

**IN THE SUPREME COURT OF
THE STATE OF NEVADA**

A CAB, LLC; AND A CAB SERIES, LLC,

Appellant,

vs.

MICHAEL MURRAY; AND
MICHAEL RENO, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Respondents.

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Elizabeth A. Brown
District Court No. A-13-659926-C
Clerk of Supreme Court

**APPENDIX TO
RESPONDENTS' ANSWERING BRIEF
VOLUME I OF VI**

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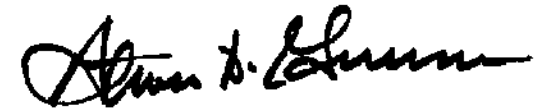
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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

11 Plaintiffs,)

12 vs.)

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

15 Defendants.)

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

SUPPLEMENTAL BRIEF

**RE: MOTION TO COMPEL
THE PRODUCTION OF
DOCUMENTS (first heard on
3/18/15)**

**Continued
Hearing: Nov. 18, 2015
Time: 9:00 a.m.**

Before Discovery
Commissioner Bonnie Bulla

17 Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation,
18 hereby submit this supplement in support of their motion for an Order directing that
19 defendants, A Cab Taxi Service LLC, and A Cab, LLC (“defendants” or “A Cab”),
20 produce materials that are properly responsive to Plaintiff’s First Request for
21 Production of Documents. As discussed, *infra*, plaintiffs should also be awarded costs
22 and attorneys fees for defendants improper actions, contemptuous deposition conduct,
23 and false representations to the Court in connection with this discovery dispute. Such
24 deposition behavior included a litany of curses and insults by defendants’ principal,
25 including calling plaintiffs’ counsel a “lying little shit.”

NATURE OF CASE AND DISCOVERY DISPUTE

Plaintiffs are seeking documentation to prove their hours of work.

28 This putative class action case seeks to collect unpaid minimum hourly wages.
Central to that claim is proof of the number of hours the plaintiffs were actually

1 working. Nevada law, NRS 608.115, requires an employer to maintain and preserve
2 “for the benefit of the employee” a record of the hours each employee works each pay
3 period. Ex. “A.” It is undisputed that in respect to the named plaintiffs no such
4 record of hours worked was maintained by defendants. Defendants insist that the
5 plaintiffs’ daily “trip sheets” (required by the taxi commission to detail each taxi fare
6 and other information) constitute such a record. They do not. Those trip sheets
7 (sample at Ex. “B”) only contain information from which such hours of work could,
8 arguably, *be calculated* (by their notations as to start, end, and break times). They
9 contain no actual statement of hours worked.

10 Defendants’ failure to keep proper records of the hours worked by their taxi
11 drivers was willful. A U.S. Department of Labor investigation uncovered such record
12 keeping deficiency in 2009 and advised defendants “that they must keep a record of
13 actual hours worked” and concluded such investigation with defendants’ “assurance of
14 future compliance.” Ex. “C,” investigative report, p. 2-3. Defendants did not
15 maintain such records after 2009, resulting in a U.S. Department of Labor investigation
16 in 2012 (which resulted, as discussed *infra*, in certain such records finally being
17 maintained in 2012 - something defendant **never acknowledged**) and a lawsuit in
18 2014 by that agency and a consent judgment *requiring* defendants to continue to
19 maintain such records under penalty of contempt. Ex. “D”, ¶ 8.

20 Defendants’ failure to keep accurate (or any) records of their taxi drivers’ hours
21 of work has forced the plaintiffs to seek discovery of *other records* that a trier of fact
22 could reasonably rely upon to determine their actual hours of work. Plaintiffs’ motion
23 presented evidence that the computer database (software) files used by defendants
24 (“Cab Manager” software) to schedule and manage their taxi drivers and taxis may
25 contain “time record” information. This would include records that a trier of fact might
26 reasonably rely upon to decide when a taxi driver actually started, and concluded, their
27 daily work shift. Such evidence consisted of the following:

- 1 ● Defendants' employee manual instructs that employees when they start
2 their shifts are to "scan" their employee bar code into defendants'
3 computer system or have their supervisor "manually enter" their TA
4 number. Such manual advises that procedure "will show that driver 'on
5 property' and ready to work." Ex. "E" Bates 00649. Defendants' trip
6 sheets, Ex. "B" also contain a computer printed "Start Time" at top of
7 their first page near the driver's computer printed name. A preserved
8 record in the Cab Manager database files of when those computer bar code
9 scans or keyboard entries were performed, and of those "Start Times" for
10 each driver printed on their trip sheets, would tend to establish *when* a cab
11 driver *started* their shift on a particular day.¹
12
- 13 ● Defendants' employee manual instructs that employees when they end
14 their shifts must have their taxi cab meter readings "transmitted to our
15 [defendants' computer] servers." Ex. "E" A Cab Bates 00649. That
16 "transmission" process also results in the printing of a receipt, Ex. "E"
17 Bates 00649, copy of the same at page 2 of Ex. "B," which receipt sets
18 forth a time and date. A preserved record in the Cab Manager database
19 files of when these meter reading "transmissions" took place would tend
20 to establish *when* a cab driver *ended* their shift on a particular day.
21
- 22 ● Plaintiff Michael Murray has also furnished a declaration stating that at
23 the end of his shift he would use defendants' computer system and view a
24 screen that would show the time he checked in for his shift and the time he
25 had scanned the bar code on his trip sheet at the end of his shift. Ex. "F" ¶
26

27 ¹ One of defendants' supervisory employees at his deposition confirmed that
28 those trip sheets with those start times were printed when the taxi driver was present
and being sent out to drive their taxi. Ex. "O," Browoski Depo., p. 48, l.20-52, l. 16.

1 7. A fully preserved record in the Cab Manager database files of what
2 plaintiff Michael Murray viewed on defendants' computer would show
3 both his shift start and shift end times for every day he worked.
4

5 SUMMARY OF STATUS AND PRIOR HISTORY

6 **Defendants have misled the Court and plaintiffs about the**
7 **need to write "code" to produce computer database files.**

8 **Defendants had no basis for their "write code" representation.**

9 In response to the foregoing evidence supporting plaintiffs' request for
10 disclosure of the Cab Manager database files, defendants offered no substantive written
11 response, but only the following assertion of counsel:

12 A Cab indeed proceed[ed] [sic] to produce the time records for the named
13 Plaintiffs. However, Plaintiffs seek time records in a computer file for not only
14 the named plaintiffs, but for every other employee. They are seeking a
15 sophisticated computerized database that will make their job much easier, but
16 that does not exist. There is no computerized database that will show the punch
17 in/punch out and breaktimes as the Plaintiffs desire. All time records pertaining
18 to the named Plaintiffs have been produced by A Cab; Plaintiffs' complaint is
19 that it is in a format they do not like. Pages 4-5 of defendants' response filed
20 3/2/15.

21 Defendants' produced no "time records" of any sort for the plaintiffs, only their
22 trips sheets (containing entries from which, arguably, their working time can be
23 divined). The foregoing assertion of counsel that "there is no computerized database"
24 that would tend to show "punch in" and "punch out" times is not supported by anything
25 in defendants' response, not even a cursory declaration. Instead when this motion was
26 argued on March 18, 2015 defendants presented their principal (and now a personal
27 defendant in this case) Jay Nady. Nady then offered unsworn testimony to the Court
28 that computer programming "code" had to be written to produce *any* computer data
files sought by plaintiffs and specifically the trip sheet "start" times. Ex. "G," p. 6, l.
1-6, transcript of 3/18/15, wherein Nady addresses the production of the record of the
"Start Times" printed from Cab Manager on the drivers' trip sheets:

The times when they picked up their trip sheets, yes, we put it on there.
We didn't save it. Doesn't mean we can't retrieve it. We weren't asked to retrieve

1 it. But we'd have to get the same people that you think has everything. We
2 haven't asked 'em to because it's expensive.

3 So in order for them to rewrite that code to get those things to put on
4 our computer, we'd have to go to them and ask 'em to give it to us.

5 This statement by Nady had no basis whatsoever. When placed under oath and
6 examined as an NRCP Rule 30(b)(6) witness on defendants' computer database
7 records, Nady admits he had no idea what he meant in telling the Court about the need
8 to write "code" and immediately, and improperly, terminates the deposition (Ex. "Q"
9 cited pages, full transcript provided in separate binder, see page 264, lines 17-24).
10 After being questioned about his prior statements to the Court on 3/18/15 he is asked
11 about his "code writing" representation:

12 Q. Now in the next paragraph, the first sentence says, "In order for them to
13 rewrite that code to get those things to put on our computer, we'd have to go
14 to them and ask them to give it to us."

15 What do you mean by the use of the word code in that sentence?

16 A. I'm not sure. And, Counselor, this will be my last question because it's a
17 quarter till.

18 As discussed, *infra*, Nady also stated at his deposition that he has no idea what
19 time records (printed trip sheet "Start Times" or any other times) are preserved in the
20 Cab Manager database and has made no attempt to find that out.

21 **Defendants' "write code" representations are false and**
22 **defendants either had knowledge they were false when made**
23 **or would have obtained that knowledge if they properly inquired.**

24 In response to the March 18, 2015 hearing and Nady's representation to the
25 Court about the need to write burdensome "code" to produce information from
26 defendants' computer database systems, an inspection of those systems was scheduled
27 for March 31, 2015. Defendants improperly terminated that inspection and did not
28 allow any meaningful examination of their computer database systems (defendants,
who refused to allow that inspection to be videotaped, insist plaintiffs' counsel acted
improperly and created an impossible to resolve "he said/she said" credibility situation

1 as to the inspection conduct). What did meaningfully occur during that brief and
2 terminated inspection was a conversation with Jim Morgan, a third party computer
3 vendor intimately familiar with Cab Manager. Among other things, Jim Morgan
4 confirmed during that conversation *that a complete copy of all Cab Manager database*
5 *files* which would contain *all information* recorded in the Cab Manager system could
6 be performed (the term “data dump” was used). Defendants’ counsel has continually
7 insisted that no such statement was ever made by Jim Morgan at that time and that no
8 such “complete” production of the Cab Manager database files was possible (again,
9 harping back to defendants’ “need to write code” claims). Ex. “H”, ¶ 3. He also
10 outlined how a cooperative process could be agreed upon to examine the Cab Manager
11 database files and extract time records as to particular activities, if that information
12 existed. *Id.* ¶ 2.

13 The motion to compel was continued from March 18, 2015 to May 20, 2015
14 where the Court directed, and the parties agreed, to proceed with NRCP Rule 30(b)(6)
15 depositions to develop a record on what computer stored records, including
16 Quickbooks payroll records, was available and could be produced. Accordingly a
17 deposition of Jim Morgan was held on July 8, 2015 (all cited pages at Ex. “P” with the
18 full transcript provided in separate binder). It was established at such deposition that:

- 19 ● Cab Manager database files, containing *all* information stored in the
20 Cab Manager system, are easily copied and produced “en masse” without
21 the need to write any computer program or “code.”²

23
24 ² Morgan dep. p. 40, p. 67-68, and elsewhere. Morgan is concerned about the
25 use of his database design by competitors and does not want any *en masse* copying to
26 take place for that reason (see p. 19-20 and elsewhere), but unequivocally confirms it is
27 easily done and requires no special computer programming or “code” writing. The
28 following is at p. 67-68:

27 Q. Mr. Morgan, if I went in surreptitiously into A Cab's office and I knew
28 where the server was, where the hard drive was that contained all of the A Cab's -- all
of A Cab's Cab Manager database files that you have been describing in your

- 1 ● Cab Manager puts the printed information that appears on the taxi
2 driver's trip sheets, such as the "Start Time" on Ex. "B." That information
3 may be preserved in the Cab Manager database after those trip sheets are
4 printed. Depo., p. 26, l. 11 to p. 29, l. 8., confirming the trip sheet boxes'
5 "labels" (descriptions) are created by A-Cab but the contents of those
6 boxes comes from the Cab Manager database.
7
- 8 ● All Cab Manager database files are in the possession of defendants and
9 stored on their equipment. Depo., p. 39, l. 21-25.
10
- 11 ● Cab Manager may preserve a record of the dates and times of bar code
12 scans of drivers trip sheets or TA cards. Depo. p. 15, l. 20 - p. 16., l. 2
13
- 14 ● It is possible to extract from Cab Manager "all records of dates and
15 times that are associated with particular activities by particular taxi
16 drivers" as long as "the data is there." Depo., p. 86, l. 8-21 and p. 88, l. 10
17 - p. 89, l. 3 (Answers only given during phone conference with Discovery
18 Commissioner Bulla, defendant was directing Morgan not to answer
19 questions and demanded that conference).

20
21 testimony, and I plugged a hard drive --portable hard drive into that computer, could I
22 instruct the computer through the operating system, be it Windows or some other form
23 of operating system, to make a complete copy of those files --

24 A. I already answered that question. I said you could copy the whole hard
25 drive.

26 Q. Which would, of course, include all of the Cab Manager database files,
27 correct?

28 A. Exactly.

 Q. And in order to do that, I don't have to write a special program, correct?

 A. No.

 Q. You think I don't have to write a special program, correct?

 A. No, not to copy a hard drive.

- 1 ● Cab Manager *does not* only store PDF “scanned images” of driver trip
2 sheets which are “non-searchable,” a false representation made to this
3 Court by defendants’ counsel, Ex. “I” p. 3; Depo. p. 23, l. 21 - p. 26, l. 1.³
4 Information is also stored in Cab Manager’s database files, *Id.*

5 **Defendants have intentionally delayed this case and obstructed**
6 **discovery, at great expense to plaintiffs, for eight months.**

7 Morgan’s deposition establishes that defendant Nady’s (and his counsel’s)
8 representations to the Court were absolutely false. There never was any need for
9 Morgan’s deposition, for the site inspection of March 31, 2015 or for Nady’s NRCP
10 Rule 30(b)(6) deposition. There was never any need to write “code” to access the
11 information sought by plaintiffs. All that was required was for defendants to fulfill
12 their duty to cooperate with discovery in good faith and provide (or make available for
13 copying) the materials sought and make reasonably diligent inquiries about, and efforts
14 to, provide such discovery.

15 The Cab Manager computer database files that may contain the information
16 sought by plaintiffs are easily duplicated and produced. If defendants were not aware
17 of that fact (which is highly doubtful) all they had to do was ask Jim Morgan. If those
18 computer database files preserved the information sought by plaintiffs it can be
19 collected (for example, the “start times” of every driver) from those files by Jim
20 Morgan or another person skilled in the use of computer databases. Alternatively, they

21
22 ³ What defendants’ counsel advised the Court in Ex. “G” was “Morgan visually
23 demonstrated to Plaintiffs’ counsel what has already been represented; that being, the
24 data stored in the system is a series of scanned documents or “.pdf” files which cannot
25 be manipulated in the searchable format Plaintiffs seek.” This is completely untrue,
26 yet defendants’ counsel goes to great lengths to try to obscure Morgan’s deposition
27 testimony and perpetrate this falsehood. *See*, objections p. 24 -26, her cross of Morgan
28 at 97, l. 1-13, requiring re-direct where he, again, confirms (1) Information in Cab
Manager is *not limited* to “non-searchable” PDF files and (2) Information can be
searched and retrieved (if it is stored in Cab Manager) for particular dates, drivers, etc.,
p. 99, l. 11 - p. 101, l. 17.

1 could have, as Jim Morgan testified he was willing to do, agreed to craft a protocol for
2 the review of the Cab Manager database and the extraction of the information sought
3 by the plaintiffs (to the extent it was located in the database). Again, they never
4 inquired with Jim Morgan about that, much less cooperated with plaintiffs in pursuing
5 such an option (instead falsely insisting to plaintiffs and the Court that the only
6 information contained in Cab Manager was in “non-searchable PDF files”).

7 In respect to Nady’s representations to the Court, the sole basis of his
8 understanding of Cab Manager that he ever identified at his deposition is Jim Morgan.⁴
9 Nady further testified at his deposition that he never inquired with Jim Morgan about
10 the information being sought by plaintiffs or the ability to produce it:

11 Q. So it's correct then that you have never asked Mr. Morgan whether
12 Cab Manager records times that certain activities took place in?

13 Defendants’ Counsel: Objection. Vague.

14 A. I have never asked him if it keeps the time or any times in Cab
15 Manager, but you have. Nady Dep. P. 70, l. 8 - 14.

16 As Jim Morgan made clear at his wholly unnecessary deposition, he is quite
17 capable of examining the Cab Manager database files, ascertaining what “time records”
18 are present in those files, and extracting such information. Such information is
19 accessible in the searchable (database) format needed by plaintiff and not just as PDF
20 “images” of scanned trip sheets. And all of the database files containing such
21 information are easily copied and produced (and the sought after information then
22

23 ⁴ As discussed, *infra*, Nady never identifies anyone as any source of his
24 knowledge of anything about Cab Manager except Morgan and is abusive (aided at
25 times by his counsel) throughout the deposition before improperly terminating the
26 deposition. But he does make clear Morgan is the sole source of his alleged
27 information on Cab Manager, to the extent he bothered to acquire such information or
28 answer questions at his deposition. See, Dep. p. 180, l. 11-15, stating “I don’t know
dick about computers” and affirming his reliance upon Morgan in respect to the Cab
Manager system.

1 extracted by someone other than Jim Morgan) without the need to write any computer
2 program "code."

3 **DEFENDANTS SHOULD BE ORDERED TO**
4 **PRODUCE ALL OF THEIR CAB MANAGER DATABASE**
5 **FILES AND ALL OF THEIR QUICKBOOKS FILES**
6 **AND THEIR "FOUR PAY PERIOD" EXCEL FILE**

7 **Cab Manager Database Files**

8 As discussed, the Cab Manager database files are in defendants' possession and
9 easily duplicated and produced *en toto*. Defendants should be Ordered to provide
10 them. Plaintiffs have no objection to a suitable protective Order deeming them
11 confidential and not subject to further disclosure.

12 **Quickbooks Files**

13 Plaintiffs' counsel has *never* gotten a response from defendants' counsel to their
14 repeated requests for the production of the Quickbooks payroll data files. When
15 questioned about whether such files could be produced Nady delayed answering the
16 question for 10 minutes, demanding to review the NRCP 30(b)(6) notice, aided in such
17 delay by spurious objections by his counsel, finally admitting it could be done. Nady
18 Depo., p. 102, l. 6 - p. 110, l. 5.

19 Just like the Cab Manager database files defendants required a completely
20 unnecessary deposition on this subject matter. The Quickbooks files, at the very least,
21 contain computerized records of the amount paid per pay period to each employee.
22 They also contain a record of *each shift* that an employee worked⁵ and printouts from
23 that system set forth itemized "shift worked" records. Ex. "J." Nady also confirmed at
24 his deposition that Quickbooks may keep a record of each shift each driver works and

25 ⁵ In the absence of an "hours worked per pay period" record a "shifts worked
26 per paid period" record is a very important item of discovery in this case. A trier of
27 fact could readily determine a taxi driver's unpaid minimum wages in a pay period, if
28 any, if they have a "total shifts" worked record for the pay period and make a
determination of the average amount of hours worked per shift.

1 that is where he “would look” to find such a record. p. 130, l. 7-17.⁶

2 Defendants’ counsel have repeatedly been implored to produce the Quickbooks
3 files but have not yet done so or indicated they ever will. Ex. “L.”

4 Defendants have also never disclosed to the Court, or plaintiffs, that the
5 Quickbooks files, starting sometime in 2012, **did contain hours of work information**
6 **for payroll periods.** Ex. “M” are payroll records of taxi driver Michael Sargeant
7 from June and July of 2014, independently obtained by plaintiffs’ counsel, that include
8 a line for a “minimum wage subsidy” setting forth a “Qty” amount. Defendants were
9 expressly directed to provide testimony on the meaning of that “Qty” entry in the
10 NRCP Rule 30(b)(6) deposition notice. Nady confirmed at the deposition the “Qty”
11 entry on such payroll records was the amount of time an employee was recorded as
12 working by defendants during the payroll period. Depo., p. 156, l. 1-5. The Ex. “M”
13 records also irrefutably establish a minimum wage violation under Nevada law since
14 they establish Sargeant was paid below the required minimum wage for the pay period
15 for such hours. This is explained as follows:

16 Sargeant’s 5/24/14-6/6/14 pay stub shows Federal minimum wage
17 compliance, where an employer may use a “tip credit” and count tips toward the
18 minimum wage, but at least \$92.79 owed to him under Nevada’s “no tip credit”
19 minimum wage. It also raises a question of whether Nevada’s \$1.00 an hour
20 higher “no health insurance” minimum wage rate applies. Such record show he
21

22 ⁶ Nady’s testimony on this subject was part of defendants’ willful contempt of
23 the NRCP Rule 30(b)(6) notice and process. That deposition notice (Ex. “K” ¶ 2)
24 directed defendants’ witness to have knowledge of the Ex. “J” “payroll detail reports”
25 but Nady testified he had never seen them before. When asked if they were produced
26 by Quickbooks he testified “I don’t know.” P. 127, l. 15 - 129, l. 3. Nady also
27 testified he made **no effort whatsoever to inform himself prior to the deposition**
28 **about any of the subjects he was designated to testify about.** P. 7, l. 18 - p. 9, l. 10
(In response to whether he prepared for his testimony “I had breakfast and I had a
bagel,” averring that he otherwise spoke to no one to prepare and examined no
documents but did read the deposition notice).

1 worked 87.48 hours ("Qty" under the "Minimum Wage Subsidy" line). He was
2 paid a "rate" of \$1.43 per hour ("Rate" under the Minimum Wage Subsidy line)
3 for earnings of \$125.10 (87.48 hours times \$1.43 an hour as listed on that line).
4 He also earned "Driver Commission" of \$416.41 and "Tips Supplemental" of
5 \$92.79 for total compensation of \$634.30. Those gross earnings of \$634.30,
6 when divided by the hours of work, 87.48, equals \$7.25 an hour, the FLSA
7 minimum wage. But to arrive at that \$7.25 an hour minimum wage requires the
8 inclusion of \$92.79 in "Tips Supplemental" (tip) income. That \$92.79 is clearly
9 tip income because it also appears as a "Tips Out" amount, an adjustment to
10 Sargeant's net pay, since it was already paid to him in cash and is not included in
11 his net paycheck. Mr. Sargeant also attests that his proper minimum wage rate
12 was \$8.25 an hour since he was not provided with any health insurance benefits,
13 meaning he is owed an additional \$1.00 an hour (\$87.48) as well for this pay
14 period under Nevada law.

15 Sargeant's 6/21/14-7/4/14 pay stub, unlike the 5/14/14-6/6/14 pay stub,
16 shows a sufficiently large "minimum wage subsidy" amount to make his hourly
17 wage, not including tips, equal \$7.25 an hour for Nevada minimum wage
18 purposes (total compensation for the week, excluding tips, was \$397.23, divided
19 by 54.78 hours equals \$7.25 an hour). While there is no "tip credit" violation
20 shown by such records his proper minimum wage rate under Nevada law was
21 \$8.25 an hour, meaning he is owed an additional \$54.78 for this pay period.

22
23 The Ex. "M" information, standing alone, will form the basis of a class wide
24 summary judgment motion (for the time period covered by such records). It is obvious
25 that defendants, precisely for that reason, concealed the existence of such records and
26 refused to produce them.

27 **The "four pay period" Excel file.**

28 Nady testified that defendants did compile, in an Excel spreadsheet, a record of

1 hours worked by all taxi drivers, and their wages paid, for four distinct payroll periods.
2 Depo. p. 227, l. 6 - p. 239, l. 6. This is apparently the only such record pre-dating 2012
3 that defendants made that, at least on its face, complies with NRS 608.115.
4 Defendants should be directed to produce this document, which they have never
5 otherwise identified in discovery (a significant impropriety).

6 **DEFENDANTS SHOULD BE ORDERED TO**
7 **PAY PLAINTIFFS' DEPOSITION COSTS AND BE**
8 **REQUIRED TO PAY PLAINTIFFS' ATTORNEYS' FEES**

8 **The Morgan Deposition**

9 The Morgan deposition was completely unnecessary and resulted from
10 defendants' absolutely false representations to plaintiffs and the Court. This included
11 their untrue claim that the computer files stored in the Cab Manager system are limited
12 to "non-searchable PDF" files; Nady's untrue, and completely made up, statement to
13 the Court about the need to write "code" (a computer program) to produce Cab Manager
14 database files; and their refusal to acknowledge that Morgan, at the March 31, 2015
15 inspection, communicated the **exact same substantive information that he was**
16 **forced by defendants to provide at a deposition.** Ex. "H," ¶¶ 2-3. In addition to
17 engaging in such willful, and knowing, misrepresentations, defendants also never even
18 consulted with Morgan, their agent, about what "time record" information exists in Cab
19 Manager.

20 **Costs for the Morgan Deposition**

21 The Court Reporter fee for the Morgan deposition was \$638.95. Ex. "N."
22 Defendants should be required to reimburse plaintiffs for that cost along with a suitable
23 attorney fee award for the 5.3 hours of attorney time and the 1.2 hours of travel time
24 that the Morgan deposition consumed. Ex. "H" ¶ 5.

25 **The Nady Deposition**

26 **The computer stored records portion of the deposition was**
27 **completely unnecessary and resulted from defendants' bad faith.**

28 As discussed, there was never any need for an NRCP Rule 30(b)(6) deposition to

1 be conducted to ascertain what computerized records were in the possession of
2 defendants and capable of production. As Nady testified, defendants have Quickbooks
3 computer data files and those files can be copied and produced. Defendants were
4 always aware the Cab Manager database files were in their possession and could be
5 copied and produced, Morgan confirming the same for plaintiffs' counsel at the March
6 31, 2015 inspection and again under oath at his deposition on July 8, 2015 (held 41
7 days prior to Nady's deposition).

8 **Nady was not a proper NRCP Rule 30(b)(6) witness**
9 **and was overwhelmingly abusive and contemptuous**
10 **and costs should be imposed on that basis as well.**

11 As discussed *supra*, footnote 6, page 11, Nady made no attempt to inform
12 himself as to anything he was designated to testify about on behalf of the corporate
13 defendants (he was not at that time a defendant personally) under Rule 30(b)(6). He
14 also confirms that despite being aware of the NRCP Rule 30(b)(6) deposition notice he
15 "chose not to" gather information from any of defendants' other employees to prepare
16 for the deposition. Depo. p. 33, l. 12 - p. 34, l. 10. He also claims the deposition
17 notice "didn't tell me I had to" get such additional information and declines to states
18 whether he bothered to inquire with his attorney about any such need to acquire
19 knowledge. Depo. p. 34, l. 4 - p. 36, l. 14.

20 Nady completely lacked knowledge as to numerous subjects he was required to
21 testify about pursuant to the notice. The following are three, there are others:

- 22 ● The extent (dates of coverage) of defendants' preserved Quickbooks
23 computer files. Notice, Ex. "K", ¶ 2, p. 3., l. 4-8. Depo., p. 92, l. 10-
24 17.
- 25 ● Defendants' process for placing information into the Quickbooks
26 system from Cab Manager. Notice, Ex. "K", ¶ 2, p. 2., l. 24-28.
27 Depo., p. 117, l. 6 - p. 118- l. 6 (Says "I don't know" if such
28

1 information is sent automatically but says “Donna would probably
2 know” since she prepares the payroll).

- 3
4 ● He did not have knowledge of all of the computer systems and
5 software used by defendants. Notice, Ex. “K”, ¶ 1, p. 2., l. 3-12.
6 Depo., p. 27, l. 20 - p. 29, l. 4. and p. 32, l. 1-4.

7
8 Nady’s testimony was replete with insults, curses, extended speeches and
9 accusations, repeated refusals to answer questions or provide needed yes, no, or
10 without knowledge answers. He repeatedly required questions be re-read to him,
11 abusively questioned examining counsel, and very significantly delayed the deposition
12 and increased its cost and engaged in other inexcusable and contemptuous behavior.
13 There are far too many examples of such conduct to list (practically on every page of
14 the transcript). In the interest of brevity only three are discussed below, but the Court
15 may also want to examine pages 190-195 and 242-251 of the transcript for typical
16 examples of how Nady continually obstructed and delayed giving answers to the
17 simplest of questions:

- 18
19 ● After fully answering the question of whether he had previously
20 asked Morgan if Cab Manager records activity times by stating
21 “I never asked him” he goes on an extended and abusive diatribe about
22 how “...you [questioning counsel] have. I was there.
23 And he said no 17 times by the way. 17 times he told you.” He then
24 proceeds to testify about his reading of Morgan’s deposition transcript.
25 When advised there was no question pending he insists on continuing
26 his tirade. When his counsel is advised to control him, she refuses and
27 they both refuse a request to go off record. Nady continues and
28 among other things calls examining counsel a “spoiled little brat.” His

1 counsel is supportive of his conduct, claiming he has a right to engage
2 in such tirades after answering a question. Depo. p. 70, l. 8 - p. 73., l.
3 24.

- 4
5 ● After testifying to a conversation he had with Morgan, on the next
6 page, where he is asked a further question about that conversation, he
7 launches into an extended sequence of abusive screaming and accusing
8 examining counsel of being a “liar” and a “damn liar” 13 times. When
9 advised he is obstructing the deposition and preventing its completion
10 he states he does not “give a shit.” He eventually stops giving audible
11 answers. That conduct was so thoroughly abusive the Court Reporter
12 stopped the proceedings and took a break, stating, on the record, “I am
13 going to stop this,” his counsel, again, making no effort to have him
14 correct his improper conduct. Depo. p. 176, l. 9 - p. 183, l. 23
15
- 16 ● When asked about the record of a particular bar code scan he, after
17 answering the question, launches into an extended tirade about how
18 he has previously answered the question and examining counsel’s
19 conduct. His counsel supports the resulting behavior by him rather than
20 relegating whatever legitimate issue might have existed to the “asked and
21 answered” objection and properly instructing him. His tirade (his
22 screaming is noted in the record) makes questioning impossible since he
23 continually interrupts the question, prevents a fully finished question from
24 being asked, and calls examining counsel a “lying little shit.” Depo. p.
25 211, l. 7 - p. 221, l. 25
26

27 Nady also, with his counsel’s support, refused to answer questions on what
28 information he furnished to such counsel about defendants’ ability to produce computer

1 data files in discovery. Depo. p. 251, l. 24 - p. 253, l. 6. Such refusal is improper in
2 that such materials were requested in discovery and defendants have made
3 representations about the availability of such materials in response to those requests.

4 **Costs for the Nady Deposition**

5 The Court Reporter fee for the Nady deposition was \$1,750.00. Ex. "N."
6 Defendants should be required to reimburse plaintiffs for that cost along with a suitable
7 attorney fee award for the 16.1 hours of time and .9 hour of travel time the Nady
8 deposition consumed. Ex. "H" ¶ 5.

9 **Amount of Total Fee Award**

10 Fees should be awarded for *all time* of plaintiffs' counsel consumed by
11 defendants' improper conduct, not just the foregoing deposition times. Those time
12 totals are no less than 49 hours of Leon Greenberg's time, plus 4 hours of travel time,
13 and 34 hours of Dana Sniegocki's time, plus 8 hours of travel time. A suitable (and in
14 plaintiff's counsel's view conservative) hourly benchmark for an attorney's fee award
15 is discussed at Ex. "H" ¶ 8. If that benchmark was to be used, and travel time awarded
16 at a 50% discount rate from that benchmark, the total fee award would be at least
17 \$29,520.

18 **CONCLUSION**

19 For all the foregoing reasons, plaintiff's motion should be granted in its entirety
20 together with such other further and different relief that the Court deems proper.

21 Dated: November 15, 2015

22
23 LEON GREENBERG PROFESSIONAL CORP.

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

CERTIFICATE OF MAILING

The undersigned certifies that on November 16, 2015, she served the within:

**Supplemental Brief
Re: Motion to Compel the Production of
Documents (first heard on 3/18/15)**

by court electronic service to:

TO:

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

/s/ Dana Sniegocki

Dana Sniegocki

EXHIBIT "A"

West's Nevada Revised Statutes Annotated
Title 53. Labor and Industrial Relations (Chapters 606-618)
Chapter 608. Compensation, Wages and Hours
Payment and Collection of Wages and Other Benefits

N.R.S. 608.115

608.115. Records of wages

Currentness

1. Every employer shall establish and maintain records of wages for the benefit of his or her employees, showing for each pay period the following information for each employee:

(a) Gross wage or salary other than compensation in the form of:

(1) Services; or

(2) Food, housing or clothing.

(b) Deductions.

(c) Net cash wage or salary.

(d) Total hours employed in the pay period by noting the number of hours per day.

(e) Date of payment.

2. The information required by this section must be furnished to each employee within 10 days after the employee submits a request.

3. Records of wages must be maintained for a 2-year period following the entry of information in the record.

Credits

Added by Laws 1975, p. 508. Amended by Laws 1979, p. 1488; Laws 1983, p. 250; Laws 1985, p. 579.

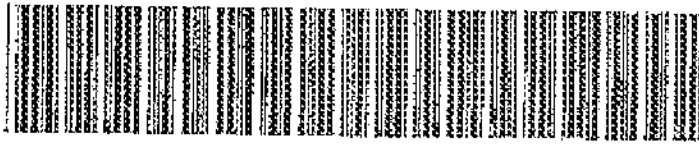
N. R. S. 608.115, NV ST 608.115

Current through all 2015 legislation effective through June 30, 2015. Subject to revision and classification by the Legislative Counsel Bureau.

End of Document

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EXHIBIT "B"

Name	Reno, Michael	Cab#	1350	Med#	17	Date	9/20/2011
TA#	17799			Shift		03-01	
Total Fares	174.70			Time Start		9/20/2011 2:36:53 AM	
Not on meter	0	After meeting with UNITED STATES DEPARTMENT OF LABOR: All drivers who work a 12-hour shift must take two 30-minute snack breaks and a 1-hour meal break. Your snack breaks and meal break must be documented on your trip sheet with a Time In and a Time Out. Space at the bottom of this page has been provided for this information. You must initial next to the "Time In" for all breaks and a meal. Anyone who doesn't adhere to this rule will be disciplined.					
VIP/CPO	0						
Charges	27.00						
Coupons	147.70						
Turn-In	147.70	Res		Rate Calls		42	
				\$ Per Gallon		3.539	
				# of Gallons		5.790	
				Total Gas Cost		\$ 20.49	

Write corrections in the space provided above.							
	Total Fare (1)	Total Miles (4)	Paid Miles (5)	Trips (6)	Accu. T. Pass	Miles	
End	861.99	1082	113	49	099.95	116	121
Start	687.29	968	067	38	072.95	116	61
Diff	174.70	114	46	11	\$ 27.00	116	60

S = Stand F = Flag R = Radio Call Voucher # = Taxi Pass							
Ride #	Ride Type or Voucher #	Pick Up From	Drop Off At	Amount	Time In	Time Out	# of Pass
1		1250	Occas' ch	22.10	4:10	4:20	1
2		1250	Tenave	21.30	4:18	4:31	1
3	3/14	1253	210 USAR	22.30	4:30	4:50	1
4	(R)	1253	IRS bldg	19.90	6:30	6:50	1
5		1252	SAHARA Rainbow	15.90	9:05	9:30	1
6	90	(R) 1253	House	19.90	10:20	10:28	1
7		1253	DAVIDS (Bridal Wynn)	15.70	10:55	11:35	1
8		1253	8 palms	20.90	11:20	12:40	2
9		1253	1400 mld	11.10	11:10	11:30	1
10	(R)	1400	FRANKOS - Suband	16.50	11:30	11:55	1
11		1253	Int'l	21.00	12:10	12:30	1
12							
13							
14							
15							
16							
17							
18							
19							
20							

A Cab 00916

SNACK	(12hr Shift = 30min X 2)	SNACK	Initial Here:
MEAL	(12hr Shift = 1 hour)	MEAL	Initial Here: MR 3:00 3:30
Requirements to be included in a break are:		SNACK	Initial Here: MR 5:00 5:30
1. Outside the control of management.		BREAK	Initial Here: MR 9:10 9:50
2. Not performing duties associated with taxi driving.		BREAK	Initial Here: RA 00023

Ride #	Ride Type or Voucher #	Pick Up From	Drop Off At	Amount	Time In	Time Out	# of Pass
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							



ARCO am/pm 82874
300 W Lake Mead
Las Vegas
NV 89030
Tel : 7026337300
Site Number 11909107

Qty Name	Price	Total
1 Unleaded Regular		20.49
Pump: 4 5.790 Gallon	\$3.539/Gallon	
SubTotal		20.49
Total		20.49

Cash 40.00
Prepay Refund Due \$ -19.51

Receipt 1712677 Duplicate
1 ANGEL 09/20/2011 14:38
PREPAY RECALLED
Thank you for choosing ANPM

A Cab
1111 S. Valley View Bl
Las Vegas, NV

VALIDATED DROP

Drop # : 00042324
Trans # : 00700283
Date Time : 09/20/11 17:08:53
POS :
Remote ID: FK
Oper # : 00437
Oper Name: RENO, MICHAEL
Cash : Cash Val
Rejected : 0

Val 2

Currency: USD

Qty	Value	Subtotal
0003	1.00	3.00
0001	5.00	5.00
0002	10.00	20.00
0006	20.00	120.00
0012 Tot USD		148.00

TOTAL USD 148.00

Time 09/20/11 17:08:53

mb TAXIPASS VOUCHER(S) &
ND TOTALS

CAB#: 1350
TIME: 14:47
DATE: 9/20/2011
DATE: 9/20/2011
VOUCH#: 3141
Amount: \$ 27.00
T. Pass TOT.: \$ 27.00
Accu. T. Pass: \$29099.95

METER

A Cab 00917

Time End
(stamp here)

11:50:20 2:54pm

Driver
Signature

Michael Reno

RA 00024

EXHIBIT "C"

A-CAB Taxi Services, LLC
4444 S. Valley View
Las Vegas, NV 89103
702-365-1900
EIN: 88-0470590

Attorney:

Esther Rodriguez, [REDACTED]

NARRATIVE

COVERAGE

Subject firm is a 24-hour taxi cab service company. The firm is a Nevada limited liability corporation that began operations and incorporated in 2001. (See Exhibit C-1). There are no other branches located in Nevada. The corporate officer is Creighton J. Nady (100% owner). Creighton J. Nady and Jon Gathright are 3(d) employers as they are acting directly in the day-to-day decision making as it relates to employees. ADV YTD 2009 is (as of 04-07-09)- [REDACTED] 2008 [REDACTED] and 2007- [REDACTED]. Jon Gathright, General Manager provided ADV information.

The investigation period covers April 1, 2007 to April 09, 2009.

EXEMPTIONS

13(a) (1) is applicable to:

Creighton J Nady	Owner	\$455,00+	541.101
Jon Gathright	General Manager	\$55,000.00	541.102
[REDACTED]			541.201

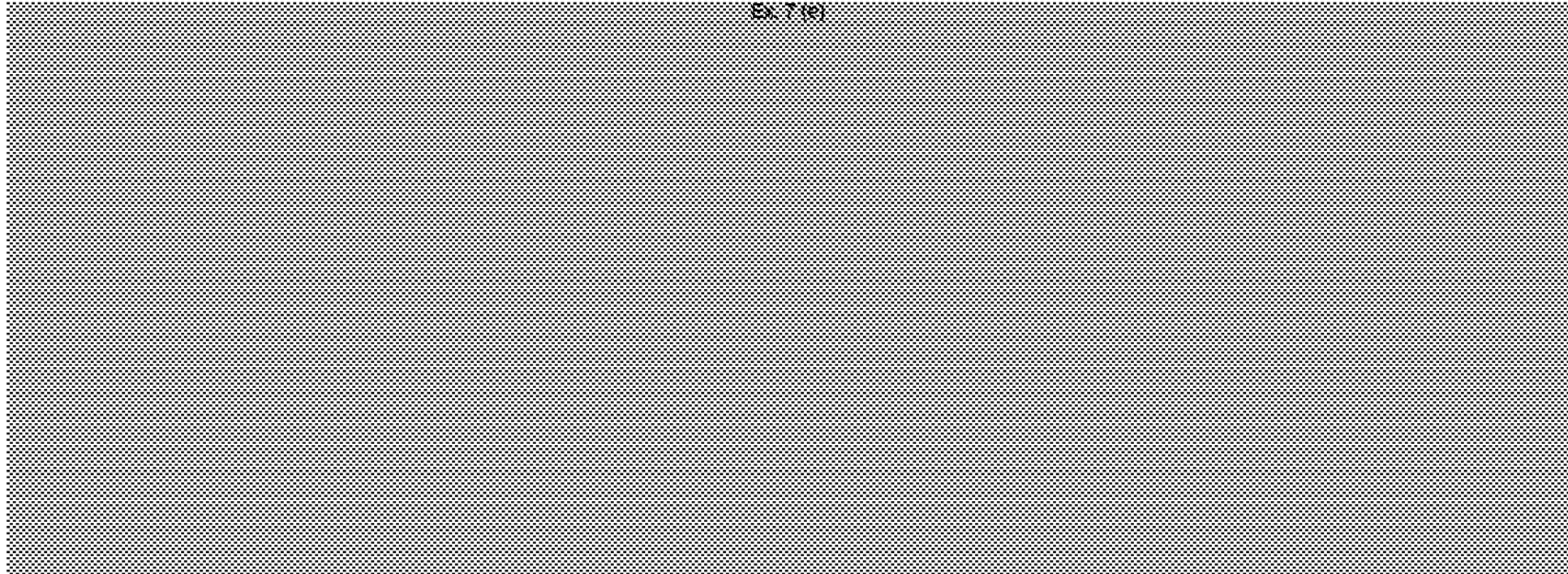
13(b) (17) All taxi cab drivers are overtime exempt.

All other non-taxi driver employees are paid by the hour. No other exemptions are applicable.

STATUS OF COMPLIANCE

Prior History: There was no prior enforcement action involving this firm.

MODO Instruction: The MODO is Phoenix, Arizona DO.




Section 6: There were no minimum wage violations found. The review of the payroll records resulted in a determination that the drivers are paid on a commission basis. While there is no record of actual hours worked, the drivers have scheduled hours and complete a trip sheets. The trip sheets have gaps in the hours worked. Using the scheduled hours worked from shift start time to shift end time, less an estimated period of time for a meal period, it was determined that in most workweeks, the drivers receive minimum wage based on the gross wage paid. Any short fall based on the scheduled hours worked could be offset by a less inclusive number of hours worked as indicated by the trip sheets. The drivers also receive tips in addition to the gross wage paid by the employer.

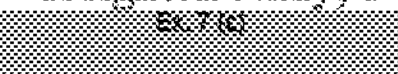
Section 7: No overtime violations found

Section 11: No record keeping violations found

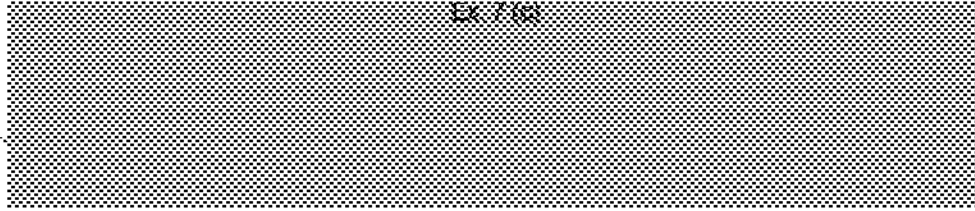
Section 12: There were no Child Labor violations found during this investigation.

DISPOSITION:

On April 30, 2009, I conducted a final conference at the firm. The following firm representatives were present for the final conference: Esther Rodriguez, legal counsel, Creighton Nady, owner, Jon Gathright, General Manager and 

 We discussed the findings of the investigation. The firm was advised that they must keep a record of actual hours worked and that the drivers, while exempt from overtime, must be paid at least the applicable minimum wage for all hours worked.

The firm was also advised that the State of Nevada minimum wage is currently \$6.85 per hour and that this investigation is being concluded with the firm's assurance of future compliance.



Date: 6-10-09

EXHIBIT "D"

JANET M. HEROLD, Regional Solicitor
SUSAN SELETSKY, FLSA Counsel
ANDREW J. SCHULTZ, Trial Attorney
California State Bar Number 237231
United States Department of Labor
Office of the Solicitor
90 Seventh Street, Suite 3-700
San Francisco, California 94103
Telephone: (415) 625-7745
Facsimile: (415) 625-7772
email: . schultz.andrew@dol.gov

Attorneys for Plaintiff, Thomas E. Perez,
United States Department of Labor

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THOMAS E. PEREZ, Secretary of
Labor, United States Department of
Labor,

Plaintiff,

v.

A CAB, LLC; and,
CREIGHTON J. NADY an individual,
Defendants.

) Case No.: 2:14-cv-01615-JCM-VCF
)
)
) CONSENT JUDGMENT AGAINST
) ALL DEFENDANTS
)
)
)
)
)
)
)
)
)

Plaintiff, THOMAS PEREZ, Secretary of Labor, United States Department of Labor (the
"Secretary"); Defendant A CAB LLC, and CREIGHTON J. NADY, an individual, (collectively,
"Defendants") having appeared through counsel, and having been duly advised on the
proceedings, waive their right to answer the Secretary's Complaint and agree to resolve the
matters in controversy in this civil action, and consent to the entry of this Consent Judgment in
accordance herewith:

1 A. The Secretary filed a Complaint alleging that Defendants violated provisions of
 2 Sections 6, 11(c), 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended
 3 (“FLSA” or the “Act”). 29 U.S.C. § 206, 211(c), 215(a)(2), and (5). The Secretary’s Complaint
 4 alleged that Defendants violated Sections 6 and 15(a)(2) of the FLSA by paying its employees’
 5 wages at rates less than the applicable federal minimum wage in workweeks when said
 6 employees were engaged in commerce or in the production of goods for commerce or were
 7 employed in an enterprise engaged in commerce or in the production of goods for commerce,
 8 within the meaning of the FLSA; and Defendants violated Sections 11(c) and 15(a)(5) of the
 9 FLSA by failing to make, keep and preserve records of their employees and of the wages, hours,
 10 and other conditions and practices of employment maintained by them as prescribed by the
 11 regulations found in 29 CFR part 516 that are issued, and from time to time amended, pursuant
 12 to section 11(c) of the FLSA.

13 B. Defendants understand and agree that demanding or accepting any of the funds
 14 due employees under this Consent Judgment (“Consent Judgment” or “Judgment”) or
 15 threatening any employee for accepting money due under this Consent Judgment or for
 16 exercising any of their rights under the Fair Labor Standards Act of 1938, as amended (“FLSA”
 17 or “the Act”), 29 U.S.C. §201, *et seq.* is specifically prohibited by this Consent Judgment and
 18 may subject Defendants to equitable and legal damages, including punitive damages and civil
 19 contempt.

20 C. Defendants waive Findings of Fact and Conclusions of Law, and agree to the
 21 entry of this Consent Judgment in settlement of this action, without further contest.

22 Therefore, upon motion of the attorneys for the Secretary, and for cause shown:

23 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that pursuant to Section
 24 17 of the FLSA, 29 U.S.C. § 217, Defendants, their officers, agents, servants, employees, and all
 25 persons in active concert or participation with them be, and they hereby are, permanently
 enjoined and restrained from violating the provisions of the Act, in any of the following
 manners:

1 1. Defendants shall not, contrary to Sections 6 and 15(a)(2) of the Act, 29 U.S.C. §§
2 206 and 215(a)(2), employ any of their employees at rates less than the applicable federal
3 minimum wage in workweeks when said employees are engaged in commerce or in the
4 production of goods for commerce or are employed in an enterprise engaged in commerce or in
5 the production of goods for commerce, within the meaning of the FLSA.

6 2. Defendants shall not, contrary to Sections 11(c) and 15(a)(5) of the Act, 29 U.S.C.
7 §§ 211(c) and 215(a)(5), fail to make, keep and preserve records of their employees and of the
8 wages, hours, and other conditions and practices of employment maintained by them as
9 prescribed by the regulations found in 29 CFR part 516 that are issued, and from time to time
10 amended, pursuant to section 11(c) of the Act.

11 3. Defendants, jointly and severally, shall not continue to withhold payment of
12 \$139,834.80, plus interest of \$154.00, which represents the unpaid minimum wage compensation
13 hereby found to be due for the period from October 1, 2010, through October 1, 2012, to the
14 present and former employees named in Exhibit A, attached hereto and made a part hereof, in the
15 amounts set forth therein.

16 **FURTHER, JUDGMENT IS HEREBY ENTERED**, pursuant to Section 16(c) of the
17 Act, 29 U.S.C. § 216(c), in favor of the Secretary and against the Defendants, jointly and
18 severally, in the total amount of \$139,988.80

19 4. The provisions of paragraphs 3 of this Consent Judgment will be deemed satisfied
20 when Defendants deliver the following to District Director, Wage and Hour Division, United
21 States Department of Labor, 600 Las Vegas Blvd. S., Suite 750 Las Vegas, NV 89101-6654.

22 a. Within fourteen calendar days of the entry of this Consent Judgment,
23 Defendants shall deliver a schedule containing the last known (home) address, social
24 security number, home telephone number (if known), and cell phone number of those
25 persons listed in Exhibit A.

 b. **PAYMENT TERMS.** No later than January 2, 2015, Defendants shall
deliver a cashier's check or money order in the amount of \$39,988.84 payable to the

1 order of the "Wage & Hour Div., Labor," with the term "A Cab, LLC" written thereon, as
2 the first of thirteen payments towards the back wages found due hereunder.

3 c. On or before the first day of each of the following 12 consecutive months,
4 Defendants shall deliver a cashier's check or money order payable to "Wage & Hour
5 Div., Labor," with the term "A Cab, LLC" written thereon, in the amount of \$8,333.33,
6 until the total amount due under the backwage provisions of this Consent Judgment has
7 been paid in full.

8 5. The Secretary shall allocate and distribute the remittances, or the proceeds
9 thereof, less deductions for employees' share of Social Security and federal withholding taxes to
10 the persons named in the attached Exhibit A, or to their estates if that be necessary, in his sole
11 discretion, and any money not so paid within a period of three years from the date of its receipt,
12 because of an inability to locate the proper persons or because of their refusal to accept it, shall
13 be then deposited in the Treasury of the United States, as miscellaneous receipts, pursuant to 29
14 U.S.C. § 216(c). The Secretary shall be responsible for deducting the employee's share of FICA
15 and federal income taxes from the amounts paid to the persons named in the attached Exhibit A,
16 and for remitting said deductions to the appropriate federal agencies.

17 6. Defendants shall not request, solicit, suggest, or coerce, directly, or indirectly, any
18 employee to return or to offer to return to any Defendant or to any person acting on behalf of any
19 Defendant, any money in the form of cash, check, or any other form, for wages previously due or
20 to become due in the future to said employee under the provisions of this judgment or the Act;
21 nor shall any Defendant accept, or receive from any employee, either directly or indirectly, any
22 money in the form of cash, check, or any other form, for wages heretofore or hereafter paid to
23 said employee under the provisions of this judgment or the Act; nor shall Defendants discharge
24 or in any other manner discriminate, nor solicit or encourage anyone else to discriminate, against
25 any such employee because such employee has received or retained money due to him from the
Defendants under the provisions of this judgment or the Act. Defendants shall pay all wages
owed to their employees "free and clear," as required by 29 C.F.R. § 531.35.

1 7. In the event of a default in the timely making of any of the payments specified
2 herein, the full gross amount outstanding due under this Consent Judgment, plus liquidated
3 damages due under FLSA Section 16(c), 29 U.S.C. § 216(c), in the amount of \$139,834.80, plus
4 post-judgment interest at the rate of 10% per year from the date of this Consent Judgment until
5 the full amount of this Consent Judgment is paid in full, shall become immediately due and
6 payable directly to the U.S. Department of Labor by certified check to the District Director of the
7 Wage and Hour Division at the address in paragraph 4. For the purposes of this paragraph, a
8 “default” is deemed to occur if payment is not delivered within five calendar days of the due
9 date.

10 8. Defendants shall make and keep records demonstrating the total number of hours
11 worked for each driver for each day and each week.

12 9. Defendants shall not claim that any portion of a driver’s work shift is break time
13 to be excluded from hours worked unless the driver is completely relieved from all duties for at
14 least 30 consecutive minutes.

15 10. The filing, pursuit, and/or resolution of this proceeding with the filing of this
16 Consent Judgment shall not act as or be asserted as a bar to any action under Section 16(b) of the
17 FLSA, 29 U.S.C. § 216(b), as to any employee not named on the Exhibit A attached to the
18 Consent Judgment and incorporated hereto by reference, nor as to any employee named on the
19 Exhibit A for any period not specified herein for the back wage recovery provisions.


20 11. Defendants agree and stipulate to enter into this Consent Judgment for the sole
21 purpose of resolving disputed facts and neither admit nor deny the allegations contained in the
22 Secretary’s Complaint.
23
24
25

12. Each party shall bear all fees and other expenses (including court costs) incurred by such party in connection with any stage of this proceeding to date; and it is further,

ORDERED that the parties to the instant complaint shall comply with the terms of this Consent Judgment;

ORDERED that this Court shall retain jurisdiction of this action for purposes of enforcing compliance with the terms of this Consent Judgment; and

Dated November 5, 2014.


UNITED STATES DISTRICT JUDGE

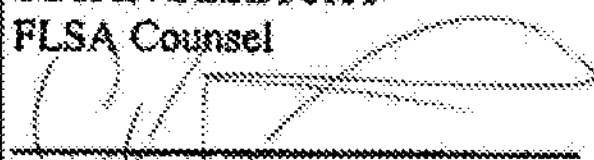
Consented to By:

For Plaintiffs:

M. PATRICIA SMITH
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

SUSAN SELETSKY
FLSA Counsel


ANDREW J. SCHULTZ
Trial Attorney
Attorneys for U.S. Department of Labor

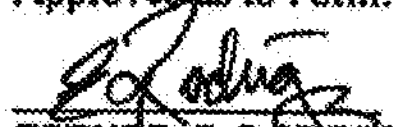
Dated: October 1, 2014

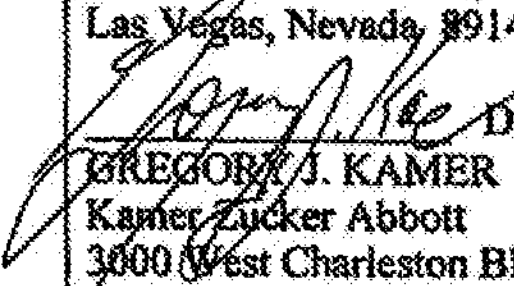
For Defendants:

Dated: September 30, 2014


CREIGHTON J. NADY, as an individual and
on behalf of A CAB LLC

Approved as to Form:

 Dated: 9/30/14
ESTHER C. RODRIGUEZ, Esq.
Rodriguez Law Offices, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada, 89145

 Dated: 9/30/2014
GREGORY J. KAMER
Kamer Zucker Abbott
3000 West Charleston Blvd., Suite 3
Las Vegas, NV 89102

Attorneys for Defendants

Consent Judgment

EXHIBIT "E"

Check-In Procedure

- When arriving on property drivers must check in with the desk supervisor on duty in the supervisors shack. The supervisor will take your TA card and scan the barcode on the back. If a driver does not have a barcode, the supervisor can manually enter that driver's TA number. This will show that driver "on property" and ready to work. If there are any messages for a driver to see management, they will be given at this time.
- When a cab is available for a driver, the desk supervisor will call that driver's name and have them report to the supervisor's shack. The driver will be informed of which cab he/she will be taking out on that shift, given the keys, medallion (if needed) and a vehicle inspection sheet. Information about the cab, shift start/finish time, or other instructions may be given out at this time.
- Upon completion of the vehicle inspection sheet (including all meter readings), the driver will return the form to the supervisors shack. Any discrepancies in the condition of the cab must be brought to the attention of the desk supervisors. After review of the inspection sheet, the supervisor will print the appropriate tripsheet, confirm that the meter readings are correct, and release the driver to begin his shift.

Check-Out Procedure

- When arriving in the yard, each driver is required to go directly to the shop area to have the vehicle's fluids checked by a mechanic. It is at this point that any vehicle trouble not already brought to the attention of a supervisor must be reported. (Note: If the trouble is thought to urgent in nature, this must be brought to a supervisor's attention immediately!)
- Drivers must check their cab's meter readings and print out a copy of their finish readings. Drivers can print readings by pressing the "Extras" button and then the "Time-Off" button. Meter readings must only be taken in A Cab's shop. NO EXCEPTIONS.
 - The printer will first print a receipt of readings and momentarily print a message that reads "METER TOTALS SENT OK". If this message does not print, the readings may not have been sent and drivers must notify a mechanic or a supervisor.
- While in the shop area, drivers must also vacuum their vehicles. Every day. NO EXCEPTIONS. Vacuuming will allow time for meter readings to be transmitted to our servers for checkout.
- Once the cab has been vacuumed and fluids have been checked, the driver must park the cab in one of the designated spaces.
- Drivers must bring the keys, tripsheet, and medallion (if needed) to the supervisor shack. The supervisor will clock the driver back in by time-stamping the back of the tripsheet.

- Drivers must then go to a driver check-out station to do their paperwork.
 - To begin the process the driver must scan the barcode near the top of their tripsheet.
 - The screen should display that driver's name, cab number, and correct finish meter readings.
 - If the information is correct the driver, using the 10-keypad, must fill in the blank boxes on the screen
 - If the information is not correct, drivers must bring this to the attention of a supervisor, and may have to complete their check-out manually.
 - The 10-keypad can be used to advance to the next box by pushing "ENTER" and the previous box by pushing the asterisk (*) key.
 - After filling in all the boxes on the check-out screen, and pushing enter a final time, the driver will be told how much cash must be turned in.
- Drivers must go to the drop safes,
 - Using the computer on the top of the safes the drivers must log in by...
 - Entering their employee identification number (not TA),
 - press the blue "down arrow" button,
 - enter their password (usually the last four digits of their social security number),
 - and press the blue button below the word "enter".
 - Once logged in, drivers must push the orange button that has a picture of a stack of money. The safe will then be ready to accept cash to be turned in.
 - Once the driver has dropped the correct amount of money, the driver must push the blue button below the word "enter".
 - Two receipts will print out on the same paper. Drivers must tear the receipt into two pieces ensuring that each half has the same information, including "TOTAL USD" and their information.
 - Drivers may keep one half for their records. The other must be turned in with their paperwork.
- Drivers must then place their tripsheet (folded in half, top to bottom), all of their receipts and senior coupons (signed, dated, TA#) in an envelope.
- Drivers will then drop their envelopes in the filing cabinet.

EXHIBIT "F"

1 LEON GREENBERG, ESQ., SBN 8094
2 DANA SNIEGOCKI, ESQ., SBN 11715
3 Leon Greenberg Professional Corporation
4 2965 South Jones Blvd- Suite E3
5 Las Vegas, Nevada 89146
6 (702) 383-6085
7 (702) 385-1827(fax)
8 leongreenberg@overtimelaw.com
9 dana@overtimelaw.com
10 Attorneys for Plaintiffs

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC, and A
CAB, LLC,

Defendants.

Case No.: A-12-669926-C

Dept.: I

**DECLARATION OF
MICHAEL MURRAY**

Michael Murray hereby affirms and declares under penalty of perjury the
following:

1. I am one of the named plaintiffs in this lawsuit seeking unpaid minimum
wages from the defendants.

2. I was employed by defendants as a taxicab driver from September 6, 2008
until April 6, 2011.

3. It has been explained to me by my attorneys that the defendants in this case
have asserted that they do not possess or maintain any computer records containing
information on my hours of work and wages paid. That is simply not true.

4. At the start of every taxicab driver's shift at A Cab, each driver is required to
hand their Taxi Authority card to a desk supervisor, who then, using a computer, scans
the bar code on the back of the Taxi Authority card which "checks" the drivers in for

1 the start of their shift. Taxicab drivers then wait to be assigned a cab to drive for their
2 shift.

3 5. Once assigned a cab, a supervisor then prints a tripsheet for the taxicab
4 driver. Such tripsheets are generated from a computer system for each driver and
5 include computer generated information at the top which states the name of the driver,
6 the cab number the driver is driving for his/her shift, the date, and the start time for the
7 shift. The top of the tripsheet also includes a unique bar code. See, Ex. "1" attached
8 hereto. These tripsheets are used throughout the shift by all taxicab drivers in order to
9 keep a record of all rides they give and fares they accept. The taxicab drivers fill out
10 these tripsheets by hand throughout their shift.

11 6. After a shift is concluded and drivers return back to A Cab's office, all
12 taxicab drivers are required to perform a meter reading of their taxicabs. Drivers do
13 this by activating the taxicab meter's "time-off" function which results in both the
14 meter printing a paper receipt showing the meter totals as well uploading the meter's
15 information directly into A Cab's computer system. See, Ex. "1" page 2, copy of
16 receipt indicating "Meter Details" and also stating "Meter Totals Sent- OK."

17 7. Once the information described in paragraph 6 has been uploaded to A Cab's
18 computer system, drivers then proceed to a supervisor's shack just outside of A Cab's
19 building and hand their tripsheets to a supervisor who timestamps the drivers'
20 tripsheets using a mechanical punch clock. See, Ex. "1" page two showing mechanical
21 timestamp on bottom right corner. Drivers then proceed with their trip sheet over to
22 any one of a number of computers (called driver check-out stations) available to
23 drivers to do our end of shift paperwork. This process requires drivers to scan the bar
24 code at the top of the Ex. "1" tripsheet on the computer's scanning device. Once
25 scanned, information appears on the computer screen showing the driver's name, cab
26 number, meter readings, time they were clocked-in, and the time their tripsheet's bar
27 code was scanned (the current time). Drivers then proceed to input into the computer
28 system the fares they received for each trip they drove and indicate whether such fare

1 was paid by credit card, cash, or a taxi voucher. This information is handwritten by
2 the drivers their tripsheets throughout the day. Once all information has been entered,
3 the computer system tallies all fares collected and informs the drivers how much cash
4 they must deposit into a separate bill collector machine called a drop safe.

5 8. The drivers then proceed to the drop safe and again scanned their bar code on
6 the top of their tripsheets to log into the drop safe computer system. Once logged in,
7 the drop safe's screen identifies the driver and specifies the total amount of cash, that
8 was previously calculated by the computer described in paragraph 7, that must be
9 dropped. Once the money is dropped, drivers then print a receipt from the drop safe
10 which shows the driver's name, the total amount of cash dropped, and the time the
11 cash drop was made. See, Ex. "1" page two, copy of receipt "Validated Drop."

12 9. These functions described in paragraphs 5-8 are performed by every one of A
13 Cab's drivers on every single shift they work. Based upon my personal knowledge,
14 and having performed these functions on a near daily basis for several years, I can say
15 with certainty that A Cab possess and maintains computerized records of the start time
16 and end time for each shift that each individual driver works.

17 10. I am also informed by my attorneys that defendants claim that the payroll
18 they have produced in this case shows that there are no minimum wage violations in
19 respect to my compensation. I do not believe that is true because, for the entirety of
20 my time employed as an A Cab taxi driver, I always worked either 5 or 6 days per
21 week and always worked a 12 hour shift. Although my tripsheets may indicate that I
22 took several hours of breaks per day, in reality I never took more than a one hour break
23 during any shift, and usually no more than 45 minutes of break time, meaning I
24 typically never worked fewer than 11 hours in any shift. The reason my tripsheets may
25 show several hours of break time is because the supervisor in the shack who collects
26 the drivers' keys and time stamps their tripsheets would tell drivers that they must
27 write in a certain number of break periods whether or not they actually took such
28 breaks. The supervisor would suggest the total amount of break time a driver should

1 write in on the tripsheet based upon the total "book" or amount of fares collected by
2 the driver. If the total book was low, drivers were told to fill in more hours of break
3 time so it appeared their commission would meet the minimum wage standards; if their
4 total book was higher in amount, they would not need to write in as much break time.
5 Tripsheets were not accepted by A Cab unless the break time specified by the
6 supervisor was filled in.

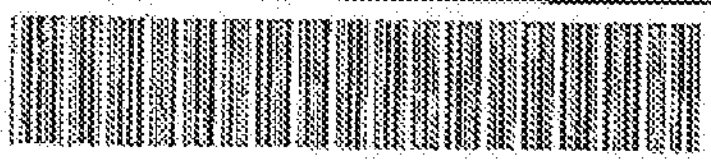
7
8 I have read the foregoing and affirm under penalty of perjury that the same is
9 true and correct.

10
11 
12 Michael Murray

03/06/2015
Date

EXHIBIT "1"

EXHIBIT "1"

Name	Murray, Michael P.	Cab#	1329	Week	23	Date	4/2/2011
Taxi	24453				Shift	89-01	
Total Fares	174.30				Time Start	4/2/2011 2:56:54 PM	
Not on meter	0				Radio Calls	56	
VFICPO	0				\$ Per Gallon	3.699	
Charges	48.20				# of Gallons	5.934	
Coupons	0	After meeting with UNITED STATES DEPARTMENT OF LABOR: All drivers who work a 12-hour shift must take two 30-minute snack breaks and a 1-hour meal break. Your snack breaks and meal break must be documented on your trip sheet with a Time In and a Time Out. Space at the bottom of this page has been provided for this information. You must initial next to the "Time In" for all breaks and a meal. Anyone who doesn't adhere to this rule will be disciplined.			Total Gas Cost	21.95	
Turn-in	126.00				Declared Tips		

Write corrections in the space provided above.						
	Total Fare (1)	Total Miles (4)	Paid Miles (5)	Trips (6)	Accu.T.Pass	Odometer
End	175.77	192	442	600	678.11	21682.7
Start	001.47	050	391	89	629.91	21687
Diff	174.30	142	51	11	48.20	140

You must include Accumulated Totals (Credit Card Totals), Gas Receipt, Senior Coupons, Credit Card Receipts, & Gift Certificates - ALL MUST BE SIGNED!

S = Stand		F = Flag		R = Radio Call		Voucher # = Taxi Pass	
Ride #	Ride Type or Voucher #	Pick Up From	Drop Off At	Amount	Time In	Time Out	# of Pass
1	R	7024 ASTROPART	14	16.10	4:35	4:55	2
2	R	ROAD RUNNER	11-B	13.90	5:15	6:25	1
3	R	14	30	23.90	6:40	7:00	2
4		30	QUEEPS RIDGE	9.30	7:55	9:05	1
5	RTH 22594	460 INNSBROOK	8	20.70	9:55	10:15	1
6		GOESSEPE	CAESARS	32.90	11:00	11:20	4
7	TP 22596	12 1/2	EMBASSY SUITES	9.50	11:30	11:40	1
8		4 1/2	O.G.	19.30	12:30	12:40	3
9		4 1/2	MANDARIN	10.30	1:00	1:10	2
10	R	CAB 1328 BROKE DOWN AZTEC JUNKED		1.00	1:30		1
11	TP 22594	4 1/2	COSMO	11.70	2:05	2:15	2
12		COSMO	MONTE	6.70	2:19	2:20	2
13							
14							
15							
16							
17							
18							
19							
20							

SNACK	(12hr Shift = 30min X 2)	Initial Here:	3:00	4:00
MEAL	(12hr Shift = 1 hour)	Initial Here:	4:55	5:55
Requirements to be included in a break are:		SNACK	Initial Here:	
1. Outside the control of management.		BREAK	Initial Here:	
2. Not performing duties associated with taxi driving.		BREAK	Initial Here:	

A Cab 00562

ARCO am/pm 82874
300 W Lake Mead
Las Vegas
NV 89030
Tel: 7026337300
Fax: 7026335600

Site Number 11809107

COPY
Transit 010125
04/03/11 02:46

PIC# 4

Pump Gallons Price
11 5.934 \$ 2.599

Product Amount
UNLEADED REGUS 21.95

Total Sale \$ 21.95

GASPRO DEBIT
XXXXXXXXXXXX4157
Auth #: 801477
Ref: 77421067
Resp Code: 000
Start: 06581978915
Trace #: 00000000



ARCO am/pm 82874
300 W Lake Mead
Las Vegas
NV 89030
Tel: 7026337300
Site Number 11809107

*** Car Wash Slip *** 1355039

1 CAR WASH 1 2.50
CODE # 38730
Receipt 1355039 ORIGINAL
2 CARMONA 04/03/2011 02:51
Thank you for choosing AMPM

A Cab 00563

Drop Off At	Amount	Time In	Time Out	# of Pass

A Cab
4445 S. Valley View Rd
Las Vegas, NV
VALIDATED DROP
Drop # : 80935430
Trans # : 80196052
Date-Time: 04/03/11 04:46:22
POS :
Remote ID: FK
Oper # : 80179
Oper Name: MURRAY, MICHAEL
Cash : Cash Val
Rejected : 2

Val 2

Currency: USD

Qty	Value	Subtotal
8001	1.00	1.00
8093	5.00	15.00
8083	20.00	60.00
8091	50.00	50.00
8098 Tot USD		126.00

TOTAL USD 126.00

BS--- METER TOTALS SEN
T - OK ---

BITAXIPASS VOUCHER(S) &
ND TOTALS

CAB#: 1329
TIME: 8:11
DATE: 4/3/2011

DATE: 4/2/2011
VOUCH#: 22596
Amount: \$ 11.50

DATE: 4/3/2011
VOUCH#: 22599
Amount: \$ 11.70

T. Pass TOT.: \$ 23.20

Accu. T. Pass: \$18573.11

METER DETAILS
Tot. FARE: \$341175.77
Tot. EXTRAS: \$681.19
Accu. Trips: 22600
Tot. DIST.: 76192.19
PAID DIST.: 112441.96
1-800-222-TAXI

BS--- METER TOTALS SEN
T - OK ---

Time End

(stamping here)

Driver
Signature

Michael Murray

RA 00046

EXHIBIT "G"

CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL MURRAY, ET AL.,

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC, ET AL.,

Defendants.

CASE NO. A669926

DEPT. 1

BEFORE THE HONORABLE BONNIE A. BULLA, DISCOVERY COMMISSIONER

WEDNESDAY, MARCH 18, 2015

RECORDER'S TRANSCRIPT OF PROCEEDINGS
NOTICE OF PLAINTIFFS' MOTION TO COMPEL THE
PRODUCTION OF DOCUMENTS

APPEARANCES:

For the Plaintiffs:

DANA SNIEGOCKI, ESQ.

For the Defendants:

ESTHER RODRIGUEZ, ESQ.

Also Present:

JAY NADY

RECORDED BY: SANDRA PRUCHNIC, COURT RECORDER/TRANSCRIBER

1 The times when they picked up their trip sheets, yes, we put it on there. We
2 didn't save it. Doesn't mean we can't retrieve it. We weren't asked to retrieve it. But we'd
3 have to get the same people that you think has everything. We haven't asked 'em to because
4 it's expensive.

5 So in order for them to rewrite that code to get those things to put on our
6 computer, we'd have to go to them and ask 'em to give it to us. The DOL, at the end of that
7 time, had the same problem. We were four years and eight months in the middle of a
8 Department of Labor audit with the same arguments that we're hearing today. We had a
9 settlement -- we had a -- they gave us the amount that we thought that we owed -- that they
10 thought we owed. And rather than fight it, we agreed to it. We're welcome -- we are willing
11 to give them the same data the DOL had for this and the benefit of their four-and-a-half years
12 of auditing our records.

13 MS. RODRIGUEZ: And we've given 'em all the summaries. I explained this to Mr.
14 Greenberg, that it was -- it took 'em four years to go through this data because it is very
15 tedious. There's thousands and thousands of pages.

16 MR. NADY: Hundreds of thousands.

17 MS. RODRIGUEZ: And so we gave Mr. Greenberg the summary of what the DOL --
18 all their hours, the revenue, and he wasn't satisfied with that. He said I want the data. I want
19 it on a little bus [sic] or a disc. I want the data. And I said it doesn't exist. We don't have
20 that. So you're welcome to look in all of the paper files, and I will give you the summaries.

21 But, I mean, like I said, Your Honor, we're not trying to be difficult on this.
22 It's just we don't have the data that they want.

23 DISCOVERY COMMISSIONER: Well, and you can produce your records in the
24 format that you want to produce them. They don't have to produce it in a format convenient
25 to the Plaintiff.

1 MS. SNIEGOCKI: Yes.

2 DISCOVERY COMMISSIONER: And then I'll see you back here 4/8 at 9:30, and
3 we'll deal with what we need to deal with.

4 MS. RODRIGUEZ: Thank you, Your Honor.

5 MS. SNIEGOCKI: Thank you very much.

6 DISCOVERY COMMISSIONER: Okay. Thank you.

7 [Proceeding concluded at 9:48 a.m.]

8 * * *

9 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
10 video recording of this proceeding in the above-entitled case.

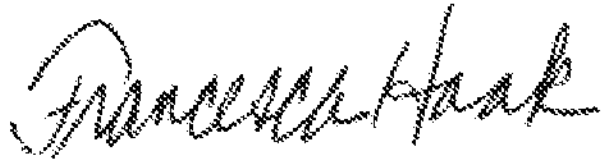
11 
12 _____
13 FRANCESCA HAAK
14 Court Recorder/Transcriber
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EXHIBIT "H"

1 **DECL**
LEON GREENBERG, ESQ., SBN 8094
2 DANA SNIEGOCKI, ESQ., SBN 11715
Leon Greenberg Professional Corporation
3 2965 South Jones Blvd- Suite E3
Las Vegas, Nevada 89146
4 (702) 383-6085
(702) 385-1827(fax)
5 leongreenberg@overtimelaw.com
dana@overtimelaw.com

6 Attorneys for Plaintiffs

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

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

11 Plaintiffs,)

12 vs.)

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

14 Defendants.)
15)
16)

Case No.: A-12-669926-C

Dept.: I

**DECLARATION OF
PLAINTIFFS' COUNSEL,
LEON GREENBERG, ESQ.**

Re: Supplement in support of
motion to compel production and
request for award of fees and costs.

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

19 1. I am one of the attorneys representing the plaintiffs in this matter. I am
20 offering this declaration in support of plaintiffs' motion to compel production of
21 computer files and for an award of costs and fees.
22

23 2. An inspection of defendants' computer systems, including their Cab Manager
24 system, was scheduled on March 31, 2015. No meaningful inspection of that system
25 took place, in respect to having my retained computer consultant actually look at such
26 system, as defendants terminated that inspection prior to allowing any such inspection.
27 What did take place of consequence during that terminated inspection was a discussion
28

1 with Jim Morgan about the Cab Manager system. During that discussion, on March
2 31, 2015, he advised:

3 (A) A complete copy ("data dump" was the term used) of all of the Cab
4 Manager database computer files used by defendants, and containing
5 information on defendants' taxi cabs' and taxi drivers' activities, could be
6 produced; and

7
8 (B) The parties could cooperatively identify certain "tables" of the Cab
9 Manager database (a "table" is a particular portion of the database that
10 includes one or more database computer files) containing the information
11 they were seeking and then extract just that information for production.
12

13 3. What Jim Morgan identified in ¶ 2 on March 31, 2015 was exactly what
14 he identified at his July 8, 2015 deposition. Namely, that the entire Cab Manager
15 database could be copied and produced or if there was a desire to extract just certain
16 information from the Cab Manager database that could also be done. Despite the
17 absolute clarity of his communication on March 31, 2015, defendants' counsel, in
18 subsequent conversations with me (and prior to forcing me to proceed with the July 8,
19 2015 deposition of Mr. Morgan), repeatedly insisted no such statement was ever made
20 by Morgan that copying of the entire Cab Manager database was possible. Defendants'
21 counsel also refused to engage in any cooperative production of just certain portions of
22 the Cab Manager database, as discussed by Mr. Morgan on March 31, 2015.
23

24 4. The court reporter costs of the Morgan and Nady NRCP 30(b)(6) depositions
25 were, respectively, \$638.95 and \$1,750.00 and copies of those invoices are submitted
26 to the Court.

27 5. Defendants have consumed a huge amount of plaintiffs' counsel's time in
28

1 their evasion of plaintiffs' discovery requests and with their misconduct. I provide a
2 summary of the same, based upon my office's contemporaneously maintained time
3 records:

4 Time Spent by Leon Greenberg:

5 **Nady Deposition:**

6 Attendance: 7.8 hours. Travel Time: .9 hours Preparation: 8.3 hours.

7 **Morgan Deposition:**

8 Attendance: 2.8 hours Travel Time: 1.2 hours Preparation: 2.5 hours

9 **Time Spent on This Motion:**

10 Moving Papers: .9 hours Reply: 2.8 hours Supplement: 21.4 hours

11 Preparation for 3/18/15 argument: .5 hours.

12 Argument/status 5/20/15: .5 hours and travel time 1.1 hours.

13 Argument time of 11/18/15: To be determined.

14 Inspection 3/31/15: 1.7 hours and travel time .8 hours.

15 **Total time of Leon Greenberg: No less than 49 hours plus 4 hours travel time.**

16 Time Spent by Dana Sniegocki, associate counsel:

17 **Nady Deposition:**

18 Attendance: 7.5 hours. Travel Time: .8 hours Preparation: 1.5 hours.

19 **Time Spent on This Motion:**

20 Moving Papers: 6.3 hours Reply: 10.9 hours Supplement: 3.2 hours

21 Argument/status dates 3/18/15, 5/20/15, 7/22/15: 3.4 hours Travel time 2.5 hours.

22 Inspection 3/31/15: 1.3 hours. Travel Time: .6

23 Argument time of 11/18/15: To be determined.

24 **Total time of Dana Sniegocki: No less than 34 hours plus 8 hours travel time.**

25 6. In respect to the foregoing detailed time charges I am not including
26 significant additional amounts of time (at least 2 to 4 additional hours of my time) that
27 were spent trying to *avoid* and *cooperatively resolve* this discovery dispute. Nor do I
28 include significant paralegal time expenditures. In respect to the foregoing detailed
time charges I appreciate that the amount of time I spent preparing this supplement was

1 extensive (over 20 hours), far more than I wanted to spend. But there was no
2 alternative if I was to suitably document to the Court the extent of defendants'
3 misconduct. I, personally, read the entirety of the Nady and Morgan deposition
4 transcripts (over 375 pages of mostly abusive testimony by Nady), took notes on the
5 same, and drafted the supplement. It was a very time consuming process.

6 7. If the Court grants my request for an award of attorney's fees based upon
7 my foregoing itemized time expenditures it should do so at an hourly rate
8 commensurate with my experience and field of practice. I have been practicing law
9 for over 22 years with the majority of that time devoted largely or exclusively to the
10 prosecution of class action wage and hour lawsuits. Attorneys with my level of
11 experience at large employment litigation firms in New York, Los Angeles or San
12 Francisco who bill by the hour and typically defend, rather than prosecute, large class
13 action wage and hour litigations command rates in the range of \$650 to \$750 an hour or
14 more. I base that understanding upon hourly fee rates I have seen submitted by such
15 counsel in other litigation matters.

16 8. In the local Las Vegas, Nevada market employment litigation attorneys
17 with experience comparable to mine command hourly rates of \$500 an hour or more. I
18 base that understanding upon hourly fee rates I have seen submitted to courts in
19 Nevada by such counsel in other litigation matters to Las Vegas based state and federal
20 courts. Judge Pro awarded fees of \$400 an hour for my time and \$240 an hour for my
21 associate, Dana Sniegocki's time, in an attorney fee award in the case of *Tallman v.*
22 *CPS Security*, United States District Court, District of Nevada, 09-CV-944, Order of
23 June 3, 2014, a putative class action unpaid minimum wage and overtime case.

24 I have read the foregoing and affirm the same is true and correct.
25 Affirmed this 16th day of November, 2015

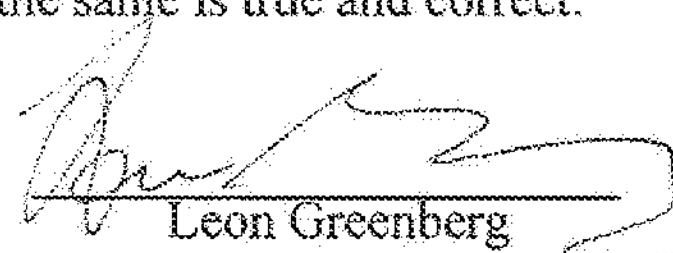
26 
27 Leon Greenberg
28

EXHIBIT "I"

RODRIGUEZ

LAW OFFICES, P.C.

www.rodriguezlaw.com

April 1, 2015

Via Facsimile 702-671-4485

Honorable Bonnie Bulla, Esq.
Discovery Commissioner
200 Lewis Avenue, Fifth Floor
Las Vegas, Nevada 89155

*Re: A Cab, LLC adv. Murray & Reno
District Court Case No. A-12669926C
Discovery Conference: 4/15/15; 9:00 am*

Dear Commissioner Bulla:

Defendant respectfully requests that you consider the following information in preparation for the hearing of **April 15, 2015**. After unfortunate events unfolded yesterday, my client Mr. Jay Nady, owner of Defendant A Cab, requested that I bring the following information to your attention.

Pursuant to your minute order from the March 18, 2015 hearing on Plaintiffs' Motion to Compel in the above matter, the Defendant allowed Plaintiffs' counsel, Leon Greenberg, Esq., Dana Sniegocki, Esq., and their computer expert, Glenn Pannenberg, to conduct an inspection yesterday at the premises of A Cab, LLC. As indicated in your order, the nature of the inspection was for Plaintiffs to confirm at A Cab's premises the payroll records and data kept for purposes of their minimum wage claims.

While your minute order allowed a five day notice for the inspection, Plaintiffs electronically served a notice on March 24, 2015 after 7:00 p.m., for the inspection to occur on March 31, 2015. In the seven-page notice, Plaintiffs' counsel indicted that they intended to inspect various programs, records, etc., that are beyond the scope of your minute order, and what was discussed at the hearing. Despite this, in an attempt to resolve as much as possible, Defendant did not file an Objection to the notice, believing once Mr. Greenberg was actually on the premises he would gain an understanding of Defendant's limited payroll processing system. In this vein, Mr. Nady made arrangements to have James Morgan, a representative of the third party vendor that created the system, present for the inspection at Mr. Nady's own expense.

However, when Mr. Greenberg, Ms. Sniegocki and Mr. Pannenberg arrived, it was apparent they had no intention of complying with your order. Mr. Greenberg began filming the inspection, despite not having provided prior notice of his intent to film the process, and essentially began conducting a video-taped deposition of Mr. Morgan. After the objections of myself and Mr. Nady, Mr. Greenberg finally stopped filming the inspection.

Mr. Greenberg, Ms. Sniegocki and Mr. Pannenberg essentially cornered Mr. Morgan who was seated a computer work station to facilitate a demonstration of the computer network. They began badgering Mr. Morgan with a barrage of rapid fire questions. As Mr. Morgan would answer

Discovery Commissioner
April 1, 2015
Page 2 of 3

questions, as best as anyone can when three people are simultaneously asking questions, Mr. Greenberg would restate Mr. Morgan's response by saying such things as "to confirm for the record, you are admitting a database exists." Both Mr. Nady and I objected to his repeated mis-characterization of Mr. Morgan's statements, but Mr. Greenberg stated he was not interested in hearing from us, and could ask anything he wanted. I informed Mr. Greenberg he was being abusive and needed to stop such tactics, as it was not in the spirit of what was intended by the discovery process, nor within the scope of the order allowing the inspection.

Mr. Nady arranged for Mr. Morgan to be present during the inspection, as Mr. Morgan has knowledge of the series of A Cab's complex network systems. Mr. Morgan verbally conveyed to Plaintiffs' counsel that most of these systems have nothing to do with payroll operations. Mr. Morgan visually demonstrated to Plaintiffs' counsel what has already been represented; that being, the data stored in the system is a series of scanned documents or ".pdf" files which cannot be manipulated in the searchable format Plaintiffs seek.

Mr. Greenberg refused to cease in his coercion of Mr. Morgan, and threatened to subpoena Mr. Morgan. Mr. Morgan was essentially physically "sandwiched" between Mr. Greenberg and Mr. Pannenberg, which created an extremely hostile and threatening environment for Mr. Morgan. Again, Mr. Morgan is not an A Cab employee nor a party to this litigation, but a third party vendor who Mr. Nady had to pay to attend.

Upon Mr. Greenberg's refusal to desist, Mr. Nady felt compelled to intervene for the protection of Mr. Morgan, and asked them to leave his premises. Mr. Nady asked Mr. Greenberg several times to leave the property, but Mr. Greenberg ignored him and continued his questioning of Mr. Morgan. At that point, Mr. Nady ordered them off his property.

While Plaintiffs will certainly take the position that they want to return to the premises to continue their "inspection," Defendant asserts that this will not be a fruitful exercise. Defendant has already turned over hard copies of the documents requested, and stored in compliance with all federal and state regulatory agencies. The documents made available to the U.S. Department of Labor have also been produced to Plaintiffs.

At the last discovery conference, Defendant reiterated that Plaintiffs had been invited to the premises to confirm the payroll setup. With this offer, Defendant was merely trying to alleviate and to extinguish Plaintiffs' suspicions that a more complex database exists. However, this spirit of cooperation essentially backfired on Defendant with a bad faith demonstration by Plaintiffs.

Discovery Commissioner
April 1, 2015
Page 3 of 3

Based upon Plaintiffs' counsel's abusive behavior, Defendant would request that the Discovery Commissioner deny any further continuation of the inspection. Defendant has already accommodated Plaintiffs by allowing the abusive inspection to continue for over an hour.

Mr. Morgan already provided a full explanation (verbal and visual) of the network systems in place at A Cab to Mr. Greenberg and his expert. Merely because the system in place is not satisfactory to Mr. Greenberg is not grounds for another inspection.

Thank you for your consideration of this issue.

Sincerely,

RODRIGUEZ LAW OFFICES, P.C.

EC Rodriguez

Esther C. Rodriguez, Esq.

ECR:srd

cc: Creighton J. Nady
Leon Greenberg, Esq.
Dana Sniegocki, Esq.

EXHIBIT "J"

Payroll Detail Report

Wednesday, September 12, 2012

Pay period of: 8/18/2012 through 8/31/2012

Page 1

Reno, Michael / A Cab

Hired: \$0.00

Shift credits: 12 of 12

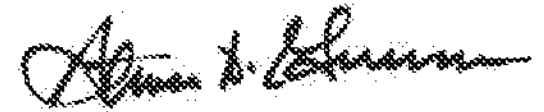
17799

Pay: **\$653.35**
Tips: \$132.67
O/S: -1.00

Shift Credit	Date	Shift	Trips	Cab	R/C	PM %	Book	Pre Trip Chrg	Split	Post Trip Chrg	Shift Chrg	Wage
*	8/18/2012	03-01	13	1333	7	36.4 %	\$173.10	0.00	72.70	13.00	17.59	\$42.11
*	8/19/2012	04-01	21	1358	11	39.3 %	\$252.50	0.00	106.05	21.00	17.39	\$67.66
*	8/20/2012	03-02	17	1304	9	41.0 %	\$231.50	0.00	97.23	17.00	15.70	\$64.53
*	8/21/2012	02-01	14	1371	4	43.1 %	\$187.20	0.00	78.62	14.00	11.40	\$53.22
*	8/22/2012	03-01	16	1322	7	41.5 %	\$207.00	0.00	86.94	16.00	17.31	\$53.63
*	8/24/2012	03-02	17	1344	8	40.0 %	\$211.10	0.00	88.66	17.00	18.14	\$53.52
*	8/25/2012	03-01	13	1331	7	42.1 %	\$218.50	0.00	91.77	13.00	12.93	\$65.84
*	8/26/2012	04-01	16	1358	5	42.1 %	\$230.80	0.00	96.94	16.00	14.06	\$66.88
*	8/27/2012	02-02	11	1309	4	38.0 %	\$173.10	0.00	72.70	11.00	16.31	\$45.39
*	8/28/2012	03-02	13	1324	6	32.2 %	\$157.50	0.00	66.15	13.00	15.16	\$37.99
*	8/29/2012	03-02	12	1324	7	34.1 %	\$173.20	0.00	72.74	12.00	15.35	\$46.39
*	8/31/2012	03-02	12	1304	8	45.2 %	\$196.60	0.00	82.57	12.00	13.39	\$57.19

21

EXHIBIT "K"



CLERK OF THE COURT

1 **NOTC**
2 LEON GREENBERG, ESQ., SBN 8094
3 DANA SNIEGOCKI, ESQ., SBN 11715
4 Leon Greenberg Professional Corporation
5 2965 South Jones Blvd- Suite E3
6 Las Vegas, Nevada 89146
7 (702) 383-6085
8 (702) 385-1827(fax)
9 leongreenberg@overtimelaw.com
10 dana@overtimelaw.com
11 Attorneys for Plaintiffs

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

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

12 Plaintiffs, }

13 vs. }

14 A CAB TAXI SERVICE LLC, and A }
15 CAB, LLC, }

16 Defendants. }

Case No.: A-12-669926-C

Dept.: I

**NOTICE TO TAKE
DEPOSITION**

17 PLEASE TAKE NOTICE that pursuant to Nevada Rules of Civil Procedure §
18 26 and § 30(b)(6), plaintiffs, by their attorneys, Leon Greenberg Professional
19 Corporation, will take the deposition of defendants, A CAB TAXI SERVICE LLC,
20 and A CAB, LLC by the person(s) most knowledgeable as to the following specified
21 subjects.

22 **DEFINITIONS**

23 The following terms have the following meanings as used herein

24 1. The term "plaintiffs" refers to the individual named plaintiffs in the
25 complaint filed in this action and all persons similarly situated to the named plaintiffs,
26 meaning all persons employed as taxicab drivers by defendants from July 1, 2007
27 through the present.
28

1 The witness(es) produced by defendants shall be most knowledgeable about the
2 following for the time period from July 1, 2007 to the present:

3 1. All computer systems, computer software, and computer data files in the
4 possession of defendants, or previously in the possession of defendants, that, at least in
5 part, contain information, or have previously contained or been used to process
6 information, about any of the following things:

7 (A) The activities of defendants' taxicabs;

8 (B) The activities of defendants' taxi cab drivers;

9 (C) The activities of the taxi meters used in defendants' taxicabs;

10 (D) The compensation paid to defendants' taxi cab drivers,
11 including how that compensation was calculated;

12 (E) The hours of work of the defendants' taxi drivers.

13
14 2. The information utilized to produce defendants' payroll statements and
15 paychecks, tax reporting (W-2 and similar documents) statements, and that is
16 otherwise used by defendants to calculate and keep track of the compensation paid to,
17 earned by and/or owed to defendants' taxicab drivers, including but not limited to the
18 document produced in this case bates stamped MURRAY RENO 000002. This
19 includes all information used to produce "Employee Pay Stub" statements and the
20 "Payroll Detail Report" at Bates Murray Reno 2 and/or the calculations of fares
21 collected and commissions, meaning wages, earned from those fares by taxi drivers
22 that are in turn used to arrive at any of the figures set forth on those payroll statements,
23 paycheck and tax reporting documents, samples of such "Employee Pay Stub"
24 documents being produced by defendants in this litigation at Bates Numbers "A Cab
25 0001-0081." Such person shall also be most knowledgeable of the computer system
26 used by defendants (Quickbooks or any other software) to create the foregoing
27 identified documents and defendants' procedure for using that computer system to do
28 so and gather the information used to do so. Such person shall also be most

1 knowledgeable about all computerized records of the wages paid by defendants to
2 their taxicab drivers, e.g., their computerized payroll records, including, without
3 limitation, all computer software, such as Quickbooks or other computer software,
4 from which they can print reports on the payroll of any particular employee and/or
5 otherwise access historic information on an employee's paid wages. Such person shall
6 also be most knowledgeable about where the computer data files used by such
7 Quickbooks or other computer software are stored, the time period covered by those
8 data files, whether any such files that previously existed have been destroyed or have
9 been lost and the circumstances surrounding the destruction or loss of such computer
10 data files, and defendants' ability to produce copies of those computer data files still in
11 their possession. Such defendant shall also be most knowledgeable about how the
12 defendants' "Payroll Detail Report," sample at Bates Murray Reno 2 is produced,
13 defendants' ability to produce those reports, the information used to produce those
14 reports, and defendants' ability to export from their computer software the information
15 contained in those reports into a computer data file (Excel and all other computer data
16 formats).

17
18 3. The information utilized to produce the numeric entries on the documents
19 produced in this case at BATES SARGEANT 1 to 4 including but not limited to the
20 numbers appearing at the intersection of the line "minimum wage subsidy" and the
21 column "Qty" (which for example on BATES SARGEANT 2 have the numbers 22.81
22 and 57.08). Such witness will testify on all sources of information used to create all
23 numbers, whether appearing on BATES SARGEANT 1 to 4 or on other payroll
24 documents of defendants' taxi cab driver employees or stored in other computer
25 records of the defendants. Such witness will also testify as to the reason such numbers
26 were so created or calculated by defendants and how they were so calculated. Such
27 witness will also testify as to the date when defendants started to create such numbers
28 and keep records of such numbers. Such witness shall also testify as to what computer

1 system (Quickbooks or other software) was used to create the printed records at
2 BATES SARGEANT 1 to 4 and where defendant keeps or has kept the computer data
3 files used by such computer system.

4
5 4. All aspects of the defendants' "Cab Manager" software system, including
6 but not limited to:

7 (a) The location of all computer hard drives containing the database files
8 used by the Cab Manager software;

9 (b) All the ways in which the Cab Manager software is used by
10 defendant;

11 (c) All information stored in or used by the Cab Manager system
12 including whether, how, and for how long, such system stores information from bar
13 code readings (whether of trip sheets, taxi driver cards, or other things), from taxi
14 meter uploads of data and drop safe activities and all other things and how that
15 information is used by the Cab Manager system;

16 (d) All information that defendant has or can access in the Cab Manager
17 system, whether in a the form of an existing report that defendant can use or has access
18 to or in another fashion.

19 (e) The ability of the Cab Manager system to generate customized reports
20 containing particular information selected by a system user, whether for an individual
21 taxi driver, taxi cab, taxi meter, group of taxi drivers, or anything else.

22 (f) Whether any computer file stored information previously existing in or
23 available to the Cab Manager system has been overridden, erased or lost.

24 (g) All formats that the Cab Manager system can export information or
25 reports in (paper, PDF, Excel, CSV, etc.).

26 (h) All materials in defendants' possession, including without limitation,
27 instructions, handbooks, training manuals, in whatever form, that discuss the
28 capabilities of the Cab Manager system and/or how that system can be used.

1
2 5. Defendants' archiving, meaning preservation, of computer data files.
3 This includes defendants policies in respect to creating back up copies of computer
4 files and their storage of such back up files, including where such files are stored and
5 what such files are so stored. This includes what data files may have been so archived
6 at one time but are not longer in existence or cannot be located. This includes what
7 data files have never been so archived and which are now lost.
8

9 6. Defendants' use, in its computer system and all other fashions and forms,
10 and its retention in all forms, of the "check in" time that is obtained from a taxi
11 driver's "TA card" barcode scan or that is manually entered by a supervisor, as
12 explained in defendants' written "Check-In Procedure" in the document produced by
13 defendants in this ligation at Bates Number "A Cab 00649."
14

15 7. Defendants' use, in its computer system and all other fashions and forms,
16 and its retention in all forms, of the "meter readings" performed by their taxi drivers,
17 e.g., all of the information that each of defendants' taxi drivers were responsible for
18 having transmitted from their assigned taxi cab to defendants' "servers for checkout"
19 at the end of each shift, as explained in defendants' written "Check-Out Procedure" in
20 the document produced by defendants in this litigation at Bates Number "A Cab
21 00649."

22 8. Defendants' use, in its computer system and all other fashions and forms,
23 and its retention in all forms, of the time and date of the "meter readings" that each of
24 defendants' taxi drivers were responsible for having transmitted from their assigned
25 taxi cab to defendants' "servers for checkout" at the end of each shift were so
26 transmitted, as explained in defendants' written "Check-Out Procedure" in the
27 document produced by defendants in this litigation at Bates Number "A Cab 00649"
28 the existence of such a record of such time and date of transmission being evidenced

1 by the receipts annexed to the taxi driver trip sheets produced by defendants in this
2 litigation, including at Bates Number "A Cab 00525."

3 9. Defendants' use, in its computer system and all other fashions and forms,
4 and its retention in all forms, of the record of the time and date a supervisor clocked
5 defendants' taxi drivers "back in" at the end of their shift once such taxi driver brought
6 their keys, tripsheet and medallion (if needed) to the supervisor shack, as explained in
7 defendants' written "Check-Out Procedure" in the document produced by defendants
8 in this litigation at Bates Number "A Cab 00649."

9 10. Defendants' use, in its computer system and all other fashions and forms,
10 and its retention in all forms, of the information indicating the time and date of the
11 computer "scan [of] the barcode near the top of their tripsheet" conducted at the end of
12 a taxi driver's work shift, as explained in defendants' written "Check-Out Procedure"
13 in the document produced by defendants in this litigation at Bates Number "A Cab
14 00650."

15 11. Defendants' use, in its computer system and all other fashions and forms,
16 and its retention in all forms, of the record setting forth a time and date which is
17 generated by the "Validated Drop" of cash performed by taxi drivers at the end of their
18 work shift, as explained in defendants' written "Check-Out Procedure" in the
19 document produced by defendants in this litigation at Bates Number "A Cab 00650"
20 the existence of such a record being generated by a "Validated Drop" being evidenced
21 by the receipts annexed to the taxi driver trip sheets produced by defendants in this
22 litigation, including at Bates Number "A Cab 00525."

23 12. Defendants' use, in its computer system and all other fashions and forms,
24 and its retention in all forms, of all details of each driver's "gross book" and the
25 calculations, and results of all calculations, done on each taxi driver's "gross book" to
26 determine the commissions paid to the driver, including but not limited to those used
27 to ensure or record that such commissions would "always be consistent with Nevada
28 State Minimum Wage Laws of \$7.25/hour" as explained in the document produced by

1 defendants in this litigation at Bates Numbers "A Cab 00651" and/or that otherwise
2 involve the application of the formula described in that document to each driver's
3 "gross book" to calculate the commissions that were actually paid by the defendants to
4 their taxi drivers.

5 13. Defendants' use, in its computer system and all other fashions and forms,
6 and its retention in all forms, of information on taxi drivers having "a prolonged period
7 of time without meter activation indicating a passenger has hired the Taxicab," such
8 periods of time being subject to being considered "personal time" of the taxi driver by
9 the defendants and "excluded from any minimum wage computation," as set forth in
10 defendants' policy recited in the document produced by defendants in this litigation at
11 Bates Number "A Cab 00651." This would include knowledge of all computer records
12 and other records, without limitation, that record periods of meter activation or
13 inactivity irrespective of whether defendants determined any "period of time without
14 meter activation" so recorded would be considered "personal time" as set forth in such
15 policy.

16 14. Defendants' use, in its computer system and all other fashions and forms,
17 and its retention in all forms, of all information used by defendants in their application
18 of the "Tip Compliance Agreement with the IRS" which is set forth in the document
19 produced by defendants in this litigation at Bates Number "A Cab 00651." This
20 would include, but not be limited to, knowledge of any such records that exist which
21 defendants use(d) or assist(ed) defendants in calculating and applying the "tip credit"
22 referenced in such document and how they complied with, or attempted to measure or
23 record their compliance with, the statement in such document that such "tip credit
24 allowed for tipped employees will not permit wages to be less than \$5.12 per hour."
25 Such witness shall also be able to testify as to all details of this "Agreement with the
26 IRS" including its purpose (as best understood by defendants), when it was entered
27 into, and all details of such agreement and terms and circumstances surrounding its
28 creation and negotiation.

1 16. Defendants' use, in its computer system and all other fashions and forms,
2 and its retention in all forms, of all information related to all rides for hire performed
3 by each of defendants' taxicab drivers. Specifically, such person must have
4 knowledge on the use of the taxicab meters in defendants' taxicabs and the ability of
5 such meters to record activities conducted by taxicab drivers, meaning the time such
6 meters were "in use" or "activated," meaning fares were being recorded as being
7 charged in such meter. Moreover, such persons must be knowledgeable about the
8 connection between, the association with, or the interplay of, the taxi cab meters
9 located inside each of the taxicabs driven by defendants' taxicab drivers, such meters
10 being referenced in the document produced by defendants in this litigation at Bates
11 Number "A Cab 00649," and "Cab Manager" and all other computer software used by
12 defendants. Such person must be knowledgeable about the existence of computer data
13 files that contain information from such taxicab meters, such data consisting of
14 information on the number of hours and minutes such meters were "in use" or
15 "activated" and the total fares collected for each trip recorded by such taxicab meters
16 and all other information recorded by such taxicab meters. Such person must also be
17 most knowledgeable about all materials in defendants' possession, including without
18 limitation, instructions, handbooks, training manuals, in whatever form, that discuss
19 the capabilities of the taxi cab meters and/or how they can be used and the information
20 they generate, store, transmit and maintain.

21
22 17. Defendants' use, in its computer system and all other fashions and forms,
23 and its retention in all forms, of all information associated with and generated by
24 defendants' operation of "drop safes" including all records generated by such "drop
25 safes" when defendants' taxicab drivers performed a "cash drop" in such drop safes,
26 including, whether such information so generated is recorded, stored, archived,
27 maintained, and capable of being copied and/or reproduced. Such person must also be
28 most knowledgeable about all materials in defendants' possession, including without

1 limitation, instructions, handbooks, training manuals, in whatever form, that discuss
2 the capabilities of the "drop safes" and/or how they can be used and the information
3 they generate, store, transmit and maintain.

4
5 18. Defendants' creation, in response to a United States Department of Labor
6 investigation, or for any other purpose, of summaries, compilations, or other computer
7 data files ("compilations" whether created in Excel form or any other form), of
8 information contained in its taxi drivers' trip sheets, such compilations being intended
9 by defendants to contain the hours of work of taxi drivers as originally set forth on
10 such trip sheets. Such witness shall testify as to the form (Excel file or otherwise) and
11 scope (time frame, drivers information contained) of any such compilations, their use
12 by defendants and anyone else, to whom copies of such compilations have been made
13 available or provided, what conclusions defendants have arrived at from examining
14 such compilations in respect to the existence of any minimum wage violations under
15 the Fair Labor Standards Act and Nevada Law by the defendants, the location of such
16 compilations and the form (software and/or data format, such as Excel or CSV) in
17 which defendants can produce a copy of such compilations and if they cannot produce
18 a copy of such compilations why they cannot do so.

19
20 19. Defendants' use, in its computer system and all other fashions and forms,
21 and its retention in all forms, of all information on the activities of the defendants' taxi
22 medallions, including, but not limited to, those records they were required to submit to
23 the Nevada Taxi Commission in the Excel template set forth at the Nevada Taxi
24 Commission's website. Additionally, such person shall also be knowledgeable about
25 all other computerized records that defendants relied upon or consulted with to create
26 those Excel templates that they submitted to the Nevada Taxi Commission and/or that
27 otherwise recorded, in part or in full, the information set forth in those Excel templates
28 that they submitted to the Nevada Taxi Commission. Such witness shall also be most

1 knowledgeable about whether any such computer files that previously existed have
2 been destroyed or have been lost and the circumstances surrounding the destruction or
3 loss of such computer data files, and defendants' ability to produce copies of such
4 computer data files still in their possession and if they cannot produce a copy of such
5 computer data files why they cannot do so.

6
7
8 20. Such person shall also be knowledgeable about all information contained
9 within computerized records, computer systems, and software, that was made available
10 for inspection to the United States Department of Labor's Wage and Hour Division.
11 This shall include the information contained within all computerized records compiled,
12 maintained, and/or created by defendants that were subsequently printed out on paper
13 or from which reports were generated which were in turn furnished or made available
14 to the United States Department of Labor's Wage and Hour Division even if such
15 office never actually inspected such computerized records, computer systems, or
16 software.

17
18 21. Such person shall be most knowledgeable about all efforts defendants
19 have made to produce computer records, whether from Quickbooks, Cab Manager, or
20 any other source, in response to requests for production made by the plaintiffs in this
21 litigation or in response to requests for information from the United States Department
22 of Labor or to otherwise ascertain whether any of the below information is contained
23 in computer records in the possession of the defendants. This will include all efforts
24 defendants have made to ascertain if any computer data files in their possession,
25 including but not limited to those used by the Cab Manager system, contain or
26 preserve any record of the following:

- 27 (i) "bar code" scans their taxi drivers were required to perform;
28 (ii) the times and dates that are printed on taxi driver trip sheets

1 and that appear in the "Time Start" identified box in the upper right
2 corner of such trip sheets as demonstrated in Bates A Cab 1690;
3 (iii) the date and time appearing on printed VALIDATED DROP
4 receipts such as the one depicted at Bates A Cab 1691;
5 (iv) the date and time appearing on printed METER DETAILS
6 receipts such as the one depicted at Bates A Cab 1693;
7 (v) the hours or time any taxi driver has worked in any particular
8 day, week or other time period;
9 (vi) any other computer data files containing a time and date that is
10 associated with any activity of any of defendants' taxi drivers, taxi
11 medallions, taxi cabs or taxi meters, irrespective of whether such
12 time and date record is believed by defendants to be accurate or
13 inaccurate.

14
15 22. In respect to all information contained in computer data files in the
16 possession of defendants, including but not limited to those contained in or used by the
17 Cab Manager or Quickbooks software, all efforts defendants have made to ascertain
18 their ability to produce a copy of such information in computer file form, either in its
19 entirety or in part. This would include all conversations had by defendants with any
20 non-party about whether such computer file copies could be produced.

21
22 23. In respect to all representations made in this litigation by defendants'
23 counsel, or defendants, about the existence of information in computer data files in the
24 defendants' possession and the ability or inability of defendants to produce copies of
25 that information or those computer files in a computer database usable file (such as
26 Excel, CSV, etc., and not PDF) format :

27
28 (A) The information provided to defendants' counsel upon which

1 such counsel based those representations, whether made to the
2 Court or in a written response to a request for production, including
3 who provided that information, what information was provided if it
4 was provided orally, and what other materials were provided to
5 such counsel if such information was not provided orally;

6
7 (B) The basis for such representations by defendants, whether in
8 written responses to requests for production or as testified to by Jay
9 Nady to the Court on March 18, 2015.

10
11 The witness(es) is to be produced on the 18th day of August, 2015 at the hour of
12 11:00 a.m. or another agreed date and time at **Litigation Services, 3770 Howard**
13 **Hughes Parkway, Suite 300, Las Vegas, Nevada 89169** and will continue day to day
14 until completed. Such witness(es) will be examined as to all facts and circumstances
15 bearing upon any and all issues in this litigation. Such deposition shall be recorded by
16 audio or video means and may also be stenographically recorded.

17
18 Dated: August 12, 2015

19
20 LEON GREENBERG PROFESSIONAL CORP.

21 /s/ Leon Greenberg
22 Leon Greenberg, Esq.
23 Nevada Bar No. 8094
24 2965 S. Jones Boulevard - Ste. E-3
25 Las Vegas, NV 89146
26 Tel (702) 383-6085
27 Attorney for the Plaintiffs
28

CERTIFICATE OF MAILING

The undersigned certifies that on August 12, 2015, she served the
within:

NOTICE OF DEPOSITION

by court electronic service to:

TO:

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

/s/ Sydney Saucier

Sydney Saucier

EXHIBIT "L"

LEON GREENBERG
Attorney at Law
2965 South Jones Boulevard • Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085

Leon Greenberg
Member Nevada, California
New York, Pennsylvania and New Jersey Bars
Admitted to the United States District Court of Colorado

Fax: (702) 385-1827

Dana Sniegocki
Member Nevada and California Bars

November 6, 2015

Esther C. Rodriguez, Esq.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

VIA E-MAIL AND FIRST CLASS MAIL

Re: Murray v. A-Cab - Quickbooks data file production

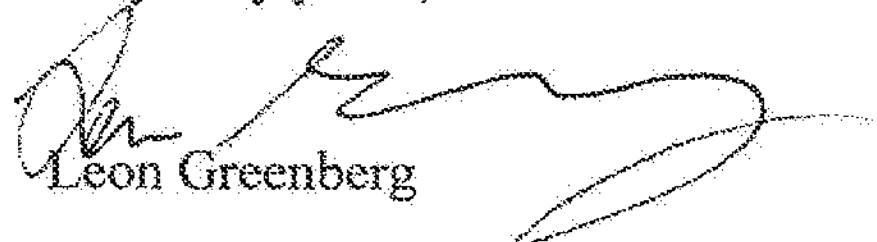
Dear Ms. Rodriguez:

I write to once again address production of the Quickbooks data files that we previously discussed by phone on September 10, 2015, and which I addressed to you in writing on September 22, 2015 and September 29, 2015. *See*, attached e-mails of the same dates. I have heard nothing further from you since September 10, 2015 when, at that time, you pledged to consult with your client on production of the Quickbooks materials.

At the deposition of defendants' NRCP 30(b)(6) witness, Creighton J. Nady testified that Quickbooks data files, at least going back for a two year period, could be copied and produced. *See*, testimony from August 18, 2015 deposition, at pp. 109-110. Despite the confirmation by Mr. Nady that such materials *do exist and can* be produced, you have ignored my repeated requests that defendants advise whether they *will* be produced.

Please advise, most promptly (such advisement is long overdue) whether any Quickbooks data production will be forthcoming. I am, of course, available to discuss this with you further.

Very truly yours,


Leon Greenberg

Subject: Murray v. A-Cab, depositions and discovery matters

From: Leon Greenberg <wagelaw@hotmail.com>

Date: 9/22/2015 5:45 PM

To: Esther Rodriguez <esther@rodriguezlaw.com>, Susan Dillow
<susan@rodriguezlaw.com>, 'Dana Sniegocki' <dana@overtimelaw.com>

During our very brief conversation today in Court you advised me, in response to my inquiry about the outstanding discovery matters in this case, that you would not speak with me about any outstanding discovery matters on the phone and I should "write a letter." Accordingly I now write seeking your attention and most prompt response to the following:

1. As you are aware, this office has served deposition notices for various A-Cab witnesses for testimony on 9/29/15 and 9/30/15. This office is prepared to proceed with those depositions on those dates but will, of course, cooperatively schedule different dates with you. Please advise if any of these depositions should proceed on those dates or propose alternative dates.
2. When we spoke on September 10, 2015 you stated you would investigate whether defendants would agree to produce any of the Quickbooks payroll data files for the putative class members. You have yet to advise me as to defendants' willingness (or unwillingness) to do so. Please advise me about this.
3. Your office had sent a deposition notice regarding the taking of testimony from non-party Keith Sakelhide on 9/29/15. Please advise if you intend to proceed with that deposition at the date, time and place indicated on that notice or otherwise.
4. When we spoke on September 10, 2015 I advised you that the NRCP 30(b)(6) deposition of Mr. Nady was not concluded on August 18, 2015. I also refer you to my letter of August 31, 2015 discussing how defendants' conduct at the August 18, 2015 deposition was improper. When we spoke on September 10, 2015 I urged you to work with me to either resolve the discovery dispute which required that NRCP 30(b)(6) deposition or produce Mr. Nady to complete that deposition. As I further advised you at that time, the conclusion of that deposition, once reconvened, should not consume very much time. You declined at that time to do either of those things. I urged you at that time to consider this further. Please advise if your position is unchanged on this issue (meaning defendants will not agree voluntarily to re-convene and properly conclude the deposition terminated on August 18, 2015 or resolve the discovery dispute that created the need for that deposition). If your position is unchanged I will ask the Court to address this issue. Such request will seek sanctions in connection with the defendants' conduct at the August 18, 2015 deposition. I would much rather simply conclude the deposition (or cooperatively resolve the entire discovery dispute that necessitates the holding of that deposition). Please note that since you advised me today you will not speak with me on the telephone about this I have now met my good faith conferral requirements by sending you this email. I will feel free to proceed with an appropriate application to the Court seeking sanctions

Thank you.

--

Leon Greenberg
Attorney at Law
2965 South Jones Boulevard #E-3
Las Vegas, Nevada 89146
(702) 383-6085
website: overtimelaw.com

RA 00078

Subject: RE: Depo schedule

From: "Esther C. Rodriguez" <esther@rodriguezlaw.com>

Date: 9/28/2015 4:22 PM

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

CC: "Susan Dillow" <susan@rodriguezlaw.com>

Thanks Leon, let's discuss tomorrow if possible, as well as PMK Depo #1 & #2.

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

Sent: Monday, September 28, 2015 12:13 PM

To: Esther Rodriguez; Dana Sniegocki

Cc: Susan Dillow

Subject: Re: Depo schedule

That is fine.

ALSO, I never got a firm position from you on the production of Quickbooks payroll data file. During our last conversation you pledged to consider/investigate the issue (no commitment by you to producing anything, only to consider/investigate). Do you have a post "investigation/consideration" position on that? Please advise & thank you.

FYI: Your emails always come through dated about 40 minutes into the future.... I guess you are ahead of your time....

On 9/28/2015 12:50 PM, Esther Rodriguez wrote:

Leon, I need to request a change to the depo schedule. Sam is in school tomorrow, and needs to switch slots with Bob McCullough. Therefore, can you accommodate the following switch?

Tues: 9 am Mike Malloy
11 am Jon Gathright
2 pm Bob McCullough

Wed: 1 pm Ed Borowski
3 pm Sam Wood

Thank you.

Esther C. Rodriguez, Esq.
Rodriguez Law Offices, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
(P)702-320-8400
(F)702-320-8401
esther@rodriguezlaw.com

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Leon Greenberg
Attorney at Law
2965 South Jones Boulevard #E-3
Las Vegas, Nevada 89146
(702) 383-6085
website: overtimelaw.com

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2013.0.3532 / Virus Database: 4365/10717 - Release Date: 09/28/15

EXHIBIT "M"

A CAR, SERIES LLC Employee Leasing Company

12044

Employee					SSN	Status (Fed/State)	Allowances/Extra
Michael C. Sargeant, 2001 Ramrod Ave. #2215, Henderson, NV 89014					6207	Single (none)	Fed-1/0/NV-0/0
					Pay Period: 05/24/2014 - 05/26/2014		Pay Date: 06/13/2014
Earnings and Hours		Qty	Rate	Current	YTD Amount		
Minimum Wage Subsidy		57.46	1.43	125.10	125.10		
Driver Commission		1.00	416.41	416.41	416.41		
Tip Supplemental				82.78	82.78		
		57.46		634.30	634.30		
Taxes				Current	YTD Amount		
Federal Withholding				42.00	42.00		
Social Security Employee				39.33	39.33		
Medicare Employee				9.20	9.20		
				90.53	90.53		
Adjustments to Net Pay				Current	YTD Amount		
Tips Out				82.78	82.78		
Net Pay				450.98	450.98		

Employee					SSN	Status (Fed/State)	Allowances/Extra
Michael C. Sargeant, 2001 Ramrod Ave. #2215, Henderson, NV 89014					***-**-5207	Single/(none)	Fed-1/0/NV-0/0
					Pay Period: 07/05/2014 - 07/16/2014		Pay Date: 07/25/2014
Earnings and Hours		Qty	Rate	Current	YTD Amount		
Minimum Wage Subsidy		57.08	4.37	243.73	583.62		
Driver Commission		1.00	166.01	166.01	1,163.01		
Incentive #5			5.00	5.00	18.00		
Tips Supplemental				46.71	267.79		
Supervisor Counseling Pay				0.00	1.46		
		57.08		460.45	2,031.87		
Taxes				Current	YTD Amount		
Federal Withholding				-22.00	-111.00		
Social Security Employee				-28.56	-125.96		
Medicare Employee				-6.87	-29.48		
				-57.23	-266.44		
Adjustments to Net Pay				Current	YTD Amount		
Tips Out				-46.71	-267.79		
Cash loan				-10.00	-10.00		
				-56.71	-277.79		
Net Pay				346.52	1,467.64		

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

Employee					SSN	Status (Fed/State)	Allowances/Extra
Michael C. Sargeant, 2001 Ramrod Ave. #2215, Henderson, NV 89014					***-**-5207	Single/(none)	Fed-1/0/NV-0/0
					Pay Period: 07/19/2014 - 08/01/2014		Pay Date: 07/28/2014
Earnings and Hours		Qty	Rate	Current	YTD Amount		
Minimum Wage Subsidy		22.81	4.08	93.08	676.68		
Driver Commission		1.00	72.41	72.41	1,235.42		
Tips Supplemental				17.90	285.69		
Supervisor Counseling Pay				0.00	1.46		
Incentive #5				0.00	16.00		
		22.81		183.37	2,215.24		
Taxes				Current	YTD Amount		
Federal Withholding				0.00	-111.00		
Social Security Employee				-11.36	-187.34		
Medicare Employee				-2.66	-32.12		
				-14.02	-280.46		
Adjustments to Net Pay				Current	YTD Amount		
Tips Out				-17.90	-285.69		
Cash loan				0.00	-10.00		
				-17.90	-295.69		
Net Pay				151.45	1,629.09		

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

12959

A CAB, SERIES LLC Employee Leasing Company

Employee: Michael C. Sargeant, 2001 Remond Ave. #2215, Henderson, NV 89014
 GEN: 21-5207 Status (Fed/State): Single (none)
 Allowances/Extra: Fed-103 NY-040
 Pay Period: 07/19/2014 - 08/01/2014
 Pay Date: 07/28/2014

Earnings and Hours	Ow	Rate	Current	YTD Amount
Minimum Wage Subsidy	22.81	4.09	93.03	676.88
Driver Commission	1.00	72.41	72.41	1,235.42
Tips Supplemental			17.90	295.59
Supervisor Counseling Pay			0.00	1.45
Incentive \$	22.81		0.00	16.00
			183.37	2,215.24

Taxes	Current	YTD Amount
Federal Withholding	0.00	-111.00
Social Security Employee	-11.36	-137.34
Medicare Employee	-2.66	-32.12
	-14.02	-380.46

Adjustments to Net Pay	Current	YTD Amount
Tips Out	-17.90	-385.69
Cash loan	0.00	148.00
	-17.90	-235.69

Net Pay 151.45 1,839.08

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

EXHIBIT "N"



Litigation
services

3770 Howard Hughes Pkwy,
STE 300
Las Vegas NV 89169
Phone: 800-330-1112
Fax: 702-631-7351
www.litigation-services.com

Leon Greenberg, Esq.
Leon Greenberg Professional Corporation
2965 South Jones Boulevard
Suite E4
Las Vegas, NV 89146

INVOICE

Invoice No.	Invoice Date	Job No.
1021465	8/31/2015	261171
Job Date	Case No.	
8/18/2015		
Case Name		
Murray vs. A Cab Taxi Service LLC		
Payment Terms		
Due upon receipt		

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:

Creighton Nady	325.00	Pages	@	4.00	1,300.00
Exhibit	124.00	Pages	@	0.55	68.20
Full Day Per Diem				200.00	200.00
Overtime/After 5:00pm	2.00	Hours	@	50.00	100.00
Conference Room at LIT				100.00	100.00
Litigation Support Package				25.00	25.00
Shipping/Handling				25.00	25.00
TOTAL DUE >>>					\$1,818.20
AFTER 9/30/2015 PAY					\$2,000.02
(-) Payments/Credits:					68.20
(+) Finance Charges/Debits:					0.00
(=) New Balance:					1,750.00

Tax ID: 27-5114755

Please detach bottom portion and return with payment.

Leon Greenberg, Esq.
Leon Greenberg Professional Corporation
2965 South Jones Boulevard
Suite E4
Las Vegas, NV 89146

Job No. : 261171 BU ID : LV-CR
Case No. :
Case Name : Murray vs. A Cab Taxi Service LLC

Invoice No. : 1021465 Invoice Date : 8/31/2015
Total Due : \$1,750.00

Remit To: **Litigation Services and Technologies of
Nevada, LLC
PO Box 843298
Los Angeles, CA 90084-3298**

PAYMENT WITH CREDIT CARD



Cardholder's Name: _____
Card Number: _____
Exp. Date: _____ Phone#: _____
Billing Address: _____
Zip: _____ Card Security Code: _____
Amount to Charge: _____
Cardholder's Signature: _____ **RA 00087**

INVOICE



Litigation
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STE 300
Las Vegas NV 89169
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Fax: 702-631-7351
www.litigationservices.com

Leon Greenberg, Esq.
Leon Greenberg Professional Corporation
2965 South Jones Boulevard
Suite E4
Las Vegas, NV 89146

Invoice No.	Invoice Date	Job No.
1016857	8/3/2015	255249
Job Date	Case No.	
7/8/2015		
Case Name		
Murray, et al. vs. A Cab Taxi Service LLC		
Payment Terms		
Due upon receipt		

Original & One Certified Copy - Deposition of:

James Morgan	121.00	Pages	@	4.00	484.00
Exhibit	9.00	Pages	@	0.55	4.95
Half Day Per Diem	1.00		@	100.00	100.00
Litigation Support Package	1.00		@	25.00	25.00
Shipping/Handling	1.00		@	25.00	25.00
TOTAL DUE >>>					\$638.95
AFTER 9/2/2015 PAY					\$702.85

Thank you for your business!

Tax ID: 27-5114755

Please detach bottom portion and return with payment.

Leon Greenberg, Esq.
Leon Greenberg Professional Corporation
2965 South Jones Boulevard
Suite E4
Las Vegas, NV 89146

Invoice No. : 1016857
Invoice Date : 8/3/2015
Total Due : \$638.95
AFTER 9/2/2015 PAY \$702.85

Remit To: **Litigation Services & Technologies of Nevada,
LLC
PO Box 843298
Los Angeles, CA 90084-3298**

Job No. : 255249
BU ID : LV-CR
Case No. :
Case Name : Murray, et al. vs. A Cab Taxi Service LLC

RA 00088

EXHIBIT "O"

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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY, and MICHAEL)
RENO, Individually and on)
behalf of others similarly)
situated,)
)
)
Plaintiffs,)
)
vs.) CASE NO.
) A-12-669926-C
)
A CAB TAXI SERVICE LLC, and)
A CAB, LLC,)
)
)
Defendants.)
)

DEPOSITION OF EDWIN BOROWSKI

Taken at Depo International
703 South Eighth Street
Las Vegas, Nevada 89101

Wednesday, September 30, 2015
12:59 P.M.

Reported by: Angela Campagna, CCR #495

1 Q. Okay. You just testified that you
2 don't have anything to do with that. My question
3 was whether you're aware?

4 A. What was the question again?

5 Q. Question is whether you are aware if
6 A Cab looks at the time that it's cab drivers work
7 in order to ensure that they are paid the minimum
8 wage?

9 MS. RODRIGUEZ: I'm going to object. The
10 question doesn't make any sense. It's nonsensical.

11 THE WITNESS: I don't know if they do or
12 don't.

13 BY MS. SNIEGOCKI:

14 Q. Do you ever get any complaints from any
15 drivers about the pay they are receiving?

16 A. Actually, no.

17 Q. No driver has ever said to you, "Hey,
18 Ed, I'm not happy with my pay?"

19 A. No.

20 Q. Okay. When a cab driver starts his or
21 her shift at A Cab is that cab driver given a trip
22 sheet?

23 A. What is the question?

24 MS. SNIEGOCKI: Could you read the question?

25 (Record read by reporter)

1 THE WITNESS: They are given -- we give them
2 an inspection form to inspect the vehicle.

3 BY MS. SNIEGOCKI:

4 Q. But my question was whether they are
5 given a trip sheet?

6 A. They are.

7 Q. So the answer is yes?

8 A. Yes. They are given a trip sheet.

9 Q. By whom are they given a trip sheet?

10 A. It is actually generated through the
11 computer and printed off and I hand it to them.

12 Q. You said it was generated through the
13 computer and printed out?

14 A. Correct.

15 Q. Who prints it?

16 A. The computer prints it. I don't print
17 it. The computer prints it out. It's like a high
18 tech thing. It's got a computer and then it's got a
19 printer and then I push a button and it prints out a
20 trip sheet. It's amazing.

21 Q. So just so I understand your testimony,
22 do you tell the computer to print out the trip
23 sheet?

24 A. It's not a voice commanded computer so
25 I have to push a button.

1 Q. So you push a button in order to make a
2 trip sheet print; is that right?

3 A. Yes.

4 Q. And --

5 A. It's amazing.

6 Q. And do you do that for every driver on
7 a shift?

8 A. Every driver that would show up.

9 Q. Approximately when would you do that?

10 A. When the driver comes back with the
11 inspection form and I just print them out a trip
12 sheet or the computer prints it out. I don't
13 personally print it because I don't have the
14 technology. The computer prints it out.

15 Q. I understand you're not a computer;
16 right?

17 A. I'm not a computer. I don't print
18 anything. It's the printer that prints it.

19 Q. You mentioned when the driver comes
20 back with the inspection sheet --

21 A. Correct.

22 Q. -- is when you would press the button
23 to print; is that right?

24 A. Correct.

25 Q. When does the driver get the inspection

1 sheet?

2 A. I just answered the question.

3 Q. When does the driver get the inspection
4 sheet?

5 A. When? Oh, the inspection sheet, I'm
6 sorry. I thought you meant the trip sheet. When
7 they show up for work.

8 Q. Who gives them the inspection sheet?

9 A. I do or a supervisor. Not just me.
10 There is other supervisors.

11 Q. Okay. So how does that process work?
12 Does the driver go up to a supervisor and ask for an
13 inspection sheet?

14 A. Well, the process works when they come
15 up to the supervisor which I'm in my office and they
16 show me their T.A. card. It has bar codes on it and
17 I make sure it's the cab driver. Then I scan it
18 through the bar code and then it scans in the
19 computer and then it shows me that that person, John
20 Doe, click, is here, and then I give them an
21 inspection form if they have a scheduled shift.

22 Q. And then what -- after you give the
23 inspection form to the driver what is the driver
24 then supposed to do, if anything?

25 A. Well, he is or he or she is supposed to

1 go and inspect the vehicle and then they bring the
2 inspection form back.

3 Q. How long does a typical inspection of
4 the vehicle by the driver take?

5 A. Maybe three, four minutes.

6 Q. And then once the driver has completed
7 the inspection they bring the inspection sheet back
8 to you; is that right?

9 A. Correct.

10 Q. And at that point you give them the
11 trip sheet?

12 A. Correct.

13 Q. You had mentioned when the driver first
14 comes to you they give you their T.A. card for you
15 to scan; is that right?

16 A. Yes.

17 Q. And then I believe what you said was
18 their name will pop up on your computer after that
19 scan is performed; is that right?

20 A. Yes. It has a bar code on the back of
21 the T.A. and that bar code matches their name in the
22 computer. I don't know how it does it, technology.
23 It just you scan the bar code. There was a guy --
24 it just pops their name up. I don't know how it
25 does it.

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)

I, Angela Campagna, a certified court reporter in Clark County, State of Nevada, do hereby certify:

That I reported the taking of the deposition of the witness, EDWIN BOROWSKI, on Wednesday, September 30, 2015, commencing at the hour of 12:59 p.m.

That prior to being examined, the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of shorthand notes taken down at said time.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 7th day of October 2015.

ANGELA CAMPAGNA, CCR #495

EXHIBIT "P"

1	DISTRICT COURT		
2	CLARK COUNTY, NEVADA		
3			
4	MICHAEL MURRAY, and MICHAEL)	
	RENO, Individually and on)	
5	behalf of others similarly)	
	situated,)	
6)	
)	
7	Plaintiffs,)	
)	
8	vs.)	Case No. A-12-669926-C
)	DEPT. NO. I
9	A CAB TAXI SERVICE LLC, and A)	
	CAB, LLC,)	
10)	
)	
11	Defendants.)	
)	

12 _____

13

14

15

16 DEPOSITION OF

17 JAMES MORGAN

18 LAS VEGAS, NEVADA

19 WEDNESDAY, JULY 8, 202015

20

21

22

23

24 Reported by: Johanna Vorce, CCR No. 913

25 Job No.: 255249

1 this is an accurate description of the program.

2 MR. GREENBERG: I'm not asking you to do that, and
3 you have clarified that the first sentence of paragraph 2 is
4 not correct, in respect to the design -- intended design of
5 the Cab Manager System. You clarified that, sir.

6 Mr. Morgan, what I am going to do is I am going to
7 ask you a series of questions that discuss information that
8 is in this document, and I would ask you whether you agree
9 with my questions or disagree. Excuse me. Agree or
10 disagree with the propositions I'm going to put to you --

11 THE WITNESS: Okay.

12 MR. GREENBERG: -- through my series of questions.

13 THE WITNESS: Okay.

14 BY MR. GREENBERG:

15 Q. Now, Mr. Morgan, the Cab Manager System has the
16 capacity, and when I -- whenever I'm talking about the Cab
17 Manager System today, I'm talking about the system that your
18 company has provided to A Cab. Okay?

19 A. Okay.

20 Q. So if for some reason -- just strike the last
21 portion that I stated.

22 The information in A Cab's Cab Manager System that
23 is contained there can include the time and date that bar
24 code scans were performed if those bar code scans were
25 initially recorded into the Cab Manager System and they have

1 been maintained in that system, correct?

2 A. Yes.

3 Q. Now, the Cab Manager System software can be used
4 to organize .pdf files.

5 A. Yes.

6 Q. So that is correct?

7 A. (Witness nods head.)

8 Q. Now, .pdf files, you agree, are not database
9 files; they are scanned images?

10 A. That is correct.

11 Q. And that would include a scanned image of a taxi
12 driver's trip sheet that they fill out each shift that they
13 work?

14 A. Correct.

15 Q. Now, the information that is stored in the Cab
16 Manager System is not limited to .pdf files; is that
17 correct?

18 A. That's correct.

19 Q. And the Cab Manager database system uses
20 information that are in database files for tables to perform
21 various functions, not .pdf files, correct?

22 A. Correct.

23 Q. Now, those database files or tables can contain
24 historic information. That historic information can include
25 such as the days and times a particular taxi medallion was

1 Q. Well --

2 A. It records a lot of productivity information,
3 which is what it was designed to do.

4 Q. What sort of productivity information?

5 A. You know, I -- I have a little bit of a problem
6 with -- with the details of some of the questions because my
7 software that I have taken the last 20 years to create is
8 proprietary software and there are people all over the
9 country that would love to get their hands on any of that
10 information as to how we do anything in our software. And
11 I'm not really comfortable revealing in a document that I
12 assume is going to be public record those kind of details
13 about our software. It makes me very uncomfortable.

14 Q. Mr. Morgan, I'm not asking you to reveal
15 information about how the Cab Manager software works.
16 Again, the purpose of my questions are to have it clear what
17 sorts of information Cab Manager can be used, has the
18 capacity to record.

19 Now, you --

20 A. I understand what you're saying. But again, my
21 problem is even telling people what information is there,
22 what it relates to, it -- it exposes me to some risk in my
23 business, my business model and the products that I sell.

24 Q. Well --

25 A. It's a very proprietary product, and it is -- it

1 is a very powerful product, and there's a lot of our
2 competition that will do anything to try to get any
3 information out of it. And that's a hard thing for me to
4 do.

5 Q. I understand, Mr. Morgan.

6 A. I'm not trying to be -- I'm not trying to be --
7 I'm not trying to impose on what you're doing. I would love
8 to be able to help, but I can't expose my company to that
9 kind of risk.

10 Q. No.

11 Mr. Morgan, you've been directed to appear by
12 subpoena. I certainly am not interested in seeing you
13 subjected to any sort of penalty from the court. I'm not
14 interested in seeing you give testimony that you are
15 uncomfortable about giving. The problem, Mr. Morgan, is
16 that there have been representations made in this case, not
17 by yourself but by A Cab and A Cab's counsel, about what
18 information is stored in the Cab Manager System. Those
19 representations, some of them, are incorrect. And
20 unfortunately, I need to explain to the court what is
21 incorrect about those representations, which is why I am
22 asking you about the capacity of the system to store certain
23 kinds of information.

24 A. I understand.

25 MS. ROGRIGUEZ: Okay. Hold on. I'm waiting for

1 A. -- "Mr. Morgan verbally conveyed." That's
2 indicating that I said something.

3 Q. This is -- this is --

4 MS. ROGRIGUEZ: Just so that you're clear -- yeah.

5 MR. GREENBERG: This is not my statement,
6 Mr. Morgan.

7 THE WITNESS: That's okay.

8 MS. ROGRIGUEZ: This is my statement, Mr. Morgan.

9 THE WITNESS: And that's fine. It says, "verbally
10 conveyed to Plaintiffs' counsel that most of these systems
11 have nothing to do with payroll operations," which is --
12 is -- is true to the large extent. "Mr. Morgan visually
13 demonstrated to Plaintiffs' counsel what has already been
14 represented; that being, the data stored in the system is a
15 series of scanned documents or '.pdf'" -- Some of the data
16 that's stored in it, yes. All this -- this is -- this is
17 pretty much true. Manipulated -- that's true. Other
18 than -- other than the -- other than the -- the statement
19 that's made after the semicolon is true. That's all right.
20 BY MR. GREENBERG:

21 Q. Mr. Morgan, then it is your testimony that the
22 only data stored in the Cab Manager System is a series of
23 scanned documents --

24 A. No.

25 Q. -- or .pdf files?

1 MS. ROGRIGUEZ: Objection; misstates --

2 THE WITNESS: No.

3 MR. GREENBERG: No.

4 MS. ROGRIGUEZ: -- prior testimony.

5 MR. GREENBERG: Okay.

6 THE WITNESS: That's not true.

7 BY MR. GREENBERG:

8 Q. So if this sentence that we were just going over
9 was to be understood to mean that the only information in
10 the Cab Manager System was information contained in .pdf
11 files, if I was to understand that, that would be an
12 incorrect understanding?

13 A. That's true.

14 MS. ROGRIGUEZ: Objection; it's misstating the
15 document, Leon. I think it's not fair. You're -- you're --
16 you're pulling this completely out of context. This is what
17 happened at the site inspection.

18 MR. GREENBERG: Counsel. Counsel.

19 MS. ROGRIGUEZ: And I think you're purposely
20 trying to confuse the witness.

21 MR. GREENBERG: Counsel.

22 MS. ROGRIGUEZ: This is a sentence that says,
23 "Mr. Morgan demonstrated to Plaintiffs' counsel," and you're
24 asking him a completely different -- to confirm something
25 completely different.

1 MR. GREENBERG: Counsel, you can object to the
2 form of the question and say that it is improper. You're
3 not allowed to make speaking objections, and I would ask you
4 to refrain from that.

5 MS. ROGRIGUEZ: Well, you're --

6 MR. GREENBERG: Can I please continue with the
7 examination, Counsel?

8 MS. ROGRIGUEZ: Not if you're going to
9 misrepresent to the witness.

10 MR. GREENBERG: Counsel, you can put your
11 objection on the record that the form of the question is
12 improper and we will move on.

13 Q (By Mr. Greenberg) Mr. Morgan, does the Cab
14 Manager System used by A Cab only store information --

15 A. No.

16 Q. -- in .pdf files?

17 A. No.

18 Q. What other format does it store information in?

19 A. I -- I thought we already established that it
20 stores data in a database format. Those are not documents.
21 That's data.

22 Q. Those are not .pdf files --

23 A. No.

24 Q. -- correct?

25 So when I say, "Those are not .pdf files" --

1 A. That's correct.

2 MR. GREENBERG: That is correct. Thank you,
3 Mr. Morgan.

4 Now, if you can, mark this as Exhibit 3.

5 (Plaintiffs' Exhibit 3 was marked
6 for identification.)

7 MR. GREENBERG: And if we could, just go off the
8 record for a minute.

9 (Discussion off the record.)

10 BY MR. GREENBERG:

11 Q. Mr. Morgan, Exhibit 3 is a copy of a trip sheet.
12 Now, on the first page of Exhibit 3, there are various
13 preprinted sections, a box that says driver name, TA number,
14 MED period, cab number, date, shift, time start. Do you see
15 those boxes at the top?

16 A. Yep.

17 Q. They all have preprinted information in them.

18 A. Um-hmm.

19 Q. Is that information that when this document was
20 created would have come from the Cab Manager System?

21 A. Not all of it.

22 Q. Which of those would have come from the Cab
23 Manager System?

24 A. The labels on all the field are created by
25 somebody at A Cab, and these are not always necessarily

1 accurate. But those labels come on the form already. Cab
2 Manager fills in some data here.

3 Q. Right. So, for example, the box where it says
4 driver name, that term, "driver name," is filled in by --

5 A. Correct.

6 Q. -- A Cab? They put in the label for that box?

7 A. Correct.

8 Q. The name of the driver that appears there, which
9 says Murray Michael P., is a piece of information that the
10 Cab Manager System pulls from its database file and prints
11 there; is that correct?

12 A. Yes.

13 Q. And is that correct for the other boxes we were
14 discussing?

15 A. Again, the labels are created by somebody at A
16 Cab. What they call those fields is totally up to them. We
17 put data in there, but it may not be exactly what that label
18 says it is.

19 Q. Right. But the data that appears in those --

20 A. The data in the fields comes from Cab Manager.

21 Q. Now, my question to you is: The data that is in
22 those fields, does Cab Manager have the capacity after this
23 document is generated for me to go back and ask the Cab
24 Manager System to tell me, by way of example, Cab 1341, can
25 you tell me on date August 13th, 2010, the information that

1 appears in the other two fields, if I wanted to know who was
2 driving that and the time that they started driving, as
3 reported on this document? Would Cab Manager be able to
4 tell me that a week later, a month later, a year later,
5 assuming the data was preserved in the system?

6 A. Assuming the data is preserved in the system, that
7 would be a true statement. Not all of the data is always
8 preserved though. Some of it is just created on the fly and
9 is dumped as it's created.

10 Q. Okay.

11 A. It's not needed later on.

12 Q. As a matter of default operation, if you know, is
13 the Cab Manager System used by A Cab set to preserve the
14 time-start data that appears on this document?

15 A. Well, you're -- you're -- there's an assumption
16 there that I didn't agree to. It says "time start" here.
17 That, again, is a label that was put on there by somebody at
18 A Cab. What information we actually put into that field may
19 be the time start, start time, whatever you want to call it.
20 It may be the time that something else occurred that was
21 incidental to this.

22 We have been told point blank by the -- well, I
23 don't need to give you that information. It's --

24 The answer to your question is sometimes yes,
25 sometimes no. I -- I can't give you a definitive answer on

1 that in every situation.

2 Q. So just to clarify, you don't know if the A Cab
3 Cab Manager System is set by default to preserve
4 historically the time and date that appear in this box that
5 says "time start"?

6 A. I don't.

7 Q. But it may?

8 A. It may.

9 Q. Are you familiar with the requirements of the
10 Nevada Taxi Commission that requires Las Vegas taxi
11 operators to report the number of shifts they've operated
12 their medallions for each day and the number of blown
13 shifts?

14 A. Yes.

15 COMMISSIONER BULLA REPORTER: Number of blown
16 shifts?

17 THE WITNESS: Blown, yes.

18 BY MR. GREENBERG:

19 Q. Is Cab Manager designed or have a function that
20 can assist A Cab in collecting that information so they can
21 report it accurately?

22 A. Can you give me a list of the information you're
23 talking about?

24 Q. Well --

25 A. You gave me a general. Give me some specifics.

1 capacity to store it?

2 A. I don't know.

3 Q. You don't know if it --

4 A. That's not information that we use, so I have no
5 idea. I really don't. I don't know.

6 Q. Okay. Well --

7 A. It's a very complicated program, and I'd have to
8 go back and look at all the details on it.

9 Q. Well, you're saying -- just to be clear,
10 Mr. Morgan -- that you don't know if the Cab Manager System
11 used by A Cab is, in fact, set up to store that information,
12 correct?

13 A. I don't know if Cab Manager even has the capacity
14 to store that information because in all honesty, we
15 don't -- I mean, I -- I could assume that it could, but I
16 don't know. There's so many -- Cab Manager is a very
17 complicated program, and I don't -- I don't know whether we
18 use that information or not.

19 Q. Okay.

20 A. I just don't. I don't remember.

21 Q. Now, Mr. Morgan, the database files that Cab
22 Manager uses and stores information on that we have been
23 discussing that A Cab uses, those files are stored on A
24 Cab's equipment, correct?

25 A. Yes.

1 Q. And a complete copy of those files could be made
2 if one had access to the server or the computer hard drive
3 where that information is stored?

4 MS. ROGRIGUEZ: Could you read back the question
5 please?

6 (Page 40, lines 1-3 read.)

7 MS. ROGRIGUEZ: Thank you.

8 THE WITNESS: It is possible to make a copy of the
9 entire database. But again, there's no way I could release
10 that kind of information. That's the heart of my entire
11 life's business to release that.

12 MR. GREENBERG: Right.

13 THE WITNESS: So that's not going to happen.

14 BY MR. GREENBERG:

15 Q. Well, Mr. Morgan, just so we can be clear, the Cab
16 Manager System you would -- used by A Cab, you would agree
17 relies upon two different kinds of files for its operation.
18 It relies on what I will call operational files, which is
19 the software your company has created, which actually runs
20 the system.

21 A. Right.

22 Q. And it also relies on database files which store
23 the information about A Cab's particular activities. Those
24 database files are operated on by the program or the
25 operational files, correct?

1 Q. That's it.

2 A. And I'm not going to answer that, not unless I
3 have an attorney that's going to represent me. I mean,
4 you're here; you're an attorney. He's got his attorney.

5 Q. Mr. Morgan, I apologize again.

6 A. Well, you're asking me if I'm willing -- if there
7 is a capability of doing something that I've already said I
8 can't do.

9 Q. I'm not asking you whether you --

10 A. That's like asking me if I could take a gun and go
11 shoot somebody in the head.

12 Q. Well, I don't want you to do that, Mr. Morgan.
13 I'm not asking you to do it.

14 A. Well, you wouldn't even ask me if I could do that.

15 Q. Mr. Morgan, if I went in surreptitiously into A
16 Cab's office and I knew where the server was, where the hard
17 drive was that contained all of the A Cab's -- all of A
18 Cab's Cab Manager database files that you have been
19 describing in your testimony, and I plugged a hard drive --
20 portable hard drive into that computer, could I instruct the
21 computer through the operating system, be it Windows or some
22 other form of operating system, to make a complete copy of
23 those files --

24 A. I already answered that question. I said you
25 could copy the whole hard drive.

1 Q. Which would, of course, include all of the Cab
2 Manager database files, correct?

3 A. Exactly.

4 Q. And in order to do that, I don't have to write a
5 special program, correct?

6 A. No.

7 Q. You think I don't have to write a special program,
8 correct?

9 A. No, not to copy a hard drive.

10 Q. I just want to be clear. When I say correct, I
11 don't have to write a special program to copy that hard
12 drive, the answer would be, yes, I don't have to write a
13 special program?

14 A. For the fourth time, yes, that's correct.

15 Q. I'm sorry. I don't want to be confusing. Forgive
16 me.

17 Mr. Morgan, please, if we could, look at Exhibit
18 1. The last paragraph of Exhibit 1 is paragraph 5.

19 MS. ROGRIGUEZ: I'm sorry. I didn't hear you.
20 What did you say?

21 MR. GREENBERG: Paragraph 5.

22 Q (By Mr. Greenberg) Mr. Morgan, the first sentence
23 of paragraph 5 states, "It is also fairly easy to
24 selectively copy only certain portions of the Cab Manager
25 database files, containing only certain types of

1 can be produced. What I'm trying to establish at this point
2 is the ability to produce just the discrete portion of the
3 information. That was what my line of questioning was
4 directed to and was fairly close to conclusion, Your Honor.

5 COMMISSIONER BULLA: So why don't I just stay on
6 the line and you continue the deposition?

7 MR. GREENBERG: Yes, Your Honor.

8 Q (By Mr. Greenberg) My question to you, Mr. Morgan,
9 was whether it would be possible for you to extract from the
10 Cab Manager System used by A Cab all records of dates and
11 times that are associated with particular activities by
12 particular taxi drivers.

13 A. Assuming the data is there, I could extract data,
14 but it has to be done in a way that does not reveal any of
15 our data modeling or the relationships between the data.
16 And that -- I would -- all I can do is give you the results
17 of our investigation. I can't give you the raw data because
18 then I have to give you the essence of what makes our
19 software work, which again, is proprietary, is the entire
20 heart of the value of my company that's taken me 20 years to
21 build. I can't give you that information.

22 MR. GREENBERG: Commissioner Bulla, I think you
23 understand the witness is concerned about some proprietary
24 intellectual property issues here, Your Honor. And I don't
25 want to cause any problems with the witness about that. I

1 A. First place, we don't know if it's recorded in the
2 system. Second place, that's a label that somebody put on
3 there. That label did not come out of Cab Manager. That's
4 saying that it's time start, whatever that means, I don't
5 know. I don't know what that number means, represents,
6 where it came from.

7 Other than that, I mean, I'm not disagreeing with
8 anything you're saying. But I don't know that that is a
9 start time.

10 Q. I understand, Mr. Morgan. I'm not asking you to
11 verify the accuracy or the characterization of that
12 information we're looking at. And we've already discussed,
13 you don't even know if that information is preserved in the
14 Cab Manager System.

15 My question to you is simply -- it sounds like you
16 could find, if that information is there, every time start
17 information that is associated with Mr. Murray, correct?

18 A. If the data exists in the database, I could pull
19 that data tied to driver and give you the results of that
20 investigation. Again, I can't give you the raw data, which
21 you had asked for before. I'm not going to do that.

22 Q. When you say "the results," could you give me an
23 Excel spreadsheet that would show the date and the time that
24 was returned --

25 A. I could give you something along those lines.

1 Whether it's an Excel spreadsheet or something else, I don't
2 know. I would have to look and see what -- how we could get
3 the results out of it.

4 MR. GREENBERG: Commissioner Bulla, this was the
5 inquiry that I was trying to get to the bottom of here. And
6 I believe the witness has provided a good answer.

7 I thank you, Mr. Morgan.

8 I don't want to take up your time unnecessarily,
9 Commissioner Bulla. It's up to you whether you feel that
10 you need to stay on or should stay on. But I'm not going to
11 be inquiring further with this witness about this subject
12 matter.

13 COMMISSIONER BULLA: Well, having said that, I
14 will go ahead and let the deposition continue without me.

15 If there are additional difficulties, I would just
16 encourage counsel to place another call. I will be
17 available until 5:00. So if there's another problem that
18 arises, please feel free to call me, and I'll take your
19 call.

20 MS. ROGRIGUEZ: Thank you, Your Honor. We
21 appreciate it.

22 MR. GREENBERG: Thank you.

23 COMMISSIONER BULLA: Thank you. Bye. Bye.

24 BY MR. GREENBERG:

25 Q. Mr. Morgan, does Cab Manager have certain reports

1 Q. "Mr. Morgan, visually demonstrated to Plaintiffs'
2 counsel what had already been represented; that being, the
3 data stored in the system is a series of scanned documents
4 or '.pdf' files which cannot be manipulated in the
5 searchable format Plaintiffs seek."

6 Do you see where I'm --

7 A. That's true.

8 Q. -- reading from?

9 A. I do recall that conversation, and that's -- that
10 is true.

11 Q. Is that an accurate representation of what
12 occurred during the site inspection?

13 A. Let me read this again.

14 Yes.

15 Q. Let me refer you to Exhibit No. 3 because there's
16 been a lot of your testimony pertaining to this, page 1, a
17 little box that is labeled time start.

18 A. Yes.

19 Q. Do you see where I'm referring to?

20 A. I do.

21 Q. Is it your testimony that you do not know for
22 certain what that date and time is capturing?

23 A. That's correct.

24 Q. Do you know for certain whether it is from Cab
25 Manager?

1 A. I don't know for certain. It could have come from
2 the computer system itself. I -- I -- I don't know.

3 Q. Okay.

4 A. I would have to look at that and verify it.

5 MS. ROGRIGUEZ: I don't have any further questions
6 for you, Mr. Morgan.

7 THE WITNESS: Okay.

8 MS. ROGRIGUEZ: Thank you.

9 FURTHER EXAMINATION

10 BY MR. GREENBERG:

11 Q. Mr. Morgan, I'm sorry. I need to try to clarify
12 something. In respect to Exhibit 2, that sentence that you
13 just went over with Ms. Rodriguez, you did demonstrate that
14 there were .pdf files of trip sheets stored in the Cab
15 Manager System on March 31st.

16 A. Yes.

17 Q. And I agree with you. You did. But I just want
18 to be clear from your testimony -- we did discuss this
19 earlier -- that the information that is stored in Cab
20 Manager is not limited to .pdf files, correct?

21 A. That's true.

22 Q. There is information such as scheduling of shifts
23 possibly, meter fares received, information relating to
24 particular medallions that is stored -- and other things --

25 A. Yes.

1 Q. -- that is stored in Cab Manager, correct?

2 A. Yes.

3 Q. And if I wanted to retrieve information based upon
4 a particular medallion or a particular driver or for a
5 particular date, Cab Manager has the capacity to retrieve
6 certain information that corresponds to a particular date I
7 designate, a particular medallion I designate, a particular
8 driver I designate, correct?

9 MS. ROGRIGUEZ: No. I'm going to object to that.
10 We just went over that with the discovery commissioner.
11 You're asking him the same question again.

12 MR. GREENBERG: Counsel, my question stands. I'd
13 like an answer.

14 THE WITNESS: Restate the question.

15 MR. GREENBERG: Could we please --

16 THE WITNESS: I thought we talked about this when
17 I was --

18 MR. GREENBERG: We did, Mr. Morgan. The only
19 reason I'm asking this to clarify is because Ms. Rodriguez
20 asked you a question that you agreed with that implies that
21 the only information stored in Cab Manager is in a .pdf
22 format.

23 THE WITNESS: That's not what I heard her say.

24 MS. ROGRIGUEZ: And that's not -- I'll stipulate
25 to that, Leon. I don't think that's the issue.

1 THE WITNESS: I didn't hear that.

2 MS. ROGRIGUEZ: It never has been an issue.

3 MR. GREENBERG: Well, could I have the last
4 question read back?

5 And if you could answer, Mr. Morgan, I think we
6 should be done.

7 (Page 100, lines 3-8 read.)

8 BY MR. GREENBERG:

9 Q. If I designate what information I would like?

10 A. Assuming the information is there, yes.

11 MR. GREENBERG: That is fine. We're done,
12 Mr. Morgan.

13 MS. ROGRIGUEZ: Well, we're not done, because I
14 think -- and I will bring that to the discovery
15 commissioner's attention that you've deliberately gone
16 around her presence on this and asked the question again.
17 But we'll address that.

18 FURTHER EXAMINATION

19 BY MS. ROGRIGUEZ:

20 Q. But as a followup, Mr. Morgan, everything that we
21 just -- this discussion about the data that was available in
22 the Cab Manager, we discussed that in the presence of
23 Mr. Nady, Mr. Greenberg, another attorney who was present
24 Ms. Sniegocki, as well as myself during the site inspection;
25 is that your recollection?

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) SS
4 COUNTY OF CLARK)

5 I, Johanna Vorce, Certified Court Reporter, do
6 hereby certify:

7 That I reported the taking of the deposition of
8 the witness, JAMES MORGAN, commencing on Wednesday, July 8,
9 2015, at 1:06 p.m.

10 That prior to being examined, the witness was by
11 me duly sworn to testify to the truth.

12 That I thereafter transcribed my shorthand notes,
13 and the typewritten transcript of said deposition is a
14 complete, true, and accurate transcription of said shorthand
15 notes.

16 That a request has been made to review the
17 transcript.

18 I further certify that I am not a relative or
19 employee of an attorney or counsel of any party involved in
20 said action, nor a relative or employee of the parties
21 involved, nor a person financially interested in said
22 action.

23 Dated this 12th day of July, 2015.

24
25

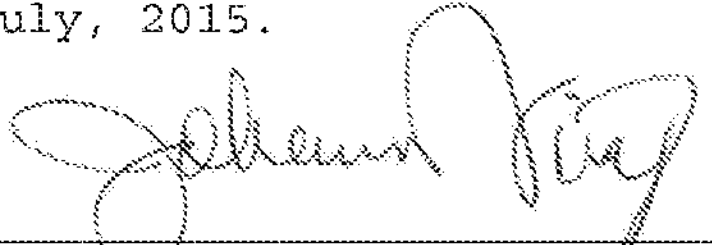

Johanna Vorce, CCR No. 913

EXHIBIT "Q"

EXHIBIT "Q"

1	DISTRICT COURT		
2	CLARK COUNTY, NEVADA		
3			
4	MICHAEL MURRAY, and MICHAEL)	
5	RENO, individually and on)	
6	behalf of others similarly)	
7	situated,)	CASE NO: A-12-669929-C
8)	
9	Plaintiffs,)	DEPT NO: I
10)	
11	vs.)	
12)	
13	A CAB TAXI SERVICE LLC, and)	
14	A CAB, LLC,)	
15)	
16	Defendants.)	
17	_____)	

11

12

13 DEPOSITION OF CREIGHTON NADY

14 LAS VEGAS, NEVADA

15 TUESDAY, AUGUST 18, 2015

16

17

18

19

20

21

22

23

24 REPORTED BY: BRITTANY J. CASTREJON, CCR NO. 926

25 JOB NO.: 261171

1	A. I don't recall.	11:16:30
2	Q. Besides those two experiences you've just recited	11:16:38
3	to me, are there any other times where you've given	11:16:47
4	testimony in an administrative proceeding you can	11:16:50
5	recall?	11:16:52
6	MS. RODRIGUEZ: I'm going to object to the	11:16:52
7	line of questioning, Mr. Greenberg, because Mr. Nady is	11:16:53
8	being produced this morning in response to your notice	11:16:57
9	of deposition which has specific categories. And I	11:17:00
10	understand you have to get some background for him, but	11:17:01
11	I don't -- I mean, unless you're addressing one of the	11:17:07
12	categories, I think your line of questioning is	11:17:10
13	improper.	11:17:14
14	MR. GREENBERG: Your objection is noted.	11:17:18
15	Can you please answer the question, Mr. Nady?	11:17:19
16	THE WITNESS: I don't remember any.	11:17:20
17	BY MR. GREENBERG:	11:17:21
18	Q. Did you do anything to prepare for your testimony	11:17:21
19	today, Mr. Nady?	11:17:29
20	A. I had breakfast and I had a bagel.	11:17:29
21	Q. Did you review any documents to prepare for your	11:17:29
22	testimony today?	11:17:30
23	A. No, not one.	11:17:32
24	Q. Did you discuss anything with anyone in	11:17:34
25	preparation for your testimony today?	11:17:39

1 A. Not a soul. I did not discuss it with anybody.

2 Q. Do you understand that you're being produced to
3 give testimony today in respect to certain specific
4 things involving Defendants A Cab Taxi Service, LLC, and
5 A Cab, LLC?

6 A. Are you going to be more specific about what
7 specific things?

8 Q. Well, we will get to that, Mr. Nady. My question
9 is just you understand you have been designated as a
10 person to answer questions on behalf of those two
11 corporations.

12 Do you understand that?

13 A. Yes.

14 Q. And do you believe you've adequately prepared
15 yourself to answer those questions -- excuse me --
16 questions about those things? You obviously don't know
17 what questions are going to be answered, but I take it
18 you do understand the things that you are supposed to
19 give answers about; correct?

20 MS. RODRIGUEZ: Objection. Vague. Calls
21 for speculation.

22 THE WITNESS: Was there a question there?

23 BY MR. GREENBERG:

24 Q. Mr. Nady, do you understand that there are
25 certain subjects that you are supposed to be prepared to

1 give answers to questions about today? 11:18:59

2 A. Are you going to be more specific about the 11:19:00

3 subjects? 11:19:04

4 Q. We will get to the subjects, Mr. Nady. Your 11:19:09

5 attorney was advised what the subjects were and what 11:19:11

6 your attorney advised you of is between you and your 11:19:14

7 attorney. I'm trying to understand whether you believe 11:19:17

8 -- you know what the subjects are that you're going to 11:19:20

9 be questioned about today? 11:19:24

10 A. I think I'm the best person for this deposition 11:19:30

11 as it was noticed. 11:19:31

12 Q. So just to confirm, you are referring to as 11:19:40

13 notice; meaning, you have actually seen the document 11:19:41

14 which contains the notice of deposition and sets forth 11:19:48

15 various -- 11:19:50

16 A. I have seen the notice of deposition. 11:19:50

17 Q. And you have reviewed it; correct? 11:19:54

18 A. And I have -- I didn't hear what you said. 11:19:56

19 Q. You have reviewed that document; correct? 11:20:00

20 A. Yes, I reviewed the document. No, I didn't 11:20:00

21 review it. I read it. I don't know if you call that 11:20:04

22 reviewing or not. 11:20:05

23 Q. Thank you. 11:20:08

24 Now, there are two defendants in this case that 11:20:09

25 are LLCs. One is registered with the name A Cab and the 11:20:11

1 A. That's correct.

2 MR. GREENBERG: That is correct. Thank you,
3 Mr. Morgan.

4 Now, if you can, mark this as Exhibit 3.
5 (Plaintiffs' Exhibit 3 was marked
6 for identification.)

7 MR. GREENBERG: And if we could, just go off the
8 record for a minute.

9 (Discussion off the record.)

10 BY MR. GREENBERG:

11 Q. Mr. Morgan, Exhibit 3 is a copy of a trip sheet.
12 Now, on the first page of Exhibit 3, there are various
13 preprinted sections, a box that says driver name, TA number,
14 MED period, cab number, date, shift, time start. Do you see
15 those boxes at the top?

16 A. Yep.

17 Q. They all have preprinted information in them.

18 A. Um-hmm.

19 Q. Is that information that when this document was
20 created would have come from the Cab Manager System?

21 A. Not all of it.

22 Q. Which of those would have come from the Cab
23 Manager System?

24 A. The labels on all the field are created by
25 somebody at A Cab, and these are not always necessarily

1	bachelor's degree, and you were a licensed CPA; correct?	11:44:50
2	A. Nope. Never took that. I took that exam and	11:45:00
3	failed it. I worked in a CPA firm for a few years.	11:45:03
4	Q. Your bachelor's degree was in accounting or was	11:45:10
5	it in a different field?	11:45:11
6	A. It was in accounting.	11:45:14
7	Q. Besides your bachelor's degree and your graduate	11:45:18
8	studies for an MBA which you did not complete, have you	11:45:24
9	undertaken any other college or graduate-level studies?	11:45:28
10	A. No.	11:45:34
11	Q. As part of your studies, either your studies to	11:45:37
12	get your bachelor's degree or your graduate studies you	11:45:44
13	undertook in the MBA program, did you ever study --	11:45:49
14	A. Sometimes.	11:45:57
15	Q. The question, sir, was did you ever study human	11:45:59
16	resource management?	11:46:03
17	A. What?	11:46:05
18	Q. Did you ever study human resource management?	11:46:09
19	A. I don't recall.	11:46:13
20	Q. Has information about the taxi cabs used by A Cab	11:46:20
21	been entered into any computer system or software by A	11:46:21
22	Cab?	11:46:31
23	A. Would you ask that question again? I didn't hear	11:46:32
24	you.	11:46:39
25	Q. Please repeat the question.	11:46:39

1	(The last question was read back by the	11:46:37
2	reporter as follows: "Has information about	11:46:29
3	the taxi cabs used by A Cab been entered into	11:46:24
4	any computer system or software by A Cab?")	11:46:29
5	MS. RODRIGUEZ: I'm going to object. It's	11:46:59
6	vague.	11:46:59
7	THE WITNESS: That's kind of a loaded	11:47:02
8	question because if I say has the information been	11:47:04
9	loaded, I'm not sure what loaded means. Has it been --	11:47:06
10	I don't think that's the correct term that you want to	11:47:19
11	use. So knowing -- not being sure what you meant by	11:47:19
12	loaded, maybe you could rephrase that for me.	11:47:26
13	BY MR. GREENBERG:	11:47:29
14	Q. The term loaded, Mr. Nady, would refer to entered	11:47:30
15	or recorded.	11:47:39
16	A. Oh, so loaded here means that the -- you're	11:47:37
17	asking them, if I could paraphrase you, if the	11:47:40
18	information from the taxi cabs -- would you be a little	11:47:45
19	more specific as to which information you're searching	11:47:48
20	for?	11:47:50
21	Q. No, Mr. Nady. My question is: Does A Cab	11:47:52
22	record, enter, keep a record of any information of its	11:47:59
23	taxi cabs in any computer system or software?	11:48:01
24	A. If I answer yes, you're going to say what? And	11:48:06
25	then I'm going to say, well, there's different parts of	11:48:11

1	it.	11:48:14
2	So I'll say yes, and you'll say what is recorded;	11:48:15
3	right?	11:48:20
4	Q. Well, what software or computer systems is that	11:48:21
5	information recorded in?	11:48:25
6	A. There's more than one software system.	11:48:26
7	Q. Please list all of them, sir.	11:48:29
8	A. I don't know all of them by name.	11:48:32
9	Q. Please tell me the ones you do know.	11:48:39
10	A. Okay. We have -- I don't know what Jim Morgan	11:48:41
11	calls his company name. I don't know. I forgot. I	11:48:49
12	think it's -- I've forgotten the name of the accounting	11:48:54
13	-- I take that back -- of the software that Jim Morgan	11:49:00
14	has from his company. You should know that. You	11:49:05
15	deposed him earlier. I don't remember the actual name	11:49:09
16	of it.	11:49:11
17	Q. Besides the software you're identifying as Jim	11:49:15
18	Morgan's software, what other software can you identify?	11:49:19
19	A. From the taxi cabs, I think there's a software	11:49:20
20	deal with VeriFone. I don't know what that's called	11:49:27
21	either. And we have a dispatch system from Jim Morgan's	11:49:34
22	company also. I think that's all. But I don't know	11:49:40
23	every system that's there. And they may be interlaced.	11:49:44
24	They may not be. I'm not certain.	11:49:51
25	MR. GREENBERG: Counsel, the witness to	11:49:57

1	Q. But in fact, Mr. Nady, you don't know all the	11:51:59
2	computer systems and software?	11:51:59
3	A. I don't think anybody knows all of the computer	11:51:59
4	systems, no.	11:52:00
5	Q. Who else would know about this besides you?	11:52:00
6	A. Almost everybody there knows a little bit.	11:52:00
7	MS. RODRIGUEZ: Hold on. I'm going to	11:52:00
8	object. Hold on. I'm objecting to your question. Who	11:52:00
9	knows about this? What? What are you referring to?	11:52:10
10	What is this?	11:52:10
11	MR. GREENBERG: The computer systems that	11:52:10
12	record or software that records information about A	11:52:10
13	Cab's taxis.	11:52:10
14	THE WITNESS: Jim Morgan is the guy I go to.	11:52:20
15	MR. GREENBERG: I understand, but Mr. Morgan	11:52:20
16	is not an employee of A Cab.	11:52:20
17	THE WITNESS: Truly.	11:52:20
18	BY MR. GREENBERG:	11:52:20
19	Q. Who works at A Cab who you think has knowledge	11:52:20
20	about this that may exceed your knowledge -- or excuse	11:52:30
21	me let me rephrase that.	11:52:30
22	Who at A Cab, besides yourself, you believe has	11:52:40
23	knowledge about the computer system or software that is	11:52:40
24	used to record information about taxi cabs, which	11:52:40
25	knowledge you don't have?	11:52:50

1	MS. RODRIGUEZ: Objection. Lacks	11:52:54
2	foundation.	11:52:57
3	THE WITNESS: Nobody knows more about it	11:52:57
4	than I do.	11:52:59
5	BY MR. GREENBERG:	11:52:59
6	Q. But your testimony here today is that you don't	11:53:00
7	actually know all of the computer systems and software	11:53:01
8	which A Cab uses to record information about taxis?	11:53:07
9	A. That's correct. And nobody at my company does.	11:53:11
10	Jim Morgan does that for me. We pay people who don't	11:53:19
11	work for me. We pay his people to do that.	11:53:20
12	Q. Prior to testifying today, did you make any	11:53:24
13	inquires with any other employees at A Cab about --	11:53:29
14	A. No, I did not.	11:53:29
15	Q. About anything that you're giving testimony here	11:53:28
16	on today?	11:53:30
17	A. I did not.	11:53:31
18	Q. And why didn't you?	11:53:34
19	A. I chose not to.	11:53:39
20	Q. And you understood that you were going to be	11:53:39
21	called upon to give answers to what was in the	11:53:39
22	deposition notice today; correct, Mr. Nady?	11:53:40
23	A. Of course I did, and I am the most knowledgeable	11:53:45
24	person.	11:53:49
25	Q. Sir, could you have obtained more knowledge about	11:53:50

1 the computer systems and software that A Cab uses to 11:53:54
2 record information from taxi cabs before you came here 11:53:57
3 today to give testimony? 11:53:59
4 A. Of course I could have -- I could have got more 11:54:01
5 information, but that didn't tell me I had to. It said 11:54:05
6 most knowledgeable, and I am the most knowledgeable. 11:54:08
7 But did it say go out and relearn a bunch of stuff? No. 11:54:12
8 It said who is the most knowledgeable? I am by far the 11:54:16
9 most knowledgeable. There isn't anybody in second 11:54:20
10 place. 11:54:23
11 Q. Mr. Nady, did you consult with your attorney 11:54:25
12 about your need to acquire knowledge about subject 11:54:28
13 matter for today to give testimony? 11:54:29
14 MS. RODRIGUEZ: Objection. I will assert a 11:54:31
15 privilege in terms of what he and I talked about. 11:54:34
16 MR. GREENBERG: I'm not asking what you told 11:54:37
17 him, Counsel. I'm asking whether he made any attempt to 11:54:39
18 find out whether he had any obligation to obtain 11:54:42
19 knowledge responsive to the notice of the deposition. 11:54:46
20 THE WITNESS: Same question disguised a 11:54:49
21 little bit differently, but I will not tell you anything 11:54:52
22 I discussed with my attorney, and for you to ask me, I 11:54:54
23 think, is improper. 11:54:59
24 MR. GREENBERG: Counsel, we have testimony 11:55:01
25 from the witness that he was aware of the notice of 11:55:04

1 Q. When you say he, who are you referring to?

01:44:23

2 A. Jim Morgan I'm talking about.

01:44:25

3 Q. Have you ever inquired with Mr. Morgan as to
4 whether the Cab Manager system stores any information --
5 any types of information, excuse me, in addition to the
6 types of information you mentioned previously?

01:44:28

01:44:31

01:44:34

01:44:38

7 A. No.

01:44:41

8 Q. So it's correct then that you have never asked
9 Mr. Morgan whether Cab Manager records times that
10 certain activities took place in?

01:44:45

01:44:50

01:44:53

11 MS. RODRIGUEZ: Objection. Vague.

01:44:59

12 THE WITNESS: I have never asked him if it
13 keeps the time or any times in Cab Manager, but you
14 have. I was there. And he said no 17 times by the way.
15 17 times he told you no.

01:45:01

01:45:05

01:45:12

01:45:19

16 I read that from his deposition. You asked him
17 17 times if it was kept, and he said, no, it wasn't. And
18 then you asked him in some other way, and you asked him,
19 I think -- he answered you three more times. I'm still
20 answering your question. I'm still answering your
21 question.

01:45:35

01:45:41

01:45:45

01:45:49

01:45:52

01:45:53

22 MR. GREENBERG: Mr. Nady, there's no
23 questions posed to you.

01:45:53

01:45:54

24 THE WITNESS: Yes, there was.

01:45:56

25 MR. GREENBERG: No, there isn't.

01:45:59

1	THE WITNESS: Oh, I'm still continuing with	01:45:59
2	the last question.	01:46:00
3	MR. GREENBERG: Off the record. Counsel, if	01:46:00
4	you're not going to --	01:46:00
5	MS. RODRIGUEZ: I don't agree to go off the	01:46:00
6	record because he's -- he needs to --	01:46:00
7	MR. GREENBERG: He answered -- Counsel, he	01:46:00
8	answered the question. Now he's giving a speech. I'm	01:46:00
9	not going to allow that.	01:46:10
10	THE WITNESS: I'm answering your question,	01:46:10
11	Counselor.	01:46:10
12	MR. GREENBERG: Mr. Nady, the question was a	01:46:10
13	yes or --	01:46:10
14	THE WITNESS: You don't like the answer. So	01:46:10
15	now you're trying to cut me off.	01:46:10
16	MR. GREENBERG: No.	01:46:20
17	THE WITNESS: That's the truth. You don't	01:46:20
18	like the answer because you --	01:46:20
19	MR. GREENBERG: Off the record.	01:46:20
20	THE WITNESS: No, you can't go off the	01:46:20
21	record.	01:46:20
22	MS. RODRIGUEZ: I'm not agreeing to go off	01:46:20
23	the record, Mr. Greenberg.	01:46:20
24	MR. GREENBERG: We're going off the record.	01:46:20
25	I'm ordering it off the record.	01:46:20

1	THE WITNESS: Oh, you're ordering it off the	01:46:58
2	record? I don't know if you can do that.	
3	MR. GREENBERG: It's my deposition.	
4	THE WITNESS: You spoiled little brat.	
5	MS. SNIEGOCKI: Did you get that on the	
6	record?	
7	MR. GREENBERG: Counsel --	
8	THE WITNESS: Are we on the record?	
9	MR. GREENBERG: No, we don't need any of	
10	this on the record. I want it off the record.	
11	Look, Counsel. It's a yes-or-no question.	
12	The answer is yes or no.	
13	MS. RODRIGUEZ: Are we still on the record?	
14	I didn't agree to go off the record.	
15	THE WITNESS: And I'm not going to answer	
16	until you -- we aren't going to discuss anything off the	01:46:58
17	record.	01:47:00
18	There's no purpose to be off the record. I	01:47:01
19	want a record of all this.	01:47:01
20	MS. RODRIGUEZ: He has a right to finish his	01:47:10
21	response to your question. That's all that we're here	01:47:10
22	arguing about is you asked a question; he wants to	01:47:16
23	finish his response.	01:47:19
24	MR. GREENBERG: Counsel, I'm going to --	01:47:19
25	MS. RODRIGUEZ: And then we'll go off the	01:47:20

1 record.

01:47:20

2 MR. GREENBERG: No. I'll tell you what.

01:47:20

3 We'll leave everything on the record. Okay?

01:47:20

4 THE WITNESS: Perfect.

01:47:20

5 MR. GREENBERG: Okay.

01:47:20

6 BY MR. GREENBERG:

01:47:20

7 Q. Mr. Nady, I want to make clear to you that if

01:47:20

8 you -- a question is yes-or-no answer, you give a

01:47:30

9 yes-or-no answer. That is sufficient. Okay? I've

01:47:30

10 given you a great deal of leeway to give expansive

01:47:30

11 answers beyond that, which is fine. And, Counsel, I

01:47:40

12 have, but we need to move forward, and that's why I was

01:47:40

13 objecting. So let's move forward.

01:47:50

14 MS. RODRIGUEZ: Well, he has a right to give

01:47:50

15 you a complete response. You cannot instruct him to

01:47:50

16 only answer a yes or no in the manner in which you

01:47:50

17 prefer.

01:48:00

18 So ask your questions, but he's entitled to

01:48:00

19 give you a full response.

01:48:00

20 MR. GREENBERG: No, Counsel, once he answers

01:48:00

21 the question yes or no, the answer is complete. He gave

01:48:10

22 a no answer to my question. The answer was complete.

01:48:10

23 He has no right to testify beyond that.

01:48:10

24 THE WITNESS: I disagree with that.

01:48:10

25 BY MR. GREENBERG:

01:48:20

1 A. Well, you remember we have every trip sheet, and
2 that's what we generated. That's the source documents.
3 Kept those.

4 Q. How far back do trip sheets exist that A Cab has
5 maintained?

6 A. I don't know. But those get deleted too. I
7 mean -- we probably have -- we started keeping those on
8 microfilm. I don't remember when that was, but I
9 imagine it was '11 or '12, something like that.

10 Q. When this case was commenced in 2012, it is
11 correct that A Cab would have had QuickBooks information
12 going back at least two years to 2010 at that time;
13 correct?

14 A. Yes.

15 Q. Today in 2015 does A Cab still have QuickBooks
16 information going back to 2010?

17 A. I don't know.

18 Q. Did A Cab make any effort to be sure it preserved
19 all of the QuickBooks information it had when this case
20 was started in 2012 once A Cab was advised about this
21 case existing?

22 A. We preserved all the pay stubs, and that might be
23 adequate.

24 Q. When you say --

25 A. In my opinion.

1	A. I don't know.	02:31:27
2	Q. Was it yesterday?	02:31:28
3	A. I don't know. Might have been just now.	02:31:30
4	Q. Mr. Nady, we discussed --	02:31:40
5	A. Mr. Greenberg.	02:31:47
6	Q. -- the QuickBooks data that is used to produce	02:31:48
7	the pay stubs at A Cab.	02:31:52
8	Is there any reason that data as it currently	02:31:54
9	exists at A Cab cannot be copied and produced?	02:31:57
10	A. Please request -- please ask that question again.	02:32:02
11	As it's used today?	02:32:05
12	Q. You've testified that there is a certain amount	02:32:09
13	of data kept in the QuickBooks system going back for	02:32:12
14	some period of time; that data was used to produce pay	02:32:16
15	stubs prior to today; correct?	02:32:25
16	A. We keep all of the data that's required by the	02:32:26
17	state or federal government.	02:32:31
18	Q. Well, Mr. Nady, correct me if I'm wrong. I	02:32:35
19	believe you testified there is at least two years' worth	02:32:38
20	of payroll data kept in the QuickBooks system; correct?	02:32:40
21	A. I believe so. I hope so.	02:32:46
22	Q. So in 2015, right now, there exists electronic	02:32:47
23	QuickBooks data files containing the information that	02:32:51
24	was used to print the payroll for a portion of -- the	02:32:55
25	payroll stubs, that is, we were talking about -- for a	02:33:01

1	portion of 2013, for 2014, and for 2015; correct, sir?	02:33:08
2	A. I'm going to try to find out where this stuff is	02:33:12
3	important, the stuff that happened in 2010 or '11.	02:33:16
4	Q. Let the record reflect the witness is consulting	02:33:20
5	the notice of deposition.	02:33:23
6	A. Thanks. Can you help me with this, or do you	02:33:26
7	want me to re-read the whole thing?	02:33:30
8	Q. I don't want you to read any of it. I want you	02:33:40
9	to answer my question.	02:33:44
10	A. I want to see where I was supposed to get this on	02:33:48
11	here. Can you refer this for me on here?	02:33:48
12	Q. Mr. Nady, I'm not going to refer anything to you	02:33:52
13	on the deposition notice. You're under the obligation	02:33:56
14	to answer the question. If you're not going to answer	02:33:56
15	it, we'll put your refusal on the record.	02:33:58
16	Counsel, could you please instruct your witness	02:34:02
17	that his conduct is not appropriate. He does not have	02:34:04
18	the right --	02:34:07
19	MS. RODRIGUEZ: He's just asking for your	02:34:08
20	assistance. I'm giving you an opportunity to answer it	02:34:10
21	as well. I'm not putting the objection that it's	02:34:13
22	outside the scope, but his concern is a legitimate one.	02:34:15
23	Are you still within the scope of your	02:34:18
24	deposition here?	02:34:20
25	MR. GREENBERG: Counsel, if you want to make	02:34:20

1 an objection, you can make an objection. An objection 02:34:23
 2 that I'm outside the scope of the notice isn't 02:34:25
 3 appropriate, but you can put -- 02:34:27
 4 MS. RODRIGUEZ: It is not appropriate? 02:34:29
 5 MR. GREENBERG: It is not appropriate as far 02:34:29
 6 as I'm concerned. 02:34:30
 7 MS. RODRIGUEZ: This is a notice of 02:34:30
 8 30(b)(6). You didn't notice this as the deposition of 02:34:31
 9 J. Nady. 02:34:30
 10 MR. GREENBERG: Counsel, I will stipulate on 02:34:30
 11 the record right now if any question is outside the 02:34:30
 12 scope of the notice of deposition, it's not admissible 02:34:40
 13 under 30(b)(6) for 30(b)(6) purposes. But you can put 02:34:40
 14 any objection -- 02:34:40
 15 MS. RODRIGUEZ: But you're just trying to 02:34:40
 16 ask everything under the sun? 02:34:50
 17 MR. GREENBERG: Counsel, there is a specific 02:34:50
 18 question pending. The witness is not answering it. You 02:34:50
 19 have not interposed an objection. It's fine for you to 02:34:50
 20 make an objection. 02:34:50
 21 MS. RODRIGUEZ: Do you have a problem with 02:35:00
 22 him looking at the notice? 02:35:00
 23 MR. GREENBERG: I do, Counsel, because he's 02:35:00
 24 delaying the progress of this deposition. He has no 02:35:00
 25 right to refuse to answer the question based on his 02:35:00

1	reading of the notice one way or the other.	02:35:11
2	THE WITNESS: I'm going to read the notice	02:35:14
3	whether you like it or not because I think I want to	02:35:15
4	refresh what I was reading yesterday. So I'm going to	02:35:16
5	go back to here where we're talking about QuickBooks.	02:35:21
6	MR. GREENBERG: Could you note the time?	02:35:30
7	THE COURT REPORTER: We can put time stamps	02:35:40
8	on the transcript if you want to.	02:35:46
9	MR. GREENBERG: Please do so. I want to	02:35:49
10	move this deposition forward. The witness is delaying,	02:35:51
11	and his conduct is improper. I am patiently waiting for	02:35:55
12	an answer, but he does have to answer.	02:35:57
13	MS. RODRIGUEZ: Well, I disagree with your	02:36:00
14	analysis here. He hasn't even taken 30 seconds to look	02:36:02
15	at a --	02:36:05
16	THE WITNESS: It's 2:35 on my cell phone	02:36:07
17	here.	02:36:10
18	MS. RODRIGUEZ: -- 12-page notice of	02:36:10
19	deposition, which as I've mentioned to you, 23	02:36:12
20	categories with subcategories. So you're free to help	02:36:15
21	this process along by pointing out what category you're	02:36:19
22	asking about so he doesn't have to go through the whole	02:36:22
23	thing.	02:36:25
24	MR. GREENBERG: Counsel, he doesn't have a	02:36:25
25	right to go through it. He needs to answer the	02:36:27

1	question.	02:36:29
2	THE WITNESS: I have a right to go through	02:36:29
3	it. I think I do. So I'm going to do it.	02:36:31
4	The payroll Bates Murray two, do we have a copy	02:36:51
5	of those? Are they on the back of this somewhere?	02:37:00
6	Ester --	02:37:01
7	MS. RODRIGUEZ: It's not on the back of	02:37:01
8	this, but I will find you a copy.	02:37:01
9	MR. GREENBERG: Counsel, I'm not asking the	02:37:11
10	witness any questions about any particular document. My	02:37:11
11	question remains pending. He needs to answer it.	02:37:21
12	MS. RODRIGUEZ: Well, Mr. Greenberg, I can	02:37:21
13	tell you, as I did earlier today, we worked very hard to	02:37:21
14	make sure that all of your categories and subcategories	02:37:31
15	were covered, and I also have tried to extend the	02:37:31
16	professional curtesy to allow you to stray quite far	02:37:41
17	from the scope, but you make it difficult when your	02:37:41
18	questions are out in left field, for lack of a better	02:37:41
19	term. And so we're just looking for a little guidance	02:37:51
20	from your notice to see where this stuff is falling	02:37:54
21	within...	02:37:56
22	MR. GREENBERG: Counsel, again if the	02:38:00
23	questions -- again, if the questions I ask are outside	02:38:00
24	the scope, put your objection on the -- you don't know	02:38:01
25	need to object. I will stipulate that any question I	02:38:06

1	ask the witness that is outside the scope is not usable	02:38:09
2	in these proceedings under NRCP -- under rule 30(b)(6).	02:38:11
3	That's fine.	02:38:17
4	MS. RODRIGUEZ: Yes. But I prepared my	02:38:17
5	witness for the categories as noticed. And so when	02:38:19
6	you're asking him questions that are outside the notice,	02:38:23
7	I understand what you're saying; that you're not going	02:38:26
8	to use them in court, but this witness hasn't been	02:38:28
9	prepared for questions that are outside the scope of	02:38:31
10	your notice.	02:38:31
11	MR. GREENBERG: Then he can say he doesn't	02:38:36
12	know. He needs to give an answer, Counsel. We're not	02:38:39
13	going to get through this deposition today at this	02:38:41
14	point, but I'm just going to wait for the answer.	02:38:44
15	THE WITNESS: What was your question? Now	02:38:46
16	it's three minutes by the way. What was your question?	02:38:50
17	MR. GREENBERG: Read back the question to	02:38:54
18	the witness, please.	02:38:59
19	MS. RODRIGUEZ: Ms. Sniegocki, I would ask	02:39:01
20	that you refrain from the various noises that I'm	02:39:02
21	hearing from your side. I think Mr. Greenberg has	02:39:06
22	refrained and just -- I know you're impatient with this	02:39:08
23	deposition, but...	02:39:11
24	MS. SNIEGOCKI: Various noises meaning what?	02:39:15
25	MS. RODRIGUEZ: Your huffing and puffing and	02:39:16

1 throwing of the pen and etc. I mean, I think we're all 02:39:20
2 trying to cooperate here. 02:39:24
3 (The last question was read back by the 02:40:42
4 reporter as follows: "So in 2015, right now, 02:32:47
5 there exists electronic QuickBooks data files 02:32:55
6 containing the information that was used to 02:32:58
7 print the payroll for a portion of -- the 02:33:00
8 payroll stubs, that is, we were talking about 02:33:03
9 -- for a portion of 2013, for 2014, and for 02:33:05
10 2015; correct, sir?") 02:33:10
11 THE WITNESS: Is that what you want me to 02:40:44
12 answer? 02:40:46
13 MR. GREENBERG: Yes. 02:40:47
14 THE WITNESS: I believe so. But I answer 02:40:48
15 that under protest because it has no bearing on this 02:40:49
16 case at this time. 02:40:52
17 BY MR. GREENBERG: 02:40:53
18 Q. Mr. Nady, is there any reason -- 02:40:53
19 A. Mr. Greenberg. 02:40:55
20 Q. -- the QuickBooks data files for the two-year 02:40:56
21 period that I just described in my question to you 02:40:59
22 cannot be produced? 02:41:03
23 MS. RODRIGUEZ: I'm sorry. I didn't hear 02:41:07
24 your question. Could you please either repeat it, or 02:41:08
25 I'll have her read it back. 02:41:11

1 MR. GREENBERG: Could you read the question 02:41:10
2 back? 02:41:14
3 (The last question was read back by the 02:41:14
4 reporter.) 02:41:20
5 THE WITNESS: I didn't say that. 02:41:20
6 BY MR. GREENBERG: 02:41:29
7 Q. Let's rephrase the question. 02:41:30
8 Mr. Nady -- 02:41:31
9 A. Mr. Greenberg. 02:41:35
10 Q. -- the QuickBooks data that you believe currently 02:41:34
11 exists that has been used to produce pay stubs for a 02:41:40
12 period going back two years, can those data files be 02:41:47
13 copied and produced? 02:41:50
14 A. Didn't I just answer that a minute ago? 02:41:54
15 Q. Is there any reason those files can't be copied? 02:41:57
16 A. I have no reason to copy them just yet. 02:42:00
17 Q. I understand, Mr. Nady. My question is: Is 02:42:00
18 there any physical reason, to your knowledge, that 02:42:00
19 someone could not go to the computer where those files 02:42:10
20 are stored -- 02:42:14
21 A. They would have a hard time getting by our 02:42:16
22 security system. 02:42:19
23 Q. Mr. Nady, someone who was authorized to do so. 02:42:19
24 Is there any reason that they could not copy 02:42:20
25 those QuickBooks files and put them on a thumb drive or 02:42:25

1	some other media --	02:42:29
2	A. Somebody that I authorized?	02:42:31
3	Q. Yes.	02:42:33
4	A. If I authorized them, I think they could do it,	02:42:34
5	yes.	02:42:37
6	Q. And is there any reason that the Cab Manager data	02:42:37
7	files which are stored also in your office cannot be	02:42:40
8	copied on to another hard drive and given to someone	02:42:44
9	else if you authorized it?	02:42:48
10	A. You're changing the subject here all of a sudden.	02:42:55
11	I'm not as familiar with Cab Manager. I think that	02:42:58
12	you'd have to ask Mr. Morgan that question because I	02:43:02
13	don't know the answer. And I think that you did ask Mr.	02:43:05
14	Morgan the answer 17 times. I think -- and then you	02:43:09
15	asked him the same question three more times after he	02:43:14
16	said no. Or he couldn't do it, or there was much more	02:43:18
17	to it than you think. And I remember that so...	02:43:22
18	Q. So your answer, Mr. Nady, is you don't know;	02:43:25
19	correct?	02:43:28
20	MS. RODRIGUEZ: Objection. Misstates his	02:43:28
21	testimony.	02:43:30
22	THE WITNESS: Is there a question?	02:43:30
23	BY MR. GREENBERG:	02:43:41
24	Q. Your answer as to whether the Cab Manager data	02:43:41
25	files can be produced off of -- a copy can be made from	02:43:45

1 A. I don't think so in the last seven or eight or
2 nine years. It's possible there's somebody I don't
3 remember, but I don't remember. Wendy was our payroll
4 manager for years. And then when she ran off with your
5 other client, Donna was --

6 Q. Now, Mr. Nady, the information from Cab Manager
7 about the fares, is that given on a paper report to the
8 person who enters the QuickBooks data?

9 A. I think they can migrate that, but I'm not
10 certain. I don't -- I never migrated it. I just get it
11 off the reports, and that's easy to do. But it could be
12 migrated, but I don't know how to do that. So when I
13 did -- the last time I did payroll, I did not do it.

14 Q. When was the last time you personally did
15 payroll?

16 A. I don't remember, but it's been more than between
17 six and 12 months. I only do it when Donna goes on
18 vacation. She doesn't go on vacation very often. She
19 went on the vacation last time to teach a class to young
20 Christians in New Mexico. And that was last summer. Or
21 maybe it was the spring.

22 Q. By migrate the data from Cab Manager, do you mean
23 there is a way that Cab Manager can automatically send
24 the information about the fares into the QuickBooks
25 system?

1	A. I don't know. Remember I said I don't know.	02:53:51
2	Q. Well, I just want to be clear what you mean by	02:53:54
3	migrate that that would be a possibility?	02:53:56
4	A. It's a possibility, but I don't know.	02:53:58
5	Q. And who would know that?	02:54:00
6	A. Donna would probably know.	02:54:01
7	Q. Now, in preparing the QuickBooks payroll, was any	02:54:11
8	information entered about the hours that taxi drivers	02:54:17
9	work in a pay period?	02:54:20
10	A. Yes.	02:54:21
11	Q. Where does that information come from?	02:54:23
12	A. From the trip sheets.	02:54:25
13	Q. And when you say from the trip sheets, is there a	02:54:27
14	specific statement on the trip sheets as to the total	02:54:30
15	amount of time the driver worked during each shift?	02:54:31
16	A. No. It's -- we calculate it by looking at the	02:54:37
17	trip sheet.	02:54:40
18	Q. And who calculates that?	02:54:41
19	A. Donna. Whoever is doing the payroll.	02:54:43
20	Q. And how does she do that?	02:54:46
21	A. With a pencil.	02:54:48
22	Q. And what formula does she use to do that?	02:54:51
23	A. There's no formula. You just count the number of	02:54:51
24	hours.	02:54:51
25	Q. So she simply refers to the information on the	02:54:51

1	Mr. Nady.	03:08:21
2	A. Mr. Greenberg, what are you referring to?	03:08:22
3	Q. First page.	03:08:23
4	A. Number 1 or page 9 or page --	03:08:31
5	Q. The first page you're holding in front of you,	03:08:34
6	Mr. Nady, the top of the document.	03:08:35
7	A. Where it says page 9?	03:08:31
8	Q. That's fine. It says Payroll Detail Report.	03:08:41
9	Do you see that?	03:08:44
10	MS. RODRIGUEZ: Have you produced these, Mr.	03:08:41
11	Greenberg?	03:08:47
12	MR. GREENBERG: Yes, I have.	03:08:47
13	MS. RODRIGUEZ: I don't think I've ever seen	03:08:41
14	these before.	03:08:50
15	BY MR. GREENBERG:	03:08:51
16	Q. Mr. Nady --	03:08:51
17	A. Mr. Greenberg.	03:08:51
18	Q. -- the document says Payroll Detail Report on the	03:08:51
19	top left corner of Bates BRAUCHLE 1.	03:09:00
20	A. He's one of your clients.	03:09:01
21	Q. Have you ever seen documents at A Cab that look	03:09:11
22	the same as this document in terms of its format, in	03:09:11
23	terms of it stating payroll detail report at the top of	03:09:21
24	the corner like that?	03:09:21
25	A. This is the second one that I've seen.	03:09:20

1	Q. What is the first one you've seen?	03:09:28
2	A. The one you showed me earlier of somebody else.	03:09:30
3	Q. And when did I show that to you earlier?	03:09:30
4	A. You showed it at the last deposition.	03:09:31
5	Q. So is it correct that you don't know anything	03:09:40
6	about the production of this document by A Cab?	03:09:40
7	A. I didn't say that.	03:09:50
8	Q. Okay. Well, have you ever seen payroll detail	03:09:50
9	reports at A Cab not necessary --	03:10:00
10	A. I've already answered that question just about	03:10:00
11	two minutes ago.	03:10:00
12	Q. -- not necessarily on paper, Mr. Nady. Have you	03:10:10
13	ever seen anything like that on a computer screen at A	03:10:10
14	Cab?	03:10:10
15	A. I've seen this report once before in any form	03:10:10
16	whatsoever, and that was from you.	03:10:10
17	Q. This document was produced from the QuickBooks	03:10:30
18	system.	03:10:30
19	A. Thank you.	03:10:30
20	Q. That is my understanding, Mr. Nady.	03:10:30
21	Do you have any reason to believe that I'm wrong	03:10:40
22	in that understanding?	03:10:40
23	MS. RODRIGUEZ: Objection. Lacks	03:10:40
24	foundation.	03:10:40
25	THE WITNESS: Mr. Greenberg, you're asking	03:10:40

1 me to tell you about something I have seen for the 03:10:50
 2 second time, and you're the only one that produced them 03:10:53
 3 for me. So the answer to your question is I don't know. 03:10:59
 4 BY MR. GREENBERG: 03:11:02
 5 Q. Mr. Nady, if you look at this document on the 03:11:02
 6 first page, there's a column that says shift credit. 03:11:09
 7 A. It says shift -- 03:11:09
 8 Q. Credit. 03:11:17
 9 Does A Cab keep track of anything called a shift 03:11:41
 10 credit of its cab drivers? 03:11:19
 11 A. Yes. 03:11:21
 12 Q. And what is that? 03:11:21
 13 A. They get credit for a shift. 03:11:28
 14 Q. And what is the purpose of keeping track of that 03:11:28
 15 information? 03:11:28
 16 A. We know who worked. 03:11:30
 17 Q. So if I wanted to find out how many shifts Mr. 03:11:30
 18 Brauchle worked for his entire career at A Cab, he would 03:11:37
 19 have one shift credit for each shift that he worked? 03:11:46
 20 A. That's two questions. If you wanted to find out 03:11:49
 21 how many shifts Mr. -- whatever his name is that you 03:11:56
 22 mutilated, I'm sure -- how many shifts he worked, I 03:11:58
 23 would imagine that we would go to his payroll file and 03:12:08
 24 look at that. That's how I would do it. I've never 03:12:09
 25 seen this document before. 03:12:17

1	Q. What would I look in the payroll file that would	03:12:15
2	tell me how many shifts he worked?	03:12:15
3	A. Go back and look at his pay stubs or the record	03:12:15
4	that we have for the last two years.	03:12:20
5	Q. By record you're meaning QuickBooks?	03:12:20
6	A. Uh-huh.	03:12:20
7	Q. So you're telling me that the QuickBooks will	03:12:20
8	tell me how many shifts a particular driver worked --	03:12:25
9	A. I'm not saying that. I'm saying that's where I	03:12:30
10	would look. You're misstating my answer again. I don't	03:12:30
11	know that.	03:12:30
12	Q. You don't know if the QuickBooks keeps a record	03:12:30
13	of each of the shifts that the driver works?	03:12:40
14	A. I don't know that, but I think that has something	03:12:40
15	to do with this shift credit, but I don't know because	03:12:45
16	I've never seen this before, the one you gave me last	03:12:50
17	time, and I didn't even look at that that closely.	03:12:54
18	Q. Besides keeping track of a shift credit to see	03:13:00
19	how many shifts a driver worked, does that serve any	03:13:04
20	other purpose for A Cab?	03:13:10
21	A. Well, if I look at the top of this thing it says	03:13:15
22	shift credit 235 of 235. So that would probably tell me	03:13:16
23	how many days he worked, and I think that's probably a	03:13:20
24	total of those at the top. I don't know because I've	03:13:25
25	never seen it before. So that's where I would look, and	03:13:25

1	Q. So the number that appears at that intersection	03:57:41
2	of QTY and minimum wage subsidy on these pay stubs is	03:57:46
3	the hours worked that A Cab has maintained for this	03:57:49
4	person in their records for this pay period; correct?	03:57:51
5	A. Right.	03:57:51
6	Q. On the pay stubs that A Cab currently produces,	03:57:56
7	do they identify a specific number on those pay stubs	03:57:59
8	that they give the employee as the amount of hours that	03:58:04
9	A Cab has determined they worked during the pay period?	03:58:07
10	A. I think it's the -- I don't know, remember?	03:58:11
11	Q. Okay. Has A Cab ever given employees pay stubs	03:58:11
12	that indicate the amount of hours by identifying it as	03:58:11
13	hours or time worked for the pay period?	03:58:24
14	A. I don't know. I would estimate -- I would guess	03:58:27
15	that they know what it is. If it's applicable.	03:58:31
16	See, only about half of our drivers actually have	03:58:41
17	to have a subsidy. Half. Only about 16 drivers last	03:58:41
18	week out of a bunch, out of 200 -- only 16 needed a	03:58:51
19	subsidy. And the week before that -- or the two weeks	03:59:01
20	before that, it was less than 16. I mean, the number of	03:59:04
21	people we have to subsidize is a minuscule number as of	03:59:01
22	the total.	03:59:14
23	Q. Going back to Exhibit 2. That's not Exhibit 2.	03:59:14
24	The other one.	03:59:31
25	A. Oh.	03:59:31

1	the Cab Manager system; correct?	04:25:21
2	A. I think it is. Yes, it is. Has to be.	04:25:21
3	Q. And does the Cab Manager system record the date	04:25:30
4	and time that bar code scan was conducted?	04:25:30
5	A. This is the fifth time you've asked me. That	04:25:30
6	does not record any time because it doesn't -- because	04:25:31
7	it's against the law, and Jim Morgan was warned about	04:25:40
8	that. So, no, it does not record the time.	04:25:40
9	Q. Did you expressly have a conversation with Jim	04:25:41
10	Morgan advising him to set up the Cab Manager system in	04:25:50
11	a fashion that it would not record the time of the bar	04:25:50
12	code scan of a driver's TA card?	04:25:50
13	A. Yes.	04:26:00
14	Q. When did you have that conversation with him?	04:26:00
15	A. As soon as the taxi cab authority told him not to	04:26:00
16	do it and told me not to do it when they found out he	04:26:00
17	was coming.	04:26:10
18	Q. And who at the taxi cab authority told you that?	04:26:10
19	A. I don't know.	04:26:10
20	Q. When did you have that communication with the	04:26:10
21	taxi cab authority?	04:26:10
22	A. About 2003.	04:26:10
23	Q. And was that with one person or more than one	04:26:20
24	person from the taxi cab authority?	04:26:20
25	A. I don't recall.	04:26:20

1 Q. Did you have that conversation in person or on 04:26:21
2 the telephone? 04:26:21
3 A. Don't recall. 04:26:21
4 Are you aware of the law, Counselor, that says 04:26:41
5 you can't use it? 04:26:41
6 Q. Mr. Nady -- 04:26:41
7 A. Mr. Greenberg. 04:26:41
8 Q. -- you were testifying that you expressly told 04:26:41
9 Mr. Morgan not to have that bar code scan time recorded 04:26:51
10 in the Cab Manager system because it was illegal, I 04:26:51
11 think, that was the term you used; correct, or against 04:27:01
12 the law? 04:27:01
13 A. That's a lie. 04:27:01
14 Q. Well, I'm trying to understand -- 04:27:01
15 MS. RODRIGUEZ: I'm going to object. It 04:27:01
16 misstates his testimony. 04:27:11
17 THE WITNESS: That's a damn lie. That's 04:27:11
18 another one of your lies. 04:27:11
19 BY MR. GREENBERG: 04:27:11
20 Q. Mr. Nady -- 04:27:11
21 A. Mr. Greenberg. 04:27:11
22 Q. -- I'm trying to understand -- 04:27:11
23 A. No, you're not. You're trying to put words in my 04:27:11
24 mouth, and that's not exactly what I said. And you know 04:27:21
25 it. You know it. 04:27:21

1	Q. Mr. Nady, if you want to get this deposition	04:27:21
2	done --	04:27:22
3	A. I don't give a shit if we get the deposition	04:27:23
4	done, Mr. Greenberg, because you're lying. You're	04:27:30
5	lying. You're just flat lying. And you got caught this	04:27:34
6	time.	04:27:34
7	Q. Mr. Nady --	04:27:34
8	A. Mr. Greenberg.	04:27:34
9	Q. You need --	04:27:35
10	A. Mr. Greenberg.	04:27:35
11	Q. -- to answer --	04:27:35
12	A. Mr. Greenberg.	04:27:35
13	Q. -- the question. And if I ask you question --	04:27:35
14	A. I said -- and I said that's a lie. So that means	04:27:35
15	no. You're lying again because you misrepresented what	04:27:42
16	I just said.	04:27:44
17	Q. Mr. Nady --	04:27:44
18	A. Mr. Greenberg.	04:27:44
19	Q. -- I don't wish to misrepresent --	04:27:46
20	A. Yes, you do. You do it intentionally. You do it	04:27:46
21	all the time.	04:27:51
22	Q. Mr. Nady --	04:27:51
23	A. Mr. Greenberg.	04:27:51
24	Q. -- if I ask you a question and I am assuming	04:27:51
25	something that is incorrect --	04:27:51

1	A. Call you liar.	04:27:5
2	Q. -- you should tell me that.	04:27:5
3	A. I did. I called you a damn liar. And you	04:27:5
4	understood exactly what I meant because you knew what	04:28:0
5	you did before you did it.	04:28:0
6	Q. Mr. Nady --	04:28:0
7	A. Mr. Greenberg.	04:28:0
8	Q. -- this is not helping us complete the	04:28:0
9	deposition.	04:28:0
10	A. And you're not going to help us if you continue	04:28:0
11	to lie.	04:28:1
12	Q. If my question is incorrect, you advise me, and	04:28:1
13	we'll get the correct question to you.	04:28:1
14	A. I just did.	04:28:1
15	Q. Okay. Thank you, Mr. Nady.	04:28:1
16	A. You're welcome.	04:28:1
17	Q. Now --	04:28:1
18	A. Do you want to restate my question -- or my	04:28:2
19	answer or not? Do you want to lie again? Do you want	04:28:2
20	to have it read back?	04:28:2
21	Q. Mr. Nady, you disagreed with my question as not	04:28:2
22	being accurate in terms of what you testified.	04:28:2
23	A. You lied. You just lied. You said I said this	04:28:3
24	and I didn't. That's a damn lie.	04:28:3
25	Q. Mr. Nady --	04:28:3

1	A. Mr. Greenberg.	04:28:37
2	Q. -- you had a conversation with Mr. Morgan about	04:28:38
3	not having the Cab Manager system record the time that	04:28:40
4	the bar code scan was conducted of the TA card; is that	04:28:41
5	correct?	04:28:50
6	A. I believe I did.	04:28:51
7	Q. Okay. And what did you tell Mr. Morgan --	04:28:51
8	A. I didn't tell Mr. Morgan anything.	04:28:57
9	Q. Okay. Well, then what did --	04:28:59
10	A. Why do you assume I did?	04:29:00
11	Q. Well, Mr. Nady, you said you had a conversation.	04:29:02
12	A. You're right, but I didn't tell him anything.	04:29:04
13	Why would tell my computer guy how to run my computer?	04:29:07
14	I don't know dick about computers. The man's a special	04:29:08
15	in it.	04:29:17
16	Q. Well, Mr. Nady --	04:29:18
17	A. Mr. Greenberg.	04:29:19
18	Q. -- what was your conversation --	04:29:19
19	A. That's a better question, Mr. Greenberg.	04:29:19
20	Q. -- with Mr. Morgan about --	04:29:19
21	A. You don't have to stretch the truth at all.	04:29:19
22	Q. -- recording bar code TA scans in the Cab Manager	04:29:20
23	system?	04:29:21
24	A. When did we get into bar codes from time? You	04:29:21
25	changed it again, Mr. Greenberg. You changed it again.	04:29:30

1	You sneaky little devil. I had a conversation about	04:29:35
2	times, not bar codes. You've changed the question, Mr.	04:29:37
3	Greenberg. You're trying -- why do you do this all the	04:29:40
4	time? Why? Why do you continually lie and try to	04:29:43
5	misrepresent what I've said?	04:29:46
6	Q. Mr. Nady --	04:29:48
7	A. Mr. Greenberg.	04:29:48
8	Q. -- we need to get your testimony clear. I	04:29:48
9	want --	04:29:51
10	A. We need to get you to ask the question instead of	04:29:51
11	changing what I've said into what you think you wanted	04:29:54
12	to hear.	04:29:57
13	Q. Okay.	04:29:58
14	A. Mr. Greenberg.	04:29:58
15	Q. Then -- Mr. Nady, did you have a conversation	04:29:59
16	with Mr. Morgan about having the Cab Manager system not	04:30:02
17	record the time that bar code scans of TA cards was	04:30:05
18	conducted?	04:30:14
19	A. What was the question?	04:30:16
20	Q. Read it back.	04:30:18
21	(The last question was read back by the	04:30:18
22	reporter as follows: "Mr. Nady, did you have	04:30:01
23	a conversation with Mr. Morgan about having	04:30:02
24	the Cab Manager system not record the time	04:30:06
25	that bar code scans of TA cards was	04:30:10

1	conducted?")	04:30:1
2	THE WITNESS: No, I didn't have a	04:30:3
3	conversation about that. I had a conversation that	04:30:3
4	included that. So I think you're misrepresented again,	04:30:3
5	Mr. Greenberg.	04:30:4
6	BY MR. GREENBERG:	04:30:4
7	Q. And what was discussed about that subject in the	04:30:4
8	conversation you are referring?	04:30:4
9	A. About that subject of? Mr. Greenberg.	04:30:4
10	Q. Not having Cab Manager record the time of TA	04:30:5
11	cards bar code scans?	04:30:5
12	A. The question was why was it not in there, Mr.	04:30:5
13	Greenberg.	04:31:0
14	Q. That was not the question --	04:31:0
15	A. I understand, but that was the conversation, Mr.	04:31:0
16	Greenberg.	04:31:0
17	Q. Okay. So who posed that question?	04:31:0
18	A. Me.	04:31:1
19	Q. And did you get an answer to that question?	04:31:1
20	A. I got an answer to that question, Mr. Greenberg.	04:31:1
21	Q. And what was the answer?	04:31:1
22	A. Mr. Greenberg, the answer was the TA doesn't	04:31:1
23	allow it.	04:31:2
24	Q. And that is what Mr. Morgan told you?	04:31:2
25	A. That's what Mr. Morgan told me.	04:31:2

1	Q. Do you remember when you had that conversation?	04:31:25
2	A. No, I don't, but it was early in my career as a	04:31:27
3	cab owner.	04:31:29
4	Q. Was that before 2008?	04:31:30
5	A. Yes, Mr. Greenberg, it was.	04:31:31
6	Q. Did you ask Mr. Morgan what he meant by the TA	04:31:33
7	doesn't allow it?	04:31:35
8	A. I don't recall.	04:31:41
9	Q. Did you have an understanding at that time about	04:31:43
10	what he meant when he said that?	04:31:45
11	A. Yes.	04:31:46
12	Q. And what was your understanding about that?	04:31:48
13	A. That the TA does not want that kind of	04:31:50
14	information on the trip sheets.	04:31:51
15	Q. Okay. Did you have any other understanding about	04:32:00
16	it?	04:32:01
17	A. (No audible response.)	04:32:10
18	Q. You need to answer verbally, sir.	04:32:11
19	A. (No audible response.)	04:32:15
20	Q. That's not a verbal answer.	04:32:17
21	A. That's a verbal.	04:32:17
22	THE COURT REPORTER: I'm going to stop this	04:38:20
23	right now. I'm taking a break.	04:38:21
24	(A break was taken from 4:32 p.m. through	04:38:30
25	4:41 p.m.)	04:41:50

1 A. I think we had a scanner at the place where they 05:22:01
2 got their trip sheets. 05:22:11

3 Q. And what happened when the driver performed that 05:22:11
4 scan of the trip sheet? 05:22:16

5 A. It would -- it would input to the computer those 05:22:17
6 four items I talked about so many times before. 05:22:24

7 Q. Was the time of that scan recorded in the Cab 05:22:31
8 Manager system? 05:22:39

9 A. Mr. Greenberg, you've asked me that now 17 times, 05:22:39
10 haven't you? 05:22:44

11 Q. No, I haven't, Mr. Nady. You need to answer my 05:22:44
12 question. 05:22:49

13 A. Mr. Greenberg, you have. You have. I'm counting 05:22:49
14 them. 17 times. Why do you ask the same question so 05:22:51
15 many times, Mr. Greenberg? Because you don't like what 05:22:56
16 you hear. Mr. Greenberg, you've asked me that question 05:22:58
17 17 times, and it's still the same big no. 05:23:01

18 Q. Your answer is no. Thank you. 05:23:04

19 A. If you ask me that again, I think I'm going to 05:23:06
20 stand up and leave, Mr. Greenberg. Okay? Understand 05:23:09
21 that. I will not allow you to try to continue to get me 05:23:11
22 to answer the question the way you want them. 05:23:14

23 Q. Now, in respect to that particular bar code trip 05:23:17
24 sheet scan that we've just discussed, did you ever ask 05:23:21
25 anyone as to -- 05:23:29

1	A. If you're going to ask about time, Mr. Greenberg.	05:23:27
2	Q. -- why the time of that scan is not recorded?	05:23:29
3	A. I already told you, Mr. Greenberg. I think we're	05:23:30
4	getting ready to leave, Mr. Greenberg. I think we're	05:23:34
5	getting ready to leave.	05:23:36
6	Q. Mr. Nady --	05:23:37
7	A. Mr. Greenberg.	05:23:38
8	Q. -- you need to --	05:23:39
9	Counsel, I can't continue my questioning if I --	05:23:39
10	THE WITNESS: Yes, you can.	05:23:41
11	MS. RODRIGUEZ: Mr. Greenberg --	05:23:41
12	THE WITNESS: You just asked the same	05:23:42
13	question. You're about to ask another one the same	05:23:45
14	thing.	05:23:47
15	MR. GREENBERG: Counsel.	05:23:47
16	THE WITNESS: You have no conscious, do you?	05:23:48
17	MS. RODRIGUEZ: Hold on.	05:23:50
18	MR. GREENBERG: Counsel, you know the	05:23:51
19	question is proper.	05:23:52
20	MS. RODRIGUEZ: No, it's not a proper	05:23:53
21	question. You have asked him the same question.	05:23:54
22	THE WITNESS: Jesus Christ.	05:23:56
23	MR. GREENBERG: I'm asking him about this	05:23:58
24	particular bar code scan. This is a new subject. He	05:24:00
25	needs to answer the question.	05:24:02

1	THE WITNESS: Mr. Greenberg --	05:24:01
2	MS. RODRIGUEZ: Hold on, Jay.	05:24:01
3	MR. GREENBERG: If he's not going to answer	05:24:01
4	the question, going to break the deposition, he can do	05:24:01
5	that.	05:24:11
6	MS. RODRIGUEZ: Ask the question one more	05:24:11
7	time.	05:24:11
8	THE WITNESS: And we'll just wait to hear it	05:24:11
9	again.	05:24:11
10	MS. RODRIGUEZ: I think what you're trying	05:24:11
11	to do is -- is -- I don't want to end this because we're	05:24:11
12	at the tail end here, but just to be answering the same	05:24:21
13	question over and over and over is abusive.	05:24:21
14	MR. GREENBERG: Counsel, I never got to ask	05:24:21
15	the question because the witness refuses to allow me to	05:24:21
16	ask the question.	05:24:31
17	THE WITNESS: It's because I can tell what	05:24:31
18	you're going to do. You do it every question. You're	05:24:31
19	so easy to read.	05:24:31
20	BY MR. GREENBERG:	05:24:31
21	Q. Mr. Nady --	05:24:31
22	A. Ask the question, and then I'll say it again. Go	05:24:31
23	ahead.	05:24:41
24	Q. Mr. Nady, the bar code scan of the trip sheet	05:24:41
25	that was conducted at the end of a driver's shift that	05:24:41

1 we were just discussing, you have explained that no
2 record of the time that that bar code scan was done is
3 recorded in the Cab Manager system; correct?

4 MS. RODRIGUEZ: That's been asked and
5 answered.

6 MR. GREENBERG: Yes. Okay. So we have no
7 dispute about your testimony on that point.

8 BY MR. GREENBERG:

9 Q. My question to you, Mr. Nady, is did you ever
10 discuss with anyone to confirm the fact that that
11 particular bar code scan was not recorded in the Cab
12 Manager system?

13 A. Let me rephrase my answer that you asked the
14 first three times. I had the conversation, yes. Guess
15 who with? Oh, gee, it was Mr. Morgan. So I went to
16 Mr. Morgan and said how come we don't keep the times in
17 there? He said because you can't by law, and I said
18 meh. So then I went to the taxi cab authority and asked
19 them how come we can't do that? They said you can't;
20 it's a statute. Do you remember that answer, Mr.
21 Greenberg? Do you remember the answer, Mr. Greenberg?
22 So why are you asking the same question so many times?
23 It was the same answer I gave you before.

24 MR. GREENBERG: Counsel --

25 MS. RODRIGUEZ: He's correct, Mr. Greenberg.

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1	I have to agree. If he wasn't going to say it, I was.		05:26:01
2	MR. GREENBERG: Counsel, that's not --		05:26:01
3	MS. RODRIGUEZ: A whole line of --		05:26:01
4	THE WITNESS: It's the same damn question.		05:26:01
5	MS. RODRIGUEZ: Hold on, Jay. The court		05:26:01
6	reporter can only get down one of us at a time.		05:26:10
7	He just summarized a whole hour of testimony		05:26:11
8	he gave you on this, and you just summarized his depo		05:26:11
9	saying, oh, so did you ever have a conversation? He		05:26:11
10	just testified about all of that.		05:26:21
11	MR. GREENBERG: No, that was not the		05:26:21
12	question --		05:26:21
13	THE WITNESS: Why do you do that?		05:26:21
14	MR. GREENBERG: It was not the same		05:26:24
15	question.		05:26:25
16	THE WITNESS: It's the same question put		05:26:26
17	another way, Mr. Greenberg.		05:26:27
18	MR. GREENBERG: Mr. Nady --		05:26:28
19	THE WITNESS: Mr. Greenberg.		05:26:29
20	MR. GREENBERG: -- this is referring to a		05:26:29
21	particular bar code scan of the trip sheet --		05:26:30
22	THE WITNESS: Whoa, whoa, whoa, whoa, whoa.		05:26:30
23	You asked about the bar code scan, and now you're		05:26:31
24	talking about a particular bar code scan just to guise		05:26:31
25	or change your question is not fair. You can't do that.		05:26:41

1	You can't ask the same question and say now a particular	05:26:46
2	bar code scan. It's the only one there is.	05:26:50
3	MR. GREENBERG: Mr. Nady --	05:26:53
4	THE WITNESS: Mr. Greenberg.	05:26:54
5	MR. GREENBERG: -- you need to answer my	05:26:56
6	question.	05:26:59
7	THE WITNESS: I did answer it.	05:26:59
8	BY MR. GREENBERG:	05:26:59
9	Q. So it is your testimony, Mr. Nady, that you never	05:26:59
10	discussed -- let's just be clear, Mr. Nady. You had	05:27:00
11	testified --	05:27:01
12	A. I am clear.	05:27:01
13	Q. -- that you had --	05:27:01
14	A. I've been clear on every answer.	05:27:01
15	Q. Mr. Nady --	05:27:11
16	A. Mr. Greenberg.	05:27:11
17	Q. -- we can't continue like this, Counsel.	05:27:11
18	MS. RODRIGUEZ: Well, I think you need to	05:27:14
19	ask a new question. Do you have any more questions	05:27:15
20	left?	05:27:17
21	MR. GREENBERG: I have --	05:27:18
22	THE WITNESS: You're threatening to quit.	05:27:18
23	We ain't coming back. You leave; we're done.	05:27:20
24	BY MR. GREENBERG:	05:27:21
25	Q. Mr. Nady --	05:27:21

1	A. Mr. Greenberg.	05:27:23
2	Q. -- again, my question refers to a bar code scan	05:27:23
3	that was conducted at the end of a driver's shift.	05:27:24
4	Now you had testified before about bar code scan	05:27:30
5	of a TA card conducted at the beginning of a driver's	05:27:30
6	shift.	05:27:40
7	Do you recall that?	05:27:40
8	A. Yes, Mr. Greenberg, I do.	05:27:40
9	Q. Thank you. I'm talking about a different bar	05:27:41
10	code scan.	05:27:41
11	Do you understand that?	05:27:41
12	A. It's the same bar code, Mr. Greenberg.	05:27:41
13	Q. The same bar code appears on a trip sheet is on a	05:27:50
14	TA card?	05:27:50
15	A. Mr. Greenberg --	05:27:50
16	MS. RODRIGUEZ: Mr. Greenberg, that is	05:28:00
17	misstating his testimony. Do you have another question?	05:28:00
18	I mean, he's answered it repeatedly.	05:28:00
19	MR. GREENBERG: He needs to answer.	05:28:00
20	MS. RODRIGUEZ: No, he's not going to answer	05:28:10
21	it.	05:28:10
22	THE WITNESS: Which bar code are you talking	05:28:10
23	about now, Mr. Greenberg?	05:28:10
24	MR. GREENBERG: There's a bar code that	05:28:10
25	appears on the trip sheet.	05:28:10

1	THE WITNESS: I've answered that question	05:28:18
2	every time the same. I'll do it again just so you'll	05:28:19
3	keep going because if I leave here, I'm not ever going	05:28:20
4	to be deposed by you again, Mr. Greenberg, because	05:28:21
5	you've had enough times to ask, and I -- when we get	05:28:22
6	done with this, we're going to analyze this thing just	05:28:23
7	to see how many times you've asked the same question,	05:28:24
8	and it won't -- it's going to be ugly.	05:28:25
9	MR. GREENBERG: Mr. Nady --	05:28:26
10	THE WITNESS: Mr. Greenberg.	05:28:27
11	MR. GREENBERG: -- are you going to answer	05:28:28
12	the question?	05:28:29
13	THE WITNESS: Ask it again, please.	05:28:30
14	BY MR. GREENBERG:	05:28:31
15	Q. The scan that is conducted by a driver of the	05:28:32
16	trip sheet at the end of their shift is what I am	05:28:33
17	discussing with you.	05:28:34
18	Do you understand that?	05:28:35
19	A. Keep going.	05:28:36
20	Q. The time that that bar code scan is conducted of	05:28:37
21	that trip sheet, which is performed by the driver at the	05:28:38
22	end of the shift, is the time that that bar code scan	05:28:39
23	conducted recorded in the Cab Manager system?	05:28:40
24	MS. RODRIGUEZ: He's not answering that	05:28:41
25	question. On to the next one.	05:28:42

1	MR. GREENBERG: No, your answer to that	05:29:21
2	question previously was no.	05:29:21
3	THE WITNESS: So why'd you ask it again?	05:29:24
4	MR. GREENBERG: Well, because we have to lay	05:29:27
5	that foundation for the next question.	05:29:28
6	BY MR. GREENBERG:	05:29:28
7	Q. My next question to you, Mr. Nady, is: How did	05:29:30
8	you find out that that time is not recorded in the Cab	05:29:32
9	Manager system?	05:29:35
10	A. The same way you found out from Mr. Morgan, Mr.	05:29:35
11	Greenberg.	05:29:35
12	Q. Okay. So Mr. Morgan told that to you?	05:29:40
13	A. Mr. Morgan stated to you in his deposition while	05:29:40
14	I was present, Mr. Greenberg, that nothing is kept on	05:29:47
15	time in Cab Manager because we were ordered not to, Mr.	05:29:50
16	Greenberg.	05:29:57
17	So why do you continue to ask -- no, the answer	05:29:57
18	to your question is no the first time and no the second	05:30:00
19	time and no the 15th time. No, no, no, Mr. Greenberg.	05:30:04
20	If you ask it again, I don't know what I'm going to do,	05:30:08
21	but be careful.	05:30:11
22	Q. Mr. Nady, I'm not --	05:30:15
23	A. Mr. Greenberg.	05:30:15
24	Q. I'm not interested in why.	05:30:17
25	A. Well, you keep asking the same question.	05:30:18

1	Q. I'm trying to make it easier for you.	05:30:15
2	A. No, you're not. You're trying to confuse me, Mr.	05:30:19
3	Greenberg. It ain't going to work. I'm way too smart	05:30:23
4	for you.	05:30:26
5	Q. Now, except for your understanding from	05:30:29
6	Mr. Morgan that no times --	05:30:33
7	A. Mr. Greenberg.	05:30:36
8	Q. -- of bar code scans --	05:30:39
9	A. Mr. Greenberg.	05:30:39
10	Q. -- are recorded --	05:30:39
11	A. Mr. Greenberg, you're going to ask me the same	05:30:39
12	question. They never have and they never will. They	05:30:39
13	never, ever did it, Mr. Greenberg. Is that okay?	05:30:42
14	Q. They never --	05:30:45
15	A. They never had any time in there ever, ever,	05:30:45
16	ever, ever, ever.	05:30:49
17	Q. From any bar code?	05:30:49
18	A. From any bar code there never.	05:30:50
19	Q. And --	05:30:51
20	A. Do you understand? Say, yes, I understand so you	05:30:53
21	won't ask the question anymore. Do you understand what	05:30:56
22	I'm -- I'm trying to be helpful here.	05:30:57
23	Q. Mr. Nady --	05:31:00
24	A. Mr. Greenberg.	05:31:00
25	Q. -- the source of your belief on that point is	05:31:01

1	Mr. Morgan; correct?	05:31:03
2	A. Mr. Greenberg, you've asked me that five times.	05:31:04
3	Five times. Why?	05:31:05
4	MS. SNIEGOCKI: We are in the same room. We	05:31:06
5	don't need to scream.	05:31:10
6	THE WITNESS: He is infuriating me with his	05:31:11
7	continually asking the same question. And I don't like	05:31:14
8	it. I think you're trying to mess with my mind, and I	05:31:20
9	don't like it, Mr. Greenberg. So please discontinue	05:31:21
10	asking the same question.	05:31:22
11	BY MR. GREENBERG:	05:31:30
12	Q. Mr. Morgan, is the sole source of --	05:31:30
13	A. No, he's not, Mr. Greenberg. That's not what I	05:31:31
14	said you lying little shit. That's not what he said.	05:31:32
15	That's not what I said. It's not what I said. You are	05:31:40
16	misstating it. I said the taxi cab authority was the	05:31:41
17	one that also said it. So he's not the only one, Mr.	05:31:42
18	Greenberg.	05:31:43
19	Q. Mr. Nady, the taxi cab authority told you what	05:31:44
20	information was in fact recorded in Cab Manager?	05:31:50
21	MS. RODRIGUEZ: Objection. Objection.	05:31:51
22	THE WITNESS: Mr. Greenberg.	05:31:54
23	MS. RODRIGUEZ: Hold on.	05:31:55
24	THE WITNESS: You are so bad. You are so	05:31:56
25	bad.	05:31:59

1 A. You're about to ask questions about the second
2 audit by the Department of Labor; is that correct, Mr.
3 Greenberg?

4 Q. Yes.

5 A. Then I understand.

6 Q. Now, in respect to that second audit, did A Cab
7 undertake to collect information on the hours worked by
8 its taxi drivers in response to the DOL's audit?

9 A. We gave most of that information to the
10 Department of Labor, and they took our documents for the
11 most part. But in answer to your question, we did a
12 very thorough audit of, I want to say, four pay periods
13 as an agreed at-random pay periods that the DOL was also
14 going to audit, and we audited at the same -- the same
15 weeks that they did, and we came up with whether or not
16 we thought we had a deficit, and they came up as to
17 whether or not they had a deficit. And we sat down and
18 talked about it.

19 Q. Now, you talked about the audit that A Cab
20 conducted of those four pay periods.

21 What did that involve A Cab doing?

22 A. A Cab reviewed every single trip sheet, every
23 single paycheck, every day, every driver for four pay
24 periods over the audit period. They were four two-pay
25 week periods. I want to say that I think there were

1	almost 30,000 pages of documents that we reviewed. We	05:39:49
2	hired outside staff, outside accountants to come in and	05:39:50
3	do that work.	05:39:51
4	Q. Who were the outside accountants?	05:39:54
5	A. People we hired out of the wanted ads. We needed	05:39:56
6	help. We didn't hire a firm. We just hired	05:40:00
7	individuals.	05:40:01
8	Q. And what did those individuals do? By do, Mr.	05:40:01
9	Nady, you say there was a review conducted. Did they	05:40:11
10	compile information from that review, put it in	05:40:11
11	something? Can you explain please?	05:40:11
12	A. Put it something?	05:40:21
13	Q. Yes.	05:40:21
14	A. Like a wastebasket or something? What are you	05:40:21
15	referring to?	05:40:21
16	Q. You said there was a review conducted of perhaps	05:40:21
17	30,000 or so trip sheets?	05:40:30
18	A. Yes, I did.	05:40:31
19	Q. And did they take information from those trip	05:40:31
20	sheets they reviewed and put it in a grid, on a log, in	05:40:31
21	some other piece of information?	05:40:31
22	A. That we did.	05:40:41
23	Q. And what did they put it into?	05:40:41
24	A. They put it into an Excel.	05:40:41
25	Q. And does A Cab still have that Excel file?	05:40:41

1	A. I believe we do.	05:40:56
2	Q. Now, you mentioned the Department of Labor	05:40:58
3	conducting their own audit for the same four pay periods	05:41:00
4	that A Cab; is that correct?	05:41:01
5	A. Well, they said they did, but I don't think they	05:41:03
6	really did.	05:41:10
7	Q. Did the DOL ever share any information about	05:41:12
8	that --	05:41:16
9	A. No.	05:41:18
10	Q. -- audit that they conducted?	05:41:18
11	A. No, but they said they did, and I think more than	05:41:18
12	anything else they reviewed ours, but they -- we were	05:41:20
13	pretty much agreed on what ours said. We had four	05:41:20
14	separate periods, I think one in each quarter. We had	05:41:30
15	our best month, our worst month, and two of them	05:41:35
16	somewhere in between. And they -- we just -- they just	05:41:40
17	told us which ones to do.	05:41:46
18	Q. Now, that audit that A Cab conducted which took	05:41:49
19	the information from the trip sheets, you believe that	05:41:51
20	that resulted in an accurate set of information in those	05:41:51
21	Excel files for each driver for each pay period in terms	05:42:00
22	of showing how long they were working each pay period?	05:42:00
23	MS. RODRIGUEZ: I'm sorry. Could you please	05:42:10
24	read that question back? I kind of got lost in that.	05:42:15
25	BY MR. GREENBERG:	05:42:17

1 Q. Mr. Nady, the audit you've described for the pay 05:42:17
2 periods that A Cab conducted and put information in the 05:42:20
3 Excel file, do you believe that the result of that was 05:42:24
4 that that Excel file for that pay period showed 05:42:27
5 accurately the amount of time each driver worked in each 05:42:30
6 of those pay periods as originally shown on their trip 05:42:33
7 sheets? 05:42:39

8 A. We went back over every single trip sheet, and I 05:42:39
9 want to tell you we had probably a dozen people working 05:42:44
10 full-time doing this. And the cost was well in the six 05:42:47
11 figures to get these numbers. And we put them in a 05:42:53
12 form, in an Excel form. We sent -- we made copies of 05:42:56
13 every trip sheet we went through. On those trip sheets, 05:43:03
14 we put where our information came from. So when they 05:43:06
15 reviewed our work, they would understand where we got it 05:43:10
16 from and asked if they had any -- if they wanted to 05:43:13
17 review it themselves, if they had any questions, 05:43:17
18 alterations, or suggestions, or changes. And that took 05:43:20
19 us -- I want to say that took us almost eight or nine 05:43:23
20 months to do that because we wanted to be -- we wanted 05:43:30
21 to put a document together that was accurate so they 05:43:36
22 wouldn't think that we were trying to fudge. So we had 05:43:41
23 it -- we did it the first time and then we had another 05:43:44
24 group do another group team do it again, and then we had 05:43:48
25 another team do it again. And then we merged those 05:43:51

1 together to take the worst case scenario, and we sent 05:43:56
2 that to them. And when they reviewed it, which took 05:44:00
3 them -- I want to say a year, they came back and said 05:44:06
4 that they've reviewed our work, and they couldn't find 05:44:11
5 anything that was not true, but they weren't sure that 05:44:16
6 it was -- everything was accurate. But they couldn't 05:44:21
7 find anything that wasn't there, and I told them that we 05:44:26
8 bent over backwards to be fair and square. So I don't 05:44:28
9 think I have a problem. And my cost in that was about 05:44:31
10 a -- when we got done about \$130,000 by the time they 05:44:38
11 got back because now I've got Greg Kamer and wonder 05:44:41
12 woman here behind me. And then that was about the time 05:44:46
13 when they then expanded those, averaged them all out. 05:44:51
14 And I think I got a copy of their work sheet for that, 05:45:01
15 but I'm not certain. But we could certainly figure it 05:45:05
16 out because I think I have all my work sheets still. 05:45:07
17 I'm not sure. Ester may have some. And we came up, and 05:45:10
18 they said after reviewing your work and reviewing our 05:45:11
19 work, we think you owe us about \$140,000. And I said 05:45:16
20 you could have done this at the beginning because I 05:45:25
21 already sent \$140,000 on this. And there was silence. 05:45:27
22 And I said I'll get back to you. And Esther thought it 05:45:31
23 would cost ---Esther and I both believed that if we 05:45:41
24 could get them to -- we thought they had to get us the 05:45:45
25 tip credit, but they declined. They said without the 05:45:51

1 tip -- we were fighting for nothing because we -- with 05:45:50
2 the tip credit we actually had zero liability. They 05:46:00
3 argued the tip credit was \$140,000. And we took about 05:46:04
4 two days and figured the best thing to do was to pay 05:46:17
5 them. 05:46:21

6 But in reality using the tip credit, we had zero 05:46:24
7 liability. And they knew it, and I knew it. And they 05:46:27
8 knew I knew it, and they didn't care. 05:46:31

9 Q. Well, when you say using the tip credit, you 05:46:31
10 think there was no liability, what was the amount of the 05:46:39
11 tip credit that you were using to reach that result? 05:46:41

12 A. \$140,000 give or take. 05:46:51

13 Q. Was that tip credit calculated as a percentage of 05:46:54
14 fares? 05:46:57

15 A. No. It was done actually on every trip sheet. 05:46:58
16 We actually did it. We did the work on it. We have 05:47:01
17 the -- to me it was nothing but the government squashing 05:47:10
18 the small company. They had no business -- because the 05:47:14
19 federal government doesn't require us to -- we get to 05:47:18
20 include a tip credit. 05:47:21

21 Q. Well, the issue of the tip credit as you were 05:47:21
22 discussing with the DOL was it a question of the amount 05:47:30
23 of the tip credit that -- 05:47:34

24 A. No. No, no. The amount was rigid. It was 05:47:34
25 whether or not we would allow it. They wouldn't allow 05:47:38

1 it. You wouldn't believe the -- I think we have -- 05:47:40
2 Esther will show you if -- maybe she will; maybe she 05:47:44
3 won't because it was between the solicitor who stated in 05:47:48
4 his -- in one of his last memos to us that the money 05:47:50
5 that they get from tips belongs to them. It was not 05:47:58
6 reported. And thus, our argument is, and we will 05:48:00
7 maintain, that you cannot use that. And that blew me 05:48:07
8 away. That was when I knew that I couldn't win this 05:48:14
9 fight. These people were overly proud of their work. 05:48:17
10 Q. You mentioned a worst case scenario that you gave 05:48:20
11 to the Department of Labor based on the audit that A 05:48:20
12 Cab -- 05:48:30
13 A. They came up with the number. I didn't. 05:48:34
14 Q. Well, you use this term worst case in your prior 05:48:38
15 answer to me. I'm just trying to understand what you 05:48:38
16 meant by that in terms of your communication with the 05:48:40
17 Department of Labor? 05:48:48
18 A. Huh? 05:48:48
19 Q. You mentioned that as part of the communication 05:48:50
20 process between A Cab and the Department of Labor, A Cab 05:48:50
21 gave to the Department of Labor some set of information 05:48:50
22 which you used the term worse case to describe? 05:48:50
23 A. Right. 05:49:00
24 Q. I'm just trying to understand what you meant by 05:49:00
25 that. 05:49:00

1 A. I meant that if the tip credit was -- was not 05:49:00
 2 allowed -- we owed them \$140,000 almost to the dollar 05:49:10
 3 within give or take a couple hundred bucks -- and that's 05:49:10
 4 when the argument -- and you'll see if we ever get them, 05:49:20
 5 I don't know if she still has them or not, the letter 05:49:20
 6 when -- that was news to me that they weren't going to 05:49:20
 7 do that. And then just like you, they started talking 05:49:30
 8 about penalties and willful this and that. And our 05:49:30
 9 argument was, hell, we just had an audit two years 05:49:40
 10 before, and it came out really smart. And we were 05:49:40
 11 pretty smug that we were going to have the same thing 05:49:50
 12 when they got through with it, but they stuck that up my 05:49:50
 13 wazoo. 05:49:50

14 Q. Besides that audit that A Cab conducted, A Cab 05:49:50
 15 provided the Excel files that resulted from that work to 05:50:00
 16 the Department of Labor? 05:50:00

17 A. Yeah. We had to send those along with the trip 05:50:00
 18 sheets that they reviewed and where our numbers were on 05:50:10
 19 those. I don't know if I still have all of those 05:50:10
 20 numbers or not, but probably do. 05:50:10

21 Q. Did A Cab provide anything to the Department of 05:50:20
 22 Labor besides those trip sheets and the Excel file you 05:50:20
 23 just mentioned in connection with that? 05:50:20

24 A. No. They had -- see the Department of Labor here 05:50:30
 25 had all of these, but we had a copy of our -- hard copy 05:50:30

1 of our trip sheets. So we went back and regenerated all
2 of our payroll based on the information we had off the
3 trip sheets. The DOL had the originals in this
4 location. The people we were talking to were out of the
5 San Francisco office.

6 Q. When you say regenerated the payroll, what do you
7 mean by that?

8 A. Just what it says.

9 Q. I don't know what that means, Mr. Nady.

10 A. Yes, you do.

11 Q. Regenerated how? With what?

12 A. We went through the trip sheets to see if we owed
13 anybody any money based on the trip sheets for hours
14 that we planned on that we thought we communicated
15 through that. We went back, and we went everywhere we
16 could possibly find the time from the beginning. If
17 they didn't stamp the time clock, which was a regular
18 basis, we went back to the gas station and got that
19 information and plugged that in. It was a bunch of
20 manual things. We put in the beginning of the shift,
21 and then we went through the end of the shift. And if
22 they put a break in there, we took that out. If the
23 breaks were not 20 minutes, we didn't allow not one
24 minute. If the breaks were over 20 minutes, we could
25 take every minute. We reduced it to 100th of an hour

1	for every break. If it was more than 20 minutes, we	05:51:56
2	took the breaks. We only took what was directly on	05:52:01
3	those and viable on those trip sheets for that	05:52:04
4	eight-week period.	05:52:08
5	Q. By regenerate the payroll, do you mean in this	05:52:09
6	Excel we were information --	05:52:13
7	A. We figured out how many hours they had and how	05:52:14
8	many hours they were actually paid for and what they	05:52:18
9	should have been paid versus what they actually got	05:52:21
10	paid.	05:52:23
11	Q. So the Excel file that was credited contained not	05:52:25
12	just information as to the hours worked by the drivers	05:52:26
13	but their compensation that they were paid during a	05:52:29
14	particular day or pay period; correct?	05:52:32
15	A. You're -- no.	05:52:34
16	MS. RODRIGUEZ: Objection. That	05:52:35
17	misstates --	05:52:36
18	THE WITNESS: That -- you're so good at	05:52:37
19	that.	05:52:40
20	MS. RODRIGUEZ: There's --	05:52:43
21	THE WITNESS: The trip sheet, the ones we	05:52:44
22	generated, we put time on them so we could tell how many	05:52:47
23	hours they were. We had to go back and find when they	05:52:51
24	started based on their time stamp, and would log that	05:52:54
25	in. And we did it for every single driver, and we did	05:52:58

1 it three times. And not only that, but then we went 05:52:58
2 back and found the breaks that we used. And we didn't 05:53:00
3 put any breaks in that were less than 20 minutes, and we 05:53:04
4 didn't put any breaks in there that were not signed and 05:53:07
5 autographed by the people. We didn't create breaks. We 05:53:10
6 used exactly what was there. And if there was a doubt 05:53:13
7 about how long it was, we'd ask the driver. 05:53:19
8 BY MR. GREENBERG: 05:53:21
9 Q. You mentioned an Excel file that was created as a 05:53:22
10 result of -- 05:53:26
11 A. Yes, it was. 05:53:27
12 Q. -- this audit you've been describing. 05:53:28
13 Did that Excel file just contain information as 05:53:31
14 to the hours worked by drivers? 05:53:34
15 A. No. 05:53:36
16 MS. RODRIGUEZ: Objection. That misstates 05:53:36
17 his testimony. And just so that you're not -- you're 05:53:38
18 not thinking there's so much more to this, I gave you a 05:53:41
19 copy of that very early on. 05:53:46
20 THE WITNESS: You did? 05:53:46
21 MS. RODRIGUEZ: He has a copy of the summary 05:53:47
22 of the Excel, but very early on. But it's for purposes 05:53:49
23 of settlement discussion. It hasn't been produced 05:53:51
24 officially by A Cab, but you have a copy of it. 05:53:51
25 THE WITNESS: I didn't know you had a copy 05:53:51

1 of it. So you know about it. So why are you pushing 05:54:00
 2 these questions? 05:54:02
 3 BY MR. GREENBERG: 05:54:03
 4 Q. Mr. Nady, the Excel file you're referring to 05:54:04
 5 would contain a line for each driver for the pay period? 05:54:05
 6 A. I got a line for each driver for each pay period. 05:54:10
 7 Q. Right. 05:54:11
 8 You talked about an audit for four pay periods? 05:54:18
 9 A. Yes. 05:54:20
 10 Q. Okay. So the end product for each pay period 05:54:21
 11 would be an Excel file that would the line for each 05:54:22
 12 driver who worked during the pay period? 05:54:24
 13 A. Yeah. 05:54:27
 14 Q. And that line would contain information showing 05:54:27
 15 what hours that person was determined to have worked -- 05:54:30
 16 A. Yeah, we generated that from the time sheet, the 05:54:34
 17 trip sheets, sometimes from when they went to the gas 05:54:38
 18 pump, sometimes we pulled it off when they put their 05:54:40
 19 money in, but we had to go out and find that data from 05:54:44
 20 the back of the trip sheets. And you've seen them here 05:54:47
 21 where they came from. And then next to that we put down 05:54:51
 22 their gross pay, and then we figured out what we should 05:54:54
 23 have paid them and we put a difference. And it equals 05:54:58
 24 \$139,800 or something like that. 05:55:01
 25 Q. When you say that line would contain a gross pay 05:55:06

1	amount, it would also have an amount -- would it have a	05:55:00
2	separate amount listed for tips or just a gross pay	05:55:10
3	amount?	05:55:10
4	A. We have gross tips in there, but we didn't	05:55:10
5	include them in the computation because at the very last	05:55:10
6	minute, they said no.	05:55:20
7	Q. Does A CAB in its payroll record record tips	05:55:20
8	drivers earn other than as a percentage of the fares	05:55:20
9	that they collect pursuant to the IRS compliance	05:55:20
10	agreement?	05:55:30
11	A. No.	05:55:30
12	Q. So there's no -- okay.	05:55:30
13	A. Thank you.	05:55:30
14	MS. RODRIGUEZ: This is a good stopping	05:55:30
15	point for a quick break.	05:55:30
16	MR. GREENBERG: Sure. Let's take a break.	05:55:30
17	(A break was taken from 5:55 p.m. through	05:55:40
18	6:04 p.m.)	05:55:40
19	MS. RODRIGUEZ: By my calculations we're at	06:04:00
20	six and a half hours excluding break time and being	06:04:00
21	generous in terms -- overestimating the breaks. So I	06:04:10
22	think you got about another 30 minutes with Mr. Nady per	06:04:10
23	the rules. And I'm certainly willing to work with you	06:04:20
24	if you think you're going to go a little bit over, but	06:04:20
25	I've asked to you give us an estimate if you're	06:04:20

1	Q. Again, I understand that a change was made to A	06:19:47
2	Cab's policies as you've described about paying the	06:19:50
3	drivers a minimum --	06:19:51
4	A. Wait, wait, wait, wait, Mr. Greenberg, you're	06:19:51
5	making a mistake. There was no change made.	06:19:59
6	Q. Okay.	06:20:01
7	A. So why would you -- I just told you there wasn't	06:20:01
8	a change made. They didn't ask us to change it. It	06:20:06
9	says specifically that we did that.	06:20:08
10	Q. Okay. So there was no change made to the	06:20:16
11	recordkeeping policies of A Cab; correct?	06:20:17
12	A. Nope. Not to the recordkeeping policies.	06:20:18
13	Q. Okay. Thank you.	06:20:18
14	A. We already had good ones on board. That's why	06:20:18
15	they didn't assign us anything like that. That's why it	06:20:21
16	was a good audit.	06:20:26
17	Q. Mr. Nady, during the course of this lawsuit, have	06:20:50
18	you provided information to your attorney about A Cab's	06:20:56
19	ability to produce computer data files?	06:20:59
20	MS. RODRIGUEZ: Hold on for a second. I	06:21:01
21	need to hear that question again to see if you're asking	06:21:06
22	for attorney-client information.	06:21:11
23	BY MR. GREENBERG:	06:21:11
24	Q. During the course of this litigation, has A Cab	06:21:11
25	provided information to its attorney about A Cab's	06:21:17

1 ability to produce computer data files?

2 MS. RODRIGUEZ: I don't think you're
3 entitled to ask him that question, Mr. Greenberg, as to
4 the communications between my client and myself.

5 MR. GREENBERG: To the extent that it is
6 responsive to discovery requests, I don't think it's
7 privileged, and that is the extent to which I'm
8 inquiring. If you're going to direct him not to answer
9 to that extent, then just make it clear on the record
10 and we can move on.

11 MS. RODRIGUEZ: I think you can rephrase the
12 question, and I wouldn't object to a rephrasing of the
13 question. But the way it's posed, you're asking for the
14 communications. So I would instruct him not to answer
15 that question.

16 BY MR. GREENBERG:

17 Q. Mr. Nady, are you aware that requests were made
18 in this case for A Cab to produce computer data
19 information, computer data files?

20 A. Yes.

21 Q. Did you communicate with your attorney about A
22 Cab's ability to produce those files?

23 MS. RODRIGUEZ: That's the same objection.
24 He's not answering that question, Mr. Greenberg.

25 MR. GREENBERG: Okay. That's fine. In

1 response to those requests, Counsel -- I just want the
2 question to be clear -- I take it you're maintaining the
3 same privileged-based objection?

4 MS. RODRIGUEZ: Yes, I am.

5 MR. GREENBERG: Okay. That's fine. We will
6 move on.

7 (Exhibit 7 was marked for identification.)

8 BY MR. GREENBERG:

9 Q. Now, Mr. Nady, what I'm showing you is a copy of
10 a transcript of a hearing that took place in the court
11 where you were present and offered some testimony. I
12 want you to look at page 5 of that. It is printed on
13 two sides.

14 Now Mr. Nady, on line 16 on page 5, you are
15 addressing the discovery commissioner. The beginning of
16 the third sentence you say, "The scans, the time on the
17 scans if you look at their own evidence, the time of the
18 scan is three or four hours apart from the two separate
19 ways that they're suggesting that we use and every -- the
20 -- when they -- the place where they put their money,
21 that machine never had an accurate time ever."

22 Do you see that sentence.

23 A. I see that sentence.

24 Q. Could you explain to me what you were trying to
25 communicate in that sentence to the discovery

1	"It says we didn't save it. Doesn't mean we	06:42:18
2	can't retrieve it. We weren't asked to retrieve it, but	06:42:20
3	we'd have to get the same people that you think has	06:42:22
4	everything. We haven't asked them to because it's	06:42:24
5	expensive."	06:42:30
6	Who are the same people that you think has	06:42:32
7	everything that you're referring to there?	06:42:36
8	A. Well, I was referring to having just -- having	06:42:38
9	this audit with these people that did this audit for me,	06:42:42
10	and we retrieved this information. It just took us	06:42:46
11	forever. I'm not going to --	06:42:48
12	Q. You're referring to back to the DOL audit we	06:42:50
13	discussed?	06:42:54
14	A. Yeah. That's where we got this information, and	06:42:56
15	that's how we know what's available and what's not.	06:42:58
16	We...	06:43:00
17	Q. Now in the next paragraph, the first sentence	06:43:02
18	says, "In order for them to rewrite that code to get	06:43:06
19	those things to put on our computer, we'd have to go to	06:43:08
20	them and ask them to give it to us."	06:43:09
21	What do you mean by the use of the word code in	06:43:14
22	that sentence?	06:43:16
23	A. I'm not sure. And, Counselor, this will be my	06:43:18
24	last question because it's a quarter till.	06:43:20
25	Q. We're not finished, Mr. Nady.	06:43:22

1 STATE OF NEVADA)
) SS:
 2 COUNTY OF CLARK)

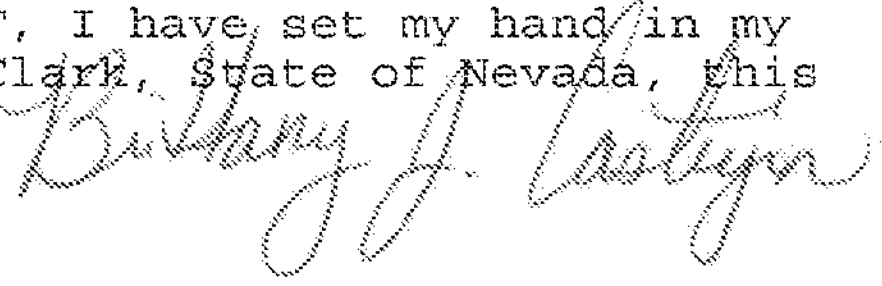
3 CERTIFICATE OF REPORTER

4 I, Brittany J. Castrejon, a Certified Court
 5 Reporter licensed by the State of Nevada, do hereby
 6 certify: That I reported the DEPOSITION OF CREIGHTON
 7 NADY, on Tuesday, August 18, 2015, at 11:13 a.m.;

8 That prior to being deposed, the witness was duly
 9 sworn by me to testify to the truth. That I thereafter
 10 transcribed my said stenographic notes into written
 11 form, and that the typewritten transcript is a complete,
 12 true and accurate transcription of my said stenographic
 13 notes. That the reading and signing of the transcript
 14 was requested.

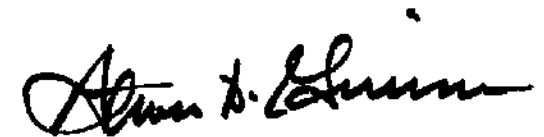
15 I further certify that I am not a relative,
 16 employee or independent contractor of counsel or of any
 17 of the parties involved in the proceeding; nor a person
 18 financially interested in the proceeding; nor do I have
 19 any other relationship that may reasonably cause my
 20 impartiality to be question.

21 IN WITNESS WHEREOF, I have set my hand in my
 22 office in the County of Clark, State of Nevada, this
 31st day of August, 2015.



24 Brittany J. Castrejon, CCR NO. 926

25



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL MURRAY, ET AL.,

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC, ET AL.,

Defendants.

CASE NO. A669926

DEPT. I

BEFORE THE HONORABLE BONNIE A. BULLA, DISCOVERY COMMISSIONER

WEDNESDAY, NOVEMBER 18, 2015

RECORDER'S TRANSCRIPT OF PROCEEDINGS
ALL PENDING MOTIONS

APPEARANCES:

For the Plaintiffs:

LEON GREENBERG, ESQ.,
DANA SNIEGOCKI, ESQ.

For the Defendants:

ESTHER C. RODRIGUEZ, ESQ.

RECORDED BY: FRANCESCA HAAK, COURT RECORDER

1 Las Vegas, Nevada - Wednesday, November 18, 2015, 9:03 a.m.

2 * * * * *

3 DISCOVERY COMMISSIONER: Murray.

4 MS. SNIEGOCKI: Good morning. Dana Sniegocki, for the Plaintiffs.

5 DISCOVERY COMMISSIONER: Good morning.

6 MR. GREENBERG: Good morning, Your Honor. Leon Greenberg, for the
7 Plaintiffs.

8 DISCOVERY COMMISSIONER: Good morning.

9 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez, for the
10 Defendants.

11 DISCOVERY COMMISSIONER: Okay. So I know the attorneys know this,
12 but I just need to say it based on what I reviewed in this particular case, and that is as a
13 lawyer you do have responsibility for the client, and even though we can't always control
14 what other people do, we have to be able to control our client in deposition, and, Ms.
15 Rodriguez, you did not do that.

16 I don't know if I would have had more success. I'm not sure anyone in this
17 room would have had more success, but, unfortunately, what it did was it caused a problem
18 in the process, and I'm concerned about how this case ultimately gets prepared for trial.

19 I understand depositions are very difficult for lay people, and certain
20 personalities don't always work very well with this deposition process, but that's something
21 the lawyer has to be able to deal with.

22 It was inexcusable, what your client called Plaintiff's counsel during the
23 deposition, which I will not repeat in open court. Inexcusable, almost to the point where I'm
24 not sure he should be allowed to be a Defendant in the 8th Judicial District Court -- that's
25 how serious this is -- because I have no confidence in what he's -- how he's answering

1 questions. That's the problem. It's not just the very childish retort, even if Plaintiffs'
2 counsel brings that out in a deponent, which I read the deposition. I didn't think the
3 questions were inappropriate. I thought the answers were somewhat evasive, so I actually
4 would have done exactly what Plaintiffs' counsel did and reask the question or try to clarify
5 it. I have to say, at least from reading the transcript, I didn't see it, I didn't hear it, but it
6 sounded to me like Plaintiffs' counsel kept his temper in check and tried to just ask his
7 questions. Now, again, I'm reading a transcript. I'm not hearing the dynamics of the voices
8 or the tones or anything like that.

9 How are we going to effectively resolve this case? That's really the question I
10 have. And how do we do it in a way where the information can be exchanged and decisions
11 can be made regarding the wage loss claim that's been asserted in a meaningful manner. The
12 motion to extend the discovery deadlines I'm granting. I'm going to give you new deadlines
13 on phase 2 liability and damages, which I intended to do all along.

14 I read the opposition last night, Ms. Rodriguez, but it's, again, there's a
15 disconnect because the reason that we are delayed in the discovery is not because the
16 Plaintiffs haven't been prosecuting their case as we -- and I even agreed that some of the
17 discovery had to wait till after the class certification. I don't know if you've received your
18 order on that yet. I suspect you will soon. -- after the class certification ruling has been
19 made, and to see what discovery is left to do after class certification, in addition to which we
20 have been working at every hearing to get the wage support for the taxicab drivers from your
21 client. And I had ordered some depositions so that we could make a decision on how to pull
22 the information off the computer so that the Plaintiff could have that information.

23 And it turns out that it's not that big of a deal, with all due respect. And, as
24 Mr. Morgan explained, it's not a problem to pull the documents off the computer. You don't
25 need to write a special program for it. You don't need a special password.

1 And, Ms. Rodriguez, your client should be able to get that information off his
2 own computer, and I'm gonna require him to do that. Whether he needs Mr. Morgan's
3 assistance or not, I don't know, but that's your issue. You'll have to deal with that. But I
4 expect all the documents on the cab manager program to be turned over to the Plaintiff, and I
5 don't know how else to say that. I know that there are concerns about, you know,
6 employment and identification, but at some point I suspect we're gonna have to know who
7 all the taxicab drivers are and what they were paid.

8 So we didn't really need to take Mr. Morgan's deposition. We just needed the
9 Defendant to download the information or print it out from the computer.

10 MR. GREENBERG: Well, Your Honor, just to be clear, a printout is not what
11 we need here because it won't be able to be analyzed or used. The materials are kept in
12 electronic form, and under Rule 26 I am entitled to them in the same form they are stored in,
13 which is electronic data files.

14 There's essentially two ways to produce the information electronically, Your
15 Honor. We can either cooperatively extract particular portions of the information -- we're
16 interested in activity information, information that's gonna tell us the times and dates that
17 certain activities were undertaken --

18 DISCOVERY COMMISSIONER: Well --

19 MR. GREENBERG: -- by certain drivers.

20 DISCOVERY COMMISSIONER: -- now's not the time to be vague. What
21 activities are you specifically talking about --

22 MR. GREENBERG: Well, as --

23 DISCOVERY COMMISSIONER: -- because right now all I really think I
24 need to do is give you the documents that are on the cab manager program that pertain to this
25 particular Defendant.

1 MR. GREENBERG: Well --

2 DISCOVERY COMMISSIONER: That's what you need.

3 MR. GREENBERG: You mean particular Plaintiff perhaps, Your Honor.

4 DISCOVERY COMMISSIONER: Or, well --

5 MR. GREENBERG: Yes.

6 DISCOVERY COMMISSIONER: No.

7 MR. GREENBERG: Oh.

8 DISCOVERY COMMISSIONER: All the -- don't you want all the taxicab
9 driver information?

10 MR. GREENBERG: That is correct, Your Honor, and there's at least two time
11 intervals that may be recorded. There's one when they start a shift and a trip sheet is printed;
12 that's on Exhibit B of my supplement, that's at the top of the document. And there is also a
13 time when meter totals are set into the CAB Manager system at the conclusion of their shift,
14 okay?

15 DISCOVERY COMMISSIONER: So why can't we just print all those
16 documents out?

17 MR. GREENBERG: Well, Your Honor, printing them out in a static paper
18 form is not going to allow me to conduct any type of appropriate analysis as to what they
19 show.

20 DISCOVERY COMMISSIONER: What analysis do you need?

21 MR. GREENBERG: I need to know what the interval is between the first time
22 and the second time for hundreds of drivers, Your Honor, for --

23 DISCOVERY COMMISSIONER: I don't understand what you're talking
24 about.

25 MR. GREENBERG: Your Honor, the purpose of the production is to try to

1 determine the hours these drivers worked. Defendants did not keep records as to the hours
2 they worked.

3 DISCOVERY COMMISSIONER: But they enter them -- they enter that data
4 in the CAB Manager program.

5 MR. GREENBERG: It is our belief that the CAB Manager system will have
6 times recorded, when they started and stopped work, yes.

7 DISCOVERY COMMISSIONER: Right.

8 MR. GREENBERG: That is our hope, Your Honor, okay?

9 DISCOVERY COMMISSIONER: Well, that seems to be what Mr. Morgan
10 said.

11 MR. GREENBERG: Well --

12 MS. RODRIGUEZ: Respectfully, Your Honor --

13 MR. GREENBERG: -- to be --

14 MS. RODRIGUEZ: -- it does not.

15 MR. GREENBERG: -- to be perfectly honest, Your Honor, Mr. Morgan
16 wasn't sure, okay, but he said it may. So the point is we need to find out. And he said: I can
17 go look and find out. Okay? And we could have a cooperative process, Your Honor,
18 whereby we agree to have the materials reviewed and produced.

19 The alternative process, Your Honor, is just they produce everything. They
20 copy the hard drive, the bulk production so to speak, which Mr. Morgan said is easily done
21 as well.

22 Your Honor, in the normal case I would be very averse to getting the bulk
23 production because it is more burdensome for me, okay, and in other cases where I get
24 cooperation from Defendants we sit down and we cooperatively figure out, well, this is the
25 portion of the database we need. It's usually a very small portion of the information that's

1 actually in there, and we --

2 DISCOVERY COMMISSIONER: How can we describe that small portion?

3 MR. GREENBERG: It would be any record of times that taxi drivers or
4 taxicabs are reported as engaging in particular activities and particular dates. Okay.

5 DISCOVERY COMMISSIONER: I'm sorry. You'll need to speak louder.

6 Any records and times of taxicab --

7 MR. GREENBERG: Of taxicabs or taxi drivers engaging in particular
8 activities at particular times, okay, and the record of which drivers were operating which
9 taxicabs on --

10 DISCOVERY COMMISSIONER: When you say particular activities and
11 particular times, are you talking about particular cab fares or routes --

12 MR. GREENBERG: No, no, Your Honor. Particular -- the CAB Manager
13 system may record, for example, that cab number 1 went out at 7:00 in the morning.

14 DISCOVERY COMMISSIONER: Okay.

15 MR. GREENBERG: But perhaps it doesn't tell us a time for driver Smith
16 starting at 7:00 in the morning, but the CAB Manager system may tell us that Smith was
17 driving cab number 1 on that date.

18 DISCOVERY COMMISSIONER: Okay.

19 MR. GREENBERG: That's why I want to know which drivers are associated
20 with which cabs, and I want the time records for both the cabs and the drivers because they
21 may exist for the cabs but not the drivers, but I may be able to trace it to the driver through
22 the connection of the driver to the particular cab. They know which driver's driving which
23 cab in the system because they, obviously, they keep that information and follow purposes,
24 and so forth, Your Honor.

25 So that's what we're seeking, Your Honor. If the Court is inclined to direct

1 Defendants to cooperatively have the CAB Manager database reviewed and produce those
2 records in a computer data file format, it could be Excel, it could be CSV, it could be any
3 number, you know. There's any number of, you know --

4 DISCOVERY COMMISSIONER: I'd like to --

5 MR. GREENBERG: -- computer data form.

6 DISCOVERY COMMISSIONER: -- start there instead of doing a complete
7 copy of the hard drive because I think that that is going to be burdensome on you, and I
8 certainly think Mr. Morgan sounds like a very reasonable person, I mean from his
9 deposition. I don't know, you know, what -- I mean, he wants to protect his program. I
10 understand that. I want to protect his program. But the information that's contained therein,
11 that pertains to the issues in this case -- and I think the Court held it was a four-year statute
12 of limitations, right?

13 MR. GREENBERG: That is correct, Your Honor.

14 DISCOVERY COMMISSIONER: So we need to go back four years, and we
15 need -- and I can't remember the date. Is it going to be 2011? I can't --

16 MR. GREENBERG: Well, it would be actually 2008, Your Honor.

17 DISCOVERY COMMISSIONER: 2008.

18 MR. GREENBERG: And we need to move --

19 DISCOVERY COMMISSIONER: Okay.

20 MR. GREENBERG: -- forward as well because the class claims are
21 continuing through 2014.

22 DISCOVERY COMMISSIONER: I understand that. I'm just trying to figure
23 out the first start date. Can you give me the first start date in --

24 MR. GREENBERG: It would be October --

25 MS. SNIEGOCKI: Eleventh, I think.

1 MR. GREENBERG: -- 11, 2008. That -- okay.

2 DISCOVERY COMMISSIONER: I remember an 11.

3 MR. GREENBERG: Yeah.

4 DISCOVERY COMMISSIONER: I just couldn't -- okay. So October 11th,
5 2008, to the present time.

6 MR. GREENBERG: And, yes, just to note, Your Honor, Mr. Morgan told me
7 at the deposition he was very distressed at being called in to this dispute, and I do think he's
8 a reputable man who wants to do the right thing. I have confidence in his credibility and his
9 forthrightness.

10 Unfortunately, I don't have confidence in the Defendants, which is the reason
11 why I will just state for the record, Your Honor, I would actually prefer to have the mass data
12 production in this case, which is normally not my preference, simply because I don't believe
13 the Defendant's conduct --

14 DISCOVERY COMMISSIONER: I just think we open up too many areas,
15 and under the Schlatter decision, even though it's a personal injury case, I don't believe that
16 just because you're either involved in a lawsuit or you're bringing a lawsuit, it opens your
17 whole business or your own personal life up to everything, and it makes me a little bit
18 concerned about doing that.

19 But I will tell you this. If defense comes back and says there's nothing on
20 there, then I'm gonna make them turn over the hard drive.

21 MS. RODRIGUEZ: Your Honor, may I --

22 DISCOVERY COMMISSIONER: Because I don't believe it.

23 MS. RODRIGUEZ: May I respond to this?

24 DISCOVERY COMMISSIONER: Yes.

25 MS. RODRIGUEZ: Because this is the first time that Mr. Greenberg will

1 specify -- and I think it's only 'cause Your Honor is pressing him -- as to what he wants from
2 there because up until this point --

3 DISCOVERY COMMISSIONER: But Ms. --

4 MS. RODRIGUEZ: -- that's all he's wanted, is just to plug into the data.

5 DISCOVERY COMMISSIONER: But Ms. Rodriguez --

6 MS. RODRIGUEZ: And there's been no --

7 DISCOVERY COMMISSIONER: -- you should know what he wants. You're
8 defending the case. You know what the allegations are. You should have gone to your
9 client, told him to get that information on a disk or some type of electronic storage unit right
10 away.

11 MS. RODRIGUEZ: Respectfully, Your Honor, I am going to do my best, but I
12 don't know what Your Honor read in the deposition because --

13 DISCOVERY COMMISSIONER: I read the whole --

14 MS. RODRIGUEZ: -- I think it's --

15 DISCOVERY COMMISSIONER: -- deposition.

16 MS. RODRIGUEZ: I think it's gonna be very difficult to -- he's still a little
17 ambiguous about hours pertaining to all activities because I think -- I mean, I'm happy to do
18 that. I'm happy to give him a printout on that, if I can.

19 DISCOVERY COMMISSIONER: You need to --

20 MS. RODRIGUEZ: But it's not as --

21 DISCOVERY COMMISSIONER: -- download the information on either -- I
22 don't know -- a flash drive, a disk. What is your preference?

23 MR. GREENBERG: Your Honor --

24 MS. RODRIGUEZ: But he's never wanted that.

25 MR. GREENBERG: -- a portable --

1 DISCOVERY COMMISSIONER: Well, that's what we're gonna get. That's
2 where we're gonna start. And if there's nothing useful on that, then I'm gonna have you turn
3 over the hard drive.

4 Yes.

5 MR. GREENBERG: In terms of media, Your Honor, it's a question of the
6 size. What they call a thumb drive would be sufficient. I can give them one. It's \$50, and it
7 stores many gigabytes of data, portable hard drive. If they have mechanical issues, I'm
8 happy to cooperate with them on it. I don't think that should be an issue, Your Honor.

9 DISCOVERY COMMISSIONER: Okay.

10 MR. GREENBERG: I understand Your Honor's approach. I think it's
11 perfectly appropriate. I appreciate Your Honor taking the time to understand the issues here
12 in respect to this.

13 I would just bring a sort of parallel or same application to this other set of
14 electronic data.

15 DISCOVERY COMMISSIONER: The QuickBooks.

16 MR. GREENBERG: The QuickBooks records, which is essentially the same
17 thing, Your Honor. What Defendants have last advised me of is that, well, we don't have an
18 obligation to make a report from the QuickBooks, which, you know, think of the
19 QuickBooks as a file cabinet that contains lots of different stuff and there's a drawer that
20 says P-for-payroll, which is what I want, not the I drawer with invoices or whatever it is.

21 DISCOVERY COMMISSIONER: That is the best way I've heard that
22 described.

23 MR. GREENBERG: Well, yes, Your Honor.

24 DISCOVERY COMMISSIONER: Maybe you need to give a CLE on it.

25 MR. GREENBERG: Well --

1 DISCOVERY COMMISSIONER: That would be helpful --

2 MR. GREENBERG: Okay. Thank --

3 DISCOVERY COMMISSIONER: -- for the Commissioner.

4 MR. GREENBERG: Thank you, Your Honor. So in QuickBooks you don't --
5 it's not like a physical cabinet, so you don't go open drawer P and take out the payroll file
6 and say, here, copy this and give it to the other counsel. You have to run a report. That's the
7 interface in the QuickBook system --

8 MS. RODRIGUEZ: That's what I've offered to do.

9 MR. GREENBERG: -- to extract that information, Your Honor.

10 DISCOVERY COMMISSIONER: And why didn't you just do it? Why --

11 MS. RODRIGUEZ: Because he's not -- he doesn't want that. He wants to
12 plug in and get a copy of the complete QuickBooks file.

13 MR. GREENBERG: Your Honor --

14 MS. RODRIGUEZ: And I've offered that, and I'm happy to do that, Your
15 Honor.

16 DISCOVERY COMMISSIONER: Ms. Rodriguez, if you had done that up
17 front, and just taken care of business, and if they had continued to push you for everything,
18 then I would have granted your protective order. But you didn't even try to put the
19 information together, what you knew would be relevant, what you knew what would be
20 relevant. You didn't even try, and that's not acceptable to me.

21 MS. RODRIGUEZ: Well --

22 DISCOVERY COMMISSIONER: And then you oppose their motion to
23 extend the discovery deadlines saying they haven't done anything when you have been
24 before me multiple times, and I have instructed certain things to happen, which apparently
25 were unnecessary because the information was available to your client without having to

1 write some sort of special code to retrieve it. So it would probably behoove you today not to
2 push me on these issues because I'm really unhappy, and I'm really unhappy with your
3 client.

4 MS. RODRIGUEZ: Your Honor, I am not going to attempt to push you. I
5 understand your frustration, but please understand that I was just served with all of these
6 issues Monday afternoon. I didn't even know that this was --

7 DISCOVERY COMMISSIONER: No. That is --

8 MS. RODRIGUEZ: -- all -- a lot of these were gonna be --

9 DISCOVERY COMMISSIONER: -- incorrect because we have been talking
10 about these issues at every hearing we've had.

11 MS. RODRIGUEZ: Your Honor, again, the information, if there is anything
12 contained in these things, have nothing to do with the named Plaintiffs, and that is one issue
13 that I've continued to bring up before Judge Cory and that he made representations --

14 DISCOVERY COMMISSIONER: Well, I'm --

15 MS. RODRIGUEZ: -- that --

16 DISCOVERY COMMISSIONER: -- going to tell you I'm not concerned
17 about it. You're gonna give the data over today.

18 MS. RODRIGUEZ: Okay.

19 DISCOVERY COMMISSIONER: So here's what I'm gonna do. I'm gonna
20 grant the motion to compel. I am not going to require the Defendant to turn over his entire
21 hard drive, but I am going to require him to put on some sort of searchable drive, just thumb
22 drive, whatever is available, all the information that pertains to the cabs, and the cab drivers,
23 and the activities on any given day starting October 11th, 2008, to the present time. And I am
24 going to accept my -- at least Plaintiffs' understanding through the deposition, and from what
25 I could ascertain, that it's not that difficult to be able to download this information.

1 You don't need to turn over the entire hard drive, but the information that
2 pertains to the cabs and the cab drivers needs to be turned over. Now, I don't know if there's
3 a searchable -- if there's a way to do that on that program.

4 MR. GREENBERG: Your Honor, the data we're talking about, again, would
5 be produced in a generic data file format, which could include Excel or CSV, which is
6 another data file format, so it's not like a picture. It's not like a printed image. It's not like a
7 document per se. It's a form of data, computer data file production. I have that. I can give it
8 to a computer savvy person. They can then go in and do the analysis as to what the times
9 show, what the driver -- the identification --

10 DISCOVERY COMMISSIONER: But I need to give Ms. Rodriguez more
11 instruction on how to pull it off the CAB Manager. That's what I'm trying to figure out.
12 Because do we have daily entries? Do we plug in cab driver? Do we plug in the cab? I
13 mean, I need to be able to articulate how they're going to pull the data off the CAB Manager.

14 MR. GREENBERG: Well, Your Honor, we had a discussion with Mr. Morgan
15 actually back in March when this inspection was terminated, and Mr. Morgan was very clear
16 that, you know, he was competent and capable of extracting the relevant tables and portions
17 of the tables that would contain that information. I am --

18 DISCOVERY COMMISSIONER: So what we need to do, Ms. Rodriguez, is
19 have you work with Mr. Morgan with your particular Defendant, have him assist you all in
20 pulling that information off, and specifically the compensation for the drivers and the routes
21 that they were driving on any given day in question starting October 11, 2008, or where the
22 cab was I guess, you know, what cab was assigned to what route.

23 MR. GREENBERG: Well, right, Your Honor. The issue is not in the CAB
24 Manager system as an actual compensation paid to the drivers; that's in the QuickBooks
25 system.

1 But in the CAB Manager system it's a question of records of times that can be
2 associated with the drivers. For example, there's barcode scans that are conducted of the
3 drivers' trip sheets and their TA cards. If those times are recorded and preserved in the CAB
4 Manager system, it'll tell us when these guys were maybe working, okay?

5 DISCOVERY COMMISSIONER: Well, now, I wrote this down from the
6 deposition that Mr. Morgan said the CAB Manager software is designed to calculate
7 commission compensation for the drivers. That's what it's designed to do.

8 Now, I don't know if this particular defendant used it for that purpose. I just
9 don't know.

10 MR. GREENBERG: I understand, and, Your Honor, what they calculated
11 actually isn't relevant. It's what they paid them. What they paid them is in the QuickBooks
12 system. That's why -- I'm trying to make it easier, Your Honor --

13 DISCOVERY COMMISSIONER: Right.

14 MR. GREENBERG: -- and avoid extraneous material. So information
15 regarding the fares that were charged, or the commissions that were paid in the CAB
16 Manager system we don't need. We just need anything that records a time that can be
17 associated with the driver or to a taxicab and through the taxicab back to a driver. That's
18 what we need, Your Honor, so we can figure out what hours these people were working.
19 That's the whole purpose of this undertaking, Your Honor.

20 DISCOVERY COMMISSIONER: So, Ms. Rodriguez, if I were you, I would
21 work with Mr. Morgan. He seemed to understand. I think -- at least my recollection is when
22 I read the transcript -- he seemed to understand what he could -- what information could be
23 accessed. So let's take care of that with respect to the CAB Manager and have you produce
24 that information regarding the location of a cab or a cab driver on any given day in question
25 starting October 11, 2008, through the present time; that's number one.

1 And then on the QuickBooks you need to produce -- and, again, in an
2 electronic searchable format or at least an electronic format -- the payroll records.

3 MR. GREENBERG: Yes, Your Honor, and QuickBooks can directly export
4 information to Excel. That's a common function that QuickBooks is used for. So, again, in
5 an electronic file format.

6 There is one remaining issue of discovery here that I was consulting with
7 Defendants' counsel, which concerned Mr. Nady's testimony as to these four pay periods
8 that they went in and they actually reviewed their records and compiled statements for each
9 driver as to the hours worked. And his testimony in the deposition at page 238 is there's an
10 Excel with a line for each driver, which has the number of hours they worked as well as
11 other information -- compensation -- for the pay period. Those are the kind of records, Your
12 Honor, that would have complied with the statute which Defendants otherwise don't have,
13 okay?

14 I spoke with Defendants' counsel this morning. She says she's not aware that
15 this document exists. She does not believe necessarily that Mr. Nady's testimony in the
16 deposition was correct about that. I would like as part of the order for them to be required to
17 give some sort of declaration clarifying this. Either Mr. Nady's gonna have to say in a
18 declaration his testimony was wrong and what the reality is, or that we don't have this
19 anymore, and it was destroyed.

20 DISCOVERY COMMISSIONER: Well, it might have been a document too. I
21 couldn't tell, and, again, I did read it, but my memory's not perfect. I thought that there was
22 some information put together for the DOL, Department of Labor.

23 MS. RODRIGUEZ: There was.

24 DISCOVERY COMMISSIONER: So I'm wondering if that's what he was
25 referring --

1 MS. RODRIGUEZ: And that's what I --
2 DISCOVERY COMMISSIONER: -- to.
3 MS. RODRIGUEZ: Did you -- just to clarify, you got my opposition --
4 DISCOVERY COMMISSIONER: This morning.
5 MS. RODRIGUEZ: -- that I sent.
6 DISCOVERY COMMISSIONER: Right. I looked --
7 MS. RODRIGUEZ: Yeah.
8 DISCOVERY COMMISSIONER: -- at it this morning.
9 MS. RODRIGUEZ: Right. And I had less than 24 hours to get that to you, so
10 I apologize for giving it to you so late, but I was served on Monday afternoon with his --
11 DISCOVERY COMMISSIONER: I think I --
12 MS. RODRIGUEZ: -- 200 pages.
13 DISCOVERY COMMISSIONER: -- had every -- I think I had previously said
14 you all could supplement your briefs after, so.
15 MS. RODRIGUEZ: My understanding was that you asked for the depo
16 transcript, so I was quite surprised to receive this number of issues, including this one, which
17 I don't think is properly before you because he's just talked to me about it for the first --
18 DISCOVERY COMMISSIONER: Well --
19 MS. RODRIGUEZ: -- time today.
20 DISCOVERY COMMISSIONER: -- I want you to have -- you've had your
21 2.34 on it, so I think you need to follow up with your client on the issue.
22 MS. RODRIGUEZ: I'll be happy to, Your Honor.
23 DISCOVERY COMMISSIONER: And that's all I'm gonna require you to do
24 today, is just follow up with your client, try to determine, you know, if there is such a
25 document or if it was prepared for the Department of Labor investigation and he no longer

1 has it.

2 Who is the lawyer on that DOL investigation, do you know, for him, or was
3 He --

4 MS. RODRIGUEZ: Oh, I represented --

5 DISCOVERY COMMISSIONER: You were?

6 MS. RODRIGUEZ: -- Mr. Nady, yes.

7 DISCOVERY COMMISSIONER: Okay, so --

8 MS. RODRIGUEZ: And A Cab.

9 DISCOVERY COMMISSIONER: -- would you not have it in your file?

10 MS. RODRIGUEZ: I do not have that, no. I don't. What I have I gave Mr.
11 Greenberg, and I gave you a redacted copy just because it was used for settlement purposes
12 between the two of us.

13 DISCOVERY COMMISSIONER: Okay. So what I would recommend that
14 you do is follow up with your client. I'm gonna set you -- you're coming back in January, so
15 I won't do anything further with that. I'll let you have the opportunity to work with your
16 client, but I do want an answer. And with regard to the specific testimony he gave in his
17 deposition, you need to talk to him about that and clarify it, at least have a clarification for
18 me when you come back.

19 MS. RODRIGUEZ: Okay.

20 DISCOVERY COMMISSIONER: But I'm not gonna order anything today on
21 it, other than you need to follow up and --

22 MS. RODRIGUEZ: Sure.

23 DISCOVERY COMMISSIONER: -- and have an answer on it. And if that
24 document or those documents do exist, they need to be produced.

25 MR. GREENBERG: Your Honor, finally, there's a question of the cost for

1 these depositions that I was assessed as well as --

2 DISCOVERY COMMISSIONER: I'm going to address that --

3 MR. GREENBERG: Yes.

4 DISCOVERY COMMISSIONER: -- in a minute. I want to get through
5 everything else.

6 MR. GREENBERG: Yes, Your Honor.

7 DISCOVERY COMMISSIONER: I have a very large calendar today.

8 So the motion to compel is granted within the following parameters. The
9 relevant information will be pulled off of the CAB Manager program into a electronic format
10 that is usable and will be provided to Plaintiffs' counsel. Defendants' counsel is instructed to
11 work with Mr. Morgan so that you can be assured that the correct information is pulled off. I
12 think there's enough discussion of this in the deposition that you should be able to ascertain
13 what it is.

14 I'll have Plaintiffs' counsel prepare the Report and Recommendation, so
15 maybe you can set forth therein exactly what you're trying to have them pull off of the CAB
16 Manager. I know you articulated it better than I'm going to rearticulate it, so I'm not gonna
17 do that, but you need to put that in the Report and Recommendations.

18 Number two, with respect to the QuickBooks, the payroll records need to be
19 pulled off the QuickBooks and, again, put into electronic format. And the dates that were --
20 the date -- timeframe that we are talking about for both sets of data is October 11th, 2008, to
21 the present time, and that's the timeframe that we're looking at.

22 With respect to fees and costs --

23 MS. RODRIGUEZ: Your Honor, may I be heard on that because I didn't have
24 an opportunity to speak, and I'll be very brief, but I just want you to understand as you
25 acknowledge that a lot of this is not captured in the transcript, but Mr. Greenberg has made

1 this whole process extremely antagonistic with my client. He has personally told him that he
2 intends to bankrupt him, and he's made -- he's the one that's made this personal, so that was
3 a --

4 DISCOVERY COMMISSIONER: But that wasn't --

5 MS. RODRIGUEZ: -- very --

6 DISCOVERY COMMISSIONER: -- on the record.

7 MS. RODRIGUEZ: No, I understand that, Your Honor.

8 DISCOVERY COMMISSIONER: What was on the record was --

9 MS. RODRIGUEZ: I don't think he'll deny saying that to him, and, as Your
10 Honor knows, we -- this is following a site inspection that went very badly, that these two --
11 and you asked --

12 DISCOVERY COMMISSIONER: But it didn't even have to happen, Ms.
13 Rodriguez, that's the point. We didn't have to go there because the information could have
14 been pulled off of the CAB Manager system .

15 MS. RODRIGUEZ: Not --

16 DISCOVERY COMMISSIONER: And that is your responsibility.

17 MS. RODRIGUEZ: Not how he wants it, and that's what I've --

18 DISCOVERY COMMISSIONER: But you're not listening. It doesn't matter
19 how he wants it. It matters how you can pull off the information that is clearly relevant to
20 this lawsuit under 16.1 and provide it. You do your part. You pull off everything that's
21 relevant. They don't like how it's presented to them, they can bring a motion, and you can
22 bring a motion for a protective order saying to me we have given them all this information
23 from CAB Manager, from QuickBooks. This is all we can do. This is the format we can do
24 it in.

25 But to do nothing is not an option, and that's what you have done to date, is

1 zero --

2 MS. RODRIGUEZ: Well, that's not --

3 DISCOVERY COMMISSIONER: -- in terms of pulling off the documents
4 that are on the CAB Manager and the QuickBooks. You've given them things that you think
5 satisfy, but when it comes to discussing the electronic information that's relevant, that's
6 stored on those programs, with all due respect, unless you've produced something that I'm
7 unaware of.

8 MS. RODRIGUEZ: Your Honor, I've produced 1,800 pages to them, and the
9 first time we were in here you --

10 DISCOVERY COMMISSIONER: But it -- was it --

11 MS. RODRIGUEZ: -- indicated that I was --

12 DISCOVERY COMMISSIONER: -- from the CAB Manager program? Was
13 it from the QuickBooks program?

14 MS. RODRIGUEZ: It's the same thing that is contained in both of those
15 programs.

16 DISCOVERY COMMISSIONER: Well, we're gonna find out if that's --
17 we're gonna find out.

18 MS. RODRIGUEZ: And Your Honor acknowledged that. You told Ms.
19 Sniegocki she'd -- I don't have to give it to them in the format that they prefer as long as I'm
20 giving it to them, and I did give that to them.

21 DISCOVERY COMMISSIONER: But, see, here's the problem. There's a
22 disconnect for me between what you've given them in the past, which, you know, you've
23 given them the -- oh, what do they call it?

24 MS. RODRIGUEZ: The trip sheets, the paystubs.

25 DISCOVERY COMMISSIONER: The trip sheets, right.

1 MS. RODRIGUEZ: All payroll records.

2 DISCOVERY COMMISSIONER: But what's on the electronic record?

3 MS. RODRIGUEZ: The paystubs, the trip sheets, the same things.

4 DISCOVERY COMMISSIONER: Well, then why didn't you just hand it
5 over? I mean --

6 MS. RODRIGUEZ: I did hand it over, Your Honor.

7 DISCOVERY COMMISSIONER: Okay. You know what? I -- my concern
8 right now is that, based on everything that has gone on, I don't know if what's on that
9 electronic -- in those electronic programs are going to comport with what is --

10 MS. RODRIGUEZ: And I think you'll be satisfied that it will.

11 DISCOVERY COMMISSIONER: Okay. Let's find that out.

12 MS. RODRIGUEZ: I'm happy to put it on a thumb drive for them.

13 DISCOVERY COMMISSIONER: Okay.

14 MS. RODRIGUEZ: And I'm happy to demonstrate to Your Honor --

15 DISCOVERY COMMISSIONER: Perfect.

16 MS. RODRIGUEZ: -- that they're one in the same.

17 DISCOVERY COMMISSIONER: Perfect. So in light of that, what I am
18 going to do today in terms of fees and costs is this. This is the only thing I'm willing to do
19 today. Everything else I'm going to have to defer until the time that I actually have the
20 opportunity to see if it's the same thing or not, okay? I am going to do that.

21 MS. RODRIGUEZ: Thank you.

22 DISCOVERY COMMISSIONER: And if it is the same thing, and there's no
23 discrepancies, then we may just call it a day. That doesn't necessarily mean that I'm not
24 gonna deal with the bad behavior of the Defendant driver at deposition -- or the Defendant
25 owner at deposition. I just haven't quite figured out how I'm gonna deal with that yet.

1 MR. GREENBERG: Your Honor spent a lot of time with us. If you're gonna
2 defer that issue, which is what it sounds like you're going to do, I understand. Let me not
3 waste your time pressing it with you right now. I would just point out that the representation
4 other things, that the stuff's been produced on paper, could only be true in terms of some
5 printed pay stubs from the QuickBooks system. Nothing from the CAB Manager system has
6 been produced, Your Honor, just copies of trip sheets. We don't have any data from --

7 DISCOVERY COMMISSIONER: Right.

8 MR. GREENBERG: -- CAB Manager.

9 DISCOVERY COMMISSIONER: And the data or -- that's on the CAB
10 Manager system may be consistent with everything else. I just don't know that because I
11 haven't seen it.

12 MR. GREENBERG: Yes.

13 DISCOVERY COMMISSIONER: This is the one thing I am willing to
14 reimburse you on though today, and that is for Mr. Morgan's deposition, because I don't
15 think it was necessary or at least if it -- it may have been necessary, but it did confirm that
16 we don't need a special code, which was represented by Defendant we don't have to write a
17 special program, we can pull the information off, and it would have been a lot more efficient
18 to do that than to go through this entire process.

19 However, I do think that you did receive some information that's helpful from
20 the deposition, so I don't think it was all a worthless process. But I calculated, with the rate
21 of -- your rate, Mr. Greenberg. I took the 2.8 hours of attendance, the 2.5 of prep, and the
22 1.2 of travel into account, and -- I'm trying to think -- I came up with a number though that
23 doesn't match that. I came up with a number of \$638.95, and that's not --

24 MR. GREENBERG: That is the court reporter amount, 638.95, is for the court
25 reporter.

1 DISCOVERY COMMISSIONER: That's the court reporter amount? Okay.
2 So that amount of money, the court reporter, for the transcript, plus -- and I did not do the
3 math, and I think it was, Mr. Greenberg, it was you who took the deposition, prepared for it,
4 attended it, travelled to it. That's all I'm going to do.

5 MR. GREENBERG: Yes, Your Honor. The question is are we going to -- are
6 you going to assess a specific amount in respect to that --

7 DISCOVERY COMMISSIONER: Well --

8 MR. GREENBERG: -- time expenditure?

9 DISCOVERY COMMISSIONER: -- I've got -- I guess I need to do the math.

10 MR. GREENBERG: Or at least give us a formula and we'll put it in --

11 DISCOVERY COMMISSIONER: It's \$400 an hour for you.

12 MR. GREENBERG: Yes, Your Honor.

13 DISCOVERY COMMISSIONER: And I'm accepting your 2.8 hours for
14 attending the deposition, 2.5 for the prep, and 1.2 for the travel, and if you could do the math,
15 I would appreciate it.

16 MR. GREENBERG: Okay. I will put that --

17 DISCOVERY COMMISSIONER: \$400 and hour.

18 MR. GREENBERG: That is how it will be calculated and put into the order. I
19 will specify --

20 DISCOVERY COMMISSIONER: And then I'll reimburse you for your
21 transcript.

22 MR. GREENBERG: Yes, Your Honor.

23 DISCOVERY COMMISSIONER: The 638.95.

24 MR. GREENBERG: That will all be itemized specifically with the formula --

25 DISCOVERY COMMISSIONER: Okay.

1 MR. GREENBERG: -- in the recommendation, Your Honor.

2 DISCOVERY COMMISSIONER: That's all I'm willing to do today. And I
3 think that's fair because I think this could have been avoided had discussions between the
4 Defendant and Mr. Morgan occurred, and Mr. Morgan could have pulled off everything that
5 was relevant to this case.

6 Now, if it turns out there's absolutely nothing on that CAB Manager program,
7 it doesn't change, you know, my decision because then it was a worthless deposition, I mean,
8 if there's nothing on it. But I think this could have been avoided with some effort by the
9 Defendant working with Mr. Morgan.

10 All right. So that's what I'm willing to do today, not going to assess any other
11 fees or costs. I'm still -- have under advisement how I'm going to handle the Defendant
12 driver's conduct at deposition and the fact that apparently it was not finished, although we
13 went over seven hours, so I'm not sure I'm willing to continue it, but I'm going to have to
14 figure that out. And I also want it to be a meaningful process, and I'm concerned that it's
15 going to turn into -- it may be that I have to attend that deposition when we finish it up. I'm
16 not sure yet. I'm still thinking. I apologize for that, but I'm -- I have to think it through a
17 little bit more. My plan is to bring you all back January 6, 2016, at 9 a.m.

18 Now, I do have to grant your motion to extend the discovery deadline since
19 currently that date is after your current trial date. I am granting that motion; it was always
20 my intention to do that. I was hoping we'd have the class certification issue resolved. I think
21 we will in short order. But my plan was always to extend the phase 2 liability and damages
22 discovery, so that's what I'm going to do today, or at least that's kind of how I characterized
23 it because I think the class certification issue's already fully discovered in to the Judge,
24 right?

25 MR. GREENBERG: Well, Your Honor, Judge Cory actually noted this for

1 last Monday for chambers decision on that. We haven't seen it as yet.

2 DISCOVERY COMMISSIONER: Right.

3 MR. GREENBERG: So we don't a hundred percent know if he's going to
4 approve of the class certification.

5 DISCOVERY COMMISSIONER: Yeah.

6 MR. GREENBERG: If he believes an additional record needs to be presented
7 to him, then presumably we would need to discover more on that. But the overlap between
8 the class discovery and the certification and, as you said, liability and damages of phase 2 is
9 very substantial, so I'm not sure that there's really sort of a wall between these two, Your
10 Honor.

11 In terms of extending the schedule, we also have Mr. Nady now as a personal
12 Defendant, which raises some additional issues in the case. He's gonna have to give a
13 further deposition just on that, Your Honor. So I would --

14 DISCOVERY COMMISSIONER: Well, we'll see. I'm sure there was a lot of
15 overlap.

16 MS. RODRIGUEZ: Absolutely. I mean, Your Honor ordered a PMK depo
17 pertaining to payroll records, and --

18 DISCOVERY COMMISSIONER: 30(b)(6).

19 MS. RODRIGUEZ: -- and -- a 30(b)(6). And, as you can see, there were 23
20 other categories, and then Mr. Greenberg asked things way outside the scope, and that was
21 one of the reasons the depo went seven hours, so --

22 DISCOVERY COMMISSIONER: But I didn't --

23 MS. RODRIGUEZ: -- he's already asked him all of those.

24 DISCOVERY COMMISSIONER: But I didn't really -- all I can say -- and
25 you all know your case much better than I do, but I'm reading the transcript, and I didn't see

1 where the questioning was inappropriate or way off base. I just didn't see it. I thought there
2 was a logical flow to it. But the issue is what do we need to do to complete the deposition of
3 the Defendant owner, if anything, and how we're gonna do it, so I may have to be present.

4 MS. RODRIGUEZ: And, Your Honor, following that timeframe, as you
5 know, there were five additional depositions taken by Mr. Greenberg where he showed up
6 with his camcorder in the witness's face, and you ordered that he was supposed to produce
7 copies of those videos to me. I've asked for 'em twice already, and he has not turned over
8 those videos.

9 MR. GREENBERG: I apologize. They can definitely have copies of the
10 videos.

11 DISCOVERY COMMISSIONER: Will you just please take care of that.

12 MR. GREENBERG: Absolutely, Your Honor. My apologies for the delay.

13 DISCOVERY COMMISSIONER: I'm going to give everybody till the end of
14 the year, which is December 31st of 2015 to provide the information from the CAB Manager
15 program, QuickBooks, and for you to get those videos over to --

16 MR. GREENBERG: Absolutely, Your Honor.

17 DISCOVERY COMMISSIONER: -- the Defendant.

18 MR. GREENBERG: I'll have my staff work on it this week.

19 DISCOVERY COMMISSIONER: Okay. So the motion to compel is granted
20 within the parameters. I did award certain fees and costs for Mr. Morgan's deposition. I am
21 deferring any additional fees and costs or other types of Rule 37 sanctions until January. I
22 want to see what the compliance is and what those documents show that we need to take a
23 look at. And you don't have to produce a copy to me, but I do expect, Mr. Greenberg, when
24 you come back to see me in January that you tell me if they're consistent with what you were
25 previously given.

1 MR. GREENBERG: Yes, Your Honor. I certainly, in respect to the
2 QuickBooks --

3 DISCOVERY COMMISSIONER: Maybe January 6 is too soon. Maybe we
4 need a little more time. Want to come back and see me January 13th? It's a Wednesday, not
5 a Friday.

6 MR. GREENBERG: That would be fine, Your Honor. And just to state for
7 the record, the only thing that would be consistent would be the QuickBooks information
8 with the printed payroll.

9 DISCOVERY COMMISSIONER: And you did explain that to me before.

10 MR. GREENBERG: Thank you, Your Honor.

11 DISCOVERY COMMISSIONER: I just don't know if what's on the CAB
12 Manager is going to be very enlightening. We'll have to find out.

13 MR. GREENBERG: Your Honor, I don't know either.

14 DISCOVERY COMMISSIONER: Well, it may not be, so we'll find out.

15 MR. GREENBERG: I appreciate Your Honor's patience with us.

16 DISCOVERY COMMISSIONER: All right. So motion to compel is granted
17 within those parameters. Plaintiffs' counsel is going to prepare my Report and
18 Recommendation. Motion to extend discovery is also granted. I'm vacating the 1/4/16 trial
19 date. I am going to give you your other deadlines. I would like to place this case on the June
20 27th, 2016, trial stack. So, in light of that, you know, my only concern now is that if you
21 don't get that information till the 30th, you're gonna need at least 30 days to get your expert
22 reports done I would think.

23 MR. GREENBERG: That's correct, Your Honor, and in terms of a June trial
24 date, I mean, assuming Judge Cory relatively soon grants certification, there's gonna have to
25 be a notice procedure to the class. That's gonna take some time, and as you were pointing

1 out, we would need to finish up the classwide discovery.

2 DISCOVERY COMMISSIONER: Okay.

3 MR. GREENBERG: Presumably there would be use for experts.

4 DISCOVERY COMMISSIONER: So what --

5 MR. GREENBERG: I think June --

6 DISCOVERY COMMISSIONER: What are you suggesting then because your
7 dates won't work.

8 MR. GREENBERG: Yeah. I think a June trial target is a little ambitious,
9 Your Honor. I would suggest something more around August or September would be more
10 sort of --

11 DISCOVERY COMMISSIONER: Probably won't be till October.

12 MR. GREENBERG: Well, then October. I mean, that's heavily --

13 DISCOVERY COMMISSIONER: Okay. So --

14 MR. GREENBERG: -- realistic.

15 DISCOVERY COMMISSIONER: -- when do you think you can reasonably
16 disclose your experts?

17 MR. GREENBERG: I would ask to have an expert disclosure deadline in
18 April, if possible, Your Honor. I think that would be more realistic, given what we're
19 dealing with here, the end of April, and then we would wrap up all of our discovery a couple
20 months thereafter I guess would be the idea.

21 DISCOVERY COMMISSIONER: I need you to work harder than the end of
22 April, and I know you've been working hard, but I need you to move it quicker --

23 MR. GREENBERG: Well --

24 DISCOVERY COMMISSIONER: -- than the end of April.

25 MR. GREENBERG: -- if Your Honor wants to move -- make that March, then

1 you can make it March. I just think, as you were saying, I mean, if I'm gonna be looking to
2 be getting --

3 DISCOVERY COMMISSIONER: How about April 1st?

4 MR. GREENBERG: Your Honor, I will do my best. I promise. I appreciate
5 Your Honor recognizing I have been working hard here.

6 DISCOVERY COMMISSIONER: And I'm not saying Ms. Rodriguez hasn't
7 been working hard.

8 MS. RODRIGUEZ: Thank you, Your Honor.

9 DISCOVERY COMMISSIONER: I think the problem is -- well, I think I
10 know what the problem is, but you're gonna have to work on it. Okay?

11 MR. GREENBERG: Would Your Honor be helped perhaps by briefs
12 submitted prior to the 13th of January?

13 DISCOVERY COMMISSIONER: No. I'm gonna give you dates right now.

14 MR. GREENBERG: Oh, okay.

15 DISCOVERY COMMISSIONER: Because we just cannot -- we cannot drag
16 this out any longer. This is a very, very old case.

17 MR. GREENBERG: Well, Your Honor, there was a stay in the case for about
18 six or nine months, so --

19 DISCOVERY COMMISSIONER: Well, that's --

20 MR. GREENBERG: -- the 41E time has been extended on that basis.

21 DISCOVERY COMMISSIONER: That doesn't --

22 MR. GREENBERG: It still is an old case, Your Honor. I appreciate that. My
23 question was just in respect to the status conference of January 13th, whether the Court will
24 be open or would want some formal report from the parties or briefs from the parties in
25 advance of the status conference.

1 MS. RODRIGUEZ: I would request not because you see what happened with
2 this one -- he turned in 200 pages.

3 DISCOVERY COMMISSIONER: I'm going to give you dates. Motion to
4 extend the discovery is granted. Your close of discovery is June 29th of 2016; last day to
5 amend pleadings, add parties, initial expert disclosure date is April 1st of 2016; your rebuttal
6 deadline is April 29th of 2016; and your dispositive motion deadline is July 29th of 2016. The
7 case will now be ready for trial September 12th of 2016. We'll see when you can get back
8 on --

9 MR. GREENBERG: Yes, Your Honor.

10 DISCOVERY COMMISSIONER: -- your trial setting, and I'll let the Judge
11 know.

12 MR. GREENBERG: Thank you, Your Honor. I am sorry to keep pestering
13 the Court. Again though in respect to the status conference on January 13th, would the Court
14 welcome or allow some status report or supplemental brief?

15 DISCOVERY COMMISSIONER: I will say this.

16 MR. GREENBERG: Yes.

17 DISCOVERY COMMISSIONER: If either side wants to provide me with
18 some additional information, i.e. there's nothing different on the QuickBooks than what we
19 previously provided, or the CAB Manager program doesn't show anything insightful,
20 however you want to, you know, supplement your -- the information is fine.

21 I don't need one to do it first and then somebody to respond. You can do it
22 simultaneously. Just make sure I get it by January 8th, 2016.

23 MR. GREENBERG: Yes, Your Honor.

24 DISCOVERY COMMISSIONER: I need my Report and Recommendation in
25 ten days. Make sure Ms. Rodriguez approves as to form and content. The status check for

CERTIFICATE OF SERVICE

I certify that on October 23, 2020 I served a copy of the foregoing RESPONDENTS' APPENDIX upon all counsel of record by EFLEX system which served all parties electronically.

Dated this 23rd day of October, 2020

/s/ LEON GREENBERG

Leon Greenberg

1 that will be?

2 THE CLERK: January 8th, 11 a.m.

3 DISCOVERY COMMISSIONER: Let's not be here for that.

4 MR. GREENBERG: We won't. Thank you, Your Honor.

5 MS. RODRIGUEZ: All right. Thank you.

6 DISCOVERY COMMISSIONER: Thank you.

7 [Proceeding concluded at 9:47 a.m.]

8 * * *

9 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
10 video recording of this proceeding in the above-entitled case.

11 

12 FRANCESCA HAAK
13 Court Recorder/Transcriber