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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

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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 III OF III**

LEON GREENBERG PROF CORP.
Leon Greenberg, Esq.
2965 South Jones Blvd., #E3
Las Vegas, NV 89146
LeonGreenberg@Overtimelaw.com
Attorneys for Appellants

SIMONS HALL JOHNSON
Mark G. Simons, Esq.
6490 S. McCarran Blvd., Ste F-46
Reno, Nevada 89509
MSimons@SHJNevada.com
Attorneys for Respondents

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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 |

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| 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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MARK G. SIMONS, ESQ.
Nevada Bar No. 5132
MSimons@SHJNevada.com
RICARDO N. CORDOVA, ESQ.
Nevada Bar No. 11942
RCordova@SHJNevada.com
SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, Nevada 89509
Telephone: (775) 785-0088
*Attorneys for Defendants Reno Cab Company, Inc.
and Roy L. Street, dba Capital Cab*

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

DEPT. NO.: 10

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

Plaintiffs,

vs.

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

Defendant.

CASE NO.: CV15-01385

DEPT. NO.: 10

MOTION FOR SUMMARY JUDGMENT

Pursuant to Nevada Rule of Civil Procedure ("NRCP") 56, Defendants Reno Cab

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

1 Company, Inc. ("Reno Cab") and Roy L. Street, dba Capital Cab ("Capital Cab")
2 (collectively, when possible, "Reno and Capital Cab"), move for summary judgment
3 against Plaintiffs Jeff Myers, Arthur Shatz, and Richard Fratis (collectively, when possible,
4 "the Plaintiffs"). This Motion is based upon the following memorandum of points and
5 authorities, the papers and pleadings on file with the Court, and any oral argument this
6 Court may allow.

7 DATED this 30th day of May, 2019.

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

11 

12 MARK G. SIMONS
13 RICARDO N. CORDOVA, Esq.
14 *Attorneys for Reno Cab Company, Inc. and Roy*
15 *L. Street, dba Capital Cab*

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. INTRODUCTION.**

18 In NRS 706.473, the Nevada Legislature statutorily defined and expressly
19 authorized taxicab companies and drivers in counties with populations of less than
20 700,000 to enter into independent contractor agreements. In accordance with this statute,
21 Reno and Capital Cab executed independent contractor agreements with the Plaintiffs.
22 Reno and Capital Cab did everything necessary to comply with NRS 706.473 and the
23 corresponding regulations promulgated by the Nevada Transportation Authority ("NTA").
24 In fact, the NTA—the agency statutorily charged with regulating such agreements—has
25 reviewed, and specifically approved, these independent contractor agreements. The
26 Plaintiffs cannot contest these facts as they are undisputed.

27 Although this Court previously deferred a ruling on the applicability of NRS
28 706.473, it is a pivotal and dispositive issue. Principles of sound judicial economy and

1 administration thus demonstrate that this issue should be resolved now. Resolving the
2 issue, and thereby obviating the need for further costly and time-consuming proceedings,
3 is especially critical here considering that the Plaintiffs wish to proceed on a class basis.
4 Further, in *Yellow Cab of Reno v. District Court*, the Nevada Supreme Court specifically
5 instructed that district courts are obligated to determine the threshold question of whether
6 NRS 706.473's requirements have been met. If so, then an independent contractor
7 relationship exists as a matter of law. In short, this Court should make a ruling—one way
8 or the other—regarding whether the parties have valid independent contractor agreements
9 under NRS 706.473.

10 Despite the clear and unambiguous language of the parties' independent
11 contractor agreements that they entered into in full compliance with NRS 706.473's
12 statutory provisions, the Plaintiffs are attempting to bring claims under the Nevada
13 Constitution's Minimum Wage Amendment ("MWA") and Nevada's wage and hour
14 statutes. The Plaintiffs' claims all depend upon the existence of an employment
15 relationship. Thus, if this Court determines that the Plaintiffs were independent
16 contractors pursuant to NRS 706.473, then the Plaintiffs' claims necessarily fail as a
17 matter of law.

18 As demonstrated herein, the Plaintiffs' claims run afoul of the plain language of
19 NRS 706.473, its legislative history, reason and public policy, and the principle that
20 statutes must be construed to avoid absurd results. Further, even though the Plaintiffs
21 previously consented to the NTA's jurisdiction and regulatory authority governing the
22 independent contractor leases, they are pursuing theories that directly conflict with the
23 NTA's jurisdiction over, and approval of, the parties' independent contractor agreements.
24 It is also well-established that where substantial evidence supports an agency
25 determination, such as that made here by the NTA in approving the independent
26 contractor agreements, that action is controlling.

27 In short, the Plaintiffs are not simply seeking to upend the parties' independent
28 contractor agreements—they are attacking the statutory scheme the Legislature

1 established in NRS Chapter 706, and the authority delegated to, and exercised by, the
2 NTA. In summary, because the Plaintiffs are independent contractors under the statutorily
3 created and authorized framework of NRS 706.473, there is no genuine issue of material
4 fact and Reno and Capital Cab are entitled to judgment as a matter of law.¹

5 **II. RELEVANT FACTS AND PROCEDURAL HISTORY.²**

6 Because the Court is undoubtedly familiar with the factual and procedural
7 background of this case, Reno and Capital Cab will focus on the facts and events which
8 are directly relevant to this Motion.

9 **A. Background.**

10 Reno Cab operates a taxicab business, with its principal place of business in
11 Washoe County, Nevada. See Declaration of Robin Street ("Street Decl.") at ¶4, attached
12 as "**Exhibit 1.**" According to the 2010 census (the last preceding national decennial
13 census prior to execution of the Agreements), as of 2010 Washoe County had a
14 population of 421,407. See United States Census Bureau Statistics for Washoe County,
15 Nevada, available at <https://www.census.gov/quickfacts/washoecountynevada> (last visited
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20 ¹Regardless of, and independent of, how the Court rules on NRS 706.473,
21 substantial portions of the Plaintiffs' claims are time-barred. See *Perry v. Terrible Herbst,*
22 *Inc.*, 132 Nev. ___, 383 P.3d 257 (2016) (holding that minimum wage claims are subject to
23 a two-year statute of limitations). In addition, the Plaintiffs' demand for punitive damages
24 fails because such damages are not available under the MWA or Nevada's wage and hour
25 statutes. See, e.g., *Hanks v. Briad Rest. Grp., L.L.C.*, 2015 WL 4562755, at *8 (D. Nev.
July 27, 2015). Because NRS 706.473 is dispositive of the entire case, however, the
Court need not reach these issues at this juncture. Reno and Capital Cab reserve the
right to move for summary judgment on these issues in the event the Court denies
summary judgment on the basis of NRS 706.473.

26 ²To satisfy the summary judgment standard, Reno and Capital Cab will present only
27 the facts that are undisputed, or which the Plaintiffs have no admissible evidence to
28 contradict. In so doing, Reno and Capital Cab do not waive the right to contest the
Plaintiffs' factual allegations in the future, should they withstand summary judgment.

1 May 2, 2019).³ In addition, during all relevant time periods, Reno Cab has held a
2 Certificate of Public Convenience and Necessity ("CPCN") issued by the NTA. See Street
3 Decl. at ¶4; see also CPCN for Reno Cab Company, RCC_000007, attached as "**Exhibit**
4 **2**";⁴ NTA List of Active CPCNs for Taxicab Businesses, *available at*
5 <http://tsa1.nv.gov/ActiveCertificatesTable.asp?nNo=9> (last visited May 8, 2019);⁵ and Exh.
6 6 at p. 1, recital 1.

7 Capital Cab operates a taxicab business, with its principal place of business in
8 Carson City, Nevada. See Street Decl. at ¶5. According to the 2010 census, as of 2010
9 Carson City had a population of 55,274. See United States Census Bureau Statistics for
10 Carson City, Nevada, *available at*
11 <https://www.census.gov/quickfacts/fact/table/carsoncitynevadacounty/PST045218> (last
12 visited May 2, 2019). In addition, during all relevant time periods, Capital Cab has held a
13 CPCN issued by the NTA. See Street Decl. at ¶5; CPCN for Capital Cab, CC_0002,
14 attached as "**Exhibit 3**"; NTA List of Active CPCNs for Taxicab Businesses, *available at*
15 <http://tsa1.nv.gov/ActiveCertificatesTable.asp?nNo=9> (last visited May 8, 2019); Exhs. 4-5
16 at p. 1, recital 1.

17 **B. The Agreements.**

18 As expressly authorized by NRS 706.473, Reno and Capital Cab entered into
19 independent contractor agreements with the Plaintiffs. Specifically, in 2011, Capital Cab
20 entered into "Taxicab Lease Agreements" with Shatz and Fratis, attached as "**Exhibit 4**"
21 and "**Exhibit 5**," respectively. In 2013, Reno Cab entered into a "Taxicab Lease
22
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24
25 ³Further, the Census Bureau estimates that as of July 1, 2018, Washoe County's
26 population was 460,587. These public records are considered authentic pursuant to NRS
27 52.085.

28 ⁴ See also, **Exhibit 10**, Declaration of Ricardo Cordova ("Cordova Decl.") at ¶4.

⁵The NTA's records are considered authentic pursuant to NRS 52.085.

1 Agreement" with Myers, attached as "**Exhibit 6**" (collectively, "the Agreements");⁶ see
2 also Myers' Response to Requests for Admission No. 1, attached as "**Exhibit 7.**"⁷

3 Because the operative terms of the Agreements are identical, Reno Cab and Capital Cab
4 will analyze the provisions thereof in unison.

5 Under the Agreements, the Plaintiffs leased taxicabs owned and licensed by Reno
6 and Capital Cab, typically for twelve (12) hour periods. See Exhs. 4-6 at ¶1. The twelve
7 (12) hour period is mandated in NAC 706.3753(1)(j)1). The lease included use of a radio,
8 dispatching system, taximeter, identifying decal, seals, and other equipment provided with
9 the taxicabs. See *id.* These amenities are all mandated by NAC provisions. In addition,
10 consistent with NAC provisions, Reno and Capital Cab accepted responsibility for
11 maintaining and paying for all licenses, taxes, and fees, regularly scheduled maintenance,
12 and insurance, on the taxicabs. See *id.* at ¶¶2-4. In exchange, the Plaintiffs agreed to pay
13 a rental fee, along with fifty percent of the fares they collected during the lease period.
14 See *id.* at ¶8.

15 The provisions of the Agreements make painstakingly clear that the Plaintiffs were
16 independent contractors pursuant to the provisions of NRS Chapter 706 and NAC Chapter
17 706, and are not employees:

18 RELATIONSHIP. Neither Party is the partner, joint
19 venturer, agent, or representatives of the other Party.
20 ***LESSEE is an independent contractor. LEASING***
21 ***COMPANY and LESSEE acknowledge and agree that***
22 ***there does not exist between them the relationship of***
23 ***employer and employee, principal and agent, or master***
24 ***and servant, either expressed or implied, but that of the***
25 ***parties is strictly that of lessor and lessee, the LESSEE***
26 ***being free from interference or control on the part of the***
27 ***LEASING COMPANY, except as otherwise provided in***
28 ***chapter 706 of the NRS and/or NAC, in the operation of the***

⁶The Agreements are authenticated in Street Decl. at ¶16.

⁷See also Cordova Decl. at ¶15.

1 Leased Taxicab.

2 *See id.* at ¶ 10 (emphasis added).

3 Pursuant to NRS 706.473(2), Reno and Capital Cab submitted copies of the
4 Agreements to the NTA for approval. *See* Street Decl. at ¶6. The NTA approved the
5 Agreements. *See id.* And, the Agreements specifically track each of the additional
6 regulatory requirements promulgated by the NTA for independent contractor agreements
7 between taxi companies and drivers. *See* Exhs. 4-6.

8 For the Court's convenience, a table detailing the Agreements' provisions and the
9 corresponding NRS and/or NAC Chapter 706 statutory requirement is provided as
10 **"Exhibit 8."**⁸ This table demonstrates Reno and Capital Cab's full compliance with the
11 relevant statutory and regulatory requirements creating the independent contractor
12 relationship which is at the heart of this case. As can easily be seen from Exhibit 8, Reno
13 and Capital Cab went to great lengths to comply with NRS 706.473, the NTA's
14 accompanying NAC regulations, and the NTA's approval of the Agreements. *See* Street
15 Decl. at ¶7. Indeed, this is reflected throughout the Agreements, the provisions of which
16 are specifically designed to ensure compliance with the applicable statutory and
17 regulatory scheme. *See id.*

18 The recitals in the Agreements (which, are conclusively presumed to be true, by
19 statute⁹), provide that Reno and Capital Cab operate taxicab businesses under CPCNs
20 issued by the NTA. *See* Exhs. 4-6. In addition, the Plaintiffs acknowledged that they,
21 along with Reno and Capital Cab, "are subject to the jurisdiction of the [NTA]" and all
22 applicable rules and regulations. *See id.* at ¶16. Finally, the Plaintiffs acknowledged that
23 they agreed "to lease a taxicab from the LEASING COMPANY **pursuant to NRS**
24
25

26 _____
27 ⁸*See also* Cordova Decl. at ¶6.

28 ⁹*See* NRS 47.240(2) (establishing a conclusive presumption for "[t]he truth of the
fact recited, from the recital in a written instrument between the parties thereto").

1 **706.473.”** *See id.* at ¶17(a) (emphasis added).

2 To the extent the Agreements afford a limited degree of control over the Plaintiffs
3 and their work, this limited activity is directed at ensuring compliance with the NTA’s
4 regulations, as required by statute. For instance, to comply with the daily inspection
5 mandates of NAC 706.380, the Agreements require the Plaintiffs to return their cabs at the
6 end of each 12-hour leasing period. *See id.* at ¶3. To comply with the limitations
7 contained in NAC 706.3761, the Agreements provide that the Plaintiffs cannot operate the
8 cabs for more than 12 hours in any 24-hour period. *See id.* at ¶5. And, to comply with the
9 record-keeping requirements of NAC 706.3747, the Agreements state that the Plaintiffs
10 must complete trip sheets. *See id.* at ¶11. In sum, Reno and Capital Cab not only
11 complied with NRS 706.473 and the NTA’s corresponding regulations, but they have
12 structured their business operations based upon those provisions. *See Street Decl.* at ¶7.

13 **C. The Plaintiffs’ Complaint.**

14 In 2015, the Plaintiffs filed virtually-identical class action complaints against Reno
15 and Capital Cab. *See Shatz and Fratis v. Street* (Complaint, dated January 16, 2015);
16 *Myers v. Reno Cab Company* (Complaint, dated January 21, 2015). In blatant
17 contradiction of the Agreements, the Plaintiffs allege that they were employees of Reno
18 and Capital Cab, respectively, *see id.* at ¶1, and were not paid the wages which they were
19 supposedly due. *See id.* at ¶20. As a result, the Plaintiffs attempt to assert claims for: (1)
20 violation of the MWA, and (2) waiting penalties pursuant to NRS 608.020-608.040. *See id.*
21 at ¶¶19-29.

22 The Plaintiffs admit, however, that they were “treated as ‘independent contractors’”
23 and compensated pursuant to their “leases.” *See id.* at ¶¶15-16. In other words, the
24 Plaintiffs concede that Reno and Capital Cab followed the agreed-upon terms of the
25 Agreements. Indeed, the fact that the Plaintiffs did not attempt to bring breach of contract
26 claims is an implicit concession that Reno and Capital Cab fully complied with their
27 obligations under the Agreements. The Plaintiffs’ entire action thus hinges upon their
28 attempts to invalidate the Agreements, and the independent contractor relationships the

1 Agreements created pursuant to NRS 706.473.

2 **D. Relevant Proceedings.**

3 Reno and Capital Cab previously submitted motions for summary judgment, which,
4 in substance, are identical. *See Shatz and Fratis v. Street* (Motion for Summary
5 Judgment, dated September 30, 2016); *Myers v. Reno Cab Company* (Motion for
6 Summary Judgment, dated September 30, 2016). Reno and Capital Cab argued, among
7 other things, that under NRS 706.473, the Plaintiffs are independent contractors. *See id.*
8 at 8-11. Thus, the Plaintiffs' status as independent contractors bars this action, as their
9 claims depend on an employment relationship. *See id.* Reno and Capital Cab pointed out
10 that under *Yellow Cab of Reno, Inc. v. District Court*, this Court is obligated to rule on the
11 applicability of NRS 706.473. *See id.* They explained that this is a threshold and
12 potentially case-concluding issue that renders inquiry into the question of control
13 unnecessary. *See id.* And, they explained, the undisputed evidence establishes this
14 statutorily-created independent contractor relationship. *See id.*¹⁰

15 The Plaintiffs submitted Oppositions, arguing that under the doctrine of
16 constitutional supremacy recognized in *Thomas v. Yellow Cab*, statutes cannot alter the
17 scope of what constitutes an employment relationship for purposes the MWA. *See Shatz*
18 *and Fratis v. Street* (Response, dated November 1, 2016); *Myers v. Reno Cab Company*
19 (Response, dated October 31, 2016). Tacitly conceding that the MWA does not define the
20 requisite employment relationship, however, Plaintiffs argued that the "economic realities"
21 test from *Terry v. Sapphire Gentlemen's Club* should be applied. *See id.* Tellingly, the
22 Plaintiffs did not even attempt to dispute that the criteria of NRS 706.473 are satisfied.

23 The Court thereafter ruled on the motions for summary judgment. *See Shatz and*
24
25

26 ¹⁰While these motions were pending, the Court consolidated and transferred these
27 cases to this Department, *see* Order dated January 3, 2017; Order Directing Random
28 Case Reassignment, dated January 3, 2017, and stayed proceedings pending resolution
of the motions for summary judgment. *See* Order, dated January 20, 2017.

1 *Fratis v. Street* (Order, dated June 12, 2016); *Myers v. Reno Cab Company* (Order, dated
2 June 12, 2016). The Court rejected the Plaintiffs' contention that the MWA supplanted
3 NRS 706.473 and NRS 608.0155. *See id.* at 4-10. As the Court astutely reasoned, unlike
4 the situation in *Thomas*, nothing in these statutes conflict with the MWA. *See id.* Further,
5 unlike the situation in *Terry*, the economic realities test is inapplicable because the
6 Legislature has given clear direction on the question of what constitutes an employment
7 relationship. *See id.* As *Terry* instructed, resort to such a test was only necessary in the
8 absence of an applicable statutory definition of an employment relationship. *See id.*

9 The Court then evaluated the conclusive independent contractor presumption
10 created in NRS 608.0155 and found that questions of fact precluded summary judgment.¹¹
11 *See id.* at 10-14. Unfortunately, the Court did not undertake the analysis of NRS 706.473
12 required by *Yellow Cab of Reno v. District Court*. Instead, in a footnote, the Court stated it
13 "need not consider NRS 706.473 in depth when NRS 608.0155 establishes the criteria for
14 an independent contractor relationship." *See id.* at 13 n.6.

15 Thereafter, these proceedings were stayed until March 1, 2019, to prevent
16 unnecessary litigation costs from being incurred, as the Parties attempted to mediate a
17 resolution of these cases. *See* Stipulation, dated September 11, 2018, and Order
18 Granting Stay of Proceedings, dated October 8, 2018. The Parties' subsequent mediation
19 was unsuccessful.¹²

20 On May 8, 2019, the Parties stipulated to stay proceedings pending resolution of
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23
24 ¹¹NRS 608.0155 is the general legislative statute addressing the independent
25 contractor presumption. NRS 706.473 works independently from NRS 608.0155 and,
26 instead, defines a specific statutorily defined independent contractor relationship. NRS
706.473, therefore, is applicable in this case regardless of the application of NRS
608.0155.

27 ¹²Without revealing the substance of any settlement negotiations, as the Parties'
28 explained during the May 1, 2019, Status Conference with the Court, the lack of a
definitive resolution on pivotal, threshold issues has prevented a settlement of this matter.

1 the instant motion for summary judgment and any subsequent appellate or writ
2 proceedings. The Parties noted that this motion presents threshold, and potentially case-
3 concluding, legal issues to the Court. These issues include whether a determination of the
4 Plaintiffs' employment or independent contractor status under Nevada law is controlled by
5 NRS 706.473, NRS 608.0155, and/or the MWA.

6 In particular, Reno and Capital Cab contend that the Plaintiffs are independent
7 contractors, as a matter of law, pursuant to NRS 706.473. Reno and Capital Cab further
8 contend that because NRS 706.473 is the narrower, more-specific, and directly applicable
9 provision, it controls. Thus, as the Parties noted in their stipulation, Reno and Capital Cab
10 assert that the applicability of NRS 706.473 is a threshold issue that should be analyzed
11 first, rendering it unnecessary to analyze the MWA and the economic realities of the
12 Parties' relationship, or NRS 608.0155 and associated issues regarding control.

13 Accordingly, Reno and Capital Cab now move the Court for a definitive ruling on
14 the applicability of NRS 706.473 and two related legal issues. Because this will
15 streamline, if not eliminate the need for further proceedings entirely, resolution of these
16 issues is critical to sound judicial economy and administration. Considering the pivotal
17 nature of these issues, Reno and Capital Cab intend to seek a Writ from the Nevada
18 Supreme Court if the Court denies this Motion. On the other hand, Reno and Capital Cab
19 anticipate that the Plaintiffs will appeal to the Nevada Supreme Court if the Court grants
20 this Motion. Either way, it is imperative that the Court rule on these issues.

21 **III. APPLICABLE LEGAL STANDARDS.**

22 A party may move for summary judgment on any claim, or part thereof, at "any time
23 until 30 days after the close of all discovery." See NRCP 56(a)-(b). Summary judgment is
24 appropriate "when the pleadings, depositions, answers to interrogatories, admissions, and
25 affidavits, if any, that are properly before the court demonstrate that no genuine issue of
26 material fact [remains], and the moving party is entitled to judgment as a matter of law."
27 *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

28 "While the pleadings and other proof must be construed in a light most favorable to

1 the nonmoving party, that party bears the burden to do more than simply show that there
2 is some metaphysical doubt as to the operative facts in order to avoid summary judgment
3 being entered in the moving party's favor." *Id.* at 732, 121 P.3d at 1031. Specifically, "in
4 order to defeat summary judgment, the nonmoving party must transcend the pleadings
5 and, by affidavit or other admissible evidence, introduce specific facts that show a genuine
6 issue of material fact." *Cuzze v. University and Community College System of Nevada*,
7 123 Nev. 598, 603, 172 P.3d 131, 134 (2007).

8 "The substantive law controls which factual disputes are material and will preclude
9 summary judgment; other factual disputes are irrelevant." *Wood*, 121 Nev. at 731, 121
10 P.3d at 1031. Notably, "[I]n the absence of ambiguity or other factual complexities,'
11 contract interpretation presents a question of law that the district court may decide on
12 summary judgment." *Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364,
13 366 (2013) (quoting *Ellison v. Cal. State Auto. Ass'n*, 106 Nev. 601, 603, 797 P.2d 975,
14 977 (1990)).

15 **IV. ARGUMENT.**

16 **A. Resolution of NRS 706.473 is a Threshold and Pivotal Issue.**

17 The Nevada Supreme Court's opinion in *Yellow Cab of Reno v. District Court* is
18 instructive regarding application of the foregoing principles within NRS 706.473's
19 framework. 127 Nev. 583, 262 P.3d 699 (2011). There, a pedestrian brought an action
20 alleging he was hit by a taxicab owned by Yellow Cab. *See id.* at 586, 262 P.3d at 700.
21 Yellow Cab moved for summary judgment, arguing that because the driver of the taxi was
22 an independent contractor under a lease under NRS 706.473, respondeat superior
23 liability could not attach. *See id.* The pedestrian claimed, much like the Plaintiffs here,
24 that Yellow Cab supposedly exerted a "high level of control" over the driver, such that an
25 employment relationship existed. *See id.* at 586, 262 P.3d at 701. The district court
26 determined that the driver's independent contractor status was a question of fact and
27 denied Yellow Cab's motion for summary judgment. *See id.* The district court failed,
28 however, to address Yellow Cab's NRS 706.473 argument. *See id.*

1 In considering Yellow Cab's subsequent writ petition,¹³ the Nevada Supreme Court
2 observed that although an employment relationship "typically" depends on the issue of
3 control, **that analysis is superseded by NRS 706.473's provisions.** Stated another
4 way, if the statute's provisions are established, then an independent contractor
5 relationship exists as a matter of law:

6 NRS 706.473 specifically authorizes the licensing of a
7 taxicab to an independent contractor if the requirements of
8 that statute and any administrative regulations promulgated
9 in accordance with NRS 706.475 are met. Thus, under the
10 statutory scheme, ***the existence of this statutorily created
independent contractor relationship turns not on the
issue of control, but on whether all of the statutory and
administrative requirements for creating such an
independent contractor relationship have been
established.***

11
12 See *id.* at 591-92, 262 P.3d at 704 (emphasis added).

13 Because the issue was fully briefed, "***the district court should have determined
14 whether, in this case, all of the statutory and administrative requirements for
15 creating an NRS 706.473 independent-contract relationship between [the driver]
16 and Yellow Cab have been met.***" See *id.* at 592, 262 P.3d at 705 (emphasis added).

17 Thus, while the Supreme Court ultimately denied Yellow Cab's writ petition on procedural
18 grounds, it did so "without prejudice to the district court re-evaluating the propriety of
19 summary judgment regarding Yellow Cab's NRS 706.473-based independent contractor
20 argument in light of the analysis set forth in this opinion." See *id.* at 593, 262 P.3d at

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24 ¹³Notably, the NTA submitted an amicus brief in support of Yellow Cab. See *id.* at
25 588 n.3, 262 P.3d at 701 n.3. This is critical because the lease agreement in *Yellow Cab*
26 is nearly identical to the Agreements here. See Yellow Cab Company of Reno, Inc.
27 Taxicab Lease Agreement, attached as "**Exhibit 9.**" Thus, the NTA's position in *Yellow Cab*
28 underscores the impropriety of the Plaintiffs' claims here. See also Cordova Decl. at ¶7.

1 705.¹⁴

2 Here, as in *Yellow Cab*, application of NRS 706.473 is a threshold, potentially
3 case-concluding issue. Principles of sound judicial economy and administration therefore
4 militate in favor of resolving the issue before further proceedings in this matter.
5 Unfortunately, this Court declined to consider whether the requirements of NRS 706.473
6 have been established, although Reno and Capital Cab briefed the issue. Accordingly, as
7 *Yellow Cab* instructs, the Court is obligated to determine whether the requirements of
8 NRS 706.473 have been met.

9 Respectfully, to the extent this Court suggested that Reno and Capital Cab merely
10 argued that NRS 706.473 “creates a presumption” of independent contractor status, it
11 appears to have misconstrued their arguments. Reno and Capital Cab argued that by its
12 express language, NRS 706.473 creates an independent contractor relationship as a
13 matter of law—not merely a presumption.

14 To the extent this Court suggested that NRS 608.0155 precludes or precedes an
15 analysis of NRS 706.473, Reno and Capital Cab respectfully submit that further
16 clarification is needed. As *Yellow Cab* instructs, such an inquiry neither precedes, nor
17 precludes, analysis of any independent contractor relationship created by NRS 706.473.
18 Indeed, as the narrower, more-specific, and directly-applicable statutory provision,
19 fundamental rules of statutory construction dictate that NRS 706.473 controls and should
20 be analyzed first. *See Nevada Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870,

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23 ¹⁴The *Yellow Cab* court declined to address the separate issue of whether the
24 existence of a statutorily-created independent contractor relationship bars respondeat
25 superior liability. *See id.* at 592 n.6, 262 P.2d at 705 n.6. Here, however, there is no
26 debate that the lack of an employment relationship is fatal to the Plaintiffs, as their claims
27 inescapably depend upon such a relationship. *See Nev. Const. Art. 15, Sec. 16*
28 (referencing the minimum wages owed to an “employee”); NRS 608.140 (referencing
actions “for wages earned and due according to the terms of his or her employment”); *see also Kaldi v. Farmers Ins. Exchange*, 117 Nev. 273, 21 P.3d 16 (2001) (rejecting
independent contractor’s attempt to assert claims sounding in employment).

1 877 (1999) (“[i]t is an accepted rule of statutory construction that a provision which
2 specifically applies to a given situation will take precedence over one that applies only
3 generally.”) (quoting *Sierra Life Ins. Co. v. Rottman*, 95 Nev. 654, 656, 601 P.2d 56, 57-
4 58 (1979)).

5 In sum, the applicability of NRS 706.473 is a preliminary issue that needs to be
6 addressed. Thus, analysis of whether the more generalized independent contractor
7 presumption of NRS 608.0115 has been established is only necessary if it is determined
8 that the Agreements did not create valid independent relationships under NRS 706.473.
9 As demonstrated below, there is simply no question that the Agreements fully complied
10 with NRS 706.473.

11 **B. The Plaintiffs’ Claims are Foreclosed by NRS 706.473.**

12 “Statutory language must be given its plain meaning if it is clear and
13 unambiguous.” *Badger v. District Court*, 132 Nev. ___, ___, 373 P.3d 89, 93 (2016).
14 “When giving a statute’s terms their plain meaning, [courts] will consider the statute’s
15 ‘provisions as a whole so as to read them in a way that [will] not render words or phrases
16 superfluous or make a provision nugatory.’” *Libby v. District Court*, 130 Nev. 359, 363-64,
17 325 P.3d 1276, 1279 (2014) (quoting *S. Nev. Homebuilders Ass’n v. Clark County*, 121
18 Nev. 446, 449, 117 P.3d 171, 173 (2005)).

19 **1. The Agreements Comply with NRS 706.473.**

20 NRS 706.473 provides, in pertinent part, as follows:

21 1. In a county whose population is less than 700,000,
22 a person who holds a certificate of public convenience and
23 necessity which was issued for the operation of a taxicab
24 business **may, upon approval from the Authority, lease a**
25 **taxicab to an independent contractor** who does not hold a
26 certificate of public convenience and necessity. A person
27 may lease only one taxicab to each independent contractor
28 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.

2. 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

1 approval. The agreement is not effective until approved by
2 the Authority.

3 (Emphasis added.)

4 NRS 706.475, in turn, states that the NTA “shall adopt such regulations as are
5 necessary to . . . [c]arry out the provisions of NRS 706.473,” including “[t]he minimum
6 qualifications for an independent contractor.” Thus, as noted, the Nevada Supreme Court
7 has recognized that “**NRS 706.473 specifically authorizes the licensing of a taxicab to
8 an independent contractor if the requirements of that statute and any
9 administrative regulations promulgated in accordance with NRS 706.475 are met.**”
10 *Yellow Cab of Reno v. District Court*, 127 Nev. 583, 592, 262 P.3d 699, 704 (2011)
11 (emphasis added). In particular, by its plain language, NRS 706.473 sets forth three
12 preliminary criteria for such agreements to be effective: (1) the county in which the
13 taxicab business operates has a population of less than 700,000, (2) the taxicab business
14 holds a CPCN, and (3) a copy of the agreement is submitted to, and approved by, the
15 NTA.

16 Stated another way, NRS 706.473 defines a specific and unique relationship that
17 the Legislature has stated is, as a matter of law, an independent contractor relationship.
18 The Nevada Supreme Court has implicitly recognized that the Legislature is vested with
19 such authority. *See Terry v. Sapphire Gentlemen’s Club*, 130 Nev. 879, 883-84, 336 P.3d
20 951, 954-55 (2014) (determining that adoption of the judicially-created economic realities
21 test was only necessary in the absence of statutory guidance); *Yellow Cab*, 127 Nev. at
22 592, 262 P.3d at 704 (holding that NRS 706.473 supplants the traditional “control” test for
23 employment status).¹⁵ It follows that this independent contractor relationship is statutorily
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27 ¹⁵Indeed, the Legislature has carved out other professions. As just one example, the
28 Legislature has created a statutory exemption from Nevada’s unemployment
compensation provisions for licensed real estate sales persons. *See, e.g.*, NRS 612.133

1 created if the requirements of NRS and NAC Chapter 706 are satisfied. Thus, the first
2 step in this analytical framework is to review of the Agreements to determine if the
3 provisions comply with NRS Chapter 706's mandates.

4 These requirements are indisputably established here, as illustrated by the table
5 attached as Exhibit 8 for the Court's convenience. Reno and Capital Cab are taxicab
6 businesses operating in Washoe County and Carson City,¹⁶ both of which have
7 populations well below 700,000, according to the 2010 Census.¹⁷ In addition, Reno and
8 Capital Cab each hold CPCNs, and held CPCNs at all relevant times, including at the
9 time the Parties' entered into the Agreements. Thus, Reno and Capital Cab hold the
10 requisite licensing and operate taxicab businesses in counties where the Legislature has
11 unequivocally authorized independent contractor arrangements in NRS 706.473. And,
12 Reno and Capital Cab submitted and obtained approval of the Agreements from the NTA.

13 Notably, the Agreements expressly state that the Plaintiffs agreed "to lease a
14 taxicab from the LEASING COMPANY **pursuant to NRS 706.473.**" See Exhs. 4-6,
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18 ("Employment' shall not include services performed by a licensed real estate salesman or
19 licensed real estate broker who is employed as a salesman or associate broker by another
20 licensed real estate broker, whether such services are performed for such employer or for
21 a third person, if such services are performed for remuneration solely by way of
22 commission."). The Nevada Supreme Court has not hesitated to enforce such statutes.
23 See, e.g., *Nevada Employment Security Department v. Capri Resorts, Inc.*, 104 Nev. 527,
24 529, 763 P.2d 50, 52 (1988) (holding that time share employees were "not employees as
25 contemplated by the unemployment compensation statutes").

26 ¹⁶See NRS 0.033 ("Whenever used in the Statutes of Nevada and Nevada Revised
27 Statutes, the term 'county' includes Carson City. . . . Except as limited by the Charter of
28 Carson City or by ordinances enacted by authority thereof, those provisions of the
Statutes of Nevada or Nevada Revised Statutes which refer to the several counties apply
equally to Carson City.").

¹⁷See NRS 0.050 ("Except as otherwise expressly provided in a particular statute or
required by the context, 'population' means the number of people in a specified area as
determined by the last preceding national decennial census conducted by the Bureau of
the Census of the United States Department of Commerce").

¶17(a) (emphasis added). In other words, the Plaintiffs already acknowledged what is clear from the Legislature's statutory scheme: NRS 706.473 controls the question of whether the Plaintiffs' were independent contractors. And, as detailed above, Reno and Capital Cab have fully and indisputably complied with NRS 706.473's requirements.

2. The Agreements Comply with the NTA's Regulations.

Having demonstrated that the Agreements comply with NRS 706.473, the next step is to determine whether the Agreements comport with the NTA's additional regulatory requirements. Pursuant to NRS 706.475, the NTA has promulgated requirements, via its regulatory authority, for establishing valid independent contractor agreements with taxi drivers. Specifically, in NAC 706.3753, the NTA set forth additional requirements for "[e]ach lease agreement entered into by a certificate holder¹⁸ and an independent contractor¹⁹ pursuant to NRS 706.473."

For instance, these regulations require such agreements to be in writing, signed, in a form approved by the NTA, describe the use of the cab and consideration provided, state that the independent contractor is subject to all applicable laws and regulations regarding taxicabs, state that the certificate holder is responsible for maintaining insurance, a file of the independent contractor's qualifications, and a file concerning the maintenance of the taxicab. See NAC 706.3751(1)(a)-(f). In addition, the NTA's regulations require such agreements to state that the certificate holder is not relieved of its responsibilities under NRS Chapter 706, state that the cab will be painted with the name, insignia and certificate number of the certificate holder, is in good mechanical condition, state that the cab cannot be subleased, state the maximum daily operation of a

¹⁸NAC 706.0305 defines a "Certificate holder" as "a person who holds a current certificate of public convenience and necessity to operate as a motor carrier."

¹⁹NAC 706.069 defines an "Independent contractor" as "a person who leases a taxicab from a certificate holder pursuant to NRS 706.473."

1 cab, and state that the cab shall be returned at the end of each shift. See NAC
2 706.3751(g)-(k).

3 The Agreements specifically track, and easily satisfy, each of NAC 706.3751's
4 extensive regulatory requirements, as again highlighted by the table attached as Exhibit
5 8. In summary, Reno and Capital Cab have done everything necessary to establish
6 effective independent contractor agreements with the Plaintiffs. The Plaintiffs have
7 nothing to demonstrate otherwise. Instead, Plaintiffs have generically argued that the
8 issue of "control" over the drivers is a question of fact. The Plaintiffs' argument, however,
9 completely misses the point. Because the relevant question is whether the Agreements
10 comport with the requirements of NRS Chapter 706 and NAC Chapter 706, and because
11 that is a purely legal question appropriately resolved at the summary judgment stage, the
12 issue of "control" is entirely irrelevant.

13 **3. Legislative History and Public Policy Favor Applying NRS**
14 **706.473.**

15 Even if there were any ambiguity regarding NRS 706.473's applicability, its
16 legislative history, considerations of sound public policy, and the principle that statutes
17 must be construed to avoid absurd results each favor determining that the Agreements
18 created valid independent contractor arrangements. When a statute is ambiguous,
19 meaning it is susceptible of more than one reasonable interpretation, courts "ascertain the
20 Legislature's intent by analyzing the statute's legislative history and construing the statute
21 in accordance with reason and public policy." *G.C. Wallace, Inc. v. District Court*, 127
22 Nev. 701, 705, 262 P.3d 1135, 1138 (2011). In addition, courts "must construe
23 ambiguous statutes so as to avoid absurd results." *Id.* (quoting *Star Ins. Co. v. Neighbors*,
24 122 Nev. 773, 776, 138 P.3d 507, 510 (2006)).

25 Albeit cursory, the available legislative history regarding NRS 706.473 bolsters the
26 conclusion that the Agreements created valid independent contractor relationships
27 pursuant to the statute. In 1993, the Legislature enacted NRS 706.473 to address the
28 financial hardships being experienced by cab companies in Northern Nevada. See

1 Minutes of the Senate Committee On Transportation regarding S.B. 561, 67th Leg., June
2 29, 1993, *available at*
3 [https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/SB561,1993.](https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/SB561,1993.pdf)
4 [pdf](https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/SB561,1993.pdf) (last visited May 2, 2019). Of significance, Robert Crowell testified in support of the
5 bill, and specifically on the behalf of Reno Cab, explaining that the statute was designed
6 to “rectify a severe problem that the northern Nevada cab companies are experiencing.”
7 *See id.* (testimony of Robert Crowell in support of S.B. 561). In other words, Reno Cab is
8 not just within the general class of entities the Nevada Legislature had in mind when it
9 enacted NRS 706.473—legislators specifically contemplated that Reno Cab would enter
10 into independent contractor agreements pursuant to the statute.

11 The legislative history of NRS 706.473 underscores the unique nature and narrow
12 impact of the statute, as well as the conclusion that the Legislature intended the outcome
13 sought here by Reno and Capital Cab. To begin, NRS 706.473 does not apply to Clark
14 County, as its population exceeds 700,000. Instead, NRS 706.473 is limited to smaller
15 counties and is further limited to a very small and discrete class, namely, taxi companies
16 and drivers. As the history of the statute shows, the Legislature, which is presumed to
17 know the law and thus understand the distinction between employees and independent
18 contractors, determined that permitting independent contractor agreements is in the best
19 financial interests of such counties and parties. In other words, the Legislature, which is
20 in the best position to make such a determination, found that the population base of
21 smaller counties would not otherwise support taxi operations. Such policy determinations
22 are the distinct province of the Legislature. *See Renown Health v. Vanderford*, 126 Nev.
23 221, 225, 235 P.3d 614, 616 (2010).

24 By entering into the Agreements, the Parties were not attempting to “contract
25 around” the MWA’s statement that its provisions “may not be waived by agreement
26 between an individual employee and an employer.” *See Nev. Const. Art. 15, § 16.*
27 Crucially, the MWA is silent on what constitutes an employment relationship. This is not
28 surprising. The drafters of the MWA recognized that such relationships are already

1 defined by statutes such as NRS 706.473, which predates the MWA by over a decade,
2 or, in the absence of an applicable statute, by the common law. In short, the Parties
3 were not evading the MWA, but instead acted pursuant to NRS 706.473's express
4 authorization for independent contractor agreements between cab companies and drivers
5 in small counties. Nothing in the MWA expresses any intent to effectively abolish such
6 statutorily-authorized independent contractor relationships.

7 The issue here is whether an employee/employer relationship exists in the first
8 place. Absent such a relationship, the MWA is not implicated. Stated another way, the
9 MWA only applies when there is an employment relationship in the first place. NRS
10 706.473 unmistakably establishes that the Parties did not have an employment
11 relationship. As such, the MWA, and its general prohibition on waivers between
12 employees and employers, simply never enters into the picture.

13 Reason, public policy, and avoiding absurd results, likewise weigh heavily, if not
14 dispositively, in favor of a determination that the Agreements create valid independent
15 contractor relationships under NRS 706.473. By way of background, taxi drivers have
16 historically been subject to a limited degree of control.²⁰ The regulatory scheme
17 established in NRS Chapter 706 represents a sharp break from that custom. After all,
18 virtually every facet of the taxi industry is now heavily regulated. In enacting NRS
19 706.473, the Legislature struck a balance, recognizing that although taxi companies and
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22 ²⁰See, e.g., *Saleem v. Corporate Transportation Group, Ltd.*, 854 F.3d 131, 139 (2d
23 Cir. 2017) (facts that transportation company provided its drivers with a client base,
24 charged fees when the drivers utilized its referral system, and had involvement in
25 enforcing rules among the drivers were insufficient to establish employment relationship);
26 *Yellow Taxi Co. of Minneapolis v. NLRB*, 721 F.2d 366 (D.C. Cir. 1983) (use of trip or log
27 sheets, a radio dispatch system, prohibition against subleasing, warnings to avoid
28 speeding did not support finding of substantial control necessary to find drivers had status
of employees rather than independent contractors); *SIDA of Hawaii, Inc. v. NLRB*, 512
F.2d 354 (9th Cir. 1975) (taxi company's rules requiring drivers to display identification,
follow dispatcher instructions, and be neat and courteous were insufficient to establish
employer relationship).

1 drivers are now subject to extensive regulation, their freedom to enter into independent
2 contractor agreements should be preserved.

3 The Plaintiffs have offered no other interpretation of NRS 706.473. Nor have they
4 offered any other explanation of its purpose. Instead, they have ignored NRS 706.473
5 altogether. It is axiomatic, however, that statutes should not be rendered meaningless.
6 See *Badger*, 132 Nev. at ___, 373 P.3d at 93; *Libby*, 130 Nev. at 363-64, 325 P.3d at
7 1279. The Plaintiffs' position is in direct conflict with these fundamental principles of
8 statutory construction.

9 It bears reiterating that Reno and Capital Cab entered into the Agreements in
10 reliance on and in conformance with NRS 706.473.²¹ In fact, they have structured their
11 entire operations to comply with the regulatory scheme, including the NTA's regulations
12 mandating a certain degree of control over drivers. Denying Reno and Capital Cab the
13 protections afforded under the statute would be a perverse and absurd result. Doing so
14 would not only defeat the purpose of NRS 706.473, but it would effectively punish Reno
15 and Capital Cab for complying with the regulatory scheme established by the Legislature.
16 See *G.C. Wallace*, 127 Nev. at 710, 262 P.3d at 1140-41 (refusing to construe a statutory
17 scheme in a way that "would snare the very individuals it was designed to serve,"
18 reasoning that such a construction would "entirely defeat" its purpose). In sum, NRS
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22 ²¹Relatedly, the presence of several constitutional issues, including the Contracts
23 Clause of the United States and Nevada Constitutions, see U.S. Const. art. I, § 10, cl.1;
24 Nev. Const. art. 1, § 15, supports construing NRS 706.473 in favor of upholding the
25 validity of the Agreements. See *Sandpointe Apartments v. District Court*, 129 Nev. 813,
26 828-29 n.4, 313 P.3d 849, 859 n.4 (statutes should be construed, if possible, to avoid
27 adjudication of constitutional questions); see also *Allied Structural Steel Co. v. Spannaus*,
28 438 U.S. 234, 245 (1978) (as reflected in the Contracts Clause, the Framers highly
valued private contracts, which "enable individuals to order their personal and business
affairs according to their particular needs and interests"; therefore, "[o]nce arranged,
those rights and obligations are binding under the law, and the parties are entitled to rely
on them.").

1 706.473's legislative history, reason and public policy, and the principle that statutes must
2 be construed to avoid absurd results, each show that the Agreements created valid
3 independent contractor arrangements.

4 **4. The NTA's Approval of the Agreements is Controlling.**

5 The Nevada Legislature has declared that its purpose and policy in enacting NRS
6 Chapter 706 was "to confer upon the Authority²² the power and to make it the duty of the
7 Authority to regulate fully regulated carriers [and] enforce the provisions of this chapter
8 and the regulations adopted by the Authority pursuant to it." See NRS 706.151(1)(a).
9 Further, "[a]ll of the provisions of [NRS Chapter 706] **must** be administered and enforced
10 with a view to carrying out the declaration of policy contained in this section." See NRS
11 706.151(2) (emphasis added).

12 Crucially, the Legislature delegated authority to the NTA to review and approve
13 independent contractor agreements between taxi companies and drivers. See NRS
14 706.473(1). This regulatory function is so vital, and so firmly vested with the NTA, that
15 such agreements are "not effective until approved by the [NTA]," see NRS 706.473(2),
16 and the NTA is given standing to intervene in an action "involving a lease agreement
17 entered into pursuant to this section." See NRS 706.473(4). The NTA is also charged
18 with adopting regulations to carry out these provisions, including enacting procedures for
19 approving, or revoking, such agreements. See NRS 706.475(1)(a), (2)(d).²³ In sum, the
20 Legislature has delegated exclusive regulatory authority to the NTA to review, and
21 approve, independent contractor agreements between taxi companies and drivers.

22 The Nevada Supreme Court has observed that "the interpretation by the agency
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25 _____
26 ²²NRS 706.018 defines the "Authority" as "the Nevada Transportation Authority
created pursuant to NRS 706.1511."

27 ²³Similarly, NRS 706.171(1)(a) statutorily authorizes the NTA to "make necessary
28 and reasonable regulations governing the administration and enforcement of the
provisions of [NRS Chapter 706]."

1 charged with administering a statute is persuasive, and that great deference should be
2 given to that interpretation if it is within the language of the statute.” *Nevada Tax Comm’n*
3 *v. Nevada Cement Co.*, 117 Nev. 960, 968-69, 36 P.3d 418, 423 (2001). Further, courts
4 “must respect the judgment of the agency empowered to apply the law to varying fact
5 patterns, even if the issue with nearly equal reason [might] be resolved one way rather
6 than another.” *Malecon Tobacco, LLC v. State Department of Taxation*, 118 Nev. 837,
7 841-42 n.15, 59 P.3d 474, 477 n.15 (2002) (quoting *Holly Farms Corp. v. NLRB*, 517 U.S.
8 392, 399 (1996)). Accordingly, where substantial evidence supports such an agency
9 determination, it is considered controlling. *See City of Reno v. Reno Police Protective*
10 *Association*, 118 Nev. 889, 900, 59 P.3d 1212, 1220 (2002).

11 Here, pursuant to its statutory authority, the NTA has promulgated various
12 regulations. Among other things, the NTA has established various additional
13 requirements for independent contractor agreements between taxi companies and
14 drivers. *See, e.g.*, NAC 706.3751; 706.0753. In other words, the NTA has interpreted
15 NRS 706.473 and NRS 706.475 and found that those statutes grant it exclusive authority
16 to review and approve such agreements. Because the NTA’s interpretation is well-within
17 the language of these statutes, it must be accorded deference.

18 The NTA has also exercised its exclusive regulatory authority to review the
19 Agreements. Crucially, the NTA has specifically approved the Agreements. As such, the
20 NTA has determined that the Agreements comply with the statutory and regulatory
21 requirements for establishing an effective independent contractor agreement. The
22 Legislature has expressly empowered the NTA to make such determinations. Further,
23 the evidence supporting the NTA’s finding is not just substantial—it is overwhelming and
24 undisputed. Thus, the NTA’s determination is controlling.

25 The Plaintiffs’ claims run afoul of these principles. The Plaintiffs are pursuing
26 theories of liability that sound in employment, despite having entered into Agreements
27 establishing that they are independent contractors pursuant to NRS 706.473. And, even
28 though the Plaintiffs previously consented to the NTA’s jurisdiction and regulatory

1 authority, they are pursuing theories that directly conflict with the NTA's approval of the
2 Agreements. In other words, the Plaintiffs are not simply seeking to upend the
3 Agreements—they are attacking the statutory scheme the Legislature established in NRS
4 Chapter 706, and the authority the Legislature delegated to the NTA. This, they cannot
5 do.

6 **5. Contract Principles Support the Application of NRS 706.473.**

7 While not dispositive, longstanding contract principles and policies bolster the
8 conclusion that the Agreements created valid independent contractor relationships under
9 NRS 706.473. As the United States Supreme Court has observed,

10 [t]here is no rule of public policy which denies effect to their
11 expressed intention, but, on the contrary, as the matter lies
12 within the range of permissible agreement, the highest public
13 policy is found in the enforcement of the contract which was
14 actually made.

14 *Santa Fe, Prescott & Phoenix Ry. Co.*, 228 U.S. 177, 188 (1913).

15 The Nevada Supreme Court has similarly observed that the public “has an interest
16 in protecting the freedom of persons to contract, and in enforcing contractual rights and
17 obligations.” *Hansen v. Edwards*, 83 Nev. 189, 192, 426 P.2d 792, 793 (1967). Further,
18 courts have “no authority to alter the terms of an unambiguous contract,” *id.*, and “will not
19 rewrite contract provisions that are otherwise unambiguous” nor “attempt to increase the
20 legal obligations of the parties where the parties intentionally limited such obligations.”
21 *Griffin v. Old Republic Ins. Co.*, 122 Nev. 479, 483, 133 P.3d 251, 254 (2006). Thus,
22 “when a contract is clear on its face, it ‘will be construed from the written language **and**
23 **enforced as written.**” *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121
24 P.3d 599, 603 (2005) (emphasis added).

25 Here, the provisions of the Agreements provide:

26 RELATIONSHIP. Neither Party is the partner, joint
27 venturer, agent, or representatives of the other Party.
28 **LESSEE is an independent contractor. LEASING
COMPANY and LESSEE acknowledge and agree that
there does not exist between them the relationship of**

1 **employer and employee**, principal and agent, or master
2 and servant, either expressed or implied, but that of the
3 parties is strictly that of lessor and lessee, **the LESSEE**
4 **being free from interference or control on the part of the**
5 **LEASING COMPANY, except as otherwise provided in**
6 **chapter 706 of the NRS and/or NAC**, in the operation of the
7 Leased Taxicab.

8 See Exhs. 4-6 at ¶ 10 (emphasis added).

9 Thus, the Agreements clearly and unambiguously provide that the Plaintiffs were
10 independent contractors pursuant to the provisions of NRS and NAC Chapter 706, and
11 are not employees. Therefore, consistent with well-established principles and policies of
12 contract law, the Agreements should be enforced. These principles and policies have
13 particular force here given the Legislature's clear intent, as expressed in NRS 706.473, to
14 authorize taxi companies and drivers to enter into independent contractor agreements. In
15 summary, because the Plaintiffs are independent contractors under the statutorily created
16 and authorized framework of NRS 706.473, there is no genuine issue of material fact and
17 Reno and Capital Cab are entitled to judgment as a matter of law.

18 **V. CONCLUSION.**

19 For the foregoing reasons, Reno and Capital Cab respectfully submit that there is
20 no genuine issue of material fact and that they are entitled to judgment as a matter of law.

21 ///

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26 ///

27 ///


28 ///

Affirmation

The undersigned hereby affirms that the preceding document does not contain the social security number of any person.

DATED this 30th day of May, 2019.

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


MARK G. SIMONS
RICARDO N. CORDOVA, Esq.
*Attorneys for Reno Cab Company, Inc. and Roy
L. Street, dba Capital Cab*

CERTIFICATE OF SERVICE

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

- ☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:
- ☒ I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

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

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

- ☐ by personal delivery/hand delivery addressed to:
- ☐ by facsimile (fax) addressed to:
- ☐ by Federal Express/UPS or other overnight delivery addressed to:

DATED this 30 day of May, 2019.


Employee of SIMONS HALL JOHNSTON PC

EXHIBIT LIST

| NO. | DESCRIPTION | PAGES |
|------------|------------------------------------|--------------|
| 1 | Street Declaration | 3 |
| 2 | CPCN for Reno Cab Company | 1 |
| 3 | CPCN for Capitol Cab | 1 |
| 4 | Shatz Agreement | 13 |
| 5 | Fratis Agreement | 14 |
| 6 | Myers Agreement | 14 |
| 7 | Excerpts of Myers' Response to RFA | 4 |
| 8 | Table | 4 |
| 9 | Yellow Cab Lease Agreement | 10 |
| 10 | Cordova Decl. | 2 |

EXHIBIT 1

EXHIBIT 1

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

1 MARK G. SIMONS, ESQ.
Nevada Bar No. 5132
2 MSimons@SHJNevada.com
RICARDO N. CORDOVA, ESQ.
3 Nevada Bar No. 11942
RCordova@SHJNevada.com
4 SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
5 Reno, Nevada 89509
Telephone: (775) 785-0088
6 *Attorneys for Defendants Reno Cab Company, Inc.*
7 *and Roy L. Street, dba Capital Cab*

8
9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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

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

13 Plaintiff,

14 vs.

15 RENO CAB COMPANY, INC.,

16 Defendant.

CASE NO.: CV15-01359

DEPT. NO.: 10

17
18 ARTHUR SHATZ, and RICHARD FRATIS,
19 individually and on behalf of others similarly
situated,

20 Plaintiffs,

21 vs.

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

24 Defendant.

CASE NO.: CV15-01385

DEPT. NO.: 10

25
26 **DECLARATION OF ROBIN STREET IN SUPPORT OF**
27 **MOTION FOR SUMMARY JUDGMENT**
28

1 Robin Street hereby deposes and declares as follows:

2 1. I am over the age of 18 and I make this declaration under penalty of perjury
3 under the laws of the United States and the State of Nevada. I could and would
4 competently testify about the information this declaration contains.

5 2. This declaration is submitted in support of the Motion for Summary
6 Judgment ("Motion") in the above-captioned matter by Defendants Reno Cab Company,
7 Inc. ("Reno Cab") and Roy L. Street, dba Capital Cab ("Capital Cab") (collectively, when
8 possible, "Reno and Capital Cab"), against Plaintiffs Jeff Myers, Arthur Shatz, and
9 Richard Fratis (collectively, when possible, "the Plaintiffs").

10 3. I am the Vice President of Reno Cab. I am a Director of Capital Cab. In
11 these roles, I have day-to-day involvement and knowledge of Reno and Capital Cab's
12 business operations and the other subjects discussed in this declaration.

13 4. Reno Cab operates a taxicab business, with its principal place of business
14 in Washoe County, Nevada. During all relevant time periods discussed herein, Reno Cab
15 has held a Certificate of Public Convenience and Necessity ("CPCN") issued by the
16 Nevada Transportation Authority ("NTA").

17 5. Capital Cab operates a taxicab business, with its principal place of business
18 in Carson City, Nevada. During all relevant time periods discussed herein, Capital Cab
19 has held a CPCN issued by the NTA. A true and correct copy is attached to the Motion
20 as Exhibit 3.

21 6. True and accurate copies of the Plaintiffs' "Taxicab Lease Agreements" are
22 attached to Reno and Capital's Motion as Exhibits 4, 5, and 6 (collectively, "the
23 Agreements"). Pursuant to NRS 706.473(2), Reno and Capital Cab submitted copies of
24 the Agreements to the NTA for approval, and the NTA has approved the Agreements.

25 7. In entering into the Agreements, Reno and Capital Cab relied on NRS
26 706.473, the NTA's accompanying regulations, and the NTA's approval of the
27 Agreements, all of which reasonably led Reno and Capital Cab to believe that the
28 Agreements created valid independent contractor relationships. Indeed, Reno and

1 Capital Cab's reliance is reflected throughout the Agreements, the provisions of which are
2 specifically designed to ensure compliance with the applicable statutory and regulatory
3 scheme. In sum, Reno and Capital Cab not only entered into the Agreements in reliance
4 on NRS 706.473 and the NTA's corresponding regulations, but they have structured their
5 business operations based upon those provisions.

6 I, Robin Street, do hereby swear under penalty of perjury under the laws of the
7 State of Nevada and the United States of America that the foregoing assertions are true
8 and correct to the best of my knowledge.

9 DATED this 29 day of May, 2019.

10
11 
12 ROBIN STREET

EXHIBIT 2

EXHIBIT 2

NEVADA TRANSPORTATION AUTHORITY
ORDER
and
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Roy L. Street
d/b/a Capital Cab Company

CPCN 2445, Sub 4
Docket No. 11-10015

The Nevada Transportation Authority ("Authority") finds that the above-named carrier has complied with this Authority's Compliance Order dated September 12, 2013, the findings of fact and conclusions of law which are hereby incorporated by this reference, and therefore is entitled to receive authority from this Authority to engage in transportation in intrastate commerce as a motor carrier.

IT IS ORDERED that the certificate of public convenience and necessity identified as CPCN 2445, Sub 3 is hereby cancelled and Roy L. Street d/b/a Capital Cab Company is hereby granted this certificate of public convenience and necessity identified as CPCN 2445, Sub 4 as evidence of the authority of the holder to engage in transportation in intrastate commerce as a common carrier by motor vehicle subject to applicable statutes, rules and regulations of the Authority, and such terms, conditions and limitations as are now or may hereafter be attached to the exercise of the privileges herein granted.

IT IS FURTHER ORDERED and made a condition of this certificate that the holder shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure to do so shall constitute sufficient grounds for suspension, modification or revocation of this certificate.

IT IS FURTHER ORDERED that nothing contained herein shall be construed to be either a franchise or irrevocable and that failure to comply with rules, regulations and orders of the Authority and applicable statutory provisions shall constitute sufficient grounds for suspension or revocation of this certificate.

IT IS FURTHER ORDERED that this authority shall not be sold or transferred without the Authority's prior approval.

IT IS FURTHER ORDERED that the transportation service to be performed by said carrier shall be as specified below:


Irregular route on-call common carriage of passengers in taxicabs between points and places within the counties of Carson City and the portion of Washoe County south of Mt. Rose highway (SR431) and between points and places in the geographical area of the Washoe County portion of the Lake Tahoe Drainage Basin, including Incline Village and Crystal Bay to the California state border (Hwy 28), and between points and places within Douglas County (US 395 and Jacks Valley Road) and Carson Valley basin (US 395) Minden, Gardnerville, Dresslerville, and north of Centerville (SR 83) and Twelve Mile and between points and places within portions of southern Storey County (SR 341 and SR 79) and between points and places within west Lyon County east to Silver Springs (Hwy 50 and SR 28) and south (Alt 95) to Wabuska and 6 miles north of Silver Springs and east of Silver Springs to Fallon (Hwy 50) Reno Hwy and 15 miles in each of 3 directions, west (Hwy 50) Austin Hwy and north (Alt 95) Lovelock Hwy and south (Alt 95) Schwarz Hwy within Churchill County and within a ten (10) mile radius of the Fernley-Wadsworth area and between points and places within a ten (10) mile radius of Fernley-Wadsworth area on the one hand and points and place in the State of Nevada, on the other.

Carrier must provide door-to-door service for wheelchair patients.

IT IS FURTHER ORDERED that the Authority retains jurisdiction for the purpose of correcting any errors which may have occurred in the drafting or issuance of this Order and Certificate of Public Convenience and Necessity.

By the Authority,


Andrew J. MacKay, Chairman

Attest: 
James Allen Day, Administrative Attorney

Dated: October 23, 2013
Las Vegas, Nevada

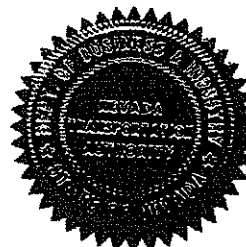


EXHIBIT 3

EXHIBIT 3

NEVADA TRANSPORTATION AUTHORITY
ORDER
and
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Roy L. Street
d/b/a Capital Cab Company

CPCN 2445, Sub 4
Docket No. 11-10015

The Nevada Transportation Authority ("Authority") finds that the above-named carrier has complied with this Authority's Compliance Order dated September 12, 2013, the findings of fact and conclusions of law which are hereby incorporated by this reference, and therefore is entitled to receive authority from this Authority to engage in transportation in intrastate commerce as a motor carrier.

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IT IS FURTHER ORDERED and made a condition of this certificate that the holder shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure to do so shall constitute sufficient grounds for suspension, modification or revocation of this certificate.

IT IS FURTHER ORDERED that nothing contained herein shall be construed to be either a franchise or irrevocable and that failure to comply with rules, regulations and orders of the Authority and applicable statutory provisions shall constitute sufficient grounds for suspension or revocation of this certificate.

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Carrier must provide door-to-door service for wheelchair patients.

IT IS FURTHER ORDERED that the Authority retains jurisdiction for the purpose of correcting any errors which may have occurred in the drafting or issuance of this Order and Certificate of Public Convenience and Necessity.

By the Authority,


Andrew J. MacKay, Chairman

Attest: 
James Allen Day, Administrative Attorney

Dated: October 23, 2013
Las Vegas, Nevada

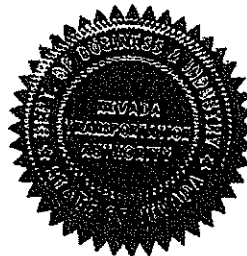


EXHIBIT 4

EXHIBIT 4

**CAPITOL CAB COMPANY
TAXICAB LEASE AGREEMENT**

THIS TAXICAB LEASE AGREEMENT ("Lease") made this 23 day of March, 2011, between ROY L. STREET dba CAPITOL CAB COMPANY, a Nevada entity, with its principal place of business at 3835 Sheep Drive, Carson City, Nevada (hereinafter referred to as "LEASING COMPANY"), and BOB SHUTT an independent contractor with his/her principal residence located at 1517 PINE CT, hereinafter referred to as "LESSEE").

WHEREAS, LEASING COMPANY is an intrastate for hire common motor carrier operating under a Certificate of Public Convenience and Necessity CPCN 2445 issued by the Nevada Transportation Authority ("NTA");

WHEREAS, LEASING COMPANY is the owner of taxicabs and other vehicles;

WHEREAS, LESSEE desires to lease from LEASING COMPANY a vehicle and other services under the term and conditions herein set forth; and

WHEREAS, the parties desire to confirm their understanding in writing.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the parties agree as follows:

1. LEASE. LESSEE agrees to lease from LEASING COMPANY a taxicab with the name, insignia, certificate number, and painted in the approved color scheme of LEASING COMPANY (the "Leased Taxicab"). At the commencement of this lease, LEASING COMPANY shall deliver the Leased Taxicab in good working order, properly licensed, and with a full tank of fuel. LEASING COMPANY shall equip the Leased Taxicab with a radio, taximeter, identifying decals, seals and other equipment required by applicable federal, state, and local laws and ordinances (collectively the "Regulatory Authorities").
2. TAXICAB FEES, LICENSING. LEASING COMPANY shall maintain and pay for all operating licenses, taxes, and fees on the Leased Taxicab. At times other than Lease Periods

LEASING COMPANY BZ

LESSEE AS

(as defined below), LEASING COMPANY may either use the Leased Taxicab itself or lease the Leased Taxicab to other lessees.

3. OWNERSHIP, MAINTENANCE, AND REPAIR. LEASING COMPANY is the owner of the Leased Taxicab, which is in a good mechanical condition and meets the requirements for operating taxicabs in the location where the taxicab will be operated. Regularly scheduled maintenance shall be LEASING COMPANY'S responsibility; provided, however, in order to keep the Leased Taxicab in good mechanical condition, LESSEE shall inspect the Leased Taxicab at the beginning of each 12 hour period and report any condition requiring repair or maintenance to LEASING COMPANY. LESSEE shall return the taxicab to LEASING COMPANY at the end of each 12 hour period to enable LEASING COMPANY to comply with the provisions of NAC § 706.380. All repairs will be done in a timely fashion and a file will be maintained by LEASING COMPANY for records concerning the maintenance of the taxicab. At no time is LESSEE authorized or allowed to make any alterations or changes of any kind to the Taxicab.
4. INSURANCE. Insurance or self insurance will be provided by LEASING COMPANY in an amount sufficient to meet regulatory requirements.
5. LEASE PERIOD. Each period LESSEE uses the Leased Taxicab shall be deemed a separate Lease Period ("Lease Period"). Each Lease Period will be determined by LESSEE and LEASING COMPANY and will be indicated on Exhibit "A". LESSEE shall not, however, operate the taxicab for more than 12 hours in any 24-hour period. This Lease shall serve as a master lease agreement, which will govern each and every Lease Period.
6. ASSIGNMENT AND SUBLEASING. LESSEE shall not transfer, assign, sublease, or otherwise enter into an agreement to lease the taxicab to another person, nor shall LESSEE'S rights be subject to encumbrance or subject to the claims of his or her creditors.
7. OPERATING AUTHORITY. LEASING COMPANY is a certified carrier and services provided by LESSEE are regulated by appropriate regulatory authorities. LESSEE'S use of

LEASING COMPANY BT

LESSEE AS

the Leased Taxicab shall be in a manner authorized by LEASING COMPANY'S certificate to operate and the LEASING COMPANY'S Tariff.

8. RENTAL FEE. In consideration of the use of the Leased Taxicab, LESSEE agrees to pay a Rental Fee to LEASING COMPANY in the amount set forth on Exhibit "A" attached hereto and incorporated herein by reference. LESSEE shall pay the rental fees set forth in Exhibit "A" for each 12 hour lease period, as well as the late fees, set forth in Exhibit "A". Any Late Fees, as listed on Exhibit "A", shall be paid to LEASING COMPANY by LESSEE at the end of the current or prior to the beginning of the next 12 hour Lease Period after incurring such Late Fee. If, for any reason, LESSEE cannot or does not complete the 12 hour Lease Period, LESSEE shall not be entitled to any reduction of the Rental Fee.
9. SECURITY DEPOSIT. In addition to the rental payment, LESSEE will pay to LEASING COMPANY, at or before commencement of the first 12 hour Lease Period, a security deposit in the amount of One Thousand Dollars (\$1,000.00), paid in full or by other payment arrangement as determined by LEASING COMPANY. The security deposit shall be maintained at One Thousand Dollars (\$1,000.00) while this lease is in effect. Said security deposit must be maintained by the LEASING COMPANY in an account separate from the carrier's operating account. Said security deposit, less proper deductions, shall be returned to LESSEE not later than thirty (30) days after the termination of this Lease. Pursuant to NAC 706.3752, any deductions must be itemized and in writing, and supported by receipts that evidences the repairs to the taxicab in an amount equal to the amount deducted, and provided to the LESSEE upon return of the remaining security deposit.

LEASING COMPANY may also deduct from said security deposit any amount due to LEASING COMPANY, including, but not limited to, delinquent rental charges, unauthorized repairs and/or maintenance, unpaid traffic fines, unauthorized charges incurred by LEASING COMPANY or other damages sustained by LEASING COMPANY.

10. RELATIONSHIP. Neither Party is the partner, joint venturer, agent, or representatives of the

LEASING COMPANY BJ

LESSEE AS

other Party. LESSEE is an independent contractor. LEASING COMPANY and LESSEE acknowledge and agree that there does not exist between them the relationship of employer and employee, principal and agent, or master and servant, either expressed or implied, but that the relationship of the parties is strictly that of lessor and lessee, the LESSEE being free from interference or control on the part of LEASING COMPANY in the operation of the Leased Taxicab. LESSEE acknowledges that:

- a. He or she is not eligible for federal or state unemployment benefits or workman's compensation benefits.
- b. LEASING COMPANY is not responsible for withholding federal or state income taxes, or any other taxes, but LESSEE will be liable for payment of those taxes.
- c. LEASING COMPANY is not responsible for withholding or paying, in any way, contribution for taxes under the Federal Insurance Act, and LESSEE will be liable for those and all other taxes.
- d. LEASING COMPANY agrees to furnish only liability insurance on the Leased Taxicab, in a sum not less than required by applicable law, and LEASING COMPANY shall not be responsible nor liable in any way for any injury to LESSEE resulting from the use or operation of such taxicab.
- e. LEASING COMPANY is a certified carrier and services provided by LESSEE are regulated by appropriate authorities. LESSEE'S use of the Leased Taxicab shall be in a manner authorized by LEASING COMPANY'S certificate to operate the Leased Taxicab and LEASING COMPANY'S Tariff.

11. TRIP SHEET. At the beginning of each 12 hour lease period, LESSEE must date and time stamp the trip sheet provided by LEASING COMPANY. At the end of each 12 hour lease period, LESSEE must provide the LEASING COMPANY with the completed date and time stamped trip sheets for that 12 hour lease period.

12. DAILY VEHICLE INSPECTION. In order to keep the Leased Taxicab in good mechanical

LEASING COMPANY B2


LESSEE AS

condition, LESSEE shall inspect the Leased Taxicab at the beginning and end of each 12 hour lease period and document on a daily inspection sheet to be submitted daily and report any condition requiring repair or maintenance to LEASING COMPANY.

13. NO PERSONAL USE. The Leased Taxicab is for commercial use only and may not be utilized for the personal use of the LESSEE.
14. ADVERTISING. In accordance with applicable law, only LEASING COMPANY is authorized to hold itself out and to advertise that it is a motor carrier authorized to provide taxicab services within the area authorized by its certificate of public convenience and necessity, CPCN 2445, including but not limited to, the use of the internet, telephone, television, radio, business cards, any form of print media, or any other form of advertising, because the taxicabs are owned by leasing company all top sign as well as any other advertising placed on or in the Taxicab is at the direction and control of the LEASING COMPANY. At its option, LEASING COMPANY may provide business cards for LESEE's use.

LESSEE shall not engage in any advertising or promotion whether by the internet, telephone, television, radio, business cards, any form of print media, or any other form of advertising which either reflects or gives the impression, whether intended or not, that LESEE is holding himself/herself out as a motor carrier authorized to provide taxicab services. In the event LESEE engages in such advertising LESEE will be solely responsible for any fines or other fees imposed by the NTA.

15. REPLACEMENT VEHICLE. In the event that any repair or maintenance takes more than eight (8) hours in any week, LEASING COMPANY shall attempt to provide a replacement Leased Taxicab, if available. If a replacement Leased Taxicab is not available, then LESSEE shall be entitled to a pro-rata refund of the Rental Fee, if applicable. Repairs and maintenance on Leased Taxicabs must be performed at LEASING COMPANY'S facilities, unless prior written authorization is obtained from LEASING COMPANY to have the

LEASING COMPANY 

LESSEE AS,

repairs and maintenance done elsewhere. LESSEE shall be responsible for the cost of unauthorized repairs and/or maintenance, and for all damages caused thereby.

16. REGULATORY AUTHORITIES. This Lease does not relieve LEASING COMPANY from its duties and responsibilities under NRS Chapter 706 or NAC Chapter 706. LESSEE and/or LEASING COMPANY are subject to the jurisdiction of the Nevada Transportation Authority ("NTA") and shall comply with all federal rules, regulations, ordinances, administrative codes, health and safety provisions and statutes in the operation of the Leased Taxicab. In the event of a violation of such laws, rules, regulations, ordinances, administrative codes, health and safety provisions and statutes, the NTA may take enforcement action against LESSEE and LEASING COMPANY. Both the LESSEE and LEASING COMPANY are subject to all laws and regulations relating to the operation of a taxicab which have been established by the NTA (as set forth in Nevada Revised Statutes and Nevada Administrative Code Chapters 706) and other regulatory agencies and LESSEE understands that a violation of those laws and regulations will breach the agreement.
17. MEDICAL AND DRIVING HISTORY. To ensure compliance with the provisions of NAC 706.3751, before this LEASE AGREEMENT can be deemed approved, the LESSEE must provide to the LEASING COMPANY:

- (a) A certificate from a licensed physician which is dated not more than 90 days before the date on which LESSEE begins to lease a taxicab from the LEASING COMPANY pursuant to NRS 706.473, which demonstrates that LESSEE is physically qualified to operate a commercial motor vehicle in accordance with 49 C.F.R. § 391.43, which certificate the LESSEE must also maintain in his/her possession when operating the taxicab; and
- (b) A copy of the driving record of the LESSEE obtained from the Department of Motor Vehicles which demonstrates that the LESSEE has not, within the past three (3) years:

LEASING COMPANY BL

LESSEE AS

- i. Been convicted of driving under the influence of an intoxicating liquor or a controlled substance;
 - ii. Been convicted of careless or reckless driving;
 - iii. Been convicted of failing to stop and remain at the scene of an accident; or
 - iv. Failed to keep a written promise to appear in Court of any offense.
18. MAINTENANCE OF RECORDS. LEASING COMPANY must maintain driver qualification files (for the LESSEE), trip sheets (for the LESSEE), and vehicle maintenance files (for the Leased Taxicab) as required pursuant to the provisions of NRS and NAC Chapters 706.
19. WARRANTY. LESSEE warrants that he/she possesses, and at all times during the term of this Lease, and any renewals or extensions hereof, shall possess, the proper driver's license to lawfully operate a taxicab as required by the regulatory authorities. LESSEE agrees to comply with all local, state, and federal laws and ordinances of Regulatory Authorities relating to the operation of motor vehicles and taxicabs. LESSEE is responsible for the payment of all parking and traffic violations, fines and penalties, including any towing, booting, or impound fees or charges, as a result of LESSEE'S use of the Leased Taxicab and any fees or fines imposed by the NTA against LESSEE. LESSEE agrees to promptly pay or contest, and to indemnify and hold harmless LEASING COMPANY from such fines, penalties, towing, booting or impound fees or charges and fees or fines imposed by the NTA against LESSEE.

LESSEE warrants that only he or she shall drive the Leased Taxicab during the Leased Period, unless LEASING COMPANY authorizes, in writing, another person to drive the Leased Taxicab.

20. REPORT OF ACCIDENTS/CRIMES. LESSEE must give LEASING COMPANY, through LEASING COMPANY'S authorized agents and/or employees, immediate radio notice of a violent crime (in which the LESSEE is the victim) or any accident, loss or claim in which

LEASING COMPANY BT

LESSEE AS

LESSEE is involved, or as soon thereafter as is reasonably possible.

21. HOURS OF OPERATION. The LESSEE shall not operate the taxicab for more than 12 hours in any 24-hour period.
22. LEASED TAXICAB RETURN. At the end of each 12 hour Lease Period, LESSEE agrees to return the Leased Taxicab at the agreed time to LEASING COMPANY'S premises in the same condition in which it was received by LESSEE, except for normal wear and tear. LESSEE agrees to pay an additional charge for late return, as outlined in Exhibit "A", and to compensate LEASING COMPANY for any damages to the Leased Taxicab as set forth herein. Failure to return with a full tank of gas will result in a charge to LESSEE to fill the tank.
23. TERMINATION. LEASING COMPANY shall have the right, but not the obligation, to immediately terminate this Lease at any time in the event that LESSEE:
 - a. Fails to pay the Rental Fee or any towing, booting, or impounded fees or charges, any other fines, fees or penalties as required herein;
 - b. Fails to maintain a proper drivers license;
 - c. Fails to timely report any accident;
 - d. Encumbers, assigns, subleases, or otherwise enters into an agreement to lease the Leased Taxicab to another person;
 - e. Fails to return the Leased Taxicab in good condition with a full tank of gas;
 - f. Violates any rule or regulation of the Nevada Transportation Authority of the State of Nevada;
 - g. Violates any rule or regulation of the Airport Authority of Washoe County;
 - h. Drives the Leased Taxicab under the influence of drugs and/or alcohol;
 - i. Fails to submit to a breath or urine test, upon objective facts, that LESSEE is under the influence of drugs and/or alcohol;

LEASING COMPANY BJ

LESSEE MC

- j. Fails to sign the ACKNOWLEDGMENT contained on the Daily Tripsheet at the beginning of each Lease Period;
- k. Is convicted of any felony or misdemeanor for driving under the influence of drugs and/or alcohol;
- l. Gives one (1) day's notice of intention not to enter into an additional Lease Period; or
- m. Allows any unauthorized person to drive the Leased Taxicab during any Lease Period.

Notwithstanding any of the above causes for termination, LEASING COMPANY shall have the right to terminate, at will, this Lease upon giving one (1) day's written notice to LESSEE of LEASING COMPANY'S intention to terminate the Lease. Termination hereunder shall be effective one (1) day after giving said written notice.

A failure by LEASING COMPANY to terminate the Lease for LESSEE'S violation of one or more of the above grounds for termination of this Lease shall not constitute a waiver of LEASING COMPANY'S right to terminate this Lease for any subsequent violations on the same or other grounds by LESSEE.

- 24. NEVADA TRANSPORTATION AUTHORITY APPROVAL. A LEASING COMPANY'S lease agreement is not deemed effective until approved by the NTA. This Lease shall be deemed to be modified, as necessary, to conform to said statutes and regulations and changes thereto.
- 25. RETENTION OF LEASE AGREEMENT. The LEASING COMPANY must retain copies of each lease agreement for a minimum of three years.
- 26. ATTORNEY'S FEES. In the event of any dispute between the LESSEE and LEASING COMPANY relating to this Lease, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees and other reasonable costs incurred by the prevailing party in connection therewith and in pursuing and collecting remedies, relief and damages.

LEASING COMPANY B/L

LESSEE McL

27. GOVERNING LAW. This agreement shall be interpreted in accordance with and through application of the laws of the State of Nevada.
28. RADIO SERVICE. LEASING COMPANY shall make available to LESSEE radio dispatching services as a means of referring prospective passengers LESSEE has the option to use radio dispatch. If LESSEE accepts the dispatch call, then LESSEE must pick up passengers through such radio dispatch. However, LESSEE has no obligation to respond to radio calls if LESSEE chooses not to utilize dispatch service. LESSEE is not obligated to report his location to LEASING COMPANY or to remain in any specific place at any fixed hours.
29. ARBITRATION. Any dispute or controversy arising between the parties involving the interpretation, enforcement or application of any provision in this Lease Agreement, or pertaining to the performance or any breach of this Lease Agreement, or in any way arising out of or related to this Lease Agreement, shall be determined by the Nevada Court Annex Arbitration Program as set forth in the Nevada Arbitration Rules, with either party retaining its right to seek a trial de novo.
30. MISCELLANEOUS. It is understood between LEASING COMPANY and LESSEE that it is in each party's best interest to maintain the reputation and goodwill of LEASING COMPANY and LESSEE. In this regard, cleanliness of Leased Taxicab, courtesy, personal grooming, dress, appearance, safety, and observance of traffic laws are to each party's mutual benefit. It is also understood between LEASING COMPANY and LESSEE that a file will be maintained by LEASING COMPANY which contains LESSEE'S qualifications to drive the taxicab.
31. RELEASE AND INDEMNITY OF ALL CLAIMS. The LEASING COMPANY and the LESSEE does for itself, its heirs, executors, administrators, successors and assigns, hereby release, remise, and forever discharge the State of Nevada, the NTA, the Nevada Attorney General, and each of their members, agents, and employees in their individual and

LEASING COMPANY BJ

LESSEE AS

representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known or unknown, in law or equity, which LEASING COMPANY and the LESSEE ever had, now has, may have, or claim to have against any or all of said entities or individuals arising out of or by reason of the processing or investigation of or other action relating to this agreement.

Furthermore, LEASING COMPANY and the LESSEE hereby agrees to indemnify, hold harmless and defend, not excluding the State's right to participate, the State of Nevada, the NTA, the Nevada Attorney General, and each of their, members, agents, and employees in their individual and representative capacities from any and all claims, suits, and actions, brought by anyone associated with this application , or by any third party, against the agencies or persons named in this paragraph, arising out of the submission, investigation, and deliberation concerning this agreement, and against any and all liabilities, expenses, damages, charges and costs, including court costs and attorneys' fees, which may be sustained by the persons and agencies named in this paragraph as a result of said claims, suits and actions.

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LEASING COMPANY BL

LESSEE AG

32. COMPLETE AGREEMENT. This Lease constitutes the entire lease, agreement, and understanding between the parties as to the subject matter hereto, and merges all prior discussions between them. None of the parties shall be bound by any conditions, definitions, warranties, understandings or representations other than as expressly provided herein.

Executed in duplicate this 23 day of March, 2011.

LEASING COMPANY:

Roy L. Street dba CAPITOL CAB COMPANY

By: Barry Laureless

Its: Manager

LESSEE:

[Signature]

LEASING COMPANY BZ

LESSEE AS

EXHIBIT "A"

RENTAL FEE AND LATE FEES

RENTAL FEES

☒ 12-HOUR PERIOD
Five (5) dollars, plus
50% of Total Book of
the shift, plus Gas

24-HOUR PERIOD
NOT AVAILABLE

ONE WEEK PERIOD
\$ _____ dollars,
plus Gas. Lessee retains 100%
of the Total Book.

LATE FEES

12-HOUR PERIOD

\$ _____

24-HOUR PERIOD

\$ _____

ONE WEEK PERIOD

\$ _____

Late fees are \$ _____ per hour or fraction thereof.


MILEAGE LIMITS

12-HOUR PERIOD

24-HOUR PERIOD

ONE WEEK PERIOD

An additional fee of \$ _____ will be charged for all miles traveled in
excess of such limits



Signature

3/30/2011

Date

LEASING COMPANY BZ

LESSEE _____

EXHIBIT 5

EXHIBIT 5

**CAPITOL CAB COMPANY
TAXICAB LEASE AGREEMENT**

THIS TAXICAB LEASE AGREEMENT ("Lease") made this 25 day of March, 2011, between ROY L. STREET dba CAPITOL CAB COMPANY., a Nevada entity, with its principal place of business at 5835 Sheep Drive, Carson City, Nevada (hereinafter referred to as "LEASING COMPANY"), and

Eric Francis an independent contractor with his/her principal residence located at 1174 Mountain Park Dr. CC NV hereinafter referred to as "LESSEE").

WHEREAS, LEASING COMPANY is an intrastate for hire common motor carrier operating under a Certificate of Public Convenience and Necessity CPCN 2445 issued by the Nevada Transportation Authority ("NTA");

WHEREAS, LEASING COMPANY is the owner of taxicabs and other vehicles;

WHEREAS, LESSEE desires to lease from LEASING COMPANY a vehicle and other services under the term and conditions herein set forth; and

WHEREAS, the parties desire to confirm their understanding in writing.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the parties agree as follows:

1. LEASE. LESSEE agrees to lease from LEASING COMPANY a taxicab with the name, insignia, certificate number, and painted in the approved color scheme of LEASING COMPANY (the "Leased Taxicab"). At the commencement of this lease, LEASING COMPANY shall deliver the Leased Taxicab in good working order, properly licensed, and with a full tank of fuel. LEASING COMPANY shall equip the Leased Taxicab with a radio, dispatching system, taximeter, identifying decals, seals and other equipment required by applicable federal, state, and local laws and ordinances (collectively the "Regulatory Authorities").

LESSEE agrees that LESSEE will operate the Leased Taxicab for a minimum of

LEASING COMPANY BL

LESSEE Eric Francis

three (3) days per seven day week, unless LEASING COMPANY authorizes LESSEE to deviate from the three (3) day minimum.

2. TAXICAB FEES, LICENSING. LEASING COMPANY shall maintain and pay for all operating licenses, taxes, and fees on the Leased Taxicab. At times other than Lease Periods (as defined below), LEASING COMPANY may either use the Leased Taxicab itself or lease the Leased Taxicab to other lessees.
3. OWNERSHIP, MAINTENANCE, AND REPAIR. LEASING COMPANY is the owner of the Leased Taxicab, which is in a good mechanical condition and meets the requirements for operating taxicabs in the location where the taxicab will be operated. Regularly scheduled maintenance shall be LEASING COMPANY'S responsibility; provided, however, in order to keep the Leased Taxicab in good mechanical condition, LESSEE shall inspect the Leased Taxicab at the beginning of each 12 hour period and report any condition requiring repair or maintenance to LEASING COMPANY. LESSEE shall return the taxicab to LEASING COMPANY at the end of each 12 hour period to enable LEASING COMPANY to comply with the provisions of NAC § 706.380. All repairs will be done in a timely fashion and a file will be maintained by LEASING COMPANY for records concerning the maintenance of the taxicab. At no time is LESSEE authorized or allowed to make any alterations or changes of any kind to the Taxicab.
4. INSURANCE. Insurance or self insurance will be provided by LEASING COMPANY in an amount sufficient to meet regulatory requirements.
5. LEASE PERIOD. Each period LESSEE uses the Leased Taxicab shall be deemed a separate Lease Period ("Lease Period"). Each Lease Period will be determined by LESSEE and LEASING COMPANY and will be indicated on Exhibit "A". LESSEE shall not, however, operate the taxicab for more than 12 hours in any 24-hour period. This Lease shall serve as a master lease agreement, which will govern each and every Lease Period.
6. ASSIGNMENT AND SUBLEASING. LESSEE shall not transfer, assign, sublease, or

LEASING COMPANY BL

LESSEE R. G.

otherwise enter into an agreement to lease the taxicab to another person, nor shall LESSEE'S rights be subject to encumbrance or subject to the claims of his or her creditors.

7. OPERATING AUTHORITY. LEASING COMPANY is a certified carrier and services provided by LESSEE are regulated by appropriate regulatory authorities. LESSEE'S use of the Leased Taxicab shall be in a manner authorized by LEASING COMPANY'S certificate to operate and the LEASING COMPANY'S Tariff.

8. RENTAL FEE. In consideration of the use of the Leased Taxicab, LESSEE agrees to pay a Rental Fee to LEASING COMPANY in the amount set forth on Exhibit "A" attached hereto and incorporated herein by reference. LESSEE shall pay the rental fees set forth in Exhibit "A" for each 12 hour lease period, as well as the late fees, set forth in Exhibit "A". Any Late Fees, as listed on Exhibit "A", shall be paid to LEASING COMPANY by LESSEE at the end of the current or prior to the beginning of the next 12 hour Lease Period after incurring such Late Fee. If, for any reason, LESSEE cannot or does not complete the 12 hour Lease Period, LESSEE shall not be entitled to any reduction of the Rental Fee.

9. SECURITY DEPOSIT. In addition to the rental payment, LESSEE will pay to LEASING COMPANY, at or before commencement of the first 12 hour Lease Period, a security deposit in the amount of One Thousand Dollars (\$1,000.00), paid in full or by other payment arrangement as determined by LEASING COMPANY. The security deposit shall be maintained at One Thousand Dollars (\$1,000.00) while this lease is in effect. Said security deposit must be maintained by the LEASING COMPANY in an account separate from the carrier's operating account. Said security deposit, less proper deductions, shall be returned to LESSEE not later than thirty (30) days after LESSEE provides a written request for return of said deposit after termination of this Lease and / or any Employment with LEASING COMPANY. However, LEASING COMPANY may maintain the security deposit longer than thirty (30) days after any written request for return of the security deposit when money due to the LEASING COMPANY under any provision of this lease is known to be owed, but

LEASING COMPANY BA

LESSEE MA

the value of the amount owed is not yet ascertained. LEASING COMPANY shall return the security deposit within thirty days (30) of ascertaining the amount owed to LEASING COMPANY. Pursuant to NAC 706.3752, any deductions must be itemized and in writing, and supported by receipts that evidences the repairs to the taxicab in an amount equal to the amount deducted, and provided to the LESSEE upon return of the remaining security deposit.

LEASING COMPANY may also deduct from said security deposit any amount due to LEASING COMPANY, including, but not limited to, delinquent rental charges, unauthorized repairs and/or maintenance, administrative fees, failed mandatory and / or random drug tests, unpaid traffic fines, unauthorized charges caused by LESSEE and / or incurred by LEASING COMPANY or other damages caused by LESSEE and / or sustained by LEASING COMPANY.

LESSEE may not obtain an advance or loan against the security deposit for any reason at anytime.

10. RELATIONSHIP. Neither Party is the partner, joint venturer, agent, or representatives of the other Party. LESSEE is an independent contractor. LEASING COMPANY and LESSEE acknowledge and agree that there does not exist between them the relationship of employer and employee, principal and agent, or master and servant, either expressed or implied, but that the relationship of the parties is strictly that of lessor and lessee, the LESSEE being free from interference or control on the part of LEASING COMPANY, except as otherwise provided in chapter 706 of the NRS and/ or NAC, in the operation of the Leased Taxicab. LESSEE acknowledges that:

- a. He or she is not eligible for federal or state unemployment benefits or workman's compensation benefits.
- b. LEASING COMPANY is not responsible for withholding federal or state income taxes, or any other taxes, but LESSEE will be liable for payment of those taxes.

LEASING COMPANY BT

LESSEE AG

- c. LEASING COMPANY is not responsible for withholding or paying, in any way, contribution for taxes under the Federal Insurance Act, and LESSEE will be liable for those and all other taxes.
- d. LEASING COMPANY agrees to furnish only liability insurance on the Leased Taxicab, in a sum not less than required by applicable law, and LEASING COMPANY shall not be responsible nor liable in any way for any injury to LESSEE resulting from the use or operation of such taxicab.
- e. LEASING COMPANY is a certified carrier and services provided by LESSEE are regulated by appropriate authorities. LESSEE'S use of the Leased Taxicab shall be in a manner authorized by LEASING COMPANY'S certificate to operate the Leased Taxicab and LEASING COMPANY'S Tariff.
11. TRIP SHEET. At the beginning of each 12 hour lease period, LESSEE must date and time stamp the trip sheet provided by LEASING COMPANY. At the end of each 12 hour lease period, LESSEE must provide the LEASING COMPANY with the completed date and time stamped trip sheets for that 12 hour lease period.
12. DAILY VEHICLE INSPECTION. In order to keep the Leased Taxicab in good mechanical condition, LESSEE shall inspect the Leased Taxicab at the beginning and end of each 12 hour lease period and document on a daily inspection sheet to be submitted daily and report any condition requiring repair or maintenance to LEASING COMPANY.
13. NO PERSONAL USE. The Leased Taxicab is for commercial use only and may not be utilized for the personal use of the LESSEE. Personal use includes, but is not limited to, using the leased taxi for personal travel, errands, and / or parking said taxi for an extended period of time at any location so that the driver may sleep.
- LEASING COMPANY maintains insurance for commercial use of the Taxicab in accordance with Chapter 706 of the NRS and NAC. If LESSEE, utilizes the Taxicab for personal use in violation of the Lease, LESSEE will be solely responsible for any damage

LEASING COMPANY

LESSEE

caused to and / or by LESSEE in operation of the Taxicab.

14. ADVERTISING. In accordance with applicable law, only LEASING COMPANY is authorized to hold itself out and to advertise that it is a motor carrier authorized to provide taxicab services within the area authorized by its certificate of public convenience and necessity, CPCN 2445, including but not limited to, the use of the internet, telephone, television, radio, business cards, any form of print media, or any other form of advertising, because the taxicabs are owned by leasing company all top sign as well as any other advertising placed on or in the Taxicab is at the direction and control of the LEASING COMPANY. At its option, LEASING COMPANY may provide business cards for LESEE's use.

LESSEE shall not engage in any advertising or promotion whether by the internet, telephone, television, radio, business cards, any form of print media, or any other form of advertising which either reflects or gives the impression, whether intended or not, that LESEE is holding himself/herself out as a motor carrier authorized to provide taxicab services. In the event LESEE engages in such advertising LESEE will be solely responsible for any fines or other fees imposed by the Nevada Transportation Authority.

15. REPLACEMENT VEHICLE. In the event that any repair or maintenance takes more than twelve (12) hours in any week, LEASING COMPANY shall attempt to provide a replacement Leased Taxicab, if available. If a replacement Leased Taxicab is not available, then LESSEE shall be entitled to a pro-rata refund of the paid Rental Fee, if applicable. However, no LESSEE shall be entitled to a pro-rata refund of the Rental Fee when the damage requiring repair was caused by any LESSEE of the Taxicab listed on Exhibit "B". Repairs and maintenance on Leased Taxicabs must be performed at LEASING COMPANY'S facilities, unless prior written authorization is obtained from LEASING COMPANY to have the repairs and maintenance done elsewhere. LESSEE shall be responsible for the cost of unauthorized repairs and/or maintenance, and for all damages

LEASING COMPANY BT

LESSEE BT

caused thereby.

16. REGULATORY AUTHORITIES. This Lease does not relieve LEASING COMPANY from its duties and responsibilities under NRS Chapter 706 or NAC Chapter 706. LESSEE and/or LEASING COMPANY are subject to the jurisdiction of the Nevada Transportation Authority ("NTA") and shall comply with all federal rules, regulations, ordinances, administrative codes, health and safety provisions and statutes in the operation of the Leased Taxicab. In the event of a violation of such laws, rules, regulations, ordinances, administrative codes, health and safety provisions and statutes, the NTA may take enforcement action against LESSEE and LEASING COMPANY. Both the LESSEE and LEASING COMPANY are subject to all laws and regulations relating to the operation of a taxicab which have been established by the NTA (as set forth in Nevada Revised Statutes and Nevada Administrative Code Chapters 706) and other regulatory agencies and LESSEE understands that a violation of those laws and regulations will breach the agreement.

17. MEDICAL AND DRIVING HISTORY. To ensure compliance with the provisions of NAC 706.3751, before this LEASE AGREEMENT can be deemed approved, the LESSEE must provide to the LEASING COMPANY:

- (a) A certificate from a licensed physician which is dated not more than 90 days before the date on which LESSEE begins to lease a taxicab from the LEASING COMPANY pursuant to NRS 706.473, which demonstrates that LESSEE is physically qualified to operate a commercial motor vehicle in accordance with 49 C.F.R. § 391.43, which certificate the LESSEE must also maintain in his/her possession when operating the taxicab; and
- (b) A copy of the driving record of the LESSEE obtained from the Department of Motor Vehicles which demonstrates that the LESSEE has not, within the past three (3) years:
 - i. Been convicted of driving under the influence of an intoxicating liquor or a

LEASING COMPANY B.L.

LESSEE R.A.

controlled substance;

- ii. Been convicted of careless or reckless driving;
- iii. Been convicted of failing to stop and remain at the scene of an accident; or
- iv. Failed to keep a written promise to appear in Court of any offense.

18. MAINTENANCE OF RECORDS. LEASING COMPANY must maintain driver qualification files (for the LESSEE), trip sheets (for the LESSEE), and vehicle maintenance files (for the Leased Taxicab) as required pursuant to the provisions of NRS and NAC Chapters 706.

19. WARRANTY. LESSEE warrants that he/she possesses, and at all times during the term of this Lease, and any renewals or extensions hereof, shall possess, the proper driver's license to lawfully operate a taxicab as required by the regulatory authorities. LESSEE agrees to comply with all local, state, and federal laws and ordinances of Regulatory Authorities relating to the operation of motor vehicles and taxicabs. LESSEE is responsible for the payment of all parking and traffic violations, fines and penalties, including any towing, booting, or impound fees or charges, as a result of LESSEE'S use of the Leased Taxicab and any fees or fines imposed by the NTA against LESSEE. LESSEE agrees to promptly pay or contest, and to indemnify and hold harmless LEASING COMPANY from such fines, penalties, towing, booting or impound fees or charges and fees or fines imposed by the NTA against LESSEE.

LESSEE warrants that only he or she shall drive the Leased Taxicab during the Leased Period, unless LEASING COMPANY authorizes, in writing, another person to drive the Leased Taxicab.

20. REPORT OF ACCIDENTS/CRIMES. LESSEE must give LEASING COMPANY, through LEASING COMPANY'S authorized agents and/or employees, immediate notice by any means, including, but not limited to, radio and telephone, of a violent crime (in which the LESSEE is the victim) or any accident, loss or claim in which LESSEE is involved, or as

LEASING COMPANY *Bd*

LESSEE *R.R.*

soon thereafter as is reasonably possible.

In the event, that LESSEE is involved in an accident caused by another, where the other driver flees the scene of the accident. LESSEE is responsible to obtain a reasonable description of the other vehicle involved in the accident, including, but not limited to, the make, model, color, license plate of the vehicle. LESSEE shall also immediately notify LEASING COMPANY of any accident involving a vehicle that has fled the scene and LESSEE shall remain at the accident scene to allow LEASING COMPANY to investigate until advised by LEASING COMPANY to leave the accident scene. In accordance with NAC 706.3752, LESSEE shall remain liable for any and all damages to the Leased Taxicab.

21. HOURS OF OPERATION. The LESSEE shall not operate the taxicab for more than 12 hours in any 24-hour period.
22. LEASED TAXICAB RETURN. At the end of each 12 hour Lease Period, LESSEE agrees to return the Leased Taxicab at the agreed time to LEASING COMPANY'S premises in the same condition in which it was received by LESSEE, except for normal wear and tear. LESSEE agrees to pay an additional charge for late return, as outlined in Exhibit "A", and to compensate LEASING COMPANY for any damages to the Leased Taxicab as set forth herein. Failure to return with a full tank of gas will result in a charge to LESSEE in the amount of the cost of fuel to fill the tank and an administrative fee related to the same.
23. TERMINATION. LEASING COMPANY shall have the right, but not the obligation, to immediately terminate this Lease at any time in the event that LESSEE:
 - a. Fails to pay the Rental Fee or any towing, booting, or impounded fees or charges, any other fines, fees or penalties as required herein;
 - b. Fails to maintain a proper drivers license;
 - c. Fails to timely report any accident, including but not limited to those referenced in subsection 20 of the Lease Agreement;
 - d. Encumbers, assigns, subleases, or otherwise enters into an agreement to lease the

LEASING COMPANY B2

LESSEE [Signature]

Leased Taxicab to another person;

- e. Fails to return the Leased Taxicab in good condition with a full tank of gas;
- f. Violates any rule or regulation of the Nevada Transportation Authority of the State of Nevada;
- g. Violates any rule or regulation of the Airport Authority of Washoe County;
- h. Drives the Leased Taxicab under the influence of drugs and/or alcohol;
- i. Fails to submit to a breath or urine test that is requested pursuant to; random testing, mandatory testing requirements under Chapter 706 of NRS and / or NAC, or upon objective facts , that LESSEE is under the influence of drugs and/or alcohol;
- j. Fails to sign the ACKNOWLEDGMENT contained on the Daily Tripsheet at the beginning of each Lease Period;
- k. Is convicted of any felony or misdemeanor for driving under the influence of drugs and/or alcohol;
- l. Is deemed by LEASING COMPANY to be unsafe or unfit to meet the safety requirements of chapter 706 of NRS and / or NAC;
- m. Gives notice of intention not to enter into an additional Lease Period; or
- n. Allows any unauthorized person to drive the Leased Taxicab during any Lease Period.

In addition to the above causes for termination, LEASING COMPANY also shall have the right to terminate, for no cause, this Lease upon giving notice to LESSEE of LEASING COMPANY'S intention to terminate the Lease. Termination hereunder shall be effective immediately after giving said notice.

A failure by LEASING COMPANY to terminate the Lease for LESSEE'S violation of one or more of the above grounds for termination of this Lease shall not constitute a waiver of LEASING COMPANY'S right to terminate this Lease for any subsequent violations on the same or other grounds by LESSEE.

LEASING COMPANY BJ

LESSEE A. R.

24. NEVADA TRANSPORTATION AUTHORITY APPROVAL. A LEASING COMPANY'S lease agreement is not deemed effective until approved by the NTA. This Lease shall be deemed to be modified, as necessary, to conform to said statutes and regulations and changes thereto.
25. RETENTION OF LEASE AGREEMENT. The LEASING COMPANY must retain copies of each lease agreement for a minimum of three years.
26. ATTORNEY'S FEES. In the event of any dispute between the LESSEE and LEASING COMPANY relating to this Lease, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees and other reasonable costs incurred by the prevailing party in connection therewith and in pursuing and collecting remedies, relief and damages.
27. GOVERNING LAW. This agreement shall be interpreted in accordance with and through application of the laws of the State of Nevada.
28. DISPATCH SERVICE. LEASING COMPANY shall make available to LESSEE a dispatching service as a means of referring prospective passengers. LESSEE has the option to use the dispatching service. If LESSEE accepts use of the dispatching service by logging into the digital dispatch system, then LESSEE must pick up passengers through such dispatch system. However, LESSEE has no obligation to respond to dispatched calls if LESSEE chooses not to utilize the dispatch service. LESSEE is not obligated to report his location to LEASING COMPANY or to remain in any specific place at any fixed hours.
29. ARBITRATION. Any dispute or controversy arising between the parties involving the interpretation, enforcement or application of any provision in this Lease Agreement, or pertaining to the performance or any breach of this Lease Agreement, or in any way arising out of or related to this Lease Agreement, shall be determined by the Nevada Court Annex Arbitration Program as set forth in the Nevada Arbitration Rules, with either party retaining its right to seek a trial de novo.

LEASING COMPANY B.T.

LESSEE [Signature]

30. MISCELLANEOUS. It is understood between LEASING COMPANY and LESSEE that it is in each party's best interest to maintain the reputation and goodwill of LEASING COMPANY and LESSEE. In this regard, cleanliness of Leased Taxicab, courtesy, personal grooming, dress, appearance, safety, and observance of traffic laws are to each party's mutual benefit. It is also understood between LEASING COMPANY and LESSEE that a file will be maintained by LEASING COMPANY which contains LESSEE'S qualifications to drive the taxicab.
31. RELEASE AND INDEMNITY OF ALL CLAIMS. The LEASING COMPANY and the LESSEE does for itself, its heirs, executors, administrators, successors and assigns, hereby release, remise, and forever discharge the State of Nevada, the Nevada Transportation Authority, the Nevada Attorney General, and each of their members, agents, and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known or unknown, in law or equity, which LEASING COMPANY and the LESSEE ever had, now has, may have, or claim to have against any or all of said entities or individuals arising out of or by reason of the processing or investigation of or other action relating to this agreement.

Furthermore, LEASING COMPANY and the LESSEE hereby agrees to indemnify, hold harmless and defend, not excluding the State's right to participate, the State of Nevada, the Nevada Transportation Authority, the Nevada Attorney General, and each of their, members, agents, and employees in their individual and representative capacities from any and all claims, suits, and actions, brought by anyone associated with this application, or by any third party, against the agencies or persons named in this paragraph, arising out of the submission, investigation, and deliberation concerning this agreement, and against any and all liabilities, expenses, damages, charges and costs, including court costs and attorneys' fees, which may be sustained by the persons and agencies named in this paragraph as a result of said claims, suits and actions.

LEASING COMPANY BZ

LESSEE HR

32. COMPLETE AGREEMENT. This Lease constitutes the entire lease, agreement, and understanding between the parties as to the subject matter hereto, and merges all prior discussions between them. None of the parties shall be bound by any conditions, definitions, warranties, understandings or representations other than as expressly provided herein.

Executed in duplicate this 25 day of March, 2011.

LEASING COMPANY:

Roy L. Street dba CAPITOL CAB COMPANY

By: Barry Lawless

Its: Manager

LESSEE:

[Signature]
R. Francis
DVR

LEASING COMPANY BL

LESSEE [Signature]

EXHIBIT "A"
RENTAL FEE AND LATE FEES

RENTAL FEES

☒ 12-HOUR PERIOD
Five (5) dollars, plus
50% of Total Book of
the shift, plus Gas and
administrative fees, if
applicable.

24-HOUR PERIOD
NOT AVAILABLE

☐ ONE WEEK PERIOD
\$ 0 dollars,
plus Gas and administrative
fees, if applicable.
Lessee retains 100% of the
Total Book.

LATE FEES

12-HOUR PERIOD

\$ 0

24-HOUR PERIOD

\$ 0

ONE WEEK PERIOD

\$ 0

Late fees are \$ _____ per hour or fraction thereof.

MILEAGE LIMITS

12-HOUR PERIOD

0


24-HOUR PERIOD

0

ONE WEEK PERIOD

0

An additional fee of \$ 0 will be charged for all miles traveled in
excess of such limits


Signature

Mar 23 81
Date

LEASING COMPANY BL

LESSEE _____

EXHIBIT 6

EXHIBIT 6

RENO CAB COMPANY, INC. dba
RENO - SPARKS CAB COMPANY

TAXICAB LEASE AGREEMENT

THIS TAXICAB LEASE AGREEMENT ("Lease") made this 27 day of DECEMBER, 2013 between RENO CAB COMPANY, INC., a Nevada corporation, with its principal place of business at 475 Gentry Way, Reno, Nevada (hereinafter referred to as "LEASING COMPANY"), and JEFF MYERS an independent contractor with his/her principal residence located at 95 GENTRY WY. RENO, hereinafter referred to as "LESSEE").

WHEREAS, LEASING COMPANY is an intrastate common motor carrier operating under a Certificate of Public Convenience and Necessity CPCN 1025 issued by the Nevada Transportation Authority ("NTA");

WHEREAS, LEASING COMPANY is the owner of taxicabs and other vehicles;

WHEREAS, LESSEE desires to lease from LEASING COMPANY a vehicle and other services under the term and conditions herein set forth;

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the parties agree as follows:

1. LEASE. LESSEE agrees to lease from LEASING COMPANY a taxicab with the name, insignia, certificate number, and painted in the approved color scheme of LEASING COMPANY (the "Leased Taxicab"). At the commencement of this lease, LEASING COMPANY shall deliver the Leased Taxicab in good working order, properly licensed, and with a full tank of fuel. LEASING COMPANY shall equip the Leased Taxicab with a radio, dispatching system, taximeter, identifying decals, seals and other equipment required by applicable federal, state, and local laws and ordinances (collectively the "Regulatory Authorities").

LESSEE agrees that LESSEE will operate the Leased Taxicab for a minimum of three (3)

days per seven day week, unless LEASING COMPANY authorizes LESSEE to deviate from the three (3) day minimum.

2. TAXICAB FEES, LICENSING. LEASING COMPANY shall maintain and pay for all operating

LEASING COMPANY [Signature]

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LESSEE [Signature]

licenses, taxes, and fees on the Leased Taxicab. At times other than Lease Periods (as defined below); LEASING COMPANY may either use the Leased Taxicab itself or lease the Leased Taxicab to other lessees.

3. OWNERSHIP, MAINTENANCE, AND REPAIR. LEASING COMPANY is the owner of the Leased Taxicab, which is in a good mechanical condition and meets the requirements for operating taxicabs in the location where the taxicab will be operated. Regularly scheduled maintenance shall be LEASING COMPANY'S responsibility; provided, however, in order to keep the Leased Taxicab in good mechanical condition, LESSEE shall inspect the Leased Taxicab at the beginning of each 12 hour period and report any condition requiring repair or maintenance to LEASING COMPANY. LESSEE shall return the taxicab to LEASING COMPANY at the end of each 12 hour period to enable LEASING COMPANY to comply with the provisions of NAC § 706.380. All repairs will be done in a timely fashion and a file will be maintained by LEASING COMPANY for records concerning the maintenance of the taxicab. At no time is LESSEE authorized or allowed to make any alterations or changes of any kind to the Taxicab.
4. INSURANCE. Liability insurance or self-insurance will be provided by LEASING COMPANY in an amount sufficient to meet legal requirements.
5. LEASE PERIOD. Each period LESSEE uses the Leased Taxicab shall be deemed a separate Lease Period ("Lease Period"). Each Lease Period will be determined by LESSEE and LEASING COMPANY and will be indicated on Exhibit "A". LESSEE shall not, however, operate the taxicab for more than 12 hours in any 24-hour period. This Lease shall serve as a master lease agreement, which will govern each and every Lease Period.
6. ASSIGNMENT AND SUBLEASING. LESSEE shall not transfer, assign, sublease, or otherwise enter into an agreement to lease the taxicab to another person, nor shall LESSEE'S rights be subject to encumbrance or subject to the claims of his or her creditors.
7. OPERATING AUTHORITY. LEASING COMPANY is a certified carrier and services provided by LESSEE are regulated by appropriate regulatory authorities. LESSEE'S use of the Leased Taxicab

LEASING COMPANY MM

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LESSEE Xgr

shall be in a manner authorized by LEASING COMPANY'S certificate to operate and the LEASING COMPANY'S Tariff.

8. RENTAL FEE. In consideration of the use of the Leased Taxicab, LESSEE agrees to pay a Rental Fee to LEASING COMPANY in the amount set forth on Exhibit "A" attached hereto and incorporated herein by reference. LESSEE shall pay the rental fees set forth in Exhibit "A" for each 12 hour lease period, as well as the late fees, set forth in Exhibit "A". Any Late Fees, as listed on Exhibit "A", shall be paid to LEASING COMPANY by LESSEE at the end of the current or prior to the beginning of the next 12 hour Lease Period after incurring such Late Fee. If, for any reason, LESSEE cannot or does not complete the 12 hour Lease Period, LESSEE shall not be entitled to any reduction of the Rental Fee.

9. SECURITY DEPOSIT. In addition to the rental payment, LESSEE will pay to LEASING COMPANY, at or before commencement of the first 12 hour Lease Period, a security deposit in the amount set forth in Exhibit "A" attached hereto and executed herewith paid in full or by other payment arrangement as determined by LEASING COMPANY. The security deposit shall be maintained while this lease is in effect. Said security deposit must be maintained by the LEASING COMPANY in an account separate from the carrier's operating account. Said security deposit, less proper deductions, shall be returned to LESSEE not later than thirty (30) days after LESSEE provides a written request for return of said deposit after termination of this Lease and / or any Employment with LEASING COMPANY. However, LEASING COMPANY may maintain the security deposit longer than thirty (30) days after any written request for return of the security deposit when money due to the LEASING COMPANY under any provision of this lease is known to be owed, but the value of the amount owed is not yet ascertained. LEASING COMPANY shall return the security deposit within thirty days (30) of ascertaining the amount owed to LEASING COMPANY. Pursuant to NAC 706.3752, any deductions must be itemized and in writing, and supported by receipts that evidences the repairs to the taxicab or other deductions in an amount equal to the amount deducted, and provided to the LESSEE upon return of the remaining security deposit.

LEASING COMPANY MM

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LESSEE Jm

LEASING COMPANY may also deduct from said security deposit any amount due to LEASING COMPANY, including, but not limited to, delinquent rental charges, unauthorized repairs and/or maintenance, administrative fees, failed mandatory and / or random drug tests, unpaid traffic fines, unauthorized charges caused by LESSEE and / or incurred by LEASING COMPANY or other damages caused by LESSEE and / or sustained by LEASING COMPANY.

LESSEE may not obtain an advance or loan against the security deposit for any reason at any time. Said security deposit is to be replenished in the event any deductions are made.

In the event that the LEASE is entered into pursuant to option "1" set forth in Exhibit "A", the five dollar administrative fee and one thousand dollar security deposit, then LEASING COMPANY reserves the right to seek reimbursement from Lessee for damages in excess of said security deposit for damages resulting from an auto accident.

In the event that the LEASE is entered into pursuant to option "2" set forth in Exhibit "A", the ten dollar administrative fee and two hundred dollar security deposit then LEASING COMPANY will apply said deposit for damages as a result of any auto accident, but not seek reimbursement from Lessee for damages in excess of the \$200.00 security deposit from an auto accident.

10. RELATIONSHIP. Neither Party is the partner, joint venturer, agent, or representatives of the other Party. LESSEE is an independent contractor. LEASING COMPANY and LESSEE acknowledge and agree that there does not exist between them the relationship of employer and employee, principal and agent, or master and servant, either expressed or implied, but that the relationship of the parties is strictly that of lessor and lessee, the LESSEE being free from interference or control on the part of LEASING COMPANY, except as otherwise provided in chapter 706 of the NRS and/ or NAC, in the operation of the Leased Taxicab. LESSEE acknowledges that:

1. He or she is not eligible for federal or state unemployment benefits or workman's compensation benefits.

2. LEASING COMPANY is not responsible for withholding federal or state income taxes, or any other taxes, but LESSEE will be liable for payment of those taxes.

LEASING COMPANY MLY

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LESSEE Jm

3. LEASING COMPANY is not responsible for withholding or paying, in any way, contribution for taxes under the Federal Insurance Act, and LESSEE will be liable for those and all other taxes.
4. LEASING COMPANY agrees to furnish only liability insurance on the Leased Taxicab, in a sum not less than required by applicable law and LEASING COMPANY shall not be responsible nor liable in any way for any injury to LESSEE resulting from the use or operation of such taxicab.
5. LEASING COMPANY is a certified carrier and services provided by LESSEE are regulated by appropriate authorities. LESSEE'S use of the Leased Taxicab shall be in a manner authorized by LEASING COMPANY'S certificate to operate the Leased Taxicab and LEASING COMPANY'S Tariff.
11. TRIP SHEET. At the beginning of each 12 hour lease period, LESSEE must date and time stamp the trip sheet provided by LEASING COMPANY. At the end of each 12 hour lease period, LESSEE must provide the LEASING COMPANY with the completed date and time stamped trip sheets for that 12 hour lease period.
12. DAILY VEHICLE INSPECTION. In order to keep the Leased Taxicab in good mechanical condition, LESSEE shall inspect the Leased Taxicab at the beginning and end of each 12 hour lease period and document on a daily inspection sheet to be submitted daily and report any condition requiring repair or maintenance to LEASING COMPANY.

In the event that LESSEE inspects a vehicle and believes that a repair affecting the safety of the public is at issue the LESSEE shall immediately inform the LEASING COMPANY of the condition or repair needed and must not utilize the vehicle on the roadways until the vehicle has been inspected by LEASING COMPANY and is deemed to no longer be a hazard to the public in accordance with NRS 706.246. Further, to ensure the safety of the travelling public LESSEE will be liable for any damages caused as a result of LESSEE's failure to drive the vehicle prior to the LEASING COMPANY's inspection of said vehicle.

LEASING COMPANY ML

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LESSEE Jn

13. NO PERSONAL USE. The Leased Taxicab is for commercial use only and may not be utilized for the personal use of the LESSEE. Personal use includes, but is not limited to, using the leased taxi for personal travel, errands, and / or parking said taxi for an extended period of time at any location so that the driver may sleep.

LEASING COMPANY maintains insurance for commercial use of the Taxicab in accordance with Chapter 706 of the NRS and NAC. If LESSEE utilizes the Taxicab for personal use in violation of the Lease, LESSEE will be solely responsible for any damage caused to and / or by LESSEE in operation of the Taxicab.

14. ADVERTISING. In accordance with applicable law, only LEASING COMPANY is authorized to hold itself out and to advertise that it is a motor carrier authorized to provide taxicab services within the area authorized by its certificate of public convenience and necessity, CPCN 1025, including but not limited to, the use of the internet, telephone, television, radio, business cards, any form of print media, or any other form of advertising, because the taxicabs are owned by leasing company all top sign as well as any other advertising placed on or in the Taxicab is at the direction and control of the LEASING COMPANY. At its option, LEASING COMPANY may provide business cards for Lessee's use.

LESSEE shall not engage in any advertising or promotion whether by the internet, telephone, television, radio, business cards, any form of print media, or any other form of advertising which either reflects or gives the impression, whether intended or not, that LESSEE is holding himself/herself out as a motor carrier authorized to provide taxicab services. In the event LESSEE engages in such advertising LESSEE will be solely responsible for any fines or other fees imposed by the Nevada Transportation Authority.

15. REPLACEMENT VEHICLE. In the event that any repair or maintenance takes more than twelve (12) hours in any week, LEASING COMPANY shall attempt to provide a replacement Leased Taxicab, if available. If a replacement Leased Taxicab is not available, then LESSEE shall be entitled to a pro-rata refund of the paid Rental Fee, if applicable. However, no LESSEE shall be

LEASING COMPANY MKE

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LESSEE [Signature]

entitled to a pro-rata refund of the Rental Fee when the damage requiring repair was caused by any LESSEE of the Taxicab listed on Exhibit "B". Repairs and maintenance on Leased Taxicabs must be performed at LEASING COMPANY'S facilities, unless prior written authorization is obtained from LEASING COMPANY to have the repairs and maintenance done elsewhere. LESSEE shall be responsible for the cost of unauthorized repairs and/or maintenance, and for all damages caused thereby.

16. REGULATORY AUTHORITIES. This Lease does not relieve LEASING COMPANY from its duties and responsibilities under NRS Chapter 706 or NAC Chapter 706. LESSEE and/ or LEASING COMPANY are subject to the jurisdiction of the Nevada Transportation Authority ("NTA") and shall comply with all federal rules, regulations, ordinances, administrative codes, health and safety provisions and statutes in the operation of the Leased Taxicab. In the event of a violation of such laws, rules, regulations, ordinances, administrative codes, health and safety provisions and statutes, the NTA may take enforcement action against LESSEE and LEASING COMPANY. Both the LESSEE and LEASING COMPANY are subject to all laws and regulations relating to the operation of a taxicab which have been established by the NTA (as set forth in Nevada Revised Statutes and Nevada Administrative Code Chapters 706) and other regulatory agencies and LESSEE understands that a violation of those laws and regulations will breach the agreement.

17. MEDICAL AND DRIVING HISTORY. To ensure compliance with the provisions of NAC 706.3751, before this LEASE AGREEMENT can be deemed approved, the LESSEE must provide to the LEASING COMPANY:

- (a) A certificate from a licensed physician which is dated not more than 90 days before the date on which LESSEE begins to lease a taxicab from the LEASING COMPANY pursuant to NRS 706.473, which demonstrates that LESSEE is physically qualified to operate a commercial motor vehicle in accordance with 49 C.F.R. § 391.43, which certificate the LESSEE must also maintain in his/her possession when operating the taxicab; and
- (b) A copy of the driving record of the LESSEE obtained from the Department of Motor Vehicles

LEASING COMPANY _____

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which demonstrates that the LESSEE has not, within the past three (3) years:

- i. Been convicted of driving under the influence of an intoxicating liquor/controlled substance;
- ii. Been convicted of careless or reckless driving;
- iii. Been convicted of failing to stop and remain at the scene of an accident; or
- iv. Failed to keep a written promise to appear in Court of any offense.

(c) Obtain work cards as required by all federal, state and local governments.

18. MAINTENANCE OF RECORDS. LEASING COMPANY must maintain driver qualification files (for the LESSEE), trip sheets (for the LESSEE), and vehicle maintenance files (for the Leased Taxicab) as required pursuant to the provisions of NRS and NAC Chapters 706.

19. WARRANTY. LESSEE warrants that he/she possesses, and at all times during the term of this Lease, and any renewals or extensions hereof, shall possess, the proper driver's license to lawfully operate a taxicab as required by the regulatory authorities. LESSEE agrees to comply with all local, state, and federal laws and ordinances of Regulatory Authorities relating to the operation of motor vehicles and taxicabs. LESSEE is responsible for the payment of all parking and traffic violations, fines and penalties, including any towing, booting, or impound fees or charges, as a result of LESSEE'S use of the Leased Taxicab and any fees or fines imposed by the NTA against LESSEE. LESSEE agrees to promptly pay or contest, and to indemnify and hold harmless LEASING COMPANY from such fines, penalties, towing, booting or impound fees or charges and fees or fines imposed by the NTA against LESSEE.

LESSEE warrants that only he or she shall drive the Leased Taxicab during the Leased Period, unless LEASING COMPANY authorizes, in writing, another person to drive the Leased Taxicab.

20. REPORT OF ACCIDENTS/CRIMES. LESSEE must give LEASING COMPANY, through LEASING COMPANY'S authorized agents and/or employees, immediate notice by any means, including, but not limited to, radio and telephone, of a violent crime (in which the LESSEE is the victim) or any accident, loss or claim in which LESSEE is involved, or as soon thereafter as is

LEASING COMPANY _____

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reasonably possible.

In the event, that LESSEE is involved in an accident caused by another, where the other driver flees the scene of the accident. LESSEE is responsible to obtain a reasonable description of the other vehicle involved in the accident, including, but not limited to, the make, model, color, license plate of the vehicle. LESSEE shall also immediately notify LEASING COMPANY of any accident involving a vehicle that has fled the scene and LESSEE shall remain at the accident scene to allow LEASING COMPANY to investigate until advised by LEASING COMPANY to leave the accident scene. In accordance with NAC 706.3752, LESSEE shall remain liable for any and all damages to the Leased Taxicab.

21. HOURS OF OPERATION. The LESSEE shall not operate the taxicab for more than 12 hours in any 24-hour period.
22. LEASED TAXICAB RETURN. At the end of each 12 hour Lease Period, LESSEE agrees to return the Leased Taxicab at the agreed time to LEASING COMPANY'S premises in the same condition in which it was received by LESSEE, except for normal wear and tear. LESSEE agrees to pay an additional charge for late return, as outlined in Exhibit "A", and to compensate LEASING COMPANY for any damages to the Leased Taxicab and/or LEASING COMPANY as a result of LESSEE's operation of said vehicle. Failure to return with a full tank of gas will result in a charge to LESSEE in the amount of the cost of fuel to fill the tank and a related administrative fee.
23. TERMINATION. LEASING COMPANY shall have the right, but not the obligation, to immediately terminate this Lease at any time in the event that LESSEE:
 - a. Fails to pay the Rental Fee or any towing, booting, or impounded fees or charges, any other fines, fees or penalties as required herein;
 - b. Fails to maintain a proper drivers license;
 - c. Fails to timely report any accident, including but not limited to those referenced in subsection 20 of the Lease Agreement;
 - d. Encumbers, assigns, subleases, or otherwise enters into an agreement to lease the Leased Taxicab to another person;

LEASING COMPANY _____

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LESSEE



- e. Fails to return the Leased Taxicab in good condition with a full tank of gas;
- f. Violates any rule or regulation of the Nevada Transportation Authority;
- g. Violates any rule or regulation of the Airport Authority of Washoe County;
- h. Drives the Leased Taxicab under the influence of drugs and/or alcohol;
- i. Fails to submit to a breath or urine test that is requested pursuant to; random testing, mandatory testing requirements under Chapter 706 of NRS and / or NAC, or upon objective facts , that LESSEE is under the influence of drugs and/or alcohol;
- j. Fails to sign the ACKNOWLEDGMENT contained on the Daily Tripsheet at the beginning of each Lease Period;
- k. Is convicted of any felony or misdemeanor for driving under the influence of drugs and/or alcohol;
- l. Is deemed by LEASING COMPANY to be unsafe or unfit to meet the safety requirements of chapter 706 of NRS and/or NAC;
- m. Gives notice of intention not to enter into an additional Lease Period; or
- n. Allows any unauthorized person to drive the Leased Taxicab during any Lease Period.

In addition to the above causes for termination, LEASING COMPANY also shall have the right to terminate this Lease, for no cause, upon giving notice to LESSEE of LEASING COMPANY'S intention to terminate the Lease. Termination hereunder shall be effective immediately after giving said notice.

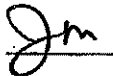
A failure by LEASING COMPANY to terminate the Lease for LESSEE'S violation of one or more of the above grounds for termination of this Lease shall not constitute a waiver of LEASING COMPANY'S right to terminate this Lease for any subsequent violations on the same or other grounds by LESSEE.

- 24. NEVADA TRANSPORTATION AUTHORITY APPROVAL. A LEASING COMPANY'S lease agreement is not deemed effective until approved by the NTA. This Lease shall be deemed to be modified, as necessary, to conform to said statutes and regulations and changes thereto.
- 25. RETENTION OF LEASE AGREEMENT. The LEASING COMPANY must retain copies of each lease agreement for a minimum of three years.

LEASING COMPANY _____

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LESSEE



26. ATTORNEY'S FEES. In the event of any dispute between the LESSEE and LEASING COMPANY relating to this Lease, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees and other reasonable costs incurred by the prevailing party in connection therewith and in pursuing and collecting remedies, relief and damages.
27. GOVERNING LAW. This agreement shall be interpreted in accordance with and through application of the laws of the State of Nevada.
28. DISPATCH SERVICE. LEASING COMPANY shall make available to LESSEE a dispatching service as a means of referring prospective passengers. LESSEE has the option to use the dispatching service. If LESSEE accepts use of the dispatching service by logging into the digital dispatch system, then LESSEE must pick up passengers through such dispatch system. However, LESSEE has no obligation to respond to dispatched calls if LESSEE chooses not to utilize the dispatch service. LESSEE is not obligated to report his location to LEASING COMPANY or to remain in any specific place at any fixed hours.
29. ARBITRATION. Any dispute or controversy arising between the parties involving the interpretation, enforcement or application of any provision in this Lease Agreement, or pertaining to the performance or any breach of this Lease Agreement, or in any way arising out of or related to this Lease Agreement, shall be determined by the Nevada Court Annex Arbitration Program as set forth in the Nevada Arbitration Rules, with either party retaining its right to seek a trial de novo.
30. MISCELLANEOUS. It is understood between LEASING COMPANY and LESSEE that it is in each party's best interest to maintain the reputation and goodwill of LEASING COMPANY and LESSEE. In this regard, cleanliness of Leased Taxicab, courtesy, personal grooming, dress, appearance, safety, and observance of traffic laws are to each party's mutual benefit. It is also understood between LEASING COMPANY and LESSEE that a file will be maintained by LEASING COMPANY which contains LESSEE'S qualifications to drive the taxicab.
31. RELEASE AND INDEMNITY OF ALL CLAIMS. The LEASING COMPANY and the LESSEE does for itself, its heirs, executors, administrators, successors and assigns, hereby release, remise, and

LEASING COMPANY _____

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forever discharge the State of Nevada, the Nevada Transportation Authority, the Nevada Attorney General, and each of their members, agents, and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known or unknown, in law or equity, which LEASING COMPANY and the LESSEE ever had, now has, may have, or claim to have against any or all of said entities or individuals arising out of or by reason of the processing or investigation of or other action relating to this agreement.

Furthermore, LEASING COMPANY and the LESSEE hereby agrees to indemnify, hold harmless and defend, not excluding the State's right to participate, the State of Nevada, the Nevada Transportation Authority, the Nevada Attorney General, and each of their, members, agents, and employees in their individual and representative capacities from any and all claims, suits, and actions, brought by anyone associated with this application , or by any third party, against the agencies or persons named in this paragraph, arising out of the submission, investigation, and deliberation concerning this agreement, and against any and all liabilities, expenses, damages, charges and costs, including court costs and attorneys' fees, which may be sustained by the persons and agencies named in this paragraph as a result of said claims, suits and actions.

32. COMPLETE AGREEMENT. This Lease constitutes the entire lease, agreement, and understanding between the parties as to the subject matter hereto, and merges all prior discussions between them. None of the parties shall be bound by any conditions, definitions, warranties, understandings or representations other than as expressly provided herein.

Executed in duplicate this 27 day of DECEMBER, 2013

LEASING COMPANY:

RENO CAB COMPANY, INC. dba RENO-SPARKS CAB COMPANY

By: _____

LEASING COMPANY _____

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LESSEE:

Its:

Reno Sparks Cab
x JH Myn

LEASING COMPANY ML

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EXHIBIT "A" RENTAL FEE, SECURITY DEPOSIT AND

LATE FEES

RENTAL FEES/Security Deposit

- | <u>12-HOUR PERIOD</u> | <u>24-HOUR PERIOD</u> | <u>ONE WEEK PERIOD</u> |
|---|-----------------------|---|
| 1. Five (5) dollars, plus 50% of Total Book of retains (100%) of the shift, plus gas and a security deposit of one thousand dollars (\$1,000.00) | NOT AVAILABLE | \$ _____ dollars, plus Gas. Lessee of the Total Book. |
| 2. <input checked="" type="checkbox"/> Ten (10) dollars, plus 50% of Total Book of retains (100%) of the shift, plus gas and a security deposit of four hundred dollars (\$200.00). | | |

LATE FEES

| <u>12-HOUR PERIOD</u> | <u>24-HOUR PERIOD</u> | <u>ONE WEEK PERIOD</u> |
|-----------------------|-----------------------|------------------------|
| \$ _____ | \$ _____ | \$ _____ |

Late fees are \$ _____ per hour or fraction thereof.

MILEAGE LIMITS

| <u>12-HOUR PERIOD</u> | <u>24-HOUR PERIOD</u> | <u>ONE WEEK PERIOD</u> |
|-----------------------|-----------------------|------------------------|
| _____ | _____ | _____ |

An additional fee of \$ _____ will be charged for all miles traveled in excess of such limits

☒ Signature 

☒ Date 12/27/13

LEASING COMPANY MM

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LESSEE 

EXHIBIT 7

EXHIBIT 7

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3 DISC
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 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

27 IN AND FOR THE COUNTY OF WASHOE

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

Dept. No.: 8

30 Plaintiff,

31 v.

32 RENO CAB COMPANY, INC.,

33 Defendant.

34 PLAINTIFF'S RESPONSE TO DEFENDANT'S

35 FIRST SET OF REQUESTS FOR ADMISSIONS TO PLAINTIFF

36 Plaintiff, Jeff Myers, Individually and on behalf of others similarly situated, by and

1
2 through his undersigned counsel, and hereby responds to Defendant, Reno Cab Company,
3 Inc.'s Requests for Admissions.
4

5 **REQUEST NO. 1:**

6 Admit that RCC_000015-28, attached hereto as **Exhibit 1**, is a true and correct copy of
7 the Taxicab Lease Agreement entered into by and between RCC and you (hereinafter the
8 "Agreement").

9 **RESPONSE TO REQUEST NO. 1:**

10 Admit.

11 **REQUEST NO. 2:**

12 Admit that you read the Agreement before signing.

13 **RESPONSE TO REQUEST NO. 2:**

14 Deny.

15 **REQUEST NO. 3:**

16 Admit that you initialed each page of the Agreement.

17 **RESPONSE TO REQUEST NO. 3:**

18 Admit.

19 **REQUEST NO. 4:**

20 Admit that you signed the Agreement.

21 **RESPONSE TO REQUEST NO. 4:**

22 Admit.

23 **REQUEST NO. 5:**

24 Admit that when you executed the Agreement, you intended to perform under the terms
25 of the Agreement as an independent contractor.
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3 **REQUEST NO. 24:**

4 Admit that at the time you were performing under the terms of the Agreement, you
5 knew other persons were leasing taxi cabs as independent contractors from RCC.

6 **OBJECTION:**

7 Request calls for a legal conclusion with respect to use of the term "leasing." Request
8 also calls for a legal conclusion in that it seeks plaintiff to define other persons by a legal term.

9 **RESPONSE TO REQUEST NO. 24:**

10 Pursuant to the foregoing objections, plaintiff denies that he ever "knew" that the
11 alleged "independent contractor" status of other persons who drove taxis for defendant was
12 legal but admits he was aware other persons drove taxicabs for defendant pursuant to the same
13 sort of Agreement that plaintiff had signed with defendant.

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

16 Date: 8-1-16

17
18 

19 Curtis B. Coulter, Esq.
20 NSB #3034
21 Law Offices of Curtis B. Coulter, P.C.
22 403 Hill Street
23 Reno, Nevada 89501

24 Leon Greenberg, Esq.
25 NSB #8094
26 Dana Sniegocki, Esq.
27 NSB#11715
28 2965 South Jones Blvd.
29 Suite E3
30 Las Vegas, Nevada 89146

Attorneys for Plaintiff

31 Law Offices of
32 Curtis B. Coulter
33 403 Hill Street
34 Reno, NV 89501
35 (775) 324-3380
36 FAX (775) 324-3381

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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 Response To Defendant's First Set Of Requests For Admissions To Plaintiff by:

 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:

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

Mark G. Simons, Esq.
Therese M. Shanks, Esq.
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

*Attorneys for Defendant
Reno Cab Company, Inc.*

DATED: 8.1.2016


An employee of Curtis B. Coulter, P.C.







Law Offices of
Curtis B. Coulter
403 Hill Street
Reno, NV 89501
(775) 324-3380
FAX (775) 324-3381

EXHIBIT 8

EXHIBIT 8

| <u>Relevant Statutory/Regulatory Requirement</u> | <u>Relevant Evidence/Contractual Provision</u> | <u>Compliance Established?</u> |
|--|---|---------------------------------------|
| NRS 706.473(1) ("In a county whose population is less than 700,000, . . .") | See United States Census Bureau Statistics for Washoe County, Nevada, <i>available at</i> https://www.census.gov/quickfacts/washoecountynevada ; United States Census Bureau Statistics for Carson City, Nevada, <i>available at</i> https://www.census.gov/quickfacts/fact/table/carsoncitynevadacounty/PST045218 . | ✓ |
| NRS 706.473(1) ("a person who holds a certificate of public convenience and necessity which was issued for the operation of a taxicab business . . .") | See Street Decl. at ¶¶ 4-5; CPCNs for Reno and Capital Cab; NTA List of Active CPCNs for Taxicab Businesses, <i>available at</i> http://tsa1.nv.gov/ActiveCertificatesTable.asp?nNo=9 ; The Agreements at p.1, recital 1 ("LEASING COMPANY is an intrastate common motor carrier operating under a [CPCN] issued by the [NTA]") | ✓ |
| NRS 706.473(1) ("may, upon approval from the [NTA], lease a taxicab to an independent contractor who does not hold a certificate of public convenience and necessity.") | See Street Decl. at ¶ 6 ("Pursuant to NRS 706.473(2), Reno and Capital Cab submitted copies of the Agreements to the NTA for approval, and the NTA has approved the Agreements."). | ✓ |
| NAC 706.3753(1)(a) ("Each lease agreement entered into by a certificate holder and an independent contractor pursuant to NRS 706.473 must: (a) Be maintained by the certificate holder.") | See generally The Agreements. | ✓ |
| NAC 706.3753(1)(b) ("Be in writing and in a form approved by the [NTA].") | See generally The Agreements; see also Street Decl. at ¶ 6. | ✓ |

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| NAC 706.3753(1)(c) ("Identify the use to be made of the taxicab by the independent contractor and the consideration to be received by the certificate holder. The use to be made of the taxicab must conform to the authority granted by the certificate to operate the taxicab.") | See The Agreements at § 7 ("LESSEE'S use of the Leased Taxicab shall be in a manner authorized by LEASING COMPANY'S certificate to operate . . ."); § 8 ("In consideration of the use of the Leased Taxicab, LESSEE agrees to pay a Rental Fee . . ."). | ✓ |
| NAC 706.3753(1)(d) ("Be signed by each party, or his or her representative, to the agreement.") | See The Agreements at p. 12-14; <i>see also</i> Myers' Response to Request for Admission No. 1. | ✓ |
| NAC 706.3753(1)(e) ("Specifically state that the independent contractor is subject to all laws and regulations relating to the operation of a taxicab which have been established by the Authority and other regulatory agencies and that a violation of those laws and regulations will breach the agreement.") | See The Agreements at § 16 ("LESSEE [is] subject to the jurisdiction of the [NTA] and shall comply with all federal rules, regulations, ordinances, administrative codes, health and safety provisions and statutes in the operation of the Leased Taxicab. . . . a violation of those laws and regulations will breach the agreement."). | ✓ |
| NAC 706.473(1)(f)(1) ("Specifically state that the certificate holder is responsible for maintaining: All required insurance associated with the taxicab and the service which is the subject of the agreement in accordance with NAC 706.191") | See The Agreements at § 4 ("Liability insurance or self-insurance will be provided by LEASING COMPANY in an amount sufficient to meet legal requirements.") | ✓ |
| NAC 706.3753(1)(f)(2) ("Specifically state that the certificate holder is responsible for maintaining: . . . A file which contains the qualifications of the independent contractor to drive the taxicab") | See The Agreements at § 18 ("LEASING COMPANY must maintain driver qualification files . . .") | ✓ |

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| <p>NAC 706.3753(1)(f)(3) ("Specifically state that the certificate holder is responsible for maintaining: . . . A file for records concerning the maintenance of the taxicab.")</p> | <p>See The Agreements at § 18 ("LEASING COMPANY must maintain . . . vehicle maintenance files . . .")</p> |  |
| <p>NAC 706.3753(1)(g) ("Specifically state that the lease agreement does not relieve the certificate holder from any of his or her duties or responsibilities set forth in this chapter and chapter 706 of NRS.")</p> | <p>See The Agreements at § 16 ("This Lease does not relieve LEASING COMPANY from its duties and responsibilities under NRS Chapter 706 or NAC Chapter 706.")</p> |  |
| <p>NAC 706.3753(1)(h)(1) ("Specifically state that the taxicab provided pursuant to the lease agreement . . . Will be painted with the name, insigne and certificate number of the certificate holder")</p> | <p>See The Agreements at § 1 ("LESSEE agrees to lease from LEASING COMPANY a taxicab with the name, insignia, certificate number, and painted in the approved color scheme of LEASING COMPANY").</p> |  |
| <p>NAC 706.3753(1)(h)(2) ("Specifically state that the taxicab provided pursuant to the lease agreement . . . Is in a good mechanical condition that will meet the requirements for operating taxicabs set forth by this State or the county or municipality in which the taxicab will be operated.")</p> | <p>See The Agreements at § 3 ("LEASING COMPANY is the owner of the Leased Taxicab, which is in good mechanical condition and meets the requirements for operating taxicabs in the location where the taxicab will be operated.")</p> |  |
| <p>NAC 706.3753(1)(i) ("Specifically state that the independent contractor shall not transfer, assign, sublease or otherwise enter into an agreement to lease the taxicab to another person.")</p> | <p>See The Agreements at § 6 ("LESSEE shall not transfer, assign, sublease, or otherwise enter into an agreement to lease the taxicab to another person. . .")</p> |  |
| <p>NAC 706.3753(1)(j)(1) ("Specifically state that the independent contractor . . . Shall not operate the taxicab for more than 12 hours in any 24-hour period")</p> | <p>See The Agreements at § 5 ("LESSEE shall not, however, operate the taxicab for more than 12 hours in any 24-hour period.")</p> |  |


| | | |
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| <p>NAC 706.3753(1)(j)(2) ("Specifically state that the independent contractor . . . Shall return the taxicab to the certificate holder at the end of each shift to enable the certificate holder to comply with the provisions of NAC 706.380.")</p> | <p>See The Agreements at § 3 ("LESSEE shall return the taxicab to LEASING COMPANY at the end of each 12 hour period to enable LEASING COMPANY to comply with the provisions of NAC § 706.380.")</p> |  |
|--|---|---|

EXHIBIT 9

EXHIBIT 9

YELLOW CAB COMPANY OF RENO, INC.
TAXICAB LEASE AGREEMENT

THIS TAXICAB LEASE AGREEMENT ("Lease") made this 1 day of September, 2005, between YELLOW CAB COMPANY OF RENO, INC., a Nevada corporation, with its principal place of business at 455 Gentry Way, Reno, Nevada (hereinafter referred to as "LEASING COMPANY"), and Timothy F. Willis an independent contractor with his/her principal residence located at 250 Booth St. Apt D, hereinafter referred to as "LESSEE").

WHEREAS, LEASING COMPANY is an intrastate for hire common motor carrier operating under a Certificate of Public Convenience and Necessity CPCN 1014 issued by the Transportation Services Authority of Nevada;

WHEREAS, LEASING COMPANY is the owner of taxicabs and other vehicles;

WHEREAS, LESSEE desires to lease from LEASING COMPANY a vehicle and other services under the term and conditions herein set forth; and

WHEREAS, the parties desire to confirm their understanding in writing.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the parties agree as follows:

1. LEASE. LESSEE agrees to lease from LEASING COMPANY a taxicab with the name, insignia, certificate number, and painted in the approved color scheme of LEASING COMPANY (the "Leased Taxicab"). At the commencement of this lease, LEASING COMPANY shall deliver the Leased Taxicab in good working order, properly licensed, and with a full tank of fuel. LEASING COMPANY shall equip the Leased Taxicab with a radio, taximeter, identifying decals, seals and other equipment required by applicable federal, state, and local laws and ordinances (collectively the "Regulatory Authorities"). LEASING COMPANY shall maintain and pay for all operating licenses, taxes, and fees on the Leased Taxicab.

LEASING COMPANY [Signature]

LESSEE [Signature]

2. TAXICAB FEES, LICENSING. LEASING COMPANY shall maintain and pay for all operating licenses, taxes, and fees on the Leased Taxicab. At times other than Lease Periods (as defined below), LEASING COMPANY may either use the Leased Taxicab itself or lease the Leased Taxicab to other lessees.
3. OWNERSHIP, MAINTENANCE, AND REPAIR. LEASING COMPANY is the owner of the Leased Taxicab, which is in a good mechanical condition and meets the requirements for operating taxicabs in the location where the taxicab will be operated. Regularly scheduled maintenance shall be LEASING COMPANY'S responsibility; provided, however, in order to keep the Leased Taxicab in good mechanical condition, LESSEE shall inspect the Leased Taxicab at the beginning of each Lease Period and report any condition requiring repair or maintenance to LEASING COMPANY. LESSEE shall return the taxicab to LESSOR at the end of each shift to enable LESSOR to comply with the provisions of NAC § 706.380. All repairs will be done in a timely fashion and a file will be maintained by LEASING COMPANY for records concerning the maintenance of the taxicab.
4. INSURANCE. Insurance or self insurance will be provided by LEASING COMPANY in an amount sufficient to meet regulatory requirements.
5. LEASE PERIOD. Each period LESSEE uses the Leased Taxicab shall be deemed a separate Lease Period ("Lease Period"). Each Lease Period will be determined by LESSEE and LEASING COMPANY and will be indicated on Exhibit "A". LESSEE shall not, however, operate the taxicab for more than 12 hours in any 24-hour period. This Lease shall serve as a master lease agreement, which will govern each and every Lease Period.
6. ASSIGNMENT AND SUBLEASING. LESSEE shall not transfer, assign, sublease, or otherwise enter into an agreement to lease the taxicab to another person, nor shall LESSEE'S rights be subject to encumbrance or subject to the claims of his or her creditors.
7. OPERATING AUTHORITY. LEASING COMPANY is a certified carrier and services provided by LESSEE are regulated by appropriate regulatory authorities. LESSEE'S use of

LEASING COMPANY

LESSEE

the Leased Taxicab shall be in a manner authorized by LEASING COMPANY'S certificate to operate and the LEASING COMPANY'S Tariff.

8. RENTAL FEE. In consideration of the use of the Leased Taxicab, LESSEE agrees to pay a Rental Fee to LEASING COMPANY in the amount set forth on Exhibit A attached hereto and incorporated herein by reference. LESSEE understands that the Rental Fee is determined based on the maximum mileage listed on Exhibit A and agrees to pay additional Rental Fees, as listed on Exhibit A, for any miles in excess of the agreed upon maximum mileage. Any additional Rental Fees shall be paid to LEASING COMPANY by LESSEE prior to the beginning of the next Lease Period after incurring such additional Rental Fee. If, for any reason, except as otherwise provided in Paragraph 2 above, LESSEE cannot or does not complete the Lease Period, LESSEE shall not be entitled to any refund of all or any portion of the Rental Fee.
9. SECURITY DEPOSIT. In addition to the rental payment, LESSEE will pay to LEASING COMPANY, at or before commencement of the initial Lease Period, a security deposit in the amount of One Thousand Dollars (\$1,000.00), in payments as determined by LEASING COMPANY. The security deposit shall be maintained at One Thousand Dollars (\$1,000.00) throughout the term of this Lease and any renewals thereof. LEASING COMPANY shall have the right, prior to or upon termination of this Lease, to deduct from said security deposit any amount due to LEASING COMPANY, including, but not limited to, delinquent lease rental charges, unauthorized repairs and maintenance, unpaid traffic fines, damages other than ordinary wear and tear, and unauthorized charges to LEASING COMPANY. Said security deposit must be maintained by the LEASING COMPANY in an account separate from the carrier's operating account. Said security deposit, less proper deductions, shall be returned to LESSEE not later than thirty (30) days after the termination of this Lease. Pursuant to NAC 706.3752, any deductions must be itemized and in writing, and supported by receipts that evidences the repairs to the amount taxicabs in an amount equal to the

LEASING COMPANY 

LESSEE 

amount deducted, and provided to the LESSEE upon return of the remaining security deposit.

10. RELATIONSHIP. Neither Party is the partner, joint venturer, agent, or representatives of the other Party. LESSEE is an independent contractor. LEASING COMPANY and LESSEE acknowledge and agree that there does not exist between them the relationship of employer – employee, principal - agent, or master - servant, either expressed or implied, but that the relationship of the parties is strictly that of lessor - lessee, the LESSEE being free from interference or control on the part of LEASING COMPANY in the operation of the Leased Taxicab. LESSEE acknowledges that:

- a. He or she is not eligible for federal or state unemployment benefits.
- b. LEASING COMPANY is not responsible for withholding federal or state income taxes, or any other taxes, but LESSEE will be liable for payment of those taxes.
- c. LEASING COMPANY is not responsible for withholding or paying, in any way, contribution for taxes under the Federal Insurance Act, and LESSEE will be liable for those and all other taxes.
- d. LEASING COMPANY agrees to furnish only liability insurance on the Leased Taxicab, in a sum not less than required by law, and LEASING COMPANY shall not be responsible nor liable in any way for any injury to LESSEE resulting from the use or operation of such taxicab.
- e. LEASING COMPANY is a certified carrier and services provided by LESSEE are regulated by appropriate authorities. LESSEE'S use of the Leased Taxicab shall be in a manner authorized by LEASING COMPANY'S certificate to operate the Leased Taxicab and LEASING COMPANY'S Tariff.

11. TRIP SHEET. At the end of each week, LESSEE must provide the LEASING COMPANY with the completed trip sheets for that shift.

12. DAILY VEHICLE INSPECTION. In order to keep the Leased Taxicab in good mechanical

LEASING COMPANY 

LESSEE 

condition, LESSEE shall inspect the Leased Taxicab at the beginning and end of each shift and document on a daily inspection sheet to be submitted daily and report any condition requiring or maintenance to LEASING COMPANY.

13. NO PERSONAL USE. The Leased Taxicab is for commercial use only and may not be utilized for the personal use of the LESSEE.
14. REPLACEMENT VEHICLE. In the event that any repair or maintenance takes more than eight (8) hours in any week, LEASING COMPANY shall attempt to provide a replacement Leased Taxicab, if available. If a replacement Leased Taxicab is not available, then LESSEE shall be entitled to a pro-rata refund of the Rental Fee, if applicable. Repairs and maintenance on Leased Taxicabs must be performed at LEASING COMPANY'S facilities, unless prior written authorization is obtained from Leasing Company to have the repairs and maintenance done elsewhere. LESSEE shall be responsible for the cost of unauthorized repairs and/or maintenance, and for all damages caused thereby.
15. REGULATORY AUTHORITIES. This Lease does not relieve LEASING COMPANY from its duties and responsibilities under N.R.S. Chapter 706 or NAC Chapter 706. LESSEE and LEASING COMPANY are subject to the jurisdiction of the Transportation Services Authority of Nevada and shall comply with all federal rules, regulations, ordinances, administrative codes, health and safety provisions and statutes in the operation of the Leased Taxicab. In the event of a violation of such laws, rules, regulations, ordinances, administrative codes, health and safety provisions and statutes, the Transportation Services Authority of Nevada may take enforcement action against LESSEE and LEASING COMPANY. Both the LESSEE and LEASING COMPANY are subject to all laws and regulations relating to the operation of a taxicab which have been established by the Transportation Services Authority (as set forth in Nevada Revised Statutes and Nevada Administrative Code Chapters 706) and other regulatory agencies and LESSEE understands that a

LEASING COMPANY 
LESSEE 

violation of those laws and regulations will breach the agreement.

16. MEDICAL AND DRIVING HISTORY. To ensure compliance with the provisions of N.A.C. 706.3751, before this LEASE AGREEMENT can be deemed approved, the LESSEE must provide to the LEASING COMPANY:

- (a) A certificate from a licensed physician which is dated not more than 90 days before the date on which LESSEE begins to lease a taxicab from the certificate holder pursuant to N.R.S. 706.473, which demonstrates that the employee or independent contractor is physically qualified to operate commercial motor vehicle in accordance with 49 C.F.R. § 391.43; and
- (b) A copy of the driving record of the LESSEE obtained from the Department which demonstrates that the LESSEE has not, within the past three (3) years:
 - i. Been convicted of driving under the influence of an intoxicating liquor or a controlled substance;
 - ii. Been convicted of careless or reckless driving;
 - iii. Been convicted of failing to stop and remain at the scene of an accident; or
 - iv. Failed to keep a written promise to appear in court of any offense.

17. MAINTENANCE OF RECORDS. The LEASING COMPANY must maintain driver qualification files (for the LESSEE), trip sheets (for the LESSEE), and vehicle maintenance files (for the Leased Taxicab) as required pursuant to the provisions of N.R.S. and N.A.C. Chapters 706.

18. WARRANTY. LESSEE warrants that he or she possesses, and at all times during the term of this Lease, and any renewals or extensions hereof, shall possess, the proper driver's license to lawfully operate a taxicab as required by the regulatory authorities. LESSEE agrees to comply with all local, state, and federal laws and ordinances of Regulatory Authorities relating to the operation of motor vehicles and taxicabs. LESSEE is responsible for the payment of all parking and traffic violations, fines and penalties, including any towing,

LEASING COMPANY 

LESSEE 

booting, or impound fees or charges, as a result of LESSEE'S use of the Leased Taxicab. LESSEE agrees to promptly pay or contest, and to indemnify and hold harmless LEASING COMPANY from such fines, penalties, towing, booting or impound fees or charges.

LESSEE warrants that only he or she shall drive the Leased Taxicab during the Leased Period, unless LEASING COMPANY authorizes, in writing, another person to drive the Leased Taxicab.

19. REPORT OF ACCIDENTS/CRIMES. LESSEE must give LEASING COMPANY, through LEASING COMPANY'S authorized agents and/or employees, immediate radio notice of a violent crime (in which the LESSEE is the victim) or any accident, loss or claim in which LESSEE is involved, or as soon thereafter as is reasonably possible.
20. HOURS OF OPERATION. The LESSEE shall not operate the taxicab for more than 12 hours in any 24-hour period.
21. LEASED TAXICAB RETURN. At the end of each Lease Period, LESSEE agrees to return the Leased Taxicab at the agreed time, with a full tank of gas, to LEASING COMPANY'S premises in the same condition in which it was received by LESSEE, except for normal wear and tear. LESSEE agrees to pay an additional charge for late return, as outlined on Exhibit A, and to compensate LEASING COMPANY for any damages to the Leased Taxicab.
22. TERMINATION. LEASING COMPANY shall have the right, but not the obligation, to immediately terminate this Lease at any time in the event that LESSEE:
 - w. Fails to pay the Rental Fee or any fines, penalties, towing, booting, or impounded fees or charges;
 - x. Fails to maintain a proper drivers license;
 - y. Fails to timely report any accident;
 - z. Encumbers, assigns, subleases, or otherwise enters into an agreement to lease the Leased Taxicab to another person;
 - aa. Fails to return the Leased Taxicab in good condition with a full tank of gas;

LEASING COMPANY Ad

LESSEE JW

- bb. Violates any rule or regulation of the Public Service Commission of the State of Nevada;
- cc. Violates any rule or regulation of the Airport Authority of Washoe County;
- dd. Drives the Leased Taxicab under the influence of drugs and/or alcohol;
- ee. Fails to submit to a breath or urine test, upon objective facts, that LESSEE is under the influence of drugs and/or alcohol;
- ff. Fails to sign the ACKNOWLEDGMENT at the beginning of each Lease Period;
- gg. Is convicted of any felony or misdemeanor for driving under the influence of drugs and/or alcohol;
- hh. Gives one (1) day's notice of intention not to enter into an additional Lease Period; or
- ii. Allows any unauthorized person to drive the Leased Taxicab during the Lease Period.

Notwithstanding any of the above causes for termination, LEASING COMPANY shall have the right to terminate, at will, this Lease upon giving one (1) day's written notice to LESSEE of LEASING COMPANY'S intention to terminate the Lease. Termination hereunder shall be effective one (1) day after giving said written notice.

A failure by LEASING COMPANY to terminate the Lease for LESSEE'S violation of one or more of the above grounds for termination of this Lease shall not constitute a waiver of LEASING COMPANY'S right to terminate this Lease for any subsequent violations on the same or other grounds by LESSEE.

- 23. TRANSPORTATION SERVICES AUTHORITY APPROVAL. A LEASING COMPANY'S lease agreement is not deemed effective until approved by the Transportation Services Authority. This Lease shall be deemed to be modified, as necessary, to conform to said statutes and regulations and changes thereto.
- 24. RETENTION OF LEASE AGREEMENT. The LEASING COMPANY must retain copies of each lease agreement for a minimum of three years.
- 25. ATTORNEY'S FEES. In the event of any dispute between the LESSEE and LEASING

LEASING COMPANY 
 LESSEE 

COMPANY relating to this Lease, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees and other reasonable costs incurred by the prevailing party in connection therewith and in pursuing and collecting remedies, relief and damages.

26. GOVERNING LAW. This agreement shall be interpreted in accordance with an through application of the laws of the State of Nevada.
27. RADIO SERVICE. LEASING COMPANY shall make available to LESSEE radio dispatching services as a means of referring prospective passengers. LESSEE must pick up passengers referred through such radio dispatch if LESSEE chooses to utilize dispatch service. However, LESSEE has no obligation to respond to radio calls if LESSEE chooses not to utilize dispatch service. LESSEE is not obligated to report his location to LEASING COMPANY or to remain in any specific place at any fixed hours.
28. ARBITRATION. Any dispute or controversy arising between the parties involving the interpretation or application of any provision of this agreement, dealing with the performance of this agreement, or in any way arising out of this agreement, shall be submitted to binding arbitration to occur in Reno, Nevada. In the event of a demand for arbitration, the parties shall each select an arbitrator and the two so selected shall in turn select a third, the three of whom shall act as an arbitration panel. All proceedings thereafter shall be conducted in accordance with the procedural rules of The American Arbitration Association. The decision of the arbitration panel shall be binding upon the parties. The expense of the arbitration proceedings shall be shared equally between the parties.
29. MISCELLANEOUS. It is understood between LEASING COMPANY and LESSEE that it is in each party's best interest to maintain the reputation and goodwill of LEASING COMPANY and LESSEE. In this regard, cleanliness of Leased Taxicab, courtesy, personal grooming, dress, appearance, safety, and observance of traffic laws are to each party's mutual

LEASING COMPANY

LESSEE

benefit. It is also understood between LEASING COMPANY and LESSEE that a file will be maintained by LEASING COMPANY which contains LESSEE'S qualifications to drive the taxicab.

30. COMPLETE AGREEMENT. This Lease constitutes the entire lease, agreement, and understanding between the parties as to the subject matter hereto, and merges all prior discussions between them. None of the parties shall be bound by any conditions, definitions, warranties, understandings or representations other than as expressly provided herein.

Executed in duplicate this 1 day of September, 2005.

LEASING COMPANY:

YELLOW CAB COMPANY OF RENO, INC.

By: *Sagun Upkunding*

Its: *Yellow Cab Co*

LESSEE:

Jimmy F. Willis

250 BOOTH ST. APT.

Reno, Nev.

LEASING COMPANY *for*

LESSEE *for*

EXHIBIT 10

EXHIBIT 10

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

MARK G. SIMONS, ESQ.
Nevada Bar No. 5132
MSimons@SHJNevada.com
RICARDO N. CORDOVA, ESQ.
Nevada Bar No. 11942
RCordova@SHJNevada.com
SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, Nevada 89509
Telephone: (775) 785-0088
*Attorneys for Defendants Reno Cab Company, Inc.
and Roy L. Street, dba Capital Cab*

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

DEPT. NO.: 10

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

Plaintiffs,

vs.

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

Defendant.

CASE NO.: CV15-01385

DEPT. NO.: 10

**DECLARATION OF RICARDO CORDOVA IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

1 Ricardo Cordova hereby deposes and declares as follows:

2 1. I am over the age of 18 and I make this declaration under penalty of perjury
3 under the laws of the United States and the State of Nevada. I could and would
4 competently testify about the information this declaration contains.

5 2. I am an attorney licensed to practice law in the State of Nevada, and am an
6 associate at Simons Hall Johnston PC. I represent Defendants Reno Cab Company, Inc.
7 ("Reno Cab") and Roy L. Street, dba Capital Cab ("Capital Cab") (collectively, when
8 possible, "Reno and Capital Cab"), in these matters.

9 3. This declaration is submitted in support of the Motion for Summary
10 Judgment ("Motion") in the above-captioned matter by Reno and Capital Cab.

11 4. Exhibit 2 to the Motion is a true and correct copy of the Certificate of Public
12 Convenience and Necessity ("CPCN") issued by the Nevada Transportation Authority
13 ("NTA") to Reno Cab.

14 5. Exhibit 7 to the Motion are true and correct excerpts of Jeff Myers'
15 Responses to the Request for Admissions.

16 6. Exhibit 8 to the Motion is a true and correct copy of a table I created
17 detailing the Agreements' provisions and the corresponding NRS and/or NCA Chapter
18 706 statutory requirement.

19 7. Exhibit 9 to the Motion is a true and correct copy of the Yellow Cab
20 Company of Reno, Inc. Taxicab Lease Agreement.

21 I, Ricardo Cordova, do hereby swear under penalty of perjury under the laws of the
22 State of Nevada and the United States of America that the foregoing assertions are true
23 and correct to the best of my knowledge.

24 DATED this 30th day of May, 2019.

25
26 
27 RICARDO CORDOVA
28

1 **3880**

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

10 LEON GREENBERG, ESQ., SBN 8094
11 DANA SNIEGOCKI, ESQ., SBN 11715
12 Leon Greenberg Professional Corporation
13 2965 South Jones Blvd- Suite E3
14 Las Vegas, Nevada 89146
15 (702) 383-6085
16 (702) 385-1827(fax)
17 leongreenberg@overtimelaw.com
18 dana@overtimelaw.com
19 Attorneys for Plaintiffs

20 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
21
22 IN AND FOR THE COUNTY OF WASHOE

23 JEFF MYERS, Individually and on
24 behalf of others similarly situated,
25
26 Plaintiffs,

Case No.: CV 15-01359
Dept.: 10

27 vs.

28 RENO CAB COMPANY, INC.,
Defendant.

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

Case No.: CV 15-01385
Dept.: 10

vs.

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

PLAINTIFFS' RESPONSE IN
OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

1 Plaintiffs, through their attorneys, Law Offices of Curtis B. Coulter, P.C. and
2 Leon Greenberg Professional Corporation, hereby file this response in opposition to the
3 motion of defendants for summary judgment.
4

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **SUMMARY OF RESPONSE**

7 **NRS 706.473 authorizes the leasing of certain taxicabs to**
8 **“independent contractors” but does not define who is or**
9 **is not an “independent contractor” for minimum wage purposes.**

10 At page 16 of their motion, defendants’ counsel sums up the basis for their
11 motion in a single sentence: “Stated another way, NRS 706.473 defines a specific and
12 unique relationship that the Legislature has stated is, as a matter of law, an independent
13 contractor relationship.” While defendants certainly wish that was true, it is not. The
14 Nevada’s Legislature in NRS 706.473 has not defined *who* is an “independent
15 contractor” for minimum wage purposes, only that *certain* “independent contractors”
16 may enter into taxicab leases.
17

18 The Nevada Transportation Authority’s (the “NTA’s”) approval of the form of
19 defendants’ taxicab leases is irrelevant to this case. The Nevada Legislature did not
20 grant the NTA the power, by approving a particular form of taxi cab lease agreement,
21 to determine if a particular taxi driver “lessee” was an “independent contractor” or an
22 “employee” for minimum wage purposes. There is no ambiguity in the legislative
23 scheme susceptible to defendants’ desired interpretation of NRS 706.473.
24

25 NRS 706.473 only confers upon the defendants a right, upon the NTA’s
26 approval of their lease agreements, to operate taxicabs in compliance with Nevada’s
27 taxicab regulatory scheme, as set forth in NRS Chapter 706. The NTA’s approval of
28

1 those leases shields defendants from adverse actions by the NTA arising from such
2 taxicab operation (such as a revocation of the defendants' privileged license to operate
3 taxicabs). It does not immunize the defendants from any liability for minimum wages
4 imposed upon them as "employers" of such taxicab lessees. That issue must be
5 resolved by reference to the precedents dealing with the Nevada Constitution's
6 Minimum Wage Amendment (the "MWA") or Nevada's statute, NRS 608.0155,
7 defining who is an "employee" or an "independent contractor" for the purposes of
8 Nevada's laws governing the obligations of an employer to pay legally required wages.
9

10 **RELEVANT BACKGROUND**

11
12 **The Court has previously ruled it should apply the criteria set forth**
13 **in NRS 608.0155 and not the longstanding "economic realities" test**
14 **of employment applied in *Terry v. Sapphire Gentlemen's Club*.**

15 In its decision of June 12, 2017 (Ex. "A") the Court denied defendants' motion
16 for summary judgment. In doing so it rejected plaintiffs' claim that the "economic
17 realities" test of employment should govern this case, as in *Terry v. Sapphire*
18 *Gentlemen's Club*, 336 P.3d 951 (Nev. Sup. Ct. 2014), that case relying on a long line
19 of cases dealing with the federal minimum wage such as *Goldberg v. Whitaker House*
20 *Coop., Inc.*, 366 U.S. 28, 32-33 (1961). Instead this Court ruled that it would apply
21 NRS 608.0155, a 2015 statute that directs the consideration of certain enumerated
22 factors and that this Court found overrides *Sapphire*.
23

24 Plaintiffs disagree with the Court's June 12, 2017 decision for one simple
25 reason: *Sapphire* was an interpretation of Nevada's Constitution (Article 15, Section
26 16, the minimum wage amendment, or "MWA"). The MWA does *not* grant Nevada's
27 Legislature the power to restrict its reach. This Court was correct, in that *Sapphire*
28

1 reached its conclusion as to what constituted an “employee” for MWA purposes based
2 upon the statutory definition (or lack thereof) of “employee” in 2014. Plaintiffs’ do not
3 believe the Nevada Legislature had the power to re-define the term “employee” under
4 the MWA in 2015 after *Sapphire* ruled on its meaning in 2014 based upon what the
5 term meant when the MWA was enacted by the voters in 2006 (though it was free to do
6 so for purposes *other* than the MWA). Presumably the Court has duly considered that
7 issue and plaintiffs do not (unless invited by the Court) seek to burden the Court with a
8 further detailed briefing on the same.
9

10 The Court, in its decision of June 12, 2017 carefully analyzed the record before
11 it, also considering the impact of NRS 706.473, and held it could not, applying NRS
12 608.0155, grant summary judgment on the “employee” issue presented by this case.
13 Defendants’ current motion presents no reason for the Court to change its decision.
14

15 ARGUMENT

16 17 **I. THE COURT HAS ALREADY CORRECTLY HELD THE** 18 **TERMS OF THE LEASES CANNOT, BY THEMSELVES,** 19 **DISPOSE OF THE PLAINTIFFS’ CLAIMS UNDER THE MWA**

20 At page 13, line 15 through page 14, line 14, of its June 12, 2017 decision the
21 Court, quite correctly, found it could not resolve the plaintiffs’ “employee” status by
22 reliance upon the lease agreement. As it observed, “...the MWA states its protections
23 ‘may not be waived by agreement between an individual employee and an employer.’ ”
24 It recognized that the Nevada Supreme Court, in *Sapphire*, also made clear that given
25 the remedial nature of the MWA the sort of “self-interested disclaimers” of any
26 employment relationship contained in the leases created by defendants could not be
27 controlling. It correctly concluded that “[a]s neither the MWA nor the Supreme Court
28

1 finds the language of the Lease to be dispositive, the Court cannot rely solely upon the
2 language of the Lease to create an independent contractor relationship.”

3 Defendants’ argument that the Court somehow failed to properly consider the
4 impact of NRS 706.473 has no basis. The Court held that the mere terms of an
5 agreement (be it termed an independent contractor agreement or “taxi lease”
6 agreement) could not be dispositive of the “employee” status issue in light of the
7 MWA’s “non-waiver” requirements and *Sapphire*. It held that the “employee status”
8 issue must be resolved, pursuant to the Legislature’s intention, under the guidelines set
9 forth in NRS 608.0155. That the defendants’ leases were approved by the NTA
10 pursuant to NRS 706.473 does not impact the Court’s reasoning. The Court’s Order of
11 June 12, 2017 found that the Legislature, by enacting NRS 608.0155, made that statute,
12 not NRS 706.473, not *Sapphire*, and not the terms of any lease agreements, the
13 controlling standard for the “employee status” issue presented by this case.
14
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18 **II. *YELLOW CAB OF RENO V. SECOND JUDICIAL DIST. CT DID***
19 ***NOT FIND COMPLIANCE WITH NRS 706.473 MAY CREATE***
20 ***AN “INDEPENDENT CONTRACTOR” RELATIONSHIP***
21 ***FOR MINIMUM WAGE PURPOSES***

22 *Yellow Cab of Reno v. Second Judicial Dist. Ct.*, 262 P.3d 699, 704 (Nev. Sup.
23 Ct. 2011) held that Nevada has yet to decide whether compliance with NRS 706.473
24 creates an independent contractor relationship for purposes of common law *respondeat*
25
26
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1 superior liability.¹ That question remains unanswered, but more importantly, in respect
2 to this case, its answer is irrelevant.

3 As *Yellow Cab of Reno* recognized, “[t]raditionally, a determination as to
4 whether an individual is an employee or an independent contractor for the purposes of
5 respondeat superior liability turns on the degree of control the purported employer
6 exercises over the individual.” *Id.* *Sapphire* held employer status for minimum wage
7 purposes is (or at least was) not evaluated under a “degree of control” analysis but
8 under an “economic realities” standard. This Court has held *Sapphire* was modified by
9 NRS 608.0155 and such statutory standard must control this case.
10

11
12 Defendants’ reliance on *Yellow Cab of Reno* is akin to relying on the existence
13 of a salt water ocean to prove that fresh water lakes also exist. That Nevada’s Courts
14 have yet to address whether the creation of an “independent contractor” relationship
15 under NRS 706.473 may modify the defendants’ liability under the *respondeat*
16 *superior* doctrine has nothing to do with their liability for minimum wages.
17

18 **III. THE NEVADA LEGISLATURE HAS NOT GIVEN**
19 **THE NTA IN NRS 706.473 THE POWER TO DETERMINE**
20 **WHETHER AN INDEPENDENT CONTRACTOR**
RELATIONSHIP EXISTS FOR MINIMUM WAGE PURPOSES

21 **A. The NTA’s approval of defendants’ leases under NRS 706.473 does**
22 **not render plaintiffs “independent contractors” under the MWA.**

23 NRS 706.473 says nothing about the NTA determining *who* is properly
24

25
26 ¹ The Supreme Court in denying writ relief in *Yellow Cab of Reno* held that
27 “...the district court should have determined whether a statutorily recognized
28 independent contractor relationship, established through compliance with NRS
706.473 and the regulations promulgated in accordance with NRS 706.475, would
allow *Yellow Cab* to avoid liability under a respondeat superior analysis.”

1 considered an “independent contractor” for the purposes of the MWA or anything else.
2 All it does is grant the NTA (1) the power to approve the form of a taxicab lease; and
3 (2) grant taxicab owners the power, once those leases are so approved by the NTA, to
4 lease their taxi cabs to independent contractors. It does not grant the NTA the power
5 to determine *who* is, or is not, actually operating a taxi cab as an “independent
6 contractor” for minimum wage purposes. Or any other purpose. Defendants
7 continually misrepresent the power granted to the NTA by NRS 706.473 as one to
8 define “independent contractor agreements.” That terminology is *not* in the statute.
9 Rather, the statute provides for the NTA to approve of, and delineate the terms of, “a
10 lease agreement” with an independent contractor.
11

12
13 The NTA is free to require taxicab lease terms that will, if complied with, tend to
14 establish a taxicab lessee is an independent contractor under the MWA. Or require
15 terms that will tend to establish they are an employee. But in either event it is the lease
16 terms themselves (if complied with) that may influence the resolution of the employee
17 or independent contractor issue. The NTA’s mere act of approving the lease does not
18 render the taxi lessee an independent contractor. Or an employee. Nor is there one
19 iota of evidence that the NTA has ever considered its action of approving a form of taxi
20 lease agreement to be determinative, for all purposes and as a matter of law, as to the
21 lessee’s status as an “independent contractor.”
22

23
24 Even if the NTA believes it has the power to define a taxi lessee as an
25 “independent contractor” as a matter of law for MWA purposes, such an assertion of
26 authority by it has no weight. “[A]n agency’s interpretation of a statute is persuasive
27 when the statute is one the agency administers.” *Nev. Pub. Empls. Ret. Bd. v. Smith*,
28

1 320 P.3d 560, 565 (Nev. Sup. Ct. 2013). The NTA does not administer the MWA, it
2 has no power over, or expertise in, Nevada’s labor laws. Its purported action (really
3 just an action asserted by defendants, there is no proof it has even considered taking
4 such action) of classifying the plaintiffs as “independent contractors” is entitled to no
5 deference.
6

7
8 **B. No basis exists to conclude the Legislature in NRS 706.473**
9 **intended to grant the NTA the power to determine who is**
10 **an independent contractor for minimum wage purposes.**

11
12 **1. Legislative schemes often treat the same persons as**
13 **employees and independent contractors for different purposes.**

14 Defendants proceed from the assumption that because the NTA has (arguably)
15 determined the plaintiffs to be independent contractors within the purview of what the
16 NTA regulates under NRS 706.473 (taxicab leases) it has also determined they are
17 independent contractors for all purposes. Such an assertion by defendants ignores that
18 the plaintiffs can be independent contractors for the purposes of the NTA and
19 employees for the purposes of the MWA.

20 The status of an individual as an independent contractor under the common law
21 (or by extension under one statutory scheme) and simultaneously as an employee under
22 a specific statutory scheme, has long been recognized. *See, Rutherford Food Corp. v.*
23 *McComb*, 331 U.S. 722, 726-28 (1947) citing Court of Appeals decision 156 F. 513 at
24 516-17 (Status of workers as independent contractors under the common law not
25 controlling and they were employees under the federal minimum wage law; the Court
26 of Appeals noting it is “immaterial” that the workers were independent contractors for
27 “other purposes.”) Nevada for certain purposes also treats independent contractors as
28

1 employees. *See, Hays Home Delivery v. Empls Ins. Co.*, 31 P.3d 367, 369-370 (Nev.
2 Sup. Ct. 2001) (Independent contractors in certain circumstances are employees for
3 purposes of Nevada's workers compensation system, as established by *Meers v.*
4 *Haughton Elevator*, 701 P.2d 1006 (Nev. Sup. Ct. 1985), and as also later codified by
5 statute).

7 **2. There is nothing in the legislative history, language, or statutory**
8 **scheme of NRS 706.473 supporting defendants' claim**
9 **the NTA has been empowered to define the plaintiffs as**
 independent contractors for minimum wage purposes.

10 The purpose of the taxicab industry regulations set forth in NRS Chapter 706 is
11 to regulate that industry in the public interest. The Nevada Legislature has seen fit to
12 regulate taxicab operators, such as the defendants, by granting them particular rights if
13 they comply with certain standards it has found are in the public interest. NRS
14 706.473 is part of a statutory scheme that says *nothing* about how, or if, taxicab drivers
15 are to be compensated in any particular fashion, if they are to be employees entitled to
16 minimum wages under a particular set of circumstances, or if they are to be treated as
17 independent contractors under any particular set of circumstances. To the extent that
18 the Nevada Legislature has cared to address those issues, it has done so in Nevada'
19 labor statutes, such as NRS 608.0155.

22 Nor is the legislative history of NRS 706.473 germane. It is not ambiguous and
23 its language (really its silence) is clear. It confers no power on the NTA to determine if
24 someone leasing a taxicab is an employee, or independent contractor, for minimum
25 wage purposes. But even if that legislative history was to be examined, it says
26 absolutely nothing about that issue. While defendants claim it does, and provide a
27 citation to the web address where such history can be found, they do not present any of
28

1 that actual history. That is because such history, Ex. “B” legislative committee report,
2 says nothing about whether, or how, persons driving taxi cabs should be classified for
3 minimum wage purposes. There is a statement from an industry lobbyist insisting,
4 without explanation, that enactment of NRS 706.473 was of vital importance to the
5 industry. That is the totality of the legislative history.
6

7 The payment of minimum wages was not even, hypothetically, an issue
8 considered by the Legislature in 1993 when NRS 706.473 was enacted. That is
9 because taxi drivers were exempt from Nevada’s minimum wage requirements in 1993
10 by application of NRS 608.250(2)(e). They only became entitled to minimum wages
11 when the MWA was passed by the voters in 2006.
12

13 **IV. THE “INDUSTRY BACKGROUND” AND “PUBLIC POLICY”** 14 **DO NOT SUPPORT DEFENDANTS’ CLAIMS**

15 Defendants repeatedly insist that the value of freedom of contract, public policy
16 considerations, and the “background” of the industry, all support their request for
17 summary judgment. They do not. Absent the existence of NRS 608.0155 the
18 otherwise controlling “economic realities” legal standard would require the granting of
19 summary judgment to the plaintiffs.
20

21 As the Court observed in its June 12, 2017 decision, and as found long ago in
22 cases such as *Rutherford Food*, minimum wage policies displace contrary policies
23 valuing the freedom of contract. Nor is there any public policy articulated in NRS
24 706.473, or elsewhere, supporting a holding that defendants should be able to avoid
25 minimum wage obligations by having the NTA approve certain forms of taxi cab lease
26 agreements.
27
28

1 Defendants' attempt to rely on some sort of "industry background" about the
2 "limited degree of control" exercised over taxi cab drivers is nonsensical. It is
3 precisely that issue (the factual disputes over defendants' degree of control over
4 operations, plaintiffs' risk of loss or profit, and so forth) that the Court found mandated
5 a denial of summary judgment under NRS 608.0155. The cases defendants cite,
6 *Saleem v. Corporate Transportation Group, Ltd.*, 854 F.3d 131, 139 (2nd Cir. 2017);
7 *Yellow Taxi Co. Of Minneapolis v. NLRB*, 721 F.2d 366 (D.C. Cir. 1983) and *SIDA of*
8 *Hawaii, Inc., v. NLRB*, 512 F.2d 354 (9th Cir. 1975), all involved a totality of the
9 circumstances examination of the relevant facts. In finding a lack of employee status
10 none relied upon a mere recital of independent contractor status in a form agreement.
11

12 The leading, and most analogous, case on the issue of taxi drivers as employees
13 or independent contractors under the "economic realities" test completely agrees with
14 plaintiffs' theory in this case. See, *NLRB v. O'Hare-Midway Limousine Service, Inc.*,
15 924 F.2d 692, 695 (7th Cir. 1991) (Lease limousine drivers *were* employees as leasing
16 company had "direct financial stake in the amount of fares collected"; distinguishing
17 the circumstances from *Yellow Taxi Co. Of Minneapolis* and similar cases where "the
18 cab companies earned the same income irrespective of any individual driver's fare
19 intake since the companies profited solely from lease contracts with the drivers."). In
20 this case the plaintiffs are employees because their lease agreements, directing the
21 payment of a \$5.00 per day fee plus 50% of the fares collected, were illusory. The
22 reality, whether measured under the "economic realities test" of *Sapphire* (which
23 would mandate summary judgment for the plaintiffs) or NRS 608.0155, was that they
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25
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1 were commission compensated employees with no separate financial or business
2 independence from the defendants.

3 **CONCLUSION**

4 For all the foregoing reasons, defendants' motion should be denied in its entirety.

5
6 Dated: July 8, 2019

7 LEON GREENBERG PROFESSIONAL CORP.

8
9 /s/ Leon Greenberg
10 Leon Greenberg, Esq.
11 Nevada Bar No. 8094
12 2965 S. Jones Boulevard - Ste. E-3
13 Las Vegas, NV 89146
14 Tel (702) 383-6085
15 Attorney for the Plaintiffs
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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030 and 603A.040

The undersigned does hereby affirm that the preceding document, Plaintiffs' Response in

Opposition to Defendants' Motion for Summary Judgment
(Title of Document)

filed in case number: 15-01359

☒ Document does not contain the personal information of any person

- OR -

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

(State specific state or federal law)

- or -

☐ For the administration of a public program

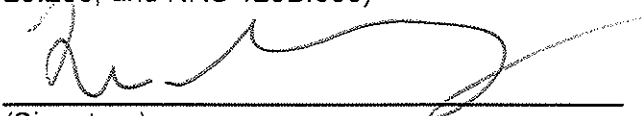
- or -

☐ For an application for a federal or state grant

- or -

☐ Confidential Family Court Information Sheet
(NRS 123.130, NRS 125.230, and NRS 125B.055)

Date: July 8, 2019


(Signature)

Leon Greenberg
(Print Name)

Plaintiffs
(Attorney for)

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Leon Greenberg Professional Corporation and that on this date I caused to be served a true copy of

PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

in this action by electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

RICARDO N. CORDOVA, ESQ.
SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., #F-46
Reno, Nevada, 89509
MARK G. SIMONS
RICARDO N. CORDOVA, Esq.

Attorneys for Reno Cab Company, Inc. and
Roy L. Street, dba Capital Cab

Dated: July 8, 2019

/s/ Sydney Saucier

Sydney Saucier

EXHIBIT "A"

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
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*,
327 P.3d at 521 (citing *W Reality Co. v. City of Reno*, 63 Nev. 330, 344, 172 P.2d 158, 165 (1946)).

17 As described *supra*, the MWA applies exclusively to “employees,” who are afforded
18 additional wage protection under the Amendment. Therefore, whether or not the MWA applies to
19 the Plaintiffs necessarily depends on whether or not the Plaintiffs are determined to be employees
20 or independent contractors.

21 **II. Independent Contractor Relationship**

22 The Response does not argue for the obviation of the legal concept of an independent
23 contractor. At oral argument, the Plaintiffs acknowledged the concept of an independent contractor
24 relationship would remain in Nevada despite the existence of the MWA. Rather, the Motion and
25 Response argue for the application of two separate tests to determine the presence or lack of
26 independent contractor relationships between the Plaintiffs and the Defendant. The Response
27 asserts the Court should apply the “economic realities test” adopted by the Supreme Court in *Terry*
28 *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:

27 ///

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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.*

The Court finds the following facts to be disputed:

- 26 1. Whether the Plaintiffs controlled their work schedules, namely: did the Plaintiffs or the
27 Defendant determine how many days the Plaintiffs worked, for how many hours the
28 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.

6
7 
8 _____
9 ELLIOTT A. SATTLER
10 District Judge

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Leon Greenberg, Esq.
2965 South Jones Blvd., Suite E3
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 567

EXHIBIT "B"

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION**

**Sixty-seventh Session
June 29, 1993**

The Senate Committee on Transportation was called to order by Chairman William R. O'Donnell, at 3:10 p.m., on Tuesday, June 29, 1993, in Room 226 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator William R. O'Donnell, Chairman
Senator Lawrence E. Jacobsen, Vice Chairman
Senator Mark A. James
Senator Leonard V. Nevin
Senator Thomas J. Hickey
Senator Lori L. Brown

COMMITTEE MEMBERS ABSENT:

Senator Joseph M. Neal, Jr. (Excused)

STAFF MEMBERS PRESENT:

Paul Mouritsen, Senior Research Analyst
Terri Jo Wittenberg, Committee Secretary

OTHERS PRESENT:

Robert Crowell, Lobbyist, Reno Cab Company
Larry Bell, Whittlesea Bell Company
Galen D. Denio, Professional Engineer, Commissioner, Nevada
Public Service Commission (PSC)
G. Barton Blackstock, Bureau Chief, Driver Control, Driver
License Division, Utah Department of Public Safety
Fredrick W. Harrell, Lobbyist, Motorcycle Dealers Association of
Nevada
Martin Bibb, Lobbyist, National Association of Independent
Insurers
Kimberly A. Bennion, Lobbyist, Nevada Division of California
State Automobile Association (CSAA)
James Jenks, Lobbyist, U.S. Inc.
Raymond L. Sparks, Chief, Registration Division, Nevada
Department of Motor Vehicles and Public Safety (DMV)
Charles Knaus, Property/Casualty Actuary, Nevada Department of
Insurance
Harvey Whittemore, Lobbyist

Chairman O'Donnell opened the hearing on Senate Bill (S.B.) 561.

Senate Bill 561: Authorizes certain persons who hold certificate of public convenience and necessity to lease taxicab to independent contractor.

Robert Crowell, Lobbyist, Reno Cab Company, testified in support of S.B. 561. Mr. Crowell said this bill will rectify a severe problem that the northern Nevada cab companies are experiencing at this time. He said one cab company is in Chapter 11 (bankruptcy) and has received authority from the bankruptcy court to lease their cabs to independent contractors. He added, currently, leasing taxicabs to independent contractors is not authorized by the rules and regulations of the Public Service Commission (PSC). Mr. Crowell said he was also in support of the amendment which limits this bill to counties with less than 400,000 people.

Larry Bell, Whittlesea Bell Company, stated he is in support of S.B. 561.

Senator Nevin said the above referenced amendment was agreed upon by all the parties involved.

Senator Brown said she has received letters from members of the professional cab drivers association and steel workers union. She asked if these groups are in support of the bill with the proposed amendment.

Senator Nevin replied the bill would not affect them since the amendment makes the bill effective only in counties whose population is less than 400,000 people.

Galen D. Denio, Professional Engineer, Commissioner, Nevada Public Service Commission (PSC), testified in regard to S.B. 561. Mr. Denio said the PSC held three workshops with the taxicab industry and, generally speaking, the workshops indicated there is widespread support for this type of a bill.

Chairman O'Donnell closed the hearing on S.B. 561 and opened the hearing on Assembly Bill (A.B.) 507.

Assembly Bill 507: Establishes system for verifying that owners of motor vehicles maintain mandatory proof of financial responsibility.

1 **3795**
MARK G. SIMONS, ESQ.
2 Nevada Bar No. 5132
MSimons@SHJNevada.com
3 RICARDO N. CORDOVA, ESQ.
Nevada Bar No. 11942
4 RCordova@SHJNevada.com
SIMONS HALL JOHNSTON PC
5 6490 S. McCarran Blvd., Ste. F-46
Reno, Nevada 89509
6 Telephone: (775) 785-0088
Attorneys for Defendants Reno Cab Company, Inc.
7 *and Roy L. Street, dba Capital Cab*

8
9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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

11
12 JEFF MYERS, individually and on behalf of
others similarly situated,

CASE NO.: CV15-01359

13 Plaintiff,

DEPT. NO.: 10

14 vs.

15 RENO CAB COMPANY, INC.,

16 Defendant.

17
18 ARTHUR SHATZ, and RICHARD FRATIS,
19 individually and on behalf of others similarly
20 situated,

CASE NO.: CV15-01385

21 Plaintiffs,

DEPT. NO.: 10

22 vs.

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

25 Defendant.

26 **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

27 Defendants Reno Cab Company, Inc. ("Reno Cab") and Roy L. Street, dba Capital
28

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

1 Cab ("Capital Cab") (collectively, when possible, "Reno and Capital Cab"), submit this
2 reply to their motion for summary judgment ("Motion") against Plaintiffs Jeff Myers, Arthur
3 Shatz, and Richard Fratis (collectively, when possible, "the Plaintiffs").

4 **I. INTRODUCTION.**

5
6 In order to withstand summary judgment, the Plaintiffs were required to come
7 forward with admissible evidence showing a genuine issue of material fact on their claims.
8 Instead, the Plaintiffs have offered up a tortured interpretation of NRS 706.473,
9 disregarded their independent contractor agreements (the "Agreements"), and ignored
10 key, undisputed facts. Those facts show that the Plaintiffs were independent contractors
11 pursuant to NRS 706.473 because Reno and Capital Cab did everything necessary to
12 comply with NRS 706.473 and the corresponding regulations promulgated by the Nevada
13 Transportation Authority ("NTA"). Indeed, the Plaintiffs' own Opposition confirms that they
14 do not have a shred of evidence showing otherwise. Accordingly, no genuine issue of
15 material fact exists, and Reno and Capital Cab are entitled to judgment as a matter of law.
16

17 **II. ARGUMENT.**

18 **A. THE PLAINTIFFS MISCONSTRUE THE COURT'S PRIOR ORDER.**

19 In the Plaintiffs' Opposition, they first argue that the Court "already" resolved the
20 issues raised in Reno and Capital Cab's Motion. See Opp'n at 4-5 (citing Order, dated
21 June 12, 2017). The Plaintiffs are mistaken.
22

23 To begin, the Plaintiffs overstate the scope of the issues the Court previously
24 reached. Reference to the Court's prior Order, which the Plaintiffs attached to their
25 Opposition, but evidently failed to read, makes this point clear. See Opp'n at Ex. A, at p.
26 13 n.6. The Court expressly stated that it "need not consider NRS 706.473 in depth when
27 NRS 608.0155 establishes the criteria for an independent contractor relationship." See *id.*
28

1 at p. 13 n.6. Thus, as Reno and Capital Cab explained in their Motion, the Court simply
2 did not undertake the analysis of NRS 706.473 required by *Yellow Cab of Reno v. District*
3 *Court*, 127 Nev. 583, 262 P.3d 699 (2011).

4 Further, the Plaintiffs' argument directly contradicts the representations they
5 recently made to this Court. The Parties not only agreed that there was a lack of a
6 definitive resolution regarding NRS 706.473, but that was the central basis for the Parties'
7 agreement and stipulation to vacate trial and stay proceedings. *See Stipulation and Order*
8 *Vacating Trial, Staying Proceedings, and Addressing Related Issues* (submitted by the
9 Parties on May 7, 2019, and approved by the Court on May 24, 2019). As the Parties
10 explained, "Defendants' anticipated motion will present threshold, and potentially case-
11 concluding, legal issues to the Court," including whether the Agreements established
12 independent contractor relationships under NRS 706.473. *See id.* at p. 2-3. The Parties
13 further explained that "[s]ince these issues are matters of law, vacating the trials so these
14 legal issues may be addressed is appropriate." *See id.* at 3.

15 Apparently, now that the Plaintiffs got everything they wanted (a stipulation to
16 partially certify this action, a stay, and an order vacating trial), they are no longer
17 interested in having the Court rule on NRS 706.473. The Plaintiffs are clearly playing fast
18 and loose with the Court. The Court should see through the Plaintiffs' games and proceed
19 as the Parties agreed and stipulated it should—namely, determining whether the
20 Agreements complied with NRS 706.473. As the Plaintiffs tacitly concede in their
21 Opposition, the evidence that the Agreements complied with NRS 706.473 is
22 overwhelming and undisputed. This is fatal to the Plaintiffs' claims.

23 **B. THE PLAINTIFFS' ATTEMPT TO MINIMIZE YELLOW CAB IS**
24 **MISGUIDED.**

25 Next, the Plaintiffs dismiss *Yellow Cab of Reno v. District Court* as "irrelevant,"
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28

1 arguing that Reno and Capital Cab's "reliance on *Yellow Cab* is akin to relying on the
2 existence of a salt water ocean to prove that fresh water lakes also exist." See Opp'n at 6.

3 Despite the Plaintiffs' flippant attempt to minimize *Yellow Cab*, it is an opinion of
4 the Nevada Supreme Court, and thus, is controlling. And, the court's holding was not
5 remotely as narrow as the Plaintiffs would have one believe. Although the Plaintiffs assert
6 that *Yellow Cab* merely stands for the proposition that an employment relationship
7 traditionally "turns on the question of control," they curiously make no mention of the fact
8 that the court went on to explain that NRS 706.473 supersedes¹ the traditional analysis:
9

10 NRS 706.473 specifically authorizes the licensing of a
11 taxicab to an independent contractor if the requirements of
12 that statute and any administrative regulations promulgated
13 in accordance with NRS 706.475 are met. Thus, under the
14 statutory scheme, ***the existence of this statutorily created***
15 ***independent contractor relationship turns not on the***
16 ***issue of control, but on whether all of the statutory and***
17 ***administrative requirements for creating such an***
18 ***independent contractor relationship have been***
19 ***established.***

20 See 127 Nev. at 591-92, 262 P.3d at 704 (emphasis added).

21 Also unmentioned by the Plaintiffs is the *Yellow Cab* court's express statement that
22 ***"the district court should have determined whether, in this case, all of the statutory***
23 ***and administrative requirements for creating an NRS 706.473 independent-contract***
24 ***relationship between [the driver] and Yellow Cab have been met."*** See *id.* at 592, 262

25 _____
26 ¹In the same vein that the Plaintiffs downplay *Yellow Cab*, in which the Nevada
27 Supreme Court made unmistakably clear that NRS 706.473 ***supersedes*** the typical
28 common law test for an employment relationship, the Plaintiffs downplay NRS 608.0155,
claiming it merely "modified" *Sapphire*, see Opp'n at 6:9. This is a prime example of the
intellectual dishonesty demonstrated in the Plaintiffs' Opposition.

1 P.3d at 705 (emphasis added). Thus, while the Court ultimately denied Yellow Cab's writ
2 petition on procedural grounds, it did so "without prejudice to the district court re-
3 evaluating the propriety of summary judgment regarding Yellow Cab's NRS 706.473-
4 based independent contractor argument in light of the analysis set forth in this opinion."
5
6 *See id.* at 593, 262 P.3d at 705.

7 This would be a bizarre instruction, if, as the Plaintiffs contend, the independent
8 contractor relationship created by NRS 706.473 has no effect outside of the narrow
9 confines of NRS Chapter 706. In short, the Plaintiffs' position is not only based on a
10 misreading of *Yellow Cab*, but it defies logic. And, as will be demonstrated below, the
11 limitation the Plaintiffs attempt to graft onto NRS 706.473 runs afoul of the plain language
12 of NRS 706.473, its legislative history, reason and public policy, and the principle that
13 statutes must be construed to avoid absurd results.

14
15 **C. THE PLAINTIFFS' CLAIMS ARE FORECLOSED BY NRS 706.473.**

16 **1. *The Agreements Indisputably Comply with NRS 706.473.***

17 Crucially, the Plaintiffs have offered nothing in their Opposition, let alone
18 admissible evidence, to rebut Reno and Capital Cab's showing that the Agreements
19 comply with NRS 706.473 and the NTA's corresponding regulations. Nor could they. The
20 evidence incontrovertibly establishes that Reno and Capital Cab did everything necessary
21 to comply with NRS 706.473 and the corresponding regulations promulgated by the NTA.
22 Further, Reno and Capital Cab presented undisputed evidence that the NTA reviewed,
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1 and specifically approved, the Agreements. Apart from the arguments of their counsel,²
2 the Plaintiffs offer nothing to contradict this evidence. In short, the Agreements
3 indisputably established independent contractor relationships under NRS 706.473.

4
5 **2. The Plaintiffs Misinterpret NRS 706.473.**

6 Instead of attempting to present evidence to create a genuine issue of material
7 fact, the Plaintiffs hang their hats exclusively on a misguided legal argument. The thrust of
8 the Plaintiffs' Opposition is that NRS 706.473, as they interpret it, has no effect outside of
9 the confines of NRS Chapter 706. See Opp'n at 6-12. Specifically, the Plaintiffs
10 repeatedly argue that although NRS 706.473 creates an independent contractor
11 relationship, this is not "for minimum wage purposes." See *id.* at 2:8, 2:16, 2:23, 6:20, 7:7,
12 7:25, 8:9, 8:18, 9:25-26.

13
14 At the outset, the Plaintiffs' position underscores that the only disputes between
15 the parties are purely legal issues that are appropriate for resolution on summary
16 judgment. The problem for the Plaintiffs is that the phrase "not for minimum wage
17 purposes" **does not appear anywhere in the text of NRS 706.473**. Tellingly, the
18 Plaintiffs avoid directly quoting the actual language of the statute. NRS 706.473 reads, in
19 full, as follows:

20
21 1. In a county whose population is less than 700,000,
22 a person who holds a certificate of public convenience and
23 necessity which was issued for the operation of a taxicab
24 business may, upon approval from the Authority, lease a
25 taxicab to an independent contractor who does not hold a

26
27 ²See *Nevada Ass'n Servs., Inc. v. District Court*, 130 Nev. 949, 957, 338 P.3d 1250,
28 1255 (2014) ("Arguments of counsel . . . are not evidence and do not establish the facts of
the case").

1 certificate of public convenience and necessity. A person
2 may lease only one taxicab to each independent contractor
3 with whom the person enters into a lease agreement. The
4 taxicab may be used only in a manner authorized by the
5 lessor's certificate of public convenience and necessity.

6 2. A person who enters into a lease agreement with
7 an independent contractor pursuant to this section shall
8 submit a copy of the agreement to the Authority for its
9 approval. The agreement is not effective until approved by
10 the Authority.

11 3. A person who leases a taxicab to an independent
12 contractor is jointly and severally liable with the independent
13 contractor for any violation of the provisions of this chapter
14 or the regulations adopted pursuant thereto, and shall
15 ensure that the independent contractor complies with such
16 provisions and regulations.

17 4. The Authority or any of its employees may
18 intervene in a civil action involving a lease agreement
19 entered into pursuant to this section.

20 Thus, by its plain language, the only limitation on the reach of NRS 706.473 is that
21 it does not apply in counties with a population of more than 700,000 (i.e., Clark County).

22 The Plaintiffs have simply invented their "not for minimum wage purposes" limitation.

23 Suffice it to say, the Plaintiffs' attempt to graft this sweeping limitation onto NRS 706.473
24 runs afoul of basic canons of statutory construction. *See Davis v. Beling*, 128 Nev. 301,
25 314, 278 P.3d 501, 511 (2012) (rejecting interpretation that "improperly reads language
26 into the statute"). The Plaintiffs' interpretation also conflicts with NRS 706.473's reference
27 to "a civil action involving a lease agreement," which shows that the Legislature
28 contemplated that such agreements would be given effect outside of the confines of NRS
Chapter 706.

Further, the Plaintiffs' "not for minimum wage purposes" language cannot
reasonably be implied in NRS 706.473. When the Legislature intends to impose that type
of limitation on a statute that creates an independent contractor relationship, it knows how

1 to do so. Take, for example, the independent contractor presumption created in NRS
2 608.0155, which prefaces its provisions with the phrase “**For purposes of this chapter**, a
3 person is conclusively presumed to be an independent contractor if . . .” (emphasis
4 added). Similarly, NRS 616A.255, a worker’s compensation statute, defines an
5 independent contractor relationship as “any person who renders service for a specified
6 recompense for a specified result, under the control of the person’s principal as to the
7 result of the person’s work only and not as to the means by which such result is
8 accomplished.” A corresponding statute, NRS 616A.025, provides this definition applies
9 only “[a]s used in chapters 616A to 616D . . .” (emphasis added).
10

11 If the Legislature had intended to impose a similar limitation on the statutorily-
12 created independent contractor relationships created in NRS 706.473, then it could have
13 easily done so. But it did not. As such, the omission of such language must be presumed
14 to be intentional. See *Boucher v. Shaw*, 124 Nev. 1164, 1169-70, 196 P.3d 959, 963
15 (2008) (the mention of one thing implies the exclusion of another); *Coast Hotels &*
16 *Casinos, Inc. v. Nev. State Labor Comm’n*, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001)
17 (“Generally, when the [L]egislature has employed a term or phrase in one place and
18 excluded it in another, it should not be implied where excluded.”).
19
20

21 Further, it is of no moment that an individual may be an independent contractor for
22 purposes of one statute, while simultaneously an employee under another. This is evident
23 because such a result must be compelled by text of the statute at issue.³ Crucially, the
24
25
26

27 ³As such, the Plaintiffs’ reliance on *Hays Home Delivery, Inc. v. Employers Ins. Co.*
28 *of Nevada*, 117 Nev. 678, 31 P.3d 367 (2001) and *Meers v. Houghton Elevator*, 101 Nev.

1 Minimum Wage Amendment ("MWA") is silent on what constitutes an employment
2 relationship. This is not surprising. The drafters of the MWA recognized that such
3 relationships are already defined by statutes such as NRS 706.473, which predates the
4 MWA by over a decade or, in the absence of an applicable statute, by the common law.

5
6 **3. The Plaintiffs' Interpretation Renders NRS 706.473 Meaningless.**

7 Of course, the Plaintiffs' assertion that the independent contractor relationship
8 created in NRS 706.473 is "not for minimum wage purposes" begs the question: What,
9 then, do they believe is the purpose of the statute? The Plaintiffs fail to offer any cogent
10 answer to this question. The Plaintiffs claim that "all it does" is (1) give the NTA power to
11 approve a lease and (2) give taxicab owners power to lease their taxi cabs. See Opp'n at
12 7:2-4.

13
14 The Plaintiffs' rationales for NRS 706.473 are circular. The statute obviously
15 authorizes lease agreements, but to what end? Elsewhere in their Opposition, the
16 Plaintiffs theorize that the NTA's approval of a lease "shields defendants from adverse
17 actions by the NTA arising from such taxicab operation (such as a revocation of the
18 defendants' privileged license to operate taxicabs)." See Opp'n at 3:1-3. The Plaintiffs
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23 701 P.2d 1006 (1985) is misplaced. In fact, both of those decisions emphasized that
24 Nevada's worker's compensation scheme is "uniquely different" in that even independent
contractors may be deemed employees for purposes thereof.

25 Here, in contrast, the lack of an employment relationship is fatal to the Plaintiffs, as
26 their claims inescapably depend upon such a relationship. See Nev. Const. Art. 15, Sec.
27 16 (referencing the minimum wages owed to an "employee"); NRS 608.140 (referencing
28 actions "for wages earned and due according to the terms of his or her employment"); see
also *Kaldi v. Farmers Ins. Exchange*, 117 Nev. 273, 21 P.3d 16 (2001) (rejecting
independent contractor's attempt to assert claims sounding in employment).

1 have not provided any cogent argument, or cited any authority, either from NRS Chapter
2 706 or anywhere else, in support of this theory. *See Berkson v. LePome*, 126 Nev. 492,
3 501, 245 P.3d 560, 566 (2010) (courts need not entertain arguments that are “not
4 supported by cogent argument and citation to relevant authority.”).

5
6 In sum, the Plaintiffs interpretation would render NRS 706.473 meaningless. Quite
7 tellingly, the Plaintiffs let it slip that they do not believe NRS 706.473 creates an
8 independent contractor relationship “for minimum wage purposes”—“**[o]r any other**
9 **purpose.**” *See* Opp’n at 7:7 (emphasis added). Once again, the Plaintiffs’ interpretation
10 of NRS 706.473 is at odds with well-established canons of statutory construction. *See*
11 *Libby v. District Court*, 130 Nev. 359, 363-64, 325 P.3d 1276, 1279 (2014) (“When giving a
12 statute’s terms their plain meaning, [courts] will consider the statute’s ‘provisions as a
13 whole so as to read them in a way that [will] not render words or phrases superfluous or
14 make a provision nugatory.’”) (quoting *S. Nev. Homebuilders Ass’n v. Clark County*, 121
15 Nev. 446, 449, 117 P.3d 171, 173 (2005)).

16
17 **4. The Plaintiffs’ Interpretation Encroaches on the NTA’s Authority.**

18 Much like their argument regarding NRS 706.473, the Plaintiffs repeatedly argue
19 the NTA is not authorized to approve the Agreements “for MWA purposes.” *See* Opp’n at
20 7.
21

22 The Plaintiffs’ arguments regarding the NTA fail because they are built on the
23 same faulty premise as their arguments regarding NRS 706.473: The statute simply does
24 not contain the limitation that the Plaintiffs say it does. Instead, the Legislature expressly
25 delegated authority to the NTA to review and approve independent contractor agreements
26 between taxi companies and drivers. *See* NRS 706.473(1). The Legislature did not
27 qualify that authority in any way, let alone state that the NTA’s authority to approve
28

1 agreements is not for minimum wage purposes. In fact, the NTA is given standing to
2 “intervene in a civil action involving a lease agreement entered into pursuant to this
3 section.” See NRS 706.473(4). The Plaintiffs’ suggestion that the NTA’s approval of such
4 agreements is ineffective outside of the confines of NRS Chapter 706 directly conflicts with
5 this provision.
6

7 Although the Plaintiffs refuse to acknowledge its effect, the NTA has exercised its
8 exclusive and unqualified authority in specifically approving the Agreements. As such, the
9 NTA has determined that the Agreements comply with the statutory and regulatory
10 requirements for establishing an effective independent contractor agreement. The
11 Legislature has expressly empowered the NTA to make such determinations. Further, the
12 evidence supporting the NTA’s finding is not just substantial—it is overwhelming and
13 undisputed. Thus, the NTA’s determination is controlling.
14

15 **5. *The Plaintiffs’ Attempts to Downplay the Legislative History of***
16 ***NRS 706.473 are Unavailing.***

17 Next, the Plaintiffs argue that the legislative history of NRS 706.473 is not
18 “germane” because it “says nothing about whether, or how, persons driving taxi cabs
19 should be classified for minimum wage purposes.” See Opp’n at 9-10.⁴ The Plaintiffs’
20 arguments are unavailing.
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25 ⁴The Plaintiffs also complain that Reno and Capital Cab provided a link to the
26 legislative history of NRS 706.473 instead of attaching it as an exhibit. See Opp’n at 9.
27 The Plaintiffs were obviously able to locate the history with the link provided. And,
28 providing a link is the customary and appropriate way to cite such materials. In fact, the
Nevada Supreme Court has frequently done so. See, e.g., *Tam v. District Court*, 131 Nev.
_____, ____ 358 P.3d 234, 239 (2015).

1 The Plaintiffs acknowledge, as they must, that the legislative history of NRS
2 706.473 shows that the statute was enacted to address the financial hardships being
3 experienced by cab companies in Northern Nevada, including one which was in
4 bankruptcy proceedings at that time. See Minutes of the Senate Committee On
5 Transportation regarding S.B. 561, 67th Leg., June 29, 1993, *available at*
6 <https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/SB561,1993.p>
7 [df](#) (last visited July 21 2019). The legislative backdrop of NRS 706.473 is significant
8 because it is no secret that employment class actions are business killers—and they have
9 been since 1937 when FRCP 23 was adopted. See Advisory Committee’s Notes on Fed.
10 Rule Civ. Proc. 23 (noting that a class action can result in “potentially ruinous liability.”).
11 Similarly, NRCP 23, Nevada’s state law analog of FRCP 23, predates NRS 706.437.
12 Thus, although the legislative history of NRS 706.473 does not discuss minimum wage,
13 employment class actions certainly were within the ambit of perils that it was designed to
14 protect cab companies against.

15
16
17 Indicia of this intent abound. For instance, NRS 706.473(4)’s reference to “*a civil*
18 *action involving a lease agreement entered into pursuant to this section*” is a
19 powerful indication that the Legislature contemplated that such agreements would afford a
20 defense against such actions. It is difficult to conceive of any other purpose that would be
21 served by a lease agreement in such an action. The Plaintiffs do not even attempt to offer
22 any other explanation for this provision.

23
24 **6. The Plaintiffs’ Interpretation Violates Public Policy.**

25 The Plaintiffs claim that there is no public policy “supporting a holding that
26 defendants should be able to avoid minimum wage obligations by having the NTA approve
27 certain forms of taxi cab lease agreements.” See Opp’n at 10. They further assert that the
28

1 background of the taxicab industry does not support a finding that they are independent
2 contractors. *See id.*

3 The Plaintiffs' have simply ignored the profoundly unjust public policy implications
4 of their interpretation of NRS 706.473. The fact is that Reno and Capital Cab entered into
5 the Agreements in reliance on and in conformance with NRS 706.473. In fact, they have
6 structured their entire operations to comply with the regulatory scheme, including the
7 NTA's regulations mandating a certain degree of control over drivers. Denying Reno and
8 Capital Cab the protections afforded under the statute would thus be a perverse and
9 absurd result. Doing so would not only defeat the purpose of NRS 706.473, but it would
10 effectively punish Reno and Capital Cab for complying with the regulatory scheme
11 established by the Legislature. *See G.C. Wallace v. District Court*, 127 Nev. 701, 710, 262
12 P.3d 1135, 1140-41 (2011) (refusing to construe a statutory scheme in a way that "would
13 snare the very individuals it was designed to serve," reasoning that such a construction
14 would "entirely defeat" its purpose).

15 Moreover, the Plaintiffs' miss the point of the background of the taxicab industry.
16
17 As Reno and Capital Cab explained in their Motion, taxi drivers have historically been
18 subject to a limited degree of control. The comprehensive regulatory scheme established
19 in NRS Chapter 706 represents, and requires, a sharp break from that custom. In
20 enacting NRS 706.473, the Legislature struck a balance, recognizing that although taxi
21 companies and drivers are now subject to extensive regulation, their freedom to enter into
22 independent contractor agreements should be preserved.

23 The Plaintiffs have not cited any authority to the contrary. *Rutherford Food Corp. v.*
24 *McComb*, 331 U.S. 722 (1947), and *NLRB v. O'Hare-Midway Limousine Service, Inc.*, 924
25 F.2d 692 (7th Cir. 1991), are easily distinguishable because neither involved a statutorily-
26
27
28

1 authorized independent contractor arrangement. Here, unlike *Rutherford*, *O'Hare* and the
2 other authorities cited in the Plaintiffs' Opposition, the Plaintiffs were independent
3 contractors ***pursuant to a statute***—NRS 706.473—not merely freestanding private
4 contracts. Thus, by entering into the Agreements, Reno and Capital Cab were not
5 attempting to “contract around” or use “self-interested disclaimers” to avoid employment
6 relationships. Rather, they acted pursuant to NRS 706.473's express authorization for
7 independent contractor agreements between cab companies and drivers in small counties.
8

9 Nothing in the MWA expresses any intent to effectively abolish such statutorily-
10 authorized independent contractor relationships. This is critical because the Nevada
11 Supreme Court has implicitly recognized that the Legislature is vested with the authority to
12 statutorily define independent contractor relationships. *See Terry v. Sapphire*
13 *Gentlemen's Club*, 130 Nev. 879, 883-84, 336 P.3d 951, 954-55 (2014) (determining that
14 adoption of the judicially-created economic realities test was only necessary in the
15 absence of statutory guidance); *Yellow Cab*, 127 Nev. at 592, 262 P.3d at 704 (holding
16 that NRS 706.473 supplants the traditional “control” test for employment status). This is
17 precisely what the Legislature did when it enacted NRS 706.473. In summary, because
18 the Plaintiffs are independent contractors under the statutorily created and authorized
19 framework of NRS 706.473, there is no genuine issue of material fact and Reno and
20 Capital Cab are entitled to judgment as a matter of law.
21
22

23 **III. CONCLUSION.**

24 For the foregoing reasons, Reno and Capital Cab respectfully submit that there is
25 no genuine issue of material fact and that they are entitled to judgment as a matter of law.
26

27 ///

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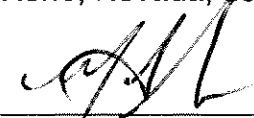
SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

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

DATED this 25th day of July, 2019.

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



MARK G. SIMONS
RICARDO N. CORDOVA, Esq.
*Attorneys for Reno Cab Company, Inc. and Roy
L. Street, dba Capital Cab*

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CERTIFICATE OF SERVICE

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

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

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

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

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

☐ by personal delivery/hand delivery addressed to:

☐ by facsimile (fax) addressed to:

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

DATED this 23 day of July, 2019.



Employee of SIMONS HALL JOHNSTON PC

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

1 **2540**
MARK G. SIMONS, ESQ.
2 Nevada Bar No. 5132
MSimons@SHJNevada.com
3 RICARDO N. CORDOVA, ESQ.
Nevada Bar No. 11942
4 RCordova@SHJNevada.com
SIMONS HALL JOHNSTON PC
5 6490 S. McCarran Blvd., Ste. F-46
Reno, Nevada 89509
6 Telephone: (775) 785-0088
Attorneys for Defendants Reno Cab Company, Inc.
7 and Roy L. Street, dba Capital Cab
8
9

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

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

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

CASE NO.: CV15-01359

13 Plaintiff,

DEPT. NO.: 10

14 vs.

15 RENO CAB COMPANY, INC.,

16 Defendant.
17

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

CASE NO.: CV15-01385

DEPT. NO.: 10

21 Plaintiffs,

22 vs.

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

25 Defendant.
26
27
28

NOTICE OF ENTRY OF ORDER

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

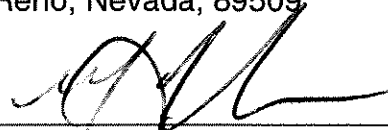
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6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

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

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

7 DATED this 16th day of December, 2019.

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



11 MARK G. SIMONS
12 RICARDO N. CORDOVA, Esq.
13 *Attorneys for Reno Cab Company, Inc. and Roy*
14 *L. Street, dba Capital Cab*
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CERTIFICATE OF SERVICE

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

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

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

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

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

☐ by personal delivery/hand delivery addressed to:

☐ by facsimile (fax) addressed to:

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

DATED this 16 day of December, 2019.



Employee of SIMONS HALL JOHNSTON PC

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

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

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EXHIBIT LIST

| NO. | DESCRIPTION | PAGES |
|------------|--------------------|--------------|
| 1 | Order Granting SMJ | 10 |

EXHIBIT 1

EXHIBIT 1

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

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

Plaintiff,

Case No.: CV15-01359

vs.

Dept. No.: 10

RENO CAB COMPANY, INC.,

Defendant.

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

Plaintiffs,

Case No.: CV15-01385

vs.

Dept. No.: 10

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

Defendants.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

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

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

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

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

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

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

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

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

16 NRS 706.475 provides:

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

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

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

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

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

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

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

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

7 (j) Specifically state that the independent contractor:

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

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

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

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

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

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

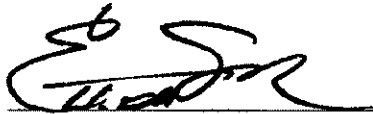
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1 Because all statutory and administrative requirements have been satisfied, the Plaintiffs are
2 independent contractors as a matter of law. As such, the protections afforded to “employees” in the
3 Minimum Wage Amendment (“the MWA”) and NRS 608.040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

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

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

CERTIFICATE OF ELECTRONIC SERVICE

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

CURTIS B. COULTER, ESQ.


LEON GREENBERG, ESQ.

DANA SNIEGOCKI, ESQ.

MARK G. SIMONS, ESQ.

JEREMY B. CLARKE, ESQ.

RICARDO N. CORDOVA, ESQ.


Sheila Mansfield
Judicial Assistant

1 **2515**

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

10 LEON GREENBERG, ESQ., SBN 8094
11 DANA SNIEGOCKI, ESQ., SBN 11715
12 Leon Greenberg Professional Corporation
13 2965 South Jones Blvd- Suite E3
14 Las Vegas, Nevada 89146
15 (702) 383-6085
16 (702) 385-1827(fax)
17 leongreenberg@overtimelaw.com
18 dana@overtimelaw.com
19 Attorneys for Plaintiffs

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

22 JEFF MYERS, Individually and on
23 behalf of others similarly situated,
24
25 Plaintiffs,

Case No.: CV 15-01359
Dept.: 10

26 vs.

27 RENO CAB COMPANY, INC.,
28 Defendant.

29 ARTHUR SHATZ and RICHARD
30 FRATIS, Individually and on behalf of
31 others similarly situated,
32 Plaintiffs,

Case No.: CV 15-01385
Dept.: 10

33 vs.

34 ROY L. STREET, individually and
35 doing business as CAPITAL CAB,
36 Defendant.

NOTICE OF APPEAL

1 Notice is hereby given that JEFF MYERS, ARTHUR SHATZ and RICHARD
2 FRATIS, plaintiffs above named, by and through their counsel of record Leon
3 Greenberg, Esq., hereby appeals to the Supreme Court of Nevada from the District
4 Court's order entered on December 16, 2019 granting Defendants' Reno Cab
5 Company and Roy L. Street, dba CAPITAL CAB's Motion for Summary Judgment
6 and resulting in the entry of a final judgment and all prior Orders entered in these
7 consolidated cases made subject to appeal by such final judgment.

8 **AFFIRMATION:** The undersigned does hereby affirm that the preceding
9 document, Notice of Appeal, does not contain the personal information of any person.

10 Dated: January 13, 2020

11 Submitted by

12 Leon Greenberg Professional Corporation

13 */s/ Leon Greenberg*

14 Leon Greenberg, Esq.
15 LEON GREENBERG PROFESSIONAL
CORPORATION
16 Attorney for the Plaintiffs
2965 South Jones Boulevard - Suite E3
17 Las Vegas, Nevada 89146
(702) 383-6085
leongreenberg@overtimelaw.com

1 CERTIFICATE OF SERVICE

2
3 Pursuant to NRCP 5(b), I certify that I am an employee of Leon Greenberg Professional
4 Corporation and that on this date I caused to be served a true copy of

5 PLAINTIFFS' NOTICE OF APPEAL

6 in this action by electronically filing the foregoing with the Clerk of the Court by using the ECF
7 system which served the following parties electronically:

8
9 MARK G. SIMONS, ESQ.
10 RICARDO N. CORDOVA, ESQ.
11 SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509

12 Attorneys for Reno Cab Company, Inc. and
13 Roy L. Street, dba Capital Cab

14 Dated: January 13, 2020

15
16 /s/ Sydney Saucier

17 _____
Sydney Saucier

CERTIFICATE OF SERVICE

I certify that on June 19, 2020 I served a copy of the foregoing JOINT APPENDIX VOLUME III 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