

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

JEFF MYERS

Plaintiff/Appellant

v.

RENO CAB COMPANY, INC.

Defendant/Respondent

No. 80448

DOCKETING

CIVIL APPEALS

Electronically Filed
Feb 12 2020 03:29 p.m.

Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Second Department 10
County Washoe Judge Hon. Elliott A. Sattler
District Ct. Case No. CV 15-01359

2. Attorney filing this docketing statement:

Attorney Leon Greenberg, Esq. Telephone 702-383-6085
Firm Leon Greenberg Professional Corporation
Address 2965 S. Jones Boulevard, Suite E-3
Las Vegas, NV 89146

Client(s) Jeff Myers

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Mark G. Simons, Telephone _____
Firm Simons Hall Johnston PC
Address 6490 S. McCarran Blvd., Suite. F-46,
Reno, NV 89509.

Client(s) Reno Cab Company

Attorney Anthony Hall, Ricardo N. Cordova, Esq. Telephone _____
Firm Simmons Hall Johnston PC
Address 6490 S. McCarran Blvd., Suite. F-46,
Reno, NV 89509.

Client(s) Reno Cab Company

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

No prior appeal or writ proceedings in this case.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

This case was consolidated in the First Judicial District court with Shatz and Fratis v. Street, Case No.: CV 15-01385 for all purposes except trial. Summary judgment on the same basis and via the same order was entered for defendants in that case as well, that case also being appealed under Appeal No.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Both Meyers and Shatz and Frantis v. Street allege putative class claims under NRCP Rule 23 seeking unpaid minimum wages alleged to be owed to taxi cab driver employees of the defendants pursuant to Article 15, Section 16, of the Nevada Constitution (the Minimum Wage Amendment or "MWA") and penalties pursuant to NRS 608.040 arising from the failure to pay such minimum wages. The district court's Order of December 16, 2019 granted summary judgment to all defendants constituting a final judgment in the defendants' favor by finding that none of the plaintiffs could make the claims asserted because, as a matter of law, they were not employees of any defendant. It arrived at that conclusion based upon the undisputed fact that each plaintiff entered into a lease agreement with the defendant to operate the taxicab that they drove, such lease agreement having been approved pursuant to NRS 706.473 by the Nevada Transportation Authority. The district court found that such approval of that lease agreement rendered all of the plaintiffs, as a matter of law, independent contractors and not employees for the purposes of the MWA and NRS 608.040.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The district court erred by finding that the existence of the lease agreement between the parties approved by the Nevada Transportation Authority pursuant to NRS 704.473 rendered the plaintiff, as a matter of law, an independent contractor of the defendant and not an employee under the MWA and NRS 608.040. That decision was in error as the Nevada Transportation Authority has no authority or power to define the plaintiff as an independent contractor, and not as an employee, for the purposes of the MWA and such decision is contrary to the holding in *Terry v. Sapphire Gentlemen's Club*, 336 P.3d 951 (Nev. Sup. Ct. 2014) defining how employment is determined for MWA purposes (the "economic realities" test). The proper application of *Terry* would require the granting of summary judgment to the plaintiff on the issue of whether they were, as a matter of law, an employee of the defendant under the MWA and NRS 608.040.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None known except the above noted case and appeal in *Fratis and Shatz v. Street*, Appeal No.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☒ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: Appellant believes the district court decision constitutes a reversal, in part, of the holding in *Terry v. Sapphire Gentlemen's Club*, 336 P.3d 951 (Nev. Sup. Ct. 2014) as under *Terry* neither NRS 704.473 nor any other Nevada Statute can define an "employee" under the MWA (or that is a substantial issue of first impression). This case involves an issue arising under the Nevada Constitution, Article 15, Section 16, of the Nevada Constitution (the Minimum Wage Amendment or "MWA") and whether the appellants are "employees" under the MWA and how, as a matter of law, their status as employees under the MWA is determined.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Pursuant to NRAP 17(a)(11) this appeal is presumptively to be retained by the Supreme Court as it involves a matter of first impression concerning the Nevada Constitution.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? Appellant does not intend to file any such motion.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from December 16, 2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served December 16, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Janury 13, 2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The district court's order granting summary judgment was a final disposition of all claims in the case and as to all parties in the case.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Jeff Myers, Plaintiff; Reno Cab Company, Defendant; Arthur Shatz and Richard Fratis, Plaintiffs; Roy L. Street, dba Capital Cab, Defendants.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff made claims for unpaid minimum wages under the MWA and related penalties under NRS 608.040. All claims were disposed of by the district court's order of December 16, 2019 granting summary judgment to defendant.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Jeff Myers

Name of appellant

February 12, 2020


Date

Clark County, Nevada

State and county where signed

Leon Greenberg

Name of counsel of record


Signature of counsel of record

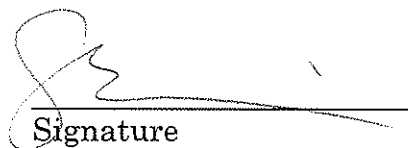
CERTIFICATE OF SERVICE

I certify that on the 12th day of February, 2020, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

By ECF system which served the parties electronically.

Dated this 12th day of February, 2020


Signature

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2 Law Offices of Curtis B. Coulter, P.C.
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4 Reno, Nevada 89501
5 Tel (775) 324-3380
6 Fax (775) 324-3381
7 ccoulter@coulterlaw.net

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17 Attorneys for Plaintiff

18 **IN THE FIRST JUDICIAL DISTRICT COURT OF**
19 **THE STATE OF NEVADA IN AND FOR CARSON CITY**

20 JEFF MYERS, Individually and on behalf of
21 others similarly situated,

22 Plaintiff,

23 vs.

24 RENO CAB COMPANY, INC.,

25 Defendant.

Case No.: 15JC0000915

Dept.: 47

COMPLAINT

**ARBITRATION EXEMPTION
CLAIMED BECAUSE THIS IS
A CLASS ACTION CASE**

26 JEFF MYERS, individually and on behalf of others similarly situated, by and through
27 his attorney, Leon Greenberg Professional Corporation, as and for a Complaint against the
28 defendant, state and alleges, as follows:

JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

1. The plaintiff, JEFF MYERS, (the "plaintiff" or the "named plaintiff") is a resident of Washoe County, Nevada and is a former employee of the defendant.

2. The defendant, RENO CAB COMPANY, INC., (hereinafter referred to as defendant") is a corporation existing and established pursuant to the laws of the State of Nevada and at all times mentioned herein was actively conducting business in Nevada.

3. The transactions between the plaintiff class alleged herein and defendant giving rise to this claim, which involved the furnishing of labor by the plaintiff class members to the defendant such labor not being fully compensated for as required by law as alleged herein, took place, to some substantial extent, within Carson City, Nevada.

CLASS ACTION ALLEGATIONS

4. The plaintiff brings this action as a class action pursuant to Nev. R. Civ. P. §23 on behalf of himself and a class of all similarly situated persons employed by the defendant in the State of Nevada.

5. The class of similarly situated persons consists of all persons employed by defendant in the State of Nevada during the applicable statute of limitations periods prior to the filing of this Complaint continuing until date of judgment, such persons being employed as taxi cab, livery or limousine drivers (hereinafter referred to as "cab drivers" or "drivers") such employment involving the driving of taxi cabs or other vehicles for hire for the defendant in the State of Nevada.

6. The common circumstance of the drivers giving rise to this suit is that while they were employed by defendant they were not paid the minimum wage required by Nevada's Constitution, Article 15, Section 16 for many or most of the days that they worked in that their hourly compensation, when calculated pursuant to the requirements of said Nevada Constitutional Provision, did not equal at least the minimum hourly wage provided for therein.

7. The named plaintiff is informed and believes, and based thereon alleges that there are at least 50 putative class action members. The actual number of class members is readily ascertainable by a review of the defendant's records through appropriate discovery.

1 8. There is a well-defined community of interest in the questions of law and fact
2 affecting the class as a whole.

3 9. Proof of a common or single set of facts will establish the right of each
4 member of the class to recover. These common questions of law and fact predominate
5 over questions that affect only individual class members. The individual plaintiff's claims are
6 typical of those of the class.

7 10. A class action is superior to other available methods for the fair and efficient
8 adjudication of the controversy. Due to the typicality of the class members' claims, the
9 interests of judicial economy will be best served by adjudication of this lawsuit as a class
10 action. This type of case is uniquely well-suited for class treatment since the employer's
11 practices were uniform and the burden is on the employer to establish that its method for
12 compensating the class members complies with the requirements of Nevada law.

13 11. The individual plaintiff will fairly and adequately represent the interests of the
14 class and has no interests that conflict with or are antagonistic to the interests of the class
15 and has retained to represent him competent counsel experienced in the prosecution of
16 class action cases and will thus be able to appropriately prosecute this case on behalf of the
17 class.

18 12. The individual plaintiff and his counsel are aware of their fiduciary
19 responsibilities to the members of the proposed class and are determined to diligently
20 discharge those duties by vigorously seeking the maximum possible recovery for all
21 members of the proposed class.

22 13. There is no plain, speedy, or adequate remedy other than by maintenance of
23 this class action. The prosecution of individual remedies by members of the class will tend
24 to establish inconsistent standards of conduct for the defendant and result in the impairment
25 of class members' rights and the disposition of their interests through actions to which they
26 were not parties. In addition, the class members' individual claims are small in amount and
27 they have no substantial ability to vindicate their rights, and secure the assistance of
28 competent counsel to do so, except by the prosecution of a class action case.

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1 work in a given shift. The plaintiff further had no actual investment in any truly independent
2 business in respect to the work he performed for the defendant, in that the "lease" fee
3 required by defendant from each of its vehicle for hire drivers was \$5.00 or a similar nominal
4 amount per day. Moreover, defendant was as a practical matter not "leasing" any vehicle to
5 the plaintiff or its other vehicle for hire drivers for \$5.00 or a similar nominal amount per day
6 and its business was dependent upon the fares collected by the plaintiff and its other vehicle
7 for hire drivers during their shift as defendant had a 50% stake in the total fares so
8 collected, and the success of defendant's business was directly dependent upon the
9 defendant's share of the fares collected by its vehicle for hire drivers and not upon the
10 money defendant collected from the plaintiff and other vehicle for hire drivers in the form of
11 a nominal "lease" fee. In the event the plaintiff and defendant's other vehicle for hire
12 operators, who also worked for the defendant under similar arrangements, failed to collect
13 significant passenger fares, defendant would not allow them to continue to "lease" vehicles
14 for \$5.00 or the similar nominal "lease fee" per day that they were charged. Thus, plaintiff
15 and the defendant's other vehicle for hire drivers were not acting as truly independent
16 business operators but were *de facto* commission compensated employees of the
17 defendant as a matter of economic reality.

18 18. The economic realities of the relationship between the plaintiff and defendant's
19 other vehicle for hire drivers and the defendant was one of employment, in that the
20 defendant mandated the hours and days of work of its vehicle for hire drivers and also
21 substantially controlled the amount of money they would earn by, among other things,
22 referring fare paying customers to them via "radio calls." Plaintiff and defendant's other
23 vehicle for hire drivers could not decline to accept such radio call assignments and had to
24 follow all of defendant's rules of operation and defendant could refuse to continue to allow
25 the them to drive the defendant's vehicles for hire at anytime, without notice, and without
26 cause. Plaintiff and defendant's other vehicle for hire drivers were treated, in all respects,
27 exactly like employees of the defendant by the defendant.

1 **AS AND FOR A FIRST CLAIM FOR RELIEF ON BEHALF OF THE NAMED PLAINTIFF**
2 **AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO NEVADA'S**
3 **CONSTITUTION**

4 19. The named plaintiff repeats all of the allegations previously made and brings
5 this First Claim for Relief pursuant to Article 15, Section 16, of the Nevada Constitution.

6 20. Pursuant to Article 15, Section 16, of the Nevada Constitution the named
7 plaintiff and the class members were entitled to an hourly minimum wage for every hour that
8 they worked for defendant and the named plaintiff and the class members were often not
9 paid such required minimum wages.

10 21. The defendant's violation of Article 15, Section 16, of the Nevada Constitution
11 involved malicious and/or fraudulent and/or oppressive conduct by the defendant sufficient
12 to warrant an award of punitive damages for the following, amongst other reasons:

13 (a) Defendant despite having, and being aware of, an express obligation under
14 Article 15, Section 16, of the Nevada Constitution, such obligation
15 commencing no later than July 1, 2007, to advise the plaintiff and the class
16 members, in writing, of their entitlement to the minimum hourly wage specified
17 in such constitutional provision, failed to provide such written advisement;

18 (b) Defendant was aware that the highest law enforcement officer of the State
19 of Nevada, the Nevada Attorney General, had issued a public opinion in 2005
20 that Article 15, Section 16, of the Nevada Constitution, upon its effective date,
21 would require defendant and other employers of vehicle for hire drivers to
22 compensate such employees with the minimum hourly wage specified in such
23 constitutional provision. Defendant consciously elected to ignore that opinion
24 and not pay the minimum wage required by Article 15, Section 16, of the
25 Nevada Constitution to its vehicle for hire employees in the hope that it would
26 be successful, if legal action was brought against it, in avoiding paying some
27 or all of such minimum wages;

1 (c) Defendant, to the extent it believed it had a colorable basis to legitimately
2 contest the applicability of Article 15, Section 16, of the Nevada Constitution to
3 its taxi driver employees, made no effort to seek any judicial declaration of its
4 obligation, or lack of obligation, under such constitutional provision and to pay
5 into an escrow fund any amounts it disputed were so owed under that
6 constitutional provision until such a final judicial determination was made.
7

8 22. Defendant engaged in the acts and/or omissions detailed in paragraph 21 in
9 an intentional scheme to maliciously, oppressively and fraudulently deprive its vehicle for
10 hire driver employees of the hourly minimum wages that were guaranteed to those
11 employees by Article 15, Section 16, of the Nevada Constitution. Defendant so acted in the
12 hope that by the passage of time whatever rights such vehicle for hire employees had to
13 such minimum hourly wages owed to them by the defendant would expire, in whole or in
14 part, by operation of law. Defendant so acted consciously, willfully, and intentionally to
15 deprive such vehicle for hire employees of any knowledge that they might be entitled to
16 such minimum hourly wages, despite the defendant's obligation under Article 15, Section
17 16, of the Nevada Constitution to advise such vehicle for hire employees of their right to
18 those minimum hourly wages. Defendant's malicious, oppressive and fraudulent conduct is
19 also demonstrated by its failure to make any allowance to pay such minimum hourly wages
20 if they were found to be due, such as through an escrow account, while seeking any judicial
21 determination of its obligation to make those payments.

22 23. The named plaintiff seek all relief available to him and the alleged class under
23 Nevada's Constitution, Article 15, Section 16 including appropriate injunctive and equitable
24 relief to make the defendant cease its violations of Nevada's Constitution and a suitable
25 award of punitive damages.

26 24. The named plaintiff on behalf of himself and the proposed plaintiff class
27 members, seeks, on this First Claim for Relief, a judgment against the defendant for
28 minimum wages owed since November 28, 2006 and continuing into the future, such sums

1 to be determined based upon an accounting of the hours worked by, and wages actually
2 paid to, the plaintiff and the class members, a suitable injunction and other equitable relief
3 barring the defendant from continuing to violate Nevada's Constitution, a suitable award of
4 punitive damages, and an award of attorneys' fees, interest and costs, as provided for by
5 Nevada's Constitution and other applicable laws.

6 **AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT TO NEVADA REVISED**
7 **STATUTES § 608.040 ON BEHALF OF THE NAMED PLAINTIFF**
8 **AND THE PUTATIVE CLASS**

9 25. Plaintiff repeats and reiterates each and every allegation previously made
10 herein.

11 26. The named plaintiff brings this Second Claim for Relief against the defendant
12 pursuant to Nevada Revised Statutes § 608.040 on behalf of himself and the alleged class
13 of all similarly situated employees of the defendant.

14 27. The named plaintiff has been separated from his employment with the
15 defendant and at the time of such separation was owed unpaid wages by the defendant.

16 28. The defendant has failed and refused to pay the named plaintiff and numerous
17 members of the putative plaintiff class who are the defendant's former employees their
18 earned but unpaid wages, such conduct by such defendant constituting a violation of
19 Nevada Revised Statutes § 608.020, or § 608.030 and giving such named plaintiff and
20 similarly situated members of the putative class of plaintiff a claim against the defendant for
21 a continuation after the termination of their employment with the defendant of the normal
22 daily wages defendant would pay them, until such earned but unpaid wages are actually
23 paid or for 30 days, whichever is less, pursuant to Nevada Revised Statutes § 608.040.

24 29. As a result of the foregoing, the named plaintiff seeks on behalf of himself and
25 the similarly situated putative plaintiff class members a judgment against the defendant for
26 the wages owed to him and such class members as prescribed by Nevada Revised Statutes
27 § 608.040, to wit, for a sum equal to up to thirty days wages, along with interest, costs and
28 attorneys' fees.

WHEREFORE, plaintiff demand the relief on each cause of action as alleged

1 aforesaid.

2 Plaintiff demand a trial by jury on all issues so triable.

3
4 AFFIRMATION

5 Pursuant to NRS 239B.030

6 The undersigned does hereby affirm that the preceding document, Complaint, does
7 not contain the social security number of any person.

8
9 Dated this 15th day of January, 2015.

10
11 Leon Greenberg Professional Corporation

12
13 By:  _____

14 LEON GREENBERG, Esq.
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20 Attorney for Plaintiff
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Reno, Nevada 89509
6 Telephone: (775) 785-0088
Attorneys for Defendants Reno Cab Company, Inc.
7 and Roy L. Street, dba Capital Cab
8
9

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR THE COUNTY OF WASHOE**

12 JEFF MYERS, individually and on behalf of
others similarly situated,

CASE NO.: CV15-01359

13 Plaintiff,

DEPT. NO.: 10

14 vs.

15 RENO CAB COMPANY, INC.,

16 Defendant.
17

18 ARTHUR SHATZ, and RICHARD FRATIS,
19 individually and on behalf of others similarly
20 situated,

CASE NO.: CV15-01385

DEPT. NO.: 10

21 Plaintiffs,

22 vs.

23 ROY L. STREET, individually and doing
24 business as CAPITAL CAB,

25 Defendant.
26
27
28

NOTICE OF ENTRY OF ORDER

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

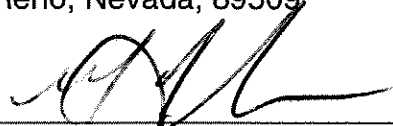
SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

1 PLEASE TAKE NOTICE that an Order Granting Motion for Summary Judgment was
2 entered by the Honorable Elliot A. Sattler on the 16th day of December, 2019, in the above-
3 entitled matters. See **Exhibit 1**.

4 **AFFIRMATION:** The undersigned hereby affirms that the preceding document
5 does not contain the social security number of any person.
6

7 DATED this 16th day of December, 2019.

8 SIMONS HALL JOHNSTON PC
9 6490 S. McCarran Blvd., #F-46
10 Reno, Nevada, 89509



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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SIMONS HALL JOHNSTON PC and that on this date I caused to be served a true copy of **NOTICE OF ENTRY OF ORDER** on all parties to this action by the method(s) indicated below:

☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Curtis Coulter, Esq.
Leon Greenberg, Esq.
Attorneys for Jeff Myers

Curtis Coulter, Esq.
Attorneys for Arthur Shatz, et al.

☐ by personal delivery/hand delivery addressed to:

☐ by facsimile (fax) addressed to:

☐ by Federal Express/UPS or other overnight delivery addressed to:

DATED this 16 day of December, 2019.



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EXHIBIT LIST

NO.	DESCRIPTION	PAGES
1	Order Granting SMJ	10

EXHIBIT 1

EXHIBIT 1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

JEFF MYERS, individually and on behalf of
others similarly situated,

Plaintiff,

Case No.: CV15-01359

vs.

Dept. No.: 10

RENO CAB COMPANY, INC.,

Defendant.

ARTHUR SHATZ and RICHARD FRATIS,
individually and on behalf of others similarly
situated,

Plaintiffs,

Case No.: CV15-01385

vs.

Dept. No.: 10

ROY L. STREET, individually and d/b/a
CAPITAL CAB,

Defendants.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Presently before the Court is the MOTION FOR SUMMARY JUDGMENT ("the Motion")
filed by Defendants RENO CAB COMPANY, INC. and ROY L. STREET dba CAPITAL CAB
(collectively, "the Defendants") on May 30, 2019. Plaintiffs JEFF MYERS, ARTHUR SHATZ
and RICHARD FRATIS (collectively, "the Plaintiffs") filed PLAINTIFFS' RESPONSE IN

1 OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ("the Opposition")
2 on July 8, 2019. The Defendants filed the REPLY IN SUPPORT OF MOTION FOR SUMMARY
3 JUDGMENT ("the Reply") on July 23, 2019. The Court held a hearing on October 16, 2019, and
4 took the matter under advisement.

5 The COMPLAINT in CV15-01385 was filed on January 16, 2015, in the First Judicial
6 District, and the COMPLAINT in CV15-01359 was filed on July 1, 2015, in the First Judicial
7 District. The parties stipulated to a change of venue, and the matters were transferred to the Second
8 Judicial District. The parties also stipulated to consolidate the two matters for all purposes, except
9 for trial. See SECOND AMENDED STIPULATION FOR CONSOLIDATION (Aug. 19, 2016).
10 This matter is an employment dispute in which the Plaintiffs contend the Defendants failed to pay
11 the Plaintiffs the requisite minimum wage and seek to collect unpaid wages and waiting time
12 penalties. The Plaintiffs are taxicab drivers, and the Defendants are taxicab companies in Washoe
13 County and Carson City. The undisputed facts are as follows: 1) the population in both Washoe
14 County and Carson City, individually, is less than 700,000 people; 2) the lease agreements at issue
15 ("the Leases") were executed between the Plaintiffs and the Defendants; 3) the Plaintiffs signed the
16 Leases; 4) the Nevada Transportation Authority ("the NTA") approved the Leases; and 5) an
17 appropriate Certificate of Public Conveyance and Necessity ("CPCN") was issued to the
18 Defendants allowing them to enter into the Leases. Tr. of Hr'g 6:24; 7:1-24; 8:1-24; 9:1-24;
19 10:1-21.

20 The Defendants contend they are entitled to summary judgment because the Plaintiffs are
21 independent contractors as a matter of law under NRS 706.473. The Motion 3:10-17; 4:2-4. The
22 Defendants contend the Plaintiffs are not entitled to claim a minimum wage or waiting time
23 penalties as independent contractors, thus foreclosing their claims as a matter of law. The Motion
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1 6:15-17; 19:3-12; 24:25-28. The Plaintiffs respond that NRS 706.473 does not define an
2 independent contractor for wage purposes. The Opposition 2:14-17. The Plaintiffs also argue the
3 NTA does not have the power to determine whether an individual is an independent contractor, and
4 compliance with NRS 706.473 does not create an independent contractor relationship for minimum
5 wage purposes. The Opposition 5:18-24; 6:1-2, 18-23; 7:1-7; 9:13-20. The Defendants reply that
6 their compliance with NRS 706.473 is fatal to the Plaintiffs' claims, and the Plaintiffs' argument
7 that NRS 706.473 is inapplicable to wage claims is unsupported by the statutory language. The
8 Reply 3:23-25; 5:15-23; 7:14-28.

10 NRCP 56(a) allows a party to petition the court for summary judgment on a claim or
11 defense. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. 49, 55,
12 366 P.3d 1105, 1109 (2016). Summary judgment is appropriate where the moving party
13 demonstrates no genuine issue of material fact, thus entitling the party to judgment as a matter of
14 law. NRCP 56(a). A material fact is one that could impact the outcome of the case. *Wood v.*
15 *Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005) (quoting *Anderson v. Liberty*
16 *Lobby*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2509-10 (1986)). "The manner in which each party
17 may satisfy its burden of production depends on which party will bear the burden of persuasion on
18 the challenged claim at trial." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172
19 P.3d 131, 134 (2007). When the party moving for summary judgment does not bear the burden of
20 persuasion at trial, the movant may satisfy the burden of production for summary judgment by
21 "submitting evidence that negates an essential element of the nonmoving party's claim" or
22 "pointing out that there is an absence of evidence to support the nonmoving party's case." *Id.* at
23 602-03, 172 P.3d at 134.

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1 When considering a motion for summary judgment, the district court must view the
2 evidence and any reasonable inferences drawn from it in the light most favorable to the
3 nonmoving party. *Wood*, 121 Nev. at 729, 121 P.3d at 1029. However, the nonmoving party must
4 set forth “specific facts demonstrating the existence of a genuine factual issue.” *Pegasus v. Reno*
5 *Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002) (explaining non-moving party may
6 not stand on “general allegations and conclusions”). Such facts must be predicated on admissible
7 evidence, and the non-moving party is not permitted “to build a case on the gossamer threads of
8 whimsy, speculation and conjecture.” *Id.* “The substantive law controls which factual disputes
9 are material and will preclude summary judgment; other factual disputes are irrelevant.” *Wood*,
10 121 Nev. at 731, 121 P.3d at 1031.
11

12 Statutory construction is a question of law. *Kay v. Nunez*, 122 Nev. 1100, 1104, 146 P.3d
13 801, 805 (2006). *See also Las Vegas Dev. Grp., LLC v. Blaha*, 134 Nev. Adv. Op. 33, 416 P.3d
14 233, 236 (2018). The ultimate goal of statutory construction is to give effect to the Legislature’s
15 intent in enacting the statute. *Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. Adv. Op. 9, 412 P.3d 56,
16 59 (2018). The statute’s plain language is the best indicator of legislative intent. *Id.* Where the
17 language is clear and unambiguous, a court does not look beyond it to ascertain legislative intent.
18 *State v. Plunkett*, 134 Nev. Adv. Op. 88, 429 P.3d 936, 938 (2018). *See also Blaha*, 134 Nev. Adv.
19 Op. 33, 416 P.3d at 235-36 (explaining court gives language its ordinary meaning where language
20 is plain and unambiguous).
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1 NRS 706.473¹ provides in relevant part:

- 2 1. In a county whose population is less than 700,000, a person who holds a certificate
3 of public convenience and necessity which was issued for the operation of a taxicab
4 business may, upon approval from the Authority [NTA], lease a taxicab to an
5 independent contractor who does not hold a certificate of public convenience and
6 necessity. A person may lease only one taxicab to each independent contractor with
7 whom the person enters into a lease agreement. The taxicab may be used only in a
8 manner authorized by the lessor's certificate of public convenience and necessity.
- 9 2. A person who enters into a lease agreement with an independent contractor pursuant
10 to this section shall submit a copy of the agreement to the Authority for its approval.
11 The agreement is not effective until approved by the Authority.
- 12 3. A person who leases a taxicab to an independent contractor is jointly and severally
13 liable with the independent contractor for any violation of the provisions of this
14 chapter or the regulations adopted pursuant thereto, and shall ensure that the
15 independent contractor complies with such provisions and regulations.

16 NRS 706.475 provides:

- 17 1. The Authority [NTA] shall adopt such regulations as are necessary to:
- 18 (a) Carry out the provisions of NRS 706.473; and
- 19 (b) Ensure that the taxicab business remains safe, adequate and reliable.
- 20 2. Such regulations must include, without limitation:
- 21 (a) The minimum qualifications for an independent contractor;
- 22 (b) Requirements related to liability insurance;
- 23 (c) Minimum safety standards; and

24 ¹ The Court previously entered an ORDER on June 12, 2017, denying a similar motion for summary judgment filed by
25 the Defendants. In footnote six, the Court stated, "[t]he Court need not consider NRS 706.473 in depth when NRS
26 608.0155 establishes the criteria for an independent contractor relationship." NRS 608.0155 discusses the conditions
27 which create the presumption an individual is an independent contractor. However, the *Yellow Cab* Court
28 acknowledged the existence of a "statutorily created independent contractor relationship" under NRS 706.463 which
does not depend on control, as NRS 608.0155 does. *Yellow Cab of Reno, Inc. v. Second Jud. Dist. Ct.*, 127 Nev. 583,
592, 262 P.3d 699, 704-05 (2011). The Court's conclusion that NRS 706.473 was inapplicable was erroneous given the
analysis in *Yellow Cab*. The Court should have examined NRS 706.473 in its previous order. Furthermore, the parties
requested the Court analyze NRS 706.473 given its potentially dispositive nature of the Plaintiff's claims, and the Court
agreed to do so. See STIPULATION AND ORDER VACATING TRIAL, STAYING PROCEEDINGS AND
ADDRESSING RELATED ISSUES (May 24, 2019).

- 1 (d) The procedure for approving a lease agreement and the provisions that must be
2 included in a lease agreement concerning the grounds for the revocation of such
3 approval.

4 NAC 706.3753 outlines the requirements for lease agreements between independent
5 contractors and taxicab companies. It provides in relevant part:

- 6 1. Each lease agreement entered into by a certificate holder and an independent contractor
7 pursuant to NRS 706.473 must:

- 8 (a) Be maintained by the certificate holder.
- 9 (b) Be in writing and in a form approved by the Authority [NTA].
- 10 (c) Identify the use to be made of the taxicab by the independent contractor and the
11 consideration to be received by the certificate holder. The use to be made of the
12 taxicab must conform to the authority granted by the certificate to operate the
13 taxicab.
- 14 (d) Be signed by each party, or his or her representative, to the agreement.
- 15 (e) Specifically state that the independent contractor is subject to all laws and
16 regulations relating to the operation of a taxicab which have been established by
17 the Authority and other regulatory agencies and that a violation of those laws and
18 regulations will breach the agreement.
- 19 (f) Specifically state that the certificate holder is responsible for maintaining:
- 20 (1) All required insurance associated with the taxicab and the service which is
21 the subject of the agreement in accordance with NAC 706.191;
- 22 (2) A file which contains the qualifications of the independent contractor to drive
23 the taxicab; and
- 24 (3) A file for records concerning the maintenance of the taxicab.
- 25 (g) Specifically state that the lease agreement does not relieve the certificate holder
26 from any of his or her duties or responsibilities set forth in this chapter and
27 chapter 706 of NRS.
- 28 (h) Specifically state that the taxicab provided pursuant to the lease agreement:
- (1) Will be painted with the name, insigne and certificate number of the
certificate holder; and

1 (2) Is in a good mechanical condition that will meet the requirements for
2 operating taxicabs set forth by this State or the county or municipality in
3 which the taxicab will be operated.

4 (i) Specifically state that the independent contractor shall not transfer,
5 assign, sublease or otherwise enter into an agreement to lease the
6 taxicab to another person.

7 (j) Specifically state that the independent contractor:

8 (1) Shall not operate the taxicab for more than 12 hours in any 24-hour period;
9 and

10 (2) Shall return the taxicab to the certificate holder at the end of each shift to
11 enable the certificate holder to comply with the provisions of NAC 706.380.

12 (k) Contain any other provision which the Authority may determine to be necessary
13 for the protection of the health and safety of members of the public.

14 The *Yellow Cab* Court instructed district courts to consider whether the statutory and administrative
15 requirements outlined in NRS 706.473 have been satisfied to determine whether an independent
16 contractor relationship exists between a taxicab driver and taxicab company. 127 Nev. at 592, 262
17 P.3d at 704-05.

18 The Court will grant the Motion because the Plaintiffs are independent contractors as a
19 matter of law. Contrary to the Plaintiffs' argument, compliance with NRS 706.473 and NAC
20 706.3753 creates an independent contractor relationship as a matter of law. The *Yellow Cab* Court
21 made this abundantly clear when it opined that "[t]he existence of this statutorily created
22 independent contractor relationship turns not on the issue of control," but on the satisfaction of
23 statutory and administrative requirements. 127 Nev. at 592, 262 P.3d at 704. In this case, all of the
24 requirements in NRS 706.473 and NAC 706.3753 have been satisfied, thus creating an independent
25 contractor relationship between the Plaintiffs and the Defendants. Regarding NRS 706.473, it is
26 undisputed that both Washoe County and Carson City individually have populations less than
27 700,000 people. It is also undisputed each of the Defendants held the appropriate CPCN to enter
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1 into the Leases. Neither party disputes the Leases were executed by the Plaintiffs and the
2 Defendants, and the Leases identify the Plaintiffs as independent contractors. The Motion Ex. 4;
3 Ex. 5; Ex. 6. It is further undisputed the NTA approved the Leases. Therefore, all of the statutory
4 requirements under NRS 706.472 have been satisfied.

5 The Leases contain all of the information required by NAC 706.3753. The Leases were
6 maintained by the Defendants, in writing and in a form approved by the NTA, and state the
7 Defendants will lease a specific taxicab to the Plaintiffs for a rental fee. *See* Ex. 4 ¶ 8; Ex. 5 ¶ 8;
8 Ex. 6 ¶ 8. *See also* NAC 706.3753(1)(a)-(c). The Plaintiffs signed their respective Leases, and the
9 Leases identified the Plaintiffs as independent contractors who were subject to all laws and
10 regulations established by the NTA and other regulatory agencies, the breach of which would
11 constitute a breach of the Leases. *See* Ex. 4 ¶ 10, ¶ 16; Ex. 5 ¶ 10, ¶ 16; Ex. 6 ¶ 10, ¶ 16. *See also*
12 NAC 706.3753(1)(d)-(e). The Leases state the Defendants are responsible for maintaining all
13 required insurance, files regarding driver qualifications and taxicab maintenance records. *See* Ex. 4
14 ¶ 4, ¶ 18; Ex. 5 ¶ 4, ¶ 18; Ex. 6 ¶ 4, ¶ 18. *See also* NAC 706.3753(1)(f). The Leases indicate the
15 Defendants are not relieved of any of their duties under NRS Chapter 706, and the taxicabs will be
16 painted with the name, insignia and certificate number of the Defendants and are in good
17 mechanical condition. *See* Ex. 4 ¶ 1, ¶ 3; Ex. 5 ¶ 1, ¶ 3; Ex. 6 ¶ 1, ¶ 3. *See also* NAC
18 706.3753(1)(g)-(h). The Leases prohibit the Plaintiffs from transferring, assigning or subleasing the
19 taxicab to anyone else and from operating the taxicab for more than twelve hours in a twenty-four-
20 hour period; the Plaintiffs are also required to return the taxicabs at the end of each shift. *See* Ex. 4
21 ¶ 3, ¶ 5, ¶ 6; Ex. 5 ¶ 3, ¶ 5, ¶ 6; Ex. 6 ¶ 3, ¶ 5, ¶ 6. *See also* NAC 706.3752(1)(i)-(j).

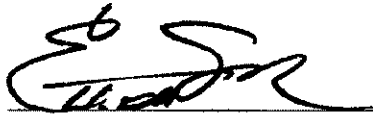
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1 Because all statutory and administrative requirements have been satisfied, the Plaintiffs are
2 independent contractors as a matter of law. As such, the protections afforded to “employees” in the
3 Minimum Wage Amendment (“the MWA”) and NRS 608.040 do not apply. The MWA provides,
4 “[e]ach employer shall pay a wage to each *employee* of not less than the hourly rates set forth in this
5 section.” NEV. CONST. art. 15 ¶ 16(A) (emphasis added). The clear language of the MWA
6 demonstrates it does not apply to independent contractors. Additionally, NRS 608.040 permits
7 “employees” who have been discharged or who have resigned or quit to collect unpaid wages and
8 waiting time penalties. The clear and unambiguous language of NRS 608.040 demonstrates it is
9 applicable to employees only. The use of the term “employee” in the MWA and NRS 608.040 is
10 not mere semantics; rather, it reflects a fundamental employment distinction. As independent
11 contractors, the Plaintiffs are foreclosed from recovery under the MWA and NRS 608.040 as a
12 matter of law.
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15 **IT IS ORDERED** the MOTION FOR SUMMARY JUDGMENT is hereby **GRANTED**.

16 **DATED** this 16 day of December, 2019.
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21 ELLIOTT A. SATTLER
22 District Judge
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of December, 2019, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 16 day of December, 2019, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

CURTIS B. COULTER, ESQ.


LEON GREENBERG, ESQ.

DANA SNIEGOCKI, ESQ.

MARK G. SIMONS, ESQ.

JEREMY B. CLARKE, ESQ.

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Sheila Mansfield
Judicial Assistant