

Case No. 85850

In the Supreme Court of Nevada

A CAB SERIES LLC, f/k/a A CAB, LLC,

Appellant,

vs.

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

Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable MARIA GALL, District Judge
District Court Case No. A-12-669926-C

APPELLANT'S APPENDIX

VOLUME 1

PAGES 1-250

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CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
1.	Complaint	10/08/12	1	1–8
2.	Transcript re Defendant’s Motion to Dismiss Complaint	01/17/13	1	9–31
3.	First Amended Complaint	01/30/13	1	32–38
4.	Notice of Entry of Decision and Order	02/13/13	1	39–47
5.	Defendant A Cab, LLC’s Answer to Complaint	04/22/13	1	48–52
6.	Notice of Entry of Order	05/06/13	1	53–56
7.	Defendant A Cab, LLC’s Answer to First Amended Complaint	05/23/13	1	57–61
8.	Joint Case Conference Report	05/28/13	1	62–69
9.	Notice of Entry of Order Denying Plaintiffs’ Counter-Motion for Default Judgment or Sanctions Pursuant to EDCR 7.602(b)	05/29/13	1	70–73
10.	Notice of Entry of Stipulation and Order Staying All Proceedings for a Period of Ninety (90) days	01/29/14	1	74–78
11.	Notice of Entry of Stipulation and Order Staying All Proceedings for a Period of Ninety (90) days (Second Request)	04/23/14	1	79–83
12.	Notice of Entry of Stipulation and Order Staying All Proceedings for a Period of Sixty (60) days (Third Request)	07/28/14	1	84–87
13.	Recorder’s Transcript of Proceedings Notice of Plaintiffs’ Motion to Compel the Production of Documents	03/18/15	1	88–107

14.	Transcript re Plaintiffs' Motion to Certify This Case as a Class Action Pursuant to NCRP Rule 23 and Appoint a Special Master Pursuant to NRCF Rule 53	08/11/15	1	108–140
15.	Notice of Entry of Order Granting Motion to Serve and File a Second Amended and Supplemental Complaint	08/17/15	1	141–144
16.	Second Amended Complaint and Supplemental Complaint	08/19/15	1	145–162
17.	Defendant A Cab, LLC's Answer to Second Amended Complaint	09/14/15	1	163–169
18.	Defendant Creighton J. Nady's Answer to Second Amended Complaint	10/06/15	1	170–176
19.	Transcript of Proceedings of All Pending Motions	11/03/15	1 2	177–250 251–345
20.	Recorder's Transcript of Proceedings for All Pending Motions	11/18/15	2	346–377
21.	Joint Case Conference Report	11/25/15	2	378–386
22.	Notice of Entry of Order Granting in Part and Denying in Part Defendant's Motion for Declaratory Order Regarding Statute of Limitations	12/22/15	2	387–391
23.	Recorder's Transcript of Proceedings for Discovery Production/Deferred Ruling – Defendant's Rule 37 Sanctions	01/13/16	2	392–412
24.	Notice of Entry of Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCF Rule 23 (b)(2) and NRCF Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to Appoint a Special Master Under NRCF Rule 53	02/10/16	2	413–430
25.	Notice of Entry of Order Denying Defendant's Motion to Dismiss and for	02/18/16	2	431–434

	Summary Judgment Against Michael Murray			
26.	Notice of Entry of Order Denying Defendant's Motion to Dismiss and for Summary Judgment Against Michael Reno	02/18/16	2	435–438
27.	Notice of Entry of Order of Discovery Commissioner's Report and Recommendation	03/04/16	2	439–446
28.	Notice of Entry of Order of Discovery Commissioner's Report and Recommendation	03/04/16	2	447–460
29.	Transcript Re: Plaintiffs' Motion to Impose Sanctions Against Defendants for Violating this Court's Order of February 10, 2016 and Compelling Compliance with that Order on OST; and Defendant's Opposition to Motion to Impose Sanctions on Order Shortening Time and Countermotion for Sanctions Against Plaintiffs	03/16/16	2	461–476
30.	Notice of Entry of Order Denying Plaintiffs' Motion to Impose Sanctions Against Defendants	04/07/16	2	477–480
31.	Notice of Entry of Order Granting Defendants' Motion for Stay Pending Court's Reconsideration of Prior Order	04/07/16	2	481–484
32.	Recorder's Transcript of Proceedings for Further Proceedings on Discovery Production/Deferred Ruling	04/08/16	2 3	485–500 501–520
33.	Notice of Entry of Order on Defendants' Motion for Reconsideration	04/28/16	3	521–524
34.	Notice of Entry of Order Denying Defendants' Motion for Reconsideration	05/27/16	3	525–528

	of Two Orders Entered March 4, 2016, Pertaining to Discovery Commissioner's Reports & Recommendations			
35.	Notice of Entry of Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP Rule 23(b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to Appoint a Special Master Under NRCP Rule 53 and Amended by this Court in Response to Defendant's Motion for Reconsideration Heard in Chambers on March 28,2016	06/07/16	3	529–546
36.	Notice of Entry of Discovery Commissioner's Report and Recommendations	07/13/16	3	547–553
37.	Transcript of Proceedings re Plaintiff's Motion to Compel the Production of Documents and Interrogatory Responses - Status Check on Status of Case	09/07/16	3	554–596
38.	Transcript of Proceedings re Motions Status Check, Compliance Status Check, and Production Status Check	10/12/16	3	597–646
39.	Recorder's Transcript of Proceedings re Status Check Compliance	11/18/16	3	647–671
40.	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion to Continue Trial Date and Extend Discovery Schedule and for Other Relief	11/23/16	3	672–677
41.	Transcript of Proceedings re Motion to Compel Interrogatory Responses on Status Check Compliance - Report and Recommendation	12/09/16	3	678–741

42.	Recorder's Transcript of Proceedings re Plaintiffs' Motion to Compel the Production of Documents	01/25/17	3 4	742–750 751–787
43.	Recorder's Transcript of Proceedings re Plaintiffs' Motion to Compel Compliance with Subpoena	02/08/17	4	788–806
44.	Transcript re Plaintiffs' Motion on OST to Expedite Issuance of Order Granting Motion Filed on 10/14/16 to Enjoin Defendants from Seeking Settlement of any Unpaid Wage Claims Involving any Class Members Except as Part of this Lawsuit and for Other Relief and for Sanctions	02/14/17	4	807–826
45.	Notice of Entry of Order Granting Certain Relief on Motion to Enjoin Defendants from Seeking Settlement of Any Unpaid Wage Claims Involving Any Class Members Except as Part of this Lawsuit and for Other Relief	02/16/17	4	827–830
46.	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion to Have Case Reassigned to Department I per EDCR Rule 1.60 and Designated as Complex Litigation per NRC 16.1(f)	02/21/17	4	831–834
47.	Notice of Entry of Order of Stipulation and Order	03/09/17	4	835–838
48.	Notice of Entry of Order of Discovery Commissioners Report and Recommendations	03/13/17	4	839–847
49.	Notice of Entry of Order of Discovery Commissioners Report and Recommendations	03/13/17	4	848–855

50.	Notice of Appeal	03/20/17	4	856–857
51.	Defendants’ Case Appeal Statement	03/20/17	4	858–862
52.	Notice of Entry of Order of Discovery Commissioner’s Report and Recommendations	03/31/17	4	863–871
53.	Notice of Entry of Discovery Commissioner’s Report & Recommendations	05/18/17	4	872–880
54.	Transcript re All Pending Motions	05/18/17	4 5	881–1000 1001–1011
55.	Transcript re Plaintiff’s Re-Notice of Motion for Partial Summary Judgment	05/25/17	5	1012–1032
56.	Notice of Entry of Decision and Order	06/07/17	5	1033–1050
57.	Transcript re Plaintiff’s Motion on Order Shortening Time and Extend Damages Class Certification and for Other Relief	06/13/17	5	1051–1072
58.	Stipulation and Order	07/11/17	5	1073–1078
59.	Notice of Entry of Order Denying Plaintiffs’ Motion for Partial Summary Judgment	07/17/17	5	1079–1084
60.	Order	07/17/17	5	1085–1086
61.	Order	07/17/17	5	1087–1088
62.	Notice of Entry of Order Denying Plaintiffs’ Counter-Motion for Sanctions and Attorneys’ Fees and Order Denying Plaintiffs’ Anti-SLAPP Motion	07/31/17	5	1089–1092
63.	Recorder’s Transcript of Proceeding re Discovery Conference	08/08/17	5	1093–1110
64.	Recorder’s Transcript of Proceeding re Discovery Conference – Referred by Judge	10/04/17	5	1111–1123

65.	Notice of Entry of Discovery Commissioner's Report & Recommendations	10/24/17	5	1124–1131
66.	Notice of Entry of Order	12/12/17	5	1132–1135
67.	Notice of Entry of Order	12/12/17	5	1136–1139
68.	Transcript Re: Plaintiff's Motion for Partial Summary Judgment and Motion to Place Evidentiary Burden on Defendants to Establish Lower Tier Minimum Wage and Declare NAC 608.102(2)(b) Invalid	12/14/17	5	1140–1198
69.	Transcript re Defendant's Motion for Summary Judgment	01/02/18	5 6	1199–1250 1251–1261
70.	Notice of Entry of Order of Appointment of Co-Class Counsel Christian Gabroy	01/04/18	6	1262–1265
71.	Notice of Entry of Order Stipulation and Order	01/16/18	6	1266–1269
72.	Notice of Entry of Order	01/22/18	6	1270–1275
73.	Transcript re Plaintiffs' Omnibus Motion in Limine 1-25, Defendants' Motion in Limine to Exclude the Testimony of Plaintiffs' Experts	01/25/18	6	1276–1311
74.	Transcript re Status Check on Appointment of Special Master	02/02/18	6	1312–1332
75.	Notice of Entry of Order Denying Plaintiffs' Motion for Bifurcation and/or to Limit Issues for Trial per NRCP 42(B)	02/02/18	6	1333–1337
76.	Notice of Entry of Order Granting Plaintiffs' Motion to Appoint a Special Master	02/08/18	6	1338–1345
77.	Transcript re Appointment of Special Master	02/15/18	6	1346–1376

78.	Notice of Entry of Order Modifying Court's Previous Order of February 7, 2018 Appointing a Special Master	02/16/18	6	1377–1380
79.	Clerk's Certificate Judgment	05/07/18	6	1381–1386
80.	Transcript re Plaintiffs' Motion for Miscellaneous Relief	05/23/18	6	1387–1463
81.	Transcript re Plaintiffs' Motion to Hold Defendants in Contempt; Strike Their Answer	06/01/18	6 7	1464–1500 1501–1508
82.	Transcript re Plaintiff's Motion for Partial Summary Judgment	06/05/18	7	1509–1580
83.	Notice of Entry of Order Granting Summary Judgment, Severing Claims, and Directing Entry of Final Judgment	08/22/18	7	1581–1646
84.	Motion to Amend Judgment	08/22/18	7	1647–1655
85.	Opposition to Plaintiffs' Motion to Amend Judgment	09/10/18	7	1656–1680
86.	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Amend Judgment	09/20/18	7	1681–1737
87.	Notice of Appeal	09/21/18	7	1738–1739
88.	Defendants' Case Appeal Statement	09/21/18	7	1740–1744
89.	Defendant's Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening	09/21/18	7 8	1745–1750 1751–1769
90.	Plaintiffs' Response and Counter-motion to Defendants Motion on OST to Quash	09/24/18	8	1770–1845
91.	Transcript re Defendant's Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening	09/26/18	8	1846–1913

92.	Transcript re Defendant's Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening, and Plaintiffs' Response to Defendant's Ex-Parte Motion to Quash Writ of Execution on OST and Countermotion for Appropriate Judgment Enforcement Relief	09/28/18	8	1914–1980
93.	Claim of Exemption from Execution – A Cab Series, LLC, Maintenance Company	10/04/18	8	1981–1986
94.	Claim of Exemption from Execution – A Cab Series, LLC, CCards Company	10/04/18	8	1987–1992
95.	Claim of Exemption from Execution – A Cab Series, LLC, Administration Company	10/04/18	8	1993–1998
96.	Claim of Exemption from Execution – A Cab Series, LLC, Taxi Leasing Company	10/04/18	8 9	1999–2000 2001–2004
97.	Claim of Exemption from Execution – A Cab Series, LLC, Employee Leasing Company Two	10/04/18	9	2005–2010
98.	Claim of Exemption from Execution – A Cab Series, LLC, Medallion Company	10/04/18	9	2011–2016
99.	Plaintiffs' Motion for an Award of Attorneys Fees and Costs as per NRCF Rule 54 and the Nevada Constitution	10/12/18	9	2017–2041
100.	Notice of Entry of Order	10/22/18	9	2042–2045
101.	Transcript Re All Pending Motions	10/22/18	9	2046–2142
102.	Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs Per NRCF Rule 54 and the Nevada Constitution	10/29/18	9	2143–2155

103.	Opposition to Plaintiffs' Motion for an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution	11/01/18	9 10	2156–2250 2251–2294
104.	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for an Award of Attorneys Fees and Costs as Per NRCP Rule 54 and the Nevada Constitution	11/08/18	10	2295–2303
105.	Opposition to Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution	11/16/18	10	2304–2316
106.	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution	11/28/18	10	2317–2323
107.	Recorder's Transcript of Hearing on All Pending Motions	12/04/18	10	2324–2405
108.	Transcript Re Resolution Economics' Application for Order of Payment of Special Master's Fees and Motion for Contempt	12/11/18	10	2406–2423
109.	Transcript re Plaintiffs Ex Parte Motion for a Temporary Restraining Order and Motion on an Order Requiring the Turnover of Certain Property of the Judgment Debtor Pursuant to NRS 21.320	12/13/18	10	2424–2475
110.	Notice of Entry of Order Denying Defendants' Motion to Quash Writ of Execution	12/18/18	10	2476–2498

111.	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Objections to Defendants' Claims of Exemption from Execution	12/18/18	10 11	2499–2500 2501–2502
112.	Notice of Entry of Order Granting Plaintiffs' Counter Motion for Judgment Enforcement Relief	01/02/19	11	2503–2510
113.	Amended Notice of Appeal	01/15/19	11	2511–2513
114.	Defendants' Amended Case Appeal Statement	01/15/19	11	2514–2518
115.	Notice of Entry of Order on Judgment and Order Granting Resolution Economics' Application for Order of Payment of Special Master's Fees and Order of Contempt	02/05/19	11	2519–2528
116.	Notice of Entry of Order Granting Plaintiffs' Motion for an Award of Attorneys' Fees and Costs Pursuant to NRCP 54 and the Nevada Constitution	02/07/19	11	2529–2539
117.	Notice of Entry of Order Denying in Part and Continuing in Part Plaintiffs' Motion on OST to Lift Stay, Hold Defendants in Contempt, Strike Their Answer, Grant Partial Summary Judgment, Direct A Prove Up Hearing, and Coordinate Cases	03/05/19	11	2540–2543
118.	Notice of Entry of Order on Defendants' Motion for Reconsideration	03/05/19	11	2544–2549
119.	Second Amended Notice of Appeal	03/06/19	11	2550–2553
120.	Defendant's Second Amended Case Appeal Statement	03/06/19	11	2554–2558
121.	Notice of Entry of Order on Special Master Resolution Economics' Ex Parte Motion for Order Shortening Time on the Motion to Strike Defendants' Motion for	03/15/19	11	2559–2563

	Reconsideration of Judgment and Order Granting Resolution Economics Application for Order of Payment of Special Masters Fees and Oder of Contempt			
122.	Stipulation and Order to Continue Hearings	05/17/19	11	2564–2566
123.	Stipulation and Order to Continue Hearings	05/20/19	11	2567–2569
124.	Recorder’s Transcript of Hearing re All Pending Motions	05/21/19	11	2570–2617
125.	Notice of Entry of Order Denying Defendants’ Motion for Reconsideration of Judgment and Order Granting Resolution Economics Application for Order of Payment of Special Master’s Fees and Order of Contempt	08/08/19	11	2618–2623
126.	Recorder’s Transcript of Hearing re All Pending Motions	12/03/19	11	2624–2675
127.	Notice of Entry of Order Denying Plaintiffs’ Motion to Allow Judgment Enforcement; Plaintiffs’ Motion to Distribute Funds Held by Class Counsel; and Plaintiffs’ Motion Requiring the Turnover of Certain Property of the Judgment Debtor Pursuant to NRS 21.320; and Order Granting Defendants’ Countermotion for Stay of Collection Activities	07/17/20	11	2676–2682
128.	Notice of Appeal	08/12/20	11	2683–2684
129.	Case Appeal Statement	08/12/20	11	2685–2688
130.	Amended Case Appeal Statement	08/20/20	11	2689–2693
131.	Clerk’s Certificate Judgment	12/15/20	11	2694–2702

132.	Notice of Entry of Order on Plaintiff's Motion for Appointment of Receiver to Aid Judgment Enforcement of Alternative Relief	02/22/21	11	2703–2708
133.	Notice of Appeal	02/23/21	11	2709–2710
134.	Case Appeal Statement	02/23/21	11	2711–2716
135.	Defendants' Motion for Costs	01/13/22	11 12	2717–2750 2751–2810
136.	Plaintiffs' Response to Defendants' Motion for Costs & Counter Motion to Offset Costs Against Judgment	02/03/22	12	2811–2825
137.	Reply in Support of Defendants' Motion for Costs and Opposition to Countermotion	02/09/22	12	2826–2846
138.	Supplement to Plaintiffs' Response to Defendants' Motion for Costs	02/10/22	12	2847–2850
139.	Defendants' Supplement to Response and Opposition to Plaintiffs' Rogue Supplement	02/10/22	12	2851–2853
140.	Defendants' Motion for Declaratory Order	02/11/22	12 13	2854–3000 3001–3064
141.	Plaintiffs' Motion for Entry of a Modified Judgment as Provided for by Remittitur	02/14/22	13	3065–3221
142.	Plaintiffs' Motion for Entry of Modified Award of Pre-Judgment Attorney's Fees as Provided for by Remittitur	02/16/22	13 14	3222–3250 3251–3272
143.	Recorder's Transcript of Hearing re All Pending Motions	02/16/22	14	3273–3301
144.	Plaintiffs' Motion for an Award of Attorney's Fees on Appeal	02/17/22	14	3302–3316
145.	Plaintiffs' Motion for an Award of Attorney's Fees on Appeal of Order Denying Receiver, Opposing Mooted	02/22/22	14	3317–3332

	Motion for Attorney's Fees, and for Costs on Appeal			
146.	Errata to Plaintiffs' Motion for Entry of Modified Award of Pre-Judgment Attorney's Fees as Provided for by Remittitur	02/23/22	14	3333–3336
147.	Plaintiffs' Response to Defendants' Motion for Declaratory Order & Counter-Motion for Award of Attorney's Fees	02/25/22	14	3337–3384
148.	Defendants' Motion to Stay on Order Shortening Time	02/28/22	14 15	3385–3500 3501–3512
149.	Opposition to Plaintiffs' Motion for Entry of a Modified Judgment as Provided for by Remittitur	02/28/22	15 16	3513–3750 3751–3786
150.	Opposition to Plaintiffs' Motion for Entry of Modified Award of Pre-Judgment Attorney's Fees and as Provided for by Remittitur	03/02/22	16	3787–3796
151.	Opposition to Plaintiffs' Motion for an Award of Attorney's Fees on Appeal	03/03/22	16	3797–3817
152.	Plaintiffs' Response to Defendants' Motion for Stay on Order Shortening Time and Counter-Motion for Award of Attorney's Fees	03/04/22	16	3818–3859
153.	Opposition to Plaintiffs' Motion for an Award of Attorney's Fees on Appeal of Order Denying Receiver, Opposing Mooted Motion for Attorney's Fees, and for Costs on Appeal	03/08/22	16	3860–3886
154.	Reply in Support of Defendants' Motion to Stay on Order Shortening Time	03/08/22	16	3887–3901
155.	Recorder's Transcript of Hearing re Defendant's Motion to Stay on OST	03/09/22	16	3902–3916

156.	Notice of Entry of Order Granting Defendants' Motion to Stay	05/03/22	16	3917–3921
157.	Notice of Entry of Order Granting Defendants' Motion for Costs	05/17/22	16	3922–3927
158.	Notice of Entry of Order Granting Defendants' Motion for Release of Cost Bonds	05/20/22	16	3928–3933
159.	Plaintiffs' Motion to Stay, Offset, or Apportion Award of Costs and/or Reconsider Award of Costs	05/31/22	16 17	3934–4000 4001–4089
160.	Notice of Entry of Order Granting Defendants' Motion for Costs	06/03/22	17	4090–4093
161.	Opposition to Plaintiffs' Motion to Stay, Offset, or Apportion Award of Costs and/or Reconsider Award of Costs and Countermotion for Attorney's Fees	06/14/22	17	4094–4193
162.	Notice of Appeal	06/14/22	17	4194–4195
163.	Case Appeal Statement	06/14/22	17	4196–4201
164.	Plaintiffs' Motion to Reconsider Award of Costs	06/16/22	17 18	4202–4250 4251–4356
165.	Transcript of Proceedings re Plaintiffs' Motion for Turnover of Property Pursuant to NRS 21.320 or Alternative Relief	06/29/22	18	4357–4379
166.	Opposition to Plaintiffs' Motion to Reconsider Award of Costs and Countermotion to Strike Duplicative Order	06/30/22	18	4380–4487
167.	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Stay, Offset, or Apportion Award of Costs and/or Reconsider Award of Costs	07/01/22	18 19	4488–4500 4501–4666

168.	Order Denying Motion Without Prejudice and with Leave to Renew	07/08/22	19	4667–4670
169.	Notice of Entry of Order Denying Plaintiffs’ Motion for Turnover of Property Pursuant to NRS 21.230 or Alternative Relief Without Prejudice	07/08/22	19	4671–4676
170.	Plaintiffs’ Reply to Defendants’ Opposition to Plaintiffs’ Motion to Reconsider Award of Costs and Response to Defendants’ Counter-Motion	07/21/22	19	4677–4716
171.	Transcript of Proceedings re Case Management Conference	07/25/22	19 20	4717–4750 4751–4766
172.	Plaintiffs’ Reply to Defendants’ Opposition to Plaintiffs’ Motion for Entry of Modified Judgment as Provided for by Remittitur	08/12/22	20	4767–4835
173.	Plaintiffs’ Reply to Defendants’ Opposition to Plaintiffs’ Motion for Entry of Modified Award of Pre-Judgment Attorney’s Fees and Provided for by Remittitur	08/12/22	20	4836–4840
174.	Plaintiffs’ Reply to Defendants’ Opposition to Plaintiffs’ Motion for an Award of Attorney’s Fees on Appeal	08/12/22	20	4841–4845
175.	Plaintiffs’ Reply to Defendants’ Opposition to Plaintiffs’ Motion for an Award of Attorneys’ Fees on Appeal of Order Denying Receiver, Opposing Mooted Motion for Attorney’s Fees, and for Costs on Appeal	08/12/22	20	4846–4867
176.	Plaintiffs’ Motion to Lift Stay and Have Pending Motions Decided	08/12/22	20	4868–4882
177.	Response to Plaintiffs’ Motion to Lift Stay and Have Pending Motions Decided	08/26/22	20	4883–4936

178.	Supplement to Defendants' Response to Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	08/29/22	20	4937–4961
179.	Second Supplement to Defendants' Response to Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	09/09/22	20	4962–4966
180.	Plaintiffs' Reply to Defendant's Opposition to Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	09/13/22	20	4967–4983
181.	Order Granting Motion to Lift Stay and Regarding Additional Briefing and Motion Practice	09/19/22	20	4984–4989
182.	Defendants' Omnibus Brief Pursuant to Court Order	09/30/22	20 21	4990–5000 5001–5199
183.	Exhibits 6-14 to Defendants' Omnibus Brief Pursuant to Court Order	09/30/22	21 22	5200–5250 5251–5300
184.	Plaintiffs' Omnibus Brief Pursuant to the Court's Order of September 19, 2022	09/30/22	22	5301–5309
185.	Defendants' Motion for Costs	10/24/22	22	5310–5326
186.	Notice of Non-Opposition to Defendants' Motion for Costs	11/01/22	22	5327–5329
187.	Plaintiffs' Opposition to Defendants' Motion for Costs	11/04/22	22	5330–5333
188.	Reply in Support of Defendants' Motion for Costs	11/07/22	22	5334–5337
189.	Notice of Entry of Order Granting Plaintiff's Motion for Entry of a Modified Judgment as Provided for by Remittitur	11/14/22	22	5338–5344
190.	Notice of Entry of Order Granting Plaintiff's Motion for Entry of a Modified Award of Pre-Judgment Attorney's Fees as Provided for by Remittitur	11/14/22	22	5345–5350
191.	Order Amending the Class	11/17/22	22	5351–5355

192.	Notice of Entry of Order Modifying Final Judgment Entered on August 21, 2018	11/17/22	22	5356–5376
193.	Notice of Entry of Order Granting Plaintiffs’ Motion for Award of Attorney’s Fees on Appeal	11/17/22	22	5377–5382
194.	Notice of Entry of Order Continuing Decision on Plaintiffs’ Motion for an Award of Attorney’s Fees on Appeal of Order Denying Receiver, Opposing Mooted Motion for Attorney’s Fees, and for Costs of Appeal	11/17/22	22	5383–5386
195.	Notice of Entry of Order Denying Defendants’ Motions for Sanctions	11/17/22	22	5387–5391
196.	Notice of Entry of Order Denying Defendants’ Motion for Costs	11/17/22	22	5392–5395
197.	Notice of Entry of Order on Motion for Costs	11/17/22	22	5396–5398
198.	Order Granting Motion to Stay, Offset, or Apportion Award of Cost	11/17/22	22	5399–5403
199.	Notice of Entry of Order Modifying Order on February 6, 2019 Granting Plaintiffs an Award of Attorney’s Fees and Costs	11/18/22	22	5404–5409
200.	Notice of Entry of Order on Motion to Distribute Funds Held by Class Counsel on and Order Shortening Time	11/21/22	22	5410–5421
201.	Notice of Entry of Order Denying Plaintiffs Motion to Reconsider Award of Costs and Striking June 3, 2022 Order	11/23/22	22	5422–5429
202.	Notice of Appeal	12/14/22	22 23	5430–5500 5501–5511
203.	Appellant’s Case Appeal Statement	12/14/22	23	5512–5516
204.	Notice of Removal	12/14/22	23	5517–5526

205.	Recorder's Transcript of Hearing on Argument re Post Judgment Receiver Motion to Distribute Funds Held by Class Counsel on an Order Shortening Time	12/15/22	23	5527–5530
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ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
130	Amended Case Appeal Statement	08/20/20	11	2689–2693
113	Amended Notice of Appeal	01/15/19	11	2511–2513
203	Appellant’s Case Appeal Statement	12/14/22	23	5512–5516
129	Case Appeal Statement	08/12/20	11	2685–2688
134	Case Appeal Statement	02/23/21	11	2711–2716
163	Case Appeal Statement	06/14/22	17	4196–4201
95	Claim of Exemption from Execution – A Cab Series, LLC, Administration Company	10/04/18	8	1993–1998
94	Claim of Exemption from Execution – A Cab Series, LLC, CCards Company	10/04/18	8	1987–1992
97	Claim of Exemption from Execution – A Cab Series, LLC, Employee Leasing Company Two	10/04/18	9	2005–2010
93	Claim of Exemption from Execution – A Cab Series, LLC, Maintenance Company	10/04/18	8	1981–1986
98	Claim of Exemption from Execution – A Cab Series, LLC, Medallion Company	10/04/18	9	2011–2016
96	Claim of Exemption from Execution – A Cab Series, LLC, Taxi Leasing Company	10/04/18	8 9	1999–2000 2001–2004
79	Clerk’s Certificate Judgment	05/07/18	6	1381–1386
131	Clerk’s Certificate Judgment	12/15/20	11	2694–2702
1	Complaint	10/08/12	1	1–8
5	Defendant A Cab, LLC’s Answer to Complaint	04/22/13	1	48–52
7	Defendant A Cab, LLC’s Answer to First Amended Complaint	05/23/13	1	57–61

17	Defendant A Cab, LLC's Answer to Second Amended Complaint	09/14/15	1	163–169
18	Defendant Creighton J. Nady's Answer to Second Amended Complaint	10/06/15	1	170–176
89	Defendant's Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening	09/21/18	7 8	1745–1750 1751–1769
120	Defendant's Second Amended Case Appeal Statement	03/06/19	11	2554–2558
114	Defendants' Amended Case Appeal Statement	01/15/19	11	2514–2518
51	Defendants' Case Appeal Statement	03/20/17	4	858–862
88	Defendants' Case Appeal Statement	09/21/18	7	1740–1744
135	Defendants' Motion for Costs	01/13/22	11 12	2717–2750 2751–2810
185	Defendants' Motion for Costs	10/24/22	22	5310–5326
140	Defendants' Motion for Declaratory Order	02/11/22	12 13	2854–3000 3001–3064
148	Defendants' Motion to Stay on Order Shortening Time	02/28/22	14 15	3385–3500 3501–3512
182	Defendants' Omnibus Brief Pursuant to Court Order	09/30/22	20 21	4990–5000 5001–5199
139	Defendants' Supplement to Response and Opposition to Plaintiffs' Rogue Supplement	02/10/22	12	2851–2853
146	Errata to Plaintiffs' Motion for Entry of Modified Award of Pre-Judgment Attorney's Fees as Provided for by Remittitur	02/23/22	14	3333–3336
183	Exhibits 6-14 to Defendants' Omnibus Brief Pursuant to Court Order	09/30/22	21 22	5200–5250 5251–5300

3	First Amended Complaint	01/30/13	1	32–38
8	Joint Case Conference Report	05/28/13	1	62–69
21	Joint Case Conference Report	11/25/15	2	378–386
84	Motion to Amend Judgment	08/22/18	7	1647–1655
50	Notice of Appeal	03/20/17	4	856–857
87	Notice of Appeal	09/21/18	7	1738–1739
128	Notice of Appeal	08/12/20	11	2683–2684
133	Notice of Appeal	02/23/21	11	2709–2710
162	Notice of Appeal	06/14/22	17	4194–4195
202	Notice of Appeal	12/14/22	22 23	5430–5500 5501–5511
4	Notice of Entry of Decision and Order	02/13/13	1	39–47
56	Notice of Entry of Decision and Order	06/07/17	5	1033–1050
53	Notice of Entry of Discovery Commissioner’s Report & Recommendations	05/18/17	4	872–880
65	Notice of Entry of Discovery Commissioner’s Report & Recommendations	10/24/17	5	1124–1131
36	Notice of Entry of Discovery Commissioner’s Report and Recommendations	07/13/16	3	547–553
6	Notice of Entry of Order	05/06/13	1	53–56
66	Notice of Entry of Order	12/12/17	5	1132–1135
67	Notice of Entry of Order	12/12/17	5	1136–1139
72	Notice of Entry of Order	01/22/18	6	1270–1275
100	Notice of Entry of Order	10/22/18	9	2042–2045
194	Notice of Entry of Order Continuing Decision on Plaintiffs’ Motion for an Award of Attorney’s Fees on Appeal of	11/17/22	22	5383–5386

	Order Denying Receiver, Opposing Mooted Motion for Attorney's Fees, and for Costs of Appeal			
25	Notice of Entry of Order Denying Defendant's Motion to Dismiss and for Summary Judgment Against Michael Murray	02/18/16	2	431–434
26	Notice of Entry of Order Denying Defendant's Motion to Dismiss and for Summary Judgment Against Michael Reno	02/18/16	2	435–438
196	Notice of Entry of Order Denying Defendants' Motion for Costs	11/17/22	22	5392–5395
34	Notice of Entry of Order Denying Defendants' Motion for Reconsideration of Two Orders Entered March 4, 2016, Pertaining to Discovery Commissioner's Reports & Recommendations	05/27/16	3	525–528
125	Notice of Entry of Order Denying Defendants' Motion for Reconsideration of Judgment and Order Granting Resolution Economics Application for Order of Payment of Special Master's Fees and Order of Contempt	08/08/19	11	2618–2623
110	Notice of Entry of Order Denying Defendants' Motion to Quash Writ of Execution	12/18/18	10	2476–2498
195	Notice of Entry of Order Denying Defendants' Motions for Sanctions	11/17/22	22	5387–5391
117	Notice of Entry of Order Denying in Part and Continuing in Part Plaintiffs' Motion on OST to Lift Stay, Hold Defendants in Contempt, Strike Their Answer, Grant	03/05/19	11	2540–2543

	Partial Summary Judgment, Direct A Prove Up Hearing, and Coordinate Cases			
201	Notice of Entry of Order Denying Plaintiffs Motion to Reconsider Award of Costs and Striking June 3, 2022 Order	11/23/22	22	5422–5429
9	Notice of Entry of Order Denying Plaintiffs’ Counter-Motion for Default Judgment or Sanctions Pursuant to EDCR 7.602(b)	05/29/13	1	70–73
62	Notice of Entry of Order Denying Plaintiffs’ Counter-Motion for Sanctions and Attorneys’ Fees and Order Denying Plaintiffs’ Anti-SLAPP Motion	07/31/17	5	1089–1092
75	Notice of Entry of Order Denying Plaintiffs’ Motion for Bifurcation and/or to Limit Issues for Trial per NRCP 42(B)	02/02/18	6	1333–1337
59	Notice of Entry of Order Denying Plaintiffs’ Motion for Partial Summary Judgment	07/17/17	5	1079–1084
169	Notice of Entry of Order Denying Plaintiffs’ Motion for Turnover of Property Pursuant to NRS 21.230 or Alternative Relief Without Prejudice	07/08/22	19	4671–4676
127	Notice of Entry of Order Denying Plaintiffs’ Motion to Allow Judgment Enforcement; Plaintiffs’ Motion to Distribute Funds Held by Class Counsel; and Plaintiffs’ Motion Requiring the Turnover of Certain Property of the Judgment Debtor Pursuant to NRS 21.320; and Order Granting Defendants’ Countermotion for Stay of Collection Activities	07/17/20	11	2676–2682

30	Notice of Entry of Order Denying Plaintiffs' Motion to Impose Sanctions Against Defendants	04/07/16	2	477–480
45	Notice of Entry of Order Granting Certain Relief on Motion to Enjoin Defendants from Seeking Settlement of Any Unpaid Wage Claims Involving Any Class Members Except as Part of this Lawsuit and for Other Relief	02/16/17	4	827–830
157	Notice of Entry of Order Granting Defendants' Motion for Costs	05/17/22	16	3922–3927
160	Notice of Entry of Order Granting Defendants' Motion for Costs	06/03/22	17	4090–4093
158	Notice of Entry of Order Granting Defendants' Motion for Release of Cost Bonds	05/20/22	16	3928–3933
31	Notice of Entry of Order Granting Defendants' Motion for Stay Pending Court's Reconsideration of Prior Order	04/07/16	2	481–484
156	Notice of Entry of Order Granting Defendants' Motion to Stay	05/03/22	16	3917–3921
22	Notice of Entry of Order Granting in Part and Denying in Part Defendant's Motion for Declaratory Order Regarding Statute of Limitations	12/22/15	2	387–391
40	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion to Continue Trial Date and Extend Discovery Schedule and for Other Relief	11/23/16	3	672–677
46	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion to Have Case Reassigned to Department I per EDCR Rule 1.60 and	02/21/17	4	831–834

	Designated as Complex Litigation per NRCP 16.1(f)			
111	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Objections to Defendants' Claims of Exemption from Execution	12/18/18	10 11	2499–2500 2501–2502
15	Notice of Entry of Order Granting Motion to Serve and File a Second Amended and Supplemental Complaint	08/17/15	1	141–144
189	Notice of Entry of Order Granting Plaintiff's Motion for Entry of a Modified Judgment as Provided for by Remittitur	11/14/22	22	5338–5344
190	Notice of Entry of Order Granting Plaintiff's Motion for Entry of a Modified Award of Pre-Judgment Attorney's Fees as Provided for by Remittitur	11/14/22	22	5345–5350
112	Notice of Entry of Order Granting Plaintiffs' Counter Motion for Judgment Enforcement Relief	01/02/19	11	2503–2510
116	Notice of Entry of Order Granting Plaintiffs' Motion for an Award of Attorneys' Fees and Costs Pursuant to NRCP 54 and the Nevada Constitution	02/07/19	11	2529–2539
193	Notice of Entry of Order Granting Plaintiffs' Motion for Award of Attorney's Fees on Appeal	11/17/22	22	5377–5382
76	Notice of Entry of Order Granting Plaintiffs' Motion to Appoint a Special Master	02/08/18	6	1338–1345
24	Notice of Entry of Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP Rule 23 (b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to	02/10/16	2	413–430

	Appoint a Special Master Under NRCP Rule 53			
35	Notice of Entry of Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP Rule 23(b)(2) and NRCP Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to Appoint a Special Master Under NRCP Rule 53 and Amended by this Court in Response to Defendant's Motion for Reconsideration Heard in Chambers on March 28,2016	06/07/16	3	529–546
83	Notice of Entry of Order Granting Summary Judgment, Severing Claims, and Directing Entry of Final Judgment	08/22/18	7	1581–1646
78	Notice of Entry of Order Modifying Court's Previous Order of February 7, 2018 Appointing a Special Master	02/16/18	6	1377–1380
192	Notice of Entry of Order Modifying Final Judgment Entered on August 21, 2018	11/17/22	22	5356–5376
199	Notice of Entry of Order Modifying Order on February 6, 2019 Granting Plaintiffs an Award of Attorney's Fees and Costs	11/18/22	22	5404–5409
70	Notice of Entry of Order of Appointment of Co-Class Counsel Christian Gabroy	01/04/18	6	1262–1265
27	Notice of Entry of Order of Discovery Commissioner's Report and Recommendation	03/04/16	2	439–446
28	Notice of Entry of Order of Discovery Commissioner's Report and Recommendation	03/04/16	2	447–460
52	Notice of Entry of Order of Discovery Commissioner's Report and Recommendations	03/31/17	4	863–871

48	Notice of Entry of Order of Discovery Commissioners Report and Recommendations	03/13/17	4	839–847
49	Notice of Entry of Order of Discovery Commissioners Report and Recommendations	03/13/17	4	848–855
47	Notice of Entry of Order of Stipulation and Order	03/09/17	4	835–838
33	Notice of Entry of Order on Defendants’ Motion for Reconsideration	04/28/16	3	521–524
118	Notice of Entry of Order on Defendants’ Motion for Reconsideration	03/05/19	11	2544–2549
115	Notice of Entry of Order on Judgment and Order Granting Resolution Economics’ Application for Order of Payment of Special Master’s Fees and Order of Contempt	02/05/19	11	2519–2528
197	Notice of Entry of Order on Motion for Costs	11/17/22	22	5396–5398
200	Notice of Entry of Order on Motion to Distribute Funds Held by Class Counsel on and Order Shortening Time	11/21/22	22	5410–5421
132	Notice of Entry of Order on Plaintiff’s Motion for Appointment of Receiver to Aid Judgment Enforcement of Alternative Relief	02/22/21	11	2703–2708
121	Notice of Entry of Order on Special Master Resolution Economics’ Ex Parte Motion for Order Shortening Time on the Motion to Strike Defendants’ Motion for Reconsideration of Judgment and Order Granting Resolution Economics Application for Order of Payment of	03/15/19	11	2559–2563

	Special Masters Fees and Oder of Contempt			
71	Notice of Entry of Order Stipulation and Order	01/16/18	6	1266–1269
10	Notice of Entry of Stipulation and Order Staying All Proceedings for a Period of Ninety (90) days	01/29/14	1	74–78
11	Notice of Entry of Stipulation and Order Staying All Proceedings for a Period of Ninety (90) days (Second Request)	04/23/14	1	79–83
12	Notice of Entry of Stipulation and Order Staying All Proceedings for a Period of Sixty (60) days (Third Request)	07/28/14	1	84–87
186	Notice of Non-Opposition to Defendants’ Motion for Costs	11/01/22	22	5327–5329
204	Notice of Removal	12/14/22	23	5517–5526
151	Opposition to Plaintiffs’ Motion for an Award of Attorney’s Fees on Appeal	03/03/22	16	3797–3817
153	Opposition to Plaintiffs’ Motion for an Award of Attorney’s Fees on Appeal of Order Denying Receiver, Opposing Mooted Motion for Attorney’s Fees, and for Costs on Appeal	03/08/22	16	3860–3886
103	Opposition to Plaintiffs’ Motion for an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution	11/01/18	9 10	2156–2250 2251–2294
149	Opposition to Plaintiffs’ Motion for Entry of a Modified Judgment as Provided for by Remittitur	02/28/22	15 16	3513–3750 3751–3786
150	Opposition to Plaintiffs’ Motion for Entry of Modified Award of Pre-Judgment	03/02/22	16	3787–3796

	Attorney's Fees and as Provided for by Remittitur			
85	Opposition to Plaintiffs' Motion to Amend Judgment	09/10/18	7	1656–1680
105	Opposition to Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution	11/16/18	10	2304–2316
166	Opposition to Plaintiffs' Motion to Reconsider Award of Costs and Countermotion to Strike Duplicative Order	06/30/22	18	4380–4487
161	Opposition to Plaintiffs' Motion to Stay, Offset, or Apportion Award of Costs and/or Reconsider Award of Costs and Countermotion for Attorney's Fees	06/14/22	17	4094–4193
60	Order	07/17/17	5	1085–1086
61	Order	07/17/17	5	1087–1088
191	Order Amending the Class	11/17/22	22	5351–5355
168	Order Denying Motion Without Prejudice and with Leave to Renew	07/08/22	19	4667–4670
181	Order Granting Motion to Lift Stay and Regarding Additional Briefing and Motion Practice	09/19/22	20	4984–4989
198	Order Granting Motion to Stay, Offset, or Apportion Award of Cost	11/17/22	22	5399–5403
144	Plaintiffs' Motion for an Award of Attorney's Fees on Appeal	02/17/22	14	3302–3316
145	Plaintiffs' Motion for an Award of Attorney's Fees on Appeal of Order Denying Receiver, Opposing Mooted Motion for Attorney's Fees, and for Costs on Appeal	02/22/22	14	3317–3332

99	Plaintiffs' Motion for an Award of Attorneys Fees and Costs as per NRCP Rule 54 and the Nevada Constitution	10/12/18	9	2017–2041
141	Plaintiffs' Motion for Entry of a Modified Judgment as Provided for by Remittitur	02/14/22	13	3065–3221
142	Plaintiffs' Motion for Entry of Modified Award of Pre-Judgment Attorney's Fees as Provided for by Remittitur	02/16/22	13 14	3222–3250 3251–3272
102	Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution	10/29/18	9	2143–2155
176	Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	08/12/22	20	4868–4882
164	Plaintiffs' Motion to Reconsider Award of Costs	06/16/22	17 18	4202–4250 4251–4356
159	Plaintiffs' Motion to Stay, Offset, or Apportion Award of Costs and/or Reconsider Award of Costs	05/31/22	16 17	3934–4000 4001–4089
184	Plaintiffs' Omnibus Brief Pursuant to the Court's Order of September 19, 2022	09/30/22	22	5301–5309
187	Plaintiffs' Opposition to Defendants' Motion for Costs	11/04/22	22	5330–5333
180	Plaintiffs' Reply to Defendant's Opposition to Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	09/13/22	20	4967–4983
86	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Amend Judgment	09/20/18	7	1681–1737
104	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for an Award of Attorneys Fees and Costs as	11/08/18	10	2295–2303

	Per NRCP Rule 54 and the Nevada Constitution			
106	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to File a Supplement in Support of an Award of Attorneys Fees and Costs Per NRCP Rule 54 and the Nevada Constitution	11/28/18	10	2317–2323
167	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Stay, Offset, or Apportion Award of Costs and/or Reconsider Award of Costs	07/01/22	18 19	4488–4500 4501–4666
170	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion to Reconsider Award of Costs and Response to Defendants' Counter-Motion	07/21/22	19	4677–4716
172	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Entry of Modified Judgment as Provided for by Remittitur	08/12/22	20	4767–4835
173	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Entry of Modified Award of Pre-Judgment Attorney's Fees and Provided for by Remittitur	08/12/22	20	4836–4840
174	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for an Award of Attorney's Fees on Appeal	08/12/22	20	4841–4845
175	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for an Award of Attorneys' Fees on Appeal of Order Denying Receiver, Opposing Mooted Motion for Attorney's Fees, and for Costs on Appeal	08/12/22	20	4846–4867

90	Plaintiffs' Response and Counter-motion to Defendants Motion on OST to Quash	09/24/18	8	1770–1845
136	Plaintiffs' Response to Defendants' Motion for Costs & Counter Motion to Offset Costs Against Judgment	02/03/22	12	2811–2825
147	Plaintiffs' Response to Defendants' Motion for Declaratory Order & Counter-Motion for Award of Attorney's Fees	02/25/22	14	3337–3384
152	Plaintiffs' Response to Defendants' Motion for Stay on Order Shortening Time and Counter-Motion for Award of Attorney's Fees	03/04/22	16	3818–3859
107	Recorder's Transcript of Hearing on All Pending Motions	12/04/18	10	2324–2405
205	Recorder's Transcript of Hearing on Argument re Post Judgment Receiver Motion to Distribute Funds Held by Class Counsel on an Order Shortening Time	12/15/22	23	5527–5530
124	Recorder's Transcript of Hearing re All Pending Motions	05/21/19	11	2570–2617
126	Recorder's Transcript of Hearing re All Pending Motions	12/03/19	11	2624–2675
143	Recorder's Transcript of Hearing re All Pending Motions	02/16/22	14	3273–3301
155	Recorder's Transcript of Hearing re Defendant's Motion to Stay on OST	03/09/22	16	3902–3916
63	Recorder's Transcript of Proceeding re Discovery Conference	08/08/17	5	1093–1110
64	Recorder's Transcript of Proceeding re Discovery Conference – Referred by Judge	10/04/17	5	1111–1123

20	Recorder's Transcript of Proceedings for All Pending Motions	11/18/15	2	346–377
23	Recorder's Transcript of Proceedings for Discovery Production/Deferred Ruling – Defendant's Rule 37 Sanctions	01/13/16	2	392–412
32	Recorder's Transcript of Proceedings for Further Proceedings on Discovery Production/Deferred Ruling	04/08/16	2 3	485–500 501–520
13	Recorder's Transcript of Proceedings Notice of Plaintiffs' Motion to Compel the Production of Documents	03/18/15	1	88–107
42	Recorder's Transcript of Proceedings re Plaintiffs' Motion to Compel the Production of Documents	01/25/17	3 4	742–750 751–787
43	Recorder's Transcript of Proceedings re Plaintiffs' Motion to Compel Compliance with Subpoena	02/08/17	4	788–806
39	Recorder's Transcript of Proceedings re Status Check Compliance	11/18/16	3	647–671
188	Reply in Support of Defendants' Motion for Costs	11/07/22	22	5334–5337
137	Reply in Support of Defendants' Motion for Costs and Opposition to Countermotion	02/09/22	12	2826–2846
154	Reply in Support of Defendants' Motion to Stay on Order Shortening Time	03/08/22	16	3887–3901
177	Response to Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	08/26/22	20	4883–4936
16	Second Amended Complaint and Supplemental Complaint	08/19/15	1	145–162
119	Second Amended Notice of Appeal	03/06/19	11	2550–2553

179	Second Supplement to Defendants' Response to Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	09/09/22	20	4962–4966
58	Stipulation and Order	07/11/17	5	1073–1078
122	Stipulation and Order to Continue Hearings	05/17/19	11	2564–2566
123	Stipulation and Order to Continue Hearings	05/20/19	11	2567–2569
178	Supplement to Defendants' Response to Plaintiffs' Motion to Lift Stay and Have Pending Motions Decided	08/29/22	20	4937–4961
138	Supplement to Plaintiffs' Response to Defendants' Motion for Costs	02/10/22	12	2847–2850
19	Transcript of Proceedings of All Pending Motions	11/03/15	1 2	177–250 251–345
171	Transcript of Proceedings re Case Management Conference	07/25/22	19 20	4717–4750 4751–4766
41	Transcript of Proceedings re Motion to Compel Interrogatory Responses on Status Check Compliance - Report and Recommendation	12/09/16	3	678–741
38	Transcript of Proceedings re Motions Status Check, Compliance Status Check, and Production Status Check	10/12/16	3	597–646
37	Transcript of Proceedings re Plaintiff's Motion to Compel the Production of Documents and Interrogatory Responses - Status Check on Status of Case	09/07/16	3	554–596
165	Transcript of Proceedings re Plaintiffs' Motion for Turnover of Property Pursuant to NRS 21.320 or Alternative Relief	06/29/22	18	4357–4379

54	Transcript re All Pending Motions	05/18/17	4 5	881–1000 1001–1011
101	Transcript Re All Pending Motions	10/22/18	9	2046–2142
77	Transcript re Appointment of Special Master	02/15/18	6	1346–1376
91	Transcript re Defendant’s Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening	09/26/18	8	1846–1913
92	Transcript re Defendant’s Ex-Parte Motion to Quash Writ of Execution and, in the Alternative, Motion for Partial Stay of Execution on Order Shortening, and Plaintiffs’ Response to Defendant’s Ex-Parte Motion to Quash Writ of Execution on OST and Countermotion for Appropriate Judgment Enforcement Relief	09/28/18	8	1914–1980
69	Transcript re Defendant’s Motion for Summary Judgment	01/02/18	5 6	1199–1250 1251–1261
2	Transcript re Defendant’s Motion to Dismiss Complaint	01/17/13	1	9–31
82	Transcript re Plaintiff’s Motion for Partial Summary Judgment	06/05/18	7	1509–1580
57	Transcript re Plaintiff’s Motion on Order Shortening Time and Extend Damages Class Certification and for Other Relief	06/13/17	5	1051–1072
55	Transcript re Plaintiff’s Re-Notice of Motion for Partial Summary Judgment	05/25/17	5	1012–1032
109	Transcript re Plaintiffs Ex Parte Motion for a Temporary Restraining Order and Motion on an Order Requiring the Turnover of Certain Property of the	12/13/18	10	2424–2475

	Judgment Debtor Pursuant to NRS 21.320			
80	Transcript re Plaintiffs' Motion for Miscellaneous Relief	05/23/18	6	1387–1463
44	Transcript re Plaintiffs' Motion on OST to Expedite Issuance of Order Granting Motion Filed on 10/14/16 to Enjoin Defendants from Seeking Settlement of any Unpaid Wage Claims Involving any Class Members Except as Part of this Lawsuit and for Other Relief and for Sanctions	02/14/17	4	807–826
14	Transcript re Plaintiffs' Motion to Certify This Case as a Class Action Pursuant to NCRP Rule 23 and Appoint a Special Master Pursuant to NRCP Rule 53	08/11/15	1	108–140
81	Transcript re Plaintiffs' Motion to Hold Defendants in Contempt; Strike Their Answer	06/01/18	6 7	1464–1500 1501–1508
73	Transcript re Plaintiffs' Omnibus Motion in Limine 1-25, Defendants' Motion in Limine to Exclude the Testimony of Plaintiffs' Experts	01/25/18	6	1276–1311
108	Transcript Re Resolution Economics' Application for Order of Payment of Special Master's Fees and Motion for Contempt	12/11/18	10	2406–2423
74	Transcript re Status Check on Appointment of Special Master	02/02/18	6	1312–1332
68	Transcript Re: Plaintiff's Motion for Partial Summary Judgment and Motion to Place Evidentiary Burden on Defendants to Establish Lower Tier	12/14/17	5	1140–1198

	Minimum Wage and Declare NAC 608.102(2)(b) Invalid			
29	Transcript Re: Plaintiffs' Motion to Impose Sanctions Against Defendants for Violating this Court's Order of February 10, 2016 and Compelling Compliance with that Order on OST; and Defendant's Opposition to Motion to Impose Sanctions on Order Shortening Time and Countermotion for Sanctions Against Plaintiffs	03/16/16	2	461–476

CERTIFICATE OF SERVICE

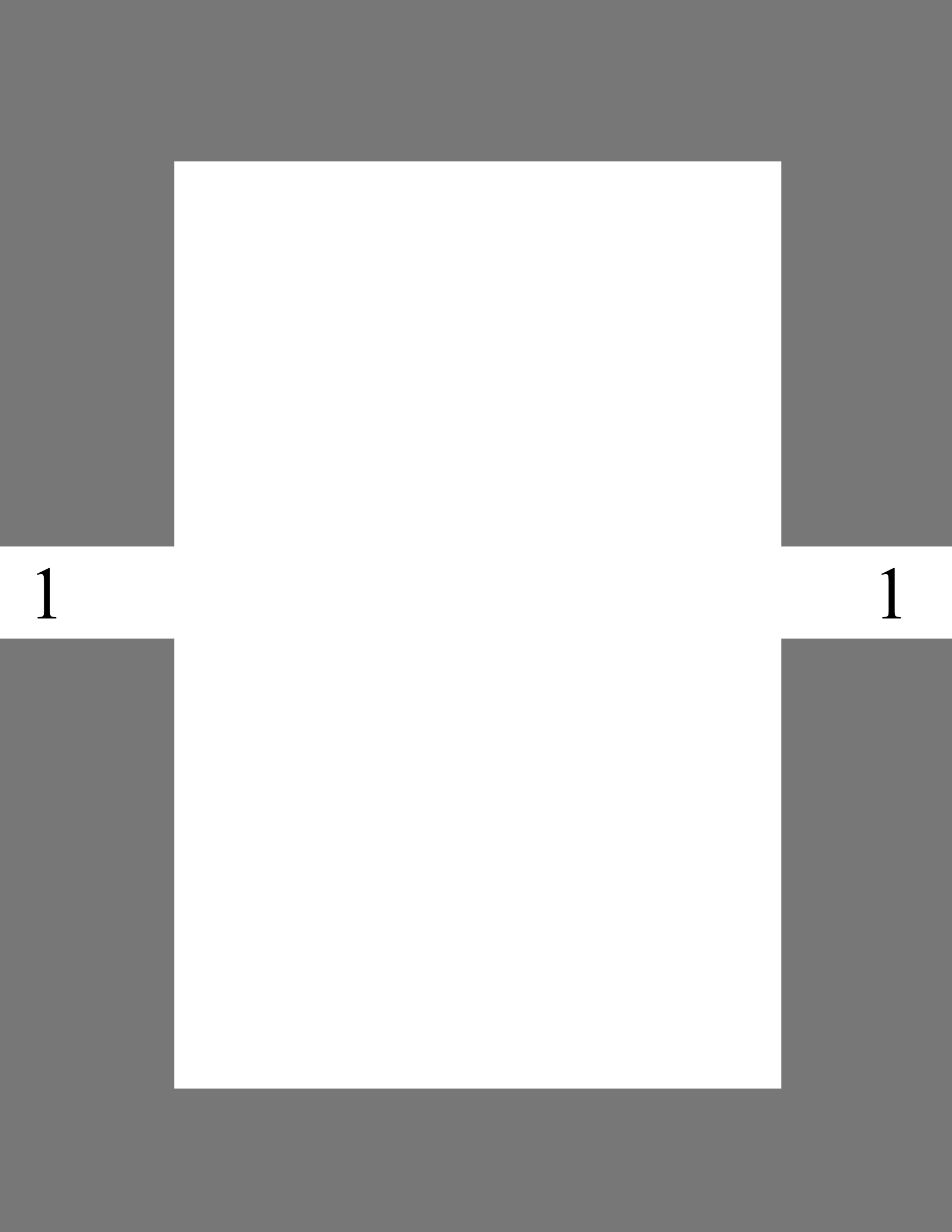
I certify that on the 26th day of January, 2024, I submitted the foregoing “Appellant’s Appendix” for e- filing and service via the Court’s eFlex electronic filing system. Electronic service of the forgoing documents shall be made upon all parties listed on the Master Service List.

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An Employee of Lewis Roca Rothgerber Christie LLP



1

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- ☐ **Landlord/Tenant**
☐ Unlawful Detainer
- ☐ **Title to Property**
☐ Foreclosure
☐ Liens
☐ Quiet Title
☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
☐ Partition
☐ Planning/Zoning

- ☐ **Negligence – Auto**
- ☐ **Negligence – Medical/Dental**
- ☐ **Negligence – Premises Liability**
(Slip/Fall)
- ☐ **Negligence – Other**

Probate

Estimated Estate Value: _____

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
☐ Individual Trustee
☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filings

- ☐ **Construction Defect**
☐ Chapter 40
☐ General
- ☐ **Breach of Contract**
☐ Building & Construction
☐ Insurance Carrier
☐ Commercial Instrument
☐ Other Contracts/Acct/Judgment
☐ Collection of Actions
☐ Employment Contract
☐ Guarantee
☐ Sale Contract
☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
☐ Foreclosure Mediation
☐ Other Administrative Law
☐ Department of Motor Vehicles
☐ Worker's Compensation Appeal

III. Business Court Requested (Please check applicable category; for Clark or Washoe County)

- ☐ NRS Chapters 78-88
- ☐ Investments (NRS 104 Art. 8)
- ☐ Commodities (NRS 90)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Securities (NRS 90)
- ☐ Trademarks (NRS 600A)

October 8, 2012

Date

Signature of initial

See other side for family-related case filings.

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and
A CAB, LLC,

Defendants.

Case
Dept

COMPLAINT

ARBITRATION
CLAIM
A CLAIM

MICHAEL MURPHY and MICHAEL RENO,
behalf of others similarly situated,
attorney, Leon Greenberg Professional
for a Complaint against the defendant
as follows:

JURISDICTION, PARTIES AND PR

1. The plaintiffs, MICHAEL MURPHY
(the "individual plaintiffs" or the "

9 County of Clark, State of Nevada and
10 Nevada.

11 **CLASS ACTION ALLEGATIONS**

12 3. The plaintiffs bring this action
13 action pursuant to Nev. R. Civ. P. §2
14 themselves and a class of all similar
15 employed by the defendants in the State

16 4. The class of similarly situated
17 of all persons employed by defendant
18 Nevada during the applicable statute
19 periods prior to the filing of this Complaint
20 until date of judgment, such persons
21 Taxi Cab Drivers (hereinafter referred to
22 or "drivers") such employment involving
23 taxi cabs for the defendants in the State

24 5. The common circumstance of the
25 rise to this suit is that while they
26 defendants they were not paid the minimum
27 Nevada's Constitution, Article 15, Section
28 most of the days that they worked in

9 7. There is a well-defined comm
10 the questions of law and fact affecti
11 whole.

12 8. Proof of a common or single
13 establish the right of each member of
14 recover. These common questions of l
15 predominate over questions that affec
16 class members. The individual plaint
17 typical of those of the class.

18 9. A class action is superior to
19 methods for the fair and efficient ad
20 controversy. Due to the typicality o
21 claims, the interests of judicial eco
22 served by adjudication of this lawsui
23 This type of case is uniquely well-su
24 treatment since the employers' practi
25 the burden is on the employer to esta
26 for compensating the class members co
27 requirements of Nevada law.

28 10. The individual plaintiffs wi

9 of the proposed class and are determi
10 discharge those duties by vigorously
11 possible recovery for all members of
12 12. There is no plain, speedy, o
13 other than by maintenance of this cla
14 prosecution of individual remedies by
15 will tend to establish inconsistent s
16 for the defendants and result in the
17 members' rights and the disposition o
18 through actions to which they were no
19 addition, the class members' individu
20 in amount and they have no substantia
21 vindicate their rights, and secure th
22 competent counsel to do so, except by
23 class action case.

24 **AS AND FOR A FIRST CLAIM FOR RELIEF C**
25 **PLAINTIFFS AND ALL PERSONS SIMILARLY**
NEVADA'S CONSTITUT

26 13. The named plaintiffs repeat
27 allegations previously made and bring
28 Relief pursuant to Article 15, Sectio

9 Article 15, Section 16 including appl
10 and equitable relief to make the defe
11 violations of Nevada's Constitution a
12 of punitive damages.

13 16. The named plaintiffs on beha
14 the proposed plaintiff class members,
15 Claim for Relief, a judgment against
16 minimum wages, such sums to be determ
17 accounting of the hours worked by, an
18 to, the plaintiffs and the class memb
19 injunction and other equitable relief
20 defendants from continuing to violate
21 Constitution, a suitable award of pun
22 award of attorney's fees, interest an
23 for by Nevada's Constitution and othe

24 **AS AND FOR A SECOND CLAIM FOR RELIEF**
25 **REVISED STATUTES § 608.040 ON BE**
26 **PLAINTIFFS**
AND THE PUTATIVE CI

27 17. Plaintiffs repeat and reite
28 allegation previously made herein.

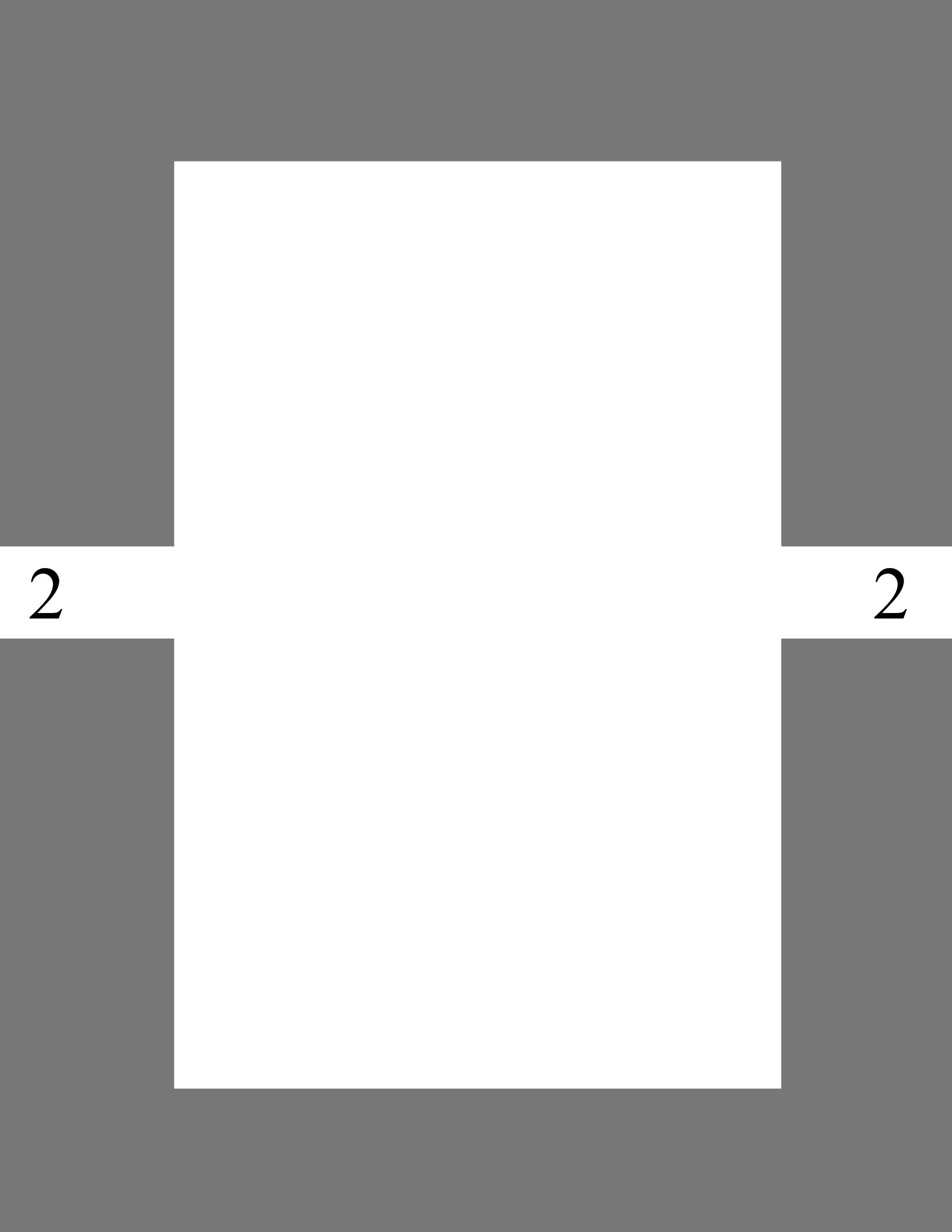
9 such separation were owed unpaid wages
10 20. The defendants have failed a
11 named plaintiffs and numerous members
12 plaintiff class who are the defendant
13 their earned but unpaid wages, such c
14 defendants constituting a violation c
15 Statutes § 608.020, or § 608.030 and
16 plaintiffs and similarly situated mem
17 class of plaintiffs a claim against t
18 continuation after the termination of
19 with the defendants of the normal dai
20 would pay them, until such earned but
21 actually paid or for 30 days, whichev
22 to Nevada Revised Statutes § 608.040.
23 21. As a result of the foregoi
24 plaintiffs seek on behalf of themselv
25 situated putative plaintiff class mem
26 against the defendants for the wages
27 class members as prescribed by Nevada
28 608.040, to wit, for a sum equal to u

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By: /s/ Leon Gre

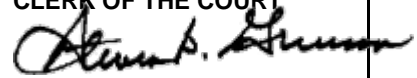
LEON GREENBERG,
Nevada Bar No.:
2965 South Jones
Las Vegas, Nevada
(702) 383-6085

Attorney for Pla



2

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TRAN

EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA

MICHAEL MURRAY, et al,	)	CASE NO. A-12-669926
)	
Plaintiffs,	)	DEPT. NO. I
)	
vs.)	
)	
A CAB TAXI SERVICE, LLC, et al,)	
)	
Defendants.)	

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE
THURSDAY, JANUARY 17, 2013

TRANSCRIPT RE:
DEFENDANT'S MOTION TO DISMISS COMPLAINT

APPEARANCES:

For the Plaintiffs: LEON GREENBERG, ESQ.

For the Defendants: ESTHER C. RODRIGUEZ, ESQ.

RECORDED BY: Lisa Lizotte, Court Recorder

1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 17, 2013, 9:34 A.M.

2 * * * * *

3 THE CLERK: Page 7, Michael Murray versus A Cab Taxi. Case Number
4 A669926.

5 MR. GREENBERG: Good morning, Your Honor. Leon Greenberg for the
6 plaintiffs.

7 THE COURT: Good morning.

8 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez for the
9 defendant A Cab, LLC.

10 THE COURT: Good morning. Do you want the lay of the land?

11 MS. RODRIGUEZ: Yes, Your Honor. It's my motion. I'm prepared to
12 argue it.

13 THE COURT: Okay. Well, let me give you the lay of the land. To this
14 point, at least, I agree pretty much with the reasoning applied by Judge Jones in
15 the federal case, the Bell Trans case. And if I do that, if I'm thinking this through
16 correctly, that would mean that the amendment to the Constitution did not impliedly
17 repeal -- is it 250?

18 MS. RODRIGUEZ: 608.250.

19 THE COURT: 250 and, you know, the rest of them. And if that's the case,
20 then there would be no cause of action here for these plaintiffs, if I'm reasoning
21 that correctly. Am I wrong?

22 MS. RODRIGUEZ: No, Your Honor, that's exactly our argument.

23 THE COURT: I thought you would like what I was saying.

24 MS. RODRIGUEZ: As well as Judge Israel has adopted the Lucas

1 reasoning, as yourself. And I did bring the minutes from a hearing yesterday that
2 took place before Judge Herndon in a matter called Barbara Gilmore versus Desert
3 Cab, and he as well adopted the Lucas reasoning, indicating that 608.250 is
4 appropriate and the amendment does not change what 608.250 stands for.

5 Would Your Honor like a copy of those minutes?

6 THE COURT: No, I don't need it. I don't believe anything Judge Herndon
7 says. No, that's not true, that's not true. I am not familiar with that case, but -- and
8 I am of course not bound by what Judge Israel did, either. I just -- I was taken with
9 the reasoning that Judge Jones had and I think it's spot on.

10 What do you say to that?

11 MR. GREENBERG: Your Honor, I would draw your attention to the very
12 first sentence of the Nevada Constitutional Amendment that is at issue and that is
13 never actually discussed in Judge Jones' opinion in Lucas.

14 THE COURT: Okay.

15 MR. GREENBERG: And that first sentence says every employer shall pay
16 a wage to each employee of not less than the hourly rate set forth in this section.
17 Every employer shall pay every employee --

18 THE COURT: Hmm.

19 MR. GREENBERG: -- at least the hourly rate set forth in this section of the
20 Nevada Constitution.

21 THE COURT: Why do you suppose that wasn't raised in front of Judge
22 Jones?

23 MR. GREENBERG: Presumably it was, Your Honor. I wasn't counsel
24 before Judge Jones. And the Nevada Constitution later on goes to define the term

1 employee and the term employee does have certain exceptions, but not the plaintiffs
2 in this case. Taxi drivers are not exceptions to the term of employee.

3 My problem, Your Honor, with what's gone on in the cases you were
4 discussing with Judge Jones, and I saw Judge Herndon yesterday on this, is that
5 no one has explained -- not Judge Jones or any subsequent judges who have looked
6 at this, how gauging the intent behind this constitutional amendment is proper for
7 this Court or for any court when the language is absolutely clear. There is no
8 ambiguity to the command of the constitutional amendment. It is absolutely clear.
9 And Governor Sandoval, when he was Attorney General -- he later became a
10 federal judge but he wasn't the federal judge who ruled on this, it was Judge Jones
11 -- offered the opinion that, look, the language here is clear. So clearly whatever
12 exceptions were in the law previously have now been overridden because this is the
13 Constitution. I mean --

14 THE COURT: Well, if it's so clear, how has it escaped everyone's attention
15 until now?

16 MR. GREENBERG: Well, Your Honor, we have this analysis by Judge
17 Jones --

18 THE COURT: Uh-huh.

19 MR. GREENBERG: -- who is the first jurist to rule on this issue, and then
20 you have the two subsequent reviews in this court. Judge Jones looked to what
21 he felt was the intent of the voters. I mean, the argument basically made to Judge
22 Jones was essentially the same argument made here that, look, when this was
23 enacted by the voters of the state, the intent was not to change any of the preexisting
24 coverage, so to speak, it was only to raise the amount that would be paid to people

1 who were covered by the minimum wage requirements.

2 Now, the problem with that, Your Honor, is that the law is clear. And
3 Judge Sandoval, when he reviewed this as Attorney General, in his opinion stated,
4 look, we have to presume that the voters knew what they were doing. It's not here
5 for this Court to act as a guardian or a super-adjudicator of what the intent of the
6 voters of the state of Nevada were when they enacted this, when the language is
7 clear.

8 THE COURT: Well, of course, but that's the very -- that's the very
9 reasoning that Judge Jones disagreed with and that I tend to agree with as well.
10 It's difficult enough to -- well, I won't say that, but it is probably a bit of a stretch
11 to suggest that all of the voters or the majority of the voters who voted for the
12 constitutional amendment were right up to snuff on this existing state of the law and
13 were aware that by virtue of amending the Constitution it would also do what you
14 say it did, that it wouldn't repeal. If they were, they probably would have more
15 specifically passed something. They would have passed something that more
16 specifically addressed the fact that they were -- intended also to repeal, because
17 what you're asking me to do is to say simply that language that says that all the --
18 it is something more than simply the general rule.

19 MR. GREENBERG: Your Honor, it means what it says. It says all
20 employers shall pay all employees the wage required in this section. There is no
21 ambiguity. The law means what it says, Your Honor.

22 THE COURT: You're not telling me that it is -- the plain meaning of the
23 constitutional amendment is there and there's no need to look at legislative history,
24 are you? That's an issue for later on this morning.

1 MR. GREENBERG: Well, Your Honor, clearly there is no need. There is
2 no ambiguity. Now, what Judge Jones did in the Lucas opinion is --

3 THE COURT: Let me ask you a question.

4 MR. GREENBERG: Yes, Your Honor.

5 THE COURT: This is not -- Am I correct, this was not argued in your
6 briefing?

7 MR. GREENBERG: In terms of the plain language, I would direct you to
8 page 7 of my opposition.

9 THE COURT: Okay.

10 MR. GREENBERG: We have the Supreme Court of the State of Nevada
11 in Board of Equalization v. Bakst. "By using the mandatory term 'shall' --

12 THE COURT: Hang on. Hang on a second. Hang on, let me get your
13 opposition. Do we have his opposition? I've got cases galore. I've got a complaint.
14 Oh, hang on a second here. Response in opposition. Yes, it's fancy words. Okay.
15 What page again?

16 MR. GREENBERG: At page 7, Your Honor, we have the Nevada Supreme
17 Court in Board of Equalization v. Bakst. This is from 2006. By saying, "By using
18 the mandatory term 'shall,' the Constitution clearly and unambiguously requires that
19 the methods used for assessing taxes throughout the state must be uniform." And
20 then there's also Nevada Mining Association, which says the Nevada Supreme
21 Court is not free to presume a constitutional provision means anything other than
22 what it says. The Court is bound by the language, the unambiguous, clear language
23 of the constitutional amendment.

24 Now, when Judge Jones looked at this, he looked at essentially the

1 short description or what was the broad understanding of the amendment, which
2 was to raise the minimum wage in Nevada. And this is defendant's position, well,
3 the point was to raise the amount, the hourly amount. But, Your Honor, what I am
4 explaining to the Court is completely consistent with that as well because it did
5 raise the minimum wage in Nevada. It raised the minimum wage for taxi drivers
6 who previously didn't even get a minimum wage. There's no reason to presume
7 that the voters of the state of Nevada would have wanted to preserve that exception
8 or that discrimination against certain classes of employees that were written in the
9 law. There's no actual rationalization that those exceptions are in the statute, Your
10 Honor. They were put in there for political reasons or whatever. This is what the
11 Legislature decided. But we are dealing with a Constitution here, Your Honor.
12 The supremacy of the Constitution is beyond question, Your Honor.

13 This is why I cannot understand Judge Jones' decision, when we have
14 no ambiguity. The language is clear. No one has explained to me or in any opinion
15 they have voiced on this issue, and I would invite Your Honor to do so, as to how we
16 get to this point of gauging the intent or going, as you were saying, to the statute --
17 you know, the legislative history, although this is a constitutional amendment, when
18 the language is absolute. And this is the conclusion, again, that Brian Sandoval,
19 when he was Attorney General, reached when he looked at this and he said --

20 THE COURT: So basically what you're saying is that since Brian Sandoval
21 is now a federal judge, his opinion is of equal weight with -- his opinion which he
22 gave as A.G. is now of equal weight as Judge Jones?

23 MR. GREENBERG: Well, Your Honor, the only opinion that matters now
24 is yours in this court.

1 THE COURT: Oh.

2 MR. GREENBERG: And he's now our esteemed governor.

3 THE COURT: He says the nicest things, doesn't he?

4 MR. GREENBERG: Well, Your Honor, I'm pointing out his opinion. The
5 rationale behind his opinion is very simple and straightforward.

6 THE COURT: Uh-huh.

7 MR. GREENBERG: There is no ambiguity here. The Court doesn't sit
8 as a guardian of the wisdom of the people of the state of Nevada. We have a
9 government of laws, not men. This is a case of the law meaning and being applied
10 as it says. And, Your Honor, if we're going to look at what the law says, 608.250,
11 sub 2, which contains the exemption, what it says actually is that the requirements
12 in 608.250, sub 1 do not apply to these individuals. 608.250, sub 1 is the statutory
13 minimum wage.

14 So how can that subsection 2 exempt or modify the requirements that
15 are imposed by Nevada's Constitution? Obviously it can't because it's a legislative
16 act and that can't overrule a constitutional provision unless the Legislature is so
17 authorized to do it. And there is no authorization in the constitutional amendment
18 for the Legislature to do it. The constitutional amendment doesn't say, Your Honor,
19 that the minimum wage for all persons that the Legislature has deemed subject to
20 the minimum wage shall be the following. That's not what it says. It says it shall
21 be for all workers as provided in this section. It limits -- it ties the hands of the
22 legislative branch to do anything to modify this. It can -- all these provisions, these
23 requirements can only be modified by the people of the state of Nevada through a
24 further constitutional amendment.

1 Now, was this a wise piece of work to be put in the Nevada
2 Constitution? Well, that's not before the Court and arguments could be made
3 about that.

4 THE COURT: You're not suggesting that --

5 MR. GREENBERG: But it is what it is, Your Honor.

6 THE COURT: You're not suggesting that the kind of -- what some have
7 referred to, not me, as a mob rule when the voters have put forward something and
8 you could go all day long looking to find understanding. I'm not saying that very
9 well. You get precious little legislative history anyway in Nevada, but when it's a
10 referendum or an initiative like this, you really -- you just -- how can you possibly go
11 behind it and get any understanding of what the voters meant? That is, if there is
12 ambiguity.

13 MR. GREENBERG: Yes, Your Honor.

14 THE COURT: And you're saying that there's none.

15 MR. GREENBERG: And that is the jumping off point, Your Honor, is the
16 ambiguity.

17 THE COURT: Well, what do you say of that? That's a pretty powerful
18 argument and one that I really had not -- I was just so taken with Judge Jones'
19 reasoning that --

20 MS. RODRIGUEZ: Well, I think Judge Jones' opinion, contrary to what
21 plaintiff's counsel just indicated, does take the time to address this Attorney General
22 opinion and basically points out that the Attorney General altogether failed to do any
23 kind of analysis in terms of implied repeal and the standard for that. They missed
24 that altogether. And first of all, as Your Honor is aware, the Attorney General

1 opinion is not binding upon this Court.

2 THE COURT: Uh-huh.

3 MS. RODRIGUEZ: But then giving it the benefit of the doubt, Judge Jones
4 explains that, first of all, first and foremost, the amendment made absolutely no
5 reference to NRS 608.250. And I think what Mr. Greenberg is arguing is that
6 somehow we should assume that the voters had this in mind and voted to repeal.
7 But the Nevada case law that we've cited indicates that the analysis should be
8 absolutely in the opposite direction, that an implied repeal is disfavored. And
9 whenever you can harmonize the two laws, that's what the courts have done, and
10 that is completely possible in this instance because, as I mentioned, 608.250 is
11 not mentioned by the amendment. Their definition, the amendment's definition
12 of employee is not in conflict with 250 or its exceptions, so there's absolutely no
13 reason that these two laws cannot be harmonized. And that is -- you only want to
14 assume a repeal when they absolutely cannot -- they're in conflict with each other.
15 And they're not in conflict with each other in this instance.

16 THE COURT: Well, you know what's interesting? I may be incorrect,
17 but I'm just looking at the Bell Trans decision, the Lucas case, the decision now.
18 I don't see where it even actually quotes the entire provision in the constitutional
19 amendment. So what does the whole provision say?

20 MS. RODRIGUEZ: The amendment?

21 THE COURT: Yes.

22 MS. RODRIGUEZ: I do have a copy of that. Well, the first section does
23 specifically address an increase in the amount, the calculation of the amount of
24 minimum wage.

1 THE COURT: But I'm looking more at does it have this broad language that
2 Mr. Greenberg is arguing for? Does it say every employee? Well, if it says every
3 employee, that still leaves you to determine who's an employee if it says every
4 person.

5 MS. RODRIGUEZ: Exactly. And 608 defines what an employee is, with
6 the exceptions.

7 THE COURT: So what does the constitutional amendment say?

8 MR. GREENBERG: Your Honor, the first sentence is at page 5 of my
9 opposition, Your Honor, and that is what I was referring to in our discussion a few
10 minutes ago.

11 THE COURT: Okay.

12 MR. GREENBERG: But I don't want to interrupt counsel. It's not polite
13 of me.

14 THE COURT: Well, but that was at my question. So where is the entire
15 constitutional provision? Is that it in the middle of page 5 of your --

16 MR. GREENBERG: No, Your Honor. It does stretch to, I believe, three or
17 four sections. That's Section A, the very first section. Section C does discuss who
18 is an employee for the purposes of the section. And again, as I was explaining to
19 the Court, the exemptions from that term employee are not applicable to these
20 plaintiffs. The exemptions include people who work for non-profits.

21 THE COURT: Does anyone happen to have the complete amendment?

22 MS. RODRIGUEZ: I do, Your Honor. I'm just looking for it.

23 THE COURT: Okay.

24 MS. RODRIGUEZ: I have it, I believe. I apologize, I only have one copy

1 that was actually an exhibit to the Lucas case.

2 THE COURT: All right.

3 MS. RODRIGUEZ: Do you want to look at it first, Mr. Greenberg?

4 MR. GREENBERG: No.

5 MS. RODRIGUEZ: May I approach, Your Honor?

6 MR. GREENBERG: By all means, give it to the bench.

7 THE COURT: He's probably dreaming about it. He doesn't need to see it.

8 MR. GREENBERG: The Court would like to see the full text. We should
9 certainly have it for them.

10 THE COURT: So it just starts out, it just starts right out with A). Each
11 employer shall pay a wage to each employee. B). The provisions may not be
12 waived by agreement. C). As used in this section, employee means any person
13 who is employed by an employer as defined herein, but does not include an
14 employee who's under 18, blah, blah, blah. Employer means. Any person who is
15 employed by an employer -- employer as defined herein. Well, where is employer
16 defined herein? I mean, does it -- Oh, there it is. Employer means any individual
17 proprietorship, partnership, blah, blah, blah. (Continues reading silently).

18 Well, all right. I interrupted your argument. I'm sorry.

19 MS. RODRIGUEZ: Well, it's just in line with what Your Honor is reviewing
20 there. Judge Jones looked at the amendment, looked at the definition as stated in
21 608.250 and specifically said that the amendment's definition of employee is not
22 in conflict with the 608.250 exceptions. And that's why these two statutes or these
23 two laws can be read in conjunction, in harmony, as required by the case law. They
24 are not in direct conflict with each other. And that's what the other courts have all

1 looked at, Judge Herndon, Judge Israel, Judge Jones. I believe this was reviewed
2 also by Judge Navarro at the federal court. And everyone has come to the same
3 conclusion that these are not in direct conflict, they can be read in conjunction. And
4 that's what we're asking this Court, to be consistent with these rulings.

5 THE COURT: Okay. Anything further?

6 MR. GREENBERG: Your Honor, the issue really is this section, the very
7 first sentence of the Nevada constitutional amendment. It is a self-contained
8 command of the Constitution. So how can its terms, which are clear on its face
9 and which are defined therein be varied by a mere legislative act? They cannot
10 be. And no one has explained this, Your Honor, not Judge Jones in Lucas. I invite
11 Your Honor to explain how that can happen consistent with the principles of a
12 constitutional government. I don't see that they can.

13 THE COURT: That's usually a trap when they invite you to do something
14 like that.

15 MR. GREENBERG: Well, maybe Your Honor should take some time to
16 think about it and can come up with an answer to that question. I can see Your
17 Honor is certainly carefully contemplating the issue. But again, Your Honor, this
18 is a question of how do we look at this intent? I mean, the foundation of the
19 rationalization for Judge Jones' decision is intent. Well, why do we look at intent
20 when we have no ambiguity? The Court doesn't need a lecture from me as to
21 applying the law as written, the plain meaning, the plain language rule and so forth.

22 And in addition, this whole question of harmonizing these two sets
23 of laws, Your Honor, it's really not an issue because we know that the Constitution
24 is supreme. To the extent that there is an exemption in 608.250 (2) from the

1 provisions of sub 1, that's fine. Sub 1 doesn't apply to those people. But that's got
2 nothing to do with what the Nevada Constitution requires by its express terms, by
3 saying everyone has to be paid as provided in this section of the Constitution and
4 these are the requirements of this section. So if you don't meet those requirements
5 for an exemption, you've got to pay your worker the minimum wage that's set forth
6 in that provision of the Constitution.

7 And, Your Honor, there is a bit of a gap between the two schemes,
8 so to speak. I mean because, for example, the Constitution exempts non-profit
9 employees but the statute does not. So non-profit employees, for example, would
10 have a right under the statute. So the statute hasn't been rendered completely
11 inoperative. But this is really a collateral issue. It's not really relevant to the question
12 of the supremacy of the constitutional command, Your Honor.

13 So this may not be a popular view that I am advocating in terms of the
14 affect this is going to have on this industry, which is used for many years to enjoying
15 this exemption. But nonetheless, this is the command of our Constitution and we
16 must be obedient to that. I mean, this is -- if the rule of law means anything, Your
17 Honor, it means that a constitutional command that is clear and unambiguous must
18 be enforced by this Court. This Court doesn't sit to judge the wisdom of the people
19 of the state of Nevada. I mean, we do live in a democracy and the Constitution is
20 supposed to be our highest command and form of governing rule.

21 I mean, I was looking at Marbury v. Madison, Your Honor, the other
22 night. It's the 210th anniversary of that decision next month, Your Honor. We could
23 review it, but the Court doesn't need that.

24 THE COURT: Don't you have any like car magazines by your bedside?

1 Do you pull out Marbury v. Madison?

2 MR. GREENBERG: Well, in preparation for coming here today, Your
3 Honor, I did review that.

4 THE COURT: You just thought you might need to dredge out old Marbury
5 again, huh?

6 MR. GREENBERG: Well, I mean, you know, you want -- I mean, the
7 language, I was going to quote from it, Your Honor, but the language unfortunately
8 is a little antiquated, so it's kind of hard to use in modern English. But we all know
9 and understand the proposition of a mere legislative act cannot change the dictates
10 of a constitutional requirement. And that is what we are faced with here, Your
11 Honor, for better or worse as a matter of public policy. But the public policy issue
12 is not before the Court. It has been decided by the people of the state of Nevada.
13 And Attorney General Sandoval, to his credit, recognized that when he was attorney
14 general. He may not have agreed with this, but he realized it for what it is. Your
15 Honor, again, the law means what it says.

16 THE COURT: Do you think -- do you think that Mr. Sandoval had a notion
17 that he would be supporting a fairly, I mean, partisan Democratic Party view, one
18 that I assume the Democratic Party would espouse that every employee and that an
19 industry that has been set up for years and years along the lines of the statute that,
20 you know, is a tip industry. I assume that's why -- I assume that's why the statutory
21 exception was made in the first place that taxi drivers and limousine drivers --
22 presumably because they enjoy tips that a minimum wage worker doesn't enjoy.
23 At any rate, do you think that he -- do you think it might come back to haunt him now
24 as governor if he is seen to be a Democrat?

1 MR. GREENBERG: Well, Your Honor, for what it's worth, under federal
2 law these individuals are covered by the minimum wage, by federal minimum wage
3 provisions --

4 THE COURT: Uh-huh.

5 MR. GREENBERG: -- and the difference is that in Nevada workers who get
6 minimum wage don't get tip credit. You have to be paid the full \$7 or so an hour.
7 Federal law allows a tip credit for all tipped workers, so taxi drivers are still covered.

8 THE COURT: Well, if the feds are enforcing it, then why are we even here?

9 MR. GREENBERG: Well, Your Honor, the problem is that the federal
10 minimum wage effectively is about \$5 an hour less --

11 THE COURT: Oh.

12 MR. GREENBERG: -- for all tipped workers. Tipped workers in Nevada
13 enjoy the full minimum wage as a matter of state law. So there really is no reason
14 why these workers should be discriminated against or treated any differently. Do
15 you think that the tips that taxi drivers receive are as much as a lot of our casino
16 workers receive? I don't think so, Your Honor. There's no -- there's no --

17 THE COURT: I have no idea and we have no evidence, of course.

18 MR. GREENBERG: Well, Your Honor, but to answer your question --

19 THE COURT: My speculation has kind of carried us off the deep end.

20 MR. GREENBERG: You asked a question about the governor.

21 THE COURT: I know.

22 MR. GREENBERG: And all I can say is when he gave this opinion this
23 was before the constitutional amendment was actually passed. This was -- he was
24 opining on the proposed, when this was actually still going in front of the voters,

1 okay. So his opinion was public record. To the extent that somebody wants to talk
2 about or evaluate what was out there in terms of an understanding of this, here
3 you have the highest law enforcement officer of the State prior to the enactment
4 of this amendment publicly pronouncing in response to a request from the Labor
5 Commissioner at that time what the effects of this amendment would be.

6 So this whole idea that this was somehow some great travesty and
7 blind enactment which was, I don't know, hoodwinked over the people of the state
8 of Nevada, there's just no basis to assume that. And if anything, the Court could
9 research this if it wishes, this amendment was passed by an overwhelming majority
10 of the voters of the state of Nevada. There is no question in my mind it would
11 have been passed as well even if this issue was specifically stated forth in the
12 amendment. But it didn't need to be stated forth in the amendment because the
13 amendment was a self-contained command. It said you have to pay as provided
14 in this section and it provided the exceptions in the section. By operation of our
15 system of laws it is the supreme law of the State of Nevada. There's no way around
16 it, Your Honor. And there is no direct understanding or analysis from any judge
17 who has looked at this as to why that does not apply and the result that Governor
18 Sandoval had envisioned back in 2005 is not applicable.

19 And, Your Honor, essentially, by the way, what we have is we have
20 Judge Jones' opinion in Lucas. Judge Israel ruled on this essentially and adopted
21 Judge Jones' opinion in Lucas.

22 THE COURT: Uh-huh.

23 MR. GREENBERG: Judge Herndon, who I saw yesterday, largely did the
24 same thing. He didn't really offer any independent analysis. He's not going to be

1 writing an opinion. He asked counsel to submit an order. So essentially you have
2 just what Judge Jones set forth in Lucas --

3 THE COURT: Okay.

4 MR. GREENBERG: -- for what it's worth.

5 THE COURT: Okay.

6 MS. RODRIGUEZ: Well, quickly, Your Honor --

7 THE COURT: It's your motion, so you get the last word.

8 MS. RODRIGUEZ: Thank you. I just want to make sure that the record is
9 clear because, you know, we got into some arguments about federal law and the
10 Fair Labor Standards Act, things like that.

11 THE COURT: Uh-huh.

12 MS. RODRIGUEZ: That's not what this lawsuit is about at all.

13 THE COURT: That's correct.

14 MS. RODRIGUEZ: We're asking for dismissal on 12(b)(1) and (6) because
15 -- just strictly on the pleadings. But I can tell you that what was pled, and you have
16 the complaint before you, just strictly has to do with Nevada minimum wage law.
17 I don't think we need to get into tip credits, those type of things, unless Your Honor
18 wants to hear about those, because we've litigated those extensively before Judge
19 Gonzalez and his representations about what taxicab drivers get in terms of tips.
20 They get \$100 a passenger for delivering to strip clubs. So they substantially get
21 a lot more than casino employees.

22 But the only thing I really want to point out to Your Honor is that I
23 believe that Mr. Greenberg now is arguing that there was this express repeal where
24 this amendment has completely replaced the statutes, but in the same breath he --

1 at the end of his argument then he is saying that it has not -- it has not replaced the
2 statute. It is not -- to quote him, he said it had not rendered the statute inoperable.
3 So I think -- and that's what he did in his pleading in his response. He argued for
4 both. First there's been a complete substitution from the amendment to the statute,
5 and then he's saying no, these actually -- the statute is still operable. So -- which is
6 what we're arguing is, yes, the statute is still operable. And I think if we're going to
7 address plain language, the plain language of the amendment does not address the
8 exceptions. The exceptions can still stand, and the exceptions being that in Nevada
9 the taxicab drivers and limousine drivers are exempt from Nevada wage -- from
10 Nevada minimum wage laws.

11 So there's no reason to -- it strictly just wasn't addressed in the
12 amendment. There is no presumption that the voters had this in mind when they
13 voted. You have the amendment in front of you. It's very limited in terms of raising
14 the amount. That was the primary focus of the amendment was to raise the amount
15 of the minimum wage, but that does not mean that all of a sudden now a whole
16 group of employees that were exempted are now included just because of this
17 particular amendment.

18 Thank you, Your Honor.

19 THE COURT: Okay. Well, this is one of those ironic moments, I suppose.
20 I have been focused by Mr. Greenberg here on the Constitution and on the
21 supremacy of the Constitution, and in that argument he is correct. It is also true
22 that it's not for me to question the wisdom of the voters and why they pass the
23 statutes that they do and I'm not free to interpose my own views as to what would
24 be effective or fair or anything else, as long as a constitutional provision is clear.

1 We tag all of our legislation usually off of the Constitution. The Constitution is the
2 bedrock. Nevada's Constitution is our bedrock no less than the United States
3 Constitution is the bedrock for the entire country and every law must be consistent
4 with the Constitution.

5 In this provision, this provision of the Constitution starts off in A) by
6 saying, "Each employer shall pay a wage to each employee of not less than" and it
7 goes on. And then in C) it says, "As used in this section, employee means" and it
8 defines employee the way that it defines it. And it makes no provision for defining
9 an employee the way that our remaining statutory law does. It makes no provision
10 for exempting from employee anyone other than -- "but does not include an
11 employee who is under 18 years of age employed by a non-profit for after school or
12 summer employment, or as a trainee for a period no longer than 90 days." That's it.

13 I am compelled, I am sworn to uphold the Constitution and enforce the
14 Constitution above any other statute. And on that basis I find, first of all, of course,
15 that this language is clear and has some plain meaning, and that if there is any
16 question left after the phrase "each employer shall pay a wage to each employee,"
17 if there's any question as to what does employee mean, the Constitution answers
18 that in its own provision. This is something that was -- may not have been urged to
19 Judge Jones. I do not know. All in all, regardless of how persuaded I may be by
20 the wisdom of my federal brother, before Judge Jones, before judge, now Governor
21 Sandoval, before anyone I am sworn to enforce the Constitution as it's written. I find
22 that the Constitution is clear and that it defines employee as it does in subsection C,
23 and therefore it has impliedly repealed section -- what chapter? Tell me again. It's
24 .250, but what --

1 MS. RODRIGUEZ: 608.

2 MR. GREENBERG: 608.250, sub 2, Your Honor.

3 THE COURT: 608.250. That is not the holding that I thought I would be
4 making when I came out here, but that is nonetheless my ruling.

5 MS. RODRIGUEZ: Expressly or impliedly repealed, Your Honor?

6 THE COURT: Impliedly. Did I say expressly?

7 MS. RODRIGUEZ: No, sir. No, Your Honor. You said impliedly. But --

8 THE COURT: Well, I think it impliedly does it or -- I mean, however you
9 want to call it. I mean, I don't think -- it cannot be expressly because it doesn't say
10 Section 608.250 is therefore not to be enforced.

11 MS. RODRIGUEZ: Correct.

12 THE COURT: So I guess I would have to say it impliedly does so because
13 it has its own definition for who is the employee and who is not covered. And
14 therefore -- you know, the fact that it even says "as used in this section employee
15 means," well, this section means Section 16, which starts out by saying each
16 employer shall pay a wage to each employee. I mean, that's pretty clear. And this
17 is not a ruling that I am particularly happy to make, but -- because I don't particularly
18 care to upset apple carts, but nonetheless that's what the Constitution says and
19 I am sworn to enforce that.

20 MS. RODRIGUEZ: Your Honor, the only thing, if Your Honor is inclined to
21 hear the additional comments that I have, is with the implied repeal, you know, the
22 case law that we've cited indicates that there has -- that these statutes still cannot
23 be read to go forward together. And since the amendment does not address these
24 exceptions, that's why I was asking whether this was -- if you're considering it as

1 an express replacement, because it just doesn't address the exceptions, and so
2 there's no reason that the exceptions cannot go forward.

3 THE COURT: That's correct, it doesn't. It doesn't, but it is the supreme
4 law of the land and any statute notwithstanding, it is the supreme law of the land.

5 MS. RODRIGUEZ: Oh, I understand that.

6 THE COURT: And that's why -- that's why impliedly it repeals it. You
7 cannot enforce a statute which is in derivation or contravention of the supreme law
8 of the land.

9 MS. RODRIGUEZ: So you're finding that it is in contravention, then, the
10 608.250, that there's something in the exceptions that are provided for in that statute
11 what would be in direct contradiction to the Constitution?

12 THE COURT: Yes. To the extent that the statute seems to provide further
13 exceptions to the word employee, then what is expressed in subsection C of Section
14 16 of our Constitution. To the extent that it does so, it must be overruled. It cannot
15 be enforced because the people have spoken in the most basic law of the land that
16 we have and said, "as used in this section employee means this." And you can't
17 then redefine employee in a statute to mean something else. The people already
18 did that. And as much as it almost grieves me to agree with Mr. Greenberg, I have
19 to. I say that in jest, Mr. Greenberg.

20 MR. GREENBERG: I apologize, Your Honor.

21 THE COURT: But I am surprised that I am persuaded.

22 Now, you do the order and pass it by her.

23 MR. GREENBERG: I will do so, Your Honor.

24 MS. RODRIGUEZ: Thank you.

1 MR. GREENBERG: Thank you, Your Honor.

2 THE COURT: All right. So the motion is denied.

3 (PROCEEDINGS CONCLUDED AT 10:15 A.M.)

4 * * * * *

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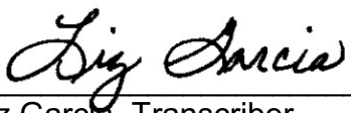
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7 ATTEST: I do hereby certify that I have truly and correctly transcribed the
8 audio/video proceedings in the above-entitled case to the best of my ability.

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Liz Garcia, Transcriber
LGM Transcription Service

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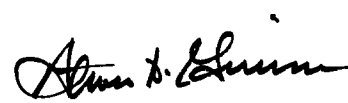
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CLERK OF THE COURT

ACOM

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Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MICHAEL MURRAY and MICHAEL)	Case No.: A-12-669926-C
RENO, Individually and on	)	Dept.: I
behalf of others similarly)	
situated,)	
	)	FIRST AMENDED COMPLAINT
Plaintiffs,)	
	)	ARBITRATION EXEMPTION
vs.	)	CLAIMED BECAUSE THIS IS
	)	A CLASS ACTION CASE
A CAB TAXI SERVICE LLC and)	
A CAB, LLC,)	
)	
Defendants.)	
_____)	

MICHAEL MURRAY (previously named as "MICHAEL MURPHY")
and MICHAEL RENO, Individually and on behalf of others
similarly situated, by and through their attorney, Leon
Greenberg Professional Corporation, as and for a Complaint
against the defendants, state and allege, as follows:

JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

1. The plaintiffs, MICHAEL MURRAY and MICHAEL RENO,
(the "individual plaintiffs" or the "named plaintiffs")

1 are residents of the State of Nevada and during all
2 relevant times were residents of Clark County, Nevada, and
3 all plaintiffs are current employees of the defendants.

4 2. The defendants A CAB TAXI SERVICE LLC and A CAB,
5 LLC, (hereinafter referred to as "A CAB" or "defendants")
6 are limited liability companies or corporations existing
7 and established pursuant to the laws of the State of
8 Nevada with their principal place of business in the
9 County of Clark, State of Nevada and conduct business in
10 Nevada.

11 **CLASS ACTION ALLEGATIONS**

12 3. The plaintiffs bring this action as a class
13 action pursuant to Nev. R. Civ. P. §23 on behalf of
14 themselves and a class of all similarly situated persons
15 employed by the defendants in the State of Nevada.

16 4. The class of similarly situated persons consists
17 of all persons employed by defendant in the State of
18 Nevada during the applicable statute of limitations
19 periods prior to the filing of this Complaint continuing
20 until date of judgment, such persons being employed as
21 Taxi Cab Drivers (hereinafter referred to as "cab drivers"
22 or "drivers") such employment involving the driving of
23 taxi cabs for the defendants in the State of Nevada.

24 5. The common circumstance of the cab drivers giving
25 rise to this suit is that while they were employed by
26 defendants they were not paid the minimum wage required by
27 Nevada's Constitution, Article 15, Section 16 for many or
28 most of the days that they worked in that their hourly

1 compensation, when calculated pursuant to the requirements
2 of said Nevada Constitutional Provision, did not equal at
3 least the minimum hourly wage provided for therein.

4 6. The named plaintiffs are informed and believe,
5 and based thereon allege that there are at least 200
6 putative class action members. The actual number of class
7 members is readily ascertainable by a review of the
8 defendants' records through appropriate discovery.

9 7. There is a well-defined community of interest in
10 the questions of law and fact affecting the class as a
11 whole.

12 8. Proof of a common or single set of facts will
13 establish the right of each member of the class to
14 recover. These common questions of law and fact
15 predominate over questions that affect only individual
16 class members. The individual plaintiffs' claims are
17 typical of those of the class.

18 9. A class action is superior to other available
19 methods for the fair and efficient adjudication of the
20 controversy. Due to the typicality of the class members'
21 claims, the interests of judicial economy will be best
22 served by adjudication of this lawsuit as a class action.
23 This type of case is uniquely well-suited for class
24 treatment since the employers' practices were uniform and
25 the burden is on the employer to establish that its method
26 for compensating the class members complies with the
27 requirements of Nevada law.

28 10. The individual plaintiffs will fairly and

1 adequately represent the interests of the class and have
2 no interests that conflict with or are antagonistic to the
3 interests of the class and have retained to represent them
4 competent counsel experienced in the prosecution of class
5 action cases and will thus be able to appropriately
6 prosecute this case on behalf of the class.

7 11. The individual plaintiffs and their counsel are
8 aware of their fiduciary responsibilities to the members
9 of the proposed class and are determined to diligently
10 discharge those duties by vigorously seeking the maximum
11 possible recovery for all members of the proposed class.

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

24 **AS AND FOR A FIRST CLAIM FOR RELIEF ON BEHALF OF THE NAMED**
25 **PLAINTIFFS AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO**
NEVADA'S CONSTITUTION

26 13. The named plaintiffs repeat all of the
27 allegations previously made and bring this First Claim for
28 Relief pursuant to Article 15, Section 16, of the Nevada

1 Constitution.

2 14. Pursuant to Article 15, Section 16, of the Nevada
3 Constitution the named plaintiffs and the class members
4 were entitled to an hourly minimum wage for every hour
5 that they worked and the named plaintiffs and the class
6 members were often not paid such required minimum wages.

7 15. The named plaintiffs seek all relief available to
8 them and the alleged class under Nevada's Constitution,
9 Article 15, Section 16 including appropriate injunctive
10 and equitable relief to make the defendants cease their
11 violations of Nevada's Constitution and a suitable award
12 of punitive damages.

13 16. The named plaintiffs on behalf of themselves and
14 the proposed plaintiff class members, seek, on this First
15 Claim for Relief, a judgment against the defendants for
16 minimum wages, such sums to be determined based upon an
17 accounting of the hours worked by, and wages actually paid
18 to, the plaintiffs and the class members, a suitable
19 injunction and other equitable relief barring the
20 defendants from continuing to violate Nevada's
21 Constitution, a suitable award of punitive damages, and an
22 award of attorney's fees, interest and costs, as provided
23 for by Nevada's Constitution and other applicable laws.

24 **AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT TO NEVADA**
25 **REVISED STATUTES § 608.040 ON BEHALF OF THE NAMED**
26 **PLAINTIFFS**
AND THE PUTATIVE CLASS

27 17. Plaintiffs repeat and reiterate each and every
28 allegation previously made herein.

1 18. The named plaintiffs bring this Second Claim for
2 Relief against the defendants pursuant to Nevada Revised
3 Statutes § 608.040 on behalf of themselves and those
4 members of the alleged class of all similarly situated
5 employees of the defendants who have terminated their
6 employment with the defendants.

7 19. The named plaintiffs have been separated from
8 their employment with the defendants and at the time of
9 such separation were owed unpaid wages by the defendants.

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

23 21. As a result of the foregoing, the named
24 plaintiffs seek on behalf of themselves and the similarly
25 situated putative plaintiff class members a judgment
26 against the defendants for the wages owed to them and such
27 class members as prescribed by Nevada Revised Statutes §
28 608.040, to wit, for a sum equal to up to thirty days

1 wages, along with interest, costs and attorneys' fees.

2 WHEREFORE, plaintiffs demand the relief on each cause
3 of action as alleged aforesaid.

4 Plaintiffs demand a trial by jury on all issues so
5 triable.

6 Dated this 30th day of January, 2013.

7

8 Leon Greenberg Professional Corporation

9

10 By: /s/ Leon Greenberg

11 LEON GREENBERG, Esq.
12 Nevada Bar No.: 8094
13 2965 South Jones Blvd- Suite E4
14 Las Vegas, Nevada 89146
15 (702) 383-6085

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17 Attorney for Plaintiff

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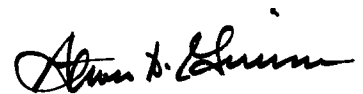
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CLERK OF THE COURT

1 **DECN**

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11 Attorneys for Plaintiffs

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 MICHAEL MURRAY, and MICHAEL)	Case No.: A-12-669926-C
15 RENO, Individually and on)	
16 behalf of others similarly	)	Dept.: I
17 situated,)	
)	
18 Plaintiffs,	)	NOTICE OF ENTRY OF
	)	DECISION AND ORDER
19 vs.)	
)	
20 A CAB TAXI SERVICE LLC, and A)	
21 CAB, LLC,)	
)	
22 Defendants.)	
)	
)	

23 PLEASE TAKE NOTICE that the Court entered a Decision and Order
24 in this matter on February 11, 2013. A copy of said Decision and
25 Order is attached hereto.

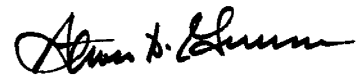
26 LEON GREENBERG PROFESSIONAL CORP.

27 *Leon Greenberg*

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CLERK OF THE COURT

1 DECN

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11 Attorneys for Plaintiffs

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 MICHAEL MURRAY, and MICHAEL)	Case No.: A-12-669926-C
15 RENO, Individually and on)	
16 behalf of others similarly	)	Dept.: I
17 situated,)	
18 Plaintiffs,)	
19 vs.	)	DECISION AND ORDER
20 A CAB TAXI SERVICE LLC, and A)	
21 CAB, LLC,)	
22 Defendants.)	

23 This matter having come before the Court on the defendants'
24 motion to dismiss plaintiffs' complaint¹ pursuant to NRCP Rules
25 12(b)(1) and 12(b)(5), such motion having come before the Court for
26 oral argument on January 17, 2012, with Esther C. Rodriguez, Esq.,
27 arguing on behalf of the defendants and Leon Greenberg, Esq.,
28 arguing on behalf of the plaintiffs, and after due consideration of
the arguments, briefs and papers submitted by counsel for the
parties, and the record of these proceedings;

¹ The Complaint served in this case indicated the first named plaintiff as Michael Murphy although the Court's docket indicates his name is Michael Murray which is such person's correct name. Defendants do not concede that the caption of this order is proper.

1 **THE COURT FINDS:**

2 **Summary of Plaintiffs' Claims and the Parties' Dispute**

3 Plaintiffs allege they were formerly employed by defendants as
4 taxi cab drivers. They allege when they were so employed the
5 defendants were obligated to pay them a minimum wage as provided for
6 under Nevada's Constitution Article 15, Section 16 ("Section 16").
7 They further allege they were not paid such minimum wage. As a
8 result, they allege they are entitled to damages and other
9 relief as provided for by Section 16 and certain penalties
10 pursuant to NRS § 608.040. Defendants claim Section 16 does not
11 confer any right to a minimum wage upon taxi drivers and moves
12 to dismiss on that basis.

13 **Discussion**

14 The Court's decision ultimately rests upon the supremacy
15 of Nevada's Constitution in all matters of law not otherwise
16 controlled by federal law or the United States Constitution.
17 The very first sentence of Section 16, in paragraph "A,"
18 provides:

19 Each employer shall pay a wage to each employee of not
20 less than the hourly rates set forth in this section.

21 This language is clear, direct and unambiguous.

22 Accordingly, the Court's inquiry is limited to determining
23 whether the parties are "employer" and "employee" for the
24 purposes of Section 16. Defendants assert Section 16 was
25 intended only to raise the minimum wage and not disturb the
26 exemptions to Nevada's minimum wage requirements in Nevada
27 Revised Statutes 608.250(2). In resolving such assertion the
28 starting point for the Court must, of course, be the language

1 of Section 16 itself. In Section 16, paragraph "C," the
2 following definition of "employee" is provided:

3 As used in this section, "employee" means any person who
4 is employed by an employer as defined herein but does not
5 include an employee who is under eighteen (18) years of
6 age, employed by a nonprofit organization for after school
or summer employment or as a trainee for a period not
longer than ninety (90) days.

7 Again, this language is clear, direct and unambiguous.
8 Through such language Section 16 extends its minimum wage
9 requirements to all employees except those set forth in paragraph
10 "C." Such paragraph "C" does not include taxi drivers among the
11 employees excluded from the reach of Section 16.

12 Defendants argue that Section 16 makes no mention of the
13 exemptions in Nevada Revised Statutes 608.250(2) and implied repeal
14 occurs only when there is irreconcilable repugnancy between the two
15 laws compelling the conclusion that the later enactment necessarily
16 repeals the earlier. They further argue where express terms of
17 repeal are not used, the presumption is always against an intention
18 to impliedly repeal an earlier statute. In support of these
19 contentions they cite *Washington v. State*, 30 P.3d 1134, 1170 (Sup
20 Ct. Nev. 2001), *Mengelkamp v. List*, 501 P.2d 1032, 1034 (Sup. Ct.
21 Nev. 1972), and the authorities discussed therein. Accordingly, in
22 defendants' view, this Court must find that the two laws can exist
23 and be read in harmony; and Section 16 did not supplant the
24 exemptions specified in Nevada Revised Statute 608.250(2).

25 Unfortunately for defendants, the foregoing clear and
26 unambiguous language of Section 16, paragraph "A," and the clear and
27 unambiguous language of paragraph "C" setting forth who is an
28 "employee" for the purposes of Section 16, renders the Court unable

1 to conduct the intent analysis urged by defendants and reach the
2 disposition they desire.

3 An examination of the intent or purpose behind a constitutional
4 provision is only proper when ambiguity exists in the language of
5 the provision. If there is no ambiguity the provision must be
6 applied in accordance with its plain meaning. See, *Halverson v.*
7 *Miller* 186 P.3d 893, 897 (Nev. Sup. Ct. 2008); *Nevadans for Nevada*
8 *v. Beers*, 142 P.3d 339, 347 (Nev. Sup. Ct. 2006); and *Rogers v.*
9 *Heller*, 18 P.3d 1034, 1038, n. 17 (Nev. Sup. Ct. 2001). The Court
10 discerns no ambiguity in the language of Section 16 and none has
11 been brought to its attention by defendants. Under such
12 circumstances, for the Court to engage in an analysis of the intent
13 behind Section 16, and by doing so override its express, clear, and
14 unambiguous language, would be antithetical to our system of
15 constitutional law. The people of the State of Nevada, through the
16 democratic process, have made Section 16 the supreme law of the
17 State of Nevada by placing its provisions in Nevada's Constitution.
18 This Court is duty bound to enforce Section 16 and its clear
19 language.

20 The provisions of NRS 608.250(2) make no mention of Section 16
21 and speak only of providing an exemption to the requirements set
22 forth in NRS 608.250(1). Nor does Section 16 grant the legislature
23 the power to modify any of its requirements. Section 16, being a
24 constitutional provision not subject to legislative modification,
25 must displace any conflicting statute. Accordingly, the provisions
26 of NRS 608.250 are not controlling upon plaintiffs' claims brought
27 under Section 16.

28 In reaching its decision, the Court acknowledges it has been

1 advised of the contrary conclusion rendered in the opinion issued by
2 United States District Court Judge Jones in *Lucas v. Bell*
3 *Transportation*, 2009 U.S. Dist. LEXIS 72549, (D. Nev. June 23, 2009).
4 It has also been made aware that the holding of *Lucas* has been
5 adopted by two of the judges of this Court.² With all due respect
6 to its judicial brethren, this Court must decline to follow *Lucas*
7 which this Court believes has not appropriately recognized, and
8 respected, the clear language and primacy of Section 16.

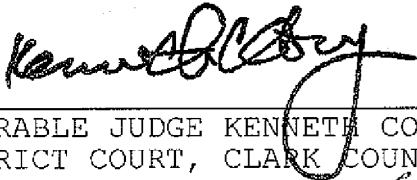
9 The Court realizes application of Section 16 to the defendants,
10 and its industry, represents a significant change for how such
11 employers must conduct business. The Court is effectuating such
12 change because it is required to do so, it passes no judgment on the
13 wisdom of such change. [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 **Conclusion**

19 Defendants' motion to dismiss pursuant to NRCP Rules 12(b)(1)
20 and 12(b)(5) is denied.

21
22 IT IS SO ORDERED this 8 day of Jul, 2013

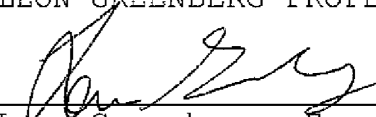
23
24 
25 HONORABLE JUDGE KENNETH CORY
26 DISTRICT COURT, CLARK COUNTY
27 ER

28 ² See, *Thomas v. Nevada Yellow Cab*, A-12-661726-C, August 30,
2012 and *Gilmore v. Desert Cab*, A-12-668502-C.

1 Submitted by:

2 LEON GREENBERG PROFESSIONAL CORP.

3

4 
Leon Greenberg, Esq.

Nevada Bar No. 8094

5 2965 S. Jones Boulevard - Ste. E-4

Las Vegas, NV 89146

6 Tel (702) 383-6085

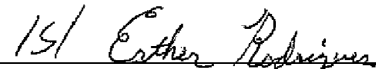
Attorney for the Plaintiffs

7

Approved as to Form:

8

9



Esther C. Rodriguez Esq.

10 Nevada Bar No. 6473

1061 Park Run Drive - Suite 150

11 Las Vegas, Nevada, 89145

Tel (702) 320-8400

12 Attorney for the Defendants

13

14

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16

17

18

19

20

21

22

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28

CERTIFICATE OF MAILING

The undersigned certifies that on February 13, 2013, she served the within:

NOTICE OF ENTRY OF DECISION AND ORDER

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

TO:

Esther C. Rodriguez, Esq.
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

/s/ Sydney Saucier

Sydney Saucier

000046

000046

Esther C. Rodriguez, Esq.
RODRIGUEZ LAW OFFICES, P
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

5

5


CLERK OF THE COURT

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

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

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

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

11 Plaintiffs,

12 vs.

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

14 Defendants.

15
16 **DEFENDANT A CAB, LLC'S ANSWER TO COMPLAINT**

17 Defendant A Cab, LLC ("Defendant"), by and through its attorney of record, ESTHER C.
18 RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., pursuant to NRCP Rule 12, and as its
19 Answer to Plaintiffs' Complaint on file herein ("Complaint"), admits, denies and alleges as follows:

20 **JURISDICTION, PARTIES AND PRELIMINARY STATEMENT**

21 1. Answering Paragraph 1 of the Complaint, Defendant is without sufficient
22 information or knowledge to form a belief as to the truth of such allegations, and therefore denies
23 the same. Defendant denies the allegation that Plaintiffs are current employees.

24 2. Answering Paragraph 2 of the Complaint, Defendant admits it is a Nevada Limited
25 Liability Company doing business in the County of Clark, State of Nevada, as a taxicab company.

26 **CLASS ACTION ALLEGATIONS**

27 3. Answering Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Complaint, Defendant
28 asserts that the allegations contained therein are a legal conclusion to which no response is

required. To the extent these Paragraphs contain any factual allegations requiring a response, Defendant denies same.

AS AND FOR A FIRST CLAIM FOR RELIEF ON BEHALF OF THE NAMED PLAINTIFFS AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO NEVADA'S CONSTITUTION

4. Answering Paragraph 13 of the Complaint, Defendant repeats and realleges its answers to the allegations contained in Paragraphs 1 through 12 as though fully set forth herein.

5. Answering Paragraphs 14, 15, and 16 of the Complaint, Defendant asserts that the allegations contained therein are a legal conclusion to which no response is required. To the extent these Paragraphs contain any factual allegations requiring a response, Defendant denies same.

AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT TO NEVADA REVISED STATUTES § 608.040 ON BEHALF OF THE NAMED PLAINTIFFS AND THE PUTATIVE CLASS

6. Answering Paragraph 17 of the Complaint, Defendant repeats and realleges its answers to the allegations contained in Paragraphs 1 through 16 as though fully set forth herein.

7. Answering Paragraphs 18, 19, 20, and 21 of the Complaint, Defendant asserts that the allegations contained therein are a legal conclusion to which no response is required. To the extent these Paragraphs contain any factual allegations requiring a response, Defendant denies same.

PRAYER FOR RELIEF

Plaintiffs' prayer for relief requires no response. However, to the extent Plaintiffs' prayer asserts allegations, Defendant denies each and every allegation in the prayer for relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

As a first separate and affirmative defense, Defendant alleges Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

As a second separate and affirmative defense, Defendant alleges Plaintiffs have failed to mitigate their alleged damages, if any.

...

THIRD AFFIRMATIVE DEFENSE

As a third separate and affirmative defense, Defendant alleges that Plaintiffs' damages, if any, were caused solely by the conduct of others and are not the result of any conduct of Defendant A Cab, LLC.

FOURTH AFFIRMATIVE DEFENSE

As a fourth separate and affirmative defense, Defendant alleges that Plaintiffs' claims are not ripe in this forum.

FIFTH AFFIRMATIVE DEFENSE

As a fifth separate and affirmative defense, Defendant alleges that Plaintiffs' claims are barred because Plaintiffs' own actions were the proximate cause of their damages, if any.

SIXTH AFFIRMATIVE DEFENSE

As a sixth separate and affirmative defense, Defendant alleges that this Court does not have jurisdiction because Plaintiffs have failed to exhaust their administrative remedies as required by Nevada law.

SEVENTH AFFIRMATIVE DEFENSE

As a seventh separate and affirmative defense, Defendant alleges that Plaintiffs' Complaint is barred by the doctrine of res judicata.

EIGHTH AFFIRMATIVE DEFENSE

As an eighth separate and affirmative defense, Defendant alleges that Plaintiffs' Complaint is barred by the doctrine of collateral estoppel.

NINTH AFFIRMATIVE DEFENSE

As a ninth separate and affirmative defense, Defendant alleges that Plaintiffs have failed to maintain their claims pursuant to Nevada Rule of Civil Procedure 23 governing class actions.

TENTH AFFIRMATIVE DEFENSE

As a tenth separate and affirmative defense, and pursuant to N.R.C.P. 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's answer to the Complaint, and therefore, this answering Defendant reserves the right to amend its answer to allege additional affirmative

1 defenses if subsequent investigation so warrants.

2 **ELEVENTH AFFIRMATIVE DEFENSE**

3 As an eleventh separate and affirmative defense, Defendant denies each and every allegation
4 of Plaintiffs' Complaint not specifically admitted or otherwise pled to herein.

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 As a twelfth separate and affirmative defense, it has been necessary for this answering
7 Defendant to retain the services of an attorney to defend this action, and Defendant A Cab, LLC is
8 entitled to a reasonable sum as and for attorney's fees.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 As a thirteenth separate and affirmative defense, Plaintiffs' claims are barred by statute of
11 limitations / laches.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 As a fourteenth separate and affirmative defense, Plaintiffs' claims are barred by unclean
14 hands / in pari delicto/ illegality.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 As a fifteenth separate and affirmative defense, Plaintiffs' claims are barred by fraud / theft.

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 As a sixteenth separate and affirmative defense, Plaintiffs' claims are barred by equitable
19 estoppel.

20 **SEVENTEENTH AFFIRMATIVE DEFENSE**

21 As a seventeenth separate and affirmative defense, Plaintiffs' claims are barred or otherwise
22 limited by offset / setoff / or payments that have already been made to the amounts in question.

23 **EIGHTEENTH AFFIRMATIVE DEFENSE**

24 As a eighteenth separate and affirmative defense, Plaintiffs' demand for attorney fees is
25 barred by the lack of any legal basis for Plaintiff attorney fees.

26 ...

27 ...

28 ...

WHEREFORE, Defendant prays as follow:

1. That Plaintiffs take nothing by way of their Complaint;

2. That Plaintiffs' Complaint be dismissed with prejudice in its entirety and Judgment entered in favor of Defendant;

3. That Defendant be awarded its attorneys' fees, costs, and interest; and

4. For such other and further relief as this Court deems just and proper.

DATED this 22 day of April, 2013.

RODRIGUEZ LAW OFFICES, P.C.



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing **Defendant A Cab, LLC's**

Answer to Complaint was served by placing same, postage prepaid, in the U.S. Mail this 22 day of April, 2013 to:

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



An Employee of Rodriguez Law Offices, P.C.

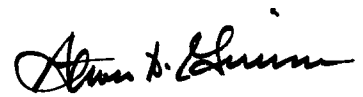
Rodriguez Law Offices, P.C.

10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Tel (702) 320-8400
Fax (702) 320-8401

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6

6



CLERK OF THE COURT

1 NOEO

2 LEON GREENBERG, ESQ., SBN 8094
3 DANA SNIEGOCKI, ESQ., SBN 11715
4 Leon Greenberg Professional Corporation
5 2965 South Jones Blvd- Suite E4
6 Las Vegas, Nevada 89146
7 (702) 383-6085
8 (702) 385-1827(fax)
9 leongreenberg@overtimelaw.com
10 dana@overtimelaw.com
11 Attorneys for Plaintiffs

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 MICHAEL MURRAY, and MICHAEL	)	Case No.: A-12-669926-C
15 RENO, Individually and on)	
16 behalf of others similarly	)	Dept.: I
17 situated,)	
18 Plaintiffs,	)	NOTICE OF ENTRY OF ORDER
19 vs.)	
20 A CAB TAXI SERVICE LLC, and A)	
21 CAB, LLC,)	
22 Defendants.)	
23)	
24)	
25)	
26)	
27)	
28)	

PLEASE TAKE NOTICE that the Court entered an Order in this matter on May 2, 2013. A copy of said Order is attached hereto.
Dated: May 6, 2013

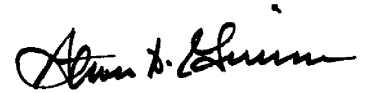
LEON GREENBERG PROFESSIONAL CORP.

Leon Greenberg

Leon Greenberg, Esq.
Nevada Bar No. 8094
2965 S. Jones Boulevard - Ste. E-4
Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Plaintiffs

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CLERK OF THE COURT

ORDER

LEON GREENBERG, ESQ., SBN 8094
DANA SNIEGOCKI, ESQ., SBN 11715
Leon Greenberg Professional Corporation
2965 South Jones Blvd- Suite E4
Las Vegas, Nevada 89146
(702) 383-6085
(702) 385-1827(fax)
leongreenberg@overtimelaw.com
dana@overtimelaw.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL MURRAY, and MICHAEL	)	Case No.: A-12-669926-C
RENO, Individually and on)	
behalf of others similarly	)	Dept.: I
situated,)	
)	
Plaintiffs,)	
	)	ORDER
vs.)	
)	
A CAB TAXI SERVICE LLC, and A)	
CAB, LLC,)	
)	
Defendants.)	

This matter having come before the Court on the defendants' motion for reconsideration of the Court's February 11, 2013 Order denying defendants' motion to dismiss the plaintiffs' complaint pursuant to Rules 12(b)(1) and 12(b)(5), such motion having been filed with the Court on February 27, 2013, and after due consideration of the briefs and papers submitted by counsel for the parties, and the record of these proceedings;

///

///

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///

///

1 **IT IS HEREBY ORDERED:**

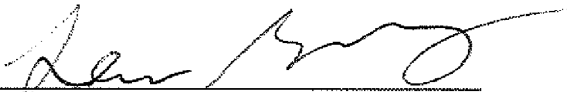
2 Defendants' motion for reconsideration of the Court's February
3 11, 2013 Order denying defendants' motion to dismiss the plaintiffs'
4 complaint pursuant to Nev. R. Civ. P. 12(b)(1) and 12(b)(5) is
5 **DENIED.**

6
7 IT IS SO ORDERED this 30 day of April, 2013

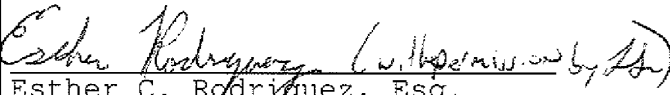
8
9 
10 _____
11 HONORABLE JUDGE KENNETH CORY
12 DISTRICT COURT, CLARK COUNTY
13 2K

12 Submitted by:

13 LEON GREENBERG PROFESSIONAL CORP.

14 
15 Dana Sniegocki, Esq.
16 Nevada Bar No. 11715
17 LEON GREENBERG PROF. CORP.
18 2965 S. Jones Boulevard - Ste. E-4
19 Las Vegas, NV 89146
20 Tel (702) 383-6085
21 Attorney for the Plaintiffs

20 Approved as to Form:

21 
22 Esther C. Rodriguez, Esq.
23 Nevada Bar No. 6473
24 1061 Park Run Drive - Suite 150
25 Las Vegas, Nevada, 89145
26 Tel (702) 320-8400
27 Attorney for the Defendants
28

CERTIFICATE OF MAILING

The undersigned certifies that on May 6, 2013, she served the within:

NOTICE OF ENTRY OF ORDER

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

TO:

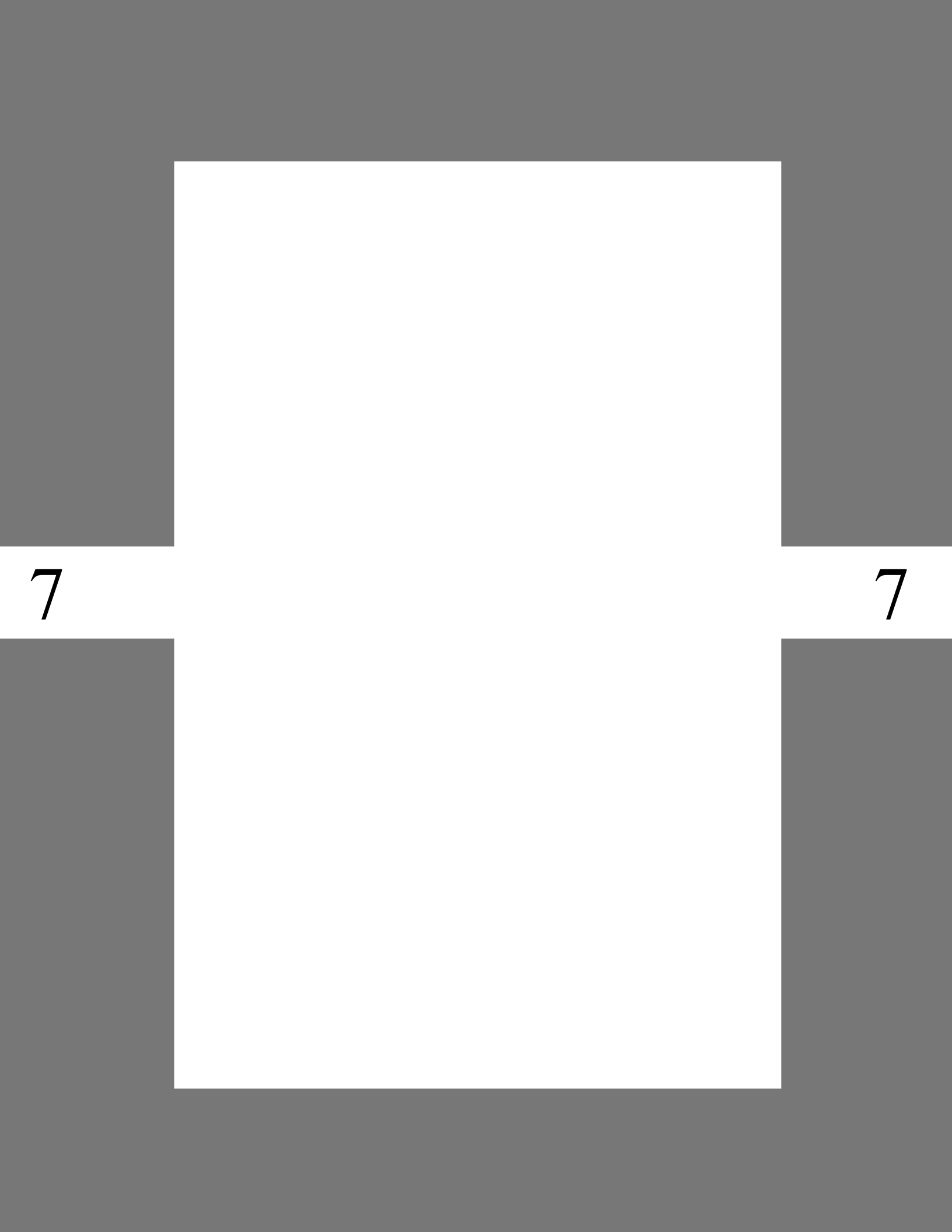
Esther C. Rodriguez, Esq.
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

/s/ Sydney Saucier

Sydney Saucier

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7

7


CLERK OF THE COURT

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

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

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

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

11 Plaintiffs,

12 vs.

13 A CAB TAXI SERVICE LLC and A CAB, LLC,
14 Defendants.

15
16 **DEFENDANT A CAB, LLC'S ANSWER TO FIRST AMENDED COMPLAINT**

17 Defendant A Cab, LLC ("Defendant"), by and through its attorney of record, ESTHER C.
18 RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., pursuant to NRCP Rule 12, and as its
19 Answer to Plaintiffs' First Amended Complaint on file herein ("Complaint"), admits, denies and
20 alleges as follows:

21 **JURISDICTION, PARTIES AND PRELIMINARY STATEMENT**

22 1. Answering Paragraph 1 of the Complaint, Defendant is without sufficient
23 information or knowledge to form a belief as to the truth of such allegations, and therefore denies
24 the same. Defendant denies the allegation that Plaintiffs are current employees.

25 2. Answering Paragraph 2 of the Complaint, Defendant admits it is a Nevada Limited
26 Liability Company doing business in the County of Clark, State of Nevada, as a taxicab company.

27 **CLASS ACTION ALLEGATIONS**

28 3. Answering Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Complaint, Defendant

1 asserts that the allegations contained therein are a legal conclusion to which no response is required.
 2 To the extent these Paragraphs contain any factual allegations requiring a response, Defendant
 3 denies same.

4 **AS AND FOR A FIRST CLAIM FOR RELIEF ON BEHALF OF THE NAMED**
 5 **PLAINTIFFS AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO**
 6 **NEVADA'S CONSTITUTION**

7 4. Answering Paragraph 13 of the Complaint, Defendant repeats and realleges its
 8 answers to the allegations contained in Paragraphs 1 through 12 as though fully set forth herein.

9 5. Answering Paragraphs 14, 15, and 16 of the Complaint, Defendant asserts that the
 10 allegations contained therein are a legal conclusion to which no response is required. To the extent
 11 these Paragraphs contain any factual allegations requiring a response, Defendant denies same.

12 **AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT TO NEVADA REVISED**
 13 **STATUTES § 608.040 ON BEHALF OF THE NAMED PLAINTIFFS AND**
 14 **THE PUTATIVE CLASS**

15 6. Answering Paragraph 17 of the Complaint, Defendant repeats and realleges its
 16 answers to the allegations contained in Paragraphs 1 through 16 as though fully set forth herein.

17 7. Answering Paragraphs 18, 19, 20, and 21 of the Complaint, Defendant asserts that
 18 the allegations contained therein are a legal conclusion to which no response is required. To the
 19 extent these Paragraphs contain any factual allegations requiring a response, Defendant denies
 20 same.

21 **PRAYER FOR RELIEF**

22 Plaintiffs' prayer for relief requires no response. However, to the extent Plaintiffs' prayer
 23 asserts allegations, Defendant denies each and every allegation in the prayer for relief.

24 **AFFIRMATIVE DEFENSES**

25 **FIRST AFFIRMATIVE DEFENSE**

26 As a first separate and affirmative defense, Defendant alleges Plaintiffs' Complaint fails to
 27 state a claim upon which relief can be granted.

28 **SECOND AFFIRMATIVE DEFENSE**

As a second separate and affirmative defense, Defendant alleges Plaintiffs have failed to
 mitigate their alleged damages, if any.

THIRD AFFIRMATIVE DEFENSE

As a third separate and affirmative defense, Defendant alleges that Plaintiffs' damages, if any, were caused solely by the conduct of others and are not the result of any conduct of Defendant A Cab, LLC.

FOURTH AFFIRMATIVE DEFENSE

As a fourth separate and affirmative defense, Defendant alleges that Plaintiffs' claims are not ripe in this forum.

FIFTH AFFIRMATIVE DEFENSE

As a fifth separate and affirmative defense, Defendant alleges that Plaintiffs' claims are barred because Plaintiffs' own actions were the proximate cause of their damages, if any.

SIXTH AFFIRMATIVE DEFENSE

As a sixth separate and affirmative defense, Defendant alleges that this Court does not have jurisdiction because Plaintiffs have failed to exhaust their administrative remedies as required by Nevada law.

SEVENTH AFFIRMATIVE DEFENSE

As a seventh separate and affirmative defense, Defendant alleges that Plaintiffs' Complaint is barred by the doctrine of res judicata.

EIGHTH AFFIRMATIVE DEFENSE

As an eighth separate and affirmative defense, Defendant alleges that Plaintiffs' Complaint is barred by the doctrine of collateral estoppel.

NINTH AFFIRMATIVE DEFENSE

As a ninth separate and affirmative defense, Defendant alleges that Plaintiffs have failed to maintain their claims pursuant to Nevada Rule of Civil Procedure 23 governing class actions.

TENTH AFFIRMATIVE DEFENSE

As a tenth separate and affirmative defense, and pursuant to N.R.C.P. 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's answer to the Complaint, and therefore, this answering Defendant reserves the right to amend its answer to allege additional affirmative defenses

1 if subsequent investigation so warrants.

2 **ELEVENTH AFFIRMATIVE DEFENSE**

3 As an eleventh separate and affirmative defense, Defendant denies each and every allegation
4 of Plaintiffs' Complaint not specifically admitted or otherwise pled to herein.

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 As a twelfth separate and affirmative defense, it has been necessary for this answering
7 Defendant to retain the services of an attorney to defend this action, and Defendant A Cab, LLC is
8 entitled to a reasonable sum as and for attorney's fees.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 As a thirteenth separate and affirmative defense, Plaintiffs' claims are barred by statute of
11 limitations / laches.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 As a fourteenth separate and affirmative defense, Plaintiffs' claims are barred by unclean
14 hands / in pari delicto/ illegality.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 As a fifteenth separate and affirmative defense, Plaintiffs' claims are barred by fraud / theft.

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 As a sixteenth separate and affirmative defense, Plaintiffs' claims are barred by equitable
19 estoppel.

20 **SEVENTEENTH AFFIRMATIVE DEFENSE**

21 As a seventeenth separate and affirmative defense, Plaintiffs' claims are barred or otherwise
22 limited by offset / setoff / or payments that have already been made to the amounts in question.

23 **EIGHTEENTH AFFIRMATIVE DEFENSE**

24 As a eighteenth separate and affirmative defense, Plaintiffs' demand for attorney fees is
25 barred by the lack of any legal basis for Plaintiff attorney fees.

26 . . .

27 . . .

28 . . .

WHEREFORE, Defendant prays as follow:

1. That Plaintiffs take nothing by way of their Complaint;

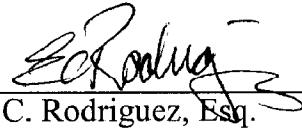
2. That Plaintiffs' Complaint be dismissed with prejudice in its entirety and Judgment entered in favor of Defendant;

3. That Defendant be awarded its attorneys' fees, costs, and interest; and

4. For such other and further relief as this Court deems just and proper.

DATED this 23 day of May, 2013.

RODRIGUEZ LAW OFFICES, P.C.



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing **Defendant A Cab, LLC**

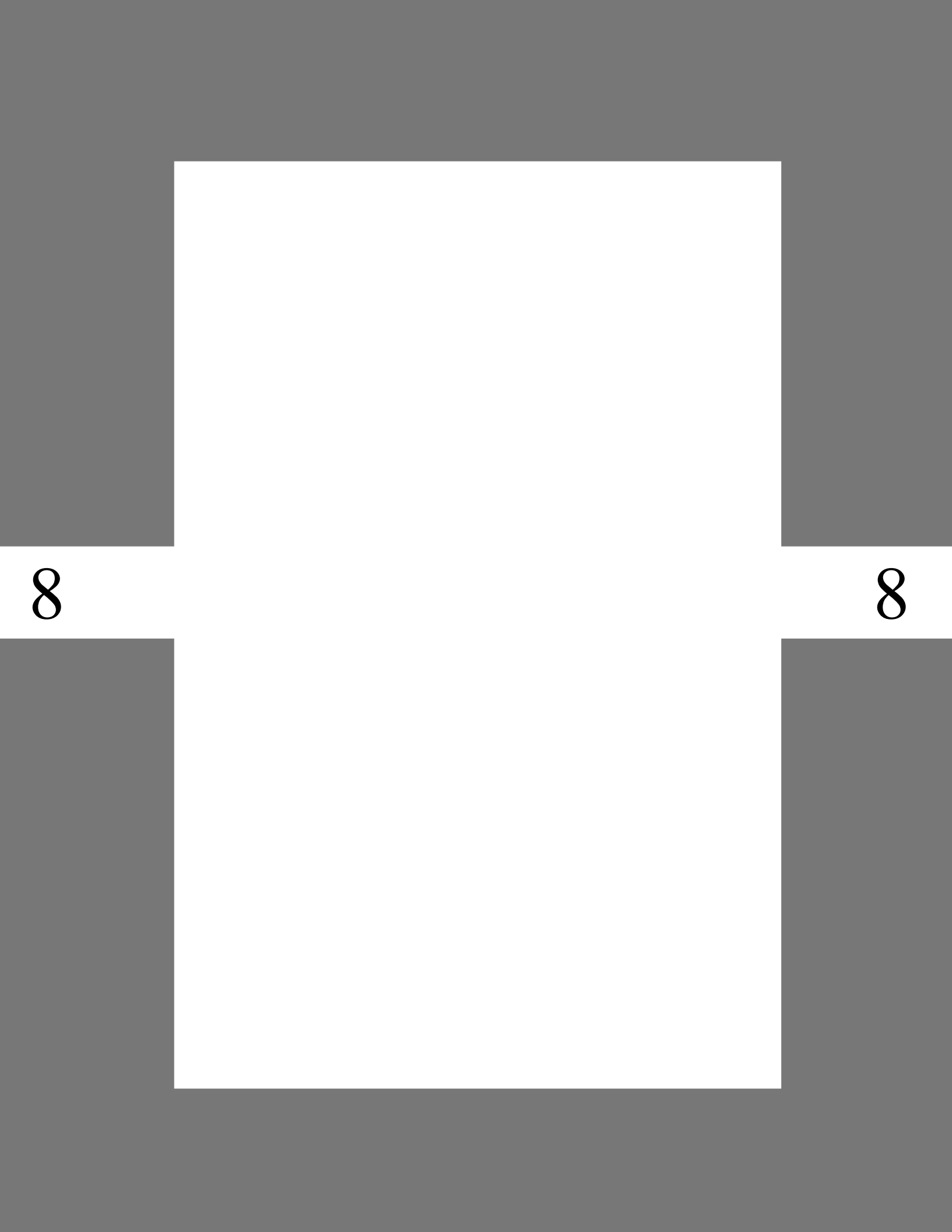
Answer to First Amended Complaint was served by placing same, postage prepaid, in the U.S.

Mail this 23 day of May, 2013 to:

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

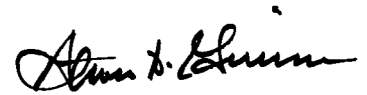


An Employee of Rodriguez Law Offices, P.C.



8

8



CLERK OF THE COURT

JCCR
LEON GREENBERG, ESQ.
Nevada Bar No.: 8094
DANA SNIEGOCKI, ESQ.
Nevada Bar No.: 11715
Leon Greenberg Professional Corporation
2965 South Jones Boulevard - Suite E4
Las Vegas, Nevada 89146
(702) 383-6085
(702) 385-1827(fax)
leongreenberg@overtimelaw.com
dana@overtimelaw.com
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A
CAB, LLC,

Defendants.

Case No. A-12-669926-C

DEPT. I

JOINT CASE CONFERENCE REPORT

DISPUTE RESOLUTION
CONFERENCE REQUIRED:
YES _____ NO X

SETTLEMENT CONFERENCE
REQUESTED:
YES _____ NO X

I.

1 **PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT**

2 A. The plaintiffs filed a Class Action Complaint on October 8, 2012. Defendants filed a
3 Motion to Dismiss on November 15, 2012. Plaintiffs thereafter filed a First Amended Complaint on
4 January 30, 2013.

5 B. The defendant answered plaintiffs' Complaint on April 22, 2013.

6 C. The Early Case Conference was held on May 9, 2013. Dana Sniegocki, Esq.
7 attended for plaintiffs and Esther Rodriguez, Esq. attended for defendant.

8 **II.**

9 **A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND EACH**

10 **CLAIM FOR RELIEF OR DEFENSE**

11 A. This case was filed as a class action for failure to pay minimum wages pursuant to
12 Article 15, Section 16 of Nevada's Constitution and for waiting penalties under N.R.S. 608.040 for
13 wages owed to the plaintiffs upon separation from their employment with the defendant. This case
14 concerns the alleged unpaid wages owed to the plaintiffs and members of the putative plaintiff class
15 who worked as taxicab drivers for the defendant taxicab company.

16 B. Plaintiffs' First Amended Complaint asserts two claims for relief: (1) Violation of
17 Article 15, Section 16 of the Nevada Constitution for failure to pay minimum wages; and (2)
18 Violation of N.R.S. 608.040.

19 C. Defendant asserts the following affirmative defenses:

- 20 1. Failure to state a claim for which relief can be granted;
21 2. Failure to mitigate damages;
22 3. Damages not the result of defendant's actions;
23 4. Claims are not ripe in this forum;
24 5. Plaintiffs proximately caused their own damages;
25 6. Failure to exhaust administrative remedies;
26 7. Claims are barred by doctrine of res judicata;

8. Claims are barred by doctrine of collateral estoppel;
9. Failure to maintain claims pursuant to NRCP 23;
10. Reservation of right to amend to add additional affirmative defenses pursuant to NRCP 11;
11. Denial of each and every allegation of Complaint not specifically admitted or otherwise pled to;
12. Defendant is entitled to reasonable sum as and for attorney's fees;
13. Claims barred by statute of limitations and/or laches;
14. Claims barred by unclean hands/in pari delicto/illegality;
15. Claims barred by fraud/theft;
16. Claims barred by equitable estoppel;
17. Claims are barred or limited by offset/setoff/or payments that have already been made; and
18. Demand for attorneys' fees is barred by the lack of any legal basis for plaintiffs' attorneys' fees.

III.

**LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS
IN THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH WERE
IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE OR AS A RESULT
THEREOF: [16.1(A)(1)(b) AND 16.1(C)(4)]**

A. Plaintiffs:

1. Plaintiffs are in possession of and have provided the following materials by way of Initial Disclosures:
 - i. Payroll Detail Report;
 - ii. Paycheck Stubs; and
 - ii. Employee Handbook

3.

B. Defendants:

None were provided at the ECC.

IV.

**LIST OF PERSONS IDENTIFIED BY EACH PARTY AS LIKELY TO HAVE INFORMATION
DISCOVERABLE UNDER RULE 26(b), INCLUDING IMPEACHMENT OR REBUTTAL**

WITNESSES: [16.1(a)(1)(A) and 16.1(c)(3)]

A. Plaintiffs: All of the named plaintiffs in this action possess information discoverable under Rule 26(b). Plaintiffs also believe all current and former employees of defendants who were so employed within the 4 years preceding the filing of the complaint in this action possess information discoverable and relevant in this matter. Plaintiffs also will also specifically name additional persons who they believe are likely to have information discoverable in their Rule 16.1 disclosures.

B. Defendant: Plaintiffs Michael Murray and Michael Reno. Defendant A Cab, LLC's Person Most Knowledgeable.

V.

DISCOVERY PLAN [16.1(b)(2) and 16.1(c)(2)]

A. What changes, if any, should be made in the timing, form, or requirements for disclosures under 16.1(a):

1. Plaintiffs' View: None
2. Defendant's View: None

When disclosures under 16.1(a)(1) were made or will be made:

1. Plaintiffs' disclosures: May 23, 2013
2. Defendant's disclosures: May 9, 2013

B. Subjects on which discovery may be needed:

1. Plaintiffs' view: Class-wide discovery will need to be conducted on all payroll

4.

1 records or other records showing all wages paid to the plaintiffs and members of the putative
2 plaintiff class during the operative statute of limitations period. Additionally, plaintiffs will require
3 class-wide discovery on all electronic records that exist evidencing trips that were made by each of
4 the class members, fares that were collected, and deductions that were made by defendants.

5 2. Defendant's view: Discovery should be limited to the named plaintiffs and to
6 the two years preceding the filing of the complaint. Defendant objects to class-wide discovery, as
7 Plaintiffs have not demonstrated any damages at all for the two named Plaintiffs, much less that this
8 matter should be exempted from arbitration as a class action case, or for an amount exceeding
9 \$50,000 per Plaintiff; or even that the claimed damages exceed \$10,000 to allow District Court
10 jurisdiction.

11 C. Should discovery be conducted in phases or limited to or focused upon particular
12 issues:

13 1. Plaintiffs' view: No.

14 2. Defendants' view: Discovery should be limited to the named plaintiffs and to
15 the two years preceding the filing of the complaint. Defendant objects to class-wide discovery, as
16 Plaintiffs have not demonstrated any damages at all for the two named Plaintiffs, much less that this
17 matter should be exempted from arbitration as a class action case, or for an amount exceeding
18 \$50,000 per Plaintiff; or even that the claimed damages exceed \$10,000 to allow District Court
19 jurisdiction.

20 D. What changes, if any, should be made in limitations on discovery imposed under
21 these rules and what, if any, other limitations should be imposed?

22 1. Plaintiffs' view: None.

23 2. Defendant's view: Discovery should be limited to the named plaintiffs and to
24 the two years preceding the filing of the complaint. Defendant objects to class-wide discovery, as
25 Plaintiffs have not demonstrated any damages at all for the two named Plaintiffs, much less that this
26 matter should be exempted from arbitration as a class action case, or for an amount exceeding
27

1 \$50,000 per Plaintiff; or even that the claimed damages exceed \$10,000 to allow District Court
2 jurisdiction.

3 E. What, if any, other orders should be entered by the court under Rule 26(c) or Rule
4 16(b) and (c):

5 1. Plaintiffs' view: None.
6 2. Defendant's view: Discovery should be limited to the named plaintiffs and to
7 the two years preceding the filing of the complaint. Defendant objects to class-wide discovery, as
8 Plaintiffs have not demonstrated any damages at all for the two named Plaintiffs, much less that this
9 matter should be exempted from arbitration as a class action case, or for an amount exceeding
10 \$50,000 per Plaintiff; or even that the claimed damages exceed \$10,000 to allow District Court
11 jurisdiction.

12 F. Estimated Time for trial:

- 13 1. Plaintiffs' view: 7 days, subject to whether class certification is granted.
14 2. Defendant's view: same
15

16 VI.

17 **DISCOVERY AND MOTION DATES [16.1(c)(5)-(8)]**

18 A. Dates agreed to by the parties:

- 19 1. Close of Discovery: **April 24, 2014**
20
21 2. Final date to file motions to amend pleadings or add parties (without further court
22 order): **January 24, 2014**
23 3. Final dates for expert disclosures: **January 24, 2014**
24 4. Final dates for rebuttal expert disclosures: **February 24, 2013**
25 5. Final date to file dispositive motions: **May 23, 2014** unless a motion for class
26 certification is pending, then 30 days after a decision on such motion has been rendered.
27
28

VII.

JURY DEMAND [16.1(c)(10)]

A jury demand has been filed: Yes.

VIII.

INITIAL DISCLOSURES/OBJECTIONS [16.1(a)(1)]

If a party objects during the Early Case Conference that initial disclosures are not appropriate in the circumstances of this case, those objections must be stated herein. The court shall determine what disclosures, if any, are to be made and shall set the time for such disclosures.

Plaintiffs' View: None.

Defendant's view: No disclosures have been received from Plaintiffs at the time of this submission. Therefore, Defendant reserves all objections. Specifically, Defendant objects to class-wide discovery, as Plaintiffs have not demonstrated any damages at all for the two named Plaintiffs, much less that this matter should be exempted from arbitration as a class action case, or for an amount exceeding \$50,000 per Plaintiff; or even that the claimed damages exceed \$10,000 to allow District Court jurisdiction.

This report is signed in accordance with Rule 26(g)(1) of the Nevada Rules of Civil Procedure. Each signature constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosures made by the signer are complete and correct as of this time.

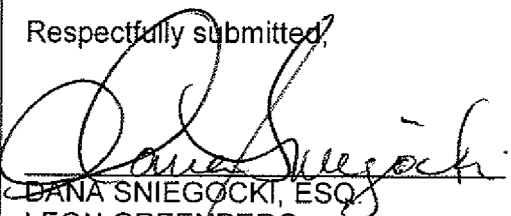
Dated:

5/28/13

Dated

5/28/13

Respectfully submitted,



DANA SNIEGOCKI, ESQ.
LEON GREENBERG
PROFESSIONAL CORPORATION
2965 South Jones Blvd., #E4
Las Vegas, NV 89146
Tel (702) 383-6085
Fax (702) 385-1827
dana@overtimelaw.com
Attorney for Plaintiffs

Respectfully submitted,



ESTHER C. RODRIGUEZ, ESQ.
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive.
Suite 150
Las Vegas, NV 89145
Tel: (702) 320-8400
info@rodriguezlaw.com
Attorney for Defendants

9

9


CLERK OF THE COURT

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

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

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

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

11 Plaintiffs,

12 vs.


13 A CAB TAXI SERVICE LLC and A CAB, LLC,
14 Defendants.

15
16 **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFFS' COUNTER-MOTION**
17 **FOR DEFAULT JUDGMENT OR SANCTIONS PURSUANT TO EDCR 7.602(b)**

18 Please take notice that an Order Denying Plaintiffs' Counter-Motion for Default Judgment
19 or Sanctions Pursuant to EDCR 7.602(b) was entered by this Court on May 28, 2013. A true and
20 correct copy is attached.

21 DATED this 29 day of May 2013.

22 **RODRIGUEZ LAW OFFICES, P.C.**

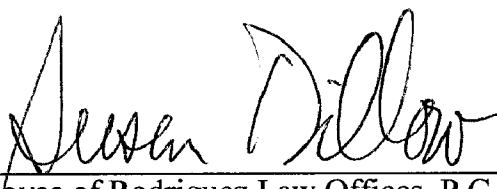
23 
24 _____
25 Esther C. Rodriguez, Esq.
26 Nevada Bar No. 6473
27 10161 Park Run Drive, Suite 150
28 Las Vegas, Nevada 89145
Attorneys for Defendant A Cab, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing **Notice of Entry of Order Denying Plaintiffs' Counter-Motion for Default Judgment or Sanctions Pursuant to EDCR**

7.602(b) was served by placing same, postage prepaid, in the U.S. Mail this 24 day of May, 2013 to:

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


 An Employee of Rodriguez Law Offices, P.C.

Rodriguez Law Offices, P.C.

10161 Park Road, Suite 150
 Las Vegas, Nevada 89145
 Tel (702) 320-8400
 Fax (702) 320-8401

000071



CLERK OF THE COURT

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

DISTRICT COURT**CLARK COUNTY, NEVADA**

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

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

11 **Plaintiffs,**

12 vs.

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

14 **Defendants.**

ORDER DENYING PLAINTIFFS' COUNTER-MOTION FOR**DEFAULT JUDGMENT OR SANCTIONS PURSUANT TO EDCR 7.602(b)**

18 Plaintiffs' Counter-Motion for Default Judgment or Sanctions Pursuant to EDCR 7.602(b),
 19 filed on April 11, 2013 and having come before this Court and decided in Chambers of the
 20 Honorable Kenneth Cory, on April 29, 2013,

21 The Court having, read all the pleadings and papers on file herein, and good cause
 22 appearing,

23 ...

24 ...

25 ...



26 ...

27 ...

28 ...

1 **IT IS HEREBY ORDERED** that Plaintiffs' Counter-Motion for Default Judgment or
 2 Sanctions Pursuant to EDCR 7.602(b) **IS DENIED.**

3 DATED this 20 day of May, 2013.

4 
 5
 6 **DISTRICT COURT JUDGE** 

6 Submitted by:

7 **RODRIGUEZ LAW OFFICES, P. C.**

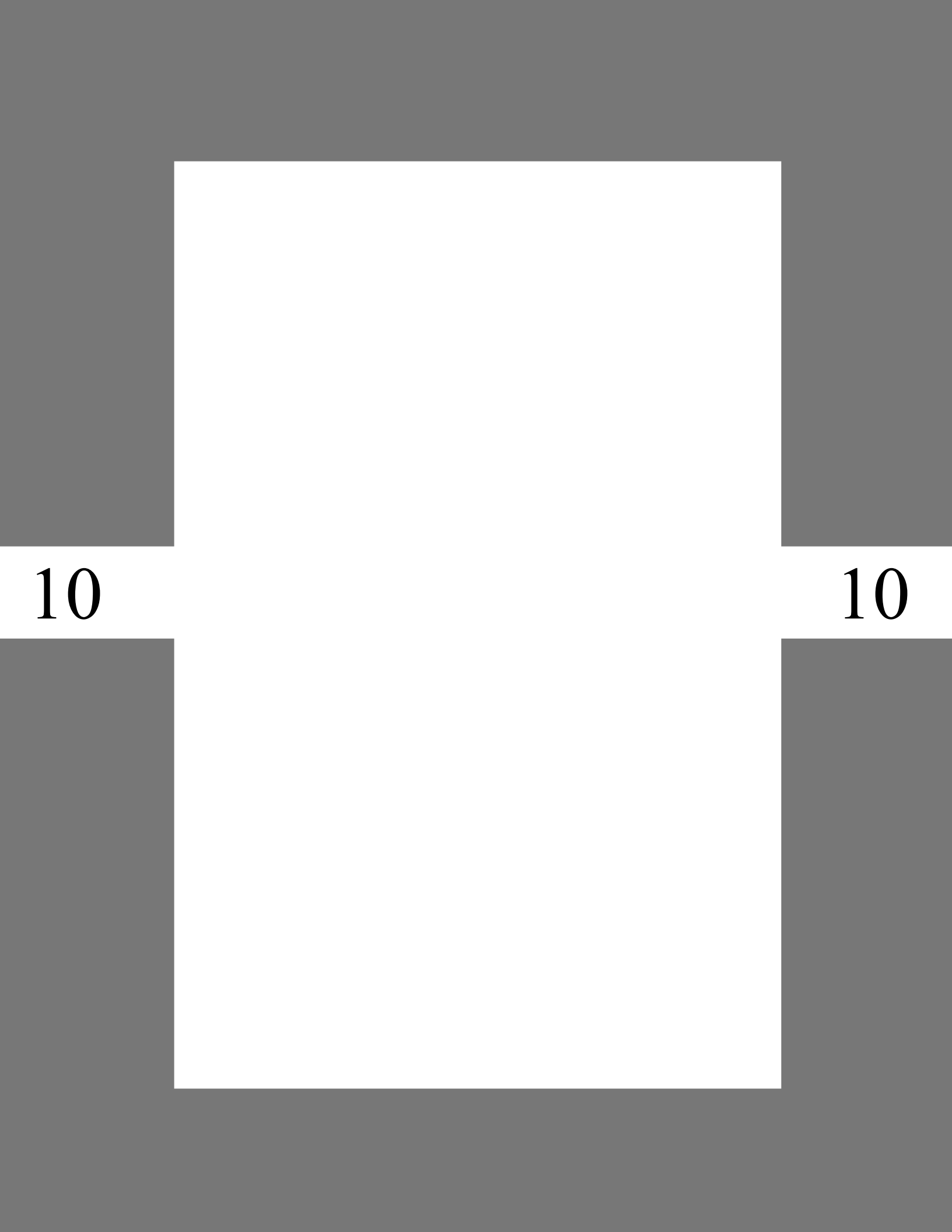
8
 9 By: 

10 Esther C. Rodriguez, Esq.
 11 Nevada State Bar No. 6473
 12 10161 Park Run Drive, Suite 150
 13 Las Vegas, Nevada 89145
 14 *Attorneys for A Cab LLC*

Rodriguez Law Offices, P.C.

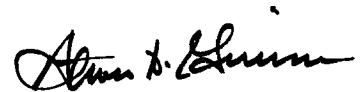
10161 Park Run Drive, Suite 150
 Las Vegas, Nevada 89145
 Tel (702) 320-8400
 Fax (702) 320-8401

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10

10



CLERK OF THE COURT

1 NOEO

2 LEON GREENBERG, ESQ., SBN 8094
3 DANA SNIEGOCKI, ESQ., SBN 11715
4 Leon Greenberg Professional Corporation
5 2965 South Jones Blvd- Suite E4
6 Las Vegas, Nevada 89146
7 (702) 383-6085
8 (702) 385-1827(fax)
9 leongreenberg@overtimelaw.com
10 dana@overtimelaw.com
11 Attorneys for Plaintiffs

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

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

17 Plaintiffs,

18 vs.

19 A CAB TAXI SERVICE LLC, and A
20 CAB, LLC,

21 Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF
STIPULATION AND ORDER
STAYING ALL PROCEEDINGS
FOR A PERIOD OF NINETY
(90) DAYS

22 PLEASE TAKE NOTICE that the Court entered the attached Order in this
23 matter on January 23, 2014.

24 Dated: January 29, 2014

25 LEON GREENBERG PROFESSIONAL CORP.

26 *Leon Greenberg*

27 Leon Greenberg, Esq.
28 Nevada Bar No. 8094
2965 S. Jones Boulevard - Ste. E-4
Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Plaintiffs

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CERTIFICATE OF MAILING

The undersigned certifies that on January 29, 2014, she served the within:

**NOTICE OF ENTRY OF
STIPULATION AND ORDER STAYING
ALL PROCEEDINGS FOR A PERIOD
OF NINETY (90) DAYS**

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

TO:

Esther C. Rodriguez, Esq.
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

/s/ Sydney Saucier

Sydney Saucier

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CLERK OF THE COURT

1 **SAO**
LEON GREENBERG, ESQ.
2 Nevada Bar No.: 8094
DANA SNIEGOCKI, ESQ.
3 Nevada Bar No.: 11715
Leon Greenberg Professional Corporation
4 2965 South Jones Boulevard - Suite E4
Las Vegas, Nevada 89146
5 (702) 383-6085
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6 leongreenberg@overtimelaw.com
dana@overtimelaw.com
7 Attorneys for Plaintiffs

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

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

13 Plaintiffs,

14 vs.

15 A CAB TAXI SERVICE LLC and A
16 CAB, LLC,

17 Defendants.
18
19
20

Case No. A-12-669926-C

DEPT. I

STIPULATION AND ORDER STAYING
ALL PROCEEDINGS FOR A PERIOD OF
NINETY (90) DAYS

21 The parties, through their respective counsel, hereby submit this stipulation and
22 order staying all proceedings for a period of ninety (90) days. The parties' request is based
23 upon the following:
24

25 1. Plaintiffs filed the Complaint in this matter on October 8, 2012 and filed an
26 Amended Complaint on January 30, 2013,

27 2. Defendants filed a Motion to Dismiss on November 15, 2012 which the Court
28

1 denied. Defendants subsequently sought reconsideration of the Court's order denying their
2 motion to dismiss on February 27, 2013 which was also denied by the Court on May 2,
3 2013.

4 3. Subsequent to the Court's order denying defendants' motion for
5 reconsideration, the Nevada Supreme Court, on October 9, 2013, heard oral argument in
6 the matter of *Thomas v. Nevada Yellow Cab Corp. et al.*, a case which presents issues of
7 law identical to those issues of law raised in the instant case. Thus, the outcome of
8 *Thomas* will have a dispositive effect on the legal issues currently before this Court.

9 4. Accordingly, the parties believe it is in the best interest of both the parties
10 and the Court to stay all proceedings in this matter for a period of ninety (90) days. The
11 parties are optimistic a decision in *Thomas* will be rendered during the course of this ninety
12 (90) day period.

13
14 ///

15
16 ///

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18 ///

19
20 ///

21
22 ///

23
24 ///

25
26 ///

5. This is the parties' first request for a stay in this matter and is made for the purpose of conserving the Court's and the parties' time and resources and not for the purpose of delay.


Dated: 1.21.14

Dated 1/21/14

Respectfully submitted,

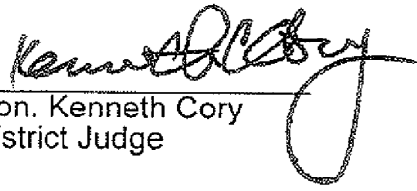
Respectfully submitted,


 DANA SNIEGOCKI, ESQ.
 LEON GREENBERG
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 Tel (702) 383-6085
 Fax (702) 385-1827
dana@overtimelaw.com
 Attorney for Plaintiffs

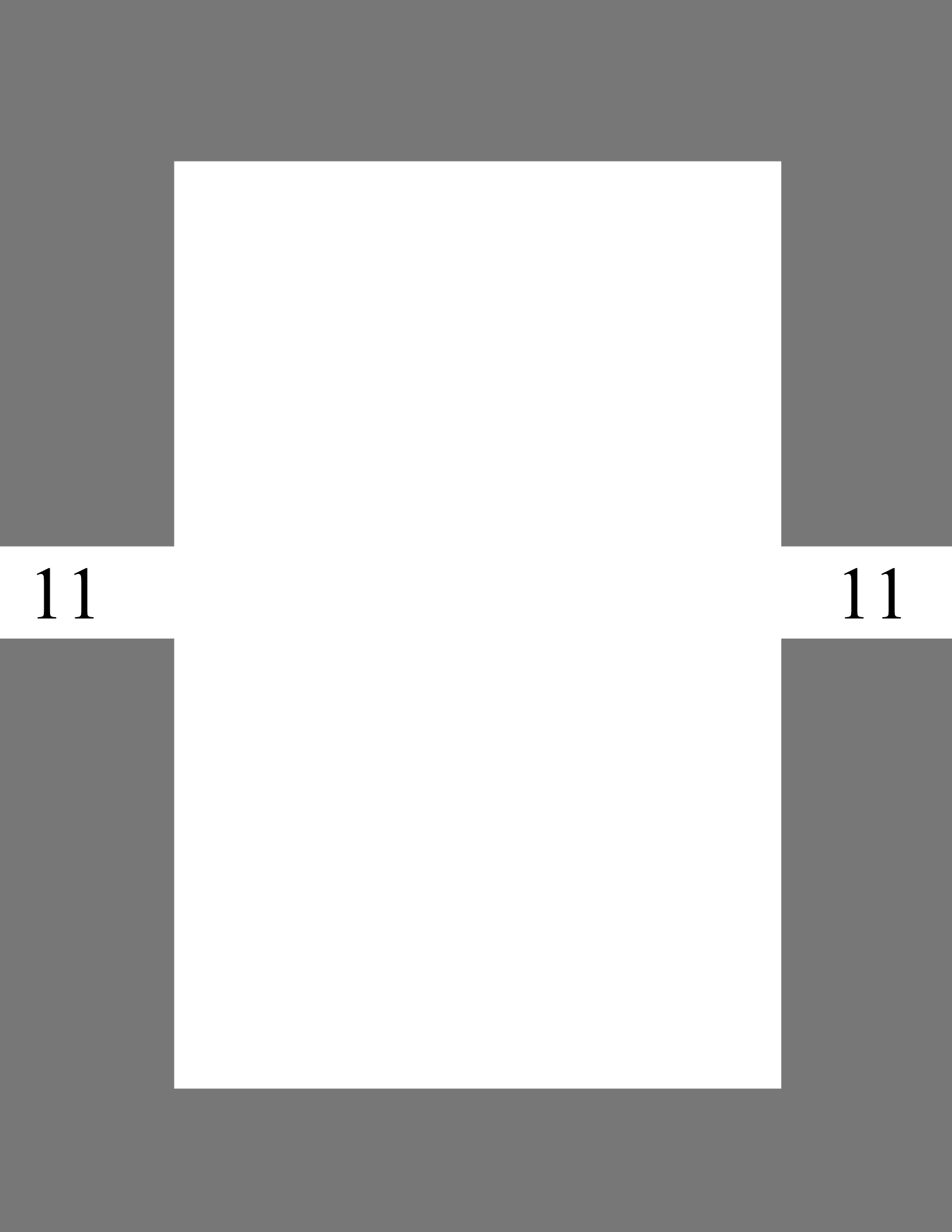

 ESTHER C. RODRIGUEZ, ESQ.
 RODRIGUEZ LAW OFFICES, P.C.
 10161 Park Run Drive.
 Suite 150
 Las Vegas, NV 89145
 Tel: (702) 320-8400
info@rodriguezlaw.com
 Attorney for Defendants

IT IS SO ORDERED.
 at 9:00 a.m.

Status check hearing is scheduled for April 22, 2014

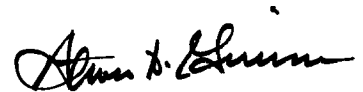

 Hon. Kenneth Cory
 District Judge

1/23/14
 Date



11

11



CLERK OF THE COURT

1 NOEO

2 LEON GREENBERG, ESQ., SBN 8094
3 DANA SNIEGOCKI, ESQ., SBN 11715
4 Leon Greenberg Professional Corporation
5 2965 South Jones Blvd- Suite E4
6 Las Vegas, Nevada 89146
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8 (702) 385-1827(fax)
9 leongreenberg@overtimelaw.com
10 dana@overtimelaw.com
11 Attorneys for Plaintiffs

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

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

17 Plaintiffs,

18 vs.

19 A CAB TAXI SERVICE LLC, and A
20 CAB, LLC,

21 Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF
STIPULATION AND ORDER
STAYING ALL PROCEEDINGS
FOR A PERIOD OF NINETY
(90) DAYS (SECOND
REQUEST)

22 PLEASE TAKE NOTICE that the Court entered the attached Order in this
23 matter on April 23, 2014

24 Dated: April 23, 2014

25 LEON GREENBERG PROFESSIONAL CORP.

26 /s/ Leon Greenberg

27 Leon Greenberg, Esq.
28 Nevada Bar No. 8094
2965 S. Jones Boulevard - Ste. E-4
Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Plaintiffs

000079

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CERTIFICATE OF MAILING

The undersigned certifies that on April 23, 2014, she served the within:

**NOTICE OF ENTRY OF
STIPULATION AND ORDER STAYING
ALL PROCEEDINGS FOR A PERIOD
OF NINETY (90) DAYS (SECOND
REQUEST**

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

TO:

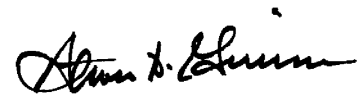
Esther C. Rodriguez, Esq.
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

/s/ Sydney Saucier

Sydney Saucier

080000

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CLERK OF THE COURT

1 **SAO**
LEON GREENBERG, ESQ.
2 Nevada Bar No.: 8094
DANA SNIEGOCKI, ESQ.
3 Nevada Bar No.: 11715
Leon Greenberg Professional Corporation
4 2965 South Jones Boulevard - Suite E4
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5 (702) 383-6085
(702) 385-1827(fax)
6 leongreenberg@overtimelaw.com
dana@overtimelaw.com
7 Attorneys for Plaintiffs

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

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

13 Plaintiffs,

14 vs.

15 A CAB TAXI SERVICE LLC and A
16 CAB, LLC,

17 Defendants.

Case No. A-12-669926-C

DEPT. I

**STIPULATION AND ORDER STAYING
ALL PROCEEDINGS FOR A PERIOD OF
NINETY (90) DAYS**

(SECOND REQUEST)

18
19
20
21 The parties, through their respective counsel, hereby submit this stipulation and
22 order continuing the stay all proceedings for a period of ninety (90) days. The parties'
23 request is based upon the following:

24
25 1. Plaintiffs filed the Complaint in this matter on October 8, 2012 and filed an
26 Amended Complaint on January 30, 2013,

27 2. Defendants filed a Motion to Dismiss on November 15, 2012 which the Court
28

1 denied. Defendants subsequently sought reconsideration of the Court's order denying their
2 motion to dismiss on February 27, 2013 which was also denied by the Court on May 2,
3 2013.

4 3. Subsequent to the Court's order denying defendants' motion for
5 reconsideration, the Nevada Supreme Court, on October 9, 2013, heard oral argument in
6 the matter of *Thomas v. Nevada Yellow Cab Corp. et al.*, a case which presents issues of
7 law identical to those issues of law raised in the instant case. Thus, the outcome of
8 *Thomas* will have a dispositive effect on the legal issues currently before this Court.

9 4. The parties previously requested a ninety (90) day stay of all proceedings in
10 this matter based upon the foregoing. That stay was ordered and entered by the Court on
11 January 27, 2014.

12 5. As of the date of the submission of this stipulation, no decision has been
13 rendered in *Thomas*.

14 6. The parties believe it is in the best interest of both the parties and the Court to
15 continue the stay all proceedings in this matter for an additional ninety (90) days from the
16 period of **April 28, 2014** through and including **July 28, 2014**. The parties are optimistic a
17 decision in *Thomas* will be rendered during the course of this ninety (90) day period.

18 7. The parties further request the status check set for April 22, 2014 at 9:00 a.m.
19 in Department I is continued for a period of ninety (90) days, or until Aug 5, 2014 at
20 9:00 a.m. in Department I.
21

22 ///

23 ///

24 ///

8. This is the parties' second request for a stay in this matter and is made for the purpose of conserving the Court's and the parties' time and resources and not for the purpose of delay.


Dated: 4-17-14

Dated 4/17/14

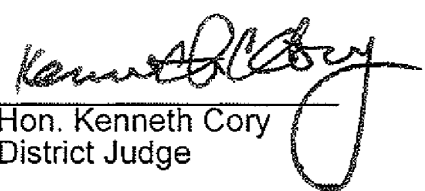
Respectfully submitted,

Respectfully submitted,

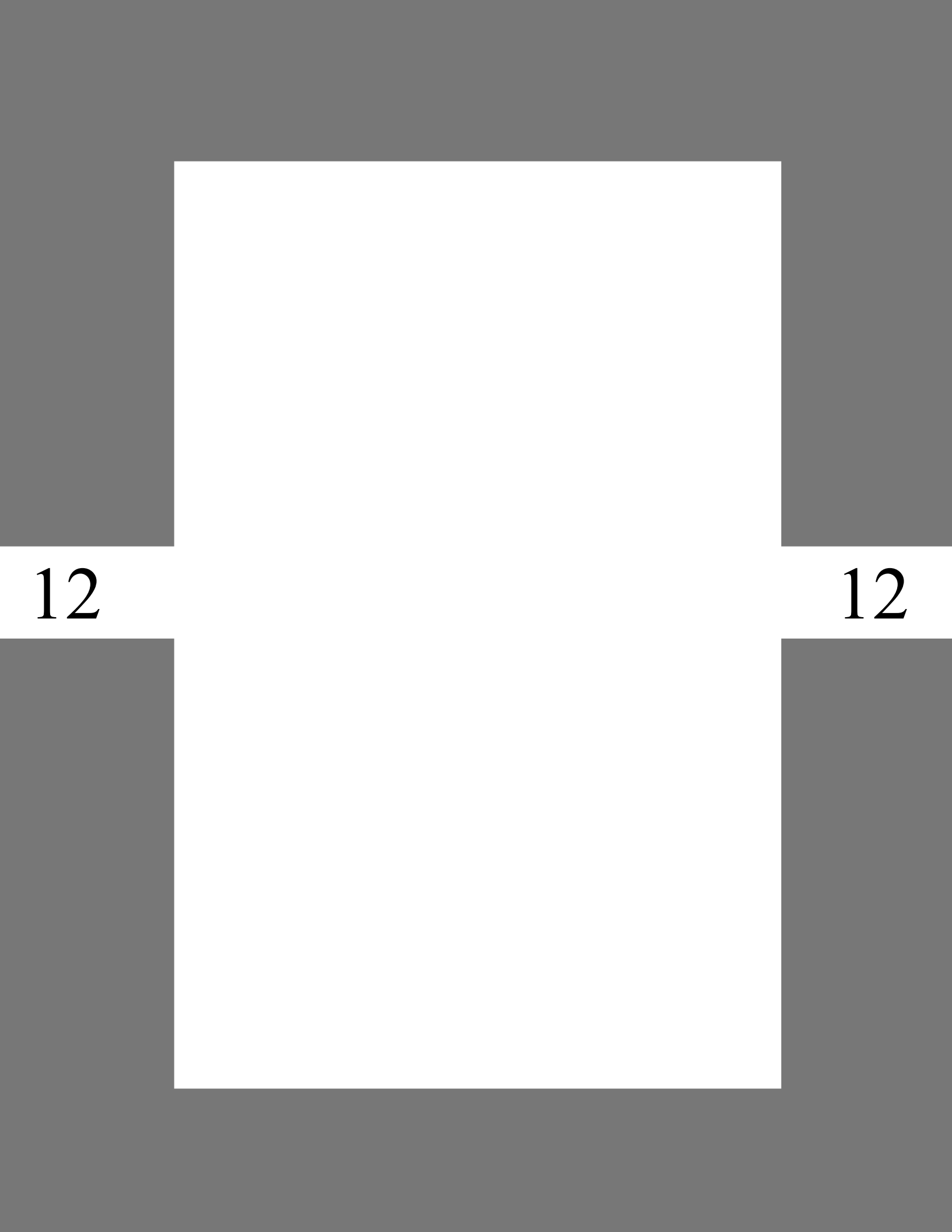

 DANA SNIEGOCKI, ESQ.
 LEON GREENBERG
 PROFESSIONAL CORPORATION
 2965 South Jones Blvd., #E4
 Las Vegas, NV 89146
 Tel (702) 383-6085
 Fax (702) 385-1827
dana@overtimelaw.com
 Attorney for Plaintiffs


 ESTHER C. RODRIGUEZ, ESQ.
 RODRIGUEZ LAW OFFICES, P.C.
 10161 Park Run Drive.
 Suite 150
 Las Vegas, NV 89145
 Tel: (702) 320-8400
info@rodriguezlaw.com
 Attorney for Defendants

IT IS SO ORDERED

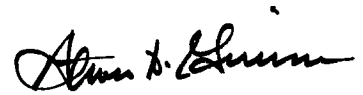

 Hon. Kenneth Cory
 District Judge


 Date April 21, 2014



12

12



CLERK OF THE COURT

1 NOEO

2 LEON GREENBERG, ESQ., SBN 8094
3 DANA SNIEGOCKI, ESQ., SBN 11715
4 Leon Greenberg Professional Corporation
5 2965 South Jones Blvd- Suite E4
6 Las Vegas, Nevada 89146
7 (702) 383-6085
8 (702) 385-1827(fax)
9 leongreenberg@overtimelaw.com
10 dana@overtimelaw.com
11 Attorneys for Plaintiffs

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

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

17 Plaintiffs,

18 vs.

19 A CAB TAXI SERVICE LLC, and A
20 CAB, LLC,

21 Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF
STIPULATION AND ORDER
STAYING ALL PROCEEDINGS
FOR A PERIOD OF SIXTY (60)
DAYS (THIRD REQUEST)

22 PLEASE TAKE NOTICE that the Court entered the attached Order in this
23 matter on July 25, 2014

24 Dated: July 28, 2014

25 LEON GREENBERG PROFESSIONAL CORP.

26 /s/ Leon Greenberg

27 Leon Greenberg, Esq.
28 Nevada Bar No. 8094
2965 S. Jones Boulevard - Ste. E-4
Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Plaintiffs

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000084


CLERK OF THE COURT

1 **SAO**
2 LEON GREENBERG, ESQ.
3 Nevada Bar No.: 8094
4 DANA SNIEGOCKI, ESQ.
5 Nevada Bar No.: 11715
6 Leon Greenberg Professional Corporation
7 2965 South Jones Boulevard - Suite E4
8 Las Vegas, Nevada 89146
9 (702) 383-6085
10 (702) 385-1827(fax)
11 leongreenberg@overtimelaw.com
12 dana@overtimelaw.com
13 Attorneys for Plaintiffs

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

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

14 Plaintiffs,

15 vs.

16 A CAB TAXI SERVICE LLC and A
17 CAB, LLC,

18 Defendants.

Case No. A-12-669926-C

DEPT. I

STIPULATION AND ORDER STAYING
ALL PROCEEDINGS FOR A PERIOD OF
SIXTY (60) DAYS

(THIRD REQUEST)

19 The parties, through their respective counsel, hereby submit this stipulation and
20 order continuing the stay all proceedings for a period of sixty (60) days while the parties
21 explore settlement. The parties' request is based upon the following:

22 1. Plaintiffs filed the Complaint in this matter on October 8, 2012 and filed an
23 Amended Complaint on January 30, 2013.

24 2. Defendants filed a Motion to Dismiss on November 15, 2012 which the Court
25 denied. Defendants subsequently sought reconsideration of the Court's order denying their
26 motion to dismiss on February 27, 2013 which was also denied by the Court on May 2,
27 2013.

1 3. Subsequent to the Court's order denying defendants' motion for
2 reconsideration, the Nevada Supreme Court, on June 26, 2014, rendered its decision in
3 *Thomas v. Nevada Yellow Cab Corp. et al.* In such decision, the Nevada Supreme Court
4 found that taxi cab drivers, as a matter of law, are required to be paid at least the minimum
5 wage pursuant to Article 15, Section 16 of the Nevada Constitution, essentially affirming the
6 ruling of this Court in denying defendants' motion to dismiss.

7 4. Since the decision in *Thomas*, the parties have engaged in good faith
8 settlement discussions which are aimed at a class-wide resolution of all claims in this
9 matter.

10 5. The parties appeared for a calendar call on July 17, 2014. On July 22, 2014,
11 a Petition for Re-Hearing was filed in the *Thomas* matter.

12 6. The parties believe continuing the current stay for a period of sixty (60) days,
13 or until **September 26, 2014**, will allow the parties to thoroughly explore settlement in this
14 matter. Furthermore, the parties expect to have additional information from the Supreme
15 Court on the *Thomas* matter by this date. Because of the class action nature of this case,
16 the settlement process is complex and requires preliminary approval by the Court, notice to
17 the class members, an opportunity for class members to make settlement claims, and then
18 final approval by the Court.

19 7. In the event the parties cannot reach an agreement to settle this matter upon
20 the expiration of the requested stay, the parties agree to appear before the Court for a
21 status check, at which point the Court can set a new trial schedule. The parties request the
22 Court set such status check for Oct 14, 2014 at 9:00 a.m. / p.m., a date
23 which is after the **September 26, 2014** expiration of the requested stay.

24 8. This is the parties' third request for a stay in this matter, the other two
25 requested stay being entirely prefaced upon the looming decision in *Thomas*. This request
26 for a stay is made for the purpose of conserving the Court's and the parties' time and
27
28

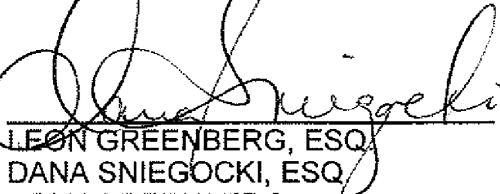
resources and to allow the parties to meaningfully engage in settlement and exchange information needed to formulate a settlement, and not for the purpose of delay.

Dated: 7/23/14


Dated 7/23/14

Respectfully submitted,

Respectfully submitted,

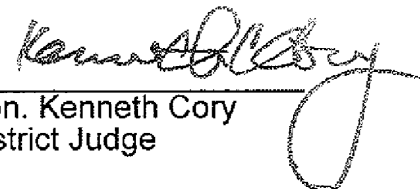


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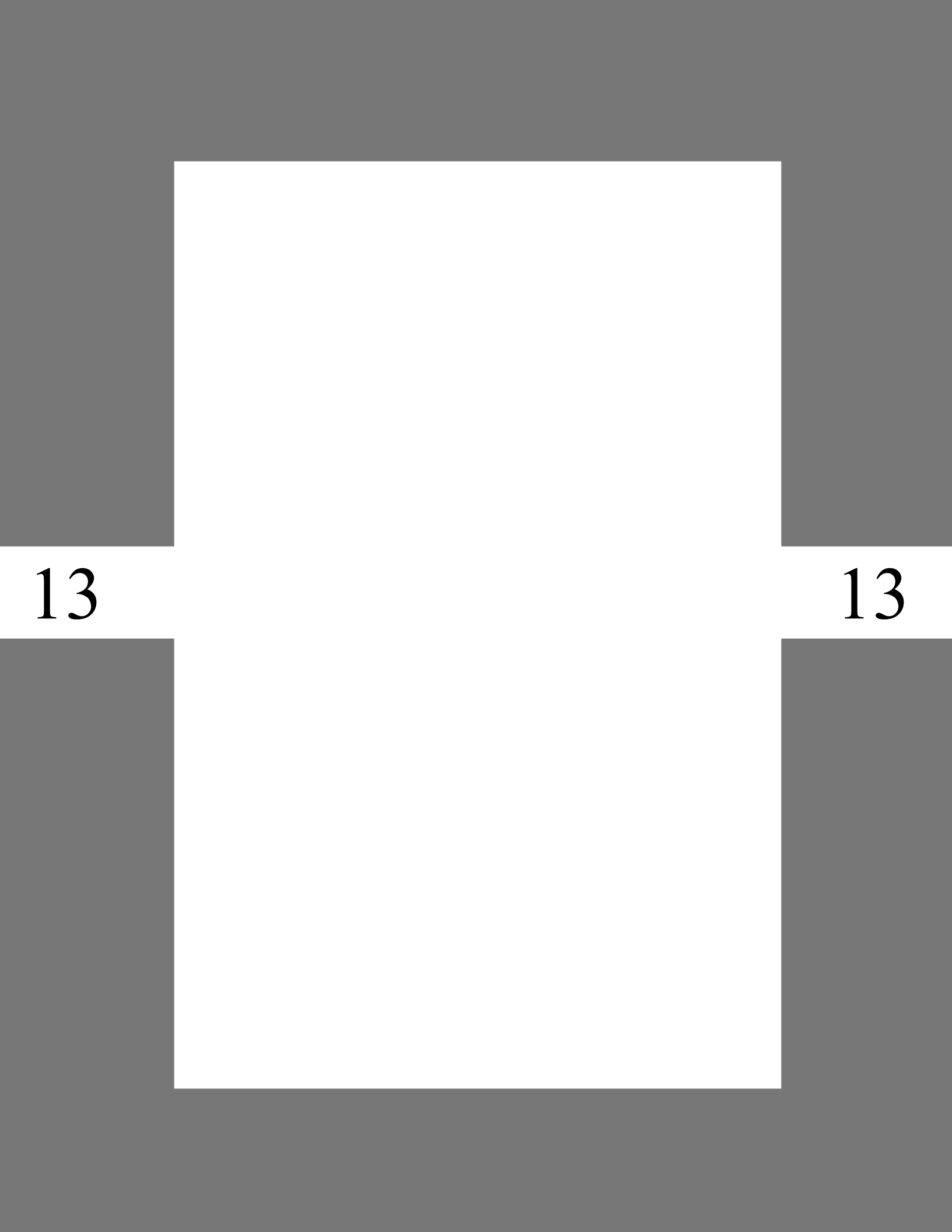
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IT IS SO ORDERED



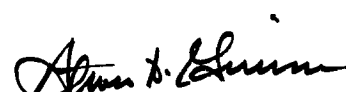
Hon. Kenneth Cory
District Judge

July 24, 2014
Date



13

13


CLERK OF THE COURT

1 RTRAN
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7)
8 MICHAEL MURRAY, ET AL.,)

9 Plaintiffs,)

10 vs.)

11 A CAB TAXI SERVICE LLC, ET AL.,)

12 Defendants.)
13)
14)

CASE NO. A669926

DEPT. I

15 BEFORE THE HONORABLE BONNIE A. BULLA, DISCOVERY COMMISSIONER
16 WEDNESDAY, MARCH 18, 2015

17 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**
18 **NOTICE OF PLAINTIFFS' MOTION TO COMPEL THE**
19 **PRODUCTION OF DOCUMENTS**

20 APPEARANCES:

21 For the Plaintiffs:

DANA SNIEGOCKI, ESQ.

22 For the Defendants:

ESTHER RODRIGUEZ, ESQ.

23 Also Present:

JAY NADY

24
25 RECORDED BY: SANDRA PRUCHNIC, COURT RECORDER/TRANSCRIBER

1 Las Vegas, Nevada - Wednesday, March 18, 2015, 9:22 a.m.

2 * * * * *

3 DISCOVERY COMMISSIONER: Murray.

4 MS. SNIEGOCKI: Good morning. Dana Sniegocki, for Plaintiffs.

5 DISCOVERY COMMISSIONER: Good morning.

6 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez, for the defense,
7 and I have Jay Nady, the owner of A Cab, present as well.

8 DISCOVERY COMMISSIONER: Good morning.

9 MR. NADY: Good morning.

10 DISCOVERY COMMISSIONER: Okay. This is Plaintiffs' motion to compel the
11 productions -- production of documents, and my first question is what did the federal
12 lawsuit -- what documents were turned over in that lawsuit?

13 MS. RODRIGUEZ: The same ones we've offered to the Plaintiffs --

14 DISCOVERY COMMISSIONER: Okay.

15 MS. RODRIGUEZ: -- which is they came on site. They reviewed all of the trip
16 sheets that they -- we made everything available to them. We made all of the payroll stubs,
17 which are kept on site, available to the Department of Labor as well. And I've had multiple
18 discussions with Mr. Sniegocki's partner, Mr. Greenberg, to offer him that same concession
19 to come on to the premises and see what we have.

20 I think, Your Honor, what we basically have is a communication problem
21 between the parties. We're willing to work with them. We've turned over all of those
22 paystubs and time records for the named persons, Murray and Reno. I think where we're
23 having a dispute is that they feel that we have a lot more electronic discovery that -- we
24 don't. We don't. A Cab is not sophisticated as some of the other companies, and that's why
25 Mr. Nady is present.

1 I got the reply yesterday saying I didn't attach sworn affidavits, so if there's
2 any question about that, he can talk about what they do have on premises. But we're
3 certainly willing to work with the Plaintiffs, but we do need some guidance on timeframes as
4 well as the type of classwide discovery that we do have to turn over 'cause we do have -- I'm
5 sure Your Honor's aware cab drivers are very litigious. Mr. Nady would be facing like 200
6 lawsuits if he turned over everybody's name, contact information, address, how much they
7 were making. There would be a lot of people that were not unhappy. So if Your Honor is
8 going to end up believing that that's appropriate, a court order is certainly gonna help.

9 THE COURT: Counsel.

10 MS. SNIEGOCKI: Well, I believe, Your Honor, there is a slight miscommunication.
11 Ms. Rodriguez just stated that there was no -- they didn't provide any kind of declaration,
12 sworn affidavit, anything from any of their managers, owners, Mr. Nady here.

13 Basically there's an assertion by counsel here that says, you know, we're
14 small, we're mom and pop, we don't have this kind of stuff. We have documentary evidence
15 that was provided in my motions at -- in my motion at Exhibit D and E which clearly show
16 that there are computerized records both as to payroll and as to time. If you look at Exhibit F
17 of Plaintiffs' motion, we do have these handwritten trip sheets. However, at the top of the
18 handwritten trip sheets, which is discussed in the motion and in the reply, as well as the
19 Plaintiffs' declaration, this is clearly -- the time the employees start their workday, is clearly
20 something kept in the Defendants' computer system. They do have a sophisticated computer
21 system. They operate this system that's used by a lot of cab companies here in Las Vegas
22 that's called Cab Manager. We've researched this. They also utilize time meters in their
23 cabs. And if you look at their employee handbook, which is the -- the excerpt is attached I
24 believe at Exhibit B of the reply or, yes, it is at Exhibit B of Plaintiffs' reply -- they have a
25 very lengthy and detailed check-in and check-out procedure.

1 Drivers come in in the morning. Their TA bar -- their TA card with a barcode
2 is scanned; that checks them in for the day. There's a time recorded in the Defendant's
3 database. They then are assigned a cab, they go on, they do their work, they work for 12
4 hours, they come back and they do three different things -- they pull in and they upload their
5 meter totals, which is done electronically. Their meter totals get sent to a computer system
6 in the Defendant's -- you know, inside the Defendant's place of business. They then have
7 their trip sheets time stamped by a mechanical time punch clock, which we're not interested
8 'cause we understand that's not something we're gonna be able to get. They then go to a
9 checkout station where everything is computerized and their meter totals and all the
10 information from their trips are there already on the computer screen as well as the time that
11 they're accessing these records. They continue to fill out whatever information it is. They
12 put in how many credit cards -- how many fares were paid with credit cards, how many fares
13 were paid with these vouchers that senior citizens use, and how many fares were paid with
14 cash. That computer then tells them, okay, driver, you know, Tom Smith, you must go over
15 to the drop machine and drop \$200, whatever is left is yours to keep in tips. They go over to
16 a drop machine. They enter their employee ID number. There's a computer screen there.
17 That computer screen comes up and associates driver Tom Smith with how much he has to
18 drop, he drops, there are receipts printed. Each of these receipts are attached to the second
19 page of their trip sheet. They are associated with drivers showing the time that each
20 transaction was performed, so when they perform a meter upload, that time is recorded.
21 When they perform a validated cash drop, that time is recorded and associated with the
22 driver.

23 So we have these three forms of time records here, if we're just gonna limit it
24 to time records at this point. We have three forms. We have their check-in time in the
25 morning when their TA card is scanned, their Taxi Authority card. We have their meter

1 upload. We have their computer actual check-out procedure that they do at a computer
2 screen. And then we have their validated cash drop. Each of these machines are
3 computerized. One is an actual computer. And there's no doubt from the documentary
4 evidence that's here that the time is recorded, and it hasn't been disputed. It can't be
5 disputed.

6 DISCOVERY COMMISSIONER: Okay. Let me just interrupt you for a minute and
7 hear from defense counsel. Is this the way that this company works?

8 MS. RODRIGUEZ: No, Your Honor, and that's why we have offered for them to
9 come onto the premises to explain on a lot of these things. There are different computerized
10 scanning in and out, automatic bar codes, but what Mr. Nady was just explaining -- and he
11 can probably give you the further details -- that a lot of these -- they've tried to have 'em --
12 the programmers fix 'em because they don't rely on those particular scans. They're not even
13 being utilized anymore, and even on the -- go ahead.

14 Can I have Mr. Nady speak to that?

15 DISCOVERY COMMISSIONER: Yes.

16 MR. NADY: I'm Jay Nady. I'm the owner. The scans, the time on the scans, if you
17 look at their own evidence, the time of the scans is three or four hours apart from the two
18 separate ways that they're suggesting that we use, and every -- the -- when they -- the place
19 where they put their money, that machine never had an accurate time, ever. We could never
20 get it to work. We had the -- and we could get an affidavit. It still doesn't work. We're
21 actually buying a new one. But that is no way related to anything close to a time. It was
22 just -- it was never done correctly. We had 'em out over a dozen times to try to make that
23 better. That -- and you'll look even on there, the times are significantly different, and today
24 it might say 3:24, tomorrow it might say 8:45. There is -- the times were almost random
25 on when they put their money in.

1 The times when they picked up their trip sheets, yes, we put it on there. We
2 didn't save it. Doesn't mean we can't retrieve it. We weren't asked to retrieve it. But we'd
3 have to get the same people that you think has everything. We haven't asked 'em to because
4 it's expensive.

5 So in order for them to rewrite that code to get those things to put on our
6 computer, we'd have to go to them and ask 'em to give it to us. The DOL, at the end of that
7 time, had the same problem. We were four years and eight months in the middle of a
8 Department of Labor audit with the same arguments that we're hearing today. We had a
9 settlement -- we had a -- they gave us the amount that we thought that we owed -- that they
10 thought we owed. And rather than fight it, we agreed to it. We're welcome -- we are willing
11 to give them the same data the DOL had for this and the benefit of their four-and-a-half years
12 of auditing our records.

13 MS. RODRIGUEZ: And we've given 'em all the summaries. I explained this to Mr.
14 Greenberg, that it was -- it took 'em four years to go through this data because it is very
15 tedious. There's thousands and thousands of pages.

16 MR. NADY: Hundreds of thousands.

17 MS. RODRIGUEZ: And so we gave Mr. Greenberg the summary of what the DOL --
18 all their hours, the revenue, and he wasn't satisfied with that. He said I want the data. I want
19 it on a little bus [sic] or a disc. I want the data. And I said it doesn't exist. We don't have
20 that. So you're welcome to look in all of the paper files, and I will give you the summaries.

21 But, I mean, like I said, Your Honor, we're not trying to be difficult on this.
22 It's just we don't have the data that they want.

23 DISCOVERY COMMISSIONER: Well, and you can produce your records in the
24 format that you want to produce them. They don't have to produce it in a format convenient
25 to the Plaintiff.

1 MS. SNIEGOCKI: Well, they have to produce it in the format in which it originally
2 exists, and we know that these exist in computer data format.

3 DISCOVERY COMMISSIONER: But I'm just saying they can produce it either as a
4 hard copy -- they don't have to produce it in a searchable electronic version for you.

5 MS. SNIEGOCKI: Well, that would be the most cost effective way for them to
6 produce it and for us to analyze it.

7 DISCOVERY COMMISSIONER: But it doesn't exist that way.

8 MS. RODRIGUEZ: That's correct.

9 DISCOVERY COMMISSIONER: That's what you're not -- I guess there's a
10 disconnect here.

11 MS. RODRIGUEZ: Exactly.

12 MS. SNIEGOCKI: Your Honor, we've seen examples of payroll summary reports.
13 They are able to produce the shifts that each person works, the total fares that were collected,
14 the total commissions split that was provided to the driver after certain deductions are made.
15 This stuff exists in rows and columns, and they have this database that's -- and now we have
16 Mr. Nady here for the first time. You know, Defendant has never -- like I said, there was no
17 sworn declaration from Mr. Nady or anybody. I know there's a tech person there, somebody
18 named I believe Mike Malloy; this is the guy who runs the sort of computer system there.

19 DISCOVERY COMMISSIONER: But --

20 MS. SNIEGOCKI: We have nothing from -- I'm sorry.

21 DISCOVERY COMMISSIONER: That's all right. What will it take to write that
22 code to be able to pull up the data; do you know how expensive that's going to be?

23 MR. NADY: No, I don't.

24 DISCOVERY COMMISSIONER: Can you find out?

25 MR. NADY: I can.

1 DISCOVERY COMMISSIONER: Can you find out? In the interim, you could
2 provide them with the data that's supportive that the DO -- Department of Labor had. Okay.
3 And they just have the summaries right now, but you could give them copies of the data if
4 they want it?

5 MS. RODRIGUEZ: Well, the data isn't all of the documents.

6 DISCOVERY COMMISSIONER: Okay.

7 MS. RODRIGUEZ: And they can come look at those.

8 MS. SNIEGOCKI: Your Honor --

9 MS. RODRIGUEZ: I just have an issue also, as I mentioned, with the just giving all
10 the contact information.

11 DISCOVERY COMMISSIONER: Right.

12 MS. RODRIGUEZ: I don't want them to sit there and write down everybody's name,
13 address, and how much they made.

14 DISCOVERY COMMISSIONER: Well, you have to certify the class first, and then
15 the contact information will have to be based on a letter, and usually I defer that to the Judge
16 to help the parties come up with a contact letter so that the people receiving the letter don't
17 have their information disclosed until they're willing to participate.

18 MS. RODRIGUEZ: Exactly. Thank you.

19 DISCOVERY COMMISSIONER: I take it there's no way to redact all that, the
20 names and information, on all the documents.

21 MS. RODRIGUEZ: Probably not because --

22 DISCOVERY COMMISSIONER: It's just too extensive.

23 MS. RODRIGUEZ: -- it's too voluminous, so we would -- I mean, I'm willing to,
24 you know, again, work with their firm I guess under an honor system that they're not going
25 to take notes on all of those particular things. I mean, they're welcome to look at the data,

1 but it would be very difficult to, I think, to redact --

2 DISCOVERY COMMISSIONER: You have to get your class certified, and that's a
3 numerosity. You don't need to know every person in the class as long as your
4 representatives are representative of the class.

5 MS. SNIEGOCKI: And, well, we have an argument here that the names and
6 addresses of these people are discoverable because they're witnesses. One of the claims that
7 are in this case -- and this was something that was -- Defendants asserted to the Department
8 of Labor -- is that these guys aren't actually working the amount of hours that they say they
9 are. They're not really working the 12-hour shifts. They take hours and hours of breaks per
10 day. These drivers, the other drivers that, you know, in the putative class are witnesses to
11 whether, in fact, they were taking the breaks. I mean, this is something that's also explained
12 in the Plaintiffs' declaration. A lot of the breaks that appear on these trip sheets are really
13 falsified. They're told by management you gotta write down breaks. It has to look like you
14 took breaks during the day; otherwise, you know, your fare totals don't equal the minimum
15 wage. So --

16 DISCOVERY COMMISSIONER: But that's not a class certification. I mean, this is
17 kind of the opposite of the case we had before -- or I had before.

18 MS. SNIEGOCKI: Well, would it -- I believe that would be part of the class
19 certification because if we have 20 guys coming forward that say, look --

20 DISCOVERY COMMISSIONER: You have to get certified as your class first.

21 MS. SNIEGOCKI: Before we can even interview witnesses to say here is the class.
22 This is who --

23 DISCOVERY COMMISSIONER: Because that's your second phase, right.

24 MS. RODRIGUEZ: And just so the record's clear, I mean, those allegations have
25 been around. They were -- when the DOL came and audited and they found them

1 completely unsubstantiated, so that's --

2 MS. SNIEGOCKI: We haven't had an opportunity to explore that. We wouldn't
3 know whether they're unsubstantiated or not, and so --

4 DISCOVERY COMMISSIONER: Right, but you don't need that information --

5 MS. SNIEGOCKI: In order to --

6 DISCOVERY COMMISSIONER: -- right now for the class.

7 MS. SNIEGOCKI: -- compose our class, Your Honor, though, respectfully. In order
8 to compose our class we would need to know, I mean, this is a situation --

9 DISCOVERY COMMISSIONER: You don't need to know the who. You need to
10 know whether or not a person falls into that category.

11 MS. SNIEGOCKI: Correct. And the only way that we could know that is to find out,
12 first of all, who worked the hours that would not satisfy the minimum wage. We can't
13 identify the class members or who's part of the class unless we know who worked what
14 hours and who were paid what.

15 It's a situation sort of where the merits and the elements of class certification
16 are overlapping.

17 DISCOVERY COMMISSIONER: You, at some point, get the names of the class
18 members --

19 MS. SNIEGOCKI: Okay.

20 DISCOVERY COMMISSIONER: -- and their contact information.

21 MS. SNIEGOCKI: Understood.

22 DISCOVERY COMMISSIONER: Okay. You do. But not right now. Right now all
23 you're trying to do is determine whether or not you can certify a class, right? That's --

24 MS. SNIEGOCKI: That is correct.

25 DISCOVERY COMMISSIONER: Okay. So we've gotta figure out how you can

1 determine that without disclosing names, what information you can look at without
2 breaching confidences, and you can't get names and addresses and go calling these people
3 right now. That's not appropriate. You have to have your class certified and then the Judge
4 is going to have to assist you all in preparing the right letter and sending it out so that the
5 people who are potentially members of the class are going to be not unhappy that their
6 personal information was disclosed and that they understand there's a purpose as to why
7 they're being contacted. All right?

8 MS. SNIEGOCKI: I understand. I did want to point out that there is no bifurcation
9 of discovery here. We didn't, you know, enter into a class certification phase one and merits
10 discovery phase two.

11 DISCOVERY COMMISSIONER: Okay.

12 MS. SNIEGOCKI: So this is open discovery as far as how our schedule proceeds.
13 That may not matter.

14 DISCOVERY COMMISSIONER: But perhaps I should have done that. I don't
15 know.

16 MS. SNIEGOCKI: Yeah. It was a few years ago, so we -- I don't know. I think we
17 just kind of agreed that it would be open, and we came to Your Honor, you know, jointly.

18 However, as far as the payroll data -- 'cause we do have two separate sets of
19 data. There's payroll, which cannot be disputed, that's contained in an electronic form that
20 has to be produced. We can't -- we would not be able to even make the case for class
21 certification without getting the payroll, the commissions that were paid to every driver.
22 And, as the Defendants have asserted, I mean, there's hundreds of drivers. For them to
23 produce these paper records that show a paystub when the information is originally kept and
24 it's left on a form, I don't believe is in compliance with the rules. The rules require if it's
25 kept in its original form, we have the opportunity to conduct discovery on data, and it's

1 there. I mean, it's -- this is clearly kept in a database. This is not something that it takes,
2 you know, rocket science --

3 DISCOVERY COMMISSIONER: How can you have that data --

4 MS. SNIEGOCKI: -- to provide.

5 DISCOVERY COMMISSIONER: -- for the Plaintiffs and not have it for everybody?

6 MS. RODRIGUEZ: I think we prepared it for their convenience for the named
7 Plaintiffs, for Murray and for Reno.

8 MS. SNIEGOCKI: Yeah.

9 MS. RODRIGUEZ: But we didn't do --

10 DISCOVERY COMMISSIONER: So you didn't --

11 MS. RODRIGUEZ: -- 500 drivers. No.

12 DISCOVERY COMMISSIONER: You didn't pull it off a computer.

13 MS. SNIEGOCKI: This is just --

14 MR. NADY: No.

15 MS. RODRIGUEZ: No.

16 MS. SNIEGOCKI: -- straight printed for our two drivers, despite the fact that the
17 request says give it to us in the data form.

18 DISCOVERY COMMISSIONER: Okay. But do you hear what they're saying?
19 They're saying that they created that document for you. It's not something they pulled off of
20 a computer. And you disagree with that?

21 MS. SNIEGOCKI: This is a report that's run. All the information is contained --

22 MS. RODRIGUEZ: And there was never any electronic payroll information ever
23 turned over to the Department of Labor. That's -- I mean, 'cause it's not there.

24 DISCOVERY COMMISSIONER: Okay. This is what I'm going to do. I'm actually
25 going to continue this motion, and these are the two things that I want you all to work on in

1 the interim. I want to know whether there is a computer program that can be written that can
2 pull off the electronic information, if there -- should such information exist, and be able to
3 provide the wages, the commissions, and the payment for individuals that could, you know,
4 qualify as part of the class.

5 And then the second thing I want -- and, Plaintiffs' counsel, you're gonna be
6 on your honor here -- I want you to go to defense counsel's office and look at the documents
7 so you know exactly what they have.

8 MS. SNIEGOCKI: Your Honor, when you say look at the documents though, are we
9 able to inspect the three systems that we know exist and that record electronically the time
10 the drivers start and the time the drivers complete each shift?

11 MR. NADY: Well --

12 MS. SNIEGOCKI: 'Cause we're happy to do that. We can bring -- we have, you
13 know, a tech person that we can bring with us; we've offered that, and it's been refused, or at
14 least resisted.

15 MR. NADY: Not entirely true. We -- when we settled -- when we settled the DOL
16 case, and when they brought that case in November -- or no, wait, March of '13, we started
17 forward with these documents, so we're doing them now so that we won't have them, and
18 since then we have them. We haven't asked them, which -- to go back and do those, the
19 DOL -- here's something that's interesting that hasn't been brought up. The DOL came to us
20 and went through our records, and then we had a truck deliver a truckload, I mean a big
21 [indicating] truckload full of our trip sheets in boxes. They had those trip sheets for over
22 four years. When everything was over and they returned them, a good number -- the truck
23 was not nearly as full. Now, either they kept them, or lost them, but they didn't return all of
24 our trip sheets, and DOL will tell you that they know that because they're the ones that we
25 had someone go pick 'em up for 'em. So we have some information, but not all, on the trip

1 sheets. The trip sheets don't all go back as far as they might.

2 DISCOVERY COMMISSIONER: Well, the information that you do have, defense
3 counsel --

4 MR. NADY: Fine.

5 DISCOVERY COMMISSIONER: -- is at your office, right?

6 MS. RODRIGUEZ: Correct.

7 MR. NADY: They're more than welcome --

8 DISCOVERY COMMISSIONER: So Plaintiffs' counsel --

9 MR. NADY: -- to it.

10 DISCOVERY COMMISSIONER: -- can come take a look at it.

11 MS. RODRIGUEZ: Right. It's on the A Cab premises. I don't have the boxes that --
12 yes.

13 DISCOVERY COMMISSIONER: It's on -- okay -- your client's premises.

14 MS. SNIEGOCKI: Your Honor, again, I want to stress there's -- we don't have any
15 interest in the trip sheets. They keep sort of bringing up that they have these trip sheets,
16 these paper trip sheets. That's not our interest. Our interest is exactly what's explained in
17 their handbook. The procedures that are explained in their handbook are all procedures that
18 must be done electronically by a computer. These records are kept.

19 DISCOVERY COMMISSIONER: Okay.

20 MS. SNIEGOCKI: There's documentation of this. So we need to explore their
21 computer system, not their paper trip sheets. Those things are useless to us. In their own
22 opposition they say they have 46,000 trip sheets a year.

23 MS. RODRIGUEZ: Right.

24 MS. SNIEGOCKI: We're talking about a four-year statute of limitations period here,
25 and at this point it's two extra years because we're two years into the future, six years worth

1 of 46 -- that's 400,000 trip sheets. That's not an interest we have. What we have an interest
2 in is the documents that are attached to the trip sheet showing that there is an electronic
3 record kept of when these drivers check in and when these drivers check out for the day. It's
4 pretty simple. We're not interested in reviewing their paper documents.

5 DISCOVERY COMMISSIONER: But I understand they don't have that information
6 electronically. That's --

7 MS. SNIEGOCKI: But the evidence here -- I understand what they're saying here
8 today, but I believe an inspection is warranted because they're only --

9 MS. RODRIGUEZ: That's fine.

10 MS. SNIEGOCKI: -- saying this here today.

11 DISCOVERY COMMISSIONER: Okay. All right.

12 MS. RODRIGUEZ: That's fine.

13 DISCOVERY COMMISSIONER: So let's continue this motion 'til, number one, we
14 figure out the costs of writing the program to pull out -- off the information. And, number
15 two, in the interim, why don't you, Plaintiffs' counsel, why don't you do a Rule 34
16 inspection notice and send it to defense counsel, and I'm going to let them bring their
17 computer person to take a look at the computers.

18 MR. NADY: That's fine.

19 MS. RODRIGUEZ: That's fine.

20 DISCOVERY COMMISSIONER: And we'll see what they can figure out.

21 MS. RODRIGUEZ: Just a question in terms of the first request about the program,
22 because there have been some changes like every two years, so how far back are we talking
23 about writing a computer program that would capture information?

24 DISCOVERY COMMISSIONER: Well, it's -- I'm assuming. I know this is Judge
25 Cory, so it's a different department.

1 MS. SNIEGOCKI: Yeah, we haven't had that issue before Judge Cory.

2 MS. RODRIGUEZ: No.

3 MS. SNIEGOCKI: But we've given you authority about the four-year statute of
4 limitations.

5 DISCOVERY COMMISSIONER: Yeah. Judge Williams just, in the other case I just
6 heard, that's what he ruled. So I'm assuming it's four years, so when --

7 MS. RODRIGUEZ: From when they filed October 2012 I believe.

8 DISCOVERY COMMISSIONER: 2012.

9 MS. SNIEGOCKI: So we go back to October of 2008 through -- I mean, we don't
10 even have to make it the present day. We can cut it off at January -- or the Thomas decision
11 was issued in June of 2014. I mean, we can cut it off January 1st, 2014. We're happy to do
12 that. And then at some point, if we need to supplement, it doesn't need to go through --

13 DISCOVERY COMMISSIONER: Okay. So let's go back to January 1st, what year?

14 MS. SNIEGOCKI: 2015.

15 DISCOVERY COMMISSIONER: Or to 2015. But when are we starting -- '08?

16 MS. SNIEGOCKI: 2008 would be the four-year statute of limitations, October of
17 2008.

18 DISCOVERY COMMISSIONER: Okay. But what month?

19 MS. SNIEGOCKI: October.

20 DISCOVERY COMMISSIONER: October.

21 MR. NADY: We have nothing then.

22 MS. RODRIGUEZ: No. I don't think --

23 MR. NADY: We have nothing then.

24 MS. RODRIGUEZ: -- we could go back that far.

25 DISCOVERY COMMISSIONER: Well, that's okay.

1 MS. SNIEGOCKI: We'll get whatever we can.

2 MS. RODRIGUEZ: Nothing computerized.

3 DISCOVERY COMMISSIONER: That's okay. Let 'em look.

4 MS. RODRIGUEZ: Okay.

5 DISCOVERY COMMISSIONER: Let 'em try.

6 MS. RODRIGUEZ: Yeah, they can look at it, but -- and we'll make the
7 representation then that it would be impossible to write a computer program to pull anything
8 that doesn't --

9 DISCOVERY COMMISSIONER: Right. And I --

10 MS. RODRIGUEZ: Okay.

11 DISCOVERY COMMISSIONER: I wouldn't expect you to be able to do that.

12 MR. NADY: We pay people based off of their trip sheets. That's the --

13 DISCOVERY COMMISSIONER: So when did you start using the computer at all?

14 MR. NADY: Oh, it's --

15 MS. RODRIGUEZ: 2013?

16 MR. NADY: Yeah.

17 DISCOVERY COMMISSIONER: Okay.

18 MS. SNIEGOCKI: Your Honor, that is --

19 MR. NADY: Okay.

20 MS. SNIEGOCKI: That is not true.

21 MR. NADY: You're right. Maybe it was sooner.

22 MS. SNIEGOCKI: This is revised --

23 MR. NADY: We're talkin' payroll now.

24 MS. SNIEGOCKI: This is their handbook. I'm sorry. This is revised in 2011, their
25 handbook, and it shows the computer system that's in place.

1 MS. RODRIGUEZ: That's not payroll. That's just the cab rolling into the yard and
2 leaving the yard. That has nothing to do with the payroll.

3 DISCOVERY COMMISSIONER: Okay.

4 MS. SNIEGOCKI: This is -- their payroll is based upon the fares that are collected.
5 This is the procedure that they follow --

6 DISCOVERY COMMISSIONER: I understand.

7 MS. SNIEGOCKI: -- in order to figure out what they get paid on a daily basis. Their
8 commission is paid daily to them or calculated daily. This is revised in 2011, and it shows
9 the exact check-in-check-out procedure drivers have to go through. Their computer
10 computes how much commission a driver earns each day.

11 DISCOVERY COMMISSIONER: Okay. I need to wrap this up.

12 MS. SNIEGOCKI: I understand.

13 DISCOVERY COMMISSIONER: So this is what we're doing. I'm going to
14 continue this motion for -- let me do three weeks just to be on the safe side.

15 THE CLERK: April 8th at 9:30.

16 DISCOVERY COMMISSIONER: Okay. So in the interim I need, Plaintiffs'
17 counsel, for you to send defense counsel a Rule 34 inspection notice and set forth exactly
18 what you're going to look at on their computers --

19 MS. SNIEGOCKI: Okay.

20 DISCOVERY COMMISSIONER: -- and who's going to be doing it, so they have
21 that information. So if there's a problem, you can have a conference call with me, but let's
22 do that. I'm going to allow you to inspect on five business days; is that sufficient for you?

23 MR. NADY: Perfect.

24 DISCOVERY COMMISSIONER: Okay.

25 MS. SNIEGOCKI: I'm sorry. You mean notice of five --

1 DISCOVERY COMMISSIONER: Well, otherwise Rule 34 gives you -- requires 30
2 days' notice.

3 MS. SNIEGOCKI: I understand.

4 DISCOVERY COMMISSIONER: I'm reducing it.

5 MS. SNIEGOCKI: I didn't know. Okay. I gotcha.

6 DISCOVERY COMMISSIONER: So -- I'm sorry.

7 MS. SNIEGOCKI: So five days' notice. Gotcha.

8 DISCOVERY COMMISSIONER: I didn't make myself clear. Five business days'
9 notice. And then you will also be able to go over and take a look at the DOL documents that
10 are in defense -- the Defendants' possession.

11 MS. SNIEGOCKI: Okay. And the names and addresses are off limits until --

12 DISCOVERY COMMISSIONER: Off limits --

13 MS. SNIEGOCKI: -- later on?

14 DISCOVERY COMMISSIONER: -- right now.

15 MS. SNIEGOCKI: So we have access to then the commission records as well as, if
16 there exists, time records based upon the information that we've provided you that we
17 believe that there are time records.

18 DISCOVERY COMMISSIONER: On the computer.

19 MS. SNIEGOCKI: Gotcha.

20 DISCOVERY COMMISSIONER: Right. You can take a look, and what's been
21 represented today is that, you know, they may not go back to 2008, but take a look and see
22 what they have, and then if there's a problem with the notice of inspection, have a
23 conference call with me.

24 MS. RODRIGUEZ: Understand.

25 DISCOVERY COMMISSIONER: Okay?

1 MS. SNIEGOCKI: Yes.

2 DISCOVERY COMMISSIONER: And then I'll see you back here 4/8 at 9:30, and
3 we'll deal with what we need to deal with.

4 MS. RODRIGUEZ: Thank you, Your Honor.

5 MS. SNIEGOCKI: Thank you very much.

6 DISCOVERY COMMISSIONER: Okay. Thank you.

7 [Proceeding concluded at 9:48 a.m.]

8 * * *

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

11 
12 _____
13 FRANCESCA HAAK
14 Court Recorder/Transcriber

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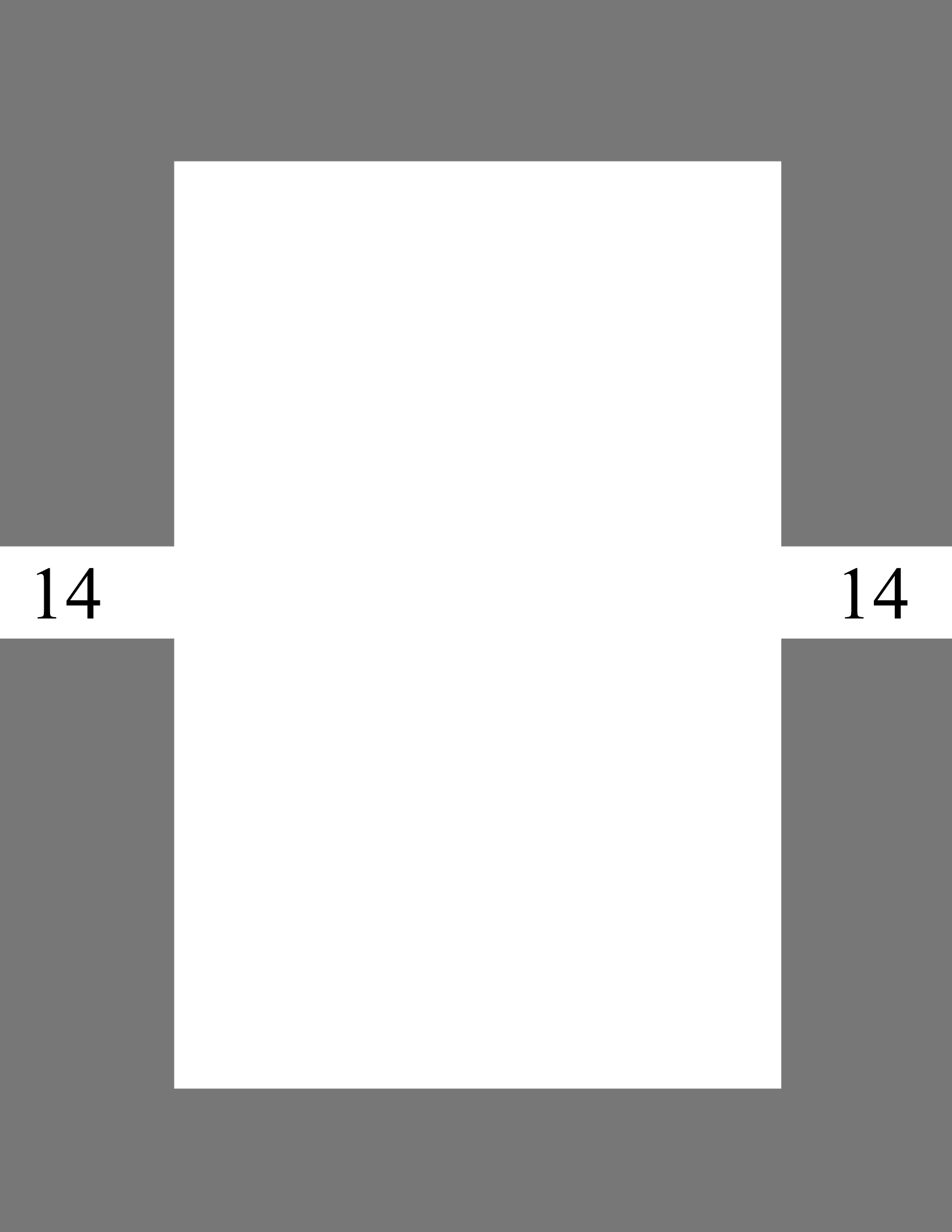
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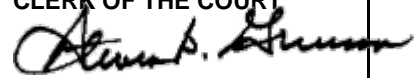
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TRAN

**EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA**

MICHAEL MURRAY, et al,	)	CASE NO. A-12-669926
)	
Plaintiffs,	)	DEPT. NO. I
)	
vs.)	
)	
A CAB TAXI SERVICE, LLC, et al,)	
)	
Defendants.)	

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE
TUESDAY, AUGUST 11, 2015

TRANSCRIPT RE:
PLAINTIFFS' MOTION TO CERTIFY THIS CASE AS A CLASS ACTION
PURSUANT TO NRCP RULE 23 AND APPOINT A SPECIAL MASTER
PURSUANT TO NRCP RULE 53

APPEARANCES:

For the Plaintiffs:	LEON GREENBERG, ESQ. DANA SNIEGOCKI, ESQ.
For the Defendants:	ESTHER C. RODRIGUEZ, ESQ.

ALSO PRESENT:	CREIGHTON J. NADY
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RECORDED BY: Lisa Lizotte, Court Recorder

000108

1 LAS VEGAS, NEVADA, TUESDAY, AUGUST 11, 2015, 10:44 A.M.

2 * * * * *

3 THE CLERK: Page 9, Michael Murray versus A Cab Taxi. Case Number
4 A669926.

5 MS. RODRIGUEZ: May I have the matter recorded, please?

6 THE COURT: Uh-huh. We'll turn on the device.

7 MS. RODRIGUEZ: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MS. RODRIGUEZ: Esther Rodriguez for the defendant. And I have the
10 owner of the company, Creighton J. Nady present.

11 THE COURT: Good morning.

12 MR. GREENBERG: Good morning, Your Honor. Leon Greenberg and
13 Dana Sniegocki for plaintiffs.

14 THE COURT: Good morning. We're on plaintiffs' motion to certify as a
15 class and to appoint a special master.

16 MR. GREENBERG: Your Honor, thank you for taking the time for us this
17 morning. When we were here before you had said you wished to have counsel
18 address the certification issue and then the special master appointment request
19 would be addressed separately.

20 THE COURT: Uh-huh.

21 MR. GREENBERG: We had not gotten through our discussion regarding
22 the class certification branch of the motion and this was continued to give
23 defendant's counsel some additional time to review the reply submission of the
24 plaintiffs. I would like to conserve the Court's time and focus whatever argument

1 I have on any particular questions or concerns or issues that come to the Court's
2 mind at the moment.

3 THE COURT: Remind me what do you say about their complaint that these
4 two individuals are not appropriate representatives of the class.

5 MR. GREENBERG: Well, Your Honor, their assertion regarding why these
6 individuals are not appropriate representatives seems to, as best as I understand it,
7 be focused on one particular issue, which is that these individuals -- one of them
8 at one time -- well, we have -- let me back up, Your Honor. There are two named
9 plaintiffs in this case, okay. There are also two proposed alternative representatives
10 which the Court could appoint either in conjunction with the two named plaintiffs or
11 instead of the two named plaintiffs if the Court felt that was appropriate. In respect --

12 THE COURT: Am I correct that the defendant's objections are aimed at the
13 two named plaintiffs? Ms. Rodriguez, is that correct?

14 MS. RODRIGUEZ: Amongst other objections --

15 THE COURT: Okay. All right.

16 MS. RODRIGUEZ: -- but definitely we have an issue with the two named
17 plaintiffs.

18 THE COURT: But the things that you brought up about one was terminated
19 for -- was it theft or some such thing?

20 MS. RODRIGUEZ: Correct. Correct.

21 THE COURT: And --

22 MS. RODRIGUEZ: And the other guy is a supervisor.

23 THE COURT: Yeah, or was for a portion of the time.

24 MS. RODRIGUEZ: Right. Right.

1 THE COURT: And those are the things that you pinpointed as having
2 objection to.

3 MS. RODRIGUEZ: Right. And additionally, Your Honor, after we continued
4 it I had a chance to review their reply, and based on that I have filed additional
5 motions which go to exactly what Your Honor is questioning. There's also a statute
6 of limitations issue. I have courtesy copies, Your Honor, if I may approach?

7 THE COURT: Were those already -- did you already give us courtesy
8 copies, because I don't think I --

9 MS. RODRIGUEZ: No, I brought those. They're set to be heard in
10 September.

11 THE COURT: Oh.

12 MR. GREENBERG: These are additional.

13 THE COURT: Oh, I'm sorry. These are not supplements to this motion --

14 MS. RODRIGUEZ: No.

15 THE COURT: -- it's additional motions.

16 MS. RODRIGUEZ: No, Your Honor. Sorry.

17 THE COURT: Okay. All right.

18 MS. RODRIGUEZ: No, but there's --

19 THE COURT: And what's the interplay between those motions and this
20 motion?

21 MS. RODRIGUEZ: One of the motions has to do with the statute of
22 limitations.

23 THE COURT: Uh-huh.

24 MS. RODRIGUEZ: The statute of limitations goes directly to one of the

1 plaintiffs because what we are arguing is that there is a -- the 2-year statute of
2 limitations is appropriate. And we fully briefed that and I think Your Honor needs to
3 consider that because if that in fact -- if the Court rules as we believe is appropriate,
4 then that completely knocks out one of the plaintiffs, as well as -- that just leaves
5 the supervisory proposed representative plaintiff.

6 THE COURT: What about these other two people that plaintiff says they
7 could put --

8 MS. RODRIGUEZ: Well, Your Honor, I objected to them attaching anything
9 about those other two people because it's improper to attach things that have not
10 been produced in the course of discovery. I don't know who these other two people
11 are. Those have not been produced in discovery. There's no Bates stamp.
12 They've never produced them. So to attach them to their motion is completely
13 improper and I'd ask the Court not to consider those because I don't know who they
14 are. But --

15 THE COURT: Well, just based on the verbal representation that was made.
16 I mean, you know me pretty well, I think. I'm for getting the issues resolved on the
17 merits as much as possible.

18 MS. RODRIGUEZ: Right.

19 THE COURT: And if in fact there are other individuals that could be
20 considered that would alleviate any concern that the Court would have with naming
21 these two named plaintiffs as the class representatives, then I think it's appropriate
22 for the Court to consider that.

23 MS. RODRIGUEZ: Well, I need to pull their employment records. I haven't
24 even verified that they were employees of A Cab. I know that one of the gentlemen

1 is a class representative for another cab company. I don't recall his name, other
2 than there's four Michaels that are proposed. There's a bunch of Michaels and one
3 of them is already in another department as the class representative. So I don't
4 think that that's appropriate as well for him to be the class representative, based
5 on the requirements of what a class representative needs to do to represent both
6 A Cab employees and another cab company's.

7 But primarily, Your Honor, what I'm asking the Court to consider today
8 is -- it goes to the fact that ultimately minimum wage may be appropriate for
9 certification but in this particular case these plaintiffs have failed altogether to meet
10 the basic requirements of NRCP 23, and that is outlined in the motions that are set
11 to be heard in September. Primarily, just to refresh the Court's recollection, there's
12 two claims that the plaintiffs are moving for.

13 THE COURT: Let me just interrupt this much. You said there was a motion
14 in limine. What's the other motion then?

15 MS. RODRIGUEZ: That's what I'm going to address, Your Honor. It is --

16 THE COURT: Okay. And is that the one, then, that talks about the
17 inappropriateness of these two individuals -- of certain individuals?

18 MS. RODRIGUEZ: It's pertaining to the claim altogether, Your Honor,
19 because there's two claims.

20 THE COURT: Okay.

21 MS. RODRIGUEZ: There's a statutory claim. They have two claims in their
22 complaint that says they violated NRS 608.040, A Cab did. And number two is the
23 claim based on the constitutional amendment, okay.

24 THE COURT: Yeah.

1 MS. RODRIGUEZ: So the motion that is before this Court, they're
2 scheduled in September, is a motion to dismiss the 608.040 altogether because
3 our statutes are very clear that the Court does not have jurisdiction over that. That's
4 a Labor Commissioner issue. And I've laid out the statutes for the Court to view
5 that the Court doesn't even have jurisdiction over that issue. And I laid out all of the
6 things that they're supposed to do before they ever make that kind of claim. So how
7 can the Court address certification if the Court doesn't even have jurisdiction over
8 the claim in its entirety?

9 THE COURT: Mr. Greenberg, do we need to wait and resolve those issues
10 first before --

11 MR. GREENBERG: Your Honor --

12 THE COURT: -- determining whether there would be a class and who
13 would be the class rep?

14 MR. GREENBERG: Well, Your Honor, efficiency would be served by
15 certifying the class and making all decisions going forward binding upon all
16 members of the class. It would be in defendant's interest as well. That way if
17 there's an appeal, if there's further litigation everyone will be bound, right or wrong,
18 by whatever Your Honor decides. The issue of certification is not about the merits.

19 And in respect to the 608.040 issue, Your Honor probably doesn't
20 remember, but you addressed this issue a couple years back in the Valdez v. Cox
21 litigation; both you and Judge Barker did.

22 THE COURT: Oh, yes, I remember everything I said two years ago.

23 MR. GREENBERG: In any event, you found that there was standing to
24 pursue these claims. But, Your Honor, that's a sub-class claim in this case. That's

1 really a residual claim. And they have every right to bring their arguments before
2 the Court respecting the merits of that. I'm not saying they shouldn't, Your Honor.

3 THE COURT: Yeah.

4 MR. GREENBERG: I'm just saying it's a separate issue from the issue
5 before the Court right now regarding getting the class certified so we can move this
6 case forward expeditiously and in an efficient fashion. There's no point or reason to
7 delay the certification. The certification requested, Your Honor, is conditional. It is
8 subject to further amendment, depending upon the future rulings the Court makes.
9 It can be narrowed prior to trial if there are certain issues that the Court finds are
10 not appropriate for class resolution. But it should be certified now and then we can
11 move forward, develop the full record. The Court can have complete information
12 regarding the facts and circumstances of all of the class members, which we don't
13 actually have at this point because the Discovery Commissioner has taken a
14 somewhat limited view of the discovery and the record that should be developed
15 in this case prior to certification.

16 So the merits of certification, not the merits of the claims, are really
17 incontestable here, Your Honor. I mean, we have a Department of Labor judgment
18 covering 430 individuals finding minimum wages are due, including --

19 MS. RODRIGUEZ: I object to that, Your Honor. That's a misrepresentation.

20 THE COURT: Well, wait, wait, wait. Let's not -- I'm probably guilty of inviting
21 that by going back and forth. Let's go ahead and hear the balance of the motion or
22 the argument on the motion and we'll go from there.

23 MR. GREENBERG: Yes. Your Honor, again, in respect to the merits of the
24 certification, we have a judgment that was entered in the federal district court that

1 found 430 individuals for a 2-year period, including Mr. Reno and Mr. Murray, the
2 named plaintiffs in this case, were owed unpaid minimum wages under federal law.
3 This is a binding judgment. I mean, defendants insist that this in fact does not
4 establish anything for the purposes of this case. It's just not true, Your Honor. You
5 have the judgment. It's attached to my moving papers. It says that it is -- you know,
6 a judge declared and determined that these individuals are owed this \$139,000 or
7 whatever it is, and they have a schedule of at least 430 people.

8 Now, Your Honor, the fact that these individuals were found to be owed
9 that money under the federal statute creates these common issues that the Court
10 here needs to certify the class on and reach the merits. We're not going to reach
11 the merits today, but there are two very clear issues regarding those individuals.
12 One is are they owed this extra dollar an hour under state law because the state
13 minimum wage potentially is a dollar an hour more than the federal minimum wage.
14 And that has to do with this healthcare issue, which of course the Court is going to
15 have to hear evidence on and address in the future. But if they didn't have that
16 health insurance, then they're owed that extra dollar. And if they did have the
17 health insurance, then they're not owed the extra dollar. But the point is it should
18 be determined for all of them, Your Honor, on a class basis because it affects all
19 of them. It's the same issue.

20 The other issue, Your Honor, is that the federal law allows the
21 defendants to enjoy a tip credit against their federal \$7.25 an hour minimum wage
22 liability, so they were entitled to count the tips toward their compliance with the
23 federal standard. And in fact, we have records, Your Honor, from 2014 which are
24 annexed -- I believe it's at Exhibit M -- or Exhibit F, actually. And this is discussed

1 in my moving papers, which show that the defendants were in fact applying the tip
2 credit. They were applying the tip credit after Your Honor ruled in February of 2013.
3 So they were taking the tip credit for about 15 months, Your Honor, after Your Honor
4 already determined in this case that they had to comply with the state standard,
5 which means that they couldn't take that tip credit. So we know, in fact, that there
6 was an ongoing violation of the law for at least a 15-month period after Your Honor
7 made that ruling in -- presumably before then, Your Honor, but this is the limited
8 records I have, because again, I haven't been afforded full class discovery in this
9 case because the class isn't certified.

10 So when we talk about meeting the requirements for certification,
11 we've got numerosity, Your Honor. We've got over 400 individuals that are already
12 identified. We've got common issues. I've just explained to Your Honor at least two
13 of the common issues. There are more. We have to show that there's a superiority
14 for class resolution here, that it is preferable to having this, you know, case not
15 proceed on a class basis. Well, Your Honor, we've got relatively small claims.
16 We've got a class of not -- presumptively not terribly sophisticated or educated
17 individuals. These are taxi drivers. These are not individuals that are likely to be
18 able to prosecute these claims individually very successfully. In addition, many
19 of them are current employees of the defendant, so presumably they would be
20 deterred from wanting to bring legal action against their employer because of the
21 obvious consequences they might face or they might fear facing in terms of not
22 being able to continue being employed, since their employment is obviously
23 important to them.

24 So -- and in addition, you know, this is a constitutional directive, Your

1 Honor. It is in Nevada's Constitution. And the language, the enforcement language
2 in the Constitution is extremely broad, as I'm sure Your Honor is cognizant of. It
3 talks about, you know, granting relief appropriate to remedy any violation, including
4 but not limited to back pay, damages, reinstatement or injunctive relief. So clearly
5 there is a strong public policy here to vigorously enforce these requirements, which
6 also supports the superiority of a class adjudication, Your Honor.

7 You know, I could go into more detail. There are other issues that are
8 common in terms of these issues of law, some of which counsel was actually raising
9 to Your Honor today. What is the statute of limitations? Is there a basis to toll the
10 statute of limitations in this case? Is there a viable sub-class claim under 608.040
11 for the statutory penalty for the terminated employees? So those are all common
12 issues which will be resolved identically for all of the class members. So there
13 overwhelmingly is a record supporting certification here.

14 Now, I understand that, again, there may be various contours or issues
15 that still have to be fleshed out here in terms of, well, what claims actually will go to
16 a merits determination before the Court down the road, so to speak, but we'll get to
17 that, Your Honor, the statute of limitations, the standing issue regarding the 608.040
18 claims, but there clearly are numerous common claims here.

19 And the other requirements of certification are met, Your Honor. I'm
20 certainly competent as counsel to represent the class. I've done a lot of class action
21 representation. I know the defendants have attacked the sufficiency of Mr. Murray
22 and Mr. Reno, Mr. Sergeant as being suitable representatives. I believe it was
23 Mr. Reno who was the -- they called the supervisor. Actually his job really was to
24 go out and like help a cab driver who had a breakdown or something on the road.

1 Otherwise he would be driving a cab normally. He wasn't a supervisor in the sense
2 that he was hiring and firing people. But, Your Honor, even if he had worked for a
3 period of time as a supervisor, he's still a member of the class for the period of time
4 he was working as a cab driver.

5 And to the extent that defendants say, well, these individuals, they
6 violated the rules, they were disciplined, they were discharged for bad behavior,
7 Your Honor, there's no -- there's nothing in the record establishing that that's
8 germane or important to their function as class representatives in this case. I would
9 remind the Court that the liabilities claimed here are strict statutory liabilities, Your
10 Honor. It's not going -- there aren't affirmative defenses here. And the credibility
11 of these individuals as being material to the prosecution of this case, it's pretty
12 speculative, Your Honor.

13 THE COURT: I see.

14 MR. GREENBERG: And again, if down the road there are issues raised
15 about that, you know, about those things, well, we can address that and the Court
16 can consider those issues. But at this point the case -- the class should be certified,
17 we should move forward and get this case moving ahead. I think Your Honor
18 understands my position.

19 THE COURT: All right.

20 MS. RODRIGUEZ: Your Honor, I'm not really sure where to even begin
21 because Mr. Greenberg has thrown everything at the Court but the kitchen sink,
22 most of which is unsupported and completely misrepresents the facts to the Court.
23 And that's why I'm jumping out of my seat to object --

24 THE COURT: Uh-huh.

1 MS. RODRIGUEZ: -- because it's clear pertaining to these two plaintiffs
2 they don't have any evidence. They have not made any prima facie showing for
3 these two named proposed representatives, Murray and Reno. They're wanting
4 to throw this judgment in front of the Court as the basis for certifying the class and
5 then this allegation of the dollar per tip. None of that has been proven. They're
6 relying --

7 THE COURT: No, of course not. Don't I have to at this point make a
8 determination based upon not that the claims have been proven but if the case goes
9 forward and they get into discovery on these claims, will these be the appropriate --
10 well, would class action at all?

11 MS. RODRIGUEZ: Well, that's what he's asking you to do, Your Honor.
12 He's asking you to say, okay, we have all of these issues; certify the class and then
13 we'll go back and determine all this stuff. But that would be procedurally incorrect
14 because what he's skipping over is number one -- number one under the NRCP rule
15 for certification is that these plaintiffs have to show that they have a claim that gives
16 rise to a judicable controversy. And that's why I was telling you, Your Honor, or
17 arguing that they have two claims. One is statutory. We have a motion to dismiss,
18 which procedurally the Court should consider. It would be improper for the Court
19 to consider -- to certify a claim that is about to be dismissed. Mr. Greenberg wants
20 you to ignore that and say, okay, go ahead and certify and then if you dismiss it,
21 you dismiss it, but you've certified the class and you've opened everything up to
22 discovery. Number two -- that's what he's anxious to do. He wants you to open up
23 everything to class discovery.

24 THE COURT: Sure. Yeah.

1 MS. RODRIGUEZ: But with the discovery that is currently under the
2 Discovery Commissioner, we have several motions pending before the Discovery
3 Commissioner. We have depositions going. Discovery Commissioner Bulla has
4 heard all of this and is currently -- has orders in place pertaining to that. Mr.
5 Greenberg hasn't been very happy with those orders and that's why he's wanting
6 to skip over it and ask you, well, then just open it up and let us do class discovery.
7 But we need to look at the first two, Murray and Reno. And I found it very interesting
8 that Mr. Greenberg said the guy that remains, the supervisor, well, part of the time
9 he was a supervisor and thought there was a period of time that he was also a
10 driver. And that's why our statute of limitations motion needs to be considered
11 first as well because the statute of limitations, as I mentioned earlier, is critical to
12 whether these plaintiffs have the judicable controversy that gives rise to a claim,
13 or the other way around, before this Court can issue class certification.

14 The statute of limitations is currently -- Your Honor may be aware it's
15 pending -- this issue is pending before the supreme court as to what the statute
16 of limitations is. I fully briefed this. Again, this is before the Court in September
17 because there's been a number of decisions before the district courts or your
18 colleagues here in the district court that have issued decisions, saying it's an
19 applicable 2-year statute of limitations. If that in fact is the way that this Court will
20 go, that will have a large impact in terms of who was part of the class and whether
21 these plaintiffs are going to be dismissed altogether.

22 So what Mr. Greenberg is asking you to do, to certify is completely
23 improper. It would be procedurally incorrect until the Court is able to consider
24 the two pending motions that are before you. Plus, based on his continued

1 representation that this judgment somehow represents that there was an adverse
2 finding against A Cab, believe me, Your Honor, I'm going to get a motion on file
3 as soon as possible pertaining to that because it is improper for him to continue to
4 represent that to you and to the Court that this was an adverse finding. It was a
5 settlement agreement. And we started to talk about --

6 THE COURT: Was there a consent decree entered into?

7 MS. RODRIGUEZ: Yes, with specific language that says in no way is it an
8 admission of liability. It was just to secure payment for a settlement agreement. So
9 for him to say, oh, this is the proof that allows the Court to grant certification, if he's
10 relying on that and if the Court is relying on that to authorize certification, that is an
11 incorrect position and I would like an opportunity to show that settlement agreement
12 to the Court in briefing and I will get an affidavit from the Solicitor General who did
13 this out of San Francisco, showing that this was nothing but a settlement agreement.
14 So it's improper for Mr. Greenberg to use it as a judgment, as he's trying to with
15 the Court.

16 Just the last things that I'd ask the Court to consider that I put in my
17 briefing, based on everything so far that we've done in nearly two and a half years
18 of discovery, they've made no showing that these two drivers are underpaid or have
19 not been appropriately paid by A Cab. That's a basic finding that this Court needs
20 to see before certifying an entire class. If they've got these two new guys that he
21 just mentioned, Michael Sergeant and Michael Berceli (phonetic), they can attempt
22 to amend their complaint again and try to add these two and show something with
23 those two, but the two they have right now they haven't shown any violation. So
24 to then say we're going to open it up to 200 other drivers, which is what he wants

1 because he can't show it with the two that he has currently, would be incorrect.

2 And I also indicated in my -- we haven't touched upon this at all, but I
3 briefed this, Your Honor, that the basis -- we kind of touched upon this the last time.
4 He's filed this as a minimum wage claim and he's attempted to say that this is based
5 upon the constitutional amendment that we were shorting the drivers or A Cab
6 was shorting the drivers a dollar. But what we started to address and everything
7 pertaining to these two plaintiffs is that it's not that they're being paid a dollar less.
8 Their declarations attached to this motion to certify says I was forced to falsify trip
9 sheets, I was forced to write down breaks. And so we started to talk about this the
10 last time that this is not a minimum wage claim. This is a claim for unpaid hours.
11 And if it's unpaid hours, if they're saying I worked an extra two hours that I had
12 to write down a break, again, that's something that needs to go to the Labor
13 Commissioner.

14 When you start making allegations of fraud and falsifying, the case law
15 is in there. It's the Johnson v. Travelers case, as well as the Paine Webber case,
16 Moore v. Paine Webber, I cited those in my brief. Fraud and these allegations of
17 falsifying information, those are very specific that those are not appropriate for class
18 certification. So to file it under the guise of a minimum wage claim is what they've
19 done, but it's actually you falsified trip sheets, you falsified hours, your falsified
20 break times. Until they can show something different, it's not appropriate for the
21 Court to certify across the board. I also cited to the Walmart v. Dukes case,
22 indicating that a class suit to recover damages for fraud allegedly practiced upon
23 numerous persons is not supported.

24 And then the last thing I'll mention, Your Honor, again, this is the

1 Moore v. Paine Webber case that says that just to have a legal theory, that's not
2 enough. And what Mr. Greenberg just argued to the Court is saying there's no
3 question that there's this legal theory; therefore that equals commonality. There's
4 no question that this is something that is appropriate to the class. That's an incorrect
5 interpretation of the law. A common course conduct such as that, a common legal
6 theory, that's not enough to support class certification.

7 So, Your Honor, I would ask that --

8 THE COURT: What does that case say is required?

9 MS. RODRIGUEZ: A common course of conduct is not enough to show
10 predominance because a common course of conduct is not sufficient to establish
11 liability of the defendant to pay any particular plaintiff. That's the Moore case. And
12 the Walmart v. Dukes is that a common legal theory is not enough. So what the
13 plaintiffs would have to show is the commonality requirement and a common legal
14 theory is not enough to just support commonality. They're going to have to show
15 more because in this case they mixed and mingled the fraud allegations in there.

16 In closing, Your Honor, I just wanted to mention that it's our position
17 that it is appropriate for Your Honor to consider the other two motions, as well as
18 the other one that I'll get on file, before you make a ruling on this class certification.

19 THE COURT: Mr. Greenberg.

20 MR. GREENBERG: Yes, Your Honor.

21 THE COURT: What about the commonality? Is it enough to have a
22 common theory of recovery?

23 MR. GREENBERG: Your Honor, the Dukes v. Walmart case concerned
24 something like a million or more women who worked for Walmart throughout the

1 country alleging discrimination in hiring, promotion, job treatment, okay. It was
2 found to be unsuitable for certification because obviously you have to look at each
3 individual person's job performance and determine whether in fact -- and how men
4 were treated in their workplace to determine if there was some sort of animus or
5 discriminatory conduct towards female employees.

6 Your Honor, it's a common examination here and it's a common
7 examination which will resolve the liability issue. The common examination is what
8 were these drivers paid, how many hours did they work during the relevant time
9 period, and then we do the math, Your Honor. Was that payment per hour equal to
10 at least the minimum wage? And then the Court also has to determine whether that
11 higher minimum wage rate applies, depending upon the health insurance that was
12 provided. So, Your Honor, the common course of conduct here is defendant's pay
13 policies. Once we examine the pay policies, liability will be addressed by itself, Your
14 Honor. It's essentially an audit type of situation is what's going on here, Your Honor.
15 There's not going to be a need to prove any individualized circumstances, any intent.

16 THE COURT: Let me ask you this. This case was filed in 2012, is that right?

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

18 THE COURT: And this is over like two and a half years, I think she said,
19 down the road?

20 MR. GREENBERG: We are approaching three years. There was a stay
21 agreed on this case for about a 10-month period, perhaps a little longer. I'm trying
22 to recall.

23 THE COURT: So that wouldn't be counted under the five year rule, the stay
24 period?

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

2 THE COURT: One thing I'm concerned with in holding off making a
3 resolution of this is the fact -- well, it's a two-fold thing. I am -- what's the right word
4 -- persuaded, moved, whatever you want to call it. Anytime somebody comes in
5 and makes a claim under the Constitution, be it the United States Constitution or
6 the Constitution of the State of Nevada, my way of thinking that is probably the
7 most important thing that courts are here to resolve because it has to do with our
8 very basic structure of governance. And so when somebody raises a claim under
9 the Constitution of the State of Nevada and points me to language that says it's
10 important, it's the Court is to use its full range of legal and equitable powers, I mean,
11 it pretty well puts a bright line on it, then it makes me feel -- and particularly when
12 I find that the case is two and a half years down the road, so if you take out the stay
13 period it's still approaching two years down the road countable time, I ask myself
14 does that comport with what I think the time frame was contemplated by the framers
15 of our Constitution, or those at least that stuck that amendment in. And it gives me
16 -- I don't know if animus is the right word, but a motivation to get this thing going.

17 And so I feel persuaded somewhat by Mr. Greenberg's argument
18 that whatever order is entered by the Court as far as certification, class certification,
19 is subject to modification and amendment as we go along, or as he said, if you
20 prevail on your statute of limitations argument then a big chunk goes out. If you
21 prevail on your argument that -- am I correct, you have raised this squarely in a
22 motion as to whether these two individuals meet it? See, I don't -- that's the one
23 thing out of everything that I read that gave me some pause that it would be
24 important that at least we know from the get-go that we've got appropriate class

1 representatives in here.

2 MS. RODRIGUEZ: If I may?

3 THE COURT: And I am motivated, shall we say, or somewhat persuaded
4 by your argument that even though it is a claimed class action, that it keys off of
5 whoever is presently the named plaintiffs.

6 So all things considered, I think I am persuaded to hold off on the
7 resolution of this motion until I hear particularly that motion. The motion in limine --
8 I mean, the motion for statute of limitations is not so important to me because if
9 you win on that you win. You know, that takes a bite out of the case, at least, if not
10 disposal of it completely. But it does seem to me that it's appropriate to wait and at
11 least see whether or not the defendant has made a point about the appropriateness
12 of these individuals. Now, if that's the case, then there should be no objection to
13 the Court also considering the other alternative proposed class representatives.

14 MR. GREENBERG: Your Honor, the defendants have had an opportunity
15 to proffer substantive evidence or reason to this Court --

16 THE COURT: Yeah.

17 MR. GREENBERG: -- as to why these individuals are not appropriate
18 representatives. The Court's job is to protect the interests of the class. The function
19 of the competence of the representatives is to be sure that the class' interests are
20 represented, not to protect the defendants from liability because they can go and
21 say, oh, well this guy was terminated for misconduct and this guy, look at his
22 employment records, he lied, and this guy, he also worked as a road supervisor at
23 certain times so he has a conflict. I mean, Your Honor, none of this is substantiated.

24 In respect to the alternative representative, Mr. Sergeant, the only

1 thing they allege in this case is that he's a representative in another litigation against
2 another taxicab company.

3 THE COURT: Yeah.

4 MR. GREENBERG: Well, how is that a conflict, Your Honor? How does
5 that make him unsuitable as a representative in this case? They just assert this --

6 THE COURT: Well, I'm not particularly moved by that argument, frankly.

7 MR. GREENBERG: Your Honor, we need to move this case forward.
8 Defendants have had an opportunity to raise these objections in their response.
9 They didn't. The 608.040 motion will affect one of the claims in this case but not
10 the minimum wage claim. That's a residual claim.

11 THE COURT: Okay.

12 MR. GREENBERG: And if that claim goes out, it goes out. The class still
13 needs to be certified in this case. What I would ask that Your Honor do is simply
14 certify the class, do it conditionally. You can appoint all four of these individuals as
15 representatives. If for some reason the Court is concerned as to their competence
16 or fitness to represent the class on the merits' determination in the future --

17 THE COURT: Uh-huh.

18 MR. GREENBERG: -- upon appropriate record the Court can remove one
19 of them as a representative. There is no point -- it is not in the class' interest to delay
20 certification in this case. As Your Honor is pointing out, this case -- in October this
21 case will be pending three years, Your Honor.

22 THE COURT: Well, I understand, but your argument assumes that it is a
23 class action case, and that is the very thing that's being objected to. I do think that
24 -- I'm a strong believer that there's a place in litigation for class actions and that it's

1 quite appropriate and I've handled any number of them, including back in the day.
2 But I don't think it's too much to make sure that the case is appropriate for it first.

3 Now, let me tell you where my thought process is so far. I don't really
4 think -- I'd be surprised if things fell in place for the defendants such that at the end
5 of the day, be it today or, what, two weeks from now, when is your --

6 MS. RODRIGUEZ: They're set on September 14th and 15th.

7 THE COURT: Or September 14th that I would decide that this case is
8 entirely inappropriate for class action. But it may be that you do raise good points
9 that might greatly affect sort of the scope of the class or the who's in the class or
10 who are their representatives. And on that basis, before you launch a class action
11 and certify a class, I think it's appropriate to make sure that people have time to
12 make their arguments, raise their questions and let's see whether this is a class
13 action.

14 MR. GREENBERG: Your Honor --

15 THE COURT: Now, as I've said, I seriously doubt that my holding would
16 be that there is no class action here. I am more concerned with making sure that
17 what I must find in order to certify it as a class are appropriately in place.

18 MR. GREENBERG: Your Honor, the statute of limitations issue, which
19 would affect the scope of claims to be resolved --

20 THE COURT: Yeah.

21 MR. GREENBERG: -- in this case --

22 THE COURT: Yeah.

23 MR. GREENBERG: -- is not going to be resolved in September when Your
24 Honor rules on it because it's scheduled for en banc argument before the supreme

1 court on October 5th on a mandamus petition.

2 THE COURT: Okay.

3 MR. GREENBERG: My point, also, Your Honor, is let's say the Court
4 certifies this class for a four year period and it turns out two of those years there
5 are no actionable claims.

6 THE COURT: Uh-huh.

7 MR. GREENBERG: The people who are included in that 4-year class, who
8 it turns out at the end of the day aren't going to receive relief from this case, there's
9 no injury to them. They have no claims. The statute of limitations had expired. And
10 defendants can't object to the certification preliminarily of a class of that temporal
11 scope because at the end of the day they're not going to have to pay these people
12 anything because they don't have claims. So deferring the class cert--

13 THE COURT: Can the Court not take into account at all the cost to both
14 sides to certify a larger class versus the cost to certify a perhaps smaller class?
15 I don't know whether it will come out to be smaller, but presumably it would.

16 MS. RODRIGUEZ: Absolutely, Your Honor, including the two proposed
17 representatives who, by the way, I'm deposing next week.

18 THE COURT: Okay.

19 MS. RODRIGUEZ: And it's very important to get that on the record before
20 Your Honor. I anticipate supplementing with their --

21 THE COURT: Okay. And you're free to do that. Just be advised that my
22 inclination is not to prevent the plaintiffs from offering up alternative representatives,
23 class representatives. It's only necessary that there be an appropriate class
24 representative.

1 MS. RODRIGUEZ: I understand that, Your Honor, and that makes sense.
2 However, I would like to know who they're proposing because, as I mentioned,
3 they've never produced these guys as a witness or as their documents except
4 attached to the motion to certify, which is against all of our rules for them to do that.
5 So what if we come before Your Honor and then he says, well, I've got Barbara
6 Jones or John Doe or whoever? He needs to produce who he's proposing and his
7 list of witnesses. In the two and a half years that we've done discovery, they've
8 never named anybody else. They've never named any witnesses. They've never
9 given any documents.

10 THE COURT: Well, their contention is they don't need to and they may not.
11 I don't know that I'm terribly persuaded by your arguments that are to this point, as
12 Mr. Greenberg points out, unsubstantiated, at least the one. And as to the other,
13 I'm not sure that that entirely disqualifies him, particularly where there are discrete
14 periods where he wasn't a supervisor, perhaps, and there's no decision on that.

15 MS. RODRIGUEZ: And the other period, if that's outside the statute of
16 limitations he's out.

17 THE COURT: Well, that remains to be seen. So I am on balance
18 determined to wait.

19 MR. GREENBERG: Your Honor -- I understand, Your Honor, and I don't
20 want to argue the merits of the certification further, unless the Court is interested
21 in hearing more about it. For example, on page 5 of my moving brief you can read
22 the reference to the consent judgment. It's clear that there is in fact a judgment
23 determining these 430 people are owed minimum wages.

24 THE COURT: Okay. All right.

1 MR. GREENBERG: But, Your Honor, I would ask the Court if we're simply
2 going to defer this until the next hearing, we have an assurance from the Court that
3 we will be able to revisit the issue of the certification at our next appearance. Is the
4 Court amenable to granting us that request?

5 THE COURT: To certify now, you mean?

6 MR. GREENBERG: No. What I'm -- it sounds like Your Honor wishes to
7 defer making a ruling on the certification at this point.

8 THE COURT: That's correct.

9 MR. GREENBERG: Your Honor was mentioning some interest in these
10 other pending motions which are for September.

11 THE COURT: It would be my intention to simply continue this until that
12 date --

13 MR. GREENBERG: Yes, Your Honor.

14 THE COURT: -- and make the determination. And it may be that it alters
15 the definition of the class if she prevails on any of these motions that she's got. It
16 might impact on who's appropriately either a representative or who is appropriately
17 in the class.

18 MR. GREENBERG: If Your Honor feels that is the better approach, I
19 understand and I appreciate you hearing us when we come back in September on
20 this, along with those other motions all in tandem. I just wanted to clarify that the
21 Court is intending to do that.

22 THE COURT: I say that, notwithstanding the thing I started with, and that is
23 the feeling in the back of my mind that this case has got a lot of old age on it already
24 and I want to see it move along.

1 MS. RODRIGUEZ: And, Your Honor, along that, he threw out these stays,
2 but these were -- I want to make it clear to the Court that the two and a half years
3 or three and a half years that we're into this now is not the fault of the defendant.
4 They've done very little discovery in this. They've taken one deposition --

5 THE COURT: Uh-huh.

6 MS. RODRIGUEZ: -- only at the order of the Discovery Commissioner.

7 THE COURT: Okay.

8 MS. RODRIGUEZ: And now he's in a rush for certification.

9 THE COURT: Well, and you may assume, probably properly, that that has
10 a lot to do with why I'm willing to wait now.

11 MS. RODRIGUEZ: I appreciate that, Your Honor.

12 THE COURT: But because I feel that most likely I will certify some kind of
13 class or other out of this, then it's all the more reason why I don't want to wait very
14 long. I want to give you an opportunity, particularly in light of the -- you know,
15 somewhat the lateness of the certification, attempt to certify, for you to make your
16 argument as to whether this should turn into a case that undoubtedly would cost
17 your client more to defend it. By the same token, I anticipate the most that it would
18 accomplish is perhaps probably tailoring the class somewhat, reducing the class,
19 perhaps. And at that point I expect we'll resolve the question of the certification and
20 then perhaps move on to the next question, and that is whether or not there should
21 be any special master at the defendants' expense.

22 Along those lines, am I correct that there's no estimate of what the
23 cost would be for the special master? I took another look to see if I missed it and
24 I still didn't find it.

1 MR. GREENBERG: Your Honor, I don't know what the cost would be for
2 a special master. But as explained in the moving papers, this is necessitated by
3 defendants' defense to these claims.

4 THE COURT: Yeah. Well, save your argument because we're going to
5 argue that next time, September 14th, assuming that I certify any class.

6 MR. GREENBERG: Yes, Your Honor.

7 THE COURT: But I just wanted to know because I think it's appropriate,
8 too, to know what kind of cost is this that we're talking about. You know, we've got
9 to get some notion of what kind of animal are we talking about here.

10 MR. GREENBERG: Well, Your Honor --

11 THE COURT: It could, I do know, very drastically, depending on who
12 the Court would appoint as a special master. Some folks, at least in the receiver
13 business, some folks will cost the litigants a lot of money, but others seem to be
14 able to operate more economically.

15 MR. GREENBERG: Well, if Your Honor is of a mind that a special master
16 is appropriate, you can certainly conditionally instruct the parties of that and perhaps
17 they can collaboratively research trying to come up with an economical process for
18 finding an agreeable special master and the cost involved.

19 THE COURT: It is -- I will tell you that -- by saying it I know I invite
20 immediate arguments and that's not what I'm doing. I don't want to argue it today,
21 but I will tell you that in my mind the question comes down to is there -- I can see
22 a lot of good to be accomplished with someone with the powers of a special master.
23 But I can also see that, you know, it could greatly multiply the cost and expense.
24 And the more it multiplies the cost, the more I question the appropriateness of

1 visiting it all on one side to the litigation.

2 Now, if I ultimately conclude that you are correct, that what you have
3 in the past is not only a powerful persuasive argument for -- that there is some merit
4 to the claim sufficient that the Court should facilitate a class action handling of it,
5 including a special master, if your argument is that as I heard you express it today
6 that it's practically law of the case -- you can't say law of the case but it's -- that the
7 Court can't really effectively go behind the ruling that's already been made, you
8 know, we can delve into that some more in our next visit.

9 MR. GREENBERG: Your Honor, it's not in the interest of the class to see
10 the defendants' resources are expended on a special master rather than satisfying
11 the class claims.

12 THE COURT: Agreed.

13 MR. GREENBERG: The request for a special master is really made as a
14 last resort here, given defendants' improper conduct, which is demonstrated in the
15 moving papers. That's the basis for the appointment, but we're not here to argue
16 the merits of this at this point. I understand.

17 MS. RODRIGUEZ: Well, Your Honor, I object to them -- if we're not here
18 to argue it, then I object to those allegations because it's absolutely not true.
19 He's skipping over things that he just doesn't want to do before the Discovery
20 Commissioner.

21 THE COURT: He's a lawyer and so are you. You just can't help it.

22 MR. GREENBERG: You're right, Your Honor.

23 MS. RODRIGUEZ: Well, I try to be patient and not respond to these, but
24 I would hate the Court to accept them at their face value because it's simply wrong.

1 THE COURT: How many matters do we have on for -- the 14th, did you
2 say? 15th.

3 MS. RODRIGUEZ: Your Honor, I wanted to address that. Actually the
4 motion to dismiss is set on the 15th. And I was wondering if we could move them
5 back one week because I have a conflict. I've got one on the 14th and one on the
6 15th and then --

7 THE COURT: We don't think so. Just --

8 MS. RODRIGUEZ: Then we can't move them one week?

9 THE COURT: Only the one on the 15th?

10 THE CLERK: I can move them forward but I can't move them back. I mean,
11 I can't go -- it's on the 15th. I can't go the 8th or the 9th.

12 MS. RODRIGUEZ: Oh, no, no. I meant --

13 THE COURT: No, she wants to go the other way.

14 MS. RODRIGUEZ: Yeah.

15 THE COURT: I can go the 22nd or the 23rd.

16 MR. GREENBERG: Is it possible we could have a time reserved a little
17 later in the day, Your Honor? That might be more efficient for everyone.

18 THE COURT: Well, the problem is that I have the trial schedule. I'm sorry,
19 what do you have?

20 MR. GREENBERG: I'm just -- I understand Your Honor's trial schedule.
21 I was just asking if we could get a time a little later in the day. You had us here at
22 10:30 today, for example.

23 THE COURT: Yeah.

24 MR. GREENBERG: If that could be done that might be helpful, Your Honor.

1 THE COURT: Let me ask. How many matters do we have on on the 15th?

2 THE CLERK: Four.

3 THE COURT: Four?

4 THE CLERK: But she's wanting it moved.

5 THE COURT: Huh?

6 THE CLERK: She wants it moved. She wants it moved off of the 15th.

7 THE COURT: Right.

8 THE CLERK: We have nothing set the 22nd or 23rd.

9 THE COURT: Nothing?

10 THE CLERK: Not so far.

11 THE COURT: All right. Let's put it on the Tuesday one, then. That's the
12 next one?

13 THE CLERK: The 22nd.

14 THE COURT: The 22nd. The 22nd, I will put it at 10:30. I really don't think
15 it's going to take longer than that to resolve.

16 MS. RODRIGUEZ: And, Your Honor, that would be the two motions, the
17 motion to dismiss the claim for relief and then the motion for declaratory order
18 regarding the statute of limitations?

19 THE COURT: Do you show that as being on for the 15th at this point or
20 when is it on? Is it even set?

21 THE CLERK: One of them is on the chambers calendar.

22 MS. RODRIGUEZ: Oh. Maybe that's the statute of limitations.

23 THE COURT: Is that the statute of limitations?

24 MS. RODRIGUEZ: Yes, it is. You're right. You're right.

1 THE COURT: All right. And is the chambers calendar going to hit before
2 the 14th -- or the 22nd?

3 THE CLERK: Yes.

4 THE COURT: All right. So that will be resolved by the time you come in.

5 MR. GREENBERG: Your Honor, if you could just instruct defendant if
6 they wish to supplement anything in respect to this motion that they serve the
7 supplement ten days prior to our new hearing date, which would be by --

8 THE COURT: Do you anticipate any supplement?

9 MS. RODRIGUEZ: Most likely, if I take the depositions next week. But I
10 would ask for the same courtesy, since I don't know who his proposed representatives
11 are going to be at this point.

12 MR. GREENBERG: Your Honor, I don't have any intention of supplementing,
13 except to the extent that they introduce something further for the record.

14 THE COURT: All right. And are the names of the alternates also in your --
15 what you've already filed?

16 MR. GREENBERG: Yes, Your Honor. We have declarations from them --

17 THE COURT: That's right. That's right.

18 MR. GREENBERG: -- affirming as to their status in the class and their
19 willingness to serve as representatives.

20 THE COURT: All right. So we don't anticipate that, so that shouldn't be
21 a problem. So you're going to supplement yours based on what you find out in a
22 deposition?

23 MS. RODRIGUEZ: I'm assuming they'll appear for a deposition next week.

24 THE COURT: Can you file any supplement a week before the hearing?

1 MS. RODRIGUEZ: I would think so, yes.

2 MR. GREENBERG: I would like a commitment.

3 THE COURT: Well, are you going to reply? Okay, so --

4 MR. GREENBERG: Well, that's why I mentioned ten days or --

5 THE COURT: Ten days before the hearing. Can you do that?

6 MR. GREENBERG: Ten days would be -- well, ten days would be Saturday,
7 Your Honor, so maybe --

8 THE COURT: Ten days would be --

9 MR. GREENBERG: -- the Friday prior to that Saturday. Eleven days, it
10 would be.

11 MS. RODRIGUEZ: How about a week ahead? I mean, I don't anticipate --
12 if I get the transcript sooner --

13 THE COURT: What's 10 days before that, the 10th? Oh, no, the 22nd.
14 The 12th of September?

15 THE CLERK: That's a Saturday.

16 THE COURT: So let's make it the day before that, Friday.

17 THE CLERK: The 11th?

18 THE COURT: Yeah. Will that work?

19 MS. RODRIGUEZ: Your Honor, I was asking for a week ahead of the
20 hearing because it's just a matter of getting the transcript.

21 THE COURT: Well, but then that doesn't give adequate time to reply, I don't
22 think.

23 MS. RODRIGUEZ: That's fine, Your Honor.

24 THE COURT: Okay.

1 MS. RODRIGUEZ: September 11th?

2 THE CLERK: September 11th.

3 THE COURT: And your reply, then, shouldn't be later than a week before
4 the hearing.

5 MR. GREENBERG: That is fine, Your Honor.

6 THE COURT: All right. And then we'll get the matter resolved.

7 Anything else?

8 MS. RODRIGUEZ: Thank you.

9 MR. GREENBERG: I think Your Honor has been clear. I appreciate you
10 taking the time for us, Your Honor.

11 THE COURT: Okay, we'll see you then.

12 (PROCEEDINGS CONCLUDED AT 11:35 A.M.)

13 * * * * *

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15 ATTEST: I do hereby certify that I have truly and correctly transcribed the
16 audio/video proceedings in the above-entitled case to the best of my ability.

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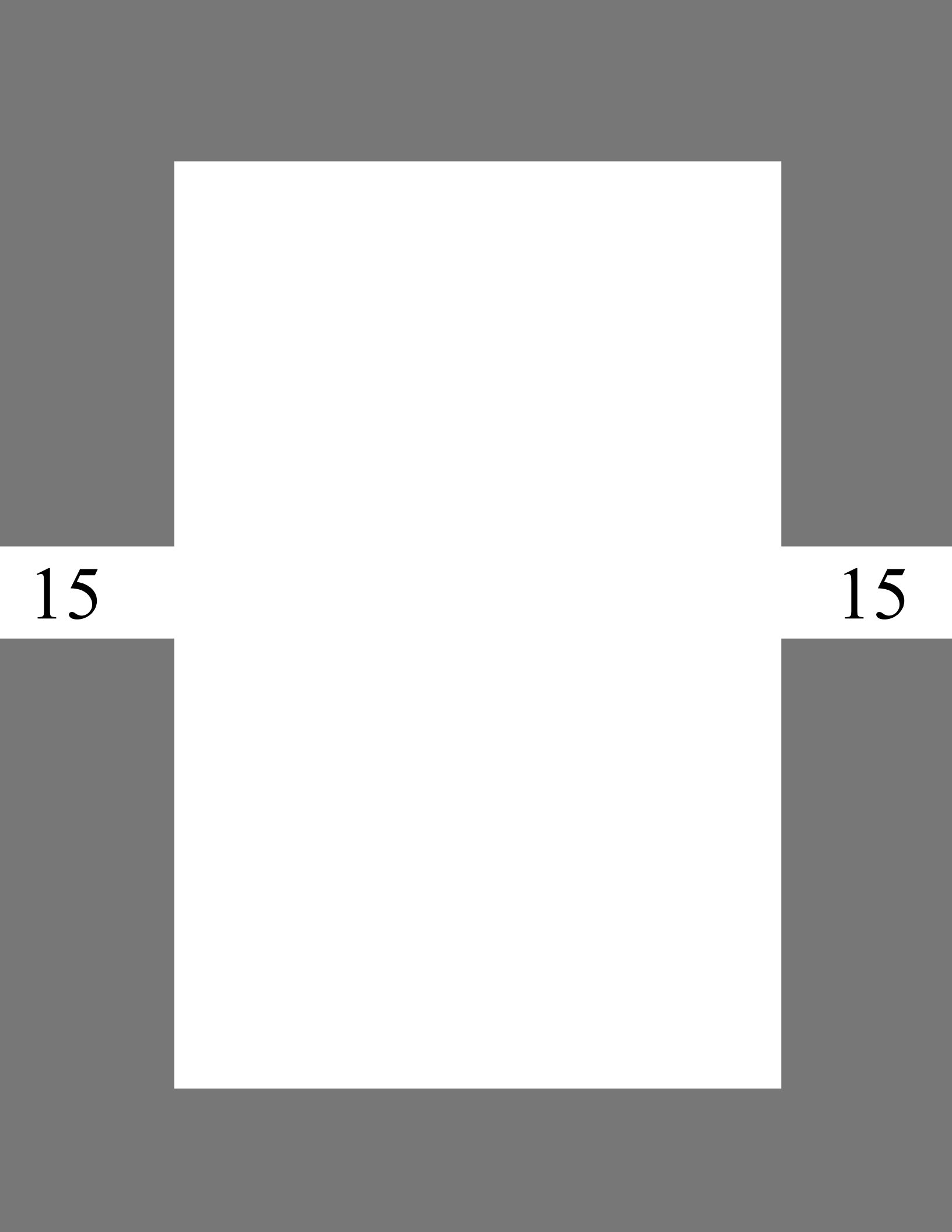
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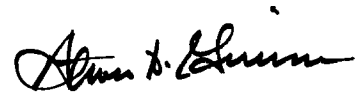
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Liz Garcia, Transcriber
LGM Transcription Service



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CLERK OF THE COURT

1 **NOEO**

2 LEON GREENBERG, ESQ., SBN 8094
3 DANA SNIEGOCKI, ESQ., SBN 11715
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11 Attorneys for Plaintiffs

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

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

17 Plaintiffs,

18 vs.

19 A CAB TAXI SERVICE LLC, and A
20 CAB, LLC,

21 Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF ORDER

22 PLEASE TAKE NOTICE that the Court entered the attached Order in this
23 matter on August 17, 2015.

24 Dated: August 17, 2015

25 LEON GREENBERG PROFESSIONAL CORP.

26 /s/ Leon Greenberg

27 Leon Greenberg, Esq.
28 Nevada Bar No. 8094
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Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Plaintiffs

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CERTIFICATE OF MAILING

The undersigned certifies that on August 17, 2015, she served the within:

Order Granting Motion to Serve and file A Second Amended
and Supplemental Complaint

by court electronic service to:

TO:

Esther C. Rodriguez, Esq.
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

/s/ Sydney Saucier

Sydney Saucier

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CLERK OF THE COURT

ORD

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

ORDER GRANTING MOTION TO
SERVE AND FILE
A SECOND AMENDED AND
SUPPLEMENTAL COMPLAINT


Plaintiffs filed their Motion to serve and file a Second Amended and
Supplemental Complaint on June 22, 2015 in the form annexed thereto as Exhibit "A."
Defendants filed a response in opposition to the motion on July 10, 2015 and plaintiffs
filed a reply in support of the motion on July 22, 2015. Such motion having come
before the Court for due consideration in Chambers on July 27, 2015, and after due
consideration and deliberation, it is hereby Ordered that:

The motion is granted and plaintiff shall have leave to serve and file a Second
Amended and Supplemental Complaint in the form annexed to the motion as Exhibit

1 "A" as the Court finds the proposed pleading sufficiently alleges the additional claims
2 set forth therein and alleges transactions and events taking place after the
3 commencement of this action.

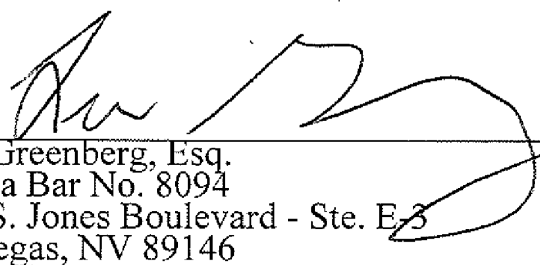
4 IT IS SO ORDERED this 14 day of Aug, 2015

5
6 
7 HONORABLE JUDGE KENNETH CORY
8 DISTRICT COURT, CLARK COUNTY

9 Dated: August 12, 2015 

10 Submitted by:

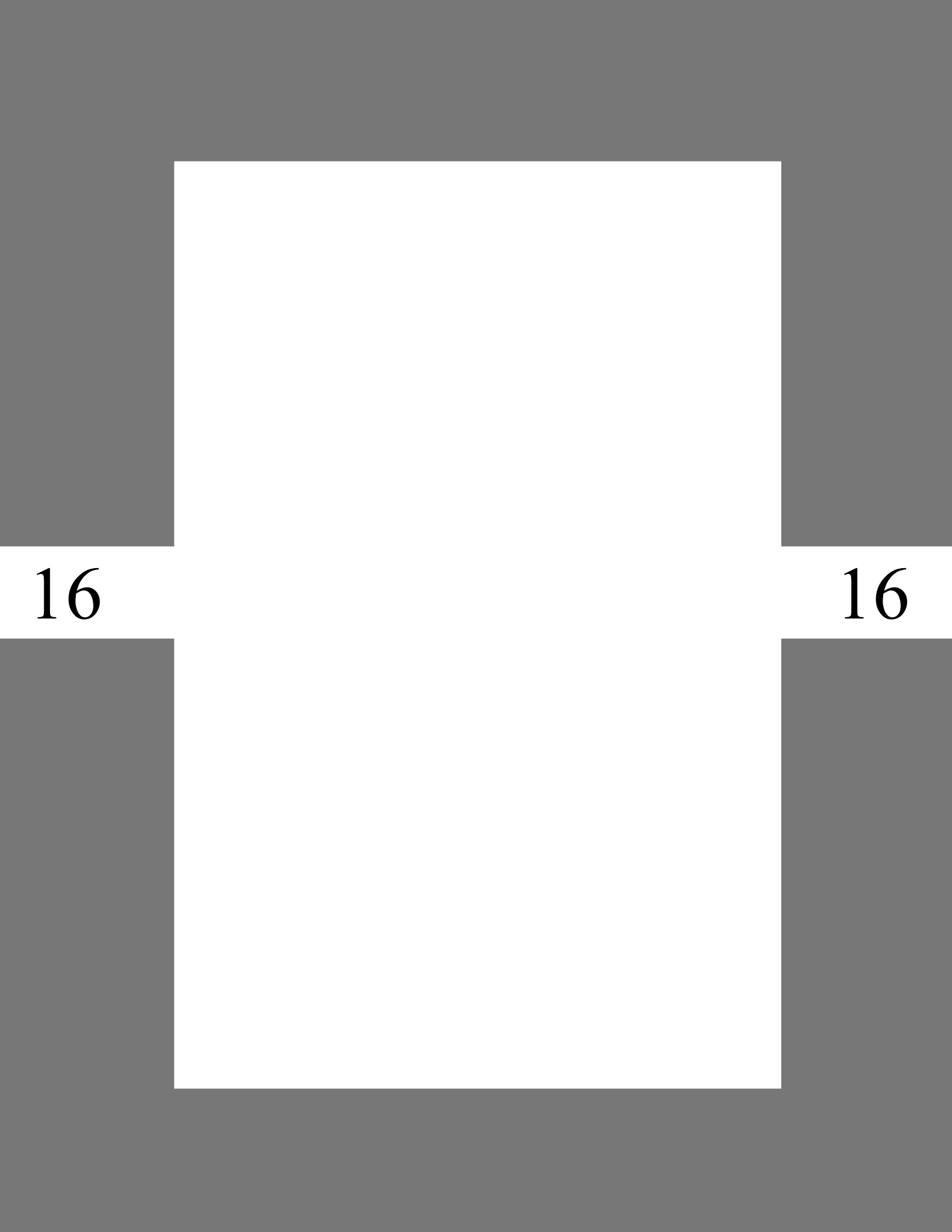
11 LEON GREENBERG PROFESSIONAL CORP.

12 
13
14 Leon Greenberg, Esq.
15 Nevada Bar No. 8094
16 2965 S. Jones Boulevard - Ste. E-3
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19 Attorney for the Plaintiffs

20 Approved as to Form:

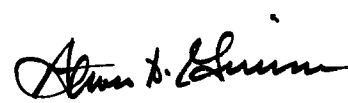
21 /s/ Approved

22 Esther C. Rodriguez, Esq.
23 Nevada Bar No. 6473
24 1061 Park Run Drive - Suite 150
25 Las Vegas, Nevada, 89145
26 Tel (702) 320-8400
27 Attorney for the Defendants
28



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16


CLERK OF THE COURT

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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-12-669926-C

Dept.: I

**SECOND AMENDED AND
SUPPLEMENTAL
COMPLAINT**

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

MICHAEL MURRAY and MICHAEL RENO, Individually and on behalf of
others similarly situated, by and through their attorney, Leon Greenberg Professional
Corporation, as and for a Complaint against the defendants, state and allege, as
follows:

JURISDICTION, PARTIES AND PRELIMINARY STATEMENT

1. The plaintiffs, MICHAEL MURRAY and MICHAEL RENO, (the
“individual plaintiffs” or the “named plaintiffs”) are residents of the State of Nevada
and during all relevant times were residents of Clark County, Nevada, and all plaintiffs
are current employees of the defendants.

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CLASS ACTION ALLEGATIONS

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1 requirements of said Nevada Constitutional Provision, did not equal at least the
2 minimum hourly wage provided for therein.

3 8. The named plaintiffs are informed and believe, and based thereon allege
4 that there are at least 200 putative class action members. The actual number of class
5 members is readily ascertainable by a review of the defendants' records through
6 appropriate discovery.

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

9 10. Proof of a common or single set of facts will establish the right of each
10 member of the class to recover. These common questions of law and fact predominate
11 over questions that affect only individual class members. The individual plaintiffs'
12 claims are typical of those of the class.

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

20 12. The individual plaintiffs will fairly and adequately represent the interests
21 of the class and have no interests that conflict with or are antagonistic to the interests
22 of the class and have retained to represent them competent counsel experienced in the
23 prosecution of class action cases and will thus be able to appropriately prosecute this
24 case on behalf of the class.

25 13. The individual plaintiffs and their counsel are aware of their fiduciary
26 responsibilities to the members of the proposed class and are determined to diligently
27 discharge those duties by vigorously seeking the maximum possible recovery for all
28 members of the proposed class.

1 14. There is no plain, speedy, or adequate remedy other than by maintenance
2 of this class action. The prosecution of individual remedies by members of the class
3 will tend to establish inconsistent standards of conduct for the defendants and result in
4 the impairment of class members' rights and the disposition of their interests through
5 actions to which they were not parties. In addition, the class members' individual
6 claims are small in amount and they have no substantial ability to vindicate their
7 rights, and secure the assistance of competent counsel to do so, except by the
8 prosecution of a class action case.

9
10 **AS AND FOR A FIRST CLAIM FOR RELIEF ON BEHALF OF THE NAMED**
11 **PLAINTIFFS AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO**
12 **NEVADA'S CONSTITUTION**

13 15. The named plaintiffs repeat all of the allegations previously made and
14 bring this First Claim for Relief pursuant to Article 15, Section 16, of the Nevada
15 Constitution.

16 16. Pursuant to Article 15, Section 16, of the Nevada Constitution the named
17 plaintiffs and the class members were entitled to an hourly minimum wage for every
18 hour that they worked and the named plaintiffs and the class members were often not
19 paid such required minimum wages.

20 17. The defendants' violation of Article 15, Section 16, of the Nevada
21 Constitution involved malicious and/or fraudulent and/or oppressive conduct by the
22 defendants sufficient to warrant an award of punitive damages for the following,
23 amongst other reasons:

- 24 (a) Defendants despite having, and being aware of, an express
25 obligation under Article 15, Section 16, of the Nevada
26 Constitution, such obligation commencing no later than July 1,
27 2007, to advise the plaintiff and the class members, in writing, of
28 their entitlement to the minimum hourly wage specified in such
constitutional provision, failed to provide such written advisement;

1 (b) Defendants were aware that the highest law enforcement
2 officer of the State of Nevada, the Nevada Attorney General, had
3 issued a public opinion in 2005 that Article 15, Section 16, of the
4 Nevada Constitution, upon its effective date, would require
5 defendant and other employers of taxi cab drivers to compensate
6 such employees with the minimum hourly wage specified in such
7 constitutional provision. Defendants consciously elected to ignore
8 that opinion and not pay the minimum wage required by Article
9 15, Section 16, of the Nevada Constitution to its taxi driver
10 employees in the hope that it would be successful, if legal action
11 was brought against it, in avoiding paying some or all of such
12 minimum wages;

13 (c) Defendants, to the extent they believed they had a colorable
14 basis to legitimately contest the applicability of Article 15, Section 16, of the Nevada Constitution to its taxi driver employees, made
15 no effort to seek any judicial declaration of its obligation, or lack
16 of obligation, under such constitutional provision and to pay into
17 an escrow fund any amounts it disputed were so owed under that
18 constitutional provision until such a final judicial determination
19 was made;
20

21 (d) Defendants were the subject of an investigation by the United
22 States Department of Labor in respect to defendants' compliance
23 with the minimum wage requirements of the federal Fair Labor
24 Standards Act, 29 U.S.C. § 201-219 which investigation was
25 concluded on April 30, 2009. Such investigation did not
26 determine if any violations of the Fair Labor Standards Act were
27 committed by the defendants, and no claim is made in this case
28 against the defendants under the Fair Labor Standards Act. Such

1 investigation resulted in defendants on April 30, 2009, being
2 advised by the U.S. Department of Labor that they must keep a
3 record of the actual hours worked by their taxi driver employees
4 and that defendants must pay their taxi drivers the minimum
5 hourly wage, defendants also being told such minimum hourly
6 wage at that time under Nevada law was \$6.85 an hour. Rather
7 than follow such advisement, defendants intentionally acted to not
8 institute any system that would keep an express, confirmed, and
9 accurate record of the hours worked by such taxi driver employees,
10 such as a dedicated payroll time clock system. Defendants also
11 acted to force their taxi driver employees to falsely record their
12 activities on their daily taxi driver trip sheets so as to make it
13 appear that the taxi drivers were taking many hours of breaks
14 during their working days, which was not true and defendants
15 knew was not true. Defendants fostered such inaccurate and
16 untrue recording by their taxi drivers of their work activities by
17 refusing to allow taxi drivers to submit accurate daily taxi driver
18 trip sheets that did not have such excessive, and untrue, recordings
19 of break time. Defendants enforced their "break time listings
20 required" policy on their taxi drivers' trip sheets with the
21 intentional goal of making it impossible for those taxi drivers to
22 collect the minimum wages they were owed and to conceal
23 defendants' violations of the Nevada Constitution. Such actions
24 by the defendants included, among other things, actually reviewing
25 the "fares booked" per shift on each taxi driver's trip sheet and
26 requiring additional break time be listed for those shifts where the
27 fare bookings were so low that minimum wages would be owed to
28 the taxi driver if their break times, as listed on their trip sheets,

1 were not inflated.

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

17 19. The rights secured to the plaintiffs and the class members under Nevada's
18 Constitution, Article 15, Section 16, for a minimum level of remuneration for their
19 labor as defendants' employees, constitute property rights, in that such level of
20 remuneration constitutes property of the plaintiffs and the class members, to wit, a sum
21 of money that they have a right to possess for the inalienable value of their labor,
22 which labor the defendants obtained from them as employers. Defendants have
23 obtained such property, the minimum wages properly the property of the plaintiffs and
24 the class members, illegally and defendants still possess the same, the defendants
25 having also committed a conversion of such property. As a result defendants should
26 be, and are, subject to all forms of equitable relief and legal sanctions necessary to
27 return such property to the plaintiffs and the class members and/or make them whole,
28 including, without limitation, a suitable Court Order directing that the defendants

1 make restitution to the plaintiffs and the class members for the full value of all such
2 property taken and held by the defendants, with interest and an award of all proper
3 incidental, consequential and/or punitive damages available under the law or in equity
4 appropriate to remedy such violations of the plaintiffs' and the class members' rights
5 under Nevada's Constitution, Article 15, Section 16.

6 20. The named plaintiffs seek all relief available to them and the alleged class
7 under Nevada's Constitution, Article 15, Section 16 including appropriate injunctive
8 and equitable relief to make the defendants cease their violations of Nevada's
9 Constitution and a suitable award of punitive damages.

10 21. The named plaintiffs on behalf of themselves and the proposed plaintiff
11 class members, seek, on this First Claim for Relief, a judgment against the corporate
12 defendants for minimum wages and restitution, such sums to be determined based
13 upon an accounting of the hours worked by, and wages actually paid to, the plaintiffs
14 and the class members, a suitable injunction and other equitable relief barring the
15 corporate defendants from continuing to violate Nevada's Constitution, a suitable
16 award of punitive damages against the corporate defendants, and an award of
17 attorney's fees, interest and costs, as provided for by Nevada's Constitution and other
18 applicable laws against the corporate defendants.

19 **AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT TO NEVADA**
20 **REVISED STATUTES § 608.040 ON BEHALF OF THE NAMED PLAINTIFFS**
AND THE PUTATIVE CLASS

21 22. Plaintiffs repeat and reiterate each and every allegation previously made
22 herein.

23 23. The named plaintiffs bring this Second Claim for Relief against the
24 corporate defendants pursuant to Nevada Revised Statutes § 608.040 on behalf of
25 themselves and those members of the alleged class of all similarly situated employees
26 of the defendants who have terminated their employment with the defendants.

27 24. The named plaintiffs have been separated from their employment with the
28

1 defendants and at the time of such separation were owed unpaid wages by the
2 defendants.

3 25. The defendants have failed and refused to pay the named plaintiffs and
4 numerous members of the putative plaintiff class who are the defendants' former
5 employees their earned but unpaid wages, such conduct by such defendants
6 constituting a violation of Nevada Revised Statutes § 608.020, or § 608.030 and
7 giving such named plaintiffs and similarly situated members of the putative class of
8 plaintiffs a claim against the defendants for a continuation after the termination of their
9 employment with the defendants of the normal daily wages defendants would pay
10 them, until such earned but unpaid wages are actually paid or for 30 days, whichever is
11 less, pursuant to Nevada Revised Statutes § 608.040.

12 26. As a result of the foregoing, the named plaintiffs seek on behalf of
13 themselves and the similarly situated putative plaintiff class members a judgment
14 against the corporate defendants for the wages owed to them and such class members
15 as prescribed by Nevada Revised Statutes § 608.040, to wit, for a sum equal to up to
16 thirty days wages, along with interest, costs and attorneys' fees.

17 **AS AND FOR A THIRD CLAIM AGAINST DEFENDANT**
18 **NADY FOR CIVIL CONSPIRACY, AIDING AND ABETTING,**
19 **CONCERT OF ACTION AND AS THE ALTER EGO**
OF THE CORPORATE DEFENDANTS

20 27. Plaintiffs repeat and reiterate each and every allegation previously made
21 herein.

22 28. The named plaintiffs bring this Third Claim for Relief against the
23 defendant NADY for civil conspiracy, concert of action, aiding or abetting the actions
24 of the corporate defendants, and/or as the alter ego of the corporate defendants, on
25 behalf of themselves and the members of the alleged class of all similarly situated
26 employees of the corporate defendants.

27 29. The corporate defendants, as the employers of the class members, had a
28 legal duty to abide by all laws imposed upon the corporate defendants by the State of

1 Nevada in respect to their treatment of the class members as such persons' employers,
2 including abiding by the provisions of Nevada's Constitution, Article 15, Section 16
3 and paying such persons the minimum wages required therein.

4 30. Defendant NADY exercised his complete control of the corporate
5 defendants to purposefully direct and have the corporate defendants violate Article 15,
6 Section 16 of Nevada's Constitution and not pay the class members the minimum
7 wages they were entitled to receive as employees from the corporate defendants,
8 NADY commanding such action by the corporate defendants despite knowing that
9 such actions were illegal and in violation of Nevada's Constitution.

10 31. The corporate defendants, although established as legal entities, had no
11 ability to resist NADY's directive to them to violate the provisions of Nevada's
12 Constitution, Article 15, Section 16 and not pay the class members the minimum
13 wages they were entitled to thereunder, as NADY completely controlled the corporate
14 defendants which control he could, and did, use to direct such non-payment of
15 minimum wages by the corporate defendants.

16 32. Defendant NADY intentionally and knowingly directed the aforesaid
17 violations of Article 15, Section 16 of Nevada's Constitution by the corporate
18 defendant and by doing so caused injury to the class members who did not receive
19 their earned and unpaid minimum wages. NADY directed the corporate defendants
20 commit those violations for the express purpose of enriching NADY, personally, and
21 not as part of any legitimate duty he had as an agent or officer of the corporate
22 defendants. NADY was enriched by those violations as he intended because he
23 received additional distributions, dividends, salary or other earnings and profits from
24 the corporate defendants that he would not have received, and could not have received,
25 except for such violations of Article 15, Section 16 of Nevada's Constitution that he
26 had the corporate defendants commit.

27 33. While it is alleged in this claim for relief that NADY is personally liable
28 for all unpaid minimum wages owed by the corporate defendants pursuant to Article

1 15, Section 16 of Nevada's Constitution to the class members, it is also alleged that
2 NADY is liable for those minimum wages so owed for work performed by the class
3 members after January 17, 2013 because of certain additional circumstances. The
4 additional circumstances requiring that NADY be held personally liable for those post
5 January 17, 2013 earned, but unpaid, minimum wages are the following:

- 6
- 7 (a) On January 17, 2013 the Court in this action held that the class
8 members were entitled to be paid by the corporate defendants the
9 minimum wages specified in Article 15, Section 16 of Nevada's
10 Constitution, which removed any uncertainty that NADY may have
11 had prior to that date as to whether the corporate defendants were
12 required to pay the class members such minimum wages;
- 13
- 14 (b) Despite such ruling on such date, and NADY's prompt advisement
15 of the same, NADY directed the corporate defendants to continue
16 for over one year to not pay the minimum wages specified in
17 Article 15, Section 16 of Nevada's Constitution to the class
18 members, and by doing so continued to enrich himself after January
19 17, 2013 with additional distributions, dividends, salary or other
20 earnings and profits from the corporate defendants that he would
21 not have received, and could not have received, except for such
22 violations of Article 15, Section 16 of Nevada's Constitution that
23 he had the corporate defendants continue to commit;
- 24
- 25 (c) To the extent NADY believed or hoped that the Court's ruling on
26 January 17, 2013, would be overturned or reversed, and the
27 corporate defendants subsequently found to not be legally obligated
28 to pay the class members the minimum wages specified by Article

1 15, Section 16 of Nevada's Constitution, he purposefully took no
2 steps to have the corporate defendants comply with that January 17,
3 2013 ruling in the interim. Such steps would have been if not to
4 pay such minimum wages to the class members to at least make
5 arrangements, subject to this Court's approval, for those minimum
6 wage amounts to be paid into an escrow fund and kept secure, and
7 available for the class members' ultimate benefit, until it was
8 determined whether the January 17, 2013 ruling would be
9 overturned or reversed. NADY intentionally failed to take any
10 such steps and directed the corporate defendants to violate this
11 Court's ruling so that NADY could enrich himself with additional
12 distributions, dividends, salary or other earnings and profits from
13 the corporate defendants that he would not have received, and
14 could not have received, if the corporate defendants had taken such
15 proper steps to comply with the Court's January 17, 2013 ruling;

- 16
17 (d) NADY by personally enriching himself with additional
18 distributions, dividends, salary or other earnings and profits from
19 the corporate defendants that he would not have received, and
20 could not have received, if the corporate defendants had taken
21 proper steps to comply with the Court's January 17, 2013 ruling has
22 rendered the corporate defendants financially insolvent and unable
23 to pay the minimum wages owed to the class members for their
24 work performed after January 17, 2013.

25
26 34. Defendant NADY has used the corporate defendants as his "alter ego"
27 and is personally liable for the claims made in this case, at least to the extent he has
28 personally enriched himself from the violations of the Nevada Constitution alleged

1 herein that he has commanded and directed the corporate defendants to commit. Such
2 “alter ego” liability is properly imposed upon him, and the separate legal existence of
3 the corporate defendants as the class members’ employer ignored for the purpose of
4 such liability, because (a) NADY has completely influenced and governed the
5 corporate defendants and compelled them to violate the Nevada Constitution and deny
6 the class members the minimum wages they are owed so that NADY could be
7 personally enriched in a commensurate amount, NADY using the corporate defendants
8 as tools for NADY to accomplish such illegal and unconstitutional goals, NADY also
9 expressly directing, planning and causing such illegal conduct that took place
10 including the intentional conduct by the defendants alleged in paragraph 17; (b) There
11 is no actual or effective separation of interests between NADY and the corporate
12 defendants as NADY completely owns and controls the corporate defendants; and (c)
13 The continued adherence to the fiction that NADY and the corporate defendants are
14 separate legal parties, with separate and different liabilities to the class members under
15 Nevada’s Constitution, would promote a fraud and an injustice, at least to the extent
16 that NADY has personally enriched himself from the violations of the Nevada
17 Constitution alleged in this complaint and the corporate defendants are otherwise
18 insolvent and unable to make sufficient restitution to the class members to remedy
19 such violations.

20 35. Defendant NADY has conspired with the corporate defendants to
21 personally enrich himself from the violations of the Nevada Constitution alleged
22 herein that he has commanded the corporate defendants to perform. Such civil
23 conspiracy by NADY occurred, and results in liability by NADY to the class members
24 for such violations, because NADY acted with the corporate defendants to have such
25 violations performed and personally took affirmative steps to have them so performed;
26 NADY intended for such activities to violate Nevada’s Constitution, they did in fact
27 violate Nevada’s Constitution, and NADY intended for the class members to be
28 deprived of the minimum wages guaranteed to them under Nevada’s Constitution and

1 the class members were so deprived and damaged by their denial of those minimum
2 wages; and NADY performed such actions not as an agent or officer of the corporate
3 defendants or in the furtherance of any duty or lawful goal in his official capacity on
4 behalf of the corporate defendants but solely for his own personal individual
5 advantage and enrichment as alleged herein.

6 36. That NADY has acted in concert with or aided and abetted the conduct
7 of the corporate defendants in that he acted in concert with the corporate defendants to
8 have them violate their duties to the class members as employers under Nevada's
9 Constitution and NADY knew such actions that he aided and abetted by the corporate
10 defendants were breaches of those duties. NADY has also personally enriched himself
11 from the violations of the Nevada Constitution alleged in this complaint that he aided
12 and abetted the corporate defendants in performing and acted in concert with them to
13 perform and as a result is personally liable to the class members for the damages
14 caused to the class members from such violations, to the extent the corporate
15 defendants are otherwise insolvent and unable to make sufficient restitution to the
16 class members to remedy such violations.

17 37. That NADY engaged in the forgoing alleged course of conduct with the
18 express intent of leaving the corporate defendants insolvent, bereft of assets, and
19 unable to pay the class members the minimum wages they are owed by the corporate
20 defendants and to enrich NADY, personally, by an equal amount.

21 38. The named plaintiffs on behalf of themselves and the proposed plaintiff
22 class members, seek, on this Third Claim for Relief, a judgment against the defendant
23 NADY for minimum wages and restitution, such sums to be determined based upon an
24 accounting of the hours worked by, and wages actually paid to, the plaintiffs and the
25 class members, at least to the extent the corporate defendants are unable to pay such
26 sums to the class members, along with other suitable equitable relief, a suitable award
27 of punitive damages, and an award of attorney's fees, interest and costs, as provided
28 for by Nevada's Constitution and other applicable laws.

**AS AND FOR A FOURTH CLAIM AGAINST
DEFENDANT NADY FOR UNJUST ENRICHMENT**

39. Plaintiffs repeat and reiterate each and every allegation previously made herein.

40. The minimum wages that were owed to the class members by the corporate defendants, as alleged herein and in paragraph 19, were the property of the class members and the corporate defendants owed such property, which were sums of money, to the class members when those minimum wages were earned; the corporate defendants actually possessed money sufficient to pay those minimum wages to the class members and could have paid those wages to the class members when they were earned by and due to the class members; and the corporate defendants had no legal right to refuse to pay those minimum wages to the class members when they were earned or pay sums of money equal to those minimum wages to someone else besides the class members who were owed those minimum wages without also paying the class members, at that time, those earned and owed minimum wages.

41. The defendant NADY received sums of money from the corporate defendants that were equal to the minimum wages owed by the corporate defendants to the class members but not paid to the class members by the corporate defendants, NADY receiving those sums of money from the corporate defendants only because he used his complete control over the corporate defendants to have such sums of money paid to him, and not the class members, by the corporate defendants.

42. The aforesaid sums of money in paragraph 41 received by NADY should not have been paid to him but used by the corporate defendants to meet their legal obligation under Nevada's Constitution to pay the class members the minimum wages they were owed and NADY would not have received those monies from the corporate defendants if he had not commanded the corporate defendants to pay those monies to him and if the corporate defendants had acted properly and used those monies to pay the class members such owed, but unpaid, minimum wages.

1 43. Although plaintiffs do not allege it was necessary for NADY to have such
2 knowledge for them to be granted the relief sought in this fourth claim for relief, they
3 expressly allege, if the Court finds such knowledge must be established for such relief
4 to be granted, that NADY commanded the payment by the corporate defendants to him
5 of the monies discussed in paragraphs 41 and 42 with full knowledge that the
6 corporate defendants only had such funds available to pay him because the class
7 members had not been paid an equal amount of minimum wages they were owed by
8 the corporate defendants.

9 44. NADY'S retention of the monies he received from the corporate
10 defendants as alleged in paragraphs 41 and 42, such monies that should have been
11 properly used by the corporate defendants to pay the class members their owed, but
12 unpaid, minimum wages, such monies also being the *de facto* property of the class
13 members, would be against fundamental principles of equity, justice and good
14 conscience, to the extent the corporate defendants, owing to their payment of such
15 monies to NADY, are now insolvent and unable to pay the class members the
16 minimum wages they are owed.

17 45. The named plaintiffs on behalf of themselves and the proposed plaintiff
18 class members, seek, on this Fourth Claim for Relief, a judgment against the defendant
19 NADY for restitution to the class of the amount of NADY'S unjust enrichment, such
20 amount to be determined based upon how much the corporate defendants are found to
21 owe the class members for unpaid minimum wages that the corporate defendants are
22 unable to pay the class members (the "deficiency amount") and how much NADY has
23 been unjustly enriched as alleged in this claim for relief up to, but not in excess of, that
24 deficiency amount, along with other suitable equitable relief and an award of
25 attorney's fees, interest and costs, as provided for by Nevada's Constitution and other
26 applicable laws.

27
28 WHEREFORE, plaintiffs demand the relief on each cause of action as alleged

1 aforesaid.

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

3
4 Dated this 22nd day of June, 2015.

5
6 Leon Greenberg Professional Corporation

7
8 By: /s/ Leon Greenberg

9 LEON GREENBERG, Esq.
10 Nevada Bar No.: 8094
11 2965 South Jones Blvd- Suite E4
12 Las Vegas, Nevada 89146
13 (702) 383-6085
14 Attorney for Plaintiff

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CERTIFICATE OF MAILING

The undersigned certifies that on August 19, 2015, she served the within:

SECOND AMENDED AND SUPPLEMENTAL COMPLAINT

by court electronic service to:

TO:

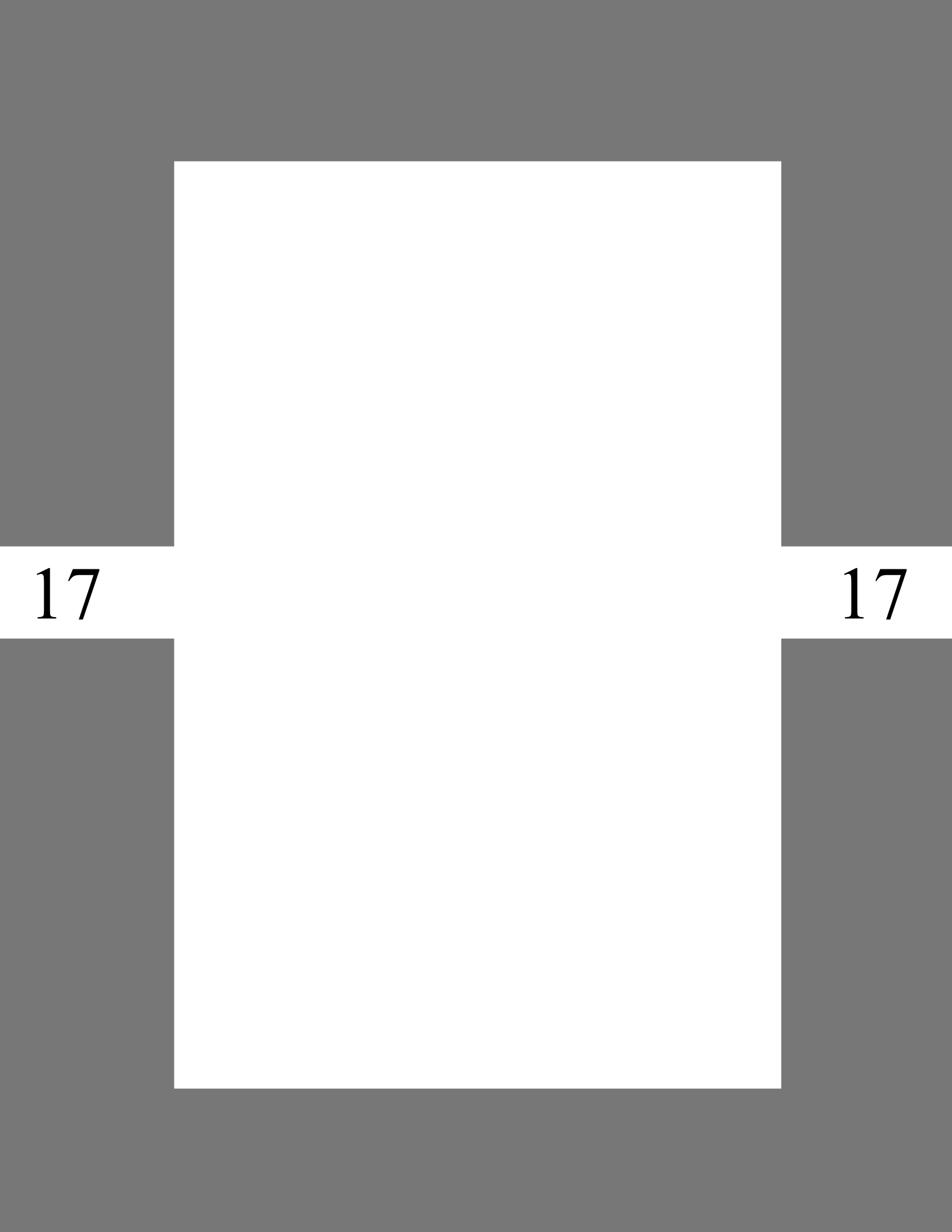
Esther C. Rodriguez, Esq.
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

/s/ Dana Sniegocki

Dana Sniegocki

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17


CLERK OF THE COURT

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

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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

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

11 Plaintiffs,

12 vs.

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

14 Defendants.

15
16 **DEFENDANT A CAB, LLC'S ANSWER TO SECOND AMENDED COMPLAINT**

17 Defendant A Cab, LLC ("Defendant"), by and through its attorney of record, ESTHER C.
18 RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., pursuant to NRCP Rule 12, and as its
19 Answer to Plaintiffs' Second Amended Complaint on file herein ("Complaint"), admits, denies and
20 alleges as follows:

21 **JURISDICTION, PARTIES AND PRELIMINARY STATEMENT**

22 1. Answering Paragraph 1 of the Complaint, Defendant is without sufficient
23 information or knowledge to form a belief as to the truth of such allegations, and therefore denies
24 the same. Defendant denies the allegation that Plaintiffs are current employees.

25 2. Answering Paragraph 2 of the Complaint, Defendant admits it is a Nevada Limited
26 Liability Company doing business in the County of Clark, State of Nevada, as a taxicab company.

27 3. Answering Paragraphs 3 and 4 of the Complaint, Defendant admits Nady is the sole
28 and managing member of A Cab, LLC. To the extent these paragraphs contain any other factual

allegations requiring a response, Defendant denies same.

CLASS ACTION ALLEGATIONS

4. Answering Paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of the Complaint, Defendant asserts that the allegations contained therein are a legal conclusion to which no response is required. To the extent these Paragraphs contain any factual allegations requiring a response, Defendant denies same.

AS AND FOR A FIRST CLAIM FOR RELIEF ON BEHALF OF THE NAMED PLAINTIFFS AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO NEVADA'S CONSTITUTION

5. Answering Paragraph 15 of the Complaint, Defendant repeats and realleges its answers to the allegations contained in Paragraphs 1 through 14 as though fully set forth herein.

6. Answering Paragraph 16 of the Complaint, Defendant asserts that the allegations contained therein are a legal conclusion to which no response is required. To the extent this Paragraph contains any factual allegations requiring a response, Defendant denies same.

7. Answering Paragraphs 17 and 18 of the Complaint, Defendant denies each and every allegation contained therein, including all sub-parts.

8. Answering Paragraphs 19, 20, and 21 of the Complaint, Defendant asserts that the allegations contained therein are a legal conclusion to which no response is required. To the extent these Paragraphs contain any factual allegations requiring a response, Defendant denies same.

AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT TO NEVADA REVISED STATUTES § 608.040 ON BEHALF OF THE NAMED PLAINTIFFS AND THE PUTATIVE CLASS

9. Answering Paragraph 22 of the Complaint, Defendant repeats and realleges its answers to the allegations contained in Paragraphs 1 through 21 as though fully set forth herein.

10. Answering Paragraphs 23, 24, 25, and 26 of the Complaint, Defendant asserts that the allegations contained therein are a legal conclusion to which no response is required. To the extent these Paragraphs contain any factual allegations requiring a response, Defendant denies same.

...

...

**AS AND FOR A THIRD CLAIM AGAINST DEFENDANT
NADY FOR CIVIL CONSPIRACY, AIDING AND ABETTING,
CONCERT OF ACTION AND AS THE ALTER EGO
OF THE CORPORATE DEFENDANTS**

11. Answering Paragraph 27 of the Complaint, Defendant repeats and realleges its answers to the allegations contained in Paragraphs 1 through 26 as though fully set forth herein.

12. Answering Paragraphs 28, 30, 31, 32, 33, 34, 35, 36, 37 and 38 of the Complaint, Defendant denies each and every allegation contained therein, including all sub-parts.

13. Answering Paragraph 29 of the Complaint, Defendant asserts that the allegations contained therein are a legal conclusion to which no response is required. To the extent this Paragraph contains any factual allegations requiring a response, Defendant denies same.

**AS AND FOR A FOURTH CLAIM AGAINST
DEFENDANT NADY FOR UNJUST ENRICHMENT**

14. Answering Paragraph 39 of the Complaint, Defendant repeats and realleges its answers to the allegations contained in Paragraphs 1 through 38 as though fully set forth herein.

15. Answering Paragraphs 40, 41, 42, 43, 44 and 45 of the Complaint, Defendant denies each and every allegation contained therein.

PRAYER FOR RELIEF

Plaintiffs' prayer for relief requires no response. However, to the extent Plaintiffs' prayer asserts allegations, Defendant denies each and every allegation in the prayer for relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

As a first separate and affirmative defense, Defendant alleges Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

As a second separate and affirmative defense, Defendant alleges Plaintiffs have failed to mitigate their alleged damages, if any.

THIRD AFFIRMATIVE DEFENSE

As a third separate and affirmative defense, Defendant alleges that Plaintiffs' damages, if

1 any, were caused solely by the conduct of others and are not the result of any conduct of Defendant
2 A Cab, LLC.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 As a fourth separate and affirmative defense, Defendant alleges that Plaintiffs' claims are
5 not ripe in this forum.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 As a fifth separate and affirmative defense, Defendant alleges that Plaintiffs' claims are
8 barred because Plaintiffs' own actions were the proximate cause of their damages, if any.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 As a sixth separate and affirmative defense, Defendant alleges that this Court does not have
11 jurisdiction because Plaintiffs have failed to exhaust their administrative remedies as required by
12 Nevada law.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 As a seventh separate and affirmative defense, Defendant alleges that Plaintiffs' Complaint
15 is barred by the doctrine of res judicata.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 As an eighth separate and affirmative defense, Defendant alleges that Plaintiffs' Complaint
18 is barred by the doctrine of collateral estoppel.

19 **NINTH AFFIRMATIVE DEFENSE**

20 As a ninth separate and affirmative defense, Defendant alleges that Plaintiffs have failed to
21 maintain their claims pursuant to Nevada Rule of Civil Procedure 23 governing class actions.

22 **TENTH AFFIRMATIVE DEFENSE**

23 As a tenth separate and affirmative defense, and pursuant to N.R.C.P. 11, all possible
24 affirmative defenses may not have been alleged herein insofar as sufficient facts were not available
25 after reasonable inquiry upon the filing of Defendant's answer to the Complaint, and therefore, this
26 answering Defendant reserves the right to amend its answer to allege additional affirmative
27 defenses if subsequent investigation so warrants.

28 . . .

ELEVENTH AFFIRMATIVE DEFENSE

As an eleventh separate and affirmative defense, Defendant denies each and every allegation of Plaintiffs' Complaint not specifically admitted or otherwise pled to herein.

TWELFTH AFFIRMATIVE DEFENSE

As a twelfth separate and affirmative defense, it has been necessary for this answering Defendant to retain the services of an attorney to defend this action, and Defendant A Cab, LLC is entitled to a reasonable sum as and for attorney's fees.

THIRTEENTH AFFIRMATIVE DEFENSE

As a thirteenth separate and affirmative defense, Plaintiffs' claims are barred by statute of limitations / laches.

FOURTEENTH AFFIRMATIVE DEFENSE

As a fourteenth separate and affirmative defense, Plaintiffs' claims are barred by unclean hands / in pari delicto/ illegality.

FIFTEENTH AFFIRMATIVE DEFENSE

As a fifteenth separate and affirmative defense, Plaintiffs' claims are barred by fraud / theft.

SIXTEENTH AFFIRMATIVE DEFENSE

As a sixteenth separate and affirmative defense, Plaintiffs' claims are barred by equitable estoppel.

SEVENTEENTH AFFIRMATIVE DEFENSE

As a seventeenth separate and affirmative defense, Plaintiffs' claims are barred or otherwise limited by offset / setoff / or payments that have already been made to the amounts in question.

EIGHTEENTH AFFIRMATIVE DEFENSE

As a eighteenth separate and affirmative defense, Plaintiffs' demand for attorney fees is barred by the lack of any legal basis for Plaintiff attorney fees.

NINETEENTH AFFIRMATIVE DEFENSE

As a nineteenth separate and affirmative defense, Plaintiffs, through knowledge of all facts relating to the acts alleged in their Complaint, ratified through their respective acts, omissions and/or failure(s) to act, any act alleged to have been done or committed by the Defendants.

TWENTIETH AFFIRMATIVE DEFENSE

As a twentieth separate and affirmative defense, Defendant hereby incorporates by reference those affirmative defenses enumerated in NRCP 8 for the specific reason of not waiving the same.

TWENTY-FIRST AFFIRMATIVE DEFENSE

As a twenty-first separate and affirmative defense, at all times, Defendant acted reasonably and in good faith in its dealings with Plaintiffs.

TWENTY-SECOND AFFIRMATIVE DEFENSE

As a twenty-second separate and affirmative defense, Defendant acted in good faith and did not directly or indirectly perform any acts whatsoever which would constitute a breach of any duty owed to Plaintiffs.

TWENTY-THIRD AFFIRMATIVE DEFENSE

As a twenty-third separate and affirmative defense, Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

As a twenty-fourth separate and affirmative defense, Plaintiffs unreasonably and unjustifiably delayed the assertion of their purported claims, all to Defendant's substantial detriment.

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As a twenty-seventh separate and affirmative defense, Plaintiffs' claims are barred as punitive damages are not permissible.

...

WHEREFORE, Defendant prays as follow:

1. That Plaintiffs take nothing by way of their Complaint;
2. That Plaintiffs' Complaint be dismissed with prejudice in its entirety and Judgment entered in favor of Defendant;
3. That Defendant be awarded its attorneys' fees, costs, and interest; and
4. For such other and further relief as this Court deems just and proper.

DATED this 11th day of September, 2015.

RODRIGUEZ LAW OFFICES, P.C.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 11th day of September, 2015, I electronically *filed* the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

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

/s/ Susan Dillow
 An Employee of Rodriguez Law Offices, P.C.

18

18


CLERK OF THE COURT

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8 **CLARK COUNTY, NEVADA**

9 MICHAEL MURRAY and MICHAEL RENO,
10 Individually and on behalf of others similarly
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Case No.: A-12-669926-C
Dept. No. I

11 Plaintiffs,

12 vs.

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

15 Defendants.

17 **DEFENDANT CREIGHTON J. NADY'S ANSWER**

18 **TO SECOND AMENDED COMPLAINT**

19 Defendant CREIGHTON J. NADY ("Defendant"), by and through his attorney of record,
20 ESTHER C. RODRIGUEZ, ESQ., of RODRIGUEZ LAW OFFICES, P.C., pursuant to NRCP Rule 12,
21 and as his Answer to Plaintiffs' Second Amended Complaint on file herein ("Complaint"), admits,
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WHEREFORE, Defendant prays as follow:

1. That Plaintiffs take nothing by way of their Complaint;
2. That Plaintiffs' Complaint be dismissed with prejudice in its entirety and Judgment entered in favor of Defendant;
3. That Defendant be awarded its attorneys' fees, costs, and interest; and
4. For such other and further relief as this Court deems just and proper.

DATED this 6th day of October, 2015.

RODRIGUEZ LAW OFFICES, P.C.

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

CERTIFICATE OF SERVICE

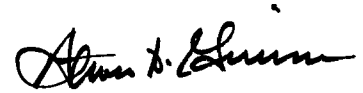
I HEREBY CERTIFY on this 6th day of October, 2015, I electronically *filed* the foregoing with the Eighth Judicial District Court Clerk of Court using the E-file and Serve System which will send a notice of electronic service to the following:

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

/s/ Susan Dillow
 An Employee of Rodriguez Law Offices, P.C.

19

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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE

ALL PENDING MOTIONS

NOVEMBER 3, 2015

APPEARANCES:

FOR THE PLAINTIFFS:	LEON GREENBERG, ESQ.
	DANA SNIEGOCKI, ESQ.
FOR THE DEFENDANTS:	ESTHER C. RODRIGUEZ, ESQ.

COURT RECORDER:

LISA LIZOTTE
District Court

TRANSCRIPTION BY:

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

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

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1 LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 3, 2015, 9:47 A.M.

2 THE CLERK: Okay. A-669926, Murray vs. A Cab Taxi
3 Service. Counsel state their appearances for the record.

4 (Pause in the proceedings)

5 MS. RODRIGUEZ: Good morning, Your Honor. Esther
6 Rodriguez for the defendant. And I have my assistant present
7 just for assistance, due to the number of hearings we have
8 this morning.

9 THE COURT: Okay. Good morning.

10 MS. SNIEGOCKI: Dana Sniegocki, for plaintiff.

11 MR. GREENBERG: Leon Greenberg, Your Honor, for
12 plaintiff.

13 THE COURT: All right. The defense also, I believe,
14 wanted to continue this so your client could be here, and I
15 understand he has a great interest in this. I didn't feel
16 that we -- that it was going to be productive or really
17 possible to continue this further. We've kind of pushed it
18 out there as far as we can push it.

19 I am concerned that -- that inasmuch as this was
20 filed in 2012 -- and I don't really know exactly how much time
21 might be excluded from a computation of the length that the
22 lawsuit has been in operation, and that I know that there are
23 issues of discovery yet to be hashed out, I felt that this --
24 this case is far enough along that just to make sure we don't
25 wind up bumping up against the five-year rule, it's important

1 to get this part of it done so we can then move on to other
2 things.

3 MS. RODRIGUEZ: Thank you, Your Honor. Yes, we just
4 asked -- Mr. Nady wanted to be present and he's in Russia this
5 week, so.

6 THE COURT: Okay.

7 MS. RODRIGUEZ: As I explained to your assistant, he
8 was unable to call in from Russia.

9 THE COURT: He's not flying on a Russian airline, or
10 is he?

11 MS. RODRIGUEZ: Yes, I know. That happened like a
12 day before he left.

13 THE COURT: Is that right? Does that -- let's see,
14 what country was that in that that --

15 MS. RODRIGUEZ: Egypt.

16 THE COURT: -- went down?

17 MS. RODRIGUEZ: Yeah.

18 THE COURT: He's not going by way of Egypt though?

19 MS. RODRIGUEZ: No. I hope not, no.

20 THE COURT: All right. We have several motions on.
21 Why don't we take them in this order. And I've -- I've put
22 them in this order because I'm leaving the Motion to Certify
23 as last, because if the defendant scores on any of these other
24 motions it's going to at least simplify and perhaps make the
25 plaintiffs' motion moot.

1 So let's look first at the Defendants' Motion for
2 Declaratory Order Regarding the Statute of Limitations.
3 Anything additional that you wish to argue at this point? We
4 had a -- sort of a convoluted bite at the apple last time and
5 I have notes of some of the argument that was made then. But
6 I'm sure that there is more that both sides want to say about
7 this motion.

8 MS. RODRIGUEZ: Well, briefly, Your Honor, as I
9 recall, I'm not sure that we got too far into the arguments
10 because we did have the pending argument before the Supreme
11 Court that did go forward in the Gilmore case. And I think at
12 that time Your Honor was wanting to see if we were going to
13 catch some inclination from the Supreme Court as to which way
14 they were going to head on this and --

15 THE COURT: I thought of it afterwards and I
16 thought, that's got to be a vain hope really. I don't suppose
17 they ruled from the Bench?

18 MS. RODRIGUEZ: They did not. And if anything,
19 there may be even an indication that the way that it was taken
20 up to them, they may not even rule on it. They questioned the
21 lot whether they even had jurisdiction as the way it was pled
22 in that particular case. So they may again punt and not even
23 address it at this point.

24 THE COURT: Does that raise the same issues as the
25 Yellow Cab, or different?

1 MS. RODRIGUEZ: Yes, if Your Honor is referring to
2 the writ now that I believe that Yellow Cab --

3 THE COURT: Okay.

4 MS. RODRIGUEZ: -- took to the Supreme Court. I
5 believe there's -- there's several writs and amicus briefs
6 that are before the Court. They're pertaining to this statute
7 of limitations issues, the prospective application.

8 THE COURT: Okay.

9 MS. RODRIGUEZ: Some of them were mix and mingling
10 them, but there are writs and amicus briefs from Yellow Cab,
11 from Boulder Cab and from Western Cab as well.

12 And they've asked to join and to consolidate also
13 with these other cases that -- the Gilmore case. I believe
14 they were denied, but now there's -- and it was funny because
15 the Supreme Court acted in my opinion somewhat surprised that
16 these writs were floating around because the defense counsel
17 that was arguing, Elayna Youchah mentioned to the Court that
18 the Court's decision was going to affect a number of
19 industries as to how they ruled on the statute of limitations.

20 And I think it was Justice Pickering said, well, how
21 do we know that these other things are even out there other
22 than checking our own docket and the rest of us were kind of
23 scratching our heads like, well, you just denied the writs to
24 -- and to join. But I'm not sure how much they were aware of
25 that, but at least now they've all been filed and they're up

1 there.

2 THE COURT: Well, I assume that a strong strain of
3 thought, then, would be that they want to make a decision
4 based on as full a record as they can which works against
5 whoever's trying to get the writ on.

6 MS. RODRIGUEZ: Right, right.

7 THE COURT: But becomes the more pervasive or impact
8 that their decision is going to have on other industries, the
9 more they would want to be sure that it's a sound decision and
10 they always like to have as much of the facts as they can
11 have.

12 MS. RODRIGUEZ: Right.

13 THE COURT: And that's -- that seems to me to often
14 be why a writ fails, they're wary. And I think, not that they
15 need my say-so, but I'd have to agree with that. I think it's
16 difficult to arrive at a sound decision when you don't have
17 all the facts in front of you.

18 MS. RODRIGUEZ: Well, I won't spent a lot of time
19 arguing this this morning, Your Honor, because we do have six
20 different hearings. Pretty much the same arguments that I
21 briefed were argued before the Supreme Court.

22 I would just highlight to the Court that what makes
23 this case a little bit different from the other ones and why I
24 believe that the Court would -- it's proper for the Court to
25 enforce a two-year statute of limitation is because the

1 allegations that are against A Cab in this case, both from
2 what is actually specified in the plaintiff's Complaints and
3 their supporting declarations, all lend themselves that this
4 is a claim for unpaid hours as opposed to specifically a
5 minimum wage where they were paid \$5.00 instead of 8.25 or
6 7.25. The unpaid hours provisions all fall within the
7 jurisdiction of the Labor Commissioner and everything under
8 the Labor Commissioner pertains to a two-year statute of
9 limitations.

10 The record-keeping requirements, the enforcement
11 statutes, I can go through and I cited to those in my brief,
12 but they all directly point to a two-year statute of
13 limitations. And while we all wait for direction from the
14 Supreme Court, I believe it would be unfair to the defense to
15 impose either a four-year or a six-year statute due to the
16 expense that was going to be involved.

17 And if Your Honor is inclined, once we get to the
18 class certification issue, the two-year statute of limitations
19 is the one that at least we should commence with until Supreme
20 Court directs us otherwise. But in this instance --

21 THE COURT: Does -- does that -- does the same
22 rationale apply to both types of claims, the statutory versus
23 the Constitution?

24 MS. RODRIGUEZ: Well, those were the arguments that
25 I put in my brief as well as what Ms. Youchah argued to the

1 Supreme Court, that there was no reason to default to a
2 catchall statute of limitation when there's one directly on
3 point, one that pertains to minimum wage claims.

4 You're making a minimum wage claim, whether it's
5 under a constitutional amendment or whether it's under the NRS
6 608, then there is a statute that says it's a two-year statute
7 of limitations. So why would you have to go to the catchall?

8 THE COURT: If we say that -- if we say that and
9 make it all encompassing to both types of claims, don't we run
10 afoul of the decision in Yellow Cab?

11 MS. RODRIGUEZ: Don't we run afoul of that?

12 THE COURT: Yeah. Doesn't -- doesn't the decision
13 of the majority, at least, in Yellow Cab seem to mitigate that
14 or argue more forcefully that where it's a constitutional
15 claim --

16 MS. RODRIGUEZ: Well, I think --

17 THE COURT: -- that this catchall must apply?

18 MS. RODRIGUEZ: -- the way I understood the Yellow
19 Cab decision, and that's going to overlap into some of our
20 other hearings this morning about the prospective application,
21 but the Yellow Cab decision, the wording was very specific
22 that says it supplants and supersedes the statute. And so
23 now, we're working with a comprehensive, minimum-wage claim.
24 And any -- I think one of the arguments that supports why a
25 two-year statute of limitation should be across the board is

1 that if you have people filing, such as taxicab drivers, and
2 they're falling -- for a minimum wage claim, and they would
3 fall under four years or six years versus anybody else in the
4 city of Las Vegas is going to fall under a two-year statute of
5 limitation, that didn't make any sense in terms of not being
6 the intent of the decision or the legislature to have two
7 different statutes of limitations running just based on the
8 particular industry that you were working in.

9 That was never the intent of the constitutional
10 amendment. The constitutional amendment was to raise a level
11 amount for all workers to be entitled to, and not for them to
12 have two different statute of limitations. That is just not
13 logical and it's not practical or workable for employers to
14 have to worry about two different statutes of limitations.

15 THE COURT: Anything else on that one?

16 MS. RODRIGUEZ: Not at this time, Your Honor.

17 THE COURT: Okay. Mr. Greenberg, what about that
18 last point?

19 MR. GREENBERG: Well, Your Honor, I think, is really
20 directing your inquiry to the critical issue here, which is
21 what is the nature of the claim made here. It's a claim made
22 under the Constitution of the State of Nevada. So the
23 attendant question is, well, what is the statute of
24 limitations for a claim brought under the Constitution?

25 This is unusual because this is a very specific,

1 civil right that is in the Constitution. But, nonetheless, I
2 mean, if this was a, I don't know, a search-and-seizure or in
3 violation of some other more traditional Bill of Rights-type
4 privilege or right secured constitutionally, there would be a
5 statute of limitations to that claim because of its
6 constitutional nature. So the question presented is really
7 what is the statute of limitations for a claim under the
8 Constitution in the State of Nevada, okay?

9 Now, this is addressed at page 5 of my brief in
10 opposition. To the extent that the Nevada Supreme Court has
11 looked at this in the Alper case and the White Pine Lumber
12 case, they have basically agreed with the analysis that it is
13 a four-year statute of limitations because that is the
14 miscellaneous catchall period for claims that are not
15 otherwise specified.

16 That application of the catchall statute of
17 limitations has, in fact, been embraced by every other
18 jurisdiction that has come across this issue. This is
19 discussed at page 6 of my brief. We have cases from High
20 Court in Texas, New York, Nebraska. Now, the -- yes?

21 THE COURT: So there's no need to look at whether it
22 creates a specialized favorite class of people, being the
23 taxicab drivers, versus everybody out in the world, that's
24 another --

25 MR. GREENBERG: This idea that somehow we're going

1 to have a dual class, a dual statute of limitations for
2 different groups of employees is a fabrication by a number of
3 counsel and defendants who are faced with these litigations
4 and are arguing these issues.

5 The constitutional minimum wage embraces all
6 employees in the State of Nevada. It's very clear from its
7 language, not just cab drivers. Cab drivers create this
8 change in the law or change in business practice which, of
9 course, is of dramatic importance to this industry.

10 But the law is the law. It's not about the business
11 issues, so to speak. And the language of the Constitution
12 applies to everyone who's an employee in the State of Nevada
13 with the exception of certain teenagers who are under 18 or
14 are in after-school employment and this is -- this is how it's
15 written into the Constitution.

16 So for those individuals, their minimum wage rights
17 would be governed still by statute, by 608.250 and then by the
18 two-year statute of limitations of 608.260. That is obviously
19 an extremely nominal slice of Nevada's work force. But for
20 everyone else, they have rights directly under the
21 Constitution. They're governed by the same constitutional
22 statute of limitations. Now, this -- this argument --

23 THE COURT: So they get the benefit of the four-year
24 statute as well?

25 MR. GREENBERG: They -- their employees. I mean,

1 the language -- Your Honor arrived at the correct decision as
2 was arrived at in Thomas about 18 months before Thomas took
3 this up, arriving in an analysis that was contrary to Judge
4 Herndon, for instance, in the Desert Cab case which
5 subsequently did go up on appeal along with Thomas and was
6 reversed after Thomas.

7 So the entirety of defendant's reasoning as to why
8 the two-year statute of limitations should apply is because we
9 have the statute 608.260. And if you read the statute, it
10 says, any employee -- "If any employer pays an employee a
11 lesser amount than the minimum wage prescribed by regulation
12 of the Labor Commissioner pursuant to the provisions of NRS
13 608.250." This is at page 7 of my opposition.

14 So 608.260, which is where this two-year period
15 comes from, it is very, very specific. It is completely
16 limited to the provisions of 608.250, which is Nevada's
17 statutory minimum wage as enacted by the legislature.

18 Now, if 608.260 did not exist, as Your Honor is well
19 aware, we would have a three-year statute of limitations for
20 claims under Nevada's statutory minimum wage because three
21 years is the general period for statutory claims in Nevada.

22 For whatever reason, when Nevada's legislature
23 enacted the statutory minimum wage, they've also specifically
24 carved out a two-year statute of limitations for claims
25 brought pursuant to that statutory minimum wage.

Now, as Your Honor was observing just a few minutes ago, you posed the question, well, if I'm going to apply this two-year statute of limitations, wouldn't we run afoul of what the Supreme Court's majority said in Thomas. And clearly you would, because as discussed on page 6 of my opposition, in Thomas what the holding was -- ultimately was in this case, the principle of constitutional supremacy prevents the Nevada legislature from creating exceptions to the rights and privileges protected by Nevada's Constitution.

So this brings us back to where I started my discussion with you, Your Honor, which is the question is, what is the statute of limitations for a claim under Nevada's Constitution? That is where you will find the answer for what the statute of limitations should be in this case, Your Honor, because clearly under Thomas, and under general principles of constitutional supremacy, the legislature is without power to modify or reduce the privileges and rights that are granted under Nevada's Constitution.

The legislature can't in the next session pass a law saying claims brought under Nevada's Constitution for minimum wages will now have a six-month statute of limitation or a one-year statute of limitations.

THE COURT: Notwithstanding Judge Navarro's opinion?

MR. GREENBERG: Notwithstanding Judge Navarro's opinion. I mean you have Judge Bell's opinion in this, which

1 is an exhibit that I attached to my brief.

2 I understand there is a divergence of views on this.
3 I mean, we have Judge -- Judge Tao in this court who issued
4 this very lengthy opinion in Williams which I do analyze and
5 discuss in my opposition. It really is lacking in terms of
6 its assumptions in a very -- a number of ways.

7 That was the one that the Supreme Court took up on
8 mandamus, the argument that counsel's referring to. And I do
9 agree, there was no real indication at argument as to the
10 Supreme Court's direction in resolving that writ from their
11 questioning. Maybe they will decide that it was granted
12 improvidently and decline to reach the merits, Your Honor.

13 THE COURT: What do you make of the defendant's
14 emphasis on whether or not this is a claim for unpaid hours
15 versus minimum wage?

16 MR. GREENBERG: I don't know what that is, Your
17 Honor. I don't understand how you can convert a claim for
18 unpaid minimum wages. I worked for 10 hours for the
19 defendant. They owe me at least \$72.50 in Nevada minimum
20 wages.

21 The defendant comes to court and says, well, Your
22 Honor, no. We paid him \$7.25 because he only worked one hour.
23 So he's saying that he worked another nine hours that we
24 didn't pay him for. He's really claiming unpaid hours, not a
25 minimum-wage deficiency.

1 Your Honor, how does that change a claim under
2 Nevada's Constitution? I have to prove my case. I have to
3 prove I actually worked the 10 hours, and I didn't get paid
4 the 72.50. What defendant is coming in and defense is saying,
5 well, if he work the 10 hours, because we paid him for one of
6 those hours, his claim is no longer a claim for unpaid minimum
7 wages. It's a claim for nine hours of unpaid -- that's not
8 the structure of the constitutional right that's afforded
9 here.

10 I mean, Your Honor, recognizing that sort of
11 analysis would essentially allow any defendant to come into
12 this court and convert any claim for unpaid minimum wages into
13 a claim for unpaid hours, whatever that is, which is not
14 specified anywhere in the NRS. There's no case law
15 recognizing this is some separate claim from a minimum wage
16 claim.

17 And under defendant's argument, being within the
18 exclusive jurisdiction of the Labor Commissioner, as well. I
19 mean there's just no support for this analysis and defendant
20 gives no support for this analysis. I mean, the minimum wage
21 law prescribes a minimum measure of compensation for an amount
22 of time the employee works, okay.

23 THE COURT: Which necessarily involves the evidence
24 of the number of hours and the amount paid.

25 MR. GREENBERG: Well, right.

1 THE COURT: To see whether measures up.

2 MR. GREENBERG: Right. Was the employee not paid at
3 all for nine hours as in the example I gave you? Or was he
4 underpaid \$6 an hour for 10 hours? It doesn't matter, Your
5 Honor, okay. I mean, the -- the fact of the matter is at the
6 end of the day, if the employee establishes he worked 10
7 hours, but was only paid \$7.25 and not \$72.50, then he's owed
8 the difference.

9 So, I mean, essentially, what the defendants are
10 urging the Court to do is to package up the analysis of this
11 in a way that just evades the coverage of the law or would
12 allow the employers to evade the coverage of the law in all
13 circumstances. I guess, if an employer paid nothing, then
14 maybe their argument would somehow fall apart under their
15 approach.

16 Although, even then they could say, well, we just --
17 we just didn't pay him for the 10 hours. He's really claiming
18 that he wasn't paid for -- well, he wasn't paid minimum wages,
19 Your Honor. At the end of the day it amounts to the same
20 thing. The laborer labored for the hours and wasn't paid the
21 full requisite amount prescribed by the Constitution.

22 That is the issue. I mean, clearly the Constitution
23 requires a broad understanding and application. And I'm not
24 -- I don't think by any means I'm stretching anything by
25 explaining this analytic approach to the Court. In fact, it's

1 quite the contrary. It's the defendants that are really sort
2 of going through this acrobatic maneuver to try to stretch the
3 legal requirements into something other than what they are.
4 And Your Honor's familiar with the constitutional language
5 that commands the Court to use its full measure of remedial
6 powers, equitable and so forth, to enforce the rights that are
7 granted by the Constitution.

8 So you just can't, as I said, engage in this -- in
9 this sort of dance of whatever one would call it, invasion of
10 the constitutional provision by adopting this analysis which
11 would essentially destroy it.

12 I don't want to belabor this issue with the Court.
13 I think the Court needs to make a ruling on this. I do
14 understand that it is unsettled. I mean, I've given you the
15 analysis that I think is clearly correct. There are other
16 trial level jurists who disagree with that, obviously.

17 THE COURT: When you say, rules on this, you don't
18 mean this -- this little issue of unpaid hours versus minimum
19 wage. You mean, on the overall question on the statute of
20 limitations for a constitutional claim?

21 MR. GREENBERG: Well, yes, Your Honor. I mean, in
22 terms of this issue of this claim not even be in a minimum-
23 wage claim, this was repeatedly raised by defendants in
24 opposition to their requests for class certification and so
25 forth. I mean, I guess if Your honor was to embrace that and

1 agree fully with what defendants are urging the Court to do,
2 you would dismiss the case and say, that's not what this --
3 this case is not a minimum-wage case, it's a claim for unpaid
4 hours, whatever that is, and you have to go to the Labor
5 Commissioner because he's the one who has exclusive
6 jurisdiction over such claims. I think the whole argument is
7 nonsensical and untenable, Your honor.

8 In respect to the statute of limitations issue, what
9 I want to point out to the Court, just as a pragmatic matter,
10 is that whether the Court was to decide if it was two years or
11 four years -- and by the way, Judge Jones in a case called
12 Schaeffer (phonetic), which was issued about three or four
13 months ago, revisited this issue himself. And he agreed that
14 NRS 608.260 does not control these claims because if you look
15 at the language, it's particular to 608.250.

16 So he agrees that under Nevada's Constitution, you
17 can't use this two-year statute of limitations. For whatever
18 reason, he said that the applicable statute of limitations
19 should be three years, which would be the general statute of
20 limitations period for statutory rights, essentially, saying
21 in his view, a constitutional right is not in a different
22 class than a general statutory right.

23 I -- he doesn't really cite any authority for that
24 view, but that was ultimately his holding in that case. I
25 know Your Honor rejected Judge Jones's reasoning in the Lucas

1 (phonetic) case which would have led Your Honor to make a
2 contrary ruling then what was ultimately found correct in
3 Yellow Cab.

4 But what I was getting to as a pragmatic matter,
5 Your Honor, there's also a claim in this case that the statute
6 of limitations should be tolled as of July 1st, 2007, because
7 Nevada's Constitution contains a written notification
8 requirement that imposes upon employers an affirmative duty to
9 provide each employee with a written notice as to the change
10 in the minimum wage.

11 The first change in the minimum wage since the
12 enactment of the constitutional provision in 2006 came on July
13 1st, 2007. Defendants never gave that written notification to
14 their taxi driver employees.

15 It would be my argument that because the
16 Constitution specifies that all equitable and other relief
17 should be available to remedy violations, the remedy for a
18 violation of the notice provision of the Constitution would
19 have to be a toll of the statute of limitations.

20 That would be the only possible remedy that would
21 afford a remedy, Your Honor, because the purpose of the notice
22 provision is obviously to be sure that the employee is aware
23 of their rights and to impose an affirmative duty on the
24 employer to advise the employee of their rights when the
25 minimum wage rate changes in the State of Nevada.

1 So if a toll was to be granted, that would take this
2 -- that would take these claims past, actually, the four-year
3 period that would otherwise be applicable, which would take
4 them back to October of 2008, because this case was filed in
5 October of 2012.

6 Now, the tolling -- the Court is not going to decide
7 this issue of the tolling of the statute of limitations right
8 now. This is discussed in a Motion to Certify at page 13,
9 Your Honor. And there is -- there is clearly --

10 THE COURT: At page 13, you said?

11 MR. GREENBERG: Of the Motion to Certify, Your
12 Honor. The issue of the fact that the statute of
13 limitations --

14 THE COURT: Oh.

15 MR. GREENBERG: The tolling issue needs to be
16 considered, Your Honor. And in the Copeland (phonetic) case,
17 the Supreme --

18 THE COURT: Within the context of which motion?

19 MR. GREENBERG: Well, Your Honor, I'm saying as a --
20 I'm not trying to deter the Court from making a determination
21 on the statute of limitations. What am saying is, let's say
22 the Court says the statute of limitations is two years, or
23 four years, or three years. The fact of the matter is, that
24 the time period of the claims that are going to be subject to
25 adjudication in this case still needs to await a determination

1 on this equitable tolling claim, okay.

2 The Court cannot decide today what the statute of
3 limitations is and certify the class and simply say, we're not
4 going to consider claims or adjudicate claims that may exist
5 prior to this two or four-year period prior to the
6 commencement of this case because of the equitable tolling
7 issue.

8 It is very clear from the Nevada Supreme Court in
9 the Copeland case, which is discussed in the class
10 certification motion, that the Court must hold an evidentiary
11 hearing and review an actual record before making a
12 determination on a claim regarding an equitable toll of the
13 statute of limitations. We're not at that point. We
14 obviously are not going to hold such a hearing.

15 THE COURT: That is separate and apart from the
16 Court declaring what the statute of limitations are for both
17 the constitutional and --

18 MR. GREENBERG: Absolutely, Your Honor. I'm just
19 saying it's a -- I'm just saying there's a relationship here
20 pragmatically in terms of moving the case forward, that's all.

21 THE COURT: I assume you would say, though, that
22 that must be included within the consideration of the motion,
23 both Motions to Dismiss?

24 MR. GREENBERG: I mean, Your Honor, we're dealing
25 with the statute of limitations issue. I'm not quite sure

1 where the Motion to Dismiss would fit into this unless the
2 issue was the Court was going to dismiss claims that predated
3 the statute of limitations.

4 THE COURT: Well, there's Motions to Dismiss
5 Plaintiffs' First Claim and Second Claim. And then, of
6 course, there's Motion to Dismiss and Summary Judgment against
7 each of the two named plaintiffs.

8 MR. GREENBERG: Yes, there is, Your Honor.

9 THE COURT: So would not the tolling have to
10 necessarily be considered within those? Otherwise, how can
11 the Court rule?

12 MR. GREENBERG: Well, Your Honor, I'm just not sure
13 from my reading of what it is the defendants are requesting
14 why that would -- why that would apply. I mean, in respect to
15 dismissing the first claim for relief, they're saying your
16 order here is completely prospective and that they had no
17 legal obligation to pay the minimum wage until Thomas was
18 issued in June of 2014.

19 So if they had no obligations under Nevada's
20 Constitution until June of 2014, anything that happens before
21 then --

22 THE COURT: So it's -- so you don't get into --

23 MR. GREENBERG: -- in their view, is irrelevant. I
24 understand that, Your Honor.

25 THE COURT: I see, yeah.

1 MR. GREENBERG: So that would render all of this
2 discussion moot, I guess.

3 THE COURT: Okay.

4 MR. GREENBERG: Anyway, Your Honor, I took up a fair
5 amount of the Court's time. I'm happy to discuss this further
6 if it would be helpful. I don't know that it would be.

7 THE COURT: No.

8 MR. GREENBERG: Okay. Thank you, Your Honor.

9 THE COURT: No. Well, other than this. You do
10 agree, I believe your materials indicate it, and I think you
11 said it verbally last time, that the two-year statute is
12 appropriate to the statutory claims?

13 MR. GREENBERG: To the 608.040 claim, that is in the
14 nature of a statutory penalty. So the two-year general
15 statute of limitations for statutory penalty claims would
16 apply to the 608.040 claim. We do not contest that analysis.

17 THE COURT: Right. Ms. Rodriguez?

18 MS. RODRIGUEZ: Your Honor, I think it's very
19 important to clarify that it is not the defendants who are
20 coming up with this argument of the unpaid hours. I tried to
21 point out to the Court, this is their argument. This is the
22 basis of their claim.

23 If Your honor will look exactly on their Second
24 Amended and Supplemental Complaint, which is what is currently
25 being litigated, and nowhere do they say anything other than

1 this issue of falsifying break time, falsifying hours. That's
2 the basis of their Complaint.

3 Page 6 of their Complaint says, "Defendants forced
4 their taxi driver employees to falsely record their activities
5 on their daily taxi driver trip sheet so as to make it appear
6 that the taxi drivers were taking many hours of breaks during
7 their work days, which was not true, and defendants knew was
8 not true. Defendants fostered such an accurate and untrue
9 recording by their taxi drivers of their work activities by
10 refusing to allow the taxi drivers to submit accurate daily
11 taxi driver trip sheets that did not have such excessive and
12 untrue recordings of break time. Defendants enforced their
13 break time listings required policy on the taxi drivers trip
14 sheets with the intentional goal of making it impossible for
15 those taxi drivers to collect the minimum wage they were owed
16 and to conceal defendants violation of the Nevada
17 Constitution."

18 This is their pleading. The only evidence they
19 have --

20 THE COURT: It says -- doesn't it --

21 MS. RODRIGUEZ: The only --

22 THE COURT: Didn't you just say minimum wage there?

23 MS. RODRIGUEZ: Based on false hours. Based on
24 false break times. They've always --

25 THE COURT: Well, but wouldn't that -- wouldn't that

1 -- a false hours claim factually support, if they proved it,
2 the legal theory of therefore you didn't pay me the minimum
3 wage?

4 MS. RODRIGUEZ: Absolutely not, Your Honor.

5 THE COURT: Why not?

6 MS. RODRIGUEZ: The minimum wage was paid for all
7 hours worked. Their claim is, we weren't paid for two hours
8 of time that we actually worked. I took the plaintiffs'
9 depositions. My -- plaintiff Michael Murray, that's what he
10 said. The only evidence that has ever been produced by the
11 plaintiffs --

12 THE COURT: And your point is that if they say that,
13 then it can't be part of a legal --

14 MS. RODRIGUEZ: That's an unpaid hours claim.

15 THE COURT: -- just a second -- that it can't be
16 part also of a legal theory of, therefore, you didn't pay me
17 the minimum wage for the hours that I actually worked.

18 MS. RODRIGUEZ: Your Honor, a minimum wage claim, as
19 they've plead against every other cab company in town, is that
20 they were being paid 5.25 instead of 7.25. That's not pled.

21 What's pled here, and what is supported by the
22 evidence, I want to refer Your Honor to Michael Murray's
23 declaration, the only declaration that's ever been produced in
24 this case, Exhibit E of their Motion to Certify, Michael
25 Murray, his whole declaration is the common false break time

1 recording issue.

2 THE COURT: That was E, you said?

3 MS. RODRIGUEZ: Yes, Your Honor.

4 THE COURT: Okay. Go ahead.

5 MS. RODRIGUEZ: This is the unpaid hours issue. And
6 that's been my point in this briefing is that this is not a
7 minimum-wage claim. This is unpaid hours. He's -- they can
8 go make their claim for unpaid hours, but this should be
9 before the Labor Commissioner.

10 And when I asked each one of these plaintiffs in
11 their deposition, what is your case, what are your claims,
12 what is your -- what is your beef with A Cab? Neither one of
13 them said minimum-wage claim.

14 As your -- as Your Honor knows from what I attached,
15 plaintiff Michael Murray -- excuse me, Reno said, well, I was
16 making less money at A Cab than I was making that Frias and I
17 was making at Yellow Cab, so therefore, something has got to
18 be wrong. And I was told the company was stealing from me.
19 Murray says, I was working during my break time. I should
20 have been paid for those hours. That's not a minimum-wage
21 claim, Your Honor.

22 And that's -- we'll get into that, into the Motions
23 to Dismiss and why they've absolutely produced no evidence to
24 support a minimum-wage claim. But for purposes of the statute
25 of limitations, I wanted to point out to Your Honor that, you

1 know, Mr. Greenberg is standing up here saying, oh, the way
2 that the defendants are presenting it, they could
3 mischaracterize it and you could never have minimum-wage
4 claim.

5 It's not us who's characterizing it that way, it's
6 the plaintiffs who have characterized it that way, both in
7 their Complaint and both in their evidence, the only evidence
8 that's ever been produced. This is an unpaid hours claim.
9 That's a two-year statute of limitations.

10 I did want to clarify to the Court that I did
11 misspeak. I don't know why I was -- had the Gilmore case in
12 my mind. It was actually the Williams v. Claim Jumper
13 Acquisition Company that we were waiting to hear the argument
14 from the Supreme Court.

15 THE COURT: Okay.

16 MS. RODRIGUEZ: I found it interesting that Mr.
17 Greenberg, in his argument, because that was nowhere contained
18 in his briefing and it's never been brought up before, that
19 now he's arguing that the four-year statute of limitation is
20 applicable to everybody. That's never been brought up in any
21 of the arguments. I don't believe that that was -- there's
22 ever been any indication that from the Thomas case that that
23 was the intent. The intent was to bring in these additional
24 Nevada employees who have never been a part of the minimum-
25 wage scheme, bring them into the fold, but not to eliminate a

1 two-year statute of limitation that has always been on the
2 books.

3 There's been absolutely no indication to say, well,
4 now, employers, you need to change all your record-keeping
5 requirements. You are now facing a four-year limitation
6 across the board. There's never -- there's never been any
7 briefing, any argument, any indication that that is the new
8 matter. If anything, the intent is, bring them in, make them
9 part of what is existing already, which is a two-year statute
10 of limitation.

11 With that, Your Honor, I think that's the only
12 points I wanted to counter from Mr. Greenberg's --

13 THE COURT: Tell me, then, what I do about the fact
14 of the Yellow Cab decision, notwithstanding it's a -- it's a
15 contentious point. And even at the Supreme Court level, 4 to
16 3. And as we -- as I already commented, even since then,
17 notwithstanding that --

18 MS. RODRIGUEZ: Right.

19 THE COURT: -- Judge Navarro disagrees with that
20 reasoning. But isn't that presently the law in Nevada?

21 MS. RODRIGUEZ: To do away with the statute of
22 limitations in its entirety?

23 THE COURT: To make the statute of limitations, on
24 the constitutional claim, be the four-year statute. In other
25 words, the less restrictive, if you will, four-year statute as

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1 opposed to the two-year statute on a purely statutory claim?

2 MS. RODRIGUEZ: I don't believe that that's the law
3 at all, Your Honor. I think we've attached several decisions
4 showing otherwise and that's why the issue of this
5 clarification is before the Supreme Court right now. I don't
6 think anybody knows what it is currently and that's why this
7 issue is before the Supremes --

8 THE COURT: Well, part of --

9 MS. RODRIGUEZ: -- and I think until they render
10 their decision, what I asked the Court to consider was
11 fairness to the defendant in this.

12 THE COURT: Uh-huh.

13 MS. RODRIGUEZ: I don't believe they're going to
14 take too much longer to render their decision, hopefully
15 within the next six months or so, but why open it up to --

16 THE COURT: Well here's -- here's partly what I key
17 off of when I say that Yellow Cab seems to say that it's four
18 years. A lot of that they can just get from Justice
19 Parragguire's dissent, a vigorous dissent in which he says I
20 disagree, I don't think it should be four hours (sic), I think
21 it should be two hours and he gives all of this reasons why.

22 Well, if that's the dissent, then presumably that's
23 because the majority opinion says that it's four years, does
24 it not?

25 MS. RODRIGUEZ: Well, and I think if Your Honor is

1 going to look to the dissent, the dissent also seems to
2 support that it's a prospective application only. And if
3 that's the case, then these plaintiffs have no business filing
4 this Complaint in the first place, because the dissent,
5 Justice Parragguire, went into how there was this confusion,
6 there wasn't -- this isn't meant to be the penalty to penalize
7 the employer, there's the conflicting laws, and therefore the
8 Court should move forward with the -- you know, this is the
9 other issue that's going to be before the Supremes, is the
10 prospective application.

11 THE COURT: Your Motion for Declaratory --
12 Declaratory Order -- sorry, give me just a second. Does it
13 raise the issue of whether or not it's prospective only?

14 MS. RODRIGUEZ: That's on our -- give me one second,
15 Your Honor.

16 THE COURT: I don't see it in --

17 MS. RODRIGUEZ: That's our Motion to Dismiss the
18 First Claim for Relief.

19 THE COURT: Okay. All right. All right. Well, for
20 purposes of your -- of your -- of this motion, I think it's --
21 to my mind, it comes down to half a loaf and that is I think
22 it's a two-year statute on the statutory claims. But I -- I
23 have to -- I consider that I'm bound by our Supreme Court law
24 that it is four years for the constitutional claim.

25 I would add that there is yet another reason why I

1 would opt for the four-year catchall as opposed to the two-
2 year. It seems to me that -- that we are to give a respect,
3 perhaps "reverence" is too strong a word, but definitely a
4 deep respect to the constitutional documents of any political
5 organization, whether it's the United States or the State of
6 Nevada. The Constitution should be amended only sparingly and
7 that seems to be the general rule.

8 Every time a Constitution is amended, be it the
9 State of Nevada Constitution or the United States
10 Constitution, there necessarily flow therefrom a bunch of
11 cases which are necessary to interpret, okay, what does that
12 really mean, and issues such as what's the implication of the
13 statute of limitations language.

14 It seems to me that the -- the will of the people
15 was expressed in the constitutional amendment, and that will
16 is not to be unduly restricted by application of a two-year
17 statute which was designed to apply, I suggest, not to
18 constitutional causes of action, but to apply to -- properly
19 to the statutory causes of action that were the subject at
20 that statutory framework, that statutory scheme.

21 I think the fact that the Constitution was amended
22 reflects a significant expression of the will of the people
23 and the framers of the Constitution to place a principle
24 firmly in evidence by which we are to all be governed in our
25 actions. And I think that in order to restrict one's access

1 to a constitutional protection, there must be expressed a
2 specific intention, not by any later court and not by any
3 legislature even, but by the passage of the constitutional
4 provision itself, that it is only intended to grant a two-year
5 statute as opposed to the four-year.

6 So, on that basis, additionally, I agree with -- it
7 doesn't matter if I agree with it or not -- that's part of the
8 reason why I agree with Justice Cherry's decision, his opinion
9 in that case.

10 So, I think that that is the ruling of the Court,
11 that it's governed by a four-year statute of limitations.

12 MS. RODRIGUEZ: Your Honor, I know that Mr.
13 Greenberg and I will be arguing about the wording of your --
14 the Court's order on this, so I would like to ask a couple of
15 questions for clarification.

16 THE COURT: Okay.

17 MS. RODRIGUEZ: One, how does the Court reconcile
18 this -- the ruling with the record-keeping provision that is
19 targeted to employers?

20 And two, is it the Court's opinion then that there
21 are two statute of limitations that will continue to run
22 concurrently? If an employee files under the statutory
23 scheme, they will be subject to a two-year statute of
24 limitations, but if they characterize their claim as
25 constitutional, it will be four-year? Or is it of the Court's

1 opinion --

2 THE COURT: Well --

3 MS. RODRIGUEZ: -- that the two-year statute of
4 limitations is gone?

5 THE COURT: -- I think that it will follow the
6 courts as we go down the road to determine whether or not the
7 facts in any particular case actually give rise to a colorable
8 claim under the Constitution, or whether they are something
9 else, i.e. a colorable claim under the statutory framework.

10 And I disagree with your argument, that certain
11 facts, if they seem to support one claim, i.e. unpaid hours,
12 that they therefore could not also support a claim for minimum
13 wage.

14 I think that what the expression of the Constitution
15 intends, that provision, is that if somebody works 10 hours,
16 you've got to pay them X amount of dollars. And whether you
17 -- the facts seem to characterize it as, oh, there's a dispute
18 about whether or not the records were kept in this case, there
19 are claims that people were forced to turn in sheets that --
20 that consciously declared fewer hours. Well, so there is a
21 factual issue.

22 If it is proven that individuals actually worked a
23 certain number of hours other than what was reported in the
24 sheets, then I think the application of the constitutional
25 cause of action comes into play. I think it may be argued to

1 be a minimum-wage claim. It's not unusual in other areas of
2 the law, in other entirely discrete fact patterns, to have one
3 set of facts that gives rise to claims implicating two
4 different statutes, or one statute and one constitutional
5 prohibition, or constitutional mandatory provision.

6 So, I think that there could also be instances where
7 you're stretching it too far to say that the facts of a
8 particular case -- and, again, I'm not just speaking of these
9 kinds of cases, but any kind of case, I think it's up to a
10 court to determine if the facts that are claimed actually give
11 rise to a colorable claim to the constitutional provision or
12 prohibition or mandatory provision, or whether they really are
13 simply a question of unpaid hours.

14 At any rate, I -- and I can conceive of how that
15 could happen in a case very -- very close to our fact pattern.
16 But I don't see that it's been shown in this case that the
17 kinds of allegations, factual allegations made by the
18 plaintiff, plaintiffs, amount to nothing more than unpaid
19 hours.

20 It seems to me that if they were able to prove up
21 their case, that they may very well -- I mean, all of which is
22 to say I can't say at this point that the door gets closed on
23 the constitutional claim, on the minimum-wage claim, or that
24 the door gets closed on -- well, that they get shunted into
25 the Labor Commissioner track as opposed to a constitutional

1 claim. It may be that at a later point, for example, in a --
2 with a Motion for Summary Judgment, that it turns out that's
3 not the case.

4 MS. RODRIGUEZ: Well, I don't -- is Your Honor
5 ruling on those motions right now?

6 THE COURT: No.

7 MS. RODRIGUEZ: Or are we talking about those?
8 Because I thought we were --

9 THE COURT: No.

10 MS. RODRIGUEZ: -- just talking about the statute of
11 limitations issue.

12 THE COURT: No.

13 MS. RODRIGUEZ: And my concern was --

14 THE COURT: No. What I -- well, the point I'm
15 trying to make here is, that in ruling on -- you know, in
16 determining at what point the Court would intercede to close
17 the door on a particular cause of action, a theory of
18 recovery, it may be that even the act -- even the facts that
19 are alleged are enough for the court to say, that's not really
20 a constitutional claim.

21 MS. RODRIGUEZ: Right.

22 THE COURT: But in other instances, I can see where
23 the Court couldn't close the door at this point, but when you
24 -- later down the road when you get to looking at what facts
25 are actually --

1 MS. RODRIGUEZ: Right.

2 THE COURT: -- able to be proven --

3 MS. RODRIGUEZ: And I think later on down the road
4 is going to be later this morning, right?

5 THE COURT: It may well be that -- that minimum-wage
6 claim goes out the window --

7 MS. RODRIGUEZ: Okay.

8 THE COURT: -- and you're looking at unpaid hours.
9 I don't know.

10 All right. So that's the closest you get to the
11 declaratory relief. You get some relief on that one.

12 Defendant's Motion to Dismiss Plaintiffs' First
13 Claim for Relief. What more needs to be said here?

14 MS. RODRIGUEZ: Your Honor, this is with one having
15 to deal with the prospective application. I think we've
16 started to talk a little bit about that. And our position is
17 that there was -- there was never any intent or any indication
18 from the Thomas v. Yellow Cab decision, that this was to apply
19 retroactively.

20 I cited the Landgraf decision, as well as the
21 amendment to the Constitution, the Supreme Court decision of
22 the Miranda case to show that courts do not typically apply
23 retroactively and nullify prior -- for the Miranda case it was
24 all the prior criminal convictions.

25 As I mentioned prior to the Thomas decision, there

1 were two conflicting laws that were on the books. This was
2 recognized by the dissent in the Thomas decision by the Judge
3 Jones' decision that went the other way. There were several
4 jurisdictions -- or excuse me -- several courts that decided
5 the issue differently than Your Honor.

6 THE COURT: Um-hum.

7 MS. RODRIGUEZ: I attached the affidavit from Keith
8 Sakelhide, the Deputy Attorney from the Labor Commissioner to
9 show that even the Labor Commissioner was confused by how to
10 handle these claims by the taxicabs.

11 And, again, what I'm trying to emphasize to the
12 Court is that when the Thomas decision came out, it wasn't to
13 punish employers and go back and try to say, well, you should
14 have been doing this all these other because there was this
15 confusion. It was rather to clarify the law and to move
16 forward from that point onward even though --

17 THE COURT: Is this where -- is this where the
18 plaintiff wants to sort of clobber your client with the notion
19 that, hey, there's already been --

20 MS. RODRIGUEZ: Right.

21 THE COURT: -- federal investigation here?

22 MS. RODRIGUEZ: Right.

23 THE COURT: And you can't say that there was no
24 notice?

25 MS. RODRIGUEZ: No, not really.

1 THE COURT: How applicable is that?

2 MS. RODRIGUEZ: I think -- well, I mean, he's thrown
3 that out on everything and I --

4 THE COURT: Sure, yeah.

5 MS. RODRIGUEZ: -- and I've tried to object
6 strenuously to that. And I'm going to have my meet-and-confer
7 with him to say stop doing that so I can file a Motion in
8 Limine because we've attached this repeatedly to show that A
9 Cab was not clobbered by the federal government. I think he
10 managed to convince the Court of that previously by saying it
11 enough times.

12 But the first time that they came in in 2009, they
13 found absolutely no violations. They got pretty much a
14 perfect score. But this was what the DOL, the Department of
15 Labor was doing across the industry. They weren't targeting A
16 Cab, as Mr. Greenberg has attempted to paint it.

17 These were industry-wide audits. They came in 2009,
18 A Cab was fine. They came in again in 2010, back-to-back
19 audits. And in 2010, the audit just went on and on, as we
20 explained to Your Honor. It went on for a couple of years.
21 And at that point, Mr. Nady made that decision, you know,
22 let's just settle this thing and it's costing me a lot more in
23 terms of attorneys' fees and attempt to resolve it. And so we
24 settled it.

25 THE COURT: And by that point -- by that point,

1 they'd actually filed the Complaint?

2 MS. RODRIGUEZ: No. No, Your Honor. No.

3 THE COURT: No? Okay.

4 MS. RODRIGUEZ: We resolved it and we resolved it
5 for -- or A Cab resolved it for \$139,000 or thereabouts.

6 THE COURT: This is the consent judgment, right?

7 MS. RODRIGUEZ: Right. However, A Cab chose --
8 well, they really didn't have 100,000 to pay out in a lump
9 sum, so they agreed with the Department of Labor to pay it in
10 monthly installments over a year.

11 THE COURT: Monthly installments, okay.

12 MS. RODRIGUEZ: And in order for the DOL to agree to
13 monthly installments, they filed -- we agreed that they would
14 file the consent judgment as protection, that if A Cab every
15 defaulted on their monthly payment, that would immediately go
16 into effect and they could collect on it.

17 But the consent judgment has the wording in there,
18 just as any settlement agreement does, that says that this is
19 not an admission of liability and in no way is any kind of
20 finding. It is merely to secure a settlement agreement to
21 resolve the audit.

22 THE COURT: I took a look -- I took a look at that
23 consent judgment to -- to try and figure out which of you was
24 correct, and I must say that to this point, it does appear to
25 me that I lean closer to your interpretation of what -- of

1 what happened here.

2 It does have some language -- the very last
3 paragraph has some language in it which makes me really
4 question whether I can consider that this was a -- a judgment
5 that is to be given the persuasive power, I guess, that the --
6 that the plaintiff urges me to do. So you may have your hands
7 full there, Mr. Greenberg, at least insofar as your argument
8 relies on that prior consent judgment.

9 It's difficult for me to say that a consent
10 judgment, especially if I'm finding that you're saying then
11 that there was no Complaint filed prior to the consent
12 judgment?

13 MS. RODRIGUEZ: They were filed together.

14 THE COURT: They were filed together.

15 MS. RODRIGUEZ: The Complaint and the consent
16 judgment filed together.

17 THE COURT: So -- so you didn't have discovery and
18 hard fought --

19 MS. RODRIGUEZ: No.

20 THE COURT: -- summary judgment considerations or
21 anything like that?

22 MS. RODRIGUEZ: No, they were filed hand-in-hand.

23 THE COURT: That gives me some pause. Okay.

24 MS. RODRIGUEZ: And we've listed the Department of
25 Labor -- Department of Justice representative in our list of

1 witnesses should this become an issue, because we'll call them
2 to the stand to testify, if need be, the Solicitor General out
3 of San Francisco who reached the settlement agreement, because
4 I consulted with him after Mr. Greenberg continued to raise
5 that issue to the Court as to -- I said, will you come in and
6 testify, then, that this is your standard operating procedure
7 for the Department of Justice? And he's named in our
8 witnesses if we need to have him --

9 THE COURT: Yeah.

10 MS. RODRIGUEZ: -- come offer testimony to the Court
11 that this is what they do to secure installment payments.

12 THE COURT: Let me ask you this though. I'm
13 guessing that Mr. Greenberg would want the Court to at least
14 recognize that regardless of what sort of evidentiary or
15 preclusive effect the judgment may have, that it does
16 represent a firm, if you want to call it an admission, against
17 interest by your client, that they were now well aware of the
18 -- of the law in this matter and of what their requirements
19 were, and that any deviation from what they agreed to be bound
20 by in the consent judgment should be viewed by the Court as a
21 sort of willful violation of the law.

22 MS. RODRIGUEZ: I don't have an issue with that,
23 Your Honor, because the DOL didn't find any violations, Mr.
24 Greenberg hasn't proven any violations --

25 THE COURT: Yeah.

1 MS. RODRIGUEZ: -- there are no violations. So, no,
2 there's definitely not any willful violations.

3 THE COURT: Well, what I'm -- what I'm guessing --
4 and I shouldn't be guessing, particularly with these attorneys
5 who know a lot more about this area of the law than I do --
6 that he wants to lay claim to, I mean, he's already at least
7 adverting to the argument that even since that time, there's
8 been this business of requiring taxicab drivers to under-
9 report, and to do all sorts of things that he would say would
10 be violative, not only of the law, but of this specific
11 recognition evidenced by this consent judgment. So we'll
12 wait. We won't put words in his mouth. Let's see if he goes
13 there.

14 MS. RODRIGUEZ: Okay.

15 THE COURT: What else do I need to consider in
16 consideration of this Motion to Dismiss the first claim?

17 MS. RODRIGUEZ: Well, the -- the other consideration
18 that I attach rather than summarizing all of my fellow cab
19 attorneys' work, I attached a number of briefs that are
20 currently before the Supreme Court. Boulder Cab has filed a
21 Petition for Writ of Mandamus the early part of October
22 arguing the cab industry's reasonable reliance on NRS 608.250
23 as the reason to why it supports that this prospective
24 application is the appropriate application.

25 Western Cab has similarly filed amicus. Their brief

1 was interesting, Your Honor, and I attached that as well to --
2 this is another argument I failed to highlight to the Court --
3 but Western Cab is arguing that it was actually the AFLCIO who
4 was involved in drafting the minimum wage amendment which is
5 precluded by the National Labor Relations Act. And they are
6 actually going to argue that the NLRB, the National Labor
7 Relations Act will -- it violates the supremacy clause of the
8 United States Constitutions and it's preempted.

9 THE COURT: So they're asking them to declare the --
10 part of the Nevada Constitution as unconstitutional?

11 MS. RODRIGUEZ: You know, it will be an interesting
12 argument to see. But I thought I would attach that and
13 highlight that to Your Honor, as well.

14 And as Your Honor mentioned early on, Yellow Cab has
15 brought this issue up as well again to -- to argue that the
16 Thomas -- their Thomas decision only applies prospectively.
17 And as Your Honor is aware, Mr. Greenberg himself asked the
18 Court to amend their decision, the Thomas decision, by asking
19 them to include the past tense terminology of supplanted and
20 superceded, and they denied that.

21 And, again, defense believes that -- and it would
22 assert to this Court that that is proof in and of itself from
23 the Supreme Court that refused to go back and change their
24 terminology to the past tense, that their intent was to make
25 it prospective.

1 And the subsequent cases, I believe it was the
2 Sapphires case, the Gentlemen's Club case, that again, they
3 had an opportunity to address it and only use the prospective
4 application terminology, the future, as opposed to going back
5 and retroactively trying to penalize employers while these two
6 conflicting laws were on the books.

7 So, with that, Your Honor, we would ask that for
8 this particular case that -- we're asking for dismissal
9 because if Your Honor is inclined to agree with the case law
10 that we've cited, and the fact that the Supreme Court has not
11 -- there is no indication to make it retroactive, both of
12 these plaintiffs worked several years before the Thomas
13 decision was issued. And so they are -- they -- the Court
14 would not have jurisdiction to hear their claims since they
15 are -- they're outside of the jurisdiction of the Court and
16 we've asked for dismissal. That's the basis of this Motion to
17 Dismiss.

18 THE COURT: Okay. All right. Now, before you
19 respond to that, let's -- let's go ahead and take a short
20 recess, may we?

21 MR. GREENBERG: Yes, Your Honor.

22 THE COURT: Five minutes.

23 MR. GREENBERG: Whatever the Court believes is
24 appropriate.

25 (Court's recessed at 10:48 a.m. until 11:00 a.m.)

1 THE COURT: Please be seated.

2 All right, Mr. Greenberg.

3 MR. GREENBERG: Your Honor, in respect to this
4 theory that defendants are presenting to the Court that
5 somehow the rights afforded by Nevada's Constitution to my
6 plaintiffs did not actually arise or come into being until
7 June of 2014, when the Supreme Court issued the Thomas
8 decision, asks this Court to abandon all fundamental
9 principles of our systems jurisprudence.

10 This is discussed, you know, in my opposition which
11 quite honestly, Your Honor, is quite brief, in part because of
12 the fundamental infirmity of this entire argument. I mean,
13 Judge Israel rejected this argument when Thomas came back to
14 him from the Supreme Court, and you're dealing essentially
15 with 800 years of common law.

16 I mean, this is discussed -- I cite -- I quote
17 Blackstone on page 5 of my Response. At common law, there was
18 no authority for the proposition that judicial decisions made
19 law only for the future. And, I mean, this is Newman v.
20 Emerson Radio and Linkletter v. Walker which was a very
21 important United States Supreme Court case.

22 Now, what defendants in these cases are trying to do
23 is they throw out Miranda and they are trying to analogize
24 this somehow, to the prospective application situation in
25 cases like Miranda.

1 But as I'm sure Your Honor can understand, Miranda
2 was the express overriding and creation of new constitutional
3 rights such as in Mapp v. Ohio involving Fourth Amendment
4 search and seizure law, which overrode previous court
5 decisions defining the contours of these constitutional
6 rights, and of which no one could possibly have any inkling
7 was going to develop as part of our jurisprudence, okay.

8 It is for that sole reason that in those cases
9 prospective application was applied to those criminal defense
10 rights, because who knew that the right to counsel, or to not
11 incriminate oneself, or to be free from search and seizure
12 without a warrant would, in fact, require a decision such as
13 Miranda where, you know, we now of course have Miranda rights
14 that arrestees are subjected to and have to be advised of.

15 The implications of making Miranda retroactive to
16 all criminal -- already adjudicated criminal convictions that
17 were not final would have been, to put it mildly, quite
18 chaotic, Your Honor. And it was for that reason that we see
19 this prospective application in that very, very narrow sort of
20 situation.

21 There is absolutely no parallel here between this
22 situation and those prospective application situations. In
23 the field of civil law, such as we are dealing with here,
24 okay, it would be as I was saying, contrary to the fundamental
25 principles of common law to say that, no, we're going to

1 adjudicate this case, but we're not actually going to give the
2 plaintiffs anything even though we're finding in their favor
3 because that's not the way the common law works.

4 I mean, this argument that we're discussing was
5 actually raised before the Ninth Circuit, and this is
6 discussed in the Green v. Executive Coach and Carriage case.
7 This is at page four of my Response. And it was completely
8 rejected summarily that this idea that Thomas somehow had no
9 application to the class of persons that we're dealing with
10 here, taxi and limousine drivers, prior to its issuance in
11 2014.

12 I mean, with all due respect, Your Honor, I actually
13 watched the video of the Ninth Circuit argument and Judge
14 Friedlander (phonetic), who heard the argument, was
15 practically laughing when counsel was making this argument at
16 the time they heard the appeal.

17 Your Honor, and in respect to just the history of
18 what's gone on here, if you look at the Desert Cab decision,
19 which is attached as Exhibit E to my opposition, because
20 there's discussion here about how, well, Thomas was talking
21 about present tense and not past tense, and Mr. Greenberg
22 asked them -- I did, in fact, ask them to revise the order
23 because I knew this argument was going to be coming up and
24 regardless of how baseless it was, they declined to do so.

25 In Desert Cab, which came later, these precise

1 arguments were raised to the Supreme Court. I mean, this --
2 and I have the -- it's in my brief at Exhibit D. I mean, you
3 have -- or Exhibit F -- you have Desert Cab's brief to the
4 Nevada state court where they implore the Supreme Court in
5 their appeal to say that Thomas has -- does not have
6 application to conduct prior to its decision.

7 They ignore it. They reverse and remand, as at
8 Exhibit F, and they say, the minimum wage amendment to the
9 Nevada Constitution implicitly repealed the exceptions to the
10 statutory scheme.

11 So, I mean, here they're using clearly past tense.
12 They were made aware of this. They understand, as I was
13 saying, the dynamics of how the common-law functions here and
14 the principles of our jurisprudential system.

15 Now, let's just set all of that aside, Your Honor,
16 and somehow look at the equities here, okay. If we were to
17 address the equities, they have no equitable claim here. The
18 fact of the matter is, Your Honor, when this constitutional
19 amendment came into being and became effective in November of
20 2006, the Attorney General of the State of Nevada issued a
21 public opinion advising all employers that -- ll employees,
22 including specifically workers in these industries, would be
23 covered by this constitutional amendment if it was, in fact,
24 enacted by the people. That was his opinion.

25 Now, I understand there was subsequent

determinations that disagreed with it. There was the Lucas decision, there was Your Honor, there was Judge Israel who actually, you know, went up on appeal in Yellow Cab who found contrary to Your Honor's determination. But the point is, defendants in the industry were on notice. They had warning that this was out there.

 Their argument wasn't, by the way, Your Honor, about a lack of clarity in the Constitution itself. The entire argument here that defendants have raised was raised in Thomas, is that, well, we have this other statutory scheme in 608.250, which excludes these people.

 o when you look at this other thing and you -- and you compare it to the constitutional language, somehow the Constitution doesn't cover these people. So, it wasn't even a question of an ambiguity organic to the constitutional language itself. It was an argument based upon the interplay of another statutory scheme with the constitutional enactment.

 And finally, Your Honor, what did the industry do in Response to all of this warning and notice? Nothing, Your Honor. They did nothing. They said, well, we'll wait until we get sued and then if somebody sues us, they're coming in now and saying, oh, well, we're sorry and we won't do it again and let us run away with the goods.

//

 Your Honor, they could have come to this court and

1 sought a declaratory judgment. They could have brought the
2 same class-action lawsuit that I have brought in this case and
3 said, tell us, District Court, we want to name all of our
4 employees, everyone in the industry who works in this industry
5 as a defendant in this punitive class action. Let's have a
6 procedure here where the Court can take input from everybody
7 and give us a determination as to what our legal
8 responsibilities are.

9 Your Honor, why would they do that? They wouldn't
10 do it, because they had everything to lose by doing it,
11 especially if they could just wait to get sued and then argue
12 that they didn't actually have to pay anything until they got
13 an adverse decision against them, Your Honor.

14 So, when we look at the -- and by the way, Your
15 Honor, we don't -- we shouldn't even be getting to examining
16 these equities given the structure of the common law and the
17 legal principles I was advising the Court of at the beginning
18 of my discussion here, which the Court is well aware of. But
19 when we get to the equities, they have no equitable basis to
20 claim that they should be relieved of their liability here,
21 Your Honor.

22 THE COURT: Well, is there -- is there room for a
23 court to even look to the equities or is it -- is that foreign
24 to this analysis here?

25 MR. GREENBERG: It is -- it is completely foreign to

1 this analysis, Your Honor. I mean, given, you know, 800 years
2 of the common law. I mean, I'm quoting Blackstone from 1809.
3 I mean, again, the common law, judicial decisions do not make
4 law only for the future. I mean, they adjudicate the rights
5 of the parties directly between them -- between themselves and
6 for the Court to consider. The circumstances of Miranda and
7 so forth that we were discussing deal with the change in
8 judicial-made law, Your Honor.

9 This is not a question of the judiciary itself
10 announcing or revising the legal relationships between
11 parties. The defendants and the industry somehow want to say
12 that, well, it was Thomas that created these rights out of the
13 blue that came to these workers in these industries. No, it
14 wasn't Thomas that created these rights, it was the amendment
15 to Nevada's Constitution.

16 And as I was pointing out, Your Honor, if you read
17 that Constitution by itself without reference to anything
18 else, you can't dispute that these rights exist for these
19 employees because it says "all employees."

20 Their argument is based on a completely separate
21 statutory enactment and an interpretation that they urged on
22 the Court that's external to the Constitution's itself. So
23 there was no doubt when considering just the Constitution's
24 language that these rights existed.

25 They were on notice, Your Honor. They had an

1 obligation to either follow what that language directed or if
2 they were unsure and they wished to contest the application at
3 that language based upon their argument as to the statutory
4 scheme in these exceptions in 608.250, then they could have
5 come to the Court and raised those claims. They can't just
6 sit back and do nothing, Your Honor, which is what they did
7 here.

8 So, I think Your Honor understands my point very
9 well, and I don't want to sort of just belabor it unless Your
10 Honor has questions that I can help with.

11 THE COURT: Okay. No.

12 MR. GREENBERG: Thank you, Your Honor.

13 MS. RODRIGUEZ: Your Honor, Mr. Greenberg knows
14 otherwise, because he asked that question of Mr. Nady in the
15 deposition. What did you do? And Mr. Nady indicated to him
16 -- Mr. Greenberg's saying here they did nothing. That's just
17 not true. Mr. Nady said, I went to the Labor Commissioner, I
18 asked for guidance from the Labor Commissioner, and the Labor
19 Commissioner said, we don't know. We don't know what to do
20 with these claims.

21 Mr. Greenberg is wanting to argue to the Court that
22 this Attorney General opinion was so clear. If it was so
23 clear, why was the State of Nevada Labor Commissioner
24 themselves still confused? They were relying on Judge Jones's
25 decision per the affidavit I attached. They had the one

1 judicial decision out there and said, we're going to stay
2 everything until we get guidance from the Supreme Court.

3 So you have the State of Nevada Labor Commissioner,
4 you have Judge Jones, you have the three dissenting Justices
5 of the Supreme Court; Justice Saitta, Justice Parragguire,
6 Justice Gibbons; all saying there was confusion, there was
7 conflicting laws, this is why we need to clarify. If there --
8 if they admit that there was confusion amongst this
9 distinguished panel, how can the Court put this burden upon an
10 employer and say, well, you should have known.

11 THE COURT: Well, aren't you --

12 MS. RODRIGUEZ: Like Mr. Greenberg is saying, you
13 should have known way back in 2006.

14 THE COURT: Aren't you inviting me to determine this
15 based upon the equities of the parties, as opposed to upon,
16 you know, stare decisis, or some less equitable-type
17 determination?

18 MS. RODRIGUEZ: Your Honor can always look to
19 fairness. And Your Honor has done that in the majority of
20 your decisions to this. And I think that that's what the
21 Court needs to look at, is fairness to the defense, due
22 notice, and putting the employer on notice. I know Mr.
23 Greenberg says, well, they could have come filed for
24 declaratory relief packing 2006. No. They did what they
25 needed to do, which was to ask for guidance from the Labor

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1 Commissioner, what do we do. We were all on hold until the
2 Supreme Court told us what to do. And that's -- there was
3 no --

4 THE COURT: Is the real -- is that the real
5 analytical tool, then? Is it a matter of, in effect, due
6 process or due notice, at least?

7 MS. RODRIGUEZ: To an extent, Your Honor, because I
8 think what we talked about in prior hearings is that there was
9 no express repeal. There was no clear intention when the
10 Nevada Constitution was amended that it was automatically
11 repealing this 608, NRS 608. That's why the -- that's where
12 the confusion came from. Nobody was clear because it didn't
13 come right out and say it.

14 THE COURT: Well, does that -- that only implicates
15 the statute of limitations question, doesn't it?

16 MS. RODRIGUEZ: Well, no, Your Honor.

17 THE COURT: No? Okay.

18 MS. RODRIGUEZ: Because if there's two laws that are
19 running concurrently --

20 THE COURT: Okay.

21 MS. RODRIGUEZ: -- there is no express repeal.
22 You're looking more at an implied repeal. And until you get
23 the clarification from the Court, the intent is not to go back
24 -- that's why I associated it with Miranda because you don't
25 want to go back and create the chaos that Mr. Greenberg is

1 talking about, where you don't have records kept, because all
2 along, from the beginning of time, taxi drivers have been
3 exempt from minimum wage.

4 The only thing that you have floating around is an
5 Attorney General opinion saying otherwise. You've got the
6 federal court saying no, they continue to be exempt. And so
7 the -- there's no indication from Thomas, contrary what Mr.
8 Greenberg is arguing, that there was any intention to go back
9 and apply it retroactively.

10 Again, I would ask the Court to not -- to look at
11 the Thomas decision, that the intent was not to punish the
12 industry, punish employers, punish defendant A Cab, but to
13 clarify the law for them and to go forward from June 24, 2014.
14 I probably got that day wrong. It's June 26th, isn't it?

15 THE COURT: All right.

16 MS. RODRIGUEZ: June -- I'll give you the two days.

17 THE COURT: All right. I -- I'm going to do what I
18 didn't want to do. I want to take one more look at the
19 analysis and statutes that both of you have -- I mean,
20 analysis and authorities that both of you have supplied.

21 So I'm going to put this on -- is there any reason
22 we can't hold this over to Monday on our chamber's calendar?
23 Have we got any conflicting, nothing coming up here with us?
24 We're going to put it on for this coming Monday.

25 THE CLERK: November 9, chamber's calendar.

1 THE COURT: For decision. And I will send you a
2 Minute Order on it.

3 MS. RODRIGUEZ: Thank you, Your Honor.

4 THE COURT: All right. And now, the second Motion
5 to Dismiss the second claim for relief.

6 MS. RODRIGUEZ: Your Honor, this is our --
7 Defendant's Motion to Dismiss the Plaintiffs' Second Claim for
8 Relief which was basically their claim. They've claimed two
9 items in the current Complaint that is pending. This one is
10 pertaining to a violation of NRS 608.040.

11 It's interesting that the plaintiffs, for all other
12 purposes, have been arguing that NRS 608 is not applicable.
13 Is not applicable for statute of limitations, it's not
14 applicable as to the exemptions, it's not applicable for all
15 other purposes except for this one when it's a penalty that is
16 targeted towards the employer. On that one, they want to
17 enforce it and say, oh, it's still applicable to the
18 constitutional amendment and employees who fall within that.

19 So our position is, no, this penalty statute was
20 never one that was to go hand-in-hand with any employees that
21 would fall under the constitutional amendment.

22 And, again, now with the Court's ruling that we're
23 working with a four-year statute of limitations, and this is a
24 -- this is the statute that pertains to payment of wages when
25 the employee terminates or separates from the company.

1 Again, this is creating a nightmare for employers
2 because, as I mentioned repeatedly, the record-keeping statute
3 is two years. And here, in this particular case, I want to
4 highlight to the Court, if I haven't already, that we've got
5 two plaintiffs here who they don't know what they're owed, if
6 anything. I attached their deposition to show that both of
7 them even said, well, if I'm not owed anything, then I owe the
8 company an apology. I have no idea what I'm owed.

9 And here they're asking the Court to enforce a
10 penalty statute to penalize the employer for not paying wages
11 that are due at the time of separation when we still, as of
12 today, three years after this thing has been filed, have no
13 idea, if anything, is owed at all.

14 It is simply not practical to work with those two
15 concepts. And, basically, with -- trying to enforce this
16 statute, you'd be holding the employer to a higher standard
17 than they employee themselves. It would encourage the
18 employee to basically sit on their hands, as these have done.

19 They've both admitted they never asked the employee
20 -- employer for any wages that are due. They've never brought
21 it to their attention to say that I owe -- I'm owed anything,
22 and yet we want to go back and penalize the employer for wages
23 that were alleged to do.

24 //

25 So it's simply not applicable in this particular

1 claim, and we're asking the Court to dismiss that second claim
2 for relief for both of these plaintiffs.

3 THE COURT: Okay.

4 MR. GREENBERG: Your Honor, you have actually dug
5 into this issue previously in the Valdez case and you have
6 Your Honor's determination here. We also have Judge Barker
7 who's looked at some of the issues raised by this claim as
8 well. I think I gave you a copy of Judge Barker's decision as
9 well as your prior decisions in Valdez addressing this.

10 Your Honor, I'm a little confused about this two-
11 year record-keeping requirement. I mean, there's only a two-
12 year statute of limitations on this claim, so any employee
13 would have to bring it within two years of separation.
14 Presumably, their records would be maintained for that same
15 two-year period, not that that's even germane to the issue of
16 recognizing the availability of this relief.

17 Your Honor, you previously ruled on this. The
18 language of the statute is clear. What I would point out is
19 that Nevada law actually has no other penalty or sort of teeth
20 by way of enforcement or remedial provisions that are in the
21 statutory scheme regarding protecting workers' wages. For
22 example, under the Fair Labor Standards Act, which covers
23 overtime claims or minimum wage claims, there are provisions
24 for double damages. Other states have specific double damage
25 provisions or 10 percent interest or what other provisions

1 which actually encourage compliance by employers with their
2 legal obligations to pay wages.

3 608.040 is the only thing in Nevada that is an
4 analogous to giving employers an incentive, a monetary
5 incentive to comply with the law and pay all of their workers'
6 wages. So if the Court were to restrict the reach of 608.040,
7 as defendants are urging the Court to do, and as Your Honor
8 rejected in Valdez, essentially, employers, in my view, would
9 be given kind of like a blank check to violate the law, or
10 certainly to act with impunity because it's kind of like,
11 well, if I don't pay you your wages, Mr. Employee, what are
12 you going to? Are you going to sue me? Maybe then I'll have
13 to pay you, and then I'll just have to pay you what I owe you
14 in the first place.

15 There's no general attorneys' fee provision allowing
16 collection of attorneys' fees for employees in the State of
17 Nevada. There is -- there is a provision that allows to give
18 notice, but the employee has to know exactly what's owed, and
19 he has to give notice in advance, and that's a possibility. I
20 mean, there are other provisions of Nevada law as Your Honor
21 is well familiar with that do allow collection of attorneys'
22 fees generally to civil litigants.

23 My point, though, is there are really no provisions
24 or protections granted under Nevada's statutory scheme to
25 employees except 608.040, which is one of the reasons why

1 enforcing it pursuant to its language is quite important. And
2 I do reference the Doolittle case on page two of my Response
3 which is from 1932, the Nevada Supreme Court. I don't
4 actually discuss it, but if Your Honor wanted to dwell into
5 this a little further, I would urge the Court to read the
6 decision. It's a fairly short decision.

7 What's interesting about Doolittle, Your Honor,
8 because I was looking at this the other day, is that in that
9 case it was a homeowner who was sued by a laborer. And the
10 laborer was actually employed by a subcontractor. And the
11 homeowner was found responsible for the wages and for the
12 penalty that was at issue under 608.040.

13 And the Supreme Court, in affirming the application
14 of 608.040, the homeowner noted in its decision that, well,
15 probably the homeowner had a good defense here because they
16 never hired the laborer. The laborer was hired by the
17 subcontractor.

18 It declined to reach that issue because it said it
19 wasn't properly preserved on the record, but it had no qualm
20 about upholding the judgment against the homeowner even though
21 it was recognizing that very probably, as to the facts that
22 were alleged, the homeowner had no liability.

23 So clearly, the Supreme Court was taking a very
24 broad view. And, in fact, in the Doolittle decision you'll
25 even see the language that says, well, you know, petitioner

1 argues that there will be a hardship if we apply this law in
2 this fashion. They say, well, look, this is the way it's
3 written and if it's causing a hardship, it's up to the
4 legislature to change it.

5 So the perspective that Your Honor enunciated in the
6 Valdez decision that I'm urging upon the Court has significant
7 historical support in the Doolittle decision as well, Your
8 Honor.

9 So, and -- I mean, you know, there's determinations
10 from the State of California, which I believe are discussed --
11 well, they're actually not discussed here, but they were
12 discussed in the Valdez case. I think Your Honor may have
13 considered them.

14 It's interesting in that the statutory language in
15 California that parallels this with the 30-day penalty
16 provision, actually includes language which gives an employer
17 a defense based upon the good faith dispute or a reasonable
18 belief as to nonliability.

19 That type of language is absent in the statute, and
20 as I was -- in the Nevada version of the statute. And as I
21 was saying, Doolittle apparently was very unconcerned with
22 that issue in their view in terms of how the statutory
23 language should be applied.

24 //

25 I don't think there's really much more I can say

1 about this, Your Honor, unless the Court has questions or
2 would like me to address something else.

3 THE COURT: No, thank you. Nothing at this point.

4 MS. RODRIGUEZ: Your Honor, just briefly. I just --
5 I'm struggling, and I cannot see how the Court can reconcile
6 enforcing the 608.040, which is something that falls squarely
7 within the Labor Commissioner. I mean, just looking at the
8 statute, the statute's very clear. It says, if an employer
9 fails to pay within three days after the wages or compensation
10 of a discharged employee becomes due, that's when the penalty
11 kicks in.

12 We're here three years later and we don't even know
13 if anything is due at all, because we're going back and
14 reconstructing based on four years, six years, the 2006
15 amendment. It's just simply not applicable to the facts that
16 are before you, Judge.

17 And plus, we have, as I mentioned, we're going to
18 get into the Motions to Dismiss, but these plaintiffs never
19 went to the Labor Commissioner to kick the statute, to get the
20 statute going. You fill out a form, you say what you think
21 you're due, and that the employer refused to give it to you.
22 We just simply do not have those circumstances in this case
23 and that's why the 608.040 is not applicable to minimum wage
24 -- I mean to amend --

25 THE COURT: Well --

1 MS. RODRIGUEZ: Go ahead.

2 THE COURT: Isn't the question, though, whether they
3 have to in order to be able to bring their private cause of
4 action?

5 MS. RODRIGUEZ: I think that's a big portion of it,
6 yes.

7 THE COURT: Well, so the --

8 MS. RODRIGUEZ: That was our argument, as well, that
9 there was not a private right -- cause of action on this, and
10 I cited to the Baldonado (phonetic) case on that. And I think
11 the cases that Mr. Greenberg attached didn't have anything to
12 do with the minimum-wage issues. They had to do with overtime
13 compensation, I believe. It's -- it's two separate animals,
14 because now we're talking about a constitutional amendment
15 issue.

16 And this -- this statute -- you know, this is the
17 one statute they've pulled out of the minimum-wage statute
18 schemes that they want to use, the penalty statute. And
19 again, you just -- you can't -- I mean, it's one way or the
20 other.

21 THE COURT: No great surprise in that.

22 MS. RODRIGUEZ: Am I surprised by that?

23 THE COURT: Yeah. Not really.

24 MS. RODRIGUEZ: I won't answer that one.

25 THE COURT: That's good.

1 All right. I'm going to do the same thing and put
2 this on for Monday.

3 THE CLERK: November 9th.

4 THE COURT: All right. And now we get to -- first
5 let's deal with the Motion to Dismiss against Mr. Reno.

6 MS. RODRIGUEZ: Your Honor, I think from some of our
7 discussions this morning, you've gotten the gist of some of
8 the issues that I've had with Mr. Reno.

9 At the last hearing of this matter, I began to tell
10 the Court that we had the deposition scheduled. Up until that
11 point, the plaintiffs had not produced anything to support
12 their case other than a pleading. We had a Complaint.

13 Everything had been produced from the defendants.
14 We've produced all of their time sheets, all of their
15 employment file, all of their pay stubs for Murray, for Reno,
16 because there simply isn't anything there that shows a
17 violation of a minimum-wage claim.

18 I then took the deposition of Mr. Reno. Mr. Reno
19 talked for three hours. The deposition took three hours. He
20 did the majority of the talking without me even having to ask
21 a lot of the questions. He has a lot of issues against his
22 former employer. He complained that he was penalized for
23 taking radio calls, he was penalized for when he dropped cash
24 short, he complained about the policies for customer service.
25 He had a lot of complaints, none of which had anything to do

1 with the minimum-wage claim. He was angry with his former
2 employer.

3 I point that out to the Court because, Your Honor,
4 I'm sure you see plaintiffs every day that come in quite angry
5 about a lot of different things, and in some cases you can
6 administer justice, and sometimes you can't because there
7 simply isn't a cause of action for those particular
8 Complaints.

9 And that's what we have here, is that Mr. Reno is
10 complaining about a lot of things, none of which have anything
11 to do with his Complaint, and none of which are a legitimate
12 cause of action under Nevada state law.

13 He, basically, when I tried to asking details about
14 his minimum-wage claim, or any kind of wage issue, the bottom
15 line was that he had previously worked for other larger
16 companies, like the Frias companies and they Yellow Cab
17 company he made a lot more money. So when he came to A Cab he
18 was making less money and he felt like that was proof that
19 there was something wrong and that the company owed him
20 something.

21 He said he heard the company was stealing with --
22 from him, so he needed to go sign up at Mr. Greenberg's
23 office, get on the list to -- because money was basically
24 available for the taking.

25 But he doesn't know about a minimum-wage claim. He

1 is not making an assertion for a minimum-wage claim. He never
2 spoke about a minimum-wage claim in three hours, other than in
3 the cross-examination which lasted about five minutes after --
4 Ms. Sniegocki was representing -- was defending the
5 deposition. She took him out, he comes back in, she asked
6 "yes" or "no" questions, are you making a minimum-wage claim,
7 yes. You know, is this your claim, yes, you know, that's it.

8 The purpose of a deposition is to allow the opposing
9 party an opportunity to get to the gist of the claim. There
10 is no gist of the claim in this. I brought copies of the
11 written discovery, which I subsequently got. I just recently
12 got it October 16th. So, I have copies for the Court. I'd
13 like to supply those to the Court as soon as I can dig through
14 my piles here. But basically, when I asked for the basis of
15 the claim, again, there was either a refusal to answer, this
16 is a wage claim.

17 I've asked for authorizations to then get tax
18 information, wage information from other employers. It's an
19 employment case. I was refused employment authorizations.
20 And I know that these are discovery issues, but discovery is
21 now closed. Discovery closed October 1st and there simply is
22 no evidence, no --

23 THE COURT: Have there been Motions to Compel filed?

24 MS. RODRIGUEZ: No, Your Honor, I just got them. I
25 just received those. I just received the Responses, and the

1 Responses are basically blank.

2 THE COURT: I see, these were not verbal. These
3 were -- these were written -- Responses to written
4 interrogatories or --

5 MS. RODRIGUEZ: Interrogatories and requests for
6 production of documents.

7 THE COURT: Requests for production, I see.

8 MS. RODRIGUEZ: And if I may approach, Your Honor, I
9 think I have the --

10 THE COURT: Yes.

11 MS. RODRIGUEZ: -- the copies. I have defendant --
12 Michael Reno's Response to Defendants' Second Interrogatories.
13 Michael -- I'm sorry, I said defendant. Plaintiff Michael
14 Reno's Response to Defendants' Second Interrogatories.
15 Plaintiff Michael Murray's Response and both plaintiffs'
16 Response to the Second Request for Production of Documents.

17 THE COURT: Okay.

18 MS. RODRIGUEZ: And, Your Honor, in preparation for
19 this hearing, I was going over these things and just -- just
20 to make sure that they had not produced any kind of evidence,
21 any documents, any witnesses, any affidavits, any evidence
22 that would defeat summary judgment.

23 I know Your Honor is going to get to class
24 certification later. But before the Court ever gets to that,
25 the Court needs to look at the two plaintiffs that are before

1 it. This particular plaintiff just has not made any evidence
2 to support the allegations in the Complaint. That's why
3 summary judgment is appropriate for Mr. Reno.

4 Mr. Greenberg has a number of cases, as we all know,
5 pending in a number of other District Courts. He's free to
6 refile with an appropriate plaintiff. This plaintiff is not
7 the appropriate one, because there is absolutely no evidence
8 before the Court to support Mr. Reno's claim and we're asking
9 that the Court granted summary judgment against Mr. Reno.

10 THE COURT: Okay. Mr. Greenberg?

11 MR. GREENBERG: Your Honor, I've heard repeatedly
12 from defense counsel that there's absolutely no evidence in
13 the record here that Mr. Reno actually possesses a claim.
14 I draw the Court's attention to Exhibit A of the Response
15 which is discussed at page five.

16 We actually took Mr. Reno's trip sheets, and it is
17 defendant's position that those trip sheets accurately
18 reflect, when you take out the break time and you look at the
19 start time and the stop time, the actual hours Mr. Reno would
20 have worked in a two-week period that matches the payroll.
21 And if you look at Exhibit A, he's making 5.52 an hour.

22 These are defendant's own records, Your Honor.
23 These are the records that I am advised repeatedly that the
24 United States Department of Labor relied upon to determine
25 that Mr. Reno was owed \$1,048.94.

1 Your Honor, Mr. Reno may be very loquacious and not
2 perhaps the best informed witness in respect to the contours
3 of his case, and the legal issues presented by this
4 litigation, is neither here nor there, okay.

5 To the extent that the Court even -- I mean,
6 discovery is ongoing, Your Honor. There's a Motion to Compel
7 Discovery. We have two or three motions, plaintiffs do, to
8 compel discovery pending before the Discovery Commissioner.
9 There is an application to extend the discovery period.
10 There's a question of production of electronic records that
11 defendants have not honored that are still in dispute in terms
12 of action from the Discovery Commissioner. I'm not going to
13 get into all of that in detail.

14 I know defendants are raising this issue that they
15 should have authorizations or disclosures from the plaintiffs
16 regarding their tax returns or their earnings records or their
17 information from other employers. There's absolutely no basis
18 for any of that to have any germane as to any issue between
19 this plaintiff and this defendant.

20 The issue is how many hours did this plaintiff work
21 and how much was he paid for those hours. If he meets the
22 minimum wage requirement in terms of payment, there's no
23 claim. It's what they would call an hours claim or just a
24 breach of contract claim if there was something, but we're not
25 claiming breach of contract, Your Honor. It's just a question

1 of the deficiency below this minimum-wage threshold.

2 Your Honor, there sufficient evidence in the record
3 here, as I said. And just so the Court understands, the
4 Department of Labor judgment is, in fact, a judgment and it --
5 and we can talk about the language of that, but the issue
6 isn't merits in terms of the Department of Labor judgment.
7 It's simply foundational, in that, it shows that there is a
8 common issue that's presented by Mr. Reno, who is owed 400 --
9 \$1,048 and all -- and 400 other people or whoever it was, 500
10 other drivers.

11 And the Department of Labor found that there was --
12 or there was some basis for them to reach these findings. And
13 if they were owed that under federal law, there's these common
14 questions of, well, federal law allows the employer to take a
15 tip credit, state law doesn't.

16 So are these individuals owed something because he
17 can't apply the tips against the Nevada minimum? And also,
18 federal law is a dollar an hour less, it's 7.25 not 8.25,
19 under the Nevada law unless you get the health coverage. So
20 again there is a common issue as to whether these plaintiffs,
21 such as Mr. Reno, were entitled to that extra dollar an hour.

22 We don't have to prove the case here, were not here
23 to prove the case. To the extent the Court even believes it's
24 ripe to look at the evidentiary file, so to speak, or what
25 evidence has been marshaled in the record so far to see if

1 there's a sufficient basis for Mr. Reno -- and Mr. Murray,
2 it's the same issue -- to proceed, clearly, there's sufficient
3 evidence in front of the Court to proceed.

4 As I said, just looking at Exhibit A, just looking
5 at the defendant's own records, we're just looking that one
6 particular pay period where we sat down and we went through
7 those trip sheets. And presumably, the Department of Labor
8 did the same thing and that's why they decided that he was
9 owed \$1,048. That's part of the Motion to Certify in respect
10 to wanting a Special Master appointed to do that thorough
11 investigation. That's a different issue, Your Honor.

12 That's basically it in terms of this issue for
13 summary judgment. I mean, there's claims made in defendant's
14 submission that somehow because there was an Offer of Judgment
15 made and it was in excess of anything that Mr. Reno might be
16 owed, and he can't articulate what he's owed, the case should
17 be dismissed.

18 Your Honor, the site know authority for that and
19 there really is no basis to proceed, to proceed in that
20 fashion, particularly in a class-action case where we're
21 talking about relief that sought on behalf of the class.
22 There's claims for equitable relief here as well.

23 I think Your Honor understands all this. I don't
24 really want to take up more time on it unless there's
25 something more that would be helpful to the Court for me to

1 address.

2 THE COURT: All right.

3 MR. GREENBERG: Thank you.

4 MS. RODRIGUEZ: Your Honor, Mr. Greenberg -- I think
5 we totally have different perspectives on this, and I think
6 the summary judgment law and rules support the defendants on
7 this one because Mr. Greenberg just stood up and said, I don't
8 have to prove my case.

9 Yeah, you do. You have to have a prima facie case
10 at this point when discovery is closed. You have to by the --
11 by the rule and by the case law show something to defeat
12 summary judgment and he absolutely hasn't done that.

13 The one week that he's attached for Mr. Reno -- and
14 Mr. Greenberg's aware of this, because we've talked about this
15 one week before, that was a calculation error on July 9th and
16 July 10th. Mr. Reno was paid eight hours on one day and five
17 days on the other as opposed to the 10 hours per day. That's
18 -- that a mathematical calculation error in one week's time of
19 his entire employment. That is not a minimum-wage claim, that
20 is not demonstrative of why this case should continue to
21 defeat summary judgment at this point.

22 The fact that -- oh, and this issue of discovery,
23 you know, to say that there's discovery issues that are
24 pending before the Discovery Commissioner, that is pertaining
25 to all the other drivers. This has nothing to do with Michael

1 Reno. He's not asked for any Motions to Compel on Michael
2 Reno. We've turned everything over pertaining to Michael Reno
3 and there is nothing to support that he is owed any minimum-
4 wage claim whatsoever.

5 Again, I've tried to -- throughout this litigation,
6 Mr. Greenberg has asked this Court certify, certify, certify.
7 Certify the class --

8 THE COURT: I know.

9 MS. RODRIGUEZ: -- so that we can just get past
10 these plaintiffs and find the real plaintiff in this. That's
11 not the way it works.

12 Class certification is secondary. The Court
13 considers class certification after legitimate claims are
14 before it and the Court starts looking at whether joinder is
15 practical or impractical to -- is class certification the
16 appropriate way to handle all of these claims together.

17 We're not there by any means. The two plaintiffs
18 that are before the Court are not legitimate plaintiffs. They
19 do not have a minimum-wage claim and Mr. Greenberg has not
20 given a scintilla of evidence to the Court to show that they
21 have a minimum-wage claim.

22 And I won't try to group them together because we're
23 only talking about Mr. Reno right now, but Your Honor has the
24 transcript and now the written discovery. And there's simply
25 nothing there to show that Mr. Reno has a minimum-wage claim

1 violation. And so this Court must grant summary judgment
2 against him. We'll talk about Mr. Murray after that, but Mr.
3 Reno himself, per his testimony, per his documentation, has no
4 claim and the Court can't turn a blind eye to that.

5 THE COURT: Okay, let me ask you this. If the Court
6 -- if the Motion to Compel and the Motion to -- I mean, part
7 of the claims of the plaintiffs, on behalf of the class at
8 least, is that there's a bunch of records that have yet to be
9 produced and/or I guess reconstituted or some such thing and
10 that's why he wants a Special Master.

11 MS. RODRIGUEZ: That has nothing to do with Mr.
12 Reno. He has every single record for Mr. Reno and I don't
13 believe that he will dispute that. He -- he's got --

14 THE COURT: Is this the only -- is this the only
15 basis for his claim is this one document that you've given me
16 in Exhibit A?

17 MS. RODRIGUEZ: Well, and Your Honor, you know, I
18 have object -- I objected to that record as well because like
19 every other time that we've been before the Court, that is a
20 record that was never produced in discovery. It shows up in
21 his oppositions for the very first time. And it's a -- it's
22 a --

23 THE COURT: Let's deal with that first, then. What
24 about that?

25 MR. GREENBERG: Your Honor, the record that you have