil Contempt to coerce and/or compel the Defendants' future compliance. The Court reserves
22 the right to hold Defendants in criminal contempt and impose a fine on Defendants for \$500.00
23 and/or imprison Creighton J. Nady for up to 25 days.

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JUDGMENT

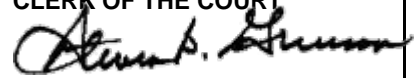
Special Master, RESOLUTION ECONOMICS LLC, shall be awarded Judgment for compensation fixed by the Court, pursuant to N.R.C.P. 53, in the amount of \$85,280.56 against Defendants, A CAB TAXI SERVICE LLC, A CAB, LLC and CREIGHTON J. NADY individually, plus attorney's fees in the amount of \$9,500.00, pursuant to N.R.S. §22.100(3), with statutory interest accruing on the total foregoing until this Judgment is satisfied. The Special Master shall be entitled to all rights and remedies to enforce this Judgment against the delinquent Defendants, A CAB TAXI SERVICE LLC, A CAB, LLC and CREIGHTON J. NADY individually.

Dated: June 18, 2019

Kenneth A. Brey
DISTRICT COURT JUDGE

Respectfully submitted,
DUBOWSKY LAW OFFICE, CHTD.

By: Peter Dubowsky, Esq.
Nevada Bar No. 4972
Amanda C. Vogler-Heaton, Esq.
Nevada Bar No. 13609
300 South Fourth Street, Suite 1020
Las Vegas, Nevada 89101
(702) 360-3500
Attorney for Special Master
Resolution Economics LLC



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

DISTRICT COURT
CLARK COUNTY, NEVADA

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.: I

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Court entered the attached Order on February
6, 2019

Dated: February 7, 2019

LEON GREENBERG PROFESSIONAL CORP.

/s/ Leon Greenberg

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

AA010220

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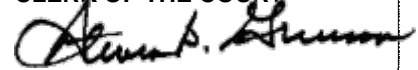
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Sydney Saucier



1 LEON GREENBERG, ESQ.
Nevada Bar No.: 8094
2 DANA SNIEGOCKI, ESQ.
Nevada Bar No.: 11715
3 Leon Greenberg Professional Corporation
2965 South Jones Boulevard - Suite E3
4 Las Vegas, Nevada 89146
(702) 383-6085
5 (702) 385-1827(fax)
leongreenberg@overtimelaw.com
6 dana@overtimelaw.com
Attorneys for Plaintiffs

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

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

12 Plaintiffs,

13 vs.

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

18 Defendants.

Case No.: A-12-669926-C

DEPT.: I

**ORDER GRANTING PLAINTIFFS'
MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND COSTS
PURSUANT TO NRCP 54 AND THE
NEVADA CONSTITUTION**

19
20 This motion came before the Court for a chambers decision on November 15,
21 2018. Via a Minute Order entered on November 29, 2018, the Court set the motion
22 for a decision announcement on December 4, 2018, when the parties were set to
23 appear for hearing on an unrelated motion. After reviewing the arguments submitted
24 by the parties in respect to plaintiffs' motion, the Court grants plaintiffs' motion, to the
25 extent indicated in this Order, and finds as follows:

26 **A. Attorney's Fees**

27 Plaintiffs' motion sought an award of attorneys' fees and costs pursuant to
28 Article 15, Section 16(B) of the Nevada Constitution which states "[a]n employee

1 who prevails in any action to enforce this section shall be awarded his or her
2 reasonable attorney's fees and costs." Plaintiffs previously secured a judgment in
3 excess of one million dollars for over 900 members of the certified class of plaintiffs
4 via the Court's order of August 21, 2018. The Order further granted class counsel 60
5 days after notice of entry of that Order to apply for an award of fees and costs.
6 Plaintiffs' Motion for an Award of Attorneys Fees and Costs was filed on October 12,
7 2018, and the Court finds such motion was timely filed in compliance with the Court's
8 August 21, 2018 Order.

9 The motion laid out three separate formulations under which the Court was
10 asked to evaluate the request for fees and costs. The first formulation offered by the
11 plaintiffs was the "aggregate hours" formulation, under which plaintiffs sought
12 attorneys' fees based upon their counsel's recorded attorney hours expended upon
13 litigating this matter (minus time for which plaintiffs' counsel has already received
14 fees from the defendants pursuant to a prior sanctions order, and minus time expended
15 upon two claims that did not proceed to judgment) and for which plaintiffs' counsel
16 built in an across-the-board 10% discount. Under that scenario, plaintiffs were
17 seeking a total attorneys' fee award of \$626,481.00.

18 Under the second alternative formulation, the "partial exclusion of hours"
19 formulation, plaintiffs sought an award of fees that excluded for fee purposes recorded
20 attorney hours that defendants could colorably argue were not spent exclusively on
21 activities germane to the litigation or that defendants would argue were unnecessary,
22 or not of great utility or efficiency, or that concerned issues never fully resolved in the
23 litigation. They also eliminated any associate attorney time for appearances at
24 depositions and court hearings for which lead counsel was also present. They further
25 built in an across-the-board 10% discount. Under that scenario, plaintiffs were
26 seeking a total attorneys' fee award of \$568,071.00.

1 Under the third alternative formulation, the “presumptive exclusion of hours”
2 formulation, plaintiffs sought an award of fees based upon an exclusion of time
3 expenditures that, in any significant measure, defendants would presumptively argue
4 should not be included in the fee award, such as time devoted to settlement and
5 mediation efforts (as no settlement or mediated resolution was achieved). They
6 further built in an across-the-board 10% discount. Under that scenario, plaintiffs were
7 seeking a total attorneys’ fee award of \$527,571.00.

8 The Court is satisfied that plaintiffs’ counsel, through their sworn declarations,
9 have set forth a reasonable basis for an award of fees under the factors set forth in
10 *Brunzell v. Golden Gate National Bank*, 85 Nev. 345 (1969) as re-affirmed by *Shuette*
11 *v. Beazer Homes Holdings Corp.*—124 P.3d 530, 549 (Nev. Sup. Ct. 2005). The Court
12 makes the following findings addressing the four relevant considerations established
13 by *Brunzell* that it must examine in arriving at an appropriate attorney fee award,
14 along with exercising its discretion in calculating that award in a fair and reasonable
15 manner. *See, Shuette, id*, citing *Brunzell* and *University of Nevada v. Tarkanian*, 879
16 P.2d 1180, 1188, 1186 (Nev. Sup. Ct. 1994).

17 The first *Brunzell* consideration is the professional qualities demonstrated by
18 plaintiffs' counsel. The majority of attorney hours detailed in plaintiffs' motion for an
19 attorney fee award and for which compensation is sought, and ultimately awarded by
20 the Court, was performed by Leon Greenberg. Such counsel has demonstrated that he
21 has over 25 years of litigation experience. Such experience includes handling other
22 class action claims seeking unpaid wages owed to employees, including class action
23 claims involving unpaid minimum wages, the issue in this case. The professional
24 experience and qualities of such counsel is also confirmed by their appellate
25 advocacy, most importantly their success in the appeal in *Thomas v. Nevada Yellow*
26 *Cab* 327 P.3d 518 (Nev. Sup. Ct. 2014), such appeal establishing the basis for the
27 minimum wage claim made in this case. The Court has also extensively personally
28

1 observed the quality of the advocacy by Leon Greenberg and the other counsel for
2 plaintiffs in this case and finds such advocacy was of a high quality. Such counsel's
3 performance has been more than adequate. They have presented the Court with
4 appropriate written briefings and demonstrated, both in those submissions and during
5 their oral advocacy, a level of competence, understanding of the relevant legal issues,
6 and professional performance, that is at least equal to the norm of counsel appearing
7 before the Court.

8 The second *Brunzell* consideration is the character of the work performed by
9 plaintiffs' counsel, considering such factors as its intricacy, importance, and the time
10 and skill it has required. The work performed by plaintiffs' counsel required a high
11 level of intricacy and attention to detail. While class action litigation is not
12 particularly common, and is not handled by most litigation attorneys, this case also
13 posed substantial additional and difficult litigation issues besides its class action
14 nature. Plaintiffs' counsel had to formulate a means to present damages claims in
15 different amounts for hundreds of class members. Unlike some class action cases, this
16 case did not involve a single set amount of damages, if liability was established, for
17 every single class member. Plaintiffs' counsel had to work closely with a skilled
18 computer data analyst (Charles Bass) and expert economist (Dr. Terrence Clauretie) to
19 present an appropriate formulation of the class members' damages for the rendering of
20 a judgment in this case. Plaintiffs' counsel also was confronted with addressing legal
21 issues raised by the relative newness, and not substantially litigated, minimum wage
22 amendment to the Nevada Constitution that was only enacted in 2006. Defendants
23 exerted considerable vigor, at times to an improper extent as demonstrated by the
24 Court's sanction order of March 4, 2016 imposing sanctions of \$3,238.95, in opposing
25 the plaintiffs' discovery efforts in this litigation. Defendants also opposed class
26 certification and otherwise strongly defended this litigation. The work performed by
27 plaintiffs' counsel was of great importance to the plaintiffs' success in this case. It was
28

1 also of presumptively great public importance, as the rights sought to be vindicated by
2 the plaintiffs are secured directly by Nevada's Constitution. In sum, the Court finds
3 that the character, intricacy, difficulty and importance of the work performed by
4 plaintiffs' counsel was far above that of a typical litigation matter.

5 The third *Brunzell* consideration is the work actually performed by plaintiffs'
6 counsel, and the skill, time and attention actually given to that work (this overlaps to
7 some extent with the second consideration). The Court has observed a very high level
8 of competence and skill exercised by plaintiffs' counsel in the performance of the
9 work necessary to the successful prosecution of this case. As discussed in their sworn
10 declarations submitted to the Court, such counsel has also demonstrated the number of
11 hours that they have devoted to this litigation, a very significant amount of time.
12 Such time expenditures, in excess of 1,000 hours from the commencement of this
13 litigation through judgment, combined with the skillful performance of that very
14 detailed work, supports the fee awarded.

15 The fourth *Brunzell* consideration is the result secured and the benefits derived
16 from the efforts of plaintiffs' counsel. That result was substantial, the entry of a
17 judgment in excess of \$1,000,000 on behalf of 890 persons owed unpaid minimum
18 wages. Such a benefit is also best evaluated not just in respect to its sheer monetary
19 size, but its advancement of an important public policy goal, the payment of minimum
20 wages under Nevada's Constitution, to a large group of persons. Absent the
21 considerable efforts of the plaintiffs' counsel, that benefit would not have been secured
22 to such persons.

23 In rendering the fee award made by this Order the Court also finds that the
24 hourly rates used by plaintiffs' counsel in proposing the fee to be awarded, a rate of
25 \$400 for their senior counsel Leon Greenberg and lesser amounts for their other
26 counsel, were justified, reasonable and appropriate. The Court also believes the
27 attorney's fee proposed by plaintiffs' counsel is, at least to some implicit extent,
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1 rendered reasonable by defendants' failure to provide any form of meaningful,
2 quantified, information contesting plaintiffs' counsel's calculations and fee award
3 claims. Defendants have provided the Court with no information concerning the
4 hourly rates charged by their counsel or the attorney's fees they have incurred in
5 litigating this matter. Nor have defendants contested the appropriateness of the
6 hourly fee rates upon which plaintiffs' counsel rely or contested with any specificity
7 their overall stated time expenditures.
8

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12 -The Court is further satisfied that plaintiffs' counsel, as confirmed by their counsel,
13 Leon Greenberg, in open court on December 4, 2018, will not and cannot, by virtue of
14 this Court's final judgment, counsel's retainer agreements with the named plaintiffs,
15 and Rule 23, seek to obtain additional attorneys' fees from any money that has been or
16 will be collected for the class members in satisfaction of the judgment, absent a
17 further order of this Court being issued authorizing the same. Finally, the Court is
18 satisfied that plaintiffs' fee request is based upon plaintiffs' counsel's
19 contemporaneously recorded hours and the Court will not require plaintiffs' counsel to
20 disclose in the record their time notes. Accordingly, the Court finds an appropriate fee
21 award should be based under plaintiffs' second formulation, the "partial exclusion of
22 hours" formulation. Thus, the Court awards plaintiffs' counsel, pursuant to the
23 mandatory fee-shifting provision of Article 15, Section 16 of the Nevada Constitution,
24 \$568,071.00 in attorneys' fees.
25

26 **B. Costs**

27 With respect to plaintiffs' request for a costs award totaling \$46,528.07, the
28 Court also finds such an award is proper.

1 Defendants' argue that costs must be denied because Plaintiffs are seeking in
2 excess of \$29,000 for experts who were never utilized, but more so were subject to
3 being stricken as having not met the required standards for admissibility, citing to
4 Defendants Motion in Limine to Exclude Plaintiffs' Experts.

5 First, the Court will note that the Court was prepared to DENY Defendants
6 motion holding that the court is satisfied that (1) Charles Bass and Terrence Claurite
7 have the requisite knowledge, skill, experience, training, or education to express
8 expert opinions on the Plaintiff's model; (2) their testimony as to the reliability of the
9 model, and the propriety of using such a model in the instant case, would assist the
10 trier of fact in determining whether and to what extent wages are owed to the class
11 members; (3) is appropriately limited in scope to each of their areas of expertise; (4) is
12 based upon sufficiently reliable methodology; and (5) is largely based on
13 particularized facts.

14 In post summary judgment proceedings Defendants continue to allege they
15 were blindsided by the Court's appointing a Special Master and subsequent granting
16 of Plaintiff's Motion for Summary Judgment, as evident once again by their citation to
17 their Motion in Limine. The Court will take this opportunity to explain to the
18 Defendants the course and reasoning of the December and January proceedings.

19 The Court heard Plaintiff's Motion for Partial Summary Judgment on
20 December 14, 2017. The Court GRANTED that motion to the extent Plaintiff has
21 established liability. Thereafter, Plaintiff filed "Plaintiffs' Supplement in Support of
22 Motion for Partial Summary Judgment" arguing that damages and liability are
23 inextricably related. Defendants' also filed their Motion for Summary Judgment on
24 November 27, 2017, and heard on January 2, 2018. Other motions before the Court in
25 the end of December 2017 and early January 2018 included Plaintiffs' Motion to
26 Place Evidentiary burden on Defendant, Plaintiffs' motion to bifurcate or limit issues
27 at trial, Defendants' objection to the Discovery Commissioners Report and
28

1 Recommendation, both Defendants' and Plaintiffs' motions in limine, Defendants'
2 Supplement regarding the January 2, 2018 hearing, both sides Objections pursuant to
3 16.1(3), and Plaintiffs' motions to strike affirmative defenses. It was upon review of
4 all of these motions that the Court found that liability and damages were indeed
5 inextricably related. That is precisely why the Court gave Defendants' one more
6 opportunity to present evidence which would rebut that liability, and yet they could
7 not.

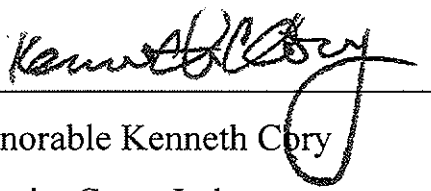
8 It was in preparation of those pretrial motions that the Court inquired into what
9 evidence would be submitted and presented at trial. In Defendants' Motion in Limine,
10 Defendants argued that Plaintiffs' experts methodology was unreliable because it
11 calculated damages derived from inaccurate information, despite Plaintiffs' experts
12 using information consisting of computer data files provided by A Cab. Defendants'
13 argued at that time that the Tripsheets were the only accurate information. That is
14 precisely why this Court appointed a special master, who expended more than \$85,000
15 to review Tripsheets which did not comply with NRS 608.115, to make a
16 determination on a precise calculation of hours. Defendants continued to use their
17 noncompliance with the record keeping statute as both a sword and a shield. That is
18 when this Court decided to apply the reasoning of the United States Supreme Court in
19 *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), which stated that "the
20 employer cannot be heard to complain that the damages lack the exactness of
21 measurement that would be possible had he kept records..." *Id.* at 687.

22 Contrary to the Defendants' assertions that the experts were never utilized,
23 Plaintiffs' experts were necessary to this Court granting summary judgment. It was
24 defendants' lack of evidence of the precise amount of work performed to negate the
25 reasonableness of the inference to be drawn from the employees' evidence which
26 warranted the granting of summary judgment. *See Anderson v. Mt. Clemens Pottery*
27 *Co.*, 328 U.S. 680, 687 (1946) ("The burden then shifts to the employer to come
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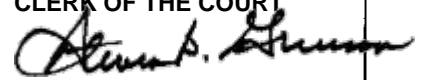
1 forward with evidence of the precise amount of work performed or with evidence to
2 negative the reasonableness of the inference to be drawn from the employee's
3 evidence. If the employer fails to produce such evidence, the court may then award
4 damages to the employee, even though the result be only approximate.”). This Court
5 gave defendants every opportunity to come forward with precise evidence, and they
6 did not. They also failed to provide the initial \$25,000 deposit as ordered by this
7 Court, so that the Special Master could provide more precision to the damages
8 calculation by recourse to the trip sheets. Defendants might have a colorable
9 argument against Plaintiff’s expert costs had the Special Master completed his work
10 regarding the Tripsheets, and had the trial proceeded on that basis. However, that is
11 not the case here. Plaintiffs’ experts were necessary and their expenses reasonable
12 given the extent of the work performed in calculating damages based upon computer
13 data information provided by ACAB. Therefore, the Court grants plaintiffs’ request in
14 its entirety and awards a total of \$46,528.07 in costs. Accordingly,
15

16 IT IS HEREBY ORDERED that Plaintiffs’ Motion for an Award of Attorneys’
17 Fees and Costs pursuant to NRCP 54 and the Nevada Constitution is GRANTED to
18 the extent specified in this Order in the total amount of \$614,599.07.
19

20 **IT IS SO ORDERED.**
21

22 
23 Honorable Kenneth Cory
24 District Court Judge
25 KC

22 Feb 6, 2019
23 Date



MTN
JAY A. SHAFER, ESQ.
Nevada Bar No. 9184
PREMIER LEGAL GROUP
1333 North Buffalo Drive, Suite 210
Las Vegas, Nevada 89128
Telephone: (702) 794-4411
Fax: (702) 794-4421
jshafer@premierelegalgroup.com
Attorney for Defendants
CAB TAXI SERVICE LLC and A CAB, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

**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**

Date of Hearing: _____
Time of Hearing: _____

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 this 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. This Motion is based on the attached points and authorities, all pleadings and papers on file herein, and any argument

AA010231

1 by counsel at the time of the hearing on this matter.

2 This motion is brought requesting the Court reconsider its prior ruling finding all
3 Defendants in Contempt for Failure to Pay the Special Master's Compensation. This motion is
4 founded upon the lack of evidence and failure to meet the requirements of NRS 22.030(2), the
5 lack of findings regarding the specific financial condition of Defendant A CAB LLC and
6 especially the lack of any findings or obligation on the part of Defendant NADY Personally.

7 DATED this 25th day of February, 2019.

8 PREMIER LEGAL GROUP

9 By: /s/ Jay A. Shafer
10 JAY A. SHAFER, ESQ.
11 Nevada Bar No. 9184
12 1333 North Buffalo Drive, Suite 210
13 Las Vegas, Nevada 89128
14 Telephone: (702) 794-4411
15 Fax: (702) 794-4421
16 jshafer@premierelegalgroup.com
17 Counsel for Defendants

18 **NOTICE OF MOTION**

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE, that the undersigned will
20 bring the above and foregoing Motion on for hearing before Department I of this Honorable
21 Court on the 28 day of March, 2019 at the hour of
22 In Chambers.m. You are invited to attend and participate.

23 DATED this 25th day of February, 2019.

24 PREMIER LEGAL GROUP

25 By: /s/ Jay A. Shafer
26 JAY A. SHAFER, ESQ.
27 Nevada Bar No. 9184
28 1333 North Buffalo Drive, Suite 210
Las Vegas, Nevada 89128
Telephone: (702) 794-4411
Fax: (702) 794-4421
jshafer@premierelegalgroup.com
Counsel for Defendants

POINTS AND AUTHORITIES

I. FACTUAL SUMMARY

In the Court's order entered on February 5, 2018, the ruling was that the Court found Defendants "A CAB TAXI SERVICE LLC, A CAB, LLC and CREIGHTON J. NADY individually, guilty of contempt of Court for disobedience and/or resistance to this Court's lawful Orders to pay the Special Master's compensation."¹ This finding of the Court appears to be erroneous given the history of this matter, and Defendant asks this court to reconsider and issue a more appropriate order.²

Despite the finding of the court, there appears to be no basis for the determination, given the evidentiary precursor required to establish such a finding. The finding of the court appears to be that "there was nothing from the defendants to really show that the defendant [A Cab] was not able to pay". But there was nothing presented that show that A Cab was able to pay but had refused to do so at the time of the hearing. In subsequent events, the report of Special Master George Swarts has been issued, determining that it cannot be said that A Cab had the money to pay Special Master Resolution Economics at any specific time, but that there was a significant decline in revenue and "A Cab will struggle to meet its obligations in the future without the infusion of capital or substantial increase in revenue".³

The lack of the evidentiary basis is particularly true of the contempt against Jay Nady personally. There were no facts specifically found which support the contempt against Jay Nady personally. A review of the Application, the Supporting Reply, and statements of counsel⁴ at the

¹ See Exhibit "A", JUDGMENT AND ORDER GRANTING RESOLUTION ECONOMICS' APPLICATION FOR ORDER OF PAYMENT OF SPECIAL MASTER'S FEES AND ORDER OF CONTEMPT [hereinafter "Contempt Order", Page 6:16-19.

² Counsel for Defendant notes that despite the instruction and expected courtesy, the proposed order finding this contempt was never provided to Counsel for review or comment before its entry. Had this been the case, a more appropriate order which embraced the court's ruling could have been provided.

³ See Report of Special Master Swarts, Page 4:7-8, 9:13.

⁴ Of course statements of counsel are not evidence and even if such statements were made, they could not be considered as evidence in support of the finding of Contempt.

1 hearing fails to reveal a single indication of a failure of Mr. Nady personally which justifies
2 contempt against him personally.

3 Moreover, it is clear from the actual findings of the order that it should necessarily be
4 limited to A Cab. The Special Master was appointed to oversee the affairs of A Cab, not Mr.
5 Nady personally.⁵ In the May 23, 2018 Order referenced, the direction was as to Defendant A
6 Cab only.⁶ In the Order of the Court entered on August 21, 2018, and referenced in Finding No.
7 9 of the instant order, the Court determined that A Cab only pay for a special master and that A
8 Cab failed to pay.⁷ Any reference to "Defendants" can only then be considered to be against A
9 Cab LLC and A Cab Taxi Service, LLC, the other Defendants in this case. As Defendant Jay
10 Nady was specifically severed out of this case by the August 21, 2018 Order of the Court.⁸
11 There has never been an Order of the Court that Jay Nady is personally responsible for the award
12 of fees, and thus there is no obligation for him to pay personally.

13 The August 21, 2018 Order acknowledges that there was no proposal of civil or criminal
14 contempt against Jay Nady, and that such a finding would not be sensible or in the interests of
15 judgment.⁹ Moreover, as an officer he is not vicariously liable for the actions of A Cab. As
16 there is no legal basis for this finding, let alone a factual finding, there is no basis for the Order
17 finding Contempt.

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23 5 See Contempt Order, Page 2:10-16.

24 6 See Contempt Order, Page 3:13-16.

25 7 See Contempt Order, Page 3:16-25.

26 8 See Exhibit "B", August 21, 2018 Order page 33:8-9.

27 9 See Exhibit "B", August 21, 2018 Order page 29:14-16.

ARGUMENT

I. RECONSIDERATION IS PROPER WHERE THE COURT HAS MATERIALLY MISAPPREHENDED THE EVIDENCE OR HAS BEEN MISTAKEN REGARDING THE STANDARD FOR RELIEF.

The rule governing motions for reconsiderations and re-hearings falls under the purview of E.D.C.R. 2.24 which says, "No motion once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefore, after notice of such motion to the adverse parties." E.D.C.R. 2.24(a). "A party seeking reconsideration of a ruling of the court . . . must file a motion for such relief within 10 days after service of a written notice of the order . . ." E.D.C.R. 2.24(b). This Motion is being brought within the ten judicial days allowed under E.D.C.R. 2.24(b). .

Reconsideration is proper given the right circumstance. *See Harvey's Wagonwheel, Inc. v. MacSween*, 96 Nev. 215, 606 P.2d 1095 (1980). "Rehearings are not granted as a matter of right [citations omitted] and are not allowed for the purpose of reargument, unless there is a reasonable probability that the court may have arrived at an erroneous conclusion." *Geller v. McCowan*, 64 Nev. 102, 108, 178 P.2d 380 (1947). The primary purpose for rehearing a motion is to inform the court that it has overlooked an important argument or fact or misunderstood a case or fact in the record. *See In re Ross*, 99 Nev. 657, 668 P.2d 1089 (1983).

Reconsideration may be brought when new issues of fact or law are brought. *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 p.2d 244, 246 (1976). If the decision set out law or facts which renders an opinion both "clearly erroneous" and "works manifest injustice" reconsideration is appropriate. *Masonry and Tile v. Joley Urga* 117 Nev. 737, 741 941 p2.2d 486, 489 (1997). While reconsideration should not be utilized as a vehicle to reargue matters considered and decided in the court's initial opinion, matters which have not been considered by the Court are properly the basis for reconsideration. *In re Ross*, 99 Nev. 657, 659, 668 P.2d 1089, 1091 (1983). The procedural and factual deficiencies in this matter are so overwhelming that this Court should reconsider its Order finding contempt.

1 **II. RECONSIDERATION IS PROPER NO CONTEMPT SHOULD HAVE BEEN**
2 **FOUND AS THE EVIDENTIARY BASIS IS LACKING**

3 Here, there is a foundational element required to be found which was not. It is instructive
4 to revisit the standards for seeking relief, and how they do not apply. While it is true that
5 contempt can be found by the court as either civil or criminal contempt, the requirements and
6 applications are not solely a matter of preference by the parties or the court.

7 Criminal contempt sanctions are punitive in nature, and act to punish a party for
8 disobeying a court directive. Rodriguez v. Eighth Judicial Dist. Court, 120 Nev. 798, 804-05,
9 102 P.3d 41, 45-46 (2004) Civil contempt is considered to be remedial in nature, as the purpose
10 of civil contempt is to coerce a party into future compliance with court orders. Id. at 805, 102
11 P.3d at 46. Further, civil contempt requires a conditional sanction which must contain a purge
12 clause allowing the party to resolve this sanction on their own. Lewis v. Lewis, 132 Nev., Adv.
13 Op. 46, 373 P.3d 878 (2016)

14 The different theories have different burdens of proof, but both have an evidentiary
15 hurdle which must be established. For criminal contempt, the allegations at issue must be
16 proven beyond a reasonable doubt. Hicks v. Feiock, 485 U.S. 624, 632, 108 S. Ct. 1423, 99 L.
17 Ed. 2d 721 (1988); Rodriguez, 120 Nev. at 804, 102 P.3d at 45. There are also protections such
18 as the sixth amendment right to counsel, the Fifth Amendment right not to take the witness stand,
19 and the right to demand a jury trial. United States v. Rylander, 714 F.2d 996, 998 (9th Cir. 1983)
20 It is clear the only evaluation here was whether civil contempt should be found.

21 For Civil contempt, allegations must be proven by clear and convincing evidence. In the
22 Matter of Battaglia, 653 F.2d 419, 422 (9th Cir. 1981). Pursuant to NRS 22.030(2), if the
23 "contempt is not committed in the immediate view and presence of the court or judge at
24 chambers, an affidavit must be presented to the court or judge of the facts constituting the
25 contempt." This principal is a long established proposition, with the Nevada Supreme Court
26 ruling over a century ago that the "petition or affidavit on which they are based must state facts
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1 showing contempt before the court has any jurisdiction to punish”. Cline v. Langan, 31 Nev.
2 239, 242, 101 P. 553, 553 (1909). A crucial determination is whether the party has the ability to
3 act, but willfully chooses not to do so. Rodriguez v. Eighth Judicial Dist. Court, 120 Nev. 798,
4 811, 102 P.3d 41, 50 (2004) (contempt found not because of any inability to pay, but in contrast,
5 because of willful refusal). In Resolution Economics’ application for contempt, the required
6 affidavit was not presented against either Defendant A Cab or Defendant Nady. On that basis
7 alone, their application should fail.

8 Nevertheless, the crucial issue regarding A Cab is whether it had the ability to act as
9 directed, but willfully and intentionally chose not to do so. When making this determination
10 there are factors which must be considered. In the context of civil litigation, the general rule is
11 the evaluation must be of the party’s then current financial status to determine their ability to pay,
12 taking into consideration “a party’s complete financial picture, balancing income and assets
13 against debts and liabilities”. Rodriguez v. Eighth Judicial Dist. Court, 120 Nev. 798, 806, 102
14 P.3d 41, 46-47 (2004). Thus, there must be an evaluation of whether or not given the resources
15 that were available, A Cab could have met its other obligations such as payroll, taxes and other
16 debts and still paid.

17 This should require an evaluation of the Party’s ability to pay at the time the Order was
18 entered into. Furthermore there certainly must be an evaluation of the party’s ability at the time
19 of the hearing. Here, prior to the entry of the instant order there was no evaluation of A Cab’s
20 ability to pay. There was no determination of its ability to pay in March 2018, May 2018 or
21 August 2018. But more importantly there was no determination of the ability to pay in
22 December of 2018. The only recognition by the court of the financial picture of A Cab was that
23 Plaintiff had garnished a substantial sum of money. Subsequently the report of Special Master
24 Swarts has confirmed the financial dire straits of A Cab, and the lack of ability to pay at any
25 specific time.¹⁰

26 ¹⁰ See Exhibit “C”, Report of Special Master Swarts.

1 A contempt sanction is improper if it is being used an execution tool to collect the
2 judgment. Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1480 (9th Cir. 1992)
3 (distinguishing between making payments and compliance with a discovery order). Here the
4 Special Master's application for contempt was based upon non-payment of the debt, rather than
5 non-compliance with discovery orders.

6 **III. RECONSIDERATION IS PROPER AS NO ALLEGATIONS WERE EVER**
7 **MADE REGARDING DEFENDANT NADY PERSONALLY.**

8 In addition to the arguments made above, as to Jay Nady personally, his actions
9 personally never came into the discussion. It was thus a shock and surprise when the Order of
10 the Court found Mr. Nady in contempt personally. It is hoped that this determination was
11 erroneous and not the actual determination of the Court. For not only do the arguments
12 regarding lack of evidence apply to Mr. Nady, he is further protected by the defense that he was
13 not ever personally ordered to pay the obligations to Special Master Resolution Economics.

14 A party subject to civil or criminal contempt sanction is entitled to notice and an
15 opportunity to be heard. Lasar v. Ford Motor Co., 399 F.3d 1101, 1109-10 (9th Cir. 2005).
16 Here, Mr. Nady was never advised that he had a personal and independent obligation to pay.
17 Nady does have an obligation to do what the law requires him to do as a representative of the
18 corporation. Wilson v. United States, 221 U.S. 361, 376, 55 L. Ed. 771, 31 S. Ct. 538 (1911)
19 However, this this does not make him personally liable for each and every debt of the
20 corporation. Trident Constr. Corp. v. W. Elec., Inc., 105 Nev. 423, 428, 776 P.2d 1239, 1242
21 (1989) (to hold liable requires process of Piercing corporate veil by evidence of sham and
22 causing significant injustice). And Mr. Nady cannot be held liable for contempt solely based
23 upon his position as an officer or employee of Defendant A Cab. See eg. Eureka Cty. Bank
24 Habeas Corpus Cases, 35 Nev. 80, 130, 126 P. 655, 671 (1912) (directors and officers of a bank
25 may not be punished unless they took independent bad acts).

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CONCLUSION

Based on the foregoing argument, Defendants respectfully requests that this Court enter an Order granting Defendants' Motion for Reconsideration and set aside the Order for Contempt to the extent it finds the Defendants in Contempt, pending further findings.

DATED this 25th day of February, 2019.

PREMIER LEGAL GROUP

By: /s / Jay A. Shafer
JAY A. SHAFER, ESQ.
Nevada Bar No. 9184
1333 North Buffalo Drive, Suite 210
Las Vegas, Nevada 89128
Telephone: (702) 794-4411
Fax: (702) 794-4421
jshafer@premierelegalgroup.com
Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 25th day of February, 2019 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

Peter Dubowsky, Esq.
Dubowsky Law Office, Chtd.
300 South Fourth Street, suite 1020
Las Vegas, Nevada 89101
Counsel for Resolution Economics, LLC

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

/s/Leta Metz
A Representative of PREMIER LEGAL GROUP

EXHIBIT A

EXHIBIT A



1 ORDR
Peter Dubowsky, Esq.
2 Nevada Bar No. 4972
Amanda Vogler-Heaton, Esq.
3 Nevada Bar No. 13609
DUBOWSKY LAW OFFICE, CHTD.
4 300 South Fourth Street, Suite 1020
Las Vegas, Nevada 89101
5 (702) 360-3500
Fax (702) 360-3515
6 Attorney for Special Master
Resolution Economics LLC
7

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 MICHAEL MURRAY, and MICHAEL RENO,) Case No.: A-12-669926-C
Individually and on behalf of others similarly
11 situated) Dept No.: I

12 Plaintiff,)

13 vs.)

14 A CAB TAXI SERVICE LLC, A CAB, LLC, and) Date: December 11, 2018
CREIGHTON J. NADY and DOES I-X and ROE) Time: 9:00 a.m.
15 CORPORATIONS I-X, inclusive)

16 Defendants)

Date: December 13, 2018

17 RESOLUTION ECONOMICS LLC) Time 10:30 p.m.

18 Special Master,)

19 vs.)

20 A CAB TAXI SERVICE LLC, A CAB, LLC,)
21 and CREIGHTON J. NADY and DOES I-X and)
ROE CORPORATIONS I-X, inclusive)

22 Defendants)
23

24 **JUDGMENT AND ORDER GRANTING RESOLUTION ECONOMICS'**
25 **APPLICATION FOR ORDER OF PAYMENT OF SPECIAL MASTER'S FEES AND**
ORDER OF CONTEMPT

1 Resolution Economics LLC ("Special Master") by and through its counsel of record,
2 Peter Dubowsky, Esq. of the DUBOWSKY LAW OFFICE, CHTD. having filed an Application
3 for an Order for the payment of its Special Master Fees in the amount of \$85,280.56, and an
4 Order of Civil Contempt; and this Court having heard the matter on December 11, 2018 and
5 December 13, 2018; and having heard the argument of counsel and statements of interested
6 parties, and good cause appearing therefor, the Court finds and orders as follows.

7 1. On February 7, 2018, this Court entered an Order Granting Plaintiffs' Motion to
8 Appoint a Special Master.

9 2. The February 7, 2018 Appointment Order stated in pertinent part the necessity of
10 the appointment of a Special Master:

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

20 3. The February 7, 2018 Order further commented on the complexity and
21 laboriousness of the Special Master's work:

22 Whether minimum wages are owed for any particular pay period is quite simple
23 when the relevant information (Hours worked and wages paid) is known. But in
24 this case the information must be gathered from over 200,000 trip sheets, a
25 complex process simile, performing the calculation on many thousands of pay
periods for approximate 1000 class members is also complicated and laborious.

4. This Court then went on to enumerate the "complicated and laborious" job
required of the Special Master.

5. On February 13, 2018, this Court entered an Order Modifying Court's Previous
Order of February 7, 2018 appointing a Special Master. The February 13, 2018 Modification
Order stated, in pertinent part:

1 The Court is extremely concerned with the passage of time in this matter for
 2 reasons previously expressed. In order to prevent one more issue from injecting
 3 itself into these proceedings, and in light of the possibility that any local firm may
 4 trigger another objection due to purported conflicts of interest, the Court rescinds
 its appointment and its selection of Mr. Rosten of Piercy Bowler Taylor & Kerns,
and selects Dr. Ali Saad of Resolution Economics to be the Special Master in this
case. (emphasis added)

5 6. On or around March 2, 2018, Defendants filed a Motion For Stay On an Order
 6 Shortening Time, claiming *inter alia*, an inability to pay the Special Master the initial \$25,000.00
 7 required by previous court order.

8 7. On March 6, 2018, this Court entered a Minute Order stating in pertinent part:

9 In the meantime [not longer than approximately 3 weeks] the Special Master is
 10 directed to cease all efforts to complete the task previously ordered by this Court
 11 until further order of this Court. Additionally, because there will be a breathing
 12 space of approximately three weeks the Defendants should well be able to set
aside the initial \$25,000 deposit, and are ordered to do so. (emphasis added)

13 8. On May 23, 2018 the Court Ordered:

14 This case needs to go forward and the Court is disinclined to hold up the matter
 15 for non-payment to the special master. COURT FURTHER ORDERED,
\$41,000.00 MUST be posted with the Clerk of the Court and the defendant is to
be present at the next hearing to show proof of the posting. (emphasis added)

16 9. On August 21, 2018, this Court entered its Order Granting Summary Judgment,
 17 Severing Claims, and Directing Entry of Final Judgment ("Judgment Order), in which this Court
 18 reiterated the Defendants' failures to comply with its Orders. The Judgment Order stated in
 19 pertinent part:

20 The Court . . . via Orders entered on February 7, 2018 and February 13, 2018,
 21 appointed a Special Master . . . The Court directed that A Cab pay for such Special
 22 Master because of A Cab's failure to maintain proper records under NRS 608.115,
 23 and to deposit \$25,000 with the Special Master as a payment towards the cost of
 24 their work. . . . A Cab failed to make such payment within the time period
 25 specified by the Court. As a result, the Special Master advised the Court that they
 have incurred \$41,000 in costs towards their completion of their assignment and
 will not proceed further with that assignment until they are in receipt of sufficient
 assurances that they will be paid for their work. The Special Master has budgeted
 \$180,000 as the projected total cost to complete their assignment. (Judgment
 Order Page 7 lines 7-25)

1 10. The Judgment Order further stated that "A Cab proposed no cure for its violation
2 of the Court's Orders appointing the Special Master. It did not state when, if ever, it intended to
3 comply with those Orders." (Judgment Order Page 9 lines 1-3)

4 11. The Court went on to find that the Defendants were in contempt, "

5 [T]he Court finds that Defendants' persistent failure to comply with Court orders
6 . . . warrants holding defendants in contempt . . . (Judgment Order Page 28 lines
7 20-22)

8 The willfulness of A Cab in disregarding the Court's Orders appointing a Special
9 Master is apparent and A Cab's **** its failure to comply with those Orders is a
10 result of a financial inability to pay the Special Master cannot be properly
11 considered and its evidence to establish same is deficient. If A Cab truly lacks the
12 financial resources to comply with those Orders it has a remedy under the United
13 States Bankruptcy Code to seek the protection of the Bankruptcy Court which is
14 empowered to relieve it from those Orders and oversee the proper disposition of
15 whatever financial resources it does possess. It has declined to do so and
16 continues to do business and defend this case in this Court. Having elected to do
17 so, it must comply with this Court's Orders or face the consequences of its failure
18 to do so. (Judgment Page 31 lines 1-10)

19 12. In this case, as all counsel will recognize, probably painfully so, we have been at
20 pains to try and come to a resolution that was fair and just to both sides. All of this happens
21 within the framework or the context, in my mind, of a lawsuit that is filed to vindicate
22 constitutional rights. I've already commented before about -- what my opinion would be about
23 is it a good idea overall to include your minimum wage act in the constitution of the state. It
24 doesn't matter what I think. The people of this state determined that it was of sufficient
25 importance they put it in the constitution. Now, that means something to me and it also informs
the Court as to what powers it needs to exercise, both legal and equitable powers, in order to
determine if these rights have been violated, and secondarily to, as much as possible, undo the
violation and get them paid. At length the Court determined that the defendants simply were not
willing to produce any evidence on their own. At most every turn the response that I heard was,
well, it's only the time sheets, only the time sheets. But the defendant did not put forward any
calculations based on the time sheets, and so ultimately because of the passage of time in this

1 litigation the Court determined that we're going to have to go back and revisit a motion that had
2 been brought by the plaintiffs earlier, much earlier. And to say that the defendants were
3 blindsided by it I don't think is really accurate. It was argued, fully argued, briefed and argued
4 by both sides when it was first proposed by the plaintiff. Simply it was the case that it became
5 more obvious to the Court ultimately that something like that, as drastic and perhaps as expensive
6 as that was the only way that we were going to get down to having the best evidence, according
7 to the defendants, of what was owed. And so the Court ordered it and ordered that the defendant
8 would pay the cost because it was -- the Court had already at that point determined that there had
9 been a violation of the constitutional provisions regarding minimum wage; that there was indeed
10 liability and the question was what the amount of the damages would be. In preparing for today
11 I've gone back and looked at virtually all of the minute orders recounting the efforts of both sides
12 and the Court in this case for the last at least year or perhaps more, and what I see is that the
13 Court ordered the defendant to pay the first \$25,000. The defendant came and protested and said
14 that it couldn't and put some forward some figures, I believe, to try and show the Court that it
15 couldn't. Well, in hindsight what I see it was saying was that it couldn't afford to, that it didn't
16 fit in its budget to pay such fees. Before I -- well, ultimately the Court realized that the defendant
17 was simply refusing to pay it. They had the money. The Court ordered \$25,000 and then later
18 \$41,000 based upon an estimate, I believe. On March 6th the Court ordered that \$25,000 be paid.
19 On May 23rd, the Court ordered that \$41,000 be paid. Still, there was nothing from the
20 defendants to really show that the defendant was not able to pay. And as I said, ultimately I
21 concluded that what the defendant was really saying was not that they didn't have the money but
22 that they didn't want to pay it because they had other business expenses. Then on September 11th
23 a writ of execution was filed and lo and behold the defendants were in possession of somewhat
24 over \$233,000 in cash. It is frankly ludicrous for the defendants to claim that they do not have
25 the money. At that point that was clear. And while the defendants may argue, yeah, but that's all

1 gone, that was tied up, well, the defendant is still operating its business. It still has income coming
2 in. It has made -- this record is devoid of evidence that shows that the defendants could not pay
3 the money, that they did not have the money, and that's in the face of a Court order, several Court
4 orders. And as was already touched upon, there was a stay put in place. The Court was
5 constantly trying to -- I think my comment during one or more of the hearings was trying not to
6 kill the goose that lays the golden egg. And it has all come to naught and this Court cannot help
7 but find that in the course of protesting loudly having to pay anything, the defendant has just flat
8 violated Court orders and refused -- not that they couldn't -- they refused to pay the \$25,000 or
9 the \$41,000, or as was just argued by Mr. Dubowsky, in fact anything. Not a penny one has been
10 paid and tendered. This is a willful violation of a Court order.

11 13. The Court had the proper authority under N.R.C.P. 53 to appoint Resolution
12 Economics as Special Master. The Defendants incurred Special Master Fees of \$85,280.56,
13 which shall be deemed the amount fixed by this Court.

14 CONTEMPT OF COURT

15
16 Based on the foregoing, and upon answer and evidence taken, the Court finds Defendants,
17 both A CAB, TAXI SERVICE LLC, A CAB, LLC and CREIGHTON J. NADY individually,
18 guilty of contempt of Court for disobedience and/or resistance to this Court's lawful Orders to
19 pay the Special Master's compensation. This Court is reserving ruling on both the civil and
20 criminal penalties for Defendants' contempt. The Court reserves the right to hold Defendants in
21 Civil Contempt to coerce and/or compel the Defendants' future compliance. The Court reserves
22 the right to hold Defendants in criminal contempt and impose a fine on Defendants for \$500.00
23 and/or imprison Creighton J. Nady for up to 25 days.

24 ///

25 ///

///

JUDGMENT

Special Master, RESOLUTION ECONOMICS LLC, shall be awarded Judgment for compensation fixed by the Court, pursuant to N.R.C.P. 53, in the amount of \$85,280.56 against Defendants, A CAB TAXI SERVICE LLC, A CAB, LLC and CREIGHTON J. NADY individually, plus attorney's fees in the amount of \$9,500.00, pursuant to N.R.S. §22.100(3), with statutory interest accruing on the total foregoing until this Judgment is satisfied. The Special Master shall be entitled to all rights and remedies to enforce this Judgment against the delinquent Defendants, A CAB TAXI SERVICE LLC, A CAB, LLC and CREIGHTON J. NADY individually.

Dated: Jan 18, 2019

Kenneth R. Berry
DISTRICT COURT JUDGE

Respectfully submitted,

DUBOWSKY LAW OFFICE, CHTD.

By: [Signature]

Peter Dubowsky, Esq.
Nevada Bar No. 4972
Amanda C. Vogler-Heaton, Esq.
Nevada Bar No. 13609
300 South Fourth Street, Suite 1020
Las Vegas, Nevada 89101
(702) 360-3500
Attorney for Special Master
Resolution Economics LLC

EXHIBIT B

EXHIBIT B

Steven D. Grierson

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-66926-C

DEPT.: I

ORDER GRANTING SUMMARY
JUDGMENT, SEVERING CLAIMS,
AND DIRECTING ENTRY OF FINAL
JUDGMENT

Hearing Date: June 5, 2018
Hearing Time: 3:00 p.m.

On June 5, 2018, with all the parties appearing before the Court by their respective counsel as noted in the record, the Court heard argument on plaintiffs' motion filed on April 17, 2018 on an Order Shortening Time seeking various relief ("Plaintiffs' Motion"), including the holding of defendants in contempt for their violation of the Court's prior Orders appointing a Special Master; granting partial summary judgment to the plaintiffs pursuant to their motion filed on November 2, 2017; striking defendants' answer, granting a default judgment, and directing a prove

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Dismissal Without Prejudice	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Judgment of Arbitration	

Case Number: A-12-66926-C

up hearing. Certain portions of Plaintiffs' Motion, not further discussed in this Order, were resolved pursuant to other Orders issued by the Court and at a hearing held on May 23, 2018. The Court grants plaintiffs' motion, to the extent indicated in this Order; it Orders a severance of the previously bifurcated claims against defendant Creighton J. Nady ("Nady"); and it Orders entry of final judgment against defendants A Cab Taxi Service LLC and A Cab, LLC (collectively "A Cab") and other relief as indicated herein.

RELEVANT PRIOR HISTORY - CLASS CERTIFICATION

On February 10, 2016 the Court initially granted class action certification under NRCP Rule 23(b)(2) and (b)(3) of claims made in this case pursuant to Article 15, Section 16 of the Nevada Constitution, the Minimum Wage Amendment (the "MWA") and for penalties under NRS 608.040 alleged to have arisen in favor of certain class members as a result of such MWA violations. The class so certified in that Order was, for purposes of damages under NRCP Rule 23(b)(3), composed of current and former taxi driver employees of defendant A-Cab from July 1, 2007 through December 31, 2015, and for appropriate equitable or injunctive relief under NRCP Rule 23(b)(2) from July 1, 2007 to the present and continuing into the future. Via subsequent Orders the Court modified and amended that initial class certification order pursuant to NRCP Rule 23(c)(1). Via its Order entered on November 21, 2016, it granted class certification under NRCP Rule 23 of the third and fourth claims for relief, first made in the Second Amended and Supplemental Complaint filed on August 19, 2016 and made solely against defendant Nady based upon "alter ego" and similar allegations. Via its Order entered on June 7, 2017, it limited the membership in the class for the period of July 1, 2007 through October 8, 2010 and dismissed certain class members and claims under the MWA accruing during that time period. It did so consistent with the Nevada Supreme Court's ruling in *Perry v. Terrible Herbst*,

1 Inc., 383 P.3d 257 (Nev. Sup. Ct. 2016) on the MWA's applicable statute of
2 limitations and what the Court found was the proper granting of an equitable toll of
3 the statute of limitations under the MWA for certain class members.
4

5 FINDINGS SUPPORTING RELIEF GRANTED BY THE COURT 6

7 The Court makes the following findings of fact and law supporting the relief
8 granted by this Order. The recited findings are not necessarily all of the findings that
9 would appropriately support the relief granted based upon the extensive record
10 presented, but they are the ones of fact and law that the Court believes provide at least
11 minimally sufficient support for its decision to grant the relief set forth in this Order:
12

- 13 1. A Cab was an employer of the class members during the time period at
14 issue and was required to pay the class members the minimum wage
15 specified by the MWA.
16
- 17 2. A Cab used Quickbooks computer software to prepare the paychecks
18 issued to the class members during the class period. A record of the
19 gross wages paid by A Cab to every class member during every pay
20 period exists in the Quickbooks computer files maintained by A Cab.
21 The Court Ordered A Cab to produce those records to the plaintiffs'
22 counsel and A Cab provided certain Excel files to the plaintiffs' counsel
23 in compliance with that Order.
24
- 25 3. A Cab used a computer software system called Cab Manager in which it
26 recorded the activities of its taxi cabs and the class members. The Cab
27 Manager software created a computer data file record indicating that a
28

1 particular class member worked, meaning they drove a taxi cab, on a
2 particular date. The Court Ordered A Cab to produce its Cab Manager
3 computer data file records to the plaintiffs' counsel and A Cab provided
4 those computer data files to the plaintiffs' counsel in compliance with that
5 Order.
6

- 7 4. Pursuant to NRS 608.115(1)(d), A Cab was required to maintain a record
8 of the total hours worked by each class member for both each day they
9 worked and for each pay period. NRS 608.115(2) required A Cab to
10 furnish to each employee the information required by that section within
11 10 days after the employee submits a request. A Cab had this obligation
12 throughout the entire period of July 1, 2007 through December 31, 2015
13 during which the class members' damages under the MWA are at issue
14 (the "Class Period").
15
- 16 5. Except for the period between January 1, 2013 and December 31, 2015, A
17 Cab has not produced any record of hours worked by the class members
18 that it can properly claim complies with any of the requirements of NRS
19 608.115(1)(d).
20
- 21 6. For the period between January 1, 2013 and December 31, 2015, the
22 Excel files produced by A Cab and discussed in ¶ 2 set forth an amount of
23 hours worked by each class member during each pay period. A Cab gave
24 testimony at an NRCP Rule 30(b)(6) deposition, the relevant excerpts
25 being placed in the record, that its Quickbooks records for that time
26 period contained an accurate statement of the total hours worked by each
27 class member during each pay period. Plaintiffs do not agree that such
28

Quickbooks hours of work are fully accurate, but insist A Cab should be bound by its testimony that such hours of work are accurately set forth in those Quickbooks records. The Court agrees and finds A Cab cannot dispute that the Quickbooks records it produced for the period between January 1, 2013 and December 31, 2015 contain an accurate statement of the hours worked during each pay period by each class member.

7. Except for the Quickbooks records discussed in ¶ 6, the only information that A Cab admits possessing on the hours worked by the class members during the Class Period is information in paper "trip sheets" that its taxi drivers are required to complete each work shift. Those trip sheets, when properly completed and legible, will be time stamped with the taxi driver's shift start time and shift end time for a workday and will also indicate periods of time that the taxi driver recorded themselves as being on a break and not working during that workday. A Cab has repeatedly asserted that those trip sheets contain an accurate record of the hours worked by every class member and can, and should, be relied upon to determine their hours of work.

8. The trip sheets in the possession of A Cab, to the extent they contain accurate information, do not meet the requirements of NRS 608.115(1)(d) or NRS 608.115(2). They are not a record of a total amount of hours or fractions thereof worked in a pay period or in a workday by an individual taxi driver. They are, at most, a record from which such information could be obtained by further examination and calculation, however such examination and calculation could not, and was not, furnished within 10 days as required by NRS 608.115(2). Assuming a trip sheet is accurate, ⁵

by examining the start time and end time of each trip sheet and calculating the interval between those two times a workday length could be ascertained. After deducting any non-working break time recorded on the trip sheet from that workday length, the total amount of time worked by the taxi driver for that workday could be determined.

9. The requirements of NRS 608.115(1)(d) are mandatory for employers and compliance with those requirements are of critical importance to the MWA.¹ Whether an employer has paid the minimum wage required by the MWA during a particular pay period requires an examination of both the wages paid to the employee and the hours they worked during the pay period.² A Cab's failure to maintain the records required by NRS 608.115(1)(d) prior to 2013, unless remedied, would render a pay period by pay period accounting of its MWA compliance, based upon an exact record of the hours worked by and wages paid to each individual class member, impossible for the period prior to 2013.

10. The MWA, being a provision of the Nevada Constitution, commands and requires vigorous enforcement by this Court. By its express language it confers upon employees a right to "....be entitled to all remedies available

¹ A Cab was also advised on April 30, 2009 by an investigator for the United States Department of Labor that it "must keep a record of actual hours worked" of the class members. See, Plaintiffs' Motion for Class Certification filed May 19, 2015, "Ex. 1B." While the absence of such an advisement would not relieve A Cab of its duty to keep the records required by NRS 608.115(1)(d), such history would support a conclusion that A Cab's failure to maintain those records was intentional and designed to render any future minimum wage law enforcement less effective.

² An exception exists if the wages paid are large enough to render an MWA violation impossible. A week only contains 168 hours and a weekly wage of \$1,218 would establish minimum wage compliance at \$7.25 an hour ($168 \times 7.25 = \$1,218$).

under the law or in equity appropriate to remedy any violation...³ of its provisions. As a result, A Cab's failure to maintain the records required by NRS 608.115(1)(d) can be neither minimized nor tolerated and cannot be allowed to frustrate the enforcement of the class members' rights secured by the MWA.

11. The Court, in response to its foregoing findings, and in furtherance of its obligation under the MWA, via Orders entered on February 7, 2018 and February 13, 2018, appointed a Special Master in this case who was tasked with reviewing the trip sheets in the possession of A Cab and creating the record of hours worked per pay period for each class member required by NRS 608.115(1)(d). The Court directed that A Cab pay for such Special Master because of A Cab's failure to maintain proper records under NRS 608.115, and to deposit \$25,000 with the Special Master as a payment towards the cost of their work. At that stage in litigation, it would not have been equitable nor justified to require Plaintiffs to pay for work performed by the Special Master when it was Defendant A Cab's failure to comply with NRS 608.115. A Cab failed to make such payment within the time period specified by the Court. As a result, the Special Master advised the Court that they have incurred \$41,000 in costs towards their completion of their assignment and will not proceed further with that assignment until they are in receipt of sufficient assurances that they will be paid for their work. The Special Master has budgeted \$180,000 as the projected total cost to complete their assignment.

³ Nevada Constitution, Article 15, Section 16 (B).
7.

12. In assessing the character of A Cab's conduct, it is instructive to note that A Cab did not make, or offer to make, an *admissible* showing of its financial position in order to evidence that it was unable to make such payment. Rather, it relied solely on its strenuous protests and summary balance sheet buttressed only by the self-serving affidavit of Defendant Nady.

13. The Court, in a minute Order issued on March 6, 2018, noted its awareness of A Cab's failure to pay the then overdue \$25,000 deposit to the Special Master and A Cab's communication with the Court advising it was experiencing financial difficulties and claiming it did not currently possess the funds to make that payment. For unrelated reasons the Court in that Order stayed this case, suspended the Special Master's work, and granted A Cab additional time to raise the funds needed to pay the Special Master during the pendency of that stay. Via a minute Order on May 22, 2018 the Court lifted that stay.

14. On May 23, 2018, June 2, 2018, and June 5, 2018 the Court conducted hearings in connection with Plaintiffs' Motion and also received various written submissions from A Cab and plaintiffs' counsel regarding A Cab's failure to pay the Special Master. The result of those hearings and submissions, in respect to the status of the Special Master and A Cab's payment to him for the completion of his work, was that A Cab either will not or cannot make any payment to the Special Master. Except for urging this Court to stay this case, and await the conclusion of certain other proceedings that A Cab asserts will narrow the class claims in this

case, A Cab proposed no cure for its violation of the Court's Orders appointing the Special Master. It did not state when, if ever, it intended to comply with those Orders or propose any other method for the Court to properly, promptly and appropriately bring this case to conclusion.

15. The conduct of A Cab in violating the Court's Orders appointing a Special Master is not the first instance of A Cab violating the Court's Orders or engaging in documented litigation misconduct in this case. On March 4, 2016 the Court, over A Cab's objections, entered an Order adopting the Report and Recommendation of the Discovery Commissioner sanctioning A Cab \$3,238.95 for obstructing discovery. The Court made specific and detailed findings in that Order in respect to A Cab's failure to produce the Quickbooks and Cab Manager computer data files; A Cab's delay in producing such materials during the eight months plaintiffs motion to compel their production had been pending; A Cab's compelling of the unnecessary deposition of a non-party witness in respect to the production of the Cab Manager records; and the abusive and inexcusable conduct of defendant Nady as an NRCp Rule 30(b)(6) deposition witness. As reflected at pages 2 and 3 in the transcript of the hearing held on November 18, 2015 by the Discovery Commissioner that resulted in such Order, the Discovery Commissioner's review of that deposition transcript raised extremely serious concerns about the defendants' inexcusable conduct.⁴

⁴ The Discovery Commissioner advised defendants of her concern at that time that defendant's conduct, if it continued, might result in some form of default judgment. "It was inexcusable, what your client called plaintiffs' counsel during the deposition, which I will not repeat in open court. Inexcusable, almost to the point where I'm not sure he should be allowed to be a Defendant in the 8th Judicial District Court-- that's how serious this is-- because I have no confidence in what he's-- how he's answering questions."

16. The Court has made every effort to fashion a method for the fair, just, and most precise disposition of the MWA claims in this case in light of A Cab's failure to maintain a record of the hours worked per pay period of each class members as required by NRS 608.115(1)(d). It is not disputed that an accurate record exists in A Cab's Quickbooks computer files of the amount of wages paid every pay period to every class member. If the records required by NRS 608.115(1)(d) had been maintained, disposition of the "lower tier" (currently \$7.25 an hour) MWA claims in this case would be a matter of simple arithmetic. In response to A Cab's insistence that the hours of work information required by NRS 608.115(1)(d) can be accurately ascertained by examining and performing calculations on the trip sheets, albeit not within 10 days as required by NRS 608.115(2), the Court appointed a Special Master. Yet A Cab's failure to pay the Special Master, or propose any other process, such as the application of statistical sample or other reasonable methodology as a substitute would, unless other measures were taken by the Court, render a recovery for the class members on their MWA claims impossible. That would appear to be precisely what A Cab's conduct is designed to achieve.

17. A Cab's argument that the only way to determine the class members' hours of work is to examine every one of their trip sheets, and that it should be the burden of the plaintiffs' themselves (or more properly their appointed class counsel) to bear the expense of doing so, cannot be adopted by the Court, and is inapposite under the guidance provided by *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946),¹⁰

1 superseded by statute on other grounds, 29 U.S.C. § 254(a) ("When the
2 employer has kept proper and accurate records the employee may easily
3 discharge his burden by securing the production of those records. But
4 where the employer's records are inaccurate or inadequate and the
5 employee cannot offer convincing substitutes a more difficult problem
6 arises. The solution, however, is not to penalize the employee by denying
7 him any recovery on the ground that he is unable to prove the precise
8 extent of uncompensated work. Such a result would place a premium on
9 an employer's failure to keep proper records in conformity with his
10 statutory duty; it would allow the employer to keep the benefits of an
11 employee's labors without paying due compensation"). Doing so would
12 serve to reward A Cab for its violation of NRS 608.115(1)(d) by shifting
13 the now considerable burden and cost of ascertaining the class members'
14 hours of work onto the plaintiffs' themselves. It is A Cab that should
15 properly bear that burden and expense and it was directed to do so
16 through the offices of the Special Master that it has failed to pay.

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18. In resolving MWA claims where no record of the total hours of work of
the employees per pay period exists as required by NRS 608.115(1)(d), or
such an amount cannot be precisely calculated in every instance (in this
case as a result of A Cab's failure to pay the Special Master), the Court
must adopt a reasonable approximation of those hours of work and
fashion an award of unpaid minimum wages based upon that
approximation even though the amount so awarded is not exact. See,
Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 685-88 (1946) ("The
employer cannot be heard to complain that the damages lack the
exactness of measurement that would be possible had he kept records....")
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Bell v. Farmers Ins. Exchange, 115 Cal. App. 4th 715, 750 (Cal. Ct. App.,
1st Dist. 2004) and other cases. Applying any approach other than the
one adopted by *Mt. Clemens* would frustrate the purposes of the MWA
and make effective enforcement of the Nevada Constitution's right to a
minimum wage impossible.

19. In support of their motion for partial summary judgment ("plaintiffs'
MPSJ"), filed on November 2, 2017, the plaintiffs rely on portions of an
Excel file that contain information for the time period of January 1, 2013
through December 31, 2015, such information for that time period being
compiled from the Quickbooks records produced by defendants. That
Excel file, "ACAB-ALL," was created by Charles Bass whose work
doing so was reviewed by Terence Clauretie Ph.D. and the subject of his
report, at Ex. "B" of plaintiffs' MPSJ, which was furnished to A Cab
along with the "ACAB-ALL" Excel file. Both Dr. Clauretie and Charles
Bass were designated as expert witnesses by the plaintiffs and deposed by
the defendants in that capacity.

20. The "A CAB ALL" Excel file created by plaintiffs contains various types
of information taken from the Quickbooks and Cab Manager computer
data files produced by A Cab to plaintiffs. As germane to this Order, it
summarizes that information for the period October 8, 2010 through
December 31, 2015 and makes calculations on that information, in
respect to the following:

- (a) In respect to every pay period, it sets forth the amount of
wages paid by A Cab to the class member as recorded in A
12.

1 Cab's Quickbooks records and the number of shifts they
2 worked during the pay period as recorded in A Cab's Cab
3 Manager records (the "shifts worked");
4

5 (b) For the period January 1, 2013 through December 31, 2015,
6 it sets forth the amount of hours worked by the class member
7 for each pay period as recorded by A Cab's Quickbooks
8 records (the "payroll hours");
9

10 (c) By dividing the class member's wages paid per pay period by
11 the recorded payroll hours worked per pay, for the period
12 January 1, 2013 through December 31, 2015, it calculates the
13 amount, if any, that the class member's wages were below
14 the \$7.25 an hour requirement for each pay period;
15

16 (d) It allows the user of the Excel file to enter a "shift length"
17 amount that it applies as a uniform length to every shift
18 worked during every pay period from October 8, 2010
19 through December 31, 2012. It then, based upon that
20 selected shift length, calculates the amount, if any, that the
21 class members' wages were below the \$7.25 an hour
22 requirement for each pay period.
23

24 21. A Cab argues that the "A CAB ALL" Excel file is inaccurate and
25 the calculations it makes cannot be relied upon but it cites no error
26 in any calculation it purports to perform. That Excel file was
27 furnished to defendants and examined by their own expert, Scott
28 ^{13.}

1 Leslie, who testified at his deposition, the relevant excerpts being
2 presented to the Court, that he concurred with Dr. Laurette's
3 finding that the calculations it made were arithmetically correct. A
4 Cab also argues it cannot be sure the information contained in the
5 "A CAB ALL" Excel file and upon which its calculations rely (the
6 payroll hours worked recorded in the Quickbooks records from
7 January 1, 2013 through December 31, 2015, the wages paid, and
8 the shifts worked, during each pay period for each class member) is
9 accurately taken from A Cab's Quickbooks and Cab Manager
10 records. Yet it has not provided to the Court a single instance
11 where its records contain information that conflicts with the per
12 pay period information set forth in the "A CAB ALL" Excel file.
13

14 22. Plaintiffs assert the "ACAB ALL" Excel file, and the work of
15 Charles Bass in placing information from A Cab's Quickbooks and
16 Cab Manager files in that Excel file and performing calculations on
17 that information, is a "summary or calculation" of A Cab's
18 voluminous records pursuant to NRS 52.275 though Charles Bass
19 is also designated as an expert witness. It asserts the calculations
20 made by the "ACAB ALL" Excel file are properly considered on
21 that basis. A Cab asserts that the "ACAB ALL" Excel file's
22 calculations are not properly considered under NRS 52.275 or on
23 any other basis and that neither Charles Bass nor Dr. Laurette are
24 properly qualified as expert witnesses. The calculations made by
25 the "ACAB ALL" Excel file are not the product of any expert
26 "opinion." They involve simple arithmetic, dividing an amount
27 paid per pay period by a number of hours worked per pay period
28 ^{14.}

1 and calculating the amount, if any, that such resulting number is
2 less than \$7.25 an hour. The plaintiffs, based upon Dr. Lauretie's
3 report of the detailed review he conducted of how Charles Bass
4 assembled the "ACAB ALL" Excel file, and the declaration of
5 Charles Bass, have met their *prima facie* burden of showing that
6 such Excel file contains information properly assembled from the
7 Quickbooks and Cab Manager computer files produced by A Cab
8 pursuant to the Court's Order. A Cab has provided no contrary
9 evidence identifying even a single instance in the many thousands
10 of pay periods set forth in the "ACAB ALL" Excel file where it
11 contains either inaccurate information that does not match A Cab's
12 records or incorrect arithmetic calculations. Accordingly, the
13 Court finds that the calculations made by the "ACAB ALL" Excel
14 file are properly relied upon and constitute facts which are
15 undisputed by any evidence to the contrary and may be properly
16 relied upon by the Court, both to establish liability and to establish
17 the amount of damages..

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23. Plaintiffs have also furnished to defendants on September 29, 2017
an Excel File "Damages 2007-2010" with the Supplemental Expert
Report (Declaration) of Charles Bass of September 27, 2017.⁵
That "Damages 2007-2010" Excel file, as discussed in the
September 27, 2017 declaration of Charles Bass, performs
calculations in a fashion identical to the "A CAB ALL" file by
allowing the assignment of a uniform "shift length" to every shift

⁵ This document, but not the Excel file, is introduced into the record at Ex. "A" of the
declaration of class counsel filed on June 20, 2018.
15

1 worked by a class member during a pay period. It also contains the
2 same information in respect to wages paid and shifts worked for
3 that time period for each pay period for each class member, as
4 taken from A Cab's Quickbooks and Cab Manager computer files.
5 It was assembled using the same process reviewed by Dr. Lauretie
6 and discussed in his report in respect to the "A CAB ALL" file. A
7 Cab has not disputed the accuracy of any calculations made in, or
8 information contained in, the "Damages 2007-2010" Excel file.
9 For the reasons discussed in ¶ 22, the Court finds that the
10 calculations made by the "Damages 2007-2010" Excel file are
11 properly relied upon and constitute facts undisputed by any
12 counter evidence from A Cab.

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24. The "ACAB ALL" Excel file, for the 14,200 pay periods it
examines for the time period January 1, 2013 through December
31, 2015, calculates that the class members' average shift length
(average working time per shift) was 9.21 hours. It arrived at that
figure based upon A Cab's payroll hours worked Quickbooks
records and the total number of shifts class members were recorded
as working by A Cab's Cab Manager records. A Cab does not
dispute that is an accurate figure and Dr. Lauretie, in his report,
verifies its accuracy. A Cab's expert, Scott Leslie, in connection
with his rebuttal expert report,⁶ for which he was paid \$47,203,⁷

⁶ This report is introduced into the record at Ex. "B" of the declaration of class
counsel filed on June 20, 2018 who, in that declaration, also states the particulars
contained in the report regarding the average shift length shown by the trip sheet
review conducted by Mr. Leslie.

⁷ Ex. "B" of the declaration of class counsel filed on June 20, 2018.
16

undertook to examine the actual trip sheets of class members for 56 pay periods between January 1, 2013 and December 31, 2015 and concluded that, on average, each shift worked by each class member during those 56 pay periods consisted of 9.5 hours of working time. He also undertook an examination of the actual trip sheets of class members for 38 pay periods between October 8, 2010 and December 31, 2012 and concluded that, on average, each shift worked by each class member during those 38 pay periods consisted of 9.8 hours of working time. He concluded that the average shift length was 9.7 hours of working time for all of the trip sheets he examined for 123 pay periods. Plaintiffs submitted declarations from three class members indicating that class members were, in most instances, assigned to work 12 hour shifts; they typically worked shifts of 11 hours or longer in length after deducting their break time; that class members took few breaks during their shifts or averaged breaks of less than one hour in length during a shift; and unless a taxi broke down a shift was at least 10 hours long. See, Ex "F" and "O" plaintiffs' motion for class certification filed May 19, 2015, Ex. "B" of opposition to defendants' motion for summary judgment filed December 14, 2017. A Cab, through Nady, pursuant to an NRCPP Rule 30(b)(6) deposition notice directed to the topic, testified it could only provide a "guess" as to the average amount of time worked by the class members each shift. See, plaintiffs' motion in limine filed December 22, 2017 at Ex. "J" and "K."

25. Plaintiffs' MPSJ includes the calculations made by the "ACAB

ALL" Excel file using A Cab's Quickbooks payroll hours for the 2013-2015 time period in respect to unpaid minimum wages owed at the \$7.25 an hour "lower tier" minimum wage rate (Column "K" to Ex. "D" to that motion, showing its examination of each of 14,200 pay period and consisting of 375 pages). It also includes a consolidated statement of the amount, if any, of unpaid minimum wages owed to each class member at \$7.25 an hour (Column "D" to Ex. "E" listing 548 class members stretching over 19 pages).

26. Plaintiffs have introduced into the record the following:

- (a) The amounts owed at \$7.25 an hour, if any, using the "ACAB ALL" Excel file for the period October 8, 2010 through December 31, 2012 for each of 9,759 pay periods and to each of 527 class members when a constant shift length of 9.21 hours per shift is used to make those calculations;⁸
- (b) The amounts owed at \$7.25 an hour, and prior to July 1, 2010 at the applicable "lower tier" minimum wage which was less than \$7.25 an hour, if any, using the "Damages 2007-2010" Excel file for the period July 1, 2007 through October 7, 2010 for each of 13,948 pay periods and to each of 378 class members when a constant shift length of 9.21

⁸ These are introduced into the record at Ex. "3" and Ex. "4" to Ex. "C" of the declaration of class counsel filed on June 20, 2018.

hours per shift is used to make those calculations;⁹

(c) A consolidated chart listing the amounts owed to each class member when the amounts detailed in ¶ 25 and ¶ 26(a) and ¶ 26(b) are combined.¹⁰

27. On November 5, 2014, A Cab and Nady entered into a consent judgment in the United States District Court for the District of Nevada with the United States Department of Labor that provided for the payment by A Cab of \$139,988.80 to resolve certain claims for unpaid minimum wages owed under the Fair Labor Standards Act for the time period October 1, 2010 through October 1, 2012. See, Plaintiffs' Motion for Class Certification filed May 19, 2015, Ex. "A." That consent judgment included a list of persons, A Cab employees who are also class members in this case, who were subject to that consent judgment and were to receive portions of such \$139,988.80 payment in amounts determined by the United States Secretary of Labor. *Id.* Such consent judgment does not, by its terms, or by operation of law, either preempt or resolve the MWA claims made in this case. A Cab, in its Answers filed with the Court, has raised a Twenty-Third Affirmative defense of accord and satisfaction. Plaintiffs served an interrogatory request seeking details of that defense, including the amounts paid to the class

⁹ These are introduced into the record at Ex. "1" and Ex. "2" to Ex. "C" of the declaration of class counsel filed on June 20, 2018.

¹⁰ These are introduced into the record at Ex. "5" to Ex. "C" of the declaration of class counsel filed on June 20, 2018. ¹⁹

members alleged by A Cab to support such defense.¹¹ A Cab referenced the consent judgment case in its interrogatory answer, but provided no information on the amounts so paid under the same to any particular class members. It also referred to its production of documents that it implied may contain such information.

Plaintiffs' counsel asserts it has not been provided with documentation from A Cab of the amounts so paid, in respect to the exact amount paid to each individual involved class member and not the entire \$139,988.80, though it does believe some such amounts were paid.¹²

28. In response to plaintiffs' counsel's assertions regarding the United States Department of Labor ("USDOL") settlement, A Cab, in its "Supplemental Authority In Response to Declaration of June 20, 2018," filed on July 10, 2018, asserts it provided relevant documentation regarding that settlement at Response 7 to plaintiffs' Fifth Set of Interrogatories. That response to plaintiffs' request that A Cab specify the amounts paid to each involved class member under the USDOL settlement consists of three words: "Please see attached." A Cab provides "attached" to that interrogatory response seven pages of documents with the names of various persons, and associated amounts that, facially, would seem to indicate a record of payments made to those persons. It offers no explanation, in its interrogatory response, of what those documents

¹¹ That interrogatory and defendants' response, No. 26, is introduced into the record at Ex. "D" of the declaration of class counsel filed on June 20, 2018.

¹² This is set forth at ¶ 5 of the declaration of class counsel filed on June 20, 2018. ²⁰

are. Nor in its July 10, 2018 filing did A Cab include any declaration corroborating and authenticating those seven pages of documents that, facially, seem to indicate payments of itemized amounts to certain class members from the USDOL settlement. In a further supplement filed by plaintiffs' counsel on July 13, 2018 plaintiffs' counsel noted that A Cab's supplement filed on July 10, 2018 lacked any proper corroboration or authentication of the facially relevant documents. Plaintiffs' counsel also noted that those documents only itemized payments totaling \$77,178.87 of the total \$139,988.80 paid under the USDOL settlement, meaning A Cab could not, from those documents, corroborate which class members may have received an additional \$62,800.43 from that settlement. In a further supplement filed on July 18, 2018 A Cab's counsel furnished their declaration (Ex. "F" thereto) purporting to authenticate the previously provided documents from the USDOL and certain additional, and not previously furnished, USDOL documents provided with that supplement.

29. Plaintiffs, upon review of the July 18, 2018 supplement filed by A Cab, filed a further supplement with the Court on August 3, 2018. In that August 3, 2018 Supplement and the Ex. "A" declaration of plaintiffs' counsel thereto, plaintiffs have established to the Court's satisfaction that A Cab has demonstrated the disposition of \$81,852.19 from the USDOL settlement. The Court is further satisfied that Ex. "B" of such supplement, based upon that \$81,852.19 from the USDOL settlement, properly applies a set off in A Cab's favor of the judgment amounts owed to the class

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members previously submitted to the Court and discussed at ¶ 26. As further detailed by that supplement, \$58,136.61 of the \$139,988.80 USDOL settlement paid by A Cab remains unaccounted for. That \$58,136.61 is potentially, in whole or in part, an additional amount that A Cab can set off against the judgments to be awarded by the Court to the class members if A Cab can itemize the amounts of that \$58,136.61 paid to the involved class members.

DISCUSSION OF RELIEF GRANTED

Plaintiffs' Motion for Summary Judgment

The Court notes we are dealing with important rights, important because the people of Nevada have said so by virtue of inserting what would have otherwise been a statutory provision into the Constitution of the State of Nevada. The Court has great respect for the constitutions and constitutional law. The Court believes that they form the basic backbone of the laws and government enumerated therein, both for the United States of America and for the State of Nevada. If the people of this state have said that there is a minimum wage act which entitles employees to be paid a certain amount, in conformity therewith, it is incumbent upon the Court to assure that at the end of the day justice is done, even though the justice that is done turns out to be of a somewhat imprecise nature.

Plaintiffs filed three (3) versions of their motion for partial summary judgment (filed on January 11, 2017, November 2, 2017, and April 17, 2018) each of which was opposed by defendants, fully briefed and argued through several hours of oral argument. Although fashioned as a motion for partial summary judgment, by the time

22.

1 Plaintiffs reached oral argument on the present motion it became clear that application
2 of their arguments regarding the Quickbooks records and the *Mt. Clemens* rationale
3 effectively resolved not only the period January 1, 2013 to December 31, 2015, but
4 also July 1, 2007 to January 1, 2013, effectively resolving all issues in the case and
5 that therefore final summary judgment is warranted.¹³ The Court finds that because
6 the Defendants could not or would not pay for the special master then pursuant to *Mt.*
7 *Clemens* the burden of proof shifted to the defense. The Court is satisfied that the
8 rationale of the *Mt. Clemens* case not only provides ample authority and justification
9 for this result, but also provides an avenue for this Court to do essential justice to the
10 parties.

11 Even under *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005), the
12 Defendants, as the nonmoving party, had the burden to “do more than simply show
13 that there is some metaphysical doubt” as to the operative facts in order to avoid
14 summary judgment being entered in the moving party’s favor.” *Id.* quoting *Matsushita*
15 *Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The Court
16 finds there is an absence of evidence to support the Defendants’ arguments and to
17 demonstrate a triable issue of fact. Defendants failed to transcend the pleadings by
18 putting forth admissible evidence to show a genuine issue of material fact exists given
19 the aforementioned posture of the case. See *Cutze v. U. and Community College*
20 *System of Nevada*, 172 P.3d 131, 134 (Nev. 2007).

21 Furthermore, under *Mt. Clemens Pottery Co.*, 328 U.S. 680, 687–88 (1946) “the
22 burden then shifts to the employer to come forward with evidence of the precise
23 amount of work performed or with evidence to negative the reasonableness of the
24

25 ¹³ On June 5, 2018, during the hours-long oral argument regarding A Cab’s failure to
26 comply with the Court’s Orders and Plaintiffs’ basis for their calculations, Plaintiffs’
27 counsel moved the Court for summary judgment on the entire case applying an
28 approximation to the time period July 1, 2007, to January 1, 2013, based on A Cab’s
Quickbooks records.
23.

1 inference to be drawn from the employee’s evidence. If the employer fails to produce
2 such evidence, the court may then award damages to the employee, even though the
3 result be only approximate.”

4 Upon the filing of plaintiffs’ first motion for partial summary judgment, and its
5 attendant evidence showing the class members performed work for which they were
6 improperly compensated, filed on January 11, 2017, defendants had the burden to
7 either put forth evidence of the precise amount of work performed, or negate the
8 reasonableness of the inference to be drawn by plaintiffs’ evidence in order to create a
9 genuine issue of material fact. See *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S.
10 680, 688 (1946); see also *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005).
11 However, the defendants have failed to do so. Thus, to ensure a both equitable and just
12 determination of the calculation of damages, the Court appointed a Special Master to
13 review the trip sheets in order to determine the precise amount of damages. However,
14 the defendants failed to comply with the Court’s orders and failed to pay for the
15 special master. Therefore, the Court finds that summary judgment is appropriate as “it
16 would be a perversion of fundamental principles of justice to deny all relief to the
17 injured person[s], and thereby relieve the wrongdoer from making any amend for his
18 acts.” *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 688 (1946) quoting *Story*
19 *Parchment Co. v. Paterson Parchment Co.*, 282 U.S. 555, 563, 51 S.Ct. 248, 250, 75
20 L.Ed. 544. Plaintiffs have put forth enough evidence to prove that the class members
21 have performed work and have not been paid in accordance with the MWA; the
22 uncertainty lies only in the amount of damages arising from the Defendants’
23 violations. See *Id.* It is enough for this Court to follow *Mt. Clemens* in that it is enough
24 under these circumstances for this Court to find a reasonable inference as to the extent
25 of the damages and grants summary judgment accordingly as set forth in this order.
26 See *Id.*

27 The Court made effort to provide fair, equitable, and precise justice to the
28

1 drivers and to the defendant business. However, it was the Defendants, through a
2 claimed but unproven inability to pay for the special master, whom continued to
3 frustrate the Court's intent to provide precise justice, thereby requiring the Court to
4 deviate from an exact calculation and instead rely upon an approximation as set forth
5 by *Mt. Clemens*.

6 No disputed triable issues of material fact are presented by A Cab warranting a
7 denial of the plaintiffs' Motion for Summary Judgment. The motions involve a
8 review of every pay period, 14,200 in total, contained in A Cab's Quickbooks records
9 for the time period from January 1, 2013 through December 31, 2015. The question
10 presented by the motions, is whether A Cab during those 14,200 pay periods
11 complied with the MWA during the period in question. The Court is satisfied that
12 information, furnished by A Cab, was accurately placed in the "ACAB ALL" Excel
13 file upon which plaintiffs' rely. The Court is also satisfied that the "ACAB ALL"
14 Excel file performs the correct arithmetical calculation to determine the underpaid
15 minimum wage amount, if any, at \$7.25 an hour, for each of the 14,200 pay periods.
16 The Court is also satisfied it provides an accurate resulting statement of the total
17 amount, if any, owed for that reason to each class member.

18 A Cab's assertions that the amounts calculated and presented by plaintiffs' are
19 unreliable is speculative. A Cab does not set forth even a single instance where the
20 calculations presented in those Exhibits is performed upon information that is not set
21 forth in A Cab's Quickbooks records or that involves erroneous arithmetic. Its
22 opposition to the plaintiffs' MPSJ is based upon pure speculation (or an assertion it
23 should be relieved of its admissions that the Quickbooks records contained accurate
24 information) and the MPSJ is granted.

25 The primary principle upon which the Court relies in entering the judgment
26 specified, *infra*, is derived from *Mt. Clemens*. A Cab cannot successfully oppose the
27 entry of such a judgment in the summary judgment context under the principles set
28 ^{25.}

1 forth in *Mt. Clemens*. There is no other practical means by which the Court can
2 resolve the MWA claims in this case, except by applying a reasonable approximation
3 of hours worked to render substantial, though inexact, justice as in *Mt. Clemens*. As
4 discussed in ¶ 24, the Court's application of an average shift length of 9.21 hours to
5 fashion a judgment for the class members under the MWA for the time period prior to
6 January 1, 2013 is a proper, albeit perhaps too favorable to A Cab, application of the
7 *Mt. Clemens* principles. That 9.21 hours long average shift length is taken from the
8 very records (the 2013-2015 Quickbooks records) that defendant Nady swore under
9 oath were *more* accurate than the trip sheets. The class members assert their hours of
10 work per shift were, on average, considerably longer. Defendants' own expert came
11 up with *longer* average shift lengths (9.5 and 9.8 hours) based upon his review of 36
12 and 38 trips sheets for two periods and a 9.7 hours long average shift length for 123
13 pay periods that he studied. A Cab is bound by its NRCP Rule 30(b)(6) testimony
14 that it can only "guess" at the proper average shift length of the class members.
15 Accordingly, it has no competent evidence it can present as to the proper average shift
16 length prior to January 1, 2013 that should be adopted by the Court and applied under
17 *Mt. Clemens*. As a result, plaintiffs' request that the Court, as discussed at the June 5,
18 2018 hearing, enter a final judgment in this matter applying the *Mt. Clemens*
19 principals, and using an average shift length of 9.21 hours for the class members'
20 claims accruing prior to January 1, 2013, is properly adopted by the Court and it is
21 granting a judgment accordingly. Such judgment shall also include interest on each
22 amount as calculated from January 1, 2016 given the difficulty of applying NRS
23 17.130 to all of the class members' MWA claims, some of which did not arise until
24 after the service of the summons and complaint.¹⁴ there is no material issue of fact
25

26 ¹⁴ The judgment amounts, with interest, so calculated for each class member are at
27 Column "G" of Ex. "5" to Ex. "C" of class counsel's declaration of June 20, 2018, that
28 chart being annexed hereto as Ex. "A." ^{26.}

1 that A Cab can dispute in respect to the Court's entry of judgment using the *Mt.*
2 *Clemens* principles given A Cab's inability to proffer any competent evidence on the
3 class members' average shift length prior to January 1, 2013.

4 A Cab's assertion, made in its affirmative defense and interrogatory response,
5 that it is entitled to some measure of satisfaction of the class members' MWA claims
6 based upon the payments it made under the U.S. Department of Labor's consent
7 judgment (§ 27) would be properly ignored as a sanction. Such action by the Court
8 would be justified and appropriate in light of A Cab's documented litigation abuses in
9 this case and its failure to properly respond to plaintiffs' interrogatory seeking such
10 information. Such action by the Court would also be justified in light of its need to
11 enter a judgment under the *Mt. Clemens* principles in response to A Cab's conduct, a
12 judgment that does not afford the class members the full, and precise, measure of
13 justice they would be entitled to, and receive, if A Cab had complied with NRS
14 608.115(1)(d). In the exercise of discretion, the Court will, nonetheless, afford A Cab
15 an opportunity to proffer proof of such payments post judgment and receive
16 appropriate satisfactions of the judgment amounts entered by this Order for the
17 involved class members. The Court will not delay entry of final judgment over this
18 issue, involving a potential offset to A Cab of less than 20% of the amount it is
19 awarding to the class, and only involving claims accruing to certain identified class
20 members during the period October 1, 2010 to October 1, 2012. But it has fashioned,
21 *infra*, provisions that afford A Cab a very fair opportunity to receive the offset it
22 claims from the consent judgment.

23 In connection with the MPSJ the plaintiffs have asked that the Court forego
24 entering judgment in favor of any class member when the amount so indicated by Ex.
25 "E" to the MPSJ is less than \$10.00, on the basis that amounts of under \$10.00 are *de*
26 *minimis*. Accordingly, the final judgment to be entered in this case for the amount of
27 unpaid minimum wages owed to the class members for the period January 1, 2013
28 27.

1 through December 31, 2015 shall be the amounts calculated to be owed to every class
2 member in Column "D" of Ex. "E" of the MPSJ if such amount is at least \$10.00. As
3 discussed at ¶ 25 and ¶ 26 plaintiffs have introduced into the record calculations
4 showing the total amount (if any) owed to each A Cab taxi driver in unpaid minimum
5 wages for the January 1, 2013 through December 31, 2015 time period, based upon
6 the Quickbooks time worked records as sought in the MPSJ, and for the period of time
7 from July 1, 2007 through January 1, 2013 based upon the application of *Mt. Clemens*
8 principles as discussed further *infra*. The Court has found those calculations to be
9 accurate as discussed at ¶ 19-24. Accordingly, attached to this Order as Ex. "A," as
10 discussed further, *infra*, are the total amounts the Clerk of the Court shall enter as
11 Judgment amounts for each class member.¹⁵ Those total owed amounts are based
12 upon the reasoning of the MPSJ which is adopted by the Court to grant judgment to
13 the class members for the period January 1, 2013 through December 31, 2015 and the
14 application of the *Mt. Clemens* principles for the time period prior to January 1, 2013.

15
16 **Plaintiffs' Motion to Hold Defendants in Contempt for Their Violation**
17 **of the Court's Prior Orders Appointing a Special Master and Striking**
18 **Defendants' Answer and Directing a Prove Up Hearing.**

19 Alternatively, given the deference this Court must give in enforcing the
20 Constitution of the State of Nevada, the Court finds that Defendants' persistent failure
21 to comply with Court orders, and for reasons stated herein, warrants holding
22 defendants in contempt and striking their answer. Plaintiffs have argued strenuously
23 for the Court to strike Defendants' answer and award judgment accordingly. While
24 this Court has been at pains to resolve important issues without resort to sanctions, the
25 Court cannot avoid the conclusion that if other, less drastic bases were not available, it
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27 ¹⁵ These amounts are the same amounts as Ex. "5" to Ex. "C" of the declaration of class
28 counsel filed on June 20, 2018 28.

would proceed by way of sanction, strike the answer, and award judgment to Plaintiffs.¹⁶

Accordingly, the following alternative basis is offered.

While Plaintiffs' Motion uses the term contempt it does not seek an arrest for civil contempt but an appropriate remedy, sanction, against A Cab for its failure to comply with the Court's Orders appointing a Special Master. If those Orders had been complied with, the Special Master's work would now be complete. The Court would be proceeding to fashion an appropriate final judgment for the class members based upon that report and the precise findings, in respect to the hours of work, wages paid, and minimum wage amounts owed to the class members, it would have contained. A Cab's failure to comply with those Orders has prevented that result. Plaintiffs do not propose an order of civil contempt and imprisonment against defendant Nady, A Cab's principal, as a remedy for that failure. Nor does the Court believe such an Order, while within the Court's power, is sensible or will serve the interests of justice. As the Plaintiffs' Motion requests, the Court should fashion some sort of alternative relief, and judgment, that will resolve this litigation and render substantial justice, albeit not in the precise form that would have been arrived at if A Cab had complied with the Court's Orders appointing the Special Master.

The Court has inherent power to appropriately sanction, and tailor remedies for,

¹⁶ The Court finds no prove up hearing is necessary under NRCP Rule 55(b)(2) as A Cab admits it has no evidence to present on the proper average shift length to be used by the Court in fashioning a judgment. The Court also finds A Cab is properly prohibited from presenting further evidence on the proper amount of a default judgment even if it possessed any germane evidence on that issue as a sanction under *Young* for the reasons already stated. See, *Blanco v. Blanco*, 311 P.3d 1170, 1176 (Nev. Sup. Ct. 2013) citing *Foster v. Dingwall*, 227 P.3d 1042, 1050 (Nev. Sup. Ct. 2010) (Recognizing such a sanction is proper under *Young*).

violations of its Orders and in response to a party's improper conduct. See, *Young v. Johnny Ribero* 787 P.2d 777, 779 (Nev. Sup. Ct. 1990) ("Litigants and attorneys alike should be aware that these [inherent] powers may permit sanctions for discovery and other litigation abuses not specifically proscribed by statute.") As discussed in *Young* and the subsequent cases from the Nevada Supreme Court that follow *Young*, this Court should make appropriately detailed and thoughtful written findings when imposing such sanctions, which can include the striking of an answer and the granting of a default judgment. Some of the factors the Supreme Court has said may be considered in determining whether to impose such sanctions are the degree of willfulness of the offending party, the feasibility and fairness of lesser sanctions, and the prejudice sustained by the non-offending party. *Id.*, 787 P.2d at 780. It is also apparent from *Bahena v. Goodyear Tire & Rubber Co.*, 235 P.3d 592, 599 (Nev. Sup. Ct. 2010) citing and quoting *Foster v. Dingwall*, 227 P.3d 1042, 1047, 1048 (Nev. Sup. Ct. 2010) that a demonstrated course of "repetitive, abusive and recalcitrant" conduct by a party can justify the imposition of such sanctions. *Bahena*, further discussing *Foster* and approving of its holding, also stated: "[w]e further concluded [in *Foster*] that entries of complete default are proper where 'litigants are unresponsive and engaged in abusive litigation practices that cause interminable delays.'" *Id.*

The Court concludes that the record in this case is sufficient under *Young* and the other controlling precedents to warrant an award of relief in the form requested by plaintiffs, a striking of defendant A Cab's answer and the entry of a default judgment. A Cab's improper conduct in violating the Court's Orders appointing a Special Master is not an isolated incident but "repetitive." Its prior history of improper conduct is discussed in ¶ 15. That improper conduct has also caused "interminable delays" in the production of A Cab's critically important Cab Manager and Quickbooks records, delays A Cab may well have intended to foster in pursuit of an NRCP Rule 41(e)

1 dismissal. The willfulness of A Cab in disregarding the Court's Orders appointing a
2 Special Master is apparent and A Cab's assertion its failure to comply with those
3 Orders is a result of a financial inability to pay the Special Master cannot be properly
4 considered and its evidence to establish same is deficient. If A Cab truly lacks the
5 financial resources to comply with those Orders it has a remedy under the United
6 States Bankruptcy Code to seek the protection of the Bankruptcy Court which is
7 empowered to relieve it from those Orders and oversee the proper disposition of
8 whatever financial resources it does possess. It has declined to do so and continues to
9 do business and defend this case in this Court. Having elected to do so, it must
10 comply with this Court's Orders or face the consequences of its failure to do so.

11 If the Court did not grant summary judgment pursuant to the burden shifting
12 under Mt. Clemens, the Court would find there are no feasible or fair lesser sanctions
13 that it can properly impose in lieu of the judgment it is granting *infra*, and the
14 prejudice sustained by the non-offending party in this case, the class members, would
15 be too great if it failed to grant that judgment. A Cab has violated its obligations
16 under NRS 608.115(1)(d), obligations which, if met, would allow the Court to render
17 full, complete, and precise justice in this matter on the class members' MWA claims.
18 In response to that violation, the Court directed A Cab to pay a Special Master to
19 correct such deficiencies in its NRS 608.115(1)(d) compliance. It has failed to do so
20 and proposed no alternative approach to bring this case to a proper conclusion. The
21 Court cannot envision any sanction or any other feasible means to justly and properly
22 redress constitutional grievances, and resolve this case under the circumstances
23 presented, except through directing entry of the judgment specified, *infra*.

24 The prejudice that would inure to the class members if the Court failed to enter
25 the judgment specified, *infra*, is manifest and extreme. A Cab's proposal that the
26 Court await the outcome of other proceedings that may or may not impact some
27 amount of the class members' claims seeks to have the Court abdicate its
28

31.

responsibility to hear and resolve the claims before it, something it cannot do.
Alternatively, A Cab postures it is entitled to rely on its failure to create the records
required by NRS 608.115(1)(d) and place upon the plaintiffs the burden, which they
should not have to meet and clearly cannot meet, to specify from their trip sheets their
precise hours of work for each pay period. Indeed, A Cab paid its expert in excess of
\$47,000 to produce a report asserting that position in its defense.

Despite plaintiffs' warranted request to hold defendants in contempt and strike
their answer, the Court has not viewed this as warranted to remedy this point, and
therefore has declined to do so. As an alternative ruling, the Court is prepared to do so
now.

THE COURT'S JUDGMENT AND THE RELIEF ORDERED

For the foregoing reasons, the Court hereby Orders the following relief and
enters a Final Judgment in this case in the following form:

- A. The Court, pursuant to NRCPL Rule 23(c)(1) amends the class claims
certified for disposition pursuant to NRCPL Rule 23(b)(3). Those claims,
in respect to defendant A Cab, are now limited to the claims of the
previously identified class members arising under the MWA against A
Cab prior to January 1, 2016 but only to the extent A Cab failed to pay
such class members the "lower tier" (health benefits provided) minimum
wage required by the MWA; only in the amounts specified and arrived at
in this Order based upon the hours of work used by the Court to
determine such amounts; and only for interest owed on those claims on
and after January 1, 2016. Individual class members who seek to collect
"higher tier" minimum wage payments under the MWA; or amounts

32.

1 owed under the MWA based upon them having actually worked more
2 hours in a pay period than the Court used in making the award to them in
3 this Order; or to collect the penalties proscribed by NRS 608.040; or for
4 additional amounts in interest that may be owed to them on their MWA
5 claims from A Cab may pursue those claims individually. Such claims
6 are dismissed from this case for all class members without prejudice;
7

8 B. All claims made against the defendant Nady are severed from the claims
9 against A Cab pursuant to NRCP Rule 21;
10

11 C. The Clerk of the Court shall enter judgment for each individual class
12 member in the amount specified in Column "F" in Ex. "A" as annexed
13 hereto against defendants A CAB TAXI SERVICE LLC and A CAB,
14 LLC. Such judgment shall conclude the class claims for damages
15 certified for disposition pursuant to NRCP Rule 23(b)(3) and constitute a
16 final judgment on such claims;
17

18 D. The Court retains continuing jurisdiction over the class claims it has
19 certified for disposition pursuant to NRCP Rule 23(b)(2), and for
20 enforcement of the monetary judgments it has rendered in favor of the
21 class members, and appoints class counsel, Leon Greenberg, Dana
22 Sniegocki, Christian Gabroy and Kaine Messer, as counsel for the class
23 member judgment creditors listed on Exhibit "A" and for whom the Court
24 is directing entry of judgment. Defendants, their agents, and their
25 attorneys, are prohibited from communicating with the class member
26 judgment creditors about their judgments granted by this Order or
27 securing any release or satisfaction of those judgments without first
28

33.

1 securing a further Order of this Court in this case. Class counsel is
2 authorized to proceed with whatever remedies it deems advisable to
3 enforce the money judgments rendered for the class members but shall
4 hold in their IOLTA account any amounts collected on such judgments
5 and only release such monies as specified by a further Order of this Court
6 in this case. Class counsel is also authorized to use all of the judgment
7 enforcement remedies provided for by NRS Chapter 21 in the name of
8 "Michael Murray as Judgment Creditor" for the total amount of the
9 unsatisfied judgments rendered in favor of all class members, they need
10 not seek or issue writs of judgment execution or levy individually for
11 each judgment creditor class member. Class counsel is also prohibited, in
12 light of the potential for A Cab to receive satisfaction of certain judgment
13 amounts as provided for under G, *infra*, until further Order is issued by
14 the Court, from taking action to collect more than \$960,000 of the
15 combined judgment value of \$1,033,027.81 that is entered under this
16 Order;
17

18 E. The time for class counsel to apply for an award of fees and costs
19 pursuant to NRCP Rule 54 is extended to 60 days after the service of this
20 Order with Notice of Entry;
21

22 F. The court stays the severed case against defendant Nady for 60 days from
23 the date of entry of this Order. That case shall remain stayed after that
24 date until the Court issues an Order lifting such stay, the Court not
25 anticipating doing so, or receiving any request from the parties to do so,
26 until expiration of that 60 day period.
27

34.

1 A Cab may present to the Court, at anytime after entry of this Order, a
2 motion to have the Court enter satisfactions towards each class member
3 judgment creditor's judgment amount for the amounts A Cab paid them
4 under the consent judgment that are a portion of the \$58,136.61 paid
5 under the consent judgment but not previously accounted for (§ 29). . It
6 shall also have the right, within 60 days from the date of service of this
7 Judgment and Order with Notice of Entry, to present to class counsel
8 evidence of how the \$58,136.61 paid under the consent judgment but not
9 previously accounted for (§ 29) should be set off against each class
10 member judgment creditor. Class counsel shall be obligated to advise A
11 Cab within 30 days thereafter if it agrees that A Cab it is entitled to a
12 judgment satisfaction based upon such evidence. If it so agrees, class
13 counsel must submit a motion to the Court within 10 days thereafter
14 seeking an Order entering such agreed upon satisfactions. If after that
15 date A Cab, after completing that process of conferral with class counsel,
16 must still file a motion with the Court to secure any such judgment
17 satisfactions, the Court will, if it grants that motion and also finds class
18 counsel did not act reasonably in cooperating with A Cab on determining
19 the amount of the satisfactions, award A Cab attorney's fees in connection
20 with the bringing of such a motion.
21

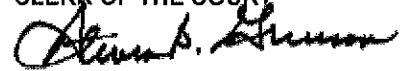
22 IT IS SO ORDERED.

23
24 
25 Honorable Kenneth Cory
26 District Court Judge
27
28

Date 8-21-18

EXHIBIT C

EXHIBIT C



1 SR
Steven J. Parsons
2 Nevada Bar No. 363
LAW OFFICES OF STEVEN J. PARSONS
3 10091 Park Run Dr Ste 200
Las Vegas NV 89145-8868
4 (702) 384-9900
(702) 384-5900 (fax)
5 Steve@SJPlawyer.com

6 Attorney for Special Master
GEORGE C. SWARTS, CPA
7

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

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

Case No.: A-12-669926-C

Dept. No.: I

12 Plaintiff,

REPORT OF SPECIAL MASTER
GEORGE C. SWARTS, CPA

13 vs.

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

16 Defendants.
_____ /

17 Special Master, GEORGE C. SWARTS, CPA by his attorney,¹ Steven J. Parsons of LAW
18 OFFICES OF STEVEN J. PARSONS, hereby files his Report as required by the Court's Order Granting
19 Plaintiffs' Counter Motion for Judgment Enforcement Relief, dated December 18, 2018 (the
20 "Order").

21 The Special Master's Report is attached hereto and incorporated herein as Exhibit "1."

22 In compliance of the Order, paragraph no. 3, in keeping confidential all materials
23 provided to him, the Special Master is filing this report, without copies of the materials. Copies
24 _____

25 ¹Mr. Parsons has not been appointed by the Court. Mr. Parsons has assisted the
26 Special Master in advising him and in facilitating contact between the parties. Any further
27 effort – and, any fees incurred by use of counsel to be charged by the Special Master – is
subject to a Petition by the Special Master for an Order of this Court appointing Mr. Parsons
as Counsel for Special Master.



LAW OFFICES OF
STEVEN J. PARSONS

1 of the materials are simultaneously being made available to the parties and mailed to the
2 Court and the parties.

3 Dated: Friday, February 1, 2019.

4 LAW OFFICES OF STEVEN J. PARSONS

5 

6 STEVEN J. PARSONS
Nevada Bar No. 363

7 Attorney for Special Master
8 GEORGE C. SWARTS, CPA

9 PROOF OF SERVICE BY E-FILING

10 Within NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that service of the
11 foregoing Report of Special Master George C. Swarts, CPA was made upon all parties, by
12 e-filing with the Court's electronic filing system.

13 Dated: Friday, February 1, 2019.

14 
15 LAW OFFICES OF STEVEN J. PARSONS

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LAW OFFICES OF
STEVEN J. PARSONS

1 EXHIBIT "1"

2 REPORT TO THE COURT OF SPECIAL MASTER, GEORGE C. SWARTS, CPA

3 I. APPOINTMENT AND ASSIGNMENT:

4 This report to the Court is in compliance of the Order appointing me as Special Master
5 (Exhibit "A".)

6 Complying with Paragraph 3 of the Order, I am providing the Court and the parties
7 under separate cover certain Financial Exhibits to this report ("Exhibits") labeled as "B", "C",
8 "D", and "E."

9 The four (4) Exhibits contain Balance Sheets of A CAB LLC for the year ended
10 December 31, 2017 and A CAB LLC SERIES LLC for the years ended December 31, 2017 and
11 2018.²

12 II. SUMMARY OF FINDINGS

13 As presented, my task as Special Master is to determine if A CAB LLC or A CAB SERIES
14 LLC (hereinafter, simply "A CAB") has sufficient funds to pay its bills. I have read and analyzed
15 the financial information provided by A CAB's management with that task in mind. None of
16 the information has been audited and accordingly, I can only comment on what has been
17 provided to me, without proclaiming its veracity.

18 Clearly, A CAB is in a period of declining revenues. Management cites the reduction
19 is due to the entry of *Uber* and *Lyft* into the Las Vegas transportation market.

20 For example, A CAB's Total Revenues declined by almost \$2.9MM from 2016 to 2017,
21 an approximate twenty-two percent (22%) reduction. I have been told by Management that
22 larger reductions occurred in the three (3) previous years. Net Income for those two (2) years
23 changed from \$854K to a loss of \$466K. See Exhibit E. The large reduction in revenue and
24 its accompanying losses have strained the financial condition of the company.

25 In 2016, Total Draws against Equity totaled \$1.25MM. Total Draws in 2017 were
26 _____

27 ²See my Financial Exhibit Disclaimers, below the Summary of Findings.

1 \$378K; and in 2018 draws were \$272K. See Exhibit E.

2 At December 31, 2017, A CAB had \$210K in cash and Total Current Assets of \$384K.

3 At that same date, Current Liabilities were \$947K. See Exhibit B1.

4 On December 31, 2017, A CAB's Current Ratio and Quick Ratios were 40.6% and
5 22.2% respectively. The subject Judgment was not in place at December 31, 2017. For
6 illustrative purposes only, I have included Liquidity and Solvency Ratios assuming a \$1MM
7 Judgment. It is clear that A CAB will struggle to meet its obligations in the future without the
8 infusion of capital or a substantial increase in revenue.

9 Although cash flows are very tight, there are times when A CAB had cash balances
10 sufficient to pay certain obligations. The QuickBooks-data for 2018 show a pattern of low and
11 overdrawn cash balances. Accordingly, it is very difficult to say when in the past A CAB has
12 had the funds to pay any specific obligation or when in the future they could do so. However,
13 I believe that Management, properly motivated, could find a way to pay Special Master #2.

14 Exhibits "B", "C", and "D" are the financial information provided to me by A CAB and
15 its counsel.

16 It is my opinion because of the financial condition of A CAB, the appointment of a
17 receiver is not feasible.

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

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25 ...

26 ...

27 ...

1 SPECIAL MASTER GEORGE C. SWARTS' FINANCIAL EXHIBIT DISCLAIMERS

2 a. EXHIBIT B-1. I prepared this from data selected from Exhibit B, page 9,
3 the Balance Sheet for A CAB on December 31, 2017, prepared by Hilburn & Lein, CPA's, May
4 14, 2018. Hillburn & Lein's Financial Report, including "Accountants' Compilation Report" is
5 being provided under separate cover to maintain confidentiality of the materials provided to
6 me. The Accountants' Compilation Report states:

7 "We did not audit or review the financial statements included in the
8 accompanying prescribed form nor were we required to perform any procedures
9 to verify the accuracy or completeness of the information provided by
10 management. Accordingly, we do not express an opinion, a conclusion, nor
provide any form of assurance on the financial statements included in the
accompanying prescribed form."

11 Further, there are no footnote disclosures attached to the report that explain the accounting
12 for the Series LLC. As Special Master, I disclaim any responsibility for the numbers therein.
13 Further, I have done nothing to verify the veracity of the numbers.

14 b. EXHIBIT C. The QuickBooks Balance Sheet Report of A CAB SERIES LLC
15 for December 31, 2017, printed from the QuickBooks backup file provided to me on January
16 24th, 2019. The QuickBooks of A CAB LLC and A CAB LLC SERIES LLC are combined into one
17 QuickBooks File. They are the unaudited work product of A CAB LLC and A CAB SERIES LLC
18 and are solely the responsibility of A CAB and A CAB SERIES LLC and management. As
19 Special Master, I disclaim any responsibility for the information therein. Further, I have done
20 nothing to verify the veracity of the numbers.


21 c. EXHIBIT D. The QuickBooks Balance Sheet Report of A CAB SERIES LLC
22 for December 31, 2018, printed from the QuickBooks backup file provided to me on January
23 24th, 2019. The QuickBooks of A CAB LLC and A CAB LLC SERIES LLC are combined into one
24 QuickBooks File. They are the unaudited work product of A CAB LLC and A CAB SERIES LLC
25 and are solely the responsibility of A CAB and A CAB SERIES LLC and management. As
26 Special Master, I disclaim any responsibility for the numbers therein. Further, I have done
27 nothing to verify the veracity of the numbers.

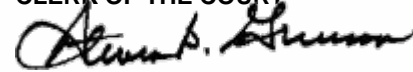


1 d. EXHIBIT E-1. I prepared this from data selected from Exhibit E, pages
2 2-10, which is Hilburn & Lein's Working Trial Balance for A CAB SERIES LLC for December 31,
3 2017, that was provided to me on January 31st, 2019. As Special Master, I disclaim any
4 responsibility for the numbers therein. Further, I have done nothing to verify the veracity of the
5 numbers.

6 Respectfully submitted this 1st day of February 2019.

7 SPECIAL MASTER

8 
9 _____
George C. Swarts, CPA
Nevada CPA No. 580
SWARTS & SWARTS, CPA'S
10 10091 Park Run Drive, Suite 200
Las Vegas, Nevada 89145-8868
11 Telephone: 702-312-8111
12 Facsimile: 702-212-1198
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21
22
23
24
25
26
27



1 **ORDR**
 Steven J. Parsons
 2 Nevada Bar No. 363
 LAW OFFICES OF STEVEN J. PARSONS
 3 10091 Park Run Dr Ste 200
 Las Vegas NV 89145-8868
 4 (702) 384-9900
 (702) 384-5900 (fax)
 5 Steve@SJPlawyer.com

6 Attorney for Special Master
GEORGE C. SWARTS, CPA

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

11 Plaintiffs,

ORDER

12 vs.

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

14 Defendants.
 15 _____/

- 16 1. ACCEPTING AND APPROVING THE FEBRUARY 1, 2019 REPORT OF
- 17 2. SPECIAL MASTER GEORGE C. SWARTS, CPA;
- 18 3. APPROVING THE RETENTION OF COUNSEL FOR THE SPECIAL MASTER;
- 19 4. APPROVING THE INTERIM FEES AND COSTS OF THE SPECIAL MASTER
- 20 5. AND HIS COUNSEL;
- 21 6. THE PAPERS INCLUDING THE EXHIBITS TO THE SPECIAL MASTER'S
- 22 7. REPORT OF FEBRUARY 1, 2019 TO REMAIN IN THE CONFIDENTIAL
- 23 POSSESSION OF THE COURT AND SPECIAL MASTER AND NOT
- OTHERWISE BE DISCLOSED TO THE PARTIES OR PUBLISHED;
5. THE ONGOING SERVICE AND THE REAPPOINTMENT OF THE SPECIAL
- 21 MASTER;
- 22 6. PLAINTIFFS SHALL NOT INITIATE ANY FURTHER EFFORTS AT
- 23 COLLECTION OF JUDGMENT AGAINST DEFENDANTS; and,
7. CONTINUING ALL OTHER MATTERS FOR HEARING ON WEDNESDAY,
- 23 FEBRUARY 27, 2019 at 10:00 AM.

24 The Motions of the Parties having been previously set for hearing by the Court, and the
 25 parties appearing before the Court in open, regular session on February 6, 2019, Plaintiffs
 26 being represented by Leon Greenberg, and Dana Sniegocki, of LEON GREENBERG PC, and
 27 Christian Gabroy, of GABROY LAW OFFICES; Defendants being represented by Esther Rodriguez,

1 of RODRIGUEZ LAW OFFICES, PC, and Jay A. Shafer, of PREMIER LEGAL GROUP; the Court's Special
2 Master George C. Swarts, CPA, present with his counsel Steven J. Parsons, of LAW OFFICES OF
3 STEVEN J. PARSONS; and Resolution Economics, an earlier Special Master, Judgment Creditor,
4 represented by its counsel Peter Dubowsky, of DUBOWSKY LAW OFFICE, CHTD.

5 The Court having reviewed the Motions, the responses thereto, and the Report of the
6 Special Master, and having considered the same, and upon review of all the papers and
7 arguments made by counsel for all parties, and the Court having determined that there is good
8 cause and proper reasons, makes the following findings:

9 1. The Court receives and accepts the Report of Special Master, **GEORGE C.**
10 **SWARTS, CPA**, dated February 1, 2019;

11 2. Upon the oral Motion of Special Master that the Court approve the retention of
12 his attorney, Steven J. Parsons of LAW OFFICES OF STEVEN J. PARSONS, the Court finds that this
13 is an appropriate case in which the Special Master should have counsel;

14 3. Upon the representation by the Special Master and his counsel that the fees and
15 costs they incurred in advance of the February 6, 2019 hearing are less than the amount
16 budgeted and allowed for in compensation for the efforts of the Special Master, specifically,
17 Twenty thousand dollars (\$20,000.00), the Court finds the expenses of the Special Master
18 and his counsel are reasonable and should be allowed;

19 4. Upon inquiry of the Special Master and counsel for the parties, there is no
20 present need to disclose the papers and reports provided to the Special Master by Defendants,
21 and the parties do not object that the papers including the Exhibits to the Special Master's
22 Report of February 1, 2019 remain in the confidential possession of the Special Master and
23 not otherwise disclosed or published, until further Order of the Court;

24 5. The parties expressed an interest in ongoing service and the reappointment of
25 the Special Master, and that the parties stipulate to the matter being continued for
26 consideration of a further Order of the Court addressing the ongoing service of the Special
27 Master, to Wednesday, February 27, 2019 at 10:00 am, in this Department. Before the next

1 hearing, the Special Master and his counsel shall prepare and circulate to the parties' counsel
2 a proposed Order for the ongoing service and the reappointment of the Special Master;

3 6. The parties expressed that pending a further mediation of the parties on
4 February 11, 2019, and the resumption of consideration of these matters by the Court on
5 February 27, 2019, that Plaintiffs shall not initiate any further efforts at collection of judgment
6 against Defendants, pending further Order of the Court on February 27, 2019;

7 7. The parties stipulate to all other issues including the pending Motions of the
8 parties be continued to the further hearing on Wednesday, February 27, 2019 at 10:00 am;
9 and

10 8. All other Orders of the Court shall continue pending any modification or further
11 Orders of the Court.

12 The Court, in consideration of the forgoing findings and this being an appropriate case,
13 therefore, enters the following Orders:

14 **IT IS HEREBY ORDERED:**

15 A. That the Special Master be allowed to retain and utilize counsel in this case, and
16 that the fees and costs of the Special Master and his counsel incurred before the hearing on
17 February 6, 2019 be paid, forthwith, by Counsel for Plaintiff as previously provided for by the
18 Court's earlier Order;

19 B. That the papers and reports provided to the Special Master by Defendants,
20 including the Exhibits to the Special Master's Report of February 1, 2019 provided to the Court
21 with the Report remain in the confidential possession of the Court and the Special Master and
22 not otherwise disclosed or published, until further Order of the Court;

23 C. That the matter be continued to Wednesday, February 27, 2019 at 10:00 am,
24 in this Department, for consideration of a further Order of the Court regarding the ongoing
25 service of the Special Master, and further, that before the next hearing, the Special Master
26 and his counsel shall prepare and circulate to the parties' counsel a proposed Order for the
27 ongoing service and the reappointment of the Special Master;

1 D. Plaintiffs shall not initiate any further efforts at collection of judgment against
2 Defendants, pending further Order of the Court on February 27, 2019; and

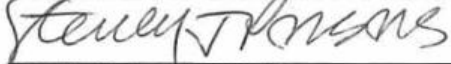
3 E. All other issues including the pending Motions of the parties be continued to the
4 further hearing on Wednesday, February 27, 2019 at 10:00 am; and all other Orders of the
5 Court shall continue pending any modification or further Orders.

6 DATED: this 1 day of March, 2019.

7
8 
DISTRICT JUDGE

9 Respectfully submitted by:

10 LAW OFFICES OF STEVEN J. PARSONS

11 

12 STEVEN J. PARSONS

Nevada Bar No. 363

13 Attorney for Special Master
14 **GEORGE C. SWARTS, CPA**

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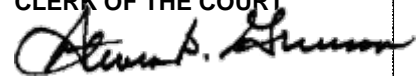
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1 ORDER

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

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6
7
8 MICHAEL MURRY, and
9 MICHAEL RENO, Individually and
 on behalf of others similarly
 situated

10 Plaintiffs,

11
12 A CAB TAXI SERVICE LLC, A
13 CAB, LLC, and CREIGHTON J.
 NADY and DOES I-X and ROE
 CORPORATIONS I –X, inclusive,

14 Defendants.

Case No.: A-12-669926-C

DEPARTMENT: 1

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

15
16
17
18
19 Plaintiffs' Motion on Order Shortening Time to Lift Stay, Hold Defendants in
20 Contempt, Strike Their Answer, Grant Partial Summary Judgment, Direct a Prove Up
21 Hearing, and Coordinate Cases, having first come before the Court on May 23, 2018,
22 the Honorable Kenneth C. Cory presiding; Leon Greenberg and Christian Gabroy
23 appearing for and on behalf of Plaintiffs; and Esther C. Rodriguez appearing for and
24 on behalf of Defendants. This Court having heard arguments of counsel and being
25 fully advised in the premises, the Court incorporates by reference the Minute Order
26 filed on February 5, 2019 and ORDERS as follows:

27
28 IT IS ORDERED that Plaintiffs' above referenced Motion is DENIED in part and

1 CONTINUED in part,
2

3 IT IS ORDERED that the Motion to Lift Stay is DENIED as moot, having been lifted
4 on May 22, 2018;
5

6 IT IS FURTHER ORDERED that the Motion to Hold Defendants in Contempt is
7 CONTINUED to June 1, 2018;
8

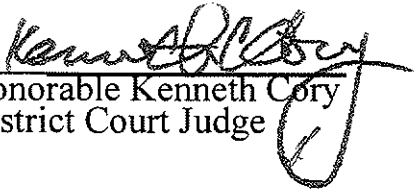
9 IT IS FURTHER ORDERED that the Motion to Strike Defendants' Answer is
10 CONTINUED to June 1, 2018;
11

12 IT IS FURTHER ORDERED that the Motion to Grant Partial Summary Judgment is
13 CONTINUED to June 5, 2018;
14

15 IT IS FURTHER ORDERED that the Motion to Direct a Prove-Up hearing is
16 CONTINUED to June 1, 2018.
17

18 IT IS FURTHER ORDERED that the Motion to Coordinate Cases is DENIED.
19

20
21 DATED this 1 day of March, 2018.⁹
22

23
24 
25 Honorable Kenneth Cory
26 District Court Judge
27
28

CHRISTIAN GABROY, ESQ., Bar No. 8805
KAINÉ MESSER, ESQ., Bar No. 14240
Gabroy law Offices
170 South Green Valley Pkwy- Suite 280
Henderson, Nevada 89012
Tel: (702) 259-7777
Fax: (702) 259-7704
christian@gabroy.com
kmesser@gabroy.com

CLARK COUNTY, NEVADA

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

Plaintiffs,

V.

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

Defendants.

)
)
) Case No. : A-12-669926-C
) Dept. No.: I
)
) **ORDER ON DEFENDANTS'**
) **MOTION FOR RECONSIDERATION**

) Date of Hearing: October 22, 2018
) Time of Hearing: 9:00 a.m.

ORDER ON MOTION FOR RECONSIDERATION

Defendants' Motion for Reconsideration, Amendment, for New Trial, and For Dismissal of Claims was heard on October 22, 2018. Plaintiffs were represented by Leon Greenberg and Dana Sniegocki. Defendants were represented by Esther Rodriguez, Michael Wall, and Jay Shafer.

1 Pursuant to NRCP 52, NRCP 59, NRCP 60, NRCP 12, and NRCP 41, Defendants moved
2 the Court for reconsideration and amendment to the summary judgment order entered on August
3 22, 2018, and for a new trial, and for dismissal of claims. Defendants argued that the Court
4 lacked subject matter jurisdiction over the claims, and should reconsider its certification under
5 NRCP 23 as improper. Defendants asserted the Court must reconsider its aggregation of these
6 claims to establish subject matter jurisdiction, relying upon *Castillo v. United Fed. Credit Union*,
7 134 Nev. Adv. Op. No. 3, Feb 1, 2018, 409 P3d 54.

8
9 Defendants also requested the Court amend its judgment to acknowledge it had received
10 the details of the settlement reached, as well as the specific overlap of the claimants and their
11 respective claims in the matter of Jasminka Dubric v. A Cab, LLC et. al, Case No. A-15-721063-
12 C. Defendants also argued the Court should amend the order to acknowledge it was made aware
13 of the prior settlement of claims, and has made a determination to disapprove it.

14
15 Defendants also sought a dismissal pursuant to NRCP 41 (e), asserting that five years
16 from the filing of the complaint had expired October 8, 2017. Defendants supplied
17 documentation to the court which they believed demonstrated Plaintiffs continued to disregard
18 any stay. Thus, they asserted they should be prohibited from seeking to rely upon these stays as
19 tolling NRCP 41(e). Defendants further asserted they did not agree to waive this rule.

20
21 In the absence of a complete dismissal, Defendants also moved for a new trial on the
22 issues which remain. Defendants argued they were prepared for a jury trial but have been
23 deprived of the same and of their right to due process. They asserted Plaintiffs have failed to
24 prove the bare minimum of liability as pled in their complaint and rely upon an assertion of
25 fraudulent break times written into trip sheets. They further claimed Plaintiffs have failed to
26 prove any actual damages, and have no Plaintiff who complied with NAC 608.155. They also
27 asserted Plaintiffs are pursuing claims for a class₂ with no representative plaintiff for that class.
28

1 Defendants also argued the claims against Defendant Nady must be dismissed.
2 Defendants argued the Court never addressed Defendants' previous motion on this issue, but had
3 allowed those claims to remain in limbo.

4 Plaintiffs asserted that Defendants' requests for relief are identical to those previously
5 made and rejected by the court. Plaintiffs further argued, relying upon *Edwards v. Emperor's*
6 *Garden Rest.*, 122 Nev. 317, 326 (2006), that this Court has subject matter jurisdiction over the
7 claims as Plaintiffs have sought equitable relief.

8 Plaintiffs further asserted that the Court's granting of class certification was appropriate
9 and that the matter should not be subject to NRCP 41(e) dismissal as the various stays ordered by
10 the Court resulted in a suspension of the time subject to Rule 41(e) by a period of 377 days.
11 Plaintiffs submit the law is clear that when the Court suspends proceedings via a stay, the time
12 under which a case must normally be brought to trial under NRCP 41(e) is extended by the
13 duration of the stay.
14

15 Plaintiffs further argued that none of Defendants' arguments have merit or should
16 concern the court. NAC 608.155 does not apply. Plaintiffs state all arguments have previously
17 been given due consideration by the Court and have all previously been rejected, including
18 Defendants' assertion that plaintiffs have pleaded claims under a fraud theory for which class
19 certification is improper; the sufficiency of Plaintiffs' expert submissions and summaries; and
20 the lack of a proper class representative. No basis exists for the Court to reconsider any of its
21 prior rulings on these issues.
22

23 ///

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1 Having reviewed the briefs and heard oral argument, Defendants' motion is DENIED.
2 The Court adopts the assertions of Plaintiffs for the bases for its decision.

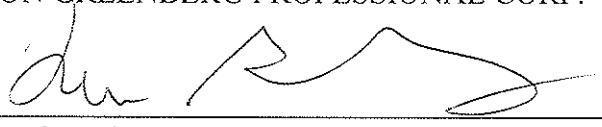
3 **IT IS SO ORDERED.**

4
5 Dated this 1 day of March, 2019.

6
7
8 
9 DISTRICT COURT JUDGE

10
11
12 Submitted by:

13
14 LEON GREENBERG PROFESSIONAL CORP.

15 
16 Leon Greenberg, Esq. NSB 8094
17 LEON GREENBERG PROFESSIONAL CORP.
18 2965 S. Jones Boulevard - Ste. E-3
19 Las Vegas, NV 89146
20 Tel (702) 383-6085
21 Attorney for the Plaintiffs
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25
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27
28

*Attorney for defendants
A Cab, LLC and Creighton J. Nady*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs.

V.

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

Defendants.

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

SECOND AMENDED NOTICE OF APPEAL

Notice is given that A Cab, LLC, Creighton J. Nady, and A Cab Series, LLC, defendants in the above-captioned matter,¹ appeal to the Supreme Court of Nevada from the district court's order granting summary judgment, severing claims, and directing entry of final judgment entered on August 21, 2018.

¹Under the fiction that A Cab, LLC, and A Cab Series, LLC, are one and the same entity, the district court, subsequent to its entry of its final judgment dated August 21, 2018, purported to add A Cab Series, LLC, as a party defendant. The district court's order is far from clear, but it purports both to substitute A Cab Series, LLC, in the place and stead of A Cab, LLC, and to retain both entities as separate defendants in the action below. Therefore, we have included A Cab Series, LLC, as an appellant from the district court's final judgment and various other post-judgment orders.

1 Notice is also given that A Cab, LLC, Creighton J. Nady, and A Cab Series, LLC,
2 appeal to the Supreme Court of Nevada from the following listed orders of the district court:

3 (1) The district court's order entered on October 22, 2018, amending its August 21,
4 2018 judgment to add A Cab Series, LLC, as a party defendant.

5 (2) The district court's order entered on December 18, 2018, granting plaintiffs'
6 counter-motion for judgment enforcement relief (receiver and injunction).

7 (3) The district court's order entered on December 18, 2018, granting in part and
8 denying in part plaintiffs' objections to defendants' claims of exemption from execution.

9 (4) The district court's order entered on December 18, 2018, denying defendants'
10 motion to quash writ of execution.

11 (5) The district court's order entered on December 20, 2018, denying defendants'
12 post-judgment motion to dismiss for lack of subject matter jurisdiction.

13 (6) The district court's order entered on February 4, 2019, entitled "Judgment and
14 Order Granting Resolution Economics' Application for Order of Payment of Special Master's
15 Fees and Order of Contempt."

16 (7) The district court's order entered on February 6, 2019, granting plaintiffs'
17 motion for an award of attorney's fees and costs.

18 (8) The district court's order entered on March 4, 2019, ruling on matters submitted
19 by Special Master George C. Swarts.²

20 (9) The district court's ordered entered on March 5, 2019, memorializing matters
21 that had been resolved long before the final judgment was entered.³

22 (10) The district court's order entered on March 5, 2019, entitled "order on motion
23

24 ²Because of the unorthodox manner in which the case has proceeded since the entry of
25 judgment in August of 2018, this order appears to qualify as a special order entered after final
26 judgment.

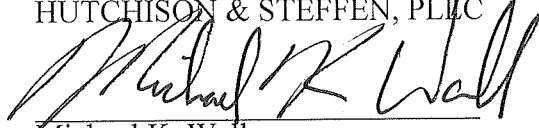
27 ³Why the district court issued this order almost a year late is a mystery, but due to the timing
28 of the issuance of the order, appellants include this order in their list of specifically appealed from
orders in order to preserve all potential appellate rights.

1 for reconsideration.”⁴

2 (6) All other judgments and orders of the district court rendered appealable by any
3 of the foregoing orders and judgments.

4 DATED this 6 day of March, 2019.

5 HUTCHISON & STEFFEN, PLLC

6 

7 Michael K. Wall

8 10080 West Alta Drive, Suite 200

9 Las Vegas, NV 89145

10 Tel: (702) 385-2500

11 Attorney for defendants

12 A Cab, LLC, and Creighton J. Nady

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27 ⁴Among other things, this order denies appellants’ timely post-trial motion for a new trial.
28 Also, this order finally resolves all post-judgment tolling motions, rendering appellants first notice
of appeal from the final judgment effective. NRAP 4(a)(6).

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN,
3 and that on this 6th day of March, 2019, I caused the above and foregoing **SECOND**
4 **AMENDED NOTICE OF APPEAL** to be served as follows:

5 ☐ by placing same to be deposited for mailing in the United States Mail, in a
6 sealed envelope upon which first class postage was prepaid in Las Vegas,
Nevada; and/or

7 ☐ pursuant to EDCR 7.26, to be sent **via facsimile**; and/or


8 ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the
9 Eighth Judicial District Court's electronic filing system, with the date and time
of the electronic service substituted for the date and place of deposit in the mail;
and/or

10 ☐ to be hand-delivered;

11 to the attorney(s) listed below at the address and/or facsimile number indicated below:

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

17 *Attorneys for plaintiffs*

18
19
20
21 
An employee of HUTCHISON & STEFFEN, PLLC