

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB, LLC, and A CAB SERIES LLC,

Appellants

vs

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

Respondents.

)
) SUPREME COURT
) CASE # 77050
) Electronically Filed
) Jan 06 2022 01:50 p.m.
) Elizabeth A. Brown
) Clerk of Supreme Court
) District Court
) Case No.: A-12-669926-C
)
) **RESPONDENTS' MOTION FOR**
) **AN AWARD OF ATTORNEY'S**
) **FEES AND INTEREST**
)
)
)

Pursuant to NRAP Rules 27 and 37(b) respondents file this motion seeking an award of attorney's fees for this appeal or an instruction that such an award of fees be appropriately made by the district court pursuant to Article 15, Section 16, of Nevada's Constitution and an instruction in the mandate issued by this Court that post-judgment interest be payable as allowed by law on the judgment and post-judgment award of attorney's fees to be entered by the district court, as modified by this Court's judgment, from the dates of their original entry in the district court, August 21, 2018, and February 6, 2019, respectively.

ON THE REQUEST FOR ATTORNEY’S FEES

I. Whether an appropriate award of attorney’s fees on this appeal should be determined by this court or the district court is not clearly established.

Respondents are current and former employees of appellant who secured a district court judgment under Article 15, Section 16, of the Nevada Constitution, the Minimum Wage Amendment (the “MWA”). Subsection B of the MWA states “[a]n employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney’s fees and costs.” This Court’s Judgment of December 30, 2021, affirmed most of the district court’s judgment and reversed the portion of that judgment predating the MWA’s two-year statute of limitations. This Court has not previously ruled on how attorney’s fees should be awarded in appeals of judgments rendered under the MWA and whether such attorney fee awards are within the jurisdiction of this Court or the district court after remittitur. Respondents bring this motion to ensure they present their request for an award of attorney fees in connection with this appeal to the proper court.

A. This Court has previously ruled that certain attorney fee awards involving appeals should be determined by the district court after remittitur.

When a party requests an award of attorney fees on an appeal and for

post-appeal judgment enforcement motions in the district court, pursuant to a right provided by contract, this Court has held that fee request should be decided by the district court. *See, Musso v. Binick*, 764 P.2d 477, 478 (Nev. Sup. Ct. 1988). Nevada's offer of judgment fee-shifting provisions, NRCF Rule 68 and NRS 17.115, also provide for awards of attorney fees on appeal and this Court has directed such attorney fees be determined by the district court. *See, In re Estate and Living Trust of Miller*, 216 P.3d 239, 243 (Nev. Sup. Ct. 2009).

B. This Court may find good reason exists for it, and not the district court, to determine the amount of attorney's fees to be awarded on this MWA appeal.

There is no uniform approach to the handling of appellate attorney's fee awards under fee shifting statutes such as the MWA. *Compare, Cummings v. Connell*, 402 F.3d 936, 947-48 (9th Cir. 2005) and Ninth Circuit Rule 39-1.8 (district court has no authority to award fees on appeal absent a transfer order from the Ninth Circuit Court of Appeals authorizing it to do so) and *Souza v. Southworth*, 564 F.2d 608, 613-614 (1st Cir. 1977) (district court has authority to award attorney's fees on appeal). *See, also, Yaron v. Township of Northampton*, 963 F.2d 33, 36 (3rd Cir. 1992) (collected cases on conflicting holdings of the Courts of Appeal on the issue).

As recognized in *Souza*, even though the district court may be in a better position to make certain factual findings in connection with an attorney fee award, it is also true “...that a court of appeals is in a better position to assess the importance and quality of appellate work...” 564 F.2d at 613-14. This Court may find it preferable to adopt the approach of the Ninth Circuit, making attorney fee awards on certain appeals directly and directing others be made by the district court, depending on the circumstances. Its decisions in both *Musso* and *Miller* involved a need for attorney’s fees to be determined, and findings of fact made, for work performed in the district court and not just for appellate work. *Musso*, 764 P.2d at 478 (fees sought “for services performed in district court in pursuing post-appeal motions to enforce judgment”), *Miller*, 216 P.3d at 243 (“On remand, the district court should award reasonable post-rejection [of offer of judgment] fees incurred at the district court and appellate levels...”)

This motion concerns an award of attorney’s fees solely for the respondents’ counsel’s work performed in this Court and in connection with this appeal. It involves no fact-finding on any proceedings taken in the district court. As discussed in *Souza*, this Court is in a better position than the district court to evaluate the quality of respondents’ counsel’s appellate work.

This litigation has also been highly contentious, spawning four different appeals (two of which remain pending) and three writ petitions.¹ Given this history, there is a high probability an appeal will be taken from any district court attorney's fee award for this appeal. Finality and judicial efficiency may be better served by having this Court directly make that fee determination.

C. If this Court wants to determine the amount of attorney's fees to award on this appeal appropriate documentation is provided.

Respondents' counsel submits a declaration, Ex. "A," with this motion detailing the basis of its request for an attorney's fee award of \$63,760 in connection with this appeal. As detailed therein, that request is based upon an appropriate reasonable hourly rate (\$400) and an expenditure of hours of time (159.4) that were contemporaneously recorded. That request also excludes from such fee calculation time spent preparing this motion, travel time, all post-oral argument time, and other amounts of time.

¹ In addition to this appeal: *A Cab Taxi Service v. Murray*, No. 71691 (argued *en banc* and resolved); *Murray v. A Cab Taxi Service*, No. 81641 (dismissed on motion); *Murray v. A Cab Taxi Service*, No. 82539 (fully briefed and pending); *Murray v. Dubric*, No. 83492 (appeal of related case judgment, not yet briefed); *A Cab, LLC v. Eighth Jud. Dist. Ct.*, No. 733326 (writ petition, denied without answer); *Murray v. Eighth Jud. Dist. Ct.*, No. 75877 (writ petition, answer directed, dismissed without prejudice as moot); and *Murray v. Eighth Jud. Dist. Ct.*, No. 82126 (writ petition, answer directed, relief denied with issues to be addressed in related case judgment appeal No. 83492).

ON THE REQUEST FOR INTEREST

Pursuant to NRAP 37(b) “[i]f the court modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest.” The Court’s Opinion, which directs a modified money judgment be entered by the district court, contains no such instruction and respondents’ counsel is unsure what NRAP 37(b) instructions the mandate (remittitur) will contain.

This Court has modified the final judgment entered by the district court on August 21, 2018, by reversing the portion of such judgment “as to damages for claims outside of the two-year statute of limitations” and otherwise affirming the district court’s summary judgment decision that resulted in the final judgment. It has remanded the case to the district court for further proceedings consistent with its opinion. Those further proceedings will also involve a re-examination of the award of attorney’s fees and costs set forth in the district court’s order of February 6, 2019. Such re-examination will consider whether: (1) Costs previously awarded should be reduced for the reasons stated in the Opinion; (2) Whether the amount of the attorney’s fees award should be reduced based on the reversal of the portion of the district court’s summary judgment decision concerning the damage claims outside of

the two-year statute of limitations.

Respondents request that the Court's mandate (remittitur) instruct the district court that the new judgment amount entered by the district court on the plaintiffs' damages be subject to post-judgment interest from the date of the original judgment's entry in the district court, August 21, 2018. They also request the district court's order reconsidering the amount of attorney's fees and costs be subject to post-judgment interest from the date of the original district court order granting that award, February 6, 2019. Such post-judgment interest is substantial, in excess of \$120,000 for the plaintiffs on their reduced damages amount (the reduced damages forming the basis for the revised judgment will be approximately \$675,000). Such post-judgment interest is also substantial, very likely over \$100,000, on the attorney's fees and costs award even as reduced in a fashion consistent with the Court's Opinions.

Failing to include the requested NRAP 37(b) mandate (remittitur) instruction on the award of interest will deprive respondents, low-wage workers owed unpaid minimum wages, of over three years of substantial accumulated post-judgment interest. It will also deprive their counsel of a similar amount of accrued interest. It would be unjust to allow appellant to

avoid payment of that accrued interest, at least in a case such as this where the bulk of the original judgment amount (over 69%) and attorney fee and cost award was sustained on appeal.

CONCLUSION

Wherefore, the Court should grant the motion for an award of attorney's fees to respondents' counsel for this appeal or alternatively direct the district court after remittitur to make such an award. The Court should also grant the motion to have the mandate (remittitur) instructions pursuant to NRAP 37(b) require the district court's determinations of damages and attorneys fees and costs upon remand to accrue post-judgment interest from August 21, 2018, and February 6, 2019, respectively.

Dated: January 6, 2022

/s/ Leon Greenberg
Leon Greenberg, Esq. (Bar # 8094)
A Professional Corporation
2965 S. Jones Blvd., Suite E-3
Las Vegas, Nevada 89146
(702) 383-6085
Attorney for Respondents

CERTIFICATE OF SERVICE

I certify that on January 6, 2022, I had served a copy of the foregoing MOTION upon all counsel of record by EFLEX system which served all parties electronically.

Dated this 6th day of January, 2022

/s/ LEON GREENBERG

Leon Greenberg

EXHIBIT "A"

IN THE SUPREME COURT OF THE STATE OF NEVADA

A CAB, LLC, and A CAB SERIES LLC,)	
)	SUPREME COURT
Appellants)	CASE # 77050
vs)	
)	
)	District Court
MICHAEL MURRAY, and MICHAEL)	Case No.: A-12-669926-C
RENO, Individually and on behalf of others)	
similarly situated,)	
)	
Respondents.)	
)	
)	
)	
)	
)	

DECLARATION

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

1. I am the attorney for the respondents. The statements made in this declaration are based upon my personal knowledge and personal observations.
2. I am presenting this declaration in connection with respondents' motion for an award of attorney's fees in connection with this appeal. Prior to drafting this declaration I have reviewed the contemporaneous time records I personally maintained of the work I performed in connection with this

appeal. All such time entries are recorded in increments of a tenth of an hour, with each such entry including the date such work was performed and a description of the work so performed. There are 52 such time entries through June 1, 2021, the date of oral argument of this appeal. Those 52 time entries corroborate that I expended a total of 179.9 hours of my time in connection with the appeal of this matter through June 1, 2021. Based on my review of those time entries, and the outcome of this appeal, I am requesting an award of attorney's fees on behalf of respondents of \$63,760 in connection with this appeal. I base that request on a net and properly charged expenditure of 159.4 hours of my time, at \$400 an hour, to achieve the successful results secured for my clients.

4. This fee request includes no requested fee based on the time expenditures of my law clerk on this appeal; based on the time expended on preparing this motion; or based on the time I expended after the appeal was orally argued or based on any travel time.

5. My time record entries indicate I spent 17.3 hours, or less, of my appellate time expenditures addressing the correctness of the portion of the district court's judgment that pre-dated the two year MWA statute of limitations. Respondents were not successful on that issue and I am not

including in my request for attorney's fees 17.3 hours of my time expenditures on this appeal that in whole or in part were devoted to that issue.

6. My time records indicate I spent 3.2 hours, or less, of my time expenditures dealing with certain confusion I had as to the completeness of the appellant's appendix and responding to motions to extend the appeal briefing time. I am not including in my request for attorney's fees the 3.2 hours of my time expenditures on this appeal that in whole or in part were spent on those activities.

7. Of the remaining 159.4 hours of my time expenditures 18.7 of those hours were spent in connection with unsuccessful mediation/settlement efforts that were required by this Court. That included two mediation sessions lasting a total of 11 hours. The balance of those time expenditures were for activities directly necessary for this appeal, with most of those expenditures involving preparation of the respondents' answering brief; reviewing the 52 volume appellant's appendix and collecting the necessary materials for the respondents' six volume appendix; and preparation for oral argument.

8. The hourly rate (\$400 an hour) upon which I am basing this fee request ($\$400 \times 159.4 = \$63,760$) is the same rate found by the district court in its order of February 6, 2019 to be reasonable for a fee award based on my

time expenditures in that court (Ex. “1” hereto, p. 5, l. 5). This Court also found in its judgment that the district court’s award of attorney’s fees based on that hourly rate was not excessive or performed in an inappropriate manner. That hourly rate is also appropriate given my experience and qualifications. I am a 1992 *magna cum laude* graduate of New York Law School where I received the Trustee’s Prize for having the highest GPA of all graduating evening division students, graduating first in my division and third out of 358 day and evening division students. I am a member of the bars of the States of Nevada, California, New York, New Jersey and Pennsylvania and have continuously practiced law full time since 1993. I have appeared as appellate counsel in at least 15 cases and orally argued in this Court and orally argued at least 10 times since 2007. That hourly fee amount is also reasonable as I have been awarded fees at the considerably higher rate of \$720 an hour in 2016 by both the Ninth Circuit Court of Appeals for appellate work and by the United States District Court for the District of Nevada. *See, Tallman v. CPS Security*, United States Court of Appeals for the Ninth Circuit, appeal No. 14-16508, Docket 42, Order filed September 8, 2016, and motion granted by such

such Order and later district court proceedings in that case, 09-cv-944, Order of November 29, 2016.

I affirm the foregoing is true under the penalty of perjury.



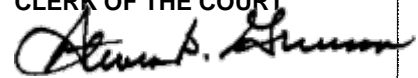
Leon Greenberg



Date

EXHIBIT "1"

EXHIBIT "1"



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

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

12 Plaintiffs,

13 vs.

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

18 Defendants.

Case No.: A-12-669926-C

DEPT.: I

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

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

25 **A. Attorney's Fees**

26 Plaintiffs' motion sought an award of attorneys' fees and costs pursuant to
27 Article 15, Section 16(B) of the Nevada Constitution which states "[a]n employee
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1 who prevails in any action to enforce this section shall be awarded his or her
2 reasonable attorney's fees and costs." Plaintiffs previously secured a judgment in
3 excess of one million dollars for over 900 members of the certified class of plaintiffs
4 via the Court's order of August 21, 2018. The Order further granted class counsel 60
5 days after notice of entry of that Order to apply for an award of fees and costs.
6 Plaintiffs' Motion for an Award of Attorneys Fees and Costs was filed on October 12,
7 2018, and the Court finds such motion was timely filed in compliance with the Court's
8 August 21, 2018 Order.

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

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

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

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

17 The first *Brunzell* consideration is the professional qualities demonstrated by
18 plaintiffs' counsel. The majority of attorney hours detailed in plaintiffs' motion for an
19 attorney fee award and for which compensation is sought, and ultimately awarded by
20 the Court, was performed by Leon Greenberg. Such counsel has demonstrated that he
21 has over 25 years of litigation experience. Such experience includes handling other
22 class action claims seeking unpaid wages owed to employees, including class action
23 claims involving unpaid minimum wages, the issue in this case. The professional
24 experience and qualities of such counsel is also confirmed by their appellate
25 advocacy, most importantly their success in the appeal in *Thomas v. Nevada Yellow*
26 *Cab* 327 P.3d 518 (Nev. Sup. Ct. 2014), such appeal establishing the basis for the
27 minimum wage claim made in this case. The Court has also extensively personally
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1 observed the quality of the advocacy by Leon Greenberg and the other counsel for
2 plaintiffs in this case and finds such advocacy was of a high quality. Such counsel's
3 performance has -been more than adequate. They have presented the Court with
4 appropriate written briefings and demonstrated, both in those submissions and during
5 their oral advocacy, a level of competence, understanding of the relevant legal issues,
6 and professional performance, that is at least equal to the norm of counsel appearing
7 before the Court.

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

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

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

23 In rendering the fee award made by this Order the Court also finds that the
24 hourly rates used by plaintiffs' counsel in proposing the fee to be awarded, a rate of
25 \$400 for their senior counsel Leon Greenberg and lesser amounts for their other
26 counsel, were justified, reasonable and appropriate. The Court also believes the
27 attorney's fee proposed by plaintiffs' counsel is, at least to some implicit extent,
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1 rendered reasonable by defendants' failure to provide any form of meaningful,
2 quantified, information contesting plaintiffs' counsel's calculations and fee award
3 claims. Defendants have provided the Court with no information concerning the
4 hourly rates charged by their counsel or the attorney's fees they have incurred in
5 litigating this matter. Nor have defendants contested the appropriateness of the
6 hourly fee rates upon which plaintiffs' counsel rely or contested with any specificity
7 their overall stated time expenditures.
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12 -The Court is further satisfied that plaintiffs' counsel, as confirmed by their counsel,
13 Leon Greenberg, in open court on December 4, 2018, will not and cannot, by virtue of
14 this Court's final judgment, counsel's retainer agreements with the named plaintiffs,
15 and Rule 23, seek to obtain additional attorneys' fees from any money that has been or
16 will be collected for the class members in satisfaction of the judgment, absent a
17 further order of this Court being issued authorizing the same. Finally, the Court is
18 satisfied that plaintiffs' fee request is based upon plaintiffs' counsel's
19 contemporaneously recorded hours and the Court will not require plaintiffs' counsel to
20 disclose in the record their time notes. Accordingly, the Court finds an appropriate fee
21 award should be based under plaintiffs' second formulation, the "partial exclusion of
22 hours" formulation. Thus, the Court awards plaintiffs' counsel, pursuant to the
23 mandatory fee-shifting provision of Article 15, Section 16 of the Nevada Constitution,
24 \$568,071.00 in attorneys' fees.
25

26 **B. Costs**

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

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

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

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

19 The Court heard Plaintiff's Motion for Partial Summary Judgment on
20 December 14, 2017. The Court GRANTED that motion to the extent Plaintiff has
21 established liability. Thereafter, Plaintiff filed "Plaintiffs' Supplement in Support of
22 Motion for Partial Summary Judgment" arguing that damages and liability are
23 inextricably related. Defendants' also filed their Motion for Summary Judgment on
24 November 27, 2017, and heard on January 2, 2018. Other motions before the Court in
25 the end of December 2017 and early January 2018 included Plaintiffs' Motion to
26 Place Evidentiary burden on Defendant, Plaintiffs' motion to bifurcate or limit issues
27 at trial, Defendants' objection to the Discovery Commissioners Report and
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1 Recommendation, both Defendants' and Plaintiffs' motions in limine, Defendants'
2 Supplement regarding the January 2, 2018 hearing, both sides Objections pursuant to
3 16.1(3), and Plaintiffs' motions to strike affirmative defenses. It was upon review of
4 all of these motions that the Court found that liability and damages were indeed
5 inextricably related. That is precisely why the Court gave Defendants' one more
6 opportunity to present evidence which would rebut that liability, and yet they could
7 not.

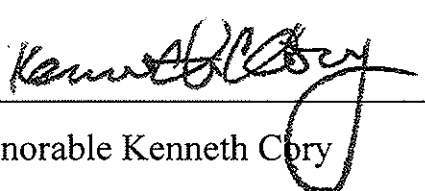
8 It was in preparation of those pretrial motions that the Court inquired into what
9 evidence would be submitted and presented at trial. In Defendants' Motion in Limine,
10 Defendants argued that Plaintiffs' experts methodology was unreliable because it
11 calculated damages derived from inaccurate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

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

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

20 **IT IS SO ORDERED.**

21
22 
23 Honorable Kenneth Cory
24 District Court Judge
25 KC

26
27 
28 Date