

**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.

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) Supreme Court No. 77050

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Elizabeth A. Brown  
Clerk of Supreme Court

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

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

HUTCHISON & STEFFEN, PLLC

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



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

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

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

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

## **CERTIFICATE OF SERVICE**

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

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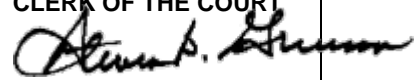
*Attorneys for Respondents*

DATED this 5<sup>th</sup> day of August, 2020.

*/s/ Kaylee Conradi*

---

An employee of Hutchison & Steffen, PLLC



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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)   
situated ) Dept No.: II

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

Date: April 16, 2019

Time: 10:30 a.m.

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

**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**

Resolution Economics LLC ("Special Master" or "ResEcon") by and through its  
counsel of record, Peter Dubowsky, Esq. of the DUBOWSKY LAW OFFICE, CHTD.

1 opposes the Defendants' Motion for Reconsideration of the District Court's Contempt  
2 Order. This Opposition is based on these Points and Authorities and all the papers and  
3 proceedings had herein.

4 I. SUMMARY OF OPPOSITION

5 ResEcon is truly the "victim" in this case— brought into the case by the District  
6 Court and never paid. In summary, Judge Cory appointed ResEcon as Special Master and  
7 ordered Defendants to pay ResEcon's compensation because Defendants could not produce  
8 "tripsheets" in order for the Judge to more accurately calculate wages due. Judge Cory  
9 initially ordered Defendants to pay ResEcon, first \$25,000.00, and subsequently \$41,000.00.  
10 But, notwithstanding multiple orders to pay ResEcon, those orders were "blown off" by the  
11 Defendants, in Judge Cory's words. To this date ResEcon, who was hired by the District  
12 Court, has not been paid a single cent of compensation for its work. Further, Defendants  
13 have not even offered to pay ResEcon anything. The Defendants continue to "blow off"  
14 court orders, with impunity.  
15

16 Judge Cory has been perfectly clear and correct to hold Defendants, including  
17 Defendant CREIGHTON J. NADY ("Nady"), personally in contempt for violating his  
18 numerous Court orders to pay Court-appointed Special Master, Resolution Economics.  
19 Judge Cory correctly saw that the Defendants had the ability to comply with his multiple  
20 court orders, but the Defendants refused.  
21

22 Judge Cory held the Defendants, including Nady, in contempt. The orders to pay for  
23 the special master go back to February 2018. Judge Cory's discussion of contempt against  
24 the Defendants goes back as far as an August 2018 Order, months prior to ResEcon's  
25 Contempt Order that was signed in February 2019.

1 At the outset, the Defendants' Motion appears to be filed beyond the 10 days  
2 prescribed by EDCR 2.24. Further, the Defendants appear to make two arguments:

3 1) The first argument is that the Defendants should not be held in contempt because  
4 they allegedly "lacked the ability to pay." Judge Cory actually called this  
5 "frankly ludicrous." Also, Defendants' own counsel contradicted this argument  
6 by claiming that Nady attempted to pay, but the Court would not accept the  
7 money. The Defendants' argument that they cannot pay is further contradicted  
8 by CPA George C. Swarts, a subsequent Special Master.  
9

10 2) The second argument appears to be that Nady should not personally be in  
11 contempt. As this Opposition will show, Judge Cory made clear that Nady was  
12 personally in contempt. As stated above, Judge Cory's findings of contempt go  
13 back to August 2018. Further, even at the December 2018, Nady's counsel did  
14 not appear to argue that Nady should be excused or immune from contempt.

15 As this Court has been made aware, Defendants filed this Motion for Reconsideration in an  
16 apparent attempt to get another District Court judge to review Judge Cory's decision.  
17 Second-guessing Judge Cory, who had been adjudicating the case for approximately 7 years,  
18 is not to be taken lightly. Judge Cory had previously commented in a March 6, 2018 Minute  
19 Order, "[T]he duplication of the time and effort it would take for another judge to become  
20 adequately conversant with this case would likely protract this case yet again, and would  
21 likely cost the parties more in attorney fees; nor would it facilitate an economical and fair  
22 management of this litigation." The Motion for Reconsideration must be denied.  
23  
24  
25



1     II.     STANDARD FOR RECONSIDERATION

2             A District Court may reconsider a previously decided issue if substantially different  
3 evidence is subsequently introduced or if the prior decision was clearly erroneous. Masonry  
4 & Tile v. Jolley, Urga & Wirth, 113 Nev. 737, 741 (1997); “Only in very rare instances in  
5 which new issues of fact or law are raised supporting a ruling contrary to the ruling already  
6 reached should a motion for rehearing be granted.” Moore v. City of Las Vegas, 92 Nev.  
7 402, 404 (1976). Points or contentions not raised in the first instance cannot be maintained  
8 or considered on rehearing. Achrem v. Expressway Plaza, Ltd., 112 Nev. 737, 742 (1996).  
9 Further, a motion for reconsideration should not be granted, absent highly unusual  
10 circumstances, unless the district court is presented with newly discovered evidence,  
11 committed clear error, or if there is an intervening change in the controlling law. Kona  
12 Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000).

14             The Defendants’ Motion for Reconsideration may not be timely. Pursuant to EDCR  
15 2.24(b), a motion to reconsideration must be filed within 10 days. The Contempt Order is  
16 dated February 4, 2019. The Notice of Entry of Order was electronically transmitted on  
17 February 5, 2019. Pursuant to Nevada Electronic Filing and Conversion Rule 9(f)(2), “An  
18 additional 3 days must not be added to the time to respond.” The 10 days would have expired  
19 by February 20, 2019, not including weekends and Presidents Day (February 18, 2019). This  
20 Motion for Reconsideration was not filed until February 25, 2019.

22     III.    RESOLUTION ECONOMICS APPOINTMENT

23             Before Resolution Economics’ involvement in this case, this lawsuit was commenced  
24 by Plaintiffs as an unpaid wages case. On February 7, 2018, Judge Cory stated that the  
25 Defendants’ tripsheets did not show the total hours employed in the pay period. Therefore,

Judge Cory deemed it necessary to bring in a Special Master, Resolution Economics<sup>1</sup>, to determine the hours worked by each Plaintiff class member for each pay period and the wages paid. Judge Cory ordered the Defendants to pay Resolution Economics.

As set forth in the Contempt Order, and more fully detailed below, the Defendants ignored multiple orders for payment, forcing Judge Cory to hold Defendants in contempt. The August 21, 2018 Order Granting Summary Judgment, Severing Claims, and Directing Entry of Final Judgment (“Judgment Order” attached as Exhibit “B” to the Motion for Reconsideration) stated the consequences of the Defendants’ failures to comply with its Orders. In that Judgment Order, Judge Cory commented that the Defendants’ violations of its Order prevented Judge Cory from fashioning a final judgment more promptly:

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.

The \$85,280.56 awarded to Resolution Economics is not simply a debt. The \$85,280.56 is the compensation that Judge Cory awarded to his Court-appointed Special Master pursuant to N.R.C.P. 53. Despite ResEcon being appointed by Judge Cory, and multiple orders by Judge Cory for Defendants to pay ResEcon, ResEcon has not been paid a single cent. In fact, the Defendants have not even offered to pay ResEcon a single cent. For the District Court to hire a Special Master, but not be able to get them compensated despite Court Orders, is nothing less than a degradation of the District Court.

---

<sup>1</sup> A February 7, 2018 Order Granting Plaintiffs’ Motion to Appoint a Special Master, appointed another Special Master. On February 13, 2018, Judge Cory modified the February 7, 2018 Order to substitute Resolution Economics as the Special Master.

1 IV. DEFENDANTS HAD THE ABILITY TO PAY

2 As a preliminary matter, and as was more thoroughly briefed in Resolution  
3 Economics' Motion for Contempt, ResEcon was only seeking civil contempt against the  
4 Defendants, not criminal. ResEcon simply wanted to get paid, not punish the Defendants for  
5 not paying. This is not to say that the Defendants are not worthy of punishment because, in  
6 Judge Cory's words, his orders were "blown off"<sup>2</sup> by the Defendants. The Nevada Supreme  
7 Court clarified in Lewis v. Lewis, 132 Nev. Adv. Op. 46 (2016) *quoting* Rodriguez v. Eighth  
8 Judicial Dist. Court, 120 Nev. 798, 804–05 (2004), "[C]ivil contempt is said to be remedial  
9 in nature, as the sanctions are intended to benefit a party by coercing or compelling the  
10 contemnor's future compliance, not punishing them for past bad acts. Moreover, a civil  
11 contempt order is indeterminate or conditional; the contemnor's compliance is all that is  
12 sought and with that compliance comes the termination of any sanctions imposed."

14 Further, the Defendants' contempt, namely the Defendants outright refusal to make  
15 payment to Judge Cory's Court-appointed Special Master, "was committed in the immediate  
16 view and presence of the court or judge."<sup>3</sup> The brazen violation of Judge Cory's payment  
17 orders were committed in his immediate view and presence.

18 The Defendants had the ability to pay, but refused to pay, notwithstanding court  
19 orders. In the child support context, the initial burden of establishing indigency rests with  
20 the party in contempt.<sup>4</sup> According to the United States Supreme Court, it is burden of the  
21 party in contempt to prove that compliance is "factually impossible." United States v.  
22 Rylander, 460 U.S. 752, 103 S.Ct. 1548, 75 L.Ed.2d 521 (1983)  
23

24  
25 <sup>2</sup> December 13, 2018 Transcript Page 37 line 9.

<sup>3</sup> See N.R.S. §22.030(1).

<sup>4</sup> Rodriguez v. Dist. Ct., 120 Nev. 798 (2004).

1 In his Contempt Order, Judge Cory had no problem finding that the Defendants could  
2 pay. Judge Cory stated:

3 The Court ordered \$25,000 and then later \$41,000 based upon an estimate, I  
4 believe. On March 6th the Court ordered that \$25,000 be paid. On May 23rd,  
5 the Court ordered that \$41,000 be paid. Still, there was nothing from the  
defendants to really show that the defendant was not able to pay.”<sup>5</sup>

6 Then on September 11th a writ of execution was filed and lo and behold the  
7 defendants were in possession of somewhat over \$233,000 in cash. It is  
8 frankly ludicrous for the defendants to claim that they do not have the  
9 money. At that point that was clear . . . It still has income coming in. It  
10 has made -- this record is devoid of evidence that shows that the  
11 defendants could not pay the money that they did not have the money,  
12 and that’s in the face of a Court order, several Court orders.<sup>6</sup>

13 Remarkably, although the Defendants’ Motion asserts that Nady had no ability to pay,

14 Defendants’ counsel outright represented that Nady attempted to pay the \$25,000.00.

15 Nady’s counsel told Judge Cory:

16 MS. RODRIGUEZ: Your Honor, I know you don’t want to hear additional  
17 argument, but I had forgotten a very important point and I’ll be happy to  
18 supply an affidavit to the Court. But during some of this, these transactions,  
19 I believe when the first \$25,000 order following the stay -- and I have to get  
20 my time period right because as I mentioned, I just remembered it, Mr. Nady  
21 went to the Clerk with a check to attempt to make a deposit as the Court  
22 ordered and the Clerk refused it. She said that because there was no order in  
23 place ordering the \$25,000 that they couldn’t accept it.<sup>7</sup>

24 Judge Cory responded:

25 I find no reason why that wasn’t at least brought to the Court’s attention. I  
mean, are you saying that the Court would have said, oh, don’t bother to pay  
it? I mean, the Court of course would have done whatever was necessary to  
get that paid so that we could get on down the road of a resolution of this case.  
In any event, I don’t think that that at all ameliorates the contempt which your  
client has shown towards these court proceedings.<sup>8</sup>

<sup>5</sup> December 11, 2018 Page lines 14-17. (emphasis added) (The December 11, 2018 Transcript is **Exhibit “1”** to this Opposition.)

<sup>6</sup> December 11, 2018 Page 13 line 21- Page 14 line 4.(emphasis added)

<sup>7</sup> December 11, 2018 Transcript Page 14 line 16-23. (emphasis added)

<sup>8</sup> December 11, 2018 Transcript Page 15 lines 14-19.

Further, at the December 13, 2018 hearing, Judge Cory stated:

When I found that you, despite your protests in September and October that you simply didn't have the money to pay the special master and then the plaintiff effected a seizure of a bank account and there's some \$230,000 laying in that bank account, I have become extremely immune to cries from an individual or a company individual that they just don't have the money to pay the special master to complete this work."<sup>9</sup>

In fact, Judge Cory stated, "It is of a concern to the Court and it hasn't been explained away how after being ordered to pay those amounts, a short while later it's found that he's sitting on a bank account with \$230,000 in it. And that has not been explained to the Court's satisfaction."<sup>10</sup>

Even George C. Swarts, CPA stated, "I believe that [Defendants'] Management properly motivated could find a way to pay [Resolution Economics] Special Master 2."<sup>11</sup>

At the December 13, 2018 hearing, Judge Cory stated, "My view is that if Mr. Nady needs to take less funds or no funds as salary until [Resolution Economics] the special master gets paid, the previous special master, that's how -- one way to purge himself from the contempt of the court. At this moment it's not the Court's concern to protect Mr. Nady in his need, personal need for salary over the needs and rightful debt to the special master."<sup>12</sup>

The Court stated:

The willfulness of A Cab in disregarding the Court's Orders appointing a Special Master is apparent and A Cab's assertion its failure to comply with those Orders is a result of a financial inability to pay the Special Master cannot be properly considered and its evidence to establish same is deficient. If A Cab truly lacks the financial resources to comply with those Orders it has a remedy under the United States Bankruptcy Code to seek the protection of the

<sup>9</sup> December 13, 2018 Transcript page 7 lines 19-24.(emphasis added) (The December 13, 2018 Transcript is attached as **Exhibit "2"** to this Opposition.)

<sup>10</sup> December 13, 2018 Transcript Page 40 lines 21-24.

<sup>11</sup> February 1, 2019 Report of Special Master George C. Swarts, CPA Page 4 line 13). The Report is Exhibit "C" to the Motion for Reconsideration. (emphasis added)

<sup>12</sup> December 13, 2018 Transcript Page 35 lines 9-13.

Bankruptcy Court which is 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.<sup>13</sup>

V. Both Defendants A Cab and Nady Are in Contempt

“Courts have inherent power to enforce their decrees through civil contempt proceedings” Matter of Water Rights of Humboldt River, 118 Nev. 901 (2002) Even if Nady were not a named party, the court has inherit power to order contempt on a non-party.<sup>14</sup> Contempt need not be willful. Mankel v. Gov't Emps. Ins. Co., (D. Nev. July 31, 2017) Further, there is no limit of contempt that a court can order to compel compliance. In Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468 (9th Cir., 1992), the Ninth Circuit affirmed a contempt order to pay \$10,000 a day, an amount that exceeded the underlying judgment, where the amount was “insufficient to coerce compliance.” *See also* SEC v. Elmas Trading Corp., 824 F.2d 732, 732-33 (9th Cir.1987) (civil contempt may become criminal over time if it has lost all coercive effect.)

Judge Cory’s Orders for payment were directed to the “Defendants” in the plural. The February 7, 2018 Order states, “The Court also finds a compelling imperative to appoint in so appointing a Special Master, at defendants’ expense . . .”<sup>15</sup> On March 6, 2018, Judge Cory entered a Minute Order ordering the Defendants to pay the initial \$25,000 to the Special Master:

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<sup>13</sup> Judgment Order Page 31 lines 1-10.

<sup>14</sup> See Pengilly v. Rancho Santa Fe Homeowners, 116 Nev. 646 (2000) n. 3. See also Supreme Court Rule 99(2)(“Nothing contained in these rules denies any court the power to maintain control over proceedings conducted before it, such as the power of contempt . . .”)

<sup>15</sup> February 7, 2018 Order Granting Plaintiffs’ Motion to Appoint a Special Master Page 3 line 7.(emphasis added) On February 13, 2018, the Court modified February 7, 2018 Order to substitute Resolution Economics as the Special Master.

For the reasons stated herein the Court grants a temporary stay to resolve the **Defendants** claimed inability to pay the Special Master the initial \$25,000 required by previous court order. In addition to **Defendants protestations** of their temporary inability to pay the initial \$25,000, the Court also GRANTS a temporary Stay due to health considerations of the Court. (emphasis added)

...  
In the meantime [not longer than approximately 3 weeks] the Special Master is directed to cease all efforts to complete the task previously ordered by this Court until further order of this Court. Additionally, because there will be a breathing space of approximately three weeks **the Defendants should well be able to set aside the initial \$25,000 deposit, and are ordered to do so.** (emphasis added)<sup>16</sup>

On May 23, 2018 the Court Ordered:

This case needs to go forward and the Court is disinclined to hold up the matter 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.**<sup>17</sup>

The payment orders go back to March 2018, and the contempt comments go back as far as August 2018. In the August 2018 Judgment Order, Judge Cory commented on holding Nady in civil contempt and imprisoning Nady: "Plaintiffs do not propose an order of civil contempt and imprisonment against defendant Nady, A Cab's principal, as a remedy for that failure."<sup>18</sup>

The Court went on to find that the Defendants were in contempt:

[T]he Court finds that Defendants' persistent failure to comply with Court orders . . . warrants holding defendants in contempt . . .<sup>19</sup>

After Nady didn't pay, Judge Cory got more serious with him: On December 11, 2018, Judge Cory stated, "I am sorry to see that Mr. Nady is not here today. He has attended

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<sup>16</sup> March 6, 2018 Court Minutes.

<sup>17</sup> May 28, 2018 Court Minutes (emphasis added).

<sup>18</sup> Judgment Order Page 29 lines 14-16. (emphasis added)

<sup>19</sup> Judgment Order Page 28 lines 20-22. (emphasis added)

1 nearly all of the hearings. I know he has a great interest. **But if he were here today, I would**  
 2 **seriously consider putting him in jail for contempt.**<sup>20</sup>

3 Judge Cory stated, "I do find that **Mr. Nady and the corporate defendants** have  
 4 willfully violated Court orders. I'm not going to order a bench warrant today but we are  
 5 going to schedule a hearing, which won't take place until after the first of the year, to  
 6 determine how far this Court should go to exact payment. It does not please me to have to  
 7 do so, but I'm virtually at the end of my rope."<sup>21</sup> Judge Cory then stated, "I think Mr. Nady  
 8 better be here personally on Thursday. I'm ordering him to be present."  
 9

10 At that December 13, 2018 hearing, Judge Cory stated, "As to the contempt, I've  
 11 already indicated I'm not going to hold Mr. Nady -- well, I have held the defendants in  
 12 contempt, but I'm not going to put Mr. Nady into jail, until such time as he complies with the  
 13 Court's order."<sup>22</sup> Judge Cory stated to Nady in court, "It gives me no great pleasure to put  
 14 you in jail, Mr. Nady, which is why I was so late coming to the point of seriously considering  
 15 doing that."<sup>23</sup> As set forth above, Judge Cory ordered that the payment of the Special Master  
 16 would be out of Nady's pocket. At the December 13, 2018 hearing, Judge Cory stated, "My  
 17 view is that if Mr. Nady needs to take less funds or no funds as salary until [Resolution  
 18 Economics] the special master gets paid, the previous special master, that's how -- one way  
 19 to purge himself from the contempt of the court. At this moment it's not the Court's concern  
 20 to protect Mr. Nady in his need, personal need for salary over the needs and rightful debt to  
 21 the special master."<sup>24</sup>  
 22

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23  
 24 <sup>20</sup> December 11, 2018 Transcript Page 14 lines 13-15. (emphasis added)

25 <sup>21</sup> December 11, 2018 Transcript page 16 lines 13-18. (emphasis added)

<sup>22</sup> December 13, 2018 Transcript Page 12 lines 9-11 (emphasis added).

<sup>23</sup> December 13, 2018 Transcript Page 8 lines 11-13.

<sup>24</sup> December 13, 2018 Transcript Page 35 lines 9-13.



Judge Cory then stated, "There is another facet to this case, if you will, that partially lends itself to the conclusion that Mr. Nady had no intention of paying these people and had no intention of even complying with the Court's orders regarding monies . . ."<sup>25</sup>

At the December 13, 2018 hearing, Judge Cory reiterated, "At this point we have someone who's been found in contempt. As you yourself have said, Mr. Nady is the one operating this business. It's under his control. If he chooses to get the special master paid and off his back, then he can do so. If he would rather not do so and he winds up violating this order, then we'll deal with it at that point."<sup>26</sup>

Judge Cory then stated, "Well, let's put it this way. What Mr. Nady and the other defendants have been found to be -- how they've been found to be in contempt of court is they were ordered at one point to pay \$41,000 to the special master. They didn't do so and they still haven't. So it is an ongoing contempt as far as I'm concerned. If he wants to get some relief from the order of the Court, then obey the order of the Court, pay the \$41,000 and then let's talk."<sup>27</sup>

Nady's attorney responded:

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

THE COURT: No. We're past that, Mr. Shafer. We're past that. This Court entered orders last September, October, and they've just -- to this point just been blown off.<sup>28</sup>

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<sup>25</sup> December 11, 2018 Transcript Page 15 lines 20-22.

<sup>26</sup> December 13, 2018 Transcript Page 36 lines 12-16.

<sup>27</sup> December 13, 2018 Transcript Page 36 lines 21-Page 37 line 2.

<sup>28</sup> December 13, 2018 Transcript Page 37 lines 3-9.

1 Judge Cory again reiterated that Mr. Nady was personally in contempt, stating, “I  
2 think Mr. Nady gets himself subject to this kind of language when he commits contempt of  
3 court by just flat refusing to pay an amount that he was ordered to be paid to the special  
4 master. That’s all.”<sup>29</sup>

5 Even Nady’s attorneys have never disputed that both Nady and his company were  
6 both liable to Resolution Economics. Nady’s counsel attempted to argue that, “It has not  
7 been established that as of now A Cab or Mr. Nady has the ability to pay, or A Cab has the  
8 ability to pay the special master fees.”<sup>30</sup>

9 As set forth above, at the December 13, 2018 hearing, Judge Cory stated, “My view  
10 is that if Mr. Nady needs to take less funds or no funds as salary until [Resolution Economics]  
11 the special master gets paid, the previous special master, that’s how -- one way to purge  
12 himself from the contempt of the court. At this moment it’s not the Court’s concern to protect  
13 Mr. Nady in his need, personal need for salary over the needs and rightful debt to the special  
14 master.”<sup>31</sup>

15 Mr. Nady understood that he was liable for the \$41,000. In Nady’s May 31, 2018  
16 Affidavit (attached as **Exhibit “3”**) he stated, “It is my understanding that the Court has now  
17 ordered a deposit of \$41,000 to be made by June 1, 2018. I am unable to make that deposit.”<sup>32</sup>  
18 In paragraph 6 of his Affidavit, Nady plead that “I am a 50+ year resident of Nevada, living  
19 here with my wife and family since 1966...” In Paragraph 12, he summarized, “I am unable  
20  
21  
22  
23

24 <sup>29</sup> December 13, 2018 Transcript page 37 line 23 – Page 38 line 1. (emphasis added)

25 <sup>30</sup> December 13, 2018 Transcript Page 22 lines 2-4. (emphasis added)

<sup>31</sup> December 13, 2018 Transcript Page 35 lines 9-13.

<sup>32</sup> Nady Affidavit Paragraph 4.

1 to pay \$250,000 [sic] for the work of the Special Master; and further cannot pay \$41,000 by  
2 June 1, 2018.”

3 The Defendants appear to assert that Nady was severed out of the case in August  
4 2018, and therefore should not be liable for ResEcon's compensation that he was  
5 previously ordered to pay. Nady is still liable to pay for the Special Master. As the  
6 record shows, whether or not Nady was “severed out,” Judge Cory ordered him to pay  
7 and held him in contempt. Judge Cory was not “piercing the corporate veil” as argued  
8 by Defendants. As set forth above, Judge Cory has inherent power to hold any party in  
9 contempt, and order whatever contempt is sufficient in order to compel Nady's compliance.  
10

11 **CONCLUSION**

12 Based on the foregoing, the Defendants’ Motion for Reconsideration must be denied.

13 Dated: \_\_\_\_\_

14 DUBOWSKY LAW OFFICE, CHTD.

15 By: \_\_\_\_\_

16 Peter Dubowsky, Esq.  
17 Nevada Bar No. 4972  
300 South Fourth Street, Suite 1020  
18 Las Vegas, Nevada 89101  
(702) 360-3500  
19 Fax (702) 360-3515  
Attorney for Special Master ResEcon  
20  
21  
22  
23  
24  
25

**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P 5(b), I hereby certify that on the 28<sup>th</sup> day of March, 2019, I served a true and correct copy of the foregoing 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 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:

Leon Greenberg, Esq.  
Attorney for Plaintiff

Esther C. Rodriguez, Esq.  
Attorney for Defendant

/s/William Thompson  
An employee of Dubowsky Law Office, Chtd.

# Exhibit “1”

1 **TRAN**

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

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

12 BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE  
13 TUESDAY, DECEMBER 11, 2018

14 ***TRANSCRIPT RE:***  
15 RESOLUTION ECONOMICS' APPLICATION FOR ORDER OF PAYMENT  
16 OF SPECIAL MASTER'S FEES AND MOTION FOR CONTEMPT

17 **APPEARANCES:**

18 For the Plaintiffs: CHRISTIAN GABROY, ESQ.

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

20 For Resolution Economics: PETER DUBOWSKY, ESQ.

21 **ALSO PRESENT:** COREY E. GILDART  
22 JONATHAN WILSON  
Resolution Economics

23  
24 RECORDED BY: Lisa Lizotte, Court Recorder

AA010305

1 LAS VEGAS, NEVADA, TUESDAY, DECEMBER 11, 2018, 10:22 A.M.

2 \* \* \* \* \*

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

5 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez, Michael  
6 Wall and Jay Shafer for the defendants.

7 THE COURT: Good morning.

8 MR. DUBOWSKY: Good morning, Your Honor. Peter Dubowsky for the  
9 special master, Resolution Economics. Along with me is Mr. Cory Gildart, who flew  
10 in from New York to be here.

11 THE COURT: Good morning.

12 MR. DUBOWSKY: And Mr. Jonathan Wilson, who came in from Los Angeles  
13 to be here, both with Resolution Economics, Your Honor.

14 THE COURT: They are both with your client, then?

15 MR. DUBOWSKY: Yes.

16 THE COURT: Is that it? Okay.

17 MR. GABROY: Good morning, Your Honor. Christian Gabroy on behalf of  
18 Michael Murray and the putative class. Bar number 8805.

19 THE COURT: Good morning.

20 THE CLERK: We need the other two gentlemen's names again.

21 MR. WILSON: Jonathan Wilson. J-o-n-a-t-h-a-n Wilson, like the basketball.

22 MR. GILDART: Corey, C-o-r-e-y Gildart, G-i-l-d-a-r-t. I apologize for the E.

23 THE COURT: You put an E in that name? Ahh, that doesn't auger well for  
24 the plaintiff's side.

1 MR. GILDART: Well, it is a given.

2 THE COURT: Yeah. All right. In a case that just never lacks for novel  
3 issues, we have another one. It is the motion by the -- it's not a receiver, special  
4 master for contempt of the defendants for failure to abide by the Court's order.

5 You have the floor.

6 MR. DUBOWSKY: Thank you, Your Honor. This is a motion for contempt.  
7 The defendants have not complied with orders going back to February, March;  
8 May 27th where this Court ordered \$41,000 be paid. And then on August 21st  
9 Your Honor said that the defendants are in contempt. So I'm not sure what to do.  
10 I guess, Your Honor, another Court order that they're going to ignore. We're really  
11 at an exhaustive approach here because they're just not paying. Now, again, let me  
12 -- as Your Honor is very well aware, my clients were brought into the case by the  
13 Court. This is not a pre-existing conflict that is brought into the court. Your Honor  
14 brought my clients into the court and ordered the defendants to pay them. They  
15 did an exhaustive amount of work, over \$85,000 in labor at the request of the Court.  
16 This Court ordered my client to be paid. And they have -- with all due respect,  
17 Your Honor, they snubbed their nose to the Court. They're not complying with this  
18 Court's orders.

19 THE COURT: Uh-huh.

20 MR. DUBOWSKY: So, Your Honor, I just have to give it to you. I don't know  
21 what more to do. We can't -- they're going to ignore another order. They haven't  
22 approached to make any voluntary payment. And my client is out all this money.  
23 It's this Court's -- respectfully, Your Honor, it's this Court's dignity at stake when  
24 somebody comes into court and says we're not complying with your Court orders.



1 THE COURT: Uh-huh.

2 MR. DUBOWSKY: So, Your Honor, I had it over to Your Honor to see  
3 what you're going to do. They're in contempt. Now, we're not asking for criminal  
4 contempt. We're not asking that you punish them, not that they're not worthy of  
5 punishment. We're not saying punish them, but just civil contempt. Whatever  
6 punishment is necessary to get them to pay, to comply with the Court orders.  
7 And then the additional amounts that are also due based upon my client's work.  
8 And so, Your Honor, I had it over to you.

9 THE COURT: The typical -- one of the ways that the Court enforces a  
10 contempt finding is -- there's any number of sanctions, of course, that the Court can  
11 apply, up to and including incarcerating someone until such time as they comply  
12 with the Court's order. Your motion does not ask for anything specific. You're  
13 asking the Court simply to find them formally in contempt, is that correct?

14 MR. DUBOWSKY: No, Your Honor. We are asking -- we understand --  
15 we've briefed the Court that the Court has the discretion to order it, and if  
16 incarceration is necessary to compel them to comply with the Court's orders, then  
17 that's what's necessary.

18 THE COURT: All right. Well, let's see what the defendants have to say.  
19 I have of course read the briefs of both sides to this controversy, as well as the  
20 plaintiff's response, the opposition filed by the defendants and the reply of the  
21 special master.

22 Ms. Rodriguez.

23 MS. RODRIGUEZ: Thank you, Your Honor. As the Court is aware, as soon  
24 as this issue of the special master was brought up rather surprisingly at one of the

1 hearings before trial, the defendants objected to the appointment of the special  
2 master, opposed the appointment of the special master, and then at first opportunity  
3 filed a motion with the Court to inform the Court and all the parties, including the  
4 special master, who was served, that there was an inability to finance such a costly  
5 project by the special master. I don't really know what Mr. Dubowsky is referring to,  
6 that the Court has already found A Cab in contempt for failure to pay a \$40,000 bill,  
7 because I don't believe that that was the case. And I looked again to see if he had  
8 attached anything to show what he's referencing, because if anything what A Cab  
9 did was to try to comply with the Court's order.

10           What I attached in my opposition was the letters that show the day  
11 that we were in court here, I believe it was February 15th of 2018, and the Court  
12 said you absolutely need to send data by tonight to the special master. A Cab did  
13 that. We overnighted everything that the Court ordered. We fully complied with  
14 everything that the Court has ever ordered as it pertains to the special master,  
15 except for the money. That's nothing that I can pay and that's nothing that A Cab  
16 could pay. And when we came to the Court, the Court did grant the stay, did allow  
17 further opportunity to try to come up with the money, and then as the Court is fully  
18 aware, things quickly transformed to go down a different path and that path was the  
19 summary judgment motion, and then to utilize the spreadsheets that were prepared  
20 by Mr. Greenberg rather than anything from the special master.

21           So in my opposition I also noted a couple of other things that I'll just  
22 briefly touch on, Your Honor, is that we've never seen any work, any data, anything  
23 from the special master. All we've ever gotten is a bill, a bill for \$85,000, which  
24 we also argued without any showing of any data that we could -- that either party

1 could use. It's not fair. And secondly, just in reviewing the bill, the bill is extremely  
2 excessive. You look at over \$17,000 to train temps or to train employees. The  
3 majority of that is then listed as data entry. And if there is just a training of data  
4 entry, then that should be a minimum wage payment, something like 8 to 10 dollars,  
5 and it's \$50 an hour. And then the people that are doing the training are \$300 an  
6 hour. So we're looking at all of a sudden a bill that's over \$85,000, with nothing to  
7 show for it except the bill.

8 But, you know, in response to what Mr. Dubowsky is arguing, again,  
9 civil contempt is not appropriate. We did comply, A Cab did comply with the Court's  
10 order. And as Your Honor is aware, this issue of the special master is on appeal.

11 THE COURT: When you say you did comply with the Court's order, how is  
12 that?

13 MS. RODRIGUEZ: Everything I attached, Your Honor, that showed that  
14 we overnighted the QuickBooks data.

15 THE COURT: Oh, okay.

16 MS. RODRIGUEZ: We overnighted all the trip sheets. We downloaded  
17 everything onto a thumb drive and a drop file, a drop box, and sent it off to the  
18 special master as the Court ordered. The only thing -- I had no idea that we were  
19 going to be served with an \$85,000 bill because as far as what the Court had  
20 ordered was the \$25,000 initial deposit. And the special master was on alert  
21 immediately that there was an inability to even come up with \$25,000. So why he  
22 and the company proceeded to continue to run up the bill to \$86,000, you know,  
23 is inexplicable. Ultimately then the Court, as the parties, have not seen anything  
24 to support such a bill. I think that the special master should be made -- if the Court

1 is inclined to grant such a bill, to at least have them turn over something to show  
2 what is worth \$86,000.

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

4 THE COURT: Do you have anything to add in?

5 MR. GABROY: Your Honor, nothing. I mean, we've already -- we filed our  
6 brief. And I think another court hearing on a different matter is coming up later this  
7 week, but we have nothing further to add than what's already briefed.

8 THE COURT: All right.

9 MR. GABROY: Thank you, Your Honor.

10 THE COURT: Mr. Dubowsky.

11 MR. DUBOWSKY: Thank you, Your Honor. Your Honor, I don't like to use  
12 Yiddish in court, but we're aware of the word chutspah. I think the definition would  
13 be sending three attorneys from three separate law firms to come into court and  
14 say they have no money to comply with a Court order.

15 Now, as far as my client, this is very specialized work and that is why  
16 the bill may appear high, but in fact the bill is accurate as to what was earned and  
17 the work that was done at the Court's request. In terms of this Court's order,  
18 \$41,000, the defendants don't have to like it. They don't have to agree with it. They  
19 do have to comply with it. And they did start to do some compliance, but not any  
20 compliance with the payment or any apparent effort to comply with the payment  
21 orders.

22 And, Your Honor, as far as contempt, I don't need to tell -- again,  
23 I didn't know about this case more than a month or so ago, but Your Honor is living  
24 it. I was here in court last week. I did find an order that says, "This Court finds

1 the defendant's persistent failure to comply with Court orders warrants holding  
2 defendants in contempt." That was page 28, lines 20 to 22 and that's in my motion.  
3 So I'm not sure if I misinterpreted what that means, but it sounds like defendants  
4 are in contempt. That's what it sounds like it says. And elsewhere in the order,  
5 which is put in the motion --

6 THE COURT: Do you know which -- was that contained in an Order of the  
7 Court or was it a statement of the Court in court, in open court?

8 MR. DUBOWSKY: It may have been the judgment order, Your Honor. Does  
9 that sound accurate?

10 THE COURT: I'm sorry?

11 MR. DUBOWSKY: The summary judgment order.

12 THE COURT: Okay. All right.

13 MR. DUBOWSKY: But again, it is cited to in the brief because in order to  
14 come into --

15 THE COURT: Okay.

16 MR. DUBOWSKY: -- as you know, Your Honor, I had to walk into the middle  
17 of a movie and get caught up on the plot.

18 MS. RODRIGUEZ: May I ask what exhibit you're looking at or you're  
19 referencing?

20 MR. DUBOWSKY: This -- I have it as a judgment, the judgment order, page  
21 28, lines 20 to 22. This is the order granting summary judgment dated August 21,  
22 2018. And again, Your Honor, whether -- that's what it says. If I misinterpreted it,  
23 I misinterpreted it, but for sure, Your Honor, I have not misinterpreted that Your  
24 Honor has ordered on May 23rd that the defendants pay \$41,000, and they have

1 not paid a dime of it. So, Your Honor, yes, contempt is in order. Whether it means  
2 incarceration until they comply, whether it means a payment of additional amounts  
3 per day until they comply, but again, Your Honor, it's this Court's order. As the  
4 supreme court has said, it's the honor and dignity of the Court that's at stake in a  
5 motion on contempt. And this is about as clear a contempt as you can get, Your  
6 Honor. So, again, I give it to the Court as to fashion something that will force the  
7 defendants to comply and pay my client for their work.

8 If Your Honor has any specific questions about the work or about the  
9 report, again, Your Honor, I have my clients, two different representatives come  
10 in, one from Los Angeles, one from New York, who can answer any additional  
11 questions you have, but I think Your Honor has what's in front of you in order to  
12 fashion a necessary remedy to force compliance. Thank you.

13 THE COURT: Let me ask this question, then, and I don't care which  
14 representative answers it. You just heard the objection that the defendant objects  
15 to the fact that the special master began by hiring a bunch of temps and paying  
16 them, to train them, apparently, to perform the work. Is that a normal thing?

17 MR. WILSON: In large scale cases like this with a small amount of time,  
18 yes, very normal.

19 THE COURT: All right.

20 MR. WILSON: We try to refrain from hiring temps as much as possible, but  
21 when the time constraint is what it is, we do our best to make sure that the work  
22 is quality.

23 THE COURT: And indeed the Court did make it clear in a number of the  
24 orders and statements that it was most concerned with the passage of time that it

1 would take in order to accomplish this purpose and that it was important to get this  
2 done quickly.

3 MR. WILSON: We took that very seriously.

4 THE COURT: Is there anything else that you know of that would aid the  
5 Court in determining the reasonableness of the charge of the \$85,000?

6 MR. WILSON: Just experience. I mean, we've all -- we've done this for  
7 many years. We can give bills for other cases, if necessary. It's very standard.  
8 And anything that you would need, we'd be happy to deliver.

9 MR. GILDART: Your Honor, if it pleases the Court. I'm Corey Gildart --

10 THE COURT: Yes.

11 MR. GILDART: -- legal officer for the firm. I would just mention that defense  
12 mentioned the high rate for the temps.

13 THE COURT: Uh-huh. Yeah.

14 MR. GILDART: It is not minimum wage work. I would just add that. We take  
15 H.R. data particularly very seriously from a privacy perspective. We don't just get  
16 regular temps off the street. These are qualified individuals and we have to train  
17 them accordingly, so that would explain that rate.

18 THE COURT: Okay. Again, a question for either of you, the representatives.  
19 As I recall, the estimate that was given to complete the work was about \$180,000.  
20 Is that correct?

21 MR. WILSON: Yes.

22 THE COURT: And was that again because of the rush nature of the services  
23 involved?

24 MR. WILSON: It would probably come out very similarly if we had more time.

1 It's just a matter of there's a ramp-up cost that you have no matter what and then  
2 after you ramp up it's smooth sailing from there.

3 THE COURT: Okay. And that's doing -- having to pull the information off of  
4 some -- I don't recall the precise estimate, I think it was around 300,000 of these  
5 time sheets.

6 MR. WILSON: Yeah. It was 300,000 files. I think it was 400,000 individual  
7 pages.

8 THE COURT: Yeah. Okay, thank you.

9 Anything further, Mr. Dubowsky?

10 MR. DUBOWSKY: I don't believe so, Your Honor. Oh, one more.

11 MR. WILSON: Just with respect to the costs, I know that they were saying  
12 something along the lines of that my boss, Ali Saad, didn't have too much time.  
13 And I just want to point out that that doesn't really make sense because our whole  
14 approach was to be as cost effective as possible. And if he had more time, for  
15 example, if he was the one doing the data entry, it would be a lot more expensive.

16 THE COURT: Yeah.

17 MR. WILSON: So basically everything we did was we were trying to do this  
18 as quickly as possible, as cost effective as possible. I spent an entire weekend  
19 personally writing out a program to analyze as much of the documents as possible  
20 programatically so that we could minimize the amount of data entry required. We  
21 put in a lot of infrastructure to get this done as quickly as possible. We're solutions  
22 oriented people. We just want to get things done as quickly as possible. And, you  
23 know, it's not really nice to be here, but the quality of our work I think would speak  
24 for itself if we had been able to complete it.



1 THE COURT: Okay. All right, thank you.

2 In this case, as all counsel will recognize, probably painfully so, we  
3 have been at pains to try and come to a resolution that was fair and just to both  
4 sides. All of this happens within the framework or the context, in my mind, of a  
5 lawsuit that is filed to vindicate constitutional rights. I've already commented before  
6 about -- what my opinion would be about is it a good idea overall to include your  
7 minimum wage act in the constitution of the state. It doesn't matter what I think.  
8 The people of this state determined that it was of sufficient importance they put it  
9 in the constitution. Now, that means something to me and it also informs the Court  
10 as to what powers it needs to exercise, both legal and equitable powers, in order  
11 to determine if these rights have been violated, and secondarily to, as much as  
12 possible, undo the violation and get them paid.

13 At length the Court determined that the defendants simply were not  
14 willing to produce any evidence on their own. At most every turn the response that  
15 I heard was, well, it's only the time sheets, only the time sheets. But the defendant  
16 did not put forward any calculations based on the time sheets, and so ultimately  
17 because of the passage of time in this litigation the Court determined that we're  
18 going to have to go back and revisit a motion that had been brought by the plaintiffs  
19 earlier, much earlier. And to say that the defendants were blindsided by it I don't  
20 think is really accurate. It was argued, fully argued, briefed and argued by both  
21 sides when it was first proposed by the plaintiff.

22 Simply it was the case that it became more obvious to the Court  
23 ultimately that something like that, as drastic and perhaps as expensive as that was  
24 the only way that we were going to get down to having the best evidence, according

1 to the defendants, of what was owed. And so the Court ordered it and ordered that  
2 the defendant would pay the cost because it was -- the Court had already at that  
3 point determined that there had been a violation of the constitutional provisions  
4 regarding minimum wage; that there was indeed liability and the question was what  
5 the amount of the damages would be.

6 In preparing for today I've gone back and looked at virtually all of the  
7 minute orders recounting the efforts of both sides and the Court in this case for  
8 the last at least year or perhaps more, and what I see is that the Court ordered the  
9 defendant to pay the first \$25,000. The defendant came and protested and said  
10 that it couldn't and put some forward some figures, I believe, to try and show the  
11 Court that it couldn't. Well, in hindsight what I see it was saying was that it couldn't  
12 afford to, that it didn't fit in its budget to pay such fees. Before I -- well, ultimately  
13 the Court realized that the defendant was simply refusing to pay it. They had  
14 the money. The Court ordered \$25,000 and then later \$41,000 based upon an  
15 estimate, I believe. On March 6th the Court ordered that \$25,000 be paid. On  
16 May 23rd, the Court ordered that \$41,000 be paid. Still, there was nothing from the  
17 defendants to really show that the defendant was not able to pay. And as I said,  
18 ultimately I concluded that what the defendant was really saying was not that they  
19 didn't have the money but that they didn't want to pay it because they had other  
20 business expenses.

21 Then on September 11th a writ of execution was filed and lo and  
22 behold the defendants were in possession of somewhat over \$233,000 in cash.  
23 It is frankly ludicrous for the defendants to claim that they do not have the money.  
24 At that point that was clear. And while the defendants may argue, yeah, but that's

1 all gone, that was tied up, well, the defendant is still operating its business. It still  
2 has income coming in. It has made -- this record is devoid of evidence that shows  
3 that the defendants could not pay the money, that they did not have the money,  
4 and that's in the face of a Court order, several Court orders.

5 And as was already touched upon, there was a stay put in place.  
6 The Court was constantly trying to -- I think my comment during one or more of the  
7 hearings was trying not to kill the goose that lays the golden egg. And it has all  
8 come to naught and this Court cannot help but find that in the course of protesting  
9 loudly having to pay anything, the defendant has just flat violated Court orders and  
10 refused -- not that they couldn't -- they refused to pay the \$25,000 or the \$41,000,  
11 or as was just argued by Mr. Dubowsky, in fact anything. Not a penny one has been  
12 paid and tendered. This is a willful violation of a Court order.

13 I am sorry to see that Mr. Nady is not here today. He has attended  
14 nearly all of the hearings. I know he has a great interest. But if he were here today,  
15 I would seriously consider putting him in jail for contempt.

16 MS. RODRIGUEZ: Your Honor, I know you don't want to hear additional  
17 argument, but I had forgotten a very important point and I'll be happy to supply an  
18 affidavit to the Court. But during some of this, these transactions, I believe when  
19 the first \$25,000 order following the stay -- and I have to get my time period right  
20 because as I mentioned, I just remembered it, Mr. Nady went to the Clerk with a  
21 check to attempt to make a deposit as the Court ordered and the Clerk refused it.  
22 She said that because there was no order in place ordering the \$25,000 that they  
23 couldn't accept it.

24 THE COURT: Hmm.

1 MS. RODRIGUEZ: So I can supply something to that effect because during  
2 this he was attempting to make a payment, a large payment. I think it was the  
3 twenty, twenty-five thousand dollars.

4 THE COURT: And so he instructed his attorneys to immediately bring that  
5 to the Court's attention; correct?

6 MS. RODRIGUEZ: No, Your Honor, because like i mentioned --

7 THE COURT: Ahh.

8 MS. RODRIGUEZ: -- there was a complete transition and that special master  
9 issue was pushed to the back burner, never to be addressed again.

10 THE COURT: Well, if it was to pay the \$25,000, that was ordered March 6th.  
11 We didn't go to the Plan B or Plan C to try and vindicate constitutional rights here  
12 until significantly later than that.

13 MS. RODRIGUEZ: Uh-huh.

14 THE COURT: I find no reason why that wasn't at least brought to the Court's  
15 attention. I mean, are you saying that the Court would have said, oh, don't bother  
16 to pay it? I mean, the Court of course would have done whatever was necessary  
17 to get that paid so that we could get on down the road of a resolution of this case.  
18 In any event, I don't think that that at all ameliorates the contempt which your client  
19 has shown towards these court proceedings.

20 There is another facet to this case, if you will, that partially lends itself  
21 to the conclusion that Mr. Nady had no intention of paying these people and had no  
22 intention of even complying with the Court's orders regarding monies, and that is his  
23 persistent attempts to create business entities which give no notice to the public that  
24 any entity has any ownership of assets or any part in the workings of the business,

1 and of course I'm referring to the Series LLCs. There are statutes, of course, in  
2 effect that allow a party to do Series LLCs, but in this case I'm not satisfied that  
3 those statutes have been properly complied with. In any event, it isn't that I'm  
4 saying he's done anything illegal with the Series LLCs, it simply makes it very  
5 obvious the lengths to which he was willing to go to protect assets at all costs. And  
6 so the course of conduct that I have delineated is consistent with the conclusion  
7 that he's not going to pay even under Court order. I give him credit if he went to the  
8 Clerk with a check at one point. I'm going to guess that was following my comment  
9 in open court that I would consider putting him in jail, which I did comment about  
10 one time in court.

11               It is simply amazing to me that the Court cannot seem to communicate  
12 with Mr. Nady that these are important responsibilities and that he's not going to  
13 avoid paying minimum wage. So I am virtually at the end of my rope. I do find that  
14 Mr. Nady and the corporate defendants have willfully violated Court orders. I'm not  
15 going to order a bench warrant today but we are going to schedule a hearing, which  
16 won't take place until after the first of the year, to determine how far this Court  
17 should go to exact payment. It does not please me to have to do so, but I'm virtually  
18 at the end of my rope.

19               We're going to set this -- let's see, we have a hearing on Thursday,  
20 don't we?

21               MR. GABROY: Yes, Your Honor.

22               THE COURT: I think Mr. Nady better be here personally on Thursday. I'm  
23 ordering him to be present.

24               MS. RODRIGUEZ: I will communicate that with him, Your Honor --

1 THE COURT: Thank you.

2 MS. RODRIGUEZ: -- or to him.

3 THE COURT: Thank you.

4 MR. GABROY: Thank you, Your Honor.

5 THE COURT: And remind me what the nature of the hearing is on Thursday.

6 MR. GABROY: Your Honor, I believe co-counsel has drafted -- it's a motion  
7 and supplemental motion regarding turnover orders in regards to certain property.

8 THE COURT: Okay.

9 MR. SHAFER: I think the order was actually to determine the scope of  
10 whether a receiver would be entered and to what scope they would -- what powers  
11 they would be appointed to.

12 THE COURT: Okay. And that's -- okay.

13 MR. GABROY: Thank you, Your Honor.

14 THE COURT: All right. So we will see you Thursday. While I am entering  
15 an order finding the defendants, including Mr. Nady personally, in contempt, that's  
16 as far as the Court is going on your motion to this point. You can probably -- I mean,  
17 it's obvious that I am considering putting him in custody until that is paid. So you  
18 may want to be here on Thursday. I think we had -- oh, your problem was with your  
19 witnesses, though -- your representatives.

20 MR. DUBOWSKY: I can be here on Thursday, Your Honor.

21 THE COURT: Yeah, okay. All right. So we start Thursday at what time?

22 THE CLERK: 10:30.

23 THE COURT: 10:30.

24 MR. GABROY: 10:30, Your Honor. Thank you.

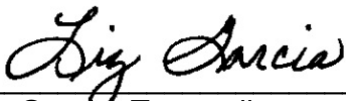
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THE COURT: All right. We'll see you Thursday at 10:30.  
MR. GABROY: We'll see you Thursday. Thank you, Your Honor.  
MR. DUBOWSKY: Thank you, Your Honor.

(PROCEEDINGS CONCLUDED AT 10:57 A.M.)

\* \* \* \* \*

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

  
\_\_\_\_\_  
Liz Garcia, Transcriber  
LGM Transcription Service

# Exhibit “2”



1 **TRAN**

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

6 MICHAEL MURRAY, et al, ) CASE NO. A-12-669926  
7 Plaintiffs, ) DEPT. NO. I  
8 vs. )  
9 A CAB TAXI SERVICE, LLC, et al, )  
10 Defendants. )  
11

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

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

18 **APPEARANCES:**

19 For the Plaintiffs: LEON GREENBERG, ESQ.  
20 CHRISTIAN GABROY, ESQ.  
21 KAINE MESSER, ESQ.

22 For the Defendants: ESTHER C. RODRIGUEZ, ESQ.  
23 MICHAEL K. WALL, ESQ.  
24 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

**AA010324**

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

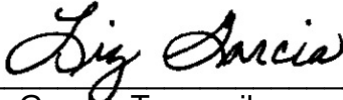
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Liz Garcia, Transcriber  
LGM Transcription Service

# Exhibit “3”

## AFFIDAVIT OF CREIGHTON J. NADY

STATE OF NEVADA           )  
  ) s. s.  
COUNTY OF CLARK        )

CREIGHTON J. NADY, being first duly sworn, states:

1. I am the managing member of A Cab, LLC ("A Cab").

2. I have not engaged in willful disobedience of any of this Court's orders, including the ordered monetary deposit of \$25,000 to a Special Master.

3. Because I was unable to make this payment of \$25,000, my counsel requested relief from this Court in the form of a stay of proceedings.

4. It is my understanding that the Court has now ordered a deposit of \$41,000 to be made by June 1, 2018. I am unable to make this deposit.

5. Attached hereto are the financial statements of A Cab, LLC, demonstrating the company's financial struggles. A Cab had a loss for the year 2017 of \$466,433.22. In this year 2018, the company has lost over \$29,000 per month or \$87,215 as of the first quarter. As a result, I have had to make the unfortunate decisions to lay off personnel, as well as to severely cut-down on the hours worked by my administrative and management personnel. I have also sold many personal assets in order to continue to have operating capital and to keep the doors open.

6. I am a 50+ year resident of Nevada, living here with my wife and family since 1966 except for my time in the U.S. Army as a Captain. I started this company in 2001. I have always strived to comply with all State and Federal laws and regulations, including the orders of this Court. There was never any deliberate intent to underpay my drivers, as I took all steps including meeting with the State Labor Commissioner's office to make sure I was acting lawfully and properly. It is my understanding that I am the only cab owner who took such steps to seek out guidance on these issues from the State.

7. When A Cab was audited by the Federal Department of Labor in 2009, I understood the company to have received a clean bill with no violations. It was my understanding that this was an assurance from the federal government that A Cab was acting properly and lawfully.

...

8. When A Cab was audited again for the time period of 2010-2012, and after escalating costs of defending the audit, I chose to settle the matter with the understanding that the monies would go into the pockets of my drivers. This settlement was \$139,998.80 that would be paid to drivers.

9. I also entered into a settlement agreement in the *Dubric v. A. Cab* matter in December 2016, which will allow additional funds to go into the pockets of my drivers.

10. I am aware that amounts in excess of the *Dubric* settlement have been offered to the class members in the *Murray* matter who rejected a resolution.

11. The financial statements attached hereto are true and accurate.

12. I am unable to pay \$250,000 for the work of the Special Master; and further cannot pay \$41,000 by June 1, 2018. Any monies paid to the Special Master will come from funds intended for the drivers.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

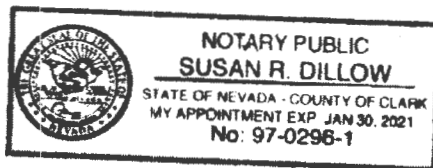
FURTHER YOUR AFFIANT SAYETH NAUGHT.

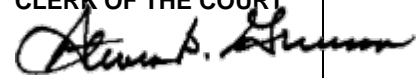
DATED this 31<sup>st</sup> day of May, 2018.

CREIGHTON J. NADY

SUBSCRIBED and SWORN to before me this 31<sup>st</sup> day of May, 2018

NOTARY PUBLIC in and for the State of Nevada





NOEJ  
Peter Dubowsky, Esq.  
Nevada Bar No. 4972  
Amanda C. Vogler-Heaton, Esq.  
Nevada Bar No. 13609  
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Las Vegas, Nevada 89101  
(702) 360-3500  
Fax (702) 360-3515  
Attorney for Plaintiff

**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,) **NOTICE OF ENTRY OF ORDER**  
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 )

Please take notice that on August 8, 2019, an ORDER DENYING DEFENDANTS'  
MOTION FOR RECONSIDERATION OF JUDGMENT AND ORDER GRANTING  
RESOLUTION ECONOMICS APPLICATION FOR ORDER OF PAYMENT OF SPECIAL



1 MASTER'S FEES AND ORDER OF CONTEMPT was entered by the Clerk of the Court in  
2 the above-referenced matter. A true and correct copy of the order is attached.

3 Dated: August 8, 2019

4 DUBOWSKY LAW OFFICE, CHTD.

5  
6 By: /s/Amanda C. Vogler-Heaton  
Amanda C. Vogler-Heaton, Esq.  
7 Attorney for Plaintiff

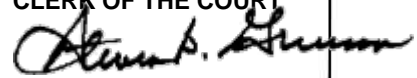
8  
9 **CERTIFICATE OF SERVICE**

10 Pursuant to N.R.C.P 5(b), I hereby certify that on the 8<sup>th</sup> day of August, 2019, I served a  
11 true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER upon those persons  
12 designated by the parties in the E-Service Master List for the above-referenced matter in the  
13 Eighth Judicial District Court eFiling System in accordance with the mandatory electronic  
14 service requirements of Administrative Order 14-2 and the Nevada Electronic Filing  
15 Conversion Rules:

16 Leon Greenberg, Esq.  
Attorney for Plaintiff

17 Esther C. Rodriguez, Esq.  
18 Attorney for Defendant

19  
20 /s/ Amanda C. Vogler-Heaton  
An employee of Dubowsky Law Office, Chtd.



ORDD  
Peter Dubowsky, Esq.  
Nevada Bar No. 4972  
Amanda Vogler-Heaton, Esq.  
Nevada Bar No. 13609  
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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.: 32  
situated )

Plaintiff,

vs.

A CAB TAXI SERVICE LLC, A CAB, LLC,) Date: May 21, 2019  
and CREIGHTON J. NADY and DOES I-X) Time: 10:30 a.m.  
and ROE CORPORATIONS I-X, inclusive )

Defendants

RESOLUTION ECONOMICS LLC

Special Master,

vs.

A CAB TAXI SERVICE LLC, A CAB, LLC,) **ORDER DENYING DEFENDANTS'**  
and CREIGHTON J. NADY and DOES I-X) **MOTION FOR RECONSIDERATION OF**  
and ROE CORPORATIONS I-X, inclusive ) **JUDGMENT AND ORDER GRANTING**  
**RESOLUTION ECONOMICS**  
**APPLICATION FOR ORDER OF**  
**PAYMENT OF SPECIAL MASTER S**  
**FEES AND ORDER OF CONTEMPT**

Defendants

The Defendants' Motion For Reconsideration Of Judgment And Order Granting  
Resolution Economics Application For Order Of Payment Of Special Master's Fees And

1 Order Of Contempt ("Motion") having been filed on February 25, 2019 for reconsideration  
2 of Judge Cory's Judgment and Order Granting Resolution Economics' Application for Order  
3 of Payment of Special Master's Fees and Order of Contempt ("Judgment/Contempt Order"),  
4 which Notice of Entry of Judgment/Contempt Order was electronically transmitted on  
5 February 5, 2019, and the hearing on the Motion having come before this Court on May 21,  
6 2019; and Special Master Resolution Economics having filed an Opposition, and Defendants  
7 not having filed a timely Reply to the Special Master Resolution Economics' Opposition<sup>1</sup>;  
8 and on May 8, 2019, Defendants having also filed a Brief Regarding Effect of Automatic  
9 Stay of 11 USC 362 Following Plaintiff's Petition for Involuntary Bankruptcy; followed by  
10 on May 9, 2019 by the Defendants filing of a Supplement to Brief Addressing Jurisdiction  
11 of this Court; and after hearing oral argument wherein Peter Dubowsky, Esq. of the  
12 DUBOWSKY LAW OFFICE, CHTD. appeared for Special Master Resolution Economics,  
13 and Jay A. Shafer of CORY READE DOWS and SHAFER, along with Esther C Rodriquez,  
14 Esq. of RODRIGUEZ LAW OFFICES, and Michael K. Wall, Esq. of HUTCHISON &  
15 STEFFEN, LLC all appearing for Defendants/Contemnors, and this Court having carefully  
16 considering the briefs and evidence, the Court finds as follows.  
17

18 Defendants' basis for this Motion to Reconsider is that Judge Cory's ruling is clearly  
19 erroneous because Judge Cory found Defendants A Cab Taxi Service LLC, A Cab and  
20 Creighton J. Nady individually guilty of contempt of Court for disobedience and/or  
21 resistance to the Court's lawful Orders to pay the Special Master's compensation.  
22

23 At the May 21, 2019 hearing, Defendants argued that Defendant Nady, individually,  
24 was not required to pay in accordance with the Department 1 Court Order and as such, could  
25

---

<sup>1</sup> The March 21, 2019 Minute Order states that the Defendants' Reply was due April 4, 2019.

1 not be held in contempt for failure to do so. In response, this Court took the matter under  
2 advisement to fully consider all former findings.

3 EDCR 2.24 (a) states, "No motions once heard and disposed of may be renewed in  
4 the same cause, nor may the same matters therein embraced be reheard, unless by leave of  
5 the court granted upon motion therefor, after notice of such motion to the adverse parties."

6 A district court may reconsider previously decided issue if substantially different evidence  
7 is subsequently introduced or decision is clearly erroneous. Masonry & Tile Contractors  
8 Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489  
9 (1997). Only in very rare instances in which new issues of fact or law are raised supporting  
10 a ruling contrary to the ruling already reached should a motion for rehearing be granted.  
11 Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

12 Judge Cory's Orders for payment were directed to the Defendants in the plural. For  
13 instance, the February 7, 2018 Order states, The Court also finds a compelling imperative to  
14 appoint in so appointing a Special Master, at defendants expense . . . On March 6, 2018,  
15 Judge Cory entered a Minute Order further ordering the Defendants to pay the initial  
16 \$25,000.00 to the Special Master, stating the Defendants should well be able to set aside the  
17 initial \$25,000.00 deposit, and are ordered to do so. Judge Cory's payment orders go back to  
18 March 2018, with warnings of contempt as far back as August 2018. In the August 2018  
19 Judgment Order, the Court found that the Defendants were in contempt: [T]he Court finds  
20 that Defendants' persistent failure to comply with Court orders . . . warrants holding  
21 defendants in contempt . . . Further on December 11, 2018, Judge Cory stated, "I do find  
22 that Mr. Nady and the corporate defendants have willfully violated Court orders."  
23  
24  
25



Courts have inherent power to enforce their decrees through civil contempt proceedings Matter of Water Rights of Humboldt River, 118 Nev. 901 (2002), thus, even if Mr. Nady was severed out, the Court had inherit power to order contempt on him as a named Defendant in this case. Therefore, this Court finds that the Defendants have failed to establish that this Court's decision was clearly erroneous.

As such, Defendants' Motion to Reconsider is hereby DENIED.

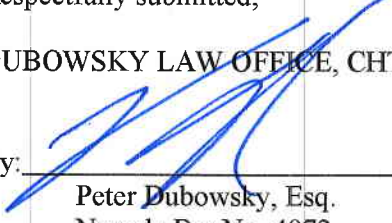
Dated: July 25, 2019



~~DISTRICT~~ COURT JUDGE  
JUDGE, DISTRICT COURT, DEPARTMENT 32  
Approved as to form and content,

Respectfully submitted,  
DUBOWSKY LAW OFFICE, CHTD.

CORY READE DOWS AND SHAFER

By:   
Peter Dubowsky, Esq.  
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(702) 360-3500  
Attorney for Special Master  
RESOLUTION ECONOMICS

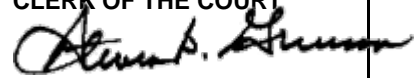
By: \_\_\_\_\_  
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(702) 794-4411  
Attorney for Defendants

Approved as to form and content,  
HUTCHISON & STEFFEN, PLLC

Approved as to form and content,  
RODRIGUEZ LAW OFFICES, P.C.

By: \_\_\_\_\_  
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Attorney for Defendants

By: \_\_\_\_\_  
Esther C. Rodriguez, Esq.  
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Las Vegas, Nevada 89145  
(702) 320-8400  
Attorney for Defendants



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  
WEDNESDAY, SEPTEMBER 26, 2018

**TRANSCRIPT RE:**  
DEFENDANT'S EX-PARTE MOTION TO QUASH WRIT OF EXECUTION  
AND, IN THE ALTERNATIVE, MOTION FOR PARTIAL STAY  
OF EXECUTION ON ORDER SHORTENING TIME

APPEARANCES:

For the Plaintiffs:	LEON GREENBERG, ESQ. DANA SNIEGOCKI, ESQ.
For the Defendants:	ESTHER C. RODRIGUEZ, ESQ. MICHAEL K. WALL, ESQ. JAY A. SHAFER, ESQ.
For Non-party Wells Fargo Bank:	KELLY H. DOVE, ESQ.
ALSO PRESENT:	CREIGHTON J. NADY

RECORDED BY: Lisa Lizotte, Court Recorder

AA010385

1 LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 26, 2018, 11:11 A.M.

2 \* \* \* \* \*

3 THE CLERK: Page 10, Michael Murray versus A Cab Taxi Service. Case  
4 Number A669926.

5 (Briefly off the record while the Court handles another matter)

6 THE COURT: Good morning.

7 MR. SHAFER: Good morning.

8 THE COURT: My, we have a full house today. Have counsel already  
9 entered their appearances?

10 MR. GREENBERG: Leon Greenberg and Dana Sniegocki for plaintiffs,  
11 Your Honor.

12 MS. SNIEGOCKI: Good morning.

13 MS. DOVE: And, Your Honor, Kelly Dove on behalf of Wells Fargo Bank.  
14 We're not a party.

15 THE COURT: Good morning.

16 MS. DOVE: Good morning.

17 MR. SHAFER: Good morning. Jay Shafer for defendants.

18 MS. RODRIGUEZ: Esther Rodriguez, good morning, for the defendants.

19 MR. WALL: And Michael Wall for the defendants. Good morning, Your  
20 Honor.

21 THE COURT: Good morning. There are two matters that are at issue or  
22 partly at issue, only one of which is calendared and that's the defendants' motion to  
23 quash the writ of execution or for a partial stay of execution. In response the plaintiff  
24 has filed not only a response to that motion but a countermotion for appropriate

1 judgment enforcement relief in which any number of tools are suggested. This has  
2 all happened very quickly. The defense motion is on an order shortening time. The  
3 countermotion for appropriate judgment enforcement relief is even quicker. I don't  
4 know exactly when that was filed. My chambers copy is not a file-stamped copy.  
5 But at any rate, perhaps recognizing that, the timing here, the plaintiff has suggested  
6 that we may need to have a different date for hearing on the countermotion, which  
7 I agree with, and suggests -- well, much of what was said in the motion itself is just  
8 taking what was said in opposition to the defense motion and taking it from a shield  
9 to a sword.

10           It seems to me -- I mean, I recognize the gravity of the situation for the  
11 defendant's business. I think that we must deal with the motion to quash the writ of  
12 execution, and to the extent possible it seems to me that we should put the plaintiffs'  
13 countermotion off, allow an opportunity to respond and then have a hearing on that.

14           Does anybody think differently?

15           MR. SHAFER: No.

16           MR. GREENBERG: Your Honor, my concern with the pending motion to  
17 quash is the record before the Court being inadequate. This is discussed in my  
18 brief, Your Honor. So I don't disagree with the Court's concern about the gravity of  
19 the situation and the need to, of course, fairly resolve defendant's request for relief,  
20 but I do believe that standing here today there clearly is an inadequate record  
21 before the Court to grant the relief they're requesting. And this is discussed in my  
22 response, Your Honor.

23           THE COURT: Okay.

24           MR. SHAFER: I have no qualms in continuing the countermotion. I think



1 that's appropriate. This is obviously somewhat of a confusing issue that needs to be  
2 addressed according to due process. And I think that's the crux of our motion and  
3 I'm happy to --

4 THE COURT: All right.

5 MR. SHAFER: -- answer your questions or go ahead if the Court is ready.

6 THE COURT: Yeah, go ahead. This is not one where I'm prepared to say,  
7 well, this is the way I'm leaning and I'll just tell you what I'm thinking because this --  
8 I don't -- well, at any rate, go ahead.

9 MR. SHAFER: Yeah. No, I appreciate that. And I'm glad that the Court  
10 recognizes the gravity of the situation. This writ, which was executed upon separate  
11 series LLCs has withheld the capital, the lifeblood of these companies. If the writ is  
12 not quashed and the funds are not returned, payroll will not be met. The company  
13 will fold. Because of its nature as a taxicab licensee, it cannot borrow against its  
14 license. It cannot declare bankruptcy. It cannot take the appropriate remedies that  
15 might otherwise be appropriate in this circumstance to try to protect against these  
16 issues. If the writ --

17 THE COURT: Now you've raised something that I'm not familiar with. They  
18 cannot declare bankruptcy, either?

19 MR. SHAFER: That's my understanding is that if it declared bankruptcy,  
20 it forfeits its license.

21 THE COURT: Ahh. I see. Okay.

22 MR. SHAFER: So while it technically can --

23 THE COURT: Uh-huh.

24 MR. SHAFER: -- it would cease to be as an operating entity.

1 THE COURT: You know, I do not know that much about bankruptcy. I  
2 always referred those questions to my brother. But it strikes me, knowing how all  
3 powerful the bankruptcy judges tend to be, it strikes me as odd that they would allow  
4 that in the estate before them, you know. But, whatever, that's perhaps a question  
5 for a different day.

6 MR. SHAFER: Yeah. And I think that's an interesting question. Obviously  
7 it's a statutory issue because it's a privilege license. But the matter is that if -- even  
8 if the license were not forfeited, employees would go elsewhere, the company would  
9 fold. But it's really a simple issue. Nevada has enacted a statutory regimen for the  
10 issuance of Series Limited Liability Corporations. The only distinction that's set out  
11 in the statute, it's NRS 86.296 and some of the corresponding records, the only  
12 difference between a series LLC and a normal LLC is the lack of requirement to  
13 register that LLC with the Nevada Secretary of State and pay the additional filing  
14 fee. That is the only difference. The statute clearly provides that it can have one  
15 or multiple members, that they can have one or no voting rights or differential voting  
16 rights. They are separate LLCs. The only restriction is that it has to have the same  
17 registered agent and if it conducts business it needs to register as a dba with the  
18 appropriate licensing authority if it's conducting business with the public. But it is a  
19 separate statute and the statute is very clear that --

20 THE COURT: Did you -- I think one of you submitted a copy of the statute  
21 with it. Was that yours?

22 MR. SHAFER: Yeah. And I -- I think that was the defense -- or plaintiff's  
23 counsel that submitted the statute.

24 MR. GREENBERG: Yes, I did, Your Honor. At Exhibit B, I believe, you

1 have -- or Exhibit C you have a copy of the Nevada statute for comparison and  
2 Exhibit D is a copy of the Texas statute, and the difference is important to discuss.  
3 But let me not interrupt.

4 MR. SHAFER: But the issue here is that the debts, liabilities of one series  
5 are enforceable against that series only, just like any other LLC. They are separate  
6 and distinct entities. While it is possible to pierce the corporate veil to go from one  
7 entity to the other or from a member to an entity, there's due process that has to  
8 be involved in that. It's not enough to say that because they share a name that  
9 they are involved or that they are connected. If I have a judgment against myself,  
10 Jay Shafer, they can't go to my brother, Tim Shafer, and try to collect against him  
11 because we're related and share the same name. We are distinct individuals.

12 Now, there is a process for piercing the corporate veil. There is a  
13 process for amending. There is a process for dealing with all these issues. We are  
14 not at that step. What they have done is collared somebody, a random third party,  
15 and are shaking them down for their money and saying prove to me that you don't  
16 have to pay me the money. That is not the way our due process works and it's not  
17 the way the statute works. NRS 86.296 says that they are a separate company  
18 and it has -- the series LLC has the same rights as any other.

19 Plaintiff tends to argue that this is kind of an umbrella subsidiary  
20 relationship and that because A Cab owns the series that they are entitled to get  
21 the assets of the subsidiary company. First, that's incorrect. They can't execute  
22 on the stock because this an LLC, which has membership interest. Second, A Cab  
23 does not own the sub series LLCs. It does not have an ownership interest. It is  
24 not a member in those series LLCs. It is complete and distinct from those two.

1 The remedy that might be --

2 THE COURT: Well, then let me go ahead and throw one hand grenade  
3 that Mr. Greenberg lobbed, and that is then what is the standing of any of the  
4 named defendants to raise objection on behalf of an entirely separate corporate  
5 entity?

6 MR. SHAFER: We are here to try to protect the business relationships of  
7 the series LLC and because this was the quickest way we knew how to do that,  
8 because justice delayed in this situation is justice denied.

9 THE COURT: Who would be the -- for example, I guess the members,  
10 who would be the managing member, for example, of any of the series LLCs?

11 MR. SHAFER: Well, I think that's been clearly developed in the record and  
12 that's one of the issues of concern here. During the deposition of Mr. Creighton J.  
13 Nady --

14 THE COURT: Uh-huh.

15 MR. SHAFER: -- last July, it was clearly disclosed to the Court the  
16 corporate organization of this business entity and that he was the member of the  
17 series LLCs. So that is -- he is the member of the different series LLCs. But a  
18 co-membership interest or having the same member doesn't conflate the two LLCs.  
19 You can be a member of multiple LLCs without piercing the corporate veil as long  
20 as you maintain the corporate books and records and do all of the things that you're  
21 supposed to do, which they have done in this instance.

22 THE COURT: Is the -- am I correct -- I don't recall, frankly, if this was  
23 argued by Mr. Greenberg, but the way the series LLCs appear to be set up is it  
24 takes portions or aspects of the LLC that is in this case of our defendant LLC and

1 divides the business of that LLC off into separate entities, separate series.

2 MR. SHAFER: That is incorrect in that it takes the business of the LLC and  
3 divides them up, because it assumes that an enterprise or an LLC can only be one  
4 business, it has to do the entire thing. It is correct, as I understand it, that the  
5 series LLCs are engaged in different businesses. One business owns the cabs.  
6 One business --

7 THE COURT: And these are the cabs that are used by the defendant  
8 corporation or defendant LLC here?

9 MR. SHAFER: Yeah. So there is a different -- and those are all -- the  
10 accounting is there. They are leased or otherwise there is a financial arrangement,  
11 and I can defer to counsel about how those are set up, but there is an appropriate  
12 accounting to where the financial records of those entities are set up. For example,  
13 I, as an attorney, can subcontract to do contract work or do something for somebody  
14 else. I don't have to take on the entire representation if I contract with another  
15 firm. It doesn't make me the attorney of record if I, you know, draft a brief under  
16 somebody else's license. It doesn't separate these out. We have the same  
17 separation here. We have different parts, different entities that are set up to allocate  
18 this. The reason for the series LLC is not provide for a limitation of liability. It's not  
19 taking advantage of the plaintiff to engage with these -- you know, what the statute  
20 provides, any more than it would be for them to set up 150 separate LLCs or to  
21 set up a trust or to engage in the other statutory established remedies for corporate  
22 organizations that are established by statute.

23 THE COURT: Was this reorganization, I believe it was in this case -- I don't  
24 know, maybe reorganization is the wrong word, but the series LLCs were formed

1 and registered, is that the right word, with the Secretary of State sometime in 2012,  
2 is that correct?

3 MR. SHAFER: It is my understanding that this set of series LLCs were  
4 established in February of 2012; sometime early in 2012.

5 THE COURT: And was that before this lawsuit was started?

6 MR. SHAFER: I believe that's correct, Your Honor.

7 THE COURT: Okay. All right.

8 MR. SHAFER: And obviously that goes to another issue which is pending  
9 before the Court regarding the amendment to the judgment's name, A Cab versus  
10 A Cab Series LLC. But that's really not what we're here for.

11 THE COURT: Right.

12 MR. SHAFER: We are not here to contest the writ of execution as it goes  
13 to A Cab. That is a separate issue and a bond and the issue before the Court. We  
14 are asking really for the Court to quash the writ of execution as it relates to third  
15 parties. It is long-established case law going back to the 1900s that when you seek  
16 to obtain assets of a third party which are claimed belong to the judgment debtor,  
17 that you have to initiate a separate legal action to bring those third parties into the  
18 jurisdiction of the Court. I mean, we can go back to -- I think it was Hagerman v.  
19 Tong Lee in 1877, Persing v. Reno Board of Trade, 30 Nev. 342, and as recently as  
20 Greene v Eighth Judicial. That has been a very clear black letter law that you must  
21 file a separate action against a third party in possession of property of the judgment  
22 debtor.

23 So if they're claiming this money belongs to A Cab or should be A Cab's  
24 or whatever their claim is, they have to initiate a separate legal action. It's not enough

1 to send a writ of execution and bamboozle the garnishee or somehow mislead them  
2 in a way that causes them to hold the funds and then somehow convince the Court  
3 to bypass the exemption process and other things to get them to transmit them to  
4 plaintiff's trust account where they can be held. One, that isn't what the law says,  
5 and two, that causes significant harm, as we've addressed with the Court.

6           There really is no basis to conflate it. I know there was some argument  
7 about Tax ID's or other governmental identifications. That doesn't separate them.  
8 If I have an LLC that I elect to be taxed as an individual representative, I don't have  
9 a separate Tax ID for my LLC, but that doesn't mean that they aren't separate  
10 entities from myself personally, as long as I provide the appropriate accounting.  
11 As we know, the Federal Government does not always recognize series LLCs. That  
12 doesn't change the fact that the Nevada statute --

13           THE COURT: So does that mean that there are separate tax returns for  
14 each of the series LLCs?

15           MR. SHAFER: I don't know that, the answer to that, Your Honor.

16           THE COURT: I see Mr. Nady shaking his head.

17           MR. SHAFER: I'm being advised that there probably are not. And of course  
18 that is one of the advantages to the series LLC, in addition to not having to file and  
19 pay the couple hundred dollars per series LLC with the Nevada Secretary of State,  
20 but then you also can account for or only file one separate tax filing with the IRS.  
21 But there is separate accounting for each of the entities.

22           THE COURT: So the -- under the framework of these series LLCs, each  
23 one has the potential to receive an income and pay out costs of doing business,  
24 etcetera, etcetera?

1 MR. SHAFER: That is correct. For example, I believe that the cab rental --  
2 you know, this particular cab leases or rents itself out for a certain daily rate and  
3 pays for the maintenance or the costs of maintaining that cab to the maintenance  
4 company or the maintenance series. That way there is an appropriate flow of  
5 accounting and liabilities to the corporation. This has been very carefully entered  
6 into with consultation with multiple legal counsel to try to abide by the state of the  
7 law and abide by what you are supposed to do to manage this. This has been  
8 a long held provision to try to establish the appropriate corporate form.

9 Really, it is very simple. They are not defendant A Cab or A Cab  
10 Series and therefore the writ of garnishment should not apply to them. If there's any  
11 hurry to this, that's not defendant's fault. Defendant raised the issue of the separate  
12 corporate organization as long as more than -- excuse me, more than a year ago  
13 in the deposition.

14 THE COURT: Oh. Uh-huh.

15 MR. SHAFER: So plaintiff's counsel has been aware of this issue for as  
16 long as they can remember. In fact, the fact that it is a series LLC is public record.  
17 It could be obtained by obtaining the corporate filings with the Nevada Secretary  
18 of State.

19 THE COURT: Uh-huh.

20 MR. SHAFER: So this should not come as a surprise to plaintiff's counsel  
21 and it's not something they couldn't have dealt with earlier. So plaintiff -- in fact,  
22 the only case law they cite in their brief, the only citation to anything other than the  
23 Texas statute, which is completely inapplicable, is a citation to Gardner v. Eighth  
24 Judicial, which says that if you know you can bring an alter ego cause of action.



1 You have that ability to bring it. They had the ability to bring it more than a year ago  
2 and chose not to.

3 THE COURT: When you say bring it, you mean bring a motion to amend  
4 to include the series LLCs?

5 MR. SHAFER: I wouldn't guess or tell Mr. Greenberg what option he would  
6 take, but certainly it would be one of those options that could have been dealt with.

7 THE COURT: Okay.

8 MR. SHAFER: We are now in a situation where they have contacted the  
9 bank, have given them information, have sent a writ for third parties. They want to  
10 kind of jump to the end of alter ego and just have the Court hold the funds because  
11 they lucked into it. You can't mug somebody and then say, well, prove to me it's  
12 not your money and it's my money.

13 THE COURT: Well, they don't want the Court to hold the funds. As I  
14 understand it, they want it to go to Mr. Greenberg's trust account.

15 MR. SHAFER: That's correct.

16 THE COURT: Okay.

17 MR. SHAFER: Because, well, a bird in the hand, right? So we have a  
18 situation here where that causes an irreparable harm to my client, an irreparable  
19 harm to the business, the very people that they claim to represent are going to be  
20 harmed by this, the drivers themselves.

21 THE COURT: That brings up a good point. Is the analysis that a court is  
22 to perform here on a motion to quash the writ of execution the same or similar to  
23 what the court would do on an injunctive relief motion?

24 MR. SHAFER: I don't believe so. I think it's --

1 THE COURT: I mean, you mentioned irreparable harm.

2 MR. SHAFER: Yeah.

3 THE COURT: That's why I'm --

4 MR. SHAFER: No, I don't think so. I think it's very clear it's a third party.  
5 Absent an order of the Court subjecting the third party to liability, absent an order  
6 of the Court or a separate action bringing or piercing the corporate veil or even  
7 pursuing with a prejudgment writ of attachment through a separate action, absent  
8 that they have no more claim on A Cab Series LLC, the maintenance LLC than they  
9 do on my own personal bank account. They have -- it is black and white. Black --  
10 the statute is very clear as to a separation of the LLCs.

11 THE COURT: Will you point that out to me? You started --

12 MR. SHAFER: Sure.

13 THE COURT: I think I interrupted. You were talking about NRS 86.296?

14 MR. SHAFER: Yeah. Absolutely, Your Honor. Subsection -- excuse me,  
15 86.296, subsection 3, which says that "the debts, liabilities, obligations and  
16 expenses incurred, contracted fo or otherwise existing with respect to a particular  
17 series are enforceable against the assets of that series only and not against the  
18 assets of the company generally or any other series." They are separate and  
19 firewalled.

20 THE COURT: Uh-huh.

21 MR. SHAFER: And I believe that there was -- I just want to check NRS --  
22 and this is a companion statute, NRS 86.311, which I can provide a copy to the  
23 Court, says -- and they changed this --

24 THE COURT: 86.311. Go ahead.

1 MR. SHAFER: Subsection 2. "Real and personal property may be  
2 purchased, owned and conveyed by a series separately in the name of the series  
3 as an asset of the series only." So bank accounts, cabs, other assets are assets  
4 of the series only. They are not --

5 THE COURT: If the records comport with that. Is that the way that goes?

6 MR. SHAFER: No different than any other LLC.

7 THE COURT: Yeah.

8 MR. SHAFER: If I have LLC A and LLC B and I smoosh all the records  
9 together and just keep one check register and don't account for it, then that would  
10 be --

11 THE COURT: Oh. Then you have effectively co-mingled or some such  
12 thing?

13 MR. SHAFER: You co-mingled it and you set yourself up.

14 THE COURT: Okay. What kind of records, then? To what extent do those  
15 have to be maintained in order to maintain that protection of no liability?

16 MR. SHAFER: Well, the statute says that you have to --

17 THE COURT: Separate and distinct records.

18 MR. SHAFER: Yeah. So you have to provide -- you have to have a ledger  
19 for the income and expenses for each series LLC.

20 THE COURT: And your client does maintain that?

21 MR. SHAFER: That's correct. And we submitted an affidavit or a  
22 declaration by their account manager to that effect. That's a sworn statement  
23 attached to our application to quash. Certainly if plaintiffs' counsel have reason to  
24 believe -- that could be subject to some other motion, but in the present case it's

1 not enough to just send this writ out and hope they get something and then to hold  
2 the money.

3 THE COURT: So is the cash flow -- I assume that A Cab LLC takes in all  
4 the money, the income, and then turns around and pays it out to each of these  
5 series LLC?

6 MR. SHAFER: No. I don't think that's entirely correct --

7 THE COURT: Oh.

8 MR. SHAFER: -- because each LLC has its own lease and its own issue,  
9 you know, as far as the income. And then there is a leasing company that handles  
10 -- or an employee company that handles the payroll, as I understand it.

11 THE COURT: How do they -- how do they get their money, then? Say --  
12 take the maintenance LLC.

13 MR. SHAFER: Well, let me give you an example and perhaps this -- I could  
14 give you the actual sums and the accounts that are at issue here. Maybe that will  
15 help the Court --

16 THE COURT: Okay.

17 MR. SHAFER: -- understand the scope of what's going on. There is an  
18 account held by -- I apologize, I want to get to the actual motion -- owned by  
19 A Cab Series LLC, Maintenance Company, \$38,572.53 that is held to pay for the  
20 maintenance expenses and the other items which are incurred to pay for other  
21 things, which is a completely separate --

22 THE COURT: And how did the \$38,000 get into those accounts?

23 MR. SHAFER: The \$38,000 I'm presuming was paid in by the other cab  
24 companies to pay for the tire rotations and other --

1 MR. NADY: It was paid in based on miles per day.

2 MR. SHAFER: So --

3 THE COURT: So the --

4 MR. NADY: It's a percent -- it's a --

5 THE COURT: Does that mean you get a check cut from A Cab to the  
6 series, the maintenance series LLC?

7 MR. NADY: I would be glad to help you with this.

8 MR. SHAFER: Well, I don't know if it's a check, but there is a transfer of --

9 MR. NADY: No, it's a transfer within the bank itself. We have 135 separate  
10 -- excuse me for not rising -- we have -- I think it's 135 separate bank accounts.

11 THE COURT: Okay.

12 MR. NADY: And as the money comes in, it's separated by cab. That  
13 becomes the revenue. Based on number of miles, a certain amount of that revenue  
14 is divided to the maintenance company. Another certain percentage, five dollars a  
15 day is paid to the -- another cell, which is -- or series. The word series and cell by  
16 law can be interchanged. But another cell gets so much for owning that medallion.  
17 There's 111 vehicles right now that are owned by 111 separate series or cells.  
18 Those for income and expenses and then we have a payroll company, which we  
19 call Employee Leasing Company, which then takes the money from the cabber.  
20 That much goes into that cab company. The expenses are paid out.

21 THE COURT: When you say that cab company, meaning an individual cab  
22 with it's own medallion?

23 MR. NADY: Each cab -- each cab company as a -- each taxi is a separate  
24 company.

1 THE COURT: Company.

2 MR. NADY: A separate corporation or entity.

3 THE COURT: Okay.

4 MR. NADY: Each one. It's been this way since we started. We have --  
5 we produce quarterly statements for each cab company every quarter and then  
6 we file a consolidated return with the State. The Taxicab Authority requires this.  
7 And we file a Schedule C for the IRS. But these expenses, it's extremely difficult  
8 accounting.

9 THE COURT: I'll say.

10 MR. NADY: But we have -- we have a smart meter which does almost all  
11 of it. The meter takes in how much the driver makes.

12 THE COURT: Wow.

13 MR. NADY: The meter takes in how much -- how many miles it is. And it's  
14 almost done automatically. We've set it up so -- pretty well through a guy that he  
15 deposed, Jim Morgan's company, where the money then goes out. We actually  
16 transfer every day or maybe two or three times a week every bit of money out of that  
17 into the appropriate expense accounts. And the rest --

18 THE COURT: So it's not only -- I mean, so you're saying the income from  
19 hauling people around goes to that one Series Cab LLC --

20 MR. NADY: That goes back -- it's deposited into the administrative account  
21 for one day. By day's end --

22 THE COURT: What's the administrative account?

23 MR. NADY: That's --

24 THE COURT: Is that an A Cab account?

1 MR. NADY: That's generally the administration of the company, Employee's  
2 Management Company.

3 THE COURT: That's a separate cell, then?

4 MR. NADY: It's a separate cell. Yes, sir.

5 THE COURT: Okay. So all the money goes to the administrative LLC for  
6 one day?

7 MR. NADY: It does until it's transferred because the bank -- it's just for  
8 logistics. We don't co-mingle the funds. We put it together until they can be  
9 distributed into each one. And from those we deduct so much for each mile. It's  
10 actually 24 cents per mile. We figure it's the cost of operating the vehicle. We take  
11 the gas for that particular vehicle and put it in there.

12 THE COURT: Wow. And do you put it in the administrative account --

13 MR. NADY: No.

14 THE COURT: -- or do you put it directly into the maintenance and --

15 MR. NADY: No, they go back into each one of those other cells. The  
16 administrative company and then the management company gets paid so much.  
17 And at the end of the day all of those -- most all of those accounts, we write checks  
18 out of the administrative company and the maintenance company also has its own  
19 checking account. All of them have their own checking accounts, but we don't issue  
20 checks in most of them. We only have four or five checking accounts --

21 THE COURT: Uh-huh.

22 MR. NADY: -- but that's because we just transfer the money within the  
23 bank. But we do that every day. And we get audited by the guy who wrote or  
24 helped write the series LLC law. Steve Oshins is his name and we probably should

1 have had him here, but you can ask him. He reviews my records and books every  
2 year --

3 THE COURT: Uh-huh.

4 MR. NADY: -- and has never found -- he's given us some possible changes,  
5 but he's never found any shortcoming that would not be applicable here in court.

6 THE COURT: Uh-huh.

7 MR. NADY: We go to great lengths to keep these records and accounts  
8 separate. And we provide income statements quarterly and then we consolidate  
9 those. When we first do an income statement it's pages and pages for each one  
10 of them.

11 THE COURT: Because it's a separate income statement for each series  
12 LLC.

13 MR. NADY: Because it's a separate income statement for each -- well, for  
14 each series. And remember, we've got one for each medallion --

15 THE COURT: Each cab. Yeah.

16 MR. NADY: -- plus one for every car.

17 THE COURT: Yeah.

18 MR. NADY: And we've got one for the management company. And we've  
19 got Employee Leasing Company, which actually pays the drivers.

20 THE COURT: What's your --

21 MR. NADY: I shouldn't say this, but if anybody is liable, it would be the  
22 Employee Leasing Company for not doing it, but.

23 THE COURT: Okay.

24 MR. NADY: They took \$44,000 out of that account, too --



1 THE COURT: Ahh.

2 MR. NADY: -- but they weren't sued.

3 MR. SHAFER: As you can tell, this is a very --

4 THE COURT: So that must cost you an arm and a leg for the accounting.

5 MR. NADY: No. Actually -- remember, I have a degree in accounting.

6 I practiced accounting before this.

7 THE COURT: Ahh.

8 MR. NADY: I was a controller of a casino for years. I worked for the  
9 Gaming Control Board for years. I was a Gaming Control Board agent. Accounting  
10 is my background.

11 THE COURT: Uh-huh.

12 MR. NADY: And we were the first cab company to do this. Others have  
13 since started doing this. The purpose initially was to limit liability in the case of an  
14 accident --

15 THE COURT: Yeah.

16 MR. NADY: -- to that particular cell or cab.

17 THE COURT: Yeah.

18 MR. NADY: If we got into a wreck, we wouldn't lose all our cabs, we would  
19 lose one.

20 THE COURT: Yeah.

21 MR. NADY: And we provide insurance for each cab, so there's a certain  
22 daily insurance amount. Yes, it seems like a lot, but you can program your  
23 computer now to do almost all of it --

24 THE COURT: All of that.

1 MR. NADY: -- every day when it comes in, and it downloads from the meter  
2 to our computer. Pretty cool.

3 THE COURT: That's amazing.

4 MR. NADY: And which Mr. Greenberg used earlier in his case to say how  
5 long they were working. But that doesn't always tell when they went it, it's just when  
6 the meter went on, which is a part of our case a long time ago. But I'm pretty proud  
7 of it.

8 THE COURT: So the -- all the income from each of the medallions goes  
9 first to the administrative company for a day and then it's transferred just by  
10 computer --

11 MR. NADY: Every day the money is completely disbursed.

12 THE COURT: To -- and so it would go to -- well, how does A Cab make  
13 any money, then?

14 MR. NADY: Well, it's completely disbursed in that normally we have zero --  
15 ZBAs, zero balance accounts in every account, but because we have outstanding  
16 checks such as payroll, those outstanding checks were collected by Mr. Greenberg.  
17 We have outstanding checks in the maintenance company that go to the State.  
18 We pay -- taxicab companies pay two dollars every time they go to the airport.

19 THE COURT: So which of these cells pays that?

20 MR. NADY: The administrative company pays those.

21 THE COURT: Okay.

22 MR. NADY: And we have a management company which does the hiring  
23 and training.

24 THE COURT: How do you get your profit out of that?

1 MR. NADY: Well, at the end of the day it all goes out of that account into  
2 my personal account and then the next day it goes back in. I don't have any money  
3 in my account.

4 THE COURT: You mean the individual cells pay into your personal --

5 MR. NADY: Yes, sir. At the end of the --

6 THE COURT: Wow.

7 MR. NADY: Remember, the money goes into the administrative and then  
8 we take out the expenses.

9 Do you want me to shut up?

10 MR. SHAFER: No, that's fine. I think the Court is getting the idea.

11 THE COURT: Yeah.

12 MR. NADY: It's extremely calculated and we've had five years of perfecting  
13 it. And the computer industry has made it so instead of having three people do it,  
14 I have a half of a person doing it, half of a full-time employee who's been with me  
15 forever.

16 MR. SHAFER: So this is --

17 THE COURT: You know, we need to change the law. I mean, make it  
18 easier somehow because --

19 MR. NADY: The law says specifically separate accounts and records --

20 THE COURT: Yeah.

21 MR. NADY: -- so that's what we've strived to do. And Steve Oshins, the  
22 other attorney that helped me create this, says it's the best he's ever seen.

23 MR. SHAFER: So there is -- obviously you can see there's a detailed  
24 nature of how this is all set up.

1 THE COURT: Yeah.

2 MR. SHAFER: They keep appropriate accounting records. When we look  
3 at it -- obviously the money is not transmitted. For example, one of the big concerns  
4 is that money that is held by -- for payroll taxes or for the franchise fee to the State  
5 is being held in the account, which if it's not paid could subject my client to sanctions  
6 or fines by the State for not submitting the funds appropriately.

7 THE COURT: Is that in the administrative account, then?

8 MR. SHAFER: Yes.

9 MR. NADY: No, that is -- yes, that's correct.

10 MR. SHAFER: Yeah. Well, some if it is in the administrative account,  
11 some of it's in the Employee Leasing Company, some of the payroll and some of  
12 the other items.

13 THE COURT: Employee Leasing, does that -- does that include all the  
14 taxi drivers?

15 MR. NADY: Yes.

16 MR. SHAFER: Well, I believe so. But there's --

17 THE COURT: So the Employee Leasing Company gets some cash flow  
18 from individual meters with the medallions and that's peeled off because that's what  
19 it costs to pay the drivers.

20 MR. SHAFER: Right.

21 THE COURT: And then it goes -- does the -- sorry. Does the Employee  
22 Leasing Company cut the check to the drivers?

23 MR. SHAFER: I don't know the answer to that specifically.

24 MR. NADY: Yes.

1 MR. SHAFER: They do.

2 THE COURT: Huh. Wow.

3 MR. SHAFER: So it is a process that's involved and that's why Mr. Nady  
4 was very clear in his deposition that there was an entity that was set up to do it  
5 that way. You know, there is -- this has been tested in litigation. You know, the  
6 concern we have is, as you heard, there's 100 plus accounts. With this garnishment  
7 in place, any time money gets put into one of these accounts it's subject to  
8 garnishment, which would require that individual series LLC to come in and file its  
9 own interpleader action, and all of a sudden we've got hundreds of actions.

10 THE COURT: Yeah.

11 MR. SHAFER: So not only for the sake of expedience but also practicality,  
12 we're here today. But it's really -- that way is kind of, respectfully, a backwards  
13 approach to how to do it because they're only entitled to execute upon the judgment  
14 debtor --

15 THE COURT: Uh-huh.

16 MR. SHAFER: -- which is A Cab LLC and A Cab Taxi Service LLC. If they  
17 believe that that judgment should be amended to somebody else, there's a process  
18 for doing that.

19 THE COURT: Uh-huh.

20 MR. SHAFER: But the process is not just telling the garnishee, telling the  
21 people who were served the writ of execution that, well, you could name anybody  
22 else that has a similar name, has A Cab in their name.

23 THE COURT: Well, that -- is that what was done here?

24 MR. SHAFER: That is.

1 THE COURT: Because I don't believe the actual writ of execution did that,  
2 did it?

3 MR. SHAFER: No. The writ said A Cab LLC and A Cab Taxi Service LLC.

4 THE COURT: Maybe I could ask -- does anybody object if I ask the bank?  
5 Are you a bank manager, ma'am?

6 MS. DOVE: No. No, Your Honor. I'm counsel for Wells Fargo.

7 THE COURT: Oh, okay.

8 MS. DOVE: So we are just here to --

9 THE COURT: Yeah.

10 MS. DOVE: You know, obviously we don't really have a dog in this fight,  
11 so to speak, about who gets the money, but --

12 THE COURT: Do you know any of the operative facts as far as how this  
13 garnishment happened and how this money was taken from these various series  
14 LLCs?

15 MS. DOVE: I know Wells Fargo was served with a write of garnishment  
16 and had quite a few accounts with the A Cab name --

17 THE COURT: Uh-huh.

18 MS. DOVE: -- titled A Cab Series, LLC (comma) and then different  
19 descriptors. My understanding, and again, not sort of testifying or giving evidence --

20 THE COURT: Yeah. No.

21 MS. DOVE: -- but my understanding is that of the many accounts that exist  
22 under the A Cab moniker they all share the same Tax ID number --

23 THE COURT: Uh-huh.

24 MS. DOVE: -- which is what Wells Fargo predominantly used to unify those.

1 And at the time of the writ, six accounts had money in them.

2 THE COURT: Uh-huh.

3 MS. DOVE: And that's what was attached at the time of the writ. They  
4 were A Cab Series LLC, Administration Company, Employee Leasing, Maintenance,  
5 Ccards, Medallion and Taxi Leasing, with far and away the most money being in the  
6 A Cab Series LLC, Administration Company account. And they went by the Tax ID  
7 number.

8 THE COURT: Uh-huh.

9 MS. DOVE: Wells Fargo is here to represent we'll of course comply with  
10 any order the Court issues with respect to the writ. It will provide further information  
11 as the Court might wish to know on as expedited a basis as possible. And just also  
12 seeks a release of any liability, whether we have to file a motion for interpleader or  
13 simply comply with the Court's order. We're just here to do what the Court finds at  
14 the end of the day.

15 THE COURT: Okay. Thank you.

16 MS. DOVE: Thank you.

17 THE COURT: Appreciate it.

18 Go ahead, Mr. Shafer.

19 MR. SHAFER: Yeah. So I think she's confirmed those are the correct  
20 ones. There were, you know, A Cab Series LLC, Maintenance Company; A Cab  
21 Series LLC, Administration Company; A Cab Series LLC, Taxi Leasing Company;  
22 A Cab Series LLC, Employee Leasing Company II; A Cab Series LLC, Medallion  
23 Company and A Cab Series LLC, Ccards. Those are on page 7 of our motion.  
24 The writ was served on September 17th. We submitted a copy of that as an exhibit,

1 I believe, to our motion. If not, I have a copy for the Court.

2 THE COURT: Uh-huh. The writ is attached, I believe, writ of execution.

3 MR. SHAFER: Yeah. And you can see it is directed to A Cab LLC or A Cab  
4 Taxi Service, which are distinct from the entities, from the account holders, which is  
5 A Cab Series LLC.

6 THE COURT: Is there an A Cab Taxi Service, LLC?

7 MR. SHAFER: There is not such an entity.

8 THE COURT: Okay.

9 MR. SHAFER: So that is -- and that is, I believe, pending another motion  
10 with the Court which has been briefed, which we are not here today. But that is  
11 essentially where the issue is, is that they have a partial name match and that's  
12 not enough to execute a writ of garnishment on a third party, especially given the  
13 extensive nature of the books and records that they have engaged in to keep them  
14 separate and distinct legally under the law.

15 THE COURT: Did those series LLCs also comply with the -- this is in  
16 86.296 sub 3, sub (b): "The articles of organization or operating agreement provides  
17 that the debts, liabilities, obligations and expenses incurred, contracted for or  
18 otherwise existing with respect to a particular series are enforceable against the  
19 assets of that series only"?

20 MR. SHAFER: Yes.

21 THE COURT: It does do that?

22 MR. SHAFER: Yes.

23 THE COURT: And did you give me an example of such a -- is it articles of  
24 organization or what kind of document is that contained in?



1 MR. SHAFER: I don't believe that we provided a copy of the articles or  
2 the operating agreement to that.

3 THE COURT: Okay.

4 MR. SHAFER: I know it had been provided -- well, I don't know if it had  
5 been provided in another action.

6 THE COURT: Okay.

7 MR. SHAFER: But essentially if plaintiffs are correct, which I don't believe  
8 they are, there can be no asset protection, no separate corporate liability for any  
9 corporate entity if it's tied in with somebody else. That's clearly not what the intent  
10 of the statute was to set up -- establish LLCs. We can argue that maybe series  
11 LLCs are not a good thing, they're not a preferable thing, but that's not what the  
12 Legislature in their wisdom has enacted. They have enacted a provision that allows  
13 for --

14 (Mr. Shafer confers with Ms. Rodriguez)

15 MR. SHAFER: So we've provided -- I think that the operating agreement  
16 for the A Cab has been provided in opposition to the motion to amend, but not the  
17 series.

18 THE COURT: I'm sorry, say that again, will you?

19 MR. SHAFER: The operating agreement for the series LLCs --

20 THE COURT: Oh.

21 MR. SHAFER: -- have not been provided, but the operating agreement for  
22 A Cab LLC has been provided to the Court as an exhibit to the opposition to the  
23 motion, plaintiff's motion to amend --

24 THE COURT: Okay.

1 MR. SHAFER: -- which was filed on September 10th. It's Exhibit 1 to that  
2 motion.

3 THE COURT: Okay.

4 MR. GREENBERG: Your Honor, the document being referred to is actually  
5 in plaintiff's response. The Certificate of Articles of Operation, Organization is at  
6 Exhibit E of my response on this motion, Your Honor.

7 THE COURT: Is that -- is that Exhibit B?

8 MR. GREENBERG: Exhibit E, Your Honor. E as in Edward.

9 THE COURT: Oh, E. Okay. All right.

10 MR. GREENBERG: The particular article is Article 2 of that document that  
11 discusses the issue.

12 THE COURT: Okay.

13 MR. SHAFER: I mean, it is clear. We have the statute to go by. And  
14 absent any evidence on their -- their filing of the writ doesn't require a third party  
15 to have a burden of proof because of established case law that they have to be  
16 brought in as a party or otherwise subjected to legal process. They haven't been,  
17 so there's no basis to do it. It is simply enough for us to say this is a separate entity.  
18 This is a different company and the Court should order that the funds that belong to  
19 that company be released. If the plaintiff disagrees with that or has other concerns  
20 about that, then they can bring the appropriate legal method to do so. But it's not  
21 enough to circumvent that, to jump to the end and violate my client -- the due  
22 process rights of A Cab Series LLC and punish them for doing what they're  
23 supposed to do --

24 THE COURT: Uh-huh.

1 MR. SHAFER: -- and providing for this accounting that they're supposed to  
2 do and keeping the corporate books and records. The statute is clear a series LLC  
3 is no different as far as separation of liabilities than an ordinary LLC. And it's not  
4 enough to just say, well, maybe sometime there's some basis that we could maybe  
5 assert and let's hold the funds until then. No. The appropriate remedy is for this  
6 Court to order those funds that are being held by Wells Fargo to be released back to  
7 the account holders. A failure to do so is both against the intent of the statute and  
8 will cause an irreparable harm, a substantial harm to my client and their employees.

9 Unless the Court has any further questions, I'll let Mr. Greenberg  
10 argue.

11 THE COURT: Not at this time, no.

12 Mr. Greenberg.

13 MR. GREENBERG: Your Honor, there are two fundamental questions  
14 presented by the application. Besides the standing issue, I don't believe there's  
15 any application properly before the Court, as Your Honor was mentioning, because  
16 these supposedly independent entities who actually have the interest in the property  
17 aren't even here. And defendants have talked about expediency to the process.  
18 Well, Your Honor, they can't have it both ways. They can't say we have no interest  
19 in this property, it's not ours, and then at the same time come to the Court and say  
20 we have a sufficient interest, so that the Court should act in terms of disposition of  
21 the property.

22 So that's a starting point, Your Honor. I don't see that there's any  
23 subject matter jurisdiction over the request, if defendants are actually making a valid  
24 request. By establishing the validity of the request, they're actually establishing that

1 there's no jurisdiction as this application is configured for the Court to give them  
2 the relief they want. But I'm skipping over that --

3 THE COURT: You're saying that in order to do that they would have to  
4 come in with separate -- not necessarily separate representation, but separate --  
5 as separate entities for each one -- well, at lease of the six that had funds taken?

6 MR. GREENBERG: Well, they say they're separate entities.

7 THE COURT: Yeah. Yeah.

8 MR. GREENBERG: They claim to have separate legal standing. I mean,  
9 the statute that they refer to does give a series, a subordinate LLC of a master LLC  
10 the right to appear in court and to prosecute and defend actions. And if they're  
11 claiming that these are really independent entities, they need to appear. It's their  
12 property. They need to come claim it. Defendants can't -- as I said, they can't  
13 have it both ways. Our position is it's not their property, at least in respect to this  
14 judgment, Your Honor.

15 THE COURT: I'll ask you to address that when I come back to you, Mr.  
16 Shafer.

17 MR. GREENBERG: But to address the issue of the enforcement of the  
18 judgment, setting aside this question of standing or even jurisdiction over the  
19 application, there are two questions that are presented. The first is whether  
20 Nevada's statute actually operates to place assets that are in a subordinate LLC  
21 from reach by a judgment against its master LLC. There is in fact nothing in the  
22 language of the statute that commands that or even allows it, Your Honor.

23 THE COURT: Why else would they do that?

24 MR. GREENBERG: Well, the traditional view or the real reason why you

1 would have a series LLC set up is in real estate investment or real estate  
2 operations. Each property is a separate series, a separate sub LLC of the real  
3 estate company. You've got four houses, four LLCs. And it makes sense there,  
4 Your Honor, because you have individual assets which are generating individual  
5 revenue, individual expenses, individual obligations, individual mortgages against  
6 each particular parcel of real estate. And what the statute --

7 THE COURT: What would be the difference between that situation of  
8 real estate and -- I mean, what if this were a real estate series LLC and it was 111  
9 or 102 instead of cabs, 102 properties?

10 MR. GREENBERG: Well, to answer your question, Your Honor, you can't  
11 do that, okay, because you need a certificate of public convenience and necessity  
12 to license, to operate a taxi business. It's a restricted license, as defendants were  
13 explaining. You need to meet the requirements by statute, which are quite rigorous --

14 THE COURT: Yeah.

15 MR. GREENBERG: -- to be approved and you as the licensee are the one  
16 who are handed those medallions in the first place by the Taxi Commission. And  
17 Mr. Nady at his deposition was deposed about whether each of these 100 or 230  
18 individual cells that he claims operate the taxi cabs could operate as independent  
19 businesses. He conceded they couldn't. And they couldn't for that reason, Your  
20 Honor, because they don't actually have access to the medallions directly. They  
21 don't own them. They have to go through the licensee, which is the master LLC  
22 here, A Cab, the judgment debtor. And in addition, it's not like the real estate  
23 situation because you don't have an independent property, you know, with its own  
24 liabilities, its own property taxes, its own independent source of revenue from rents,

1 etcetera, etcetera. This is an integrated business, Your Honor. They have to have  
2 drivers, they have to have maintenance. I mean, it works together and in particular  
3 it only can operate derivative of that license holder's power, Your Honor.

4 THE COURT: Uh-huh.

5 MR. GREENBERG: And the license holder here is A Cab, LLC, which is  
6 the judgment debtor, the master of the series. And in addition, Your Honor, these  
7 series LLCs, the subordinate LLCs that are issued under the law, they owe their  
8 existence to the master LLC. If the master LLC disappears or is dissolved, there  
9 is no provision in the law for the continuance of the existence of the series LLCs.  
10 They may exist as separate legal entities, but there is no registration with the  
11 department of State. In this case they don't have a separate tax registration. They  
12 could have but they don't because they are operating, as I was explaining, as part  
13 of an integrated business.

14 And to take a look at the language of the statute which was being  
15 discussed by Your Honor with counsel and that counsel has recited, counsel has  
16 skipped over the issue, which is that in 3(b), okay, as Your Honor was asking about  
17 the operating agreement, okay, there are two issues raised here by the limitation on  
18 liability as the statute is written. First of all, it doesn't even shield the series, the sub  
19 series from a judgment against the master. And it doesn't actually say that. It says  
20 the articles of organization, etcetera, can provide that the assets -- with respect to a  
21 particular series only, the judgment or liabilities of that series -- of that series, of that  
22 sub of the master are enforceable only against that series, that sub, okay. So that  
23 sub can be structured so that if I get a judgment against the sub, the sub series of  
24 the master, I can only go after that sub series' assets. I can't go after its sister sub

1 series and I can't up the chain against the master because that clearly bars it. It  
2 doesn't say anything about a judgment against the master. It's completely silent  
3 on that issue, okay.

4 Now, in this case we have in the record here an admission that the  
5 interest held by all of these LLCs, assuming they are really independent entities,  
6 is the same person. They're all held by Mr. Nady. Mr. Nady is the holder. So they  
7 say, well, there's no stock certificates issued. Well, that's true in the LLC structure  
8 we don't have stock certificates as in a normal corporation, but the interests are the  
9 same. And the reason why I point this out -- I have in Exhibit D a copy of the Texas  
10 statute concerning LLCs. And in Texas, if you look at Section A-2 of the first page  
11 there that I gave you, it expressly extends the shield of assets that we were just  
12 discussing in possession of the sub to judgments, the liabilities of the company  
13 generally. This language is not present in Nevada's statute. So this assumption  
14 that these assets are beyond reach of a judgment against the company generally  
15 when the membership identical, the ownership interest is identical, is not supported  
16 by the statutory language.

17 So that is the first problem here and this is an issue of law that I think  
18 Your Honor needs to consider, particularly in light of what we were discussing  
19 regarding the fact that this is an integrated business operation, as defendants have  
20 testified about. Your Honor heard some testimony from Mr. Nady. I do object to  
21 that to the extent that he may have testified as to details different than in his  
22 deposition. In his deposition he did confirm much of what he was saying today.  
23 I'm not sure if was necessarily identical.

24 And this goes to what I was initially addressing to the Court when we

1 started that I think we need more of a record here before the Court can resolve this  
2 issue because essentially, and this gets to the second point I was trying to raise, all  
3 you have before the Court are defendants' assertions that these are independent  
4 entities, an assertion which is contradicted by defendants coming in here  
5 simultaneously and speaking on behalf of them rather than having them file their  
6 own appearances. As I said, that can't be reconciled. But there are no books or  
7 records. Your Honor was asking about the operating agreement, and this is the  
8 other crucial portion of subsection 3 that Your Honor was looking at. And if you  
9 look at Exhibit E of the response, which is the only document we have -- excuse  
10 me, that's Exhibit B. Oh, no, that's not B, that's E. I'm sorry. E as in Edward,  
11 Your Honor.

12 THE COURT: Okay.

13 MR. GREENBERG: If you look at E, Article 2, this is all we have in the  
14 record here regarding the potential invocation of that subpart 3 of the Nevada  
15 statute. It simply says that A Cab LLC is a Series Limited Liability Company that  
16 may -- that may establish sub series, which in turn may benefit from the protections  
17 afforded in the statute.

18 THE COURT: Where are you -- where are you reading?

19 MR. GREENBERG: This is on the second page of Exhibit E. The first page  
20 of Exhibit E is the certificate accompanying articles of organization.

21 THE COURT: Oh. Oh, okay. Yeah.

22 MR. GREENBERG: The second page we have the actual articles of  
23 organization and Article 2 contains the series LLC authorization for A Cab LLC.

24 THE COURT: Uh-huh.



1 MR. GREENBERG: And you can read the language yourself Your Honor,  
2 but it is permissive language.

3 THE COURT: So it would -- you would in turn have to look at the operating  
4 agreement?

5 MR. GREENBERG: Absolutely, Your Honor. This doesn't say as a matter  
6 of fundamental organization in that document that every series LLC in fact enjoys  
7 the limitations of liability in respect to its assets. It doesn't say that. It simply says  
8 the master LLC here is authorized to establish them in that order. And pursuant to  
9 86.296 3(b), as Your Honor was asking defense counsel, in order for them to benefit  
10 from that limitation on liability, assuming it even extends in this situation, when we  
11 were previously discussing that there is nothing in the statute extending that shield  
12 to judgments against the master LLC.

13 But let's assume that the purpose of the statute does in fact provide  
14 that shield. They still need to come in here and establish two things. One is that  
15 the operating agreement in fact confers that immunity upon them. And we don't  
16 have any of these operating agreements. There's nothing in the record, Your  
17 Honor. The second thing they have to establish is in 3(a), that in fact there are  
18 separate and distinct records maintained for these businesses. And again, all we  
19 have are defendants' assertions. We have nothing in the record. What we do know  
20 about that issue, whether there are separate and distinct records, is that they all  
21 share the same EIN number. We have testimony from Mr. Nady in his deposition  
22 that there is a common unemployment insurance account filed with the State of  
23 Nevada for A Cab LLC. We know that that license to operate the taxi business as  
24 the carrier is authorized to A Cab LLC, the master. It's not issued to any of these

1 102 medallion holders that A Cab LLC has designated the medallions to. I mean,  
2 the certificate, the license to operate is possessed by the master.

3 So we don't have any record. And there's in fact no public record  
4 regarding the existence of any of these sub series LLCs. There's no tax ID, there's  
5 no filing with the Secretary of State, there are no business licenses, there's no dba  
6 filings. There's nothing, Your Honor, except their assertion that they are in fact  
7 separate entities. Now, I'm sure the attorney from Wells Fargo can confirm this,  
8 but if I'm an incorporated business -- I am an incorporated business, actually Your  
9 Honor -- I can go to a bank and I can establish an account for my administration  
10 department, I can establish an account for my employee department, I can establish  
11 an account for my maintenance department. Those are all part of my corporation.  
12 I mean, here they title them Maintenance Company. There's no reason this Court  
13 should view that as being any different than being the maintenance department of  
14 the same entity, which is the judgment debtor here, A Cab LLC.

15 We just don't have a record here establishing any reason to conclude  
16 that the assertions made by the defendants, assuming the Court even would  
17 entertain them given the fact that these supposed independent entities aren't here,  
18 are in fact true, Your Honor. I mean, there's good reason to doubt it.

19 And this gets to the other issue which I was asking the Court to take  
20 note of, is that the record as presented by the defendants themselves shows that  
21 there are good, equitable reasons to not grant the relief because they admit that  
22 some of these monies that they're seeking to release are actually being held for the  
23 benefit of the master LLC. A Cab LLC as the CPCN holder, they're the ones who  
24 are responsible for remitting those taxes to the State for the operation of the taxicab

1 business. They're the carrier. They're the ones who would have to pay the  
2 unemployment insurance tax, for example. The State is going to go after them if  
3 those taxes aren't paid. If they're holding money in accounts at Wells Fargo, you  
4 know, as a separate entity --

5 THE COURT: Are you saying that they don't pay those fees -- each  
6 individual series company doesn't pay those fees to the State?

7 MR. GREENBERG: It's not their responsibility to pay them. Those are  
8 liabilities of A Cab LLC, Your Honor. They're the liabilities of the master. The  
9 master is the one who holds the certificate to operate the taxicab company. The  
10 master, according to Mr. Nady's deposition, is the one who has the unemployment  
11 insurance account with the State of Nevada. And again Your Honor, I am getting  
12 into assertions of fact here, which I'm making to the Court in a very hasty fashion  
13 because we don't actually have the time to get the evidentiary records before the  
14 Court, but I am very certain of what I am telling the Court. But this goes to my point  
15 that the Court needs to have more of a record here because there is very good  
16 reason to believe it's otherwise than what the defendants are representing to the  
17 Court.

18 Even assuming these were independent entities and they were the  
19 ones who have title to the money in these accounts, they very likely are holding that  
20 money or a substantial portion of that money, by their own admission, by their own  
21 limited record before this Court, as nothing but bailees for A Cab LLC, the judgment  
22 debtor here. If they're holding money to pay to Nevada to satisfy the tax liabilities of  
23 the master, which is what they say they are doing here, then that's attachable, Your  
24 Honor. That's not shielded from our execution. The State of Nevada may give the

1 master LLC a lot of grief when it doesn't get those monies, but that's not the concern  
2 of this Court. I mean, if they're holding -- again, if they're holding those monies for  
3 that purpose then they're attachable, Your Honor. And it's a lot more complicated,  
4 okay, than defendants are representing to this Court. They're basically just coming  
5 to the Court and saying, look, this money doesn't belong to the judgment debtor,  
6 it belongs to these other people. We're telling you that and therefore release the  
7 funds. And, Your Honor, the funds don't have to be put in my trust account. They  
8 can be deposited with the court if that was a more reasonable way to proceed.

9           There was a comment initially made about how the taxi company could  
10 not go to the bankruptcy court. I don't believe that's correct, Your Honor. The  
11 bankruptcy court clearly has the power as federal supremacy to take control of the  
12 company and also to prevent the Taxi Commission from doing anything in respect  
13 to the licensee, okay. Whether that in fact will result in the company going out of  
14 business is another story, but it's not a question that the bankruptcy court action  
15 is not available to them. It's probably not desirable to them because this whole  
16 argument that they're trying to make, this whole shielding of their assets that they're  
17 trying to engage in here clearly will not be recognized by the bankruptcy court  
18 because in bankruptcy court you have a very evolved jurisdiction of entity business  
19 operations or ongoing business operations which will not allow them to make these  
20 sort of arguments to the bankruptcy court. They are aware of that. That's why they  
21 don't want to go before the bankruptcy court.

22           THE COURT: What I understood Mr. Shafer to be saying, and maybe I  
23 didn't get this correctly, but if they did go file in bankruptcy court then the State  
24 would move in and take away their license, I guess, so they would be effectively

1 out of business.

2 MR. GREENBERG: Well, Your Honor, there's a stay in bankruptcy court,  
3 okay. Just like, you know, you can't foreclose on the property once the homeowner  
4 files for bankruptcy, you've got to get the stay lifted. I mean, conceivably they could  
5 if they went to the bankruptcy court, but it's not like they can act without going before  
6 the bankruptcy court. The bankruptcy court clearly has superior jurisdiction. What  
7 would happen is all hypothetical in that situation. I just want the Court to understand  
8 this claim that this is not an avenue that's available to them as a matter of law  
9 clearly is in error.

10 But there's one other issue that is not discussed in my briefs that I  
11 think is extremely important. I didn't have time to raise this, but I want the Court to  
12 understand this. Under the Taxi Commission's regulations, and I can actually give  
13 Your Honor the exact cite if you want.

14 THE COURT: Uh-huh.

15 MR. GREENBERG: It's NAC 706.149, okay. The Taxi Commission  
16 requires that operators who are issued these licenses, because it's for the public  
17 interest, must meet certain financial particulars, okay. One of them is that there  
18 must be at least a 20 percent equity interest in the business. The business can't be  
19 insolvent. It has to have a certain measure of financial health. And they have to file  
20 financial reports with the Taxi Commission every year. I believe it's in May, is my  
21 understanding. There's a uniform system that they use for this. Those reports are  
22 not public record. I cannot access -- well, if Your Honor issued a subpoena, which  
23 you might want to -- I can't access them otherwise, though.

24 My point, Your Honor, is that A Cab LLC, the holder of this license, is

1 reporting to the Taxi Commission all of these medallions, all of these vehicles that  
2 are possessed by the series LLC, by supposedly independent, subordinate LLCs  
3 as its assets, they should be estopped from taking the position that is before this  
4 Court that they're not its assets, okay. And this again goes to the point that we  
5 need more of a record developed here.

6 And what's really going on, I think Your Honor understands, is that  
7 in light of the Court's judgment defendants have appealed. They have every right  
8 to appeal and have their appeal heard, but they don't have the right to stop the  
9 judicial process here in this court. They're not posting a bond. Clearly they have  
10 the resources, they could post a bond, but if they posted a bond and the appeal is  
11 unsuccessful, they're going to have to pay the plaintiffs. What's going on here is  
12 they're trying to keep the business running so they have their options open. If the  
13 appeal is unsuccessful, they could just close down the business and in the interim  
14 make whatever profits they can from the business, which is significant. The  
15 financials we have do show the business generally has been earning a significant  
16 income over the past five years, certainly more than the judgment that is at issue.

17 THE COURT: Let me ask you to clarify. You made reference to NAC  
18 706.149. Equity capital: Minimum requirement; proof; failure to comply. This is  
19 regulation of motor carriers generally. What part am I looking at?

20 MR. GREENBERG: Well, they are a motor carrier. They are required --  
21 they're one of the motor carriers that are regulated under the State statute and  
22 under the Taxi Commission. They have to show that they're financially solvent to --

23 THE COURT: "Shall maintain an investment of not less than 20 percent  
24 equity capital in his or her operations and include proof that the fully regulated

1 carrier meets this requirement in his or her annual report filed with the Authority.”

2 That’s the part you’re talking about?

3 MR. GREENBERG: Well, right, Your Honor. I mean, this is a requirement  
4 that they have to meet. I mean, the NRS sections that relate to that are NRS  
5 706.167, which specifies an annual report must be filed by May 15th. That’s the  
6 statutory reference.

7 I think Your Honor understands my concern here, okay. I’m trying to  
8 do the right thing. I understand the Court is trying to do the right thing. And just  
9 to return to my initial statement because I know I’m repeating myself -- unless the  
10 Court has other questions, I don’t really want to take up more of the Court’s time.

11 THE COURT: No.

12 MR. GREENBERG: You’ve been extremely patient with us. It’s just that --

13 THE COURT: I can only do that because I have a crack staff, you see.

14 MR. GREENBERG: Well, I thank them, then, as well as Your Honor.

15 THE COURT: Who will stay at their posts to the bitter end.

16 MR. GREENBERG: We need more of a record here, Your Honor.

17 THE COURT: Okay.

18 MR. GREENBERG: These funds, they don’t have to be turned over to me.  
19 They should be put in escrow somewhere and held. If the defendants want to go  
20 seek bankruptcy relief in response to that, the funds are going to wind up going to  
21 a trustee and they’re not going to -- you know, they’re going to be taken out of my  
22 jurisdiction or the jurisdiction of the Court.

23 THE COURT: If I agreed with you, why not just ask the banker or the bank  
24 to maintain the funds --

1 MR. GREENBERG: That's fine with me, Your Honor.

2 THE COURT: -- pending further order of the Court?

3 MR. GREENBERG: Yeah, I would ask that --

4 THE COURT: Would that be a problem for your bank?

5 MS. DOVE: No, Your Honor. Wells Fargo is happy to comply with whatever

6 Your Honor orders.

7 THE COURT: All right.

8 MS. DOVE: We just want to make sure we're not -- we're between a rock

9 and a hard place as things stand now.

10 THE COURT: Understood.

11 MS. DOVE: If we release the funds we can be liable to one side. If we

12 keep them we can be liable to the other. So we are simply happy to follow this

13 Court's order regarding whatever Your Honor wishes us to do.

14 THE COURT: All right. Thank you.

15 MR. GREENBERG: And perhaps Your Honor could give us some

16 suggested schedule for further hearings, some production of the actual materials

17 that they claim support their position regarding release of this writ. Maybe Your

18 Honor wants to give them leave to have these supposed entities intervene -- apply

19 to intervene and appear, as they claim they should. Let's see these operating

20 agreements that supposedly provide the foundation for this limitation of assets.

21 I'd like to have an inspection of the actual records and documents that they claim

22 show that they've complied with the statute regarding the maintenance of these

23 corporations. I asked the Court to order a judgment debtor examination. That was

24 part of the cross-motion. That would be part of this process. Your Honor may want



1 to consider all this rather than make any decision right now, besides just to maintain  
2 the status quo, but there's an avenue we need to go forward with here in some  
3 fashion. So I'm asking Your Honor just to perhaps think about that and possibly  
4 address those issues.

5 THE COURT: All right. Mr. Shafer, what -- it's your motion, what do you  
6 say in response to what's raised? Well, let me put it this way. The things that do  
7 concern me from what Mr. Greenberg just said, one is still the standing. I find it  
8 difficult to see how far the statute goes in allowing entities to band together and  
9 protect from liability, but only if certain things are done. And then the parties that  
10 I have before me are not those parties. If they're really separate, then how is there  
11 standing? Second is -- that concerns me is the point that he made about only the  
12 master company LLC holds the license. So, I mean, that has a lot of ramifications  
13 for how or whether there's compliance with the intent of the statute, I think.

14 MR. SHAFER: Let me -- I'm sorry, go ahead.

15 THE COURT: And then finally the lack of record, which I also am troubled  
16 by. I'm being asked to jump onto a boat that I don't know much about and there  
17 isn't much of a record here to support these various points that have been raised.

18 MR. SHAFER: Well, if it's okay, I'll take the last point --

19 THE COURT: Yeah.

20 MR. SHAFER: -- because I think it's the easiest to deal with. The fact  
21 of the matter is that Mr. Greenberg has put the cart before the horse. It is clear,  
22 unequivocal black letter law that if you want the assets of a third party you have to  
23 sue them. You have to bring them into a legal proceeding. He has said, well, we  
24 happened upon these assets. I found this wallet on the table, I get to take it unless

1 the person comes in and proves that it's mine. That's not where we're at. They  
2 have to sue the individual series LLC. They have to subject them to --

3 THE COURT: I thought the issue was whether or not we really have third  
4 parties or do we really only have one party, at least as far as the LLCs are  
5 concerned?

6 MR. SHAFER: Yeah. Well, I mean, the clear -- this is what I'm coming to,  
7 is that he has turned the evidentiary standard on its head and tried to say that,  
8 well, we have a duty to prove that we exist or we have a duty to prove that we are  
9 not subject to this liability, rather than him try to prove that it is a piercing of the  
10 corporate veil. So let's say that there was a legal action and it brought these people  
11 in, he would have to show a prima facie case as to why these entities -- why there  
12 should be a piercing of the corporate veil. We've established that we have these  
13 entities, that the accounts are there, that they're separate accounting. We have  
14 a declaration and sworn testimony these are separate series LLCs. We have  
15 established as a prima facie case that they are separate and distinct.

16 The burden then shifts to Mr. Greenberg to prove that they are not.  
17 And that's skipping over the service issue and that they are subject to jurisdiction  
18 here. It's very simple. They haven't been sued, they haven't been brought in, and  
19 therefore the burden is not to -- he's flipped it on its head and asking us to prove  
20 the negative, to prove that we didn't commit a crime, to prove that we weren't  
21 at certain place at a certain time. That is -- the presumption of innocence, a  
22 presumption of lack of liability has not flipped here because he has a judgment  
23 against one party. He still has the burden to prove that. He has the obligation.

24 He also has the corporate structure law. It is not a master/subordinate

1 relation between the master and the series LLC. There's provisions in the statute  
2 that talk about how removal of a member of the master doesn't mean removal from  
3 the series. There is a provision that sets these up. They are separate and distinct  
4 entities that do not have a master/subordinate relationship. They are separate  
5 LLCs just like -- and so to that effect, the Court really just needs to consider them  
6 as separate LLCs and apply the appropriate standard when you're dealing with  
7 two complete and distinct series or normal LLCs.

8           What we have here was when the garnishment was written he  
9 executed a garnishment to everything that shared that EIN. An EIN is not  
10 determinative. There's nothing in the statute that says that you have to have a  
11 separate EIN or a separate Tax ID to be a separate LLC. In fact, that's one of the  
12 benefits when you look at the advantages, it allows you to have a centralized  
13 recording of the income.

14           The Taxicab Authority is aware of the corporate organization of A Cab  
15 and the series LLCs which provide services to it. They are not concerned about the  
16 financial organizations. A Cab is compliant with its statutory reporting requirements.  
17 They've cleared this with the Taxicab Authority. His assertions that maybe they  
18 haven't, that there's this statute and since they haven't proved they met the statute,  
19 they haven't met the statute. It is the complete opposite of how the rule of law  
20 issues. You don't get to say, well, there's a requirement and they haven't proved  
21 they met it and therefore we're entitled to pierce the corporate veil. No. The  
22 presumption is that there isn't any action that's been taken against A Cab, so the  
23 presumption should be that they are compliant with any statutory and regulatory  
24 authority that the Nevada Taxicab Authority has seen to fit to impose by either rule,

1 statute or law.

2 If he wants to bring an action, he has to sue them separately. He has  
3 to bring an action to bring it. Now, the problem is is because these are businesses  
4 that are intertwined -- I'm trying to explain it in the best way I can that makes it  
5 simple. If I hire a janitor to clean my office, that doesn't mean that they're involved  
6 somehow in the practice of law or that it's inappropriate for me to pay them as an  
7 independent contractor because they provide services to me as a law firm, any more  
8 than it's different for me to pay a copy company to provide copies for trial litigation  
9 because that's involved in the practice of law.

10 His restriction of a series LLC to real estate properties is completely  
11 wrong and it's completely inappropriate. The legislative history to NRS 86.296,  
12 that contemplated that it would be used in various enterprises, such as restaurants,  
13 real estate, anything where you have individual segments for which LLCs would  
14 be useful to have but for which imposing the regulatory requirements would be a  
15 substantial burden. Obviously having 150 LLCs that you have to update an officer  
16 and director to imposes a substantial burden to do so. The Legislature has enacted  
17 the requirements. We've met a prima facie case as to why these sub series LLCs  
18 are not here. It would be against due process for the Court to order withholding of  
19 the funds at this point. They have remedies and methods that they can enact to  
20 protect their interest, but they can't just do whatever they want and use the ends  
21 to justify the means.

22 THE COURT: When you say due process, you mean the due process as  
23 it protects these individual persons?

24 MR. SHAFER: Correct.

1 THE COURT: Okay.

2 MR. SHAFER: Yeah, these individual LLCs. They have to name them or  
3 they have to take some action to say that they are not and to absolve them of their  
4 -- you know, to pierce the corporate veil and say they are an alter ego. I mean,  
5 that's what the case they cited in their brief stands for, is that if you have a cause  
6 of action against members of an LLC or another corporate entity, you can bring that,  
7 you're entitled to bring that, but you have to bring it and you have to put that party  
8 on notice of the claims and give them an opportunity to defend. In fact, that's one  
9 of the clear issues in the statute. The statute says that a series LLC has an ability  
10 to sue and to be sued, to defend, to take action to own property, to sell it, to dispose  
11 of it. If it is a subsidiary, if it is an appendage --

12 THE COURT: Is that in that same statute or is that in a different one?

13 MR. GREENBERG: Yes, Your Honor.

14 MR. SHAFER: It is NRS 86.296 subparagraph 2, (a) through (f).

15 THE COURT: Yes. Okay. Okay.

16 MR. SHAFER: And the individual series in other cases have been sued.  
17 This court is probably replete with all sorts of series LLCs that are a party, that are  
18 plaintiffs and defendants in many courses of action. They are their own entity. They  
19 have the ability to act on their behalf. If they are mere appendages to the master,  
20 then that would defeat the separate nature because they wouldn't have the ability  
21 to sell or dispose of property because they would be subject to any restrictions that  
22 the master LLC or the one -- A Cab --

23 THE COURT: Well, let me ask you a question about that. If to operate a  
24 taxi you have to have a medallion, you have to have -- you have to be licensed by

1 the Taxicab Authority, then to be separate would you not have to have each one of  
2 those separate entities, the series LLCs go get their license? Does the license go  
3 to them or does the license that's in place, is it for A Cab?

4 MR. SHAFER: No. I believe that it is the company. In fact, the license  
5 I believe is held by a company by the name of Admiral Taxi, but it isn't operated as  
6 that because there was another Admiral entity. They are entitled to have this broken  
7 up. The only distinction here is that it lends to confusion because we call it a series  
8 LLC. If you had separate LLCs we wouldn't even be having this argument because  
9 it's axiomatic that an LLC is separate and has its own separate assets and own  
10 separate liabilities.

11 THE COURT: Uh-huh.

12 MR. SHAFER: But because they are a series, it somehow confuses the  
13 issues and we have some magical hand waving to conflate the issues. No. A series  
14 LLC is an LLC and entitled to the same protections and rights as any other LLC,  
15 subject to the restrictions of the statute under NRS 86.296. There's no support for  
16 their proposition that it is somehow subordinate or subject to the liabilities of this  
17 master LLC as a matter of law without any need to -- you know, to serve the entity  
18 individually or separately. So as far as the -- I'm not a taxi attorney and I'm not  
19 completely familiar with the administrative code on this issue, but I presume that if  
20 there were an issue it would have been raised by the Taxicab Authority because the  
21 corporate organization has been disclosed to the Taxicab Authority, how everything  
22 is reported. They are required to report --

23 MR. NADY: We reported. We were agendized and we were changed of  
24 type of entity from an LLC to a series LLC in 2012.

1 MR. SHAFER: So they've cleared this with the appropriate authority. So  
2 as far as any administrative barrier or concerns, I think we can say with relative  
3 confidence that that is not an issue and has been adjudicated by the appropriate  
4 authority on that issue.

5 The sole issue for the Court is whether or not plaintiff can bypass the  
6 requirement to sue you personally individually and claim assets and hold assets  
7 of an unrelated -- excuse me, of a third party without due process. And they are  
8 entitled to try to bring whatever action they can, but right now they have failed to do  
9 that. The reason -- and I think that's -- as I'm going through my notes, that is about  
10 as simple as I can make it. If plaintiffs have their way there is no protection for  
11 series LLCs. It will completely destroy the purpose of the statute because it means  
12 that anybody who has a claim against the master can just kind of run amok and grab  
13 whatever they can grab. And it's not even against series LLCs, against any LLC.  
14 They just happen to grab something that doesn't belong to them and they can hold  
15 it until they prove -- the other side prove that it's not.

16 Really, the appropriate remedy here is to order Wells Fargo to release  
17 the funds, and if the plaintiffs have any objections or have a belief that the series  
18 LLCs are subject to liability for A Cab, then they bring the appropriate motion to  
19 amend as they've done already.

20 THE COURT: Okay. Looking at 86.296, sub 3(b), which says that the  
21 article -- they get to be treated as a separate entity if the articles of organization  
22 or the operating agreement provides that the debts, liabilities, obligations and  
23 expenses incurred, contracted for or otherwise existing with respect to a particular  
24 series are enforceable against the assets of that series only and not against the

1 assets of the company generally or any other series. You submitted a number of  
2 documents. Is that provision in either the articles of organization or an operating  
3 agreement?

4 MR. SHAFER: Yes.

5 THE COURT: Okay. Where is that?

6 MR. SHAFER: Well, we have the provision from A Cab LLC, which in  
7 Article 2 of the -- which is attached as Exhibit E to their motion, it says that this is  
8 a Series Limited Liability Corporation that may establish and may have a separate  
9 business purpose or investment objective or limitation of liabilities of such in  
10 accordance with --

11 THE COURT: I'm sorry, before you get too far into it, tell me again where  
12 you're at.

13 MR. SHAFER: I'm sorry. Exhibit E.

14 MR. GREENBERG: Exhibit E of the response, Your Honor.

15 MR. SHAFER: Exhibit E to their opposition.

16 THE COURT: Oh, okay. Okay. That's a certificate to a company, the  
17 restated articles --

18 MR. SHAFER: If you go to the second page of that exhibit --

19 THE COURT: Okay.

20 MR. SHAFER: -- there is the Amended and Restated Articles of  
21 Organization for A Cab LLC.

22 THE COURT: Okay.

23 MR. SHAFER: Article 2 to that says that this is a Series Limited Liability  
24 Company.



1 THE COURT: Uh-huh.

2 MR. SHAFER: And says that it will establish a series. If we skip down to  
3 the end, will have a separate business purpose or investment objective and a  
4 limitation on liabilities of such series in accordance with the provisions of 86.161  
5 of the Nevada Revised Statutes. This was --

6 THE COURT: It says to the extent provided in the operating agreement  
7 of the company.

8 MR. SHAFER: Right. We don't have the individual series LLCs' operating  
9 agreements present before the Court, but we do have sworn testimony as to what  
10 they contain.

11 THE COURT: All right.

12 MR. SHAFER: And if the Court is -- I can get Steve Oshins to come and  
13 testify about what they contain or we could get it within the next few minutes, but  
14 I think that we've established sufficiently that they do contain that. If they don't and  
15 the plaintiffs wish to test that argument, they can bring whatever action they want.  
16 But I think we've established the prima facie case as to what they contain.

17 THE COURT: Okay. Anything else?

18 MR. SHAFER: And if you -- we could -- if that's the Court's concern, you  
19 could order a release of the funds pending submission of the articles containing  
20 language to that effect. Normally I would say additional briefing, but additional  
21 briefing will kill this company.

22 THE COURT: All right. Anything else?

23 MR. SHAFER: I think that's -- I think we've established that the case law  
24 is on our side and that despite the argument against it there's no record proving that

1 there is a separate -- or a basis to pierce the corporate veil or otherwise go against  
2 the statute.

3 THE COURT: All right. This is for me, at least, a difficult analysis to make,  
4 particularly at this point in the game. We've been involved in heated litigation for  
5 five years, more than five years, really, because there's been various stays during  
6 the litigation process. We get all the way down to the very end, a judgment is  
7 rendered, rightly or wrongly, a judgment is rendered. The victorious plaintiff goes to  
8 obtain what they have maintained is due and I would have to point out again this is  
9 monies that were due that were found in -- you talk about constitutional rights, due  
10 process, there's also the constitutional right because the people of Nevada said that  
11 it is to receive pay in accordance with that provision of the Nevada Constitution.

12 We get all the way down to the very end, the plaintiff goes to execute  
13 and is told at that point and we're told that, oh, you've got the wrong guy. That's not  
14 -- this one that you took the money from, that's not me, that's some other guy. Well,  
15 sometimes that's hard to pin down. When you have natural people it's pretty easy  
16 to distinguish one from another. The law of Nevada says that they don't have to be  
17 natural people, it can be a corporate citizen or it can be an LLC or, as we now learn,  
18 it can be a series LLC.

19 In dealing with this question of are these series LLCs truly separate  
20 individuals as apparently intended by the law of the State of Nevada, I have to view  
21 it within the context of where we are in this lawsuit. What that means to me is that  
22 if you're going to avoid the natural course of a lawsuit that ends in a judgment and  
23 execution, then it's incumbent upon you to show that you're not the guy. In criminal  
24 law we have the other dude did it as the defense. In business law, corporate law,

1 LLC law in the State of Nevada we now have the other series LLC did it or nobody  
2 did it, it was only the -- I think at some point you used the term the umbrella  
3 organization, although not that you agreed with it, but you know, A Cab LLC. And  
4 I don't have the other people here. Today earlier in court you saw that somebody  
5 came in and got an exemption from execution by showing that those funds weren't  
6 theirs, they belong to somebody else. It's a much easier proposition with people  
7 than it is with a corporate person or LLC person.

8           So I believe that it's incumbent upon me viewing this question and  
9 issue arising in the context of this litigation to say to the separate series LLCs you  
10 need to show me that you're not -- because you look just like the other guy. And so  
11 in fact that's the only way you get standing. It is -- in trying to discern whether this is  
12 really a separate individual -- and when I say this is, what I really mean, I guess for  
13 our purposes it boils down to the six series LLCs that had money in their accounts  
14 which was attempted to be levied upon. You only get to be treated that way under  
15 Nevada law if you're doing certain things; for example, the things that we've been  
16 through. We don't need to rehash all of that stuff, but particularly NRS 86.296.

17           And I don't have a record before me that shows that whichever of the  
18 six series LLCs has the money has complied with everything that's in that statute,  
19 most particularly somewhere where it says that it's only -- that liabilities are only  
20 enforceable against the assets of that series only. Well, or in other words, that the  
21 liabilities of A Cab LLC are not my liabilities. You have to -- you have to -- you go  
22 through the extra step of saying I really am a person as that is recognized under  
23 Nevada law. And I think that you have to do that. Otherwise, if you don't do that  
24 then what you wind up with is a way for someone, be they a natural person or

1 corporate or LLC to literally make themselves judgment-proof by going through the  
2 motions of some of the requirements of Nevada law as regards series LLCs but  
3 not all of them.

4           So I think it's incumbent upon me to require that in this instance these  
5 separate LLCs, series LLCs need to be able to say, hey, you can't take my money  
6 because I really am a separate person. And so at the very least I think it would take  
7 more of a record than we have here. I don't know what to do about the perhaps  
8 devastating toll that this may have upon the company, the company at the top, the  
9 LLC, but we have been through the entire litigation process provided under the laws  
10 of the State of Nevada. As I said, rightly or wrongly this plaintiff has obtained a  
11 judgment. Now they're trying to execute to get the money that is required under  
12 the Constitution of the State of Nevada. When I put that up against the claim that --  
13 and it's not even a person, it's lawyers for the defendant saying, oh, but this guy is  
14 not me, so, you know, you're going to have to do more than that. That's all I can  
15 tell you.

16           MR. SHAFER: If I -- I don't mean to argue. We did submit a declaration of  
17 Mr. Steven Beck --

18           THE COURT: Okay.

19           MR. SHAFER: -- who is an employee of A Cab Series, LLC, Employee  
20 Leasing II.

21           THE COURT: Where is this now?

22           MR. SHAFER: That is Exhibit B to our motion to quash.

23           THE COURT: B, you said, that's in Boy?

24           MR. SHAFER: Yes. It is the last three pages of our -- of the motion.

1 THE COURT: Oh, of Steve Beck?

2 MR. SHAFER: Correct.

3 THE COURT: Okay.

4 MR. SHAFER: And Mr. Beck, after being sworn testified that he keeps the  
5 books and records for these companies and that -- he says that in paragraph 2. In  
6 paragraph 7 he says that the garnished accounts are not those of A Cab LLC and  
7 has sworn testimony attesting to that fact. He testifies that -- as to who owns the  
8 funds that are being taken. I appreciate the Court's concerns with balancing the  
9 rights of a plaintiff to collect on a debt which the Court has determined they are  
10 owed and I am not here to argue that judgment, the validity of it, the enforceability  
11 of it at all, except as opposed to these independent agencies.

12 If the Court is inclined because of the sheer nature of this, we would  
13 be willing to submit to the Court with a sworn attesting affidavit the operating  
14 agreement's articles of incorporation for these six entities and we could do so by  
15 the close of business today, by four o'clock.

16 THE COURT: That would take care -- perhaps would take care of one of  
17 my concerns. Another, though, concerns the licensing. If A Cab LLC is the only  
18 entity licensed, as opposed to some of these individual series LLCs, then how is  
19 that that they're the only ones licensed to make the money and yet somebody else,  
20 a separate person is doing the business and making the money?

21 Yes?

22 MR. WALL: May I address that just shortly, Your Honor?

23 THE COURT: Yes.

24 MR. WALL: I don't know if --

1 MR. SHAFER: No, I think that would be --

2 THE COURT: Sure. Yeah.

3 MR. WALL: We set up corporations all the time every day in our business.  
4 The licensing for a parent for whatever it is that the business is doing is always held  
5 by a parent corporation. Subsidiary corporations then do business under those  
6 licenses. They may have to have doing business licenses for whatever it is they're  
7 doing, but each one of these LLCs has whatever licenses they need. It's a red  
8 herring to say because there's one license that A Cab has to operate a company  
9 that it's all one company.

10 THE COURT: Uh-huh.

11 MR. WALL: It is set up with separate companies just like any other  
12 corporate organization would be set up for the purpose of limiting liability. This was  
13 explained throughout this time and they only sued A Cab LLC. They can't get a  
14 judgment against someone else. With all due respect, Your Honor --

15 THE COURT: Uh-huh.

16 MR. WALL: -- you're shifting the burden again. It's their burden to prove --

17 THE COURT: I love it when lawyers say with all due respect.

18 MR. WALL: -- that somebody -- they have to prove that somebody isn't the  
19 person -- is the person they have a judgment against before they can take it. They  
20 can't go to -- they can't get a judgment against Farmers and then go collect against  
21 one of Farmers' subsidiaries. They have to sue and make sure that there is -- that  
22 they've got the right entity.

23 THE COURT: Assuming that you have a subsidiary legally recognized in  
24 the State of Nevada.

1 MR. WALL: The law presumes that until they prove otherwise.

2 THE COURT: Where does it say that, that the law presumes that?

3 MR. WALL: If I'm a corporation you can't just come and take my bank  
4 account and say prove to me that you're an actual corporation. You have to prove  
5 first that you have a basis for taking the money and that I'm not a corporation. It's  
6 always the burden of the party who is taking the money to pierce the veil, not the  
7 other way around. We get to defend when they try to pierce the veil, not the other  
8 way around.

9 THE COURT: Well, I'd be happy to receive further briefing on that. I don't  
10 -- you know, that doesn't change my conclusion that at this juncture it is not only fair  
11 but incumbent upon the defendant or defendants -- or defendant -- it's not even that,  
12 it's the series LLC that holds the money that they say has been wrongfully held up  
13 for execution.

14 MR. WALL: Then they should have sued the series LLCs.

15 MR. SHAFER: That is the -- the appropriate remedy is to sue the series  
16 LLCs and bring them into the jurisdiction of the Court. That's set out in the Greene  
17 case versus the Eighth Judicial District.

18 THE COURT: But if they are not a separate person, then what? In other  
19 words, if they haven't complied with Nevada law such that they are -- such that a  
20 separate person recognizable by the law has even been created, is it no burden to  
21 show that? I don't agree with that.

22 MR. WALL: You sue them and you prove that they're not a person when  
23 they claim that they're a person. That's the requirement of the law.

24 THE COURT: I disagree.

1 MR. WALL: I have to sue the corporation. I don't get to just go take the  
2 corporation's money and then say prove I stole it from you.

3 THE COURT: Well, at the beginning of the lawsuit that may be so, but  
4 when you have series LLCs created by the defendant it becomes important to make  
5 sure that the law has been complied with in order to shield those assets from the  
6 liabilities of the parent. I don't think that is too much of a stretch to ask them to  
7 show that you are in fact a person recognized by Nevada law.

8 MR. WALL: They have to show that when they're sued, Your Honor, not  
9 before.

10 MR. SHAFER: They are, I believe --

11 THE COURT: Well, you may be right. In that case all I can say is then you  
12 don't appear to represent those persons. You represent the defendant.

13 MR. SHAFER: And there is a process for claiming exemption. The sheriff  
14 has not served the entities as required, has not served them with a notice of  
15 execution. And this gets into some of the other argument. There is a process for  
16 claiming exemption. That exemption requires that the notice of writ be served upon  
17 the party being executed upon. No writ has been served --

18 THE COURT: Okay.

19 MR. SHAFER: -- upon the series LLCs.

20 THE COURT: All right.

21 MR. SHAFER: There's no basis to do that. I suppose -- in fact, I don't  
22 believe even that they served the -- I guess it's another issue that they didn't serve --  
23 the sheriff didn't serve the LLC with a notice of writ timely, either, or A Cab LLC.

24 THE COURT: Required by the law?



1 MR. SHAFER: Required by the law.

2 THE COURT: Okay.

3 MR. SHAFER: But that's I think an evidentiary issue that we may need to  
4 get into when the things were mailed and that's not why we're here.

5 THE COURT: Well, it was raised.

6 MR. SHAFER: We raised that because we wanted to make every  
7 argument we could --

8 THE COURT: Yeah.

9 MR. SHAFER: -- so there wasn't an unfair surprise at the time when we  
10 came in here today, especially given that it was on an order shortening time.

11 THE COURT: Well, that's the kind of issue that if I -- it seems to me it's fair  
12 to turn to the plaintiff and say did you comply with the statute, procedural statutes  
13 regarding execution?

14 MR. GREENBERG: Your Honor, I can personally attest that when the writ  
15 was sent out, because I personally delivered it to the constable, a notice form was  
16 given to them because they wouldn't take it without the notice form and without  
17 instructions as to where to serve it with the proper envelope and so forth.

18 THE COURT: Was that a notice form to the defendant LLC or to the  
19 series?

20 MR. GREENBERG: Your Honor, we don't even know anything about the  
21 existence of these series LLCs because they're not public record. There's no way  
22 we could know about it. The writ was directed to the assets of --

23 THE COURT: I thought each one of them was created and made a public  
24 record of. Is that not true?

1 MR. GREENBERG: It is not, Your Honor. That's part of the problem here.  
2 They are not registered with the Secretary of State. They can go out tomorrow and  
3 mint 100 more series LLCs. They don't have business licenses for any of these  
4 series LLCs. They're not registered as business names with the County, Your  
5 Honor. There's no way to know --

6 THE COURT: Does not the administrative LLC have some sort of business  
7 license?

8 MR. GREENBERG: None that we've been able to find. None that's been  
9 introduced in the record in these proceedings.

10 THE COURT: Do you know?

11 MR. GREENBERG: This is part of the problem that we're facing here,  
12 Your Honor. What I wanted to just point out to the Court is that for Your Honor to  
13 proceed in the fashion you are proceeding, you should also look at what is in the  
14 record. What is in the record is two things. You have an EIN number, a Tax ID  
15 number that ties these all together to A Cab LLC. And in addition, Your Honor,  
16 when this case was commenced in 2012, A Cab LLC, the master LLC here against  
17 whom the judgment is entered, was issuing W-2s as the employer, as the liable  
18 party to the plaintiffs. I mean, a copy is at Exhibit A of my response.

19 THE COURT: Uh-huh.

20 MR. GREENBERG: So as Your Honor was saying, we need to sue --  
21 this discussion you have to sue the right people, well, we did sue the right people.  
22 I mean, Mr. Nady at his deposition confirmed that at the time that 2012 W-2 was  
23 issued it was in fact being issued by the master LLC here. So the liability in this  
24 case, as Your Honor understands, extends back quite a number of years before

1 2012 and after 2012. The point is once this litigation is ongoing, I mean they can't  
2 then somehow shift their assets to these -- its subordinate LLCs after it's already  
3 been named. You know, again, Your Honor, we don't have a clear -- I'm not  
4 asserting we have a clear determinative record here, Your Honor. That's not what  
5 I'm here to argue. What I'm here to argue is we don't have a sufficient record,  
6 clearly, to grant the defendants the relief they were asking. And I think Your Honor  
7 appreciates why we don't, okay.

8 And I just would like to emphasize two other things, which is that the  
9 analogy to Farmers Insurance that Mr. Wall was giving the Court is not completely  
10 correct because if you have a judgment against Farmers as the parent and there's  
11 a Farmers subsidiary that Farmers parent wholly owns, they're the only interested  
12 party of the subsidiary, yes, you can attach the subsidiary. You don't have to go  
13 and sue the subsidiary because it's an asset of the judgment debtor which is the  
14 parent. I think Your Honor understands that.

15 THE COURT: So is that -- but in this case the owner, the parent owner  
16 would be Mr. Nady himself.

17 MR. GREENBERG: But Mr. Nady's interests are identical in the parent LLC  
18 here, the master LLC.

19 THE COURT: Okay.

20 MR. GREENBERG: He should not be -- I mean, there's no difference of  
21 membership. There's no difference of ownership between A Cab, the master --

22 THE COURT: Uh-huh.

23 MR. GREENBERG: -- and its, you know, 200 or 300 subordinate series  
24 LLCs. It's no different, Your Honor. It's all owned by Mr. Nady. There's no basis

1 for him to hide or for A Cab LLC as the master that he's operating through to be able  
2 to place the assets that are nominally titled to the slaves, so to speak, of the master  
3 beyond reach of the liability of the master. I was explaining this in the language  
4 of the statute itself. It does not mention any ability of the series to shield their  
5 assets from liabilities of the master. It says that the liabilities of the slaves, the  
6 subordinates, can be limited to their assets and not to their sisters, but it doesn't say  
7 anything about if you get a judgment against the basis for their existence because  
8 they can't exist without the master. There has to be a master for them to exist.

9 THE COURT: Yeah.

10 MR. GREENBERG: But, Your Honor, even if the Court was to find in  
11 favor of defendants' request here and say that these assets are possessed, were  
12 nominally titled to these six or whatever it is subordinate LLCs, there's still a  
13 question as to whether some measure of those assets really is being held for the  
14 benefit of A Cab LLC, the master. They've introduced evidence that it is, as we  
15 were discussing, in respect to these monies they were supposedly holding for tax  
16 payments. So there shouldn't be any rush here to release funds for any reason.  
17 I mean, you need more of a record. I think Your Honor understands my position  
18 on that. So Your Honor should proceed in that fashion as you think is best.

19 THE COURT: Well, what I'm trying to do is to see whether or not these  
20 series defend-- not defendants, these series LLCs' existence can be appropriately  
21 documented enough so the Court can at least know whether we do have an  
22 execution that cannot go forward. As I said, I'm acutely aware that it's possible that  
23 the life of the company hangs in the balance. It doesn't seem to me that you do too  
24 much good by killing the goose that lays the golden egg. But that's a different thing

1 than someone who has participated in a lawsuit and has waited themselves to say  
2 we're the wrong guy until this moment in time. I think it is -- as I said, then it's at  
3 least incumbent on these parties to establish that they are really separate entities  
4 cognizable under Nevada law.

5 All right, hang on a minute.

6 (Court confers with the clerk)

7 THE COURT: All right, here's what we're going to do. I'm going to meet  
8 again with you on Friday, two days hence. A Cab and/or the Series LLCs who claim  
9 to be officially cognizable will have until then to either supply or bring with you some  
10 sufficient evidence to do so, to see that in all particulars it's appropriate for me to  
11 hold off on this execution. I will be gone from the jurisdiction beginning the next day,  
12 Saturday, so this is -- will be the last time. That will be for two weeks. This will be  
13 the last time that we can get this resolved and I want to get it resolved appropriately  
14 under Nevada law. I won't give you a time right now. I have to check a couple of  
15 things. But we'll contact your offices. Is it okay if we contact one party for each  
16 side? Which should we contact?

17 MS. RODRIGUEZ: May I seek the Court's indulgence for a moment --

18 THE COURT: Yes.

19 MS. RODRIGUEZ: -- because I know that I will be scheduled to be out of  
20 town and Mr. Nady as well will be in Kiev, out of the country. So I just want to make  
21 sure with Mr. Shafer and Mr. Wall. I can supply what the Court is asking to counsel,  
22 but I want to make sure somebody else will be here.

23 THE COURT: Uh-huh.

24 MS. RODRIGUEZ: Will you be here Friday?

1 MR. SHAFER: I can be here Friday.

2 MR. NADY: I have payroll Friday. That's -- I have to issue paychecks those  
3 days and I will not be able to since they've taken that money out of that payroll  
4 account.

5 THE COURT: But it won't be you who's issuing the checks, will it?

6 MR. NADY: They took the money from the payroll account.

7 THE COURT: Which is the property of whom?

8 MR. NADY: Which is the property of the payroll account. It's a separate  
9 corporation that wasn't even sued.

10 THE COURT: Okay. So that's yet another entity?

11 MR. SHAFER: Yes, Your Honor.

12 MR. NADY: They're called Employee Leasing Account.

13 MR. SHAFER: And this has been the structure --

14 THE COURT: That's not a series LLC?

15 MR. SHAFER: It is.

16 MR. NADY: Yes, sir, it is.

17 THE COURT: Oh, okay.

18 MR. NADY: A Cab Series LLC, Employee Leasing.

19 MR. SHAFER: It's been the structure since 2012. Is it -- it's not possible to  
20 -- would it be possible to hold this tomorrow? If it's not, I understand.

21 THE COURT: No.

22 MR. SHAFER: Okay.

23 THE COURT: No, I really can't tomorrow.

24 MS. RODRIGUEZ: Your Honor, if I may, just for clarification because there

1 are over 120 series LLCs within the series LLC that have some reference to A Cab.  
2 And since all the money was pulled through a common employer EIN number,  
3 basically A Cab is on hold as to what accounts are going to be garnished because  
4 if everything is under the EIN number, it just happened that those six accounts were  
5 -- had money and so they were garnished.

6 THE COURT: Uh-huh.

7 MS. RODRIGUEZ: But they are living day-by-day in fear that maybe one  
8 of the other 120, if there's a dollar in the account that it's going to be garnished by  
9 the bank --

10 THE COURT: Uh-huh.

11 MS. RODRIGUEZ: -- because we're just using -- or the bank I believe was  
12 instructed by Mr. Greenberg to just use an EIN number --

13 THE COURT: Uh-huh.

14 MS. RODRIGUEZ: -- which is common to the 120 plus. So what -- I think  
15 for what the Court is requesting --

16 THE COURT: I guess I would have to leave it to the defendants to  
17 determine which ones they want to show to the Court are --

18 MS. RODRIGUEZ: Well, that's what I wanted to ask the Court, is for now  
19 do you want the operating agreements and the documentation for the six that have  
20 already been garnished so that we can show those were improperly garnished?

21 THE COURT: If I were you that's what I would do. That's the thing -- that's  
22 what we're really staring at right now in the face.

23 MR. NADY: Those operating agreements are already written. They're on  
24 my desk.

1 MS. RODRIGUEZ: Hold on, Jay.

2 MR. NADY: I'm sorry.

3 THE COURT: So it makes sense to me that if I were you I would try to at  
4 least get these six released and maybe you have to worry about the rest on another  
5 day. I don't know. You have to make that decision.

6 MS. RODRIGUEZ: Well, that's what we were trying to prevent, 120  
7 interpleader actions or complaints in intervention --

8 THE COURT: Yeah.

9 MS. RODRIGUEZ: -- on behalf of 120 different separate entities. But if  
10 they're all subject to being garnished, then that's going to be the Court's preference.  
11 But maybe with this, this will satisfy the Court, just if you see this --

12 THE COURT: I don't have a preference per se. I'm responding to the  
13 various issues and arguments and matters put to me to try and sort out and apply  
14 the law legally and justly.

15 MS. DOVE: Your Honor, could I just request service of anything that's filed  
16 from the parties --

17 THE COURT: Yes.

18 MS. DOVE: -- a courtesy copy, and the time of Friday's so we can --

19 THE COURT: Any problem with that, folks? Anybody files anything, serve  
20 it on the bank as well.

21 All right. We will contact, then -- whose office for the defense are we  
22 going to contact?

23 MR. SHAFER: You can contact my office.

24 THE COURT: We will contact you shortly and let you know what time, and



1 also you, Mr. Greenberg.

2 MR. GREENBERG: Yes, Your Honor. Just note my objection for the  
3 record. The presentation of the operating agreements that's being discussed does  
4 not establish by themselves compliance with the statute that Your Honor has been  
5 talking about. There still has to be an established business operation that's actually  
6 operating independently in respect to how the books and records and the operations  
7 of the business are managed. And I don't see that I'm going to be given an  
8 opportunity in any kind of evidentiary hearing in this time frame to be able to  
9 examine any of that. But we will take this up in the fashion that the Court will review  
10 on Friday.

11 THE COURT: Yeah. Okay.

12 MR. GREENBERG: I'm just noting that for the record, Your Honor.

13 THE COURT: All right. I'll see you on Friday. I'll let you know shortly what  
14 time.

15 MR. GREENBERG: Thank you, Your Honor.

16 THE COURT: Thank you.

17 (PROCEEDINGS CONCLUDED AT 1:14 P.M.)

18 \* \* \* \* \*

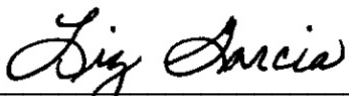
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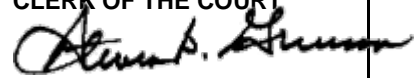
20 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
21 audio/video proceedings in the above-entitled case to the best of my ability.

22

23

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Liz Garcia, Transcriber  
LGM Transcription Service



1 **TRAN**

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

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

11 BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE

12 FRIDAY, SEPTEMBER 28, 2018

13 ***TRANSCRIPT RE:***

14 DEFENDANT'S EX-PARTE MOTION TO QUASH WRIT OF EXECUTION  
15 AND, IN THE ALTERNATIVE, MOTION FOR PARTIAL STAY  
16 OF EXECUTION ON ORDER SHORTENING TIME

17 PLAINTIFFS' RESPONSE TO DEFENDANT'S EX-PARTE MOTION TO QUASH  
18 WRIT OF EXECUTION ON OST AND COUNTERMOTION FOR  
19 APPROPRIATE JUDGMENT ENFORCEMENT RELIEF

20 **APPEARANCES:**

21 For the Plaintiffs: LEON GREENBERG, ESQ.  
22 DANA SNIEGOCKI, ESQ.

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

For Non-party Wells Fargo Bank: KELLY H. DOVE, ESQ.

RECORDED BY: Lisa Lizotte, Court Recorder

**AA010453**

1 LAS VEGAS, NEVADA, FRIDAY, SEPTEMBER 28, 2018, 10:40 A.M.

2 \* \* \* \* \*

3 THE COURT: I received this morning the defendant's copies of defense  
4 exhibits in support of this motion to quash the writ of execution consisting of  
5 Exhibit A, which then consists of -- I don't know how many, but a whole series of --  
6 well, A is the affidavit of Mr. Beck. B is the series -- no, sorry.

7 MR. SHAFER: I believe it's E, Your Honor.

8 THE COURT: C starts with the selected portions of NRS 86. And then  
9 D has certificate to a company. I should probably use the ones that you formally  
10 submitted. You wish this to be made an exhibit today?

11 MR. SHAFER: Yes, Your Honor.

12 THE COURT: All right. And defendant -- I mean, plaintiff has received  
13 this?

14 MR. GREENBERG: We were given a copy here in court this morning.

15 THE COURT: Uh-huh. All right. Any objection to enter these into the  
16 record?

17 MR. GREENBERG: Well, Your Honor, I don't see that we can object to  
18 their introduction in the record, but in terms of them being considered by the Court  
19 as representing what they purport to represent, we do have a serious problem --

20 THE COURT: Sure.

21 MR. GREENBERG: -- from an evidentiary point of view, Your Honor.

22 THE COURT: Yeah. Okay. So this will be admitted as Defense Exhibits --  
23 altogether it's A through J, I believe. Is that correct?

24 MR. SHAFER: Yes, Your Honor.

1 THE COURT: And the -- how many of these exhibits are operating  
2 agreements?

3 MR. SHAFER: Your Honor, Exhibit E.

4 THE COURT: E. Okay.

5 MR. SHAFER: E is one set of the operating agreements for one of the  
6 series.

7 THE COURT: For one of the series.

8 MR. SHAFER: Yes.

9 THE COURT: For which series?

10 MR. SHAFER: It is for -- so I get the name right, A Cab Series LLC, Valley  
11 Taxi Company.

12 THE COURT: Okay.

13 MR. SHAFER: And I will represent to the Court that this series is potentially  
14 identical to all of the other series agreements, series operating agreements for each  
15 taxicab.

16 THE COURT: All right. Okay, so those will be admitted as Defense A  
17 through J.

18 I would say that my law clerk and I worked late into the night last night  
19 trying to really get on top of this issue, including reviewing not only the Nevada  
20 statute, form of the statute, but statutes enacted in -- similar statutes enacted in  
21 other states and some reading materials -- where is that -- one of which is Limited  
22 Liability Companies Law, Practice and Forms by Nicholas Karambelas, which has  
23 a section which describes series LLCs. Some of the challenges that have come  
24 about in those states that have adopted them and some of the various forms of

1 a series LLC creation in statutory creation. Some of the things -- rules that have  
2 been adopted in certain states which seem to have avoided all of this that we've  
3 encountered, and that is that each series LLC must be registered with the same  
4 entity as the lead LLC, the lead series LLC. We don't have that, apparently, in  
5 Nevada. If we do, I'd be happy to be disabused of that notion.

6 Also, I've taken a look at what this author at least says about how  
7 various entities, governmental entities deal with a situation like this where they are  
8 not separately publicly identified so that the public can know who they're really  
9 dealing with as opposed to who they thought they were dealing with perhaps. In this  
10 case A Cab LLC or ultimately as of last year A Cab Series LLC. And it appears that  
11 to some extent -- and these are just generalities, these do not necessarily apply --  
12 well, we're not even there in this case. Bankruptcy court tends to brush aside the  
13 series LLCs and tend to go to the creator of the entire series. There's also some  
14 treatment of what happens in non-series states. In other words, recognition of a  
15 series LLC doing business in a non-series state, which we don't have in this case.  
16 And there's also a treatment of what happens or what some of the issues are when  
17 one gets into the treatment of series LLCs under the Uniform Commercial Code,  
18 Article 9. There are any number of other topics that creep up but they're only  
19 tangentially implicated in the present matter before the Court.

20 I'm going to hear from all of you. By the way, I understand you need  
21 to leave, Mr. Wall, at 11:15. I'll try to make as much headway as we can before  
22 that happens.

23 Here is the question that I wind up having, even having seen the  
24 exhibits submitted by the defendant, and most particularly the operating agreements

1 or at least some of them that have been employed here. There is one, for example,  
2 which says: Operating Agreement between A Cab Series dash Employee Leasing  
3 Company II and A Cab Series LLC, Valley Taxi Company. Question for the  
4 defense. Is there another operating agreement which first establishes A Cab Series  
5 LLC dash Employee Leasing Company II or establishes A Cab Series LLC, Valley  
6 Taxi Company? Or is this the document purported to be the creation of both of  
7 those series LLCs?

8 MR. SHAFER: I think -- if I can respond. This is the only operating -- the  
9 only agreement we have. There is not a separate operating agreement that is solely  
10 as to Employee Leasing or solely as to Valley.

11 THE COURT: Uh-huh.

12 MR. SHAFER: But it is not -- under the statute it is not required --

13 THE COURT: Okay.

14 MR. SHAFER: -- to have such an operating agreement. And we refer to  
15 this in the selected statutes, but in the state of Nevada an operating agreement is  
16 an elective or a permissive matter to establish a limited liability corporation and not  
17 mandatory.

18 THE COURT: Uh-huh.

19 MR. SHAFER: The mandated part is the articles of incorporation that are  
20 filed with the Nevada Secretary of State and one you have that, that operating  
21 agreement -- and you have an operating agreement for the filed entity, that permits  
22 the members to then create series LLCs on their own. Now, if they wish to have  
23 liability protection there has to be an operating agreement that provides that they  
24 are subject -- excuse me -- that they are separate. And I believe that each of these

1 is an agreement signed by the members of the respective entities that provides  
2 that each of these entities is its own entity, has its own liabilities and not subject to  
3 attachment or liability of the other series or general corporation.

4 THE COURT: And so that's the purpose of this operating agreement here?

5 MR. SHAFER: That is one of the purposes.

6 THE COURT: Okay.

7 MR. SHAFER: It's also to establish the relationship between the various  
8 series so that the relationships and the product or what they were going to do is  
9 defined, which is one of the portions of keeping appropriate records so that there  
10 is a written record of what the relationship is between the series LLCs. I think  
11 that's incumbent on what the -- to maintain adequate records. If you don't have a  
12 document of what they're going to do for each other -- having this establishes that  
13 and provides that record of what they're going to do. So --

14 THE COURT: So that theoretically you could have a series LLC that has  
15 a number of members, two of which, let's say, decide to form another series LLC  
16 and then do business with yet a third series LLC?

17 MR. SHAFER: That's correct.

18 THE COURT: So if that happens and there is a dispute between these two  
19 series LLCs and the dispute is not resolved and it eventuates in a lawsuit, would  
20 the lawsuit of A Cab Series -- let's assume the Valley Taxi Company decided to sue  
21 A Cab Series, Employee Leasing Company II, how would -- I mean, what effect  
22 would that have? In other words, if they had a disagreement and sued each other,  
23 even though they knew about each other --

24 MR. SHAFER: Uh-huh.

1 THE COURT: -- that we were doing business with a series LLC that is not  
2 registered anywhere and does not do business under its own name. Well, I guess  
3 I wouldn't go that far. It does business but in the form of doing agreements such  
4 as the one that's done here and other things. I believe, and correct me if I'm wrong,  
5 the Employee Leasing Company II was the one that had the responsibility for W-2s.

6 MR. SHAFER: Well, let's take this example that there was a dispute  
7 between the Employee Leasing series and Valley Taxi series. Perhaps there was  
8 some dispute about a payment that wasn't made. Here it's somewhat of a moot  
9 issue because the member, the sole member of the company is the same in both  
10 instances.

11 THE COURT: Right.

12 MR. SHAFER: Let's say that that was not -- there was some disunity of  
13 interest or some shared interest, one was a multi-member or whatever, or maybe  
14 they were completely disparate. I've established series LLCs that has -- Series 1  
15 has one member and Series 2 has another entire member. Let's say there was  
16 some dispute regarding that. They would -- each would have the ability to sue or  
17 to be sued and there is no restriction that I'm aware of that would prevent one  
18 company from suing the other. The only difference would be they would have to  
19 serve the registered series with the Nevada Secretary of State. So if Valley Taxi  
20 were to sue Employee Leasing, they would serve A Cab Series LLC at the address  
21 indicated with the Nevada Secretary of State.

22 THE COURT: And I assume that's because A Cab Series LLC is the real --  
23 the closest thing we have to a real --

24 MR. SHAFER: They -- it is a registered --



1 THE COURT: -- existing entity?

2 MR. SHAFER: Yeah, it is a registered entity, and so they are the correct  
3 one to be served for that purpose.

4 THE COURT: So they would serve them, serve A Cab Series LLC?

5 MR. SHAFER: They would serve the registered agent for A Cab Series LLC.

6 THE COURT: Okay, the registered agent.

7 MR. SHAFER: There is a fine distinction, but -- and many times the  
8 registered agent is the corporation itself.

9 THE COURT: And how would they know who the registered agent was?

10 MR. SHAFER: They would know that because that's listed with the Nevada  
11 Secretary of State.

12 THE COURT: Okay.

13 MR. SHAFER: So --

14 THE COURT: And that's if these two companies -- I should probably  
15 identify this document. There's no numbers on it, but it's one of the documents  
16 contained in Exhibit E.

17 MR. SHAFER: Yeah.

18 THE COURT: And it is an operating agreement between Leasing Company  
19 and Valley Taxi Company. If a third party had a dispute with A Cab Series LLC,  
20 Valley Taxi Company, which could be anything -- I assume that Valley Taxi  
21 Company operates taxis?

22 MR. SHAFER: Yes. It operates -- it owns one of the taxicabs.

23 THE COURT: Okay.

24 MR. SHAFER: Yes.

1 THE COURT: So if -- well, let's say the cab gets in a wreck and people are  
2 harmed and they believe -- they take issue not only with the driver but the company  
3 who owns the cab. And I suppose in Nevada we have theories of P.I. lawsuits that  
4 include the owners of the vehicle. How would that person know who to sue?

5 MR. SHAFER: Well, it's pretty simple. In that instance they would -- if they  
6 knew the name of the taxi company they would sue A Cab Series or Valley Taxi  
7 Company. If they didn't, it's no different than any other accident where they don't  
8 know the exact name. They would sue A Cab Series LLC or --

9 THE COURT: How would they know who to serve in Valley Taxi Company?

10 MR. SHAFER: Well, this goes back to one of the --

11 THE COURT: Does that go back to -- there's no registered agent for Valley  
12 Taxi Company; right?

13 MR. SHAFER: No, there is a registered agent for Valley Taxi Company  
14 and that's the same registered agent for A Cab Series LLC.

15 THE COURT: How would they know that that is the registered agent for  
16 Valley Taxi Company? In other words, I assume that this is not a public document  
17 somewhere --

18 MR. SHAFER: No, it is not.

19 THE COURT: -- Secretary of State for anyone to find out who to serve.  
20 So they would serve in that case A Cab Series LLC, the registered agent?

21 MR. SHAFER: Correct.

22 THE COURT: And if they proceeded through the litigation and let's say  
23 they did persevere and obtained a judgment against Valley Taxi Company, how  
24 would they -- how would they execute on the judgment?

1           MR. SHAFER: Well, there is a very good way to do that and that's -- as in  
2 the example of the personal injury accident, Nevada provides for several theories  
3 of liability, including alter ego. Let me give you an example. If there was a car  
4 accident and Valley Taxi Company owned the cab that was involved in the auto  
5 accident, the plaintiff who was injured may bring suit against the taxi driver for  
6 negligent operation of the vehicle. He may also bring a cause of action for negligent  
7 maintenance or some other cause of action. The maintenance is done by a  
8 completely separate entity. There is a way to do that. When you bring the lawsuit,  
9 you bring it upon the information you have at the time and prudent practice is to  
10 name Does and Roes so that if it indeed turns out that the person -- the name you  
11 sued was not the correct person, you can move to amend.

12           Or as plaintiff has done in this instance, they have moved -- they  
13 sued A Cab LLC and following the judgment have moved to amend to name A Cab  
14 Series, LLC. I'm not commenting on the merits of that motion, but illustrating that it  
15 is a method or a remedy that can be brought in the event that the improperly named  
16 party, or if you allege that the improperly party was named. Plaintiff in their brief that  
17 they submitted yesterday cited several cases regarding amendment and bringing  
18 claims against a differently named party. In all of those instances they said that you  
19 need to bring an action or bring some sort of proceeding to amend and to add that  
20 cause of action as an alter ego.

21           THE COURT: Uh-huh.

22           MR. SHAFER: It's really -- I can appreciate the Court's concern in protecting  
23 the public --

24           THE COURT: Uh-huh.

1 MR. SHAFER: -- because you do want to have accountability --

2 THE COURT: Uh-huh.

3 MR. SHAFER: -- for companies to be responsible. But there's really no  
4 difference between that -- we do not require people to -- you know, to give their  
5 name, necessarily. Well, I guess there is a statute that says that, but if you are --  
6 let me give you an example. My wife was driving down the street yesterday and  
7 some teenagers threw a rock at her car and damaged her car. She stopped and  
8 asked their names and they gave their first names and that's it and then ran off.  
9 If we were to bring a suit against that person, we would name Alexander and Kevin  
10 Doe, bring the lawsuit against them and engage in our due diligence to name that  
11 person. Upon finding out their identity, it would be incumbent upon us to move to  
12 amend to correct the name of the parties as part of our due diligence, but we would  
13 be able to bring that lawsuit even though we didn't know the correct name of the  
14 parties. Or if it turned out that Kevin Smith was really not his name but in fact was  
15 Joe Biden or some other name, we would be able to move to amend to name the  
16 correct party. We do not mandate that we have our names tattooed on our  
17 foreheads or otherwise provided. There is a method that balances that.

18 In the statute there's not a provision that requires registration with the  
19 Nevada Secretary of State. I know other states have enacted to do that, but our  
20 Legislature in its wisdom or folly has ruled that these are the requirements, that if  
21 you operate in this manner that you can -- you do not have to register. In fact,  
22 there's not a way for the series LLCs to register. It would be impossible for A Cab  
23 Series LLC, Valley Taxi to go to the Nevada Secretary of State and try to file a  
24 registered agent certificate. It is impossible for them to do that. There is no method

1 to do that. Even if they wanted to do that or tried to that, it is an impossibility to do  
2 that. The method you have to do that is to have, as they set out in the statute, is to  
3 create articles and then have an operating agreement that provides for how lawsuits  
4 and how these things are to be managed. And this is what we've submitted in  
5 Exhibit E and also -- excuse me, Exhibit F -- no, Exhibit E, and then Exhibit D is the  
6 articles of incorporation that set out the basis for the registered LLC.

7 THE COURT: I'm sorry, that was Exhibit --

8 MR. SHAFER: Exhibit D.

9 THE COURT: D. Okay.

10 MR. SHAFER: And we referred to this yesterday.

11 THE COURT: Certificate to accompany restated articles or amended and  
12 restated articles.

13 MR. SHAFER: Yes. And pages 2 and 3 are the amended and restated  
14 articles of organization --

15 THE COURT: Uh-huh.

16 MR. SHAFER: -- that were filed in -- were created in February of 2012.

17 THE COURT: Uh-huh.

18 MR. SHAFER: And these set out the separate nature of the series LLCs  
19 in accordance with the statute that was in place at that time.

20 THE COURT: Uh-huh.

21 MR. SHAFER: It's since been revised slightly, but that is why it was created  
22 there. And this comes --

23 THE COURT: So are you saying that by -- I mean, how would a party  
24 under the circumstances that I was describing where you have one of these series

1 LLCs that gets in a legal dispute and somebody wants to sue them, how would they  
2 know?

3 MR. SHAFER: They would know the same way we get any information.  
4 They would -- well, let me back up here. One of the reasons that the -- the benefit  
5 of the way these are drafted now, A Cab Series LLC indicates its tie to the registered  
6 entity by its name format, because if you notice all of the entities are A Cab Series  
7 LLC comma Valley Taxi Company; A Cab, Employee Leasing Company, so that it  
8 would put the various parties on notice that A Cab Series LLC is a part or related to  
9 those entities.

10 THE COURT: Well, how would they know that, though? If somebody gets  
11 in a wreck with the cab that we were talking about, how would they know that the  
12 owner is known as A Cab Series LLC, Valley Taxi Company?

13 MR. SHAFER: Well, in the event of an accident the insurance for the  
14 individual entity and the registration docs for the car show that the owner of the  
15 vehicle is A Cab Series LLC, Valley Taxi Company. So --

16 THE COURT: But how would somebody know that? In other words, to  
17 get even to the registration? I assume what you're saying is they have to do the  
18 discovery to find out.

19 MR. SHAFER: Well, that would be part of it, but if we go back to the  
20 automobile accident, it is incumbent on a registered driver in the state of Nevada to  
21 provide insurance information and provide registration information in the event of  
22 an accident.

23 THE COURT: Uh-huh.

24 MR. SHAFER: So if A Cab is in an automobile accident with another party,

1 they have to provide that information. That information then would identify them  
2 as A Cab Series LLC, with an address that's indicated, just as if you or I were in  
3 an auto accident we would have to provide that registration information and would  
4 provide our address information for us to be sued or contacted in the event of a  
5 claim for damages. It's no different for the series here in the event of an automobile  
6 accident. It's listed on the insurance, it's listed on the registration documents so  
7 that person, that cab driver -- the person that was involved in that accident or the  
8 passenger would know who it is.

9           When we get to the series of hypotheticals, what if somebody driving  
10 down the street wanted to sue Valley Taxi for offensive advertising or something.  
11 Maybe there was an ad that they thought was a little too racy or something and they  
12 felt offended and wanted to bring a lawsuit. How would they do that? Well, how  
13 would they do that in any other instance if they say who it was? If I'm driving down  
14 the street and they don't like -- they think my license plate is offensive and want to  
15 sue me for that, how do they find out who I am? I mean --

16           THE COURT: Well, driving down the street, I assume they have the tag  
17 number, like off the tag.

18           MR. SHAFER: Yeah. And they would have the tag number here, which  
19 they would go to the DMV, find out who the registered operator of that vehicle was.  
20 There is a method that's set out in the statute for service and that's that all of these  
21 series LLCs have the registered agent that's indicated by the registered -- the  
22 registered agent for the filed LLC is who has to be served.

23           THE COURT: Okay.

24           MR. SHAFER: Now, how do you find out that? I appreciate the Court's

1 concern, but I don't know that it has to be a full-proof method that no matter with  
2 no effort on the part of the complaining party the name of the entity has to be  
3 discovered. It's whether or not that entity is hiding or not representing who it is  
4 or is engaging in some sort of skullduggery to obscure their identity. And in this  
5 case they have registered the vehicle, they operate under Valley Taxi, they have  
6 insurance in that name, so that any foreseeable action -- I guess the question is  
7 how do you -- you know, we can get into lots of scenarios --

8 THE COURT: Yeah.

9 MR. SHAFER: -- in which it might be difficult for the plaintiff or putative  
10 plaintiff to find out the exact identity of the entity, and that's I suppose a balancing  
11 test. It's not set out in the statute that there has to be a way. The Legislature  
12 has made an exception for the registration requirement for series LLCs. If the  
13 Legislature chooses to change that or amend that in some way, as they have in  
14 other states, there are certainly reasons why they would and reasons why they  
15 would not want to do that.

16 Going back to the issue, one of the primary benefits of a series LLC  
17 is that you do not have to do multiple filings with the Nevada Secretary of State.  
18 That it makes it simpler. They've done that to invite businesses to the state of  
19 Nevada and to compete with Delaware and other states that have such a similar  
20 series LLC. I mean, to a certain extent we could argue against the creation of a  
21 corporate entity or a limited liability corporation in the first place, but they have been  
22 created and we have to deal with the statutes as they are written.

23 THE COURT: Uh-huh.

24 MR. SHAFER: So I appreciate the Court's concern, but I think the answer



1 to that is in most instances the remedy -- well, you don't need to reach the remedy  
2 because they will know the identity of the entity in most scenarios, and if they don't  
3 they can move to amend or they can move to seek alter ego. We do not require in  
4 the state of Nevada that the identity of owners of a corporation or a limited liability  
5 company be known. They are not required to be registered with the Nevada  
6 Secretary of State. So if we want to pierce the corporate veil or bring an alter ego  
7 theory, how would we go about that? Well, you Does and Roes and you seek to  
8 amend and you seek discovery in that process. So there is a method that does not  
9 leave a plaintiff without a remedy or without an ability to pursue a claim.

10 THE COURT: Let's return to this operating agreement that I was looking  
11 at between the Employee Leasing Company II and Valley Taxi Company.

12 MR. SHAFER: Correct.

13 THE COURT: What part of this -- I'm concerned that this purports to be  
14 an operating agreement that creates, apparently, both A Cab Series LLCs that are  
15 named there, and yet what it really is is simply a lease because the very -- the  
16 language, once it gets through with -- I mean, it starts off saying, "This employee  
17 leasing agreement is made and entered into by and between A Cab Series LLC,  
18 Employee Leasing Company II and A Cab Series LLC, Valley Taxi Company,  
19 lessee, effective as of the commencement of business 2/25/16, the effective date."  
20 So it's a lease. It says it's an operating agreement, but there is -- I don't see  
21 anything in this operating agreement -- in other words, if somebody even did  
22 diligence and came up with this document, how does this document create the  
23 entities that it purports to have created and as lessor and lessee?

24 MR. SHAFER: And I appreciate the Court pointing to that. This is a lease.

1 It is an agreement that defines the relationship between these two entities. If we  
2 turn to the second page of this agreement, particularly paragraphs 9 and 10,  
3 paragraph 9 provides that the Employee Leasing Company II and Valley Taxi  
4 Company have the list of items A through F, which are the same powers and  
5 responsibilities that are set out in the organizing statute, NRS 86.296. So this  
6 paragraph here establishes the series LLCs, plural. It is a reciprocal and mutual  
7 establishment by the different -- the members of the different series LLCs.

8 THE COURT: Uh-huh.

9 MR. SHAFER: So this paragraph here establishes those entities and  
10 reiterates the powers and abilities they have. Paragraph 10 limits the liability and  
11 copies this language from the statute as to the limitation of liability as to the series  
12 itself being responsible for its own debts and not responsible for others. So these  
13 two paragraphs are the establishing and the limiting factors required in the statute  
14 to establish a series LLC. While it's a bit of a sandwich in that it combines multiple  
15 ingredients and multiple aspects and while some attorneys may like to have  
16 separate documents, one establishing and then the other, I don't see anything in the  
17 statute or anything in law that would preclude a combined agreement to this effect.

18 THE COURT: Uh-huh. What --

19 MR. SHAFER: It is a mutual pledge.

20 THE COURT: You mentioned just now that separate and distinct records  
21 are maintained. They -- it says they're held directly or indirectly, including through  
22 a nominee or otherwise, and accounted for separately from the other assets of the  
23 company and any other series. What assets is -- would either of these entities own  
24 since -- isn't one of the hallmarks of one of these series limited liability companies

1 is that they can control assets but not own them?

2 MR. SHAFER: It is possible to control and to own. The statute provides  
3 and in fact this operating agreement says that they can own property -- they can  
4 own, hold, improve or otherwise deal with real or personal property. Valley Taxi  
5 Company owns a vehicle. That's the asset that it has that is used in the furtherance  
6 of providing taxi service.

7 THE COURT: Which is -- Valley Taxi, which is a series --

8 MR. SHAFER: It is a series of A Cab Series, LLC.

9 THE COURT: Uh-huh.

10 MR. SHAFER: So it is the entity that owns the vehicle. So that's the asset  
11 that it has. Employee Leasing, the assets that it has, I suppose, are the provision of  
12 labor that is used by the -- provides the drivers of the vehicles then used to generate  
13 revenue.

14 THE COURT: Does the limited liability -- or, sorry, the series LLC statute  
15 in Nevada either allow explicitly or preclude a series LLC from owning property  
16 assets?

17 MR. SHAFER: It explicitly provides for that, Your Honor.

18 THE COURT: Okay.

19 MR. SHAFER: In fact, if we look at --

20 THE COURT: Ahh. 86.311. Acquisition, ownership and disposition of  
21 property by company and series.

22 MR. SHAFER: That is -- yes. Also, 86.296 2, sub (e) and (f).

23 THE COURT: Oh, where did that go? Where is our series LLC statute?

24 MR. SHAFER: That would be Exhibit B to our motion.

1 THE COURT: You put the statute in there?

2 MR. SHAFER: I did, Your Honor, just so we didn't have to pull the heavy

3 books.

4 THE COURT: Oh. D, did you say, like Dog?

5 MR. SHAFER: No. E. Edward and Frank, under paragraph 2.

6 THE COURT: All right.

7 MR. SHAFER: Leading into that --

8 THE COURT: Where's the statute? I'm looking for the statute. Is that in E?

9 MR. SHAFER: No. Sorry. Exhibit B. Or, excuse me, Exhibit C as in Charlie.

10 THE COURT: C. Okay. All right.

11 MR. SHAFER: On page 1 of Exhibit C, looking at paragraph 2, it says, "A

12 series may." And then directing to subparagraph (e) and (f), (e) says a series may

13 "purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and

14 otherwise deal in and with real or personal property or an interest in it, wherever

15 situated, and the power to sell, convey, mortgage, pledge, lease, exchange, transfer

16 and otherwise dispose of all or any part of its property and assets."

17 THE COURT: Okay.

18 MR. SHAFER: So a series LLC has the ability to hold and to transfer

19 property.

20 THE COURT: All right. Let me jump to another statute, then. You may not

21 have this with you.

22 MR. SHAFER: Well, I think -- yeah. Counsel was just pointed to 86.311.

23 THE COURT: Oh, yes. Uh-huh.

24 MR. SHAFER: Which says essentially the same thing. Subparagraph 2

1 says, "Real and personal property may be purchased, owned and conveyed by  
2 a series separately in the name of a series, as an asset of the series only."

3 THE COURT: Uh-huh.

4 MR. SHAFER: So a series LLC has the ability to do that, subject to the  
5 authorization of its members and managers. Here there is only one member and  
6 they have authorized this.

7 THE COURT: What I keep coming back to is this problem with interpreting  
8 these statutes in this fashion, and that is that in this case we are dealing with a  
9 constitutional mandate, the minimum wage act, only it's not just an act it's part of our  
10 Constitution. And what I hear you saying is that if we interpret our limited -- I'm  
11 sorry, our series LLC enabling legislation in the way that you're proposing, there is  
12 really no way for employees to know who their real employer is. How many of the  
13 drivers know that their employer is a series LLC, Employee Leasing Company?

14 MR. SHAFER: That I do not know the answer to, Your Honor, but I think  
15 I can anticipate that there's -- there is a remedy for that situation.

16 THE COURT: And then similarly under NRS 86 -- now I don't recall exactly  
17 which statute it is, but it says that -- where's the statute that says that you have to be  
18 able to go to your employer and request your pay information and they have to give  
19 it to them in ten days, within ten days? Where's that statute?

20 MR. GREENBERG: That would be in Chapter 608, Your Honor.

21 THE COURT: Oh, 608. That's right. That's right.

22 MR. GREENBERG: Or maybe 613. It's part of the labor code, Your Honor,  
23 not the LLC.

24 THE COURT: So how would this Employee Leasing Company -- first of all,

1 how would an employee know to go there? How would they know to know who  
2 their real employer is and how -- who would they make demand on in the Employee  
3 Leasing Company to get the information guaranteed by NRS 608.115?

4 MR. SHAFER: Well, in that instance when the employee gets paid they  
5 receive tax information. They receive tax statements, whether they're an  
6 independent contractor or an actual employee, they receive tax documents that  
7 identify who their employer is and the appropriate withholding. So in that instance --

8 THE COURT: So each of the payment stubs, the pay stubs identify the  
9 employer as this series LLC, Employee Leasing Group?

10 MR. SHAFER: I do not know the answer to that, Your Honor, if they do or  
11 they don't. But I suppose that's an issue as to whether or not -- it may be that they  
12 identify only the dba. That would be when we have -- that would be a different  
13 argument altogether as to whether or not the appropriate demand would be made  
14 upon their employer, given that the employer identifies themselves as a particular  
15 name.

16 THE COURT: Well, let's assume that -- who would it be? I don't even  
17 know who it would be. You could say the IRS, but they play by different rules. If  
18 the IRS came around and said we don't think you're withholding enough, how would  
19 they know who to talk to if all they have is whatever the employee has?

20 MR. SHAFER: Well, they would make a demand on whoever was remitting  
21 the taxes; that information.

22 THE COURT: How would they know who that is?

23 MR. SHAFER: Well, they would be getting a statement. They don't just get  
24 a blank check or, you know, cash that's received. There is some tracking as to the

1 EIN number as to how that has to be prepared. Again, with the -- I think there is  
2 a remedy to do that. If for some reason there was a mistake in the name of the  
3 company that was identified, there's a remedy for that, amending or adding the  
4 correct name, just as if you were in an auto accident and somebody identified  
5 themselves by the incorrect name. For example, if my wife identified herself by her  
6 maiden name as opposed to her married name, that would not disrupt necessarily  
7 the lawsuit.

8 THE COURT: Well, in this instance I'm talking about how does the IRS go  
9 to find out -- verify that the correct amount -- or if they look at the paystub and they  
10 see what it reflects in terms of withholding and the amount of pay, how would they  
11 go to the employer, which is this Leasing Company, and say you're not withholding  
12 enough or you're withholding too much or whatever? How would they do that?

13 MR. SHAFER: Well, in reality they go to their HR department or to whoever  
14 has been appointed to address that and, you know, try to deal with that issue.

15 THE COURT: How do they know that? Who's the HR department? I mean,  
16 have they got a sign on the door, we are the HR department for the Employee  
17 Leasing Group? Or, I'm sorry, Employee Leasing Company, being the Series LLC  
18 dash Employee Leasing Company?

19 MR. SHAFER: Well, in some ways --

20 THE COURT: Is there a sign on the door?

21 MR. SHAFER: I don't know, is there a sign?

22 MS. RODRIGUEZ: Your Honor, may I?

23 THE COURT: Yeah.

24 MS. RODRIGUEZ: I don't want to add additional argument, but since Mr.

1 Nady is out of the country, I'm a little more familiar with the premises.

2 THE COURT: Okay.

3 MS. RODRIGUEZ: I won't make argument, but maybe I can answer some  
4 of the questions if the Court is okay with that, because yes, there is a sign on the  
5 door. It doesn't say Employee Leasing Company on the door, but there is a Human  
6 Resources Department, there is a Payroll Department, that if an employee has  
7 any problems with tax withholding or payroll questions, anything like that, they  
8 are dealing with those people and those people are actually working for the  
9 Administration Company, like Mr. Beck who supplied the declaration saying I'm the  
10 bookkeeper, I'm the accountant, I work for the Admin. Company. And so if there  
11 was a question --

12 THE COURT: So they're not employees of any of these entities?

13 MS. RODRIGUEZ: They -- the drivers?

14 THE COURT: No. No. You said these --

15 MS. RODRIGUEZ: The admin people?

16 THE COURT: Yeah, admin people.

17 MS. RODRIGUEZ: Right. They --

18 THE COURT: They're not employees --

19 MS. RODRIGUEZ: No, they're different. They're administration. The  
20 Employee Leasing Company -- excuse me. A Cab Series LLC, Administration  
21 Company is going to encompass such people as the payroll people, the HR people,  
22 the accountant, the more professional people. It's a separate company entirely  
23 than the taxicab drivers that are through Employee Leasing Company, as well as  
24 Employee Leasing Company Roman numeral II.



1 THE COURT: So if the IRS through whatever means decided that there  
2 was insufficient money being withheld and they wanted to deal directly with the  
3 employer, if the -- even if the paystub identifies the true employer, which is this  
4 Series LLC, Employee Leasing Company, then they would have to know to go to a  
5 different company's administrative people or bookkeeping people to have somebody  
6 to talk to about this.

7 MS. RODRIGUEZ: Well, like all the cab companies in town and especially  
8 because A Cab is not that big, everybody is housed basically in the same  
9 administration building, so it's not like they have to go to Henderson for one office  
10 and Las Vegas for another. They're all in the same premises. There are just  
11 different businesses according to purpose, really. I think the names speak for  
12 themselves. The Admin. is very straightforward, those are the people that are going  
13 to do the administration. So if something comes in from the IRS or from the Labor  
14 Commissioner or from Nevada Equal Rights, anything like that, that's going to get  
15 directed to the right answering department, whether it's going to be the payroll  
16 people or the HR people that are dealing, you know, with the insurance health  
17 benefits, that type of thing.

18 And I wouldn't necessarily rely on the W-2s or the paycheck stubs  
19 or some of those things that they necessarily have A Cab Series LLC, Employee  
20 Leasing Company, Roman numeral II, because again, like most companies, A Cab  
21 outsources a lot of that to use through Intuit and check printing, people like Clark  
22 Check Printing. And they -- I think that's where we originally got the name A Cab  
23 Taxi Service, which is nonexistent altogether, because as Mr. Nady testified in his  
24 deposition, the check printing company put that on the checks. So I can represent

1 that every entity, every series has the word A Cab in it, but whether anybody has  
2 ever gotten it right from -- Are you familiar with Intuit? That's what I'm --

3 THE COURT: Only just barely, so not very much.

4 MS. RODRIGUEZ: Okay. The Intuit payroll processing and the Clark  
5 Check Printing Services, the Costco check printing services. A lot of times they  
6 really shortcut things and put A Cab Taxi or A Cab Service. And so it's hard to rely  
7 upon those particular prints as being the appropriate name.

8 MR. SHAFER: But I think this is --

9 THE COURT: The operating agreement we've been looking at, which is  
10 between the Employee Leasing Company II and Valley Taxi Company, says in it,  
11 "The purpose of the lessor is to interview, select" -- I'm at number one -- "is to  
12 interview, select or reject applicants, orientate those selected applicants to the  
13 customs and requirements of A Cab Taxi Company." So the operating agreement  
14 itself refers to an A Cab Taxi Company. So I would suggest that it may -- the  
15 confusion may not have originated with whoever did that check stub or whatever  
16 it was because the operating agreement itself refers to such a company. The  
17 agreement is not between them and anybody, but it does refer to it. It also says,  
18 "Taxicab drivers as needed for each taxi company within this series of cells named  
19 under the series limited liability company, A Cab LLC." It does not say A Cab Series  
20 LLC. A Cab Series LLC did not exist, am I correct, until 2017?

21 MR. SHAFER: No. A Cab Series LLC was created in 2012.

22 THE COURT: And is that because the --

23 MR. SHAFER: I think the reason it was created, after approval of the  
24 Taxicab Authority in 2011 --

1 THE COURT: But it was still called A Cab LLC, it was not called A Cab  
2 Series LLC.

3 MR. SHAFER: The name had not been updated with the Nevada Secretary  
4 of State. Even though the articles was A Cab Series LLC, it had not been updated  
5 with the Nevada Secretary of State.

6 THE COURT: So this agreement would be correct that it was being done  
7 for cells ostensibly within A Cab LLC, even though there was no series liability  
8 company -- there was no series LLC created by A Cab, whatever you want to call it  
9 at the top, until 2017?

10 MR. SHAFER: Well, let me back up here.

11 THE COURT: And therefore why would not -- if somebody even had this  
12 document, the operating agreement, why would they not think that the real cab  
13 company, so to speak, was either A Cab Taxi Company, which is nonexistent,  
14 apparently, or/and A Cab LLC, which is specifically referenced? And so my whole  
15 point is unless you get all of this done right from the beginning, including  
16 denominating A Cab as an A Cab Series LLC, you haven't complied with Nevada  
17 statutes for purposes of creation of a whole series of LLCs.

18 In the example that we had before you said that for several of these  
19 things they would simply go to the Secretary of State and they would find out who  
20 A Cab Series LLC, who their registered agent was and they'd serve them, but there  
21 was no such entity until -- well, let me rephrase that. They wouldn't have found  
22 A Cab Series LLC, they would have found A Cab LLC, which I assume they would,  
23 quite correctly, I think, or understandably assume was organized under Nevada's  
24 laws pertaining to LLCs. They might have even taken comfort from -- that they had

1 the right person from Nevada statute NRS 86.141, which deals with LLCs which  
2 says, "Except as otherwise provided in subsection 2, a limited liability company may  
3 be organized under this chapter for any lawful purpose. A person shall not organize  
4 a limited liability company for any illegal purpose or with the fraudulent intent to  
5 conceal any business activity or lack thereof from another person or a governmental  
6 agency." And number 2 says: "A limited liability company may not be organized  
7 for the purpose of insurance unless approved to do so by the Commissioner of  
8 Insurance."

9 So would you say that these putative defendants, any number of  
10 series LLCs, are not bound by Nevada's -- by that particular statute that is not  
11 included in the series LLC statutes but is included in the LLC statutes? Or would  
12 you say that statute is not applicable to the defendant in this case, to A Cab LLC?

13 MR. SHAFER: I think I would argue that it is not relevant to this issue at  
14 hand, and let me explain that. Nowhere has it been argued that the creation of  
15 the series LLCs or the LLCs were for an illegal purpose. They aren't created to  
16 distribute drugs or --

17 THE COURT: Did you say legal or --

18 MR. SHAFER: Illegal.

19 THE COURT: For an illegal purpose. Yeah.

20 MR. SHAFER: Right. They aren't created to, you know, do some -- to  
21 create -- distribute drugs or illegal property or some other improper or illegal basis.

22 THE COURT: Would it be an illegal purpose to form them in order to avoid  
23 liability for the minimum wage requirements in our Constitution? Would that not be  
24 an illegal purpose?

1 MR. SHAFER: Well, there is nowhere on the record that these entities  
2 were formed for the purpose of avoiding taxes or employment liability or minimum  
3 wage liability. If that was the express purpose --

4 THE COURT: You're right.

5 MR. SHAFER: -- then that might be problematic --

6 THE COURT: Yeah.

7 MR. SHAFER: -- but they aren't here. The express -- and they aren't  
8 created to hide assets, either. The authorizing statute permits and does not require  
9 separate registration of the series LLC. So by their very nature if it permits a  
10 company not to be registered, in fact you can't, then as a -- if it is impossible to  
11 register, it is impossible to see how such creation of a series LLC would be created  
12 for the purpose of avoiding or hiding recognition. If you're doing what the statute  
13 says and you can't do any more --

14 THE COURT: And yet what you're telling me is because of A Cab LLC's  
15 use of the series LLC mechanism, albeit not really legally until 2017 because it still  
16 did not identify itself as a series LLC until that date, so no person who had any  
17 quarrel with one of these series LLC companies could know that they better get it  
18 right because that's a separate legal entity than A Cab LLC. Would that not qualify  
19 -- I mean, would I -- don't I have to interpret this statute as being applicable to  
20 A Cab LLC's purported creation of separate series LLCs in an illegal manner as far  
21 as I can tell because it didn't identify itself as a series LLC, so nobody going to the  
22 available public records would be put on notice that they better do some of the  
23 things that we talked about earlier in terms of discovery?

24 MR. SHAFER: Let me --

1 THE COURT: Then how can I not hold that NRS 86.141 applies and that --  
2 I don't want to hold that there was fraudulent intent to conceal any business activity,  
3 but you have taken a series LLC statute that was designed -- it may be questioned,  
4 I think, whether or not the Nevada Legislature ever intended for that statute to be  
5 used for a company, an LLC, even a series LLC to take all of its business operation  
6 and slice it up -- in my analysis it's kind of sliced up horizontally, meaning -- well,  
7 you could do it vertically -- anyway, sliced up so as to actually be separate cells that  
8 do not bear any liability for the activities of other cells but are never identified to the  
9 public, never identified in any way that the public could know, even if they need to  
10 dig deeper.

11 MR. SHAFER: I think that that is the actual intent of the statute, Your  
12 Honor, is to allow a company to divide its assets up into separate series and to  
13 create a limitation on liability.

14 Going back to whether or not the series LLC was created, I think it is  
15 inaccurate to say that the series LLC was not created until 2017. The entity was  
16 created in February of 2012 when the amended and restated articles was filed with  
17 the Nevada Secretary of State. Anybody who looked at A Cab Series LLC -- and  
18 the amended articles is a public record and could be obtained from the Nevada  
19 Secretary of State --

20 THE COURT: There was no A Cab identified as A Cab Series LLC  
21 because it was still -- it specifically said it shall be known as A Cab LLC.

22 MR. SHAFER: There is no requirement in the statute for a series LLC to be  
23 identified as a series.

24 THE COURT: Well, then if there is not, all of the protection of assets by

1 creation of series LLCs that took place in this case could take place with no notice to  
2 anyone who had sued the entity that was then the real entity. A Cab LLC was not a  
3 series, was not -- gave no notice to the public. In other words, if I don't require that  
4 notice be given under our series LLC, even if it's just by virtue of calling yourself a  
5 series LLC in stead of an LLC, then I don't know how to avoid thinking that you run  
6 afoul of the LLC statutes. I mean, at that point it was still an LLC at the point that it  
7 filed its 2012 amendment.

8 MR. SHAFER: Yes. Up until 2012, A Cab initially -- the entity was known  
9 as Admiral Cab or Admiral Taxi. In 2001 it changed its name to A Cab LLC. In  
10 2012 it changed to be a series LLC through the amended restatement, which was  
11 a public record.

12 THE COURT: And what was the name of the entity in that public record?

13 MR. SHAFER: The name was A Cab Series LLC, as we look --

14 THE COURT: No.

15 MR. SHAFER: The recorded name, the name which appeared under the  
16 Nevada Secretary of State was A Cab. The question is does that destroy or make  
17 it not a series? That there was a mistake or an error in recording, does that destroy  
18 the series LLC? I see no basis to find so. That might be a basis for an argument as  
19 to whether or not the appropriate entity was served, but in this instance and counsel  
20 has advised me that in all the answers and in all the responses for discovery, in  
21 every instance A Cab Series LLC denied that it was the employer, and so put it out  
22 there for many, many years that they were not the employer. As we saw in the  
23 deposition transcript of Mr. Nady, he says that the Employee Leasing Company  
24 was actually the employer. But that's an argument for another day as to who the

1 appropriate entity should have been and there's a method for --

2 THE COURT: He said that in 2017, correct?

3 MR. SHAFER: Correct.

4 THE COURT: Okay.

5 MR. SHAFER: And there's an argument for why they might have been  
6 excused for bringing it later on. I would think that the denial of the -- that they were  
7 the employer would have spurred -- at least in my instance I would have sent a  
8 request for admission or a request for interrogatory as to who the employer of these  
9 drivers were. If you're denying that they were the driver (sic), who is the employer?  
10 I'm not familiar with what happened in that case to know if they did or didn't do that  
11 or what the responses were, but there is a remedy for doing that.

12 THE COURT: And they would have sent that -- they would have sent that  
13 to A Cab?

14 MR. SHAFER: And they would have asserted jurisdiction over A Cab  
15 through the service of process. If I get sued and I had nothing to do with an  
16 automobile accident, I was in another state at the time, by virtue of my service I am  
17 before the court and have an obligation to respond to the other party. Now, I can  
18 move to quash, I can move to dismiss, I can move to take whatever remedies, but  
19 by virtue --

20 THE COURT: Is that by long arm or --

21 MR. SHAFER: Well, I mean, ultimately it's by nature of the service. It is  
22 presumptive that I have an obligation to respond. Obviously I can bring for lack of  
23 jurisdiction a motion to dismiss or any number of remedies based on a failure to  
24 bring the proper party before the court, but until that point I don't have the luxury



1 of not responding. I'm just ignoring the orders of the court because, hey, you've  
2 got the wrong guy. No. I have an obligation, at least presumptively of being served,  
3 of responding. That is the situation here. That does not -- the fact that I can be  
4 brought or that I am the wrong person doesn't change the nature of the LLCs or the  
5 separate nature of the property that's at issue. There is nothing -- and this is going  
6 back to it really is an issue, I think, of due process and going through things the  
7 right way.

8 THE COURT: Uh-huh.

9 MR. SHAFER: If you -- you have an obligation to do your due diligence.  
10 If through your due diligence and reasonable effort you cannot discover the  
11 appropriate party, you bring against the party you know -- you think that it is and you  
12 engaged in that process. There is not a constitutional requirement for us to wear  
13 name tags of who and where we can be legally served. I don't have to carry around  
14 a registered agent card for myself. The Legislature has not enacted that rule. They  
15 have for LLCs, that there has to be a registered agent. And for series LLCs there  
16 is a registration requirement for the entity. But those are issues as to reasonability,  
17 not foundational requirements for a separate nature.

18 The question the statute poses is, one, are there separate records?  
19 Are there records that are kept that establish a separate nature? And I would  
20 submit that the operating agreement between these various entities carves out  
21 a separate nature for Taxi Company, the Employee Leasing Company, for the  
22 maintenance company. And are finances kept separate? And we have sworn  
23 testimony that they are. So presumptively we've met the two requirements under  
24 the statute. I may not disagree with the Court, to its opinion as to whether or not

1 it would be a good idea or good public policy to require series LLCs to register, or  
2 it would be a good idea to impose other requirements. But the Legislature hasn't  
3 done that. The fact that other jurisdictions have indicates that the Legislature has  
4 no desire to do that or has elected not to do that.

5 And again, the remedy is one that they've already elected, and that's  
6 to move to amend the judgment. Now, here the crux of this issue is they served a  
7 writ of execution on A Cab LLC, not on A Cab Series LLC, Maintenance Company.  
8 There might be a different reason for carving A Cab Series, the employment  
9 company, but that's not before the Court. They have an obligation to put the  
10 individual series, the presumptive separate parties on notice.

11 They cited to a lot of case law in their brief about whether or not an  
12 EIN number provides a basis to pierce the corporate veil, whether or not you can  
13 have separate companies, but the thing they omit is that in every one of those  
14 cases there was a separate action, there was a motion to amend, there was some  
15 procedure that said that you have to go to the other person, you have to go to the  
16 other party and bring them into the lawsuit by -- (unintelligible) -- by personal service  
17 or by subjecting them to the jurisdiction of the Court. Until they are given that  
18 opportunity to respond, you know, you can't jump to the end. You say, well, I think  
19 they do, so let's take their money and then they can prove it later. But I think going  
20 back to the separate -- as much as we would like to, the requirements are the ones  
21 set out in the statute and I don't believe that there's a separate requirement to  
22 register. Obviously they have endeavored to do so.

23 Going back to the operating agreement, you mentioned and I just want  
24 to touch on this briefly, that A Cab LLC was mentioned in the operating agreement

1 between the separate series and A Cab Taxi Company. Again, A Cab Series LLC  
2 or A Cab Taxi Company wasn't a party to that and any mistake shouldn't be  
3 construed against it.

4 THE COURT: Wasn't a party to?

5 MR. SHAFER: To that operating -- to that contract or operating agreement.

6 THE COURT: This operating agreement? Neither of those entities was a  
7 party to to this?

8 MR. SHAFER: No.

9 THE COURT: Who was, then?

10 MR. SHAFER: A Cab Series LLC, Valley Taxi Company and A Cab Series  
11 LLC, Employee Leasing Company were parties to this agreement.

12 THE COURT: Okay.

13 MR. SHAFER: A Cab Series LLC or A Cab LLC are not. So if there's a  
14 mistake in reference to the name, going back to contract construction does that  
15 error or that mistake destroy this agreement or is it just simply -- you know, can we  
16 reasonably interpret it to mean who it is?

17 THE COURT: Well, here's the problem I'm having with virtually all of these  
18 explanations and the argument that you're making. It seems to me that if I agree  
19 with that and simply say to these particular plaintiffs, sorry, Bud, you just -- you  
20 sued the wrong entity, you didn't go and find that there was an Employee Leasing  
21 Company and you didn't find that there was a Valley Taxi Company and you didn't  
22 discover all of these various series LLCs, and therefore too bad, so sad, give me  
23 the money back. And Mr. Nady and A Cab LLC, who have been parties to this  
24 litigation, obviously, from the get-go, walk out with money that has been executed

1 upon. I can't get away from the notion that it is those employees, the employee  
2 class who will thereby be deprived of due process of law.

3 MR. SHAFER: And I can appreciate the Court's concern.

4 THE COURT: And even, I would say, a heightened or, you know, we could  
5 say strict scrutiny, we'll borrow a term from a different legal analysis, giving -- I think  
6 the Court is duty bound to vouchsafe that parties really do have due process and  
7 that that due process means you can't organize all these things behind closed  
8 doors, not let anyone know, not even call the master LLC a series LLC until five  
9 years after the litigation was commenced. I just -- I don't know how to countenance  
10 that and not be forced to find that it works as a fraud upon the rights of these  
11 employees.

12 MR. SHAFER: And I can appreciate the Court's concern regarding that.  
13 I have two points in response to that. First, if I am sued, my co-counsel and I are  
14 driving down the road, she's driving, she gets in an auto accident, she runs away  
15 and the police cite me for driving, and I deny that I was the one that caused the  
16 accident and I do that through the entirety of the litigation, it is not a fraud for me  
17 to continue to maintain my innocence, nor is it a fraud to say -- to point to her, that  
18 it's another party. There is a separateness there.

19 THE COURT: If there is a legal separation --

20 MR. SHAFER: Correct.

21 THE COURT: -- correct?

22 MR. SHAFER: Correct. If I say that my name is, you know, John Smith  
23 and it's not John Smith, or they sued me as John Smith and I deny that that's the  
24 thing through the litigation, I told them that, it is not a fraud to continue to say that,

1 you know, accounts that are held by Jane Smith are not subject to attachment.

2 There is a method for doing that.

3 They were advised early on that this was not the appropriate entity.

4 They could have taken steps and in fact they did so the moment the judgment was  
5 entered, they moved to amend. And that's not what we're here for. I'm not arguing  
6 whether or not they have a successful motion to amend or not. The Court doesn't  
7 need to get there and in fact shouldn't get there at this point. The sole thing we  
8 have to look at is are these separate entities as a prima facie case. Do they meet  
9 the facial requirements for separation as a statute? Do they have a separate -- do  
10 they hold themselves out as a separate entity? Have they met the requirements of  
11 the statute? And I submit they have.

12 Is there a basis to move to amend? I don't know. Is there a basis to  
13 name them personally? I don't know. The Court doesn't know. The Court can't  
14 and should not reach that at this point. There is a method and a procedure for  
15 doing that. If it turns out that they were hiding money and doing things, other things,  
16 by all means pierce the corporate veil. It's no different than any other piercing of the  
17 corporate veil requirement. There is a method for doing that, and that is as we saw  
18 in the -- and I'll just name the cases that they cited, in Hennessey's Tavern, the one  
19 out of California, it says that it is necessary that a new defendant be named in the  
20 amended complaint and summons and that they be served upon in order for the  
21 court to acquire jurisdiction. They were asserting alter ego, that they were the same  
22 entity, and yet the court still required that jurisdiction be established over the other  
23 entities.

24 In the Greene case that they cited last time we were here, there is a

1 basis to require personal jurisdiction. Greene v. Eighth Judicial District Court,  
2 115 Nev. 391, Hagerman v. Tong Lee going back to 1877, all require that when you  
3 seek alter ego or seek an independent party, you have to establish jurisdiction over  
4 them. Maybe they have to file a separate lawsuit, maybe they can move to amend  
5 the judgment in this case. I'm not arguing which is the appropriate remedy, nor am  
6 I conceding any particular points, but there are remedies that are available. But  
7 you cannot send a writ to Party A and because you get something of Party B, hold  
8 it until such time as you can prove up a basis to argue that, to get that money,  
9 because there is just no basis to do that. And that's -- it is that limited and discrete  
10 issue, whether or not they can skip and jump to the end or whether they have to  
11 jump through the appropriate procedural and due process requirements.

12 I appreciate the Court's concerns regarding collectability of judgment,  
13 particularly as to the minimum wage claims for employees. There is a method to do  
14 that. But I don't think that the Court -- as much as we would like to change the law  
15 or as much as we might think that the law might be better if it were construed a  
16 particular way, we have to abide by the law as it is written. We have to respect the  
17 fact that the Legislature has permitted series LLCs to be created in this manner and  
18 to have these certain requirements. And based on the promise that if you comply  
19 with the requirements that are issued in the statute, that you have a separate liability,  
20 that you have an ability to compartmentalize and to hold these out separately.

21 The fact that a claim is made on a wage claim does not distinguish  
22 it or make it different than any other claim that is brought against a series LLC,  
23 whether it be personal injury or breach of contract or defamation or whatever the  
24 basis might be.

1 THE COURT: Let me ask you a question, then. Would a writ of execution  
2 served upon the assets of the Employee Leasing Group have been effective in this  
3 case at this juncture?

4 MR. SHAFER: Well, that's a hypothetical because they didn't. I think the  
5 appropriate remedy would have been to seek a prejudgment writ of attachment and  
6 to engage in that method to seek claims against Employee Leasing. And that might  
7 be the only one for which --

8 THE COURT: So what's the answer to my question, though? Would it  
9 have been effective to serve the bank with a writ of execution in the name of the  
10 Employee Leasing Company?

11 MR. SHAFER: Well, by effective do you mean would it have been an  
12 appropriate writ or would they ultimately end up getting the money?

13 THE COURT: Both.

14 MR. SHAFER: Well, the second one I think is easy to establish. No, it  
15 would not necessarily because there's a basis for claims of exemption and there's  
16 a process that's set out in the statute for claiming exemption and contesting the  
17 objections or the exemption -- objecting to the exemptions and a hearing and all  
18 that.

19 THE COURT: What would the exemption be?

20 MR. SHAFER: I don't know, Your Honor, what the exemptions might be.  
21 I think certainly there would be exemptions for the funds that are held for the IRS  
22 or for Social Security that are held. But that's a hypothetical and I'm going beyond  
23 my brief as to what I actually have knowledge of. But I think, again, that might be  
24 a case in which you would see that. A prejudgment writ of attachment, I cannot say

1 that it would be effective because I don't know the basis on which they would argue  
2 that. It might be possible for it to be effective. If they appropriately had a basis to  
3 pierce the corporate veil, and I know that's the subject of another motion which has  
4 been briefed by my co-counsel on the motion to amend which is pending before the  
5 Court, but that -- if there were to be an exception that would be the sole exception.

6           There would not be a basis to seek a writ of garnishment or a writ of  
7 execution against the companies that own the medallions, nor would there be a  
8 basis to do so on the Maintenance Company. The Maintenance Company doesn't  
9 employ the drivers, doesn't provide paychecks to the drivers. It holds money for the  
10 maintenance of the vehicles and the money that is held is to be used to buy tires  
11 and change oil and to buy gas and all the other expenses that are incurred in the  
12 operation and maintenance of the actual vehicles themselves, subject to the  
13 operating agreement between the parties.

14           THE COURT: And am I correct that they don't get the money to do that  
15 from the Employee Leasing Group, they must get that from someone else, that  
16 money?

17           MR. SHAFER: I don't know if the money comes directly from the Employee  
18 Leasing Company or if the Admin. Company delivers as sort of bailee from the  
19 Employee Leasing Company to the Maintenance Company.

20           THE COURT: Okay.

21           MR. SHAFER: But I think that that's the -- it might be possible for them  
22 to argue that the Employee Leasing -- and obviously that's subject to some later  
23 argument and that goes beyond what I'm prepared to argue to the Court today.  
24 But that would be -- if there is any exception, that would be the only one. And I'm



1 not conceding that it is, but that would be the only one because the others have a  
2 clear and separate -- they have a different operation. They don't employ drivers.

3 THE COURT: Uh-huh.

4 MR. SHAFER: They aren't the appropriate party in any circumstance in  
5 this as to who the appropriate entity might be. Now, if you argue that they should  
6 have been or that they pulled money out of one account, then that's a different thing  
7 altogether. That's no different than piercing the corporate veil and subject to -- well,  
8 if they want to pursue that, they can do post-judgment discovery like any other  
9 judgment creditor.

10 THE COURT: You heard Mr. Nady describe to some extent just a brief  
11 thing of how the money transfers from one series LLC to another.

12 MR. SHAFER: Uh-huh.

13 THE COURT: And that a part I didn't quite understand was that it goes  
14 from -- I think he said the Administrative Series LLC to him for one day and then  
15 it's transferred back. Does that have anything to do with creating -- with legitimizing  
16 the series LLC application in this instance?

17 MR. SHAFER: I don't know that it has --

18 THE COURT: Or what is the purpose of that? Do you know?

19 MR. SHAFER: Well, I believe the purpose of that is to take your profits --

20 THE COURT: Okay.

21 MR. SHAFER: -- just like any other LLC distributes profits.

22 THE COURT: So whatever amount he sends back is not the full amount  
23 that was sent, presumably?

24 MR. SHAFER: I don't know that that's correct.

1 THE COURT: Okay.

2 MR. SHAFER: In some instances -- I don't know that there is any reason  
3 to say that it is or is not. I think in most instances it is essentially the same amount.  
4 Sometimes it may be less, sometimes it may be more. I believe that it is intended to  
5 be -- they do that for accounting purposes to take profits and then to make capital  
6 contributions to keep the operation going, so that the business is adequately funded.  
7 If there was a shortfall on one particular week and inordinate expenses, then in  
8 some instances the capital contribution that occurs may be greater than the  
9 distribution that was taken the week before or the day before or whatever it happens  
10 to be. And that's subject to the accounting and that would be, you know, if there  
11 were such an action of post-judgment discovery, that would be -- well, subject to  
12 whatever objections might be brought, but that would be -- but those are all  
13 accounted for as to -- and those are reflected in the tax filings that go to the IRS.

14 THE COURT: Let me just ask our bank representative -- I'm sorry, would  
15 you give us your name again, please?

16 MS. DOVE: Sure. It's Kelly Dove.

17 THE COURT: Last name?

18 MS. DOVE: Dove. D-o-v-e.

19 THE COURT: Dove.

20 MS. DOVE: Yes.

21 THE COURT: Do you know whether or not there is such a transfer from  
22 one of these series LLC accounts directly to Mr. Nady, presumably some significant  
23 sum, I would think, and then a transfer back from his personal account to one or  
24 more of these series LLC accounts?