

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

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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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Supreme Court No. 77050  
Oct 23 2020 02:39 p.m.  
Elizabeth A. Brown  
District Court No. A-13-659926-C  
Clerk of Supreme Court

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

LEON GREENBERG  
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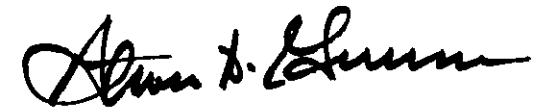
Doc. No.	Description	Vol.	Bates Nos.
1	Plaintiffs' Supplemental Brief Re: Motion to Compel Production of Documents (first heard on 3/18/15) filed November 16, 2015	I	RA00001– RA00191
2	Transcript of Hearing November 18, 2015	I	RA00192– RA00223
3	Order on Discovery Commissioner's Report and Recommendation filed March 3, 2016	II	RA00224– RA00229
4	Transcript of Hearing April 8, 2016	II	RA00230– RA00265
5	Plaintiffs' Motion to Compel Production of Documents filed December 23, 2016	II	RA00266– RA00414
6	Order on Discovery Commissioner's Report and Recommendation filed March 9, 2017	II	RA00415– RA00421
7	Transcript of Hearing May 25, 2017	II	RA00422– RA00442
8	Plaintiffs' Motion to Impose Sanctions Against Defendants for Violating Order of March 9, 2017 and Compelling Compliance with that Order filed July 12, 2017	III	RA00443– RA00496
9	Plaintiffs' Motion for Partial Summary Judgement with Declaration of Plaintiffs' Counsel and Exhibits (through Exhibit "C") filed November 2, 2017	III	RA00497– RA00637
10	Plaintiffs' Motion for Partial Summary Judgement with Declaration of Plaintiffs' Counsel and Exhibits (portion Exhibit "D" only) filed November 2, 2017	IV	RA00638– RA00871
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12	Defendants' Objections to Discovery Commissioner's Report & Recommendations filed November 13, 2017	V	RA01069– RA01088

13	Plaintiffs' Response to Defendants' Objections to Discovery Commissioner's Report & Recommendations filed November 22, 2017	V	RA01089– RA01104
14	Transcript of Hearing September 26, 2018	VI	RA01105– RA01172
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15	Transcript of Hearing September 28, 2018	VI	RA01173– RA01239



CLERK OF THE COURT

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**DISTRICT COURT****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

DISCOVERY  
 COMMISSIONER'S REPORT  
 AND RECOMMENDATIONS

17  
 18 HEARING DATE: January 13, 2016

19 HEARING TIME: 9:00 a.m.

20 Attorney for Plaintiffs Leon Greenberg, Esq., and Dana Sniegocki, Esq., of

21 Leon Greenberg

22 Professional Corporation

23 Attorney for Defendants Esther Rodriguez, Esq., of Rodriguez Law Offices, P.C.

**I.****FINDINGS**

26 1. The matter was before the Discovery Commissioner for a status check on  
 27 compliance on Plaintiffs' Motion to Compel the Production of Documents, which was  
 28 heard by the Court on March 18, 2015, May 20, 2015, and on November 18, 2015, and

1 was heard on that date along with Plaintiffs' Motion to Extend the Discovery Schedule  
2 as well as plaintiffs' request for attorneys' fees and costs in connection with taking the  
3 deposition of James Morgan and defendants' Nev. R. Civ. P. 30(b)(6) witness,  
4 Creighton J. Nady, as requested in Plaintiffs' Supplemental Brief to their Motion to  
5 Compel the Production of Documents.

6 2. As a result of the hearing of November 18, 2015, a Discovery Commissioner  
7 Report and Recommendations was prepared and submitted by Plaintiffs, over the  
8 objections of Defendants. After revising the document to comply with her directions,  
9 the Discovery Commissioner signed the DCR&R on December 11, 2015; and the  
10 document was served upon the parties on December 17, 2015. The DCR&R contained  
11 compliance deadlines of December 31, 2015. Defendants timely filed their objections  
12 to the DCR&R, and requested a District Court hearing on the issues or in the  
13 alternative, requested the District Court modify the order to limit the scope of time and  
14 years outlined by the Discovery Commissioner.

15 3. As of the status check of January 13, 2016, the District Court Judge had neither  
16 signed the DCR&R nor set the matter for hearing. On January 8, 2016 the District  
17 Court Judge entered a minute order granting class action certification in this matter  
18 and directing the submission of final Order for signature in respect to the same. Such  
19 final Order has not as of January 28, 2016, been entered.

20 4. In the interim, Defendants made efforts to comply with the Discovery  
21 Commissioner's direction by, on January 8, 2016, providing to Plaintiffs' counsel  
22 certain electronic data stored in both the Cab Manager program and the Quickbooks  
23 program. This data was intended by Defendants to be inclusive from the time period  
24 of June 2014 to present. Plaintiffs' counsel advised the Court that they have not had a  
25 chance, as of January 13, 2016, to review the Cab Manager provided data but had  
26 reviewed the Quickbooks data. Plaintiffs' counsel further advised that the  
27 Quickbooks data production was inadequate and unuseable as it failed to identify the  
28 produced payroll information with particular employees, either by name or unique

1 identifier.

2 5. After reviewing the record, hearing the representations by counsel, and  
3 considering the request for costs and fees made by plaintiffs in their supplemental  
4 brief to their Motion to Compel the Production of Documents, the Discovery  
5 Commissioner finds that defendants must supplement the production of electronic data  
6 records to include the names of the taxicab drivers (or some unique identifier) that  
7 correspond with the records produced by the defendants so that such records may be  
8 properly analyzed and identified by plaintiffs' counsel. The Discovery Commissioner  
9 further finds that Plaintiffs' request for Rule 37 sanctions should be granted in part and  
10 denied in part.

11 6. The request is granted as to allowing Plaintiffs to submit an affidavit consistent  
12 with the factors outlined in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d  
13 31 (1969) for the attorney time spent and costs associated with preparing and arguing  
14 the motion. The request for further Rule 37 sanctions, as it relates to plaintiffs'  
15 counsels' fees and costs associated with taking the deposition of Creighton J. Nady as  
16 defendants' Rule 30(b)(6) witness, is denied without prejudice.

## 17 II.

### 18 RECOMMENDATIONS

19 IT IS HEREBY RECOMMENDED that the Plaintiffs' request for Rule 37  
20 sanctions is GRANTED in part and DENIED in part. The Request is granted as to  
21 allowing Plaintiffs to submit an affidavit consistent with the factors outlined in  
22 *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969) for the attorney  
23 time spent and costs associated with preparing the motion. Counsel for Plaintiffs is to  
24 prepare an affidavit consistent with the factors outlined in *Brunzell* by March 1, 2016.  
25 Defendants will be provided an opportunity to oppose Plaintiffs' submission.

26 IT IS FURTHER RECOMMENDED that Plaintiffs' requests for further Rule 37  
27 sanctions beyond those specified in the immediately preceding paragraph are denied  
28 without prejudice.

Case Name: *Murray v. A Cab, LLC et al.*  
Case No.: A-12-669926-C  
Hearing date: January 13, 2016

IT IS FURTHER RECOMMENDED that Defendants disclose the names of the drivers before March 16, 2016.

IT IS FURTHER RECOMMENDED that the parties appear before the Commissioner for a status check regarding further proceedings on March 16, 2016 at 10:00 a.m.


The Discovery Commissioner, having met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED this 10 day of February, 2016.

  
DISCOVERY COMMISSIONER

Submitted by:


**LEON GREENBERG  
PROFESSIONAL CORPORATION**

  
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**NOTICE**

Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

[Pursuant to E.D.C.R. 2.34(f) an objection must be filed and served no more than five (5) days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. See E.D.C.R. 2.34(f)]

A copy of the foregoing Discovery Commissioner's Report was:

\_\_\_\_\_ Mailed to Plaintiff/Defendant at the following address on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

X \_\_\_\_\_ Placed in the folder of Plaintiff/Defendant's counsel in the Clerk's office on the 11 day of Feb., 2016.

**STEVEN D. GRIERSON**

By   
Deputy Clerk

**ORDER**

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

\_\_\_\_\_ The parties having waived the right to object thereto,

~~X~~<sup>mm</sup> No timely objections having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),

\_\_\_\_\_ Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

\* \* \*

AND

~~X~~ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

\_\_\_\_\_ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner attached hereto.

\_\_\_\_\_ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report and Recommendations is set for \_\_\_\_\_, 2016, at \_\_\_\_:\_\_\_\_ a.m.

Dated this 2 day of March, 2016.

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

DISTRICT COURT  
CLARK COUNTY, NEVADA

CASE NO. A669926

DEPT. I

Defendants.

BEFORE THE HONORABLE BONNIE A. BULLA, DISCOVERY COMMISSIONER  
FRIDAY, APRIL 8, 2016

**RECORDER'S TRANSCRIPT OF PROCEEDINGS**  
**FURTHER PROCEEDINGS: DISCOVERY PRODUCTION/DEFERRED RULING**

APPEARANCES:

LEON GREENBERG ESQ.,  
DANA SNIEGOCKI, ESQ.

ESTHER C. RODRIGUEZ, ESQ.

RECORDED BY: FRANCESCA HAAK, COURT RECORDER

1 Las Vegas, Nevada - Friday, April 8, 2016, 10:27 a.m.

2 \* \* \* \* \*

3 DISCOVERY COMMISSIONER: Murray.

4 MR. GREENBERG: Good morning, Your Honor. Leon Greenberg, Dana  
5 Sniegocki, for Plaintiffs.

6 DISCOVERY COMMISSIONER: Good morning.

7 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez, for the  
8 Defendants.

9 DISCOVERY COMMISSIONER: Good morning again. Okay. So we're  
10 here on the status check. Unfortunately, I don't think the District Court Judge has made all  
11 the decisions that need to be made for me to really thoroughly address the issues. I was half  
12 inclined just to contact you all and say, you know what, let's just move this a little bit. But I  
13 thought, in light of the supplemental briefing, and what was being discussed, I thought that  
14 maybe we should try to address a few of the issues.

15 I do think though apparently that the Judge has put a protective order or a stay  
16 in place, right --

17 MR. GREENBERG: Your Honor --

18 DISCOVERY COMMISSIONER: -- until the --

19 MR. GREENBERG: -- the stay only refers to his February 10<sup>th</sup> order. It does  
20 not stay the proceedings. There is a separate motion pending before Judge Cory to stay all  
21 proceedings; that motion has not been ruled upon, and there is confusion because of the  
22 language in the order that came down and was entered two days ago or one day ago, but that  
23 referred to a motion originally returnable April 4<sup>th</sup>, which was to stay compliance with the  
24 February 10<sup>th</sup> class certification order. That order directed production of names and  
25 addresses and circulation of notice.

1 DISCOVERY COMMISSIONER: That's stayed --

2 MR. GREENBERG: That is stayed, Your Honor.

3 DISCOVERY COMMISSIONER: -- pending the certification.

4 MS. RODRIGUEZ: No.

5 MR. GREENBERG: Pending reconsideration --

6 DISCOVERY COMMISSIONER: Reconsideration --

7 MR. GREENBERG: -- which will --

8 DISCOVERY COMMISSIONER: -- of class certification. Okay.

9 MR. GREENBERG: Yes, Your Honor.

10 DISCOVERY COMMISSIONER: But now there is another motion to stay all

11 the proceedings, but the Judge has not ruled on that yet. Is it set for hearing?

12 MR. GREENBERG: That is --

13 MS. RODRIGUEZ: It's -- sorry.

14 MR. GREENBERG: No hearing, but it is set for --

15 MS. RODRIGUEZ: I believe Judge Cory set all of those on March 28<sup>th</sup>. We

16 just don't have a decision.

17 DISCOVERY COMMISSIONER: Okay.

18 MS. RODRIGUEZ: In chambers.

19 DISCOVERY COMMISSIONER: Okay, because that, obviously, impacts

20 what I can do and cannot do to assist you all. But -- and I don't know what the Court is

21 going to do. I have no information. I have not received any decision.

22 So I think -- I'm really torn because in some respects I just want to continue

23 this so I know what the Judge is going to do on the stay. But I also want to alleviate some of

24 the concern regarding the request for fees and costs. Perhaps I just didn't communicate fully

25 the last time you all were here. I'm not entertaining any more fees and costs from the

1 Plaintiff. I'm just not gonna do it right now. I had awarded the fees and costs. I think that  
2 they've been paid, have they not?

3 MS. RODRIGUEZ: No, Your Honor, but --

4 DISCOVERY COMMISSIONER: Okay.

5 MS. RODRIGUEZ: -- we'll get those paid.

6 DISCOVERY COMMISSIONER: All right.

7 MR. GREENBERG: Your Honor, that's subject to reconsideration too before  
8 Judge Cory. They filed objections; Judge Cory denied the objections; and then they filed for  
9 reconsideration of that --

10 DISCOVERY COMMISSIONER: Okay.

11 MR. GREENBERG: -- order as well, Your Honor.

12 DISCOVERY COMMISSIONER: Well --

13 MS. RODRIGUEZ: He's right, Your Honor. I misspoke. I was confused.  
14 There's -- we've got so many conflicting motions going on right now.

15 DISCOVERY COMMISSIONER: Okay. Well, I feel confident about what I  
16 previously awarded in terms of fees and costs. I'm not inclined to give any more today, but I  
17 am hesitant to actually put anything in the Report and Recommendations because of the  
18 pending motions.

19 I think that there's a writ regarding the time you can go back on the effect of  
20 the law on the minimum wage, but I looked at that Thomas versus Yellow Cab case, and it  
21 seems to me that the new legislation trumps the exemptions, as I read it, so it seems to me  
22 that the cab companies -- and I think the Court's already found that, although that may be  
23 part of the reconsideration -- that the cab companies have to provide minimum wage.

24 MR. GREENBERG: Your Honor, the Ninth Circuit has looked at that issue.  
25 They've said that the requirement was effective as of 2006, which was the adoption of the

1 constitutional amendment. The reasoning of the Thomas decision talks about constitutional  
2 supremacy overriding the prior statutory exemptions.

3 DISCOVERY COMMISSIONER: Right.

4 MR. GREENBERG: There's been District Court -- every District Court Judge  
5 that has looked at this issue, including Judge Israel, Judge Bell, in this Court have also said  
6 that it was effective as of 2006, Your Honor. But it is true --

7 DISCOVERY COMMISSIONER: Okay.

8 MR. GREENBERG: -- there is a writ petition pending before the Supreme  
9 Court that has been briefed with an answer, and it is not decided as of today, to my  
10 knowledge, Your Honor.

11 But what I would like to point out is that in this particular case Judge Cory  
12 denied Defendants' motion to dismiss in February of 2013, which was 15 months prior to the  
13 Thomas decision, and he reached the same conclusion that Thomas did, which is that the  
14 companies had to pay the minimum wage.

15 So to say that there's some sort of perspective application rationale here in this  
16 case clearly doesn't make any sense because Defendants had an order telling them in  
17 February of 2013 -- not June of 2014, 15, months later -- that they had to do this, and Judge  
18 Cory obviously was right on the law. So --

19 DISCOVERY COMMISSIONER: And so we're going back, not just to 2014,  
20 we have to go back to the timeframe of the statute of limitations, which is what I think I  
21 recommended.

22 MR. GREENBERG: You did, Your Honor. You ordered production back  
23 to --

24 DISCOVERY COMMISSIONER: For four years.

25 MR. GREENBERG: -- back to 2008. This case was filed in October of 2012.

1 DISCOVERY COMMISSIONER: Right.

2 MR. GREENBERG: My fundamental concern, Your Honor, is to develop the  
3 record here, get the information that the Defendants have that they've denied having, that  
4 they've refused to produce, that they've produced in an unusable form. We've been 14  
5 months now, Your Honor, on this motion, and we're still back, and we still haven't made  
6 hardly any progress, except establishing that certain information exists that they denied  
7 exists, and it can produced. Otherwise though, we really haven't accomplished anything,  
8 Your Honor, in terms of getting the production done.

9 DISCOVERY COMMISSIONER: Well, I hope that's not completely true, but  
10 I think part of the problem is we have a dispute over what the Plaintiff is legally entitled to.  
11 We have a reconsideration on the class certification. We have a reconsideration on my  
12 sanctions. We have a reconsideration on apparently just about everything, but I need to let  
13 the Court deal with that.

14 Now, here's what I am going to tell you --

15 MR. GREENBERG: Yes, Your Honor.

16 DISCOVERY COMMISSIONER: -- is that if the reconsideration is denied,  
17 the Court may or may not stay the case. If the Court stays the case -- and we have to wait for  
18 the writ outcome I guess -- 'cause the request to stay is based on the other case, not on this  
19 case. I don't know if the Court's going to do that, but if there is some issue of stay, then we  
20 have to wait for the decision. If the Court's not going to stay it, then I am going to uphold  
21 my prior ruling that we have to go back to 2008. And if that information is not produced  
22 back to that date, then I may be inclined to give more award of sanctions and fees. I'm just  
23 not gonna do it today.

24 MR. GREENBERG: I understand, Your Honor, and I just want to state for the  
25 record you did direct that I had leave to submit a further application at our meeting in



1 January, which is why it was done.

2 DISCOVERY COMMISSIONER: Okay.

3 MR. GREENBERG: But I understand. I would prefer if Your Honor simply  
4 reserves the issue.

5 DISCOVERY COMMISSIONER: I will.

6 MR. GREENBERG: As you're saying, you're not making a determination as  
7 to an award today, but perhaps in the future we can revisit that, depending on circumstances  
8 as they develop. I would prefer that your determination today be in that mode, Your Honor.

9 DISCOVERY COMMISSIONER: Well, I'm not going to recommend  
10 anything actually because I'm not going to have you do a Report and Recommendations  
11 from today's hearing.

12 MR. GREENBERG: Yes, Your Honor.

13 DISCOVERY COMMISSIONER: I just don't think it's prudent, with  
14 everything else pending, and I want the Court to decide what the Court is going to do  
15 because that will affect my decision.

16 But I think the fees and costs that were supplemented went back. It was too --  
17 it was not what I intended, so I may not have made it clear, so I promise you that if I do  
18 decide to revisit the fees and costs issue because of the noncompliance, once the Court  
19 makes the Court's decision, then I will give you better direction.

20 MR. GREENBERG: Thank you, Your Honor.

21 DISCOVERY COMMISSIONER: Okay. But I'm not going to do anything  
22 today. And, unfortunately, maybe we should have handled it a little differently, but --

23 MR. GREENBERG: Yes, Your Honor.

24 DISCOVERY COMMISSIONER: -- I want the Court to know -- I want the  
25 parties to understand that if the Court upholds what I have previously done, and I do have an

1 expectation that my prior recommendations will be complied with, and I am concerned  
2 because I indicated that if the information could not be provided, that I would be inclined to  
3 require the entire CAB Manager program and QuickBooks to be turned over for the relevant  
4 timeframe.

5 MS. RODRIGUEZ: May I speak, Your Honor? I'd like to --

6 DISCOVERY COMMISSIONER: Yes.

7 MS. RODRIGUEZ: I'd like to talk about some of those issues before we  
8 reconvene again 'cause I understand Your Honor's position on this, and you hit it right on  
9 the head. It's -- the big question is the ruling from Judge Cory and the ruling from the  
10 Supreme Court as to the effective date. You're right, all the Courts have ruled that those  
11 exemptions are gone, but the big question that we don't have guidance on -- and he's going  
12 to the Ninth Circuit -- is when does it start. And so what we have done, as we've informed  
13 Your Honor before, is we have turned over all of the electronic data from what the cab  
14 industry believes is the appropriate effective date --

15 DISCOVERY COMMISSIONER: But I --

16 MS. RODRIGUEZ: -- which is June 2014.

17 DISCOVERY COMMISSIONER: But I ruled differently. See, I already  
18 recommended it to be different, so technically -- and the Judge signed off on it, so  
19 technically right now you have violated a Court order.

20 MS. RODRIGUEZ: I understand that, and that --

21 DISCOVERY COMMISSIONER: You don't get to choose. You would have  
22 almost been better not complying at all because now you have directly gone against my  
23 recommendation, which is now an order in the case.

24 Now, I know the Judge is gonna reconsider it. I understand that. But what I'm  
25 saying, under the Bahena decision, if, after reconsideration, my recommendation is upheld,

1 it's retro.

2 MS. RODRIGUEZ: I understand that, but, Your Honor, I do want to refresh  
3 your recollection that we actually didn't have a signed order. Judge Cory sat --  
4 unfortunately, sat on your recommendation for quite a few months, and in the interim we  
5 went ahead and produced all of that, so we produced it absent an order, Your Honor, so we  
6 have been trying to comply with that, and I would like to continue to comply with that, and  
7 that's why I want to put these issues out on the table, because one of his -- we have turned  
8 over the E-data, the electronic data, and what I attached -- I don't know if you received a  
9 copy of my opposition because --

10 DISCOVERY COMMISSIONER: I did.

11 MS. RODRIGUEZ: Okay. Well, what we have to have a frank discussion  
12 about is back to the beginning of this dispute is whether that electronic data is the exact same  
13 thing as the paper documents that we have offered him, and what I attached from the  
14 QuickBooks is to show that, yes, it is. These have always been available to him. He doesn't  
15 want to look at 'em. We had this other class action firm that we've -- we have no problem  
16 with. We're working together. We've completed discovery. They have an expert that's  
17 reviewed all of this, and they don't have an issue with it, but Mr. Greenberg wants it in a  
18 particular format, and in his latest response he has just said that he wants it in a single-line  
19 format instead of a double-lines format.

20 I went back to my QuickBooks program person. She has no idea what he's  
21 talking about. I have no idea what he's talking about. He's free to manipulate the data as he  
22 wanted, but if he would just give me an example of what he's talking about, we'll try to redo  
23 the data for him again.

24 MR. GREENBERG: Your Honor, I wrote to Defendants on January 11<sup>th</sup> about  
25 this; I never got a response.

1 MS. RODRIGUEZ: And that's not true, Your Honor.

2 MR. GREENBERG: Defendant --

3 MS. RODRIGUEZ: We've been talking --

4 DISCOVERY COMMISSIONER: Okay.

5 MS. RODRIGUEZ: -- on the phone.

6 DISCOVERY COMMISSIONER: Here's what I don't want to do today. I  
7 don't want to get into a battle over he-said-she-said. It's just not productive. We have an  
8 issue that we have to resolve. Does the data that was turned over from 2014 -- is it the same  
9 as the paper stuff?

10 MR. GREENBERG: Your Honor, okay.

11 DISCOVERY COMMISSIONER: Answer the question yes or no. It's a yes  
12 or no question.

13 MR. GREENBERG: It has to be, Your Honor, if -- since the paper stuff is  
14 produced from the QuickBooks. We have testimony from Mr. Nady that the payroll is  
15 produced from the QuickBooks. It has to be the same, Your Honor.

16 DISCOVERY COMMISSIONER: All right. So --

17 MR. GREENBERG: If it's not the same, then Defendants aren't producing the  
18 original electronic information properly.

19 DISCOVERY COMMISSIONER: So if you had all the information in the  
20 paper documentation, I understood that you wanted it perhaps in electronic format for ease of  
21 convenience, but the documents themselves are identical, so there's no hiding the ball here  
22 by the Defendant.

23 MR. GREENBERG: Your Honor, the documents would number hundreds of  
24 thousands of pages. They originate in the electronic records. In fact, there is no reason for  
25 Defendant to even keep that information for historical purposes in a paper format.

1 Presumably they would print it out and give it to me because it is much more efficiently kept  
2 in the QuickBooks data. It's originally created from that data. It was maintained in that  
3 format. I'm entitled to it, Your Honor. It will be impossible, as a practical matter, to  
4 conduct an audit for over a thousand individuals week by week, for hours and wages, to --

5 DISCOVERY COMMISSIONER: But we are --

6 MR. GREENBERG: -- determine if there are minimum wage deficiencies  
7 looking at paper data, Your Honor.

8 DISCOVERY COMMISSIONER: We are arguing over two separate issues,  
9 and I'm not going to argue about it. I have already ordered them --

10 MR. GREENBERG: I apologize.

11 DISCOVERY COMMISSIONER: -- to produce the data in electronic format,  
12 okay? That's already been done. They've produced it from 2014 forward. They disagree  
13 with the prior recommendation, right?

14 MR. GREENBERG: Your Honor, they have not produced the QuickBooks  
15 data from June of 2014. This is addressed in my letter of January 11<sup>th</sup>, if you'd like to look at  
16 what was submitted --

17 DISCOVERY COMMISSIONER: I am not --

18 MR. GREENBERG: -- to you --

19 DISCOVERY COMMISSIONER: I did not read through everything  
20 because --

21 MR. GREENBERG: Understand, Your Honor.

22 DISCOVERY COMMISSIONER: -- there were issues with the Court not  
23 making a decision. I looked briefly at your written documentation. But my understanding is  
24 they did, in fact, produce the QuickBooks from 2014 to the present.

25 MR. GREENBERG: Your Honor, they have not, and we can review that, and I

1 will demonstrate to you how they have not. And if they are to produce, they say it's June  
2 2014 forward, fine, we can deal with that right now, and we can defer dealing with anything  
3 before that because of your concern about the other actions of the Court. That would be very  
4 advisable in my view, Your Honor, but, of course, it's your decision what the Court should  
5 deal with at this time, if it should deal with that piece of the production, so to speak, right  
6 now.

7 DISCOVERY COMMISSIONER: But Ms. Rodriguez has said she produced  
8 it.

9 MS. RODRIGUEZ: I don't understand what he believes is missing.

10 MR. GREENBERG: Your Honor --

11 MS. RODRIGUEZ: Because it's my understanding -- I mean --

12 DISCOVERY COMMISSIONER: Is it produced in electronic format?

13 MS. RODRIGUEZ: I believe it is, Your Honor.

14 MR. GREENBERG: Your Honor, would you like to see what's actually  
15 produced? I can show you a sample. Visually you can understand it. It's very easy.

16 MS. RODRIGUEZ: I attached a sample.

17 MR. GREENBERG: I can get -- no, you did not. You -- actually you're right,  
18 you did attach it, but I can demonstrate to Your Honor what the problem is, if you would like  
19 to see.

20 DISCOVERY COMMISSIONER: Okay. Let me take a look at it.

21 MS. RODRIGUEZ: And that's what I've been asking for. I don't know what  
22 the problem is. I don't know what he's dissatisfied with.

23 DISCOVERY COMMISSIONER: Show counsel first. Show defense counsel  
24 first.

25 MR. GREENBERG: Yes, of course, Your Honor.

1 DISCOVERY COMMISSIONER: And explain it. Tell her first.

2 MR. GREENBERG: There are two pages to this data, Your Honor.

3 DISCOVERY COMMISSIONER: And where did the pages come from; are

4 they --

5 MR. GREENBERG: This is --

6 DISCOVERY COMMISSIONER: -- printouts from the electronic

7 information?

8 MR. GREENBERG: Yes.

9 If you could give these two pages to the Court, Your Honor.

10 [Handing documents to the Marshal]

11 There is a page -- and I will give two pages to defense counsel. Here are two

12 pages for you.

13 [Handing documents to Ms. Rodriguez]

14 What you're looking at, one is on the long print view, Your Honor, which is

15 the landscape print, the other is on the portrait view, the short print view; you understand

16 what I mean by that? It says on the long print view three employees, okay. If you look to

17 the far left of that long printout --

18 DISCOVERY COMMISSIONER: Yes.

19 MR. GREENBERG: -- we have various lines with descriptions.

20 DISCOVERY COMMISSIONER: Right.

21 MR. GREENBERG: Okay? And then -- that's one column. Then there's a

22 column for hours and there's a column that says January 9<sup>th</sup>, 2015, okay?

23 DISCOVERY COMMISSIONER: Which I'm assuming is the date worked.

24 MR. GREENBERG: Well, the pay period.

25 DISCOVERY COMMISSIONER: Okay.

1 MR. GREENBERG: The week or two-week period, whatever it is, two --

2 DISCOVERY COMMISSIONER: Okay.

3 MR. GREENBERG: -- weeks, I guess, Your Honor.

4 So what it is is these Excel files that were produced from QuickBook, as it  
5 says, are approximately 400 columns across, okay. You need to look at two columns to  
6 determine anything about an individual employee. You need to look at the hours, and you  
7 need to look at the column that's under the date, which has various numbers relating to  
8 driver commission, total gross pay, adjusted gross pay, net pay.

9 Now, as a starting point, Your Honor, the numbers for total gross pay, adjusted  
10 gross pay, and net pay are all the same. I have no information on the deductions that were  
11 taken from pay. Deductions were taken from pay for purposes of accidents, for purposes of  
12 fines, for other assessments that were made against the employees that in certain instances  
13 could very well reduce their actual pay below the minimum wage. I need that information.  
14 This was discussed in my letter of January 11<sup>th</sup> to Defendants, which was never responded  
15 to. It is with my supplement of March 11<sup>th</sup> filed with Your Honor.

16 Now, in addition --

17 MS. RODRIGUEZ: Before he moves on --

18 MR. GREENBERG: -- the problem here --

19 MS. RODRIGUEZ: -- Your Honor addressed that at our last hearing, and  
20 we've never talked about the deductions. We were to show him what was contained in the  
21 QuickBooks, which was the gross hours, and the -- excuse me, the gross pay and the hours.

22 MR. GREENBERG: Your Honor, in addition, the problem here, okay -- and --  
23 is that this information, what is important is the hours and what was paid. I think Your  
24 Honor understands that. That's how we're gonna find out if there's a minimum wage  
25 deficiency from this information, Your Honor.



1           However, when you look at this information, we don't know which two  
2 columns refer to any particular employee. There is no employee identification number in  
3 this production. There is no name. So I have approximately 400 columns relating to over  
4 200 individuals, but I have no idea who they are. So, for example, if I -- and this is produced  
5 as a sequence of 50 or so Excel files, one for each pay period. So I can look in one pay  
6 period and see if there's deficiencies for, you know, 200 unique people in that pay period,  
7 but when I go to the next pay period, I can't match it up, Your Honor. The next pay period I  
8 have no idea who these people are.

9           DISCOVERY COMMISSIONER: So we have a problem because they've  
10 done a motion to reconsider class certification, so the identity of the employees has not yet  
11 been determined, and we have to have that reconsideration heard first, and then I think you  
12 are definitely entitled to the names and the employees. And, until that time, it seems like on  
13 the shorter form you've been able to calculate the wage --

14           MR. GREENBERG: Well --

15           DISCOVERY COMMISSIONER: -- of seven-twenty-five an hour.

16           MR. GREENBERG: -- I will explain the significance of that, but just your last  
17 comment, Your Honor, your prior order directed him to substitute identifiers for the  
18 employee names. They didn't have to give me the employee names.

19           DISCOVERY COMMISSIONER: I understand that.

20           MR. GREENBERG: So as this data exists right now, it is completely useless  
21 in terms of me being able to identify any group of employees in terms of who actually is  
22 owed potentially anything based on this data because I have no individual -- I have no way to  
23 link this to even a John Doe or a number one, two, three individual.

24           DISCOVERY COMMISSIONER: Or what their employment was.

25           MR. GREENBERG: Yes, Your Honor.

1 MS. RODRIGUEZ: Your Honor, I offered to do that because you indicated at  
2 our last hearing that we could do such a thing, just easily numbering them, and we said he  
3 could do that. He's got the electronic data. I called him. I talked to him about that. It was  
4 basically an all or nothing, and he wants it back to 2007, not pursuant to your order, but to  
5 2008, and that's basically why it's up for reconsideration.

6 MR. GREENBERG: Your Honor, I would appreciate it if Your Honor would  
7 instruct defense counsel to please correspond with me in writing about discovery issues and  
8 respond to --

9 DISCOVERY COMMISSIONER: Not gonna do it.

10 MR. GREENBERG: -- my written --

11 DISCOVERY COMMISSIONER: You all are grownups.

12 MR. GREENBERG: Well, okay.

13 DISCOVERY COMMISSIONER: You need to be able to talk with each  
14 other. If I have to do something like that -- I am not going to do that. I would highly  
15 encourage you to confirm your conversations, but once communication breaks down, there  
16 will be additional problems, and I expect you all to pick up the phone and be able to talk to  
17 each other. That's ridiculous.

18 MR. GREENBERG: Your Honor, it is ridiculous. In 23 years of practice, I  
19 have never made that request to a Court. But what Ms. Rodriguez just told you just isn't true.  
20 We had no such conversation since my January 11<sup>th</sup> letter, and there is no way I could insert  
21 employee IDs with this information. How do I know if the guy --

22 DISCOVERY COMMISSIONER: I will agree with that because I don't know  
23 how to do it. So I think there is a problem here so we need to figure out how to make it  
24 workable, at least from 2014 forward. So if you're not going to give the names over right  
25 now because of the pending motion, then how can we do this where we know what, you

1 know, label the employee by number and what they did because right now, I mean, I'm  
2 assuming this is a driver, this --

3 MS. RODRIGUEZ: Right.

4 DISCOVERY COMMISSIONER: -- sheet I have is a taxi cab driver.

5 MR. GREENBERG: It's three drivers on that sheet, Your Honor. Each two  
6 columns refers to one individual.

7 MS. RODRIGUEZ: That's right because --

8 DISCOVERY COMMISSIONER: Okay.

9 MS. RODRIGUEZ: -- there are -- I haven't looked at the entirety, but he's  
10 probably right. It probably is about 400 or so. It's -- we tried to compile everything to give  
11 him everything from that time period, and it does read in columns.

12 MR. GREENBERG: Your Honor, you had mentioned that I had calculated the  
13 hourly wage on the other piece of paper. The point, the significance, of where it says seven-  
14 twenty-five an hour, if you divide the eight-eighty -- eighty-eight-point-forty-eight, is this is  
15 from January 2015. This individual is being paid less than the minimum wage.

16 DISCOVERY COMMISSIONER: Yeah, I --

17 MR. GREENBERG: Minimum wage in Nevada is --

18 DISCOVERY COMMISSIONER: -- figured that out.

19 MR. GREENBERG: -- eight-twenty-five. Yes. That's the reason why it was  
20 noted.

21 But, Your Honor, the other problem with the production here is that the way  
22 this should be set up, Your Honor, is the employee's name should be here in one column,  
23 column A, and all of this other information should be in multiple columns going across, so  
24 everything is indexed to one employee. The problem with this set-up, Your Honor -- and  
25 this is done intentionally by Defendants -- is that this is going to have to be completely

1 reformatted for analytic purposes because --

2 DISCOVERY COMMISSIONER: Well, before we make a statement like that,  
3 let's have some support for the intentional aspect of this because this may be the way they  
4 keep their books.

5 MR. GREENBERG: Your Honor, this is not the way the QuickBooks is able  
6 to produce the information. If I was given an opportunity to go to the QuickBooks data, I  
7 could probably do this myself. I actually work with QuickBooks. I can get a QuickBooks  
8 person to do it.

9 DISCOVERY COMMISSIONER: We're not gonna do that.

10 MR. GREENBERG: Well, then they need to provide it in a way that's usable.  
11 Ms. Rodriguez is testifying here she doesn't know how to do it. She spoke with the person at  
12 the -- the client. They don't understand it. Maybe they don't, okay.

13 MS. RODRIGUEZ: That's not what I said.

14 MR. GREENBERG: I can --

15 MS. RODRIGUEZ: I said I didn't understand what he wanted.

16 MR. GREENBERG: Your Honor, she doesn't understand because she doesn't  
17 communicate with me, and I explained in my letter of January 11<sup>th</sup>, to which she never  
18 responded in any fashion until today.

19 DISCOVERY COMMISSIONER: Well, your communication needs to be  
20 better.

21 MR. GREENBERG: I agree, Your Honor, it should be better, and I apologize.

22 DISCOVERY COMMISSIONER: And I can't -- I expect -- you're adults. I  
23 expect you to communicate professionally and reasonably and be responsive. But I,  
24 candidly, don't know if it's gonna make a difference or if it's in writing or oral exactly -- and  
25 for the reason that I think that there are so many issues right now. But I am expecting a fresh

1 start when we get these motions resolved by the District Court Judge. We will be starting  
2 fresh, and we will be addressing the issues, if necessary, from the beginning. But under  
3 Bahena, the recommendations date back, they're retro. So that could cause the Defendant a  
4 little bit of difficulty.

5 Having said that, I understand where we're at legally, and I want the Court to  
6 resolve the issues before the Court, and I'm hoping that the Supreme Court will address the  
7 writ, but I can't tell you that's going to happen in any -- in the near future.

8 So what I'm concerned about today is I think that there is an agreement, at  
9 least principal -- there is an agreement that we can at least disclose the data from 2014  
10 forward. We can't disclose the names of the employees, but we should be able to break it  
11 down so that, you know, we don't have three employees in one column. I don't understand  
12 that.

13 MS. RODRIGUEZ: That's just -- it's -- he asked for lump-sum data, and we  
14 tried to format so that it would usable for him.

15 DISCOVERY COMMISSIONER: But I said you need to identify it by driver  
16 and put a number next to the driver, and that is not what I'm seeing.

17 MS. RODRIGUEZ: But when we got together on that, Your Honor, we had a  
18 discussion, and, in fact, I think you kind of pointed to him and said couldn't you easily have  
19 put a number on this. I mean, we can redo this for him and put a number 1 through 400.

20 DISCOVERY COMMISSIONER: I don't want to have to go back and listen  
21 to my hearings from before.

22 MS. RODRIGUEZ: We could redo the data.

23 DISCOVERY COMMISSIONER: But I am --

24 MS. RODRIGUEZ: I'll redo it.

25 DISCOVERY COMMISSIONER: -- really confident that I said put a number

1 by the employee --

2 MS. RODRIGUEZ: I can do that.

3 DISCOVERY COMMISSIONER: -- replace the employee name with a  
4 number.

5 MS. RODRIGUEZ: That's --

6 MR. GREENBERG: Your Honor --

7 MS. RODRIGUEZ: I'll redo the data. That's not a problem, Your Honor.  
8 And I, you know, really I want to highlight to Your Honor when Mr. Greenberg and I speak,  
9 it's -- I don't believe that it's adversarial. I don't think we've raised our voices at each other,  
10 and we seem to sometimes I think we get on the same page about things, and then I do get  
11 confirming letters that say completely the opposite of what I think that we've agreed upon.  
12 So we -- I'm in agreement that I will try to work better with Mr. Greenberg in  
13 communicating, but we just have not been on the same page about this, what he wants, and  
14 what A Cab is able to provide.

15 DISCOVERY COMMISSIONER: Well, this is what I want. It's gonna be all  
16 about me at this point. This is what I want. I want the 2014 data forward produced from the  
17 QuickBooks in a meaningful production so that the -- each employee stands by him or  
18 herself, but you have to put the number down to replace the name. But the grouping -- so it  
19 looks like, okay, so this involves three people. I think that's extremely confusing.

20 MR. GREENBERG: Your Honor --

21 MS. RODRIGUEZ: That's just the way it prints.

22 MR. GREENBERG: Your Honor, no, this is the way --

23 MS. RODRIGUEZ: Because it --

24 MR. GREENBERG: -- it appears on the screen. This is a spreadsheet that  
25 goes over 400 columns across, Your Honor. Okay.

1 DISCOVERY COMMISSIONER: Well, that's not workable.

2 MR. GREENBERG: It isn't workable, and it's not workable in this format, and  
3 there is no need to produce it in this format, Your Honor. And if Your Honor is unsure about  
4 this, I would simply ask leave to provide additional documentation to Your Honor. I will get  
5 someone who is well versed in QuickBooks to explain in detail, with examples, for the  
6 record or the Court as to why this should easily be produced in a linear format.

7 Your Honor, I've been litigating these cases for over 20 years. I have never  
8 had a problem with somebody insisting this is the only way to produce this information.  
9 This is not. This is the way to obstruct the analysis of the information. That is why  
10 Defendants are doing this, Your Honor.

11 MS. RODRIGUEZ: No, Your Honor.

12 MR. GREENBERG: And they have a history here of simply not producing  
13 information and not disclosing that they have electronic data. I'm sorry, Your Honor. I am  
14 going --

15 MS. RODRIGUEZ: I'm not really sure --

16 MR. GREENBERG: -- over history here, and that's probably not  
17 appropriate --

18 DISCOVERY COMMISSIONER: I'm trying --

19 MR. GREENBERG: -- very much.

20 DISCOVERY COMMISSIONER: -- to analyze in my -- to the best of my  
21 ability how we can at least get the information from 2014 forward exchanged in a  
22 meaningful way. So what I'm thinking of is having defense counsel submit to me in camera  
23 this production. I don't know why we have to have 400 columns across. I don't understand  
24 that.

25 I mean, what -- this is what we need. We need the employee, absent the name

1 at the present time, until reconsideration is decided, the wage earned, the I guess the date  
2 of --

3 MR. GREENBERG: The pay period, Your Honor.

4 DISCOVERY COMMISSIONER: -- pay period -- thank you. Can't even  
5 think anymore. -- the pay period, and whether there were any deductions taken and for what.  
6 That's what we need.

7 MR. GREENBERG: And the hours, Your Honor, the hours recorded for the  
8 pay period, Your Honor.

9 DISCOVERY COMMISSIONER: Right. Well, that is here.

10 MR. GREENBERG: That is --

11 DISCOVERY COMMISSIONER: I've got the hours recorded, the pay period,  
12 so the amount paid, whether there were any deductions and what they were for.

13 MR. GREENBERG: That is correct, but you don't actually have that  
14 information here because --

15 DISCOVERY COMMISSIONER: I don't have the deductions.

16 MR. GREENBERG: -- you don't have the deductions, you don't have an  
17 identity for the driver.

18 DISCOVERY COMMISSIONER: Because, if I recall correctly, this is about  
19 whether or not we comply with the minimum wage rule, whether or not we've offered  
20 insurance, health insurance or not, and whether that affects the rate of the minimum wage  
21 that has to be paid.

22 MR. GREENBERG: That's right, Your Honor, but we first need to look at  
23 the -- find out what these people were paid and how many hours they were working. If  
24 they're making ten dollars an hour, then there's no issue with that person for that pay period.  
25 We don't have to go any further, Your Honor. This should really be the first step, and we



1 haven't even gotten there, Your Honor.

2 DISCOVERY COMMISSIONER: Well, not for the lack of trying by the  
3 Court.

4 MS. RODRIGUEZ: And, Your Honor --

5 MR. GREENBERG: I appreciate that Your Honor is trying.

6 MS. RODRIGUEZ: -- all of the --

7 MR. GREENBERG: And I would like the opportunity to simply get Your  
8 Honor good, easy-to-understand information so as to not waste your time at hearing now or  
9 in the future on this so Your Honor can make an informed determination as to what should  
10 be done here if Your Honor is having difficulty understanding the way --

11 DISCOVERY COMMISSIONER: I'm not having difficulty understanding.  
12 What I'm having difficulty understanding is why can't we work this out between counsel;  
13 that's what I'm having difficulty understanding. Why can't we follow my prior Report and  
14 Recommendations? That's what I'm having difficulty understanding, sir.

15 MR. GREENBERG: I apologize, Your Honor.

16 DISCOVERY COMMISSIONER: You know, I'm fed up. You're adults.  
17 You're professionals. You're members of this Bar. You need to communicate and work  
18 together.

19 MR. GREENBERG: Your Honor, my problem is there has been no responsive  
20 communication.

21 MS. RODRIGUEZ: And that's not true.

22 MR. GREENBERG: I write to --

23 DISCOVERY COMMISSIONER: Well, apparently that is disputed.

24 MR. GREENBERG: I understand, Your Honor.

25 DISCOVERY COMMISSIONER: So how can we fix the problem? That's

1 what I'm concerned about, so when you go out the door I have some assurance that the data  
2 from 2014 forward is going to be produced in a meaningful way and not 400 columns across  
3 that mean nothing.

4 MR. GREENBERG: In respect --

5 MS. RODRIGUEZ: Your Honor, he can manipulate that data, and that was the  
6 whole point.

7 DISCOVERY COMMISSIONER: I don't want him manipulating it. I want  
8 you producing it --

9 MS. RODRIGUEZ: I'm gonna try --

10 DISCOVERY COMMISSIONER: -- in a meaningful format.

11 MS. RODRIGUEZ: I will try that, Your Honor. But the problem all along has  
12 been this -- he didn't want to look at the documents. He wanted data he could manipulate, so  
13 that's what we gave him, was data that he could --

14 MR. GREENBERG: Your Honor --

15 MS. RODRIGUEZ: -- do what he wanted.

16 DISCOVERY COMMISSIONER: I don't like the word manipulate. He  
17 wanted data that he could check and go through to determine whether or not your client  
18 complied with the law.

19 MS. RODRIGUEZ: I can't think of the right word, but I believe that that was  
20 his word, that he wanted to be able to cut and paste and be able to do formulas and things.

21 DISCOVERY COMMISSIONER: Well, he wants to be able --

22 MS. RODRIGUEZ: That's what I'm referring to.

23 DISCOVERY COMMISSIONER: -- to search the data.

24 MS. RODRIGUEZ: I'm referring to --

25 DISCOVERY COMMISSIONER: Or data.

1 MS. RODRIGUEZ: -- formulas when I'm talking about manipulating, that he  
2 can take gross wages, put a divided by hours and come up and see which one of those.  
3 That's my understanding.

4 DISCOVERY COMMISSIONER: But we can't determine that from what  
5 you've produced.

6 MS. RODRIGUEZ: Okay.

7 DISCOVERY COMMISSIONER: Because I don't know which employee  
8 we're talking about, and I also don't know if there was a deduction made for any reason, i.e.  
9 healthcare. That's what we really need.

10 MS. RODRIGUEZ: But we hadn't talked about that, his issue --

11 DISCOVERY COMMISSIONER: What do you think --

12 MS. RODRIGUEZ: -- that he's been --

13 DISCOVERY COMMISSIONER: -- this case is about?

14 MS. RODRIGUEZ: His issue has been for the names. He's been pushing for  
15 the names.

16 DISCOVERY COMMISSIONER: You know what?

17 MS. RODRIGUEZ: That was our last --

18 DISCOVERY COMMISSIONER: I'm really not going to address this further.  
19 I have explained to you what needs to be done. Do not, do not underestimate this Court. I  
20 have told you repeatedly that I understand the names are protected until the Court rules on  
21 the class certification. But I specifically requested you to produce the information and  
22 number the employees. I am confident I did that. If I have to go back and look, you're  
23 gonna pay a contribution for my time on having to do that. But I am confident that that was  
24 the plan, but that is not what you have produced here to the best of my ability to understand  
25 what this is. So you need to go back. You need to produce it by employee. You do not need

1 to identify the names until the Court has ruled on the class certification.

2 MS. RODRIGUEZ: Right.

3 DISCOVERY COMMISSIONER: You can use numbers, but you have to  
4 identify the hours worked, the pay period, the amount paid, and whether there were any  
5 deductions, specifically deductions for health insurance. So in my mind there should be  
6 three columns, not 400.

7 MR. GREENBERG: Your Honor, again, I need this information produced in a  
8 linear format. It is very easily done in that fashion, and if Your Honor wants me to come  
9 back, we will deal with that in the future. I don't want to have another production like what  
10 you're looking at right now, Your Honor.

11 MS. RODRIGUEZ: And I don't know what that means. What does that  
12 mean?

13 MR. GREENBERG: Your Honor, I will explain to counsel in writing with  
14 sufficient documentation, and I will explain to the Court in writing with substantial  
15 documentation exactly what is necessary to resolve the issue of the QuickBooks production  
16 short of the entire database turn over, which they don't want --

17 DISCOVERY COMMISSIONER: This is --

18 MR. GREENBERG: -- and I have never initially sought, Your Honor.

19 DISCOVERY COMMISSIONER: This is what I want you to do. I want you  
20 to put in writing to defense counsel, CC me on it, and hand deliver a copy to me so I have it.

21 MR. GREENBERG: Yes, Your Honor.

22 DISCOVERY COMMISSIONER: I want you to put in writing exactly what  
23 you want that QuickBook spreadsheet to look like, exactly.

24 MR. GREENBERG: Okay.

25 DISCOVERY COMMISSIONER: And an explanation of how it can be done

1 and why it should be able to be done in that respect.

2 MR. GREENBERG: Yes, Your Honor.

3 DISCOVERY COMMISSIONER: And then, defense counsel, I need you to  
4 go back and determine how you can identify the employees by number. I think that's easier  
5 than anything else. And I think I had even talked about keeping a sheet --

6 MR. GREENBERG: Key, Your Honor.

7 DISCOVERY COMMISSIONER: -- a key --

8 MR. GREENBERG: Yes.

9 DISCOVERY COMMISSIONER: -- right?

10 MR. GREENBERG: Yes, Your Honor.

11 DISCOVERY COMMISSIONER: Didn't I talk about that?

12 MR. GREENBERG: Yes, Your Honor.

13 DISCOVERY COMMISSIONER: It only had the names next to the numbers  
14 so that when we did have the class certification ruled upon, we could put the names with the  
15 numbers. So I don't understand what the problem is, but I expect counsel to rectify it  
16 immediately.

17 MR. GREENBERG: Your Honor --

18 DISCOVERY COMMISSIONER: I am gonna set this for -- I'm not having  
19 any Report and Recommendation today. I want counsel to work together to get a meaningful  
20 QuickBooks spreadsheet made available per employee as we've discussed. Plaintiffs'  
21 counsel's instructed to send defense counsel, with a copy to the Commissioner, an  
22 explanation of specifically what you want and how you can easily put that together, if you  
23 have an expert who can explain that or if you have somebody who can explain that, that's  
24 fine.

25 MR. GREENBERG: I will --

1 DISCOVERY COMMISSIONER: I need --

2 MR. GREENBERG: -- do that, Your Honor.

3 DISCOVERY COMMISSIONER: -- a CC of that letter because it's going on  
4 the left-hand side of the file. And then when you come back here on the -- in 30 days, I hope  
5 the Court will have a ruling on the stay.

6 MR. GREENBERG: I appreciate --

7 DISCOVERY COMMISSIONER: And the certification.

8 MR. GREENBERG: -- your patience, Your Honor, and I apologize --

9 DISCOVERY COMMISSIONER: Well, I apologize if I do not seem to be as  
10 patient as I normally am, but I am clearly at a loss as to how to effectively get this discovery  
11 disclosed. I just don't understand why it's been that big of an issue.

12 MR. GREENBERG: And, Your Honor, the communications between counsel  
13 have been absolutely abhorrent here, and I apologize for that, and I realize what I need to do  
14 is when I send a letter on January 11th and I'm not getting a response, I need to send a letter  
15 a week later saying I haven't gotten a response, and then a week later, and a week later, so  
16 there will be records, Your Honor, that I am not getting a response --

17 DISCOVERY COMMISSIONER: Well --

18 MR. GREENBERG: -- rather than us doing a he-said-she-said --

19 MS. RODRIGUEZ: I think he's already doing that.

20 MR. GREENBERG: -- in front of you 'cause I didn't do that, Your Honor, so  
21 there -- I did not make the effort to document the communication issues appropriately.

22 DISCOVERY COMMISSIONER: I understand how long this has been going  
23 on. This is your entire file. I understand how long this has been going on. Please do not  
24 underestimate my understanding of what is going on. I do not have answers on the  
25 QuickBook productions because this is something that it seems clear to me that you could

1 produce it in a better usable format, but I don't know that to be the case because I don't  
2 know what their QuickBooks looks like.

3 MR. GREENBERG: I understand, Your Honor, and --

4 MS. RODRIGUEZ: And, Your Honor, just, you know, we've talked about  
5 this, but we have this other class action lawsuit going through the same time period, same  
6 drivers. We have not been before you on any of these issues. We've worked it out with the  
7 other side. They have their expert. All state agencies, all federal agencies have all relied on  
8 the paper file, so when he's in here saying it's impossible for me to go through these paper  
9 files and prepare my case, everybody else has done that.

10 DISCOVERY COMMISSIONER: Well, I think his concern is being able to  
11 audit, and search, and look at the information. So, obviously, the Plaintiffs' counsel has had  
12 experience as well, and he is used to seeing this information in a certain format.

13 Is there another case that has been fully litigated in the public eye that you  
14 could produce a copy of the QuickBooks that you would like to see, similar to what you'd  
15 like to see the Defendant produce in the same format so that the Defendant could see what  
16 you've actually been able to obtain in another case?

17 MR. GREENBERG: I can review my files. There may be an exemplar of  
18 some sort along those lines, Your Honor, but if not, I will have something suitably produced  
19 as a visual sample so it can be easily understood, what we're talking about.

20 DISCOVERY COMMISSIONER: Attach it to your letter --

21 MR. GREENBERG: Absolutely, Your Honor.

22 DISCOVERY COMMISSIONER: -- that you're gonna write.

23 MR. GREENBERG: No. There needs to be an illustration here, not just a  
24 narrative description. It's not gonna be easy to understand without that. I appreciate that.  
25 That's why I gave Your Honor the illustration I gave you today.

1 DISCOVERY COMMISSIONER: And I'm gonna say what I think is  
2 important at this point though is to try to work together. I understand it's litigation. I know  
3 it can be difficult. But we just simply have to do a better job on both sides, and we have to  
4 try, even though we've objected to everything and appealed to everything, we have to try to  
5 at least produce the 2014 data forward in a meaningful format, and it would be helpful,  
6 Plaintiffs' counsel, if you would give defense counsel a copy of something that you have in  
7 another case so she can actually see, hey, other people do this.

8 MR. GREENBERG: Your Honor, I will produce an explanation with an  
9 illustration of what needs to be done here, and, in fact, I will go out and hire an independent  
10 person to go to their premises if Your Honor authorizes it and they want help, they want  
11 technical help. I have --

12 DISCOVERY COMMISSIONER: This is not --

13 MR. GREENBERG: -- worked with --

14 DISCOVERY COMMISSIONER: This is not a discussion for today.

15 MR. GREENBERG: I understand. That would be an eventual -- let's one  
16 thing at a time. Let's get the documentation to everybody on the record about what we're  
17 dealing with, and then we'll take it from there, Your Honor.

18 DISCOVERY COMMISSIONER: 2014 forward.

19 MR. GREENBERG: Yes, Your Honor.

20 DISCOVERY COMMISSIONER: Ms. Rodriguez, go back and see what --

21 MS. RODRIGUEZ: I will, Your Honor.

22 DISCOVERY COMMISSIONER: -- the deal is.

23 MS. RODRIGUEZ: I thought we had done that. I will redo it to number it for  
24 him. I'll see if it can be renumbered, you know, what employee --

25 DISCOVERY COMMISSIONER: But it's not just renumbering. It's also



1 providing the information --

2 MS. RODRIGUEZ: Right.

3 DISCOVERY COMMISSIONER: -- that's critical here. I mean, you know  
4 what this case is about. The deduction at issue is health insurance. That's the whole case.  
5 You should have known that from day one.

6 MS. RODRIGUEZ: Yeah.

7 DISCOVERY COMMISSIONER: So please don't tell me, well, they never  
8 asked for that. That is just beyond my comprehension. If you know what the case is about,  
9 you have obligation to produce relevant evidence under 16.1, so don't tell me that you didn't  
10 understand that, okay?

11 MR. GREENBERG: Your Honor, it's not just the deduction for health  
12 insurance. It would be any nontaxed deduction, nonlien deductions. There were other  
13 deductions employer was taking for property damage, for penalties that they imposed on  
14 employees for some reason, which do exist.

15 DISCOVERY COMMISSIONER: But that wouldn't necessarily violate the  
16 law.

17 MR. GREENBERG: It wouldn't violate the law, but if it reduced the pay for  
18 the period below --

19 DISCOVERY COMMISSIONER: Then you can see the --

20 MR. GREENBERG: -- below the minimum -- that's why I need that deduction  
21 information.

22 DISCOVERY COMMISSIONER: But they can do that. The issue that you  
23 are saying -- I mean, this is your case, as I understand it -- is that they did not either, one,  
24 offer the health insurance, or, number two, by taking that into account and deducting the  
25 wage rate it was violating the Nevada Constitution, right? I mean, all the other deductions

1 there's no argument that the Defendant can take those deductions, is there?

2 MR. GREENBERG: They can't take 'em if it reduces the pay below the  
3 minimum wage. You can't deduct a hundred dollars from somebody's paycheck for damage  
4 to their taxi if it's gonna reduce their hourly rate for that pay period below the eight-twenty-  
5 five or seven-twenty-five an hour. We can't do it, Your Honor. That triggers a minimum  
6 wage violation. That is why I need the deduction information.

7 DISCOVERY COMMISSIONER: So we need all the deductions, not just the  
8 health insurance.

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

10 DISCOVERY COMMISSIONER: But wouldn't there be one column for that?

11 MR. GREENBERG: Your Honor, it is definitely listed in an identifiable  
12 intersection, column, cell --

13 DISCOVERY COMMISSIONER: Okay.

14 MR. GREENBERG: -- in the QuickBooks, and I will demonstrate how this  
15 needs to be deduced, Your Honor.

16 MS. RODRIGUEZ: Well, that's --

17 MR. GREENBERG: And, again, I apologize for the failure of communication  
18 here. I could have done a better job. I should have done a better job so --

19 DISCOVERY COMMISSIONER: Well --

20 MR. GREENBERG: And I will do a better --

21 DISCOVERY COMMISSIONER: -- communication --

22 MR. GREENBERG: -- job.

23 DISCOVERY COMMISSIONER: -- is a two-way street.

24 MR. GREENBERG: Yes, Your Honor.

25 DISCOVERY COMMISSIONER: And I used to do a sufficient job at

1 communicating so that there is no issue of what I am expecting. But I think there should be  
2 no issue right now. I think I --

3 MR. GREENBERG: I will do a better job, Your Honor, promise.

4 DISCOVERY COMMISSIONER: I think I've made it very clear, Ms.  
5 Rodriguez, what I expect to be produced.

6 MS. RODRIGUEZ: I'm going to A Cab right after this, Your Honor. I'm  
7 going to see what they have in their QuickBooks and if that reformatting can be done. I'm --  
8 it has been very laborious on their side to have to pull -- I explained that at the last hearing.  
9 It's not as easy as Mr. Greenberg presented, that it's a matter of them redoing it, but we're  
10 gonna do our best to try --

11 DISCOVERY COMMISSIONER: But they have to --

12 MS. RODRIGUEZ: -- to comply.

13 DISCOVERY COMMISSIONER: -- prove too. I mean, the Plaintiff has the  
14 burden of proof, but on your affirmative defenses you do, and you have probably the burden  
15 of persuasion as well on those, right? Am I confusing it?

16 MR. GREENBERG: Well, Your Honor, I would just --

17 DISCOVERY COMMISSIONER: But --

18 MR. GREENBERG: Yes, Your Honor.

19 DISCOVERY COMMISSIONER: Forget that.

20 MR. GREENBERG: Okay.

21 DISCOVERY COMMISSIONER: Here's what needs to happen. You need to  
22 be able to defend your position that you didn't violate the minimum wage, if that's your  
23 defense, so you're going to necessarily need to show all the deductions and the payments that  
24 were made to each individual employee because if the Court says, yes, I agree this is a  
25 certified class, I'm gonna maintain that, then short of appealing you're going to have to

1 produce the information per employee.

2 MS. RODRIGUEZ: And it's, well, the most accurate documentation are the  
3 paper files, and they are there to demonstrate all of the deductions, all of the taxes,  
4 everything that we are now putting together for Mr. Greenberg electronically.

5 MR. GREENBERG: Your Honor, I would like to spare Defendants from any  
6 additional unnecessary burden 'cause they've been talking about the burden of getting this  
7 together. She said she's gonna go to the Defendant's office and work on it right away. I  
8 would urge them to wait until I get that communication we've been discussing out with  
9 guidance and instruction on the record about this. That's their choice, how they want -- what  
10 they want to spend their time doing, Your Honor, but I'm trying --

11 DISCOVERY COMMISSIONER: It would seem to me that would be prudent.

12 MR. GREENBERG: I'm trying to help everybody out here and make things  
13 easier. That's --

14 DISCOVERY COMMISSIONER: But I am not --

15 MR. GREENBERG: -- my point, Your Honor.

16 DISCOVERY COMMISSIONER: -- going to necessarily tell the lawyers how  
17 to do their job, but that does seem like it would be a prudent plan.

18 Nothing further today, no Report and Recommendations. I do expect a better  
19 job of communication, and I do expect, since it's not an issue, to produce in a workable  
20 format the information necessary from 2014 forward.

21 MR. GREENBERG: Yes, Your Honor. One sort of housekeeping issue is our  
22 schedule in this case. For example, I had expert designations this month. We have a close of  
23 discovery 6/29.

24 DISCOVERY COMMISSIONER: I'll have to address that when you come  
25 back and see me next time.

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

2 DISCOVERY COMMISSIONER: But your trial date of 1/3/17 has to stand. I  
3 think we have a five-year rule issue.

4 MR. GREENBERG: Not until 2018 on this case actually, Your Honor. It was  
5 filed October of 2012, and there was a stay for approximately six months or maybe even a  
6 little more. So we would be about two years off from --

7 DISCOVERY COMMISSIONER: I would want you to confirm when you  
8 think the five-year rule runs because I don't want to have a problem with that if I have to  
9 adjust the deadlines, so you'll need to reach an agreement and we'll have to put it on the  
10 record.

11 MR. GREENBERG: When we return, Your Honor.

12 DISCOVERY COMMISSIONER: Okay. I'm hoping 30 days is enough. I  
13 may be inclined to go out 45, just to be on the safe side.

14 MR. GREENBERG: That would be fine, Your Honor. I would ask that the  
15 Court just avoid May 26 because I have some other hearings on that date.

16 THE CLERK: May 20<sup>th</sup>.

17 DISCOVERY COMMISSIONER: May 20<sup>th</sup>, it's a Friday.

18 THE CLERK: At 10.

19 DISCOVERY COMMISSIONER: At 10.

20 MR. GREENBERG: That should be fine, Your Honor.

21 DISCOVERY COMMISSIONER: Ms. Rodriguez, does that work for you?

22 MS. RODRIGUEZ: I think that'll be fine, Your Honor.

23 DISCOVERY COMMISSIONER: May 20<sup>th</sup>, 2016, at 10 a.m. I'll see you  
24 then.

25 MR. GREENBERG: Thank you, Your Honor.

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DISCOVERY COMMISSIONER: Thank you very much.

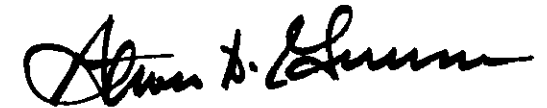
MS. RODRIGUEZ: Thank you.

[Proceeding concluded at 11:14 a.m.]

\* \* \*

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

  
FRANCESCA HAAK  
Court Recorder/Transcriber



CLERK OF THE COURT

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

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

13 Plaintiffs,

14 vs.

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

17 Defendants.

Case No.: A-12-669926-C

Dept.: I

**MOTION TO COMPEL THE  
PRODUCTION OF  
DOCUMENTS**

18 Plaintiffs, through their attorneys, Leon Greenberg Professional Corporation,  
19 hereby move this Court for an Order compelling defendants, A Cab Taxi Service LLC,  
20 A Cab, LLC, and Creighton J. Nady (“defendants” or “A Cab”), to produce certain  
21 records.

22 Plaintiffs’ motion is brought pursuant to Nev. R. Civ. P. 37(a) and is made and  
23 based upon the annexed declaration of counsel, the memorandum of points and  
24 authorities submitted with this motion, the attached exhibits, and the other papers and  
25 pleadings in this action.

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Dated: December 23, 2016

By: /s/ Leon Greenberg  
Leon Greenberg, Esq.  
Nevada Bar No.: 8094  
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Attorney for Plaintiff



1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**  
2                                   **RELEVANT NATURE AND PROCEDURAL OF THIS CASE**

3           The court has certified this case as a class action for equitable relief and  
4           minimum wages owed to defendants' taxi driver employees under Article 15, Section  
5           16 of the Nevada Constitution.

6                                   **RELEVANT NATURE OF DISCOVERY SOUGHT TO BE COMPELLED**

7           Plaintiffs seek an Order compelling defendants to produce an Excel file(s) in  
8           which defendants contemporaneously recorded the hours of work of the class  
9           members. This Excel file of the class members' working time is referred to by  
10          defendants as "J Roll." The "J Roll" file was discussed by defendant Nady at an  
11          NRCPP Rule 30(b)(6) deposition conducted on November 22, 2016. Ex. "A," excerpt  
12          from deposition testimony. The existence of "J Roll" is also confirmed by the sworn  
13          statements of defendants' former employees, Bonnie Wittig and Wendy Gagliano Ex.  
14          "B" and "C." "J Roll," as testified to by defendant Nady, records the start time, break  
15          time, and end time of each class member's (taxi driver's) work shift, such times in turn  
16          being taken from each class member's daily trip sheet. Ex. "A." That "time worked"  
17          information in the "J Roll" was used to determine whether a class member's wages met  
18          minimum wage standards and to calculate the class members' payroll. Ex. "C" ¶ 4.

19          This file(s) should have been produced at the outset of discovery in this matter  
20          and defendants have offered no basis for withholding its production. It was also  
21          expressly requested by plaintiffs, who served a request for production of "all records"  
22          setting forth the hours of work of the class members. Defendants, in response, falsely  
23          stated such production was overly burdensome as the information was in trip sheets,  
24          which number in excess of 46,000 per year and are not organized by employee name.  
25          Ex "D," Defendants' Responses to Plaintiffs' First Request for the Production of  
26          Documents, Response No. 4. Through vigorous investigation plaintiffs' counsel has  
27          learned that defendants' "hours of work are recorded on the trip sheets only" claim is  
28          undeniably false. Accordingly, the Court must compel production of the "J Roll" file.

1 Appropriate costs and sanctions should be imposed on defendants for their willful and  
2 dishonest concealment of these records and their failure to produce them previously.

3 Plaintiffs also seek an Order compelling defendants to produce documents  
4 detailing the marital and dependent status for all class members, as indicated in their  
5 W-4 IRS forms and as such information (married, unmarried, number of dependants)  
6 was subsequently placed in defendants' computerized payroll system, Quickbooks.  
7 Such information is highly germane to determining whether each class member was  
8 entitled to the higher tier minimum wage (currently \$8.25 per hour) or were only  
9 eligible to receive the lower tier minimum wage (currently \$7.25 per hour). This  
10 information was sought by plaintiffs and discussed at the Discovery Commissioner's  
11 hearing held on December 9, 2016. *See* Ex. "E," Transcript of Hearing. The  
12 Discovery Commissioner did not rule on this issue at that time and granted plaintiffs  
13 leave to seek a ruling on the same via a separate motion. *Id.*

14 **I. WHY THE REQUESTED DISCOVERY SHOULD BE COMPELLED**

15 **A. Defendants have concealed the existence of, and failed to produce,**  
16 **highly relevant records of the class members' working time.**

17 **1. Defendants have just now confirmed that they created, and**  
18 **presumably still have, a computerized record of the hours**  
**worked each payroll period by the class members.**

19 The "J Roll" file is an item of discovery within the scope of Rule 26(b) and is  
20 directly responsive to the plaintiffs' prior request for production. As described by the  
21 defendants in their NRCP 30(b)(6) testimony, "J Roll" is a spreadsheet created by the  
22 defendants that contains a record of all hours worked by all drivers for each shift for  
23 every payroll period. *See* Ex. "A" generally. *See* also Ex. "C" ¶ 4. "J Roll" contains  
24 the hours of work of each class member that defendants used to determine if the class  
25 members' pay met the minimum wage requirements of the law. *Id.* Defendants'  
26 owner, Creighton J. Nady, described "J Roll" in the following way:

27 **Q: When was the last time you personally did the payroll and**  
**reviewed the 500 or more trip sheets for the time drivers**  
28 **worked each shift to compute the payroll?**

**A: Well, by the time we get them they're pretty much summated by**

1 Nancy, so I did the payroll about six months ago when Dona was  
on some sort of a sabbatical.

2 **Q: Did you review the trip sheets with...**

3 **A:** I reviewed some of them, not all of them.

4 **Q: Why only some of them?**

5 **A:** Because Nancy had already put together the times on there for me.

6 **Q: How did she put together the times?**

7 **A:** You take the beginning and ending and we add eight minutes to  
both ends.

8 **Q: Is that number entered into a spreadsheet?**

9 **A:** Yeah.

10 **Q: Is there a name used for that spreadsheet?**

11 **A:** I don't recall what the name of it is. I'm sure there is a name. Do I  
know what it is? No, not off the top of my head, but I could find it.  
If you ask for it, I'll give it to you in writing.

12 **Q: What's done with that spreadsheet after information is put into  
it?**

13 **A:** We probably just save it on the computer.

14 **Q: And that spreadsheet that you were describing is prepared for  
an entire payroll period, which is two weeks, correct?**

15 **A:** Yes.

16 **Q: And it contains the shift information for every driver who  
worked during that two-week period, correct?**

17 **A:** I believe so.

18 **Q: And what happens to that spreadsheet once its fully prepared?**

19 **A:** We then use that for the payroll.

20 **Q: And then what happens to the spreadsheet?**

21 **A:** I don't know. It stays in the computer, I believe.

22 **Q: And then a copy of that spreadsheet can be produced?**

23 **A:** If you ask for it.

24 **Q: To your knowledge, do those spreadsheets exist in A Cab's  
computer records?**

25 **A:** I don't know, but I would assume they do.

26 **Q: Is that Excel file that we've been discussing where the time is  
recorded called the J roll?**

27 **A:** Yes, I think that's it. I'm not certain. This is something I do every  
day and it's been six months or four or five months since I did it. I  
don't remember, but I think its called the J roll as opposed to the  
payroll.

28

1           Q:    Do you know why its called the J roll?

2           A:    They named it after me.

3           Q:    And who named it?

4           A:    I did.

5           Q:    And who created it?

6           A:    I think I helped with it.

7           ...

8           Q:    Can you tell me anything about how that spreadsheet is set up?

9           A:    To the best of my recollection, it says when they started and when  
10           they ended.

11           See, Ex. "A," Deposition transcript of Creighton J. Nady as NRCP 30(b)(6) witness,  
12           November 22, 2016, beginning on 68:14 and continuing to 80:4, although the Court is  
13           encouraged to read through all the testimony provided in Ex. "A" to grasp the full  
14           importance of "J Roll" and the defendants' wilful concealment of the same.

15           2.    **Defendants, in an attempt to make this case impossible to**  
16           **prosecute, have, through their counsel, insisted for almost**  
17           **two years that nothing like the "J Roll" records exists.**

18           Defendants, from the outset of this case, have resisted producing any  
19           computerized records. They required the taking of two completely pointless  
20           depositions on their computer systems and a wholly pointless "on site" inspection of  
21           their computer systems that defendants obstructed and prematurely terminated. This  
22           wild goose chase resulted in the Court's order imposing sanctions of \$3,238.5 (Ex.  
23           "F."). Defendants have repeatedly insisted that the only records showing the hours  
24           worked by their taxicab drivers are hundreds of thousands of paper documents (the  
25           drivers' original trip sheets). If that were true it would be impracticable for plaintiffs'  
26           counsel to review those documents individually, one by one, to determine the actual  
27           working time of the class members. Such a "no records" (or no "practical records for  
28           analysis") of time worked circumstance would greatly aid the defendants, as the  
29           plaintiffs have the burden of establishing the hours that they worked and that their  
30           compensation for those hours was below the minimum hourly rate.

31           In furtherance of creating this sort of "impossible to prosecute" situation,  
32           whereby the class members' hours of work would remain beyond effective analysis or

1 presentation at trial, defendants' counsel, presumably based upon its clients false  
2 assertions to it, previously advised this Court, that

3 "...Plaintiffs seek time records in a computer file for not only the named  
4 plaintiffs, but for every other employee. They are seeking a sophisticated  
5 computerized database that will make their job much easier, **but that does not  
exist. There is no computerized database that will show the punch  
in/punch out and breaktimes as the Plaintiffs' desire.**"

6 *See*, Ex. "G," Defendants' Opposition to plaintiffs' first motion to compel, filed on  
7 March 2, 2015, at 4:27-5:3 (emphasis added).<sup>1</sup>

8 **3. Defendant Nady has lied under oath, asserting that nothing**  
9 **like the "J-Roll" hours of work time record was ever created.**

10 In addition to defendants' active concealment of the "J Roll" and abjectly false  
11 statements in motions to the Court, the defendant Nady testified falsely under oath  
12 about this issue as well. In his 2015 deposition as defendants' NRCP 30(b)(6)  
13 witness, defendant Nady was questioned about the company's practice of keeping  
14 electronic records of the hours worked by its cab drivers, as such information might be  
15 taken from the drivers' trip sheets. He was expressly designated by defendants as a  
16 witness responsive to that issue. *See*, Ex. "T" NRCP 30(b)(b) notice, ¶ 18, expressly

17 \_\_\_\_\_  
18 <sup>1</sup>The Motion to Compel to which the Ex. "C" opposition relates resulted in the  
19 Discovery Commissioner compelling defendants to produce the Cab Manager data and  
20 the Quickbooks records for the class members. While the Cab Manager and  
21 Quickbooks data were produced after the Court's Ex. "F" sanction order, the  
22 Quickbooks data only contained a record of the class members' hours of work since  
23 January 1, 2013 (the class claims involve, at a minimum, the period from October 8,  
24 2010 forward under the statute of limitations). Although defendants, as admitted by  
25 Nady, were examining and recording (in the "J-Roll") those hours of work *prior* to  
26 2013 they were not putting that information into the payroll reports (pay stubs) from  
27 Quickbooks that employees received. Nady testified that omission was intentional  
28 because defendants did not want the drivers to know that "if they didn't do well [in  
collecting passenger fares] they still get paid a bunch of money [an extra payment for  
minimum wage deficiencies]." Ex. "H" 121:9-16. Production of the "J Roll" file(s)  
will make clear what "hours of work" defendants were using to prepare their payroll  
from 2010 through 2012 when they did not include that hours of work information in  
their Quickbooks generated payroll records.

1 seeking information of "... computer data files ("compilations") whether created in  
2 Excel or any other form) of information contained in taxi drivers' trip sheets..." He  
3 testified that while A-Cab started reviewing drivers' trip sheets in 2009 to compile  
4 their working hours per pay period, and increased their wages for the pay period if a  
5 review of those hours indicated the driver was being paid "below minimum wage," A-  
6 Cab did not keep a record of those hours in electronic form:

7 **Q. Has A Cab always examined the number of hours worked per**  
8 **pay period in preparing its payroll for the cab drivers?**

9 A. Not always. I think we started after our first audit [referring to first  
10 U.S. Department of Labor Audit in 2009]. I can't remember the  
11 name of the auditor, but he recommended we keep track of every  
12 hour.

13 **Q. And --**

14 A. And we kept track of hours then also, but we didn't keep records of  
15 all of them. So I mean, we had to go back. He didn't like having  
16 to go back and look at each trip sheet any more than you will about  
17 trying to figure out how many hours they actually worked or any  
18 more than the DOL when they did audit us for three and a half  
19 years. They kept those things, and they went over every one of  
20 them.

21 **Q. Well, it's your testimony then that since the time of that audit,**  
22 **A Cab has always examined the number of hours a taxi driver**  
23 **worked during a payroll period in calculating their pay for the**  
24 **period?**

25 A. I believe we have, yes.

26 **Q. But A Cab has not always kept a record of that number of**  
27 **hours for the entire pay period; correct?**

28 A. Well, after the first audit, A Cab -- we didn't measure it up against  
the minimum wage as cited or as recommended by the DOL. And  
thus, we took the number of hours off the trip sheets. The trip  
sheets come -- or they came in two week periods, you know, five,  
six, ten of them, eleven, sometimes 12 even. And we would put a  
total on -- staple it together and put a total on the front of the  
number of hours. Then if that was below minimum wage, we  
would then increase the wage and the commission to do that. We'd  
keep track of how much it was. Now we didn't do that. And the  
reason we didn't do it is we didn't want the drivers -- maybe a  
stupid thing to do, and it ended up biting us a little bit. We didn't  
want the drivers to know that if they didn't do well they still get  
paid a bunch of money. So we didn't tell them that we were  
keeping that. We did keep a record of it though of how much we  
supplemented their wages. And then when it became an issue, we  
started putting it down as a supplement.  
You guys are passing notes like kids.

**Q. Now, Mr. Nady, in order to do the calculations you just**



1 described, A Cab had to determine each pay period how many  
2 A. Yes. hours a cab driver worked during that pay period; correct?

3 Q. So it had to create a total hours worked for the cab driver for  
4 A. Yes. that pay period; correct?

5 Q. But it has not actually preserved that total number of hours  
6 worked that it calculated; correct?

7 MS. RODRIGUEZ: Objection. Misstates prior testimony.

8 THE WITNESS: No. I don't think -- even though it's misstated, I  
9 don't think we kept those.

10 Ex. "H," 120:5-122:10

11 Nady then goes on to explain that the compilation, from the drivers' trip sheets,  
12 of hours worked per pay period by each driver was manually performed and recorded  
13 "on a tape from an adding machine" that was "stapled" to the driver's trip sheets for  
14 the pay period. Ex. "H," 122:18-125:12. He further explains that while such  
15 "stapled" pieces of "adding machine" tape set forth the hours worked by each driver  
16 for each pay period, he is uncertain if those records still exist. *Id.* When asked if that  
17 "adding machine tape" system was still used, Nady testified that the system "may have  
18 evolved" but expressly denied any knowledge of whether the payroll preparer, Donna,  
19 used Excel files (J-Roll being an Excel file) for payroll preparation. Ex. "H" 125:21-  
20 126:17.

21 Such assertions by Nady in 2015, about the non-existence of any Excel record  
22 such as J-Roll were knowingly untrue, as he admitted the existence of the same in  
23 2016, testifying that he, personally, created and named an Excel spreadsheet called "J  
24 Roll" which is a record of all hours worked by all cab drivers for each of their daily  
25 shifts. Ex. "A." The abject falsity of defendants' assertions in this case regarding the  
26 non-existence of any records like the "J-Roll" is not only confirmed by Nady's 2016  
27 deposition, it is also confirmed in the sworn declaration of their longtime payroll  
28 manager. *See*, Ex. "C," Declaration of Wendy Gagliano. Ms. Gagliano affirms that "J  
Roll" was created in 2009 after the defendants were first investigated by the U.S.

1 Department of Labor regarding their payroll practices; that such file was created for  
2 the purpose of tracking the hours each cab driver worked each shift to determine if  
3 drivers were earning minimum wage; that she was instructed by defendants' owner,  
4 Jay Nady, to use it for this purpose in her capacity as Payroll Manager; that the hours  
5 worked by every driver for every shift was either manually or automatically entered in  
6 the "J Roll" spreadsheet; and that such file remained in use by A Cab from 2009 when  
7 it was created until at least June 2013 when her employment at A Cab was terminated.  
8 *Id.* at ¶ 2-5. There is no denying that the "J Roll" files contain highly relevant  
9 information that should have been produced long ago, that defendants have willfully  
10 concealed its existence, and its production must be expressly ordered.

11 Defendants have also submitted falsely sworn interrogatory responses. *See*, Ex.  
12 "M," Defendants' Responses to Plaintiffs' First Set of Interrogatories. In such  
13 interrogatories, the defendants are asked to identify the computer software used by the  
14 defendants that possess information on, *inter alia*, the number of shifts, the dates of  
15 shifts, and the lengths of shifts, that their taxicab drivers work. Falsely, defendants  
16 responded that they have used Microsoft Excel since 2013. *Id.* (Emphasis added).

17 **4. Sanctions are warranted in response to defendants'**  
18 **concealment of facts and information crucial to this case,**  
**their false statements to the Court and their false testimony.**

19 The Court has the inherent power to sanction litigants and attorneys for abusive  
20 litigation practices. *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 95, 787 P.2d  
21 777, 779, 781 (1990). ("Litigants and attorneys alike should be aware that these  
22 powers may permit sanctions for discovery and other litigation abuses not specifically  
23 proscribed by statute.") *See also, Emerson v. Eighth Judicial Dist. Court of State, ex*  
24 *rel. Cnty. of Clark*, 263 P.3d 224, 229 (2011) (District court has broad discretion to  
25 impose sanctions for professional misconduct at trial and for other litigation abuses).  
26 While the Court should only use its sanctions power when necessary, and only to the  
27 extent the circumstances require such usage, defendants conduct in this case makes the  
28 imposition of sanctions necessary.



1       The Ex. "B" and "C" declarations and the Ex. "A" testimony of defendants'  
2 owner establishe, beyond question, that the defendants have (1) actively concealed the  
3 existence of this highly relevant item of discovery for the past four years that this case  
4 has been pending; (2) submitted false statements to this Court, via their counsel, about  
5 the non-existence of computerized records showing the "punch in and punch out" time  
6 of the plaintiffs and class member cab drivers; (3) provided knowingly false NRC  
7 30(b)(6) testimony in 2015 as demonstrated in the Ex. "H" transcript excerpt; and (4)  
8 provided false sworn interrogatory responses affirming that A Cab only began using  
9 Microsoft Excel in 2013, which is directly contradicted by the Ex. "B" and "C"  
10 declarations and Nady's own Ex. "A" testimony.

11       In determining the amount of sanctions to award, the Court should recognize the  
12 pattern, and history, of improper conduct by these defendants. *See*, Ex. "F," Order  
13 granting attorneys' fees in the amount of \$3,238.95 for defendants' prior discovery  
14 misconduct. The Ex. "F" order, while assessing attorney's fees at \$400 an hour for  
15 class counsel Leon Greenberg, only awarded fees for a minority his time (only certain  
16 deposition time and costs) expended on that very protected dispute over Cab Manager  
17 and Quickbooks computer data file production. Even an award of \$4,000 (for 10  
18 hours of such counsel's time) would still not fully compensate such counsel for all of  
19 the time expended in bringing this motion and determining the existence of these  
20 concealed "J-Roll" files. Ex. "J." Such counsel has also expended considerable  
21 expense, in excess of \$3,800, on the services of a consultant to analyze the defendants'  
22 Quickbooks and Cab Manager data to obtain an understanding of the class damages.  
23 That work will now have to be redone, at significant additional expense, with the  
24 improperly withheld "J Roll" data. Ex. "J" declaration of counsel.

25       A proper award of attorney's fees or sanctions is up to the Court. Class counsel  
26 submits such an award should be no less than \$5,000 and a more proper award would  
27 be \$10,000. Ex. "J."

1        **B.     The Marital and Dependent Status of Each of the Class Members is**  
2        **Known to the Defendants and Must be Provided to Determine**  
3        **Whether the Class Members Were “Offered” Qualifying Health**  
4        **Insurance Benefits as Contemplated by the Nevada Constitution**

5        For an employer to pay the “lower tier” minimum wage of \$7.25 an hour to an  
6        employee it must meet three criteria: (1) It must “offer” health insurance to the  
7        employee, but the employee need not actually enroll in the insurance; and (2) The  
8        “offered” health insurance must be available to the employee and their “dependents”  
9        (the employee must have an option to enroll their spouse and dependent children); and  
10       (3) The premium the employee pays if they elect to enroll in the insurance cannot be  
11       more than 10% of his wages (and the employer cannot include tip earnings in figuring  
12       that 10%). Criteria 1 and 3 were recently established by the Nevada Supreme Court in  
13       *MDC Restaurants v. Eighth Judicial Dist. Ct.*, 132 Nev. Adv. Op 76 (Oct. 27, 2016).  
14       Criteria 2 comes directly from the Nevada Constitution, Article 15, Section 16,  
15       Subpart “A”: “Offering health benefits within the meaning of this section shall consist  
16       of making health insurance available to the employee **for the employee and the**  
17       **employee’s dependents** at a total cost to the employee for premiums of not more than  
18       10 percent of the employee’s gross taxable income from the employer.”

19       In this case the defendants **are not** “offering” health insurance, for minimum  
20       wage purposes, to the following class members:

21               Since at least June 1, 2015 defendants **have not offered class members**  
22               **the option to insure their spouses.** Ex. “K” insurance plan descriptions  
23               indicating no spousal coverage is available. Accordingly, no health  
24               insurance, for minimum wage purposes, has been “offered” to married  
25               class members since at least June 1, 2015;

26               Class members with any dependents (be it a spouse or children) must **pay**  
27               **an insurance premium amount that is indisputably in excess of 10%**  
28               **of their wages if they only were paid \$7.25 an hour and as a result are**

1 not being offered health insurance for minimum wage purposes. The  
2 lowest cost "dependent" premium per two week pay period was \$134.96.  
3 See, Ex. "K." Even if a class member worked 7 days a week, 12 hours a  
4 day, their earnings per two week pay period at \$7.25 an hour would only  
5 be \$1,218.00 and such \$134.96 premium was in excess of 10% of that  
6 amount.

7 Plaintiffs, via an interrogatory, previously requested that defendants identify  
8 from their payroll records, which contain information from each class member's W-4  
9 form, the marital status and claimed dependents of each class member. Ex. "L,"  
10 sample W-4 form confirming every employee must advise their employer whether they  
11 are married and separately the number of dependents that they are claiming. In  
12 response to that request, defendants insist such information is "overbroad" and this  
13 was "discussed at the Discovery Conference of December 9, 2016 in which the  
14 Discovery Commissioner ruled that Plaintiffs are not entitled to this information." Ex.  
15 "N," Defendants' Responses to Plaintiffs' Sixth Set of Interrogatories at response nos.  
16 28-29. Neither assertion is true or intelligible.

17 The Court has never "ruled" upon whether this information should be produced,  
18 as pages 56-57 of the hearing transcript of December 9, 2016 demonstrate. Ex. "E."  
19 The brief discussion that took place on this issue was concluded not with a "ruling" on  
20 whether this information needed to be produced, but a commitment to having the issue  
21 heard by a future motion:

22 MR. GREENBERG: Your Honor, it's not whether they  
23 took any plan. It's whether they could have covered  
24 themselves and their dependents within the 10 percent once  
25 they were eligible.

26 DISCOVERY COMMISSIONER: Well, you don't need to  
27 know all the details.

28 MR. GREENBERG: Your Honor, if they -- if they had a  
spouse, they couldn't cover the spouse if the plan didn't  
offer spousal coverage which --

DISCOVERY COMMISSIONER: But that's a different --

1 MR. GREENBERG: -- it didn't.

2 DISCOVERY COMMISSIONER: -- issue. We're --

3 MR. GREENBERG: No, Your Honor --

4 DISCOVERY COMMISSIONER: -- just going in circles.

5 MR. GREENBERG: Your --

6 DISCOVERY COMMISSIONER: I -- I don't want to spend  
7 anymore time --

8 MR. GREENBERG: Can I -- can I --

9 DISCOVERY COMMISSIONER: -- on that issue. What is  
10 your third issue?

11 MR. GREENBERG: Your Honor, all I would ask is  
12 permission to brief that issue and return it by motion.

13 DISCOVERY COMMISSIONER: Then you'll have to bring a  
14 separate motion.

15 MR. GREENBERG: Thank you, Your Honor.

16 Ex. "E" p. 56-57 (emphasis added).

17 Defendants' claim that the production of this information is "overbroad" in light  
18 of the holding in *MDC Restaurants* is unexplained because that assertion has no basis.  
19 *MDC Restaurants* determined an employee need not "enroll" but only be "offered" the  
20 "qualifying" health insurance. It further ruled that the "10% of wages" premium cost  
21 cannot include (cannot base that 10% amount upon a sum including) the employee's  
22 tips. Such holding leaves undisturbed, and confirms the Nevada Constitution's  
23 required that the cost of such insurance, which insurance must be "offered" not just to  
24 the employee individually but to their "dependents," cannot exceed 10% of the  
25 employee's wages. Yet any class member with any dependent of any sort (spouse or  
26 child) was **never offered qualifying health insurance** by the defendants, either  
27 because the premium cost was too high or defendants refused the spouses of  
28 employees to enroll in the insurance.

Determining which class members were offered "qualifying health insurance"

1 and which were not offered such insurance requires access to the class members'  
2 marital status and other dependent status information. Defendants' assertions to the  
3 contrary are baseless.

4 Defendants' owner, Jay Nady, testified during his November 22, 2016 NRCP  
5 30(b)(6) deposition that defendants' Quickbooks records maintain a record of the  
6 marital status and dependent status of each of its employees and that such record can  
7 be generated. *See*, Ex. "A" at 258:3-259:15; 265:13-266:11. While plaintiffs have  
8 already received certain records from defendants' Quickbooks system, the marital  
9 status and dependent indicator in those records was omitted from that production. The  
10 Court is already aware of the ease of producing Quickbooks records, and the further  
11 production of this additional *portion* of the Quickbooks records will involve no burden  
12 at all to defendants. Accordingly, such information should be compelled.

13 **II. PLAINTIFFS' COUNSEL'S GOOD FAITH CONFERRAL**

14 In compliance with EDCR 2.34, plaintiffs' counsel has conferred with  
15 defendants and their counsel regarding production of the "J Roll" files during the  
16 November 22, 2016 NRCP 30(b)(6) deposition. Ex. "A" at pp. 73-75. The Discovery  
17 Commissioner has also authorized the filing of a further motion to compel regarding  
18 information concerning the marital and dependent status of each of the class members  
19 at the parties' December 9, 2016 hearing. Ex. "E." No production of each of the two  
20 items mentioned above has been forthcoming since the parties met and conferred,  
21 making the current motion ripe.

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**CONCLUSION**

For all the foregoing reasons, plaintiffs’ motion should be granted in its entirety together with such other further and different relief that the Court deems proper.

Dated: December 23, 2016

LEON GREENBERG PROFESSIONAL CORP.

/s/ Leon Greenberg  
Leon Greenberg, Esq.  
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Tel (702) 383-6085  
Attorney for the Plaintiffs

CERTIFICATE OF MAILING

The undersigned certifies that on December 23, 2016, she served the within:

**Plaintiff's Motion to Compel the Production of Documents**

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"



## DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY, and MICHAEL RENO, ) Case No.: A-12-669926-C

Individually and on behalf of ) Dept. No.: I

Others similarly situated, )

Plaintiff, )

VS )

A CAB TAXI SERVICE LL, A CAB, LLC )

And CREIGHTON J. NADY, )

Defendants. )

RECORDED DEPOSITION OF PMK A CAB TAXI SERVICE LLC & A CAB,

LLC

CREIGHTON NADY

Taken on November 22, 2016

At 9:41 a.m.

## Evolve Downtown

400 South 4th Street, Suite 300

Las Vegas, Nevada 89101

1 APPEARANCES:

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3 DANA SNIEGOCKI

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7

8

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14

15 MICHAEL WALL, ESQ.

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1 Q: Mr. Nady, just again, just to be  
2 clear, and I apologize for having to continue with  
3 this because I don't think your testimony is  
4 completely clear, you're not really sure if there's  
5 any different system used by A Cab now to keep track  
6 of the time the drivers are working besides  
7 information that's on those trip sheets. Is that  
8 correct?

9 A: I am sure that we are using the  
10 timestamps from the trip sheets for their time.

11 Q: For their working time?

12 A: Yes, sir.

13 Q: Now, do you know if that time  
14 simply remains recorded on the trip sheets or is it  
15 taken off the trip sheets and recorded somewhere  
16 else?

17 A: It's not... we also add eight minutes  
18 to the beginning and end of the shift.

19 Q: Who does that?

20 A: Whoever does their payroll.

21 Q: Donna? Anybody else?

22 A: Donna does that. Just add it on.

23 Q: Does anybody else do that?

24 A: If Donna is not there to do  
25 payroll, I would have to do most of it myself.

1 Q: Anybody else?

2 A: No.

3 Q: Does she actually review the trip  
4 sheets?

5 A: Yes.

6 Q: Do you actually review the trip  
7 sheets when you do the payroll?

8 A: Yeah, I think so. I do it, I'd  
9 assume she does.

10 Q: And how many trip sheets have to be  
11 reviewed for each payroll period?

12 A: I couldn't tell you the exact  
13 number.

14 Q: Well, you've reviewed them, haven't  
15 you, for the purposes of...

16 A: Yes, but I don't count them.

17 Q: Is it more than 100?

18 A: Yes.

19 Q: Is it more than 200?

20 A: Yes.

21 Q: Is it more than 300?

22 A: Yes.

23 Q: Is it more than 500?

24 A: Yes.

25 Q: And you review 500 trip sheets when

1 you prepare the payroll?

2 A: You have to get the time somehow.

3 Q: You do that yourself, sir?

4 A: Well, we have another girl who does  
5 it also, Nancy, an accountant, who actually does the  
6 time on every day.

7 Q: Has anybody done that previously  
8 but does not work for the company anymore?

9 A: Wendy used to.

10 Q: Anybody else?

11 A: I don't know. I can't tell you off  
12 the top of my head. It goes back. Wendy has been  
13 gone almost four or five years now.

14 Q: When was the last time you  
15 personally did the payroll and reviewed the 500 or  
16 more trip sheets for the time drivers worked each  
17 shift to compute the payroll?

18 A: Well, by the time we get them  
19 they're pretty much summated by Nancy, so I did the  
20 payroll about six months ago when Dona was on some  
21 sort of a sabbatical.

22 Q: Did you review the trip sheets  
23 with...

24 A: I reviewed some of them, not all of  
25 them.

1 Q: Why only some of them?

2 A: Because Nancy had already put  
3 together the times on there for me.

4 Q: How did she put together the times?

5 A: You take the beginning and ending  
6 and we add eight minutes to both ends.

7 Q: But is that information that's  
8 calculated, the beginning and the ending and the  
9 eight minutes you've testified about, recorded  
10 somewhere?

11 A: Well, no. I don't know. We figure  
12 out the time on it.

13 Q: Well, you figure out the time based  
14 on the trip sheet, Mr. Nady. But once you figure  
15 that number out, what do you do with that number?

16 A: We use that as a guide to find out  
17 if they've earned enough to make minimum wage and we  
18 put that against what we think their hours are.

19 Q: Is that number entered into a  
20 spreadsheet?

21 A: Yeah.

22 Q: Is there a name used for that  
23 spreadsheet?

24 A: I don't recall what the name of it  
25 is. I'm sure there is a name. Do I know what it is?

1 No, not off the top of my head, but I could find it.

2 If you ask for it, I'll give it to you in writing.

3 Q: Did you make any effort for today  
4 to determine what the name was on that spreadsheet?

5 A: No, I didn't look up the name of  
6 it.

7 Q: What's done with that spreadsheet  
8 after information is put into it?

9 A: We probably just save it on the  
10 computer.

11 Q: Excuse me, sir?

12 A: Nothing happens to it.

13 Q: Well, it's used for the purpose of  
14 determining whether the driver was earning minimum  
15 wage. Is that correct?

16 A: I believe so. Well, we... there's a  
17 catch on it that tests itself. Once you put the  
18 time... you put the time in and the wages there and  
19 it'll test itself.

20 Q: There is a formula in the  
21 spreadsheet?

22 A: I believe so, yeah.

23 Q: Well, how could it test itself if  
24 there wasn't a formula?

25 MS. RODRIGUEZ: Object to the form.

1 A: I don't know. I'm not a computer  
2 guy, but it tells me if have to worry about it.

3 Q: Well, you used the word test. I'm  
4 just trying to understand..

5 A: I assume there's a test on it.

6 MS. RODRIGUEZ: Wait for the question.

7 Q: Well, you've used that spreadsheet,  
8 correct?

9 A: Pardon?

10 Q: You've used that spreadsheet you're  
11 describing, correct?

12 A: I've used it, yes.

13 Q: So you have actually personally  
14 looked at trip sheets to determine the amount of time  
15 manually by analyzing the trip sheet in front of you  
16 that the drive worked that shifted, put the amount of  
17 time into the spreadsheet plus eight minutes,  
18 correct?

19 A: Plus 16 minutes.

20 Q: Plus 16 minutes? So you have done  
21 that...

22 A: I have done that.

23 Q: And that spreadsheet that you were  
24 describing is prepared for an entire payroll period,  
25 which is two weeks, correct?



1 A: Yes.

2 Q: And it contains the shift  
3 information for every driver who worked during that  
4 two-week period, correct?

5 A: I believe so.

6 Q: And what happens to that  
7 spreadsheet once it's fully prepared?

8 A: We then use that for the payroll.

9 Q: And then what happens to the  
10 spreadsheet?

11 A: I don't know. It stays in the  
12 computer, I believe.

13 Q: And then can a copy of that  
14 spreadsheet be produced?

15 A: If you ask for it.

16 Q: To your knowledge, do those  
17 spreadsheets exist in A Cab's computer records?

18 A: I don't know, but I would assume  
19 they do.

20 Q: Do you know how far back in time  
21 those spreadsheets exist?

22 A: No.

23 MS. RODRIGUEZ: Just so the record is  
24 clear, this is everything that's been turned over to  
25 you. You're referring to all the Quickbooks stuff

1 that's been given to you, so there's nothing... I mean  
2 just to prevent you having to guess and that you're  
3 on the wrong page with him. Everything has been  
4 given to you.

5 Q: Counsel, QuickBooks are not  
6 spreadsheets. They're not Excel spreadsheets. They  
7 are not the materials that the witness has described.

8 MS. RODRIGUEZ: Okay, I just wanted to  
9 let you know that's been turned over to you.

10 Q: I don't... you are? Excuse me.  
11 Counsel, we have had QuickBooks production in this  
12 case. We acknowledge that. It's not what we're  
13 requiring, though. Counsel, I will state on the  
14 record that I do want those Excel spreadsheets that  
15 have been described by the witness..

16 MS. RODRIGUEZ: It's all been turned  
17 over to you.

18 Q: If this will be considered our meet  
19 and confer on the record right here, then I will make  
20 my motion, counsel.

21 MS. RODRIGUEZ: That's why I'm giving  
22 you an opportunity to clarify so that you are  
23 comfortable that everything has been turned over to  
24 you. And the reason that I'm bringing that to your  
25 attention now is that I assume you're going to use up

1 every minute of the seven hours and I will not have a  
2 chance for cross examination, so I do just want to  
3 clarify that for you right now while we're addressing  
4 this. This has been turned over to you.

5 Q: Well, if I believe that it hasn't,  
6 I should proceed with a motion to the court, counsel?  
7 If that's your position, that's fine. And I don't  
8 want...

9 MS. RODRIGUEZ: I don't know what to  
10 tell, you to be honest. It's been turned over to  
11 you. I just wanted to let you know that.

12 Q: Counsel, I have not been provided  
13 with any Excel spreadsheets as the witness has  
14 described here today. He's testified they exist. He  
15 doesn't know for how long a period they exist, but he  
16 has personal knowledge of them. He's testified he  
17 has actually worked with them.

18 A: I'm not sure if it's an Excel  
19 spreadsheet.

20 MS. RODRIGUEZ: Just go ahead and wait.

21 Q: Nothing of that sort has been  
22 provided, counsel.

23 MS. RODRIGUEZ: That's fine. I mean I  
24 will clarify that if I have an opportunity for cross  
25 examination, but I just wanted to give you the heads

1 up as a courtesy. So go ahead.

2 Q: Again, counsel, I intend to make  
3 the motion to produce it and I don't see that there's  
4 any need for us to confer further, because you're  
5 telling me it's been produced and I'm saying it  
6 hasn't been. And we can just leave it at that and  
7 we'll make our record before the court when I make my  
8 motion to the court and the court will decide what to  
9 do with that. Is that understood, counsel?

10 MS. RODRIGUEZ: That's fine.

11 Q: Okay, thank you.

12 A: And since I was there when  
13 everything was produced, everything we have we've  
14 given you on that. We have no reason to hide this  
15 stuff, because we're pretty proud of it. So I might  
16 have misstated when I said it was on a spreadsheet.  
17 It might be part of QuickBooks. It might be a thing  
18 on QuickBooks that tells us where the world we're  
19 under.

20 Q: Mr. Nady, you've described an  
21 analysis done for each shift of each trip sheet. I  
22 mean each day the driver worked, someone is figuring  
23 out the total amount of time they worked each day,  
24 correct?

25 A: I did.

1 Q: The QuickBooks payroll contains  
2 information as to the total number of hours someone  
3 works during a payroll period. Do you understand  
4 that?

5 MS. RODRIGUEZ: I'm sorry. I can  
6 barely... your voice drops, so I didn't hear the  
7 question.

8 Q: Mr. Nady, when the payroll is  
9 prepared, it's for a two-week period, correct?

10 A: Yes.

11 Q: And the QuickBooks includes a  
12 statement with that payroll as to the total number of  
13 hours the driver worked during the two-week period,  
14 correct?

15 A: It does.

16 Q: And I'm talking currently, for the  
17 last two years, it does, correct?

18 A: You're talking currently... I don't  
19 know if that's correct or not.

20 Q: You don't know if the QuickBooks  
21 currently contains a statement as to the number of  
22 hours a driver worked..

23 A: You've seen it of course they do.  
24 They're on there. If you look on the stub, you'll  
25 see that there is a number of hours on there, and you

1 know that. We've discussed that before.

2 Q: But does the QuickBooks contain a  
3 statement as to the number of hours a driver worked  
4 each day?

5 A: No.

6 Q: Now, the sheet that you were  
7 describing to me where you have reviewed trip sheets  
8 and entered information regarding how long a driver  
9 worked each day based on the trip sheet information,  
10 does that spreadsheet have you enter a starting time  
11 and an ending time of the shift and, perhaps in  
12 another column, break time amounts or other  
13 information? Can you describe that sheet to me,  
14 please?

15 A: I can't describe it. I don't do  
16 that part.

17 Q: Well, Mr. Nady, you've testified  
18 that you have on occasion prepared the payroll and  
19 reviewed trip sheets and entered information into  
20 this spreadsheet that had - as you called it - a test  
21 in it. Do you recall testifying about that role a  
22 while ago?

23 A: When the payroll is done, that I  
24 did about four or five months ago, I had hours  
25 already in... all I needed to do was enter the time off

1 of the... someone else gave me the time in there. I  
2 don't remember where it came from, but I do on  
3 occasion review the trip sheets when I was doing that  
4 to verify what they had. If something was askew or  
5 out of the normal, I actually looked at the trip  
6 sheets.

7 Q: So to be clear, you did not  
8 actually review the trip sheets to enter the time in  
9 that spreadsheet you were talking about; is that  
10 correct?

11 A: No, I did not.

12 Q: But you say you looked at some trip  
13 sheets to consult them in respect to certain entries  
14 in that spreadsheet?

15 A: What I recall is that when I was  
16 doing that if somebody had an immense amount of time  
17 or a little amount of time, I wanted to see what it  
18 was, so I might have to go through the trip sheets.  
19 If it's just a normal time or if there were two trip  
20 sheets for the same day for the same person, it's a  
21 red flag so you take a look at it.

22 Q: Is that Excel file that we've been  
23 discussing where the time is recorded called the J  
24 roll?

25 A: Yes, I think that's it. I'm not

1 certain. This is something I do every day and it's  
2 been six months or four or five months since I did  
3 it. I don't remember, but I think it's called the J  
4 roll as opposed to the payroll.

5 Q: Do you know why it's called the J  
6 roll?

7 A: They named it after me.

8 Q: And who named it?

9 A: I did.

10 Q: And who created it?

11 A: I think I helped with.

12 Q: Did anybody else help with it?

13 A: I can't recall. It's been around  
14 since a year, two years.

15 Q: Did it exist in 2010?

16 A: I don't know. I don't think so. I  
17 don't recall a J roll then.

18 Q: Did it exist in 2012?

19 A: I don't recall. It might be... I  
20 think it did.

21 Q: You say you've helped design that  
22 spreadsheet. Can you tell me what you did to help  
23 design that spreadsheet?

24 A: No, I can't. I don't recall. It's  
25 been a long time.



1 Q: Can you tell me anything about how  
2 that spreadsheet is set up?

3 A: To the best of my recollection, it  
4 says when they started and when they ended.

5 Q: So you're saying that - and correct  
6 me if I'm wrong - that in one row and column someone  
7 would enter a start time, 12:30 for example, and then  
8 in another row and column intersection they'd enter  
9 an end time, say 10:30, and then the spreadsheet  
10 would calculate the difference between those two time  
11 entries? Is that correct?

12 A: I believe so.

13 Q: And was there another column or  
14 modification to the formula to add the 16 minutes of  
15 additional time that you said was added to each  
16 shift?

17 A: I think so.

18 Q: But do you know?

19 A: I said I think so. If I said I  
20 knew, I would be different, but I said I think so.  
21 That means I don't know for sure, but I think it's  
22 there.

23 Q: It would be helpful if you just  
24 said you didn't know if you don't know for sure.

25 A: Oh, I don't know. I assume it's

1 there.

2 Q: Okay. Thank you.

3 A: Because that's the policy. It's  
4 out there somewhere. Where it is, I can't say  
5 specifically.

6 Q: Is there any reason that the J roll  
7 documents or spreadsheets that are in possession of A  
8 Cab have not been produced in this litigation?

9 A: Are you assuming they haven't been  
10 produced?

11 Q: Yes, I am. They have not been  
12 produced. I'm telling you that, Mr. Nady.

13 A: No, I don't know. If they haven't  
14 been produced, maybe you didn't ask for them in the  
15 right way. I don't have any clue. How does that  
16 sound?

17 Q: Did your attorney instruct you that  
18 the court had directed all records of time that  
19 drivers worked were to be produced in this case?

20 MS. RODRIGUEZ: I'm going to object to  
21 the form. You're asking him for attorney-client  
22 communications. Perhaps you can rephrase.  
23 Otherwise, I'm going to instruct him not to answer.

24 Q: Mr. Nady, were you made aware in  
25 this litigation that the defendant was directed by

1 the court to produce all records it that had showing  
2 the time that drivers were working?

3 A: Yes.

4 Q: Is there some reason in response,  
5 to your knowledge, of that directive you did not  
6 produce the J roll?

7 MS. RODRIGUEZ: I'm going to object it  
8 misstates his testimony.

9 A: I think everything that we had,  
10 including a J roll, was presented. It might be in a  
11 different name than you're accustomed to, and it  
12 might be in a different name than the J roll. Maybe  
13 it's part of QuickBooks and it's part of that. But  
14 I'm going to assume, as we have instructed our people  
15 and me to produce everything, that we have produced  
16 everything and as with payroll. So do I think we  
17 didn't give you something? No, we certainly didn't  
18 hide anything. I'm under oath when I'm saying this.  
19 I understand that.

20 Q: So Mr. Nady, what I understand is  
21 that there was no intention by A Cab to not produce  
22 the J roll...

23 A: I'm saying we have produced it all  
24 and you're saying we haven't, so we have a  
25 disagreement. We have given you everything we have

1 that we do our payroll.

2 Q: Well, have you discussed with  
3 anyone the production of J roll materials in this  
4 case?

5 MS. RODRIGUEZ: Again, outside of  
6 discussions with counsel. I'm going to instruct him  
7 no to answer that, Leon, if that's what you're  
8 asking.

9 Q: Counsel, I will break the question  
10 up, because it is not privileged to the extent that  
11 it involves discovery that the defendant has been  
12 instructed to provide. Mr. Nady, besides your  
13 counsel, have you had any conversations with anyone  
14 at A Cab about producing J roll spreadsheets?

15 A: Probably I've informed Donna to  
16 give you everything that we have. I think that the  
17 name J roll is what our problem is here. I don't  
18 think that the J roll is a separate document. I  
19 think it's basically our payroll, as I stated  
20 earlier. They just call it the J roll, but I think  
21 it's nothing more than in the QuickBooks. And  
22 QuickBooks has a whole bunch of stuff in it that  
23 might look to me when we're inputting it as a  
24 spreadsheet, so I couldn't be mistaken on that. But  
25 I don't think there's anything you don't have. I am

1 certain of it. There's nothing you don't have.

2 Q: Did you have any discussion with  
3 Donna about J roll specifically being among the  
4 materials to be produced in this... well, did you have  
5 any discussion with Donna specifically about J roll  
6 being among the materials to be produced in this  
7 lawsuit?

8 A: No.

9 Q: Did you have any specific  
10 discussions mentioning J roll materials with anyone  
11 at A Cab as being among the materials to be produced  
12 in this lawsuit?

13 A: No one calls it the J roll except  
14 Wendy. Everyone else calls it QuickBooks. It's the  
15 same thing, I believe.

16 Q: Well, do you know, sir?

17 A: I don't know. I didn't have a  
18 discussion with...

19 Q: Well, no, do you...

20 A: We don't talk about J roll because  
21 only... when Wendy went away, no one called it J roll  
22 anymore.

23 Q: Mr. Nady, you said you believe that  
24 this J roll spreadsheet - I'm using the word  
25 spreadsheet because we've called it that; I'm not

1 saying that you're swearing that that's what it is -  
2 you say you believe it may be part of QuickBooks. Do  
3 you know?

4 A: No, I don't know.

5 Q: So you don't really know if it is  
6 or is not part of QuickBooks, is what you're telling  
7 me?

8 A: That's correct. I think it is.

9 Q: And what's the basis for that  
10 belief?

11 A: Just my working with it.

12 Q: It doesn't look like an Excel  
13 spreadsheet to you?

14 A: When you're doing payroll, it's  
15 pretty much inputting. I mean I don't go from one to  
16 the other.

17 Q: Are you aware that Excel works with  
18 QuickBooks? You can enter information into Excel  
19 which will in turn be entered into QuickBooks for  
20 purposes of...

21 A: Maybe that's what we're doing,  
22 maybe. And the answer to my question is I'd  
23 forgotten that until you brought it up.

24 Q: Did you have any discussions with  
25 your counsel about producing J roll information?

1 MS. RODRIGUEZ: Objection; I'm going to  
2 instruct him not to answer. Objecting to the form of  
3 that.

4 Q: You're asserting a privilege,  
5 counsel?

6 MS. RODRIGUEZ: Did you just ask him if  
7 he had any discussions with me about producing the J  
8 roll? Is that the question?

9 Q: Yes, that is the question, counsel.

10 MS. RODRIGUEZ: Yeah, I am.

11 Q: Okay. It's not privileged,  
12 counsel. We'll mark it for ruling, but let's move  
13 forward. Mr. Nady, did you have any discussions with  
14 counsel about the need to produce all records  
15 maintained by A Cab as to hours worked by cab  
16 drivers?

17 MS. RODRIGUEZ: Same objection.

18 A: I think...

19 MS. RODRIGUEZ: Same objection. You're  
20 not answering that question. I'm objecting to the  
21 form of the question.

22 Q: You're objecting to the form or are  
23 you asserting privilege, counsel?

24 MS. RODRIGUEZ: Both, and I'm giving  
25 you an opportunity to rephrase it, if you prefer.

1 But if you're just asking him something specifically  
2 about what he and I are talking about, then he's not  
3 going to answer it in that form.

4 Q: Counsel, there's two issues.

5 There's the question of whether he had any  
6 conversations on the subject with you and then  
7 there's the question of what was actually said. If  
8 you're instructing him not to answer the first one  
9 based upon privilege, let's just make it clear on the  
10 record none of it is privileged, but I can take that  
11 up with the court at a later date.

12 A: Can I go potty?

13 MS. RODRIGUEZ: Yeah, I need a break  
14 too, please.

15 Q: Let's just finish this last  
16 question. Is the privilege being asserted in respect  
17 to both parts of what I've discussed?

18 MS. RODRIGUEZ: Yes, it is. I'm giving  
19 you an opportunity to rephrase it, if you prefer.

20 Q: Okay, we'll take a break now.

21 A: How long do you want to be gone?  
22 Like five minutes?

23 MS. MCCALISTER: Going off the record  
24 at 11:27 a.m.

25 We are back on the record in the matter



1 of Michael Murray versus A Cab Taxi Service, LLC.

2 The time is 11:49 a.m. Please proceed.

3 Q: Mr. Nady, I believe you mentioned  
4 Nancy is the person at A Cab who deals with the J  
5 roll spreadsheet that we were discussing. Is that  
6 correct?

7 A: I think that the term 'J roll' is  
8 confusing, because nobody uses that since Wendy left,  
9 as I said earlier. So I think we should just call it  
10 the payroll, because I don't know what the J roll is,  
11 really.

12 Q: Well, Mr. Nady, I understand that  
13 it may have a different name, but we were talking  
14 about this thing that was described as a spreadsheet  
15 where information from the trip sheets was put in.  
16 Nancy is the person you identified who normally deals  
17 with that process; is that correct?

18 A: Yes.

19 Q: And how long has she been dealing  
20 with that process?

21 A: I don't know.

22 Q: Has it been more than two years?

23 A: Yes.

24 Q: Has it been more than four years?

25 A: Probably.

1 Q: What's Nancy's last name?

2 A: I don't know.

3 Q: What's her position at A Cab?

4 A: She reviews the trip sheets.

5 Q: She's an employee of A Cab,  
6 correct?

7 A: Yes.

8 Q: And you don't know her last name?

9 A: No, I don't.

10 Q: And her job is just reviewing trip  
11 sheets?

12 A: Yes.

13 Q: Does that job have a title to it?

14 A: No.

15 Q: Does anybody at A Cab have the job  
16 responsibility of verifier?

17 A: Ah, you can call it that. That  
18 would be Nancy.

19 Q: Does anybody else have that job  
20 responsibility besides Nancy?

21 A: No.

22 Q: And how long has Nancy worked for A  
23 Cab?

24 A: I already stated that. I don't  
25 know. And you asked me two years and I said I don't

1 know. And then you asked four years and I said  
2 probably.

3 Q: Mr. Nady, I asked you how long she  
4 was involved with the entry of that information. I  
5 didn't ask you how long she was working there.

6 A: She's had the same job since she  
7 got there.

8 Q: So she has been a verifier the  
9 entire time she's been there?

10 A: That's your choice of words. She  
11 reviews the trip sheets.

12 Q: Well, does A Cab ever use that  
13 term, 'verifier,' to describe those duties..

14 A: I don't know if anyone does. I  
15 don't know.

16 Q: Have you ever heard that term  
17 'verifier' used at A Cab to describe her duties?

18 A: Yes, I have.

19 Q: Who has used that term?

20 A: Nancy.

21 Q: This will be plaintiff's 3. Mr.  
22 Nady, plaintiff's Exhibit 3 bears Bates number 633.  
23 Plaintiff's Exhibit 2 bore Bates number 577. I'm  
24 looking at Exhibit 3, Mr. Nady. There is a section  
25 that says reporting for work instructions. Do you

1 not having that, too, but we will be better this  
2 time. But I can tell you it was never a year.

3 Q: Do you know if the payroll system  
4 maintained by A Cab indicates whether an employee has  
5 a spouse?

6 A: Indicates whether he has a...

7 Q: Spouse.

8 A: Spouse? No.

9 Q: You don't know that; is that  
10 correct?

11 A: I don't know.

12 Q: Are you aware that on a W-4 form  
13 that every employee fills out they'd have to list  
14 whether they are married or not married?

15 A: I do.

16 Q: And are you aware that that status,  
17 married or not married, controls the deductions that  
18 are required from an employee's payroll?

19 A: #I do.

20 Q: So is it correct that for every  
21 employee at A Cab their status for tax purposes is  
22 recorded as either married or unmarried? Is that...

23 A: I do.

24 Q: So if I wanted to find out the name  
25 or identity of every single employee, every single

1 taxi driver at A Cab, who currently is recorded in A  
2 Cab's payroll system as having married status for tax  
3 deduction purposes, I would be able to ascertain that  
4 from the QuickBooks?

5 A: I would tell you this, that cab  
6 drivers don't always tell the truth when it comes to  
7 their withholding information, and I can't tell you  
8 if they are married or not just by repeating what  
9 they put down on their application.

10 Q: I'm only talking what you indicated  
11 for payroll purposes...

12 A: It's on the payroll. It's part of  
13 the normal calculations in QuickBooks and it's  
14 required, yes, and it also how many dependence they  
15 have.

16 Q: Yes, thank you. Now, Mr. Nady,  
17 we're going back to Exhibit 12, which was the second  
18 set of interrogatory responses. I'd like you to take  
19 a look at number three, which begins on page one, and  
20 then the answer to number three on page two.

21 A: What's the question, sir?

22 Q: You have read that. Do you have  
23 any memory of assisting the preparation of the  
24 response to that request, number three?

25 A: I do.

1 Q: And the response to the request  
2 says that it would be unduly burdensome for defendant  
3 to compile this data. Do you see that?

4 A: Well, I'm inclined to think it was  
5 already included in the stuff we gave you and then  
6 you were just basically trying to get more work out  
7 of us with the same information you already had.

8 Q: Well, we've gone over the  
9 information that was provided, which was for those  
10 three years, Mr. Nady, and I think you agree with me  
11 that we don't have information for the time periods  
12 in those documents; is that correct?

13 MS. RODRIGUEZ: I'm going to object to  
14 the form of the question, and again you're misstating  
15 testimony and misstating the evidence on the record.

16 Q: The witness can answer my question.  
17 And if he's not comfortable doing so, we will...

18 MS. RODRIGUEZ: Well, and I'm just  
19 putting my objection.

20 Q: Yes, that's...

21 MS. RODRIGUEZ: I'm not instructing him  
22 not to answer. I'm just making my objection.

23 Q: Counsel...

24 A: Let me answer it.

25 Q: Please answer, Mr. Nady.

1 A: Ask it again, because I forgot.

2 Q: Mr. Nady, we discussed Exhibit 10,  
3 which details the cost to employees for insurance  
4 benefits for a three-year period. We discussed how  
5 there's a time period prior to June of 2013 and a  
6 time period from 2014 to 2015 that we do not have  
7 information about that from those three pages. Do  
8 you remember that?

9 A: I think we're mixing metaphors  
10 here. If you have the QuickBooks, you can tell who  
11 has that, who has insurance.

12 Q: Can you explain to me how, looking  
13 at the QuickBooks, I can determine what premium  
14 contribution would be required by a taxi driver?

15 A: To be required?

16 Q: Yes. To be...

17 A: It's the same for everybody. It's  
18 just about...

19 Q: It's not the same if somebody has  
20 dependence.

21 A: But we only have about four of  
22 those, and you would see that on the payroll pretty  
23 easily. It would be a large amount.

24 Q: So how many cab drivers does...  
25 withdrawn. Mr. Nady, the question was in respect to

1 the health insurance benefits offered. State the  
2 premium contribution required to be paid to obtain  
3 health insurance benefits, to enroll in the program  
4 and receive the benefits, to the taxi driver and for  
5 his dependence. Now, if a taxi driver is enrolled  
6 and there is a deduction in the QuickBooks, yes, we  
7 know what the taxi driver paid. He was enrolled,  
8 right?

9 A: Yes.

10 Q: But that deduction doesn't tell us  
11 what the cost would be for him to enroll dependence  
12 who he did not elect to enroll, would it?

13 A: That's correct. It would not. If  
14 he did not elect to enroll them, then we wouldn't  
15 know.

16 Q: So the answer that was given here,  
17 it says plaintiff can readily ascertain this  
18 information from the QuickBooks data or reproduced by  
19 the defendant is not accurate, is it?

20 MS. RODRIGUEZ: I'm going to object.  
21 It misstates the question, the response, and the  
22 evidence in the record.

23 A: I see your point, counselor. It  
24 might not... I guess I just didn't think of it.

25 Q: So again, I can find the



1 information from the QuickBooks if it isn't in there,  
2 right?

3 A: I don't know if it's in there or  
4 not, but I'm going to find out for you, because  
5 you're going to ask me in writing and I'll do it  
6 again. But I understand now what you're getting at.  
7 I guess that situation never occurred before to me,  
8 no.

9 Q: Well, the point, Mr. Nady, is it's  
10 not a question of what the drivers may have paid for  
11 what they decided to participate. The question that  
12 was asked in interrogatory number three is what it  
13 would cost them for themselves and their dependents.  
14 Doesn't matter whether they actually agreed to take  
15 it and pay it. We look in QuickBooks, we can see  
16 what they paid?

17 A: Right.

18 Q: But the QuickBooks isn't  
19 necessarily going to tell us who they were covering  
20 for that payment, will it?

21 A: Well, it will sort of will, because  
22 it will tell you one person is himself; two persons  
23 are easy, himself and his spouse; and if he had more  
24 than that, you've got two persons, a spouse or one  
25 child, or two persons including a spouse and more

1    than one child.

2                   Q:   Does the QuickBooks tell us how  
3   many persons are being covered on the...

4                   A:   No, but it tells you how much is  
5   behind deducted and you can kind of assert that.

6                   Q:   Well, when you say kind of assert  
7   it, you can only convert it into a particular level  
8   of coverage if you know what the coverage cost is for  
9   the individual, the spouse, the family, and so forth,  
10  correct?

11                  A:   Right.  I've already said that  
12  perhaps you've looked into things a bit deeper than I  
13  did, so...

14                  Q:   Well, I was seeking more  
15  information than you understood we were trying to  
16  get.

17                  A:   And I understand that.

18                  Q:   I'm glad we have that  
19  understanding, Mr. Nady.

20                  A:   And when we get it... I will work on  
21  this for...

22                  Q:   Okay, thank you, Mr. Nady.

23                  MS. RODRIGUEZ:  Well, before my client  
24  makes any representations of what we're going to do  
25  or not, I think we've already had a ruling by the

1 discover commissioner on this, and so my objection is  
2 based on what the discovery commissioner has already  
3 indicated as not being relevant and your  
4 misinterpretation of... I don't agree with your  
5 interpretation of the statute and the case law. And  
6 I instruct my client not to continue to offer to do  
7 things, because you're not aware of the rulings from  
8 the judge.

9 A: I'm not aware. You never told me  
10 those. I wasn't there. If the judge says I don't  
11 have to do it, I won't do it. Or the discovery  
12 commissioner.

13 Q: Is a record kept in A Cab's  
14 computer system as to the level of coverage..

15 A: Start over. I can't hear you.

16 Q: Is a record, when an employee  
17 elects to enroll in the health insurance, is a record  
18 kept in A Cab's computer system, whether in  
19 QuickBooks or some other computerized record, of the  
20 type of coverage they've elected to enroll in,  
21 single, spouse, family?

22 A: I would imagine it is in the  
23 QuickBooks and I haven't done this before myself.  
24 But when they elect the insurance for themselves, it  
25 goes into one field. And when they elect for

1 themselves and their spouse, it goes to another  
2 field. There is, I think, five fields that you could  
3 put them in and that each one has a different amount.

4 Q: So for each employee in the  
5 QuickBooks information for that employee you  
6 understand that there is various boxes that can be  
7 checked..

8 A: Yes. Well, not kind of like boxes,  
9 just level one through four or five.

10 Q: There's an indicator..

11 A: Yes, there is.

12 Q: ... for each employee to be made,  
13 showing no enrolment, enrolment single, enrolment...

14 A: Exactly.

15 Q: ... family, et cetera? Okay, thank  
16 you. Can that information from QuickBooks be  
17 produced?

18 A: I think we can generate that. I  
19 don't see why not. I don't remember how we get it  
20 out. I did the payroll for years and I'm trying to  
21 think... I'm pretty sure I can generate that.

22 Q: Mr. Nady, are you aware of an order  
23 that was issued in this case on February 11, 2013?

24 A: An order?

25 Q: If there was an order issued in

1 CERTIFICATE OF RECORDER

2 STATE OF NEVADA )

3 COUNTY OF CLARK )

4 NAME OF CASE: MICHAEL MURRAY vs A CAB TAXI SERVICE LL

5 I, Shaynelle McCalister, a duly commissioned

6 Notary Public, Clark County, State of Nevada, do hereby

7 certify: That I recorded the taking of the

8 deposition of the witness, Creighton Nady,

9 commencing on 11/22/2016.

10 That prior to being examined the witness was

11 duly sworn to testify to the truth.

12 I further certify that I am not a relative or

13 employee of an attorney or counsel of any of the

14 parties, nor a relative or employee of an attorney or

15 counsel involved in said action, nor a person

16 financially interested in the action.

17 IN WITNESS WHEREOF, I have hereunto set my

18 hand in my office in the County of Clark, State of

19 Nevada, this 11/22/2016.

20 

21 \_\_\_\_\_

22 Shaynelle McCalister Notary

23

24

25

1 CERTIFICATE OF TRANSCRIPTION

2 STATE OF NEVADA )

3 COUNTY OF CLARK )

4 NAME OF CASE: MICHAEL MURRAY vs A CAB TAXI SERVICE LL

5 I, Peter Hellman, a duly commissioned

6 Notary Public, Clark County, State of Nevada, do hereby

7 certify: That I transcribed or supervised the transcription

8 of the Recorded deposition of the witness,

9 Creighton Nady,

10 commencing on 11/22/2016. The Transcription is a true

11 and accurate representation of the testimony taken from

12 the witness, Creighton Nady.

13 I further certify that I am not a relative or

14 employee of an attorney or counsel of any of the

15 parties, nor a relative or employee of an attorney or

16 counsel involved in said action, nor a person

17 financially interested in the action.

18 IN WITNESS WHEREOF, I have hereunto set my

19 hand in my office in the County of Clark, State of

20 Nevada, this 11/22/2016.

21

22

23 Peter Hellman - Notary

24

25

# EXHIBIT "B"

1 LEON GREENBERG, ESQ., SBN 8094  
2 DANA SNIEGOCKI, ESQ., SBN 11715  
3 Leon Greenberg Professional Corporation  
2965 South Jones Blvd- Suite E3  
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(702) 385-1827(fax)  
leongreenberg@overtimelaw.com  
5 dana@overtimelaw.com  
Attorneys for Plaintiffs

6  
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, A CAB,  
LLC, and CREIGHTON J. NADY,

14 Defendants.  
15

Case No.: A-12-669926-C

Dept.: I

DECLARATION OF BONNIE  
WITTIG

16  
17 BONNIE WITTIG, hereby affirms and declares under penalty of perjury the  
18 following:

19 1. I am a former employee of the defendants in this case. I was employed by  
20 A Cab from approximately June 2005 through August of 2011 as a bookkeeper.

21 2. I am aware that the defendants in this case, until at least August of 2011  
22 when I left the company, utilized an Excel spreadsheet known as "J Roll" in the  
23 preparation of their taxi drivers employees' payroll.

24 3. I am aware of the existence of this "J Roll" from conversations I have had  
25 with defendants' former payroll employee, Wendy Gagliano, and defendants' manager  
26 Jon Gathright and defendants' supervisor, Sam Wood. I have also overheard  
27 conversations between defendants' owner, Creighton J. Nady, and Sam Wood that  
28 concerned the defendants' use of "J Roll."



1           4.       During the conversations I had with Wendy Gagliano, Jon Gathright, and  
2 Sam Wood it was explained to me by such persons that "J Roll" is used by A Cab as  
3 part of its process for calculating the payroll for each taxi driver employee for each pay  
4 period. I have been told by Wendy Gagliano, Jon Gathright, and Sam Wood that this  
5 "J Roll" spreadsheet contained information on each shift worked by each taxi driver  
6 employed by A-Cab. They told me it was used by A-Cab to determine whether the  
7 taxicab drivers employed by A Cab were earning enough during their shift to at least  
8 equal the minimum wage for the twelve (12) hour shift they worked. Wendy  
9 Gagliano, Jon Gathright, and Sam Wood also told me they would review the "J Roll"  
10 and figure out how much break time would have to be added into a taxi driver's shift  
11 to help make each driver's pay for the shift equal at least the minimum wage.

12           5.       I recall overhearing at least one conversation between A Cab's owner,  
13 Creighton J. Nady, and Sam Wood concerning "J Roll." That conversation took place  
14 in the office just across the hall from mine, and was loud enough that I could hear it in  
15 my office. I specifically recall Mr. Nady telling Sam Wood, during that conversation,  
16 that more "break time" needed to be added to the "J Roll" or else drivers were going to  
17 start losing their jobs.

18           I have read the foregoing and affirm under penalty of perjury that the same is  
19 true and correct.

20

21

22

23

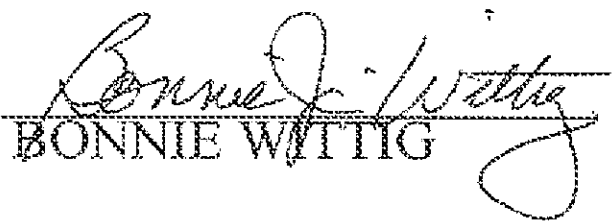
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25

26

27

28

  
BONNIE WITTIG

10/5/15  
Date

# EXHIBIT "C"

1 LEON GREENBERG, ESQ., SBN 8094  
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5 dana@overtimelaw.com  
Attorneys for Plaintiffs

6  
7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

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

10 Plaintiffs,

11 vs.

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

14 Defendants.  
15

Case No.: A-12-669926-C

Dept.: I

DECLARATION OF WENDY  
GAGLIANO

16  
17 I, WENDY GAGLIANO, hereby affirm and declare under penalty of perjury the  
18 following:

19 1. I am a former employee of the defendants in this case. I was employed by  
20 A Cab from approximately December 2004 through June 2013. I was hired as a  
21 Dispatcher and worked in that position for a few weeks. I was then offered a position  
22 as a Verifier in which I was responsible for collecting trip sheets and money from each  
23 of the cab drivers at the end of their shifts and verified the money collected from the  
24 drivers was correct. I then deposited that money into a safe at the end of each night. I  
25 continued in that position for approximately two years. I was then offered a position  
26 as the personal assistant to A Cab's General Manager, Jon Gathright, and remained in  
27 that position for approximately one to one and one half years. Thereafter I was offered  
28 a position as Payroll Manager and Benefits Administrator, and remained in that

1 position from approximately 2008 until I was terminated in June of 2013.

2  
3 2. I am aware that the defendants in this case, until at least June of 2013  
4 when I left the company, utilized an Excel spreadsheet known as "J Roll" in the  
5 preparation of the payroll for their taxicab driver employees.

6  
7 3. "J Roll" was created by defendants' Information Technology manager,  
8 Mike Malloy, shortly after the U.S. Department of Labor audited A Cab's payroll  
9 practices in 2009. I also recall that I assisted Mike Malloy with the creation of the "J  
10 Roll" spread sheet. It was after that 2009 investigation by the U.S. DOL that A Cab  
11 also instituted a policy that all taxicab drivers must include two hours of break time on  
12 their trip sheets for each shift that they worked. While I was working at A Cab, I  
13 would estimate that at least 95% of the drivers were assigned to work 12 hour shifts.

14  
15 4. "J Roll" was created for the purpose of tracking the hours each of the cab  
16 drivers worked each shift in order to determine if the commissions they were earning  
17 equaled at least the minimum hourly wage for each pay period. I am aware of this  
18 because I was instructed by Jay Nady, after the results of the U.S. DOL 2009 audit, to  
19 use "J Roll" to calculate the payroll for the drivers.

20  
21 5. "J Roll" is used in conjunction with the drivers' commission data that is  
22 stored in the Cab Manager system. That commission data (the drivers' earnings) is  
23 exported from Cab Manager into the "J Roll" file. When "J Roll" was first created, the  
24 hours that each of the drivers worked for each shift was manually entered into the "J  
25 Roll" spread sheet by someone at A Cab. At least one of the persons I recall who  
26 manually entered the hours worked by each of the drivers into the "J Roll" was A  
27 Cab's supervisor, Sam Wood. I also believe that at some later point, instead of  
28 someone manually entering the hours worked information for drivers into the "J Roll"

1 file, that information was being exported directly from Cab Manager. I am unsure  
2 when that process began or how long it remained in place. I am also unsure if any  
3 manual changes were made to the hours worked information in the "J Roll" file when  
4 that information was exported from Cab Manager.  
5

6 6. I also worked as the Benefits Administrator for A Cab during the entirety  
7 of the time I worked as Payroll Manager. In this capacity, I utilized an Excel  
8 spreadsheet to alert me when each of the employees at A Cab became eligible to  
9 participate in A Cab's health insurance benefits plan. I reviewed this Excel  
10 spreadsheet every payroll period at A Cab, and when it alerted me that a cab driver  
11 was eligible to participate in the health insurance benefits plan, meaning the waiting  
12 period for that driver was about to expire, I began to prepare a packet for that driver  
13 with information to enroll in health insurance benefits.  
14

15 7. From the time I became employed at A Cab in 2002 and until at least  
16 2011 that I can recall, A Cab had a one year, 365 day, waiting period for all its  
17 employees before they were eligible to participate in the health insurance plans it  
18 offered to its employees, including all of its taxicab drivers. After 2011, I recall that A  
19 Cab changed its waiting period for health insurance benefits for its employees from  
20 one year to 90 days, and then to 60 days. I do not recall the exact date that A Cab  
21 changed the health insurance waiting period to 90 days, but I am certain that A Cab  
22 had a 365 day waiting period through at least part of 2011.  
23

24 8. I am also aware from reading an excerpt of deposition testimony by Mr.  
25 Nady that he called me a "lying person" and stated that I created a document that  
26 includes false information about the waiting period for defendants' cab drivers to  
27 obtain health insurance benefits. During this testimony, Mr. Nady also accused me of  
28 living with Michael Reno, one of the named plaintiffs in this case, and stated that it

1 was for this reason that I falsified the information contained in the document labeled  
2 as "A Cab 00415" which I am told was produced by A Cab as part of this litigation. I  
3 have never lived with the plaintiff, Michael Reno. I am familiar with his name only  
4 because of my work at A Cab as a Payroll Manager and Benefits Administrator. I  
5 never had a personal relationship with Michael Reno either when I worked at A Cab or  
6 any time before or after that. The document labeled "A Cab 00415" is an authentic  
7 letter that was drafted by me as the Payroll Manager and Benefits Administrator while  
8 I was employed by A Cab using A Cab's official letterhead. The policy stated in that  
9 letter regarding A Cab's 365 day waiting period was, in fact, the waiting period policy  
10 at A Cab on the date the letter was written, February 23, 2011.

11

12 I have read the foregoing and affirm under penalty of perjury that the same is  
13 true and correct.

14

15

16

*Wendy Gagliano*  
Wendy Gagliano

*12/20/16*  
Date

17

18 STATE OF NEVADA

19 COUNTY OF CLARK

20

21 Subscribed and sworn before me

22 this 20<sup>th</sup> day of December, 2016

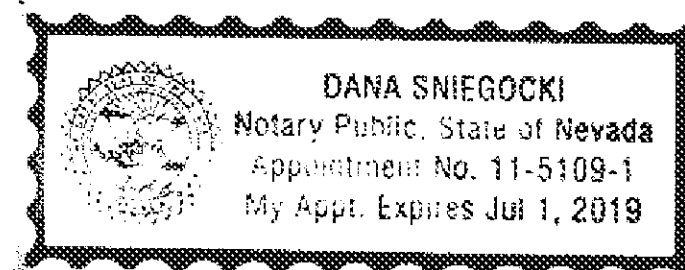
23

24

25 Notary Public in and for the  
26 County of Clark, State of Nevada

27

28



# EXHIBIT "D"

1 **RESP**  
2 Esther C. Rodriguez, Esq.  
3 Nevada Bar No. 6473  
4 RODRIGUEZ LAW OFFICES, P.C.  
5 10161 Park Run Drive, Suite 150  
6 Las Vegas, Nevada 89145  
7 702-320-8400  
8 [info@rodriguezlaw.com](mailto:info@rodriguezlaw.com)  
9 *Attorneys for Defendant A Cab, LLC*

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

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

11 Plaintiffs,

12 vs.

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

14 Defendants.

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

15  
16 **RESPONSE TO PLAINTIFFS' FIRST REQUEST**  
17 **FOR PRODUCTION OF DOCUMENTS**

18 Defendant A CAB, LLC, by and through its attorney, ESTHER C. RODRIGUEZ, ESQ., of  
19 RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRCP 34, hereby responds to Plaintiffs' First  
20 Request for Production of Documents as follows:

21 1. AMOUNTS PAID AND EARNINGS DOCUMENTS - Produce copies of all  
22 documents that set forth amounts paid to and/or earned by the named plaintiffs and all persons  
23 similarly situated to the named plaintiffs while they were employed by the defendants from October  
24 8, 2008 through the present. This information, if created, kept or maintained and fully available in  
25 computer file form, is sought in that form and you should contact plaintiff's counsel to arrange for  
26 production of such computer file(s) in an appropriate format. In the event that such materials are  
27 not available in computer file form, the information sought would include, but not be limited to,  
28 copies of pay checks vouchers (pay stubs), ledgers or pay check statements containing any



1 itemization or information detailing the amounts paid, deductions from and the calculation of the  
2 same, and to whom they were paid. Only in the event such information (the amounts paid by each  
3 check) is not otherwise available in another form, copies of cancelled checks showing such  
4 payments should be produced.

5 **RESPONSE NO. 1:** Objection. This request seeks production of confidential information that is  
6 not available to the public and that is not reasonably calculated to lead to the discovery of  
7 admissible evidence. See *Schlatter v. Eighth Judicial District Court*, 93 Nev. 189, 561 P2d 1342  
8 (1977). Such a request is not made to lead to relevant admissible evidence but such request is made  
9 to embarrass, harass and annoy. This request is overbroad in terms of time pursuant to NRS  
10 608.260, and requests information that would invade the privacy of individuals not a party to this  
11 litigation. Further, the request is vague and ambiguous. Without waiving said objections, see First  
12 Supplement to Defendant A Cab, LLC's ECC Statement, A Cab 0001 to A Cab 0081.

13 2. W-2 FORMS - Produce copies of all W-2 forms issued to the named plaintiffs and  
14 all persons similarly situated to the named plaintiffs, or filed with the Internal Revenue Service  
15 about such persons, while they were employed by the defendants from October 8, 2008 through the  
16 present. This may be produced in the form of a computer file, if maintained in that fashion and  
17 originally filed with the Internal Revenue Service in that fashion, rather than by furnishing actual  
18 physical copies of paper W-2 forms.

19 **RESPONSE NO. 2:**

20 Objection. This request seeks production of confidential information that is not available to  
21 the public and that is not reasonably calculated to lead to the discovery of admissible evidence. See  
22 *Schlatter v. Eighth Judicial District Court*, 93 Nev. 189, 561 P2d 1342 (1977). Such a request is  
23 not made to lead to relevant admissible evidence but such request is made to embarrass, harass and  
24 annoy. This request is overbroad in terms of time pursuant to NRS 608.260, and requests  
25 information that would invade the privacy of individuals not a party to this litigation. Further, the  
26 request is vague and ambiguous. Without waiving said objections, see First Supplement to  
27 Defendant A Cab, LLC's ECC Statement, A Cab 0082 to A Cab 0086.

28 3. COMPENSATION CALCULATION DOCUMENTS - Produce copies of all

documents that set forth how it was determined by defendants to pay the amounts actually paid to the named plaintiffs and all persons similarly situated to the named plaintiffs while they were employed by the defendants from October 8, 2008 through the present. This would include all documents setting forth how the earnings of such employees of the defendant were calculated, whether or not such earnings were actually paid to such employees. This information, if created, kept or maintained and fully available in computer file form, is sought in that form and you should contact plaintiff's counsel to arrange for production of such computer file(s) in an appropriate format. In the event that such materials are not available in computer file form, the information sought would include, but not be limited to, copies of ledgers or reconciliations or other writings reflecting how the amounts paid to such employees and/or their earnings were calculated. This request includes production of all records that set forth the total amount of passenger fares collected by each such person each day they were employed by defendant and how such fares were divided between the defendant and each such person. Such records need **not** be produced as copies of original daily reconciliations or scratch sheets or other paper documents if one or more computer files exist that contain all of such information that is set forth in such paper records, in which event such computer files should be produced.

**RESPONSE NO. 3:** See Response No. 1.

4. TIME RECORDS - Produce copies of all documents that set forth the amount of time the named plaintiffs and all persons similarly situated to the named plaintiffs were working for defendants each day or each week while they were employed by the defendants from October 8, 2008 through the present. This request includes production of all records such as "punch clock" entries and taxicab meter records, indicating times of day that such person performed, started, or ended, particular activities during any workday they were employed by defendants, whether or not defendants considered such times to be part of the time such persons were "working," including, but not limited to, the times such persons arrived at or left defendants' business location or the times they started or ended rest or meal breaks. This information, if created, kept or maintained and fully available in computer file form, is sought in that form and you should contact plaintiff's counsel to arrange for production of such computer file(s) in an appropriate format. In the event that such

1 materials are not available in computer file form, the information sought in paper form would  
2 include, but not be limited to, copies of ledgers, time clock punch cards, or reconciliations or other  
3 writings reflecting the amounts of time each such employee was working, or that records other  
4 activities including activities that the defendants may have not deemed to be work, during each such  
5 person's workday(s) while they were employed by the defendants.

6 **RESPONSE NO. 4:** Objection, this request is overbroad in terms of time pursuant to NRS  
7 608.260; requests information that would invade the privacy of individuals not a party to this  
8 litigation; and is vague and ambiguous. This request also calls for proprietary information as the  
9 information is contained on A Cab's trip sheets. This Request also seeks information the discovery  
10 of which is overly burdensome to Defendant as there are approximately 46,080 trip sheets per year  
11 which are not kept by name of employee. Without waiving these objections, Defendant will make a  
12 diligent search for responsive documents, and will copy and produce those within 30 days.

13 5. COMPENSATION AGREEMENT OR RULES DOCUMENTS - Produce copies of  
14 all documents that set forth or explain how the named plaintiffs and all persons similarly situated to  
15 the named plaintiffs were to be compensated for the work they performed while they were employed  
16 by the defendants from October 8, 2008 through the present. This would include all written  
17 contracts or agreements explaining the nature of the compensation arrangement that the parties  
18 agreed upon for the purpose of compensating such persons for their services as employees of  
19 defendants. This would also include all other writings setting forth any changes to any such  
20 contracts or agreements or that otherwise contain any statements, rules or formulas showing or  
21 discussing how such person's compensation was being calculated or would be calculated in the  
22 future. This would include all writings setting forth how taxi passenger fares collected by such  
23 persons were to be divided between the defendants and such persons including but not limited to the  
24 percentage of such fares that such persons were to be paid as compensation by defendants and how  
25 that percentage was to be calculated. This would include the amount of any "trip charge" or fuel or  
26 other deductions that were made by the defendants from such persons' total daily collected  
27 passenger fares or any calculated percentage share of such fares for the purposes of calculating the  
28 compensation to be paid to such persons by defendants.

1 **RESPONSE NO. 5:** Objection, this is a compound request, and is vague and ambiguous. Further,  
2 this request is overbroad in terms of time pursuant to NRS 608.260; requests information that would  
3 invade the privacy of individuals not a party to this litigation; and calls for proprietary information.  
4 Without waiving said objections, A Cab drivers are at-will employees not contracted employees.  
5 Defendant will make a diligent search for responsive documents, and will copy and produce those  
6 within 30 days.

7 6. EMPLOYMENT AGREEMENT AND HANDBOOK DOCUMENTS - Produce  
8 copies of all documents that set forth or explain the employment relationship between the named  
9 plaintiffs and all persons similarly situated to the named plaintiffs and the defendants, from October  
10 8, 2008 through the present. This would include all personnel manuals or employee handbooks or  
11 other written statements about the terms and conditions of such persons' employment with the  
12 defendants, as such terms and conditions were in effect from October 8, 2008 through the present.

13 **RESPONSE NO. 6:** See Response 5.

14 7. RELEASE OF CLAIMS FOR UNPAID WAGES - Produce copies of all releases,  
15 waivers of claims, or settlement agreements that purport to release or settle any actual or potential  
16 claim of any taxicab driver of the defendants for unpaid wages earned but not paid from October 8,  
17 2008 through the present.

18 **RESPONSE NO. 7:** Objection. This request seeks production of confidential information that is  
19 not available to the public and that is not reasonably calculated to lead to the discovery of  
20 admissible evidence. See *Schlatter v. Eighth Judicial District Court*, 93 Nev. 189, 561 P2d 1342  
21 (1977). Such a request is not made to lead to relevant admissible evidence but such request is made  
22 to embarrass, harass and annoy. This request is overbroad in terms of time pursuant to NRS  
23 608.260, and requests information that would invade the privacy of individuals not a party to this  
24 litigation. Further, the request is vague and ambiguous.

25 8. TRIP SHEETS - Produce copies of the trip sheets and other records of the trips (taxi  
26 passenger transports) performed by each of the named plaintiffs and those persons similarly situated  
27 to the named plaintiffs from April 25, 2006 through the present. For the purpose of this request, the  
28 term "trip" refers to the driving of passengers by a taxicab driver for which a fare was collected.

This information, if created, kept or maintained and fully available in computer file form, is sought in that form and you should contact plaintiff's counsel to arrange for production of such computer file(s) in an appropriate format.

**RESPONSE NO. 8:** See Response No. 4.

9. AFFIRMATIVE DEFENSE DOCUMENTS AND OTHER DOCUMENTS TO BE RELIED UPON - For each affirmative defense asserted by the defendants, separately identify and produce all documents relevant to the defense. Identify and produce all documents which heretofore have not been produced, but which relate to or support the defendants' affirmative defenses or contradict the claims made in plaintiffs' complaint or that the defendants reserve the right to rely upon at the time of trial.

**RESPONSE NO. 9:** See First Supplement to Defendant A Cab, LLC's ECC Statement and all supplements thereto. Further, Defendant reserves the right to rely upon the documents produced by the other parties in this matter.

10. NAMES AND ADDRESS OF WITNESSES AND PUTATIVE CLASS MEMBERS - Produce documents which set forth the names and addresses of all persons similarly situated to the plaintiffs who were employed by the defendants from October 8, 2008 through the present. This information, if created, kept or maintained and fully available in computer file form, is sought in that form and you should contact plaintiff's counsel to arrange for production of such computer file(s) in an appropriate format. If such information is not available in that form, or as a list or other unified document already in defendants' possession, defendants are to produce the portions of the other documents in their possession, which could be W-2 forms, employment applications, or other documents, that will contain the names and addresses of each such person.

**RESPONSE NO. 10:** Objection. This request seeks production of confidential information that is not available to the public and that is not reasonably calculated to lead to the discovery of admissible evidence. See *Schlatter v. Eighth Judicial District Court*, 93 Nev. 189, 561 P2d 1342 (1977). Such a request is not made to lead to relevant admissible evidence but such request is made to embarrass, harass and annoy. This request is overbroad in terms of time pursuant to NRS 608.260, and requests information that would invade the privacy of individuals not a party to this

1 litigation. Further, the request is vague and ambiguous. Finally, this Complaint has not made a  
2 minimum showing of *any* compensation owed for the two named Plaintiffs, much less any that  
3 would be owed on a class wide basis.

4 11. NAMES AND ADDRESSES OF WITNESSES WHO ARE FORMER  
5 SUPERVISORS, MANAGERS OR DISPATCHERS OF DEFENDANTS - Produce documents  
6 which set forth the names and addresses of all persons employed by the defendants from April 25,  
7 2006 through the date of this request but who are no longer employed by the defendants and who  
8 were managers, supervisors or dispatchers employed by defendants. This information, if created,  
9 kept or maintained and fully available in computer file form, is sought in that form and you should  
10 contact plaintiff's counsel to arrange for production of such computer file(s). If such information is  
11 not available in that form, or as a list or other unified document already in defendants' possession,  
12 defendants are to produce the portions of the other documents in their possession, which could be  
13 W-2 forms, employment applications, or other documents, that will contain the names and  
14 addresses of each such person.

15 **RESPONSE NO. 11:** Objection. This request seeks production of confidential information that is  
16 not available to the public and that is not reasonably calculated to lead to the discovery of  
17 admissible evidence. See *Schlatter v. Eighth Judicial District Court*, 93 Nev. 189, 561 P2d 1342  
18 (1977). Such a request is not made to lead to relevant admissible evidence but such request is made  
19 to embarrass, harass and annoy. This request is overbroad in terms of time pursuant to NRS  
20 608.260, and requests information that would invade the privacy of individuals not a party to this  
21 litigation. Further, the request is vague and ambiguous.

22 12. INSURANCE POLICIES AND BOND DOCUMENTS - Produce copies of all  
23 insurance policies and/or bonds that may be available to pay damages sought by the plaintiffs in  
24 their complaint.

25 **RESPONSE NO. 12:** American Country Insurance, Commercial General Liability Policy, a copy  
26 of which will be produced.

27 13. PRIOR LAWSUITS OR INVESTIGATIONS CONCERNING CLAIMS FOR  
28 UNPAID WAGES - Besides documents originating in this lawsuit, produce copies of all documents



1 relating to or mentioning any investigation, inquiry, or lawsuit involving the defendants and that  
2 claims defendants have breached their contracts with their employees who are taxi drivers to pay  
3 such persons certain wages and/or violated the requirements of either the Fair Labor Standards Act  
4 or Nevada's statutes or constitution in respect to the payment of wages to such persons. This  
5 request includes the production of all documents generated as a result of, or used in connection  
6 with, any audit conducted by or of the defendants by the United States Department of Labor or the  
7 Nevada Labor Commissioner in connection with any claims for, or determination of, whether  
8 unpaid minimum wages or any other wages were owed by defendants' to its employees performing  
9 taxicab driving services. This request is not limited to any time frame.

10 **RESPONSE NO. 13:** Objection. This request seeks production of confidential information that is  
11 not available to the public and that is not reasonably calculated to lead to the discovery of  
12 admissible evidence. See *Schlatter v. Eighth Judicial District Court*, 93 Nev. 189, 561 P2d 1342  
13 (1977). Such a request is not made to lead to relevant admissible evidence but such request is made  
14 to embarrass, harass and annoy. This request is overbroad in terms of time pursuant to NRS  
15 608.260, and requests information that would invade the privacy of individuals not a party to this  
16 litigation. Further, the request is vague and ambiguous.

17 14. DOCUMENTS RELATING TO THE NAMED PLAINTIFFS - Identify and produce  
18 all documents that mention or contain any reference to the plaintiffs. This would included (*sic*) all  
19 personnel files and records on the named plaintiffs.

20 **RESPONSE NO. 14:** Objection, this request is vague and ambiguous and overbroad. Without  
21 waiving said objections, the personnel files will be copied and produced within the next 30 days.

22 15. STATEMENTS - Produce copies of all statements gathered since the  
23 commencement of this litigation, such statements bearing on any facts and circumstances contained  
24 in the complaint filed in this action, and such statements gathered in connection with the defense of  
25 this plaintiffs' claims in this action.


26 **RESPONSE NO. 15:** Objection, this request is overbroad, vague and ambiguous, and calls for  
27 attorney client privileged information, and attorney work product. Without waiving said objections,  
28 there are no documents responsive to this request.

20. (sic) ATTENDANCE RECORDS - Produce copies of all attendance records for the plaintiffs and those persons similarly situated to the plaintiffs for the four years preceding the filing of the complaint in this matter through the present, such records demonstrating whether any of such persons were present or absent at the defendants' facilities on a particular work day.

RESPONSE NO. 20 (sic): Objection, this request is overbroad in terms of time pursuant to NRS 608.260, and requests information that would invade the privacy of individuals not a party to this litigation. Further, the request is vague and ambiguous. Without waiving said objections, see Response No. 4.

DATED this 26 day of August 2013.

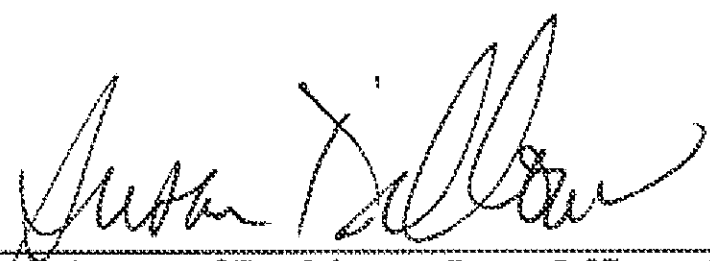
RODRIGUEZ LAW OFFICES, P.C.

  
\_\_\_\_\_  
Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
*Attorneys for Defendant A Cab, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing Response to Plaintiffs' First Request for the Production of Documents was served by placing same, postage prepaid, in the U.S. Mail this 26 day of August, 2013 to:

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

  
\_\_\_\_\_  
An Employee of Rodriguez Law Offices, P.C.



# EXHIBIT "E"

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

MICHAEL MURRAY, et al.,	.	CASE NO. A-12-669926-C
	.	
Plaintiffs,	.	DEPT. NO. I
	.	
vs.	.	
	.	
A CAB SERVICE, LLC, et al.,	.	TRANSCRIPT OF
	.	PROCEEDINGS
Defendants.	.	
. . . . .	.	

BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

**MOTION TO COMPEL INTERROGATORY RESPONSES**  
**STATUS CHECK: COMPLIANCE - REPORT AND RECOMMENDATION**

FRIDAY, DECEMBER 9, 2016

APPEARANCES:

FOR THE PLAINTIFFS:	LEON GREENBERG, ESQ.
FOR THE DEFENDANTS:	ESTHER C. RODRIGUEZ, ESQ.
	MICHAEL K. WALL, ESQ.

COURT RECORDER:

FRANCESCA HAAK  
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC  
Englewood, CO 80110  
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

1 the date of hire, the date of rehire. We have the financial  
2 information, the amount that the plan was offered. So should  
3 not we -- shouldn't we be able to derive whether they took an  
4 individual plan, no plan, or the family plan? Isn't there a  
5 way to capture that information?

6 MR. GREENBERG: Your Honor, it's not whether they  
7 took any plan. It's whether they could have covered  
8 themselves and their dependents within the 10 percent once  
9 they were eligible.

10 DISCOVERY COMMISSIONER: Well, you don't need to  
11 know all the details.

12 MR. GREENBERG: Your Honor, if they -- if they had a  
13 spouse, they couldn't cover the spouse if the plan didn't  
14 offer spousal coverage which --

15 DISCOVERY COMMISSIONER: But that's a different --

16 MR. GREENBERG: -- it didn't.

17 DISCOVERY COMMISSIONER: -- issue. We're --

18 MR. GREENBERG: No, Your Honor --

19 DISCOVERY COMMISSIONER: -- just going in circles.

20 MR. GREENBERG: Your --

21 DISCOVERY COMMISSIONER: I -- I don't want to spend  
22 anymore time --

23 MR. GREENBERG: Can I -- can I --

24 DISCOVERY COMMISSIONER: -- on that issue. What is  
25 your third issue?

1 MR. GREENBERG: Your Honor, all I would ask is  
2 permission to brief that issue and return it by motion.

3 DISCOVERY COMMISSIONER: Then you'll have to bring a  
4 separate motion.

5 MR. GREENBERG: Thank you, Your Honor.

6 DISCOVERY COMMISSIONER: Number three, what's your  
7 third issue?

8 MR. GREENBERG: Your Honor, there was testimony at  
9 the deposition that we -- we noticed Mr. Nady as a 30(b)(6)  
10 witness to tell us about the PDF storage, electronic scanned  
11 storage of trip sheets. He came to the deposition. He could  
12 tell us nothing about that.

13 DISCOVERY COMMISSIONER: You have the trip sheets  
14 now.

15 MR. GREENBERG: Your Honor, I don't have them in the  
16 PDF form. If they're stored in PDF form, not 500,000 pages of  
17 paper form, I want them, and they should be produced, and it's  
18 very easy to produce them. Mr. Nady even testified at his  
19 deposition that if they were there --

20 DISCOVERY COMMISSIONER: Didn't we address --

21 MR. GREENBERG: -- they could be copied.

22 DISCOVERY COMMISSIONER: -- these issues before? Is  
23 this like Groundhog Day where I'm hearing the same things all  
24 over again? Because that's --

25 MR. GREENBERG: Yes, you --

1 before, Happy Holidays.

2 MS. RODRIGUEZ: Thank you, Your Honor. You too.

3 MR. WALL: Thank you, Your Honor.

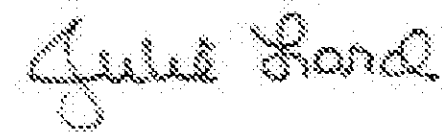
4 (Proceeding concluded at 11:12 a.m.)

5 \* \* \* \* \*

6 CERTIFICATE

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

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JULIE LORD, INDEPENDENT TRANSCRIBER

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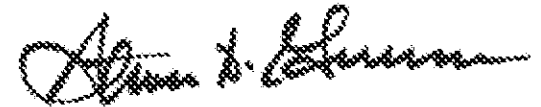
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# EXHIBIT "F"



CLERK OF THE COURT

DCRR

LEON GREENBERG, ESQ.

Nevada Bar No.: 8094

DANA SNIEGOCKI, ESQ.

Nevada Bar No.: 11715

Leon Greenberg Professional Corporation

2965 South Jones Boulevard - Suite E-3

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(702) 383-6085

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[leongreenberg@overtimelaw.com](mailto:leongreenberg@overtimelaw.com)

[dana@overtimelaw.com](mailto:dana@overtimelaw.com)

Attorneys for Plaintiffs

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

DEPT.: I

**DISCOVERY COMMISSIONER'S  
REPORT AND RECOMMENDATION**

Hearing Date: November 18, 2015

Hearing Time: 9:00 a.m.

Attorney for Plaintiff Dana Sniegocki, Esq. and Leon Greenberg, Esq. of

Leon Greenberg Professional Corporation

Attorney for Defendant: Esther Rodriguez, Esq. of Rodriguez Law Offices, P.C

FINDINGS

1. This matter was heard before the Discovery Commissioner on Plaintiffs' Motion to Compel the Production of Documents, which was originally heard by the Court on March 18, 2015 and continued for a further hearing on November 18, 2015 and was heard on that date along with Plaintiffs' Motion to Extend the Discovery Schedule. This matter was also heard on a status check to advise the Court of the parties' progress on conducting Rule 30(b)(6) depositions, first recommended by the Discovery Commissioner at the May 20, 2015 status check, on information relevant to the plaintiffs' Motion to Compel Production of Documents.

2. Plaintiffs' motion to compel seeks the production of those portions of the electronic computer data records from defendants' Cab Manager software system which would assist at trial in determining the times that defendants' taxi drivers start and end their shifts, *as well as the location and activity of any given* ~~the defendants not otherwise maintaining any computerized time~~ *Cab. M.* ~~records on their taxi drivers' hours of work.~~ *Plaintiffs position is as follows:* Taxi drivers conduct certain activities at the start and end of their shifts which activities communicate information into the Cab Manager software. Those activities involve having the bar codes on their Taxicab Authority identification cards and trip sheets scanned and uploading their taxi meter totals into the Cab Manager software system. The taxi drivers also deposit money into electronic drop safes at the end of their shifts and information about that activity



1 may also be communicated to the Cab Manager software. The trip sheets the taxi  
2 drivers use also come with "start times" printed on them and those "start times" are  
3 printed by the Cab Manager software. The times the defendants' taxi drivers  
4 conducted the foregoing activities, and the printed "start times" on their trip sheets, if  
5 preserved in the Cab Manager computer data records, are relevant and discoverable  
6 information that should be produced. In addition, records showing that a particular  
7 taxi cab was operated by a particular taxi driver on a particular day, along with the  
8 attendant records, if any, of the times during such day such taxi cab was operated, and  
9 placed into service and taken out of service, is relevant and discoverable information  
10 that should be produced. *Based on the foregoing, &* Defendants are to produce the portion of the Cab Manager  
11 computer data records containing the foregoing information for all of defendants'  
12 taxicab drivers *and/or cabs &* from October 8, 2008 through the present. Additionally, plaintiffs'  
13 request for electronic computer data records from defendants' Quickbooks software  
14 system showing the wages paid (excluding tips actually received or credited as gross  
15 income), shifts worked, and hours worked (or hours recorded for payroll purposes or  
16 minimum wage compliance purposes as having been worked), of defendants' taxicab  
17 drivers also seeks relevant information that can be produced and must be produced for  
18 the time period of October 8, 2008 through the present.

25  
26  
27 3. Defendants have not complied with their obligation to respond to  
28 *discovery requests timely and in accordance with NAC 161.10*  
~~plaintiffs' discovery requests in an informed, good faith, and appropriate manner. The~~

defendants' principal, Creighton J. Nady, <sup>told</sup> misrepresented to the Court at the March 18, 2015 hearing the difficulties defendants' faced in producing the information originally sought by plaintiffs in February 2015 and specifically that burdensome computer "code" would have to be written to produce such information. <sup>This representation</sup> ~~A conclusion that such~~ <sup>was incorrect.</sup> ~~misrepresentation was intentional is supported by the course of events in this case.~~ ~~Even if that misrepresentation was not intentional it was, by defendants' own admission, uninformed, not the product of appropriate due diligence, and without any actual basis in fact.~~ Despite having a duty to do so, defendants never inquired with any knowledgeable person, which clearly should have been their computer consultant James Morgan, about what would be necessary to produce such information. Such ~~derelection of their responsibility to cooperate with the discovery process, or their~~ <sup>A previous</sup> ~~affirmative misrepresentation, resulted in the need for plaintiffs' counsel to conduct a~~ Rule 34 inspection that was terminated early by defendants, <sup>and</sup> ultimately resulted in <sup>the Discovery Commissioner recommending the Plaintiffs take the</sup> ~~the unnecessary~~ deposition of non-party James Morgan. The foundational information <sup>to determine the accessibility of the information at issue.</sup> secured from James Morgan on the Cab Manager system during that deposition was always available to defendants. Defendants should have <sup>been able to consult</sup> ~~complied with their duty to~~ <sup>or</sup> ~~inquire~~ with James Morgan about producing the information sought by plaintiffs and taken appropriate action to produce such information. There was no need for the deposition of James Morgan.

1 4. Defendants' non-compliance with their obligation to respond to  
2 plaintiffs' discovery request in an informed, ~~good faith~~ <sup>W</sup> and appropriate manner, was  
3 also manifested in the deposition held of defendants' principal, Creighton J. Nady as  
4 an NRCP Rule 30(b)(6) witness. ~~That deposition was required for the same reason,~~  
5 ~~defendants' failure to comply with their discovery obligations as specified in~~  
6 ~~paragraph 3, supra, as the unnecessary deposition of James Morgan. Many or most of~~  
7 ~~the NRCP Rule 30(b)(6) subjects inquired about at that deposition were unnecessary~~  
8 ~~for the same reasons the James Morgan deposition was unnecessary.~~ In addition the  
9 conduct of Mr. Nady at the deposition was highly inappropriate and inexcusable. He  
10 was not a proper NRCP Rule 30(b)(6) deposition witness as he conceded he made no  
11 attempt to inform himself as to certain noticed deposition topics, that he was not  
12 informed about those topics, and indicated other personnel of the defendants, known  
13 to him, had knowledge about those topics. He was abusive to examining counsel,  
14 and *Plaintiffs' position is that he was also* evasive and confrontational beyond any appropriate or allowable boundaries, and was  
15 *uninformed as to several key areas, which has not* <sup>conduct</sup> ~~not~~ cautioned or counseled to curb his behavior by defendants' counsel. *yet been*  
16 *Unfortunately, it does not appear* <sup>specifically</sup> *based on a review of the record Mr. Nady was* <sup>addressed to</sup>  
17 *efficiency*

18 5. An extension of the discovery schedule, as requested by the plaintiffs, is  
19 also warranted in light of the plaintiffs' motion to compel the production of  
20 documents which has been pending for eight months and the resolution of which was  
21 delayed by defendants. Accordingly, the discovery deadlines in this matter will be  
22 extended as specified below.

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II.

RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED that Plaintiffs' Motion to Compel the Production of Documents is GRANTED. The electronic computer data records from the Cab Manager software system recording the dates, times, and activities specified in paragraph 2 of the Findings shall be produced by defendants for each of their taxicab drivers, and taxi cabs, from October 8, 2008 through the present must be produced. Such information is to be produced in an Excel spreadsheet format or in an otherwise searchable electronic format and be produced to plaintiffs on or before December 31, 2015.

Defendants' counsel is instructed to work with Cab Manager personnel, including Jim Morgan who provided testimony in this matter regarding the Cab Manager software system and stated he had the ability to review the Cab Manager computer data records and segregate and produce the information, if it existed, specified in paragraph 2 of the Findings.

*Difficulties in producing the Cab Manager information*  
~~Defendants' counsel should also communicate with plaintiffs' counsel should~~  
*as recommended may result in the Commissioner*  
~~any issues arise with the production of the records being compelled. As the testimony~~  
*of Morgan requires*  
~~of Morgan indicates that the entire Cab Manager database can be copied and produced.~~  
*The specifics of such production will be*  
~~in bulk without difficulty, should the portion of the data being compelled by this~~  
*deferred until such time it becomes necessary in*  
~~Report and Recommendation be unable to be extracted and provided to the plaintiffs'~~  
~~counsel, the Court will require the entire contents of the Cab Manager database to be~~

1 turned over to plaintiffs' counsel who must then sort and extract the relevant  
2 information plaintiffs sought in their motion to compel. Additionally, defendants  
3 must also provide to plaintiffs' counsel, no later than December 31, 2015, electronic  
4 computer data records in Excel spreadsheet or an otherwise searchable electronic  
5 format from defendants' Quickbooks system as specified in paragraph 2 of the  
6 Findings for the time period of October 8, 2008 through the present.  
7

9 No other information contained within defendants' Quickbooks system, such as  
10 defendants' internal business or accounts payable records, are being compelled in this  
11 Report and Recommendation, provided that defendants produce the information as  
12 specified in paragraph 2 of the Findings. If they fail to do so, or assert they cannot  
13 extract such information, the Court will require the parties to enter into a suitable  
14 *Discovery Commissioned will likely require*  
15

16 protective order preserving the confidentiality of the Quickbooks database and  
17 *for the Applicable time frame to be produced*  
18 *Subject to an appropriate protective order, the*  
19 *specifics of such production will be deferred until*  
20 *such time as it becomes necessary.*  
21

22 IT IS FURTHER RECOMMENDED that based upon paragraph 3 of the  
23 Findings defendants are ordered to pay the costs and fees of plaintiffs' counsel for  
24 having to proceed with the unnecessary deposition of James Morgan on July 8, 2015.  
25 The Discovery Commissioner has determined that plaintiffs' counsel must be  
26 reimbursed \$638.95 for court reporter fees, plus \$400 per hour for plaintiffs' counsel's  
27 time in connection with the Morgan deposition. The Discovery Commissioner is  
28

1 satisfied that plaintiffs' counsel's time records showing 2.5 hours of preparation, 2.8  
2 hours of attendance, and 1.2 hours for travel relating to the Morgan deposition are fair.

3 Accordingly, defendants are required to submit to plaintiffs' counsel, a check for  
4 \$3,238.95 to cover the costs and fees associated with the Morgan deposition. *These*  
5 *costs and fees will be due and owing within 30 days after this*

6 IT IS FURTHER RECOMMENDED that based upon paragraphs 3 and 4 of the *Report*  
7 Findings the imposition of additional fees and costs upon defendants in connection *is signed by me*  
8 with plaintiffs' motion to compel, including but not limited to the deposition of *District Court*  
9 Creighton J. Nady, be reserved for further consideration and recommendations by the *Judge W.*

10 Discovery Commissioner at the parties' next status check on January 13, 2016 *at*  
11 *9:00 a.m. MT*

12 Finally, the discovery deadlines in this matter are extended as follows:

13 **Close of Discovery:** June 29, 2016

14 **Deadline to Amend Pleadings and Add Parties:** April 1, 2016

15 **Deadline to Disclose Expert Reports:** April 1, 2016

16 **Deadline to Disclose Rebuttal Expert Reports:** April 29, 2016

17 **Dispositive Motion Deadline:** July 29, 2015

18 *Further, the case will now be ready for trial on or after*  
19 *9-12-16*  
20 The parties are further ordered to appear back before the Discovery *and be current*  
21 Commissioner on January 13, 2016 at 9:00 a.m. for a status check on compliance  
22 with the foregoing. The parties may provide additional briefings to the Discovery  
23 Commissioner regarding compliance with this Report and Recommendation no later  
24 than January 8, 2016. *trial date*  
25 *of 1-4-16 is*  
26 *vacated. MT*



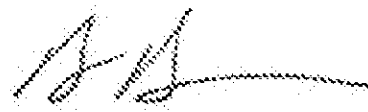
CASE NAME: *Murray et al. v. A Cab Taxi Service LLC., et al.*

Case No. A-12-669926-C

Hearing Date: November 18, 2015

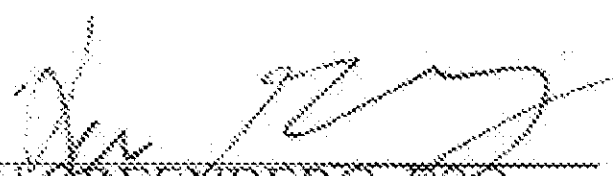
The Discovery Commissioner, met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.


DATED: December 11, 2015.

  
DISCOVERY COMMISSIONER

Respectfully submitted:

Approved as to form and content:

  
LEON GREENBERG, ESQ.  
DANA SNIEGOCKI, ESQ.  
LEON GREENBERG  
PROFESSIONAL  
CORPORATION  
2965 South Jones Blvd., #E4  
Las Vegas, NV 89146  
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Attorney for Plaintiffs

  
ESTHER C. RODRIGUEZ, ESQ.  
NV Bar 006473  
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Las Vegas, NV 89145  
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Fax (702) 320-8401  
[info@rodriguezlaw.com](mailto:info@rodriguezlaw.com)  
Attorney for Defendant

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NOTICE

Pursuant to N.R.C.P. 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

[Pursuant to E.D.C.R. 2.34(f), an objection must be filed and served no more than five (5) days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of the party's lawyer in the Clerk's office. See E.D.C.R. 2.34(f).]

A copy of the foregoing Discovery Commissioner's Report was:

\_\_\_\_\_ Mailed to the parties at the following address on the \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_

X Placed in the folders of Plaintiff's/Defendant's counsel in the Clerk's

Office on the 17 day of Dec.

STEVEN D. GRIERSON

By 

DEPUTY CLERK



CASE NAME: *Murray et al. v. A Cab Taxi Service LLC., et al.*

Case No. A-12-669926-C

Hearing Date: November 18, 2015

**ORDER**

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

\_\_\_\_\_ The parties having waived the right to object thereto,

\_\_\_\_\_ No timely objections having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),

☒ Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

☒ AND

☒ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

\_\_\_\_\_ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner:

\_\_\_\_\_ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report and Recommendations is set for the \_\_\_\_\_ day of \_\_\_\_\_ 2015, at \_\_\_\_\_ a.m./p.m.

Dated this 29 day of Feb, 2015.

  
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

The undersigned certifies that on March 4, 2016, she served the  
within:

**Order on Discovery Commissioner's Report and Recommendation**

by court electronic service to:

TO:

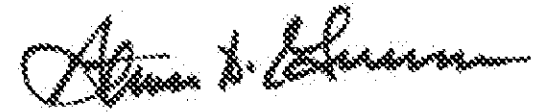
Esther C. Rodriguez, Esq.  
RODRIGUEZ LAW OFFICES, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, NV 89145

*/s/ Dana Sniegocki*

---

Dana Sniegocki

# EXHIBIT "G"



CLERK OF THE COURT

1 **OMCM**  
2 Esther C. Rodriguez, Esq.  
3 Nevada Bar No. 6473  
4 RODRIGUEZ LAW OFFICES, P.C.  
5 10161 Park Run Drive, Suite 150  
6 Las Vegas, Nevada 89145  
7 702-320-8400  
8 [info@rodriguezlaw.com](mailto:info@rodriguezlaw.com)  
9 *Attorneys for Defendant A Cab, LLC*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 **MICHAEL MURPHY and MICHAEL RENO,**  
10 Individually and on behalf of others similarly  
11 situated,

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

11 Plaintiffs,

12 vs.

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

14 Defendants.

15  
16 **DEFENDANT'S OPPOSITION TO MOTION TO COMPEL**

17 **THE PRODUCTION OF DOCUMENTS**

18 Defendant A Cab, LLC ("A Cab"), by and through its attorney, Esther C. Rodriguez, Esq.,  
19 of RODRIGUEZ LAW OFFICES, P.C., hereby submits this Opposition to Plaintiffs' Motion to Compel  
20 the Production of Documents.

21 **POINTS AND AUTHORITIES**

22 **I. Factual Background**

23 Plaintiff Michael Murray and Michael Reno are former employees of Defendant A Cab,  
24 LLC ("A Cab"). Michael Murray worked for A Cab from September 6, 2008 to April 6, 2011.  
25 Michael Reno worked for A Cab from June 16, 2010 to September 26, 2012 as a taxicab driver.  
26 These two drivers allege a claim for an hourly minimum wage. (Plaintiffs' Complaint ¶ 14.) Their  
27 lawsuit was brought pursuant to Article 15, Section 16, of the Nevada Constitution, which they  
28 claim eliminated the current and long-standing exemptions to the minimum wage and overtime

1 laws for various categories of workers in Nevada, specifically, taxicab drivers. (Plaintiffs'  
2 Complaint ¶ 13 and 14.) Following the Constitutional Amendment, a series of wage claim lawsuits  
3 were filed against the majority of taxicab companies in Las Vegas, including this instant suit  
4 against A Cab, LLC.

5 A Cab is one of the smallest taxicab companies in Las Vegas, serving primarily the westside  
6 residential section of the Las Vegas Valley. Up until December 2014, it was entirely restricted  
7 from serving the more lucrative areas of Las Vegas, including the Strip, McCarran Airport, or the  
8 Las Vegas Convention Center. It now has a limited number of medallions that can service this area.  
9 The point of this background is to highlight that A Cab is still a small business that is run by 1  
10 owner, Creighton J. Nady, and does not have the high tech computerized pay and shift data that  
11 some of the larger corporate cab companies have in Las Vegas; and that Plaintiffs are demanding  
12 with this motion.

13 A Cab has always sought to comply with all federal and state regulations, including those  
14 pertaining to wage issues. It has never been shown to be out of compliance with any federal or  
15 state wage regulation. It is true that A Cab underwent an audit by the Department of Labor (DOL)  
16 for the same time period at issue in the Plaintiffs' complaint, October 2010 to October 2012. The  
17 DOL audited each taxicab company in Las Vegas, including A Cab, for any potential wage or  
18 record keeping violations. After several years of escalating costs associated with this audit, A Cab  
19 chose to enter into an agreement with the DOL to resolve the matter. There was no admission of  
20 any violation<sup>1</sup>, and A Cab in fact recognized that any payments made would go directly into the  
21 pockets of its drivers, which it was in favor of doing so.

22 In June 26, 2014, the Nevada Supreme Court issued a decision in *Thomas v. Yellow Cab*, in  
23 which the Court gave guidance for the first time to the taxicab industry that the wage exemptions  
24 pertaining to taxidivers have been extinguished by the passage of the amendment to the Nevada  
25 Constitution. Following that time, A Cab again took steps to make sure its drivers were being paid  
26

---

27 <sup>1</sup> "Defendants agree and stipulate to enter into this Consent Judgment for the sole purpose  
28 of resolving disputed facts and neither admit nor deny the allegations contained in the  
Secretary's Complaint." Exhibit C to Plaintiff's Motion, p. 5.

1 in compliance with the new interpretation.

2       However, what has not been interpreted is any guidance pertaining to when the  
3 extinguishment of the wage exemptions is effective. The cab industry has asserted in the other  
4 cases filed by Mr. Greenberg similar to this one that the effective date is June 26, 2014, when the  
5 Court issued its decision. As demonstrated in this discovery dispute, Plaintiffs assert a retroactive  
6 date to 2008. This dispute over an effective date is relevant to the present issue before the  
7 Discovery Commissioner as this discovery dispute is one pertaining to the period of time of  
8 requested documents. As has been discussed with Plaintiffs' counsel, the matter is presently before  
9 the Nevada Supreme Court in the matter of *Barbara Gilmore v. Desert Cab, Inc.* (Sup. Ct. No.  
10 62905), and it is important to have that guidance before turning over documents that are not deemed  
11 applicable to this case. In that case, Plaintiffs' counsel has specifically requested the Court to  
12 address "that the holding in *Thomas v. Nevada Yellow Cab Corporation* is not limited to conduct  
13 taking place after June 26, 2014." See Exhibit A attached hereto.

14       A Cab is not attempting to be uncooperative with the Plaintiffs, and has had numerous  
15 discussions and in-person meetings to facilitate a resolution to these disputes. A Cab even hosted a  
16 meeting on its business premises with the owner Creighton J. Nady to explain to Plaintiffs' counsel,  
17 Leon Greenberg, Esq. that A Cab is not a high tech computerized business, and that many of the  
18 items he is seeking in a computerized format simply do not exist. Much of Plaintiffs' complaints  
19 stem from the fact that shifts and drivers' breaks and schedules are kept in the form of tripsheets.  
20 As required by the State of Nevada Taxicab Authority, the tripsheets are maintained by shift, not by  
21 employee name.

22       With this instant motion, Plaintiffs are moving to compel items that either do not exist, or  
23 that A Cab would have to expend large amounts of manpower to compute and to calculate in the  
24 computerized spreadsheet that Plaintiffs seek. The discovery rules do not require that a party must  
25 summarize and do the work for the adverse party, but simply must turn over those documents that  
26 are kept in the normal course of business. This is what A Cab has complied with.

27 ...

28 ...

**II. Discovery Sought and Response**

**1. Class-wide Electronic Payroll and Hours Worked Computer Data**

A Cab has produced approximately 1800 pages in document production in this matter. All payroll information has been provided for the two named individuals Michael Reno and Michael Murray. These include the documents for each and every shift worked by Michael Reno or Michael Murray. All payroll information for these individuals have also been produced. This information all demonstrates that A Cab is in compliance with all payments to these individuals. Therefore, Plaintiffs now seek information on a class-wide basis for merely a fishing expedition to see if they can find any individuals who may have an error in their pay. This is not the purpose of discovery.

Plaintiffs seek copies of pay check vouchers (pay stubs), ledgers or pay check statements and to whom they were paid. This is private information for each of these individuals. None of these individuals have given their permission or authorization for their personal pay information to be released to an attorney for a former employee.

Plaintiffs argue they want to demonstrate commonality and numerosity, but they have failed to demonstrate there is any type of wage violation at all with the named Plaintiffs. They have not made any type of minimal showing that there is any wage violation at A Cab, and yet they want A Cab to turn over everyone's pay information. In the cases relied upon by Plaintiffs, the court found that Plaintiffs must first make a prima facie showing of a claim. In this lawsuit, they have failed to do so.

**2. Time Records**

Firstly, Plaintiffs' request stems back to October 8, 2008, which is beyond the time period A Cab asserts is the effective date of the Constitutional Amendment. Secondly, in its response, A Cab indicated, "This Request also seeks information the discovery of which is overly burdensome to Defendant as there are approximately 46,080 trip sheets per year which are not kept by name of employee. Without waiving these objections, Defendant will make a diligent search for responsive documents, and will copy and produce those within 30 days." A Cab indeed proceed to produce the time records for the named Plaintiffs. However, Plaintiffs seek time records in a computer file for not only the named plaintiffs, but for every other employee. They are seeking a sophisticated

1 computerized database that will make their job much easier, but that does not exist. There is no  
2 computerized database that will show the punch in/punch out and breaktimes as the Plaintiffs  
3 desire. All time records pertaining to the named Plaintiffs have been produced by A Cab;  
4 Plaintiffs' complaint is that it is in a format they do not like.

5 With the documents pertaining to the named Plaintiffs, Plaintiffs cannot prove any type of  
6 wage violation, so they therefore are demanding everyone else's records in order to make a case.  
7 Again, this is not the purpose of discovery, to make a business open its files for any one to come in  
8 and search to see if there are grounds for a claim. Only the federal government has license to  
9 proceed in such a fashion, and in fact, already did so at A Cab. Exhibit C to Plaintiffs' Motion.

### 10 3. Contact Information for Putative Class Members

11 Plaintiffs seek contact information for all drivers from October 2008 to the present.  
12 Plaintiffs have not demonstrated any violation or supported a prima facie showing; and are only  
13 seeking this information in order to manufacture a claim. Secondly, as specified above, the  
14 retroactive date to 2008 is in dispute and is currently before the Nevada Supreme Court. A Cab  
15 asserts that the effective date is June 26, 2014.

### 16 4. Documents from Prior Lawsuits

17 Plaintiffs are already in possession of the pleadings pertaining to the federal lawsuit, as  
18 demonstrated by Exhibit C to their Motion. There are no other pleadings available other than the  
19 Complaint and Consent Judgment. Defendants will produce these in a formal production, as well  
20 correspondence between the parties (A Cab and the DOL). It was unclear, prior to receipt of this  
21 motion, that Plaintiffs were wanting this information. However, Defendants requests the Discovery  
22 Commissioner's guidance on whether documents pertaining to settlement negotiations between the  
23 DOL and A Cab must be produced.

24 It appears from Plaintiffs' motion that Plaintiffs also seek all documents stemming from any  
25 investigation from the Nevada Labor Commissioner, "with no limitation to any time frame." A Cab  
26 objects to this request based on two grounds. The first is that the request is unduly burdensome. A  
27 Cab does not keep a separate file on correspondence from the Nevada Labor Commissioner. A Cab  
28 would have to review each and every employee file for anyone that has ever worked there, to



1 determine if it contains a letter from the Nevada Labor Commissioner, and whether it pertains to  
2 any type of minimum wage or other type of wage claim. A Cab can prepare a supplemental  
3 response to Plaintiffs' Request For Production of Documents to indicate that to the best of the  
4 company's knowledge, there were no claims for minimum wage as drivers were never before  
5 eligible. But of course, the company cannot make this representation without searching every  
6 employee file.

7 The second grounds for objecting to this request, is that any claims filed with the Nevada  
8 Labor Commissioner by persons not affiliated with Michael Murray or Michael Reno are private.

9 **III. Conclusion**

10 Based upon the foregoing points and authorities, Defendant A CAB, LLC respectfully  
11 requests this Honorable Court to enter an Order denying Plaintiff's Motion to Compel the  
12 Production of Documents, as A Cab has already produced all documents relevant to the named  
13 Plaintiffs.

14 DATED this 2<sup>nd</sup> day of March, 2015.

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

16  
17 /s/ Esther C. Rodriguez, Esq.  
18 Esther C. Rodriguez, Esq.  
19 Nevada State Bar No. 006473  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
Attorneys for Defendant A Cab, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 2<sup>nd</sup> day of March, 2015, I electronically filed the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

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

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

# EXHIBIT "H"

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 but I think she puts it on the trip sheet.

2 Q. Well, the number of hours per payroll period is  
3 used by A Cab in preparing the payroll; correct?

4 A. Of course.

5 Q. Has A Cab always examined the number of hours  
6 worked per pay period in preparing its payroll for the  
7 cab drivers?

8 A. Not always. I think we started after our first  
9 audit. I can't remember the name of the auditor, but he  
10 recommended we keep track of every hour.

11 Q. And --

12 A. And we kept track of hours then also, but we  
13 didn't keep records of all of them. So I mean, we had  
14 to go back. He didn't like having to go back and look  
15 at each trip sheet any more than you will about trying  
16 to figure out how many hours they actually worked or any  
17 more than the DOL when they did audit us for three and a  
18 half years. They kept those things, and they went over  
19 every one of them.

20 Q. Well, it's your testimony then that since the  
21 time of that audit, A Cab has always examined the number  
22 of hours a taxi driver worked during a payroll period in  
23 calculating their pay for the period?

24 A. I believe we have, yes.

25 Q. But A Cab has not always kept a record of that

1 number of hours for the entire pay period; correct?

2 A. Well, after the first audit, A Cab -- we didn't  
3 measure it up against the minimum wage as cited or as  
4 recommended by the DOL. And thus, we took the number of  
5 hours off the trip sheets. The trip sheets come -- or  
6 they came in two week periods, you know, five, six, ten  
7 of them, eleven, sometimes 12 even. And we would put a  
8 total on -- staple it together and put a total on the  
9 front of the number of hours. Then if that was below  
10 minimum wage, we would then increase the wage and the  
11 commission to do that. We'd keep track of how much it  
12 was. Now we didn't do that. And the reason we didn't  
13 do it is we didn't want the drivers -- maybe a stupid  
14 thing to do, and it ended up biting us a little bit. We  
15 didn't want the drivers to know that if they didn't do  
16 well they still get paid a bunch of money. So we didn't  
17 tell them that we were keeping that. We did keep a  
18 record of it though of how much we supplemented their  
19 wages. And then when it became an issue, we started  
20 putting it down as a supplement.

21 You guys are passing notes like kids.

22 Q. Now, Mr. Nady, in order to do the calculations  
23 you just described, A Cab had to determine each pay  
24 period how many hours a cab driver worked during that  
25 pay period; correct?

1 A. Yes.

2 Q. So it had to create a total hours worked for the  
3 cab driver for that pay period; correct?

4 A. Yes.

5 Q. But it has not actually preserved that total  
6 number of hours worked that it calculated; correct?

7 MS. RODRIGUEZ: Objection. Misstates prior  
8 testimony.

9 THE WITNESS: No. I don't think -- even  
10 though it's misstated, I don't think we kept those.  
11 BY MR. GREENBERG:

12 Q. Has A Cab kept that total that it calculated  
13 starting at any particular point in time going forward?

14 A. Yes.

15 Q. When did it start keeping --

16 A. Don't know. And if you ask me to narrow it down,  
17 I'm going to say I don't know.

18 Q. Since the institution of this lawsuit, has it  
19 been keeping that information, the total number of hours  
20 of each driver during each pay period?

21 A. I think -- I think you'll find if you look at the  
22 trip sheets, you'll find how many hours was on that  
23 paycheck. I think if you look at the trip sheets as  
24 they're stapled together, there will be a note on each  
25 one of those weeks for every person how many hours there

1 was. It's either on a big thing on each page, or it's  
2 on a tape from an adding machine with the number of  
3 hours added up there. And you could see then the tape  
4 where we added 8, 12, 10, 11, 5, 4, 6, 7, whatever we  
5 had. We would put that on the tape, put them together,  
6 and that would be what we would use as -- when we were  
7 calculating payroll. That's the way it was.

8 Q. Okay. So what you're telling me is that if a  
9 driver worked ten shifts in a payroll period, the person  
10 responsible for payroll would take those ten trip sheets  
11 from those shifts, go through each one of them, manually  
12 add them up with a calculator for pay period total of  
13 hours based upon those ten trip sheets and then staple  
14 that piece of paper from the adding machine to those ten  
15 trip sheets; is that correct?

16 A. That's how we used to do it, yes.

17 Q. And were those stapled trip sheets with those  
18 pieces of paper from the calculator preserved?

19 A. We gave them all to the DOL.

20 Q. Including those stapled --

21 A. We gave all of them to the DOL for the time  
22 period that we're discussing here. We gave them all to  
23 them.

24 Q. And have they been returned?

25 A. Maybe half and maybe they're not put together and



1 maybe it's a mess because they didn't -- they just threw  
2 things around and there's lots of dust on them and you  
3 don't know what's there because they didn't put them  
4 back in the same order. Our boxes were by date. They  
5 were in perfect form. They were in alphabetical by  
6 name, by day every day. And when they got them back to  
7 us, the ones -- they obviously didn't go through all of  
8 them, but the ones that they gave back to us were -- had  
9 been tipped over and crushed, and they weren't kept  
10 well.

11 Q. You used the word maybe more than once in the  
12 answer you were just giving me.

13 Do you know if those trip sheets that were  
14 stapled together with those pieces of adding machine  
15 paper stapled to them still exist and are in the  
16 possession of A Cab?

17 A. I would say I don't know for sure, but I think  
18 pretty much they are in a different form of collection.  
19 I think now they put -- they've sorted them in a  
20 different manner.

21 Q. Well, have they been separated? They were  
22 stapled --

23 A. Yep, they were separated.

24 Q. So do any of them still exist with that piece of  
25 adding machine paper stapled to them in pay period

1 groups as you've described to me?

2 A. I don't know.

3 Q. You don't know?

4 A. No, I don't know.

5 Q. Do you know where those trip sheets are stored  
6 right now?

7 A. Yep.

8 Q. Where are they?

9 A. At my office. They didn't give us back all of  
10 them, Counsel. At least there's a fewer number of  
11 boxes, and they were not all full. They were not cared  
12 for well.

13 Q. Now, currently does A Cab still prepare the  
14 payroll in terms of figuring the hours per pay period  
15 that a driver worked in the same fashion that you have  
16 described to me, which is the person takes all of the  
17 trip sheets for a particular driver for a particular pay  
18 period, uses a calculator to print out a piece of paper  
19 with the total for that pay period of all the trip  
20 sheets, and staples them to the trip sheets as a group?

21 Is that system still used now?

22 A. We may have evolved.

23 Q. When you say may, what do you mean?

24 A. Well, I'm not doing payroll that frequently. I  
25 did it that way, but I only had to do one payroll while

1 Donna was on vacation. But I didn't have a lot of  
2 complaints either. Mine was done. My checks were  
3 almost all right. I think that Donna keeps the number  
4 of hours in a different method. Ask me what it is; I'll  
5 tell you I don't know. I don't recall how she does it.

6 Q. Is it possible -- withdrawn.

7 Do you know if she uses an Excel file?

8 A. I just said I don't know.

9 Q. Does Donna use Excel in the course of her work?  
10 Do you know that?

11 A. I believe she does. She does some things for me  
12 using Excel.

13 Q. Do you know what she does in Excel?

14 A. No. She sends me notes on Excel sometimes.

15 Q. Anything else she's done in Excel that you can  
16 recall?

17 A. Not that I know of.

18 Q. Why don't we mark this as Exhibit 1.

19 (Exhibit 1 was marked for identification.)

20 BY MR. GREENBERG:

21 Q. Mr. Nady --

22 A. Mr. Greenberg.

23 Q. -- please take a look at Exhibit 1. At the top  
24 of this document it says Payroll Detail Report.

25 Do you see that, sir? The first page at the top

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

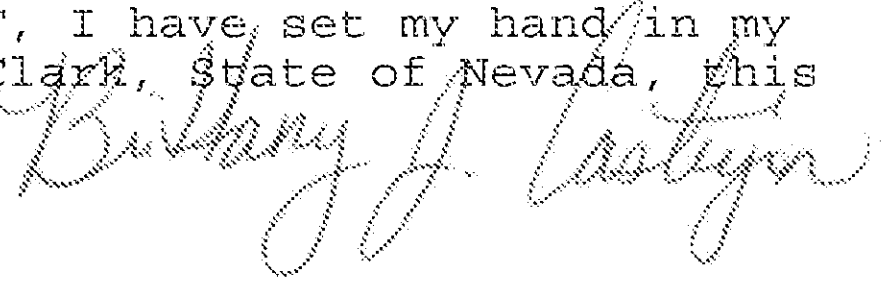
3 CERTIFICATE OF REPORTER

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.

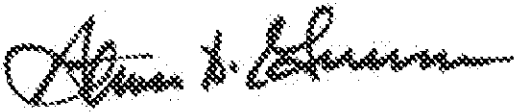
21 IN WITNESS WHEREOF, I have set my hand in my  
 22 office in the County of Clark, State of Nevada, this  
 31st day of August, 2015.



24 \_\_\_\_\_  
 Brittany J. Castrejon, CCR NO. 926

25

# EXHIBIT "I"

  
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](mailto:leongreenberg@overtimelaw.com)  
10 [dana@overtimelaw.com](mailto: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 produced 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 18<sup>th</sup> 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 "J"

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.**

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 class of plaintiffs in this matter.  
20 I am offering this declaration in support of plaintiffs' request for an award of  
21 attorney's fees and costs.  
22

23 2. As detailed in plaintiffs' motion, attorney's fees and costs are sought  
24 based upon defendants' failure to produce their Excel file(s) (the "J-Roll") containing  
25 hours of work, per payroll period, for each class member. No such "per payroll  
26 period" hours of work information has been provided in this case that pre-dates  
27 January of 2013. Beginning in January of 2013, such information is stated in the  
28

Quickbooks records (payroll records) produced by defendants.

3. Defendants' failure to be forthcoming about the existence of the "J-Roll" Excel file(s) has caused the following economic loss/attorney time expenditures in this case for which an award of costs, attorney's fees, and/or sanctions should be imposed upon the defendants:

(A) Data Analysis Costs - Plaintiffs' counsel has, to date, paid \$3,850 to a skilled computer data consultant to analyze the Quickbooks payroll data provided by defendants. That data is only meaningful when the hours of work, per pay period, is known. That analysis has proceeded without the benefit of the "J-Roll" information and will now have to be redone once that information is produced.

(B) Attorney time expended on this motion seeking production - I, personally, have expended no less than 6 hours of my time (not including any motion hearing time) in the preparation of the portion of this motion that addresses "J-Roll" production. My associate, Dana Sniegocki, has expended no less than 8 hours of time in connection with the same. My time was previously awarded at a fee rate of \$400 an hour (Ex. "F"). Ms. Sniegocki has been practicing law over 7 years and if her time was awarded at a rate of \$250 an hour a total fee award would be no less than \$4,400 based upon such time expenditures.

(C) - Attorney time expended by the obstruction of this case generally - Defendants' failure to produce the J-Roll materials, and the vitally important information that they contain, has significantly obstructed the prosecution of this case. It has forced plaintiffs' counsel to engage in the

1 taking of numerous percipient witness depositions and other discovery to  
2 try to obtain such information from other sources and/or establish the  
3 existence of the "J-Roll" that defendants denied existed. Those very time  
4 consuming activities, that I would estimate consumed at least an  
5 additional 20 hours of attorney time, would have been unnecessary if  
6 these materials had been properly and timely furnished.

7 I have read the foregoing and affirm the same is true and correct.  
8

9 Affirmed this 23rd day of December, 2016

*/s/ Leon Greenberg*

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11 

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Leon Greenberg  
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# EXHIBIT "K"

## A CAB, LLC

### EMPLOYEE BENEFIT SUMMARY

### 6/1/2013 – 5/31/2014 PLAN YEAR

#### ELIGIBILITY

- First day of the month following 90 days of employment
- All active full-time employees

#### MEDICAL – HEALTH PLAN OF NEVADA

##### HMO PLAN – Premium Advantage Plus EX2000

	In-Network
Calendar Year Deductible (CYD)	\$2,500 Individual \$5,000 Family
Office Visits	\$25 Copay
Specialist Visits	\$50 Copay
Routine Lab	\$25 Copay, after Deductible
Routine X-Ray	\$25 Copay, after Deductible
Urgent Care	
Within Service Area	\$25 Copay
Outside Service Area	\$40 Copay after Deductible
Emergency Room	\$200 Copay, after Deductible <i>waived if admitted</i>
Inpatient Hospital	\$400 per admission, after Deductible
Outpatient Surgery	\$50 per admission, after Deductible
Prescription Drug Program	
Generic	\$25
Brand	\$50
Non-Formulary	\$75
Mall Order (90 day supply)	
Generic	\$50
Brand	\$100
Non-Formulary	Not Available
<b>Employee Cost Per Pay Period</b>	
	Employee Only    Employee + Spouse    Employee + Child(ren)    Employee + Family
Rate	\$39.32    \$145.59    \$134.96    \$273.11

#### VOLUNTARY DENTAL – METLIFE

	In-Network	Out-of-Network
Calendar Year Deductible (CYD) <i>Applies to Basic &amp; Major Services Only</i>	\$50 Individual \$150 Family	\$100 Individual \$300 Family
Preventive	100%	80%
Basic	80%	50%
Major	50%	50%
Dental Calendar Year Maximum	\$5,000	
Employee Cost Per Pay Period		
	Employee Only	Employee + Spouse Child(ren) Family
Rate	\$11.74	\$27.15 \$22.86 \$38.58

#### VOLUNTARY VISION – METLIFE

	In-Network	Out-of-Network		
<b>Exam</b> <i>Once every 12 months</i>	\$20 Copay	Up to \$45 allowance		
<b>Lenses</b> <i>Once every 12 months</i>	\$20 Copay	\$30 - \$100 allowance		
<b>Frames</b> <i>Once every 24 months</i>	\$100 allowance then 20% discount	Up to \$55 allowance		
<b>Elective Contact Lenses</b> Fitting & Evaluation  Elective Lenses	Not to exceed \$60 Copay Up to \$100 allowance	Up to \$80 allowance <i>(Fitting, Evaluation &amp; Lenses Combined)</i>		
<b>Employee Cost Per Pay Period</b>				
	Employee Only	Employee + Spouse	Employee + Child(ren)	Employee + Family
Rate	\$3.50	\$7.01	\$6.58	\$10.07

#### MEDICAL BRIDGE – COLONIAL

##### PLAN 3

*Benefits paid once per covered person per calendar year*

	Benefit
Hospital Confinement	\$1,000
Outpatient Surgical Procedure	\$1,500 Calendar Year Max
Tier 1	\$500
Tier 2	\$1,000
Diagnostic Procedure	\$250
Health Screening	\$50
<b>Employee Cost Per Pay Period</b>	
No cost for employee only coverage when enrolled in HPN HMO medical plan	

#### CUSTOMER SERVICE NUMBERS

Health Plan of Nevada (HMO)	www.healthplanofnevada.com
Member Services	702-242-7300 800-777-1840
MetLife	www.metlife.com
Customer Service	800-275-4638
Wells Fargo Insurance Services	
Mona Nassir	702-946-1632
Colonial	
Kym Dunham	702-326-6235

Information in this document offers highlights of your benefit plans. The official Plan Documents actually govern your rights and benefits under each plan. If any discrepancy exists between this document and the Plan Documents, the actual legal Plan Documents will prevail. Plan provisions and eligibility do not constitute an employment contract with any individual. Coverage may vary state to state according to state mandated benefits.

RA 00395





## A CAB - EMPLOYEE BENEFIT SUMMARY

06/01/2015 – 05/31/2016 PLAN YEAR

### MEDICAL – PROMINENCE HEALTH PLAN

HMO Core \$10 \$2500 Rx - 25/50/75

#### General Plan Information

Calendar Year Deductible \$2,500

Coinsurance 0%

Calendar Year Out-of-Pocket Max \$6,350

#### Physician Services

Office Visit/ Exam \$40/visit

Office Visit/ Specialist \$70/visit

#### Diagnostic Procedures

Routine Lab No Charge

Routine X-Ray \$50/test

#### Hospital / Surgical Center

Inpatient Hospital Deductible+\$2,000/admit

Outpatient Surgery \$750 copay

#### Emergency Care

Emergency Room \$350/visit

*Waived if admitted*

Urgent Care Facility \$50/visit

#### Pharmacy

Generic/Pref Brand/Non-Pref Brand \$25 / \$50 / \$75

Special Pharmaceuticals 20% Coinsurance

#### Employee Cost Per Paycheck

	Employee Only	Employee + Spouse*	Employee + Child(ren)	Employee + Family*
Rate	\$43.00	N/A	\$158.17	N/A

### CUSTOMER SERVICE NUMBERS

Prominence - Medical [www.prominencehealthplan.com](http://www.prominencehealthplan.com)

Member Services 800-863-7515

Principal - Dental [www.principal.com](http://www.principal.com)

Customer Service 800-247-4695

Principal/VSP - Vision [www.vsp.com](http://www.vsp.com)

Customer Service 800-877-7195

Colonial - Voluntary Benefits Contact Kym Dunham

Customer Service Email [kdunham524@gmail.com](mailto:kdunham524@gmail.com)

Customer Service (702)326-6235

### DENTAL – PRINCIPAL/Diversified Dental Network

	In-Network	Out-of-Network
Calendar Year Deductible (CYD)	\$75 Individual \$225 Family	\$100 Individual \$300 Family

Preventive 100% 80%  
*Calendar Year Deductible (CYD) only applies to Preventive Services when using out-of-network providers*

Basic	80%	50%
Major	50%	50%
Annual Maximum	\$2,500	\$2,000

#### Employee Cost Per Paycheck

	Employee Only	Employee + Spouse	Employee + Child(ren)	Employee + Family
Rate	\$14.27	\$28.29	\$29.18	\$44.98

### VISION – PRINCIPAL/VSP

	In-Network	Out-of-Network
Exam <i>Once every 12 months</i>	\$10 Copay	Up to \$45 allowance

Lenses  
*Once every 12 months*  
\$25 Copay\* Up to \$100 allowance  
*\*Additional charges may apply for lens enhancements, such as UV coating, tinting, etc.*

Frames <i>Once every 24 months</i>	Up to \$150 allowance	Up to \$70 allowance
---------------------------------------	-----------------------	----------------------

#### Employee Cost Per Paycheck

	Employee Only	Employee + Spouse	Employee + Child(ren)	Employee + Family
Rate	\$3.80	\$7.63	\$7.96	\$12.84

### VOLUNTARY BENEFITS - COLONIAL

*Rates & benefit coverage varies, contact Colonial for more information*

**Voluntary Life** insurance pays a lump sum in the event of death. Term Life or Universal Life insurance options available.

**Voluntary Short Term Disability** insurance protects a percentage of an insured's income in the event they become ill or injured off-the-job and cannot work.

**Voluntary Accident** can pay a benefit directly to an insured if they or an insured family member have suffered a covered injury and need treatment.

**Voluntary Critical Illness &/or Cancer** insurance pays a lump sum amount upon diagnosis of a covered event.

**WHEN IS OPEN ENROLLMENT:** Open Enrollment is during the month of May every year for June 1<sup>st</sup> effective date

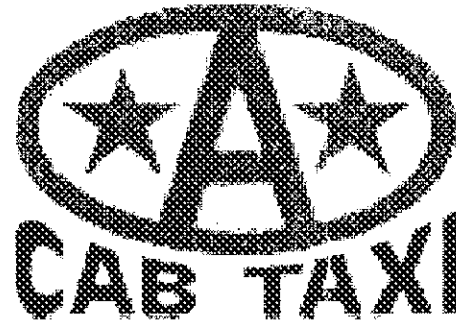
**QUALIFYING EVENTS:** Birth of Child, Adoption, \*Marriage, Divorce, Court Ordered Changes, Gain/Loss of Other Coverage

**WAITING PERIOD:** First of the month following 60 days of employment

*\*Spouse coverage not available for medical*

RA 00396

## Medical Plan &amp; Rate Analysis



CAPSTONE | REAL ESTATE MANAGEMENT INSURANCE

Effective 6-1-2016 to May 31, 2017

Prominence Options	CURRENT HMO PLAN		RENEWAL HMO PLAN	
	Prominence Core / Base Plan HMO Deductible Core 10		Prominence HMO Advantage Plus 4000	
Benefits	Health Care Partners (Las Vegas Only)		Health Care Partners (Las Vegas Only)	
Provider Network	In-Network		In-Network	
Cal Year Deductible				
Individual	\$2,500		\$4,000	
Family	\$7,500		\$12,000	
Coinsurance	0%		40%	
Out of Pocket Maximum				
Individual	\$6,350		\$6,600	
Family	\$12,700		\$13,200	
Office Visits & Hospitalization				
PCP Office Visit	\$40		\$30	
Preventive Care	0		0	
Specialist Office Visit	\$70		\$60	
TeleMedicine Services	\$30		\$20	
Hospital Services				
In Patient Hospitalization	CYD / \$2,000 copay per admit		CYD, then 40%	
Out Patient Hospitalization	\$750 copay		CYD, then 40%	
Physician Surgical Services				
Surgeon	Bundled w/ Inpatient & Outpatient		Bundled w/ Inpatient & Outpatient	
Anesthesia	Bundled w/ Inpatient & Outpatient		Bundled w/ Inpatient & Outpatient	
Emergency Services				
ER (Ded waived if admitted)	\$350 copay per visit		\$350 copay plus 40%	
Urgent Care	\$50 copay per visit		\$50 copay per visit	
Lab & X Ray				
Routine Laboratory Services	No Charge		No Charge	
Routine X-ray	\$50 copay per test		\$30 copay per test	
CT Scan and MRI	\$100 copay per test		\$250 copay per test	
Prescription Drugs				
Tier 1	\$25		\$25	
Tier 2	\$50		\$50	
Tier 3	\$75		\$75	
Mail-Order	See Plan Description		See Plan Description	
Total Employees	2015	Current	2016	Renewal
Employee Only Monthly Rate		\$277.26		\$335.46
Employee + Child(ren)		\$526.80		\$637.39
Employee Cost Monthly		\$93.17		\$94.25
A Cab Employee Monthly Cost		\$184.09		\$241.21
A Cab Employee Annual Cost per Employee		\$2,209.08		\$2,894.52
Employees Cost Per Pay Period ( 26 pay periods)		\$43.00		\$43.50
Employee + Child(ren) Per Pay Period ( 26 pay periods)		\$158.17		\$182.85

RA 00397

# EXHIBIT "L"

# Form W-4 (2016)

**Purpose.** Complete Form W-4 so that your employer can withhold the correct federal income tax from your pay. Consider completing a new Form W-4 each year and when your personal or financial situation changes.

**Exemption from withholding.** If you are exempt, complete **only** lines 1, 2, 3, 4, and 7 and sign the form to validate it. Your exemption for 2016 expires February 15, 2017. See Pub. 505, Tax Withholding and Estimated Tax.

**Note:** If another person can claim you as a dependent on his or her tax return, you cannot claim exemption from withholding if your income exceeds \$1,050 and includes more than \$350 of unearned income (for example, interest and dividends).

**Exceptions.** An employee may be able to claim exemption from withholding even if the employee is a dependent, if the employee:

- Is age 65 or older,
- Is blind, or
- Will claim adjustments to income; tax credits; or itemized deductions, on his or her tax return.

The exceptions do not apply to supplemental wages greater than \$1,000,000.

**Basic instructions.** If you are not exempt, complete the **Personal Allowances Worksheet** below. The worksheets on page 2 further adjust your withholding allowances based on itemized deductions, certain credits, adjustments to income, or two-earners/multiple jobs situations.

Complete all worksheets that apply. However, you may claim fewer (or zero) allowances. For regular wages, withholding must be based on allowances you claimed and may not be a flat amount or percentage of wages.

**Head of household.** Generally, you can claim head of household filing status on your tax return only if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself and your dependent(s) or other qualifying individuals. See Pub. 501, Exemptions, Standard Deduction, and Filing Information, for information.

**Tax credits.** You can take projected tax credits into account in figuring your allowable number of withholding allowances. Credits for child or dependent care expenses and the child tax credit may be claimed using the **Personal Allowances Worksheet** below. See Pub. 505 for information on converting your other credits into withholding allowances.

**Nonwage income.** If you have a large amount of nonwage income, such as interest or dividends, consider making estimated tax payments using Form 1040-ES, Estimated Tax for Individuals. Otherwise, you may owe additional tax. If you have pension or annuity income, see Pub. 505 to find out if you should adjust your withholding on Form W-4 or W-4P.

**Two earners or multiple jobs.** If you have a working spouse or more than one job, figure the total number of allowances you are entitled to claim on all jobs using worksheets from only one Form W-4. Your withholding usually will be most accurate when all allowances are claimed on the Form W-4 for the highest paying job and zero allowances are claimed on the others. See Pub. 505 for details.

**Nonresident alien.** If you are a nonresident alien, see Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens, before completing this form.

**Check your withholding.** After your Form W-4 takes effect, use Pub. 505 to see how the amount you are having withheld compares to your projected total tax for 2016. See Pub. 505, especially if your earnings exceed \$130,000 (Single) or \$160,000 (Married).

**Future developments.** Information about any future developments affecting Form W-4 (such as legislation enacted after we release it) will be posted at [www.irs.gov/w4](http://www.irs.gov/w4).

## Personal Allowances Worksheet (Keep for your records.)

<b>A</b>	Enter "1" for yourself if no one else can claim you as a dependent . . . . .	<b>A</b>	_____
<b>B</b>	Enter "1" if: <div><ul style="list-style-type: none"><li>• You are single and have only one job; or</li><li>• You are married, have only one job, and your spouse does not work; or</li><li>• Your wages from a second job or your spouse's wages (or the total of both) are \$1,500 or less.</li></ul></div> . . . . .	<b>B</b>	_____
<b>C</b>	Enter "1" for your spouse. But, you may choose to enter "-0-" if you are married and have either a working spouse or more than one job. (Entering "-0-" may help you avoid having too little tax withheld.) . . . . .	<b>C</b>	_____
<b>D</b>	Enter number of dependents (other than your spouse or yourself) you will claim on your tax return . . . . .	<b>D</b>	_____
<b>E</b>	Enter "1" if you will file as head of household on your tax return (see conditions under Head of household above) . . . . .	<b>E</b>	_____
<b>F</b>	Enter "1" if you have at least \$2,000 of child or dependent care expenses for which you plan to claim a credit . . . . . (Note: Do not include child support payments. See Pub. 503, Child and Dependent Care Expenses, for details.)	<b>F</b>	_____
<b>G</b>	<b>Child Tax Credit</b> (including additional child tax credit). See Pub. 972, Child Tax Credit, for more information. • If your total income will be less than \$70,000 (\$100,000 if married), enter "2" for each eligible child; then less "1" if you have two to four eligible children or less "2" if you have five or more eligible children. • If your total income will be between \$70,000 and \$84,000 (\$100,000 and \$119,000 if married), enter "1" for each eligible child . . . . .	<b>G</b>	_____
<b>H</b>	Add lines A through G and enter total here. (Note: This may be different from the number of exemptions you claim on your tax return.) ►	<b>H</b>	_____

For accuracy, complete all worksheets that apply.

- If you plan to itemize or claim adjustments to income and want to reduce your withholding, see the **Deductions and Adjustments Worksheet** on page 2.
- If you are single and have more than one job or are married and you and your spouse both work and the combined earnings from all jobs exceed \$50,000 (\$20,000 if married), see the **Two-Earners/Multiple Jobs Worksheet** on page 2 to avoid having too little tax withheld.
- If neither of the above situations applies, stop here and enter the number from line H on line 5 of Form W-4 below.

Separate here and give Form W-4 to your employer. Keep the top part for your records.

<b>Form W-4</b> Department of the Treasury Internal Revenue Service		<b>Employee's Withholding Allowance Certificate</b>		OMB No. 1545-0074 <b>2016</b>	
► Whether you are entitled to claim a certain number of allowances or exemption from withholding is subject to review by the IRS. Your employer may be required to send a copy of this form to the IRS.					
1 Your first name and middle initial		Last name		2 Your social security number	
Home address (number and street or rural route)				3 <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate. Note: If married, but legally separated, or spouse is a nonresident alien, check the "Single" box.	
City or town, state, and ZIP code				4 If your last name differs from that shown on your social security card, check here. You must call 1-800-772-1213 for a replacement card. ► <input type="checkbox"/>	
5 Total number of allowances you are claiming (from line H above or from the applicable worksheet on page 2)				5 _____	
6 Additional amount, if any, you want withheld from each paycheck . . . . .				6 \$ _____	
7 I claim exemption from withholding for 2016, and I certify that I meet both of the following conditions for exemption. • Last year I had a right to a refund of all federal income tax withheld because I had no tax liability, and • This year I expect a refund of all federal income tax withheld because I expect to have no tax liability. If you meet both conditions, write "Exempt" here . . . . .				7 <input type="checkbox"/>	
Under penalties of perjury, I declare that I have examined this certificate and, to the best of my knowledge and belief, it is true, correct, and complete.					
Employee's signature (This form is not valid unless you sign it.) ►				Date ►	
8 Employer's name and address (Employer: Complete lines 8 and 10 only if sending to the IRS.)		9 Office code (optional)		10 Employer identification number (EIN)	

**Deductions and Adjustments Worksheet****Note:** Use this worksheet *only* if you plan to itemize deductions or claim certain credits or adjustments to income.

<b>1</b>	Enter an estimate of your 2016 itemized deductions. These include qualifying home mortgage interest, charitable contributions, state and local taxes, medical expenses in excess of 10% (7.5% if either you or your spouse was born before January 2, 1952) of your income, and miscellaneous deductions. For 2016, you may have to reduce your itemized deductions if your income is over \$311,300 and you are married filing jointly or are a qualifying widow(er); \$285,350 if you are head of household; \$259,400 if you are single and not head of household or a qualifying widow(er); or \$155,650 if you are married filing separately. See Pub. 505 for details . . . . .	<b>1</b>	\$
<b>2</b>	Enter: $\left\{ \begin{array}{l} \$12,600 \text{ if married filing jointly or qualifying widow(er)} \\ \$9,300 \text{ if head of household} \\ \$6,300 \text{ if single or married filing separately} \end{array} \right\}$ . . . . .	<b>2</b>	\$
<b>3</b>	<b>Subtract</b> line 2 from line 1. If zero or less, enter "-0-" . . . . .	<b>3</b>	\$
<b>4</b>	Enter an estimate of your 2016 adjustments to income and any additional standard deduction (see Pub. 505) . . . . .	<b>4</b>	\$
<b>5</b>	<b>Add</b> lines 3 and 4 and enter the total. (Include any amount for credits from the <i>Converting Credits to Withholding Allowances for 2016 Form W-4</i> worksheet in Pub. 505.) . . . . .	<b>5</b>	\$
<b>6</b>	Enter an estimate of your 2016 nonwage income (such as dividends or interest) . . . . .	<b>6</b>	\$
<b>7</b>	<b>Subtract</b> line 6 from line 5. If zero or less, enter "-0-" . . . . .	<b>7</b>	\$
<b>8</b>	<b>Divide</b> the amount on line 7 by \$4,050 and enter the result here. Drop any fraction . . . . .	<b>8</b>	
<b>9</b>	Enter the number from the <b>Personal Allowances Worksheet</b> , line H, page 1 . . . . .	<b>9</b>	
<b>10</b>	<b>Add</b> lines 8 and 9 and enter the total here. If you plan to use the <b>Two-Earners/Multiple Jobs Worksheet</b> , also enter this total on line 1 below. Otherwise, <b>stop here</b> and enter this total on Form W-4, line 5, page 1 . . . . .	<b>10</b>	

**Two-Earners/Multiple Jobs Worksheet (See *Two earners or multiple jobs* on page 1.)****Note:** Use this worksheet *only* if the instructions under line H on page 1 direct you here.

<b>1</b>	Enter the number from line H, page 1 (or from line 10 above if you used the <b>Deductions and Adjustments Worksheet</b> ) . . . . .	<b>1</b>	
<b>2</b>	Find the number in <b>Table 1</b> below that applies to the <b>LOWEST</b> paying job and enter it here. <b>However</b> , if you are married filing jointly and wages from the highest paying job are \$65,000 or less, do not enter more than "3" . . . . .	<b>2</b>	
<b>3</b>	If line 1 is <b>more than or equal to</b> line 2, subtract line 2 from line 1. Enter the result here (if zero, enter "-0-") and on Form W-4, line 5, page 1. <b>Do not</b> use the rest of this worksheet . . . . .	<b>3</b>	

**Note:** If line 1 is **less than** line 2, enter "-0-" on Form W-4, line 5, page 1. Complete lines 4 through 9 below to figure the additional withholding amount necessary to avoid a year-end tax bill.

<b>4</b>	Enter the number from line 2 of this worksheet . . . . .	<b>4</b>	
<b>5</b>	Enter the number from line 1 of this worksheet . . . . .	<b>5</b>	
<b>6</b>	<b>Subtract</b> line 5 from line 4 . . . . .	<b>6</b>	
<b>7</b>	Find the amount in <b>Table 2</b> below that applies to the <b>HIGHEST</b> paying job and enter it here . . . . .	<b>7</b>	\$
<b>8</b>	<b>Multiply</b> line 7 by line 6 and enter the result here. This is the additional annual withholding needed . . . . .	<b>8</b>	\$
<b>9</b>	Divide line 8 by the number of pay periods remaining in 2016. For example, divide by 25 if you are paid every two weeks and you complete this form on a date in January when there are 25 pay periods remaining in 2016. Enter the result here and on Form W-4, line 6, page 1. This is the additional amount to be withheld from each paycheck . . . . .	<b>9</b>	\$

**Table 1****Table 2**

Married Filing Jointly		All Others		Married Filing Jointly		All Others	
If wages from <b>LOWEST</b> paying job are—	Enter on line 2 above	If wages from <b>LOWEST</b> paying job are—	Enter on line 2 above	If wages from <b>HIGHEST</b> paying job are—	Enter on line 7 above	If wages from <b>HIGHEST</b> paying job are—	Enter on line 7 above
\$0 - \$6,000	0	\$0 - \$9,000	0	\$0 - \$75,000	\$610	\$0 - \$38,000	\$610
6,001 - 14,000	1	9,001 - 17,000	1	75,001 - 135,000	1,010	38,001 - 85,000	1,010
14,001 - 25,000	2	17,001 - 26,000	2	135,001 - 205,000	1,130	85,001 - 185,000	1,130
25,001 - 27,000	3	26,001 - 34,000	3	205,001 - 360,000	1,340	185,001 - 400,000	1,340
27,001 - 35,000	4	34,001 - 44,000	4	360,001 - 405,000	1,420	400,001 and over	1,600
35,001 - 44,000	5	44,001 - 75,000	5	405,001 and over	1,600		
44,001 - 55,000	6	75,001 - 85,000	6				
55,001 - 65,000	7	85,001 - 110,000	7				
65,001 - 75,000	8	110,001 - 125,000	8				
75,001 - 80,000	9	125,001 - 140,000	9				
80,001 - 100,000	10	140,001 and over	10				
100,001 - 115,000	11						
115,001 - 130,000	12						
130,001 - 140,000	13						
140,001 - 150,000	14						
150,001 and over	15						

**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. Internal Revenue Code sections 3402(f)(2) and 6109 and their regulations require you to provide this information; your employer uses it to determine your federal income tax withholding. Failure to provide a properly completed form will result in your being treated as a single person who claims no withholding allowances; providing fraudulent information may subject you to penalties. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation; to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws; and to the Department of Health and Human Services for use in the National Directory of New Hires. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The average time and expenses required to complete and file this form will vary depending on individual circumstances. For estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.

RA 00400

# EXHIBIT "M"

1 **RESP**  
2 Esther C. Rodriguez, Esq.  
3 Nevada Bar No. 6473  
4 RODRIGUEZ LAW OFFICES, P.C.  
5 10161 Park Run Drive, Suite 150  
6 Las Vegas, Nevada 89145  
7 702-320-8400  
8 [info@rodriguezlaw.com](mailto:info@rodriguezlaw.com)  
9 *Attorneys for Defendant A Cab, LLC*

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13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

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

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,

Defendants.

**ANSWERS TO PLAINTIFFS' FIRST SET OF**  
**INTERROGATORIES TO DEFENDANTS**

Defendant A CAB, LLC, by and through its attorney, ESTHER C. RODRIGUEZ, ESQ., of  
RODRIGUEZ LAW OFFICES, P.C., and pursuant to NRCP 33, hereby responds to Plaintiffs' First Set  
of Interrogatories as follows:

**INTERROGATORY NO. 1:**

Identify, by name, all computer software used by defendants in the operation of their taxicab  
business, including but not limited to, those computer software systems that possess any  
information on any of the following: the number of shifts worked by each of their taxicab drivers;  
the dates on which such shifts are worked; the length of time each such shifted lasted; the wages  
and/or commissions paid to such taxicab drivers; the number of trips taken during a taxicab driver's  
shift; and the total amount of fares collected by each taxicab driver during each shift.

...



ANSWER NO. 1: Objection. This request seeks production of confidential and proprietary information that is not available to the public and that is not reasonably calculated to lead to the discovery of admissible evidence. See *Schlatter v. Eighth Judicial District Court*, 93 Nev. 189, 561 P2d 1342 (1977). This request is overbroad in terms of time pursuant to NRS 608.260, and the relevant statute of limitations. Further, the request is vague and ambiguous. Without waiving said objections, Defendant responds: Cab Manager, Quickbooks, Microsoft Excel since 2013.

DATED this 31<sup>st</sup> day of March, 2015.

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

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 31<sup>st</sup> day of March, 2015, I electronically served the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the parties listed on the service list, or by placing a true and correct copy of the same, postage prepaid, in the U.S. Mail as follows (*Note: all parties not registered pursuant to Administrative Order 14-2 have been served by mail*):

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

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



VERIFICATION

STATE OF NEVADA

COUNTY OF CLARK

I, the undersigned, state that I am the General Manager of A Cab, LLC, the Defendant in the above-entitled action, that I have read the foregoing A Cab, LLC's Answers to Plaintiff's First Set of Interrogatories and know the contents thereof; that the same is true of my own knowledge, except for those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

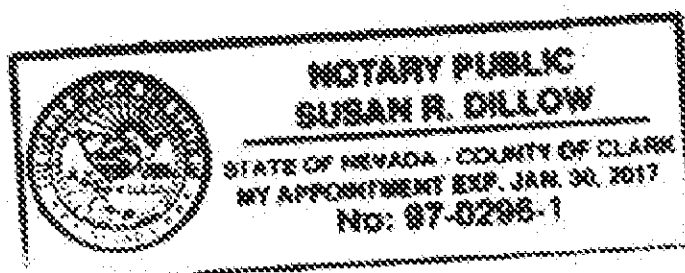
Executed under penalty of perjury under the laws of the State of Nevada this 31 day of March, 2015.

A Cab, LLC

By: [Signature]  
Jon Gathright, General Manager

Subscribed and sworn to before me  
this 31 day of MARCH, 2015.

[Signature]  
Notary Public in and for said  
County and State



# EXHIBIT "N"

**RESP**

Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
RODRIGUEZ LAW OFFICES, P.C.  
10161 Park Run Drive, Suite 150  
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702-320-8400  
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Michael K. Wall, Esq.  
Nevada Bar No. 2098  
Hutchinson & Steffen, LLC  
10080 West Alta Drive, Suite 200  
Las Vegas, Nevada 89145  
702-385-2500  
[mwall@hutchlegal.com](mailto:mwall@hutchlegal.com)  
*Attorneys for Defendants*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

**ANSWERS TO PLAINTIFFS' SIXTH SET OF**

**INTERROGATORIES TO DEFENDANTS**

Defendants, by and through their attorney, ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ  
LAW OFFICES, P.C., and pursuant to NRCP 33, hereby respond to Plaintiffs' Sixth Set of  
Interrogatories as follows:

**INTERROGATORY NO. 20:**

Set forth the factual details on which defendants base their Second Affirmative Defense that  
plaintiffs have failed to mitigate their damages. Such response shall include all particulars relating

1 to what actions, if any, defendants allege plaintiffs should have taken to mitigate their damages but  
2 which plaintiffs did not, the extent to which, if such actions were taken, plaintiffs damages would  
3 have been mitigated, and all other events, transactions, and circumstances that defendants believe  
4 support such claim by defendants.

5 **ANSWER NO. 20:**

6 Objection, compound, vague and ambiguous, and Defendants reserve the right to amend this  
7 response as the individual members of the class have not been identified who have accepted  
8 representation and/or opted out; and discovery is continuing. Without waiving said objections, A  
9 Cab drivers control their own schedules, as well as the factors pertaining to their ability to earn  
10 more compensation or less compensation. In certain circumstances, individual plaintiffs failed to  
11 generate enough revenue on a shift to earn a minimum wage deliberately, consistently, and without  
12 basis or justification. Additionally, if or when there are errors in the calculation of pay, individual  
13 plaintiffs failed to make management aware so that the pay could be corrected. Prior to the  
14 initiation of the lawsuit herein, Plaintiffs never made any demand for payment of minimum wage or  
15 underpayment. Plaintiffs failed to accept offers of resolution far in excess of the value of their  
16 respective claims; failed to make a demand for a resolution; and have refused offers to resolve,  
17 meet, or to engage in mediation or alternative dispute resolution; thereby deliberately escalating the  
18 damages claimed.

19 **INTERROGATORY NO. 21:**

20 Set forth the factual details on which defendants base their Fifth Affirmative Defense that  
21 plaintiffs claims are barred because plaintiffs own actions were the proximate cause of their  
22 damages. Such response must identify the nature of such actions (e.g., what it is that the plaintiffs  
23 did or did not do that defendants claim is the proximate cause of the plaintiffs' damages). Such  
24 response, to the extent known to defendant, must also detail every event and transaction, its  
25 participants, location, date and time, that such actions or lack of action occurred.

26 **ANSWER NO. 21:**

27 Objection, compound, vague and ambiguous, and Defendants reserve the right to amend this  
28 response as the individual members of the class have not been identified who have accepted

1 representation and/or opted out; and discovery is continuing. Without waiving said objections, A  
2 Cab drivers control their own schedules, as well as the factors pertaining to their ability to earn  
3 more compensation or less compensation. In certain circumstances, individual plaintiffs  
4 proximately caused their own damages by failing to generate enough revenue on a shift to earn a  
5 minimum wage deliberately, consistently, and without basis or justification. Additionally, when  
6 there are errors in the calculation of pay, individual plaintiffs failed to make management aware so  
7 that the pay could be corrected. Plaintiffs are responsible for their own book and well as accurate  
8 reporting of their times to Defendants. Prior to the initiation of the lawsuit herein, Plaintiffs never  
9 made any demand for payment of minimum wage or underpayment. Plaintiffs failed to accept  
10 offers of resolution far in excess of the value of their respective claims; failed to make a demand for  
11 a resolution; and have refused offers to resolve, meet, or to engage in mediation or alternative  
12 dispute resolution; thereby deliberately escalating the damages claimed.

13 **INTERROGATORY NO. 22:**

14 Set forth the factual details on which defendants base their Seventh Affirmative Defense  
15 that plaintiffs' Complaint is barred by the doctrine of res judicata. Such response must identify  
16 every judicial or quasi judicial proceeding or adjudication creating the claimed *res judicata*. Such  
17 response must include all particulars of such proceedings and adjudications, including the parties to  
18 the same, the court or other tribunal in which such action took place, and the judicial or other  
19 official who allegedly made the decision creating such *res judicata* status. Such response must also  
20 include a statement of how defendants believe each such proceeding or adjudication created *res*  
21 *judicata*.

22 **ANSWER NO. 22:**

23 Objection, compound, vague and ambiguous, and Defendants reserve the right to amend this  
24 response as the individual members of the class have not been identified who have accepted  
25 representation and/or opted out; and discovery is continuing. Without waiving said objections,  
26 matters contained within Plaintiffs' Complaint have been resolved and/or adjudicated in *Perez v. A*  
27 *Cab, LLC*, U.S. District Court Case No. 2:14-cv-1615, as well as through those claims that have  
28 been adjudicated and/or resolved through the Nevada Office of the Labor Commissioner.

**INTERROGATORY NO. 24 (sic):**

Set forth the factual details on which defendants base their Eighth Affirmative Defense that plaintiffs' Complaint is barred by the doctrine of collateral estoppel. Such response must include all particulars of such proceedings and adjudications, including the parties to same, the court or other tribunal in which such action took place, and the judicial or other official who allegedly made the decision creating such collateral estoppel status. Such response must also include a statement of how defendants believe each such proceeding or adjudication created collateral estoppel.

**ANSWER NO. 24 (sic):**

Objection, compound, vague and ambiguous, and Defendants reserve the right to amend this response as the individual members of the class have not been identified who have accepted representation and/or opted out; and discovery is continuing. Without waiving said objections, matters contained within Plaintiffs' Complaint have been resolved and/or adjudicated in *Perez v. A Cab, LLC*, U.S. District Court Case No. 2:14-cv-1615, as well as through those claims that have been adjudicated and/or resolved through the Nevada Office of the Labor Commissioner. Further, Defendants' organizational status was brought before the State of Nevada Taxicab Authority after proper notice, and no objection was received. The driver tip agreement was resolved with the Internal Revenue Service, and no objection was received.

**INTERROGATORY NO. 25:**

Set forth the factual details on which defendants base their Sixteenth Affirmative Defense that plaintiffs' Complaint is barred by equitable estoppel, including every event, transaction, and circumstance that defendants believe support such claim, including what actions defendants allege were taken by the plaintiffs which formed the basis for plaintiffs to be equitably estopped from asserting the claims they have asserted in this case.

**ANSWER NO. 25:**

Objection, compound, vague and ambiguous, and Defendants reserve the right to amend this response as the individual members of the class have not been identified who have accepted representation and/or opted out; and discovery is continuing. Without waiving said objections, A Cab drivers control their own schedules, as well as the factors pertaining to their ability to earn

1 more compensation or less compensation. Defendants assert that Plaintiffs' voluntary conduct may  
2 be an action, silence, acquiescence, or concealment of material facts. In certain circumstances,  
3 individual plaintiffs failed to generate enough revenue on a shift to earn a minimum wage  
4 deliberately, consistently, and without basis or justification. Additionally, if or when there are  
5 errors in the calculation of pay, individual plaintiffs failed to make management aware so that the  
6 pay could be corrected. Prior to the initiation of the lawsuit herein, Plaintiffs never made any  
7 demand for payment of minimum wage or underpayment. Plaintiffs failed to accept offers of  
8 resolution far in excess of the value of their respective claims; failed to make a demand for a  
9 resolution; and have refused offers to resolve, meet, or to engage in mediation or alternative dispute  
10 resolution; thereby deliberately escalating the damages claimed.

11 **INTERROGATORY NO. 26:**

12 Set forth the factual details on which defendants base their Twenty-Third Affirmative  
13 Defense that plaintiffs' Complaint is barred by the doctrine of accord and satisfaction. Such  
14 response should reference all monetary payments made to the plaintiffs and members of the  
15 certified class which form the basis for accord and satisfaction, including the amount of such  
16 payments, the dates on which such payments were made, whether the basis for such payments were  
17 explained in writing and agreed to by plaintiffs and, if so, all contents of those written  
18 communications, who provided such payments to the plaintiffs, whether defendants possess any  
19 documentary records evidencing the existence that such payments were made which form the basis  
20 for the accord and satisfaction, and the contents of all such documents.

21 **ANSWER NO. 26:**

22 Objection, compound, vague and ambiguous, and Defendants reserve the right to amend this  
23 response as the individual members of the class have not been identified who have accepted  
24 representation and/or opted out; and discovery is continuing. Without waiving said objections,  
25 matters contained within Plaintiffs' Complaint have been resolved and/or adjudicated in *Perez v. A*  
26 *Cab, LLC*, U.S. District Court Case No. 2:14-cv-1615, as well as through those claims that have  
27 been adjudicated and/or resolved through the Nevada Office of the Labor Commissioner.  
28 Additionally, see documents provided in Defendants' "Responses to Plaintiffs' Eleventh (sic)



Request for Production of Documents,” and the form 941s provided to Plaintiffs and all supplements thereto. Plaintiffs failed to accept formal offers of resolution pursuant to NRCP 68 far in excess of the value of their respective claims; failed to make a demand for a resolution; and have refused offers to resolve, meet, or to engage in mediation or alternative dispute resolution; claimed damages have been satisfied including those for attorney fees, costs, and interest.

**INTERROGATORY NO. 27:**

Set forth the factual basis on which defendants base their Twenty-Sixth Affirmative Defense that plaintiffs’ claims are barred as Defendant based its actions upon information provided by the pertinent state and/or federal agencies, and not in ignorance/violation of the law. Such response shall include the content of all information provided by every pertinent state and/or federal agency who provided such information to the defendants, the dates on which such information was provided, the persons from whom such information was provided, whether defendants possess any documentary evidence that such information was provided by such state and federal agencies, and if so, the contents of all such documentary evidence.

**ANSWER NO. 27:**

Objection, compound, vague and ambiguous, and Defendants reserve the right to amend this response as discovery is continuing. Without waiving said objections, Defendants respond that they were provided guidance by both state and federal agencies, both solicited and unsolicited, as to proceeding appropriately and properly under all federal and state laws. Such guidance included but was not limited to meeting and receiving information from the Nevada Office of the Labor Commissioner; meeting and receiving information on more than one occasion with local Wage and Hour personnel; meeting and receiving information on more than one occasion with Federal agents including from the Department of Justice and the Internal Revenue Service; as well as receiving guidance from the Nevada Supreme Court on many of the issues contained within Plaintiffs’ complaints. Documentary evidence includes but is not limited to the affidavit of Keith Sakelhide which has been produced; the clean audit from the Department of Labor indicating “no violations” which has been produced; and the Consent Judgment in *Perez v. A Cab* indicating that Defendants enter into a settlement denying the allegations of the complaint.



**INTERROGATORY NO. 28:**

For each person identified in the Excel file titled "Driver contact list" provided by defendants to plaintiffs' counsel in compliance with the Court's order of June 7, 2016, set forth the marital status of each such person as reflected in defendant's records, including by not limited to, all IRS W4 forms for such persons in the possession of defendants.

**ANSWER NO. 28:**

Objection, this request is overbroad in terms of scope of information requested in light of the guidance provided by the Nevada Supreme Court in 132 Nev. Advance Opinion 76, which holds that employers need only to offer a qualifying health benefit plan in order to pay a lower-tier minimum wage. Furthermore, this issue was discussed at the Discovery Conference of December 9, 2016 in which the Discovery Commissioner ruled that Plaintiffs are not entitled to this information; DCR&R is pending.

**INTERROGATORY NO. 29:**

For each person identified in the Excel file titled "Driver contact list" provided by defendants to plaintiffs' counsel in compliance with the Court's order of June 7, 2016, and who was enrolled in a health insurance plan offered by the defendants, set forth the number of dependents indicated by each such person that were to be enrolled in such health insurance plan.

**ANSWER NO. 29:**

Objection, this request is overbroad in terms of scope of information requested in light of the guidance provided by the Nevada Supreme Court in 132 Nev. Advance Opinion 76, which holds that employers need only to offer a qualifying health benefit plan in order to pay a lower-tier minimum wage. Furthermore, this issue was discussed at the Discovery Conference of December 9, 2016 in which the Discovery Commissioner ruled that Plaintiffs are not entitled to this information; DCR&R is pending.

**INTERROGATORY NO. 30:**

For each person identified in the Excel file titled "Driver contact list" provided by defendants to plaintiffs' counsel in compliance with the Court's order of June 7, 2016, specify and set forth separately the marital status (e.g. single, married, or other status) defendants have on

1 record for each such person.

2 ANSWER NO. 30:

3 Objection, this request is overbroad in terms of scope of information requested in light of  
4 the guidance provided by the Nevada Supreme Court in 132 Nev. Advance Opinion 76, which  
5 holds that employers need only to offer a qualifying health benefit plan in order to pay a lower-tier  
6 minimum wage. Furthermore, this issue was discussed at the Discovery Conference of December  
7 9, 2016 in which the Discovery Commissioner ruled that Plaintiffs are not entitled to this  
8 information; DCR&R is pending.

9 DATED this 12<sup>th</sup> day of December, 2016.

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

11  
12 /s/ Esther C. Rodriguez, Esq.  
13 Esther C. Rodriguez, Esq.  
14 Nevada Bar No. 6473  
15 10161 Park Run Drive, Suite 150  
16 Las Vegas, Nevada 89145  
17 *Attorneys for Defendant A Cab, LLC*

18 CERTIFICATE OF SERVICE

19 I HEREBY CERTIFY on this 12th day of December, 2016, I electronically served the  
20 foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System  
21 which will send a notice of electronic service to the following:

22 Leon Greenberg, Esq.  
23 Leon Greenberg Professional Corporation  
24 2965 South Jones Boulevard, Suite E4  
25 Las Vegas, Nevada 89146  
26 *Counsel for Plaintiff*  
27 (702) 385-1827

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

Rodriguez Law Offices, P.C.  
30161 Park Row Drive, Suite 100  
Las Vegas, Nevada 89145  
Tel (702) 310-0400  
Fax (702) 310-3401

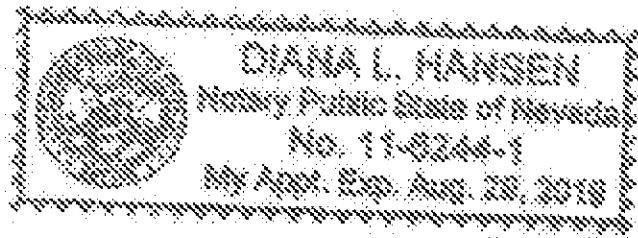
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VERIFICATION

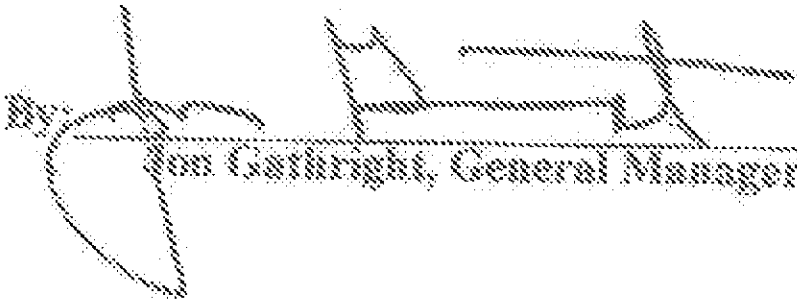
STATE OF NEVADA  
COUNTY OF CLARK

I, the undersigned, state that I am the General Manager of A Cab, LLC, the Defendant in the above-entitled action, that I have read the foregoing Defendants' Answers to Plaintiffs' Sixth Set of Interrogatories and know the contents thereof, that the same is true of my own knowledge, except for those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

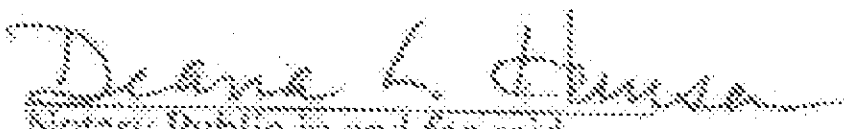
Executed under penalty of perjury under the laws of the State of Nevada this \_\_\_\_\_ day of December, 2016.

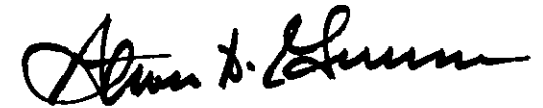


A Cab, LLC

By:  Jon Gathright, General Manager

Subscribed and sworn to before me  
this 12<sup>th</sup> day of December, 2016.

  
Notary Public in and for said  
County and State



CLERK OF THE COURT

1 **DCRR**  
2 LEON GREENBERG, ESQ.  
3 Nevada Bar No.: 8094  
4 DANA SNIEGOCKI, ESQ.  
5 Nevada Bar No.: 11715  
6 2965 South Jones Boulevard, Suite E3  
7 Las Vegas, Nevada 89146  
8 Tel: (702) 383-6085  
9 Fax: (702) 385-1827  
10 [leongreenberg@overtimelaw.com](mailto:leongreenberg@overtimelaw.com)  
11 [dana@overtimelaw.com](mailto:dana@overtimelaw.com)  
12 *Attorneys for Plaintiffs*

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

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

13 Plaintiffs,

14 vs.

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

17 Defendants.

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

18 **DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS**  
19

20 Hearing Date: January 25, 2017  
21 Hearing Time: 9:00 a.m.

22 Attorney for Plaintiffs: Leon Greenberg, Esq., and Dana Sniegocki, Esq.,  
23 Leon Greenberg Professional Corporation.

24 Attorney for Defendants: Esther C. Rodriguez, Esq.  
25 Rodriguez Law Offices, P.C.

26 Mark K. Wall, Esq.  
27 Hutchinson & Steffen, LLC  
28

1 I.  
2 FINDINGS

3 1. This matter came before the Discovery Commissioner on "Plaintiffs'  
4 Motion to Compel the Production of Documents" filed December 23, 2016.

5 2. The items of discovery sought to be compelled by plaintiffs' motion  
6 consisted of: (A) a series Excel spreadsheets compiled by defendants known as "J  
7 Roll" which allegedly contain the total hours worked by each class member for each  
8 pay period; and (B) information demonstrating the marital and dependent status of  
9 each of the class members which is alleged to exist in defendants' Quickbooks  
10 records.

11 3. During the hearing, the Court also noted that defendants' disclosures  
12 pertaining to health insurance benefits offered by the defendants to the class  
13 members during the applicable statute of limitations period lacks information  
14 detailing the cost to the employee (premiums) to secure health insurance benefits for  
15 himself and his spouse. This information is missing for the time period specified as  
16 "2012-2013" on the document proffered by defendants during such hearing and  
17 labeled as A CAB 01917. Such information is necessary to make a determination as  
18 to whether defendants offered health insurance benefits to their employees that  
19 complies with the Minimum Wage Amendment to the Nevada Constitution, as  
20 explained in *MDC Restaurants et al. v. Diaz et al.*, 132 Nev. Adv. Op. 76 (NV Sup.  
21 Ct. 2016), to allow defendants to pay the "lower tier" Nevada minimum wage.

22 4. After reviewing the briefs and hearing the representations of both  
23 parties, the Court finds the plaintiffs' motion to compel should be granted within the  
24 parameters discussed below.

25 II.  
26 RECOMMENDATIONS

27 IT IS HEREBY RECOMMENDED that pertaining to Plaintiffs' Motion to  
28 Compel information demonstrating the marital and dependent status of each of the

1 members of the certified class, defendants are instructed to produce W4s for all class  
2 members for the statute of limitations period. Such W4s will be maintained  
3 confidentially under a protective order to be used in this litigation only and shall be  
4 maintained confidentially until such time as otherwise ordered by the District Court  
5 Judge. The production of these materials subject to a protective order will not  
6 impact the parties' abilities to share such information with any experts.

7 Additionally, defendants are instructed to review and investigate their ability to  
8 retrieve this information that shows the marital and dependent status of each of the  
9 class members as reported to defendants by such class members from their  
10 Quickbooks files. Such information must be gathered by defendants for the entirety  
11 of the statute of limitations period through and including the present time, though  
12 defendants are only required to produce such information to plaintiffs' counsel up to  
13 and including December 31, 2015. In the event the District Judge expands the time  
14 frame of the certified class period, defendants shall provide all such post-December  
15 31, 2015 information to plaintiffs' counsel. In so recommending this, the Discovery  
16 Commissioner does not impose upon the defendants any obligation to verify whether  
17 such information as reported to defendants by the class members is factually correct.

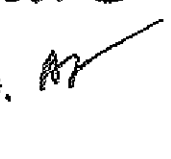
18 IT IS FURTHER RECOMMENDED that pertaining to the portion of  
19 plaintiffs' motion that sought an order compelling production of the "J Roll" Excel  
20 spreadsheets, defendants are directed to investigate whether such "J Roll" materials  
21 or other computerized records utilized by defendants to compile and total up the  
22 hours worked by each class member per each pay period for the statute of limitations  
23 period preceding January 1, 2013 exists. If such Excel "J Roll" or other program or  
24 material was used by defendants to create and keep track of the foregoing-mentioned  
25 total hours worked per pay period by the class members, defendants must produce  
26 the same. Plaintiffs' counsel requested the Commissioner order defendants to  
27 produce a sworn statement in the event defendants claim such files and/or programs  
28 did not exist, but the Discovery Commissioner declines to order the same and

1 believes that such a determination should be made by the District Judge. If  
2 defendants insist they have already produced the "total hours worked per pay period"  
3 amounts for the time period prior to January 1, 2013, defendants must demonstrate  
4 ~~Confirm that it has been provided and confirm the format~~  
~~how such information, the amount of "total hours worked per pay period" for each~~  
5 ~~in which it has been produced. My 1~~  
~~class member, has already been provided.~~

6 IT IS FURTHER RECOMMENDED that defendants are to supplement their  
7 disclosures to indicate the total cost to the employee per pay check for an employee  
8 to secure health insurance for himself and his spouse for the time period "2012-  
9 2013" as specified on the document proffered by defendants during such hearing and  
10 labeled as A CAB 01917.

11  
12 DATED this 15 day of February, 2017.

13  
14   
15 \_\_\_\_\_  
16 DISCOVERY COMMISSIONER  
17  
18

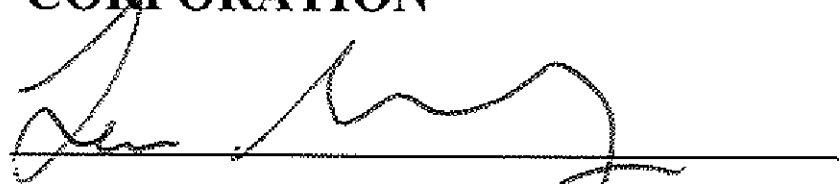
19 I a specific concern was raised as to the existence of  
20 payroll records (or J-Roll) between 2010 and 2013;  
21 Defense Counsel is to confirm whether or not these  
22 records exist. and confirm whether the hours worked  
23 by each member of the class during this  
24 time frame can be calculated based on  
25 the trip sheets and payroll records which have  
26 been produced as discussed at the hearing.   
27  
28

Case Name: Murray v. A Cab, LLC, et al.  
Case No.: A-12-669926-C

The Discovery Commissioner, met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof: hereby submits the above recommendations.

Submitted by:

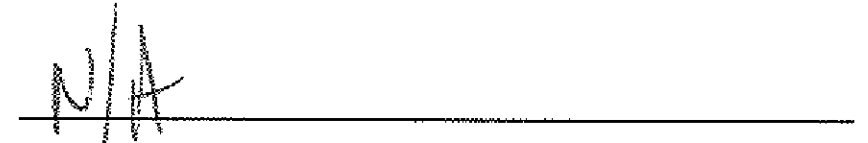
**LEON GREENBERG  
PROFESSIONAL  
CORPORATION**



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[dana@overtimelaw.com](mailto:dana@overtimelaw.com)  
*Attorneys for Plaintiffs*

Approved as to form and content:

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



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[info@rodriguezlaw.com](mailto:info@rodriguezlaw.com)  
*Attorneys for Defendants*



Case Name: Murray v. A Cab, LLC, et al.  
Case No.: A-12-669926-C

**NOTICE**

Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

**The Commissioner's Report is deemed received three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. E.D.C.R. 2.34(f).**

A copy of the foregoing Discovery Commissioner's Report was:

\_\_\_\_\_ Mailed to Plaintiff/Defendant at the following address on the \_\_\_\_ day of \_\_\_\_\_, 2017:

\_\_\_\_\_ Placed in the folder of counsel in the Clerk's office on the \_\_\_\_ day of \_\_\_\_\_, 2017:

✓ \_\_\_\_\_ Electronically served counsel on Feb. 16, 2017, Pursuant to N.E.F.C.R. Rule 9.

By   
Commissioner Designee

**ORDER**

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

- ☒ <sup>NF</sup> The parties having waived the right to object thereto,  
☒ No timely objections having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),  
☐ Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

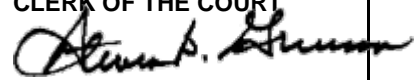
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AND

- ☒ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.  
☐ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner attached hereto.  
☐ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report and Recommendations is set for \_\_\_\_\_, 2017, at \_\_\_\_:\_\_\_\_ a.m.

Dated this 7 day of March, 2017.

  
DISTRICT COURT JUDGE



TRAN

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

MICHAEL MURRAY, et al,

Plaintiffs,

vs.

A CAB TAXI SERVICE, LLC, et al,

Defendants.

CASE NO. A-12-669926

DEPT. NO. I

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE

THURSDAY, MAY 25, 2017

**TRANSCRIPT RE:**  
PLAINTIFF'S RE-NOTICE OF MOTION FOR PARTIAL  
SUMMARY JUDGMENT

APPEARANCES:

For the Plaintiffs:

LEON GREENBERG, ESQ.  
DANA SNIEGOCKI, ESQ.

For the Defendants:

ESTHER C. RODRIGUEZ, ESQ.  
MICHAEL K. WALL, ESQ.

ALSO PRESENT:

CREIGHTON J. NADY

RECORDED BY: Lisa Lizotte, Court Recorder

1 LAS VEGAS, NEVADA, THURSDAY, MAY 25, 2017, 1:37 P.M.

2 \* \* \* \* \*

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

5 MS. RODRIGUEZ: Good afternoon, Your Honor. Esther Rodriguez and  
6 Michael Wall for the defendants, and Creighton J. Nady is present.

7 THE COURT: Good morning -- good afternoon; wherever we are.

8 MR. GREENBERG: Good afternoon, Your Honor. Leon Greenberg with  
9 Dana Sniegocki for plaintiffs.

10 THE COURT: Good afternoon.

11 MS. SNIEGOCKI: Good afternoon.

12 THE COURT: We have pretty well visited this issue. Let's see, we've had  
13 a motion for partial summary judgment with two errata, the opposition, the plaintiff's  
14 reply to the opposition and then I believe there was a supplemental to plaintiff's reply.  
15 We had the oral argument and then we had, at the Court's suggestion or at least  
16 allowance or whatever, we had an additional briefing consisting of a letter from  
17 Mr. Greenberg with attachments and the supplement to the defendants' opposition.

18 So we've given this issue a lot. Is there anything to be added or is  
19 there anything, any argument that needs to be made that hasn't been thus far  
20 addressed?

21 MR. GREENBERG: Well, Your Honor, I would address perhaps some other  
22 issues that in my mind may well be collateral, but it sort of depends upon the Court's  
23 thought process or what the Court agrees is important. So I don't want to start going  
24 off into other subject matter that we haven't discussed because Your Honor really

1 sort of hasn't developed your thoughts --

2 THE COURT: Well, give me a notion --

3 MR. GREENBERG: -- communicated to us that much as yet, Your Honor.

4 THE COURT: Give me a notion of what you're thinking of.

5 MR. GREENBERG: Well, Your Honor, I haven't directly addressed to the  
6 Court the fact that there's really a question of just estoppel here. And the reason  
7 why I say estoppel and I haven't addressed it is because the defendants were under  
8 an obligation to keep hourly records. That's statutory under Nevada law. They were  
9 also subject to a consent judgment from the Department of Labor to keep accurate  
10 records of their employees and pay them accurately in compliance with the federal  
11 minimum wage. And by the way, Your Honor, their payroll records for this period  
12 do show compliance with the federal minimum wage. There is no violation under  
13 federal law for the period we are discussing, 2013 to 2015. The violation that arises  
14 under Nevada law is because of the tip credit issue and because of the dollar an  
15 hour issue involving the health insurance availability.

16 So for them to come to the Court and now say that their records are  
17 not accurate, you know, is in violation of the consent judgment that they agreed to.  
18 It's in violation of their duty under the statute to keep the records. Now, you know,  
19 I mention this as an estoppel issue, but, Your Honor, I didn't really get into this  
20 previously and I don't know that it's germane here because we already have their  
21 admissions testimonially, which I've brought to the Court's attention, at their  
22 deposition that the records are in fact fully accurate that we have used. So there  
23 shouldn't be any dispute as to the accuracy of the records. It's not really even a  
24 question of estoppel, Your Honor.

1 THE COURT: Okay.

2 MR. GREENBERG: That is all that came to my mind additionally that we  
3 did not discuss previously, Your Honor.

4 THE COURT: All right. Ms. Rodriguez, anything additional --

5 MS. RODRIGUEZ: Actually, yes.

6 THE COURT: -- you think needs to be --

7 MS. RODRIGUEZ: Thank you, Your Honor, because that is actually one  
8 of the items that I did want to address that I didn't necessarily highlight in my  
9 supplement to the Court. And I think it's ironic that Mr. Greenberg is arguing about  
10 the estoppel and the accuracy of the records because throughout this litigation and  
11 even in the complaint, and I brought a copy of the complaint because his arguments  
12 completely contradict what he's arguing in the complaint or what he's asking for in  
13 the complaint.

14 Specifically I'm referring -- it starts at the bottom of page 5 of the  
15 second amended and supplemental complaint that was filed on August 19, 2015  
16 and it goes through page 6 and 7. But basically the complaint alleges this 2009  
17 Department of Labor investigation that Mr. Greenberg just referenced that following  
18 that time the complaint states that rather than follow the advisement of the U.S.  
19 Department of Labor, defendants intentionally acted to not institute any system that  
20 would keep an express, confirmed and accurate records of the hours worked by  
21 such taxi driver employees. And then there's a very long paragraph in explanation  
22 as to why they are alleging that the records are not accurate, that they're inaccurate.  
23 But now in summary judgment they are arguing -- they are relying on those exact  
24 records that they previously argued and alleged were inaccurate.

1           So I think there's a big problem there. Either they need to dismiss  
2 parts of their complaint where they're alleging that the records are inaccurate and  
3 that A Cab fails to keep any accurate records, or they go to their current argument,  
4 which is, okay, they are accurate records and based on those records we're asking  
5 for summary judgment. So that was the one point that I wanted to bring to the  
6 Court's attention.

7           The second item, briefly, is just that in preparing again for this hearing  
8 I'm still trying to get my head around what numbers they are asking for, because  
9 when I looked at the original motion that was asking for the time period of January  
10 1st of 2013 through May of 2016, the motion asked for \$174,445, based on the  
11 \$7.25 an hour. The supporting documentation to that motion shows a completely  
12 different figure. These are the figures from Mr. Bass that are \$174,593. It's off.  
13 And then the reply that is allegedly just asking for a figure through the end of 2015  
14 has a third figure that is \$174,423. So just working with the \$7.25, not even getting  
15 into the \$8.25 issue, by their own pleadings and their supporting documentation they  
16 have a number of different calculations that have come from Mr. Bass' methodology.

17           And what Mr. Greenberg just said, that they are strictly going off of  
18 the tip credit issue, if A Cab were to present to the Court, which I didn't know that  
19 that was going to be a basis of his argument this afternoon, but A Cab did look at  
20 their tip credit for the same time period and it's a fourth figure altogether. So if he's  
21 saying now that Mr. Bass' calculations are actually just tips that were improperly  
22 used in the payment for drivers, then A Cab's calculations, just looking at -- they  
23 can run a report on tips that were included during that time period, and that's yet  
24 another figure.

1                   So I think just because there are so many different calculations that  
2 plaintiffs themselves have presented, I think it's improper for the Court at this point  
3 to grant summary judgment on that particular issue. And those are basically --

4           THE COURT: You didn't say proper, you said improper?

5           MS. RODRIGUEZ: I'm sorry?

6           THE COURT: You didn't say it's proper to grant summary judgment?

7           MS. RODRIGUEZ: No, it's improper.

8           THE COURT: Improper. Okay, I just wanted to make sure that I was hearing  
9 you right.

10          MS. RODRIGUEZ: No, I'm not arguing for summary judgment on this.

11          THE COURT: Yeah. Okay.

12          MS. RODRIGUEZ: That would be the other court, the other department.

13          THE COURT: All right.

14          MS. RODRIGUEZ: No.

15          THE COURT: All right.

16          MS. RODRIGUEZ: That's the gist of it, Your Honor.

17          THE COURT: Okay. Well, my conclusion is -- doesn't really address either  
18 point which has just been raised. My conclusion rests upon the notion that when  
19 we last met it appeared that plaintiff at least was convinced that they would not need  
20 the services of an expert in order to present these figures and calculations in such  
21 a fashion that the Court could grant partial summary judgment. My conclusion after  
22 reading everything that I have is that I cannot grant the motion for partial summary  
23 judgment. Partly I believe that it is because either I'm just a little slow, and I don't  
24 claim to have been a arithmetic or a financial whiz, but I could not simply understand



1 from the presentation made by the plaintiff in this last letter from Mr. Greenberg  
2 and the attachments, I could not arrive at a simple calculation and it appeared to  
3 me that it would require the services of an expert in order to help the Court or the  
4 trier of fact. The Court to determine whether there was no issue or the trier of fact  
5 if there is an issue to determine what the correct calculation would be under any of  
6 the scenarios that are put forward by the plaintiff.

7           This case has had a somewhat unusual history, including everything,  
8 including being assigned out to a different department and then brought back.  
9 It is my conclusion that given the present state of discovery and of the time for  
10 designation of experts and their reports on both sides having seemingly passed,  
11 although there was a reservation of an expert, it's my conclusion that we have  
12 time before a February trial date to yet hear from experts. And on my own motion,  
13 *sua sponte*, it appears to me that what would be the best way to try and get to a  
14 resolution in this case that is based upon the merits would be to reopen discovery  
15 for the purposes solely of having both sides have an opportunity to designate  
16 experts and file a report. And if a rebuttal expert is deemed necessary, to do so.

17           I have some dates worked out which I have written down. I'll ask you  
18 to take those down and then I'd like to hear from you if anybody feels that these are  
19 unworkable. And then I'll probably go ahead and do what I was going to do anyway  
20 because I think they are workable, but I'll be glad to hear from you on the subject.  
21 Today is May 25th. I would be reopening discovery strictly for experts and expect  
22 that by June 30th all initial expert designations and reports would be made. By  
23 July 31st, all rebuttal expert designations and reports would be made. Discovery  
24 would then close September 29th, which would set us up in time for dispositive

1 motions to be filed by October 30th.

2 Anybody have any response to that?

3 MR. GREENBERG: Yes, Your Honor. I understand from what you're saying  
4 that you're not precluding a grant of summary judgment for what I have requested  
5 in the future based on a developed record after expert discovery is concluded.

6 THE COURT: That is my thought. I am not -- I would not deny this motion  
7 with prejudice. I think that what we have run into may cast some question and  
8 some doubt about the likelihood of a grant of partial summary judgment, given the  
9 -- to some extent the difficulty to harnessing these numbers and making sense out  
10 of them, but I would not preclude that. I would not preclude the filing or refiling.

11 MR. GREENBERG: Your Honor, I'm just trying to understand the position  
12 of the Court because the testimonial record we have is that the information in  
13 the QuickBooks is the information that was used to produce the payroll and the  
14 paychecks that were issued to the class members and produce the paystubs.

15 In the letter I had delivered to you on Monday, the last page of the  
16 letter actually has a copy of one -- it's Exhibit B, I believe -- it has one page. It has  
17 a copy of the actual paystub issued for a pay period, along with the excerpt from  
18 the Excel materials given to us showing all of the matching payroll transactions that  
19 appear on that paystub. Defendants have testified under oath that it does match,  
20 that anything that is on the paystubs is in the Excel files that were produced.  
21 Defendants do not dispute that that particular paystub I presented to the Court does  
22 in fact present a minimum wage violation. And as I detailed to the Court, it is in fact  
23 included --

24 THE COURT: Am I to gather from this that you're rearguing the motion?

1 MR. GREENBERG: Well, Your Honor, what I'm just trying to understand  
2 in terms of the Court's denial of the motion, is the Court denying the motion based  
3 upon its concern about the calculations that were performed or its concern about  
4 the basis, the underlying basis of what's presented?

5 THE COURT: Then let me -- let me run it by you perhaps with a little more of  
6 an answer to that. You have a bunch of numbers. There is some dispute from the  
7 defendants about whether you can even use those numbers, but you've mounted  
8 evidence that would perhaps seem to indicate that they could not be heard to  
9 complain if you're using their own numbers. But then you go to the calculation, and  
10 getting from those raw numbers on the report to a final calculation I simply suspect  
11 takes more in the form of an evidentiary nature, more of an evidentiary presentation  
12 than simply saying, look, you can take these numbers off of this column and do that.  
13 Well, why? Why does that work?

14 MR. GREENBERG: Well, and if Your Honor feels that that's -- the process,  
15 so to speak, needs to be subject to adversarial scrutiny in terms of taking the  
16 information and reaching the conclusions that I've presented to the Court, then  
17 yeah, I mean, you have experts. They're deposed. There will be a record. There  
18 will be a discussion of that and we can proceed in that fashion.

19 What I find perplexing, Your Honor, is Your Honor is reaching that  
20 conclusion, okay, when defendants have provided nothing. They've provided  
21 nothing in respect to any actual dispute of any of the calculations that are made,  
22 okay. Again, it is their materials, it is their information. They've affirmed under oath  
23 this is correct information. I have demonstrated to the Court that it does in fact  
24 match the payroll that was issued, to the extent that I have the sample to present to

1 the Court. Defendants have not disputed that. They haven't disputed a single line  
2 of the arithmetical analysis that was produced.

3 So, Your Honor, they should have a responsibility to come here before  
4 the Court and provide something substantive to -- rather than just say, well, we can't  
5 trust these calculations.

6 THE COURT: Let me suggest this to you --

7 MR. GREENBERG: Yeah.

8 THE COURT: -- before I even get to whatever their problems are with it.

9 MR. GREENBERG: Okay.

10 THE COURT: There is a burden that you have to show to the Court that this  
11 is a simple enough calculation that even I can do it, and I'm afraid I could not quite  
12 get there. I need something more that explains to me why you take this and take  
13 that and why you do this; the type of thing that I generally get in the form of expert  
14 testimony that explains why certain known facts or data may be used or manipulated  
15 or however you want to call it to produce a conclusion, be it mathematical or  
16 otherwise, which is if not totally unassailable, is at the very least beyond the mark  
17 of what a proponent on a motion must show in order to prevail.

18 MR. GREENBERG: I understand, Your Honor. My concern, quite frankly,  
19 is down the road we're going to be back here on this on a further motion. And we  
20 have a trial scheduled and how the issues in this case may be dealt with either  
21 before trial or at trial. And my problem is this, Your Honor. If defendant has  
22 admitted how much they have paid a class member in a pay period and they've  
23 admitted how many hours that class member worked in the pay period, those are  
24 the only facts we need to know to determine whether they've been paid less than

1 \$7.25 or less than \$8.25 an hour. Do you understand that, Your Honor?

2 THE COURT: Yes. If only it were that simple when you're dealing with  
3 hundreds of records and calculations. Frankly, I don't think that there's a lot more  
4 clarity I can give you as to why I don't feel that I can do this than to say if you were  
5 trying to prevail in front of a jury with this I think you'd be hard pressed. In other  
6 words, without something more to explain to them what the numbers mean, where  
7 you got them, what they mean and how it's calculated out.

8 MR. GREENBERG: Well --

9 THE COURT: And if that doesn't -- if none of that makes any sense to you,  
10 then all I can do is say you can attribute it then to perhaps my inability with numbers  
11 or with something. But I didn't feel that after reading your explanation that I could  
12 simply make that calculation quite as simply as it was expressed to be done and  
13 feel that I was being accurate.

14 MR. GREENBERG: Well, Your Honor, the calculation I described has to be  
15 -- is at issue for something like 14,000 paychecks. It's not -- but the calculation itself  
16 is set by law. I mean, how much was the employee paid and how many hours did  
17 he work? Those are the two relevant factors, Your Honor. I don't want to take up  
18 Your Honor's time excessively. You've been very patient with us. I'm just trying to  
19 understand how we're going to move this case forward and what --

20 THE COURT: Well, it would be nice if you could ask me a few questions  
21 and I could tell you, look, this was the only little bit and piece that was missing.  
22 You'd know what to plug in next time and away we'd go. I don't think I can do that.  
23 I can only tell you that I looked at your explanation and before I even received  
24 Ms. Rodriguez' supplement to the opposition I was pretty sure I wasn't going to

1 be able to get from A to B reliably with what I had.

2 MR. GREENBERG: Your Honor, if I have 14,000 individual paystubs that the  
3 defendant had verified were in fact copies of the paystubs issued on every paycheck  
4 and it showed the hours and the pay and I produced an old-fashioned ledger for  
5 each person based on those paystubs showing any amounts that were owed on  
6 each pay period, would that be -- if that was done by hand by a group of clerks,  
7 would that be more sensible or understandable? You're not sure?

8 THE COURT: How far do you want to go with this?

9 MR. GREENBERG: Your Honor, let me not take up any more of your time.  
10 Again, I'm just trying to get guidance from the Court about how we're going to  
11 proceed.

12 THE COURT: Well, I've tried --

13 MR. GREENBERG: You're doing your best to give me that guidance and  
14 I appreciate it.

15 THE COURT: And I've tried to do my best to explain to you that I can't quite  
16 get there. I can't agree that it is that simple of a calculation that it does not appear  
17 to need something more in the way of evidence, in the form most likely of an expert  
18 explanation for how these things are calculated out.

19 MR. GREENBERG: To do 14,000 calculations, Your Honor, is involved.

20 THE COURT: I'm not suggesting it might take individual explanation of  
21 14,000 calculations. I don't know what it would take for you to do it. That's for you  
22 to figure out.

23 MR. GREENBERG: Well, that's what I'm trying to do, Your Honor, and it just  
24 -- it seems -- I'm confused. I'm just being very straight with Your Honor.

1 THE COURT: Well, you're not alone.

2 MR. GREENBERG: I'm confused because I'm not sure when we go -- when  
3 I present a case to the Court on this --

4 THE COURT: Uh-huh.

5 MR. GREENBERG: -- and we have, again, an established amount that was  
6 paid to someone, an established amount of hours that they worked, it is just an  
7 arithmetic calculation at that point. I mean, 10 divided into 100 is always going to  
8 be 10, Your Honor. It's not subject to dispute.

9 THE COURT: What I hear you saying very nicely and kindly now is that  
10 unless I'm a dunce there's no way I could not be able to see this calculation and  
11 simply do it.

12 MR. GREENBERG: Your Honor --

13 THE COURT: That's what it makes me feel like.

14 MR. GREENBERG: -- the way the information is presented to the Court, the  
15 Court may find lacking. I understand that, okay, and I can certainly work to address  
16 that. When you speak about you don't -- you're not sure that the calculation to be  
17 performed on one particular pay period is so simple --

18 THE COURT: I'm not talking about the simple arithmetic, taking two or three  
19 numbers and running those numbers. I'm talking about how you get to that point.

20 MR. GREENBERG: How you get to that result --

21 THE COURT: Yeah.

22 MR. GREENBERG: -- for 14,000 pay periods. Okay.

23 THE COURT: Yeah.

24 MR. GREENBERG: You've clarified it, Your Honor. Thank you. I've taken

1 up enough of your time on this.

2 THE COURT: Good. I'm glad I finally was able to satisfy you.

3 MR. GREENBERG: Thank you.

4 THE COURT: Now, anything else? Ms. Rodriguez, do you wish to make  
5 comment on --

6 MS. RODRIGUEZ: Just in answer to the Court's question about the  
7 proposed dates. I think those are fair and workable. I don't have any objection to  
8 those dates.

9 THE COURT: Okay.

10 MS. RODRIGUEZ: But just for purposes of the record I just do want to put my  
11 objection that pursuant to the Discovery Commissioner Report and Recommendation  
12 of November 18th, 2016, the expert deadline was January 27th of 2017.

13 THE COURT: Uh-huh.

14 MS. RODRIGUEZ: But I understand the Court's decision in this, so I just --

15 THE COURT: Well, okay. If we were going to go that route, then we could  
16 say that by reserving an expert and by putting all of the necessary things that there  
17 would at least -- it was necessary for at least a designation, that it might have been  
18 a good idea to also counter-designate, even though nobody had a report to give yet.  
19 I would not expect a report --

20 MS. RODRIGUEZ: Right.

21 THE COURT: -- from one without getting a report from the other.

22 MS. RODRIGUEZ: Right.

23 THE COURT: I think this is a complicated enough case; that everybody has  
24 been doing their best to do the best they can with it. And if we're going to make a



1 record, then here's my record. I know you both to be very fine attorneys, very  
2 capable attorneys. I think the level of professionalism has slipped in this case  
3 on both sides. I expect both sides to show a higher level of professionalism and  
4 courtesy towards each other in the future without accusing each other, either in  
5 written pleadings or argument of the motives or a lack of professionalism of each  
6 other. If you have a problem with professionalism take it somewhere, but not here.

7 Am I clear?

8 MR. GREENBERG: Yes, Your Honor. I would not have any disagreement  
9 with your admonition to us in that respect.

10 THE COURT: Ms. Rodriguez?

11 MS. RODRIGUEZ: I understand that, Your Honor, but just for the Court,  
12 because the Court did raise this, or I believe Mr. Greenberg may have raised this  
13 in the last hearing that we were here. And on behalf of A Cab I did consult with the  
14 State Bar on some of the actions that have occurred in this case.

15 THE COURT: Uh-huh.

16 MS. RODRIGUEZ: And Bar counsel informed me that their hands were tied  
17 in proceeding with anything against Mr. Greenberg for like failure to communicate  
18 offers of settlement to his client, those kind of things --

19 THE COURT: Okay.

20 MS. RODRIGUEZ: -- because the district court judges undermine -- well,  
21 undermine is a strong word. I don't mean to insult the Court by that. But basically  
22 Bar counsel said they could only follow the lead of the district court judges --

23 THE COURT: Okay.

24 MS. RODRIGUEZ: -- and they were very frustrated.

1 THE COURT: Okay.

2 MS. RODRIGUEZ: So I understand Your Honor's instruction to take it  
3 elsewhere.

4 THE COURT: I'm not talking about trying to sort out what's happened in the  
5 past. I'm talking about prospectively. If you all have bones of contention with each  
6 other for conduct of counsel in the past there are ways, eventually, to take care of  
7 that. But I'm talking about for the rest of this case, I expect what I know you can  
8 both give. I've seen you do it.

9 MR. GREENBERG: Your Honor, absolutely. Just to address the question  
10 of the schedule you were giving us, Your Honor --

11 THE COURT: Yes.

12 MR. GREENBERG: -- there is discovery outstanding from defendants that's  
13 been ordered. There was discussion earlier about some W-4 information to be  
14 produced, which is important for an expert report. I am waiting the production of  
15 that. I understand you're giving us a deadline to work with here, but obviously  
16 there has to be compliance with the prior orders of the Court regarding discovery.

17 THE COURT: Well, then I suggest you seek it.

18 MR. GREENBERG: Okay. If necessary, I will submit a motion on that.  
19 Yes, Your Honor.

20 THE COURT: I would suggest to both of you that since we have a fairly tight  
21 schedule, that if you aren't getting something you think you're entitled to, you file  
22 with the Discovery Commissioner.

23 MR. GREENBERG: Right. The only other item of discovery, just to bring  
24 it to the Court's attention, is the deposition of Mr. Nady on the claims against him

1 personally. We had a schedule which would have carried us to the end of April.

2 THE COURT: Uh-huh.

3 MR. GREENBERG: We had a 60-day stay, meaning if that schedule had  
4 been carried forward it would have been to the end of June. I've advised defense  
5 counsel that we have a motion to bifurcate before Your Honor, which as I  
6 understand it Your Honor is not inclined to bifurcate the claim against Mr. Nady,  
7 at least not at this point. So I do need to proceed with his deposition on the claims  
8 against him individually.

9 THE COURT: I would suggest that you do that.

10 MR. GREENBERG: Well, I just --

11 MS. RODRIGUEZ: I've addressed that with Mr. Greenberg because we  
12 have a Discovery Commissioner's order in place. And I sent him correspondence  
13 yesterday. I'm not sure if he didn't see that, but she's already ordered an additional  
14 only three hours if necessary. So I've asked them what are the areas of testimony  
15 they're intending to cover because they've already deposed him for I believe over  
16 10 hours on two separate days.

17 THE COURT: Okay.

18 MS. RODRIGUEZ: So I --

19 THE COURT: So it sounds like you may have a discovery dispute to go  
20 before our Discovery Commissioner.

21 MR. GREENBERG: Well, Your Honor, I was addressing this because Your  
22 Honor was talking about opening the discovery specifically for this issue of expert  
23 reports and so forth.

24 THE COURT: Yeah.

1 MR. GREENBERG: The only other item of discovery outstanding that hasn't  
2 been --

3 THE COURT: Oh.

4 MR. GREENBERG: -- ordered by the Court is Mr. Nady's deposition.

5 THE COURT: So you're asking whether you're limited to expert things or not.

6 MR. GREENBERG: And counsel is correct, the discovery -- there was an  
7 understanding with the Discovery Commissioner. His deposition will be limited to  
8 half a day and it is on the claims against him individually. Again, under the stay  
9 that schedule for April 27th or 28th actually wasn't served on us until like a week  
10 or two ago. I don't know, it got lost sort of in the process between the Discovery  
11 Commissioner and Your Honor perhaps. But the point is there was a stay for  
12 60 days while we attempted mediation. So assuming that schedule was in place,  
13 discovery actually wouldn't be expiring until the end of June.

14 THE COURT: Okay.

15 MR. GREENBERG: I just want confirm-- I don't want an unclear record.  
16 I want confirmation --

17 THE COURT: Well, that's fair.

18 MR. GREENBERG: -- that we -- hopefully defendant will go on the record  
19 right now and say, yes, we're going to do this deposition. I'm not talking about  
20 making any other additional discovery demands or requirements on defendants.  
21 This has been sort of in the hopper for awhile, Your Honor. That's all.

22 THE COURT: Well, it would be easy enough to simply say that, yes, the  
23 discovery at least until the end of June may involve matters other than these expert  
24 designations and reports.

1 MR. GREENBERG: Okay. That's consistent with the schedule that was  
2 entered and the --

3 MS. RODRIGUEZ: I'm in agreement with that. I have calculated as well that  
4 our discovery closes at the end of June. I don't remember the exact date. I think  
5 it's like June 27th or thereabouts for other issues, because I similarly have -- want  
6 to take a number of depositions before the close of discovery, unrelated to the  
7 experts. But as far as Mr. Nady's deposition, no, I'm not going to go on the record  
8 as he's asking, saying that I'm agreeing that he has the right to depose him a third  
9 time, because I think he's already asked a number of questions that he's wanting  
10 to ask him again. And so this is an issue that's been repeatedly addressed with the  
11 Discovery Commissioner, so I can't just give him --

12 THE COURT: Well, in the interest of time then, if you know that there's not  
13 going to be agreement, I suggest you file your motion then.

14 MR. GREENBERG: Your Honor, there was a motion for a protective order.  
15 It was denied. That was how we came up with this one half day deposition that was  
16 instructed by the Discovery Commissioner for Mr. Nady on the claims against him  
17 personally. If bifurcation had proceeded I would have deferred that, but it is not  
18 proceeding to be bifurcated.

19 THE COURT: This was an order that our Discovery Commissioner put out?

20 MR. GREENBERG: Yes, it was, Your Honor. And, look, Your Honor, to  
21 the extent that there was any examination of Mr. Nady on anything that he's been  
22 examined on previously, their objections will be preserved. I understand that. There  
23 are claims against him individually regarding his management, the alter ego issues  
24 with the company and so forth which have not been subject to examination. He's

1 been produced as a 30(b)(6) witness, Your Honor. He has not been deposed  
2 in his individual capacity. He elected to come in as a 30(b)(6) witness. He could  
3 have --

4 THE COURT: So, what are you -- the purpose of you saying this now is  
5 you want me to order it?

6 MR. GREENBERG: I don't -- Your Honor, I hear -- if your position is that we  
7 will simply address this by further motion if defendants don't cooperate, then that's  
8 fine. I just want to be clear Your Honor is not precluding this today --

9 THE COURT: No.

10 MR. GREENBERG: -- because Your Honor's initial statement about discovery  
11 proceeding solely --

12 THE COURT: No. And you're correct. You're correct and I stand corrected.  
13 Let us just say, so that we're all on the same page, until the end of June all discovery  
14 will be open.

15 MR. GREENBERG: And we have the additional expert discovery that you've  
16 outlined to us, Your Honor.

17 THE COURT: Beyond June, unless somebody files a motion and it is  
18 warranted, beyond that point then it should be focused on expert discovery.

19 MR. GREENBERG: That's fine, Your Honor.

20 THE COURT: Okay.

21 MS. RODRIGUEZ: That's what I understood the Court to say.

22 MR. GREENBERG: I want to thank Your Honor for being patient with me.  
23 I don't think I was -- I was a little difficult today and I apologize.

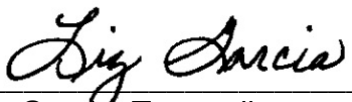
24 THE COURT: Okay. All right, thank you.

1 MS. RODRIGUEZ: So, shall I prepare an order, Your Honor --  
2 THE COURT: All right.  
3 MS. RODRIGUEZ: -- on the motion for partial summary judgment?  
4 THE COURT: That's fine.  
5 MS. RODRIGUEZ: Okay.  
6 THE COURT: And pass it by counsel  
7 MS. RODRIGUEZ: All right. Thank you.  
8 THE COURT: Thank you.

9 (PROCEEDINGS CONCLUDED AT 2:11 P.M.)

10 \* \* \* \* \*

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

14   
15 Liz Garcia, Transcriber  
16 LGM Transcription Service  
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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 23<sup>rd</sup> day of October, 2020

*/s/ LEON GREENBERG*

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Leon Greenberg