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

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

Appellant,

vs.

RENO CAB COMPANY, INC.,

Respondent.

No. 80448
District Ct. # CV15-01359

Electronically Filed
Jun 22 2020 11:09 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

Appellants,

vs.

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

Respondent.

No. 80449
District Ct. # CV15-01385

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**JOINT APPENDIX
VOLUME II OF III**

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Shatz v. Street dba Capital Cab, No 80449

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18	Reply in Support of Motion for Summary Judgment of Roy L. Street filed September 30, 2016 and Opposition to Counter-Motion, <i>Shatz v. Roy L. Street dba Capital Cab</i>	November 17, 2016	II, JA 370-383
19	Reply in Support of Counter-Motion of Jeff Myers filed October 31, 2016, <i>Myers v. Reno Cab Company</i>	December 1, 2016	II, JA 384-391
20	Reply in Support of Counter-Motion of Arthur Shatz and Richard Fratis filed October 31, 2016, <i>Shatz v. Roy L. Street dba Capital Cab</i>	December 1, 2016	II, 391-397
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23	Response in Opposition of plaintiffs Arthur Shatz and Richard Fratis to Motion for Summary Judgment of Roy L. Street filed September 30, 2016 and Counter-Motion for Discovery Pursuant to NRCPP Rule 56(F) in <i>Shatz v. Roy L. Street dba Capital Cab</i> with Exhibits	November 1, 2016	II, JA 272-355

24	Response in Opposition of Jeff Myers, Arthur Shatz and Richard Fratis to Motion for Summary Judgment filed May 30, 2019 of Reno Cab Company, <i>Meyers v. Reno Cab Company</i> , and Roy L. Street, <i>Shatz v. Street dba Capital Cab</i> (consolidated cases) with Exhibits	July 8, 2019	III, 537-570

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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 Case No.: CV15-01359
others similarly situated

Dept. No.: 8

Plaintiff,

v.

RENO CAB COMPANY, INC.,

Defendant.

PLAINTIFFS' RESPONSE TO
MOTION FOR SUMMARY
JUDGMENT
COUNTER-MOTION FOR
DISCOVERY PURSUANT TO
NRCP RULE 56(F)

Plaintiff hereby submits this response in opposition to defendant's motion for summary
judgment and in support of plaintiffs' counter-motion for discovery pursuant to NRCP Rule
56(f).

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MEMORANDUM OF POINTS AND AUTHORITIES

SUMMARY

Defendant's motion is premature, made prior to the development of a proper record for the Court's consideration, and relies upon a non-existent "conclusive presumption" and facts that are disputed by the parties.

The only accurate statement in defendant's moving papers is its recital of the parties' dispute, which is whether the plaintiff was an independent contractor or employee of the defendant who enjoys the minimum wage protections of Article 15, Section 16 of the Nevada Constitution, enacted in 2006 (the Minimum Wage Amendment or "MWA"). The Nevada Supreme Court, in *Thomas v. Nevada Yellow Cab*, 327 P.3d 518 (2014) found that taxi drivers are not exempt from the minimum wage required by the MWA. It further held, in *Terry v. Sapphire Gentlemen's Club*, 336 P.3d 951 (Nev. Sup. Ct. 2014) that the test of "employment" under the MWA is one of "economic realities," applying that well developed test of employment under the federal minimum wage law, the Fair Labor Standards Act (the "FLSA").

The resolution of this case is not controlled, and cannot be controlled, by the dictates of any Nevada statute. Plaintiff's claims arise directly under the Nevada Constitution and the MWA does not grant the Nevada Legislature the power to modify or change it terms through any statute. The principle of constitutional supremacy, the foundation of the decision in *Thomas*, strips Nevada's statutes of the power to define, much less create a "conclusive presumption," as to what workers are to be deemed "employees" or "independent contractors" under the MWA. For the purposes of the minimum wage claims asserted in this case whether the plaintiffs are employees or independent contractors must be evaluated under the "economic realities" test of employment, as recognized in *Terry*.

Since defendant's motion is predicated upon the application of a non-existent statutory "presumption" it must be denied and the Court need not consider any other issues raised by that

1 motion. But if the Court were to do so, it is also apparent that critically relevant facts are in
2 dispute and a woefully insufficient factual record is before the Court. Accordingly, summary
3 judgment must also be denied on that basis and appropriate NRCP Rule 56(f) relief, to allow a
4 full range of discovery to be conducted, must also be granted.

5 **IN RESPONSE TO DEFENDANT'S FACTUAL ASSERTIONS**

6 **There are undisputed facts which are irrelevant**

7 Defendant's motion depends, in large or majority measure, upon wholly irrelevant
8 "facts." These include such things as the plaintiff having his "social security number" as do all
9 employees and this obtaining of the licenses necessary for him to drive a taxi cab. Yet plaintiff
10 was no different than any other employee who had to have a specific form of motor vehicle,
11 truck operator, etc., license to perform their employment duties. These "facts," while true, are
12 irrelevant.

13 The great weight of defendant's motion is based upon the lease agreement that the
14 plaintiff signed and that was a condition of his employment. That lease agreement does not,
15 and cannot, make the plaintiff an "independent contractors" by a consensual agreement of the
16 parties. It is well established that an "employee" cannot agree to become a "non-employee" for
17 minimum wage purposes and waive any of their rights under the MWA through a contract or
18 lease. The MWA expressly prohibits any such waiver. *See*, Nev. Const. Art. 15, Sec. 16,
19 Subpart B ("The provisions of this section may not be waived by agreement between an
20 individual employee and an employer.") If such contracts to "agree" to *not* be an employee for
21 minimum wage purposes were enforceable, the minimum wage law itself would be, as a
22 practical matter, rendered a legal nullity as all "employers" would simply "contract around" its
23 requirements.

24 The lease agreement signed by the plaintiff and relied upon by defendant (Ex. "1" to
25 defendant's motion) was not executed until December 27, 2013, well after plaintiff began
26 working as a taxicab driver for defendant. *See*, Ex. "B," documents produced by defendant
27

1 during the course of discovery showing plaintiff was working as a taxicab driver for defendant
2 from at least as early as August 13, 2013. No basis exists to impose the terms of that lease
3 agreement to the parties' relationship prior to the date of its execution.
4

5 **The relevant facts alleged by defendant are disputed.**

6 Defendant claims certain facts, which if true would be relevant to the parties' dispute,
7 are "undisputed." Such facts are *not* "undisputed." They are simply asserted, in a blanket,
8 undetailed, untruthful and summary fashion by the defendant in an affidavit. Those assertions
9 cannot be accepted as true by the Court and are vigorously disputed by the plaintiff. They
10 include an assertion that the plaintiff controlled when he leased a taxicab; that he controlled
11 length of his workday; that he controlled what passengers he chose to transport; and that
12 whether the plaintiff made any money from his work as a taxi driver had nothing to do with
13 what Reno Cab did or did not do. *See*, Defendant's Motion for Summary Judgment at Ex. "2."
14 Plaintiff controverts each of those assertions. He had no control over when he could drive a
15 taxi and had to agree to a pre-arranged schedule of workdays that was set by Reno Cab. Ex.
16 "A," declaration of Jeff Myers. He did not control the length of his workdays and was required
17 to be available to take passenger fares for at least 10 hours of his scheduled 12 hour shift every
18 day he worked unless the defendant consented to an "early out," which means he would need to
19 get permission to work a shorter shift. *Id.* "Early outs" were not favored by defendant and
20 could lead to being placed on suspension or stand-by work status. *Id.* Defendant controlled
21 what passengers he transported and he was not free to turn away radio call passengers that the
22 defendant told him to transport. He had to take those radio call passengers even if they earned
23 him very little money and he would have earned more money by seeking to accept a "non-radio
24 call" ride from a passenger at a casino instead of the radio call. *Id.* And his income as a taxi
25 driver was significantly dependent upon Reno Cab providing him with customers as at least
26 50% of his passengers were provided by Reno Cab radio calls. *Id.*
27
28

1 Defendant's assertion that the plaintiff only worked 6 hours or less during a 12 hour
2 shift is demonstrably false. As demonstrated by his own trip sheets his average shift length,
3 measured from his "out" time from defendant's garage with his taxi to his last fare of the shift's
4 "end time" was in excess of 10 hours. Ex. "C," tripsheets for August of 2013 and Excel
5 spreadsheet analysis of the same.

6 **Defendant ignores the controlling economic considerations of the parties' relationship,**
7 **which was one where the plaintiff was a commission paid**
8 **laborer and not truly an economically independent business person .**

9 The significance of the parties' lease agreement is in its economic terms. Plaintiff was
10 not "leasing" taxis which he operated with absolutely no economic interest retained by Reno
11 Cab in his activities while it was under such "lease." The economic reality is that there was no
12 true "lease" that was occurring. Reno Cab was paying a "commission" to the plaintiff for
13 driving Reno Cab's taxi. Reno Cab needed for the plaintiff to be active transporting paying
14 customers while that taxi was "leased." It needed to have the plaintiff collecting fares, and
15 making money for Reno Cab, while he was nominally "leasing" the taxi cab. The entire
16 structure of that "lease" was a travesty, requiring only a nominal \$10.00 per day assured
17 "lease" payment from the plaintiffs with the plaintiff then allowed to keep 50% of the fares
18 actually collected. Reno Cab, under that "lease" agreement, could not simply turn the plaintiff
19 loose, as it claims, to work as little, or as much as he wanted, for a 12 hour lease while only
20 being assured of a \$10.00 "lease" payment for those 12 hours. It had to, and did, intimately
21 control the activities of the plaintiff while he "leased" that taxi cab to sure it was making
22 money from the plaintiff's "leased" activities.

23 Plaintiff was also expressly barred under the lease's terms from subleasing the taxi or
24 having any "unauthorized person" (that term is not defined but presumably meaning anyone not
25 approved of by Reno Cab) operate the taxi. See, Ex. "1" to Defendant's Motion, Lease
26 agreement, at ¶ 23(n). While defendant insists the plaintiff "had the ability to hire someone to

1 assist him to perform his independent contractor duties” such assertion is meaningless. The
2 plaintiff’s “duties” consisted of driving a taxi cab and he could not hire a “substitute” driver
3 without defendant’s consent.

4 ARGUMENT

5 I. THE “ECONOMIC REALITIES” OF THE PARTIES’ 6 RELATIONSHIP DETERMINES THE PLAINTIFF’S STATUS 7 AS AN “EMPLOYEE” FOR MINIMUM WAGE PURPOSES.

8 A. Nevada’s statutes have no relevancy to what constitutes 9 “employment” subject to the Nevada Constitution’s 10 Minimum Wage Amendment.

11 In *Thomas* the Nevada Supreme Court made clear that the structure of the MWA
12 allowed for no deviation from its terms, no exceptions to its requirements, to be effectuated by
13 any legislatively enacted statute:

14 It is fundamental to our federal, constitutional system of government that a state
15 legislature "has not the power to enact any law conflicting with the federal
16 constitution, the laws of congress, or the constitution of its particular State."
17 "The Nevada Constitution is the 'supreme law of the state,' which 'control[s]
18 over any conflicting statutory provisions.....'"

19 In our view, the district court's and respondents' reading of the Minimum Wage
20 Amendment as allowing the Legislature to provide for additional exceptions to
21 Nevada's constitutional minimum wage disregards the canon of construction
22 "'expressio unius est exclusion alterius,' the expression of one thing is the
23 exclusion of another." The Minimum Wage Amendment expressly and broadly
24 defines employee, exempting only certain groups: "'employee' means any person
25 who is employed [by an individual or entity that may employ individuals or
26 enter into contracts of employment] but does not include an employee who is
27 under eighteen (18) years of age, employed by a nonprofit organization for after
28 school or summer employment or as a trainee for a period not longer than ninety
(90) days." Following the expressio unius canon, the text necessarily implies
that all employees not exempted by the Amendment, including taxicab drivers,
must be paid the minimum wage set out in the Amendment. 327 P.3d at 520-
21.

25 *Thomas* did not examine the question of what laborers are properly considered
26 “employees” and not independent contractors under the MWA. But it confirms that the answer
27 to that question must be found in the text of the MWA itself, as no statutory enactments can

1 vary or “define” what that text requires. Under the doctrine of constitutional supremacy, the
2 Nevada Legislature, and the statutes it enacts, cannot diminish or alter the force of the MWA.

3
4 The question of what sort of relationship constitutes “employment” for minimum wage
5 purposes under Nevada’s minimum wage laws, and is not properly treated as an “independent
6 contractor” relationship even if such was the parties’ intent, was directly answered in *Terry*.
7 Presumably defendant, in reply, will argue that the reasoning of *Terry* is inapplicable as it
8 directly addressed only Nevada’s minimum wage statute, NRS 608.250 and not the MWA.
9 That is an argument without substance. As *Terry* makes clear the MWA, as held by *Thomas*,
10 effectuates an intent of Nevada’s voters to create a broader constitutional minimum wage right
11 for Nevada workers. 336 P.3d at 955. And while the narrow issue *Terry* was presented with
12 was determining employee status under the minimum wage statute, NRS 608.250, and not the
13 MWA, it ultimately makes clear its adoption of the “economic realities” test of employment for
14 both: “We therefore adopt the FLSA’s [the Fair Labor Standards Act, federal minimum wage
15 law’s] “economic realities” test for employment in the context of Nevada’s minimum wage
16 laws.” 336 P.3d at 958, plural tense emphasized.

17
18 **B. Defendant’s motion must be denied as it has not**
19 **established that the plaintiff is an “independent**
20 **contractor” under the “economic realities” test of**
21 **employment governing minimum wage claims under**
22 **Nevada’s Constitution.**

23 As *Terry* noted, the economic realities test of employment for minimum wage purposes
24 requires an examination of “...the totality of the circumstances of the circumstances that make
25 up a working relationship’s economic reality...” *Id.* While it did not formulate any rigid or
26 hard and fast test, it identified six factors “which courts nearly universally consider” when
27 applying that test, citing *Real v. Driscoll Strawberry Assocs., Inc.* 603 F.2d 748, 754 (9th Cir.
28 1979). *Id.*

Those six factors are:

- (1) the degree of the alleged employer's right to control the manner in which the work is to be performed;
- (2) the alleged employee's opportunity for profit or loss depending upon his managerial skill;
- (3) the alleged employee's investment in equipment or materials required for his task, or his employment of helpers;
- (4) whether the service rendered requires a special skill;
- (5) the degree of permanence of the working relationship; and
- (6) whether the service rendered is an integral part of the alleged employer's business.

Id.

Even a cursory examination of these factors, based upon the very limited record before the Court, establishes they cannot possibly be sufficiently established in the defendant's favor to result in the granting of defendant's motion. Ultimately, plaintiff contends any proper evaluation of those factors must result in a finding that the plaintiff was an employee, but he defers his arguments for summary judgment in his favor until after a full record is developed through discovery.

Of these six factors only one, or at most two, could, arguably, based on the facts of this case, lend some measure of support for an independent contractor finding. The first of those factors is the "alleged employer's right to control the manner in which the work is to be performed." Defendant's taxi drivers, being in the field and away from any direct in-person supervision by managers at a fixed business location, they had some ability to control the "manner" in which they performed their work. They could typically decide on their own initiative whether to turn left or right on a particular street or take a particular course of travel for a passenger and so forth.

The other of those factors is "the alleged employee's opportunity for profit or loss depending upon his managerial skill." The defendant's taxi drivers had, to some extent, to use their own initiative to locate customers and transport them efficiently to increase their earnings.

1 As a result, this factor is not one that, on its face, completely favors an employment finding.

2 Yet an examination of the relevant facts does not show that these two factors weigh
3 substantially, or even to any significant extent, in the defendant's favor. Both the "manner" in
4 which the plaintiff performed his work and his "profit and loss" opportunities were
5 substantially controlled, if not overwhelmingly dominated, by the defendant. While the
6 defendant did not dictate, to the precise street and turn, every route of travel the plaintiff took
7 while driving the taxi cab, it controlled when the plaintiff would work; how long he would
8 work on the days he did work; the fares that he charged; what passengers he had to take from
9 the defendant's radio calls, which were 50% of all the passengers, and other significant
10 elements of the "manner" in which the plaintiff performed his work. Reno Cab's exercise of
11 control in that fashion also significantly influenced the plaintiff's "profit and loss"
12 opportunities, as the plaintiff could not pursue more attractive profit opportunities when
13 defendant was commanding him to take radio calls. Ex. "A" at ¶ 5. Indeed, some of those
14 radio calls would also impose a loss on the plaintiff, one he was powerless to avoid. *Id.*

15
16 The other four factors identified in *Terry*, the plaintiff's investment in equipment and
17 materials or use of helpers; whether they were rendering services requiring a special skill; the
18 degree of permanence of their working relationship with Reno Cab; and whether the service
19 they provided was an integral part of Reno Cab's business, weigh overwhelmingly if not
20 exclusively in the plaintiff's favor. The plaintiff had no investment in his taxi driving activities
21 as Reno Cab owed the taxis and also prohibited him from using "helpers" to drive the taxis.
22 Driving a taxi is not a special skill as the vast majority of adults know how to drive an
23 automobile. The plaintiff worked on permanent and set schedules for Reno Cab. The business
24 of Reno Cab is providing transportation by taxi, a service that it completely depended upon the
25 plaintiff to provide through his labor.

1 **II. MATERIAL ISSUES OF FACT ARE IN DISPUTE**
2 **AND SUMMARY JUDGMENT MUST BE DENIED**

3 As discussed, *supra*, defendant seeks summary judgment by seeking to have this Court
4 apply an erroneous legal standard that would, as a *per se* matter, result in a “non-employee”
5 finding for MWA purposes for any laborer who agreed, whether in defendant’s “lease”
6 agreement or some other contract, to be an “independent contractor.” And as also discussed, a
7 proper determination of the employee/independent contractor issue also requires the
8 development of a much fuller factual record for the Court’s consideration.

9 But even if the Court were to examine the defendant’s motion in a more limited context,
10 it is apparent that summary judgment must be denied because, as discussed in the foregoing
11 statement of facts, the material facts that they assert exist and entitle them to summary
12 judgment are all disputed.

13 **IN SUPPORT OF THE COUNTER-MOTION**

14 **There has been very little opportunity for discovery to be conducted**
15 **and plaintiff should be granted leave to conduct further discovery.**

16 Only limited discovery has been conducted in this matter and plaintiff’s counsel has
17 written to defendant’s counsel about the inadequacies of the defendant’s discovery responses.
18 *See*, Ex. “D.” The parties have yet to confer about defendant’s discovery responses. Plaintiff’s
19 have also noticed a deposition under Nev. R. Civ. P. 30(b)(6) of the defendant which has yet to
20 be confirmed by defendant.

21 Plaintiff should be allowed discovery to develop an appropriate factual record to
22 address the “economic realities” test of employment. Defendant’s motion is clearly premature
23 and made without affording any reasonable allowance to the plaintiff to conduct discovery.
24 Accordingly, plaintiff’s counter-motion under NRCP Rule 56(f) should be granted and
25 discovery in this matter, including but not limited to a Nev. R. Civ. P. 30(b)(6) deposition,
26 should be allowed prior to defendant renewing its motion for summary judgment.

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CONCLUSION

For all the foregoing reasons, defendant's motion should be denied and plaintiff's motion granted in its entirety together with such further relief as the Court deems proper.

The undersigned hereby affirm that the above document does not contain the Social Security Number of any person, pursuant to NRS 239B.030.

Dated this 31st day of October, 2016.

Leon Greenberg Professional Corporation

By: /s/ Leon Greenberg

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5 (b), I hereby certify that I am an employee of the Law Offices of Curtis B. Coulter and that I served a true and correct copy of the foregoing PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY JUDGMENT COUNTER-MOTION FOR DISCOVERY PURSUANT TO NRCP RULE 56(F) by:

- ☒ Mail on all parties in said action, by placing a true copy thereof, enclosed in a sealed envelope with first-class postage affixed thereto, deposited in the United States Mail, at Reno, Nevada.
- ☐ Personal delivery by causing a true copy thereof to be hand-delivered to the address or addresses set forth below.
- ☐ Facsimile on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address or addresses noted below.
- ☐ Federal Express or other overnight delivery.
- ☐ Hand-delivery by Reno/Carson Messenger Service.

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DATED: 10.31.2016



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INDEX OF EXHIBITS

Exhibit A	Mr. Myers' Declaration
Exhibit B	Discovery Produced RCC_2 and 3
Exhibit C	Tripsheets
Exhibit D	Discovery responses

EXHIBIT "A"

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

27 JEFF MYERS, Individually and on behalf of Case No.: CV15-01359
28 others similarly situated

Dept. No.: 8

Plaintiff,

DECLARATION OF JEFF MYERS

v.

RENO CAB COMPANY, INC.,

Defendant.

Jeff Myers hereby affirms, under penalty of perjury, that:

1. I am the plaintiff in this lawsuit. I am offering this declaration in response to defendant's motion for summary judgment. This case concerns my claim that I was an employee of Reno Cab when I worked for them as a taxi driver and I was entitled to a

1
2
3 minimum hourly wage for that work. I understand that Reno Cab is now requesting that
4 the Court dismiss my case because it claims I was really an independent contractor, not
5 their employee. As part of that request, Reno Cab has made a number of statements to
6 the Court that are not true.

7 2. While I signed a contract to "lease" a cab from Reno Cab to drive, and that "lease" was
8 day to day, my work agreement with Reno Cab was not really a "lease" but a "fare
9 split" arrangement. Each shift that I took out a cab to drive I would collect the fares on
10 the meter from passengers. From those fares I had to pay for the taxi's gas and pay
11 Reno Cab \$10.00 plus one-half of the total amount of fares collected.

12 3. I understand that Reno Cab has told the Court that I could get a cab from Reno Cab to
13 drive whenever I wanted under the lease agreement I signed with them and I could drive
14 it as much, or as little, as I wanted, but just not for more than 12 hours at once. That is
15 not true. I could only drive a cab on the days and times that I pre-arranged with Reno
16 Cab and they agreed to let me drive one. They had a minimum number of days of work
17 each week, a regular schedule, for each taxi driver. I worked a five day a week set
18 schedule. It was not acceptable to Reno Cab for me just to not show up to drive a taxi
19 on the days they assigned one to me or even to arrange with them in advance to take
20 days off. If I did not show up for my shifts, or took too many days off, I would be
21 "suspended" from driving for some period of time. That means they would they would
22 refuse to let me drive a taxi on other days that I was normally scheduled to drive. They
23 would also place taxi drivers on "standby" if they called in sick too much, or missed too
24 many scheduled shifts, or left their shifts early too often or failed to bring in enough
25 fares during their shifts. Drivers placed on "standby" were allowed to show up at Reno
26 Cab to try and get a cab to drive but might, or might not, be given a chance to drive a
27

1
2
3 cab and make money depending on whether a cab was available. And if a driver
4 consistently failed to make a large enough book (collection of passenger fares during
5 their shift) or took too many days off Reno Cab would fire them and not let them
6 continuing driving its taxi cabs.

7 4. Reno Cab also required that when I took a cab out to drive on my shift I was not to
8 return it, and stop working without their permission, until I had been driving for at least
9 10 hours of the 12-hour shift. They also did not want cab drivers ending their shifts until
10 they had booked at least \$60.00 in passenger fares. If you booked at least \$60.00 you
11 could ask Reno Cab managers or dispatchers for an "early out" so you could finish your
12 shift before the normal 10 hour minimum and go home. But Reno Cab did not like
13 drivers taking early outs and discouraged them from doing that and did not have to give
14 early outs to drivers. I did not often request an early out but based on my experience at
15 Reno Cab I believe any driver who took an early out more than once a month would
16 very likely expose themselves to a bad response from management at Reno Cab,
17 including being suspended or being placed on standby status.

18 5. I understand Reno Cab claims I could decide what fares to pick up and that the amount I
19 earned driving the cab had no relationship to anything that Reno Cab did. That is not
20 true. Approximately 50% of the customers I transported I received from radio calls to
21 me by Reno Cab's dispatchers. I did not have the freedom only pick up the customers I
22 wanted when the Reno Cab dispatcher gave me a radio call. Unless I could give the
23 Reno Cab dispatcher a safety related excuse, such as the call seemed to be to a place
24 where there might be criminal activity going on and I might be in danger if I took it, I
25 had to pick up the passenger. That meant I was required to pick up very low value fares
26 that were not worth my time. For example, I would be told by the dispatcher to take a
27

1
2
3 \$5.00 fare that involved transporting a senior citizen to a store and then taking him back
4 home. It was not in my interest to spend my time taking that fare and it would have
5 been better for me to have spent that time waiting at one of the Reno casinos for a better
6 fare, but Reno Cab required that I take that fare. On more than one occasion, Reno Cab
7 required I drive outside of Reno, to Virginia City or Lake Tahoe, to pick up a fare that
8 was not there. I lost money on those assignments because I had to pay for the gas to
9 drive to those places and made no fare at all. But, again, I had no choice, I had to take
10 those fares. Those radio call customers were also a very important part of the income I
11 earned as a Reno Cab driver. Without Reno Cab providing those radio call customers to
12 me I would have transported significantly fewer customers and booked a much smaller
13 amount of fares, meaning both Reno Cab and I would have made much less money.

- 14 6. Reno Cab also made sure the other taxi drivers and I were in our cabs and working and
15 available to take fares. They required we respond to a "check in" call every two hours to
16 confirm that we were in our taxis and available to take fares. They did that because they
17 did not want us going home or taking extended breaks during our shifts, they wanted us
18 with the taxis and available to take fares and make money during our entire shift.

19 Date: 10/26/14
20 10/27/14

21
22 
JEFF MYERS

EXHIBIT "B"

Cab No	Dr No	Driver	In Date/Time	Time	Type	Book	Net	Due
575	5156	Myers, Jefferson W	1/16/2014 14:30	8:00	Split Meter	110.25	55.13	65.88
535	5156	Myers, Jefferson W	1/15/2014 15:00	8:30	Split Meter	108.25	54.13	64.13
588	5156	Myers, Jefferson W	1/11/2014 15:30	9:00	Split Meter	118.50	59.25	70.75
570	5156	Myers, Jefferson W	1/10/2014 15:00	8:30	Split Meter	98.25	49.13	59.13
540	5156	Myers, Jefferson W	1/8/2014 17:00	9:00	Split Meter	59.00	29.50	39.50
537	5156	Myers, Jefferson W	1/4/2014 14:30	7:30	Split Meter	104.75	52.38	62.38
511	5156	Myers, Jefferson W	1/3/2014 15:00	8:00	Split Meter	70.75	35.38	45.38
511	5156	Myers, Jefferson W	1/1/2014 15:30	8:30	Split Meter	122.75	61.38	71.38
511	5156	Myers, Jefferson W	12/31/2013 16:30	9:30	Split Meter	105.25	52.63	62.63
511	5156	Myers, Jefferson W	12/28/2013 16:00	9:00	Split Meter	104.50	52.25	62.25
511	5156	Myers, Jefferson W	12/27/2013 16:30	10:00	Split Meter	138.75	69.38	80.13
511	5156	Myers, Jefferson W	12/26/2013 16:00	9:30	Split Meter	91.00	45.50	51.25
511	5156	Myers, Jefferson W	12/25/2013 15:30	9:00	Split Meter	242.50	121.25	126.25
511	5156	Myers, Jefferson W	12/24/2013 16:00	9:30	Split Meter	118.00	59.00	64.00
511	5156	Myers, Jefferson W	12/21/2013 16:30	10:00	Split Meter	143.00	71.50	77.25
511	5156	Myers, Jefferson W	12/20/2013 16:00	9:30	Split Meter	113.75	56.88	61.88
585	5156	Myers, Jefferson W	12/19/2013 16:30	9:00	Split Meter	78.00	39.00	44.00
572	5156	Myers, Jefferson W	11/10/2013 0:00	4:00	Split Meter	307.00	153.50	159.25
572	5156	Myers, Jefferson W	11/9/2013 0:00	4:00	Split Meter	257.25	128.63	134.38
572	5156	Myers, Jefferson W	11/8/2013 0:00	4:00	Split Meter	78.50	39.25	45.00
572	5156	Myers, Jefferson W	11/7/2013 0:00	4:00	Split Meter	60.00	30.00	35.00
566	5156	Myers, Jefferson W	11/6/2013 0:00	4:30	Split Meter	50.50	25.25	30.25
572	5156	Myers, Jefferson W	11/3/2013 0:00	4:00	Split Meter	173.50	86.75	92.50
572	5156	Myers, Jefferson W	11/2/2013 0:00	4:00	Split Meter	166.00	83.00	89.50
572	5156	Myers, Jefferson W	11/1/2013 0:00	4:30	Split Meter	105.00	52.50	58.25
572	5156	Myers, Jefferson W	10/27/2013 0:00	4:30	Split Meter	278.25	139.13	144.88
572	5156	Myers, Jefferson W	10/26/2013 0:00	4:00	Split Meter	127.75	63.88	68.88
596	5156	Myers, Jefferson W	10/25/2013 0:00	4:30	Split Meter	85.25	42.63	47.63
572	5156	Myers, Jefferson W	10/24/2013 0:00	4:30	Split Meter	88.00	44.00	49.00
572	5156	Myers, Jefferson W	10/20/2013 0:00	4:00	Split Meter	127.25	63.63	68.63
572	5156	Myers, Jefferson W	10/19/2013 0:00	4:30	Split Meter	171.25	85.63	92.13
572	5156	Myers, Jefferson W	10/18/2013 0:00	4:30	Split Meter	176.00	88.00	93.00
572	5156	Myers, Jefferson W	10/16/2013 0:00	4:00	Split Meter	85.41	42.71	47.71
572	5156	Myers, Jefferson W	10/13/2013 0:00	4:30	Split Meter	128.50	64.25	70.00
572	5156	Myers, Jefferson W	10/12/2013 0:00	4:30	Split Meter	171.25	85.63	90.63
572	5156	Myers, Jefferson W	10/11/2013 0:00	4:30	Split Meter	160.75	80.38	85.38
572	5156	Myers, Jefferson W	10/10/2013 0:00	4:00	Split Meter	89.50	44.75	50.50
572	5156	Myers, Jefferson W	10/6/2013 0:00	4:00	Split Meter	266.75	133.38	140.63
572	5156	Myers, Jefferson W	10/5/2013 0:00	4:00	Split Meter	127.25	63.63	70.13
572	5156	Myers, Jefferson W	10/4/2013 0:00	4:00	Split Meter	98.00	49.00	54.00
572	5156	Myers, Jefferson W	10/3/2013 0:00	4:00	Split Meter	74.75	37.38	42.38
578	5156	Myers, Jefferson W	10/2/2013 0:00	4:00	Split Meter	127.25	63.63	68.63
578	5156	Myers, Jefferson W	10/1/2013 0:00	4:00	Split Meter	138.25	69.13	74.13

RCC_000002

568	5156 Myers, Jefferson W	9/30/2013 0:00	4:30 Split Meter	62.00	31.00	36.00
572	5156 Myers, Jefferson W	9/29/2013 0:00	4:00 Split Meter	259.75	129.88	136.38
572	5156 Myers, Jefferson W	9/28/2013 0:00	4:00 Split Meter	207.00	103.50	110.00
572	5156 Myers, Jefferson W	9/27/2013 0:00	4:00 Split Meter	60.25	30.13	35.13
572	5156 Myers, Jefferson W	9/26/2013 0:00	4:30 Split Meter	62.00	31.00	38.25
572	5156 Myers, Jefferson W	9/25/2013 0:00	4:00 Split Meter	62.00	31.00	36.75
572	5156 Myers, Jefferson W	9/22/2013 0:00	4:00 Split Meter	167.00	83.50	88.50
572	5156 Myers, Jefferson W	9/21/2013 0:00	4:00 Split Meter	101.25	50.63	57.13
572	5156 Myers, Jefferson W	9/19/2013 0:00	4:00 Split Meter	101.50	50.75	56.50
572	5156 Myers, Jefferson W	9/14/2013 0:00	4:00 Split Meter	110.00	55.00	60.00
572	5156 Myers, Jefferson W	9/13/2013 0:00	3:00 Split Meter	100.00	50.00	56.50
572	5156 Myers, Jefferson W	9/12/2013 0:00	4:00 Split Meter	176.00	88.00	93.75
572	5156 Myers, Jefferson W	9/11/2013 0:00	4:00 Split Meter	33.00	16.50	21.50
572	5156 Myers, Jefferson W	9/8/2013 0:00	4:00 Split Meter	202.25	101.13	108.38
572	5156 Myers, Jefferson W	9/7/2013 0:00	4:00 Split Meter	139.00	69.50	74.50
572	5156 Myers, Jefferson W	9/6/2013 0:00	4:30 Split Meter	144.25	72.13	78.63
572	5156 Myers, Jefferson W	9/5/2013 0:00	4:00 Split Meter	101.75	50.88	55.88
572	5156 Myers, Jefferson W	9/4/2013 0:00	4:00 Split Meter	81.75	40.88	45.88
572	5156 Myers, Jefferson W	9/1/2013 0:00	4:00 Split Meter	244.00	122.00	127.00
572	5156 Myers, Jefferson W	8/31/2013 0:00	3:30 Split Meter	165.25	82.63	87.63
526	5156 Myers, Jefferson W	8/28/2013 0:00	4:30 Split Meter	70.50	35.25	40.25
551	5156 Myers, Jefferson W	8/27/2013 0:00	5:00 Split Meter	89.75	44.88	50.63
551	5156 Myers, Jefferson W	8/26/2013 0:00	5:00 Split Meter	76.25	38.13	43.13
526	5156 Myers, Jefferson W	8/25/2013 0:00	4:30 Split Meter	234.00	117.00	123.50
526	5156 Myers, Jefferson W	8/24/2013 0:00	4:30 Split Meter	123.00	61.50	67.25
526	5156 Myers, Jefferson W	8/18/2013 0:00	4:00 Split Meter	165.25	82.63	88.38
526	5156 Myers, Jefferson W	8/17/2013 0:00	4:30 Split Meter	162.25	81.13	86.88
526	5156 Myers, Jefferson W	8/13/2013 0:00	4:00 Split Meter	60.25	30.13	35.13
				9,207.66	4,604.01	5,050.01

EXHIBIT "C"

DATE	TIME OUT	LAST PASSENGER DROP TIME	time from "out" to end of last fare
8/2/2013	17:42	4:07	10:25
8/3/2013	17:39	4:33	10:54
8/4/2013	17:33	2:50	9:17
8/5/2013	17:43	3:03	9:20
8/6/2013	17:41	2:54	9:13
8/9/2013	17:40	4:14	10:34
8/10/2013	18:03	3:53	9:50
8/11/2013	17:39	4:43	11:04
8/12/2013	18:08	5:12	11:04
8/16/2013	17:41	5:07	11:26
8/17/2013	18:01	4:32	10:31
8/23/2013	17:34	3:46	10:12
8/24/2013	17:39	4:47	11:08
8/25/2013	17:26	3:35	10:09
8/26/2013	17:28	2:49	9:21
8/27/2013	17:33	4:20	10:47
8/30/2013	18:38	4:27	9:49
8/31/2013	18:12	3:07	8:55
Average Time			10:13

MYERS00063

TRIP SHEETS

8/2/13 -

9/30/13

ID#: 5156 DRIVER NAME: Myers, Jefferson
IS THIS 2ND CAB? No PREVIOUS CAB:

DATE: 08/02/2013 CAB # 526 Night Shift
PREVIOUS DRIVER: 5348 David Mancini

	UNITS	ODOMETER	TOTAL MILES	PAID MILES	TRIPS
IN	5372.45	318771	6247	7823	78
OUT	5,234.70	318676	6117	7790	65
DIFF	137.75	95	130	33	13

LAST OUT:

I, Jefferson Myers, ACKNOWLEDGE THAT THIS PERIOD SHALL BE GOVERNED BY THE TAXI CAB MASTER LEASE AGREEMENT BY AND BETWEEN MYSELF AND THE LEASING COMPANY. I AGREE TO BE BOUND BY ALL THE TERMS, CONDITIONS, AND OBLIGATIONS OF THE TAXI CAB MASTER LEASE AGREEMENT.

SIGNATURE: *Jefferson Myers*

NEW DAMAGE OR UNRESOLVED PROBLEMS WITH VEHICLE:

DUE IN: 6:00 AM	TIME OUT: 5:42 PM
	TIME IN:
	TOTAL TIME:
	PERSONAL:
	DOWN TIME:
	TIME ACTUALLY WORKED:
METER DIFFERENCE:	
NOT ON METER (+):	
DED FROM METER (-):	
TOTAL BOOK:	137.75
LEASE - 50% OF BOOK:	69
50% OF BOOK + ADMIN FEE:	74
CHARGES (-):	
CREDIT CARDS (-):	15
OTHER (-):	
TOTAL PAYMENTS:	59
SHORTAGE:	
CASHIER:	TIME:

GAS IN: PRICE: OIL: GASMAN

TRIP	FROM	TIME	# PAX	DESTINATION	TIME	FARE
1	ATLANTIS	6:08	2	ELDORADO	6:19	16.25
2	ATLANTIS	7:18	2	SUNDANCE MOTEL	7:32	14.50
3	WALMART-DAMONTE	8:21	3	OFFENHAUSER	8:31	12.00
4	ATLANTIS	9:01	2	NUTMEG	9:04	4.75
5	95 FOOTHILL RD	9:33	3	ATLANTIS	9:41	14.50
6	ATLANTIS	9:56	1	GENTRY	9:59	5.75
7	WALMART	11:17	1	MEADOWWOOD MALL	11:20	14.50
8	DOTTYS-DAMONTE	12:09	1	8000 OFFENHAUSER	12:12	12.50
9	TAMARACK	2:10	2	EVERGREEN ST.	2:15	11.75
10	ATLANTIS	2:28	2	VIRGINIA LAKE	2:33	7.25
11	ATLANTIS	1	3:24	APPLE ST.	3:32	7.50
12	ATLANTIS	2	3:51	GRAND CANYON	3:55	8.50
13	ATLANTIS	1	4:07	NEIL RD	4:12	8.00
14						
15						
16						

TOTAL PASSENGERS 23

TAPE TOTAL

Notes: ; ;

ID#: 5156 DRIVER NAME: Myers, Jefferson
IS THIS 2ND CAB? No PREVIOUS CAB:

DATE: 08/03/2013 CAB # 526 Night Shift
PREVIOUS DRIVER: 4882 Ronald McDonald

	UNITS	ODOMETER	TOTAL MILES	PAID MILES	TRIPS
IN	5646.20	318898	6382	7883	07
OUT	5,487.95	318825	6304	7849	88
DIFF	158.25	73	78	34	19

LAST OUT:

I, Jefferson Myers, ACKNOWLEDGE THAT THIS PERIOD SHALL BE GOVERNED BY THE TAXI CAB MASTER LEASE AGREEMENT BY AND BETWEEN MYSELF AND THE LEASING COMPANY. I AGREE TO BE BOUND BY ALL THE TERMS, CONDITIONS, AND OBLIGATIONS OF THE TAXI CAB MASTER LEASE AGREEMENT.

SIGNATURE: *Jefferson Myers*

NEW DAMAGE OR UNRESOLVED PROBLEMS WITH VEHICLE

GAS IN: PRICE: OIL: GASMAN

DUE IN: 6:00 AM		TIME OUT: 5:39 PM	
		TIME IN:	
		TOTAL TIME:	
		PERSONAL:	
		DOWN TIME:	
TIME ACTUALLY WORKED:			
METER DIFFERENCE:			
NOT ON METER (+):			
DED FROM METER (-):			
TOTAL BOOK:		158.25	
LEASE - 50% OF BOOK:		79	
50% OF BOOK + ADMIN FEE:		84	
CHARGES (-):			
CREDIT CARDS (-):		7	
OTHER (-):			
TOTAL PAYMENTS:		77	
SHORTAGE:			
CASHIER:		TIME:	

TRIP	FROM	TIME	# PAX	DESTINATION	TIME	FARE
1	195 DAMONTE RANCH	6:30	1	MARRIOTT RES INN	6:36	10.00
2	710 ROBINHOOD	6:53	1	LITTLE FLOWER	7:01	10.00
3	ATLANTIS	7:58	3	SILVER LEGACY	8:08	12.50
4	LITTLE FLOWER	8:17	1	710 ROBINHOOD	8:32	11.00
5	ATLANTIS	9:39	1	GENTRY	9:42	5.25
6	ATLANTIS	10:08	1	PEPPERMILL	10:12	5.00
7	ATLANTIS	10:20	4	PEPPERMILL	10:23	4.75
8	ATLANTIS	10:45	3	PEPPERMILL	10:48	4.75
9	ATLANTIS	10:52	1	920 W. PECKHAM	10:57	5.25
10	ATLANTIS	11:37	2	SILVER LEGACY	11:45	13.00
11	ATLANTIS	11:00	1	HUFFAKER	1:06	10.50
12	ATLANTIS	1:22	1	S STAR BAR	1:30	11.50
13	S STAR BAR	1:31	2	EL DORADO	1:31	4.50
14	DOTTY'S-KIETZKE	1:53	1	MOTEL 6-PLUMB	1:59	9.75
15	ATLANTIS	3:00	2	1550 RILEY	3:09	6.50
16	ATLANTIS	3:29	2	PEPPERMILL	3:27	4.75

TOTAL PASSENGERS: 30

TAPE TOTAL

Notes: ; ;

	FROM	TIME	PASS	DESTINATION	TIME	FARE	
17	ATLANTIS	341	1	NEIL RD.	344	5 25	
18	ATLANTIS	4101	1	MEADOW SPRING	4107	6 00	
19	ATLANTIS	433	1	RAIL CITY	440	17 25	
20							
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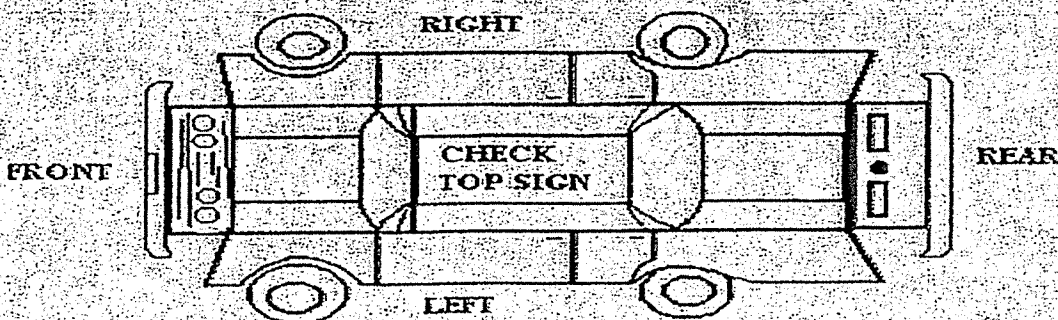
MYERS00066

CHECK LIST

CLEANLINESS OUTSIDE	WHEELS, RIMS AND TIRES	CHEATER LIGHTS
CLEANLINESS INSIDE	REAR VISION MIRRORS	HORN
CLEANLINESS TRUNK	HEADLIGHTS	WINDSHILD WIPERS
BRAKES	TAIL LIGHTS	EMERGENCY EQUIP
PARKING BRAKE	TURN SIGNALS	STEERING

NOTES

Mark any damage on diagram



ID#: 5156 DRIVER NAME: Myers, Jefferson
IS THIS 2ND CAB? No PREVIOUS CAB:

DATE: 08/04/2013 CAB # 526 Night Shift
PREVIOUS DRIVER: 4908 Silveria Salmela

	UNITS	ODOMETER	TOTAL MILES	PAID MILES	TRIPS
IN	5919.95	319073	6568	7951	27
OUT	5,835.20	319009	6500	7932	18
DIFF	84.75	64	68	19	9

LAST OUT:

I, Jefferson Myers, ACKNOWLEDGE THAT THIS PERIOD SHALL BE GOVERNED BY THE TAXI CAB MASTER LEASE AGREEMENT BY AND BETWEEN MYSELF AND THE LEASING COMPANY. I AGREE TO BE BOUND BY ALL THE TERMS, CONDITIONS, AND OBLIGATIONS OF THE TAXI CAB MASTER LEASE AGREEMENT.

SIGNATURE: 

NEW DAMAGE OR UNRESOLVED PROBLEMS WITH VEHICLE

DUE IN: 6:00 AM	TIME OUT: 5:33 PM
	TIME IN:
	TOTAL TIME:
	PERSONAL:
	DOWN TIME:
	TIME ACTUALLY WORKED:
METER DIFFERENCE:	
NOT ON METER (+):	
DED FROM METER (-):	
TOTAL BOOK:	84.75
LEASE - 50% OF BOOK:	42
50% OF BOOK + ADMIN FEE:	47
CHARGES (-):	
CREDIT CARDS (-):	
OTHER (-):	
TOTAL PAYMENTS:	47
SHORTAGE:	
CASHIER:	TIME:

GAS IN: PRICE: OIL: GASMAN

TRIP	FROM	TIME	# PAX	DESTINATION	TIME	FARE
1	25 FOOTHILL RD.	6:35	1	PATRIOT / ROUND	6:50	20.00
2	ATLANTIS	8:15	1	PEPPER MILL	8:18	4.75
3	BROOKSIDE APTS	8:50	1	SUBWAY / ROUND	9:10	6.75
4	ATLANTIS	10:12	1	CIRCUS CIRCUS	10:22	13.50
5	ATLANTIS	11:18	2	HARRAHS	11:26	11.75
6	ATLANTIS	12:10	1	PEPPER MILL	12:12	4.75
7	DOTTY'S - DAMONTE	12:41	1	8000 OPENHAUSER	12:45	12.50
8	ATLANTIS	1:10	1	PLUMA & MOANA	1:13	6.00
9	ATLANTIS	2:50	2	PEPPER MILL	2:53	4.75
10						
11						
12						
13						
14						
15						
16						

TOTAL PASSENGERS

11

TAPE TOTAL

Notes: ; ;

ID#: 5156 DRIVER NAME: Myers, Jefferson
IS THIS 2ND CAB? No PREVIOUS CAB:

DATE: 08/05/2013 CAB # 526 Night Shift
PREVIOUS DRIVER: 5357 Max Vallejo

	UNITS	ODOMETER	TOTAL MILES	PAID MILES	TRIPS
IN	6080.95	319230	6734	7990	40
OUT	5,989.95	319161	6661	7969	32
DIFF	91	69	73	21	8

LAST OUT:

I, Jefferson Myers, ACKNOWLEDGE THAT THIS PERIOD SHALL BE GOVERNED BY THE TAXI CAB MASTER LEASE AGREEMENT BY AND BETWEEN MYSELF AND THE LEASING COMPANY. I AGREE TO BE BOUND BY ALL THE TERMS, CONDITIONS, AND OBLIGATIONS OF THE TAXI CAB MASTER LEASE AGREEMENT.

SIGNATURE: *Jefferson Myers*

NEW DAMAGE OR UNRESOLVED PROBLEMS WITH VEHICLE

DUE IN: 6:00 AM	TIME OUT: 5:43 PM
	TIME IN:
	TOTAL TIME:
	PERSONAL:
	DOWN TIME:
	TIME ACTUALLY WORKED:
METER DIFFERENCE:	
NOT ON METER (+):	
DED FROM METER (-):	
TOTAL BOOK:	91
LEASE - 50% OF BOOK:	46
50% OF BOOK + ADMIN FEE:	51
CHARGES (-):	
CREDIT CARDS (-):	18
OTHER (-):	
TOTAL PAYMENTS:	33
SHORTAGE:	
CASHIER:	TIME:

MYERS00068

GAS IN: PRICE: OIL: GASMAN

TRIP	FROM	TIME	# PAX	DESTINATION	TIME	FARE
1	ATLANTIS	6:24	2	PEPPERMILL	6:27	5.50
2	MEADOWWOOD APTS	7:35	1	EDDORADO	7:45	17.50
3	ATLANTIS	8:26	1	NUBBET	8:35	20.00
4	BULLY'S WEDGE PKW	10:05	1	HILTON GARDEN INN	10:17	19.75
5	ATLANTIS	10:31	2	PEPPERMILL	10:34	5.00
6	ATLANTIS	12:11	1	TAHITI WY.	12:15	7.25
7	ATLANTIS	1:11	1	2ND ST.	1:17	10.50
8	ATLANTIS	3:03	1	PEPPERMILL	3:06	5.50
9						
10						
11						
12						
13						
14						
15						
16						

TOTAL PASSENGERS 10

TAPE TOTAL

Notes: ; ;

ID#: 5156 DRIVER NAME: Myers, Jefferson
IS THIS 2ND CAB? No PREVIOUS CAB:

DATE: 08/06/2013 CAB # 526 Night Shift
PREVIOUS DRIVER: 5039 Robert Dickinson

	UNITS	ODOMETER	TOTAL MILES	PAID MILES	TRIPS
IN	6222.95	319327	6838	8019	58
OUT	6,153.20	319289	6797	8005	50
DIFF	69.75	38	41	14	8

LAST OUT:

I, Jefferson Myers, ACKNOWLEDGE THAT THIS PERIOD SHALL BE GOVERNED BY THE TAXI CAB MASTER LEASE AGREEMENT BY AND BETWEEN MYSELF AND THE LEASING COMPANY. I AGREE TO BE BOUND BY ALL THE TERMS, CONDITIONS, AND OBLIGATIONS OF THE TAXI CAB MASTER LEASE AGREEMENT.

SIGNATURE: *Jeff Myers*

NEW DAMAGE OR UNRESOLVED PROBLEMS WITH VEHICLE

DUE IN: 6:00 AM		TIME OUT: 5:41 PM	
		TIME IN:	
		TOTAL TIME:	
		PERSONAL:	
		DOWN TIME:	
TIME ACTUALLY WORKED:			
METER DIFFERENCE:			
NOT ON METER (+):			
DED FROM METER (-):			
TOTAL BOOK:		69.75	
LEASE - 50% OF BOOK:		35	
50% OF BOOK + ADMIN FEE:		40	
CHARGES (-):			
CREDIT CARDS (-):		13	
OTHER (-):			
TOTAL PAYMENTS:		27	
SHORTAGE:			
CASHIER:		TIME:	

GAS IN: PRICE: OIL: GASMAN

TRIP	FROM	TIME	# PAX	DESTINATION	TIME	FARE
1	ATLANTIS	6:14	1	PEPPERMILL	6:19	6.00
2	ATLANTIS	7:15	3	PEPPERMILL	7:19	5.25
3	ATLANTIS	8:26	2	HARRAH'S	8:36	12.00
4	ATLANTIS	9:05	1	PEPPERMILL	9:09	4.75
5	ATLANTIS	9:47	1	GISS PLUMAS	9:54	9.50
6	ATLANTIS	11:18	2	SILVER LEGACY	11:30	13.25
7	ATLANTIS	1:20	2	GROVE	1:24	5.50
8	ATLANTIS	2:54	1	WALGREENS/HARVARD	3:14	13.50
9						
10						
11						
12						
13						
14						
15						
16						

TOTAL PASSENGERS 13

TAPE TOTAL

Notes: ; ;

ID#: 5156 DRIVER NAME: Myers, Jefferson
IS THIS 2ND CAB? No PREVIOUS CAB:

DATE: 08/09/2013 CAB # 526 Night Shift
PREVIOUS DRIVER: 5316 Ken Woolcock

	UNITS	ODOMETER	TOTAL MILES	PAID MILES	TRIPS
IN	6966.20	319690	7222	8191	22
OUT	6,751.45	319585	7111	8140	4
DIFF	214.75	105	111	51	18

LAST OUT:

I, Jefferson Myers, ACKNOWLEDGE THAT THIS PERIOD SHALL BE GOVERNED BY THE TAXI CAB MASTER LEASE AGREEMENT BY AND BETWEEN MYSELF AND THE LEASING COMPANY. I AGREE TO BE BOUND BY ALL THE TERMS, CONDITIONS, AND OBLIGATIONS OF THE TAXI CAB MASTER LEASE AGREEMENT.

SIGNATURE: *Jefferson Myers*

NEW DAMAGE OR UNRESOLVED PROBLEMS WITH VEHICLE

GAS IN: PRICE: OIL: GASMAN

DUE IN: 6:00 AM TIME OUT: 5:40 PM

TIME IN:

TOTAL TIME:

PERSONAL:

DOWN TIME:

TIME ACTUALLY WORKED:

METER DIFFERENCE:

NOT ON METER (+):

DED FROM METER (-):

TOTAL BOOK: 214.75

LEASE - 50% OF BOOK: 107

50% OF BOOK + ADMIN FEE: 112

CHARGES (-):

CREDIT CARDS (-): 19

OTHER (-):

TOTAL PAYMENTS: 93

SHORTAGE:

CASHIER: TIME:

MYERS00070

TRIP	FROM	TIME	# PAX	DESTINATION	TIME	FARE
1	ATLANTIS	5:59	2	PEPPERMILL	6:03	4.75
2	PEPPERMILL	6:04	2	NUGGET	6:28	23.00
3	NUGGET	6:30	3	ATLANTIS	6:45	18.75
4	WALMART-DAMONTE	7:13	3	14015 PERLITE DR.	7:19	12.25
5	ATLANTIS	7:51	2	PEPPERMILL	7:59	7.50 5.02
6	FOOD SOURCE	8:13	2	HUBBARD	8:21	7.75
7	ATLANTIS	8:36	4	GSR	8:45	12.75
8	ATLANTIS	8:56	1	COMBLEY	9:06	14.50
9	ATLANTIS	9:28	2	DIAMONDS	9:46	16.00
10	ATLANTIS	10:23	1	PEPPERMILL	10:26	5.50
11	ATLANTIS	10:36	1	KEY CLUB	10:45	12.50
12	ATLANTIS	11:42	1	LA QUINTA	11:49	10.75
13	ATLANTIS	12:28	1	WALMART/REDFIELD	12:47	7.00
14	ATLANTIS	1:39	1	1850 IDLEWILD	1:43	16.50
15	ATLANTIS	2:32	1	EL DORADO	2:44	15.50
16	475 GENTRY	3:07	1	LONGLET & McCARTHY	3:12	9.50

TOTAL PASSENGERS 33

TAPE TOTAL

Notes: ; ;

	FROM	TIME	PASS	DESTINATION	TIME	FARE	
17	ATLANTIS	3:53	1	CATALINA	3:52	7 00	
18	ATLANTIS	4:14	4	SIERRA GOLD	4:20	16 00	
19							
20							
21							
22							
23							
24							
25							
26							
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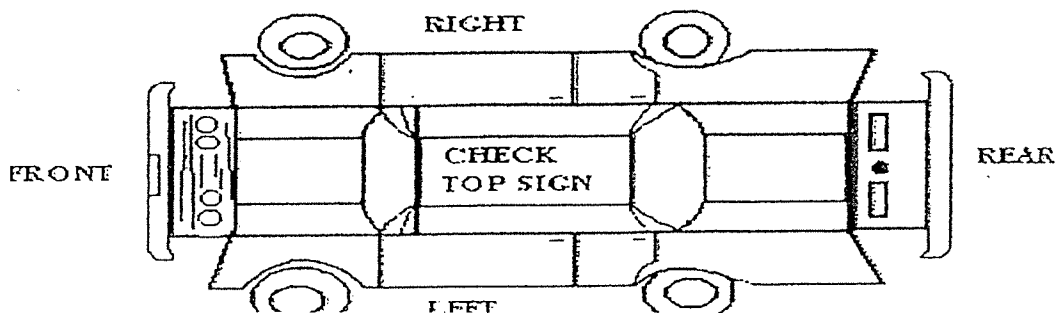
MYERS00071

CHECK LIST

CLEANLINESS OUTSIDE	_____	WHEELS, RIMS AND TIRES	_____	CHEATER LIGHTS	_____
CLEANLINESS INSIDE	_____	REAR VISION MIRRORS	_____	HORN	_____
CLEANLINESS TRUNK	_____	HEADLIGHTS	_____	WINDSHILD WIPERS	_____
BRAKES	_____	TAIL LIGHTS	_____	EMERGENCY EQUIP	_____
PARKING BRAKE	_____	TURN SIGNALS	_____	STEERING	_____

NOTES

Mark any damage on diagram



ID#: 5156 DRIVER NAME: Myers, Jefferson
IS THIS 2ND CAB? No PREVIOUS CAB:

DATE: 08/10/2013 CAB # 526 Night Shift
PREVIOUS DRIVER: 4908 Silveria Salmela

	UNITS	ODOMETER	TOTAL MILES	PAID MILES	TRIPS
IN	7477.45	31992.5	2421	8308	61
OUT	7,215.20	319801	7340	8242	41
DIFF	262.25	124	131	66	20

LAST OUT:

I, Jefferson Myers, ACKNOWLEDGE THAT THIS PERIOD SHALL BE GOVERNED BY THE TAXI CAB MASTER LEASE AGREEMENT BY AND BETWEEN MYSELF AND THE LEASING COMPANY. I AGREE TO BE BOUND BY ALL THE TERMS, CONDITIONS, AND OBLIGATIONS OF THE TAXI CAB MASTER LEASE AGREEMENT.

SIGNATURE:

NEW DAMAGE OR UNRESOLVED PROBLEMS WITH VEHICLE

GAS IN: PRICE: OIL: GASMAN

DUE IN: 6:00 AM	TIME OUT: 6:03 PM
	TIME IN:
	TOTAL TIME:
	PERSONAL:
	DOWN TIME:
TIME ACTUALLY WORKED:	
METER DIFFERENCE:	
NOT ON METER (+):	
DED FROM METER (-):	
TOTAL BOOK:	262
LEASE - 50% OF BOOK:	131
50% OF BOOK + ADMIN FEE:	136
CHARGES (-):	
CREDIT CARDS (-):	
OTHER (-):	
TOTAL PAYMENTS:	136
SHORTAGE:	
CASHIER:	TIME:

MYERS00072

TRIP	FROM	TIME	# PAX	DESTINATION	TIME	FARE
1	ATLANTIS	6:14	2	PEPPERMILL	6:18	5.75
2	ATLANTIS	6:25	2	NUGGET	6:42	21.50
3	710 ROBINHOOD	7:05	1	LITTLE FLOWER	7:11	9.00
4	ATLANTIS	7:29	2	4175 NEIL RD.	7:33	6.50
5	ATLANTIS	7:50	4	6SR	7:58	11.75
6	LITTLE FLOWER	8:13	1	710 ROBINHOOD	8:40	9.50
7	ATLANTIS	8:59	3	PEPPERMILL	9:03	5.00
8	ATLANTIS	9:21	2	WINNERS COP RD	9:34	30.50
9	S. VIRGINIA/DAMONTE	9:40	1	7-11 ROUND	9:45	5.50
10	ATLANTIS	10:12	2	PLAZA RESORT CLUB	10:24	14.25
11	JACKSONS S. VIRGINIA	10:35	1	KANE CT.	10:52	27.25
12	ATLANTIS	11:22	2	7-11 NEIL RD.	11:32	5.50
13	S. McCORMICK BLVD	11:35	1	BRIGHTON ST.	11:55	22.00
14	ATLANTIS	12:26	2	MAYBERRY	12:38	17.50
15	ATLANTIS	11:07	1	GOLD DUST CASINO	11:17	14.25
16	ATLANTIS	11:28	3	6SR	11:34	11.75

TOTAL PASSENGERS

37

TAPE TOTAL

Notes: ; ;

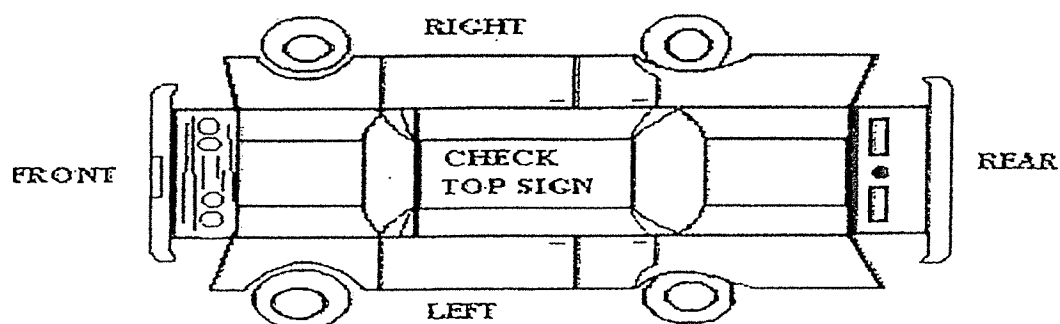
	FROM	TIME	PASS	DESTINATION	TIME	FARE	
17	ATLANTIS	2:13	1	SILVER LEGACY	2:20	12 00	MYERS00073
18	WILD ORCHID	2:26	4	BSR	2:32	10 25	
19	ATLANTIS	3:25	1	AIRPORT	3:35	12 25	
20	ATLANTIS	3:53	1	AIRPORT	4:00	10 50	
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
32							
33							
34							
35							
36							
37							

CHECK LIST

CLEANLINESS OUTSIDE	_____	WHEELS, RIMS AND TIRES	_____	CHEATER LIGHTS	_____
CLEANLINESS INSIDE	_____	REAR VISION MIRRORS	_____	HORN	_____
CLEANLINESS TRUNK	_____	HEADLIGHTS	_____	WINDSHILD WIPERS	_____
BRAKES	_____	TAIL LIGHTS	_____	EMERGENCY EQUIP	_____
PARKING BRAKE	_____	TURN SIGNALS	_____	STEERING	_____

NOTES

Mark any damage on diagram



ID#: 5156 DRIVER NAME: Myers, Jefferson
IS THIS 2ND CAB? No PREVIOUS CAB:

DATE: 08/11/2013 CAB # 526 Night Shift
PREVIOUS DRIVER: 4908 Silveria Salmela

	UNITS	ODOMETER	TOTAL MILES	PAID MILES	TRIPS
IN	7741.95	320103	7661	8375	79
OUT	7,643.95	320032	7585	8349	72
DIFF	98.00	71	76	26	7

LAST OUT:

I, Jefferson Myers, ACKNOWLEDGE THAT THIS PERIOD SHALL BE GOVERNED BY THE TAXI CAB MASTER LEASE AGREEMENT BY AND BETWEEN MYSELF AND THE LEASING COMPANY. I AGREE TO BE BOUND BY ALL THE TERMS, CONDITIONS, AND OBLIGATIONS OF THE TAXI CAB MASTER LEASE AGREEMENT.

SIGNATURE: *Jeff Myers*

NEW DAMAGE OR UNRESOLVED PROBLEMS WITH VEHICLE

DUE IN: 6:00 AM		TIME OUT: 5:39 PM	
		TIME IN:	
		TOTAL TIME:	
		PERSONAL:	
		DOWN TIME:	
TIME ACTUALLY WORKED:			
METER DIFFERENCE:			
NOT ON METER (+):			
DED FROM METER (-):			
TOTAL BOOK:		98	
LEASE - 50% OF BOOK:		49	
50% OF BOOK + ADMIN FEE:		54	
CHARGES (-):		7	
CREDIT CARDS (-):		22	
OTHER (-):			
TOTAL PAYMENTS:		75	
SHORTAGE:			
CASHIER:		TIME:	

GAS IN: PRICE: OIL: GASMAN

TRIP	FROM	TIME	# PAX	DESTINATION	TIME	FARE
1	ST. MARYS	6:06	1	WEST HILLS	6:11	9.00
2	ATLANTIS	7:04	3	308 I ST.	7:13	23.00
3	ATLANTIS	8:17	2	MAYBERRY	8:34	18.25
4	ATLANTIS	10:54	2	ELDORADO	11:00	12.00
5	ATLANTIS	1:01	1	PARKWAY DR.	1:13	20.00
6	BROOKTREE APTS	2:26	1	SHOPN 60 ROUND	2:32	6.75
7	ATLANTIS	4:43	2	AIRPORT	4:47	11.00
8						
9						
10						
11						
12						
13						
14						
15						
16						

TOTAL PASSENGERS

12

TAPE TOTAL

Notes: ; ;

ID#: 5156 DRIVER NAME: Myers, Jefferson
IS THIS 2ND CAB? No PREVIOUS CAB:

DATE: 08/12/2013 CAB # 526 Night Shift
PREVIOUS DRIVER: 5357 Max Vallejo

	UNITS	ODOMETER	TOTAL MILES	PAID MILES	TRIPS
IN	7958.20	320240	7806	8419	05
OUT	7,897.95	320216	7781	8409	94
DIFF	60.25	24	25	10	11

LAST OUT:

I, Jefferson Myers, ACKNOWLEDGE THAT THIS PERIOD SHALL BE GOVERNED BY THE TAXI CAB MASTER LEASE AGREEMENT BY AND BETWEEN MYSELF AND THE LEASING COMPANY. I AGREE TO BE BOUND BY ALL THE TERMS, CONDITIONS, AND OBLIGATIONS OF THE TAXI CAB MASTER LEASE AGREEMENT.

SIGNATURE: Jeff Myers

NEW DAMAGE OR UNRESOLVED PROBLEMS WITH VEHICLE

GAS IN: PRICE: OIL: GASMAN

DUE IN: 6:00 AM TIME OUT: 6:08 PM

TIME IN:

TOTAL TIME:

PERSONAL:

DOWN TIME:

TIME ACTUALLY WORKED:

METER DIFFERENCE:

NOT ON METER (+):

DED FROM METER (-):

TOTAL BOOK: 60.25

LEASE - 50% OF BOOK: 30

50% OF BOOK + ADMIN FEE: 35

CHARGES (-):

CREDIT CARDS (-):

OTHER (-):

TOTAL PAYMENTS: 35

SHORTAGE:

CASHIER: TIME:

MYERS00075

TRIP	FROM	TIME	# PAX	DESTINATION	TIME	FARE
1	ATLANTIS	6:58	2	PEPPERMILL	7:01	5.00
2	ATLANTIS	7:31	2	PEPPERMILL	7:39	5.00
3	ATLANTIS	8:43	2	PEPPERMILL	8:46	5.00
4	ATLANTIS	9:34	2	HARRAHS	9:40	11.50
5	ATLANTIS	11:39	1	PEPPERMILL	11:43	4.75
6	ATLANTIS	12:56	2	PEPPERMILL	12:58	4.75
7	ATLANTIS	2:14	1	PEPPERMILL	2:14	5.25
8	ATLANTIS	2:41	1	KIETZKE/GENTRA	2:44	5.25
9	ATLANTIS	4:14	2	PEPPERMILL	4:17	5.00
10	PEPPERMILL	4:20	1	ATLANTIS	4:24	4.75
11	ATLANTIS	5:12	1	BALL PARK MKT.	5:14	4.00
12						
13						
14						
15						
16						

Notes: ; ;

TOTAL PASSENGERS 17

TAPE TOTAL

	FROM	TIME	PASS	DESTINATION	TIME	FARE
17						
18						
19						
20						
21						
22						
23						
24						
25						
26						
27						
28						
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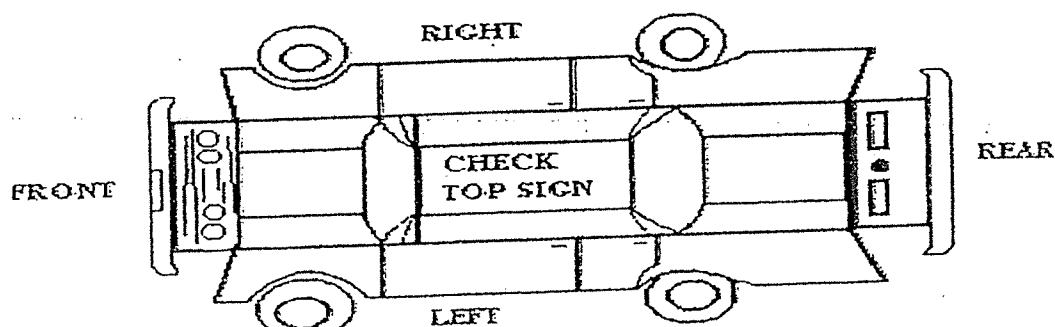
MYERS00076

CHECK LIST

CLEANLINESS OUTSIDE	_____	WHEELS, RIMS AND TIRES	_____	CHEATER LIGHTS	_____
CLEANLINESS INSIDE	_____	REAR VISION MIRRORS	_____	HORN	_____
CLEANLINESS TRUNK	_____	HEADLIGHTS	_____	WINDSHILD WIPERS	_____
BRAKES	_____	TAIL LIGHTS	_____	EMERGENCY EQUIP	_____
PARKING BRAKE	_____	TURN SIGNALS	_____	STEERING	_____

NOTES

Mark any damage on diagram



Reno Sparks Cab Co

Cab 0526 Driver Trip Sheet ID:2455

August 16, 2013

Driver: 5156 Jefferson W Myers - Night Shift

I, Jefferson W Myers, acknowledge that this period shall be governed by the Taxi Cab Master Lease Agreement by and between myself and the leasing company. I agree to be bound by all the terms, conditions, and obligations of the the Taxi Cab Master Lease Agreement.

Signature: Jeff Myers

Previous Driver:	08/16/13
0119 LG Arnett	07:00 AM
Check Out	
Cashier: Kelly	08/16/13
Kutella	05:41 PM

TIME	Date	Shift	Time
IN			
OUT	08/16/13	Night Shift	05:30
Time Elapsed:	Personal Time:	Down Time:	Time Worked:

METER	Units	Odometer	Total Miles	Paid Miles	Trips
IN	8375.95	320559	8145	8516	43
OUT	\$8,213.70	320,469	8,049	8,478	30
DIFF	162.25	90	96	38	13
+ Not On Meter:	- Ded From Meter:	= Adjusted Meter:			

NOTES TO DRIVER !

	PASSENGERS	TIME	FARE
1 ALEXANDER APTS	PASS. 1	7:12	7:41 17.75
2 ATLANTIS - WILD ORCHID	2	8:49	8:56 9.75
3 WILD ORCHID - J.A. NUGGET	2	8:58	9:05 15.50
4 BALL PARK - VULCANIZING	1	9:25	9:31 7.25
5 ATLANTIS - PEPPER MILL	2	10:25	10:28 5.00
6 ATLANTIS - POLO LOUNGE	1	11:10	11:15 7.50
7 ATLANTIS - 1452 RILEY	2	11:49	11:54 6.50
8 ATLANTIS - NEIL RD.	1	12:38	12:43 6.25
9 ATLANTIS - MENS CLUB	3	1:23	1:34 12.75
10 ATLANTIS - MOANA	1	2:38	2:39 3.50
11 ATLANTIS - ELORA00	1	3:21	3:28 12.00

PAYMENT	
Commission Book:	
of Book:	
Total Book:	162 25 =
Cab Lease Fee:	81 +
CC's x:	5 +
Payment Due:	86 =
Gas Gals: -	-
Cost:	-
Credit Card Charges:	-
Customer Charges:	-
Employee Charges:	-
Comps:	-
Misc ():	-
Sub Total:	=
Sirf Payment:	+
Bill Payment:	+
Damage Payment:	+
Total Due:	86 =
Cash Received:	-

Driver: 5156 Jefferson W Myers

Sirf Payments Sirf Refunds Sirf Balance Remaining Payment Recents Payments Suggestion No Car?

\$1,000	\$0	\$1,000	\$0	\$25	Sirf is fully paid	\$0
Bill Total	Payments	Balance	Payment	Recent Payments	Suggestion	No Car?
\$0	\$0	\$0	\$25	Bills are fully paid	\$0	
Damage Total	Payments	Balance	Payment	Recent Payments	Suggestion	No Car?
\$0	\$0	\$0	\$25	Damages are fully paid	\$0	JA 247

	FROM	TIME	PASS	DESTINATION	TIME	FARE
17	5725 NOROENB WY	431	1	AIRPORT	450	48 28
18	ATLANTIS	502	2	AIRPORT	507	10 25
19						
20						
21						
22						
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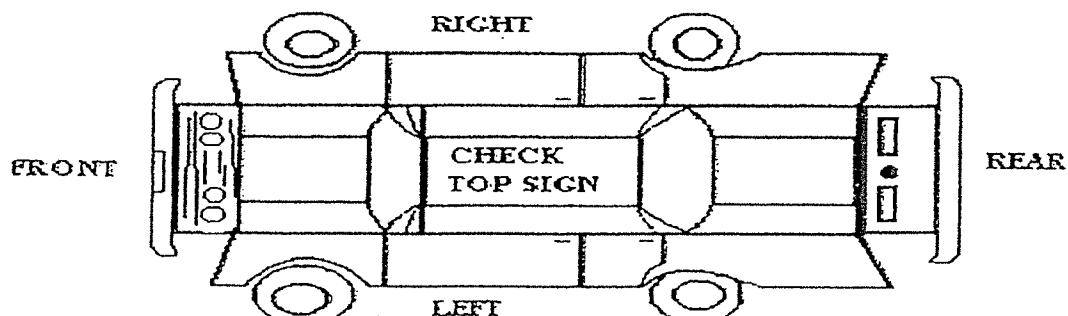
MYERS00078

CHECK LIST

CLEANLINESS OUTSIDE	_____	WHEELS, RIMS AND TIRES	_____	CHEATER LIGHTS	_____
CLEANLINESS INSIDE	_____	REAR VISION MIRRORS	_____	HORN	_____
CLEANLINESS TRUNK	_____	HEADLIGHTS	_____	WINDSHILD WIPERS	_____
BRAKES	_____	TAIL LIGHTS	_____	EMERGENCY EQUIP	_____
PARKING BRAKE	_____	TURN SIGNALS	_____	STEERING	_____

NOTES

Mark any damage on diagram



Reno Sparks Cab Co

Cab 0526 Driver Trip Sheet ID:2602

August 17, 2013

Driver: 5156 Jefferson W Myers - Night Shift

I, Jefferson W Myers, acknowledge that this period shall be governed by the Taxi Cab Master Lease Agreement by and between myself and the leasing company. I agree to be bound by all the terms, conditions, and obligations of the the Taxi Cab Master Lease Agreement.

Signature: _____

Previous Driver:	08/17/13
5156 J W Myers	12:00 AM
Check Out	08/17/13
Cashier: Cassidy	06:01 PM
Butler	

MYERS00079

TIME	Date	Shift	Time
IN			
OUT	08/17/13	Night Shift	06:00
Time Elapsed:	Personal Time:	Down Time:	Time Worked:

PAYMENT

Commission Book:		
of Book:		
Total Book:	165	25 =
Cab Lease Fee:	83	+
CC's x:	88	+
Payment Due:		=
Gas Gals: - Cost:		-
Credit Card Charges:	12	-
Customer Charges:		-
Employee Charges:		-
Comps:		-
Misc ():		-
Sub Total:		=
Sirf Payment:		+
Bill Payment:		+
Damage Payment:		+
Total Due:	76	=
Cash Received:		-
		=

METER	Units	Odometer	Total Miles	Paid Miles	Trips
IN	8659.45	320762	8359	8659	68
OUT	\$8,494.20	320,680	8,272	8,543	54
DIFF	165.25	82	87	116	19
+ Not On Meter:		- Ded From Meter:		= Adjusted Meter:	

NOTES TO DRIVER !

Driver: 5156 Jefferson W Myers

Sirf Payments	Sirf Refunds	Sirf Balance	Remaining Payment	Recents	Payments	Suggestion	No Car?
\$1,000	\$0	\$1,000	\$0	\$25	Sirf is fully paid	\$0	
Bill Total	Payments	Balance	Payment	Recent Payments	Suggestion	No Car?	
\$0	\$0	\$0	\$25	Bills are fully paid	\$0		
Damage Total	Payments	Balance	Payment	Recent Payments	Suggestion	No Car?	
\$0	\$0	\$0	\$25	Damages are fully paid	\$0		

JA 249

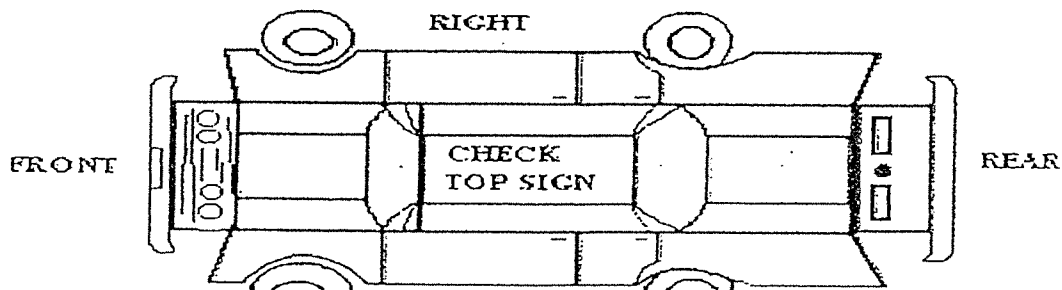
	FROM	TIME	PASS	DESTINATION	TIME	FARE
17	ATLANTIS	6:09	2	PLAZA RESORT CLUB	1:22	15 25
18	WALMART	6:40	4	ROBINHOOD/LITTLE FLOWER	7:05	14 50
19	ATLANTIS	7:25	2	PEPPER MILL	7:28	5 00
20	LITTLE FLOWER	8:14	1	SAUMART/ROBINHOOD	8:34	9 25
21	SAUMART-PLUMB	8:40	1	MONROE ST.	8:45	5 50
22	ATLANTIS	9:40	2	ELDORADO	9:50	12 25
23	CAMPO	9:55	4	GRANITE ST.	10:02	12 50
24	ATLANTIS	10:29	3	7-11 - NEIL RD	10:32	5 75
25	ATLANTIS	10:56	1	880 LOCUST	11:01	9 00
26	ATLANTIS	11:34	3	PEPPER MILL	11:36	4 75
27	ATLANTIS	11:55	4	PEPPER MILL	11:57	4 75
28	ATLANTIS	12:05	1	BRINKBY	12:08	5 50
29	ATLANTIS	12:35	4	6SR	12:40	11 50
30	TAMARACK CASINO	1:24	2	EVERGREEN	1:29	11 50
31	ATLANTIS	2:33	1	SALEM PL.	2:37	6 75
32	ATLANTIS	3:21	1	AM/PM N. VIRGINIA	3:26	7 50
33	ATLANTIS	3:39	1	REDFIELD PKWY	3:42	6 25
34	ATLANTIS	3:46	1	AIRPORT/7-11	3:56	12 50
35	ATLANTIS	4:29	2	LA MICHOACANA	4:32	5 00
36						
37						

CHECK LIST

CLEANLINESS OUTSIDE	_____	WHEELS, RIMS AND TIRES	_____	CHEATER LIGHTS	_____
CLEANLINESS INSIDE	_____	REAR VISION MIRRORS	_____	HORN	_____
CLEANLINESS TRUNK	_____	HEADLIGHTS	_____	WINDSHILD WIPERS	_____
BRAKES	_____	TAIL LIGHTS	_____	EMERGENCY EQUIP	_____
PARKING BRAKE	_____	TURN SIGNALS	_____	STEERING	_____

NOTES

Mark any damage on diagram



Reno Sparks Cab Co

Cab 0526 Driver Trip Sheet ID:3404

August 23, 2013

Driver: 5156 Jefferson W Myers - Night Shift

I, Jefferson W Myers, acknowledge that this period shall be governed by the Taxi Cab Master Lease Agreement by and between myself and the leasing company. I agree to be bound by all the terms, conditions, and obligations of the the Taxi Cab Master Lease Agreement.

Signature: _____

Previous Driver:	08/23/13
5356 N Ellwood	05:00 PM
Check Out	08/23/13
Cashier: Kelly Kutella	05:34 PM

MYERS00081

TIME	Date	Shift	Time
IN			
OUT	08/23/13	Night Shift	05:30
Time Elapsed:	Personal Time:	Down Time:	Time Worked:

PAYMENT

Commission Book:		
of Book:		
Total Book:	123	=
Cab Lease Fee:	62	+
CC's x :	67	+
Payment Due:		=
Gas Gals: - Cost:		-
Credit Card Charges:	19	-
Customer Charges:		-
Employee Charges:		-
Comps:		-
Misc ():		-
Sub Total:		=
Sirf Payment:		+
Bill Payment:		+
Damage Payment:		+
Total Due:	48	=
Cash Received:		-
		=

METER	Units	Odometer	Total Miles	Paid Miles	Trips
IN	9436.70	321218	8844	8761	43
OUT	\$9,313.70	321,138	8,758	8,733	831
DIFF	123.00	80	86	28	12
+ Not On Meter:		- Ded From Meter:		= Adjusted Meter:	

NOTES TO DRIVER !

Driver: 5156 Jefferson W Myers

Sirf Payments Sirf Refunds Sirf Balance Remaining Payment Recents Payments Suggestion No Car?

\$1,000	\$0	\$1,000	\$0	\$25	Sirf is fully paid	\$0
Bill Total	Payments	Balance	Payment	Recent Payments	Suggestion	No Car?
\$0	\$0	\$0	\$25	Bills are fully paid	\$0	
Damage Total	Payments	Balance	Payment	Recent Payments	Suggestion	No Car?
\$0	\$0	\$0	\$25	Damages are fully paid	\$0	JA 251

	FROM	TIME	PASS	DESTINATION	TIME	FARE
17	TAMARACK CASINO	6:33	1	8200 OFFERMAN RD	6:40	13 75
18	MACYS	7:18	1	PEPPERMILL	7:15	9 50
19	ATLANTIS	8:15	1	ALMOND DR.	8:18	6 50
20	ATLANTIS	9:57	2	TOWN LIQUOR/PEPPERMILL	10:15	9 50
21	ATLANTIS	10:43	1	DOUBLE R BLVD.	10:54	14 25
22	ATLANTIS	11:52	1	PEPPERMILL	11:53	4 75
23	ATLANTIS	12:06	1	SKY VALLEY	12:20	22 00
24	ATLANTIS	1:07	2	MENS CLUB	1:14	12 00
25	TAMARACK JUNCTION	1:36	2	RUSTY ST.	1:43	14 50
26	ATLANTIS	2:42	2	PEPPERMILL	2:44	4 75
27	ATLANTIS	3:34	1	RIDGEVIEW ST.	3:37	6 25
28	ATLANTIS	3:43	1	710 ROBINWOOD	3:46	5 50
29						
30						
31						
32						
33						
34						
35						
36						
37						

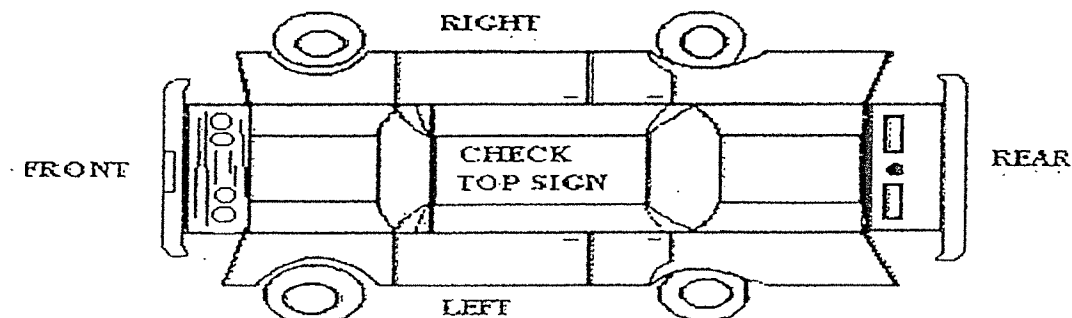
MYERS 000083

CHECK LIST

CLEANLINESS OUTSIDE	_____	WHEELS, RIMS AND TIRES	_____	CHEATER LIGHTS	_____
CLEANLINESS INSIDE	_____	REAR VISION MIRRORS	_____	HORN	_____
CLEANLINESS TRUNK	_____	HEADLIGHTS	_____	WINDSHILD WIPERS	_____
BRAKES	_____	TAIL LIGHTS	_____	EMERGENCY EQUIP	_____
PARKING BRAKE	_____	TURN SIGNALS	_____	STEERING	_____

NOTES

Mark any damage on diagram



Reno Sparks Cab Co

Cab 0526 Driver Trip Sheet ID:3569

August 24, 2013

Driver: 5156 Jefferson W Myers - Night Shift

I, Jefferson W Myers, acknowledge that this period shall be governed by the Taxi Cab Master Lease Agreement by and between myself and the leasing company. I agree to be bound by all the terms, conditions, and obligations of the the Taxi Cab Master Lease Agreement.

Signature: _____

Previous Driver:	08/24/13
5156 J W Myers	12:00 AM
Check Out	
Cashier: Cassidy	08/24/13
Butler	05:39 PM

MYERS \$00083

TIME	Date	Shift	Time
IN			
OUT	08/24/13	Night Shift	05:30
Time Elapsed:	Personal Time:	Down Time:	Time Worked:

METER	Units	Odometer	Total Miles	Paid Miles	Trips
IN	9845.45	321446	9085	8856	79
OUT	\$9,611.45	321,324	8,956	8,797	60
DIFF	234.00	122	129	59	19
+ Not On Meter:		- Ded From Meter:		= Adjusted Meter:	

NOTES TO DRIVER !

PAYMENT	
Commission Book:	
of Book:	
Total Book:	234.00
Cab Lease Fee:	117
CC's x :	22
Payment Due:	
Gas Gals: - Cost:	
Credit Card Charges:	50
Customer Charges:	
Employee Charges:	
Comps:	
Misc ():	
Sub Total:	
Sirf Payment:	+
Bill Payment:	+
Damage Payment:	+
Total Due:	72
Cash Received:	

Driver: 5156 Jefferson W Myers

Sirf Payments	Sirf Refunds	Sirf Balance Remaining	Payment Recents	Payments Suggestion	No Car?
\$1,000	\$0	\$1,000	\$0	\$25	Sirf is fully paid \$0
Bill Total	Payments	Balance	Payment	Recent Payments	Suggestion No Car?
\$0	\$0	\$0	\$25	Bills are fully paid	\$0
Damage Total	Payments	Balance	Payment	Recent Payments	Suggestion No Car?
\$0	\$0	\$0	\$25	Damages are fully paid	\$0

JA 253

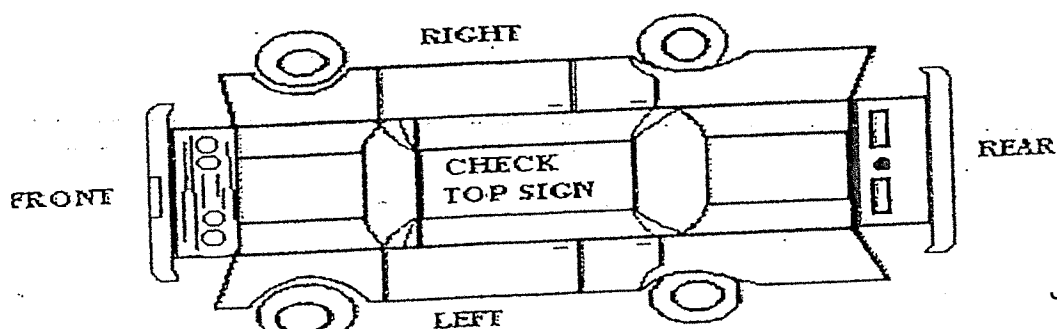
	FROM	TIME	PASS	DESTINATION	TIME	FARE	
17	444 KIRMAN	5:45	1	CARRIAGE INN	6:05	10 00	MYERS00084
18	HARRAH'S	6:11	1	MILL ST.	6:08	5 00	
19	710 ROBINHOOD	6:52	1	LITTLE FLOWER	6:59	9 50	
20	CARRIAGE INN	8:11	1	444 KIRMAN	8:26	9 50	
21	LITTLE FLOWER	8:30	1	SAU MART/ROBINHOOD	8:48	9 25	
22	ATLANTIS	9:35	2	SILVER LEGACY	9:47	13 50	
23	ATLANTIS	10:00	2	ZEPHYR BAR	10:18	8 25	
24	ATLANTIS	10:25	3	SILVER LEGACY	10:33	12 25	
25	ATLANTIS	10:52	1	S. MEADOWS/BIG BOULDER	11:09	23 75	
26	ZEPHYR BAR	11:33	2	KEY CLUB	11:42	13 00	
27	ATLANTIS	12:20	1	RENO REGENCY	12:28	12 50	
28	ATLANTIS	105 12:20	2	PEPPERMILL	109	5 00	
29	KEY CLUB	1:35	2	ATLANTIS	1:41	12 00	
30	ATLANTIS	1:47	1	JIM BOYS/CIRCUS CIRCUS	2:10	14 50	
31	ATLANTIS	2:39	1	RIDGEVIEW	2:46	11 75	
32	ATLANTIS	3:39	1	KENTFIELD RD.	3:58	28 25	
33	ATLANTIS	4:16	1	FILBERT	4:19	6 25	
34	ATLANTIS	4:29	2	CIRCUS CIRCUS	4:37	13 00	
35	CIRCUS CIRCUS	4:38	2	AIRPORT	4:47	16 50	
36							
37							

CHECK LIST

CLEANLINESS OUTSIDE	_____	WHEELS, RIMS AND TIRES	_____	CHEATER LIGHTS	_____
CLEANLINESS INSIDE	_____	REAR VISION MIRRORS	_____	HORN	_____
CLEANLINESS TRUNK	_____	HEADLIGHTS	_____	WINDSHILD WIPERS	_____
BRAKES	_____	TAIL LIGHTS	_____	EMERGENCY EQUIP	_____
PARKING BRAKE	_____	TURN SIGNALS	_____	STEERING	_____

NOTES

Mark any damage on diagram



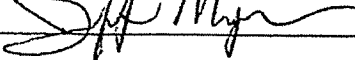
Reno Sparks Cab Co

Cab 0551 Driver Trip Sheet ID:3700

August 25, 2013

Driver: 5156 Jefferson W Myers - Night Shift

I, Jefferson W Myers, acknowledge that this period shall be governed by the Taxi Cab Master Lease Agreement by and between myself and the leasing company. I agree to be bound by all the terms, conditions, and obligations of the the Taxi Cab Master Lease Agreement.

Signature: 

Previous Driver:	08/25/13
5312 E Y Pearce	03:30 PM
Check Out	08/25/13
Cashier: Cassidy	05:26 PM
Butler	

MYERS000085

TIME	Date	Shift	Time
IN			
OUT	08/25/13	Night Shift	05:00
Time Elapsed:	Personal Time:	Down Time:	Time Worked:

METER	Units	Odometer	Total Miles	Paid Miles	Trips
IN	2558.54	256952	8322	3048	98
OUT	\$2,482.29	256,900	8,267	3,031	990
DIFF	76.25	52	55	17	8
+ Not On Meter:	- Ded From Meter:		= Adjusted Meter:		

NOTES TO DRIVER !

PAYMENT

Commission Book:		
of Book:		
Total Book:	76.25	=
Cab Lease Fee:	38	+
CC's x :	43	+
Payment Due:	43	=
Gas Gals: -		-
Cost:		-
Credit Card Charges:		-
Customer Charges:		-
Employee Charges:		-
Comps:		-
Misc ():		-
Sub Total:		=
Sirf Payment:		+
Bill Payment:		+
Damage Payment:		+
Total Due:	43	=
Cash Received:		-
		=

Driver: 5156 Jefferson W Myers

Sirf Payments	Sirf Refunds	Sirf Balance Remaining	Payment Recents	Payments Suggestion	No Car?
\$1,000	\$0	\$1,000	\$0	\$25	Sirf is fully paid \$0
Bill Total	Payments	Balance	Payment	Recent Payments	Suggestion No Car?
\$0	\$0	\$0	\$25	Bills are fully paid	\$0
Damage Total	Payments	Balance	Payment	Recent Payments	Suggestion No Car?
\$0	\$0	\$0	\$25	Damages are fully paid	\$0
					JA 255

	FROM	TIME	PASS	DESTINATION	TIME	FARE	
17	ATLANTIS	5:35	1	SSS PLUMB	8:42	8 50	
18	ATLANTIS	6:50	1	NEIL & PECKHAM	8:54	6 00	
19	ATLANTIS	6:32	2	PEPPERMILL/ELCO	6:41	13 35	
20	ATLANTIS	7:10	2	WHOLE FOODS	7:16	8 00	
21	ATLANTIS	8:35	2	RIVER ROOM	8:43	11 25	
22	95 GENTRY	10:28	1	95 GENTRY/WALMART	10:28	11 25	
23	DOTT'S-DAMONTE	12:20	1	8000 OFFENHAUSER	12:29	12 00	
24	ATLANTIS	2:40	1	PEPPERMILL	2:42	5 00	
25	ATLANTIS	3:35	1				
26							
27							
28							
29							
30							
31							
32							
33							
34							
35							
36							
37							

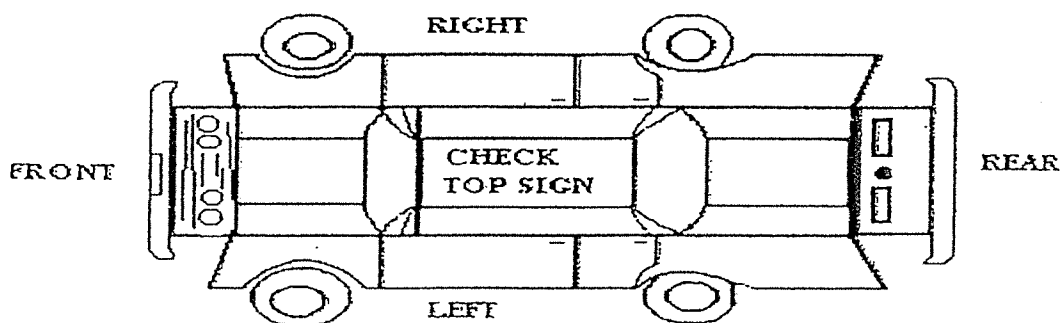
MYERS00086

CHECK LIST

CLEANLINESS OUTSIDE	_____	WHEELS, RIMS AND TIRES	_____	CHEATER LIGHTS	_____
CLEANLINESS INSIDE	_____	REAR VISION MIRRORS	_____	HORN	_____
CLEANLINESS TRUNK	_____	HEADLIGHTS	_____	WINDSHILD WIPERS	_____
BRAKES	_____	TAIL LIGHTS	_____	EMERGENCY EQUIP	_____
PARKING BRAKE	_____	TURN SIGNALS	_____	STEERING	_____

NOTES

Mark any damage on diagram



Reno Sparks Cab Co

Cab 0551 Driver Trip Sheet ID:3843

August 26, 2013

Driver: 5156 Jefferson W Myers - Night Shift

I, Jefferson W Myers, acknowledge that this period shall be governed by the Taxi Cab Master Lease Agreement by and between myself and the leasing company. I agree to be bound by all the terms, conditions, and obligations of the the Taxi Cab Master Lease Agreement.

Signature: Jeff Myers

Previous Driver:	08/26/13
3877 R E Loyle Jr	04:30 PM
Check Out	08/26/13
Cashier: Cassidy	05:28 PM
Butler	

MYERS00087

TIME	Date	Shift	Time
IN			
OUT	08/26/13	Night Shift	05:00
Time Elapsed:	Personal Time:	Down Time:	Time Worked:

PAYMENT

Commission Book:	89.75	
of Book:	45.00	
Total Book:	89.75	
Cab Lease Fee:	50.00	
CC's x :	75	
Payment Due:		
Gas Gals: -		
Cost:		
Credit Card Charges:	30.75	
Customer Charges:		
Employee Charges:		
Comps:		
Misc ():		
Sub Total:	30.75	
Sirf Payment:		
Bill Payment:		
Damage Payment:		
Total Due:	20.00	
Cash Received:		

METER	Units	Odometer	Total Miles	Paid Miles	Trips
IN	2847.79	257149	8532	3115	1021
OUT	\$2,758.04	257,087	8,466	3,090	1,016
DIFF	89.75	62	66	25	5
+ Not On Meter:		- Ded From Meter:		= Adjusted Meter:	

NOTES TO DRIVER I

Driver: 5156 Jefferson W Myers

Sirf Payments Sirf Refunds Sirf Balance Remaining Payment Recents Payments Suggestion No Car?

\$1,000	\$0	\$1,000	\$0	\$25	Sirf is fully paid	\$0
Bill Total	Payments	Balance	Payment	Recent Payments	Suggestion	No Car?
\$0	\$0	\$0	\$25	Bills are fully paid	\$0	
Damage Total	Payments	Balance	Payment	Recent Payments	Suggestion	No Car?
\$0	\$0	\$0	\$25	Damages are fully paid	\$0	JA 257

	FROM	TIME	PASS	DESTINATION	TIME	FARE	
17	ATLANTIS	7:07	1	CAL NEVA	7:15	11	25
18	FOXY NAILS	8:15	2	BIG FIVE / GOLD OOST	8:45	30	25
19	ATLANTIS	11:28	1	HARRAHS	11:35	11	50
20	ATLANTIS	12:18	1	CLOVER	12:33	5	25
21	ATLANTIS	2:34	1	WEDGE PKWY	2:49	31	00
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
32							
33							
34							
35							
36							
37							

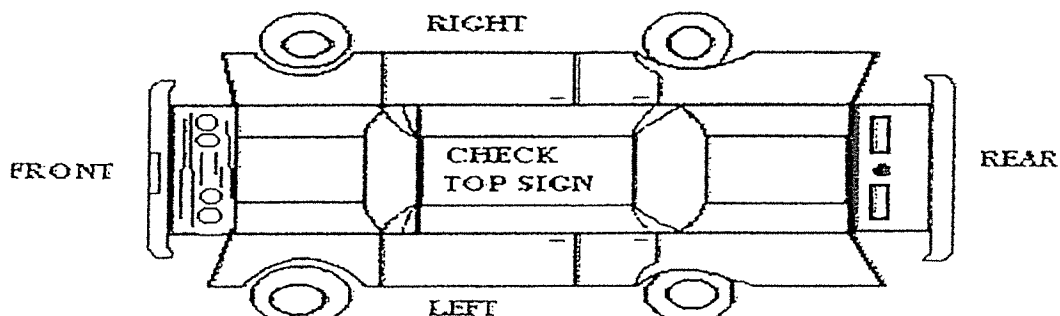
MYERS000088

CHECK LIST

CLEANLINESS OUTSIDE	_____	WHEELS, RIMS AND TIRES	_____	CHEATER LIGHTS	_____
CLEANLINESS INSIDE	_____	REAR VISION MIRRORS	_____	HORN	_____
CLEANLINESS TRUNK	_____	HEADLIGHTS	_____	WINDSHILD WIPERS	_____
BRAKES	_____	TAIL LIGHTS	_____	EMERGENCY EQUIP	_____
PARKING BRAKE	_____	TURN SIGNALS	_____	STEERING	_____

NOTES

Mark any damage on diagram



Reno Sparks Cab Co

Cab 0526 Driver Trip Sheet ID:3983

August 27, 2013

Driver: 5156 Jefferson W Myers - Night Shift

I, Jefferson W Myers, acknowledge that this period shall be governed by the Taxi Cab Master Lease Agreement by and between myself and the leasing company. I agree to be bound by all the terms, conditions, and obligations of the the Taxi Cab Master Lease Agreement.

Signature: *Jeff Myers*

Previous Driver:	08/27/13
5362 D C Carvahlo-Steinberg	12:00 AM
Check Out Cashier:	08/27/13
Krystal Kisylla	05:33 PM

TIME	Date	Shift	Time
IN			
OUT	08/27/13	Night Shift	05:30
Time Elapsed:	Personal Time:	Down Time:	Time Worked:

METER	Units	Odometer	Total Miles	Paid Miles	Trips
IN	170.20	321693	9347	8923	12915
OUT	\$99.70	321,641	9,292	8,909	906
DIFF	70.50	52	55	14	9
+ Not On Meter:		- Ded From Meter:		= Adjusted Meter:	

NOTES TO DRIVER I

PAYMENT

Commission Book:	70	50
of Book:	35	
Total Book:	40	=
Cab Lease Fee:	40	+
CC's x :		+
Payment Due:		=
Gas Gals: -		-
Cost:		-
Credit Card Charges:		-
Customer Charges:		-
Employee Charges:		-
Comps:		-
Misc ():		-
Sub Total:		=
Sirf Payment:		+
Bill Payment:		+
Damage Payment:		+
Total Due:	40	=
Cash Received:		-

Driver: 5156 Jefferson W Myers

Sirf Payments	Sirf Refunds	Sirf Balance Remaining	Payment Recents	Payments Suggestion	No Car?
\$1,000	\$0	\$1,000	\$0	\$25	Sirf is fully paid \$0
Bill Total	Payments	Balance	Payment	Recent Payments	Suggestion No Car?
\$0	\$0	\$0	\$25	Bills are fully paid	\$0
Damage Total	Payments	Balance	Payment	Recent Payments	Suggestion No Car?
\$0	\$0	\$0	\$25	Damages are fully paid	\$0

JA 259

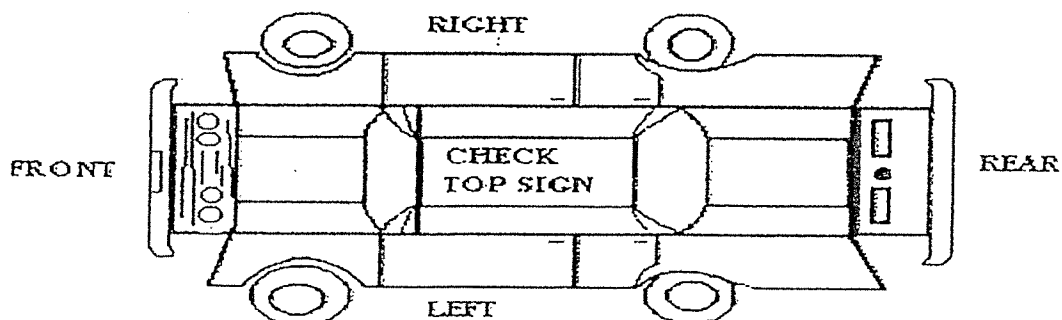
	FROM	TIME	PASS	DESTINATION	TIME	FARE	
17	475 GENTRY	5:42	1	ELDORADO MOTEL	5:41	6 75	
18	WALMART-DAMONTE	7:16	1	S. MEADOWS PKWY.	7:21	11 00	
19	ATLANTIS	8:46	1	DELUCCIE LN,	8:52	8 75	
20	ATLANTIS	10:33	2	LA QUINTA INN	10:40	9 25	MYERS00090
21	ATLANTIS	12:16	1	PEPPER MILL	12:18	5 00	
22	ATLANTIS	1:15	4	PEPPER MILL	1:18	5 00	
23	ATLANTIS	2:40	2	WATT ST	2:48	8 00	
24	ATLANTIS	2:51	2	GROVE ST	2:57	6 50	
25	ATLANTIS	4:18	1	AIRPORT	4:20	10 25	
26							
27							
28							
29							
30							
31							
32							
33							
34							
35							
36							
37							

CHECK LIST

CLEANLINESS OUTSIDE	_____	WHEELS, RIMS AND TIRES	_____	CHEATER LIGHTS	_____
CLEANLINESS INSIDE	_____	REAR VISION MIRRORS	_____	HORN	_____
CLEANLINESS TRUNK	_____	HEADLIGHTS	_____	WINDSHILD WIPERS	_____
BRAKES	_____	TAIL LIGHTS	_____	EMERGENCY EQUIP	_____
PARKING BRAKE	_____	TURN SIGNALS	_____	STEERING	_____

NOTES

Mark any damage on diagram



Reno Sparks Cab Co

Cab 0572 Driver Trip Sheet ID:4528

August 30, 2013

Driver: 5156 Jefferson W Myers - Night Shift

I, Jefferson W Myers, acknowledge that this period shall be governed by the Taxi Cab Master Lease Agreement by and between myself and the leasing company. I agree to be bound by all the terms, conditions, and obligations of the the Taxi Cab Master Lease Agreement.

Signature: _____

Previous Driver:	08/30/13
5252 MA Rahman	12:00 AM
Check Out Cashier:	08/30/13
Kelly Kutella	06:38 PM

TIME	Date	Shift	Time
IN			
OUT	08/30/13	Night Shift	06:30
Time Elapsed:	Personal Time:	Down Time:	Time Worked:

METER	Units	Odometer	Total Miles	Paid Miles	Trips
IN	3836.49	160116	144	8514	18991
OUT	\$3,671.24	160,019	40	8,476	974
DIFF	165.25	97	104	38	17
+ Not On Meter:	- Ded From Meter:		= Adjusted Meter:		

NOTES TO DRIVER !

PAYMENT		
Commission Book:	165	25
of Book:	83	
Total Book:	88	=
Cab Lease Fee:	88	+
CC's x :		+
Payment Due:		=
Gas Gals: -		-
Cost:		-
Credit Card Charges:		-
Customer Charges:		-
Employee Charges:		-
Comps:		-
Misc ():		-
Sub Total:		=
Sirf Payment:		+
Bill Payment:		+
Damage Payment:		+
Total Due:	88	=
Cash Received:		-

Driver: 5156 Jefferson W Myers

Sirf Payments	Sirf Refunds	Sirf Balance Remaining	Payment Recents	Payments Suggestion	No Car?
\$1,000	\$0	\$1,000	\$0	\$25	Sirf is fully paid \$0
Bill Total	Payments	Balance	Payment	Recent Payments	Suggestion No Car?
\$0	\$0	\$0	\$25	Bills are fully paid	\$0
Damage Total	Payments	Balance	Payment	Recent Payments	Suggestion No Car?
\$0	\$0	\$0	\$25	Damages are fully paid	\$0

	FROM	TIME	PASS	DESTINATION	TIME	FARE	
17	PEPPERMILL	7:12	2	NU66ET	7:38	22.50	
18	NU66ET	7:32	4	CIRCUS CIRCUS	7:46	15.50	
19	ATLANTIS	1	8:35	CLOVER WY	8:40	5.25	
20	95 GENTRY	8:52	1	VASSAR	8:59	7.25	
21	ATLANTIS	9:35	2	PEPPERMILL	9:41	5.00	
22	ATLANTIS	10:09	2	PECKAM & NEIL	10:09	5.50	
23	ATLANTIS	10:33	1	THOMAS JEFFERSON	10:42	14.00	
24	ATLANTIS	11:17	1	BAKER ST.	11:20	6.00	
25	ATLANTIS	11:50	1	BEST WESTERN MOTEL	11:57	9.50	
26	ATLANTIS	12:15	2	SILVER LEGACY	12:23	12.50	
27	ATLANTIS	12:52	1	SIERRA CEDARS AVE	12:55	7.00	
28	TAMARACK CASINO	1:10	1	TAURUS AVE.	1:14	10.00	
29	ATLANTIS	1:47	1	3300 KAUZ CT.	1:49	5.20	
30	TAMARACK	2:40	1	S. MEADOWS PKWY.	2:48	11.25	
31	ATLANTIS	3:12	1	FANTASY GIRLS	3:23	14.25	
32	ATLANTIS	4:07	1	MARGRAVE	4:11	7.50	
33	ATLANTIS	4:24	1	LOFT APTS	4:27	4.25	
34							
35							
36							
37							

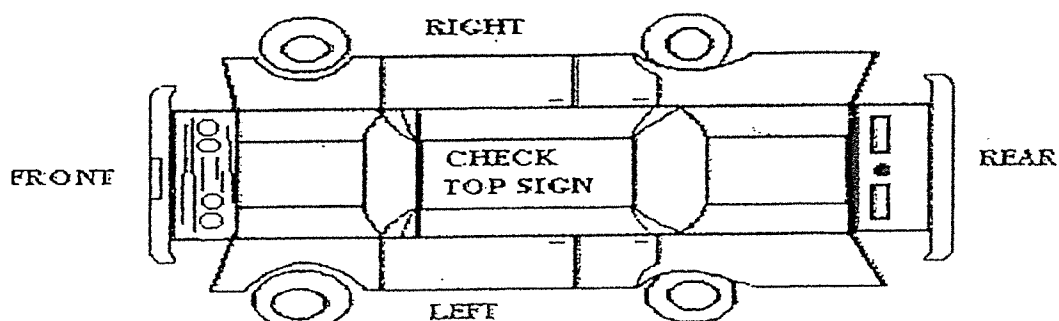
MYERS00009

CHECK LIST

CLEANLINESS OUTSIDE	_____	WHEELS, RIMS AND TIRES	_____	CHEATER LIGHTS	_____
CLEANLINESS INSIDE	_____	REAR VISION MIRRORS	_____	HORN	_____
CLEANLINESS TRUNK	_____	HEADLIGHTS	_____	WINDSHILD WIPERS	_____
BRAKES	_____	TAIL LIGHTS	_____	EMERGENCY EQUIP	_____
PARKING BRAKE	_____	TURN SIGNALS	_____	STEERING	_____

NOTES

Mark any damage on diagram



Reno Sparks Cab Co

Cab 0572 Driver Trip Sheet ID:4696

August 31, 2013

Driver: 5156 Jefferson W Myers - Night Shift

I, Jefferson W Myers, acknowledge that this period shall be governed by the Taxi Cab Master Lease Agreement by and between myself and the leasing company. I agree to be bound by all the terms, conditions, and obligations of the the Taxi Cab Master Lease Agreement.

Signature: _____

Previous Driver:	08/31/13
5156 JW Myers	12:00 AM
Check Out	
Cashier: Cassidy	08/31/13
Butler	06:12 PM

MYERS00093

TIME	Date	Shift	Time
IN			
OUT	08/31/13	Night Shift	06:00
Time Elapsed:	Personal Time:	Down Time:	Time Worked:

METER	Units	Odometer	Total Miles	Paid Miles	Trips
IN	4442.74	160398	443	8662	19041
OUT	\$4,198.74	160,288	327	8,606	9,016
DIFF	244.00	110	116	56	25
+ Not On Meter:		- Ded From Meter:		= Adjusted Meter:	

NOTES TO DRIVER !

PAYMENT

Commission Book:	244.00	
of Book:	122.00	
Total Book:	127	=
Cab Lease Fee:	127	+
CC's x :		+
Payment Due:		=
Gas Gals: -		-
Cost:		-
Credit Card Charges:		-
Customer Charges:		-
Employee Charges:	5.00	-
Comps:		-
Misc ():		-
Sub Total:	5	=
Sirf Payment:		+
Bill Payment:		+
Damage Payment:		+
Total Due:	122.00	=
Cash Received:		-
		=

Driver: 5156 Jefferson W Myers

Sirf Payments	Sirf Refunds	Sirf Balance	Remaining Payment	Recents Payments	Suggestion	No Car?
\$1,000	\$0	\$1,000	\$0	\$25	Sirf is fully paid	\$0
Bill Total	Payments	Balance	Payment	Recent Payments	Suggestion	No Car?
\$0	\$0	\$0	\$25	Bills are fully paid	\$0	
Damage Total	Payments	Balance	Payment	Recent Payments	Suggestion	No Car?
\$0	\$0	\$0	\$25	Damages are fully paid	\$0	JA 263

	FROM	TIME	PASS	DESTINATION	TIME	FARE	
17	ATLANTIS	6:30	2	EL DORADO	6:40	12 50	
18	ATLANTIS	7:04	3	DIAMONDS CASINO	7:15	14 50	
19	ATLANTIS	7:50	1	GSR	8:01	13 75	
20	ATLANTIS	8:13	2	NUGGET	8:23	20 00	
21	NUGGET	8:25	2	PEPPERMILL	8:41	23 00	
22	ATLANTIS	8:50	2	SILVER LEGACY	8:59	12 75	
23	ATLANTIS	9:29	4	PEPPERMILL	9:26	4 75	
24	ATLANTIS	9:34	4	PEPPERMILL	9:37	5 00	
25	ATLANTIS	9:47	1	GRANT ST	9:51	5 00	
26	ATLANTIS	10:05	4	PEPPERMILL	10:08	5 00	
27	196 GENTRY	10:24	1	LINDEN ST.	10:25	4 25	
28	1000 BECK ST.	10:44	1	7-11 LAKESIDE ROUND	10:49	6 25	
29	ATLANTIS	11:07	1	CLOVER WY.	11:10	6 00	
30	CLOVER WY,	11:10	1	CHESTERFIELD CT.	11:28	26 25	
31	ATLANTIS	12:01	1	WALGREENS/PEPPERFIELD	12:14	6 75	
32	ATLANTIS	12:55	1	2306 HARVARD	12:59	6 25	
33	ATLANTIS	1:16	2	DOUBLE R BLVD.	1:24	15 00	
34	ATLANTIS	1:49	2	PEPPERMILL	1:50	4 75	
35	ATLANTIS	2:10	1	CATALINA DR.	2:14	6 75	
36	ATLANTIS	2:34	1	1375 RILEY	2:38	6 00	
37	ATLANTIS	3:02	1	BEST WESTERN	3:07	9 00	

MYERS00094

CHECK LIST

CLEANLINESS OUTSIDE	_____	WHEELS, RIMS AND TIRES	_____	CHEATER LIGHTS	_____
CLEANLINESS INSIDE	_____	REAR VISION MIRRORS	_____	HORN	_____
CLEANLINESS TRUNK	_____	HEADLIGHTS	_____	WINDSHILD WIPERS	_____
BRAKES	_____	TAIL LIGHTS	_____	EMERGENCY EQUIP	_____
PARKING BRAKE	_____	TURN SIGNALS	_____	STEERING	_____

NOTES

Mark any damage on diagram

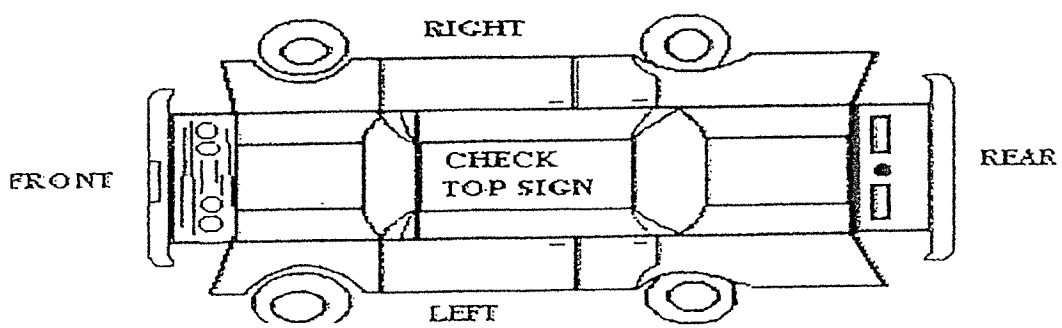


EXHIBIT "D"

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

Fax: (702) 385-1827

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

October 21, 2016

Mark v. Simons
Therese M. Shanks
ROBISON BELAUSTEGUI SHARP & LOW
71 Washington Street
Reno, Nevada 89503

VIA E-MAIL AND FIRST CLASS MAIL

Re: Myers v. Reno Cab

Dear Counsel:

We are in receipt of Defendants' Responses to Plaintiff's First Request for Production of Documents, First Set of Interrogatories, and First Request for Admissions. I write concerning defendants' responses and to confer in good faith about the need to supplement such responses.

Responses to First Request for Production of Documents

Request No. 2

In response to Request No. 2, which sought the production of electronic computer database or other computer data files that contained information on the amounts earned and paid to the plaintiff, hours worked by the plaintiff, tips received by the plaintiff, and deductions made from such earnings, defendants provided RCC000002-5. Pages 2-3 of that production consist of a screen capture (from a computer database file with rows and columns) of what appears to be the fares collected by plaintiff, his "net book," and his time worked, among other things. This record appears to contain such information only for the time period of

August 13, 2013 through January 16, 2014. That time frame does not cover the full period plaintiff was employed. Accordingly, defendants must supplement their responses to include information for all dates worked by the plaintiff.

Additionally, the “time” column consistently shows a rounded number. Plaintiff’s counsel can only assume this column represents the purported hours plaintiff worked on the date in the corresponding date column. But, the very nature of the numbers in that column always appearing to be a rounded number to the half or full hour suggests that such information is not accurate. Please supplement defendants’ response to this request with information showing the hours actually worked by the plaintiff, or clarify whether the information appearing in the “time” column is the only information defendants possess on the hours worked by the plaintiff.

Requests No. 14 and 17

These requests sought information related to any investigation by the Nevada Labor Commissioner and/or the United States Department of Labor concerning unpaid wages and all documents associated with any such investigations. In response to Request No. 14, defendants stated they were in the process of compiling responsive documents and would be supplementing their responses. No such supplemental responses have been served. Please do so.

In response to Request No. 17, defendants objected to producing any documents furnished to the Nevada Labor Commissioner or the United States Department of Labor in connection with any investigations on the basis that the request was overbroad and unduly burdensome and that the claims had not yet been certified for class action treatment. These objections are misplaced. Whether defendants have ever been investigated, or had an adverse decision rendered from the Nevada Labor Commissioner and/or the United States Department of Labor is germane to whether defendants had reason to believe that the plaintiff and defendants’ other taxicab drivers were employees covered by the Fair Labor Standards Act and the Minimum Wage Amendment to the Nevada Constitution. Plaintiff’s Complaint includes a claim for punitive damages and prior investigations, decisions, or findings by either of these two agencies that defendants violated minimum wage laws are relevant to plaintiff’s claims for punitive damages. Accordingly, defendants must supplement their response to Request No. 17.

Request No. 19

This request sought the production of all statements gathered in preparation of the defense of this matter since the commencement of the action. In response, defendants refer to the documents produced at RCC0000001-28. A review of such documents indicate that none of them include a statement that was gathered in preparation of the defense of this matter. If defendants have gathered no statements from witnesses or other persons in preparation for the defense of this litigation they should state the same. If defendants have obtained such statements, such statements must be produced. Please clarify defendants' response to this request.

Request No. 22

This request sought the production of written communications between the corporate owners concerning this lawsuit. Defendants object to the request on the basis that it seeks documents covered by the attorney work product doctrine and/or seeks information already in possession of the plaintiff. Nonetheless, defendants respond that they are compiling responsive documents and will supplement their response accordingly.

First, this request explicitly excluded any written communications authored or received by defendants' counsel when such communication was first made (*i.e.* if defendants' counsel was subsequently sent a copy of the communication after it was exchanged between any owners of the corporate defendants, such communications would not be privileged). Second, an objection that such documents are already in the possession of the plaintiff is entirely unfounded as plaintiff could not possibly have possession of communications regarding this lawsuit between the owners of the corporate defendants. Since defendants endeavored to compile materials responsive to this request and supplement their response, please do so or state definitively that no such communications exist.

Request No. 23

This request sought production of tripsheets for the plaintiff and putative plaintiff class from July 1, 2007 through the present. Defendants object to production of any records for any person other than the plaintiff and state they are in the process of compiling responsive documents and will supplement.

Defendants have not supplemented this response and no tripsheets for the plaintiff have been produced. Please supplement defendants' response accordingly and provide all tripsheets for the plaintiff in the possession of defendants.

Request No. 24

This request sought documents created, posted, or provided by defendants to their taxicab drivers in compliance with Article 15, Section 16 of the Nevada Constitution concerning written notification of the minimum wage adjustments. Defendants again respond that they are compiling responsive documents, but no such supplemental response has been provided. Please supplement defendants' response to include responsive documents or state that no such documents exist.

Request No. 25

This request sought production of written communications and advisements relied upon by defendants in determining whether defendants were required to comply with the Minimum Wage Amendment of the Nevada Constitution. While defendants assert objections, including that such communications are privileged, defendants also state they are compiling responsive documents and will supplement accordingly. No such supplement has been provided. Please supplement defendants' response to this request.

Request No. 27

This request sought the production of computer data files containing information on the use of defendants taxicab medallions on a daily basis, including information showing the total time such medallions were in use, the identity of the driver assigned to that medallion, and the number of trips associated with that medallion for a particular shift. Defendants state in response that they are compiling responsive documents and intend to supplement. Please provide a supplemental response including responsive materials, in their original computer data file format, and not in paper or PDF form.

Request No. 28

This request sought production of 1099s for all of defendants taxicab

drivers from July 1, 2007 through the present. While defendants refuse to provide information for persons other than the named plaintiff, defendants have failed to produce any 1099s for Mr. Meyers. There is no basis for defendants to withhold Mr. Meyers's 1099s from defendant. Such documents are directly relevant to defendants' defenses in this case, which allege that all of defendants' taxicab drivers are "independent contractors" and not employees. Accordingly, please supplement defendants' response to this request and provide all such 1099s for Mr. Meyers for the relevant time period.

Responses to First Set of Interrogatories

Interrogatory No. 3

This interrogatory requested defendants to state the contents of all communications defendants' owners, principals, or managers had concerning defendants' legal obligation to their taxicab drivers in respect to Article 15, Section 16 of the Nevada Constitution. Defendants provide a host of objections, including that the interrogatory imposes a burden on RCC to gather information from parties over whom it has no control. Such objection is without merit. If any of defendants principals, owners, or managers are communicating and making decisions on behalf of RCC concerning whether RCC has an obligation to comply with the Minimum Wage Amendment to the Nevada Constitution, such information is discoverable, relevant, and within the "control" of defendants.

Furthermore, defendants' response to this request is nonsensical in that it provides a copy/paste answer having nothing to do with the request, and which concerns the independent contractor agreement between the plaintiff and the defendants. I am requesting that defendants supplement their response to this interrogatory to include information that is responsive to the actual interrogatory posed, or state that defendants are refusing to provide an answer.

Interrogatory No. 4

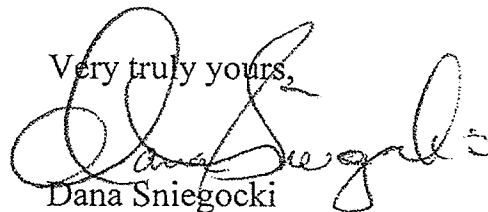
This interrogatory sought the names and contact information for all persons formerly employed as managers, assistant managers, supervisors, and dispatchers for defendants during the time period plaintiff was driving a taxicab for defendants. Defendants' response states, in part: "Plaintiff is unaware of any

person who is responsive to this inquiry.” While the use of the word plaintiff may be an oversight, defendants should correct this interrogatory to specify that they are answering on behalf of defendants. Additionally, it appears that defendants are responding that there are no persons who worked in the above-mentioned positions during the time plaintiff drove a taxicab for defendants and who are no longer employed by the defendants. If this is the case, please so state so that defendants’ response is clear.

Good Faith Conferral

Please allow this letter to serve as plaintiff’s good faith effort to confer regarding the issues raised above. Please provide supplemental responses no later than October 28, 2016. In the interim, plaintiff’s counsel intends to call your office next week and further confer about these issues by telephone. In the event the parties cannot resolve the above-referenced discovery issues, plaintiff intends to bring them before the Court for resolution.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dana Sniegocki", written over the typed name.

Dana Sniegocki

cc.: Curtis Coulter, Esq.

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Attorneys for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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

Case No.: CV15-01359, CV15-01385

Dept. No.: 8

Plaintiffs,

PLAINTIFFS' RESPONSE TO
MOTION FOR SUMMARY
JUDGMENT

v.

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

COUNTER-MOTION FOR
DISCOVERY PURSUANT TO
NRCP RULE 56(F)

Defendants.

Plaintiffs hereby submit this response in opposition to defendant's motion for summary judgment and in support of plaintiffs' counter-motion for discovery pursuant to NRCP Rule 56(f).

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MEMORANDUM OF POINTS AND AUTHORITIES

SUMMARY

Defendant's motion is premature, made prior to the development of a proper record for the Court's consideration, and relies upon a non-existent "conclusive presumption" and facts that are disputed by the parties.

The only accurate statement in defendant's moving papers is its recital of the parties' dispute, which is whether the plaintiffs were independent contractors or employees of the defendant who enjoy the minimum wage protections of Article 15, Section 16 of the Nevada Constitution, enacted in 2006 (the Minimum Wage Amendment or "MWA"). The Nevada Supreme Court, in *Thomas v. Nevada Yellow Cab*, 327 P.3d 518 (2014) found that taxi drivers are not exempt from the minimum wage required by the MWA. It further held, in *Terry v. Sapphire Gentlemen's Club*, 336 P.3d 951 (Nev. Sup. Ct. 2014) that the test of "employment" under the MWA is one of "economic realities," applying that well developed test of employment under the federal minimum wage law, the Fair Labor Standards Act (the "FLSA").

The resolution of this case is not controlled, and cannot be controlled, by the dictates of any Nevada statute. Plaintiffs' claims arise directly under the Nevada Constitution and the MWA does not grant the Nevada Legislature the power to modify or change it terms through any statute. The principle of constitutional supremacy, the foundation of the decision in *Thomas*, strips Nevada's statutes of the power to define, much less create a "conclusive presumption," as to what workers are to be deemed "employees" or "independent contractors" under the MWA. For the purposes of the minimum wage claims asserted in this case whether the plaintiffs are employees or independent contractors must be evaluated under the "economic realities" test of employment, as recognized in *Terry*.

Since defendant's motion is predicated upon the application of a non-existent statutory

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2 “presumption” it must be denied and the Court need not consider any other issues raised by that
3 motion. But if the Court were to do so, it is also apparent that critically relevant facts are in
4 dispute and a woefully insufficient factual record is before the Court. Accordingly, summary
5 judgment must also be denied on that basis and appropriate NRCP Rule 56(f) relief, to allow a
6 full range of discovery to be conducted, must also be granted.
7

8 **IN RESPONSE TO DEFENDANT’S FACTUAL ASSERTIONS**

9 **There are undisputed facts which are irrelevant**

10 Defendant’s motion depends, in large or majority measure, upon wholly irrelevant
11 “facts.” These include such things as the plaintiffs having “their own social security number”
12 as do all employees and their maintenance of the licenses necessary for them to drive a taxi
13 cab. Yet plaintiffs were no different than any other employee who had to have a specific form
14 of motor vehicle, truck operator, etc., license to perform their employment duties. These
15 “facts,” while true, are irrelevant.

16 The great weight of defendant’s motion is based upon the lease agreement that the
17 plaintiffs signed and that was a condition of their employment. That lease agreement does not,
18 and cannot, make the plaintiffs “independent contractors” by a consensual agreement of the
19 parties. It is well established that an “employee” cannot agree to become a “non-employee” for
20 minimum wage purposes and waive any of their rights under the MWA through a contract or
21 lease. The MWA expressly prohibits any such waiver. *See*, Nev. Const. Art. 15, Sec. 16,
22 Subpart B (“The provisions of this section may not be waived by agreement between an
23 individual employee and an employer.”) If such contracts to “agree” to *not* be an employee for
24 minimum wage purposes were enforceable, the minimum wage law itself would be, as a
25 practical matter, rendered a legal nullity as all “employers” would simply “contract around” its
26 requirements.
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3 **The relevant facts alleged by defendant are disputed.**

4 Defendant claims certain facts, which if true would be relevant to the parties' dispute,
5 are "undisputed." Such facts are *not* "undisputed." They are simply asserted, in a blanket,
6 undetailed, untruthful and summary fashion by the defendant in an affidavit. Those assertions
7 cannot be accepted as true by the Court and are vigorously disputed by the plaintiffs. They
8 include an assertion that the plaintiffs controlled when they leased a taxicab; that they
9 controlled length of their workday; that they controlled what passengers they chose to
10 transport; and that whether the plaintiffs made any money from their work as taxi drivers had
11 nothing to do with what Capital Cab did or did not do. *See*, Defendant's Motion for Summary
12 Judgment at Ex. "2." Plaintiffs controvert each of those assertions. They had no control over
13 when they could drive a taxi and had to agree to a pre-arranged schedule of workdays that was
14 set by Capital Cab. Ex. "A," declarations of Arthur Shatz and Richard Fratis. They did not
15 control the length of their workdays and were required to be available to take passenger fares
16 for a full 12 hour shift every day they worked unless the defendant consented to let them work
17 a shorter shift. *Id.* Defendant controlled what passengers they transported and they were not
18 free to turn away passengers that the defendant told them to transport. *Id.* And their income as
19 taxi drivers was almost entirely dependent upon Capital Cab providing them with customers as
20 over 90% of their passengers were provided by Capital Cab radio calls. *Id.*

21 It should also be noted that defendant's Motion for Summary Judgment is predicated on
22 an incompetent affidavit, which plaintiffs submit should be ignored by the Court. The affiant,
23 Robin Street, states they are the named defendant in this matter doing business as Capitol Cab.
24 The named defendant in this action is actually Roy L. Street, doing business as Capital Cab.
25 Defendant does not explain this discrepancy and does not indicate why the Court should accept
26 the sworn statements of Robin Street, an unknown and unidentified person and *not* the
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2 defendant in this matter, as true.

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4 **Defendant ignores the controlling economic considerations of the parties' relationship,**
5 **which was one where the plaintiffs were commission paid**
6 **laborers and not truly economically independent business persons .**

7 The significance of the parties' lease agreement is in its economic terms. Plaintiffs
8 were not "leasing" taxis which they operated with absolutely no economic interest retained by
9 Capital Cab in their activities while it was under such "lease." The economic reality is that
10 there was no true "lease" that was occurring. Capital Cab was paying a "commission" to the
11 plaintiffs for driving Capital Cab's taxi. Capital Cab needed the plaintiffs to be active
12 transporting paying customers while that taxi was "leased." It needed to have the plaintiffs
13 collecting fares, and making money for Capital Cab, while they were nominally "leasing" the
14 taxi cab. The entire structure of that "lease" was a travesty, requiring only a nominal \$5.00 per
15 day assured "lease" payment from the plaintiffs with the plaintiffs then allowed to keep 50% of
16 the fares actually collected. Capital Cab, under that "lease" agreement, could not simply turn
17 the plaintiffs loose, as it claims, to work as little, or as much as they wanted, for a 12 hour lease
18 while only being assured of a \$5.00 "lease" payment for those 12 hours. It had to, and did,
19 intimately control the activities of the plaintiffs while they were driving that "leased" taxi cab
20 to sure it was making money from the plaintiffs' "leased" activities.

21 Plaintiffs were also expressly barred under the lease's terms from subleasing the taxi or
22 having any "unauthorized person" (that term is not defined but presumably meaning anyone not
23 approved of by Capital Cab) operate the taxi. See, Ex. "1" to Defendant's Motion, Lease
24 agreement, at ¶ 23(m). While defendant insists the plaintiff "had the ability to hire someone to
25 assist him to perform his independent contractor duties" such assertion is meaningless. The
26 plaintiffs' "duties" consisted of driving a taxi cab and they could not hire a "substitute" driver
27 without defendant's consent.

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ARGUMENT

I. THE “ECONOMIC REALITIES” OF THE PARTIES’
RELATIONSHIP DETERMINES THE PLAINTIFFS’ STATUS
AS “EMPLOYEES” FOR MINIMUM WAGE PURPOSES.

A. Nevada’s statutes have no relevancy to what constitutes
“employment” subject to the Nevada Constitution’s
Minimum Wage Amendment.

In *Thomas* the Nevada Supreme Court made clear that the structure of the MWA allowed for no deviation from its terms, no exceptions to its requirements, to be effectuated by any legislatively enacted statute:

It is fundamental to our federal, constitutional system of government that a state legislature "has not the power to enact any law conflicting with the federal constitution, the laws of congress, or the constitution of its particular State." "The Nevada Constitution is the 'supreme law of the state,' which 'control[s]' over any conflicting statutory provisions....."

In our view, the district court's and respondents' reading of the Minimum Wage Amendment as allowing the Legislature to provide for additional exceptions to Nevada's constitutional minimum wage disregards the canon of construction "'expressio unius est exclusio alterius,' the expression of one thing is the exclusion of another." The Minimum Wage Amendment expressly and broadly defines employee, exempting only certain groups: "'employee' means any person who is employed [by an individual or entity that may employ individuals or enter into contracts of employment] but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days." Following the expressio unius canon, the text necessarily implies that all employees not exempted by the Amendment, including taxicab drivers, must be paid the minimum wage set out in the Amendment. 327 P.3d at 520-21.

Thomas did not examine the question of what laborers are properly considered “employees” and not independent contractors under the MWA. But it confirms that the answer to that question must be found **in the text of the MWA itself, as no statutory enactments can**

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3 vary or “define” what that text requires. Under the doctrine of constitutional supremacy, the
4 Nevada Legislature, and the statutes it enacts, cannot diminish or alter the force of the MWA.

5 The question of what sort of relationship constitutes “employment” for minimum wage
6 purposes under Nevada’s minimum wage laws, and is not properly treated as an “independent
7 contractor” relationship even if such was the parties’ intent, was directly answered in *Terry*.
8 Presumably defendant, in reply, will argue that the reasoning of *Terry* is inapplicable as it
9 directly addressed only Nevada’s minimum wage statute, NRS 608.250 and not the MWA.
10 That is an argument without substance. As *Terry* makes clear the MWA, as held by *Thomas*,
11 effectuates an intent of Nevada’s voters to create a broader constitutional minimum wage right
12 for Nevada workers. 336 P.3d at 955. And while the narrow issue *Terry* was presented with
13 was determining employee status under the minimum wage statute, NRS 608.250, and not the
14 MWA, it ultimately makes clear its adoption of the “economic realities” test of employment for
15 both: “We therefore adopt the FLSA’s [the Fair Labor Standards Act, federal minimum wage
16 law’s] “economic realities” test for employment in the context of Nevada’s minimum wage
17 laws.” 336 P.3d at 958, plural tense emphasized.

18
19 **B. Defendant’s motion must be denied as it has not**
20 **established that the plaintiffs are “independent**
21 **contractors” under the “economic realities” test of**
22 **employment governing minimum wage claims under**
23 **Nevada’s Constitution.**

24 As *Terry* noted, the economic realities test of employment for minimum wage purposes
25 requires an examination of “...the totality of the circumstances of the circumstances that make
26 up a working relationship’s economic reality...” *Id.* While it did not formulate any rigid or
27 hard and fast test, it identified six factors “which courts nearly universally consider” when
applying that test, citing *Real v. Driscoll Strawberry Assocs., Inc.* 603 F.2d 748, 754 (9th Cir.

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2 1979). *Id.*
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5 Those six factors are:
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7 (1) the degree of the alleged employer's right to control the manner in which the work is
8 to be performed;

9 (2) the alleged employee's opportunity for profit or loss depending upon his
10 managerial skill;

11 (3) the alleged employee's investment in equipment or materials required for his task,
12 or his employment of helpers;

13 (4) whether the service rendered requires a special skill;

14 (5) the degree of permanence of the working relationship; and

15 (6) whether the service rendered is an integral part of the alleged employer's business.
16 *Id.*

17 Even a cursory examination of these factors, based upon the very limited record before
18 the Court, establishes they cannot possibly be sufficiently established in the defendant's favor
19 to result in the granting of defendant's motion. Ultimately, plaintiffs contend any proper
20 evaluation of those factors must result in a finding that the plaintiffs were employees, but they
21 defer their arguments for summary judgment in their favor until after a full record is developed
22 through discovery.

23 Of these six factors only one, or at most two, could, arguably, based on the facts of this
24 case, lend some measure of support for an independent contractor finding. The first of those
25 factors is the "alleged employer's right to control the manner in which the work is to be
26 performed." Defendant's taxi drivers, being in the field and away from any direct in-person
27 supervision by managers at a fixed business location, they had some ability to control the
"manner" in which they performed their work. They could typically decide on their own

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2 initiative whether to turn left or right on a particular street or take a particular course of travel
3 for a passenger and so forth.

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5 The other of those factors is “the alleged employee's opportunity for profit or loss
6 depending upon his managerial skill.” The defendant’s taxi drivers had, to some extent, to use
7 their own initiative to locate customers and transport them efficiently to increase their earnings.
8 As a result, this factor is not one that, on its face, completely favors an employment finding.

9 Yet an examination of the relevant facts does not show that these two factors weigh
10 substantially, or even to any significant extent, in the defendant’s favor. Both the “manner” in
11 which the plaintiffs performed their work and their “profit and loss” opportunities were
12 substantially controlled, if not overwhelmingly dominated, by the defendant. While the
13 defendant did not dictate, to the precise street and turn, every route of travel the plaintiffs took
14 while driving the taxi cab, it controlled when the plaintiffs would work; how long they would
15 work on the days they did work; the fares that they charged; what passengers they had to take
16 from the defendant’s radio calls, which were 90% of all the passengers, and other significant
17 elements of the “manner” in which the plaintiffs performed their work. Capital Cab’s exercise
18 of control in that fashion also significantly influenced the plaintiffs’ “profit and loss”
19 opportunities, as the plaintiffs could not pursue more attractive profit opportunities when
20 defendant was commanding them to take radio calls. Indeed, some of those radio calls would
21 also impose a loss on the plaintiffs, one they were powerless to avoid. *See*, Ex. “A.”

22
23 The other four factors identified in *Terry*, the plaintiffs’ investment in equipment and
24 materials or use of helpers; whether they were rendering services requiring a special skill; the
25 degree of permanence of their working relationship with Capital Cab; and whether the service
26 they provided was an integral part of Capital Cab’s business, weigh overwhelmingly if not
27 exclusively in the plaintiffs’ favor. The plaintiffs had no investment in their taxi driving

1
2 activities as Capital Cab owed the taxis and also prohibited them from using “helpers” to drive
3 the taxis. Driving a taxi is not a special skill as the vast majority of adults know how to drive
4 an automobile. The plaintiffs worked on permanent and set schedules for Capital Cab. The
5 business of Capital Cab is providing transportation by taxi, a service that it completely
6 depended upon the plaintiffs to provide through their labor.
7

8 **II. MATERIAL ISSUES OF FACT ARE IN DISPUTE**
9 **AND SUMMARY JUDGMENT MUST BE DENIED**

10 As discussed, *supra*, defendant seeks summary judgment by seeking to have this Court
11 apply an erroneous legal standard that would, as a *per se* matter, result in a “non-employee”
12 finding for MWA purposes for any laborer who agreed, whether in defendant’s “lease”
13 agreement or some other contract, to be an “independent contractor.” And as also discussed, a
14 proper determination of the employee/independent contractor issue also requires the
15 development of a much fuller factual record for the Court’s consideration.

16 But even if the Court were to examine the defendant’s motion in a more limited context,
17 it is apparent that summary judgment must be denied because, as discussed in the foregoing
18 statement of facts, the material facts that they assert exist and entitle them to summary
19 judgment are all disputed.

20 **IN SUPPORT OF THE COUNTER-MOTION**

21 **There has been no opportunity for discovery to be conducted**
22 **and plaintiffs should be granted leave to conduct discovery.**

23 No discovery schedule has been entered in this case and this case was transferred from
24 Carson City to this Court and then was in the process of being consolidated with the similar
25 *Myers v. Reno Cab* case. Plaintiffs also served interrogatory, document production, and
26 admission requests in this case on August 9, 2016, to which defendant has never responded.
27

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3 Ex. "B." Plaintiffs have also served a deposition notice. Ex. "C."

4 Plaintiffs should be allowed discovery to develop an appropriate factual record to
5 address the "economic realities" test of employment. Defendant's motion is clearly premature
6 and made without affording any reasonable allowance to the plaintiff to conduct discovery.
7 Accordingly, plaintiffs' counter-motion under NRCP Rule 56(f) should be granted and
8 discovery in this matter, including but not limited to what is sought in Exs. "B" and "C," should
9 be allowed.

10 **CONCLUSION**

11 For all the foregoing reasons, defendant's motion should be denied and plaintiff's
12 motion granted in its entirety together with such further relief as the Court deems proper.

13 The undersigned hereby affirm that the above document does not contain the Social Security Number of any person,
14 pursuant to NRS 239B.030.

15 Dated this 31st day of October, 2016.

16 Leon Greenberg Professional Corporation

17 By: /s/ Leon Greenberg

18 LEON GREENBERG, Esq.
19 Nevada Bar No.: 8094
20 2965 South Jones Blvd- Suite E3
21 Las Vegas, Nevada 89146
22 Tel (702) 383-6085
23 Fax (702) 385-1827

24 *Attorney for Plaintiffs*

1
2
3 **CERTIFICATE OF SERVICE**

4 Pursuant to NRCP 5 (b), I hereby certify that I am an employee of the Law Offices of
5 Curtis B. Coulter and that I served a true and correct copy of the foregoing PLAINTIFFS'
6 RESPONSE TO MOTION FOR SUMMARY JUDGMENT COUNTER-MOTION FOR
7 DISCOVERY PURSUANT TO NRCP RULE 56(F) by:

8 ☒ Mail on all parties in said action, by placing a true copy thereof, enclosed in a
9 sealed envelope with first-class postage affixed thereto, deposited in the United
States Mail, at Reno, Nevada.

10 ☐ Personal delivery by causing a true copy thereof to be hand-delivered to the
address or addresses set forth below.

11 ☐ Facsimile on the parties in said action by causing a true copy thereof to be
12 telecopied to the number indicated after the address or addresses noted below.

13 ☐ Federal Express or other overnight delivery.

14 ☐ Hand-delivery by Reno/Carson Messenger Service.

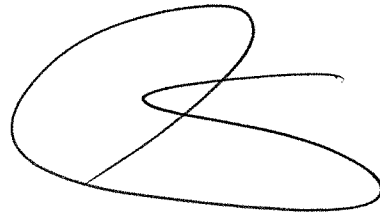
15 Addressed as follows:

16 Michael A. Pintar, Esq.
17 Glogovac & Pintar
427 West Plumb Lane
Reno, NV 89509

18 Mark G. Simons, ESq.
19 Robison, Belaustegui, Sharp & Low\
71 Washington Street
20 Reno, NV 89503

21 *Attorneys for Defendants*

22 DATED: 10.31.2016



23
24
25 An employee of the
26 Law Offices of Curtis B. Coulter

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INDEX OF EXHIBITS

Exhibit A	Mr. Fratis' Declaration and Mr. Shatz' Declaration
Exhibit B	Discovery requests from Plaintiffs to Defendant
Exhibit C	Notice to Take Deposition

EXHIBIT "A"

1
2
3 CODE: 1120
4 CURTIS B. COULTER, ESQ.
5 NSB #3034
6 Law Offices of Curtis B. Coulter, P.C.
7 403 Hill Street
8 Reno, Nevada 89501
9 P: 775 324 3380
10 F: 775 324 3381
11 ccoulter@coulterlaw.net

12
13 LEON GREENBERG, ESQ.
14 NSB #8094
15 DANA SNIEGOCKI, ESQ.
16 NSB #11715
17 Leon Greenberg Professional Corporation
18 2965 South Jones Blvd.
19 Suite E3
20 Las Vegas, Nevada 89146
21 P: 702.383.6085
22 F: 702.385.1827
23 leongreenberg@overtimelaw.com
24 dana@overtimelaw.com

25 *Attorneys for Plaintiff*

26
27 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
28
29 IN AND FOR THE COUNTY OF WASHOE

30 ARTHUR SHATZ and RICHARD FRATIS, Case No.: CV15-01359, CV15-01385
31 Individually and on behalf of
32 others similarly situated Dept. No.: 8

33 Plaintiffs,

34 v.

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

37 Defendants.
38 _____/

39 DECLARATION OF PLAINTIFF RICHARD FRATIS

40 Richard Fratis hereby affirms, under penalty of perjury, that:

- 41 1. I am one of the plaintiffs in this lawsuit. I am offering this declaration in response to
42 defendant's motion for summary judgment. This case concerns my claim that I was an

1
2
3 employee of Capital Cab when I worked for them as a taxi driver and I was entitled to a
4 minimum hourly wage for that work. I understand that Capital Cab is now requesting
5 that the Court dismiss my case because it claims I was really an independent contractor,
6 not their employee. As part of that request to the Court Capital Cab has made a number
7 statements that are not true.

8 2. I started working for Capital Cab in approximately 1999. Then, Capital Cab gave taxi
9 drivers a paycheck based on the hours worked. That practice changed shortly after I
10 started working for Capital Cab.

11 3. While I signed a contract to "lease" a cab from Capital Cab to drive, and that "lease"
12 was day to day, my work agreement with Capital Cab was not really a "lease" but a
13 "fare split" arrangement. Each shift that I took out a cab to drive I would collect the
14 fares on the meter from passengers. From those fares I had to pay for the taxi's gas and
15 pay Capital Cab \$5.00 plus one-half of the total amount of fares collected. I worked
16 driving a taxi for Capital Cab for over 10 years. **Exhibit 1** is a document I received
17 from Capital Cab. It provides supporting evidence of my declaration. Also, see **Exhibit**
18 **2**.

19 4. I understand that Capital Cab has told the Court that when I worked as a Capital Cab
20 taxi driver I could lease a cab to drive whenever I wanted and once I leased it I could
21 drive it as much, or as little, as I wanted, but just not for more than a continuous 12 hour
22 time period. That is not true. I could only drive a cab on the days and times that I pre-
23 arranged with Capital Cab and when they agreed to let me drive one. They had a
24 minimum number of times each week they demanded I drive a taxi, which during my
25 last few years driving was usually 4 days a week. If I did not show up to drive a taxi on
26 the days they assigned one to me, they would refuse to let me drive a taxi on other days.
27

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- 3 5. I also had to stay with the taxi I was assigned for my entire 12-hour shift or until Capital
- 4 Cab told me I could stop if I wanted to go home before that 12 hours was up (that is
- 5 called an "early out.") I could only get an "early out" if the authorized person at Capital
- 6 Cab gave me permission to stop working early, which sometimes they would give and
- 7 sometimes they would not. This was a real concern to the other taxi drivers and me
- 8 because there would be times that business was very slow, when there were no
- 9 passenger fares and no real prospect of getting any passenger fares. When that
- 10 happened, the other Capital Cab taxi drivers and I would often want to go home early
- 11 rather than wait hours for passenger calls that were never going to come. However,
- 12 Capital Cab often would refuse to let us turn in our taxis early and go home. That was
- 13 because Capital Cab was paying us nothing for our time and interested in having us wait
- 14 for hours with the chance we *might* get a fare and make money for the company.
- 15 6. Like other taxi drivers, I was told when to start work and when I could stop. The time I
- 16 worked was recorded on "Trip Sheets." Those sheets are in the possession of Capital
- 17 Cab. *See, Exhibit 1.*
- 18 7. I understand Capital Cab claims I could decide what fares to pick up and that the
- 19 amount I earned driving the cab had no relationship to anything that Capital Cab did.
- 20 That is not true. Approximately 90% of the customers I transported I received from
- 21 radio calls to me by Capital Cab's dispatchers. I had to pick up those customers if the
- 22 Capital Cab dispatcher told me to do so. If I refused, Capital Cab would not let me
- 23 continue to drive one of their taxis. Sometimes those calls would cost me money
- 24 because I had to pay for 100% of the taxi's gasoline. For example, Capital Cab's
- 25 dispatch would tell me I had to drive south to Minden (about 20 miles) to pick up and
- 26 transport a passenger in the Minden area. The fare for that passenger would be less than
- 27

1
2
3 \$5.00, and I would only receive 50% of that fare (less than \$2.50) for taking that call.
4 The cost for the gasoline to drive from Carson City to Minden and back would be more
5 than what I would earn from that fare. But I had no choice, I had to accept that call or
6 Capital Cab would tell me to return my taxi and stop working my shift and refuse to let
7 me work in the future for Capital Cab.

8 8. Taxi drivers were also prohibited from being in the dispatch office. The reason was to
9 be certain that dispatch sent out the pickup assignments, and to preclude drivers from
10 hearing a customer's call for a pickup and then go pick up that fare. Capital Cab called
11 that prohibited practice stealing a fare. *See, Exhibit 2, "Dispatch Office."*

12 9. Because about 90% of the passengers were assigned by Capital Cab's radio dispatchers,
13 I had very little control over the amount of money I made driving a taxi for Capital Cab.
14 The nature of the Carson City taxi business is there are not many taxi stands or places
15 where passengers will walk up to your taxi and ask you for a ride. As a result, what the
16 other Capital Cab taxi drivers and I earned driving a taxi for Capital Cab was almost
17 entirely dependent upon what passengers were referred to us by Capital Cab's radio
18 calls.

19 10. I understand Capital Cab says I did not have to wear any uniform. There was not any
20 official "Capital Cab" uniform but there was a dress code that required the other Capital
21 Cab taxi drivers and I wear a collared shirt.

22 11. Capital Cab was very controlling of my activities as a taxi driver since the amount of
23 money it earned from my work depended on the amount of fares I collected ("booked").
24 At one point Roy Street learned, my "book" was low because I was taking a three-hour
25 break during my 12-hour driving shift. I was doing that because of a medical condition.
26 He had my Friday night shift taken away from me as a result. That was a very desirable
27

1
2 shift because it was a busier time and Roy Street wanted to set an example of me and
3 give the Friday night shift to a taxi driver who he thought would be more available and
4 make more money for Capital Cab.
5

6 DATE: OCT 26, 2016

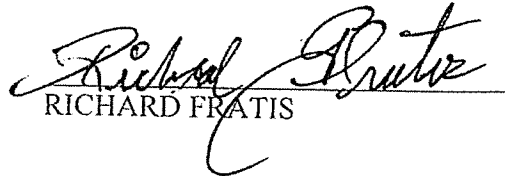
7 
8 RICHARD FRATIS
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EXHIBIT 1

EXHIBIT 1

UNITS IS MONEY

OFF EXTRAS

CAPITOL CAB CO.
TRIP SHEET

CARSON

driver name

date

cab#

is this second cab

yes/no

previous cab:

units	odometer	total miles	paid miles	trips	time out	time in	total time	personal time	down time	time worked
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The undersign lessee acknowledges that this period shall be governed by the taxi master lease Agreement, by and between a leasee and leasing company and will agree to be bound by all the terms, conditions and obligations of the taxi master lease agreement.

sign

new damage or unresolved problems with vehicle.

meter diff	
not on meter (+)	
deduct from meter (+)	
total book	
50%	
50% + \$5.00	
charges (-)	
other (+/-)	

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EXHIBIT 2

EXHIBIT 2

Capitol Cab Co.
Driver Rules and Regulations
2009

These rules, set in definition format, contain a variety of regulations and suggestions all of which are designed to accomplish several goals.

A) The best possible service to our customers.

B) The safest and most efficient operation of our fleet.

C) The fairest relationship of our employees with each other and the Company. These rules cannot cover every point or possible situation, but maintaining a professional attitude and using common sense will solve most of the problems that may arise. When in doubt, ask your Road Boss, Dispatcher or Management.

Absences: Excessive absences may result in loss of insurance benefits or termination. If you have to miss a shift, give as much notice as possible.

Abusiveness: There are several categories to consider, for example:

A) Other drivers or employees. Drivers, dispatch, or the mechanic are not to be verbally or physically abused. Abuse is counter-productive and will not be tolerated.

B) Passengers. Passengers are the lifeblood of the Company and are not to be abused, harassed, embarrassed, or intimidated in any way.

C) Cars. The Company maintains and repairs the cars. Excessive wear, damage or maintenance requirements due to abusive driving will be charged to the driver. Not checking the fluids, letting a developing problem go too long, hitting curbs, disregarding speed bumps and dips, and driving too fast in bad weather are great ways to lose your Security Fund and lease.

Accidents: Notify dispatch immediately. Render appropriate aid if necessary. Get as much information as you can. If it's investigated by law enforcement, get the case number, and do not move the car unless directed to by the officer present or the road boss. Above all, DO NOT admit fault. That will be determined by the law enforcement agency. All of the Company paperwork needs to be done immediately.

Additives: Don't put any additive into any system of the car without the advice and consent of the mechanic or management. This includes the canned Fix-A-Flat.

Alcohol: No driver shall use alcohol during or 12 hours before their shift.

Addresses: Avoid excessive airtime. Having dispatch repeat an address over and over is unnecessary. Make sure that you have correctly understood the address given. Writing down the address on your trip sheet or notepad saves a lot of airtime and your time.

Airport (Reno): When dropping off at the airport, do not leave your car unattended; you will be cited. Due to special permit requirements, only the road boss car is allowed to pick up at the Reno Tahoe airport.

Attitude: Simply put, a positive attitude, in virtually any situation, will be more beneficial than a negative one.

Back Loading: Loading a fare behind the first car on the stand. Normally prohibited, back loading is allowed as long as no form of enticement or inducement is used. We have many customers who prefer to ride with a familiar driver and will get in a car that isn't first on the stand.

Baggage: Use proper lifting techniques to avoid injuries. Not helping with baggage will most likely cost you a tip and get you a complaint.

Bars: Go inside and announce yourself. Be patient with the customer. Remember that bartenders and owners rely on you to get their customers home safely. You do have the right to refuse service if the customer cannot walk to the cab himself. You can walk them to and from the car if you so choose.

Bingo: You have a fare to pick up at the place where you are clearing. (Someone has called from the address or establishment you are dropping off at.) Bingos do not apply if there is a car sitting in that zone or if you can't load the fare within 3 minutes.

Brakes: Pay attention to the warning signs that your brakes are getting worn. You may be charged for a rotor or a drum that has to be replaced due to your negligence.

Calls: Fares dispatched by radio. You cannot refuse a call unless management has approved it or the customer has requested that you are not to pick them up.

Calling Off: You are allowed to "call off" once a month. If you call off any more than that, you will need a doctor's excuse. If you call off without a doctor's excuse, you will take the next working day off as well. When you call off you need to contact your road boss first.

Calling Trips: Always call your trips. This allows for more efficient dispatching, saves you gas and time, and is for your safety. If the dispatcher doesn't know what you are doing or where you are going, they cannot help you. If you have anyone in your cab or are making any delivery, you are on a trip and it must be called. Not calling trips is considered stealing from your fellow drivers.

Cars: Your home, office, and source of income. The cars are to be treated with respect and kept as clean as possible.

Chains: There will be times when chains are necessary. The Company provides chains, but you are responsible for their installation and removal. You may be charged for damage to the chains or the car if chains are used (or not used) in a negligent manner. Chains can be a hassle, but they can save you time and prevent an accident.

Change: You should start each shift with adequate change. The customer is entitled to change no matter how small the amount. Many times offering change will result in a happier customer and a better tip.

Charges: Capitol Cab has several accounts that charge fares. Always be certain the charge is good before accepting it. Charges often have restrictions or specific requirements. Dispatch will help you make sure the charge is valid.

Check: The standard word to acknowledge receiving a radio transmission. Always make sure the dispatcher "checks" your message. Assuming you were heard can lead to confusion for both you and dispatch.

Checks: No checks, period! If you receive it, it must be made out to you.

Citations: Unless involving a Company responsibility, you are liable for any citation or ticket received.

Cleanliness: The cleaner you keep yourself and your car, the better.

Clearing: A short announcement lets the dispatcher know you are ready for another call. Radio the dispatcher with your car number then wait to be acknowledged. After that happens transmit your clear amount. You are not entitled to clear until you are ready for another call. Calling clear when you are waiting to be paid or making change is cheating.

Codes: Insertion of the following words or phrases will inform the dispatcher and the road boss that you have a problem. If you have a situation in which you need to call a code and are unable to do so, key up your microphone and get as much information to the dispatcher as possible. If you hear the dispatcher repeat any of these words, stay off the air for the other driver's safety. When the code is cleared by the dispatcher, then you can transmit whatever you need to.

A) Capitol (car number): You wish to have a sheriff's unit meet you at your destination. For example, "Capitol 6 loaded to the Nugget" means that, for reasons you cannot discuss over the air, you want an officer to meet you at the Nugget.

B) Jockey: You are in a situation of imminent danger or are anticipating a problem with your fare. All other drivers stay off the air.

C) Zero: You are being physically attacked or need emergency assistance. The dispatcher will call the sheriff's office immediately, and then repeat your message so the other drivers know to stay off the air. Be careful not to use the word "zero" in ordinary transmissions.

Complaints: Unhappy customers will call the dispatcher or management for a variety of reasons. Some of these reasons might be driving habits, lack of change, trip route, appearance, attitude, etc. Too many complaints would indicate a career change.

Courtesy: One of the most important words in the cab industry. Extend courtesy to your passengers, the public, and other drivers. You are highly visible and your courtesy, or lack of it, will be noticed.

Criminal Activities: Not tolerated on or off shift.

Crosswalks: Exercise extra caution in blind situations, i.e. where traffic is slowing down or stopped for reasons not immediately known. Slow down or stop until you are sure the crosswalk is clear.

Cruising: Driving around, looking for fares, rarely productive in Carson City.

Defensive Driving: All drivers should pass a defensive driving course before going on the road; and every 2 years thereafter.

Deliveries: Go to the door of the address that wants the delivery. Get the money up front. Run the meter both ways (round trip). Make every attempt to do the shopping quickly and accurately. Some drivers prefer not to deliver alcohol.

If you're not comfortable with it, don't do it.

Dispatch: Radio service provided by the Company. Always let the dispatcher know what you are doing; getting in or out of your car, going to lunch, etc. The dispatcher works directly for the Company and is not to be used as your secretary.

Dispatch Office: Unless you're on legitimate business, STAY OUT of the dispatch office. If it is determined that you have stolen a call out of the dispatch office, you will be terminated.

Lease Fees: As an independent contractor with Capitol Cab, the lease fee set forth by management will be set at \$5.00 plus 50% of your meter total daily. This fee is non-negotiable and must be paid every day.

Long-Cabbing: The practice of calling a zone or on a stand before actually getting there. **DON'T DO IT!**

Meter: The meter must be in the "hired" position for all fares, passengers, or deliveries. Meter readings are to be recorded on your trip sheet. The operation of the meter is fully explained during your orientation and training.

Money: Do not flash large amounts of money. Be careful when asked if you can break large bills. It may be a set up. When you're turning in your book, please "face" your money; all the bills facing the same direction and same side up. Also change up. The manager has to count all the money every day. The easier you make it for him, the better for everyone.

Narcotics: Illegal substances are not condoned on or off shift.

Night Driving: Less visibility demands more caution. Watch for animals when you're out of town. Remember that you have a better chance of meeting a drunk driver at night. Drive defensively.

No-Goes: You cannot find the customer you were dispatched for. A legitimate no-go entitles you to be put back on 1 in the line up. A no-go from a personal entitles you to go back to where you were in the line up. A phony no-go to save your position will get you parked and/or terminated.

No Pay: If a passenger won't pay the fare you are entitled to make a citizen's arrest under the "Defrauding an Innkeeper" statutes. Take into consideration the circumstances and how much time it will take to file a report.

Pandering: If your customer asks you about the legal brothels in the area, you may discuss the subject with them. If you bring up the subject, you may be

guilty of pandering; the solicitation or provision of prostitution. This is strictly prohibited by Nevada State Law.

Parked: If you commit an infraction that warrants it the road boss may "gas" or "park" you. Don't argue, gas the car and return it to the shop. All "gassings" or "parking" are written up and reviewed by management.

Personals: A customer requests a specific driver. Unless you are on 1, you may refuse a personal or pass it to another driver. However, you are not allowed to pass it to a driver on another shift. Personals are generally dispatched as soon as they come in. **Your regular customers must ask for you every time they call. Otherwise, you will not be dispatched on the call.**

Pocket Personals: A personal you have pre-arranged or who has called you on your cell phone. Tell the dispatcher about your personal. Try to encourage your personals to go through the dispatcher. Dispatch may be holding other calls for you that may have called first.

Pushing: DO NOT push any other vehicle with your car. The air bag may deploy and you will be held responsible for its replacement.

Radio (Car): Do not let the stereo system interfere with your work. If it does, then the radio will be removed from the car.

Radio (Cab): Always listen to your radio. DO NOT turn it off while on a trip. The dispatcher may be trying to give you a bingo or need to communicate with you. Use air time as little as possible. Keep your transmissions short and to the point.

Radio Procedures: When calling your trips you should:

- A) Call your car number.
- B) Wait for the dispatcher to respond. Be sure it is you they are responding to.
- C) Give your trip information to the dispatcher. I.E., your destination, if it's a round trip, or has stops, etc.

D) Calling clear when you are finished with your trip. Give the dispatcher your clear amount. If it's an out of town trip, the dispatcher will need your clearing time, as well.

E) Be sure to be clear, concise, and to the point. Make sure all your information is correct.

If the dispatcher is busy and cannot respond to you quickly, please be patient and wait until you hear their voice, then proceed.

Round: You are clearing at the point where you picked up. Tell the dispatcher.

Security Deposit: As a driver, you must pay \$20.00 per week towards an accident fund. This fund is to pay for any at fault accidents or damage to the car you might have. At the end of your employment with Capitol Cab, If have not had any accidents or done any damages to the cars, you will receive all monies due to you. You will be paid within a period of 30 days, less any monies owed to the Company.

Service Area: The area in which we provide service includes Carson City Township, portions of Washoe County, all of Douglas and Lyon Counties.

Shift Change: The car should be fueled, clean, and at the shop 15 minutes before the beginning of the next shift. While an overlap sometimes occurs, all efforts should be made to avoid this.

Smoking: Do not smoke when you have a passenger in the car. Use your ashtray, not the streets, for butts.

Speed Bumps: They are there for a reason. Slow down. Speed bumps can easily damage your car. This kind of damage is considered abusive.

Stands: The only stand in Carson City is at the Nugget.

Stacking: Calling in "clear" when in fact you are not. Don't do it, it's not allowed.

Tips: The result of good service. You may not ask for a tip or harass the customer in any way for a tip, or the lack thereof.

Tipping Dispatchers: The dispatchers are not allowed to ask for tips, but as a driver you can tip them. If you think they are doing a good job please feel free to show them how much you appreciate them.

Transporting: Refers to driving a customer's vehicle. The Company's insurance does not permit us to do this. And will result in TERMINATION!!!

Trash: Dispose of trash properly. Do not use private dumpsters. Do not litter.

Trip Sheet: Provide the information indicated. Detailed trip sheet information is contained in the driver's manual.

U-turns: U-turns are prohibited. U-turns are the cause of most accidents and are not allowed anywhere.

Vouchers: All trips on vouchers or charge slips should be cleared with the dispatcher. Some vouchers also require a Company charge slip. Make sure the information is clear and legible. It should also include the passenger's name. Unless instructed by the company or its representatives do not, and I repeat, do not add a tip to the voucher. This is considered stealing from our customers who have these accounts set up with us. It can cause us to lose these customers or accounts. If you are caught doing this you will be parked and required to speak with management. This offense can and will lead to you standing in the unemployment line.

Waiting Time: The current rate for waiting time is \$23.00 per hour. Waiting time accrues at the rate of .46 for every 50 seconds. At speeds of less than 12.5 mph, the meter automatically goes on waiting time.

Weapons: The Company's Certificate requires us to obey all County, State, and Federal statutes. It is against Company policy to carry weapons in the car.

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Drug Testing: Capitol Cab has a **no tolerance rule**. In accordance with the Transportation Service Authority, all employees or lease drivers will submit to a random, regulated drug screen. Any and all employees or lease drivers that refuse this drug screening, for any reason, will be terminated. Any person that does not pass the drug screening will be terminated.

Documents: Always carry your driver's license, medical card, and S.O. card.

Double Loading: Permitted with the consent of the first fare. Run the trip to the first destination. Clear the meter and re-flag, to the second destination. Write both trips on your trip sheet.

Extras: We are certified to carry up to four people with no extra charge.

Estimates: If you need an estimate for a fare, ask the dispatcher or the road boss.

Flags: **Before taking any flag, check with the dispatcher!** Another car may have already been dispatched to that customer and you will be stealing the call. Always ask if you can take the flag first.

Flat Rating: Our certificate does not permit flat-rating. (The charging of an amount that is different from the meter.) It is not allowed.

Fluids: The life blood of your car. Check your fluids before going on the road.

Gambling: Gambling is on your time and your money. If you lose your book due to gambling you will be **TERMINATED, NO EXCEPTIONS!!!**

Gassing: Usually the dispatcher will tell you when it is time to gas at the end of your shift. Make sure the tank is topped off. Get a receipt and turn it in with your trip sheet.

Grievances: Be professional. Take your grievance to the road boss or management.

Weather: A major factor for safe driving. Remember, the roads become very slippery at the beginning and during any kind of precipitation. The Company provides winter driving training.

Zones: Carson City is divided into 4 zones; north, east, south, and the "block". Out of county zones are as follows:

- 1) South of the Douglas County Line.
- 2) East of the Virginia City turn off for Lyon County.
- 3) North of the East Lake Blvd. exit to just south of the Mount Rose Highway for Washoe County.

Please remember these rules are designed to be safe and fair to all parties involved. If you have any questions or concerns, please feel free to contact management or your road boss.

Thank You.

1
2
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24 *Attorneys for Plaintiff*

25 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

26 IN AND FOR THE COUNTY OF WASHOE

27 ARTHUR SHATZ and RICHARD FRATIS, Case No.: CV15-01359, CV15-01385
Individually and on behalf of
others similarly situated Dept. No.: 8

Plaintiffs,

v.

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

Defendants.

DECLARATION OF PLAINTIFF ARTHUR SHATZ

Arthur Shatz hereby affirms, under penalty of perjury, that:

1. I am one of the plaintiffs in this lawsuit. I am offering this declaration in response to defendant's motion for summary judgment. This case concerns my claim that I was an

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2
3 employee of Capital Cab when I worked for them as a taxi driver and I was entitled to a
4 minimum hourly wage for that work. I understand that Capital Cab is now requesting
5 that the Court dismiss my case arguing I was an independent contractor, not their
6 employee. As part of that request to the Court Capital Cab has made a number
7 statements that are not true.

8 2. I drove a taxi for Capital Cab for about three years and stopped in 2013 or 2014. While
9 I signed a contract to "lease" a cab from Capital Cab to drive, and that "lease" was day
10 to day, my work agreement with Capital Cab was not really a "lease" but a "fare split"
11 arrangement. Each shift that I took out a cab to drive I would collect the fares on the
12 meter from passengers. From those fares I had to pay for the taxi's gas and pay Capital
13 Cab \$5.00 plus one-half of the total amount of fares collected. This practice is shown on
14 Capital Cab's Trip Sheet. *See, Exhibit 1.*

15 3. The Trip Sheet also records the time the taxi driver starts working and when they stop
16 working. Capital Cab recorded the start and stop times when the driver started and when
17 the driver stopped working.

18 4. I understand that Capital Cab has told the Court that when I worked as a Capital Cab
19 taxi driver I could lease a cab to drive whenever I wanted and once I leased it I could
20 drive it as much, or as little, as I wanted, but just not for more than a continuous 12 hour
21 time period. That is not true. I could only drive a cab on the days and times that I pre-
22 arranged with Capital Cab and they agreed to let me drive the cab. They had a minimum
23 number of times each week they demanded I drive a taxi and my regular schedule
24 required that I drive a taxi for them four days a week, Thursday through Sunday. I knew
25 if I did not show up to drive a taxi on the days they assigned to me, they would refuse to
26 let me drive a taxi on other days. If I didn't want to drive a taxi on one of my normal
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3 scheduled days I had to request a day off, in advance, from Capital Cab, which they
4 might, or might not, agree to let me have. That is called "Calling Off." There was a
5 written rule by Capital Cab that drivers who were going to be out of work for a medical
6 reason for two days or more were required to bring in a doctor's note. In that respect, it
7 was just like any other job where you had assigned, regular, hours and days that you
8 were required to work and could only change those with permission from your
9 employer. *See, Exhibit 2* which is the Driver Rules and regulations I received from
10 Capital Cab.

11 5. I also had to stay with the taxi I was assigned for my entire 12-hour shift or until Capital
12 Cab told me I could stop if I wanted to go home before that 12 hours was up (that is
13 called an "early out.") I could only get that "early out" if the authorized person at
14 Capital Cab gave me permission to stop working early, which sometimes they would
15 give and sometimes they would not. This was a real concern to the other taxi drivers
16 and me because there would be times that business was very slow, when there were no
17 passenger fares or any real prospect of getting any passenger fares. When that happened
18 the other Capital Cab taxi drivers and I would often want to go home early rather than
19 wait hours for passenger calls that were never going to come. But Capital Cab often
20 would refuse to let us turn in our taxis early and go home. That was because Capital
21 Cab was paying us nothing for our time and interested in having us wait around for
22 hours on the chance we *might* get a fare and make money for the company.

23 6. I understand Capital Cab claims I could decide what fares to pick up and that the
24 amount I earned driving the cab had no relationship to anything that Capital Cab did.
25 That is not true. Approximately 90% or more of the customers I transported were the
26 result of radio dispatch calls to me by Capital Cab's dispatchers. There were a few times
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3 I was able to convince the Capital Cab's dispatchers to let me decline a particular radio
4 call, but that was rare and as a general rule I had to pick any customer Capital Cab
5 dispatchers told me to take. Typically, I Capital Cab dispatchers were strict with the
6 other taxi drivers about not letting them turn down any radio dispatched call to pick up a
7 customer. Even so, if I repeatedly or frequently refused to take radio calls given to me
8 Capital Cab they would not let me continue to drive one of their taxis. Sometimes those
9 radio dispatched assignments would be very bad for me to take and I would actually
10 *lose* money taking those calls because I had to pay for 100% of the taxi's gasoline. For
11 example, Capital Cab's dispatch would tell me I had to drive to Minden to take a local
12 trip for a passenger in the Minden area. The fare for that passenger would be about
13 \$5.00 and I would only receive 50% of that fare (about \$2.50) for taking that call. The
14 cost for the gasoline to drive from Carson City to Minden and back would be more than
15 what I would earn from that fare. But I had no choice, I had to accept that call or Capital
16 Cab would tell me to return my taxi and stop working my shift and also refuse to let me
17 work in the future for Capital Cab.

- 18 7. Because about 90% of the passengers came from Capital Cab's radio dispatchers I had
19 very little control over the amount of money I made driving a taxi for Capital Cab. The
20 nature of the Carson City taxi business is there are not many taxi stands or places where
21 passengers will walk up to your taxi and ask you for a ride. As a result, what the other
22 Capital Cab taxi drivers and I earned driving a taxi for Capital Cab was almost entirely
23 dependent upon what passengers were referred to us by Capital Cab's radio calls.

24 Date: 10/26/2016


ARTHUR SHATZ

EXHIBIT 1

EXHIBIT 1

UNITS IS MONEY
OFF EXTRAS

CAPITOL CAB CO.
TRIP SHEET

CARSON

driver name		date		cab#	
Is this second cab		yes/no		previous cab:	
units	1	odometer	total miles	4	paid miles
					trips
					6
					time out
					time in
					total time
					personal time
					down time
					time worked

The undersign lessee acknowledges that this period shall be governed by the taxi master lease Agreement, by and between a leasee and leasing company and will agree to be bound by all the terms, conditions and obligations of the taxi master lease agreement.

meter diff	
not on meter (+)	
deduct from meter (+)	
total book	
50%	
50% + \$5.00	
charges (-)	
other (+/-)	

sign
 new damage or unresolved problems with vehicle.

passengers	fuel cost	fuel gallons	total payment
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trip	pick up address	time	pass	destination	time	amount
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EXHIBIT 2

EXHIBIT 2

Capitol Cab Co.
Driver Rules and Regulations
2009

These rules, set in definition format, contain a variety of regulations and suggestions all of which are designed to accomplish several goals.

A) The best possible service to our customers.

B) The safest and most efficient operation of our fleet.

C) The fairest relationship of our employees with each other and the Company. These rules cannot cover every point or possible situation, but maintaining a professional attitude and using common sense will solve most of the problems that may arise. When in doubt, ask your Road Boss, Dispatcher or Management.

Absences: Excessive absences may result in loss of insurance benefits or termination. If you have to miss a shift, give as much notice as possible.

Abusiveness: There are several categories to consider, for example:

A) Other drivers or employees. Drivers, dispatch, or the mechanic are not to be verbally or physically abused. Abuse is counter-productive and will not be tolerated.

B) Passengers. Passengers are the lifeblood of the Company and are not to be abused, harassed, embarrassed, or intimidated in any way.

C) Cars. The Company maintains and repairs the cars. Excessive wear, damage or maintenance requirements due to abusive driving will be charged to the driver. Not checking the fluids, letting a developing problem go too long, hitting curbs, disregarding speed bumps and dips, and driving too fast in bad weather are great ways to lose your Security Fund and lease.

Accidents: Notify dispatch immediately. Render appropriate aid if necessary. Get as much information as you can. If it's investigated by law enforcement, get the case number, and do not move the car unless directed to by the officer present or the road boss. Above all, DO NOT admit fault. That will be determined by the law enforcement agency. All of the Company paperwork needs to be done immediately.

Additives: Don't put any additive into any system of the car without the advice and consent of the mechanic or management. This includes the canned Fix-A-Flat.

Alcohol: No driver shall use alcohol during or 12 hours before their shift.

Addresses: Avoid excessive airtime. Having dispatch repeat an address over and over is unnecessary. Make sure that you have correctly understood the address given. Writing down the address on your trip sheet or notepad saves a lot of airtime and your time.

Airport (Reno): When dropping off at the airport, do not leave your car unattended; you will be cited. Due to special permit requirements, only the road boss car is allowed to pick up at the Reno Tahoe airport.

Attitude: Simply put, a positive attitude, in virtually any situation, will be more beneficial than a negative one.

Back Loading: Loading a fare behind the first car on the stand. Normally prohibited, back loading is allowed as long as no form of enticement or inducement is used. We have many customers who prefer to ride with a familiar driver and will get in a car that isn't first on the stand.

Baggage: Use proper lifting techniques to avoid injuries. Not helping with baggage will most likely cost you a tip and get you a complaint.

Bars: Go inside and announce yourself. Be patient with the customer. Remember that bartenders and owners rely on you to get their customers home safely. You do have the right to refuse service if the customer cannot walk to the cab himself. You can walk them to and from the car if you so choose.

Bingo: You have a fare to pick up at the place where you are clearing. (Someone has called from the address or establishment you are dropping off at.) Bingos do not apply if there is a car sitting in that zone or if you can't load the fare within 3 minutes.

Brakes: Pay attention to the warning signs that your brakes are getting worn. You may be charged for a rotor or a drum that has to be replaced due to your negligence.

Calls: Fares dispatched by radio. You cannot refuse a call unless management has approved it or the customer has requested that you are not to pick them up.

Calling Off: You are allowed to "call off" once a month. If you call off any more than that, you will need a doctor's excuse. If you call off without a doctor's excuse, you will take the next working day off as well. When you call off you need to contact your road boss first.

Calling Trips: Always call your trips. This allows for more efficient dispatching, saves you gas and time, and is for your safety. If the dispatcher doesn't know what you are doing or where you are going, they cannot help you. If you have anyone in your cab or are making any delivery, you are on a trip and it must be called. Not calling trips is considered stealing from your fellow drivers.

Cars: Your home, office, and source of income. The cars are to be treated with respect and kept as clean as possible.

Chains: There will be times when chains are necessary. The Company provides chains, but you are responsible for their installation and removal. You may be charged for damage to the chains or the car if chains are used (or not used) in a negligent manner. Chains can be a hassle, but they can save you time and prevent an accident.

Change: You should start each shift with adequate change. The customer is entitled to change no matter how small the amount. Many times offering change will result in a happier customer and a better tip.

Charges: Capitol Cab has several accounts that charge fares. Always be certain the charge is good before accepting it. Charges often have restrictions or specific requirements. Dispatch will help you make sure the charge is valid.

Check: The standard word to acknowledge receiving a radio transmission. Always make sure the dispatcher "checks" your message. Assuming you were heard can lead to confusion for both you and dispatch.

Checks: No checks, period! If you receive it, it must be made out to you.

Citations: Unless involving a Company responsibility, you are liable for any citation or ticket received.

Cleanliness: The cleaner you keep yourself and your car, the better.

Clearing: A short announcement lets the dispatcher know you are ready for another call. Radio the dispatcher with your car number then wait to be acknowledged. After that happens transmit your clear amount. You are not entitled to clear until you are ready for another call. Calling clear when you are waiting to be paid or making change is cheating.

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Narcotics: Illegal substances are not condoned on or off shift.

Night Driving: Less visibility demands more caution. Watch for animals when you're out of town. Remember that you have a better chance of meeting a drunk driver at night. Drive defensively.

No-Goes: You cannot find the customer you were dispatched for. A legitimate no-go entitles you to be put back on 1 in the line up. A no-go from a personal entitles you to go back to where you were in the line up. A phony no-go to save your position will get you parked and/or terminated.

No Pay: If a passenger won't pay the fare you are entitled to make a citizen's arrest under the "Defrauding an Innkeeper" statutes. Take into consideration the circumstances and how much time it will take to file a report.

Pandering: If your customer asks you about the legal brothels in the area, you may discuss the subject with them. If you bring up the subject, you may be

guilty of pandering; the solicitation or provision of prostitution. This is strictly prohibited by Nevada State Law.

Parked: If you commit an infraction that warrants it the road boss may "gas" or "park" you. Don't argue, gas the car and return it to the shop. All "gassings" or "parking" are written up and reviewed by management.

Personals: A customer requests a specific driver. Unless you are on 1, you may refuse a personal or pass it to another driver. However, you are not allowed to pass it to a driver on another shift. Personals are generally dispatched as soon as they come in. **Your regular customers must ask for you every time they call. Otherwise, you will not be dispatched on the call.**

Pocket Personals: A personal you have pre-arranged or who has called you on your cell phone. Tell the dispatcher about your personal. Try to encourage your personals to go through the dispatcher. Dispatch may be holding other calls for you that may have called first.

Pushing: DO NOT push any other vehicle with your car. The air bag may deploy and you will be held responsible for its replacement.

Radio (Car): Do not let the stereo system interfere with your work. If it does, then the radio will be removed from the car.

Radio (Cab): Always listen to your radio. DO NOT turn it off while on a trip. The dispatcher may be trying to give you a bingo or need to communicate with you. Use air time as little as possible. Keep your transmissions short and to the point.

Radio Procedures: When calling your trips you should:

- A) Call your car number.
- B) Wait for the dispatcher to respond. Be sure it is you they are responding to.
- C) Give your trip information to the dispatcher. I.E., your destination, if it's a round trip, or has stops, etc.

D) Calling clear when you are finished with your trip. Give the dispatcher your clear amount. If it's an out of town trip, the dispatcher will need your clearing time, as well.

E) Be sure to be clear, concise, and to the point. Make sure all your information is correct.

If the dispatcher is busy and cannot respond to you quickly, please be patient and wait until you hear their voice, then proceed.

Round: You are clearing at the point where you picked up. Tell the dispatcher.

Security Deposit: As a driver, you must pay \$20.00 per week towards an accident fund. This fund is to pay for any at fault accidents or damage to the car you might have. At the end of your employment with Capitol Cab, If have not had any accidents or done any damages to the cars, you will receive all monies due to you. You will be paid within a period of 30 days, less any monies owed to the Company.

Service Area: The area in which we provide service includes Carson City Township, portions of Washoe County, all of Douglas and Lyon Counties.

Shift Change: The car should be fueled, clean, and at the shop 15 minutes before the beginning of the next shift. While an overlap sometimes occurs, all efforts should be made to avoid this.

Smoking: Do not smoke when you have a passenger in the car. Use your ashtray, not the streets, for butts.

Speed Bumps: They are there for a reason. Slow down. Speed bumps can easily damage your car. This kind of damage is considered abusive.

Stands: The only stand in Carson City is at the Nugget.

Stacking: Calling in "clear" when in fact you are not. Don't do it, it's not allowed.

Tips: The result of good service. You may not ask for a tip or harass the customer in any way for a tip, or the lack thereof.

Tipping Dispatchers: The dispatchers are not allowed to ask for tips, but as a driver you can tip them. If you think they are doing a good job please feel free to show them how much you appreciate them.

Transporting: Refers to driving a customer's vehicle. The Company's insurance does not permit us to do this. And will result in TERMINATION!!!

Trash: Dispose of trash properly. Do not use private dumpsters. Do not litter.

Trip Sheet: Provide the information indicated. Detailed trip sheet information is contained in the driver's manual.

U-turns: U-turns are prohibited. U-turns are the cause of most accidents and are not allowed anywhere.

Vouchers: All trips on vouchers or charge slips should be cleared with the dispatcher. Some vouchers also require a Company charge slip. Make sure the information is clear and legible. It should also include the passenger's name. Unless instructed by the company or its representatives do not, and I repeat, do not add a tip to the voucher. This is considered stealing from our customers who have these accounts set up with us. It can cause us to lose these customers or accounts. If you are caught doing this you will be parked and required to speak with management. This offense can and will lead to you standing in the unemployment line.

Waiting Time: The current rate for waiting time is \$23.00 per hour. Waiting time accrues at the rate of .46 for every 50 seconds. At speeds of less than 12.5 mph, the meter automatically goes on waiting time.

Weapons: The Company's Certificate requires us to obey all County, State, and Federal statutes. It is against Company policy to carry weapons in the car.

Tips: The result of good service. You may not ask for a tip or harass the customer in any way for a tip, or the lack thereof.

Tipping Dispatchers: The dispatchers are not allowed to ask for tips, but as a driver you can tip them. If you think they are doing a good job please feel free to show them how much you appreciate them.

Transporting: Refers to driving a customer's vehicle. The Company's insurance does not permit us to do this. And will result in TERMINATION!!!

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Weapons: The Company's Certificate requires us to obey all County, State, and Federal statutes. It is against Company policy to carry weapons in the car.

Drug Testing: Capitol Cab has a **no tolerance rule**. In accordance with the Transportation Service Authority, all employees or lease drivers will submit to a random, regulated drug screen. Any and all employees or lease drivers that refuse this drug screening, for any reason, will be terminated. Any person that does not pass the drug screening will be terminated.

Documents: Always carry your driver's license, medical card, and S.O. card.

Double Loading: Permitted with the consent of the first fare. Run the trip to the first destination. Clear the meter and re-flag, to the second destination. Write both trips on your trip sheet.

Extras: We are certified to carry up to four people with no extra charge.

Estimates: If you need an estimate for a fare, ask the dispatcher or the road boss.

Flags: **Before taking any flag, check with the dispatcher!** Another car may have already been dispatched to that customer and you will be stealing the call. Always ask if you can take the flag first.

Flat Rating: Our certificate does not permit flat-rating. (The charging of an amount that is different from the meter.) It is not allowed.

Fluids: The life blood of your car. Check your fluids before going on the road.

Gambling: Gambling is on your time and your money. If you lose your book due to gambling you will be **TERMINATED, NO EXCEPTIONS!!!**

Gassing: Usually the dispatcher will tell you when it is time to gas at the end of your shift. Make sure the tank is topped off. Get a receipt and turn it in with your trip sheet.

Grievances: Be professional. Take your grievance to the road boss or management.

Weather: A major factor for safe driving. Remember, the roads become very slippery at the beginning and during any kind of precipitation. The Company provides winter driving training.

Zones: Carson City is divided into 4 zones: north, east, south, and the "block". Out of county zones are as follows:

- 1) South of the Douglas County Line.
- 2) East of the Virginia City turn off for Lyon County.
- 3) North of the East Lake Blvd. exit to just south of the Mount Rose Highway for Washoe County.

Please remember these rules are designed to be safe and fair to all parties involved. If you have any questions or concerns, please feel free to contact management or your road boss.

Thank You.

EXHIBIT "B"

1 CURTIS B. COULTER, ESQ., NSB 3034
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Reno, Nevada 89501
3 Tel (775) 324-3380
Fax (775) 324-3381
4 ccoulter@coultterlaw.net

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6 DANA SNIEGOCKI, ESQ., NSB 11715
Leon Greenberg Professional Corporation
7 2965 South Jones Blvd - Suite E3
Las Vegas, Nevada 89146
8 Tel (702) 383-6085
Fax (702) 385-1827
9 leongreenberg@overtimelaw.com
10 dana@overtimelaw.com

11 Attorneys for Plaintiffs

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

14 ARTHUR SHATZ and RICHARD FRATIS,)
15 Individually and on behalf of others)
16 similarly situated,)

17 Plaintiffs,)

18 vs.)

19 ROY L. STREET, individually and doing)
business as CAPITAL CAB,)

20 Defendant.)

Case No.: CV 15-01359

Dept.: 8

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO THE
DEFENDANT**

21
22 TO: ROY L. STREET, defendant, and his attorneys of record

23 SET: ONE

24
25 Pursuant to Rule 33 of the Nevada Rules of Civil Procedure, plaintiffs request that
26 defendant furnishes sworn, separate, and complete written answers to each interrogatory
27 set forth herein to the Leon Greenberg Professional Corporation, attorney for plaintiffs, at
28 2965 South Jones Boulevard, Suite E3, Las Vegas, Nevada, 89146, which answers,

1 according to Rule 33 of the Nevada Rules of Civil Procedure, should be made within thirty
2 (30) days of the service of this Demand.

3 These interrogatories shall be deemed to continue beyond the date when the
4 defendant serves its responses to the same, and defendant shall supplement its answers if
5 further knowledge, information, or documents are acquired by the defendant,, its agents,
6 representatives, or attorneys subsequent to the date of the original response.

7 DEFINITIONS AND INSTRUCTION

8 1. If any request is deemed to call for the production of privileged information
9 provide the following information:

- 10 a. the reason for withholding the information;
11 b. a statement of the basis for the claim of privilege, work product
12 or other ground of non-disclosure

13 2. If you contend that it would be unreasonably burdensome to obtain and provide
14 any of the information called for in response to any of these requests, then in response to
15 the appropriate request:

- 16 a. produce and set forth all such information as is available to you
17 without undertaking what you contend to be an unreasonable burden;
18 b. describe with particularity the efforts made by you or on your
19 behalf to secure such information including, without limitation, identification of persons
20 consulted, description of files, records, and documents reviewed and identification of each
21 person who participated in the gathering of such information with specification of the amount
22 of time spent and nature of work done by each person; and
23 c. state with particularity the ground on which you contend that
24 additional efforts to obtain such information would be unreasonably burdensome.

25 3. These requests should be considered to be continuing, and supplemental
26 answers should be served as further information becomes available pursuant to Rule 26(e)
27 of the Federal Rules of Civil Procedure.

28 4. If any request herein cannot be complied with in full, it shall be complied with to

1 the extent possible with an explanation as to why full compliance is not possible.

2 5. With respect to information that is responsive but is withheld, the following
3 additional information shall be provided:

4 a. the grounds asserted supporting the failure to produce;

5 b. the factual basis for a claim of privilege and/or confidentiality;

6 6. The source or sources of the information provided in each interrogatory
7 response shall be specifically identified.

8 7. If in answering these requests, you claim any ambiguity in interpreting either the
9 request or a definition or instruction applicable thereto, such claim shall not be utilized by
10 you as a basis for refusing to respond, but there shall be set forth as part of the response
11 the language deemed to be ambiguous and the interpretation chosen or used in responding
12 to the request.

13 8. Unless otherwise specified, the time period covered by these demands is July
14 1, 2007 to the present.

15 9. The plural and singular tense shall be deemed to be used throughout these
16 demands and definitions and responses shall be made as if demands were made in both
17 the plural and singular tense regardless of how such demands are actually worded herein.

18
19 10. The conjunctive and disjunctive tense ("and/or") is to be deemed used
20 throughout these demands and definitions and defendant should respond to all demands as
21 if they are made in both the conjunctive and disjunctive tense except in respect to those
22 demands which clearly qualify a demand by using the conjunctive tense to narrow the scope
23 of the material sought.

24 11. The term "Defendant" refers to the defendant appearing on the caption of this
25 case and represented by the law office(s) receiving this request.

26 INTERROGATORIES

27 INTERROGATORY NO. 1:

28 In respect to the health insurance benefits offered by defendant to its taxicab

1 drivers from July 1, 2007 through the present, state with specificity the premium contribution
2 (in dollars and cents) required to be paid by all such taxicab drivers to obtain health
3 insurance benefits for such taxicab driver and his/her dependents.

4
5 **INTERROGATORY NO. 2:**

6 In respect to the health insurance benefits offered by defendant to its taxicab
7 drivers from July 1, 2007 through the present, state with specificity the waiting period (in
8 days, months, or years) that a taxicab driver must wait, after his/her first day of employment,
9 until he/she is eligible to obtain health insurance benefits offered by defendant.

10
11 **INTERROGATORY NO. 3:**

12 In respect to the health insurance benefits offered by defendant to its taxicab
13 drivers from July 1, 2007 through the present, state with specificity all qualifications a
14 taxicab driver must meet to become eligible to obtain health insurance benefits offered by
15 defendant, including but not limited to, the minimum number of hours or shifts (specifying
16 how many hours of work constitute a "shift") per week or per month or per year (and the
17 minimum amount of time, if any, that must be worked each such "shift") a taxicab driver
18 must work to be eligible to obtain such health insurance benefits or maintain their eligibility
19 to receive such benefits without having to make any additional premium payment.

20
21 **INTERROGATORY NO. 4:**

22 State with specificity the contents of all communications defendant or any of its
23 owners, principals, officers, and/or managers had any time prior to January 21, 2015
24 concerning defendant's legal obligations to its taxicab drivers with the minimum wage as
25 specified in Article 15, Section 16 of the Nevada Constitution, including but not limited to all
26 communications discussing such obligations with any attorney. A response to this
27 interrogatory should include, but not be limited to, the dates on which such communications
28 took place, the identity of all persons who were parties to such communications, and the

1 contents of all such communications.

2 **INTERROGATORY NO. 5:**

3 State with specificity the contents of all communications defendant or any of its
4 owners, principals, officers, and/or managers had any time prior to January 21, 2015
5 concerning whether or not defendant were required to comply to the provision of Article 15,
6 Section 16 (A) of the Nevada Constitution that states: "An employer shall provide written
7 notification of the rate adjustments to each of its employees and make the necessary payroll
8 adjustments by July 1 following the publication of the bulletin," including, but not limited to all
9 communications discussing such subject with any attorney. A response to this interrogatory
10 should include, but not be limited to, the dates on which such communications took place,
11 the identity of all persons who were parties to such communications, and the contents of all
12 such communications.

13 **INTERROGATORY NO. 6:**

14 Set forth the name, last known address, and last known telephone number for all
15 persons employed by as managers, assistant managers, supervisors, and dispatchers from
16 July 1, 2007 but who are no longer so employed with defendant.

17
18 DATED this 5th day of August, 2016.

19 Leon Greenberg Professional Corporation

20 By: /s/ Leon Greenberg
21 Leon Greenberg, Esq.
22 Nevada Bar No.: 8094
23 2965 South Jones Boulevard - Suite E3
24 Las Vegas, Nevada 89146
25 Tel (702) 383-6085
26 Attorney for Plaintiff
27
28

CERTIFICATE OF MAILING

The undersigned certifies that on August 9, 2016, she served the within:

PLAINTIFFS' FIRST SET OF INTERROGATORIES

by depositing the same in the U.S. mail, first class postage, prepaid, addressed as follows:

TO:

Michael A. Pintar, Esq.
Andrew C. Joy, Esq.
Glogovac & Pintar
427 West Plumb Lane
Reno, Nevada 89509

Attorneys for Defendant

/s/ Sydney Saucier

Sydney Saucier

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2 403 Hill Street
Reno, Nevada 89501
3 Tel (775) 324-3380
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Leon Greenberg Professional Corporation
7 2965 South Jones Blvd - Suite E3
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8 Tel (702) 383-6085
Fax (702) 385-1827
9 leongreenberg@overtimelaw.com
dana@overtimelaw.com

10 Attorneys for Plaintiffs

11
12 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
13 **THE STATE OF NEVADA IN AND FOR WASHOE COUNTY**

14 ARTHUR SHATZ and RICHARD FRATIS,)
15 Individually and on behalf of others)
16 similarly situated,)

17 Plaintiffs,)

18 vs.)

19 ROY L. STREET, individually and doing)
business as CAPITAL CAB,)

20 Defendant.)

Case No.: CV 15-01359

Dept.: 8

**PLAINTIFF'S FIRST SET OF
REQUEST FOR ADMISSIONS TO
DEFENDANTS**

21
22 TO: ROY L. STREET, defendant, and his attorneys of record

23 SET: ONE

24 Pursuant to Rule 36 of the Nevada Rules of Civil Procedure, plaintiff propounds
25 these Requests for Admissions to Defendants.

26 These requests shall be deemed to continue beyond the date when the defendant
27 serves its responses to the same, and defendant shall supplement its answers if further
28 knowledge, information, or documents are acquired by the defendant,, its agents,

1 representatives, or attorneys subsequent to the date of the original response.

2 **DEFINITIONS AND INSTRUCTIONS**

3 1. These requests should be considered to be continuing, and supplemental
4 answers should be served as further information becomes available pursuant to the
5 applicable rules of the Nevada Rules of Civil Procedure.

6 2. If any request herein cannot be complied with in full, it shall be complied with to
7 the extent possible with an explanation as to why full compliance is not possible.

8 3. The term "Action" refers to the above-captioned civil action, *Shatz, et al v.*
9 *Street, dba Capital Cab*, Case No. CV 15-01359.

10 4. The term "Complaint" refers to the Complaint on file in this Action.

11 5. The term "person" refers to and includes a corporation, partnership, joint
12 venture, proprietorship, firm, company, employer, unincorporated association, individual,
13 association of individuals, or any other such entity.

14 6. The term "individual" means a human being.

15 7. The term "document" means any written, graphic, or recorded material of
16 every kind and description, however produced or reproduced, whether draft or final, original
17 or reproduction, signed or unsigned, and regardless of whether approved, signed, sent,
18 received, redrafted, or executed, prepared by or for, or in the possession custody or control
19 of Defendants, their attorneys or other persons acting on Defendants' behalf. Without
20 limiting the foregoing, the term "document" includes the following: correspondence,
21 memoranda, electronic mail ("email") messages, text messages, computer generated
22 documents, documents maintained on a computer or computer disc or tape, notes jottings,
23 books, records, reports, surveys, studies, analyses, projections, tapes, recordings, or
24 transcriptions of verbal conversations or statements, however made, business forms, labels,
25 papers and forms filed with courts or other governmental bodies, notices, messages,
26 calendar or diary entries, charts, tabulations, contracts, applications, maps, pamphlets, film
27 impressions, agreements, statistical or informational accumulation including all forms of
28 computer storage and retrieval, transportation logs, appointment books, resolutions,

1 minutes or informal memoranda of meetings, and copies of documents which are not
2 identical duplicates of the originals (e.g., because handwritten or "blind" notes appear
3 thereon or are attached thereto) or materials similar to any of the foregoing.

4 8. The term "communication" means any manner or form of information or
5 message transmission, however produced or reproduced, whether by correspondence,
6 memorandum, or other document, or orally or otherwise, which is made, distributed,
7 circulated between or among persons or data storage or processing units, in any way, either
8 directly or indirectly. The term includes any conversation, discussion, meeting, conference
9 or any other oral statement.

10 9. The term "identify" means:

- 11 a. When used with reference to a document, state: (i) the type of
12 documents (e.g., letter, email, memorandum, report, tape,
13 printout, etc.); (ii) the date when the document was prepared;
14 (iii) the name of the individual who drafted or prepared the
15 document; (iv) the present or last known location of the
16 document or the identity of the individual who has custody of
17 the document; and (v) such other information sufficient to
18 enable Defendants to identify the document, such as the
19 addressee(s), the approximate length in pages, persons who
20 received copies, and a synopsis of its contents.
- 21 b. When used with reference to a person, state its or their: (i) full
22 name; (ii) organizational status (e.g., corporation, partnership,
23 etc.); (iii) nature and character of its or their business or
24 organization; (iv) business address and telephone number; (v)
25 last known residential address and telephone number; and (vi)
26 other similar identifying information, with the exception that if
27 the person to be identified is an individual, then identify as in
28 subparagraph (c).

- 1 c. When used with reference to an individual, state his or her: (i)
2 full name; (ii) last known home or business address and
3 telephone number; (iii) job title or position; and (iv) other similar
4 identifying or contact information.
- 5 d. When used with reference to a communication: (i) If written,
6 identify the document as in subparagraph (a) above; and (ii) if
7 oral, state the date of the communication and the individuals
8 or persons who sent, received and otherwise had knowledge of
9 the communication, and state the substance thereof.
- 10 10. The term "date" means the day, month, and year. If any of these three (3)
11 components of the date is unavailable, so state, and give as close an approximation as
12 possible to the unproduced date.
- 13 11. The term "including" means "including without limitation."
- 14 12. The terms "relating to" or "concerning" mean and include: regarding,
15 pertaining to, constituting, referring to, evidencing, contradicting, reflecting, describing,
16 embodying, concerning, mentioning, supporting, corroborating, proving, showing, refuting,
17 including, or has anything to do with, and in each instance, directly or indirectly. These
18 terms mean, without limitation, any reference or relationship which either (a) provides
19 information with respect to the subject inquiry, or (b) might lead to individuals who, or
20 documents which, might possess or contain information with respect to the subject of
21 inquiry.
- 22 13. The terms "and" and "or" shall be both conjunctive and disjunctive.
- 23 14. The term "any" includes "all," "every," and "each," and vice versa.
- 24 15. Where the singular is used with reference to any person, document,
25 communication, or other item, it shall include the plural if, in fact, there are more than one,
26 and vice versa.
- 27 16. If Defendants object to part of an Interrogatory and refuse to answer or
28 produce pursuant to that part, Defendants should state their objection and respond to the

1 remainder of that Interrogatory. If Defendants object to the scope or time period of an
2 Interrogatory and refuses to answer for that scope or time period, Defendants should state
3 their objection and respond to the Interrogatory for the scope or time period she believes is
4 appropriate.

5 17. In producing documents in response to these Requests For Admissions,
6 please indicate, by number, the specific Interrogatory to which each document or group of
7 documents is responsive.

8 18. If any documents requested herein have been lost, stolen, discarded, or
9 destroyed, the document so lost, discarded, stolen, or destroyed shall be identified as
10 completely as possible, including the identification set forth below regarding privileged
11 matter and the following information: date of disposal or loss or theft, person authorizing the
12 disposal, persons having knowledge of the disposal, loss, or theft, and the person disposing
13 of the document.

14 19. If you object to any part of an Interrogatory because of a privilege, please
15 provide the following information:

- 16 a. the nature of the privilege claimed (including work product);
- 17 b. if the privilege is being asserted in connection with a claim or defense
18 governed by state law, the state privilege rule being invoked;
- 19 c. the date of the document or communication;
- 20 d. if a document: its type (correspondence, memorandum, facsimile, etc.),
21 custodian, location, and such other information sufficient to identify the
22 document for a subpoena duces tecum or an Interrogatory, including,
23 where appropriate, the author(s), the addressee(s), and, if not apparent,
24 the relationship between the author(s) and addressee(s);
- 25 e. if a verbal communication: the place where it was made, the names of
26 the persons present while it was made, and, if not apparent, the
27 relationship of the persons present to the declarant; and
- 28 f. the general subject matter of the document or communication.

20. These Requests For Admissions are to be regarded as continuing in nature pursuant to Nevada Rule of Civil Procedure 26(c), and Defendants are requested to provide, by way of supplemental responses, any additional information later obtained by Defendants, their attorneys, or any other person or entity for or on their behalf, which information will augment or otherwise modify any response given to these Requests For Admissions.

21. The term “plaintiffs” refers to the individual named plaintiffs in the complaint filed in this action and all other persons similarly situated to the plaintiffs.

23. The terms “document” and “documents” include every memorialization in every medium of every kind and nature.

24. The term “gross taxable income” as used in these requests means the wages paid by defendants to its taxicab drivers excluding any tips collected by such taxicab drivers. As used herein, “wages” is given the meaning set forth in NRS 608.012.

25. Unless otherwise specified, the time period covered by these demands is July 1, 2007 to the present.

REQUEST FOR ADMISSIONS

1. Admit the insurance premium contribution defendant's taxicab driver employees were required to pay, from July 1, 2007 through the present, to secure health insurance coverage for both themselves and their dependents under the health insurance plan offered by defendant, exceeded 10 percent of each such taxicab drivers' gross taxable income from the defendant each month.

2. Admit the insurance premium contribution defendant's taxicab driver employees were required to pay, from July 1, 2007 through the present, to secure health insurance coverage for both themselves and their dependents under the health insurance plan offered by defendant, exceeded 10 percent of some of such taxicab drivers' gross taxable income from the defendant each month.

3. Admit that, prior to July 1, 2014, defendants never provided a written notification of the rate adjustment of the Nevada hourly minimum wage, which adjustment became effective on July 1, 2007, to each of its taxicab drivers employed on July 1, 2007 or

1 thereafter.

2 4. Admit that, prior to July 1, 2014, defendants never provided a written
3 notification of the rate adjustment of the Nevada hourly minimum wage, which adjustment
4 became effective on July 1, 2010, to each of its taxicab drivers employed on July 1, 2010 or
5 thereafter.

6 5. Admit that some of defendant's taxicab driver employees, from July 1, 2007
7 through the present, were employed by defendants during days that the benefits conferred
8 by defendant's health insurance plan were unavailable to them because they were not
9 qualified to participate in such health insurance plan irrespective of their willingness to pay a
10 portion of an insurance premium to receive those benefits.

11 6. Admit that on or after July 1, 2007, defendant imposed a waiting period that
12 exceeded six months, after the date of hire, for taxicab drivers to become eligible to receive
13 health insurance benefits, provided by the defendant, for themselves and their dependents.

14
15 DATED this 5th day of August, 2016.

16
17 Leon Greenberg Professional Corporation

18 By: /s/ Leon Greenberg

19 Leon Greenberg, Esq.

20 Nevada Bar No.: 8094

21 2965 South Jones Boulevard - Suite E3

22 Las Vegas, Nevada 89146

23 Tel (702) 383-6085

24 Attorney for Plaintiff
25
26
27
28

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10 Attorneys for Plaintiffs

11
12 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
13 **THE STATE OF NEVADA IN AND FOR WASHOE COUNTY**

14 ARTHUR SHATZ and RICHARD FRATIS,)
15 Individually and on behalf of others)
16 similarly situated,)

17 Plaintiffs,)

18 vs.)

19 ROY L. STREET, individually and doing
business as CAPITAL CAB,)

20 Defendant.)

Case No.: CV 15-01359

Dept.: 8

**PLAINTIFF'S FIRST REQUEST
FOR THE PRODUCTION OF
DOCUMENTS**

21
22 TO: ROY L. STREET, defendant, and his attorneys of record

23 SET: ONE

24 Pursuant to the applicable provisions of the Nevada Rules of Civil Procedure § 34
25 and the Local Rules of this Court plaintiff request that the defendant produce the following
26 items within 30 days of the service of this request or within such other time frame allowed by
27 said Rule at the Law Office of Leon Greenberg, Professional Corporation, attorney for
28 plaintiff, at 2965 South Jones Boulevard, Suite E3, Las Vegas, Nevada, 89146, for

1 inspection and copying. This request seeks in the first instance, in lieu of producing such
2 items for inspection and copying, the production of copies of such items which defendant
3 can produce and/or have delivered on or before such date. If defendant wishes to produce
4 the original items for production and copying it needs to contact plaintiff's counsel to confirm
5 their appearance on such date with such items and/or to arrange another mutually
6 convenient date for such production.

8 **INSTRUCTIONS AND DEFINITIONS**

9 1. These requests should be considered to be continuing, and supplemental answers
10 should be served as further information becomes available pursuant to Rule 26(e) of the
11 Nevada Rules of Civil Procedure.

12 2. In complying with this Request for Production of Documents, you are required to
13 produce all documents specified herein that are in your possession, custody or control or
14 which are otherwise available to you.

15 3. If any request herein cannot be complied with in full, it shall be complied with to the
16 extent possible with an explanation as to why full compliance is not possible.

17 4. With respect to each document or communication that is responsive but is withheld,
18 the following additional information shall be provided:

19 a) the grounds asserted supporting the failure to produce;

20 b) the factual basis for a claim of privilege and/or confidentiality;

21 c) the subject matter, date, author, recipient, addressee and number of pages;

22 d) the subject matter, date, parties and medium for each communication;

23 e) the current or last known location of the document; and

24 f) the current or last known person retaining the document.

25 5. If a requested document cannot be located, then identify such document by setting
26 forth:

27 a) the last known person retaining the document;

28 b) whether the document is lost and the efforts made to locate the lost document;

1 c) whether the document was destroyed or discarded and the date, manner,
2 reason and person responsible for such action; and

3 d) a statement describing the document, including a summary of its contents, the
4 author and the persons to whom it was sent or shown.

5 6. If any documents which contained responsive information no longer exist, identify
6 each by setting forth:

7 a) all the information contained in the document;

8 b) the type of document (e.g., letters or memoranda);

9 c) the time period when the documents were maintained;

10 d) all persons who have or had knowledge of the contents of the documents;

11 e) the circumstances of the loss or destruction; and

12 f) all persons who have knowledge of the loss or destruction.

13 7. If any identified document is subject to destruction under any document retention or
14 destruction program, the document(s) should be exempted from any scheduled destruction
15 until the conclusion of this lawsuit or unless otherwise permitted by the Court.

16 8. Separate responses should be given to each document request. If a document is
17 responsive to more than one request, additional copies are not needed, but the subsequent
18 responses should identify the request for which the document was produced.

19 9. The source or sources of each document produced shall be specifically identified.

20 10. Please produce clear and legible copies of the originals of all documents
21 requested, as well as any and all copies of such original documents that bear any mark or
22 notation not present on the original.

23 11. If in answering these requests, you claim any ambiguity in interpreting either the
24 request or a definition or instruction applicable thereto, such claim shall not be utilized by
25 you as a basis for refusing to respond, but there shall be set forth as part of the response
26 the language deemed to be ambiguous and the interpretation chosen or used in responding
27 to the request.

28 12. Unless otherwise specified, the time period covered by these demands is July 1,

1 2007 to the present.

2 13. The plural and singular tense shall be deemed to be used throughout these
3 demands and definitions and responses shall be made as if demands were made in both
4 the plural and singular tense regardless of how such demands are actually worded herein.

5 14. The conjunctive and disjunctive tense ("and/or") is to be deemed used throughout
6 these demands and definitions and defendant should respond to all demands as if they are
7 made in both the conjunctive and disjunctive tense except in respect to those demands
8 which clearly qualify a demand by using the conjunctive tense to narrow the scope of the
9 material sought.

10 15. The term "Defendant" refers to defendant in this action represented by the law
11 office(s) receiving this request.

12 16. In the event that any documents requested for production herein exist in electronic
13 (be it database, word processing, or other computer software) form, or were generated from
14 such electronic form, please specify the electronic form for each document produced, and
15 produce such materials in their native, electronic form, as opposed to paper documents or
16 PDF documents. This includes the actual database files or other computer files in their
17 original, native, format.

18 17. In the event the documents to be produced in response to these requests exceed
19 500 pages, and the documents to be produced, or some of them, exist in electronic (be it
20 database, word processing, or other computer software) form, or were generated from such
21 electronic form, the production of such documents in their original electronic form (and not in
22 paper form) is requested and please contact plaintiff's counsel to make arrangements for
23 the production of such documents in electronic form.

24 18. If a request seeks documents containing information that has not been compiled or
25 organized by the defendant in the exact form requested, but the information requested
26 exists in an electronic form from which such document(s) can be produced, a complete copy
27 of such electronic form (database) can be produced in lieu of the specifically requested
28 documents.

1 19. The term "plaintiff" refers to the persons named as plaintiff in the caption of this
2 case.

3 20. The term "defendant's taxicab drivers" refers to all persons who drove defendant's
4 taxi cabs and while doing so transported one or more paying passengers. The term refers
5 to all such persons who leased such taxi cabs from defendants and as a result of such
6 lease were, if otherwise qualified, legally authorized to drive such taxi cabs and while doing
7 so transport fare paying passengers in such taxi cabs. The term also includes all persons
8 the defendant allowed or permitted to drive its taxi cabs and transport paying customers in
9 such taxi cabs in the absence of any such lease agreement with the defendant.

10 21. The term "document" means every recording or record of whatever nature,
11 including all paper records and computer (electronic data) records and audio and video
12 recordings.

13 14 **DOCUMENTS TO BE PRODUCED**

15 1. Produce copies of all taxi cab lease agreements and all other agreements
16 entered into between the defendant and defendant's taxicab drivers for all periods from July
17 1, 2007 through the present.

18
19
20 2. Produce copies of all records setting forth the activities Defendant's Taxi Cab
21 Drivers from July 1, 2007 through the present. This request seeks, in the first instance, the
22 production of **electronic computer database or other computer data files** that contain
23 such information, which would include all details of amounts earned (whether calculated on
24 a commission, hourly or other basis) or collected by each of Defendant's Taxi Cab Drivers,
25 whether from the collection of customer fares or otherwise, each day or each pay period,
26 hours worked each day or each pay period, tips received or credited each day or each pay
27 period, and deductions made from amounts paid or to be paid by defendant to its taxi
28 drivers. If such information, or all of such information, is not available in such computer file

1 form, other forms that contain such information can be substituted, but only for such
2 information (or portion of such information) that is not available in computer file form. Such
3 substitution may include the following paper documents (or computer images of such
4 documents) which should contain some or all of the requested information:

- 5 a) Pay stubs or other records of payment amounts made;
- 6 b) Copies of cancelled checks if no paystub is produced for such check;
- 7 c) Time records (including time log, time card, computer time keeping system
8 reports or printouts and similar records);
- 9 d) 1099 forms;
- 10 e) All other records of whatever nature that show or refer to either the hours worked
11 by, or the amounts paid to, or amounts owed to or work performed by, the plaintiff and
12 persons similarly situated to the plaintiff.

13
14 3. Produce copies of all releases, waivers or settlement agreements that purport to
15 release or settle any actual or potential claim of any taxicab driver of the defendant for
16 unpaid monies owed to them by the defendant or that affirm or acknowledge receipt by any
17 taxicab driver of the defendant of full payment of any wages, penalties or other monies
18 owed to such person by the defendant.

19
20 4. Produce copies of all records detailing the "trips" performed by the named
21 plaintiff and defendant's taxicab drivers from July 1, 2007 through the present. For the
22 purpose of this request, the term "trip" refers to the driving of passengers by a taxicab driver
23 for which a fare was collected. This request seeks the production of such materials in their
24 original, native, electronic form (data or database format) and not in a form that is converted
25 from a data file into PDF images or printed in paper form. If defendant has any concern
26 about its ability to produce these materials in the requested electronic data format,
27 defendant's counsel should contact plaintiff's counsel to discuss proper production.

28

1 5. Produce copies of all documents that detail, mention, or illustrate the method
2 and manner of compensation to be paid to the plaintiff defendant's taxicab drivers by the
3 defendant for the performance of taxicab driving.

4
5 6. Produce copies of all handbooks, rules, instructions, directions and manuals and
6 similar documents distributed to the plaintiff and defendant's taxicab drivers.

7
8 7. Produce copies of all records and documents containing any information setting
9 forth or relating to the commission rates paid to or promised to plaintiff and defendant's
10 taxicab drivers for the performance of taxicab driving from July 1, 2007 through the present.

11
12 8. For each affirmative defense asserted by the defendant, separately identify and
13 produce all documents relevant to the defense.

14 9. Identify and produce all documents which heretofore have not been produced,
15 but which relate to or support the defendant's affirmative defenses or contradicts the claims
16 made in plaintiff's complaint or that the defendant reserve the right to rely upon at the time
17 of trial.

18
19 11. Identify and produce a list of the names and addresses of all persons similarly
20 situated to the plaintiff who leased taxis from the defendant from July 1, 2007 through
21 December 31, 2015, such taxi leases containing a requirement that the defendant receive a
22 portion (percentage) of the fares collected by the leasing taxi driver.

23
24 12. Produce copies of all insurance policies and/or bonds that may be available to
25 pay any damages sought by the plaintiff in his complaint.

26
27 13. Produce a copy of all contracts of whatever nature entered into between the
28 plaintiff (and defendant's taxicab drivers) and the defendant, including, but not limited to, all

1 independent contractor agreements which such persons worked under and which were in
2 effect from anytime between July 1, 2007 to the present.

3
4 14. Produce copies of any documents relating to or mentioning any investigation,
5 inquiry, or correspondence directed to or mentioning the name of, or in the possession of,
6 the defendant. Such documents, investigations or inquiries originating with either the
7 Nevada Labor Commissioner or the United States Department of Labor, such documents
8 mentioning or referring to any claims for unpaid wages (of any sort) by taxicab drivers of the
9 defendant or any other person or entity. This request includes the production of all
10 documents generated as a result of, or used in connection with, any audit conducted by or
11 of the defendant in connection with any claims for unpaid wages by employees performing
12 taxicab driving services. This request is not limited to any time frame.

13
14 15. Identify and produce copies of all papers related to or mentioning any litigation
15 in which the defendant, or any non-publicly traded corporation in which they had an
16 ownership interest in, are named as defendant(s) and which litigation involved any claim for
17 unpaid wages. This request is not limited to any time frame.

18
19 16. Produce a complete copy of the personnel file and all other records in the
20 possession of the defendant on the named plaintiffs.

21
22 17. Identify and produce copies of all documents furnished by the defendant
23 to the Nevada Labor Commissioner or the United States Department of Labor, wage and
24 hour division for any reason. This includes all documents, computer data files, or
25 information in computer systems, that were provided to or made available for inspection and
26 review by the defendant to the United States Department of Labor in connection with their
27 investigation(s) of defendant's compliance with the Fair Labor Standards Act, such things to
28 be produced even if they were not actually inspected and reviewed by the United States

1 Department of Labor.

2
3 18. Identify and produce all documents that mention or contain any reference
4 to the plaintiffs.

5
6 19. Produce copies of all statements gathered since the commencement of this
7 litigation, such statements bearing on any facts and circumstances contained in the
8 complaint filed in this action, and such statements gathered in preparation of the defense of
9 the plaintiff's claims in this action and on which defendant may rely.

10
11 20. Produce copies of all attendance records for the plaintiffs and defendant's
12 taxicab drivers from July 1, 2007 through the present, such records demonstrating whether
13 any of such persons were present or absent at the defendant's facilities on a particular day.
14 This request seeks the production of such materials in their original, native, electronic form
15 (data or database format) and not in a form that is converted into PDF images or printed in
16 paper form. If defendant has any concern about its ability to produce these materials in the
17 requested electronic data format, defendant's counsel should contact plaintiff's counsel to
18 discuss proper production.

19
20 21. Produce all documents containing identifying information (name, address, and
21 telephone number) of all persons formerly employed by defendant in any capacity other
22 than as taxicab drivers (including, but not limited to, former managers, assistant managers,
23 supervisors, dispatchers, administrative employees, etc.), such persons having been
24 employed any time after July 1, 2007 and who are no longer employed by defendant.

25
26 22. Produce/Identify copies of all e-mails and/or other written communications
27 between or among any of the corporate owners of the defendant in this action, such
28 communications concerning the above captioned lawsuit and/or activities relating to the

1 filing of this lawsuit. Excluded from this request are any communications in which counsel
2 for the defendant was an author or recipient of such communication when such
3 communication was *first* made or dispatched but defendant should produce copies of any
4 such communications that were subsequently made or dispatched to persons who are not
5 counsel for the defendant.

6
7 23. For all time periods since July 1, 2007 during which defendant claims it does
8 not otherwise possess accurate records of the hours worked each day or each pay period
9 by its taxi cab drivers, produce copies of the trip sheets and other records of the trips (taxi
10 passenger transports) performed by the named plaintiff defendant's taxicab drivers. For the
11 purpose of this request, the term "trip" refers to the driving of passengers by a taxicab driver
12 for which a fare was collected. This information, if created, kept or maintained and fully
13 available in computer file form (database form), is sought in that form and you should
14 contact plaintiff's counsel to arrange for production of such computer file(s) in an
15 appropriate format.

16
17 24. Produce all documents created by, posted by, or provided by defendant
18 to defendant's taxicab drivers in compliance with Article 15, Section 16 (A) of the Nevada
19 Constitution concerning written notification to employees of the minimum wage rate
20 adjustments discussed in such section.

21
22 25. Produce all communications, advisements, letters, memoranda, or other
23 documents relied upon by defendant to determine whether or not defendant was required to
24 comply to the provision of Article 15, Section 16 (A) of the Nevada Constitution that states:
25 "An employer shall provide written notification of the rate adjustments to each of its
26 employees and make the necessary payroll adjustments by July 1 following the publication
27 of the bulletin." This request includes all documents and communications between the
28 defendant and any other person, including but not limited to, management advisors,

1 consultants, and attorneys. This request is not limited to any particular time frame.

2
3 26. Produce copies of all documents or records that discuss, mention, detail,
4 or demonstrate the availability of, cost of, premiums associated with, and waiting period for,
5 any health insurance plan or coverage, including family coverage, offered by defendant to
6 its taxicab drivers from July 1, 2007 through the present.

7
8 27. Produce all computer data files from defendant's taxicab meters or any
9 other source that contain information concerning the use or operation of defendant's taxi
10 medallions on a daily basis, including but not limited to, information concerning the total time
11 (in hours and minutes) per day all such medallions are in operation, the operator (taxicab
12 driver) of such medallion, the number of trips associated with each such medallion each
13 day, and all other information concerning the use or operation of defendant's medallions.
14 Information responsive to this request must include all such information from July 1, 2007
15 through the present.

16
17 28. Produce copies of all IRS 1099 forms for the plaintiff and defendant's
18 taxicab drivers who drove taxicabs for the defendant from July 1, 2007 through the present.

19
20 DATED this 4th day of August, 2016.

21 Leon Greenberg Professional Corporation

22 By: /s/ Leon Greenberg
23 Leon Greenberg, Esq.
24 Nevada Bar No.: 8094
25 2965 South Jones Boulevard - Suite E3
26 Las Vegas, Nevada 89146
27 Tel (702) 383-6085
28 Attorney for Plaintiff

EXHIBIT "C"

NOTC
CURTIS B. COULTER, ESQ.
NSB #3034
Law Offices of Curtis B. Coulter, P.C.
403 Hill Street
Reno, Nevada 89501
P: 775 324 3380
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Attorneys for Plaintiffs

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

IN AND FOR THE COUNTY OF WASHOE

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

Plaintiffs,

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

Defendants.

Case No.: CV15-01359, CV15-
01385

Dept.: 8

**NOTICE TO TAKE
DEPOSITION**

PLEASE TAKE NOTICE that pursuant to Nevada Rules of Civil Procedure §
26 and § 30(b), plaintiffs, by their attorneys, Leon Greenberg Professional Corporation,
will take the deposition of defendant, ROY L. STREET. Such deposition will be to
secure testimony from such defendant for all purposes in this litigation, including the
prosecution of the claims of the plaintiffs and on whatever defenses are alleged in this
case by the defendant.

1 The witness(es) is to be produced on the **12th day of December, 2016** at the
2 hour of **10:00 a.m.** or another agreed data and time at the law office of Curtis B.
3 Coulter, P.C., 403 Hill Street, Reno, Nevada 89501 , and will continue day to day until
4 completed. Such witness(es) will be examined as to the foregoing and all facts and
5 circumstances bearing upon any and all issues in this litigation. Such deposition shall
6 be recorded by audio and/or video and/or stenographically.

7
8 Dated this 28th day of October, 2016.

9
10 Leon Greenberg Professional Corporation

11
12 By: /s/ Leon Greenberg

13 LEON GREENBERG, Esq.
14 Nevada Bar No.: 8094
2965 South Jones Blvd- Suite E3
15 Las Vegas, Nevada 89146
(702) 383-6085

16 Attorney for Plaintiffs
17
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28

CERTIFICATE OF MAILING

The undersigned certifies that on October 28, 2016, she served the within:

NOTICE TO TAKE DEPOSITION

by depositing the same in the U.S. mail, first class postage, prepaid, addressed as follows:

TO:

Michael A. Pintar, Esq.
Andrew C. Joy, Esq.
Glogovac & Pintar
427 West Plumb Lane
Reno, Nevada 89509

Attorneys for Defendant

/s/ Sydney Saucier

Sydney Saucier

3795

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tshanks@rbsllaw.com

Attorneys for Reno Cab Company, Inc.

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,

vs.

RENO CAB COMPANY, INC.,

Defendant.

CASE NO.: CV15-01359

CASE NO.: CV15-01385

DEPT. NO.: 8

AND RELATED MATTERS.

REPLY TO PLAINTIFF'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT
AND OPPOSITION TO COUNTER-MOTION FOR DISCOVERY
PURSUANT TO NRCP RULE 56(F)

Reno Cab Company, Inc. ("Reno Cab"), by and through its attorneys of Robison, Belaustegui, Sharp & Low, replies to the response to motion for summary judgment and opposition to counter-motion for discovery pursuant to NRCP 56(f).

I. NEVADA'S MINIMUM WAGE AMENDMENT DOES NOT APPLY TO INDEPENDENT CONTRACTORS.

The issue this Court must determine is whether plaintiff Jeff Myers ("Myers") is an independent contractor under the terms of his contractual agreement with Reno Cab. It is suggested that this issue is relatively easy to decide in Reno Cab's favor since the Lease clearly states in unambiguous language: **"LESSEE is an independent contractor."** Exh. 1, Lease, ¶10 emphasis added. Reno Cab is not trying to avoid

1 paying minimum wage to employees and Reno Cab is not undertaking any efforts to
2 circumvent employer-employee law. As an independent contractor, Nevada's Minimum
3 Wage Amendment (the "MWA") is inapplicable and irrelevant.

4 Myers' arguments in opposition to summary judgment all fail because Myers is an
5 independent contractor and the MWA does not apply to him. Further, the Nevada
6 Legislature could not make it any more clear that independent contractors are not
7 subject to the MWA when it amended NRS 608.255(3) to state that as a matter of law,
8 the "**relationship between a principal and an independent contractor**" does not give
9 rise to an employment relationship and such relationship is not subject to any "**statutory
10 or constitutional provision governing the minimum wage paid to an employee . . .
11 .**" (Emphasis added).

12 Myers' opposition requires that this Court entirely ignore the law of contracts, the
13 application of the parol evidence, rule NRS 706.473's provisions, NRS 608.0155's
14 provisions and NRS 608.255(3)'s provisions. For the reasons that will be shown below,
15 Myers' attempt to classify this case as one arising under the MWA because Myers is
16 somehow an "employee" fails as a matter of law.

17
18 **A. THE MINIMUM WAGE AMENDMENT IS AMBIGUOUS AS TO WHO
19 QUALIFIES AS AN "EMPLOYEE" AND "EMPLOYER."**

20 To prevail on his claim under MWA, Myers must prove that he qualifies as an
21 "employee," and that Reno Cab qualifies as an "employer" under the MWA. By its plain
22 language, the MWA only applies to "employees" and "employers." Nev. Const. art. XV, §
23 6. On its face this enactment does not apply to independent contractors. If Myers is an
24 independent contractor as defined under his Lease, as defined under NRS 706.473's or
25 NRS 608.0155's provisions, then the MWA on its face is irrelevant because the MWA
26 does not apply to independent contractors.¹

27 As an independent ground demonstrating that the MWA does not apply to Myers'
28 independent contractor relationship, the following analysis is provided. The MWA does

¹ See NRS 608.255(3) precluding any application of any minimum wage law for an employee to an independent contractor relationship.

1 not contain a clear definition of either "employee" or "employer." An "employee" is
2 defined as any person who "is employed by an employer." *Id.* at § 6(C). "Employer" is
3 defined as "any individual, proprietorship, partnership, joint venture, corporation, limited
4 liability company, trust, association, or other entity that may employ individuals or enter
5 into contracts of employment." *Id.* Under these definitions, then, Reno Cab only
6 qualifies as an "employer" if it "**employs**" individuals or enters "into contracts of
7 **employment.**" *Id.* (Emphasis added). The MWA does not define what it means to
8 "employ" a person or what qualifies as "contract of employment."
9

10 **B. THIS COURT MAY LOOK TO STATUTES FOR GUIDANCE.**

11 Myers incorrectly asserts that the Court cannot look to Nevada's statutes as
12 interpretative aides in defining constitutional provisions. Myers is wrong because it is
13 well recognized that state legislatures have "the power, within reasonable limitations, to
14 prescribe legal definitions of" their state constitution's language. Malone v. Edwards,
15 247 S.E.2d 454, 455-56 (S.C. 1978). It is also well recognized that "where a
16 constitutional provision may well have either of two meanings, it is a fundamental rule of
17 constitutional construction that, if the Legislature has by statute adopted one, its action in
18 this respect is well nigh, if not completely, controlling." Armstrong v. Cnty. of San Mateo,
19 194 Cal. Rpt. 294, 310 (Ct. App. 1983) (internal quotations omitted); see *also* Smith v.
20 Brantley, 400 So. 2d 442, 448 (Fla. 1981) (holding that "a statute may adopt one of
21 several possible meanings attributable to a constitutional provision," and that these
22 "legislative constructions are to be given great weight in interpreting the provision").

23 In this regard, the Nevada Legislature has spoken and enacted a statute that
24 specifically defines who should be considered an independent contractor and thus, not
25 an employee. See NRS 608.0155. Since an individual cannot be both an independent
26 contractor and an employee if the individual is one—he or she is not the other. Thus, if
27 an individual meets the requirements of this statute defining him or herself as an
28 independent contractor, then the individual is not an employee who is subject to the
MWA. As Reno Cab fully set forth in its motion, Myers meets the statutory factors

1 conclusively establishing that Myers is an independent contractor and not an employee.²
2 Thus, Myers is clearly an independent contractor and not an employee under the MWA
3 and the MWA again has no application and summary judgment is required in Reno Cab's
4 favor.

5 **C. NRS 706.473 AND NRS 608.0155 DO NOT CONFLICT WITH THE MWA.**

6 Myers argues that NRS 706.473 and NRS 608.0155 conflict with the MWA so the
7 Court should ignore their application. However, Myers' argument would only have merit
8 if the language of NRS 706.473 and NRS 608.0155 was in actual **conflict** with the
9 language of the MWA. Thomas v. Nev. Yellow Cab Corp., 130 Nev. ___, ___, 327 P.3d
10 518, 520-21 (2014).

11 Myers fails to recognize that neither NRS 706.473 or NRS 608.0155 attempt to
12 limit or alter any **employee's** right to receive minimum wage. Instead, these statutes
13 define those types of workers who are independent contractors—not employees.
14 Because the MWA does not address the rights of independent contractors, these
15 statutes do not conflict with the MWA because these statutes have no application to
16 employees. Instead, these statutes only deal with independent contractors to which the
17 MWA does not apply.

18 Defendant admits that Thomas did not address the MWA in the context of
19 independent contractors. Further, no party disputed that the taxicab drivers in Thomas
20 were specifically hired as "employees" by the cab company in that case. Again, Thomas
21 did not deal with independent contractors like Myers. See 130 Nev. at ___, 327 P.3d at
22 520. In Thomas, the Nevada Supreme Court was concerned with the effect that the
23 MWA had on a prior statute, which expressly exempted **employee** taxicab drivers from
24 Nevada's minimum wage requirement. Id. In a four to three decision, the court held that
25 the MWA impliedly repealed the statutory exemption for taxicab drivers employed as
26 employees, and the MWA requires all employers to pay all employees minimum wage.

27
28

² Again, all the factors analyzed in Reno Cab's opening motion are undisputed as were
not contested by Myers.

1 Id. Obviously the issue in Thomas was very different in this case because Myers is an
2 independent contractor who is not covered by the MWA. Thomas dealt with an admitted
3 employee, whereas here, Myers is an admitted independent contractor and the MWA
4 does not apply as a matter of law.

5 **D. NRS 706.473 AND NRS 608.0155 EXPRESS LEGISLATIVE INTENT TO**
6 **PRECLUDE PAYMENT OF MINIMUM WAGE TO TAXICAB DRIVERS**
7 **WHO ARE INDEPENDENT CONTRACTORS.**

8 The fact that NRS 706.473 and NRS 608.0155 may define a class of workers who
9 are not subject to the MWA does not render these statutes per se unconstitutional
10 because they can still be construed in harmony with the MWA. See Thomas, 327 P.3d
11 at 521 ("We will construe statutes, if reasonably possible, so as to be in harmony with the
12 constitution." (Internal quotations omitted)). Statutes and "pertinent constitutional
13 provisions must be construed together with a view to make effective the legislative intent
14 rather than to defeat it." In re Cent. Ill. Pub. Servs. Co., 78 P.3d 419, 426 (Kan. 2003)
15 (internal quotations omitted); see also Colo. Republication Party v. Williams, 370 P.3d
16 650, 654 (Colo. Ct. App. 2016) ("Where a constitutional provision and a statute pertain to
17 the same subject matter, we construe them in harmony." (Internal quotations omitted)).
18 Accordingly, this Court is to evaluate NRS 706.473 and NRS 608.0155 to be in harmony
19 with the MWA.

20 As noted, NRS 706.473 and NRS 608.0155 can easily be construed in harmony
21 with the MWA. If an individual does not qualify as an independent contractor under
22 these statutes, then the individual is an employee and must pay him or her minimum
23 wage under the MWA. Conversely, if the individual is an independent contractor under
24 these statutes, then the MWA does not apply and does not require the taxicab company
25 to pay him or her minimum wage.

26 This construction is consistent with Nevada's Legislative intent to exempt taxicab
27 companies from having to pay their drivers minimum wage if the drivers are independent
28 contractors. This legislative intent is clearly evidenced because prior to the enactment of
the MWA, the Nevada Legislature went so far as to decree that taxicab employee

1 drivers were exempt from the minimum wage requirements. NRS 608.250(2). The
2 Nevada Legislature also expressly permits taxicab companies to lease their taxis to
3 independent contractors, who are not subject to Nevada's minimum wage. NRS
4 706.473(1). Finally, the Nevada Legislature has set forth specific statutory factors to
5 define who qualifies as an "independent contractor." NRS 608.0155.
6

7 The foregoing demonstrates that Nevada's Legislature intent is clear and
8 Nevada's laws are not intended to say that every person who procures the services of
9 another must pay that person minimum wage under the MWA as an automatic
10 employee.³ The Nevada Legislature has made it abundantly clear that Nevada intends
11 to recognize that parties can enter into independent contractor relationships and that
12 these relationships will be honored and not subject to the MWA.⁴ Accordingly, the MWA
13 is inapplicable to this case because Myers is an independent contractor, and the statutes
14 which define him as an independent contractor are not in conflict with the MWA.

15 **II. MYERS' CONTRACT DOES NOT VIOLATE THE MWA.**

16 Myers is also incorrect when he argues that the MWA prevents Reno Cab and
17 Myers from agreeing that Myers is an independent contractor. This is because the MWA
18 prohibits an employer from entering into any agreement with an employee that waives
19 the minimum wage. Nev. Const. art. XV, § 6(B) ("The provisions of this section may not
20

21 ³ Myers' proposition to this Court is that there can never be an independent contractor
22 because everyone would be an employee subject to the MWA's provisions. This
23 interpretation of the MWA and its interaction with NRS 706.473 and NRS 608.0155
24 creates an absurdity which must be rejected by the Court. General Motors v. Jackson,
25 111 Nev. 1026, 1029, 900 P.2d 345, 348 (1995) (statutory interpretation should avoid
26 absurd or unreasonable results); Las Vegas Sun v. District Court, 104 Nev. 508, 511,
27 761 P.2d 849, 851 (1988) ("statutes should be interpreted so as to effect the intent of the
28 legislature in enacting them; the interpretation should be reasonable and avoid absurd
results.").

⁴ See also Yellow Cab of Reno, Inc. v. Second Judicial Dist. Court of State ex rel. Cty. of Washoe, 127 Nev. 583, 592, 262 P.3d 699, 704 (2011) (affirming that the determination of an independent contractor relationship under NRS 706.473 was not the control exercised by the alleged employer but whether the statutory criteria for the independent contractor relationship was established).

1 be waived by agreement between an individual employee and an employer.”). Nothing
2 in the MWA prevents an individual from entering into a business contract specifying that
3 the individual is an independent contractor. See id. Further, nothing prevents parties
4 from agreeing in a written contract that their business relationship is that of an
5 independent contractor and specifically not an employee. Thus, Myers and Reno Cab
6 properly and legally entered into a contract in which Myers represented, agreed and
7 confirmed that he was an independent contractor and not an employee.⁵

8
9 Myers’ opposition also asks this Court to completely disregard the law of
10 contracts. It is suggested that this Court cannot ignore the parties’ Lease. This is
11 because the Nevada Supreme Court has held that parties have the fundamental right
12 and the complete freedom to enter into contracts defining their rights and duties as long
13 as the contract is not illegal or contradicts public policy. As stated in McCall v. Carlson,
14 63 Nev. 390, 424, 172 P.2d 171, 187–88 (1946):

15 [The Court’s] powers do not extend so far as to permit us to disregard
16 fundamental principles of the law of contracts, or arbitrarily to force upon parties
17 contractual obligations, terms or conditions which they have not voluntarily
18 assumed. In this regard, equity respects and upholds the fundamental right of the
19 individual to complete freedom to contract or decline to do so, as he conceives to
20 be for his best interests, so long as his contract is not illegal or against public
21 policy. . . . Much as we would like to relieve the appellant from his unfortunate
22 situation, we cannot rightfully do so, as we must maintain the necessary certainty,
23 stability and integrity of contractual rights and obligations.

24 Id.

25 In Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 278–79, 21 P.3d 16, 19–20 (2001),
26 the Nevada Supreme Court conclusively established that parties could validly contract to
27 define that a party was an independent contractor without violating any public policy. In

28
⁵ Myers’ argument that the Court should ignore Myers’ contractual admission that he is
an independent contractor also flies in the face of Nevada’s evidentiary rules. See e.g.
NRS 51.035(3) (party’s admission of fact is admissible against the party and not
hearsay).

1 granting summary judgment for the defendant, the Court specifically analyzed the
2 parties' contract and held that

3 **the agreement specifically states that Kaldi is not an employee of Farmers**
4 **and that nothing in the Agreement is intended to create an**
5 **employee/employer relationship. . . . As the Agreement unambiguously**
6 **provides that Kaldi was an independent contractor, not an employee, we**
reject his argument that it created an employment relationship.

7 Id. (emphasis added) (citations omitted). The Kaldi Court then affirmed the trial court's
8 dismissal of the plaintiff's complaint. Id. at 23. Again, the Kaldi Court has held that
9 parties are free to enter into valid and enforceable contracts defining their relationship as
10 an independent contractor relationship and that such contract is enforceable as a matter
11 of law.

12
13 Of further critical import, Myers' opposition does not address Reno Cab's
14 arguments on the enforcement and application of the plain language of the lease
15 defining Myers as an independent contractor. Further Myers does not oppose the
16 application of the parol evidence rule which bars Myers from attempting to present any
17 evidence that would contradict the express terms of the Lease defining Myers as an
18 independent contractor.⁶ Therefore, Reno Cabs' arguments are deemed unopposed and
19 conceded by Myers. See DCR 13(3) ("Failure of the opposing party to serve and file his
20 written opposition may be construed as an admission that the motion is meritorious and
21 a consent to granting the same."). Courts interpreting rules similar to DCR 13(3) hold
22 that these rules are "understood to mean that if a party files an opposition to a motion
23 and therein addresses only some of the movant's arguments, the court may treat the
24 unaddressed arguments as conceded." Wannall v. Honeywell, Inc., 775 F.3d 425, 428
25 (D.C. Cir. 2014); see also Alam v. Reno Hilton Corp., 819 F. Supp. 905, 908 n.3 (D. Nev.
26
27
28

⁶ See Exh. 1, Lease, ¶10 ("**LESSEE is an independent contractor.**" (emphasis added)).

1 1993) ("Plaintiffs did not argue to the contrary to this issue in their opposition papers,
2 thereby conceding the point.").

3 In addition, enforcement of the Lease defining Myers as an independent
4 contractor achieves and satisfies the highest public policy. As the United States
5 Supreme Court held in Sante Fe, Prescott, & Phoenix Ry. Co., 228 U.S. 177, 33 S.Ct.
6 474 (1913):
7

8 There is no rule of public policy which denies effect to their expressed intention,
9 but, on the contrary, **as the matter lies within the range of permissible**
10 **agreement, the highest public policy is found in the enforcement of the**
11 **contract which was actually made.**

12 Id. at 188, 33 S.Ct. at 478 (emphasis added); see also General Mills, Inc. v. Goldman,
13 184 F.2d 359, 366 (8th Cir. 1950) ("the highest public policy is found in the enforcement
14 of the contract as it was actually made.").

15 Myers asks this Court to ignore the "highest public policy" which is the
16 enforcement of the contract freely entered into by Myers. Myers, however, forgets that
17 this Court is not allowed to ignore clear and unambiguous terms of the Lease defining
18 Myers as an independent contractor and that the Court is obligated to enforce the Lease
19 defining Myers as an independent contractor. Davis v. Beling, 128 Nev. Adv. Op. 28,
20 278 P.3d 501, 515 (2012) ("the initial focus is on whether the language of the contract is
21 clear and unambiguous; if it is, the contract will be enforced as written."); Canfora v.
22 Coast Hotels and Casinos, Inc., 121 Nev. 771, 776, 121 P.3d 599, 603 (Nev. 2005)
23 ("when a contract is clear on its face, it 'will be construed from the written language and
24 enforced as written.' The court has no authority to alter the terms of an unambiguous
25 contract.").⁷

26
27 ⁷ This is the very doctrine the Kaldi Court embraced when rendering its decision that the
28 parties' contract conclusively established that the plaintiff was an independent contractor
based upon the clear and unambiguous language of the agreement. Kaldi v. Farmers
Ins. Exchange, 117 Nev. 273, 281, 21 P.3d 16, 21 (Nev. 2001) ("We are not free to
modify or vary the terms of an unambiguous agreement.").

1 There is no legal basis or public policy that abrogates the enforcement of the
2 Lease. The Lease states Myers is an independent contractor and Myers does not
3 contest the arguments presented in Reno Cab's Opening Motion stating Myers is an
4 independent contractor. In addition, Myers is barred by the parol evidence rule from
5 arguing or contesting his independent contractor relationship. Rather than address
6 these arguments, Myers asserts the untenable contention that this Court should
7 disregard the terms of the Lease in total because Myers is magically an employee (even
8 though he's not under the terms of the Lease, under NRS 706.473 and under NRS
9 608.0155). Despite Myers' arguments, this Court is not empowered to disregard the
10 terms of the parties' Lease defining Myers as an independent contractor. See Watson v.
11 Watson, 95 Nev. 495, 596 P.2d 507, 508 (1979) ("Courts are bound by language which
12 is clear and free from ambiguity and cannot, using the guise of interpretation, distort the
13 plain meaning of an agreement."). Accordingly, summary judgment as requested is
14 required.

15
16 **III. NRS 608.0155 ABROGATED THE "ECONOMIC REALITIES" TEST.**

17 Myers' reliance on the "economic realities" test set forth in Terry v. Sapphire
18 Gentleman's Club, 130 Nev. ___, 336 P.3d 951 (2014) is misplaced because NRS
19 608.0155 has largely abrogated the economic realities test. As mentioned, NRS
20 608.0155 was enacted as part of S.B. 224 in 2015 in direct response to the Nevada
21 Supreme Court's decision in Terry. See Hearing on S.B. 224 before Sen. Comm. on
22 Commerce, Labor and Energy, 78th Reg. Sess. (March 9, 2015). As the proponents of
23 the bill explained, the economic realities test's "parameters are expansive and ultimately
24 shows that the vast majority of all workers in Nevada would test as an employee." Id.
25 The Nevada Legislature enacted S.B. 224 specifically to avoid the detrimental impact of
26 the Terry decision:

27 [E]very organization in the State that uses independent contractors is at risk for up
28 to 2 years of back wages, penalties and business taxes, which could total in the
millions of dollars for retroactive liability . . . The economic realities applied by the
Nevada Supreme Court is the most expansive version of any employment test
according to the U.S. Department of Labor. The majority of workers taking the

1 economic realities test end up being classified as an employee instead of an
2 independent contractor.

3 Id.

4 The Terry court adopted the economic realities test because it found that
5 Nevada's statutory definitions were "insufficiently precise" to determine who actually
6 qualified as an "employer" and "employee" under Nevada minimum wage law. 130 Nev.
7 at ___, 336 P.3d at 954. Thus, the Court adopted the economic realities test to "provide
8 a structure that lower courts may also use to assess the realities of various working
9 relationships" for purposes of minimum wage disputes. Id. Those concerns no longer
10 exist with the adoption of NRS 608.0155 because this statute sets forth specific factors
11 that this Court can consider in determining whether Myers is an independent contractor.

12 The enactment of NRS 608.0155 impliedly repealed the Court's decision in Terry.
13 In Nevada, the common-law is only the rule of decision if it has not been "modified or
14 changed by legislation." Edmonds v. Perry, 62 Nev. 41, 57, 140 P.2d 566, 574 (1943);
15 see also Davenport v. State Farm Mut. Auto. Ins. Co., 81 Nev. 361, 364, 404 P.2d 10, 11
16 (1965) ("Of course the common law is the rule of decision in our courts unless in conflict
17 with . . . statutory law."). The test set forth in NRS 608.0155 is different than the
18 economic realities test adopted in Terry, and the two cannot be reconciled. Accordingly,
19 the economic realities test is no longer the appropriate test by which to determine Myers'
20 status.

21 Myers does not address Reno Cab's arguments about his qualifications for the
22 factors under NRS 608.0155. Therefore, these arguments are deemed admitted. DCR
23 13(3); Alam, 819 F. Supp. at 908 n.3. Summary judgment in favor of Reno Cab is
24 independently warranted on these grounds.

25 **IV. MYERS' "COUNTER-MOTION" FOR DISCOVERY IS PROCEDURALLY**
26 **DEFECTIVE.**

27 Myers' NRCP 56(f) request must be denied because he does not comply with any
28 of the requirements of that rule. When a party seeks a continuance of summary
judgment, he must "provide an affidavit giving the reasons why the party cannot present

1 'facts essential to justify the party's opposition.'" Choy v. Ameristar Casinos, Inc., 127
2 Nev. 870, 872, 265 P.3d 698, 700 (2011) (quoting NRCP 56(f)). Failure to provide this
3 affidavit is grounds for denial. Id. Myers does not provide this Court with any affidavit
4 and, therefore, this request must be denied by the Court.

5 In addition, Myers has an affirmative obligation to explain to this Court "how
6 further discovery will create a genuine issue of material fact." Francis v. Wynn Las
7 Vegas, LLC, 127 Nev. 657, 669, 262 P.3d 705, 714 (2011). Discovery under Rule 56(f)
8 should be denied whether the proposed discovery "would not affect the resolution of the
9 legal issues" warranting summary judgment. DeGrassi v. City of Glendora, 207 F.3d
10 636, 643 (9th Cir. 2000) (interpreting FRCP 56(d), NRCP 56(f)'s federal counterpart).⁸
11 Myers does not, and cannot, explain to this Court why he needs additional discovery on
12 the plain terms Lease – or that the parol evidence rule would bar any such evidence.
13 Because these are purely legal issues no factual discovery is relevant.

14 Similarly, Myers bases his request on his incorrect assertion that the economic
15 realities test applies to the facts of this case. It does not. Thus, Myers' request to
16 conduct additional discovery to create a factual record to support his economic realities
17 test arguments is irrelevant since that test has no bearing and no application on the legal
18 issues in this case. Finally, Myers does not request to conduct discovery on the factors
19 set forth under NRS 608.0155 and Myers has thus conceded that these factors are
20 undisputed and no discovery need take place on these factors for the Court to rule on
21 the summary judgment motion. Accordingly, Myers' request must be denied as
22 procedurally defective and summary judgment in favor of Reno Cab is warranted.

23 ///

24 ///

25
26
27 ⁸ "Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive
28 authority, because the Nevada Rules of Civil Procedure are based in large part upon
their federal counterparts." Executive Mgmt., Ltd. v. Tigor Title Ins. Co., 118 Nev. 46, 53,
38 P.3d 872, 876 (2002) (internal quotations omitted).

1 **V. CONCLUSION.**

2 For the foregoing reasons, Reno Cab respectfully requests that this Court grant its
3 motion for summary judgment as follows: that the Lease's terms are clear and
4 unambiguous; that the Lease defines Myers as an independent contractor; that the parol
5 evidence rule bars Myers from presenting any evidence that contradicts his status as an
6 independent contractor; and that as a matter of law the Court is obligated to enforce the
7 contract as written. In addition, Reno Cab's Lease with Myers is valid and enforceable
8 under NRS 706.473, which Lease defines Myers as an independent contractor. Further,
9 it is uncontested that Myers is an independent contractor pursuant to the provisions of
10 NRS 608.0155. Because of the foregoing, the MWA does not apply to Myers because
11 he is not an employee and the MWA only applies to employees and not independent
12 contractors. As further grounds for summary judgment, NRS 608.255(3) specifically
13 precludes the application of the MWA to Myers' independent contractor relationship with
14 Reno Cab. Therefore, Reno Cab is entitled to summary judgment dismissing Myers'
15 Complaint in total.

16 **AFFIRMATION:** The undersigned does hereby affirm that this document does
17 not contain the Social Security Number of any person.

18 DATED this 17th day of November, 2016.

19
20
21 ROBISON, BELAUSTEGUI, SHARP & LOW
22 71 Washington Street
23 Reno, Nevada 89503

24 By: Therese Shanks
25 Mark G. Simons, Esq., NSB No. 5132
26 Therese M. Shanks, Esq., NSB No. 12890
27 Attorneys for Defendant
28

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true copy of the **REPLY TO PLAINTIFF'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO COUNTER-MOTION FOR DISCOVERY PURSUANT TO NRCP RULE 56(F)** 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:

Leon Greenberg, Esq.
Dana Sniegocki, Esq.
2965 South Jones Blvd., Ste. E3
Las Vegas, NV 89146

☒ by using the Court's CM/ECF Electronic Notification System addressed to:

Curtis Coulter, Esq.
Michael Pintar, Esq.

☐ by personal delivery/hand delivery addressed to:

☐ by facsimile (fax) addressed to:

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

DATED this 17th day of November, 2016.



Employee of Belaustegui, Sharp & Low

3795

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Attorneys for Defendant

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

ARTHUR SHATZ and RICHARD FRATIS,

Plaintiffs,

vs.

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

Defendants.

CASE NO.: CV15-01385

CASE NO.: CV15-01359

DEPT. NO.: 8

CONSOLIDATED

REPLY TO PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY JUDGMENT
AND OPPOSITION TO COUNTER-MOTION FOR DISCOVERY
PURSUANT TO NRCP RULE 56(F)

Roy L. Street dba Capital Cab ("Capital Cab"), by and through Mark G. Simons of Robison, Belaustegui, Sharp & Low, replies to the response to motion for summary judgment and opposition to counter-motion for discovery pursuant to NRCP 56(f).

I. NEVADA'S MINIMUM WAGE AMENDMENT DOES NOT APPLY TO INDEPENDENT CONTRACTORS.

The issue this Court must determine is whether plaintiffs Arthur Shatz ("Shatz") and/or Richard Fratis ("Fratis") are independent contractors under the terms of their contractual agreements with Capital Cab. It is suggested that this issue is relatively easy to decide in Capital Cab's favor since the Leases clearly state in unambiguous language:

1 **"LESSEE is an independent contractor."** Exhs. 1 and 4, Lease, ¶10 emphasis added.
2 Capital Cab is not trying to avoid paying minimum wage to employees and Capital Cab is
3 not undertaking any efforts to circumvent employer-employee law. As an independent
4 contractor, Nevada's Minimum Wage Amendment (the "MWA") is inapplicable and
5 irrelevant.

6 Shatz'/Fratis' arguments in opposition to summary judgment all fail because they
7 are independent contractors and the MWA does not apply to them. Further, the Nevada
8 Legislature could not make it any more clear that independent contractors are not
9 subject to the MWA when it amended NRS 608.255(3) to state that as a matter of law,
10 the **"relationship between a principal and an independent contractor"** does not give
11 rise to an employment relationship and such relationship is not subject to any **"statutory**
12 **or constitutional provision governing the minimum wage paid to an employee . . .**
13 **."** (Emphasis added).

14 Shatz'/Fratis' opposition requires that this Court entirely ignore the law of
15 contracts, the application of the parol evidence, rule NRS 706.473's provisions, NRS
16 608.0155's provisions and NRS 608.255(3)'s provisions. For the reasons that will be
17 shown below, Shatz'/Fratis' attempts to classify this case as one arising under the MWA
18 because they are somehow "employees" fails as a matter of law.

19
20 **A. THE MINIMUM WAGE AMENDMENT IS AMBIGUOUS AS TO WHO**
21 **QUALIFIES AS AN "EMPLOYEE" AND "EMPLOYER."**

22 To prevail on their claim under MWA, Shatz'/Fratis must prove that they qualify as
23 an "employee," and that Capital Cab qualifies as an "employer" under the MWA. By its
24 plain language, the MWA only applies to "employees" and "employers." Nev. Const. art.
25 XV, § 6. On its face this enactment does not apply to independent contractors. If
26 Shatz'/Fratis are independent contractors as defined under their Leases, as defined
27 under NRS 706.473's or NRS 608.0155's provisions, then the MWA on its face is
28 irrelevant because the MWA does not apply to independent contractors.¹

¹ See NRS 608.255(3) precluding any application of any minimum wage law for an employee to an independent contractor relationship.

1 As an independent ground demonstrating that the MWA does not apply to
2 Shatz'/Fratis' independent contractor relationship, the following analysis is provided. The
3 MWA does not contain a clear definition of either "employee" or "employer." An
4 "employee" is defined as any person who "is employed by an employer." *Id.* at § 6(C).
5 "Employer" is defined as "any individual, proprietorship, partnership, joint venture,
6 corporation, limited liability company, trust, association, or other entity that may employ
7 individuals or enter into contracts of employment." *Id.* Under these definitions, then,
8 Capital Cab only qualifies as an "employer" if it **employs** individuals or enters "into
9 contracts of **employment**." *Id.* (Emphasis added). The MWA does not define what it
10 means to "employ" a person or what qualifies as "contract of employment."

11 **B. THIS COURT MAY LOOK TO STATUTES FOR GUIDANCE.**

12 Shatz'/Fratis incorrectly assert that the Court cannot look to Nevada's statutes as
13 interpretative aides in defining constitutional provisions. Shatz'/Fratis are wrong because
14 it is well recognized that state legislatures have "the power, within reasonable limitations,
15 to prescribe legal definitions of" their state constitution's language. Malone v. Edwards,
16 247 S.E.2d 454, 455-56 (S.C. 1978). It is also well recognized that "where a
17 constitutional provision may well have either of two meanings, it is a fundamental rule of
18 constitutional construction that, if the Legislature has by statute adopted one, its action in
19 this respect is well nigh, if not completely, controlling." Armstrong v. Cnty. of San Mateo,
20 194 Cal. Rprt. 294, 310 (Ct. App. 1983) (internal quotations omitted); see *also* Smith v.
21 Brantley, 400 So. 2d 442, 448 (Fla. 1981) (holding that "a statute may adopt one of
22 several possible meanings attributable to a constitutional provision," and that these
23 "legislative constructions are to be given great weight in interpreting the provision").

24 In this regard, the Nevada Legislature has spoken and enacted a statute that
25 specifically defines who should be considered an independent contractor and thus, not
26 an employee. See NRS 608.0155. Since an individual cannot be both an independent
27 contractor and an employee if the individual is one—he or she is not the other. Thus, if
28 an individual meets the requirements of this statute defining him or herself as an

1 independent contractor, then the individual is not an employee who is subject to the
2 MWA. As Capital Cab fully set forth in its motion, Shatz/Fratis meet the statutory factors
3 conclusively establishing that Shatz/Fratis are independent contractors and not
4 employees.² Thus, Shatz/Fratis are clearly independent contractors and not employees
5 under the MWA and the MWA again has no application and summary judgment is
6 required in Capital Cab's favor.

7 **C. NRS 706.473 AND NRS 608.0155 DO NOT CONFLICT WITH THE MWA.**

8 Shatz/Fratis argue that NRS 706.473 and NRS 608.0155 conflict with the MWA so
9 the Court should ignore their application. However, Shatz'/Fratis' argument would only
10 have merit if the language of NRS 706.473 and NRS 608.0155 was in actual conflict
11 with the language of the MWA. Thomas v. Nev. Yellow Cab Corp., 130 Nev. ___, ___,
12 327 P.3d 518, 520-21 (2014).

13 Shatz/Fratis fail to recognize that neither NRS 706.473 or NRS 608.0155 attempt
14 to limit or alter any **employee's** right to receive minimum wage. Instead, these statutes
15 define those types of workers who are independent contractors—not employees.
16 Because the MWA does not address the rights of independent contractors, these
17 statutes do not conflict with the MWA because these statutes have no application to
18 employees. Instead, these statutes only deal with independent contractors to which the
19 MWA does not apply.

20 Defendants admit that Thomas did not address the MWA in the context of
21 independent contractors. Further, no party disputed that the taxicab drivers in Thomas
22 were specifically hired as "employees" by the cab company in that case. Again, Thomas
23 did not deal with independent contractors like Shatz/Fratis. See 130 Nev. at ___, 327
24 P.3d at 520. In Thomas, the Nevada Supreme Court was concerned with the effect that
25 the MWA had on a prior statute, which expressly exempted **employee** taxicab drivers
26 from Nevada's minimum wage requirement. Id. In a four to three decision, the court
27

28

² Again, all the factors analyzed in Capital Cab's opening motion are undisputed as were not contested by Shatz/Fratis.

1 held that the MWA impliedly repealed the statutory exemption for taxicab drivers
2 employed as employees, and the MWA requires all employers to pay all employees
3 minimum wage. Id. Obviously the issue in Thomas was very different in this case
4 because Shatz/Fratis are independent contractors who are not covered by the MWA.
5 Thomas dealt with an admitted employee, whereas here, Shatz/Fratis are admitted
6 independent contractors and the MWA does not apply as a matter of law.

7
8 **D. NRS 706.473 AND NRS 608.0155 EXPRESS LEGISLATIVE INTENT TO**
9 **PRECLUDE PAYMENT OF MINIMUM WAGE TO TAXICAB DRIVERS**
10 **WHO ARE INDEPENDENT CONTRACTORS.**

11 The fact that NRS 706.473 and NRS 608.0155 may define a class of workers who
12 are not subject to the MWA does not render these statutes per se unconstitutional
13 because they can still be construed in harmony with the MWA. See Thomas, 327 P.3d
14 at 521 (“We will construe statutes, if reasonably possible, so as to be in harmony with the
15 constitution.” (Internal quotations omitted)). Statutes and “pertinent constitutional
16 provisions must be construed together with a view to make effective the legislative intent
17 rather than to defeat it.” In re Cent. Ill. Pub. Servs. Co., 78 P.3d 419, 426 (Kan. 2003)
18 (internal quotations omitted); see also Colo. Republication Party v. Williams, 370 P.3d
19 650, 654 (Colo. Ct. App. 2016) (“Where a constitutional provision and a statute pertain to
20 the same subject matter, we construe them in harmony.” (Internal quotations omitted)).
21 Accordingly, this Court is to evaluate NRS 706.473 and NRS 608.0155 to be in harmony
22 with the MWA.

23 As noted, NRS 706.473 and NRS 608.0155 can easily be construed in harmony
24 with the MWA. If an individual does not qualify as an independent contractor under
25 these statutes, then the individual is an employee and must pay him or her minimum
26 wage under the MWA. Conversely, if the individual is an independent contractor under
27 these statutes, then the MWA does not apply and does not require the taxicab company
28 to pay him or her minimum wage.

This construction is consistent with Nevada’s Legislative intent to exempt taxicab
companies from having to pay their drivers minimum wage if the drivers are independent

1 contractors. This legislative intent is clearly evidenced because prior to the enactment of
2 the MWA, the Nevada Legislature went so far as to decree that taxicab employee
3 drivers were exempt from the minimum wage requirements. NRS 608.250(2). The
4 Nevada Legislature also expressly permits taxicab companies to lease their taxis to
5 independent contractors, who are not subject to Nevada's minimum wage. NRS
6 706.473(1). Finally, the Nevada Legislature has set forth specific statutory factors to
7 define who qualifies as an "independent contractor." NRS 608.0155.

8 The foregoing demonstrates that Nevada's Legislature intent is clear and
9 Nevada's laws are not intended to say that every person who procures the services of
10 another must pay that person minimum wage under the MWA as an automatic
11 employee.³ The Nevada Legislature has made it abundantly clear that Nevada intends
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13 these relationships will be honored and not subject to the MWA.⁴ Accordingly, the MWA
14 is inapplicable to this case because Shatz/Fratis are independent contractors, and the
15 statutes which define them as independent contractors are not in conflict with the MWA.

16 **II. SHATZ'/FRATIS' CONTRACTS DO NOT VIOLATE THE MWA.**

17 Shatz/Fratis are also incorrect when they argues that the MWA prevents Capital
18 Cab and Shatz/Fratis from agreeing that Shatz/Fratis are independent contractors. This
19

20
21 ³ Shatz'/Fratsi' proposition to this Court is that there can never be an independent
22 contractor because everyone would be an employee subject to the MWA's provisions.
23 This interpretation of the MWA and its interaction with NRS 706.473 and NRS 608.0155
24 creates an absurdity which must be rejected by the Court. General Motors v. Jackson,
25 111 Nev. 1026, 1029, 900 P.2d 345, 348 (1995) (statutory interpretation should avoid
26 absurd or unreasonable results); Las Vegas Sun v. District Court, 104 Nev. 508, 511,
27 761 P.2d 849, 851 (1988) ("statutes should be interpreted so as to effect the intent of the
28 legislature in enacting them; the interpretation should be reasonable and avoid absurd
results.").

⁴ See also Yellow Cab of Reno, Inc. v. Second Judicial Dist. Court of State ex rel. Cty. of Washoe, 127 Nev. 583, 592, 262 P.3d 699, 704 (2011) (affirming that the determination of an independent contractor relationship under NRS 706.473 was not the control exercised by the alleged employer but whether the statutory criteria for the independent contractor relationship was established).

1 is because the MWA prohibits an employer from entering into any agreement with an
2 employee that waives the minimum wage. Nev. Const. art. XV, § 6(B) ("The provisions
3 of this section may not be waived by agreement between an individual employee and an
4 employer."). Nothing in the MWA prevents an individual from entering into a business
5 contract specifying that the individual is an independent contractor. See id. Further,
6 nothing prevents parties from agreeing in a written contract that their business
7 relationship is that of an independent contractor and specifically not an employee. Thus,
8 Shatz/Fratis and Capital Cab properly and legally entered into contracts in which
9 Shatz/Fratis represented, agreed and confirmed that they were independent contractors
10 and not an employees.⁵

11 Shatz'/Fratis' opposition also asks this Court to completely disregard the law of
12 contracts. It is suggested that this Court cannot ignore the parties' Lease. This is
13 because the Nevada Supreme Court has held that parties have the fundamental right
14 and the complete freedom to enter into contracts defining their rights and duties as long
15 as the contract is not illegal or contradicts public policy. As stated in McCall v. Carlson,
16 63 Nev. 390, 424, 172 P.2d 171, 187–88 (1946):

17 [The Court's] powers do not extend so far as to permit us to disregard
18 fundamental principles of the law of contracts, or arbitrarily to force upon parties
19 contractual obligations, terms or conditions which they have not voluntarily
20 assumed. In this regard, equity respects and upholds the fundamental right of the
21 individual to complete freedom to contract or decline to do so, as he conceives to
22 be for his best interests, so long as his contract is not illegal or against public
23 policy. . . . Much as we would like to relieve the appellant from his unfortunate
24 situation, we cannot rightfully do so, as we must maintain the necessary certainty,
25 stability and integrity of contractual rights and obligations.

26 Id.

27 In Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 278–79, 21 P.3d 16, 19–20 (2001),
28 the Nevada Supreme Court conclusively established that parties could validly contract to

⁵Shatz'/Fratis' argument that the Court should ignore their contractual admissions that they are independent contractors also flies in the face of Nevada's evidentiary rules. See e.g. NRS 51.035(3) (party's admission of fact is admissible against the party and not hearsay).

1 define that a party was an independent contractor without violating any public policy. In
2 granting summary judgment for the defendant, the Court specifically analyzed the
3 parties' contract and held that

4
5 **the agreement specifically states that Kaldi is not an employee of Farmers**
6 **and that nothing in the Agreement is intended to create an**
7 **employee/employer relationship. . . . As the Agreement unambiguously**
8 **provides that Kaldi was an independent contractor, not an employee, we**
9 **reject his argument that it created an employment relationship.**

10 Id. (emphasis added) (citations omitted). The Kaldi Court then affirmed the trial court's
11 dismissal of the plaintiff's complaint. Id. at 23. Again, the Kaldi Court has held that
12 parties are free to enter into valid and enforceable contracts defining their relationship as
13 an independent contractor relationship and that such contract is enforceable as a matter
14 of law.

15 Of further critical import, Shatz'/Fratis' opposition does not address Capital Cab's
16 arguments on the enforcement and application of the plain language of the lease
17 defining them independent contractors. Further Shatz/Fratis do not oppose the
18 application of the parol evidence rule which bars them from attempting to present any
19 evidence that would contradict the express terms of the Leases defining them as
20 independent contractors.⁶ Therefore, Capital Cabs' arguments are deemed unopposed
21 and conceded by Shatz/Fratis. See DCR 13(3) ("Failure of the opposing party to serve
22 and file his written opposition may be construed as an admission that the motion is
23 meritorious and a consent to granting the same."). Courts interpreting rules similar to
24 DCR 13(3) hold that these rules are "understood to mean that if a party files an
25 opposition to a motion and therein addresses only some of the movant's arguments, the
26 court may treat the unaddressed arguments as conceded." Wannall v. Honeywell, Inc.,

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28
⁶ See Exhs. 1 and 4, Leases, ¶10 ("**LESSEE is an independent contractor.**" (emphasis added)).

1 775 F.3d 425, 428 (D.C. Cir. 2014); see also Alam v. Reno Hilton Corp., 819 F. Supp.
2 905, 908 n.3 (D. Nev. 1993) ("Plaintiffs did not argue to the contrary to this issue in their
3 opposition papers, thereby conceding the point.").

4
5 In addition, enforcement of the Leases defining Shatz/Fratis as independent
6 contractors achieves and satisfies the highest public policy. As the United States
7 Supreme Court held in Sante Fe, Prescott, & Phoenix Ry. Co., 228 U.S. 177, 33 S.Ct.
8 474 (1913):

9
10 There is no rule of public policy which denies effect to their expressed intention,
11 but, on the contrary, **as the matter lies within the range of permissible
agreement, the highest public policy is found in the enforcement of the
contract which was actually made.**

12 Id. at 188, 33 S.Ct. at 478 (emphasis added); see also General Mills, Inc. v. Goldman,
13 184 F.2d 359, 366 (8th Cir. 1950) ("the highest public policy is found in the enforcement
14 of the contract as it was actually made.").

15
16 Shatz/Fratis ask this Court to ignore the "highest public policy" which is the
17 enforcement of the contract freely entered into by Shatz/Fratis. Shatz/Fratis, however,
18 forget that this Court is not allowed to ignore clear and unambiguous terms of the Lease
19 defining Shatz/Fratis as independent contractors and that the Court is obligated to
20 enforce the Lease defining them as independent contractors. Davis v. Beling, 128 Nev.
21 Adv. Op. 28, 278 P.3d 501, 515 (2012) ("the initial focus is on whether the language of
22 the contract is clear and unambiguous; if it is, the contract will be enforced as written.");
23 Canfora v. Coast Hotels and Casinos, Inc., 121 Nev. 771, 776, 121 P.3d 599, 603 (Nev.
24 2005) ("when a contract is clear on its face, it 'will be construed from the written

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1 language and enforced as written.’ The court has no authority to alter the terms of an
2 unambiguous contract.”).⁷

3
4 There is no legal basis or public policy that abrogates the enforcement of the
5 Leases. The Leases state Shatz/Fratis are independent contractors and they do not
6 contest the arguments presented in Capital Cab’s Opening Motion stating they are
7 independent contractors. In addition, Shatz/Fratis are barred by the parol evidence rule
8 from arguing or contesting their independent contractor relationship. Rather than
9 address these arguments, Shatz/Fratis assert the untenable contention that this Court
10 should disregard the terms of the Leases in total because Shatz/Fratis are magically
11 employees (even though they are not under the terms of the Lease, under NRS 706.473
12 and under NRS 608.0155). Despite Shatz’/Fratis’ arguments, this Court is not
13 empowered to disregard the terms of the parties’ Leases defining Shatz/Fratis
14 independent contractors. See Watson v. Watson, 95 Nev. 495, 596 P.2d 507, 508
15 (1979) (“Courts are bound by language which is clear and free from ambiguity and
16 cannot, using the guise of interpretation, distort the plain meaning of an agreement.”).
17 Accordingly, summary judgment as requested is required.

18 **III. NRS 608.0155 ABROGATED THE “ECONOMIC REALITIES” TEST.**

19 Shatz’/Fratis’ reliance on the “economic realities” test set forth in Terry v. Sapphire
20 Gentleman’s Club, 130 Nev. ___, 336 P.3d 951 (2014) is misplaced because NRS
21 608.0155 has largely abrogated the economic realities test. As mentioned, NRS
22 608.0155 was enacted as part of S.B. 224 in 2015 in direct response to the Nevada
23 Supreme Court’s decision in Terry. See Hearing on S.B. 224 before Sen. Comm. on
24 Commerce, Labor and Energy, 78th Reg. Sess. (March 9, 2015). As the proponents of
25 the bill explained, the economic realities test’s “parameters are expansive and ultimately

26
27 ⁷ This is the very doctrine the Kaldi Court embraced when rendering its decision that the
28 parties’ contract conclusively established that the plaintiff was an independent contractor
based upon the clear and unambiguous language of the agreement. Kaldi v. Farmers
Ins. Exchange, 117 Nev. 273, 281, 21 P.3d 16, 21 (Nev. 2001) (“We are not free to
modify or vary the terms of an unambiguous agreement.”).

1 shows that the vast majority of all workers in Nevada would test as an employee.” Id.
2 The Nevada Legislature enacted S.B. 224 specifically to avoid the detrimental impact of
3 the Terry decision:
4

5 [E]very organization in the State that uses independent contractors is at risk for up
6 to 2 years of back wages, penalties and business taxes, which could total in the
7 millions of dollars for retroactive liability . . . The economic realities applied by the
8 Nevada Supreme Court is the most expansive version of any employment test
according to the U.S. Department of Labor. The majority of workers taking the
economic realities test end up being classified as an employee instead of an
independent contractor.

9 Id.

10 The Terry court adopted the economic realities test because it found that
11 Nevada’s statutory definitions were “insufficiently precise” to determine who actually
12 qualified as an “employer” and “employee” under Nevada minimum wage law. 130 Nev.
13 at ___, 336 P.3d at 954. Thus, the Court adopted the economic realities test to “provide
14 a structure that lower courts may also use to assess the realities of various working
15 relationships” for purposes of minimum wage disputes. Id. Those concerns no longer
16 exist with the adoption of NRS 608.0155 because this statute sets forth specific factors
17 that this Court can consider in determining whether Shatz/Fratis are independent
18 contractors.

19 The enactment of NRS 608.0155 impliedly repealed the Court’s decision in Terry.
20 In Nevada, the common-law is only the rule of decision if it has not been “modified or
21 changed by legislation.” Edmonds v. Perry, 62 Nev. 41, 57, 140 P.2d 566, 574 (1943);
22 see also Davenport v. State Farm Mut. Auto. Ins. Co., 81 Nev. 361, 364, 404 P.2d 10, 11
23 (1965) (“Of course the common law is the rule of decision in our courts unless in conflict
24 with . . . statutory law.”). The test set forth in NRS 608.0155 is different than the
25 economic realities test adopted in Terry, and the two cannot be reconciled. Accordingly,
26 the economic realities test is no longer the appropriate test by which to determine
27 Shatz’/Fratis’ status.

28 Shatz/Fratis do not address Capital Cab’s arguments about their qualifications for
the factors under NRS 608.0155. Therefore, these arguments are deemed admitted.

DCR 13(3); Alam, 819 F. Supp. at 908 n.3. Summary judgment in favor of Capital Cab is independently warranted on these grounds.

IV. SHATZ'/FRATIS "COUNTER-MOTION" FOR DISCOVERY IS PROCEDURALLY DEFECTIVE.

Shatz'/Fratris NRCP 56(f) request must be denied because they do not comply with any of the requirements of that rule. When a party seeks a continuance of summary judgment, they must "provide an affidavit giving the reasons why the party cannot present 'facts essential to justify the party's opposition.'" Choy v. Ameristar Casinos, Inc., 127 Nev. 870, 872, 265 P.3d 698, 700 (2011) (quoting NRCP 56(f)). Failure to provide this affidavit is grounds for denial. Id. Shatz'/Fratris do not provide this Court with any affidavit and, therefore, this request must be denied by the Court.

In addition, Shatz'/Fratris have an affirmative obligation to explain to this Court "how further discovery will create a genuine issue of material fact." Francis v. Wynn Las Vegas, LLC, 127 Nev. 657, 669, 262 P.3d 705, 714 (2011). Discovery under Rule 56(f) should be denied whether the proposed discovery "would not affect the resolution of the legal issues" warranting summary judgment. DeGrassi v. City of Glendora, 207 F.3d 636, 643 (9th Cir. 2000) (interpreting FRCP 56(d), NRCP 56(f)'s federal counterpart).⁸ Shatz'/Fratris do not, and cannot, explain to this Court why they need additional discovery on the plain terms Lease – or that the parol evidence rule would bar any such evidence. Because these are purely legal issues no factual discovery is relevant.

Similarly, Shatz'/Fratris base their request on their incorrect assertion that the economic realities test applies to the facts of this case. It does not. Thus, Shatz'/Fratris' request to conduct additional discovery to create a factual record to support their economic realities test arguments is irrelevant since that test has no bearing and no application on the legal issues in this case. Finally, Shatz'/Fratris do not request to

⁸ "Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." Executive Mgmt., Ltd. v. Tigor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (internal quotations omitted).

1 conduct discovery on the factors set forth under NRS 608.0155 and they have thus
2 conceded that these factors are undisputed and no discovery need take place on these
3 factors for the Court to rule on the summary judgment motion. Accordingly, Shatz'/Fratis'
4 request must be denied as procedurally defective and summary judgment in favor of
5 Capital Cab is warranted.

6 **V. CONCLUSION.**

7 For the foregoing reasons, Capital Cab respectfully requests that this Court grant
8 its motion for summary judgment as follows: that the Lease's terms are clear and
9 unambiguous; that the Lease defines Shatz/Fratis as independent contractors; that the
10 parol evidence rule bars Shatz/Fratis from presenting any evidence that contradicts their
11 status as an independent contractor; and that as a matter of law the Court is obligated to
12 enforce the contract as written. In addition, Capital Cab's Lease with Shatz/Fratis is valid
13 and enforceable under NRS 706.473, which Lease defines Shatz/Fratis as independent
14 contractors. Further, it is uncontested that Shatz/Fratis are independent contractors
15 pursuant to the provisions of NRS 608.0155. Because of the foregoing, the MWA does
16 not apply to Shatz/Fratis because they are not employees and the MWA only applies to
17 employees and not independent contractors. As further grounds for summary judgment,
18 NRS 608.255(3) specifically precludes the application of the MWA to Shatz'/Fratis'
19 independent contractor relationship with Capital Cab. Therefore, Capital Cab is entitled
20 to summary judgment dismissing Shatz'/Fratis' Complaint in total.

21
22 **AFFIRMATION:** The undersigned does hereby affirm that this document does
23 not contain the Social Security Number of any person.

24 DATED this 17th day of November, 2016.

25 ROBISON, BELAUSTEGUI, SHARP & LOW
26 71 Washington Street
27 Reno, Nevada 89503

28 By: Therese Shanks
Mark G. Simons, Esq., NSB No. 5132
Therese M. Shanks, Esq., NSB No. 12890
Attorneys for Defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON,
BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true copy
of the **REPLY TO PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY
JUDGMENT AND OPPOSITION TO COUNTER-MOTION FOR DISCOVERY
PURSUANT TO NRCP RULE 56(F)** 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:

☒ by using the Court's CM/ECF Electronic Notification System addressed to:

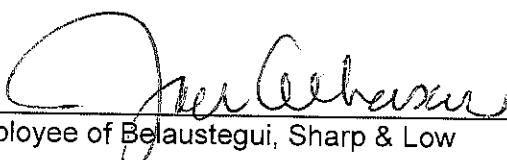
Curtis Coulter, Esq.
Michael Pintar, Esq.

_____ by personal delivery/hand delivery addressed to:

_____ by facsimile (fax) addressed to:

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

DATED this 17th day of November, 2016.



Employee of Belaustegui, Sharp & Low

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Attorneys for Plaintiff

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 Case No.: CV15-01359
others similarly situated

Dept. No.: 8

Plaintiff,

v.

PLAINTIFF'S REPLY IN SUPPORT OF
HIS COUNTER-MOTION FOR
DISCOVERY PURSUANT TO
NRCP RULE 56(F)

RENO CAB COMPANY, INC.,

Defendant.

_____ /

Plaintiff hereby submits this reply in support of his counter-motion for discovery
pursuant to NRCP Rule 56(f).

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MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

I. PLAINTIFFS' COUNTERMOTION IS PROPERLY ASSERTED UNDER NEV. R. CIV. P. 56(F) AND SHOULD BE GRANTED

A. Nevada Supreme Court Precedents Support Plaintiff's Position that Summary Judgment Cannot be Granted Without An Opportunity To Conduct Further Discovery

As the Nevada Supreme Court has repeatedly held, it is an abuse of discretion for a district court to deny a party opposing summary judgment a continuance to conduct discovery and gather factual evidence, if the party can show a need under Nev. R. Civ. P. Rule 56(f) for such discovery and they have acted with reasonable diligence. *See, Halimi v. Blacketor*, 770 P.2d 531, 532 (Sup. Ct. Nev. 1989) (Abuse of discretion to grant summary judgment and deny additional time for discovery when case had been pending one year). *Halimi* substantially relied upon the Nevada Supreme Court's decision in *Harrison v. Falcon Products*, 746 P.2d 642-43 (Sup. Ct. Nev. 1987), broadly holding that a party opposing summary judgment is entitled, as long as they have been reasonably diligent, to "discover any information that is 'reasonably calculated to lead to the discovery of admissible evidence'" as provided for by Nev. R. Civ. P. Rule 26(b)(1). *Harrison* reversed summary judgment against the plaintiff in that case as Nev. R. Civ. P. Rule 56(f) required the plaintiff be granted an opportunity to conduct discovery to counter the defendant's claims in a case that was not yet two years old. *Id.*

The standards developed by and applied in *Harrison* and *Hamli* have been repeatedly reaffirmed by the Nevada Supreme Court in subsequent decisions. *See, Aviation Ventures, Inc. v. Joan Morris, Inc.* 110 P.3d 59, 62-63 (Nev. Sup. Ct. 2005) (Abuse of discretion under Nev. R. Civ. P. Rule 56(f) to grant summary judgment eight months after case commenced when no

discovery had been conducted or could be conducted since parties had yet to submit a joint case conference report) and other cases.

**B. There Was No Procedural Defect In Plaintiff's Countermotion
Under Nev. R. Civ. P. 56(f) For Additional Discovery**

NRCP 56(f) sets forth a discretionary standard for this Court to follow. This Court is free to deny summary judgment to defendants irrespective of whether a "procedurally proper" request for a continuance under NRCP 56(f) has been made. Defendants' assertion that the Myers's countermotion "*must* be denied because he does not comply with any of the requirements of that rule" is unsupported. *See*, Defendants' Opposition at p. 11 (emphasis added). Under NRCP 56(f) the Court "*may order a continuance to permit affidavits to be obtained* or depositions to be taken or discovery to be had or may make such other order as is just." Nev. R. Civ. P. 56(f) (emphasis added). The absence of *affidavits* setting forth reasons why additional discovery must be conducted does not present this Court with a mandatory duty to deny plaintiff's countermotion. The Court is free to determine, from the request made in plaintiff's countermotion, whether to order additional discovery to be conducted.

The above has implicitly been approved by the Nevada Supreme Court. In *Halimi*, discussed *supra*, the Nevada Supreme Court reversed a district court's grant of summary judgment to the appellee, finding that granting summary judgment in that case was an abuse of discretion. *See, Halimi v. Blacketor*, 770 P.2d 531 (Sup. Ct. Nev. 1989). The *Halimi* opinion makes no reference to a countermotion under Rule 56(f) with supporting affidavits having been filed by the plaintiff. Rather, the plaintiff made a "request for additional time for discovery in his memorandum in opposition" which the Nevada Supreme Court found to be "sufficient for purposes of NRCP 56(f)." *Id.* at 531. Thus, plaintiff's request for additional discovery in his memorandum in opposition and countermotion, irrespective of whether plaintiff also set forth such request in a duplicative affidavit, is "sufficient for purposes of NRCP 56(f)."

1
2
3 **II. DEFENDANT SETS FORTH AN IMPROPER STANDARD FOR**
4 **DETERMINING THE EMPLOYMENT RELATIONSHIP AT ISSUE**

5 In opposing plaintiff's counter-motion for additional discovery, defendant states that
6 "Myers bases his request [for additional discovery] on his incorrect assertion that the economic
7 realities test applies to the facts of this case. It does not. Thus, Myers' request to conduct
8 additional discovery to create a factual record to support his economic realities test arguments
9 is irrelevant since that test has no bearing and no application on the legal issues in this case."
10 Defendant's Opposition at p. 12. Such a statement by defendant ignores fundamental
11 principles of jurisprudence and the supremacy of the Nevada Constitution to any acts by the
12 Legislature.

13 In examining the meaning of "employee" under Nevada law, the Nevada Supreme
14 Court, in *Terry v. Sapphire Gentleman's Club*, 130 Nev. ___, 336 P.3d 951 (2014),
15 emphatically stated "our state's and federal minimum wage laws should be harmonious in terms
16 of which workers qualify as employees under them. We therefore adopt the FLSA's "economic
17 realities" test for employment in the context of Nevada's minimum wage laws." *Id.* at p. 958
18 (emphasis added). *Terry's* use of the plural tense in this circumstance is important. The Court
19 was applying judicial interpretation to the use of the term "employees" under all Nevada
20 minimum wage laws, including the use of such term in Article 15, Section 16 of the Nevada
21 Constitution (The "Minimum Wage Act" or "MWA"). It noted that even the MWA did not
22 provide clear guidance on how an "employer" should be defined. In noting that, the Court
23 found that "a more concrete interpretative aid—one extrinsic from Nevada's statutory and
24 constitutional minimum wage frameworks—is required" to determine employment status under
25 Nevada's minimum wage law. *Id.* at p. 955. *Terry* also emphasized that the MWA was the
26 result of "the state's voters' wish that more, not fewer, persons would receive minimum wage
27

1
2
3 protections.” *Id.*

4 The subsequent passing by the legislature and enactment of NRS 608.0155 cannot,
5 under recognized principles of jurisprudence and the supremacy of the Nevada Constitution, act
6 to redefine the meaning of “employee” under the MWA from the one found in *Terry*. The
7 Nevada Supreme Court has found such term to be determined by employing the “economic
8 realities test” based upon the voters’ wishes that more, not fewer, persons receive minimum
9 wage. Such a constitutional meaning of this word is not subject to redefinition by the
10 Legislature.

11 In *State ex. rel. Schneider v. Kennedy*, 587 P.2d 844 (Sup. Ct. Kan. 1978), the Kansas
12 Supreme Court determined whether the Kansas legislature had the power to redefine, by
13 legislative action, the definition of “open saloon” as that term was used in Article 15, Section
14 10 of the Kansas Constitution. Specifically, the legislatively enacted a statute stated, in part,
15 “As used in Kan. Const. art. 15, § 10 and this section, ‘open saloon’ means any place public or
16 private where alcoholic liquor is sold or offered or kept for sale by the drink...” *Id.* at p. 847.
17 The Court noted that the legislature, in using such language, was disclosing that it was
18 “redefining ‘open saloon’ as used in section 10 of article 15 of the constitution of the State of
19 Kansas.” *Id.* at p. 854. But, “the people of Kansas, however, did not give the legislature the
20 right to define an “open saloon” in the Kansas constitution.” *Id.*

21 Similarly, the voters of the State of Nevada have not given the legislature the right to
22 define “employee” in the Nevada Constitution. “If the Legislature could change the
23 Constitution by ordinary enactment, ‘no longer would the Constitution be ‘superior paramount
24 law, unchangeable by ordinary means.’ It would be ‘on a level with ordinary legislative acts,
25 and, like other acts, ... alterable when the legislature shall please to alter it.’” *Thomas v. Nev.*

1
2 *Yellow Cab Corp.*, 327 P.3d 518, 522 (Nev. Sup. Ct. 2014), citing *City of Boerne v. Flores*, 521
3 U.S. 507, 529, 117 S. Ct. 2157, 138 L. Ed. 2d 624 (1997).

4
5 NRS 608.0155 is a prime example of what the Nevada Supreme Court warned of in
6 *Thomas*; the loss of the Constitution's status as the "superior paramount law" because of
7 altering at the legislature's pleasure. As defendant asserts, NRS 608.0155 was enacted to avoid
8 the impact of the *Terry* decision. But, the people of the state of Nevada voted in 2006 to enact
9 broad minimum wage protections to all "employees" in Nevada. *See*, Art. 15, Sec. 16 of the
10 Nev. Const. It is not for the legislature to say who the voters meant to protect when they
11 sought to expand minimum wage rights to all "employees" in Nevada through a constitutional
12 amendment. As the Nevada Supreme Court has recognized, "[t]he issue ought to be not what
13 the legislature,' or, in this case, the voting public, 'meant to say, but what it succeeded in
14 saying.'" *Thomas v. Nev. Yellow Cab Corp.*, 327 P.3d 518, 522 (Nev. Sup. Ct. 2014) citing
15 Lon L. Fuller, *Anatomy of the Law* 18 (Greenwood Press 1976).

16 Accordingly, plaintiff's request for further discovery consistent with the factors
17 considered under the "economic realities" test for employees covered by the MWA, as
18 announced in *Terry*, is proper.

19 CONCLUSION

20 For all the foregoing reasons, defendant's motion should be denied and plaintiff's
21 countermotion granted in its entirety together with such further relief as the Court deems
22 proper.

23 Dated this 1st day of December 2016.

24 The attorney of record in this case hereby affirms that the above document does not contain the Social Security
Number of any person, pursuant to NRS 239B.030.

25 Leon Greenberg Professional Corporation

26 By: /s/ Leon Greenberg

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Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5 (b), I hereby certify that I am an employee of Law Offices of Curtis B. Coulter, P.C., and that I served a true and correct copy of the Plaintiff's Reply In Support Of His Counter-Motion For Discovery Pursuant To NRCP RULE 56(F).

 X Mail on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope with first-class postage affixed thereto, deposited in the United States Mail, at Reno, Nevada.

 Personal delivery by causing a true copy thereof to be hand-delivered to the address or addresses set forth below.

 Facsimile on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address or addresses noted below.

 Federal Express or other overnight delivery.

 Hand-delivery by Reno/Carson Messenger Service.

Addressed as follows:

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DATED: 12.1.2016

/s/ Irene Sanchez

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Attorneys for Plaintiff

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

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

Case No.: CV15-01359, CV15-01385

Dept. No.: 8

Plaintiffs,

PLAINTIFFS' RESPONSE TO
MOTION FOR SUMMARY
JUDGMENT
COUNTER-MOTION FOR
DISCOVERY PURSUANT TO
NRCF RULE 56(F)

v.

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

Defendants.

Plaintiff hereby submits this reply in support of his counter-motion for discovery pursuant to
NRCF Rule 56(f).

///

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3 **MEMORANDUM OF POINTS AND AUTHORITIES**
4 **ARGUMENT**

5 **I. PLAINTIFFS' COUNTERMOTION IS PROPERLY ASSERTED UNDER NEV.**
6 **R. CIV. P. 56(F) AND SHOULD BE GRANTED**

7 **A. Nevada Supreme Court Precedents Support Plaintiff's**
8 **Position that Summary Judgment Cannot be Granted**
9 **Without An Opportunity To Conduct Further Discovery**

10 As the Nevada Supreme Court has repeatedly held, it is an abuse of discretion for a
11 district court to deny a party opposing summary judgment a continuance to conduct discovery
12 and gather factual evidence, if the party can show a need under Nev. R. Civ. P. Rule 56(f) for
13 such discovery and they have acted with reasonable diligence. *See, Halimi v. Blacketor*, 770
14 P.2d 531, 532 (Sup. Ct. Nev. 1989) (Abuse of discretion to grant summary judgment and deny
15 additional time for discovery when case had been pending one year). *Halimi* substantially
16 relied upon the Nevada Supreme Court's decision in *Harrison v. Falcon Products*, 746 P.2d
17 642-43 (Sup. Ct. Nev. 1987), broadly holding that a party opposing summary judgment is
18 entitled, as long as they have been reasonably diligent, to "discover any information that is
19 'reasonably calculated to lead to the discovery of admissible evidence'" as provided for by
20 Nev. R. Civ. P. Rule 26(b)(1). *Harrison* reversed summary judgment against the plaintiff in
21 that case as Nev. R. Civ. P. Rule 56(f) required the plaintiff be granted an opportunity to
22 conduct discovery to counter the defendant's claims in a case that was not yet two years old.
23 *Id.*

24 The standards developed by and applied in *Harrison* and *Hamli* have been repeatedly
25 reaffirmed by the Nevada Supreme Court in subsequent decisions. *See, Aviation Ventures, Inc.*
26 *v. Joan Morris, Inc.* 110 P.3d 59, 62-63 (Nev. Sup. Ct. 2005) (Abuse of discretion under Nev.
27 R. Civ. P. Rule 56(f) to grant summary judgment eight months after case commenced when no
28 discovery had been conducted or could be conducted since parties had yet to submit a joint case

conference report) and other cases.

**B. There Was No Procedural Defect In Plaintiff's Countermotion
Under Nev. R. Civ. P. 56(f) For Additional Discovery**

NRCP 56(f) sets forth a discretionary standard for this Court to follow. This Court is free to deny summary judgment to defendants irrespective of whether a "procedurally proper" request for a continuance under NRCP 56(f) has been made. Defendants' assertion that the Shatz'/Fratris countermotion "*must* be denied because they do not comply with any of the requirements of that rule" is unsupported. *See*, Defendants' Opposition at p. 11 (emphasis added). Under NRCP 56(f) the Court "*may order a continuance to permit affidavits to be obtained* or depositions to be taken or discovery to be had or may make such other order as is just." Nev. R. Civ. P. 56(f) (emphasis added). The absence of *affidavits* setting forth reasons why additional discovery must be conducted does not present this Court with a mandatory duty to deny plaintiff's countermotion. The Court is free to determine, from the request made in plaintiff's countermotion, whether to order additional discovery to be conducted.

The above has implicitly been approved by the Nevada Supreme Court. In *Halimi*, discussed *supra*, the Nevada Supreme Court reversed a district court's grant of summary judgment to the appellee, finding that granting summary judgment in that case was an abuse of discretion. *See, Halimi v. Blacketor*, 770 P.2d 531 (Sup. Ct. Nev. 1989). The *Halimi* opinion makes no reference to a countermotion under Rule 56(f) with supporting affidavits having been filed by the plaintiff. Rather, the plaintiff made a "request for additional time for discovery in his memorandum in opposition" which the Nevada Supreme Court found to be "sufficient for purposes of NRCP 56(f)." *Id.* at 531. Thus, plaintiff's request for additional discovery in his memorandum in opposition and countermotion, irrespective of whether plaintiff also set forth such request in a duplicative affidavit, is "sufficient for purposes of NRCP 56(f)."

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3 **II. DEFENDANT SETS FORTH AN IMPROPER STANDARD FOR**
4 **DETERMINING THE EMPLOYMENT RELATIONSHIP AT ISSUE**

5 In opposing plaintiffs' counter-motion for additional discovery, defendant states that
6 "Shatz/Fratis base their request [for additional discovery] on their incorrect assertion that the
7 economic realities test applies to the facts of this case. It does not. Thus, Shatz'/Fratis' request
8 to conduct additional discovery to create a factual record to support their economic realities test
9 arguments is irrelevant since that test has no bearing and no application on the legal issues in
10 this case." Defendant's Opposition at p. 12. Such a statement by defendant ignores
11 fundamental principles of jurisprudence and the supremacy of the Nevada Constitution to any
12 acts by the Legislature.

13 In examining the meaning of "employee" under Nevada law, the Nevada Supreme
14 Court, in *Terry v. Sapphire Gentleman's Club*, 130 Nev. ___, 336 P.3d 951 (2014),
15 emphatically stated "our state's and federal minimum wage laws should be harmonious in terms
16 of which workers qualify as employees under them. We therefore adopt the FLSA's "economic
17 realities" test for employment in the context of Nevada's minimum wage laws." *Id.* at p. 958
18 (emphasis added). *Terry's* use of the plural tense in this circumstance is important. The Court
19 was applying judicial interpretation to the use of the term "employees" under all Nevada
20 minimum wage laws, including the use of such term in Article 15, Section 16 of the Nevada
21 Constitution (The "Minimum Wage Act" or "MWA"). It noted that even the MWA did not
22 provide clear guidance on how an "employer" should be defined. In noting that, the Court
23 found that "a more concrete interpretative aid—one extrinsic from Nevada's statutory and
24 constitutional minimum wage frameworks—is required" to determine employment status under
25 Nevada's minimum wage law. *Id.* at p. 955. *Terry* also emphasized that the MWA was the
26 result of "the state's voters' wish that more, not fewer, persons would receive minimum wage
27 protections." *Id.*

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3 The subsequent passing by the legislature and enactment of NRS 608.0155 cannot,
4 under recognized principles of jurisprudence and the supremacy of the Nevada Constitution, act
5 to redefine the meaning of “employee” under the MWA from the one found in *Terry*. The
6 Nevada Supreme Court has found such term to be determined by employing the “economic
7 realities test” based upon the voters’ wishes that more, not fewer, persons receive minimum
8 wage. Such a constitutional meaning of this word is not subject to redefinition by the
9 Legislature.

10 In *State ex. rel. Schneider v. Kennedy*, 587 P.2d 844 (Sup. Ct. Kan. 1978), the Kansas
11 Supreme Court determined whether the Kansas legislature had the power to redefine, by
12 legislative action, the definition of “open saloon” as that term was used in Article 15, Section
13 10 of the Kansas Constitution. Specifically, the legislatively enacted a statute stated, in part,
14 “As used in Kan. Const. art. 15, § 10 and this section, ‘open saloon’ means any place public or
15 private where alcoholic liquor is sold or offered or kept for sale by the drink...” *Id.* at p. 847.
16 The Court noted that the legislature, in using such language, was disclosing that it was
17 “redefining ‘open saloon’ as used in section 10 of article 15 of the constitution of the State of
18 Kansas.” *Id.* at p. 854. But, “the people of Kansas, however, did not give the legislature the
19 right to define an “open saloon” in the Kansas constitution.” *Id.*

20 Similarly, the voters of the State of Nevada have not given the legislature the right to
21 define “employee” in the Nevada Constitution. “If the Legislature could change the
22 Constitution by ordinary enactment, ‘no longer would the Constitution be ‘superior paramount
23 law, unchangeable by ordinary means.’ It would be ‘on a level with ordinary legislative acts,
24 and, like other acts, ... alterable when the legislature shall please to alter it.’” *Thomas v. Nev.*
25 *Yellow Cab Corp.*, 327 P.3d 518, 522 (Nev. Sup. Ct. 2014), citing *City of Boerne v. Flores*, 521
26 U.S. 507, 529, 117 S. Ct. 2157, 138 L. Ed. 2d 624 (1997).

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3 NRS 608.0155 is a prime example of what the Nevada Supreme Court warned of in
4 *Thomas*; the loss of the Constitution's status as the "superior paramount law" because of
5 altering at the legislature's pleasure. As defendant asserts, NRS 608.0155 was enacted to avoid
6 the impact of the *Terry* decision. But, the people of the state of Nevada voted in 2006 to enact
7 broad minimum wage protections to all "employees" in Nevada. See, Art. 15, Sec. 16 of the
8 Nev. Const. It is not for the legislature to say who the voters meant to protect when they
9 sought to expand minimum wage rights to all "employees" in Nevada through a constitutional
10 amendment. As the Nevada Supreme Court has recognized, "[t]he issue ought to be not what
11 the legislature,' or, in this case, the voting public, 'meant to say, but what it succeeded in
12 saying.'" *Thomas v. Nev. Yellow Cab Corp.*, 327 P.3d 518, 522 (Nev. Sup. Ct. 2014)citing Lon
13 L. Fuller, *Anatomy of the Law* 18 (Greenwood Press 1976).

14 Accordingly, plaintiff's request for further discovery consistent with the factors
15 considered under the "economic realities" test for employees covered by the MWA, as
16 announced in *Terry*, is proper.

17 CONCLUSION

18 For all the foregoing reasons, defendant's motion should be denied and plaintiff's
19 countermotion granted in its entirety together with such further relief as the Court deems
20 proper.

21 Dated this 1st day of December, 2016.

22 The attorney of record in this case hereby affirms that the above document does not contain the Social Security
23 Number of any person, pursuant to NRS 239B.030.

24 Leon Greenberg Professional Corporation

25 By: /s/ Leon Greenberg

26 LEON GREENBERG, Esq.
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28 2965 South Jones Blvd- Suite E4

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Tel (702) 383-6085
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5 (b), I hereby certify that I am an employee of Law Offices of Curtis B. Coulter, P.C., and that I served a true and correct copy of the Plaintiff's Plaintiffs' Response To Motion For Summary Judgment Counter-Motion For Discovery Pursuant To NRCP RULE 56(F).

 X Mail on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope with first-class postage affixed thereto, deposited in the United States Mail, at Reno, Nevada.

 Personal delivery by causing a true copy thereof to be hand-delivered to the address or addresses set forth below.

 Facsimile on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address or addresses noted below.

 Federal Express or other overnight delivery.
 Hand-delivery by Reno/Carson Messenger Service.

Addressed as follows:

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DATED: 12.1.2016

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An employee of Curtis B. Coulter, P.C.

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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,

Case No.: CV15-01359

Plaintiff,

Dept. No.: 8

vs.

RENO CAB COMPANY, INC.,

Defendant.

ARTHUR SHATZ and RICHARD
FRATIS,

Case No.: CV15-01385

Plaintiffs,

Dept. No.: 8

v.

ROY L. STREET, individually and dba
CAPITAL CAB,

Defendants.

ORDER

On August 19, 2016, the parties filed its *Second Amended Stipulation for Consolidation*.

Having reviewed the *Second Amended Stipulation for Consolidation* and
good cause appearing,

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1 The *Second Amended Stipulation for Consolidation* is hereby **GRANTED**.
2 The above two cases are hereby consolidated for all further proceedings. However,
3 at this time, consolidation does not include consolidation of the trials. The parties
4 may request consolidation for trial purposes at a later date.

5 Dated this 3 day of January, 2017.

Patrick Flanagan
PATRICK FLANAGAN
Chief District Judge

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Curtis Coulter, Esq. for Plaintiff Jeff Myers, Arthur Shatz, and Richard Fratis; and

I deposited in the Washoe 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:

Saahib Singh
Judicial Assistant

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,

vs.

Case No.: CV15-01359

Dept. No.: 10

RENO CAB COMPANY, INC.,

Defendant.

ORDER

Presently before the Court is a MOTION FOR SUMMARY JUDGMENT ("the Motion"). The Motion was filed by Defendant RENO CAB COMPANY, INC. ("the Defendant") on September 30, 2016. Plaintiff JEFF MYERS ("the Plaintiff") filed the PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY JUDGMENT COUNTER-MOTION FOR DISCOVERY PURSUANT TO NRCP RULE 56(F) ("the Response") on October 31, 2016. The Defendant filed the REPLY TO PLAINTIFF'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO COUNTER-MOTION FOR DISCOVERY PURSUANT TO NRCP RULE 56(F) ("the Reply") on November 17, 2016. The Motion was submitted to the instant department on January 12, 2017.¹

¹ The instant case was transferred from Department 8 to Department 10 on January 12, 2017. See ORDER DIRECTING RANDOM CASE REASSIGNMENT, issued January 3, 2017; see also CASE ASSIGNMENT NOTIFICATION, issued January 12, 2017. The Motion was originally submitted to Department 8 on November 17, 2016.

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The Complaint explains the Plaintiff is a taxicab driver who leased a taxicab from the Defendant taxicab company. The Complaint, 4:2-7. The Plaintiff entered into a lease contract (“the Lease”) with the Defendant on December 27, 2013. The Motion, exhibit 1. The Complaint alleges two claims. The First Claim alleges “[p]ursuant to Article 15, Section 16, of the Nevada Constitution the named [P]laintiff and the class members were entitled to an hourly minimum wage for every hour they worked for the defendant.” The Complaint, 6:5-7. The First Claim further alleges the Defendant’s violation “involved malicious and/or fraudulent and/or oppressive conduct by the [D]efendant sufficient to warrant an award of punitive damages.” The Complaint, 6:9-11. The Second Claim alleges “pursuant to Nevada Revised Statutes §608.040...the [P]laintiff has been separated from his employment with the [D]efendant and at the time of such separation was owed unpaid wages by the [D]efendant.” The Complaint, 8:10-14. The Second Claim further alleges “[t]he [D]efendant has failed and refused to pay the named [P]laintiff...earned but unpaid wages....” The Complaint, 8:15-17.

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³ The record does not reflect any attempt on behalf of the Plaintiff to certify the class pursuant to NRCP 23.

1 The Defendant filed the MOTION TO STAY DISCOVERY (“the MTS”) on November 28,
2 2016. The Plaintiff filed the PLAINTIFF’S RESPONSE IN PARTIAL OPPOSITION TO
3 DEFENDANT’S MOTION TO STAY DISCOVERY PENDING DISPOSITION OF
4 DEFENDANT’S MOTION FOR SUMMARY JUDGMENT on December 15, 2016. The
5 Defendant filed the REPLY IN SUPPORT OF MOTION TO STAY DISCOVERY on December
6 19, 2016. The MTS was submitted to the instant department on January 12, 2017.⁴

7 The Court issued an ORDER (“the January Order”) on January 20, 2017. The January
8 Order required the parties to set a hearing on the Motion. The January Order, 3:10-12. The January
9 Order additionally stayed any disposition of the MTS pending resolution of the Motion. The
10 January Order, 3:4-7. The Court held a hearing on the Motion on March 14, 2017. The Court took
11 the Motion under advisement at the conclusion of the hearing.

12 LEGAL STANDARD

13 Under NRCP 56(b), a defendant may move at any time for summary judgment in its favor
14 “as to all or any part” of the claim, counter-claim, or cross claim. When it reviews a motion for
15 summary judgment, a court will consider the evidence, and any reasonable inferences drawn from
16 the evidence, in the light most favorable to the nonmoving party. *Wood v. Safeway*, 121 Nev. 724,
17 732, 121 P.3d 1026, 1031 (2005). The nonmoving party must, “by affidavit or otherwise, set forth
18 specific facts demonstrating the existence of a genuine issue for trial or have summary judgment
19 entered against him.” *Id.* Summary judgment is appropriate under NRCP 56 when the pleadings,
20 depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before
21 the court demonstrate no genuine issue of material fact exists, and the moving party is entitled to
22 judgment as a matter of law. *Safeway*, 121 Nev. at 731, 121 P.3d at 1031. A factual dispute is
23 material if it “might affect the outcome of the suit under the governing law;” disputes that are
24 “irrelevant or unnecessary” are not material and will not preclude summary judgment. *Safeway*,
25 121 Nev. at 730, 121 P.3d at 1030 (quoting *Anderson v. Liberty Lobby*, 477 U.S. 242, 247-48, 106
26 S.Ct. 2505, 2509-10 (1986)). “[T]he nonmoving party may not defeat a motion for summary
27 judgment by relying ‘on the gossamer threads of whimsy, speculation and conjecture.’” *Safeway*,
28 121 Nev. at 731, 121 P.3d at 1030 (internal citation omitted). A court must take great care when

⁴ The MTS was originally submitted to Department 8 on December 19, 2016.

1 granting a motion for summary judgment. *Johnson v. Steel Inc.*, 100 Nev. 181, 182, 678 P.2d 676,
2 677 (1984), *overruled on other grounds by Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137 P.3d
3 1171 (2006).

4 In an order concerning summary judgment, a court “shall set forth the undisputed material
5 facts and legal determinations on which the court granted summary judgment.” NRCp 56(c). If a
6 court’s order does not dispose of the entire case, but instead sustains issue for trial, the order will
7 specify the facts that are disputed and those that are not disputed. NRCp 56(d).

8 ANALYSIS

9 The arguments presented in the instant matter originate in a single, fundamental issue: does
10 the Nevada Legislature (“the Legislature”) have the ability to interpret an amendment made to the
11 Nevada Constitution through the creation of a new statute? The Plaintiff argues against legislative
12 interpretation, and instead advocates for strict adherence to the plain language of the amendment
13 and the Nevada Supreme Court (“the Supreme Court”) cases interpreting it. The Defendant argues
14 in favor of legislative interpretation, contending a statute more recently codified than the
15 amendment may clarify the amendment’s intended application.

16 The Motion contends the Plaintiff is an independent contractor pursuant to the express language
17 of the Lease. The Motion, 6:8-19. The Motion additionally avers NRS 706.473 and NRS 608.0155
18 specifically establish an independent contractor relationship between taxicab drivers and taxicab
19 companies. The Motion, 8:22-23; 11:5-7; 13:9, 15, 22; 16:2, 14, 23. The Response argues for the
20 application of the Minimum Wage Amendment (“the MWA”) of the Nevada Constitution, which
21 provides minimum wage protection for Nevada employees. The Response, 2:7-11. The Response
22 additionally asserts the NRS is not relevant in a determination of “what constitutes ‘employment’
subject to the [MWA].” The Response, 6:6-8.

23 **I. Application of the MWA**

24 The MWA is codified as Article 15, §16, of the Nevada Constitution, and was added in
25 2006. The MWA provides: “[e]ach employer shall pay a wage to each employee of not less than
26 the hourly rates set forth in this section.” The MWA(A). The MWA proceeds to enumerate
27 specific minimum wage rates for employees in Nevada. The MWA additionally provides: “[t]he
28 provisions of this section may not be waived by agreement between an individual employee and an
employer.” The MWA(B). The MWA defines “employee” as: “any person who is employed by an

1 employer as defined herein but does not include an employee who is under eighteen (18) years of
2 age, employed by a nonprofit organization for after school or summer employment or as a trainee
3 for a period not longer than ninety (90) days.” The MWA(C). The MWA defines employer as:
4 “any individual, proprietorship, partnership, joint venture, corporation, limited liability company,
5 trust, association, or other entity that may employ individuals or enter into contracts of
6 employment.” *Id.*

7 “The Nevada Constitution is the ‘supreme law of the state,’ which ‘control[s] over any
8 conflicting statutory provisions.’” *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327
9 P.3d 518, 521 (2014) (quoting *Clean Water Coal v. The M Resort, L.L.C.*, 127 Nev. 301, 309, 255
10 P.3d 247, 253 (2011)). Accordingly, a court shall “construe statutes, ‘if reasonably possible, so as
11 to be in harmony with the constitution.’” *Thomas*, 327 P.3d at 521 (quoting *State v. Glusman*, 98
12 Nev. 412, 419, 651 P.2d 639, 644 (1982)). However, in cases where the “statute is ‘irreconcilably
13 repugnant’ to a constitutional amendment, the statute is deemed to have been impliedly repealed by
14 the amendment.” *Thomas*, 327 P.3d at 521 (quoting *Mengelkamp v. List*, 88 Nev. 542, 545-46, 501
15 P.2d 1032, 1034 (1972)). Unless the statutory amendment “conflicts with existing law to the extent
16 that both cannot logically exist,” there exists a presumption “against [the] implied repeal.” *Thomas*,
17 327 P.3d at 521 (citing *W Reality Co. v. City of Reno*, 63 Nev. 330, 344, 172 P.2d 158, 165 (1946)).

18 As described *supra*, the MWA applies exclusively to “employees,” who are afforded
19 additional wage protection under the Amendment. Therefore, whether or not the MWA applies to
20 the Plaintiff necessarily depends on whether or not the Plaintiff is determined to be an employee or
21 an independent contractor.

22 **II. Independent Contractor Relationship**

23 The Response does not argue for the obviation of the legal concept of an independent
24 contractor. At oral argument, the Plaintiff acknowledged the concept of an independent contractor
25 relationship would remain in Nevada despite the existence of the MWA. Rather, the Motion and
26 Response argue for the application of two separate tests to determine the presence or lack of an
27 independent contractor relationship between the Plaintiff and the Defendant. The Response asserts
28 the Court should apply the “economic realities test” adopted by the Supreme Court in *Terry v.*
Sapphire Gentlemen’s Club, 130 Nev. Adv. Op. 87, 336 P.3d 951 (2014). The Response contends
evaluation of the factors cited in *Sapphire*, “must result in a finding that the [P]laintiff was an
employee....” The Response, 7:22-27; 8:1-13. The Motion avers the economic realities test was

1 abrogated by statute, and is therefore an inapplicable test. The Motion, 17:19-28; 18:1.

2 Accordingly, the Motion argues for application of the test enumerated in NRS 608.0155, as well as
3 general application of NRS 706.473. The Motion asserts these statutes create “a conclusive
4 presumption that [the Plaintiff] is an independent contractor.” The Motion, 2:5-9.

5 When a supreme court decision is later contradicted by a statutory amendment, that
6 amendment can be construed to supersede the decision. *See Jacobson v. Clayton*, 121 Nev. 518,
7 522, 119 P.3d 132, 134 (2005) (an amendment to NRS 140.040(3) superseded the Supreme Court’s
8 ruling in *Bodine v. Stinson*, 85 Nev. 657, 461 P.2d 686 (1969), when the statute was amended to
9 contradict the ruling two years earlier); *accord, Simmons Self-Storage v. Rib Roof, Inc.*, 130 Nev.
10 Adv. Op. 57, 331 P.3d 850, 855 (2014). A court may presume the legislature knew of the supreme
11 court decision when they amended the statute. *See Northern Nevada Assoc. of Injured Workers v.*
12 *Nevada State Indus. Ins. Sys.*, 107 Nev. 108, 112, 807 P.2d 728, 730 (1991) (reasoning that “the
13 legislature presumably knew the law when it most recently amended” a workers’ compensation
14 statute and left the statute unchanged).

15 The *Thomas* Court ruled on whether the MWA “override[s] the exception for taxicab drivers
16 provided in Nevada’s minimum wage statute, NRS 608.250(2)(e).” *Thomas*, 327 P.3d at 520. The
17 *Thomas* Court held:

18 The [MWA]’s broad definition of employee and very specific exemptions necessarily and
19 directly conflict with the legislative exception for taxicab drivers established by NRS
20 608.250(2)(e). Therefore, the two are “irreconcilably repugnant,”...such that “both cannot
21 stand,”...and that the statute is impliedly repealed by the [MWA].

22 *Id.* at 521. *Sapphire* was decided in the same year, but subsequent to *Thomas*.⁵ The *Sapphire* Court
23 adopted the economic realities test used by federal courts in disposition of actions made under the
24 federal Fair Labor Standards Act (“the FLSA”). *Sapphire*, 336 P.3d at 958. The *Sapphire* Court
25 held:

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⁵ The *Sapphire* Court recognized the *Thomas* holding when it stated “[o]nly an employee is entitled to minimum wages under NRS Chapter 608. NRS 608.250, superseded in part by constitutional amendment as recognized in *Thomas*...” *Sapphire*, 336 P.3d at 954.

1 the Legislature has not clearly signaled its intent that Nevada's minimum wage scheme
2 should deviate from the federally set course...our state's and federal minimum wage laws
3 should be harmonious in terms of which workers qualify as employees under them. We
therefore adopt the FLSA's 'economic realities' test...in the context of Nevada's minimum
wage laws.

4 *Id.* Accordingly, the *Sapphire* Court made clear the Supreme Court adopted the economic realities
5 test *in the absence of a clear signal* from the Legislature.

6 The *Sapphire* Court dedicated a sizeable portion of its opinion to analysis of the legislative
7 history of Nevada's minimum wage laws from the 1960s and 1970s, as well as the "overlap
8 between the [MWA] and NRS Chapter 608." *Id.* at 955-56. The *Sapphire* Court remarked the
9 definitions of "employer" provided by both the statute at issue and the MWA offered "little
10 elucidation." *Id.* at 955. Thus, the *Sapphire* Court called for "a more concrete interpretive aid," to
11 properly apply the broad definitions enumerated in the MWA. *Id.* As the *Sapphire* Court analyzed
12 the legislative history available at the time of its disposition, this Court assumes analysis of the
13 subsequent, updated legislative history in the disposition of the instant matter is proper. The
14 updated legislative history is especially pertinent given it provides precisely the "interpretive aid"
the *Sapphire* Court called for.

15 The *Sapphire* Court's legislative history analysis explained it is the Legislature's common
16 practice to attempt to harmonize federal law with Nevada's statutory schemes. The *Sapphire* Court
17 stated: "the Legislature has long relied on federal...law to lay a foundation of worker protections
18 that this State could build upon...and so in many significant respects, Nevada's...laws and those set
19 federally run parallel." *Id.* at 955. To this end, the *Sapphire* Court stated the Legislature
20 "repeatedly heard testimony" concerning the "burden on business and potential confusion" should
21 federal and state law "fail to operate harmoniously." *Id.* at 957. However, the *Sapphire* Court
22 additionally acknowledged the Legislature's ability to deviate from federal law when it is so
23 inclined. *See Sapphire* at 956 (citing *Dancer I-VII v. Golden Coin, Ltd.*, 124 Nev. 28, 32-33, 176
24 P.3d 271, 274-75 (2008)). It is only in the absence of both harmonious statutes, as well as any clear
25 deviation or direction from the Legislature, that the *Sapphire* Court adopted the economic realities
test.

26 In 2015, subsequent to the *Thomas* and *Sapphire* decisions, the Legislature passed Senate
27 Bill Number 224 ("SB 224"). The Legislature described SB 224 as:
28

1 AN ACT relating to employment; establishing a conclusive presumption that a person is an
2 independent contractor if certain conditions are met; [and] excluding the relationship
3 between a principal and an independent contractor from certain provisions governing the
4 payment of minimum wage to an employee....

5 S.B. 224, 2015 Leg., 78th Session. (Nev. 2015). In enacting SB 224, the Legislature explained it
6 applied “to any action or proceeding to recover unpaid wages pursuant to a requirement to pay a
7 minimum wage in which a final decision has not been rendered as of [its] effective date,” in June of
8 2015. *Id.* SB 224 added a new section to NRS chapter 608, which was later codified as NRS
9 608.0155. NRS 608.0155 provides:

10 1. [A] person is conclusively presumed to be an independent contractor if:

11 (a)...the person possesses or has applied for an employer identification number or social
12 security number or has filed an income tax return for a business or earnings from self
13 employment with the Internal Revenue Service in the previous year;

14 (b) The person is required by the contract with the principal to hold any necessary state
15 business registration or local business license and to maintain any necessary occupational
16 license, insurance or bonding; and

17 (c) The person satisfies three or more of the following criteria:

18 (1)...the person has control and discretion over the means and manner of the
19 performance of any work and the result of the work, rather than the means or manner
20 by which the work is performed, is the primary element bargained for by the
21 principal in the contract.

22 (2)...the person has control over the time the work is performed.

23 (3) The person is not required to work exclusively for one principal....

24 (4) The person is free to hire employees to assist with the work.

25 (5) The person contributes a substantial investment of capital in the business of the
26 person, including, without limitation, the:

27 (I) Purchase or lease of ordinary tools, material and equipment regardless of
28 source....

2. The fact that a person is not conclusively presumed to be an independent contractor for
failure to satisfy three or more of the criteria set forth in paragraph (c) of subsection 1 does
not automatically create a presumption that the person is an employee.

23 The Legislature explicitly contradicted the Supreme Court’s decisions in *Thomas* and
24 *Sapphire* by means of a statutory amendment adding NRS 608.0155 to Nevada’s statutory scheme.
25 Not only does SB 224 explicitly exclude the requisite payment of minimum wage to independent
26 contractors, it also specifically enumerates a test for determination of the existence of an
27 independent contractor relationship. Further, the NRS 608.0155 test is blatantly contradictory to
28 the economic realities test adopted in *Sapphire*. While the Legislature may not have “clearly
signaled” its intent to the Supreme Court prior to the decisions rendered in *Thomas* and *Sapphire*,

1 the passage of SB 224 and codification of NRS 608.0155 plainly evidence such intent.
2 Accordingly, the Court construes NRS 608.0155 to supersede the decisions in *Thomas* and
3 *Sapphire*, and abrogate the Supreme Court's adoption of the federal economic realities test.
4 *Jacobson*, 121 Nev. at 522, 119 P.3d at 134.

5 The Supreme Court has held "[t]he separation of powers; the independence of one branch
6 from the others; the requirement that one department cannot exercise the powers of the other two is
7 fundamental in our system of government." *Galloway v. Truesdell*, 83 Nev. 13, 19, 422 P.2d 237,
8 242 (1967). The *Galloway* Court reasoned:

9 legislative power is the power of law-making representative bodies to frame and enact laws,
10 and to amend or repeal them. This power is indeed very broad, and, except where limited
11 by Federal or State Constitutional provisions, that power is practically absolute. Unless
12 there are specific constitutional limitations to the contrary, statutes are to be construed in
13 favor of the legislative power.

14 *Id.* 83 Nev. at 20, 422 P.2d at 242. This broad legislative power must therefore be entirely distinct
15 from judicial power, which the *Galloway* Court describes as:

16 [t]he authority to hear and determine justiciable controversies. Judicial power includes the
17 authority to enforce any valid judgment, decree or order....Judicial power, or the exercise of
18 judicial functions cannot include powers or functions that do not stem from the basic
19 judicial powers and functions set forth in the Constitution, unless the Constitution otherwise
20 expressly provides. Hence it follows that the judicial power, and the exercise thereof by a
21 judicial function, cannot include a power or function that must be derived from the basic
22 Legislative or Executive powers.

23 The Supreme Court properly exercised its judicial power to "hear and determine justiciable
24 controversies" when it issued its opinions in *Thomas* and *Sapphire*. Additionally, the Legislature
25 properly exercised its legislative power to "frame and enact laws" when it passed SB 224 and
26 subsequently codified it as NRS 608.0155. However, it would not be proper for this Court to ignore
27 the Legislature's exercise of its "practically absolute" power by misapplying Supreme Court
28 opinions. Were the Court to apply the economic realities test, as suggested by the Plaintiff, and fail
to apply the test subsequently codified by the Legislature, a clear breach of the separation of powers
would result.

The Court recognizes and is respectful of the well-established doctrine of stare decisis,
which is "indispensable to the due administration of justice." *Armenta-Carpio v. State*, 129
Nev.Adv.Op. 54, 306 P.3d 395, 398 (2013) (holding under "the doctrine of stare decisis, [the Court]
will not overturn precedent absent compelling reasons for so doing.") (internal citation omitted).

1 However, the Court reasons its adherence to the NRS 608.0155 test does not disregard the holding
2 of the *Sapphire* Court in violation of stare decisis. Rather, it acknowledges a purposeful
3 modification of Nevada's statutory scheme made in response to Supreme Court opinions the
4 Legislature found to necessitate clarification. Accordingly, in disposing of the instant matter, the
5 Court is acting in accordance with the most recently enacted and applicable law on the matter.

6 The Court does not find the Legislature's codification of NRS 608.0155 to be
7 "irreconcilably repugnant" to the MWA. *Thomas*, 327 P.3d at 521. Rather, NRS 608.1055
8 supplements the MWA by providing an interpretive tool to aid in the determination of the
9 amendment's application to particular groups. It does so by enumerating a clear test of who is and
10 who is not an independent contractor, and therefore, who is and who is not excepted from the
11 MWA's expanded protections. It does not designate specific groups, such as taxi drivers, for its
12 application or exemption. The *Thomas* Court found such designation to be constitutionally infirm.
13 *Id.* Therefore, the Court does not find NRS 608.0155 to conflict "with existing law to the extent
14 that both cannot logically exist." *Id.* Quite the contrary, the Court finds NRS 608.0155 clarifies the
15 application of the MWA, therefore allowing both to logically co-exist. This co-existence is
16 especially appropriate given the presumption against repeal. *Id.*

17 **III. Application of the NRS 608.0155 Test**

18 The Motion contends "NRS 608.0155 creates a conclusive presumption of independent
19 contractor status when a number of easily identifiable criteria are met." The Motion, 11:11-12. The
20 Response advocates for application of the economic realities test and therefore does not directly
21 oppose the Motion's arguments regarding application of the NRS 608.0155 test. However, the
22 Response opposes the Motion's assertions concerning the Plaintiff's status as an independent
23 contractor, stating they "cannot be accepted as true by the Court and are vigorously disputed by the
24 Plaintiff." The Response, 4:8-9.

25 **The Court finds the following facts to be undisputed:**

- 26 1. The Plaintiff entered into the Lease with the Defendant on December 27, 2013. The
27 Motion, exhibit 1.
- 28 2. The Lease states the Plaintiff, was "free from interference and control on the part of the"
Defendant. *Id.*
3. The Lease states the Plaintiff "will operate the Leased Taxicab for a minimum of three
(3) days per seven day week, unless [the Defendant] authorizes [the Plaintiff] to deviate

1 from the three (3) day minimum.” *Id.*

- 2 4. The Lease states only the Plaintiff could drive the leased taxicab unless the Defendant
3 “authorizes, in writing, another person to drive the leased taxicab.” *Id.*
4 5. The Lease states: “the [Plaintiff] must provide to the [Defendant]: (a) a certificate from a
5 licensed physician which is dated not more than 90 days before the date on which the
6 [Plaintiff] begins to lease a taxicab...which demonstrates that [Plaintiff] is physically
7 qualified to operate a commercial motor vehicle...[and] (c) obtain work cards as
8 required by all federal, state and local governments.” *Id.*
9 6. The Lease states: “[a]t the beginning of each 12 hour lease period, [the Plaintiff] must
10 date and time stamp the trip sheet provided by the [Defendant] with the completed date
11 and time stamped trip sheets for that 12 hour lease period.”
12 7. The Plaintiff’s payment for the leased taxicab was ten dollars per 12-hour period, plus
13 fifty percent of all fares received, in addition to the cost of gas. *Id.*
14 8. The Plaintiff possessed his own social security card and number. The Motion, exhibit 4.
15 9. The Plaintiff possessed a valid driver’s license. *Id.*
16 10. The Plaintiff possessed a chauffeur work permit for the City of Sparks. *Id.*
17 11. The Plaintiff possessed a five-year non-gaming permit from the Reno Police
18 Department. *Id.*
19 12. The Plaintiff possessed a medical examiner’s certificate. *Id.*

20 **The Court finds the following facts to be disputed:**

- 21 1. Whether the Plaintiff controlled his work schedule, namely: did the Plaintiff or the
22 Defendant determine how many days the Plaintiff worked, for how many hours the
23 Plaintiff worked, at what times the Plaintiff worked, and for what percentage the
24 Plaintiff worked of the 12-hour prescribed period.
25 2. Whether the Plaintiff controlled the passengers he transported in the leased taxicab,
26 including: what percentage of passengers the Plaintiff was permitted to decide to take,
27 where and when the Plaintiff was required to pick-up passengers, and the frequency with
28 which the Plaintiff’s freedom to decide his own fares was restricted.
3. Whether the Plaintiff was in fact free to hire a substitute drive to assist with his work.
4. Whether the Plaintiff was in fact free to work elsewhere.

1 As enumerated *supra*, an individual “is conclusively presumed to be an independent
2 contractor” if they meet the requirements set by NRS 608.0155. The individual must first possess
3 or have applied for, *inter alia*, “an employer identification number or social security number....”
4 The Plaintiff possessed a social security card and number and therefore satisfies the first
5 requirement. Second, the individual “is required by the contract with the principal to hold any
6 necessary state business registration or local business license and to maintain any necessary
7 occupational license, insurance or bonding....” The Plaintiff was both required by the Lease to
8 possess, and did in fact possess, a Nevada driver’s license, a medical examiners card, a permit from
9 the Reno Police Department, and a chauffeurs permit from the City of Sparks, and therefore
10 satisfies the second requirement. The Court finds the Plaintiff satisfies section (1)(a) and section
11 (1)(b) of the NRS 608.0155 test; however, the individual must additionally satisfy three of the
12 following criteria from NRS 608.0155(1)(c):

- 13 (1)...the person has control and discretion over the means and manner of the performance of
14 any work and the result of the work, rather than the means or manner by which the work is
15 performed, is the primary element bargained for by the principal in the contract.
- 16 (2)...the person has control over the time the work is performed.
- 17 (3) The person is not required to work exclusively for one principal....
- 18 (4) The person is free to hire employees to assist with the work.
- 19 (5) The person contributes a substantial investment of capital in the business of the person,
20 including, without limitation, the:
21 (I) Purchase or lease of ordinary tools, material and equipment regardless of source....

22 The Court finds an issue of material fact concerning the Plaintiff’s satisfaction of three of
23 the five supplementary criteria listed *supra*. The Motion offers, *inter alia*, the Lease, the Plaintiff’s
24 answers to interrogatories, and the AFFIDAVIT OF ROBIN STREET IN SUPPORT OF MOTION
25 FOR SUMMARY JUDGMENT (“the Affidavit”) to support the Plaintiff’s ability to satisfy the
26 supplementary criteria. The Motion, exhibits 1, 2, 3 and 5. However, the Response contests the
27 facts asserted in these documents. The Response offers, *inter alia*, THE DECLARATION OF
28 JEFF MYERS (“the Declaration”), charts of the Plaintiff’s hours worked, and the trip sheets listing
the details of the Plaintiff’s fares, both in opposition to the Motion, as well as in support of the
Declaration. A number of the facts asserted in the Affidavit and Declaration directly oppose each
other. For example, the Affidavit asserts the Defendant “did not control any aspect of the work
performed by Myers....” The Affidavit, 1:17. Conversely, the Declaration asserts the Plaintiff
“worked a set schedule,” from which he could “be suspended.” The Declaration, 2:17-18, 20-21.

1 The Court finds the facts supporting the Plaintiff's ability to satisfy the supplementary criteria are
2 largely contested by the pleadings, and therefore preclude the Court from finding the Plaintiff is an
3 independent contractor under the NRS 608.0155 test.

4 In addition to contending the Plaintiff is an independent contractor under the statutory test,
5 the Motion argues the Plaintiff was an independent contractor "as a matter of law," due to the "clear
6 and unambiguous language of the Lease." ⁶ The Motion, 6:8-11. Section 10 of the Lease provides:

7 Neither Party is the partner, joint venture, agent, or representative of the other Party. LESSEE
8 [Plaintiff] is an independent contractor. LEASING COMPANY [Defendant] and LESSEE
9 acknowledge and agree that there does not exist between them the relationship of employer and
10 employee, principal and agent, or master and servant, either expressed or implied, but that the
11 relationship of the parties is strictly that of lessor and lessee, the LESSEE being free from
12 interference and control of the part of the LEASING COMPANY....

13 The Motion relies heavily upon the Lease in order to evidence the specific elements of the
14 relationship between the Plaintiff and the Defendant, and therefore categorize the Plaintiff as an
15 independent contractor pursuant to the NRS 608.0155 test. The Plaintiff signed the Lease, therefore
16 the Court presumes the Plaintiff agreed to the relationship enumerated therein. *Yee v. Weiss*, 110
17 Nev. 657, 662, 877 P.2d 510,513 (1994) (reasoning "Courts have consistently held that one is
18 bound by any document one signs...."). While the Lease may unambiguously define the Plaintiff
19 as an independent contractor, the MWA states its protections "may not be waived by agreement
20 between an individual employee and an employer." The MWA(B). In regards to subverting the
21 rights afforded by the MWA via contract, the *Sapphire* Court held: "[p]articularly where, as here,
22 remedial statutes are at play, a putative employer's self-interested disclaimers of any intent to hire
23 cannot control the realities of an employment relationship....Thus, [the Respondent]'s protestations
24 that the [Petitioners] 'never intended to be employees,' and agreed to be independent contractors are

25 ⁶ The Motion additionally argues application of NRS 706.473 creates a presumption that the Plaintiff is an independent
26 contractor. NRS 706.473 governs leasing taxi cabs to independent contractors. NRS 706.473(1) provides: "a person
27 who holds a certificate of public convenience and necessity which was issued for the operation of a taxicab business
28 may...lease a taxicab to an independent contractor...A person may lease only one taxicab to each independent
contractor with whom the person enters into a lease agreement. The taxicab may be used only in a manner authorized
by the lessor's certificate of public convenience and necessity." NRS 706.473(2) further provides: "[a] person who
enters into a lease agreement with an independent contractor pursuant to this section shall submit a copy of the
agreement to the Authority for its approval." The Court need not consider NRS 706.473 in depth when NRS 608.0155
establishes the criteria for an independent contractor relationship. However, the Court recognizes its tendency to
supplement the presumption of an independent contractor relationship.

1 beside the point.” *Sapphire*, 336 P.3d at 954. As neither the MWA nor the Supreme Court finds
2 the language of the Lease to be dispositive, the Court cannot rely solely upon the language of the
3 Lease to create an independent contractor relationship.

4 **IV. Conclusion**

5 The Court finds the Plaintiff’s arguments against legislative interpretation of the MWA to
6 be unpersuasive. Such an application would affect the business relationships, contracting
7 possibilities, and the income and wage potential of numerous Nevada industries that utilize
8 independent contractors. Were the Court to allow the MWA to be interpreted by the economic
9 realities test rather than by NRS 608.0155, the MWA’s application would be substantially expanded
10 beyond the limits set by the duly elected members of Nevada’s Legislature.

11 When viewed in the light most favorable to the Plaintiff, the Plaintiff’s status as an
12 independent contractor remains an issue of material fact for trial. The material facts remaining at
13 issue are determinative of the Plaintiff’s ability to qualify for the expanded protection afforded to
14 employees under the MWA. Whether the Plaintiff may succeed on his First Claim for application
15 of the MWA, or his Second Claim for unpaid wages necessarily originating in its application,
16 remains to be decided.

17 **IT IS ORDERED** the Defendant’s MOTION FOR SUMMARY JUDGMENT is hereby
18 DENIED.

19 **IT IS FURTHER ORDERED** the stay of proceedings discussed in the MTS is hereby
20 lifted.

21 **DATED** this 12 day of June, 2017.



22 ELLIOTT A. SATTLER
23 District Judge
24
25
26
27
28

1
2 **CERTIFICATE OF MAILING**

3 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court
4 of the State of Nevada, County of Washoe; that on this 12 day of June, 2017, I deposited in the
5 County mailing system for postage and mailing with the United States Postal Service in Reno,
6 Nevada, a true copy of the attached document addressed to:

7 Leon Greenberg, Esq.
8 2965 South Jones Blvd., Suite E3
9 Las Vegas, NV 89146
10

11 **CERTIFICATE OF ELECTRONIC SERVICE**


12 I hereby certify that I am an employee of the Second Judicial District Court of the State of
13 Nevada, in and for the County of Washoe; that on the 12 day of June, 2017, I electronically
14 filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of
15 electronic filing to the following:
16

17 CURTIS COULTER, ESQ.

18 THERESE SHANKS, ESQ.

19 MARK SIMONS, ESQ.

20 MICHAEL PINTAR, ESQ.
21
22
23
24
25

26 
27 Sheila Mansfield
28 Administrative Assistant

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

* * *

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

Plaintiffs,
vs.

Case No.: CV15-01385
Dept. No.: 10

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

Defendants.

ORDER

Presently before the Court is a MOTION FOR SUMMARY JUDGMENT ("the Motion"). The Motion was filed by Defendant ROY L. STREET ("the Defendant") on September 30, 2016. Plaintiffs ARTHUR SHATZ and RICHARD FRATIS ("the Plaintiffs") filed the PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY JUDGMENT COUNTER-MOTION FOR DISCOVERY PURSUANT TO NRCP RULE 56(F) ("the Response") on November 1, 2016. The Defendant filed the REPLY TO PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO COUNTER-MOTION FOR DISCOVERY PURSUANT TO NRCP RULE 56(F) ("the Reply") on November 17, 2016. The Motion was submitted to the instant department on January 12, 2017.¹

¹ The instant case was originally filed in the First Judicial District in Carson City. After transfer to the Second Judicial District, the case was initially assigned to Department 4. The Plaintiffs filed a Peremptory Challenge on December 8, 2015. The case was transferred from Department 4 to Department 9 on December 9, 2015. Judge for Department 9, the

PROCEDURAL AND ACTUAL BACKGROUND

The underlying case concerns an employment dispute. The Plaintiffs filed the COMPLAINT (“the Complaint”) on July 16, 2015. Counsel for the Plaintiffs filed a nearly identical COMPLAINT in Case Number CV15-01359 on the same date. Both Complaints were structured as class action claims.² The Plaintiffs filed the STIPULATION FOR CONSOLIDATION (“the Stipulation”) on July 5, 2016, in case number CV15-01359. The Stipulation indicated the parties’ agreement to consolidate the two cases “for all further proceedings.” The Stipulation, 2:5-6. The Plaintiffs filed the SECOND AMENDED STIPULATION FOR CONSOLIDATION (“the Second Stipulation”) on August 22, 2016. The Second Stipulation explained the Stipulation was modified such that “consolidation does not include consolidation of trials.” The Second Stipulation, 1:22-23; 2:6.

The Complaint explains the Plaintiffs are taxicab drivers who leased a taxicab from the Defendant taxicab company. The Complaint, 4:8-13. Plaintiff ARTHUR SHATZ (“Shatz”) entered into a lease contract (“the Lease”) with the Defendant on March 23, 2011. The Motion, exhibit 1. Plaintiff RICHARD FRATIS (“Fratiss”) entered into an identical lease contract with the Defendant on March 25, 2011.³ The Motion, exhibit 4. The Complaint’s First Claim alleges “[p]ursuant to Article 15, Section 16, of the Nevada Constitution the named [P]laintiffs and the class members were entitled to an hourly minimum wage for every hour they worked for the defendant.” The Complaint, 6:10-12. The First Claim further alleges the Defendant’s violation “involved malicious and/or fraudulent and/or oppressive conduct by the [D]efendant sufficient to warrant an award of punitive damages.” The Complaint, 6:14-16. The Complaint’s Second Claim alleges “pursuant to Nevada Revised Statutes §608.040...the [P]laintiffs have been separated from their employment with the [D]efendant and at the time of such separation was owed unpaid wages by the [D]efendant.” The Complaint, 8:16-19. The Second Claim further alleges “[t]he [D]efendant has failed and refused to pay the named [P]laintiffs...earned but unpaid wages....” The Complaint, 8:20-22.

Honorable Scott N. Freeman, recused himself from the matter on December 11, 2015. Accordingly, the case was reassigned to Department 8 on December 11, 2015. CV15-01385 was consolidated into CV15-01359, which had been assigned to the instant Department.

² The record does not reflect any attempt on behalf of the Plaintiffs to certify the class pursuant to NRCP 23.

³ As the Leases are identical, the Court will refer to both leases as “the Lease” for clarification.

1 The Defendant filed the MOTION TO STAY DISCOVERY (“the MTS”) on November 28,
2 2016. The Plaintiffs filed the PLAINTIFFS’ RESPONSE IN PARTIAL OPPOSITION TO
3 DEFENDANT’S MOTION TO STAY DISCOVERY PENDING DISPOSITION OF
4 DEFENDANT’S MOTION FOR SUMMARY JUDGMENT on December 15, 2016, in case
5 number CV15-01359. The Defendant filed the REPLY IN SUPPORT OF MOTION TO STAY
6 DISCOVERY on December 19, 2016, in case number CV15-01359. The MTS was submitted to
the instant department on January 12, 2017, in case number CV15-01359.⁴

7 The Court issued an ORDER (“the January Order”) on January 20, 2017. The January
8 Order required the parties to set a hearing on the Motion. The January Order, 3:10-12. The January
9 Order additionally stayed any disposition of the MTS pending resolution of the Motion. The
10 January Order, 3:4-7. The Court held a hearing on the Motion on March 14, 2017. The Court took
11 the Motion under advisement at the conclusion of the hearing.

12 **LEGAL STANDARD**

13 Under NRCP 56(b), a defendant may move at any time for summary judgment in its favor
14 “as to all or any part” of the claim, counter-claim, or cross claim. When it reviews a motion for
15 summary judgment, a court will consider the evidence, and any reasonable inferences drawn from
16 the evidence, in the light most favorable to the nonmoving party. *Wood v. Safeway*, 121 Nev. 724,
17 732, 121 P.3d 1026, 1031 (2005). The nonmoving party must, “by affidavit or otherwise, set forth
18 specific facts demonstrating the existence of a genuine issue for trial or have summary judgment
19 entered against him.” *Id.* Summary judgment is appropriate under NRCP 56 when the pleadings,
20 depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before
21 the court demonstrate no genuine issue of material fact exists, and the moving party is entitled to
22 judgment as a matter of law. *Safeway*, 121 Nev. at 731, 121 P.3d at 1031. A factual dispute is
23 material if it “might affect the outcome of the suit under the governing law;” disputes that are
24 “irrelevant or unnecessary” are not material and will not preclude summary judgment. *Safeway*,
25 121 Nev. at 730, 121 P.3d at 1030 (quoting *Anderson v. Liberty Lobby*, 477 U.S. 242, 247-48, 106
26 S.Ct. 2505, 2509-10 (1986)). “[T]he nonmoving party may not defeat a motion for summary
27 judgment by relying ‘on the gossamer threads of whimsy, speculation and conjecture.’” *Safeway*,

28 ⁴ The MTS was originally submitted to Department 8 on December 19, 2016.

1 121 Nev. at 731, 121 P.3d at 1030 (internal citation omitted). A court must take great care when
2 granting a motion for summary judgment. *Johnson v. Steel Inc.*, 100 Nev. 181, 182, 678 P.2d 676,
3 677 (1984), *overruled on other grounds by Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137 P.3d
4 1171 (2006).

5 In an order concerning summary judgment, a court “shall set forth the undisputed material
6 facts and legal determinations on which the court granted summary judgment.” NRCP 56(c). If a
7 court’s order does not dispose of the entire case, but instead sustains issue for trial, the order will
8 specify the facts that are disputed and those that are not disputed. NRCP 56(d).

9 ANALYSIS

10 The arguments presented in the instant matter originate in a single, fundamental issue: does
11 the Nevada Legislature (“the Legislature”) have the ability to interpret an amendment made to the
12 Nevada Constitution through the creation of a new statute? The Plaintiffs argue against legislative
13 interpretation, and instead advocates for strict adherence to the plain language of the amendment
14 and the Nevada Supreme Court (“the Supreme Court”) cases interpreting it. The Defendant argues
15 in favor of legislative interpretation, contending a statute more recently codified than the
16 amendment may clarify the amendment’s intended application.

17 The Motion contends the Plaintiffs are independent contractors pursuant to the express language
18 of the Lease. The Motion, 7:9-28. The Motion additionally avers NRS 706.473 and NRS 608.0155
19 specifically establish an independent contractor relationship between taxicab drivers and taxicab
20 companies. The Motion, 9:27-28; 10:1-9; 12:11-19. The Response argues for the application of the
21 Minimum Wage Amendment (“the MWA”) of the Nevada Constitution, which provides minimum
22 wage protection for Nevada employees. The Response, 2:7-11. The Response additionally asserts
23 the NRS is not relevant in a determination of “what constitutes ‘employment’ subject to the
24 [MWA].” The Response, 6:6-8.

25 **I. Application of the MWA**

26 The MWA is codified as Article 15, §16, of the Nevada Constitution, and was added in
27 2006. The MWA provides: “[e]ach employer shall pay a wage to each employee of not less than
28 the hourly rates set forth in this section.” The MWA(A). The MWA proceeds to enumerate
specific minimum wage rates for employees in Nevada. The MWA additionally provides: “[t]he
provisions of this section may not be waived by agreement between an individual employee and an

1 employer.” The MWA(B). The MWA defines “employee” as: “any person who is employed by an
2 employer as defined herein but does not include an employee who is under eighteen (18) years of
3 age, employed by a nonprofit organization for after school or summer employment or as a trainee
4 for a period not longer than ninety (90) days.” The MWA(C). The MWA defines employer as:
5 “any individual, proprietorship, partnership, joint venture, corporation, limited liability company,
6 trust, association, or other entity that may employ individuals or enter into contracts of
7 employment.” *Id.*

8 “The Nevada Constitution is the ‘supreme law of the state,’ which ‘control[s] over any
9 conflicting statutory provisions.’” *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327
10 P.3d 518, 521 (2014) (quoting *Clean Water Coal v. The M Resort, L.L.C.*, 127 Nev. 301, 309, 255
11 P.3d 247, 253 (2011)). Accordingly, a court shall “construe statutes, ‘if reasonably possible, so as
12 to be in harmony with the constitution.’” *Thomas*, 327 P.3d at 521 (quoting *State v. Glusman*, 98
13 Nev. 412, 419, 651 P.2d 639, 644 (1982)). However, in cases where the “statute is ‘irreconcilably
14 repugnant’ to a constitutional amendment, the statute is deemed to have been impliedly repealed by
15 the amendment.” *Thomas*, 327 P.3d at 521 (quoting *Mengelkamp v. List*, 88 Nev. 542, 545-46, 501
16 P.2d 1032, 1034 (1972)). Unless the statutory amendment “conflicts with existing law to the extent
17 that both cannot logically exist,” there exists a presumption “against [the] implied repeal.” *Thomas*,
18 327 P.3d at 521 (citing *W Reality Co. v. City of Reno*, 63 Nev. 330, 344, 172 P.2d 158, 165 (1946)).

19 As described *supra*, the MWA applies exclusively to “employees,” who are afforded
20 additional wage protection under the Amendment. Therefore, whether or not the MWA applies to
21 the Plaintiffs necessarily depends on whether or not the Plaintiffs are determined to be employees
22 or independent contractors.

23 **II. Independent Contractor Relationship**

24 The Response does not argue for the obviation of the legal concept of an independent
25 contractor. At oral argument, the Plaintiffs acknowledged the concept of an independent contractor
26 relationship would remain in Nevada despite the existence of the MWA. Rather, the Motion and
27 Response argue for the application of two separate tests to determine the presence or lack of
28 independent contractor relationships between the Plaintiffs and the Defendant. The Response
asserts the Court should apply the “economic realities test” adopted by the Supreme Court in *Terry*
v. Sapphire Gentlemen’s Club, 130 Nev. Adv. Op. 87, 336 P.3d 951 (2014). The Response
contends evaluation of the factors cited in *Sapphire*, “must result in a finding that the [P]laintiffs

1 were employees....” The Response, 8:15-18. The Motion avers the economic realities test was
2 abrogated by statute, and is therefore an inapplicable test. The Motion, 19:3-14. Accordingly, the
3 Motion argues for application of the test enumerated in NRS 608.0155, as well as general
4 application of NRS 706.473. The Motion asserts these statutes create “a conclusive presumption
5 that [the Plaintiffs] are independent contractors.” The Motion, 2:19-22.

6 When a supreme court decision is later contradicted by a statutory amendment, that
7 amendment can be construed to supersede the decision. *See Jacobson v. Clayton*, 121 Nev. 518,
8 522, 119 P.3d 132, 134 (2005) (an amendment to NRS 140.040(3) superseded the Supreme Court’s
9 ruling in *Bodine v. Stinson*, 85 Nev. 657, 461 P.2d 686 (1969), when the statute was amended to
10 contradict the ruling two years earlier); *accord, Simmons Self-Storage v. Rib Roof, Inc.*, 130 Nev.
11 Adv. Op. 57, 331 P.3d 850, 855 (2014). A court may presume the legislature knew of the supreme
12 court decision when they amended the statute. *See Northern Nevada Assoc. of Injured Workers v.*
13 *Nevada State Indus. Ins. Sys.*, 107 Nev. 108, 112, 807 P.2d 728, 730 (1991) (reasoning that “the
14 legislature presumably knew the law when it most recently amended” a workers’ compensation
15 statute and left the statute unchanged).

16 The *Thomas* Court ruled on whether the MWA “override[s] the exception for taxicab drivers
17 provided in Nevada’s minimum wage statute, NRS 608.250(2)(e).” *Thomas*, 327 P.3d at 520. The
18 *Thomas* Court held:

19 The [MWA]’s broad definition of employee and very specific exemptions necessarily and
20 directly conflict with the legislative exception for taxicab drivers established by NRS
21 608.250(2)(e). Therefore, the two are “irreconcilably repugnant,”...such that “both cannot
22 stand,”...and that the statute is impliedly repealed by the [MWA].

23 *Id.* at 521. *Sapphire* was decided in the same year, but subsequent to *Thomas*.⁵ The *Sapphire* Court
24 adopted the economic realities test used by federal courts in disposition of actions made under the
25 federal Fair Labor Standards Act (“the FLSA”). *Sapphire*, 336 P.3d at 958. The *Sapphire* Court
26 held:

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⁵ The *Sapphire* Court recognized the *Thomas* holding when it stated “[o]nly an employee is entitled to minimum wages under NRS Chapter 608. NRS 608.250, superseded in part by constitutional amendment as recognized in *Thomas*...” *Sapphire*, 336 P.3d at 954.

1 the Legislature has not clearly signaled its intent that Nevada's minimum wage scheme
2 should deviate from the federally set course...our state's and federal minimum wage laws
3 should be harmonious in terms of which workers qualify as employees under them. We
therefore adopt the FLSA's 'economic realities' test...in the context of Nevada's minimum
wage laws.

4 *Id.* Accordingly, the *Sapphire* Court made clear the Supreme Court adopted the economic realities
5 test *in the absence of a clear signal* from the Legislature.

6 The *Sapphire* Court dedicated a sizeable portion of its opinion to analysis of the legislative
7 history of Nevada's minimum wage laws from the 1960s and 1970s, as well as the "overlap
8 between the [MWA] and NRS Chapter 608." *Id.* at 955-56. The *Sapphire* Court remarked the
9 definitions of "employer" provided by both the statute at issue and the MWA offered "little
10 elucidation." *Id.* at 955. Thus, the *Sapphire* Court called for "a more concrete interpretive aid," to
11 properly apply the broad definitions enumerated in the MWA. *Id.* As the *Sapphire* Court analyzed
12 the legislative history available at the time of its disposition, this Court assumes analysis of the
13 subsequent, updated legislative history in the disposition of the instant matter is proper. The
14 updated legislative history is especially pertinent given it provides precisely the "interpretive aid"
the *Sapphire* Court called for.

15 The *Sapphire* Court's legislative history analysis explained it is the Legislature's common
16 practice to attempt to harmonize federal law with Nevada's statutory schemes. The *Sapphire* Court
17 stated: "the Legislature has long relied on federal...law to lay a foundation of worker protections
18 that this State could build upon...and so in many significant respects, Nevada's...laws and those set
19 federally run parallel." *Id.* at 955. To this end, the *Sapphire* Court stated the Legislature
20 "repeatedly heard testimony" concerning the "burden on business and potential confusion" should
21 federal and state law "fail to operate harmoniously." *Id.* at 957. However, the *Sapphire* Court
22 additionally acknowledged the Legislature's ability to deviate from federal law when it is so
23 inclined. *See Sapphire* at 956 (citing *Dancer I-VII v. Golden Coin, Ltd.*, 124 Nev. 28, 32-33, 176
24 P.3d 271, 274-75 (2008)). It is only in the absence of both harmonious statutes, as well as any clear
25 deviation or direction from the Legislature, that the *Sapphire* Court adopted the economic realities
test.

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1 In 2015, subsequent to the *Thomas* and *Sapphire* decisions, the Legislature passed Senate
2 Bill Number 224 (“SB 224”). The Legislature described SB 224 as:

3 AN ACT relating to employment; establishing a conclusive presumption that a person is an
4 independent contractor if certain conditions are met; [and] excluding the relationship
5 between a principal and an independent contractor from certain provisions governing the
payment of minimum wage to an employee....

6 S.B. 224, 2015 Leg., 78th Session. (Nev. 2015). In enacting SB 224, the Legislature explained it
7 applied “to any action or proceeding to recover unpaid wages pursuant to a requirement to pay a
8 minimum wage in which a final decision has not been rendered as of [its] effective date,” in June of
9 2015. *Id.* SB 224 added a new section to NRS chapter 608, which was later codified as NRS
10 608.0155. NRS 608.0155 provides:

11 1. [A] person is conclusively presumed to be an independent contractor if:

12 (a)...the person possesses or has applied for an employer identification number or social
13 security number or has filed an income tax return for a business or earnings from self
employment with the Internal Revenue Service in the previous year;

14 (b) The person is required by the contract with the principal to hold any necessary state
15 business registration or local business license and to maintain any necessary occupational
license, insurance or bonding; and

16 (c) The person satisfies three or more of the following criteria:

17 (1)...the person has control and discretion over the means and manner of the
18 performance of any work and the result of the work, rather than the means or manner
by which the work is performed, is the primary element bargained for by the
principal in the contract.

19 (2)...the person has control over the time the work is performed.

20 (3) The person is not required to work exclusively for one principal....

21 (4) The person is free to hire employees to assist with the work.

22 (5) The person contributes a substantial investment of capital in the business of the
person, including, without limitation, the:

(I) Purchase or lease of ordinary tools, material and equipment regardless of
source....

23 2. The fact that a person is not conclusively presumed to be an independent contractor for
24 failure to satisfy three or more of the criteria set forth in paragraph (c) of subsection 1 does
not automatically create a presumption that the person is an employee.

25 The Legislature explicitly contradicted the Supreme Court’s decisions in *Thomas* and
26 *Sapphire* by means of a statutory amendment adding NRS 608.0155 to Nevada’s statutory scheme.
27 Not only does SB 224 explicitly exclude the requisite payment of minimum wage to independent
28 contractors, it also specifically enumerates a test for determination of the existence of an

1 independent contractor relationship. Further, the NRS 608.0155 test is blatantly contradictory to
2 the economic realities test adopted in *Sapphire*. While the Legislature may not have “clearly
3 signaled” its intent to the Supreme Court prior to the decisions rendered in *Thomas* and *Sapphire*,
4 the passage of SB 224 and codification of NRS 608.0155 plainly evidence such intent.
5 Accordingly, the Court construes NRS 608.0155 to supersede the decisions in *Thomas* and
6 *Sapphire*, and abrogate the Supreme Court’s adoption of the federal economic realities test.
7 *Jacobson*, 121 Nev. at 522, 119 P.3d at 134.

8 The Supreme Court has held “[t]he separation of powers; the independence of one branch
9 from the others; the requirement that one department cannot exercise the powers of the other two is
10 fundamental in our system of government.” *Galloway v. Truesdell*, 83 Nev. 13, 19, 422 P.2d 237,
11 242 (1967). The *Galloway* Court reasoned:

12 legislative power is the power of law-making representative bodies to frame and enact laws,
13 and to amend or repeal them. This power is indeed very broad, and, except where limited
14 by Federal or State Constitutional provisions, that power is practically absolute. Unless
15 there are specific constitutional limitations to the contrary, statutes are to be construed in
16 favor of the legislative power.

17 *Id.* 83 Nev. at 20, 422 P.2d at 242. This broad legislative power must therefore be entirely distinct
18 from judicial power, which the *Galloway* Court describes as:

19 [t]he authority to hear and determine justiciable controversies. Judicial power includes the
20 authority to enforce any valid judgment, decree or order....Judicial power, or the exercise of
21 judicial functions cannot include powers or functions that do not stem from the basic
22 judicial powers and functions set forth in the Constitution, unless the Constitution otherwise
23 expressly provides. Hence it follows that the judicial power, and the exercise thereof by a
24 judicial function, cannot include a power or function that must be derived from the basic
25 Legislative or Executive powers.

26 The Supreme Court properly exercised its judicial power to “hear and determine justiciable
27 controversies” when it issued its opinions in *Thomas* and *Sapphire*. Additionally, the Legislature
28 properly exercised its legislative power to “frame and enact laws” when it passed SB 224 and
subsequently codified it as NRS 608.0155. However, it would not be proper for this Court to ignore
the Legislature’s exercise of its “practically absolute” power by misapplying Supreme Court
opinions. Were the Court to apply the economic realities test, as suggested by the Plaintiffs, and
fail to apply the test subsequently codified by the Legislature, a clear breach of the separation of
powers would result.

1 The Court recognizes and is respectful of the well-established doctrine of stare decisis,
2 which is “indispensable to the due administration of justice.” *Armenta-Carpio v. State*, 129
3 Nev.Adv.Op. 54, 306 P.3d 395, 398 (2013) (holding under “the doctrine of stare decisis, [the Court]
4 will not overturn precedent absent compelling reasons for so doing.”) (internal citation omitted).
5 However, the Court reasons its adherence to the NRS 608.0155 test does not disregard the holding
6 of the *Sapphire* Court in violation of stare decisis. Rather, it acknowledges a purposeful
7 modification of Nevada’s statutory scheme made in response to Supreme Court opinions the
8 Legislature found to necessitate clarification. Accordingly, in disposing of the instant matter, the
9 Court is acting in accordance with the most recently enacted and applicable law on the matter.

10 The Court does not find the Legislature’s codification of NRS 608.0155 to be
11 “irreconcilably repugnant” to the MWA. *Thomas*, 327 P.3d at 521. Rather, NRS 608.1055
12 supplements the MWA by providing an interpretive tool to aid in the determination of the
13 amendment’s application to particular groups. It does so by enumerating a clear test of who is and
14 who is not an independent contractor, and therefore, who is and who is not excepted from the
15 MWA’s expanded protections. It does not designate specific groups, such as taxi drivers, for its
16 application or exemption. The *Thomas* Court found such designation to be constitutionally infirm.
17 *Id.* Therefore, the Court does not find NRS 608.0155 to conflict “with existing law to the extent
18 that both cannot logically exist.” *Id.* Quite the contrary, the Court finds NRS 608.0155 clarifies the
19 application of the MWA, therefore allowing both to logically co-exist. This co-existence is
20 especially appropriate given the presumption against repeal. *Id.*

21 **III. Application of the NRS 608.0155 Test**

22 The Motion contends “NRS 608.0155 creates a conclusive presumption of independent
23 contractor status when a number of easily identifiable criteria are met.” The Motion, 12:17-19. The
24 Response advocates for application of the economic realities test and therefore does not directly
25 oppose the Motion’s arguments regarding application of the NRS 608.0155 test. However, the
26 Response opposes the Motion’s assertions concerning the Plaintiffs’ status as independent
27 contractors, stating they “cannot be accepted as true by the Court and are vigorously disputed by the
28 Plaintiffs.” The Response, 4:5-7.

29 **The Court finds the following facts to be undisputed:**

- 30 1. Shatz entered into the Lease with the Defendant on March 23, 2011. The Motion,
31 exhibit 1.

- 1 2. Fratis entered into an identical Lease with the Defendant on March 25, 2011. The
2 Motion, exhibit 1.
- 3 3. The Lease states the Plaintiffs were “free from interference and control on the part of
4 the” Defendant. The Motion, exhibit 1; exhibit 4.
- 5 4. The Lease states the Plaintiffs would “operate the Leased Taxicab for a minimum of
6 three (3) days per seven day week, unless [the Defendant] authorizes [the Plaintiffs] to
7 deviate from the three (3) day minimum.” *Id.*
- 8 5. The Lease states only the Plaintiffs could drive the leased taxicabs unless the Defendant
9 “authorizes, in writing, another person to drive the leased taxicab.” *Id.*
- 10 6. The Lease states: “the [Plaintiffs] must provide to the [Defendant]: (a) a certificate from
11 a licensed physician which is dated not more than 90 days before the date on which the
12 [Plaintiffs] begins to lease a taxicab...which demonstrates that [Plaintiffs are] physically
13 qualified to operate a commercial motor vehicle...[and] (c) obtain work cards as
14 required by all federal, state and local governments.” *Id.*
- 15 7. The Lease states: “[a]t the beginning of each 12 hour lease period, [the Plaintiffs] must
16 date and time stamp the trip sheet provided by the [Defendant] with the completed date
17 and time stamped trip sheets for that 12 hour lease period.”
- 18 8. The Plaintiffs’ payment for the leased taxicab was ten dollars per 12-hour period, plus
19 fifty percent of all fares received, in addition to the cost of gas. *Id.*
- 20 9. Shatz possessed a Work Permit from the Carson City Sheriff’s Office. The Motion,
21 exhibit 3.
- 22 10. Fratis possessed a valid commercial driver’s license. The Motion, exhibit 5.
- 23 11. Fratis possessed an Employee Registration Work Certificate from the Carson City
24 Sheriff’s Office. *Id.*
- 25 12. Fratis possessed a medical examiner’s certificate. *Id.*

26 **The Court finds the following facts to be disputed:**

- 27 1. Whether the Plaintiffs controlled their work schedules, namely: did the Plaintiffs or the
28 Defendant determine how many days the Plaintiffs worked, for how many hours the
Plaintiffs worked, at what times the Plaintiffs worked, and for what percentage the
Plaintiffs worked of the 12-hour prescribed period.

- 1 2. Whether the Plaintiffs controlled the passengers they transported in the leased taxicabs,
2 including: what percentage of passengers the Plaintiffs were permitted to decide to take,
3 where and when the Plaintiffs were required to pick-up passengers, and the frequency
4 with which the Plaintiffs' freedom to decide their own fares was restricted.
- 5 3. Whether the Plaintiffs were in fact free to hire a substitute drive to assist with their
6 work.
- 7 4. Whether the Plaintiffs were in fact free to work elsewhere.

8 As enumerated *supra*, an individual "is conclusively presumed to be an independent
9 contractor" if they meet the requirements set by NRS 608.0155. The individual must first possess
10 or have applied for, *inter alia*, "an employee identification number or social security number...."
11 Shatz possessed a work permit, which if un-redacted, presumably contains Shatz's employee
12 identification number. Fratis possessed an Employee Registration Work Certificate, which if un-
13 redacted, presumably contains Fratis' employee identification number. The Motion fails to provide
14 the social security cards of either Plaintiff. Second, the individual "is required by the contract with
15 the principal to hold any necessary state business registration or local business license and to
16 maintain any necessary occupational license, insurance or bonding...." The Plaintiffs were both
17 required by the Lease to possess applicable permits and licensures. Fratis possessed a Nevada
18 driver's license, a medical examiners card, and an Employee Registration Work Certificate, and
19 therefore satisfies the second requirement. The Motion fails to provide similar documentation for
20 Shatz besides his Work Permit; therefore Shatz does not satisfy the requirement. The Court finds
21 Fratis satisfies section (1)(a) and section (1)(b) of the NRS 608.0155 test; however, the Court
22 requires further documentation to reach a similar determination regarding Shatz.

23 The individual must additionally satisfy three of the following criteria from NRS
24 608.0155(1)(c):

- 25 (1)...the person has control and discretion over the means and manner of the performance of
26 any work and the result of the work, rather than the means or manner by which the work is
27 performed, is the primary element bargained for by the principal in the contract.
- 28 (2)...the person has control over the time the work is performed.
- (3) The person is not required to work exclusively for one principal....
- (4) The person is free to hire employees to assist with the work.
- (5) The person contributes a substantial investment of capital in the business of the person,
 including, without limitation, the:
 (I) Purchase or lease of ordinary tools, material and equipment regardless of source....

1 The Court finds an issue of material fact concerning the Plaintiffs' satisfaction of three of
2 the five supplementary criteria listed *supra*. The Motion offers, *inter alia*, the Lease as signed by
3 Fratis and as signed by Shatz, and the AFFIDAVIT OF ROBIN STREET IN SUPPORT OF
4 MOTION FOR SUMMARY JUDGMENT ("the Affidavit") to support the Plaintiffs' ability to
5 satisfy the supplementary criteria. The Motion, exhibits 1; 2; and 4. However, the Response
6 contests the facts asserted in these documents. The Response offers, *inter alia*, the
7 DECLARATION OF PLAINTIFF RICHARD FRATIS ("the Declaration") in opposition to the
8 Motion. A number of the facts asserted in the Affidavit and Declaration directly oppose each other.
9 For example, the Affidavit asserts the Defendant "did not control any aspect of the work performed
10 by Shatz...." The Affidavit, 1:16-17. Conversely, the Declaration asserts Fratis could "only drive a
11 cab on the days and times that [he] pre-arranged with [the Defendant] and when [the Defendant]
12 agreed to let [him] drive one." The Declaration, 2:22-23. The Court finds the facts supporting the
13 Plaintiffs' ability to satisfy the supplementary criteria are largely contested by the pleadings, and
14 therefore preclude the Court from finding the Plaintiffs are independent contractors under the NRS
608.0155 test.

15 In addition to contending the Plaintiffs are independent contractors under the statutory test,
16 the Motion argues the Plaintiffs were independent contractors "as a matter of law," due to the "clear
17 and unambiguous language of the Lease." ⁶ The Motion, 7:9, 22. Section 10 of the Lease provides:

18 Neither Party is the partner, joint venture, agent, or representative of the other Party. LESSEE is
19 an independent contractor. LEASING COMPANY and LESSEE acknowledge and agree that
20 there does not exist between them the relationship of employer and employee, principal and
21 agent, or master and servant, either expressed or implied, but that the relationship of the parties
22 is strictly that of lessor and lessee, the LESSEE being free from interference and control of the
23 part of the LEASING COMPANY....

24 ⁶ The Motion additionally argues application of NRS 706.473 creates a presumption that the Plaintiffs are independent
25 contractors. NRS 706.473 governs leasing taxi cabs to independent contractors. NRS 706.473(1) provides: "a person
26 who holds a certificate of public convenience and necessity which was issued for the operation of a taxicab business
27 may...lease a taxicab to an independent contractor...A person may lease only one taxicab to each independent
28 contractor with whom the person enters into a lease agreement. The taxicab may be used only in a manner authorized
by the lessor's certificate of public convenience and necessity." NRS 706.473(2) further provides: "[a] person who
enters into a lease agreement with an independent contractor pursuant to this section shall submit a copy of the
agreement to the Authority for its approval." The Court need not consider NRS 706.473 in depth when NRS 608.0155
establishes the criteria for an independent contractor relationship. However, the Court recognizes its tendency to
supplement the presumption of an independent contractor relationship.

1 The Motion relies heavily upon the Lease in order to evidence the specific elements of the
2 relationships between the Plaintiffs and the Defendant, and therefore categorize the Plaintiffs as
3 independent contractors pursuant to the NRS 608.0155 test. The Plaintiffs signed the Lease,
4 therefore the Court presumes the Plaintiffs agreed to the relationship enumerated therein. *Yee v.*
5 *Weiss*, 110 Nev. 657, 662, 877 P.2d 510,513 (1994) (reasoning “Courts have consistently held that
6 one is bound by any document one signs...”). While the Lease may unambiguously define the
7 Plaintiffs as independent contractors, the MWA states its protections “may not be waived by
8 agreement between an individual employee and an employer.” The MWA(B). In regards to
9 subverting the rights afforded by the MWA via contract, the *Sapphire* Court held: “[p]articularly
10 where, as here, remedial statutes are at play, a putative employer’s self-interested disclaimers of any
11 intent to hire cannot control the realities of an employment relationship....Thus, [the Respondent]’s
12 protestations that the [Petitioners] ‘never intended to be employees,’ and agreed to be independent
13 contractors are beside the point.” *Sapphire*, 336 P.3d at 954. As neither the MWA nor the Supreme
14 Court finds the language of the Lease to be dispositive, the Court cannot rely solely upon the
15 language of the Lease to create an independent contractor relationship.

15 **IV. Conclusion**

16 The Court finds the Plaintiffs’ arguments against legislative interpretation of the MWA to
17 be unpersuasive. Such an application would affect the business relationships, contracting
18 possibilities, and the income and wage potential of numerous Nevada industries that utilize
19 independent contractors. Were the Court to allow the MWA to be interpreted by the economic
20 realities test rather than by NRS 608.0155, the MWA’s application would be substantially expanded
21 beyond the limits set by the duly elected members of Nevada’s Legislature.

22 When viewed in the light most favorable to the Plaintiffs, the Plaintiffs’ status as
23 independent contractors remains an issue of material fact for trial. The material facts remaining at
24 issue are determinative of the Plaintiffs’ ability to qualify for the expanded protection afforded to
25 employees under the MWA. Whether the Plaintiffs may succeed on their First Claim for
26 application of the MWA, or their Second Claim for unpaid wages necessarily originating in its
27 application, remains to be decided.
28

1 **IT IS ORDERED** the Defendant's MOTION FOR SUMMARY JUDGMENT is hereby
2 DENIED.

3 **IT IS FURTHER ORDERED** the stay of proceedings discussed in the MTS is hereby
4 lifted.

5 **DATED** this 12 day of June, 2017.

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9 ELLIOTT A. SATTLER
10 District Judge
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Las Vegas, NV 89146

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 12 day of June, 2017, 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 COULTER, ESQ.
THERESE SHANKS, ESQ.
MARK SIMONS, ESQ.
MICHAEL PINTAR, ESQ.

JA 431

CERTIFICATE OF SERVICE

I certify that on June 19, 2020 I served a copy of the foregoing JOINT APPENDIX VOLUME II OF III upon all counsel of record by ECF system which served all parties electronically.

Dated this 19th Day of June, 2020

/s/ LEON GREENBERG

Leon Greenberg