

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 2

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129	Case Appeal Statement	08/12/20	11	2685–2688
134	Case Appeal Statement	02/23/21	11	2711–2716
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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
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5	Defendant A Cab, LLC’s Answer to Complaint	04/22/13	1	48–52
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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
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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
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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
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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 NRCF 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 NRCF 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 at Exhibit A of my Response is a compilation of the trip
2 sheets for Mr. Reno that defendants produced in discovery.

3 THE COURT: Okay.

4 MR. GREENBERG: They do not -- they're telling the
5 Court right now that there are errors and there's an
6 explanation for this and this calculation that works out to
7 5.52 an hour isn't correct; none of this is in their Reply,
8 Your Honor. They don't address this at all in their Reply.
9 So I have no idea what they're talking about when they say
10 that's not true or accurate.

11 Your Honor, in terms of the discovery that's seeking
12 to be compelled from the Discovery Commissioner, it's for the
13 class, Your Honor. It would apply equally to Mr. Reno and Mr.
14 Murray. We're seeking the electronic records that we
15 believe --

16 THE COURT: So what more would it be in relation to
17 Mr. Reno, for example, other than these trip sheets that I
18 have here?

19 MR. GREENBERG: Your Honor, it would be records
20 showing the actual activities of the drivers in terms of when
21 they appeared to work, when they were given their trip sheets.

22 THE COURT: I'm speaking of Mr. Reno now.

23 MR. GREENBERG: For Mr. Reno, for Mr. Murray and for
24 all the other cab drivers. There is a sophisticated computer
25 system that keeps track of the activities of the cab drivers

1 and the medallions.

2 THE COURT: And is --

3 MR. GREENBERG: It says when they go out and when
4 they come back.

5 THE COURT: Is the idea that it would show
6 discrepancies -- more discrepancies than what is reflected in
7 these trip sheets?

8 MR. GREENBERG: Your Honor, it is our position that
9 an analysis of those records will show the drivers are working
10 far more hours than shown on the trip sheets. But, Your
11 Honor --

12 THE COURT: Including Mr. Reno?

13 MR. GREENBERG: Including Mr. Reno and Mr. Murray,
14 they're members of the class.

15 But, Your Honor, I want to point something else out
16 here that defendants are skipping over, and it hasn't been
17 addressed, which is that NRS 608.115 which is discussed in the
18 motion in relation to the request for the Special Master,
19 requires defendants, employers, to maintain a statement of
20 hours of what an employee has worked during every pay period.
21 They have violated that in this case. And, in fact, they did
22 so intentionally because they were told by the U.S. Department
23 of Labor back in 2010 that they needed to keep these records.

24 THE COURT: Then these things that you --

25 MS. RODRIGUEZ: I'm objecting to that, Your Honor.

1 THE COURT: These things that you submitted to me
2 are not those records then?

3 MR. GREENBERG: Right. Those records don't exist,
4 Your Honor. They simply issued -- until -- until shortly
5 before Your Honor's ruling in February of -- or January of
6 2013, and only after the Department of Labor came back in
7 2012, did the defendant start issuing payroll checks that
8 actually had a statement of hours per pay period on them.
9 They never issued them prior to that date.

10 And, by the way, Your Honor, when they started
11 issuing those payroll checks as we've discussed in the Motion
12 to Certify, they were still taking tip credit which is not
13 allowed under Nevada law, even after Your Honor ruled that
14 they were subject to Nevada's law in January or February of
15 2013. My point is, Your Honor --

16 THE COURT: And is the evidence that you seek to
17 bring about more evidence as to those alleged violations?

18 MR. GREENBERG: The evidence we're seeking, Your
19 Honor, is to establish what the true hours were that these --

20 THE COURT: Okay.

21 MR. GREENBERG: We know what they were paid, Your
22 Honor --

23 THE COURT: All right.

24 MR. GREENBERG: -- because we have the payroll
25 record, okay. Although, we don't actually have them in an

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1 electronic form, which is what we've requested and defendants
2 have refused to give us without any good reason. That's
3 another issue in front of the Discovery Commissioner.

4 We can't really do an analysis, Your Honor, without
5 the electronic records. There's no reason they haven't been
6 provided to us except they're just obstructing the process of
7 the case. But these are issues for the Discovery Commissioner
8 to deal with. And those Motions to Compel have been -- has
9 been filed now since -- I guess March was the first one.
10 There's been two subsequent ones.

11 THE COURT: When are they set to be heard?

12 MR. GREENBERG: This month, in a few weeks, Your
13 Honor.

14 MS. RODRIGUEZ: Your Honor, he keeps asking for a
15 continuance of these motions. So the implication that we've
16 delayed this is completely false.

17 THE COURT: Okay.

18 MS. RODRIGUEZ: Further, none of those issues have
19 anything to do with Murray and Reno. The Discovery
20 Commissioner has already told them that we are not required to
21 keep them in the format that they want where they want to do
22 this searchable stuff. She said, if we turned over these
23 documents, these trip sheets, these pay stubs, that's what we
24 were required to do. That's what we showed to the DOL. I
25 told the Discovery Commissioner, this is everything the DOL

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1 looked at. She said, as long as you're giving Mr. Greenberg
2 what you gave the DOL, that's what we gave him.

3 He is not going to see anything else in these
4 alleged computer files that are going to show different hours.
5 There's no such thing that they, even by this document that
6 I'm objecting to with their opposition, this is what they put
7 together I'm assuming because this document has never shown up
8 in discovery. I'm assuming one of the two attorneys put it
9 together.

10 And what I pointed out to the Court in my Reply,
11 that they had done it wrong. They put two hours some places
12 and there were two and a half hours actually written in the
13 trip sheets. So they manipulated the numbers to come up with
14 this \$5.52 as a rate of pay. That's wrong. This Court should
15 not even be looking at this stuff because it's not
16 authenticated. It's attorney written.

17 And another issue that we've completely jumped over
18 on this, since Mr. Greenberg has raised this issue about what
19 Mr. Reno was entitled to, the \$1,100, I didn't want to
20 emphasize this to the Court, but I think it's important since
21 this issue has been raised.

22 I attached the Offer of Judgment, Your Honor.
23 During the deposition, the plaintiff himself -- it's not that
24 the Offer moots the litigation. The important part is that
25 this Offer was never even conveyed to the client. There's a

1 serious issue there. And we have sworn testimony from both of
2 these plaintiffs saying they were never even aware of these
3 offers. There is a complete failure on the duty of
4 plaintiff's counsel to inform them. I think what he's wanting
5 to do is then to, again, get the class certified. I don't
6 care about these plaintiffs, because somewhere out there
7 there's a legitimate plaintiff.

8 THE COURT: What is the effect of that on these --
9 this motion?

10 MS. RODRIGUEZ: The effect of -- well, for --

11 THE COURT: Not conveying the Offer -- offering
12 judgment?

13 MR. GREENBERG: Your Honor --

14 MS. RODRIGUEZ: The --

15 THE COURT: No, just a minute.

16 MS. RODRIGUEZ: I'm trying to gather my thoughts
17 here, Your Honor, because I'm -- I definitely pled it towards
18 the opposition to certifying the class in terms of the
19 qualifications of plaintiff's counsel and the plaintiff
20 himself in proceeding and representing the class.

21 THE COURT: Understood.

22 MS. RODRIGUEZ: So I don't want to skip over that.
23 The importance of that --

24 THE COURT: In relation to this motion.

25 MS. RODRIGUEZ: -- this is attorney-driven

1 litigation. This plaintiff has no indication as to what a
2 minimum-wage claim is, if he is owed anything at all, whether
3 the fact that the defense has already offered him a
4 resolution. Why are we here? Why are we running up
5 attorneys' fees and costs into the thousands of dollars when
6 the plaintiff has been offered a resolution?

7 THE COURT: Let me --

8 MS. RODRIGUEZ: That completely goes against --

9 THE COURT: Let me -- let me ask you this. I am not
10 sure that I read this correctly was -- as to one of these two
11 at least, and maybe both. Did they, during that same
12 deposition, indicate -- after indicating surprise that they
13 didn't know about the Offer of Proof, did they indicate they
14 are not interested in that, they want to go forward?

15 MS. RODRIGUEZ: No.

16 THE COURT: In other words, a rejection of the -- I
17 said offer of proof, of the offering judgment?

18 MS. RODRIGUEZ: Right, right. No, Mr. Reno did not
19 say that.

20 THE COURT: All right. Okay, go ahead.

21 MS. RODRIGUEZ: No. He was surprised that he would
22 be getting a check from the Department of Labor and that there
23 was an offer from the employer to -- to settle his claim as
24 well.

25 THE COURT: And does set have effect on this motion?

1 MS. RODRIGUEZ: I believe it does, Your Honor.

2 THE COURT: What is the effect?

3 MS. RODRIGUEZ: The effect is --

4 THE COURT: How does it tie in?

5 MS. RODRIGUEZ: -- that the plaintiff has not --
6 does not -- the plaintiff himself, Michael Reno, does not have
7 a grasp of a claim, does not have a judicial controversy. And
8 further, that the defense has already offered to resolve a
9 claim, his claim, more than sufficiently. And he has not been
10 given the opportunity to go ahead and resolve this claim
11 before this Court. Why are we going forward?

12 THE COURT: All right. I've --

13 MS. RODRIGUEZ: It extinguishes his claim.

14 THE COURT: We're into playing ping-pong now.
15 Normally, I would have stopped right there. But you do raise
16 a question. I think Mr. Greenberg needs to be given the
17 opportunity to respond.

18 MR. GREENBERG: Your Honor, I understand the Court
19 is trying to navigate its way here, okay. But it is -- it is
20 extremely offensive, improper for me to be brought before this
21 Court and questioned regarding what my communications were
22 with my clients. And that is completely sacrosanct and
23 privileged. I can't talk about that. I will certainly tell
24 the Court, I have absolutely fulfilled my obligations to see
25 my clients are fully informed as I am required to do as an

1 officer of this court.

2 If the Court wants to satisfy itself because it
3 believes it's germane, and that is Your Honor's --

4 THE COURT: Right.

5 MR. GREENBERG: -- determination to make as to what
6 my clients know about what was offered or not offered, we can
7 arrange to have them come down here, you can talk to them in
8 chambers outside of my presence, I'd be happy to arrange that.
9 I'm just put in an impossible situation by these allegations,
10 Your Honor.

11 THE COURT: All right. Well let me ask you the same
12 question I was asking Ms. Rodriguez. Does that have any
13 impact on this motion?

14 MR. GREENBERG: Does it have any impact on this
15 motion that what?

16 THE COURT: The issue of whether or not the offering
17 judgment was transmitted to your client, communicated to your
18 client; does that have anything to do with this motion that we
19 are presently considering?

20 MR. GREENBERG: It has no impact -- it has --

21 THE COURT: Their dismissal and summary judgment
22 against Mr. Reno.

23 MR. GREENBERG: It has no bearing whatsoever, Your
24 Honor, because I assure the Court they were advised, okay. I
25 mean, again, I have a duty to advise my clients of such thing

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1 as well as other things that occur litigation during the
2 course of my representation. And I do -- and I never fail to
3 fulfill those duties. I mean, obviously, I can't talk about
4 what I discussed --

5 THE COURT: Okay.

6 MR. GREENBERG: -- when, where, how, et cetera, with
7 my clients in a privileged capacity, and the Court understands
8 that. It is really outrageous that this is even raised in
9 this context, Your Honor.

10 But the point is that the Offer of Judgment is
11 irrelevant to use the issue before the Court. The plaintiffs
12 have no obligation to accept it. And let's just -- let's just
13 go with the alternative. Let's say they wanted to take the
14 Offer of Judgment. Your Honor would still have to approve the
15 settlement in this case because it's a punitive class action
16 litigation.

17 There's -- there's an interest here of the unnamed
18 punitive class members. And this is, in fact, discussed --
19 there was a Response filed on the 19th of September to their
20 supplement where this whole issue was raised by the defendants
21 as to the sufficiency of Mr. Murray and Reno as
22 representatives.

23 And it's very clear, Your Honor, that this Court is
24 not -- these plaintiffs don't have the freedom in a class
25 context under Rule 23 to simply accept an Offer of Judgment,

1 have a final judgment entered in their favor against
2 defendants and terminate the litigation. It can't work that
3 way procedurally given the context of this case, as a punitive
4 class action case. The law is very clear on this, Your Honor.

5 Plus there are claims for equitable relief here,
6 Your Honor, which, of course, are not addressed by the Offer
7 of Judgment. So the Offer of Judgment is completely
8 irrelevant to the course of this litigation.

9 Your Honor, there were all sorts of representations
10 made about what's gone on with the Discovery Commissioner and
11 what the Discovery Commissioner told the defendants to do or
12 not to do.

13 In fact, the Discovery Commissioner directed an
14 inspection of the plaintiffs' -- of defendants' premises on
15 this electronics records production; that wasn't completed.
16 There was a dispute about that.

17 She directed that a 30(b)(6) deposition be held.
18 That wasn't completed either. We have a host of disputes
19 regarding the development of the record here that have been
20 pending before the Discovery Commissioner.

21 The reason why these have not gone to further
22 hearing with the Discovery Commissioner is because this motion
23 for class certification was fully briefed in June, and we were
24 waiting for Your Honor to resolve it because the Discovery
25 Commissioner has repeatedly indicated that she has to manage

1 the scope of the discovery that she's going to direct if there
2 isn't a class certified. Quite understandably, that is of
3 concern to her.

4 The idea was to streamline and to simplify the
5 process knowing what Your Honor's view was on the request for
6 the class certification. And defendants have consistently
7 agreed to continue these hearings before the Discovery
8 Commissioner.

9 So, again, we need to focus on what we have here,
10 Your Honor, and I'm sort of running a little afield myself.
11 I'm trying to assist the Court.

12 THE COURT: Okay.

13 MR. GREENBERG: Is there something further I should
14 address that would be --

15 THE COURT: No, I just wanted you to --

16 MR. GREENBERG: -- that would be helpful?

17 THE COURT: Since that was raised --

18 MR. GREENBERG: And, Your Honor, I have to --

19 THE COURT: -- I wanted you to have the opportunity
20 to respond.

21 MR. GREENBERG: -- I have to apologize. There is a
22 misunderstanding here. I had said that -- defense counsel,
23 and their Reply in respect to Mr. Reno's Exhibit A submission
24 of my Response did not address this. I actually realized I
25 don't have the Reply with me. I have the Reply from Mr.

1 Murray, not Mr. Reno. So my statement may be incorrect about
2 that that I make previously.

3 What I did hear them say in court was something
4 about the one page on Exhibit A which is essentially a chart.
5 Your Honor, that's just a summary of the record. I mean, if
6 somebody wants to go through those 10 trip sheets or whatever
7 it is, and see the start time, and the end time, and take out
8 the break time that's recorded, they'll get the same numbers
9 of hours worked.

10 And if they run those numbers -- you know, that
11 total of, I think it's 92 hours or whatever it is, against the
12 \$400 or whatever it was that he earned for the period which,
13 you know, is discussed in the opposition, you're going to wind
14 up with the same 5.52 an hour number.

15 They haven't presented a different number that would
16 be in compliance with the minimum wage standard based upon an
17 analysis of those trip sheets; have they? I haven't heard
18 them say, well, the actual analysis would show that Mr. Reno
19 made, you know, \$9.00 an hour during this period. So, still,
20 there's nothing in the record showing he was ever paid less
21 than minimum wage.

22 Your Honor, to the extent that I need to put in an
23 evidentiary standard here, an offer of proof of some sort,
24 it's here, Your Honor, okay. So enough for me consuming the
25 Court's time on that. Thank you.

1 THE COURT: All right.

2 MS. RODRIGUEZ: Your Honor, again, we're putting the
3 cart before the horse. We are not under Rule 23 right now,
4 the class has been certified. We need to look at this
5 plaintiff as any other plaintiff that would walk in before
6 this Court.

7 And this particular plaintiff, as I've mentioned,
8 has no idea what he's owed. I have repeatedly informed the
9 Court that they have completely failed to comply with NRCP
10 16.1 to show a calculation of damages. We have no indication
11 as we sit here today if they think that Michael Reno is owed
12 anything at all.

13 This is the first time in this opposition that we
14 saw this one week calculation of a week where he was shorted
15 some hours. As I've mentioned, we've talked about this week
16 before because this was a mathematical error. This is not an
17 underpayment. This was a shortage of the hours. He was paid
18 five hours for whatever reason. Sam Wood was the person who
19 added up the hours on that particular day. Mr. Greenberg took
20 his deposition.

21 If -- even accepting everything that the plaintiffs
22 say, Your Honor, if you had a plaintiff walk in and say, okay,
23 I've got a weeks worth here of seven hours at 7.25, that I'm
24 owed 8.25, he's talking about 50 bucks that should have been
25 drafted up in an NRCP 16.1 to show, this is what I think I'm

1 owed, \$55.00, and the employer has offered them \$15,000 to
2 resolve the case, would Your Honor that case to go forward?
3 Absolutely not. It makes absolutely no sense. And that's why
4 the Offer of Judgment extinguishes that claim.

5 Mr. Reno recognized that if that offer was far
6 beyond his expectations, it was completely surprised. I know
7 that Mr. Greenberg is representing to the Court that he
8 conveyed that offer, but Your Honor has the sworn testimony
9 from the plaintiff himself saying. I didn't know anything
10 about that offer. I've never heard of that offer. I've never
11 seen this document. I'm totally surprised that I'm getting
12 any money from the Department of Labor. I have no idea what
13 I'm owed. It simply makes no sense to allow this case to
14 proceed.

15 Again, the issues that are before the Discovery
16 Commissioner, I cringe every time I hear Mr. Greenberg making
17 these representations to the Court about the lack of
18 conclusion of some deposition or the inspection. All of those
19 were terminated because of actions on the behalf of the
20 plaintiff.

21 But I would like to point out that none of those
22 issues are before the Discovery Commissioner. They've not
23 asked for -- to compel, to go any further than -- we were --
24 we did a PMK depo for like 10 hours and he wants to continue
25 it. But that has nothing to do with Michael Murray and

1 Michael Reno again.

2 Discovery is closed. There's no other issues
3 pertaining to Murray and Reno. And I would ask the Court to
4 treat Murray and Reno like any other plaintiff that is here
5 before the Court, and they simply have not given the Court
6 anything to survive a summary judgment. That's why the Court
7 has to grant summary judgment against both of them.

8 I can go into Murray, but the bottom line is, the
9 basis is the same thing.

10 THE COURT: Let's -- let's -- yeah, let's look at
11 Murray and see what -- what, if anything, may be --

12 MS. RODRIGUEZ: Murray has been the --

13 THE COURT: -- particularly applicable to him.

14 MS. RODRIGUEZ: Your Honor has his discovery
15 responses. I would urge you to read those. There is nothing
16 in there that would suffice to defeat summary judgment.

17 Apparently, they have some statement from a witness
18 that they're refusing to disclose until they deem it timely
19 for them to disclose it. But discovery is closed, so I don't
20 know what mystery document is out there. But as we sit here
21 today, with discovery closed as of October 1st, there are no
22 documents, there are no witnesses, there are no affidavits
23 that are required by the rule.

24 //

25 Let me find my notes on Murray to add if there's any

1 -- oh, Mr. Murray was an interesting one. And again, I
2 attached his deposition, because as I mentioned, a deposition
3 is the time to get to the bottom of the claim.

4 Mr. Murray outright refused to answer the questions.
5 He absolutely refused. I said, are you going -- you're
6 refusing to answer the question? I'm refusing. I'm not
7 saying anything further on that issue.

8 And when I pressed him about this issue of the Offer
9 of Judgment and his claim, he pled the Fifth. He said, I'm
10 pleading the Fifth Amendment against the right of self-
11 incrimination and against perjuring himself in his own
12 deposition.

13 Your Honor, if you had any other plaintiff that
14 would come in into that before this Court, you'd absolutely
15 throw that case out. These plaintiffs have refused to
16 cooperate in discovery, they refused to turn over any
17 evidence. They are just lined up because they've heard
18 there's money to be had somewhere.

19 But the Court has to look at what is before it and
20 there just simply isn't any evidence to support either one of
21 them on this. We are not -- again, with Murray, it's the same
22 thing. We are not at NRCP 23. He's not representing the
23 class. He's not appropriate for a class. And we'll get into
24 that a little bit later. But I've attached his criminal
25 record to show the type of character and integrity that this

1 person brings; there is none. He has a felony record and --

2 THE COURT: Well, does that tie in on this motion?

3 MS. RODRIGUEZ: No, Your Honor. It is on to the
4 next one on whether he's appropriate.

5 THE COURT: Okay.

6 MS. RODRIGUEZ: But his claims themselves, he has
7 nothing to support the claims himself. So he should be
8 dismissed on summary judgment.

9 THE COURT: Okay.

10 MR. GREENBERG: Your Honor, this time I am correct
11 in that in the Motion to Certify, at page 20, Exhibit M, this
12 is on the Motion to Certify filed back in May, you have,
13 again, a comparison of the trip sheets from defendants and the
14 pay for that pay period.

15 And Mr. Murray was paid 7.19 an hour, below the
16 minimum wage, as discussed at page 20 in the Class
17 Certification Motion as documented in Exhibit M. And these,
18 again, are from defendants' records. And this time I'm
19 correct in that defendants never dispute in any manner the
20 appropriateness of that summary of their records.

21 So, again, 7.19 isn't 7.25 an hour, Your Honor, or
22 8.25 an hour. Again, Mr. Murray is among the individuals who
23 the Department of Labor did make a finding, defendants agreed,
24 were owed something.

25 And because there was a finding they were owed

1 something, it does raise a question as to whether they were
2 owed that extra dollar an hour above the federal minimum wage
3 something they were found to owed. And if they were owed
4 something extra, because the tips were applied against the
5 federal minimum wage requirement. These are questions the
6 defendants have not resolved in their favor, and that
7 certainly exist for purposes of trial, Your Honor.

8 And as I've said before, what's pending before the
9 Discovery Commissioner is disclosure of all of the electronic
10 records relating to the activities of all of the drivers,
11 including Mr. Murray and Mr. Reno, which we've never gotten.
12 And that will be taken up by her in due course.

13 THE COURT: Let's --

14 MR. GREENBERG: Yes.

15 THE COURT: Let's assume for the moment, just for
16 the moment, that your -- that you get some relief from your
17 pending motion or motions before the Discovery Commissioner.
18 Does that mean that discovery is going to be reopened?

19 MR. GREENBERG: There's a motion pending to extend
20 the discovery schedule --

21 MS. SNIEGOCKI: Yes.

22 MR. GREENBERG: -- because we never got a resolution
23 as to the production of the electronic records. The
24 defendants even admitted under oath that they have Quickbooks
25 records. They never produce them to me. They've never given

1 me any reason for their failure to produce them.

2 They alleged that certain records relating to Cab
3 Manager can't be produced. In fact, we took a deposition of
4 the person whose their consultants who runs that system and he
5 completely contradicted representations made to the Discovery
6 Commissioner. These files exist on a hard drive on a server
7 in their premises and they can be copied just by copying the
8 hard drive.

9 Whether they should be copied and produced is a
10 different story, Your Honor. We have basically been stuck
11 since March of this year on these representations that
12 defendants have made under oath to the Discovery Commissioner,
13 by Mr. Nady himself in court before the Discovery Commissioner
14 that these -- these records didn't exist and couldn't be
15 duplicated or produced.

16 When I asked him at his deposition about this, he
17 said he had no idea why he told this to the Discovery
18 Commissioner and he ran out of the room. And if necessary, we
19 will bring all of these issues to the Discovery Commissioner
20 for further resolution.

21 The point is, all of that is pending, Your Honor,
22 okay. It is clearly premature for the Court to consider the
23 sufficiency of the record and the evidence at this point in
24 regard to these two individuals' claims.

25 And to the extent that the Court wants to look at

1 what's been established, we have established, Your Honor, that
2 a review of the trip sheets and the payroll for these two
3 individuals, at least for one pay period, showed deficiencies
4 in the minimum wage rate, below even the 7.25.

5 And we don't know whether they are entitled to the
6 8.25 because we haven't resolved that issue in respect to the
7 health insurance either. That is an additional issue which is
8 subject to further ruling by the Court and discovery.

9 So, Your Honor, there's no basis to dismiss these
10 claims at this point. Defendants certainly have a right to
11 make a request for summary judgment at an appropriate time on
12 an appropriate record. This is not the time, not given the
13 fact that we've been, you know, trying to get these materials
14 from the Discovery Commissioner, a ruling from her.

15 Your Honor, this isn't a situation where I should be
16 coming in with like a 56(f) request or something for
17 alternative relief on summary judgment because my requests to
18 compel the discovery have been pending before the Court since
19 March of this year, Your Honor. So this is all premature,
20 okay.

21 And, again, you do have a documentation in the
22 record from the trip sheets that have been examined, from the
23 Department of Labor's findings, from the defendants' agreement
24 with the Department of Labor's findings that money was owed to
25 these individuals under federal law which, as I've pointed out

1 repeatedly, is much less demanding of the defendants in
2 respect to its minimum wage standard.

3 Even if the defendants have 100 percent complied
4 with their federal requirements, the significant question
5 still exists as to whether they owe something more under
6 Nevada law. And these plaintiffs need to be given an
7 opportunity to litigate those issues.

8 I think I've made my point clear, Your Honor, thank
9 you.

10 MS. RODRIGUEZ: Well --

11 THE COURT: And back to you.

12 MS. RODRIGUEZ: Thank you, Your Honor. You know,
13 some of these allegations that Mr. Greenberg is just now
14 bringing for the first time about health insurance and things
15 like that, he never conducted any discovery -- discovery on
16 any of those issues. It's a little late to do any of that,
17 Your Honor.

18 That's -- that's what summary judgment is about.
19 You have your discovery period. He never asked for an
20 extension of discovery until two days before the close of
21 discovery. I think he realized he hadn't done any discovery,
22 he hadn't worked up this file. He's been so concerned about
23 doing the class certification that he forgot about these two
24 main plaintiffs.

25 THE COURT: When the Motions to Compel filed in

1 relation to the cutoff of discovery?

2 MS. RODRIGUEZ: Well, one of the Motions to Compel
3 has already been denied.

4 THE COURT: Okay.

5 MS. RODRIGUEZ: The big one that he keeps talking
6 about saying electronic records and this and that, Mr.
7 Greenberg wasn't there, but this co-counsel was there, and
8 that's what I was referring, where she was very clear and said
9 they don't need to manufacture something, they don't need to
10 give it to you in the form that you want. As long as they're
11 giving you the paper documents that they gave the DOL, she was
12 fine with that.

13 They came back again, they refiled it after being
14 denied. And then she said, fine, go back, take a PMK depo,
15 take a -- the computer expert depo. They did. They didn't --
16 contrary to his representations, and we can turn it over --
17 over those transcripts -- they did not say what he is wanting
18 to hear what that they said. That's absolutely not true.

19 So he's had these motions pending, the second round,
20 and he keeps asking to continue those things. I've not asked
21 to continue those things; Mr. Greenberg asked to continue
22 those things. So to now come into the Court and say, well,
23 now we've got all these issues, so the Court can't grant
24 summary judgment; he has just failed to make his case for
25 these two plaintiffs.

1 As I mentioned to the Court, he can refile with an
2 appropriate plaintiff. He just doesn't have an appropriate
3 plaintiff with these two gentlemen. Reno and Murray do not
4 have a minimum-wage claim. They don't know anything about a
5 minimum-wage claim, they don't have the evidence. This Court
6 has to follow the summary judgment in this particular
7 instance.

8 And I think it's important to highlight to the Court
9 that you may not be aware, but we have a concurrent class-
10 action lawsuit for the same claims, a minimum-wage claim that
11 is going before Judge Delaney. And Mr. Greenberg's aware of
12 this, because the plaintiff's counsel called me up and told me
13 that Mr. Greenberg talk to him about it.

14 It's the same thing, but they have a better
15 plaintiff, to be quite honest. It's the Jasminka Dubric case
16 v. A Cab. Same, I mean, their Complaints are almost word for
17 word as Mr. Greenberg, but it's a different lawsuit and it's a
18 class-action that's proceeding before Judge Delaney. So if
19 the Court is concerned that there's a whole --

20 THE COURT: Which one was filed first?

21 MS. RODRIGUEZ: Mr. Greenberg's. His was filed in
22 2012, I believe, and -- but there's plenty of these class-
23 action lawsuits. And, again, the Court doesn't have to
24 preclude Mr. Greenberg, obviously, from getting the right
25 plaintiff and filing if he feels it's appropriate, but in this

1 circumstance, these are not the guys.

2 These -- they have to be dismissed per summary
3 judgment based on what is before the Court. He can throw out
4 all the speculative things, you know, and say, well, we can
5 prove this if you let us go on, if you extend discovery. He's
6 never asked for an extension of discovery until, like I
7 mentioned, the two days before.

8 And if -- if we have to go back before the Discovery
9 Commissioner, I am confident that she is not going to be happy
10 with the plaintiffs' behavior because she does recognize that
11 all of these things could have been brought up within the
12 discovery period.

13 And when she sees those answers that I turned over
14 to the Court showing their refusal to answer the questions,
15 their refusal to cooperate in discovery, the plaintiffs'
16 depositions where they refused to answer the questions, pled
17 the Fifth Amendment.

18 And then with counsel's written Response saying, I
19 have a statement, but I will turn it over when I deem fit, not
20 within the discovery period; I don't think Commissioner Bulla
21 is going to be very happy with the plaintiffs' behavior. So I
22 am doubtful that she is going to engage in an extension of
23 this discovery.

24 THE COURT: You may be correct, but my
25 interpretation of the Supreme Court's bent on Motions for

1 Summary Judgment convinces me that I must deny the motions at
2 this time, without prejudice, until -- well, until we see what
3 is going to happen on the discovery issues. So that has to be
4 the ruling as to both of those.

5 So that means that the Defendant's Motion to Dismiss
6 and for summary judgment against Michael Reno and against
7 Michael Murray are denied without prejudice at this time.

8 All right. Now, assuming that I don't knock out one
9 or both of the claims by virtue of the two motions I've taken
10 under advisement, the two Motions to Dismiss, one for the
11 first claim and one for the second claim, let us move on to
12 the Motion to Certify. Well, it's 12:00 now.

13 MS. RODRIGUEZ: I have a suggestion on this, Your
14 Honor, because it --

15 THE COURT: How's your -- how's your afternoon? Oh,
16 good, let's start back up at 1:30 and get this done.

17 MS. RODRIGUEZ: Your Honor, may I -- may I make a --

18 THE COURT: Sure.

19 MS. RODRIGUEZ: -- quick suggestion to the Court?

20 THE COURT: Sure.

21 MS. RODRIGUEZ: Because based on what I've just
22 raised, I believe we need to take this to the Discovery
23 Commissioner and we are set, I believe, next week for her to
24 make a decision on this, because if she extends discovery or
25 -- or does not, I'm going to refile this MSJ on both of these

1 gentlemen, and then the Court will not have two plaintiffs to
2 certify this case.

3 So I don't think that the Court will be in a
4 position to rule on the class certification today pending the
5 Discovery Commissioner's hearings next week. I would urge the
6 Court to maybe continue this a couple weeks out.

7 THE COURT: You're right. I am not inclined to do
8 so, just because of what I said earlier. We've had all kinds
9 of things that have held this case up, and I think that if
10 this Court is -- contributes to that logjam any further, I
11 think that when this shakes out at the Supreme Court level,
12 there may -- there might be some legitimate criticism of the
13 trial court. And I'm just not going to do it anymore.

14 I want to get these issues done so we all know where
15 we stand with these issues. Let's -- why don't we come back
16 at 1:30 and we'll get this done.

17 MR. GREENBERG: If that's what Your Honor believes
18 is best. I fully agree, Your Honor. We need to get this
19 fully brief, considered by Your Honor and decided. If that's
20 what we should do, we will return at 1:30 and hopefully we can
21 move speedily along at that time, Your Honor.

22 THE COURT: Yeah, let's do that. 1:30 then.

23 MR. GREENBERG: Thank you, Your Honor.

24 THE COURT: Thank you.

25 MS. RODRIGUEZ: Thank you.

1 (Court's recessed at 12:15 p.m. until 1:39 p.m.)

2 THE COURT: All right. Oh, this, I believe -- is this --
3 this is yours, I believe. Did you hand me this?

4 MS. RODRIGUEZ: You know, Your Honor, I gave you --
5 I gave you the wrong set. I had a courtesy copy for you
6 because I think that one had writing.

7 THE COURT: This is a Response to interrogatories?

8 MS. RODRIGUEZ: Right.

9 THE COURT: Yeah.

10 MS. RODRIGUEZ: I have copies for the Court.

11 THE COURT: Okay.

12 MS. RODRIGUEZ: Thank you. If I can find them
13 again. I noticed it at lunch, I apologize.

14 THE COURT: That's all right. All right.
15 Plaintiffs' motion, certify the case and appoint a Special
16 Master.

17 MR. GREENBERG: Yes, good afternoon, Your Honor.
18 Before I begin, first of all, two things. I was before Judge
19 Israel a week ago in the Thomas case and he granted class
20 certification, the record that I would submit was
21 substantially less compelling than the record in this case,
22 but in many ways quite similar.

23 What was presented to Judge Israel in that case was
24 a record of the U.S. Department of Labor investigation which
25 was resolved by a review of records, which made a finding

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1 about 600 or so drivers were owed about \$400,000 in unpaid
2 minimum wages under federal law which, you know, which was
3 taken care of. The company paid it and so forth.

4 So the issue wasn't whether they, in fact, owed
5 that. The issue was that it established, as a matter of
6 record, that there was reason to believe that there was a
7 common issue for the Yellow Cab drivers in respect to the
8 issues we've discussed previously in this case, specifically,
9 that that review and finding a resolution by the Department of
10 Labor, that the federal Department of Labor still left open
11 this issue of the tip credit that was being used to reach that
12 assessment in this issue of the additional one dollar an hour
13 question that Nevada law requires be considered in respect to
14 the health insurance requirements as to whether they are met
15 which would make --

16 THE COURT: Did he -- did he appoint the Special
17 Master?

18 MR. GREENBERG: There was no request made for the
19 appointment of a Special Master because that issue is not
20 present in that case, because in that case, we don't appear to
21 have the same question as to the noncompliance with the
22 record-keeping requirements.

23 And I would submit, actually, a record of a willful
24 evasion of those requirements. But that's not a required
25 showing that I think needs to be made here in terms of bad

1 faith or willfulness by the defendants to have the Special
2 Master appointed. And this is discussed in my briefs.

3 But before I go on to address anything further,
4 there is no order actually entered by Judge Israel at this
5 time. It's just a Minute Order on the record, a form of order
6 that needs to be submitted to him.

7 But as I said, I think there is an important
8 parallel there between this case and that case. I mean, here
9 we have a judgment which involved the same sort of review in
10 history involving a federal minimum wage compliance and so
11 forth in findings.

12 Was there any particular issues that the Court would
13 like me to address or that the Court is concerned about? I do
14 believe the briefing has been pretty thorough. We did discuss
15 this morning some issues that the Court may find germane or of
16 concern to it in respect to this motion.

17 THE COURT: The question regarding appointment of
18 the Special Master.

19 MR. GREENBERG: Well, yes, Your Honor. And --

20 THE COURT: One of the questions being what would a
21 Special Master be doing?

22 MR. GREENBERG: Well, what a Special Master would be
23 charged with doing, Your Honor, is creating the record the
24 defendants were statutorily required to create and did not
25 create. And what defendants have done here --

1 THE COURT: And in order to do that, how would the
2 Special Master proceed?

3 MR. GREENBERG: Well, I brought the Court's
4 attention this morning to reviews that were done as to trip
5 sheets that were used by Mr. Murray and Mr. Reno for two
6 particular pay periods. And I explained to the Court that
7 looking at the start times, the end times, the break times
8 entered on this trip sheets, there would be violations of the
9 minimum-wage threshold when you compare those hours to the
10 corresponding payroll.

11 THE COURT: And your allegation somewhere in here
12 was there's like 230,000 of those?

13 MR. GREENBERG: There are hundreds of thousands trip
14 sheets, yes, that would be within the time period.

15 THE COURT: How -- how long would it take the
16 Special Master and presumably a fleet of personnel?

17 MR. GREENBERG: It would -- it would obviously be an
18 undertaking of thousands of dollars of expenses, tens of
19 thousands of dollars of expenses, Your Honor. No question
20 about it in my mind.

21 THE COURT: Do -- do you have any sort of estimate
22 of how long it would take them to do that?

23 MR. GREENBERG: Well, Your Honor, the Department of
24 Labor investigation was actually resolve upon a representative
25 sample. I believe, they looked at six weeks, six pay periods

1 for a two-year period. Defendants are not willing to
2 stipulate to that in this case presumably.

3 Defendants' defense in this case is essentially that
4 everything is recorded in the trip sheets. No, we have no
5 weekly payroll hours, at least not before 2012 when the second
6 Department of Labor investigation came back, which resulted in
7 the 2014 consent judgment.

8 At that time, they did change their record-keeping
9 practices and this is documented in my submissions to the
10 Court, and did provide an hours work statement for every
11 corresponding payroll period. But prior to that time they did
12 not.

13 And, actually, Your Honor, we even have testimony
14 from -- I don't know that this was submitted in the briefs
15 here, Your Honor, from -- and we can supplement to develop
16 this further if the Court found it of interest. We actually
17 have testimony from Mr. Nady that was taken back in August
18 where he says that, yes, we did review contemporaneously the
19 trip sheets of the drivers, and we're going back to 2010 or
20 what have you. And then we would -- on a piece of paper,
21 there would be a statement as to the hours that were worked.

22 And if we determined that the hours -- that the --
23 the commission pay, because drivers are paid a commission, but
24 if they determined the commission that the drivers would get
25 for the pay period would be less than the minimum wage as

1 shown by that review on that piece of paper, we would adjust
2 the pay of the driver to increase it to the minimum-wage
3 threshold.

4 But they made no actual recording of the adjustment
5 on -- on the driver's pay stub, supposedly, because they
6 didn't want to encourage them to be lazy and therefore not
7 work hard enough and get the minimum wage subsidy that they
8 were getting. And they kept no record of those pay period
9 reviews that were conducted of the trip sheets
10 contemporaneously.

11 So, essentially, Your Honor, defendants have
12 constructed this problem for themselves, clearly in an attempt
13 to subvert a holding of responsibility that is sought in this
14 case. They have very conveniently failed to keep these
15 records, Your Honor, to make it impossible as a practical
16 matter, or at least to build for them a defense that they can
17 come to court with that, oh, well, no, everything was in the
18 trip sheets.

19 But to know what's actually in those trip sheets and
20 compile them on the class-wide basis for hundreds of drivers
21 over a number of years involving, as Your Honor was pointing
22 out, hundreds of thousands of trip sheets, is an impractical
23 economic burden to put on a plaintiff, any individual
24 plaintiff or any plaintiff's counsel. So therefore, you're
25 not going to be able to hold us responsible. It's a very nice

1 sort of situation for the defendants to be in if that's
2 allowed by the Court.

3 That's why I requested a Special Master. The
4 Special Master is a last resort, Your Honor. And they should
5 pay for this Special Master.

6 THE COURT: What would you say to the defendant's
7 argument that using a Special Master -- I'm not sure how --
8 they aren't exactly clear on what they think the duties of the
9 Special Master would be, but they are clear that they fear the
10 Special Master becoming a fact-finder with the Court being
11 merely a reviewing court.

12 MR. GREENBERG: Well, Your Honor, the fact-finder --
13 excuse me -- the Special Master cannot be a fact-finder, we
14 know that. The facts that will be found need to be found by a
15 jury, or if the Court was sitting as a fact -- finder of fact,
16 by the Court.

17 THE COURT: So if --

18 MR. GREENBERG: But the Special Master would not
19 be --

20 THE COURT: He's just doing the math?

21 MR. GREENBERG: He's just doing the math, Your
22 Honor. All he's going to be doing is looking at the trip
23 sheets and creating a summary of the information that's in
24 there. And defendants -- just as I gave Your Honor those --
25 Exhibit A of the opposition we were discussing in respect to

1 Mr. Murray and Mr. Reno, and as we have attached to the Motion
2 to Certify also as an exhibit, I believe, maybe it's M, it
3 would be the exact same thing I've already demonstrated to
4 this Court, is that someone would sit down -- in fact,
5 defendants did this already in connection with the Department
6 of Labor audit which was the result.

7 In fact, defendants testified under oath they did
8 this contemporaneously with when they did their payroll going
9 back to 2010 or wherever -- whenever it was. But they didn't
10 keep the information and they didn't centralize it, okay, and
11 put it in a spreadsheet or at least a spreadsheet that they
12 admit exists and that they be willing to produce.

13 So, Your Honor, the problem that is caused here is
14 of defendants' own making. And again, they had a statutory
15 obligation to keep these records. I mean, if you want, I can
16 give you a copy right here if 608 -- NRS 608.115, I mean,
17 (1)(a)(d). It says that an employer shall keep records for
18 the benefit of the employee and (1)(a)(d) says total hours
19 employed in the pay period by noting the number of hours per
20 day.

21 There is no total of the hours kept per pay period.
22 In fact, Your Honor, we don't even have a total per day,
23 because the trip sheets themselves only had information from
24 which one can calculate the hours per day. There's a start
25 time, there's an end time, and there are break times that are

1 listed. But you would actually have to sit down and, you
2 know, go through with your pencil and added it up and do the
3 calculations. So, in fact, they kept no record whatsoever
4 that even --

5 THE COURT: As you -- as you --

6 MR. GREENBERG: -- facially complies with the
7 statute.

8 THE COURT: As you can imagine, Ms. Rodriguez, that
9 would be something that you might need to respond to when --

10 MS. RODRIGUEZ: I'd be happy to, Your Honor.

11 MR. GREENBERG: If Your Honor would appreciate --

12 THE COURT: Then I'll get you to do that when you
13 give your opposition.

14 MR. GREENBERG: Your Honor, again, I understand that
15 the Special Master appointment is an unusual step for this
16 Court to take. But I don't really know how else the Court can
17 promote justice here, and enforce the command of the Nevada
18 Constitution under these circumstances which, as Your Honor
19 has observed, the Court has a very strong duty to enforce
20 those rights that are granted.

21 The remedial language of the Constitution itself
22 could not be broader. It authorizes the granting of all
23 remedial equitable, et cetera, relief, damages, et cetera,
24 that are appropriate to remedy any violation.

25 If an employer can essentially violate the statute

1 largely with impunity by simply not keeping the records that
2 they -- it's not violate the statute, it's violate the
3 Constitution, Your Honor, by not keeping the records that they
4 are required to by statute, and then built a defense based
5 upon that, it is inequitable.

6 Your Honor, you know, and there's other background
7 here. I mean, we have been arguing over the production of
8 certain electronic Cab Management records which -- which
9 record information regarding the activities of defendants'
10 taxicabs.

11 Defendants insist that those records, even though
12 the they'll tell us when a particular cab was being driven by
13 a particular driver and went out of the garage and came back
14 at the end of the shift, would not accurately reflect the time
15 that a driver was, in fact, working. And again, they kept no
16 punch clock, time clock records, in fact, reflecting the
17 information.

18 Defendants are not inclined to agree to use that
19 alternative information source as a record for understanding
20 what the plaintiffs -- what the class members were working.
21 In fact, they are fighting to even produce any of that. They
22 insist it can't be produced or it should be produced and so --
23 that's with the Discovery Commissioner. We're not here to
24 argue about the production of that information.

25 But what I'm saying, Your Honor, is that defendants

1 have very clearly postured themselves in this litigation as
2 building a defense on the position that the only accurate
3 information relating to the time that these individuals worked
4 is in those trip sheets. And there is no other source of
5 accurate information.

6 And they had a duty to keep that information in some
7 accessible form. They didn't, Your Honor. And it's clear
8 that they didn't do that intentionally because they were told
9 by the Department of Labor in 2010 to do it.

10 In fact, part of the consent order, which we were
11 previously discussing earlier today, with the federal
12 Department of Labor, compels them to keep records of hours
13 that the individuals are working, because they were found to
14 have been deficient in that duty under the federal minimum
15 wage law.

16 And as I told the Court, starting at sometime in
17 2012, apparently they have started correlating hours worked
18 with pay period wages and have actually put it in the
19 electronic record. And it's -- I told you, and we can get the
20 testimony, I don't know if it's -- if it's in the record here,
21 if the Court wants it.

22 Mr. Nady said they were doing that all along, they
23 just weren't bothering to preserve the information which, of
24 course, raises an interesting question why they weren't. They
25 were going to all of that trouble to review the records and

1 supposedly calculating and adjusting the pay to be sure that
2 it was compliant with the minimum wage, and presumably
3 defendants at trial would be entitled to testify to that
4 effect. I mean, their credibility might not be great, but
5 that would be for a jury to decide, Your Honor. But they
6 didn't keep those records.

7 So, again, Your Honor, given the duty that is
8 imposed by statute on the employer under 608.115, the need to
9 enforce the rights granted under the Constitution, and the
10 history of this case, the fact, again, that the defendants
11 were explicitly told, and it was actually in 2009, when the
12 original U.S. Department of Labor investigation was -- was
13 undertaken. That's at page 22, Exhibit B of the Class
14 Certification Motion. Well, page 22 is where it's discussed.
15 They promised they were going to keep these records; they
16 never did, Your Honor.

17 And, again, I don't believe it should be necessary
18 for the Court to make a finding of willful evasion or bad
19 faith on the part of the defendants to appoint the Special
20 Master here. But if the Court believes that that finding is
21 something that it would consider making or is germane to its
22 decision, it should certainly review that material.

23 And, you know, there was an assurance. In fact, it
24 also states in that report that they were advised they have to
25 pay their taxi drivers Nevada minimum hourly wages which was

1 6.85 an hour and Nevada, of course, doesn't get them tip
2 credit.

3 Now, again, Your Honor, we're not talking about
4 whether they owe my client something, whether they owe the
5 class something, you know, what they were found to be owed
6 under the federal minimum wage law.

7 Again, we're just talking about the background here,
8 the circumstances, the nature of the claims made in this case
9 and how they justify this admittedly unusual remedy that I'm
10 asking the Court to apply in respect to granting appointment
11 of a Special Master.

12 What's the alternative, Your Honor? If no Special
13 Master is appointed, the alternative is, this case can
14 proceed, presumably, defendants can proceed to trial with
15 their insistence that only -- only the -- the trip sheets
16 contain the accurate information, and they'll be allowed to
17 argue that. And how can I -- how can I possibly counter that?
18 I can't, Your Honor.

19 I don't have the tens of thousands, maybe hundreds
20 of thousands of dollars of resources that would be required to
21 review those trip sheets, and refute those claims, which
22 defendant has created that defense again through their
23 inaction, through their obvious neglect and failure to
24 preserve this information despite being statutorily required
25 to do so. And that promotes an injustice in this case, Your

1 Honor, by allowing this case to proceed in that posture.

2 I mean, remember, Your Honor, as class counsel, I
3 have undertaken to underwrite the cost and the expenses of
4 this litigation, and I intend to do so. And I may have to
5 hire an expert witness at some point to do that and I
6 understand that, Your Honor.

7 But the point is, the defendants, they're not
8 required to pay anything prior to judgment. And upon
9 judgment, who knows, if they go out of business, they may not
10 have to pay a judgment either, Your Honor. There's a limit to
11 the resources that I, as plaintiffs' counsel, can logically
12 devote to the championing of the class's interest. I'm going
13 to do my best; if the Court feels certification is proper and
14 I'm competent to be counsel, I will certainly discharge my
15 duties as class counsel to the best of my ability.

16 But given this unusual history and set of
17 circumstances here, the statutory obligation, the purpose of
18 the Constitution, a Special Master appointment, I think, is
19 clearly needed.

20 Now, Your Honor, in terms of limiting the burden,
21 let's say it would be \$100,000 for a Special Master to go
22 through 200,000 trip sheets and compile all of this
23 information for what could be a four-year period, perhaps.
24 Well, you know, defendants and the plaintiffs can sit down and
25 say, okay, look, will each select a one-month period from each

1 of those four years, and thereby cut the cost down to 112 as
2 to what it would be as a representative sample and stipulate
3 to work with that.

4 And I would be open to such a resolution, Your
5 Honor. If Your Honor grants my request, okay, you can
6 certainly also tailor it in such a fashion to compel the
7 parties to work together, to prepare a proposal that will
8 limit the cost.

9 I'm not -- it doesn't do my clients, the class, any
10 good to see \$100,000 or more spent on a Special Master when
11 that may deprive ultimately the class the funds that could be
12 available for them to recover on a judgment.

13 But the problem, Your Honor, is if the Court doesn't
14 push defendants towards any sort of agreement or willingness
15 to work out an alternative arrangement or approach here, it
16 doesn't grant me any measure of relief on this request for
17 appointment of a Special Master, it will promote an injustice,
18 Your Honor.

19 And I would -- you know, I suppose the Court could
20 even, if it wanted to appoint a Special Master who had some
21 sort of statistical expertise, and could opine to the Court as
22 to what a statistically significant sampling of four years of
23 trip sheets might consist of, so forth and so on, I mean, I
24 think we, as relatively intelligent counsel, could agree on
25 what would be an appropriate sample.

1 My point is that there are ways to approach this and
2 to give the relief that I'm requesting and promote the just
3 ends that I'm asking the Court to do without creating this
4 sort of overwhelmingly difficult and burdensome result for
5 everyone, which is not what I desire here. And as I said,
6 that's clearly not in the interest of the class either, Your
7 Honor.

8 You know, alternatively, look, if the defendants
9 wouldn't agree to be bound by such a sampling that the Court
10 might direct through a Special Master, the Court could at
11 least enter an order allowing the results of such a sampling
12 to be presented to a jury and allow a jury to consider that
13 for whatever -- for whatever it wishes.

14 I mean, if the defendants still want to insist that,
15 you know, there is an insufficient quantum of evidence here
16 and so forth and so on and argue to the jury that the
17 plaintiffs have failed to make out their case as they are
18 alleging because it's all in the trip sheets, and the trip
19 sheets within the trip sheets, isn't really fully known, I
20 suppose they could still to that.

21 But at least there would be some level playing field
22 here, Your Honor. At least there would be some measure of
23 remedy afforded to the plaintiffs in this case for what
24 clearly was an improper history and course of conduct by the
25 defendants in failing to preserve and keep this information in

1 the first place.

2 So, I think Your Honor understands. I mean, we can
3 move on and discuss the issues with the certification. I
4 think you're asking me to address the merits in terms of why,
5 why is Special Master should be granted here.

6 THE COURT: Yes, I --

7 MR. GREENBERG: And I've tried to address that as
8 best as I can, Your Honor.

9 THE COURT: Yeah. If there's anything else that you
10 feel, other than what's in the written work that you -- that
11 you want to address with me regarding the merits of the motion
12 itself, then feel free, but I don't have any questions.

13 MR. GREENBERG: Your Honor, quite candidly,
14 essentially what I would do if I was to argue further at this
15 point without specific inquiries from the Court, is really to
16 simply repeat what has been quite thoroughly briefed. And I
17 don't really want to take up the Court's time simply -- it's
18 nice for the Court to indulge me by giving me the time and
19 your attention to listen to what I have to say, Your Honor.

20 But, you know, just in a -- in a very brief nutshell
21 here, Your Honor --

22 THE COURT: Do you hear that? A lawyer said
23 "brief" --

24 MR. GREENBERG: Yes, very --

25 THE COURT: -- "I'll be brief."

1 MR. GREENBERG: I think Your Honor can appreciate we
2 are talking about common claims. We've talked about this
3 issue of the tip credit that was applied, of whether they're
4 entitled to this extra dollar an hour.

5 We have some quantum of evidence here to show that
6 there are hundreds of people who may be affected here based on
7 the Department of Labor's, you know, consent judgment.

8 So the idea that there's, you know, if a common
9 issue is numerosity is satisfied, we have common issues of the
10 law. Your Honor was addressing in the statute of limitations
11 issue a little while ago. We have a common issue of law as to
12 whether punitive damages would be available to the class, a
13 common issue as to whether the health insurance requirements
14 apply here and the extra dollar an hour applies.

15 There's also a request for injunctive relief in
16 respect to defendants' continuing violations of the statute.
17 It is apparent from the most recent pay stubs we have, which
18 go back to the 2014 period just about 15 months ago, and this
19 is in the record, I know, in terms of the submission we gave
20 Your Honor, that they're only paying 7.25 an hour. They may
21 well have to pay 8.25 an hour based on the health insurance
22 requirements.

23 Mr. Sargeant, who is an alternative representative,
24 and we submitted his payroll documents, states he never got
25 health insurance coverage from the company. The company

1 hasn't introduced any evidence actually establishing that they
2 met the health insurance requirement to the Constitution which
3 are pretty rigorous.

4 I mean, it's only 10 percent of the wages, not the
5 tips the employee earns that can be a contribution. It has to
6 provide family coverage. It's quite an expensive undertaking
7 for an employer to provide insurance that complies with those
8 requirements, Your Honor.

9 So, again, we're not resolving that issue right now.
10 But the point is, we should resolve it, and to get equitable
11 relief granted on that, to make them comply going forward
12 clearly is within the scope of what the Constitution provides.
13 There's questions as to the record-keeping process as well.
14 There are allegations that they are not keeping records
15 properly and so forth.

16 And potentially -- we are asking potentially the
17 Special Master be appointed actually to monitor the defendants
18 operations and continuing compliance with the requirements of
19 the Constitution.

20 But we're not asking at this point that a Special
21 Master be applied -- be appointed to actually enforce any
22 decrees from this Court. We're simply asking the Court, allow
23 us to gather evidence and presumably the Court, in equity,
24 would have to, you know, hear and determine those claims at
25 some point in the future.

1 And, again, this is discussed in the brief. There's
2 questions of standing about the ability to request equitable
3 relief. This is, again, addressed in the brief. It's not an
4 Article III standing issue under the United States
5 Constitution of Nevada.

6 I could go on, Your Honor. And there are additional
7 nuances of the law here and legal issues that are raised. And
8 I -- again, there's not much point of me just going on and on
9 about it. If the Court has questions, I should assist the
10 Court or maybe I should respond to what counsel has to say.
11 Thank you.

12 THE COURT: Okay. No, I don't have any further
13 questions at this point. Ms. Rodriguez?

14 MS. RODRIGUEZ: Your Honor, I'll try to start in the
15 order in which Mr. Greenberg addressed some of the items. I
16 can't go through and refute everything he said, but listening
17 to it, I'm just dumbfounded, because of the majority of the
18 representations to the Court, I feel like he was just making
19 them up as he went along. They are unfounded. They're simply
20 allegations.

21 He threw so much out there. He said no less than
22 three times, he brought up that -- that DOL, and that there
23 was this adverse finding, and I think Your Honor already took
24 a look at that. And I'm sure we're going to have to brief
25 that separately, because he continues to throw that out as a

1 basis for certification. And that couldn't be further from
2 the truth about a finding, an adverse finding against A Cab.

3 A Cab has a clean history, a clean record, has never
4 been reprimanded, has never received these penalties, has
5 never been told otherwise. Everything that Mr. Greenberg
6 continues to hammer and say this is -- this is it, this is it,
7 go forward, grant certification because they're such bad guys.
8 It's just, I am stunned that these representations are being
9 made to the Court.

10 THE COURT: Well, let me toss in a question there,
11 then, because in between -- somewhere in amongst all the
12 various points that Mr. Greenberg brings up about the prior,
13 whatever you want to call it, monitoring, examination,
14 investigation, audit by --

15 MS. RODRIGUEZ: The Department of Labor.

16 THE COURT: Yeah.

17 MS. RODRIGUEZ: Um-hum.

18 THE COURT: Is the notion that as early as 2009,
19 there was -- and I take it there was an order of sorts that --

20 MS. RODRIGUEZ: No.

21 THE COURT: -- they were to maintain records.

22 MS. RODRIGUEZ: No, sir. No, Your Honor. I mean,
23 you have that exhibit, that same exhibit that he keeps
24 reading. I don't know where he's reading because it just
25 keeps saying, no violations found. Record-keeping, no

1 violations found.

2 THE COURT: All right. And no -- your position is
3 that at no time has any of the -- any government agency,
4 rather it be federal or state, have ordered your client to
5 maintain records of the sort that they are seeking in this
6 case?

7 MS. RODRIGUEZ: Well, Your Honor, and that's -- that
8 was -- I'm glad you brought that up, because it's quite the
9 opposite. Mr. Greenberg just keeps continuing to emphasize
10 they've been told, they have to do this. It's been the
11 opposite. The Department of Labor checked off on the records
12 that were being kept. There's been no violation. They looked
13 at the records. They -- A Cab has kept the trip sheets, has
14 kept the pay stubs, the DOL signed off. The Discovery
15 Commissioner looked --

16 THE COURT: When you say signed off, is there some
17 record of them signing off?

18 MS. RODRIGUEZ: It's attached to --

19 THE COURT: Or just the --

20 MS. RODRIGUEZ: It's the same thing that Mr.
21 Greenberg keeps pointing to, the 2009 DOL audit.

22 THE COURT: And it's just that there's --

23 MS. RODRIGUEZ: It says no violations found.

24 THE COURT: -- an absence of saying that you're
25 supposed to keep records?

1 MS. RODRIGUEZ: Right. It just says no violations.
2 I think it says it four times, no violations, no violations.
3 I don't know how many other ways they can say it.

4 THE COURT: Okay.

5 MS. RODRIGUEZ: Number two, Discovery Commissioner
6 tells them they're keeping -- that the records that we have
7 and that we've produced are fine. Mr. Greenberg then says,
8 well, they should have been keeping an electronic time clock,
9 they should have been keeping electronic files. It's illegal
10 in the taxicab industry.

11 There is a statute in the NRS's that says you have
12 to use a manual time clock. You cannot have the electronic
13 time clock that he's wanting. And we went through this
14 extensively in the depositions. And it was explained to him
15 over and over and over. But he hears what he wants to hear
16 and he manipulates the information to say otherwise and it's
17 absolutely not true.

18 The Taxicab Authority and the Nevada Transportation
19 Authority, the NTA, both require that a manual time clock,
20 which is reflected on the time sheets, is what is required to
21 show the hours worked. A Cab has kept all of those records.

22 But I went back to the very first point because the
23 Court's question was, what is a Special Master going to do?

24 THE COURT: Okay.

25 MS. RODRIGUEZ: First of all, I don't know why we're

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1 talking about a Special Master because -- for two reasons.
2 One, discovery is closed. It closed October 1st. Any
3 remaining issues are before the Discovery Commissioner.

4 And I put this in my brief, that I didn't even like
5 the fact that he was asking for a Special Master. I pointed
6 out to the Court is that he's trying to get around the orders
7 from the Discovery Commissioner because he -- she has said
8 otherwise. She's already told him, they're not required to do
9 this, this and this. He doesn't like it.

10 So now he's coming back and asking the Court for the
11 appointment of a Special Master to do the discovery that he's
12 refusing to do, and that it's too late to do. He said, oh, I
13 can get an expert to come look at some of this stuff, perhaps
14 I should. It's too late. The expert deadline was months ago.
15 He did not do that.

16 It's too late to speculate about what could be done
17 in this case. And that was my whole point, is we have to look
18 at where are we at now. He simply has not worked up the case
19 and he wants a Special Master to go back and look at
20 everything that he should have been doing for the last 2 to 3
21 years which he's refused to do at the defendant's expense.

22 THE COURT: What -- which is what? Which is what?

23 MS. RODRIGUEZ: Which is look at the trip sheets,
24 look at the pay stubs. And we've given them for -- already
25 the two named plaintiffs. He's refused to even look at those.

1 In two years he hasn't looked at them, because if he had, we
2 wouldn't have these motions for summary judgment saying
3 there's no evidence, there's no proof that there's been any
4 violation whatsoever.

5 He -- now he wants them for the rest of the class,
6 but he doesn't want to look at them again. He wants a Special
7 Master to go look at them, find me a plaintiff, find somebody
8 with the violation so I can proceed against A Cab. Oh, and by
9 the way, A Cab's paying for it.

10 This is an upside down case, Your Honor. That
11 absolutely makes no sense. And for the Court to -- I think
12 the Court denied the summary judgment motions at this point
13 saying we need to resolve these discovery issues based on his
14 representations that they had something to do with Michael
15 Murray and Michael Reno, which I am represented to the Court
16 they have absolutely nothing to do with those two plaintiffs.

17 But I understand Your Honor's concerns that we need
18 to resolve that issue with the Discovery Commissioner and then
19 I'm going to come back and I'm going to refile those things.

20 But for the same reason, it makes no sense that
21 unless the Discovery Commissioner is going to rule to reopen
22 discovery on all these issues or to extend discovery, that the
23 Court should appoint a Special Master at this point. There is
24 nothing for the Special Master to do as discovery is closed at
25 this point.

1 Everything I heard come out of Mr. Greenberg's mouth
2 had to do with, again, fraud, falsifying trip sheets,
3 falsifying hours, we want to Special Master to go back and
4 look at those things.

5 And I think it is very important to point this out,
6 Your Honor, because we're back on this issue of unpaid hours,
7 false trip sheets, fraud and those --

8 THE COURT: He claims -- he claims in his written
9 work here that in the face of your -- you're protesting to
10 that effect in your opposition that there's fraud claims here.

11 MS. RODRIGUEZ: He just said they were. He just
12 told you over and over and over, the employer has been
13 deceitful, has purposely deceived the drivers. Deception and
14 fraud to me are ringing the same tune.

15 THE COURT: Okay. But there is a difference between
16 a fraud claim cause of action --

17 MS. RODRIGUEZ: Correct.

18 THE COURT: -- and allegations of in the course of
19 the, you know, evidentiary fraud, if you will --

20 MS. RODRIGUEZ: Right.

21 THE COURT: -- or some such thing, right?

22 MS. RODRIGUEZ: But again, his claim is not that the
23 drivers were underpaid on a minimum-wage claim. His claim is
24 that the employer has purposefully forced the drivers to
25 falsify trip sheets, they're engaging in fraud.

1 He personally even amended his Complaint to allege
2 those claims against Jay Nady, that he was fraudulently doing
3 all of these things profiteer from it -- to profit from it.

4 And this goes exactly to the point of why fraud is
5 not an appropriate claim under a class-action certification.
6 By his own theories and by his own arguments --

7 THE COURT: Is there a fraud claim?

8 MS. RODRIGUEZ: -- he's just talked himself out of a
9 class certification.

10 THE COURT: Is there a fraud claim in the Complaint
11 as it stands?

12 MR. GREENBERG: Your Honor, there --

13 THE COURT: Wait, wait, I'll let you respond.

14 MR. GREENBERG: Oh, oh --

15 THE COURT: But let me --

16 MR. GREENBERG: I'm sorry.

17 MS. RODRIGUEZ: Everything in this Complaint --

18 THE COURT: I'm sorry, I meant --I meant to direct
19 that to her.

20 MS. RODRIGUEZ: Is there a specific fraud claim?

21 THE COURT: Yeah.

22 MS. RODRIGUEZ: The word "fraud" goes throughout the
23 pleading. It's not -- doesn't say --

24 THE COURT: Well, that's not my question. My
25 question is --

1 MS. RODRIGUEZ: First, class --

2 THE COURT: My question is, is there a fraud claim
3 in the Complaint? You know what I mean?

4 MS. RODRIGUEZ: I'd have to pull the Complaint out
5 to see if there's a fraud --

6 THE COURT: Okay. Let me rephrase that; a fraud
7 cause of action?

8 MS. RODRIGUEZ: There -- my understanding, there's
9 three claims.

10 THE COURT: Okay.

11 MS. RODRIGUEZ: One is the minimum wage based on
12 fraud, based on false trip sheets. Number two is the
13 statutory claim that Your Honor was going to consider. That
14 has -- I don't believe that has anything to do with fraud.
15 But number three, the amended one, has to do against Jay Nady
16 and his fraudulent practices. So two out of three are based
17 on broad.

18 THE COURT: Is that -- is that a fraud claim against
19 him then?

20 MS. RODRIGUEZ: I believe so. It said -- it said
21 that he is purposely trying to bankrupt the company so that he
22 can keep the money.

23 THE COURT: Okay. All right. Now, is there a fraud
24 cause of action in your Complaint?

25 MR. GREENBERG: Your Honor, no.

1 THE COURT: All right.

2 MR. GREENBERG: The Court is familiar --

3 THE COURT: What is the one against Mr. Nagy?
4 Naggy? Am I saying that right?

5 MS. RODRIGUEZ: Nady, N-a-d-y.

6 THE COURT: Nady.

7 MR. GREENBERG: The claims made against Mr. Nady
8 personally concern his misuse of the corporate forum and his
9 tortious acts independently by directing that the drivers not
10 be paid the minimum wage, by failing to have the cooperation
11 which he fully controls, comply with Your Honor's
12 determination in January and February of 2013, that the
13 minimum wage needed to be paid to the drivers. The defendants
14 just ignored that. They kept not paying the drivers in
15 compliance --

16 THE COURT: Okay. Well, I'm not asking what all the
17 -- what the evidence is.

18 MR. GREENBERG: Well, that's the allegation, Your
19 Honor.

20 THE COURT: All right.

21 MR. GREENBERG: Okay. Fraud, you're just -- as we
22 all know, Your Honor, fraud is a common law concept that
23 requires a misrepresentation, but it involves reliance. You
24 induce someone to act.

25 THE COURT: But the cause of action, is -- is it one

1 to pierce the corporate veil or what is the objective?

2 MR. GREENBERG: In terms of Mr. Nady, yes. That --
3 that civil conspiracy, there may be a related -- as I said, a
4 related tort claim.

5 THE COURT: All right.

6 MR. GREENBERG: But it is not -- it's not a fraud
7 claim because, Your Honor, the taxi drivers here weren't
8 induced to rely upon any representations. There's no claim in
9 this case --

10 THE COURT: Okay.

11 MR. GREENBERG: -- that there was reliance. That is
12 an essential element to fraud.

13 THE COURT: Okay.

14 MR. GREENBERG: So it's just not in the picture here
15 in any capacity in respect to any claim.

16 THE COURT: All right. Thank you.

17 MR. GREENBERG: I -- the Court maybe wants to
18 continue with defendants' counsel?

19 THE COURT: I do, yes.

20 MR. GREENBERG: Yes.

21 MS. RODRIGUEZ: The cause of action under -- against
22 Mr. Nady says that Nady and the corporate defendants or
23 separate legal parties. They would promote a fraud and an
24 injustice, at least to the extent that Nady has personally
25 enriched himself from the violation of the Nevada

1 Constitution.

2 THE COURT: What's the prayer for that cause of
3 action?

4 MS. RODRIGUEZ: I think it's unjust --

5 THE COURT: Is it fraud damages or --

6 MS. RODRIGUEZ: -- unjust enrichment.

7 THE COURT: Okay. Unjust enrichment and perhaps
8 piercing the corporate veil; is that what it's --

9 MS. RODRIGUEZ: Correct. Correct.

10 THE COURT: Okay. All right.

11 MS. RODRIGUEZ: Punitive damages.

12 THE COURT: Okay. Okay, go ahead then. I -- I had
13 interrupted you with that question.

14 MS. RODRIGUEZ: "The defendants' malicious,
15 oppressive and fraudulent conduct is demonstrated by his
16 failure to make any the allowances to pay a minimum hourly
17 wage. Defendants engaged in the acts and omissions or
18 fraudulently conduct." He says it repeatedly. It's -- the
19 whole Complaint is based on fraud.

20 THE COURT: Okay.

21 MS. RODRIGUEZ: Not appropriate for class
22 certification. I cited the case law in there, that's the
23 Travelers case, the Johnson v. Travelers case. Fraud is not
24 an appropriate cause of action for certification.

25 THE COURT: Is this a fraud cause of action?

1 MS. RODRIGUEZ: I think we're doing a play on words,
2 Your Honor.

3 THE COURT: Maybe so because --

4 MS. RODRIGUEZ: If you allege a cause of action, but
5 throughout the pleading --

6 THE COURT: You throw in a lot of --

7 MS. RODRIGUEZ: -- you say fraud, fraud, fraud,
8 fraud, fraud.

9 THE COURT: Yeah.

10 MS. RODRIGUEZ: And then the only basis to support
11 your claim is a declaration, one declaration that says fraud
12 and falsification --

13 THE COURT: Yeah.

14 MS. RODRIGUEZ: -- I was forced to falsify my trip
15 sheets and that's why I'm bringing this claim against A Cab, I
16 think there's no question that we're talking about fraud.
17 That's the cause of his --

18 THE COURT: Okay.

19 MS. RODRIGUEZ: And that's what his basis --

20 THE COURT: I guess what I was trying to get at, was
21 is there a claim whereby one alleges fraud and therefore
22 punitive damages.

23 MS. RODRIGUEZ: Right, correct. Yes, yes, he is
24 seeking that, absolutely. I mean, if -- if he's --

25 THE COURT: Okay.

1 MS. RODRIGUEZ: -- if he's going to concede on
2 punitive damages, I would -- I'd love to hear that because
3 that's probably our next motion is -- is the punitive damages.
4 I mean, he's seeking punitive damages and seeking class
5 certification, both based on fraud.

6 THE COURT: Okay.

7 MS. RODRIGUEZ: You know, and Your Honor, I think
8 one thing that we just completely skipped over and I touched
9 upon in early on this morning, is the plaintiffs' counsel and
10 the plaintiffs themselves and their qualifications to proceed
11 to represent the class in this matter. I mean, Mr. Greenberg
12 just stood up and gave you all these reasons about fulfilling
13 his duty to the class, and he understood his obligations to
14 the class.

15 I think we have clear evidence here, Your Honor, and
16 I'm really stunned that he has not been more reprimanded about
17 this issue, because when I learned in the depositions that a
18 settlement offer had not even been conveyed to these
19 plaintiffs, and that they were shocked that such an offer was
20 even on the table, I have never -- in my 17 years of practice,
21 I have never run into that where a counsel has not conveyed
22 the offer. And I -- it violates the very basics of our
23 Professional Rules of Conduct and Ethics and that in and of --

24 THE COURT: Well, I think you have just struck at
25 the reason why you haven't heard me say more about it. There

1 are other avenues available to people if they wish to avail
2 themselves of it.

3 My understanding -- and I don't -- I may not be
4 accurate in this. That's why I asked earlier how accurate
5 this was, was that at least one at these plaintiffs in the
6 deposition said, no, I didn't know about it, but at a later
7 point said something to the effect where they -- they were not
8 interested in taking any Offer in Judgment.

9 MS. RODRIGUEZ: Well, number one was Reno. He never
10 said what Your Honor just indicated.

11 THE COURT: Okay. All right.

12 MS. RODRIGUEZ: Number two, got a heads up about my
13 question because he was on day two or three later.

14 THE COURT: Okay.

15 MS. RODRIGUEZ: So he knew the question was coming.
16 There's no doubt in my mind that he knew the question was
17 coming about whether he had received notification of the Offer
18 of Judgment.

19 THE COURT: Okay.

20 MS. RODRIGUEZ: My Offer of Judgment was served in
21 March. He said under oath that he learned of it two months
22 later. As Your Honor knows, they're only good for 10 days.
23 So he's -- and I pressed him. I said, so you learned of this
24 two months later? And that's when he started pleading the
25 Fifth Amendment.

1 He refused to answer further. Ms. Sniegocki
2 continued to tell him, I'm instructing you not to answer
3 anything as pertains to discussions between yourself, Mr.
4 Greenberg and myself. And so then he proceeded from thereon
5 to plead the Fifth so that he would not perjure himself in his
6 deposition.

7 So, I think if Your Honor looks at that deposition
8 transcript, it's very clear that neither plaintiff knew about
9 the offer on the table. And, you know, for the second guy to
10 start saying, I don't want to perjure myself, I'm going to
11 plead the Fifth, and then thereafter he refused to answer
12 questions is -- you know, the other prong of this, of my
13 statement, that these plaintiffs are -- do not reach the
14 minimum threshold to represent the class based on their
15 character, based on their background, everything I produced to
16 the Court.

17 The Court needs to look at that. If they cannot --
18 on both ends. If Mr. Greenberg is not even representing the
19 interests of these two -- the best interest of these two
20 plaintiffs, how can he be trusted to represent the best
21 interest of the class?

22 This is why I pointed out to the Court that this is
23 attorney-driven litigation, not for the protection of the
24 plaintiffs, as he continues to want to emphasize to the Court,
25 because I think he understands the Court's concern that the

1 Court's only concern is upholding the Constitution,
2 administering justice.

3 And I know that Your Honor is concerned about the
4 taxicab drivers, that they are -- have been deprived in any
5 fashion. But your -- the trust is being misplaced. This
6 employer does everything, bends over backwards to take care of
7 its drivers.

8 And I'm sorry that Mr. Nady is not here personally
9 to continue to emphasize that to you because, you know, this
10 is a family-owned, he's -- it's a one-owner person. He has
11 shed blood, sweat and tears to build this company. It's a
12 smaller company. They don't have the electronic capacity of
13 the larger companies that Mr. Greenberg is going against, the
14 Yellow Cabs and the Whittlesea Blue and this is a small
15 company.

16 THE COURT: I read your description of the --

17 MS. RODRIGUEZ: Right, right. And it's important.

18 THE COURT: -- of the business and the fact that it
19 operates for the most part in a restricted part of the --

20 MS. RODRIGUEZ: Correct.

21 THE COURT: -- of the Valley here.

22 MS. RODRIGUEZ: Their restrictions were lifted, I
23 think, 10 days ago.

24 THE COURT: Well, let me -- let me -- so that we're
25 -- I don't know if I'll actually make anything clearer.

1 Sometimes when you try to clarify things, you actually wind up
2 doing the opposite.

3 But you seem to be -- you're shocked, I believe, was
4 the way you put it, that I -- that I wasn't more shocked or
5 didn't jump on something about the allegations that
6 plaintiffs' counsel didn't convey an offer to his client. And
7 what I want to make clear is there are all kinds of facts that
8 oftentimes pertain to issues that sometimes rear their ugly
9 heads in litigation, but that aren't really part of the
10 litigation.

11 There's no cause of action here that relates to
12 plaintiffs' counsel's representation of his client in the
13 sense of conveying offers. There are other forums for that.

14 Years of seeing all sorts of thorny issues crop up
15 in litigation convinces me that unless this is the proper
16 forum for an issue, a thorny issue, the -- only that which
17 really needs to be said, should be said, because of the fact
18 that there may well be a lot of other facts that revolve
19 around it, that cannot be properly brought up in the context
20 of this litigation.

21 And when it deals with the reputation of an
22 attorney, and the way they deal with their counsel, I have
23 learned through sometimes thorny experience that one must
24 tread cautiously and be aware of the fact that there are facts
25 that may not ever come to light in the context of this

1 litigation. They may well be in another forum, I don't know.

2 MS. RODRIGUEZ: I appreciate and understand what
3 you're saying, Your Honor. And that sheds light on me -- for
4 me, because, I guess I was troubled by the fact that you heard
5 that and to me, I didn't even see you flinch.

6 THE COURT: Sure. I read it.

7 MS. RODRIGUEZ: And to me it was shocking to -- to
8 see it.

9 THE COURT: I read it before I heard it.

10 MS. RODRIGUEZ: And -- and --

11 THE COURT: So any flinching that went on went on in
12 chambers.

13 MS. RODRIGUEZ: But I hear what you're saying, that
14 it is -- perhaps it's not the appropriate forum. But I will
15 -- I will -- I understand what you're saying, and I will
16 address that as -- but I think it does go to the issue of this
17 certification, because there is -- and I supplied the case law
18 that says that the Court has to be assured that both the
19 counsel and the plaintiffs are the proper one to represent
20 this class. And I think it's important.

21 And the reason to me it's shocking is because, you
22 know, it's a basic, ethical rules for proceeding. I represent
23 a lot of plaintiffs in my -- in my practice. And I know no
24 matter how pathetic the offers are, I get \$5 offers all the
25 time and I have to call them up and tell them, you know, I'm

1 obligated to pass this offer on to you.

2 And when I learned in these depositions that --
3 these weren't \$5 offers; these were legitimate, outstanding
4 offers to try to resolve this thing. And this wasn't the
5 first time that this -- because we tried other avenues with
6 Mr. Greenberg early on. We've had several meetings where
7 we're trying to sit down and work these things out.

8 But we are meeting a wall over and over and over
9 because this plaintiffs' counsel wants to -- clearly wants to
10 take this thing to get it certified, wants to get -- I don't
11 -- you know, what becomes evident is that he -- from the
12 evidence, it does not appear that the concern is for the
13 plaintiffs themselves, but rather to -- for the fees and the
14 costs, to acquire that. And I think that's why I attached
15 some of the case law that shows that that's not the proper way
16 to handle a class certification.

17 We -- we are all here to make sure that as the taxi
18 drivers, that if there has been a violation, they need to be
19 compensated. And that was Mr. Nady's intention in making them
20 a very large offer, say, if you can't tell me what you're
21 owed, we have a DOL saying you're owed \$100 and, here, I'm
22 going to offer you \$5,000, you know, because he wants his cab
23 drivers, even former cab drivers to be happy.

24 //

25 But he was convinced that these guys were just never

1 told because he said, I can't believe that they wouldn't
2 accept that. That's more than they've made in six months.
3 You know, I want to pay them six months worth. And its
4 because they simply were not told. And I think the Court
5 needs to consider that before ever addressing a certification.

6 And I just -- I know the Court is anxious to certify
7 this because of the --

8 THE COURT: Well, let me give you another practical,
9 pragmatic reason why I would be loathe to go down that road.
10 Because I know, as I'm sure you know from seeing Mr.
11 Greenberg's involvement in other class-action cases, I know
12 that he's involved in a lot of class-actions.

13 I daresay that's probably exclusively what he does,
14 at least as far as I know. I have seen him at work in a lot
15 of other cases and I have confidence in him, as I do you now,
16 that you know what you're doing when it comes to this type of
17 litigation.

18 If I go down that road, if I get detoured from the
19 issues that are so important in this case, to go down this
20 other road, we're going to turn this into not only a whole new
21 lawsuit, a separate lawsuit, but World War III, because I
22 would imagine that when it came right down to it, he would do
23 the appropriate thing; hire counsel, new causes of action
24 would eventuate that would certainly involve several people.
25 And the next thing you know, we would never get this matter

1 resolved.

2 So I'm going to try to keep my nose on the issues
3 that are properly within the context of this litigation. That
4 is not the say that I always cast a blind eye, or a blind ear
5 -- that's not right -- a deaf ear to things that are brought
6 up that make me question. But it just means that I'm more
7 likely to make note of it, but as long -- unless I see
8 something that causes me to think that I must take action
9 here, I'm liable to try and keep my nose to the grindstone and
10 get this case litigated and let you all deal with the next
11 case to be litigated.

12 MS. RODRIGUEZ: And we certainly will in a different
13 forum, Your Honor. But unfortunately, or fortunately, however
14 you want to look at it, it is an element for class
15 certification.

16 THE COURT: Okay.

17 MS. RODRIGUEZ: The Court has to consider
18 plaintiffs' counsel --

19 THE COURT: Indeed.

20 MS. RODRIGUEZ: -- as well as plaintiffs in this
21 matter. And I know that Your Honor has -- is going to take
22 the prospective issue, prospective application issue under
23 advisement further. But if Your Honor rules in our favor on
24 that one, both of these plaintiffs are gone.

25 As I mentioned, the Discovery Commissioner's

1 hearings are in the next week, if not two weeks I believe
2 they're next week. If she refuses to extend discovery, or
3 limits it for the one issue, I believe, that he has in front
4 of her, it's not going to affect the -- any additional
5 evidence for Murray or Reno, and I will be refiling the
6 Motions for Summary Judgment and to Dismiss.

7 And I think the Court has, you know, is trying to be
8 cautious in allow -- in denying those without prejudice by
9 just letting these Discovery Commissioner issues play out.
10 But at this point, we don't have two solid plaintiffs. They
11 are very questionable. They're questionable with character,
12 they're questionable with their claims, they're questionable
13 as to whether they will survive at all with the dismissal on a
14 prospective application issue.

15 So, you know, all during this course of this
16 litigation, Mr. Greenberg has wanted you to certify so that he
17 can find a plaintiff. And he's amended his Complaint several
18 times, as Your Honor knows, to even personally assert things
19 against Jay Nady.

20 He's never brought in another plaintiff. He keeps
21 dangling this Michael Sargeant or this Brauchle out there.
22 He's had ample opportunity to name them, even as a witness.
23 He's never done so. And again, I don't know how many times
24 -- I know the Courts probably tired of me saying this, but
25 discovery closed October 1. We have nothing to show that

1 Brauchle or Sargeant is any better of a plaintiff. And, in
2 fact, it's kind of suspicious as to why he would never name
3 them as a plaintiff or even as a witness.

4 But with what is before the Court today, there is
5 not sufficient elements. He's not even touched the elements
6 for class certification. And, you know, I just -- that's the
7 plaintiffs' doing in this, that we -- that I know the Court is
8 concerned, well, this may not go to trial in five years, but
9 this is plaintiff who has created this situation by not
10 adequately preparing his case.

11 And if there was any other plaintiff -- I mean, I've
12 been before you, Your Honor, as a plaintiff's counsel on this
13 and I know you kick them out.

14 So I'm just -- I'm befuddled that these two
15 plaintiffs that have nothing to support their case, that we're
16 even considering a class certification because class
17 certification is secondary.

18 First, Your Honor needs to see if these are
19 legitimate claims before them. And then if joinder is
20 impracticable -- and we haven't even gotten to any of those
21 elements because we're down here.

22 And I think Mr. Greenberg is just wanting you to
23 skip ahead and he's talking to you about health issues and
24 dollar per hour and this and that, but he didn't do any
25 discovery on any of that, and there's nothing to support that

1 there's been any violation ever.

2 And he's asking, you know, the contrary of what we
3 see all the time. He's asking the defense to put forward all
4 these things to prove that his -- to disprove his case. But
5 it's his burden to prove it, and it simply not there, Your
6 Honor.

7 So I don't think class certification is appropriate
8 at this time.

9 THE COURT: All right. Okay. I need to take five
10 minutes --

11 MR. GREENBERG: Yes, Your Honor.

12 THE COURT: -- before we hear from Mr. Greenberg.

13 (Court's recessed at 2:34 p.m. until 2:41 p.m.)

14 THE COURT: All right, Mr. Greenberg.

15 MR. GREENBERG: Yes, Your Honor.

16 Is there anything in particular that the Court would
17 like me to respond to or that was raised?

18 THE COURT: No, I don't think so.

19 MR. GREENBERG: Then I would like to respond, Your
20 Honor, to this issue of the history here with the Department
21 of Labor, and the report that was actually conducted. And if
22 you go to Exhibit B, and I'm reading verbatim from this.

23 THE COURT: I'm sorry, which exhibit?

24 MR. GREENBERG: This is Exhibit B, Your Honor.

25 THE COURT: B as in boy?

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1 MR. GREENBERG: B as in boy of the moving papers.
2 This is the 2009 U.S. DOL report that defense counsel was also
3 referring to. If you look on page 2, it says, "Section 6,
4 there were no minimum wage violations found." Okay. And
5 skipping one more sentence, it says, "While there is no record
6 of actual hours worked, the drivers have scheduled hours and
7 complete trip sheets." So they find there is no record of
8 actual hours worked.

9 THE COURT: Okay.

10 MR. GREENBERG: If we go down to the bottom where it
11 says "Disposition" after the redacted portion, it says, "We
12 discussed the findings of the investigation. The firm was
13 advised that they must keep a record of actual hours worked
14 and that the drivers, while exempt from overtime, must be paid
15 at least the applicable minimum wage for all hours worked."
16 They're advised that Nevada minimum wage is currently 6.85.
17 And in the last phrase it says, "This investigation is being
18 concluded with the firm's assurance of future compliance."

19 Your Honor, I don't see how one can interpret that
20 as anything other than a promise by the defendants that they
21 were going to follow the admonition right there in that
22 disposition paragraph, that they were going to keep records of
23 the actual hours worked by the taxi drivers. The DOL said,
24 you need to do this. They said, you have our assurance we're
25 going to comply and that's how it was disposed of in 2009.

1 The reality is, they never did it. I know we have
2 trip sheets, Your Honor. But as I pointed out to the Court
3 before, those trip sheets don't even include a statement as to
4 the hours the driver worked during that particular shift.

5 They only include information from which it could be
6 gathered, but those aren't -- those aren't statements of the
7 actual hours they worked on a shift. It's only information
8 from which one could ascertain it which -- they testified they
9 did, and that testimony is not actually before the Court.

10 That deposition was taken in August. I could
11 present it if the Court wanted. I don't know that the Court
12 should need to consider that actually. But this is just
13 addressing this issue that we started at regarding the Special
14 Master and the question of the history here.

15 Now, there was a statement from defense counsel that
16 the trip sheets have to be manually stamped and they're not
17 allowed to keep an electronic record of the time that these
18 drivers worked. Your Honor, there is no prohibition against
19 them keeping a payroll record of the hours that any employee
20 works or that these drivers work. Again, 608.115 specifically
21 requires that they keep these records as to the number of
22 hours worked per pay period and maintain them. They didn't.

23 Counsel is referring to this operational requirement
24 regarding the Taxi Commission that on those trip sheets
25 themselves, they want to see a manual stamped timestamp from a

1 time clock, because they have to keep those trip sheets to see
2 what passengers they transported, various other things.

3 That's an independent regulatory requirement. It's
4 got nothing to do, Your Honor, with their obligation as an
5 employer to maintain records of the hours their employees
6 work, Your Honor. So it -- it's not even apples to oranges.
7 It's just -- it's just a completely different issue and
8 regulatory requirement.

9 Your Honor, you've heard a lot from defense counsel
10 about representations regarding what the Discovery
11 Commissioner has decided in this case. Your Honor, I don't
12 want to get into refuting that. We do have some decisions
13 from the Discovery Commissioner. I will say that we do have a
14 hearing with her again on the 18th of this month.

15 She has specifically granted me leave to supplement
16 my submissions to her based on this deposition of Mr. Nady
17 that was conducted in August, based upon a deposition of this
18 computer data consultant that was conduct before then because
19 we've been in this electronic records production dispute since
20 March of this year, Your Honor. She will rule on these
21 issues. A request for extension of the discovery period was
22 made because defendants wouldn't agree to that.

23 All of these issues with the discovery, again, have
24 been held largely in abeyance and continued in front of the
25 Discovery Commissioner because we filed this motion in May,

1 and it was fully briefed in June. And we're waiting for
2 resolution of the class certification issue as a matter of
3 economy before trying to get the Discovery Commissioner's
4 rulings on this.

5 So we're not trying to delay things, we're not
6 trying to avoid things here, Your Honor. We are being
7 diligent and trying to press forward as best as we can.

8 And that brings me to another issue, which I really
9 should have emphasized in my first statements to Your Honor.
10 This motion is not about the merits. We all understand that
11 class certification is not a determination of the merits.
12 It's a determination as to whether there is a sufficient
13 quantum of information of evidence that can lead the Court to
14 believe that at least there is the good basis to find that the
15 Rule 23 elements of numerosity, commonality, technicality of
16 claims, adequacy of representation and so forth are met. So
17 this is not about us proving our case at this point.

18 And, again, back to this U.S. Department of Labor
19 consent judgment. Whether that, in fact, is a binding finding
20 on the defendants, that they, in fact, owed this \$139,000 to
21 the 435 people specified, is not the foundation of the Motion
22 for Certification. The fact of the matter is that they
23 reached an agreement with the Department of Labor.

24 //

25 Let's just -- let's just assume it's not, in fact, a

1 binding judgment. It clearly is, Your Honor. Let's just say
2 it's not. It's no different than what was presented to Judge
3 Israel in Yellow Cab, where they came in and they did a
4 cooperative audit. And rather than having to take it to a
5 consent judgment, they simply reached an understanding that
6 based upon this review of the records, this was what was owed
7 under the Fair Labor Standards Act.

8 The fact that there is a history there of a review
9 and a determination provides enough quantum of evidence for
10 this Court to say, hey, there's enough of -- there's enough
11 people here that have an interest in this, there's enough
12 bases to find that there are common claims at issue for the
13 reasons I've repeated numerous times.

14 The fact that the federal law is much more lenient
15 here, and that even if they've complied hundred percent with
16 the federal law by honoring that consent judgment, they still
17 very probably could owe additional money for that same time
18 period to the same drivers under state law, and we need to
19 have an opportunity to determine that.

20 So it's really just a predicate fact, Your Honor.
21 It's not a merits determination. We are not here to determine
22 the merits of anything.

23 Now, actually, if we want to look at a merits issue
24 and tie that to the class certification, this is presented
25 front and center to Your Honor by the final supplement I filed

1 with the Court on October 13th, where I address -- and I
2 addressed this briefly when we were here for argument before
3 -- the fact that the Court has to certify -- I mean, I say,
4 have to, Your Honor, and I know that's not my job, it's your
5 job to decide what you have to do.

6 But given the record that's before the Court which
7 is not refuted, there is no basis to deny certification of the
8 claims going from October 2012 forward. We have introduced
9 evidence to Your Honor in the record that shows that Mr.
10 Sargeant -- and these are documents that are at Exhibit G of
11 the moving papers, originally. These are documents and
12 they're discussed at pages 11 to 12 in the moving papers.
13 These are -- these are statements --

14 THE COURT: Hang -- hang on one second.

15 MR. GREENBERG: Yes.

16 THE COURT: You said your supplement.

17 MR. GREENBERG: My supplement. And this is
18 discussed, again, in the supplement at page three. You may
19 just want to look at page three. Actually, they're reproduced
20 -- the documents are reproduced again in the supplement that
21 was filed on October 18th -- October 13th. And it only
22 addresses the partial class certification that I'm talking
23 about for the period after October of 2012.

24 //

25 Defendants started producing these payroll records

1 which showed how much they were paying the driver in
2 compensation per pay period, and also the hours they worked.
3 And as I -- and next to the supplement, we have the testimony
4 from Mr. Nady confirming the correctness --

5 THE COURT: No, I'm sorry.

6 MR. GREENBERG: Yes.

7 THE COURT: I have to -- I have to ask you. This is
8 -- you're talking about your second supplement?

9 MR. GREENBERG: It -- I -- it would be the second
10 supplement. It's -- it was --

11 THE COURT: Plaintiff's Response to Defendants'
12 Supplement.

13 MR. GREENBERG: No, Your Honor. It's Plaintiffs' --
14 it's Plaintiffs' Supplement to Plaintiffs' Motion to Certify
15 this case as class action. It was filed on October 13th.
16 That is the electronic filing stamp date that appears on it.
17 It was the final.

18 (Pause in the proceedings)

19 MR. GREENBERG: Well, if it would assist, I can give
20 Your Honor my copy.

21 THE COURT: Yeah, would you? I don't think we have
22 it.

23 MR. GREENBERG: Well, it should have been -- a
24 chamber's copy should have been sent to Your Honor and I'm
25 sorry if -- if Your Honor doesn't have this. I will draw the

1 Court's attention.

2 THE COURT: Do you have this, Ms. Rodriguez?

3 MR. GREENBERG: It was served through the -- the
4 WizNet system, Your Honor, and it does bear an October 13th --

5 THE COURT: File-stamped October 13th.

6 MS. RODRIGUEZ: I'm -- I'm looking, but I recall it,
7 because I think I objected that that document that he's
8 referring to was another document that was never produced in
9 discovery. And plus, it's based on what he put in his brief.
10 It wasn't matching up with the exhibits. So it actually
11 wasn't making any sense, his representation in the supplement.

12 THE COURT: Which -- which exhibit are we speaking
13 of?

14 MS. RODRIGUEZ: We're talking about Exhibit B to his
15 October 13th submission.

16 THE COURT: Is that -- is that the correct exhibit,
17 Mr. Greenberg?

18 MR. GREENBERG: What I just handed you, on page
19 five, was referring to exhibit -- exhibit -- well, I believe
20 it's at Exhibit B there. This was originally at Exhibit G of
21 the class certification moving papers, as well, Your Honor.
22 These are pay stubs from Mr. Sargeant.

23 THE COURT: All right.

24 MR. GREENBERG: And if you look at these pay stubs,
25 they have a column that says minimum wage subsidy and a

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1 quantity. For example, it says 87.48 on the one I'm looking
2 at. There are like three or five of these particular pay
3 stubs.

4 THE COURT: Uh-huh.

5 MR. GREENBERG: The deposition testimony of Mr. Nady
6 which is in the supplement from October which I gave you, Your
7 Honor, and actually I believe it's also referenced in the
8 supplement from September that I submitted on September 18th,
9 confirms that that minimum wage subsidy quantity number is the
10 number of hours that defendants recoded on these pay stubs Mr.
11 Sargeant was working in that pay period.

12 So we now have, for these pay stubs, a period of
13 time where defendants acknowledge exactly how many hours the
14 taxi driver was working and what they paid him. These are
15 defendant's own records. And as it says here, they actually
16 paid him a subsidy of a 1.43 for that 87.48 hours because his
17 commission wasn't sufficient to meet the minimum-wage. And
18 this is discussed in the supplement.

19 The problem, Your Honor, is that until June of 2014
20 when the Thomas decision was issued, that supplement
21 calculation still included the tips, so that they were not
22 actually supplementing enough to meet the Nevada standard.
23 They were supplementing enough to meet the federal standard
24 because they were saying, okay, how much do we have to
25 increase Mr. Sargeant's pay to make it 7.25 with the tips.

1 And that's the federal standard of compliance.
2 They're not subsidizing -- they're not subsidizing enough here
3 to meet and 8.25 standard, because Mr. Sargeant didn't get
4 health insurance, and they're including the tips in the
5 calculation. And that is discussed, again, in the supplement
6 I just gave you, Your Honor. I give a detailed analysis.

7 My point, Your Honor, is that you have irrefutable
8 proof from defendant's own records, from their testimony from
9 Mr. Nady about what the entries in those records mean, that
10 they were not in compliance during this period of time.

11 So, again, clearly the class should be certified, if
12 only for the period of time that exist for those records. In
13 fact, this would be a summary judgment class, Your Honor.

14 But again, as I said, we're not here on the merits.
15 It would make a lot more sense to certify the class to the
16 full extent that has been requested by the plaintiff, and then
17 we would deal with this issue of an equitable toll of the
18 statute of limitations and so forth after we do the
19 certification.

20 But my point, Your Honor, is that even if the Court
21 for some reason believes the factual record is not sufficient
22 to grant the full scope of the class certification that I
23 initially requested back in May, in full, there clearly -- and
24 none of this evidence, Your Honor, that I'm pointing out about
25 Mr. Sargeant's payroll records has been refuted by the

1 defendants.

2 They've confirmed the conclusions that I've just
3 drawn to the Court's attention from these records. And it was
4 confirmed by Mr. Nady in his testimony what those entries
5 meant on those records in terms of the time that he was
6 working.

7 So, Your Honor, just to move along here --

8 MS. RODRIGUEZ: Your Honor, may I respond to that?
9 Because that's -- that's incorrect. And for him to say that
10 is, again --

11 THE COURT: You may -- you may, but it's his motion,
12 so he'll get the last word.

13 MS. RODRIGUEZ: And he's relying -- I did want to
14 point out to the Court, though, this Exhibit B that -- again,
15 this is another time that what he's asking you to look at, the
16 first page of Exhibit B, you will see it does not have a Bates
17 stamp number, because it has never been produced in discovery.
18 Discovery is closed. Here's a -- here's a supplement, October
19 13th, where he's producing this alleged pay stub from Mr.
20 Sargeant for the first time. The Court shouldn't even be
21 looking at that.

22 THE COURT: What about that?

23 MR. GREENBERG: Your Honor, those pay stubs were
24 produced in May with the initial moving papers at Exhibit G.

25 THE COURT: Okay.

1 MR. GREENBERG: Not in October, they were produced
2 in May. They were produced in discovery. The fact that that
3 copy doesn't have --

4 MS. RODRIGUEZ: No, that --

5 MR. GREENBERG: -- a Bates stamp on it, this is
6 Exhibit G, Your Honor, the moving papers --

7 MS. RODRIGUEZ: I objected at that point. I said --

8 THE COURT: Wait, wait.

9 MS. RODRIGUEZ: I said -- I said they haven't done
10 it.

11 THE COURT: Hold on, hold on. What were you --
12 you're saying it was produced in May.

13 MR. GREENBERG: It was produced in May when I made
14 the motion to certify the class, Your Honor. It's at -- those
15 same pay stubs are at Exhibit G of the moving papers.

16 THE COURT: Okay. Now what were you saying about
17 the fact there is no Bates stamp?

18 MR. GREENBERG: The fact that there's no Bates stamp
19 doesn't affect it's admissibility, Your Honor. They were
20 provided with this. They were provided with these through
21 discovery as soon as I got them are very shortly thereafter.
22 I filed this motion within a week or two weeks after I was
23 contacted by Mr. Sargeant and these came into my possession.

24 THE COURT: So this was an originally -- was
25 originally attached to the motion itself; is that correct?

1 MR. GREENBERG: That's correct. From May of -- it's
2 at Exhibit G of the motion filed 5/19. I mean, you can take a
3 look at your copy. You do have a copy of that, Your Honor.

4 THE COURT: All right.

5 MS. RODRIGUEZ: That's not producing them in
6 discovery, Your Honor. And I objected --

7 THE COURT: I'm sorry?

8 MS. RODRIGUEZ: That is not producing them in
9 discovery. And I objected at that point, because that's the
10 first time it surfaced and I said, where are these documents
11 coming from? They've never been produced in discovery. And
12 he did it again. He's just -- attaches them to motions
13 without producing. They've never been produced.

14 THE COURT: What about that?

15 MR. GREENBERG: Your Honor --

16 MS. RODRIGUEZ: And, Your Honor --

17 MR. GREENBERG: -- they were produced --

18 THE COURT: Wait, wait, let me --

19 MR. GREENBERG: Your Honor, they were produced in
20 May at Exhibit G --

21 THE COURT: All right. So you're --

22 MR. GREENBERG: -- along with Exhibit F.

23 THE COURT: And discovery had not closed in May?

24 MR. GREENBERG: Discovery hadn't closed, Your Honor,
25 and it was produced with Mr. Sargeant's declaration at Exhibit

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1 F who's supporting the class certification.

2 THE COURT: Well, when you say produced, you mean
3 attached to your motion?

4 MR. GREENBERG: They were attached to the motion at
5 that time.

6 THE COURT: Okay. Were they produce pursuant to
7 16.1?

8 MR. GREENBERG: They -- they were produced, Your
9 Honor, through discovery as well in a subsequent supplemental
10 production. Was it done on May 18th when this motion was
11 served? I don't know, Your Honor.

12 But, I mean, for -- and these are defendants' own
13 records. Mr. Nady was examined at his deposition in August on
14 these documents. Defendants don't dispute that they generated
15 these documents. In fact, Mr. Nady's testimony confirms that
16 these are of the form that A Cab produces.

17 So, I mean, for them to attack the authenticity of
18 these materials is really frivolous, Your Honor.

19 THE COURT: All right. Hang on now. Ms. Rodriguez,
20 you wanted --

21 MS. RODRIGUEZ: No, he's never produced them, no.
22 If he's produced them, I'd love for him to produce them to the
23 Court, because he's never produced them. I objected back
24 then. He doesn't feel like he has to comply with any NRCP
25 rules for some reason. And he's asking Your Honor to look at

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1 his calculations based on page 3 and 4 of this last
2 supplement.

3 And that's why I responded to it because he's
4 talking about this May 14th pay stub shows a violation. And
5 you can look at everything he's attached, he's still
6 referencing documents that have never been produced. So if
7 Your Honor's going to take the time --

8 THE COURT: You're talking about the same thing?

9 MS. RODRIGUEZ: Yes. If Your Honor's going to take
10 the time to look at that, look at his allegations versus what
11 he's attached and nothing even matches up. He just throws it
12 out there and expects that nobody's going to check it.

13 THE COURT: Well, this shouldn't be all that hard to
14 figure out, folks.

15 MR. GREENBERG: It's straight math, Your Honor.

16 THE COURT: Have you got something that shows that
17 this was -- I mean, typically, when something is produced,
18 it's given a Bates stamp number.

19 MR. GREENBERG: Your Honor, yes. And, Your Honor,
20 this -- I am completely mystified as to defendants' position
21 here that this is somehow not before the Court for
22 consideration. Mr. Sargeant comes to me shortly before May
23 18th, and he is a member of the class. He contacts me
24 independently, he furnishes a declaration in support of the
25 certification motion, he agrees to be a representative, he

1 produces to me documents he has that demonstrate his work as a
2 class member for the employer. This is all included in the
3 Motion to Certify.

4 How is it that that is not properly before the
5 Court? Because -- because allegedly defendants say, well, it
6 wasn't produced in a 16.1 disclosure. You have -- you have it
7 right here, Your Honor. Mr. Nady was examined under oath.

8 THE COURT: Part of the reason why counsel
9 typically, in my experience, try to utilize documents that
10 have been given pursuant to 16.1, is that that's usually when
11 it does get a Bates stamp, and thereafter it's very easy to
12 establish that it was given during --

13 MR. GREENBERG: Well, Your Honor, in this case it's
14 very easy because it was filed with the Court on May 18th.
15 It's public record that these were served through the Wiznet
16 system and defendants got them on that date. They can't claim
17 any prejudice.

18 THE COURT: Well, Ms. Rodriguez, if this is a
19 document that was regularly kept in the course of business by
20 your client, at least I would not expect there to be a
21 terrible surprise here.

22 MS. RODRIGUEZ: I don't know that it is, Your Honor.
23 And Mr. Sargeant's never even been named as a witness. So I
24 don't know how he can come in and authenticate this at all. I
25 mean, he's -- like I said, he's been dangling these

1 plaintiffs, but he's never even named them as a witness. So
2 why should I have to depose them or conduct discovery on
3 Sargeant and Brauchle if he's just had them as a threat.

4 THE COURT: But you don't believe -- you don't
5 believe that this was a pay stub issued by your client; is
6 that it?

7 MS. RODRIGUEZ: I have not pulled that pay stub. I
8 haven't gone back because it's never been produced in
9 discovery, so I didn't think it was part of this case.

10 THE COURT: Did you get it attached to your -- the
11 May --

12 MS. RODRIGUEZ: The May motion? Yes, because I
13 objected that the Court should not consider it. And I gave
14 them opportunity to produce it and again, they didn't produce
15 it. All this time they haven't produced it.

16 THE COURT: Well, let's -- you know, there's been a
17 lot of allegations flying back and forth. Why don't you
18 subsequent to today please submit to the Court your --
19 whatever discovery document you have that shows that this was
20 transmitted to Ms. Rodriguez. Would you do that?

21 MR. GREENBERG: Your Honor, it is my belief a
22 supplemental Rule 16 Response was sent. I would point out,
23 Your Honor, in her Response --

24 THE COURT: Will you do that?

25 MR. GREENBERG: I will certainly -- do you want me

1 to bring something to Your Honor, to chambers documenting
2 that? I have to go back to my office, but I believe on my
3 computer --

4 THE COURT: Well, sure, but --

5 MR. GREENBERG: -- I will have a copy showing in
6 June or May that this was sent.

7 THE COURT: Just -- just do this. Submit it to Ms.
8 Rodriguez and to me, if you would. I don't care if you just
9 do it in a letter.

10 MR. GREENBERG: Okay.

11 MS. RODRIGUEZ: But, Your Honor, as well, I
12 appreciate that, and thank you. But my second point on this
13 was that everything that he's writing in the actual body of
14 the pleading references something which has never been
15 produced and is not attached to any motion. He's talking
16 about a
17 May --

18 THE COURT: Which is what?

19 MS. RODRIGUEZ: -- a May 14th, 2014 pay stub.

20 THE COURT: What -- what page are you on?

21 MS. RODRIGUEZ: Page 3.

22 THE COURT: Okay. A discussion -- plaintiff's
23 moving papers at pages 11 to 12. That discussion is repeated
24 below. So he's repeating something from his motion at page 11
25 to 12. Sargeant's 5/14, et cetera, et cetera, et cetera. So

1 that was in the May motion.

2 MS. RODRIGUEZ: Right.

3 THE COURT: And so your point is that?

4 MS. RODRIGUEZ: There has never been -- that pay
5 stub that he's talking about where he's trying to show the
6 Court that this demonstrates -- irrefutably establishes a
7 violation, we've never seen that pay stub. I don't know what
8 he's talking about.

9 THE COURT: That's -- that's the -- that's the May
10 14th of 2014, to June 6th of 2014 pay stub, right?

11 MS. RODRIGUEZ: Correct, Your Honor.

12 THE COURT: Okay.

13 MR. GREENBERG: Your Honor, it's a typo; it's May
14 24th to June 6th. It's a 14-day pay period.

15 THE COURT: Okay.

16 MR. GREENBERG: It's not May 14th to June 6th.

17 THE COURT: May 24th to June 6th. But is that --

18 MR. GREENBERG: Yes, Your Honor. That's at Exhibit
19 G of the moving papers. It is the very first page of Exhibit
20 G of the May 18th filed papers. You will see it there, Your
21 Honor. And I apologize for the typo. Counsel is correct, it
22 refers to a May 14th date. It should be a May 24th date.

23 THE COURT: All right. So that's Exhibit G. Is
24 that different than -- I mean, that's the same one that --

25 MS. RODRIGUEZ: Right.

1 MR. GREENBERG: It's the same one as in the October
2 supplement I handed up to Your Honor personally a little while
3 ago.

4 THE COURT: All right.

5 MR. GREENBERG: It's the same discussion --

6 THE COURT: Does that --

7 MR. GREENBERG: -- the same math, the same documents
8 the math is based on, Your Honor.

9 THE COURT: All right.

10 MS. RODRIGUEZ: Well, Your Honor, when I looked at
11 it, to me, I could not match those up. I didn't assume that
12 was a typo because the numbers were not adding up.

13 THE COURT: Okay.

14 MS. RODRIGUEZ: So that's why I'm questioning
15 whether a 5/14 pay stub even existed.

16 THE COURT: Okay. The typo is continued in the next
17 paragraph, Sargeant's 6/21/14 pay stub, unlike the 5/14. All
18 right. So now we at least know what we're talking about.

19 MR. GREENBERG: Yes, Your Honor. On this issue,
20 Your Honor, I would just point out that in their Response to
21 the class certification motion filed in June, they do not
22 raise any objection to the admission of Exhibit G or the
23 arithmetical presentation that was made at page 11 of the
24 Motion to Certify.

25 THE COURT: Okay.

1 MR. GREENBERG: Okay, Your Honor. But Your Honor
2 can -- Your Honor's quite capable of multiplying and dividing
3 and subtracting, as we all are. So those numbers speak for
4 themselves, Your Honor.

5 There are -- there are some sort of peripheral
6 allegations here made regarding the adequacy of the -- of the
7 claim representatives, Mr. Murray and Reno, to represent the
8 class for certification purposes.

9 Your Honor, I mean, there's a 20-year old conviction
10 of I believe it's Mr. Murray. I think that's a little bit
11 beyond the pale in terms of admissibility for any purpose of
12 at this point.

13 And I -- and, you know, when defense counsel has a
14 chance to perhaps speak a little more, if Your Honor's going
15 to entertain that, they may raise issues as to their
16 deposition testimony not evidencing an understanding of the
17 claims and so forth and so on.

18 But, Your Honor, that's not their responsibility as
19 a class representative to show that they are familiar
20 intricately with the nature of the legal claims in this case.
21 And, I mean, this is addressed in the September 18th Response.
22 I mean, their duty is to show that they're willing to
23 cooperate and to help prosecute the case. They did give
24 depositions. I know that there's allegations that they
25 refused to answer certain questions. I don't know what the

1 germaneness of that is. Defense counsel hasn't explained why
2 that refusal is germane or impairs their ability to represent
3 the class.

4 At page five of the September 18th Response, I mean,
5 there's a huge body of case law in this. You can't disqualify
6 a class representative just because they're not able to
7 actually articulate what the legal theory is that is being
8 brought on their behalf in court.

9 Their job is simply to testify as best as they can
10 regarding the facts of the case and to cooperate with the
11 process, which is what they're doing here, Your Honor.
12 Otherwise, you know, defendants would, you know, always manage
13 to disqualify people as representatives supposedly to protect
14 the class, but really they're protecting the defendant from
15 ever getting sued by anybody who would be inadequate
16 representative in their view. I mean, it's just not the
17 examination that should be going on here, Your Honor.

18 Otherwise, Your Honor, we've spent a lot of time,
19 and I appreciate Your Honor's indulgence. And I have to say,
20 just to finish up right now, I think a lot of what we've
21 discussed is quite collateral to the issues that are before
22 the Court.

23 Let me not say anything more unless the Court has
24 something more to direct to me or I feel there's something I
25 should respond to from defendants --

1 THE COURT: No.

2 MR. GREENBERG: -- if the Court's going to entertain
3 further discussion from counsel.

4 THE COURT: No, I have no more questions. I will --
5 the ruling on this must necessarily await the ruling on the
6 other two motions that I've put over to Monday. I would
7 anticipate entering a minute order Monday which would
8 represent a ruling on this motion as well. So, I think that
9 should do it.

10 All right, anything else?

11 MS. RODRIGUEZ: Thank you, Your Honor.

12 MR. GREENBERG: Thank you. We appreciate your
13 patience. I certainly appreciate your patience and I think I
14 can speak for defense counsel as well on that one.

15 THE COURT: All right.

16 MS. RODRIGUEZ: Absolutely, as well as your staff.
17 I respect your endurance.

18 MR. GREENBERG: The only thing maybe we can agree
19 on, Your Honor.

20 (Proceeding concluded at 3:08 p.m.)

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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CLERK OF THE COURT

DISTRICT COURT

MICHAEL MURRAY, ET AL.,

Plaintiffs,

VS.

A CAB TAXI SERVICE LLC, ET AL.,

Defendants.

CASE NO. A669926

DEPT. I

BEFORE THE HONORABLE BONNIE A. BULLA, DISCOVERY COMMISSIONER

WEDNESDAY, NOVEMBER 18, 2015

RECORDER'S TRANSCRIPT OF PROCEEDINGS

ALL PENDING MOTIONS

APPEARANCES:

For the Plaintiffs:

LEON GREENBERG, ESQ.,

DANA SNIEGOCKI, ESQ.

For the Defendants:

ESTHER C. RODRIGUEZ, ESQ.

RECORDED BY: FRANCESCA HAAK, COURT RECORDER

000346

1 Las Vegas, Nevada - Wednesday, November 18, 2015, 9:03 a.m.

2 * * * * *

3 DISCOVERY COMMISSIONER: Murray.

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

5 DISCOVERY COMMISSIONER: Good morning.

6 MR. GREENBERG: Good morning, Your Honor. Leon Greenberg, for the
7 Plaintiffs.

8 DISCOVERY COMMISSIONER: Good morning.

9 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez, for the
10 Defendants.

11 DISCOVERY COMMISSIONER: Okay. So I know the attorneys know this,
12 but I just need to say it based on what I reviewed in this particular case, and that is as a
13 lawyer you do have responsibility for the client, and even though we can't always control
14 what other people do, we have to be able to control our client in deposition, and, Ms.
15 Rodriguez, you did not do that.

16 I don't know if I would have had more success. I'm not sure anyone in this
17 room would have had more success, but, unfortunately, what it did was it caused a problem
18 in the process, and I'm concerned about how this case ultimately gets prepared for trial.

19 I understand depositions are very difficult for lay people, and certain
20 personalities don't always work very well with this deposition process, but that's something
21 the lawyer has to be able to deal with.

22 It was inexcusable, what your client called Plaintiff's counsel during the
23 deposition, which I will not repeat in open court. Inexcusable, almost to the point where I'm
24 not sure he should be allowed to be a Defendant in the 8th Judicial District Court -- that's
25 how serious this is -- because I have no confidence in what he's -- how he's answering

1 questions. That's the problem. It's not just the very childish retort, even if Plaintiffs'
2 counsel brings that out in a deponent, which I read the deposition. I didn't think the
3 questions were inappropriate. I thought the answers were somewhat evasive, so I actually
4 would have done exactly what Plaintiffs' counsel did and reask the question or try to clarify
5 it. I have to say, at least from reading the transcript, I didn't see it, I didn't hear it, but it
6 sounded to me like Plaintiffs' counsel kept his temper in check and tried to just ask his
7 questions. Now, again, I'm reading a transcript. I'm not hearing the dynamics of the voices
8 or the tones or anything like that.

9 How are we going to effectively resolve this case? That's really the question I
10 have. And how do we do it in a way where the information can be exchanged and decisions
11 can be made regarding the wage loss claim that's been asserted in a meaningful manner. The
12 motion to extend the discovery deadlines I'm granting. I'm going to give you new deadlines
13 on phase 2 liability and damages, which I intended to do all along.

14 I read the opposition last night, Ms. Rodriguez, but it's, again, there's a
15 disconnect because the reason that we are delayed in the discovery is not because the
16 Plaintiffs haven't been prosecuting their case as we -- and I even agreed that some of the
17 discovery had to wait till after the class certification. I don't know if you've received your
18 order on that yet. I suspect you will soon. -- after the class certification ruling has been
19 made, and to see what discovery is left to do after class certification, in addition to which we
20 have been working at every hearing to get the wage support for the taxicab drivers from your
21 client. And I had ordered some depositions so that we could make a decision on how to pull
22 the information off the computer so that the Plaintiff could have that information.

23 And it turns out that it's not that big of a deal, with all due respect. And, as
24 Mr. Morgan explained, it's not a problem to pull the documents off the computer. You don't
25 need to write a special program for it. You don't need a special password.

1 And, Ms. Rodriguez, your client should be able to get that information off his
2 own computer, and I'm gonna require him to do that. Whether he needs Mr. Morgan's
3 assistance or not, I don't know, but that's your issue. You'll have to deal with that. But I
4 expect all the documents on the cab manager program to be turned over to the Plaintiff, and I
5 don't know how else to say that. I know that there are concerns about, you know,
6 employment and identification, but at some point I suspect we're gonna have to know who
7 all the taxicab drivers are and what they were paid.

8 So we didn't really need to take Mr. Morgan's deposition. We just needed the
9 Defendant to download the information or print it out from the computer.

10 MR. GREENBERG: Well, Your Honor, just to be clear, a printout is not what
11 we need here because it won't be able to be analyzed or used. The materials are kept in
12 electronic form, and under Rule 26 I am entitled to them in the same form they are stored in,
13 which is electronic data files.

14 There's essentially two ways to produce the information electronically, Your
15 Honor. We can either cooperatively extract particular portions of the information -- we're
16 interested in activity information, information that's gonna tell us the times and dates that
17 certain activities were undertaken --

18 DISCOVERY COMMISSIONER: Well --

19 MR. GREENBERG: -- by certain drivers.

20 DISCOVERY COMMISSIONER: -- now's not the time to be vague. What
21 activities are you specifically talking about --

22 MR. GREENBERG: Well, as --

23 DISCOVERY COMMISSIONER: -- because right now all I really think I
24 need to do is give you the documents that are on the cab manager program that pertain to this
25 particular Defendant.

1 MR. GREENBERG: Well --

2 DISCOVERY COMMISSIONER: That's what you need.

3 MR. GREENBERG: You mean particular Plaintiff perhaps, Your Honor.

4 DISCOVERY COMMISSIONER: Or, well --

5 MR. GREENBERG: Yes.

6 DISCOVERY COMMISSIONER: No.

7 MR. GREENBERG: Oh.

8 DISCOVERY COMMISSIONER: All the -- don't you want all the taxicab
9 driver information?

10 MR. GREENBERG: That is correct, Your Honor, and there's at least two time
11 intervals that may be recorded. There's one when they start a shift and a trip sheet is printed;
12 that's on Exhibit B of my supplement, that's at the top of the document. And there is also a
13 time when meter totals are set into the CAB Manager system at the conclusion of their shift,
14 okay?

15 DISCOVERY COMMISSIONER: So why can't we just print all those
16 documents out?

17 MR. GREENBERG: Well, Your Honor, printing them out in a static paper
18 form is not going to allow me to conduct any type of appropriate analysis as to what they
19 show.

20 DISCOVERY COMMISSIONER: What analysis do you need?

21 MR. GREENBERG: I need to know what the interval is between the first time
22 and the second time for hundreds of drivers, Your Honor, for --

23 DISCOVERY COMMISSIONER: I don't understand what you're talking
24 about.

25 MR. GREENBERG: Your Honor, the purpose of the production is to try to

1 determine the hours these drivers worked. Defendants did not keep records as to the hours
2 they worked.

3 DISCOVERY COMMISSIONER: But they enter them -- they enter that data
4 in the CAB Manager program.

5 MR. GREENBERG: It is our belief that the CAB Manager system will have
6 times recorded, when they started and stopped work, yes.

7 DISCOVERY COMMISSIONER: Right.

8 MR. GREENBERG: That is our hope, Your Honor, okay?

9 DISCOVERY COMMISSIONER: Well, that seems to be what Mr. Morgan
10 said.

11 MR. GREENBERG: Well --

12 MS. RODRIGUEZ: Respectfully, Your Honor --

13 MR. GREENBERG: -- to be --

14 MS. RODRIGUEZ: -- it does not.

15 MR. GREENBERG: -- to be perfectly honest, Your Honor, Mr. Morgan
16 wasn't sure, okay, but he said it may. So the point is we need to find out. And he said: I can
17 go look and find out. Okay? And we could have a cooperative process, Your Honor,
18 whereby we agree to have the materials reviewed and produced.

19 The alternative process, Your Honor, is just they produce everything. They
20 copy the hard drive, the bulk production so to speak, which Mr. Morgan said is easily done
21 as well.

22 Your Honor, in the normal case I would be very averse to getting the bulk
23 production because it is more burdensome for me, okay, and in other cases where I get
24 cooperation from Defendants we sit down and we cooperatively figure out, well, this is the
25 portion of the database we need. It's usually a very small portion of the information that's

1 actually in there, and we --

2 DISCOVERY COMMISSIONER: How can we describe that small portion?

3 MR. GREENBERG: It would be any record of times that taxi drivers or
4 taxicabs are reported as engaging in particular activities and particular dates. Okay.

5 DISCOVERY COMMISSIONER: I'm sorry. You'll need to speak louder.

6 Any records and times of taxicab --

7 MR. GREENBERG: Of taxicabs or taxi drivers engaging in particular
8 activities at particular times, okay, and the record of which drivers were operating which
9 taxicabs on --

10 DISCOVERY COMMISSIONER: When you say particular activities and
11 particular times, are you talking about particular cab fares or routes --

12 MR. GREENBERG: No, no, Your Honor. Particular -- the CAB Manager
13 system may record, for example, that cab number 1 went out at 7:00 in the morning.

14 DISCOVERY COMMISSIONER: Okay.

15 MR. GREENBERG: But perhaps it doesn't tell us a time for driver Smith
16 starting at 7:00 in the morning, but the CAB Manager system may tell us that Smith was
17 driving cab number 1 on that date.

18 DISCOVERY COMMISSIONER: Okay.

19 MR. GREENBERG: That's why I want to know which drivers are associated
20 with which cabs, and I want the time records for both the cabs and the drivers because they
21 may exist for the cabs but not the drivers, but I may be able to trace it to the driver through
22 the connection of the driver to the particular cab. They know which driver's driving which
23 cab in the system because they, obviously, they keep that information and follow purposes,
24 and so forth, Your Honor.

25 So that's what we're seeking, Your Honor. If the Court is inclined to direct

1 Defendants to cooperatively have the CAB Manager database reviewed and produce those
2 records in a computer data file format, it could be Excel, it could be CSV, it could be any
3 number, you know. There's any number of, you know --

4 DISCOVERY COMMISSIONER: I'd like to --

5 MR. GREENBERG: -- computer data form.

6 DISCOVERY COMMISSIONER: -- start there instead of doing a complete
7 copy of the hard drive because I think that that is going to be burdensome on you, and I
8 certainly think Mr. Morgan sounds like a very reasonable person, I mean from his
9 deposition. I don't know, you know, what -- I mean, he wants to protect his program. I
10 understand that. I want to protect his program. But the information that's contained therein,
11 that pertains to the issues in this case -- and I think the Court held it was a four-year statute
12 of limitations, right?

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

14 DISCOVERY COMMISSIONER: So we need to go back four years, and we
15 need -- and I can't remember the date. Is it going to be 2011? I can't --

16 MR. GREENBERG: Well, it would be actually 2008, Your Honor.

17 DISCOVERY COMMISSIONER: 2008.

18 MR. GREENBERG: And we need to move --

19 DISCOVERY COMMISSIONER: Okay.

20 MR. GREENBERG: -- forward as well because the class claims are
21 continuing through 2014.

22 DISCOVERY COMMISSIONER: I understand that. I'm just trying to figure
23 out the first start date. Can you give me the first start date in --

24 MR. GREENBERG: It would be October --

25 MS. SNIEGOCKI: Eleventh, I think.

1 MR. GREENBERG: -- 11, 2008. That -- okay.

2 DISCOVERY COMMISSIONER: I remember an 11.

3 MR. GREENBERG: Yeah.

4 DISCOVERY COMMISSIONER: I just couldn't -- okay. So October 11th,
5 2008, to the present time.

6 MR. GREENBERG: And, yes, just to note, Your Honor, Mr. Morgan told me
7 at the deposition he was very distressed at being called in to this dispute, and I do think he's
8 a reputable man who wants to do the right thing. I have confidence in his credibility and his
9 forthrightness.

10 Unfortunately, I don't have confidence in the Defendants, which is the reason
11 why I will just state for the record, Your Honor, I would actually prefer to have the mass data
12 production in this case, which is normally not my preference, simply because I don't believe
13 the Defendant's conduct --

14 DISCOVERY COMMISSIONER: I just think we open up too many areas,
15 and under the Schlatter decision, even though it's a personal injury case, I don't believe that
16 just because you're either involved in a lawsuit or you're bringing a lawsuit, it opens your
17 whole business or your own personal life up to everything, and it makes me a little bit
18 concerned about doing that.

19 But I will tell you this. If defense comes back and says there's nothing on
20 there, then I'm gonna make them turn over the hard drive.

21 MS. RODRIGUEZ: Your Honor, may I --

22 DISCOVERY COMMISSIONER: Because I don't believe it.

23 MS. RODRIGUEZ: May I respond to this?

24 DISCOVERY COMMISSIONER: Yes.

25 MS. RODRIGUEZ: Because this is the first time that Mr. Greenberg will

1 specify -- and I think it's only 'cause Your Honor is pressing him -- as to what he wants from
2 there because up until this point --

3 DISCOVERY COMMISSIONER: But Ms. --

4 MS. RODRIGUEZ: -- that's all he's wanted, is just to plug into the data.

5 DISCOVERY COMMISSIONER: But Ms. Rodriguez --

6 MS. RODRIGUEZ: And there's been no --

7 DISCOVERY COMMISSIONER: -- you should know what he wants. You're
8 defending the case. You know what the allegations are. You should have gone to your
9 client, told him to get that information on a disk or some type of electronic storage unit right
10 away.

11 MS. RODRIGUEZ: Respectfully, Your Honor, I am going to do my best, but I
12 don't know what Your Honor read in the deposition because --

13 DISCOVERY COMMISSIONER: I read the whole --

14 MS. RODRIGUEZ: -- I think it's --

15 DISCOVERY COMMISSIONER: -- deposition.

16 MS. RODRIGUEZ: I think it's gonna be very difficult to -- he's still a little
17 ambiguous about hours pertaining to all activities because I think -- I mean, I'm happy to do
18 that. I'm happy to give him a printout on that, if I can.

19 DISCOVERY COMMISSIONER: You need to --

20 MS. RODRIGUEZ: But it's not as --

21 DISCOVERY COMMISSIONER: -- download the information on either -- I
22 don't know -- a flash drive, a disk. What is your preference?

23 MR. GREENBERG: Your Honor --

24 MS. RODRIGUEZ: But he's never wanted that.

25 MR. GREENBERG: -- a portable --

1 DISCOVERY COMMISSIONER: Well, that's what we're gonna get. That's
2 where we're gonna start. And if there's nothing useful on that, then I'm gonna have you turn
3 over the hard drive.

4 Yes.

5 MR. GREENBERG: In terms of media, Your Honor, it's a question of the
6 size. What they call a thumb drive would be sufficient. I can give them one. It's \$50, and it
7 stores many gigabytes of data, portable hard drive. If they have mechanical issues, I'm
8 happy to cooperate with them on it. I don't think that should be an issue, Your Honor.

9 DISCOVERY COMMISSIONER: Okay.

10 MR. GREENBERG: I understand Your Honor's approach. I think it's
11 perfectly appropriate. I appreciate Your Honor taking the time to understand the issues here
12 in respect to this.

13 I would just bring a sort of parallel or same application to this other set of
14 electronic data.

15 DISCOVERY COMMISSIONER: The QuickBooks.

16 MR. GREENBERG: The QuickBooks records, which is essentially the same
17 thing, Your Honor. What Defendants have last advised me of is that, well, we don't have an
18 obligation to make a report from the QuickBooks, which, you know, think of the
19 QuickBooks as a file cabinet that contains lots of different stuff and there's a drawer that
20 says P-for-payroll, which is what I want, not the I drawer with invoices or whatever it is.

21 DISCOVERY COMMISSIONER: That is the best way I've heard that
22 described.

23 MR. GREENBERG: Well, yes, Your Honor.

24 DISCOVERY COMMISSIONER: Maybe you need to give a CLE on it.

25 MR. GREENBERG: Well --

1 DISCOVERY COMMISSIONER: That would be helpful --

2 MR. GREENBERG: Okay. Thank --

3 DISCOVERY COMMISSIONER: -- for the Commissioner.

4 MR. GREENBERG: Thank you, Your Honor. So in QuickBooks you don't --
5 it's not like a physical cabinet, so you don't go open drawer P and take out the payroll file
6 and say, here, copy this and give it to the other counsel. You have to run a report. That's the
7 interface in the QuickBook system --

8 MS. RODRIGUEZ: That's what I've offered to do.

9 MR. GREENBERG: -- to extract that information, Your Honor.

10 DISCOVERY COMMISSIONER: And why didn't you just do it? Why --

11 MS. RODRIGUEZ: Because he's not -- he doesn't want that. He wants to
12 plug in and get a copy of the complete QuickBooks file.

13 MR. GREENBERG: Your Honor --

14 MS. RODRIGUEZ: And I've offered that, and I'm happy to do that, Your
15 Honor.

16 DISCOVERY COMMISSIONER: Ms. Rodriguez, if you had done that up
17 front, and just taken care of business, and if they had continued to push you for everything,
18 then I would have granted your protective order. But you didn't even try to put the
19 information together, what you knew would be relevant, what you knew what would be
20 relevant. You didn't even try, and that's not acceptable to me.

21 MS. RODRIGUEZ: Well --

22 DISCOVERY COMMISSIONER: And then you oppose their motion to
23 extend the discovery deadlines saying they haven't done anything when you have been
24 before me multiple times, and I have instructed certain things to happen, which apparently
25 were unnecessary because the information was available to your client without having to

1 write some sort of special code to retrieve it. So it would probably behoove you today not to
2 push me on these issues because I'm really unhappy, and I'm really unhappy with your
3 client.

4 MS. RODRIGUEZ: Your Honor, I am not going to attempt to push you. I
5 understand your frustration, but please understand that I was just served with all of these
6 issues Monday afternoon. I didn't even know that this was --

7 DISCOVERY COMMISSIONER: No. That is --

8 MS. RODRIGUEZ: -- all -- a lot of these were gonna be --

9 DISCOVERY COMMISSIONER: -- incorrect because we have been talking
10 about these issues at every hearing we've had.

11 MS. RODRIGUEZ: Your Honor, again, the information, if there is anything
12 contained in these things, have nothing to do with the named Plaintiffs, and that is one issue
13 that I've continued to bring up before Judge Cory and that he made representations --

14 DISCOVERY COMMISSIONER: Well, I'm --

15 MS. RODRIGUEZ: -- that --

16 DISCOVERY COMMISSIONER: -- going to tell you I'm not concerned
17 about it. You're gonna give the data over today.

18 MS. RODRIGUEZ: Okay.

19 DISCOVERY COMMISSIONER: So here's what I'm gonna do. I'm gonna
20 grant the motion to compel. I am not going to require the Defendant to turn over his entire
21 hard drive, but I am going to require him to put on some sort of searchable drive, just thumb
22 drive, whatever is available, all the information that pertains to the cabs, and the cab drivers,
23 and the activities on any given day starting October 11th, 2008, to the present time. And I am
24 going to accept my -- at least Plaintiffs' understanding through the deposition, and from what
25 I could ascertain, that it's not that difficult to be able to download this information.

1 You don't need to turn over the entire hard drive, but the information that
2 pertains to the cabs and the cab drivers needs to be turned over. Now, I don't know if there's
3 a searchable -- if there's a way to do that on that program.

4 MR. GREENBERG: Your Honor, the data we're talking about, again, would
5 be produced in a generic data file format, which could include Excel or CSV, which is
6 another data file format, so it's not like a picture. It's not like a printed image. It's not like a
7 document per se. It's a form of data, computer data file production. I have that. I can give it
8 to a computer savvy person. They can then go in and do the analysis as to what the times
9 show, what the driver -- the identification --

10 DISCOVERY COMMISSIONER: But I need to give Ms. Rodriguez more
11 instruction on how to pull it off the CAB Manager. That's what I'm trying to figure out.
12 Because do we have daily entries? Do we plug in cab driver? Do we plug in the cab? I
13 mean, I need to be able to articulate how they're going to pull the data off the CAB Manager.

14 MR. GREENBERG: Well, Your Honor, we had a discussion with Mr. Morgan
15 actually back in March when this inspection was terminated, and Mr. Morgan was very clear
16 that, you know, he was competent and capable of extracting the relevant tables and portions
17 of the tables that would contain that information. I am --

18 DISCOVERY COMMISSIONER: So what we need to do, Ms. Rodriguez, is
19 have you work with Mr. Morgan with your particular Defendant, have him assist you all in
20 pulling that information off, and specifically the compensation for the drivers and the routes
21 that they were driving on any given day in question starting October 11, 2008, or where the
22 cab was I guess, you know, what cab was assigned to what route.

23 MR. GREENBERG: Well, right, Your Honor. The issue is not in the CAB
24 Manager system as an actual compensation paid to the drivers; that's in the QuickBooks
25 system.

1 But in the CAB Manager system it's a question of records of times that can be
2 associated with the drivers. For example, there's barcode scans that are conducted of the
3 drivers' trip sheets and their TA cards. If those times are recorded and preserved in the CAB
4 Manager system, it'll tell us when these guys were maybe working, okay?

5 DISCOVERY COMMISSIONER: Well, now, I wrote this down from the
6 deposition that Mr. Morgan said the CAB Manager software is designed to calculate
7 commission compensation for the drivers. That's what it's designed to do.

8 Now, I don't know if this particular defendant used it for that purpose. I just
9 don't know.

10 MR. GREENBERG: I understand, and, Your Honor, what they calculated
11 actually isn't relevant. It's what they paid them. What they paid them is in the QuickBooks
12 system. That's why -- I'm trying to make it easier, Your Honor --

13 DISCOVERY COMMISSIONER: Right.

14 MR. GREENBERG: -- and avoid extraneous material. So information
15 regarding the fares that were charged, or the commissions that were paid in the CAB
16 Manager system we don't need. We just need anything that records a time that can be
17 associated with the driver or to a taxicab and through the taxicab back to a driver. That's
18 what we need, Your Honor, so we can figure out what hours these people were working.
19 That's the whole purpose of this undertaking, Your Honor.

20 DISCOVERY COMMISSIONER: So, Ms. Rodriguez, if I were you, I would
21 work with Mr. Morgan. He seemed to understand. I think -- at least my recollection is when
22 I read the transcript -- he seemed to understand what he could -- what information could be
23 accessed. So let's take care of that with respect to the CAB Manager and have you produce
24 that information regarding the location of a cab or a cab driver on any given day in question
25 starting October 11, 2008, through the present time; that's number one.

1 And then on the QuickBooks you need to produce -- and, again, in an
2 electronic searchable format or at least an electronic format -- the payroll records.

3 MR. GREENBERG: Yes, Your Honor, and QuickBooks can directly export
4 information to Excel. That's a common function that QuickBooks is used for. So, again, in
5 an electronic file format.

6 There is one remaining issue of discovery here that I was consulting with
7 Defendants' counsel, which concerned Mr. Nady's testimony as to these four pay periods
8 that they went in and they actually reviewed their records and compiled statements for each
9 driver as to the hours worked. And his testimony in the deposition at page 238 is there's an
10 Excel with a line for each driver, which has the number of hours they worked as well as
11 other information -- compensation -- for the pay period. Those are the kind of records, Your
12 Honor, that would have complied with the statute which Defendants otherwise don't have,
13 okay?

14 I spoke with Defendants' counsel this morning. She says she's not aware that
15 this document exists. She does not believe necessarily that Mr. Nady's testimony in the
16 deposition was correct about that. I would like as part of the order for them to be required to
17 give some sort of declaration clarifying this. Either Mr. Nady's gonna have to say in a
18 declaration his testimony was wrong and what the reality is, or that we don't have this
19 anymore, and it was destroyed.

20 DISCOVERY COMMISSIONER: Well, it might have been a document too. I
21 couldn't tell, and, again, I did read it, but my memory's not perfect. I thought that there was
22 some information put together for the DOL, Department of Labor.

23 MS. RODRIGUEZ: There was.

24 DISCOVERY COMMISSIONER: So I'm wondering if that's what he was
25 referring --

1 MS. RODRIGUEZ: And that's what I --

2 DISCOVERY COMMISSIONER: -- to.

3 MS. RODRIGUEZ: Did you -- just to clarify, you got my opposition --

4 DISCOVERY COMMISSIONER: This morning.

5 MS. RODRIGUEZ: -- that I sent.

6 DISCOVERY COMMISSIONER: Right. I looked --

7 MS. RODRIGUEZ: Yeah.

8 DISCOVERY COMMISSIONER: -- at it this morning.

9 MS. RODRIGUEZ: Right. And I had less than 24 hours to get that to you, so
10 I apologize for giving it to you so late, but I was served on Monday afternoon with his --

11 DISCOVERY COMMISSIONER: I think I --

12 MS. RODRIGUEZ: -- 200 pages.

13 DISCOVERY COMMISSIONER: -- had every -- I think I had previously said
14 you all could supplement your briefs after, so.

15 MS. RODRIGUEZ: My understanding was that you asked for the depo
16 transcript, so I was quite surprised to receive this number of issues, including this one, which
17 I don't think is properly before you because he's just talked to me about it for the first --

18 DISCOVERY COMMISSIONER: Well --

19 MS. RODRIGUEZ: -- time today.

20 DISCOVERY COMMISSIONER: -- I want you to have -- you've had your
21 2.34 on it, so I think you need to follow up with your client on the issue.

22 MS. RODRIGUEZ: I'll be happy to, Your Honor.

23 DISCOVERY COMMISSIONER: And that's all I'm gonna require you to do
24 today, is just follow up with your client, try to determine, you know, if there is such a
25 document or if it was prepared for the Department of Labor investigation and he no longer

1 has it.

2 Who is the lawyer on that DOL investigation, do you know, for him, or was
3 He --

4 MS. RODRIGUEZ: Oh, I represented --

5 DISCOVERY COMMISSIONER: You were?

6 MS. RODRIGUEZ: -- Mr. Nady, yes.

7 DISCOVERY COMMISSIONER: Okay, so --

8 MS. RODRIGUEZ: And A Cab.

9 DISCOVERY COMMISSIONER: -- would you not have it in your file?

10 MS. RODRIGUEZ: I do not have that, no. I don't. What I have I gave Mr.
11 Greenberg, and I gave you a redacted copy just because it was used for settlement purposes
12 between the two of us.

13 DISCOVERY COMMISSIONER: Okay. So what I would recommend that
14 you do is follow up with your client. I'm gonna set you -- you're coming back in January, so
15 I won't do anything further with that. I'll let you have the opportunity to work with your
16 client, but I do want an answer. And with regard to the specific testimony he gave in his
17 deposition, you need to talk to him about that and clarify it, at least have a clarification for
18 me when you come back.

19 MS. RODRIGUEZ: Okay.

20 DISCOVERY COMMISSIONER: But I'm not gonna order anything today on
21 it, other than you need to follow up and --

22 MS. RODRIGUEZ: Sure.

23 DISCOVERY COMMISSIONER: -- and have an answer on it. And if that
24 document or those documents do exist, they need to be produced.

25 MR. GREENBERG: Your Honor, finally, there's a question of the cost for

1 these depositions that I was assessed as well as --

2 DISCOVERY COMMISSIONER: I'm going to address that --

3 MR. GREENBERG: Yes.

4 DISCOVERY COMMISSIONER: -- in a minute. I want to get through
5 everything else.

6 MR. GREENBERG: Yes, Your Honor.

7 DISCOVERY COMMISSIONER: I have a very large calendar today.

8 So the motion to compel is granted within the following parameters. The
9 relevant information will be pulled off of the CAB Manager program into a electronic format
10 that is usable and will be provided to Plaintiffs' counsel. Defendants' counsel is instructed to
11 work with Mr. Morgan so that you can be assured that the correct information is pulled off. I
12 think there's enough discussion of this in the deposition that you should be able to ascertain
13 what it is.

14 I'll have Plaintiffs' counsel prepare the Report and Recommendation, so
15 maybe you can set forth therein exactly what you're trying to have them pull off of the CAB
16 Manager. I know you articulated it better than I'm going to rearticulate it, so I'm not gonna
17 do that, but you need to put that in the Report and Recommendations.

18 Number two, with respect to the QuickBooks, the payroll records need to be
19 pulled off the QuickBooks and, again, put into electronic format. And the dates that were --
20 the date -- timeframe that we are talking about for both sets of data is October 11th, 2008, to
21 the present time, and that's the timeframe that we're looking at.

22 With respect to fees and costs --

23 MS. RODRIGUEZ: Your Honor, may I be heard on that because I didn't have
24 an opportunity to speak, and I'll be very brief, but I just want you to understand as you
25 acknowledge that a lot of this is not captured in the transcript, but Mr. Greenberg has made

1 this whole process extremely antagonistic with my client. He has personally told him that he
2 intends to bankrupt him, and he's made -- he's the one that's made this personal, so that was
3 a --

4 DISCOVERY COMMISSIONER: But that wasn't --

5 MS. RODRIGUEZ: -- very --

6 DISCOVERY COMMISSIONER: -- on the record.

7 MS. RODRIGUEZ: No, I understand that, Your Honor.

8 DISCOVERY COMMISSIONER: What was on the record was --

9 MS. RODRIGUEZ: I don't think he'll deny saying that to him, and, as Your
10 Honor knows, we -- this is following a site inspection that went very badly, that these two --
11 and you asked --

12 DISCOVERY COMMISSIONER: But it didn't even have to happen, Ms.
13 Rodriguez, that's the point. We didn't have to go there because the information could have
14 been pulled off of the CAB Manager system .

15 MS. RODRIGUEZ: Not --

16 DISCOVERY COMMISSIONER: And that is your responsibility.

17 MS. RODRIGUEZ: Not how he wants it, and that's what I've --

18 DISCOVERY COMMISSIONER: But you're not listening. It doesn't matter
19 how he wants it. It matters how you can pull off the information that is clearly relevant to
20 this lawsuit under 16.1 and provide it. You do your part. You pull off everything that's
21 relevant. They don't like how it's presented to them, they can bring a motion, and you can
22 bring a motion for a protective order saying to me we have given them all this information
23 from CAB Manager, from QuickBooks. This is all we can do. This is the format we can do
24 it in.

25 But to do nothing is not an option, and that's what you have done to date, is

1 zero --

2 MS. RODRIGUEZ: Well, that's not --

3 DISCOVERY COMMISSIONER: -- in terms of pulling off the documents
4 that are on the CAB Manager and the QuickBooks. You've given them things that you think
5 satisfy, but when it comes to discussing the electronic information that's relevant, that's
6 stored on those programs, with all due respect, unless you've produced something that I'm
7 unaware of.

8 MS. RODRIGUEZ: Your Honor, I've produced 1,800 pages to them, and the
9 first time we were in here you --

10 DISCOVERY COMMISSIONER: But it -- was it --

11 MS. RODRIGUEZ: -- indicated that I was --

12 DISCOVERY COMMISSIONER: -- from the CAB Manager program? Was
13 it from the QuickBooks program?

14 MS. RODRIGUEZ: It's the same thing that is contained in both of those
15 programs.

16 DISCOVERY COMMISSIONER: Well, we're gonna find out if that's --
17 we're gonna find out.

18 MS. RODRIGUEZ: And Your Honor acknowledged that. You told Ms.
19 Sniegocki she'd -- I don't have to give it to them in the format that they prefer as long as I'm
20 giving it to them, and I did give that to them.

21 DISCOVERY COMMISSIONER: But, see, here's the problem. There's a
22 disconnect for me between what you've given them in the past, which, you know, you've
23 given them the -- oh, what do they call it?

24 MS. RODRIGUEZ: The trip sheets, the paystubs.

25 DISCOVERY COMMISSIONER: The trip sheets, right.

1 MS. RODRIGUEZ: All payroll records.

2 DISCOVERY COMMISSIONER: But what's on the electronic record?

3 MS. RODRIGUEZ: The paystubs, the trip sheets, the same things.

4 DISCOVERY COMMISSIONER: Well, then why didn't you just hand it
5 over? I mean --

6 MS. RODRIGUEZ: I did hand it over, Your Honor.

7 DISCOVERY COMMISSIONER: Okay. You know what? I -- my concern
8 right now is that, based on everything that has gone on, I don't know if what's on that
9 electronic -- in those electronic programs are going to comport with what is --

10 MS. RODRIGUEZ: And I think you'll be satisfied that it will.

11 DISCOVERY COMMISSIONER: Okay. Let's find that out.

12 MS. RODRIGUEZ: I'm happy to put it on a thumb drive for them.

13 DISCOVERY COMMISSIONER: Okay.

14 MS. RODRIGUEZ: And I'm happy to demonstrate to Your Honor --

15 DISCOVERY COMMISSIONER: Perfect.

16 MS. RODRIGUEZ: -- that they're one in the same.

17 DISCOVERY COMMISSIONER: Perfect. So in light of that, what I am
18 going to do today in terms of fees and costs is this. This is the only thing I'm willing to do
19 today. Everything else I'm going to have to defer until the time that I actually have the
20 opportunity to see if it's the same thing or not, okay? I am going to do that.

21 MS. RODRIGUEZ: Thank you.

22 DISCOVERY COMMISSIONER: And if it is the same thing, and there's no
23 discrepancies, then we may just call it a day. That doesn't necessarily mean that I'm not
24 gonna deal with the bad behavior of the Defendant driver at deposition -- or the Defendant
25 owner at deposition. I just haven't quite figured out how I'm gonna deal with that yet.

1 MR. GREENBERG: Your Honor spent a lot of time with us. If you're gonna
2 defer that issue, which is what it sounds like you're going to do, I understand. Let me not
3 waste your time pressing it with you right now. I would just point out that the representation
4 other things, that the stuff's been produced on paper, could only be true in terms of some
5 printed pay stubs from the QuickBooks system. Nothing from the CAB Manager system has
6 been produced, Your Honor, just copies of trip sheets. We don't have any data from --

7 DISCOVERY COMMISSIONER: Right.

8 MR. GREENBERG: -- CAB Manager.

9 DISCOVERY COMMISSIONER: And the data or -- that's on the CAB
10 Manager system may be consistent with everything else. I just don't know that because I
11 haven't seen it.

12 MR. GREENBERG: Yes.

13 DISCOVERY COMMISSIONER: This is the one thing I am willing to
14 reimburse you on though today, and that is for Mr. Morgan's deposition, because I don't
15 think it was necessary or at least if it -- it may have been necessary, but it did confirm that
16 we don't need a special code, which was represented by Defendant we don't have to write a
17 special program, we can pull the information off, and it would have been a lot more efficient
18 to do that than to go through this entire process.

19 However, I do think that you did receive some information that's helpful from
20 the deposition, so I don't think it was all a worthless process. But I calculated, with the rate
21 of -- your rate, Mr. Greenberg. I took the 2.8 hours of attendance, the 2.5 of prep, and the
22 1.2 of travel into account, and -- I'm trying to think -- I came up with a number though that
23 doesn't match that. I came up with a number of \$638.95, and that's not --

24 MR. GREENBERG: That is the court reporter amount, 638.95, is for the court
25 reporter.

1 DISCOVERY COMMISSIONER: That's the court reporter amount? Okay.
2 So that amount of money, the court reporter, for the transcript, plus -- and I did not do the
3 math, and I think it was, Mr. Greenberg, it was you who took the deposition, prepared for it,
4 attended it, travelled to it. That's all I'm going to do.

5 MR. GREENBERG: Yes, Your Honor. The question is are we going to -- are
6 you going to assess a specific amount in respect to that --

7 DISCOVERY COMMISSIONER: Well --

8 MR. GREENBERG: -- time expenditure?

9 DISCOVERY COMMISSIONER: -- I've got -- I guess I need to do the math.

10 MR. GREENBERG: Or at least give us a formula and we'll put it in --

11 DISCOVERY COMMISSIONER: It's \$400 an hour for you.

12 MR. GREENBERG: Yes, Your Honor.

13 DISCOVERY COMMISSIONER: And I'm accepting your 2.8 hours for
14 attending the deposition, 2.5 for the prep, and 1.2 for the travel, and if you could do the math,
15 I would appreciate it.

16 MR. GREENBERG: Okay. I will put that --

17 DISCOVERY COMMISSIONER: \$400 and hour.

18 MR. GREENBERG: That is how it will be calculated and put into the order. I
19 will specify --

20 DISCOVERY COMMISSIONER: And then I'll reimburse you for your
21 transcript.

22 MR. GREENBERG: Yes, Your Honor.

23 DISCOVERY COMMISSIONER: The 638.95.

24 MR. GREENBERG: That will all be itemized specifically with the formula --

25 DISCOVERY COMMISSIONER: Okay.

1 MR. GREENBERG: -- in the recommendation, Your Honor.

2 DISCOVERY COMMISSIONER: That's all I'm willing to do today. And I
3 think that's fair because I think this could have been avoided had discussions between the
4 Defendant and Mr. Morgan occurred, and Mr. Morgan could have pulled off everything that
5 was relevant to this case.

6 Now, if it turns out there's absolutely nothing on that CAB Manager program,
7 it doesn't change, you know, my decision because then it was a worthless deposition, I mean,
8 if there's nothing on it. But I think this could have been avoided with some effort by the
9 Defendant working with Mr. Morgan.

10 All right. So that's what I'm willing to do today, not going to assess any other
11 fees or costs. I'm still -- have under advisement how I'm going to handle the Defendant
12 driver's conduct at deposition and the fact that apparently it was not finished, although we
13 went over seven hours, so I'm not sure I'm willing to continue it, but I'm going to have to
14 figure that out. And I also want it to be a meaningful process, and I'm concerned that it's
15 going to turn into -- it may be that I have to attend that deposition when we finish it up. I'm
16 not sure yet. I'm still thinking. I apologize for that, but I'm -- I have to think it through a
17 little bit more. My plan is to bring you all back January 6, 2016, at 9 a.m.

18 Now, I do have to grant your motion to extend the discovery deadline since
19 currently that date is after your current trial date. I am granting that motion; it was always
20 my intention to do that. I was hoping we'd have the class certification issue resolved. I think
21 we will in short order. But my plan was always to extend the phase 2 liability and damages
22 discovery, so that's what I'm going to do today, or at least that's kind of how I characterized
23 it because I think the class certification issue's already fully discovered in to the Judge,
24 right?

25 MR. GREENBERG: Well, Your Honor, Judge Cory actually noted this for

1 last Monday for chambers decision on that. We haven't seen it as yet.

2 DISCOVERY COMMISSIONER: Right.

3 MR. GREENBERG: So we don't a hundred percent know if he's going to
4 approve of the class certification.

5 DISCOVERY COMMISSIONER: Yeah.

6 MR. GREENBERG: If he believes an additional record needs to be presented
7 to him, then presumably we would need to discover more on that. But the overlap between
8 the class discovery and the certification and, as you said, liability and damages of phase 2 is
9 very substantial, so I'm not sure that there's really sort of a wall between these two, Your
10 Honor.

11 In terms of extending the schedule, we also have Mr. Nady now as a personal
12 Defendant, which raises some additional issues in the case. He's gonna have to give a
13 further deposition just on that, Your Honor. So I would --

14 DISCOVERY COMMISSIONER: Well, we'll see. I'm sure there was a lot of
15 overlap.

16 MS. RODRIGUEZ: Absolutely. I mean, Your Honor ordered a PMK depo
17 pertaining to payroll records, and --

18 DISCOVERY COMMISSIONER: 30(b)(6).

19 MS. RODRIGUEZ: -- and -- a 30(b)(6). And, as you can see, there were 23
20 other categories, and then Mr. Greenberg asked things way outside the scope, and that was
21 one of the reasons the depo went seven hours, so --

22 DISCOVERY COMMISSIONER: But I didn't --

23 MS. RODRIGUEZ: -- he's already asked him all of those.

24 DISCOVERY COMMISSIONER: But I didn't really -- all I can say -- and
25 you all know your case much better than I do, but I'm reading the transcript, and I didn't see

1 where the questioning was inappropriate or way off base. I just didn't see it. I thought there
2 was a logical flow to it. But the issue is what do we need to do to complete the deposition of
3 the Defendant owner, if anything, and how we're gonna do it, so I may have to be present.

4 MS. RODRIGUEZ: And, Your Honor, following that timeframe, as you
5 know, there were five additional depositions taken by Mr. Greenberg where he showed up
6 with his camcorder in the witness's face, and you ordered that he was supposed to produce
7 copies of those videos to me. I've asked for 'em twice already, and he has not turned over
8 those videos.

9 MR. GREENBERG: I apologize. They can definitely have copies of the
10 videos.

11 DISCOVERY COMMISSIONER: Will you just please take care of that.

12 MR. GREENBERG: Absolutely, Your Honor. My apologies for the delay.

13 DISCOVERY COMMISSIONER: I'm going to give everybody till the end of
14 the year, which is December 31st of 2015 to provide the information from the CAB Manager
15 program, QuickBooks, and for you to get those videos over to --

16 MR. GREENBERG: Absolutely, Your Honor.

17 DISCOVERY COMMISSIONER: -- the Defendant.

18 MR. GREENBERG: I'll have my staff work on it this week.

19 DISCOVERY COMMISSIONER: Okay. So the motion to compel is granted
20 within the parameters. I did award certain fees and costs for Mr. Morgan's deposition. I am
21 deferring any additional fees and costs or other types of Rule 37 sanctions until January. I
22 want to see what the compliance is and what those documents show that we need to take a
23 look at. And you don't have to produce a copy to me, but I do expect, Mr. Greenberg, when
24 you come back to see me in January that you tell me if they're consistent with what you were
25 previously given.

1 MR. GREENBERG: Yes, Your Honor. I certainly, in respect to the
2 QuickBooks --

3 DISCOVERY COMMISSIONER: Maybe January 6 is too soon. Maybe we
4 need a little more time. Want to come back and see me January 13th? It's a Wednesday, not
5 a Friday.

6 MR. GREENBERG: That would be fine, Your Honor. And just to state for
7 the record, the only thing that would be consistent would be the QuickBooks information
8 with the printed payroll.

9 DISCOVERY COMMISSIONER: And you did explain that to me before.

10 MR. GREENBERG: Thank you, Your Honor.

11 DISCOVERY COMMISSIONER: I just don't know if what's on the CAB
12 Manager is going to be very enlightening. We'll have to find out.

13 MR. GREENBERG: Your Honor, I don't know either.

14 DISCOVERY COMMISSIONER: Well, it may not be, so we'll find out.

15 MR. GREENBERG: I appreciate Your Honor's patience with us.

16 DISCOVERY COMMISSIONER: All right. So motion to compel is granted
17 within those parameters. Plaintiffs' counsel is going to prepare my Report and
18 Recommendation. Motion to extend discovery is also granted. I'm vacating the 1/4/16 trial
19 date. I am going to give you your other deadlines. I would like to place this case on the June
20 27th, 2016, trial stack. So, in light of that, you know, my only concern now is that if you
21 don't get that information till the 30th, you're gonna need at least 30 days to get your expert
22 reports done I would think.

23 MR. GREENBERG: That's correct, Your Honor, and in terms of a June trial
24 date, I mean, assuming Judge Cory relatively soon grants certification, there's gonna have to
25 be a notice procedure to the class. That's gonna take some time, and as you were pointing

1 out, we would need to finish up the classwide discovery.

2 DISCOVERY COMMISSIONER: Okay.

3 MR. GREENBERG: Presumably there would be use for experts.

4 DISCOVERY COMMISSIONER: So what --

5 MR. GREENBERG: I think June --

6 DISCOVERY COMMISSIONER: What are you suggesting then because your
7 dates won't work.

8 MR. GREENBERG: Yeah. I think a June trial target is a little ambitious,
9 Your Honor. I would suggest something more around August or September would be more
10 sort of --

11 DISCOVERY COMMISSIONER: Probably won't be till October.

12 MR. GREENBERG: Well, then October. I mean, that's heavily --

13 DISCOVERY COMMISSIONER: Okay. So --

14 MR. GREENBERG: -- realistic.

15 DISCOVERY COMMISSIONER: -- when do you think you can reasonably
16 disclose your experts?

17 MR. GREENBERG: I would ask to have an expert disclosure deadline in
18 April, if possible, Your Honor. I think that would be more realistic, given what we're
19 dealing with here, the end of April, and then we would wrap up all of our discovery a couple
20 months thereafter I guess would be the idea.

21 DISCOVERY COMMISSIONER: I need you to work harder than the end of
22 April, and I know you've been working hard, but I need you to move it quicker --

23 MR. GREENBERG: Well --

24 DISCOVERY COMMISSIONER: -- than the end of April.

25 MR. GREENBERG: -- if Your Honor wants to move -- make that March, then

1 you can make it March. I just think, as you were saying, I mean, if I'm gonna be looking to
2 be getting --

3 DISCOVERY COMMISSIONER: How about April 1st?

4 MR. GREENBERG: Your Honor, I will do my best. I promise. I appreciate
5 Your Honor recognizing I have been working hard here.

6 DISCOVERY COMMISSIONER: And I'm not saying Ms. Rodriguez hasn't
7 been working hard.

8 MS. RODRIGUEZ: Thank you, Your Honor.

9 DISCOVERY COMMISSIONER: I think the problem is -- well, I think I
10 know what the problem is, but you're gonna have to work on it. Okay?

11 MR. GREENBERG: Would Your Honor be helped perhaps by briefs
12 submitted prior to the 13th of January?

13 DISCOVERY COMMISSIONER: No. I'm gonna give you dates right now.

14 MR. GREENBERG: Oh, okay.

15 DISCOVERY COMMISSIONER: Because we just cannot -- we cannot drag
16 this out any longer. This is a very, very old case.

17 MR. GREENBERG: Well, Your Honor, there was a stay in the case for about
18 six or nine months, so --

19 DISCOVERY COMMISSIONER: Well, that's --

20 MR. GREENBERG: -- the 41E time has been extended on that basis.

21 DISCOVERY COMMISSIONER: That doesn't --

22 MR. GREENBERG: It still is an old case, Your Honor. I appreciate that. My
23 question was just in respect to the status conference of January 13th, whether the Court will
24 be open or would want some formal report from the parties or briefs from the parties in
25 advance of the status conference.

1 MS. RODRIGUEZ: I would request not because you see what happened with
2 this one -- he turned in 200 pages.

3 DISCOVERY COMMISSIONER: I'm going to give you dates. Motion to
4 extend the discovery is granted. Your close of discovery is June 29th of 2016; last day to
5 amend pleadings, add parties, initial expert disclosure date is April 1st of 2016; your rebuttal
6 deadline is April 29th of 2016; and your dispositive motion deadline is July 29th of 2016. The
7 case will now be ready for trial September 12th of 2016. We'll see when you can get back
8 on --

9 MR. GREENBERG: Yes, Your Honor.

10 DISCOVERY COMMISSIONER: -- your trial setting, and I'll let the Judge
11 know.

12 MR. GREENBERG: Thank you, Your Honor. I am sorry to keep pestering
13 the Court. Again though in respect to the status conference on January 13th, would the Court
14 welcome or allow some status report or supplemental brief?

15 DISCOVERY COMMISSIONER: I will say this.

16 MR. GREENBERG: Yes.

17 DISCOVERY COMMISSIONER: If either side wants to provide me with
18 some additional information, i.e. there's nothing different on the QuickBooks than what we
19 previously provided, or the CAB Manager program doesn't show anything insightful,
20 however you want to, you know, supplement your -- the information is fine.

21 I don't need one to do it first and then somebody to respond. You can do it
22 simultaneously. Just make sure I get it by January 8th, 2016.

23 MR. GREENBERG: Yes, Your Honor.

24 DISCOVERY COMMISSIONER: I need my Report and Recommendation in
25 ten days. Make sure Ms. Rodriguez approves as to form and content. The status check for

1 that will be?

2 THE CLERK: January 8th, 11 a.m.

3 DISCOVERY COMMISSIONER: Let's not be here for that.

4 MR. GREENBERG: We won't. Thank you, Your Honor.

5 MS. RODRIGUEZ: All right. Thank you.

6 DISCOVERY COMMISSIONER: Thank you.

7 [Proceeding concluded at 9:47 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 FRANCESCA HAAK
13 Court Recorder/Transcriber

000377

000377

21

21


CLERK OF THE COURT

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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, and CREIGHTON J. NADY,

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.

PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT

A. Plaintiffs filed a Complaint on October 8, 2012. Plaintiffs filed a First Amended Complaint on January 30, 2013. Plaintiffs filed a Second Amended and Supplemental Complaint on August 19, 2015, adding the new Defendant Creighton J. Nady and the Third and Fourth Claims for Relief.

B. Defendant A Cab, LLC filed an Answer to the "Second Amended Complaint" on September 14, 2015.

Plaintiffs served a Second Amended and Supplemental Complaint on Defendant Nady on September 17, 2015.

Discovery closed on October 1, 2015 per the Stipulation and Order Extending Discovery Deadlines dated November 10, 2014.

Defendant Creighton J. Nady filed an Answer to the "Second Amended Complaint" on October 6, 2015.

An Early Case conference was not requested by the new party. Plaintiffs believe an additional Early Case Conference should be held in compliance with Nev. R. Civ. P. 16.1(b)(1) as the Second Amended and Supplemental Complaint contains two additional causes of action which require discovery not previously anticipated by the plaintiffs. Plaintiffs' counsel requested a conference via e-mail to defendants' counsel.

II.

A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND EACH**CLAIM FOR RELIEF OR DEFENSE**

2.

1 A. Plaintiffs Michael Murray and Michael Reno filed this case as a class action
2 for failure to pay minimum wages pursuant to Article 15, Section 16 of Nevada's
3 Constitution and for waiting penalties under N.R.S. 608.040 for wages owed to the plaintiffs
4 upon separation from their employment with the defendant. This case concerns the alleged
5 unpaid wages owed to the plaintiffs and members of the putative plaintiff class who worked
6 as taxicab drivers for the defendant taxicab company.
7

8 B. The Court has not yet certified this case as a class action, but a motion for
9 class certification is pending, fully briefed, and was argued before the District Court on
10 November 3, 2015. Such motion was continued to the Court's chambers calendar for a
11 November 9, 2015 decision. A decision has yet to be issued.
12

13 C. Plaintiffs' Second Amended and Supplemental Complaint asserts three
14 claims for relief: (1) Violation of Article 15, Section 16 of the Nevada Constitution for failure
15 to pay minimum wages; (2) Violation of N.R.S. 608.040; and (3) Civil Conspiracy, Aiding
16 and Abetting, Concert of Action, and as the Alter-Ego of the Corporate Defendants against
17 Defendant Creighton J. Nady only.
18

19 C. Defendants assert the following affirmative defenses:
20

- 21 1. Failure to state a claim for which relief can be granted;
- 22 2. Failure to mitigate damages;
- 23 3. Damages not the result of defendants' actions;
- 24 4. Claims are not ripe in this forum;
- 25 5. Plaintiffs proximately caused their own damages;
- 26 6. Failure to exhaust administrative remedies;
- 27 7. Claims are barred by doctrine of res judicata;
- 28 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;

18. Demand for attorneys' fees is barred by the lack of any legal basis for plaintiffs' attorneys' fees;

19. Plaintiffs ratified, through acts or omissions and/or failures to act, any act alleged to have been committed by the defendants;

20. Incorporation of affirmative defenses enumerated in NRCP 8;

21. Defendants acted reasonably and in good faith in their dealings with plaintiffs;

22. Defendants acted in good faith and did not perform any acts which would constitute a breach of any duty owed to plaintiffs;

23. Claims are barred by Doctrine of Accord and Satisfaction;

24. Plaintiffs unreasonably delayed assertion of claims to defendants' detriment;

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1 in this action possess information discoverable and relevant in this matter. Plaintiffs further
2 believe Creighton J. Nady, defendant, possesses information discoverable and relevant in
3 this matter. Plaintiffs also will also specifically name additional persons who they believe
4 are likely to have information discoverable in supplemental Rule 16.1 disclosures, if any.
5

6
7 B. Defendant: Defendant Nady joins in the witnesses and discovery completed
8 by Defendant A Cab, LLC.

9 V.

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

11 A. What changes, if any, should be made in the timing, form, or requirements for
12 disclosures under 16.1(a):
13

- 14 1. Plaintiffs' View: None
15 2. Defendant's View: None

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

- 17 1. Plaintiffs' disclosures: N/A
18 2. Defendant's disclosures: Defendants assert that discovery closed
19 October 1, 2015; Defendant Nady joins in the documents, witnesses and discovery
20 completed by Defendant A Cab, LLC.
21

22 B. Subjects on which discovery may be needed:

- 23 1. Plaintiffs' view: Discovery will need to be conducted on the affirmative
24 defenses raised by the defendants in their Answers to the Second Amended and
25 Supplemental Complaint. Discovery must also be conducted regarding the Third Claim for
26 Relief, including, but not limited to, the activities of the defendants after entry of this Court's
27 Order of February 11, 2013 in respect to how defendants were compensating their taxicab
28

1 drivers post entry of that Order and the involvement of defendant, Nady, in directing,
2 controlling, monitoring, and implementing the activities of the corporate defendants in
3 respect to the method and manner in which such corporate defendants recorded and kept
4 track of hours worked by their taxicab driver employees and the method and manner by
5 which such corporate defendants paid wages to their taxicab driver employees.
6

7 2. Defendant's view: Defendant asserts that discovery closed October
8 1, 2015, and does not agree to extend.

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

11 1. Plaintiffs' view: No.

12 2. Defendants' view: n/a
13

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

16 1. Plaintiffs' view: None.

17 2. Defendant's view: n/a
18

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

21 1. Plaintiffs' view: None.

22 2. Defendant's view: Defendants assert that discovery closed October
23 1, 2015 and does not agree to extend. If the Court is inclined to extend, discovery should
24 be limited to the new claim and new Defendant only.

25 F. Estimated Time for trial:

26 1. Plaintiffs' view: 7 days, subject to whether class certification is
27 granted.
28

2. Defendant's view: 7 days

VI.

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

A. Dates proposed by the plaintiffs:

- | | | |
|----|--|-----------------------|
| 1. | Close of Discovery: | June 29, 2016 |
| 2. | Deadline to Amend Pleadings and Add Parties: | April 1, 2016 |
| 3. | Deadline to Disclose Expert Reports: | April 1, 2016 |
| 4. | Deadline to Disclose Rebuttal Expert Reports: | April 29, 2016 |
| 5. | Dispositive Motion Deadline: | July 29, 2015 |

B. Defendant did not agree to extend discovery which closed October 1, 2015, but the Discovery Commissioner has ordered the above dates.

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: n/a

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

1 knowledge, information, and belief, formed after a reasonable inquiry, the disclosures made
2 by the signer are complete and correct as of this time.


3
4 Dated: 11/25/15

Dated 11/25/15

5
6 Respectfully submitted,

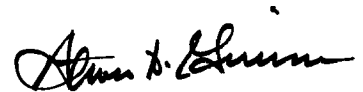
Respectfully submitted,

7
8 
9 DANA SNIEGOCKI, ESQ.
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12 2965 South Jones Blvd., #E3
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22

22



CLERK OF THE COURT

1 **NOEO**

2 LEON GREENBERG, ESQ., SBN 8094
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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.)
22 _____)

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF ORDER

23 PLEASE TAKE NOTICE that the Court entered the attached Order in this
24 matter on December 21, 2015

25 Dated: December 22, 2015

26 LEON GREENBERG PROFESSIONAL CORP.

27 /s/ Leon Greenberg

28 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

000387

000387

CERTIFICATE OF MAILING

The undersigned certifies that on December 22, 2015, she served the within:

NOTICE OF ENTRY OF ORDER

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

000388

000388


CLERK OF THE COURT

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7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

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

13 Plaintiffs,

14 vs.

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

16 Defendants.

Case No.: A-12-669926-C

DEPT.: I

Hearing Date: November 3, 2015

Hearing Time: 9:00 a.m.

17
18
19 **Order Granting in Part and Denying in Part Defendant's Motion for**
20 **Declaratory Order Regarding Statute of Limitations**

21 Defendants filed their Motion for Declaratory Order Regarding the Statute of
22 Limitations on August 10, 2015. Plaintiff's Response in Opposition to defendant's motion
23 was filed on August 28, 2015. Defendants thereafter filed their Reply to plaintiff's
24 Response in Opposition to defendants' motion on September 8, 2015. This matter, having
25 come before the Court for hearing on November 3, 2015, with appearances by Leon
26 Greenberg, Esq. and Dana Sniegocki, Esq., on behalf of all plaintiffs, and Esther
27 Rodriguez, Esq., on behalf of all defendants, and following the arguments of such counsel,
28

1 and after due consideration of the parties' respective briefs, and all pleadings and papers
2 on file herein, and good cause appearing, therefore

3 **THE COURT FINDS:**

4 Defendants' Motion seeks to limit the statute of limitations applicable to claims for
5 unpaid minimum wages under Article 15, Section 16 of the Nevada Constitution to a two
6 year period as in NRS 608.260, the Nevada statute that sets the statute of limitations for
7 claims brought for unpaid minimum wages under NRS 608.250, from which the plaintiff
8 taxicab drivers are specifically exempt. In opposition, plaintiffs urged the Court to apply the
9 four year "catch all" statute of limitations under NRS 11.220, which applies to all claims for
10 relief not otherwise provided for by statute.
11

12 The claims asserted involve claims under Nevada's Constitution. The Court finds
13 there must be expressed a specific intention by the passage of the constitutional provision
14 itself that it is intended to be limited to a specific period of limitations. Because the
15 Constitution is silent on the period of limitations within which to bring an action, plaintiffs
16 must not be restricted by application of a two year statute of limitations that was designed
17 not to apply to a constitutional provision, but to a specific statutory provision. Accordingly,
18 the Court finds that the four year "catch all" period of limitations, set forth in NRS 11.220, is
19 the most appropriate period of limitations to apply to a claim under Nevada's Constitution.
20
21 Therefore,
22

23 **IT IS HEREBY ORDERED:**

24 Defendants' Motion for a Declaratory Order Regarding the Statute of Limitations is
25 GRANTED in part and DENIED in part. Defendants' Motion is GRANTED to the extent
26 that the instant order will be deemed a declaratory order regarding the statute of
27 limitations applicable to plaintiffs' First Claim for Relief which seeks unpaid minimum
28

wages under Article 15, Section 16 of the Nevada Constitution. Defendants' Motion is DENIED in part to the extent that defendants sought the Court to apply a two year statute of limitations to such claims under Article 15, Section 16 of the Nevada Constitution. The Court will apply a four year statute of limitations as provided for under the "catch all" period of limitations found in NRS 11.220

IT IS SO ORDERED.

Dec 15, 2015
Honorable Kenneth Cory
District Court Judge

Kenneth Cory
Date

Respectfully submitted:

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Approved as to form and content:

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23

23

Allen D. Levine

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL MURRAY, ET AL.,

Plaintiffs,

VS.

A CAB TAXI SERVICE LLC, ET AL.,

Defendants.

CASE NO. A669926

DEPT. I

BEFORE THE HONORABLE BONNIE A., DISCOVERY COMMISSIONER

WEDNESDAY, JANUARY 13, 2016

RECORDER'S TRANSCRIPT OF PROCEEDINGS
DISCOVERY PRODUCTION/DEFERRED RULING - DEFENDANT'S
RULE 37 SANCTIONS

APPEARANCES:

For the Plaintiffs:

LEON GREENBERG, ESQ.,
DANA SNIEGOCKI, ESQ.

For the Defendants:

ESTHER RODRIGUEZ, ESQ.

RECORDED BY: FRANCESCA HAAK, COURT RECORDER

1 Las Vegas, Nevada - Wednesday, January 13, 2016, 9:29 a.m.

2 * * * * *

3 DISCOVERY COMMISSIONER: Murray.

4 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez, for the
5 Defendants.

6 DISCOVERY COMMISSIONER: Good morning.

7 MR. GREENBERG: Good morning, Your Honor. Leon Greenberg, Dana
8 Sniegocki, for Plaintiffs.

9 MS. SNIEGOCKI: Good morning.

10 DISCOVERY COMMISSIONER: Good morning. It's gonna be a Happy
11 New Year, everybody?

12 MR. GREENBERG: I hope so.

13 DISCOVERY COMMISSIONER: I hope so too. I'm counting on it.

14 So we're here for a status check, and I know we've been back and forth a
15 number of times, and I'm sure that there is probably a little bit of confusion. I do know that
16 there was an objection to my Report and Recommendation by defense counsel, but I don't
17 think it's been heard yet.

18 MS. RODRIGUEZ: No, Your Honor, it hasn't.

19 DISCOVERY COMMISSIONER: So I'm not sure what the status is. But I
20 think where we left off last time, if I -- if memory serves me correctly, is that the Defendant
21 was going to produce some additional information, and then there was going to be a review
22 of that information and a determination whether or not it was different than what had already
23 been produced on the time cards and the initially disclosed information. So I don't know
24 what the status of that is. I know that apparently it was a little more labor intensive than
25 anticipated. I had the impression certainly, and I think the record will bear me out, that we

1 didn't think it was going to be that big of a deal just to provide that information to the
2 Plaintiffs' counsel in addition to the timecards and everything that had already been
3 provided.

4 If it had turned out to be such a big chore, I would have hoped I would have
5 had a telephone call or a conference call so that we could address the issue, but perhaps it has
6 been taken care of, and the documentation is now produced. I just don't know what the
7 status is.

8 MR. GREENBERG: Well --

9 MS. RODRIGUEZ: I can update you as to what we have produced.

10 DISCOVERY COMMISSIONER: Okay.

11 MS. RODRIGUEZ: As Your Honor indicated, there is not a signed order yet,
12 and I don't know if Judge Cory -- what he's gonna do with the Report and Recommendation,
13 if he's gonna modify it, as we've requested, to just kinda limit the time. So, in the interim,
14 while we were kind of on hold over the holidays, I had Jim Morgan, the expert, and A Cab
15 personnel start to work to try to put this together. And so they have -- or I have produced
16 what we were able to come up with so far, which is a QuickBooks production, as ordered,
17 and the CAB Manager production, as ordered.

18 And I subsequently recently just got correspondence from Mr. Greenberg
19 indicating that he's not happy with the production, and so I think we are gonna have further
20 discussions on this because I think it was his interpretation that we were supposed to turn
21 over all of the names of the cab drivers associated with that information, and that was never
22 my understanding of Your Honor's order. I think you previously ordered that the specific
23 names of the drivers wasn't to be disclosed, but the data that he's been looking for was to be
24 disclosed, and that's what --

25 DISCOVERY COMMISSIONER: I don't remember --

1 MS. RODRIGUEZ: -- I turned over.

2 DISCOVERY COMMISSIONER: -- talking about the names. I think that's
3 actually something that you may need to talk with the District Court Judge when it comes to
4 the class certification issue. Right now we're dealing with numerosity.

5 MS. RODRIGUEZ: Right.

6 DISCOVERY COMMISSIONER: I don't think you need to know the exact
7 names of the drivers. I think you need to know the number that we're dealing with that fall
8 in -- potentially fall into the categories of concern so that the Judge can deal with the
9 certification issue. Then once it is certified as a class, if, in fact, it is, then the names of the
10 individuals have to be exchanged, a letter has to be sent advising them that they're a member
11 of the class, and that's something that typically the District Court Judge works out with the
12 lawyers.

13 MS. RODRIGUEZ: Right, and that --

14 DISCOVERY COMMISSIONER: It's not something I personally do.

15 MS. RODRIGUEZ: And just --

16 MR. GREENBERG: If I could --

17 MS. RODRIGUEZ: -- to update you, and I guess I'm trying to jump ahead of
18 Mr. Greenberg because --

19 DISCOVERY COMMISSIONER: Right. That's okay.

20 MS. RODRIGUEZ: -- a lot of times he'll hit so many issues that I can't even
21 address 'em all, so I just wanted to get a couple points out. Yes, we just got a minute order
22 Friday from the Judge. We don't have a full order of what he's going to certify, but there is
23 a minute order indicating that he's gonna move forward with class certification.

24 DISCOVERY COMMISSIONER: Okay.

25 MS. RODRIGUEZ: But when I produced all of this over the holidays, we

1 didn't have any indication.

2 DISCOVERY COMMISSIONER: And I didn't order it, so I'm not as
3 concerned about that. I think it's -- certainly I'd like you to have your order in place, and
4 then we can figure out the -- how to provide the names of the individuals.

5 MS. RODRIGUEZ: Okay. And the only thing that I would add is that he did
6 send me another E-mail yesterday -- I'm sure he's gonna bring this up -- indicating that
7 there -- he had some other questions about the way the electronic data is being reflected
8 between gross wages and hours, which I think is what your order indicated, that we were
9 supposed to turn over all information pertaining to the -- or information pertaining to the
10 wages and the hours, which we did, but now I think he's wanting a further specification of
11 all of the deductions, which we don't feel is appropriate, like federal tax withholdings, social
12 security withholdings, FICA, all of those things, because that has nothing to do with the
13 minimum wage claims. And I don't think that was ever addressed.

14 DISCOVERY COMMISSIONER: I agree with you on that.

15 MS. RODRIGUEZ: That's all I have, Your Honor. Thank you.

16 MR. GREENBERG: Your --

17 DISCOVERY COMMISSIONER: Go ahead.

18 MR. GREENBERG: -- Honor, counsel's making some representations about
19 the QuickBooks production which I got last Friday. Okay.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. GREENBERG: What I want to explain to the Court, I -- Your Honor just
22 made a statement about something not being appropriate in respect to the production. I
23 would ask Your Honor to simply reserve any ruling on any issue regarding what should or
24 shouldn't be done with the QuickBooks production. Let us, as counsel, confer further about
25 this. There are problems with the form of the production. Not only didn't -- they didn't

1 produce it with the employee names, they didn't produce it with an employee reference.
2 Normally I get this with a code number for each employee, so I don't even know --

3 DISCOVERY COMMISSIONER: Didn't we talk about that? I'm -- again, I
4 apologize to counsel because I have a number of cases, so I try to keep all these straight, but
5 I'm not always wonderful at it.

6 And I'm wondering -- didn't we talk about producing them with names, or
7 letters, or numbers, or something?

8 MR. GREENBERG: Well, my point is the obvious, Your Honor. Without a
9 unique identification for a payroll period, we don't know who it refers to. But, again, back
10 to my first request, Your Honor, that we simply defer the Court making any instructions or
11 any rulings regarding the QuickBooks --

12 DISCOVERY COMMISSIONER: I'm just trying to find out what the status is
13 today.

14 MS. RODRIGUEZ: Well --

15 MR. GREENBERG: Yes, Your Honor. In respect to this issue of the
16 deductions from the pay, it is germane because deductions are taken from pay that are not tax
17 deductions that reduce pay below the minimum wage amount. That's why we need to see
18 the bills and the net. It is not irrelevant to this case, Your Honor.

19 DISCOVERY COMMISSIONER: I'm not sure I agree with you on that, so
20 that might be something we'll have to brief and deal with later.

21 MR. GREENBERG: Yes, Your Honor.

22 DISCOVERY COMMISSIONER: What I'm concerned about right now
23 though -- and I -- you know, defense counsel, you're going to have to have a way for
24 whatever information you turned over per employee of identifying that employee on your
25 QuickBook. Now, I'm assuming you can do that, but I can't imagine you wouldn't have had

1 some sort of a code or chart so you could know which employee's information you were
2 turning over. I mean, that's a common sense issue that I'm not sure I can really address
3 further than that.

4 MS. RODRIGUEZ: Well, it's laid out line by line, Your Honor, and the only
5 thing --

6 DISCOVERY COMMISSIONER: I'm sure you have a number -- a name that
7 goes with each line, right?

8 MS. RODRIGUEZ: Yes. It just was left off. I mean, we could easily number
9 it as employee number 1 through 300.

10 MR. GREENBERG: Yes, Your Honor. Without a unique identifier, the
11 information is useless. There are other problems with the information --

12 DISCOVERY COMMISSIONER: Well, it's --

13 MR. GREENBERG: -- as produced.

14 DISCOVERY COMMISSIONER: -- not useless if each line represents an
15 employee, then number the lines. I mean, you know --

16 MR. GREENBERG: No, but, Your Honor, I don't know which employee goes
17 with which line. It's --

18 DISCOVERY COMMISSIONER: Well, not yet.

19 MR. GREENBERG: Well, yes, if it was supplemented it could be useful.

20 DISCOVERY COMMISSIONER: Not yet.

21 MR. GREENBERG: In its current form, Your Honor --

22 DISCOVERY COMMISSIONER: But you have numerosity; that's what
23 you're missing. And it doesn't even matter because the Judge is gonna certify the class,
24 right?

25 MR. GREENBERG: The class has --

1 DISCOVERY COMMISSIONER: So --

2 MR. GREENBERG: -- been certified --

3 DISCOVERY COMMISSIONER: Right, so --

4 MR. GREENBERG: -- Your Honor.

5 DISCOVERY COMMISSIONER: -- we're done with that issue.

6 MR. GREENBERG: I really don't want to take up Your Honor's time.

7 DISCOVERY COMMISSIONER: Oh, no.

8 MR. GREENBERG: You're being very --

9 DISCOVERY COMMISSIONER: It's my pleasure.

10 MR. GREENBERG: -- patient. You're being very patient with us.

11 DISCOVERY COMMISSIONER: Oh, sometimes I'm better than others.

12 MR. GREENBERG: Well, Your Honor, what I would like to do is try to work
13 cooperatively with defense counsel to resolve all of this, and if we are not able to, spell it out
14 for the Court in some written submission, hopefully very brief where it is all absolutely clear
15 'cause we're talking about charts, and documents, and, you know, a spreadsheet and so forth.

16 DISCOVERY COMMISSIONER: Right.

17 MR. GREENBERG: And data. It's hard to discuss orally without detail, Your
18 Honor.

19 DISCOVERY COMMISSIONER: Have we seen the order for class
20 certification yet?

21 MR. GREENBERG: We --

22 DISCOVERY COMMISSIONER: We just have the minute order.

23 MR. GREENBERG: We have --

24 MS. RODRIGUEZ: Have a minute order.

25 MR. GREENBERG: -- a minute order, if Your Honor would like a copy,

1 but --

2 DISCOVERY COMMISSIONER: Okay.

3 MR. GREENBERG: -- I am drafting an order for Judge --

4 DISCOVERY COMMISSIONER: For the Judge.

5 MR. GREENBERG: -- Cory's submission.

6 DISCOVERY COMMISSIONER: Okay.

7 MR. GREENBERG: Hopefully this week it'll get to him.

8 What I did want to point out, just as a scheduling issue here, Your Honor --

9 DISCOVERY COMMISSIONER: Yes.

10 MR. GREENBERG: -- your Report and Recommendation did put this to June
11 29th for conclusion of discovery. Given the class certification and the fact that there's going
12 to be a notice sent, which notice and opt-out period probably is not going to be concluded I
13 would suspect until April or May --

14 DISCOVERY COMMISSIONER: I was gonna say May.

15 MR. GREENBERG: -- at this point. Yeah. I don't know if that discovery
16 period is gonna be workable. I'm just --

17 DISCOVERY COMMISSIONER: Probably not.

18 MR. GREENBERG: Just giving you a heads up, Your Honor. I'm not
19 suggesting there's something you need to do at this point about it, but you wanted to know
20 the status, so I think that should be something you're --

21 DISCOVERY COMMISSIONER: Well, I --

22 MR. GREENBERG: -- told about.

23 DISCOVERY COMMISSIONER: -- think that you all need to think about
24 preparing either a 2.35 stipulation, or I think you're going to need to submit something to
25 me. Now, did Judge Cory talk to you about how you were gonna do the notice?

1 MS. RODRIGUEZ: No, Your Honor. None of that has been addressed.
2 We've been on hold, and we just got that -- what he just held up, just a one-paragraph minute
3 order, on Friday afternoon. So there hasn't been any further guidance, and we still have a
4 number of issues pending before Judge Cory --

5 DISCOVERY COMMISSIONER: Okay.

6 MS. RODRIGUEZ: -- in terms of the time that's gonna -- you know, for the --
7 for each employee.

8 DISCOVERY COMMISSIONER: 'Cause we're going to need to have -- once
9 the class is certified, the list of names that potentially go with the class is going to need to be
10 identified. So it may be time now to turn over the names. I'm going to let you all talk about
11 it and try to work it out. But it seems to me, defense counsel, now is probably the time to
12 provide the list of names that go with the documents, as you've already turned over, because
13 those people are going to have to be contacted.

14 MS. RODRIGUEZ: Your Honor, and it gets a little bit more complex, and I
15 would just like to give you the heads up as well on this.

16 DISCOVERY COMMISSIONER: Okay.

17 MS. RODRIGUEZ: Is that we have another pending class action suit for the
18 same employees, the same timeframe, pending from another law firm in another Department.
19 And so Judge --

20 DISCOVERY COMMISSIONER: How is that possible?

21 MR. GREENBERG: Your Honor, it's not.

22 MS. RODRIGUEZ: So Judge Cory needs to -- I'm gonna bring all of these
23 issues before Judge Cory to let him know that the Barassa Law Group has this pending
24 before Judge Delaney at the same time, so there are some issues because --

25 DISCOVERY COMMISSIONER: Maybe that was my confusion.

1 MS. RODRIGUEZ: No, Your Honor.

2 DISCOVERY COMMISSIONER: I've seen this twice.

3 MS. RODRIGUEZ: This is -- we haven't even addressed these issues before
4 you. I've talked to Mr. Greenberg about 'em, but none of this has really been --

5 DISCOVERY COMMISSIONER: Before me.

6 MS. RODRIGUEZ: I didn't -- exactly.

7 DISCOVERY COMMISSIONER: Okay.

8 MS. RODRIGUEZ: And we're gonna have -- I can't necessarily release all of
9 the names because some of 'em are under the Barassa Law Group as opposed to Mr.
10 Greenberg's.

11 MR. GREENBERG: Your Honor, that's not -- I spoke with Mr. -- with
12 counsel at Barassa Law Group yesterday.

13 DISCOVERY COMMISSIONER: Okay.

14 MR. GREENBERG: And their position is they simply want to get notice of
15 the certification in this case. Their client may remain a class member in this case. Their
16 client has other claims against Defendants. They have not moved for class certification.
17 This case has been certified as a class. It includes everyone. So there's not going to be --

18 DISCOVERY COMMISSIONER: This has to be the earlier case too.

19 MR. GREENBERG: Yes, Your Honor.

20 DISCOVERY COMMISSIONER: So if there's any consolidation, that other
21 case would come into this one I would suspect.

22 MR. GREENBERG: Yes, Your Honor. There's not gonna be any conflict or
23 overlap or separation. I mean, there's one person in that case who can or cannot proceed in
24 this case, if they wish. That's up to them.

25 DISCOVERY COMMISSIONER: But their claims are different in the other

1 case.

2 MR. GREENBERG: They have --

3 MS. RODRIGUEZ: No.

4 MR. GREENBERG: They have --

5 MS. RODRIGUEZ: No. They --

6 MR. GREENBERG: -- other claims against the Defendant involving
7 completely different issues as well in federal litigation that they're pursuing against the
8 company. They have identical claims in this court in respect to minimum wages for the one
9 individual they represent. They did allege that as a class case, but it was never certified. No
10 request was made for certification.

11 DISCOVERY COMMISSIONER: So how is the Barassa Group's case in
12 front of Judge Delaney different than yours?

13 MR. GREENBERG: Your Honor, it's not certified. It's only for one
14 individual. This case has been certified for everyone, including that individual, if she elects
15 to participate in this case. If she wishes to --

16 DISCOVERY COMMISSIONER: Can she opt out and then have her own
17 lawsuit --

18 MR. GREENBERG: Absolutely, Your Honor.

19 DISCOVERY COMMISSIONER: -- in front of Judge Delaney? Okay.

20 MR. GREENBERG: And that was what I was speaking with her counsel about
21 yesterday --

22 DISCOVERY COMMISSIONER: All right.

23 MR. GREENBERG: -- Your Honor.

24 DISCOVERY COMMISSIONER: All right.

25 MS. RODRIGUEZ: Well, I was unaware of his conversations, but they're

1 exactly the same case. The different claims he's talking about is a separate case --

2 DISCOVERY COMMISSIONER: But --

3 MS. RODRIGUEZ: -- in a federal lawsuit.

4 DISCOVERY COMMISSIONER: But they can't move for class certification
5 because this case has already certified the class.

6 MR. GREENBERG: Correct, Your Honor.

7 DISCOVERY COMMISSIONER: I don't think they can. Otherwise, they're
8 going to be consolidated 'cause it's the same case, and then we've got a problem.

9 MR. GREENBERG: Yes, Your Honor.

10 MS. RODRIGUEZ: Well --

11 MR. GREENBERG: That's correct. Your Honor, as I was urging the Court to
12 let us work as counsel to try to deal further with the discovery and the production of the
13 QuickBooks, the other materials --

14 DISCOVERY COMMISSIONER: So when do you want to come back and
15 see me, because you're -- I'm not gonna let you go today without a followup.

16 MR. GREENBERG: I would suggest something on the order of 45 to 60 days
17 is probably sensible. I don't want to put it off too far. On the other hand, if we come back in
18 three weeks, I don't think there's gonna be that much we can really substantively discuss.
19 Maybe --

20 DISCOVERY COMMISSIONER: How about a mandatory settlement
21 conference?

22 MS. RODRIGUEZ: That would be wonderful, Your Honor. We've -- I think
23 we've tried to engage in --

24 DISCOVERY COMMISSIONER: Because we've got --

25 MS. RODRIGUEZ: -- some discussions.

1 DISCOVERY COMMISSIONER: -- class certification now. We do have
2 some information; I understand it's not everything you want, but you've got -- somebody's
3 not feeling very good over there.

4 MS. SNIEGOCKI: Sorry.

5 DISCOVERY COMMISSIONER: I think class certification is important.
6 You've got that. You've got some of the QuickBooks. You've got the time cards. I think
7 maybe -- let's see where you're at when I bring you back. I may suggest that. I may even
8 suggest that we see what we can do to coordinate one for you.

9 MR. GREENBERG: Yes, Your Honor, if there's adequate production, that
10 would make sense. At this point, there is not adequate production of information.

11 DISCOVERY COMMISSIONER: Okay. Well, I need you to work it out. It
12 sounds to me like there's been a good faith effort. So here's what I'm going to do today.

13 I also know I continued this matter for further Rule 37 sanctions; I'm going to
14 deny that without prejudice right now. I think that the party's conduct at deposition is going
15 to come out at trial, and I don't think it's going to be a wonderful thing for the Defendant,
16 but I'm not willing to give anymore sanctions at this point, but I will deny that without
17 prejudice, but I will defer. I mean, if conduct continues, I'm going to have to deal with it
18 appropriately. I just -- I have my reasons for denying it without prejudice, but I don't want
19 the Plaintiffs' counsel to think that I am not appalled by what happened because I am. But I
20 think that I'm not going to do anything further right now about it because I think the
21 Defendant actually has hurt himself sufficiently by his conduct. I also think that if there are
22 future issues or future problems with him, then I will have to do something more active than
23 I'm doing it. But I think you have a lot of good cross-exam.

24 MR. GREENBERG: Your Honor, my concern about that is Your Honor has
25 definitely shown the Defendant its disapproval, and I appreciate that. My concern about the

1 limiting of the sanctions award is Your Honor awarded me costs for the cost of the
2 deposition attendance. My time that was involved in bringing this issue --

3 DISCOVERY COMMISSIONER: Right, and I did award those. I'm not
4 taking those away. Those remain.

5 MR. GREENBERG: I understand, Your Honor, but I spent probably another
6 20 hours of time presenting the misconduct of the Defendants to this Court for ruling, and
7 the Court did find that that misconduct at the deposition --

8 DISCOVERY COMMISSIONER: I think I gave you an award of your time --

9 MR. GREENBERG: For attendance --

10 DISCOVERY COMMISSIONER: -- for that, and for bringing the motion.
11 I'm pretty sure I did. And the 2.3, did I not?

12 MS. RODRIGUEZ: Yes, you did, Your Honor.

13 MR. GREENBERG: You did not, Your Honor. The recommendation simply
14 covered the time and the cost for the deposition itself.

15 DISCOVERY COMMISSIONER: I thought I brought -- I thought I awarded
16 the costs of the motion.

17 MR. GREENBERG: You did not, Your Honor.

18 MS. RODRIGUEZ: Yeah, I was objecting because he even included his travel
19 time, and when he noticed it --

20 DISCOVERY COMMISSIONER: Yeah. I think --

21 MS. RODRIGUEZ: -- two hours away --

22 MR. GREENBERG: Your Honor --

23 DISCOVERY COMMISSIONER: I think you're confused, counsel. I think
24 you did, and I think I gave it.

25 MR. GREENBERG: Your Honor --

1 DISCOVERY COMMISSIONER: I think -- All right. Listen.

2 MR. GREENBERG: I have the report right here, and recommendation.

3 DISCOVERY COMMISSIONER: May I take a look at it, because I don't
4 have it.

5 [Mr. Greenberg approaches the bench]

6 DISCOVERY COMMISSIONER: And then I need to get you on your way
7 today.

8 MR. GREENBERG: It is page 7 and 8, Your Honor.

9 DISCOVERY COMMISSIONER: I'm looking.

10 THE CLERK: Is this from November 18th?

11 DISCOVERY COMMISSIONER: Yes, it is.

12 THE CLERK: You did award, in the minute order, some things --

13 DISCOVERY COMMISSIONER: I think I awarded the money for the
14 preparation and the attendance, but not for the motion.

15 MR. GREENBERG: None for the motion, Your Honor, and this was for the
16 deposition --

17 DISCOVERY COMMISSIONER: Okay. So why don't you, before the next
18 hearing, prepare a supplemental affidavit applying the Brunzell factors for the cost and time
19 of bringing it to my attention through the motion.

20 MR. GREENBERG: And, Your Honor, just to clarify, the award covered the
21 Morgan deposition, not Mr. Nady's deposition. You believed that the cost of the Nady
22 deposition should not be assessed against --

23 DISCOVERY COMMISSIONER: Right, because you were going to need to
24 take that deposition.

25 MR. GREENBERG: Just to clarify --

1 DISCOVERY COMMISSIONER: But --

2 MR. GREENBERG: -- I understand, Your Honor.

3 DISCOVERY COMMISSIONER: But -- and I understand the bad conduct
4 that happened during the deposition. I'll give you the fees and costs you spent preparing the
5 motion on that conduct.

6 MR. GREENBERG: Thank you, Your Honor.

7 DISCOVERY COMMISSIONER: But you'll need to apply the Brunzell
8 factors, and you'll need to do it by a supplemental affidavit in advance of the next hearing,
9 and that will give defense counsel opportunity to look at it as well and make any arguments
10 against it that she desires to do.

11 I'm going to continue this matter 60 days, so I'll need that supplement with
12 your affidavit applying the Brunzell factors in advance of the next hearing, and I would like
13 it certainly let's say by March 1st --

14 MR. GREENBERG: Yes, Your Honor.

15 DISCOVERY COMMISSIONER: -- 2016, and that will give defense counsel
16 an opportunity to file any type of opposition she desires to do. And then I'm going to bring
17 you back March 16th, which is a Wednesday, at 10 a.m., for further status check conference.
18 I do -- would require though, defense counsel, on the Rule 37 sanctions, I'm basically going
19 to deny that in large part. It's gonna be granted in part and denied in part, but I will allow
20 the Plaintiff to submit an affidavit just for bringing the motion and referencing the conduct.

21 MS. RODRIGUEZ: I understand, Your Honor.

22 DISCOVERY COMMISSIONER: All right.

23 MR. GREENBERG: Yes, Your Honor.

24 DISCOVERY COMMISSIONER: But that's it.

25 MS. RODRIGUEZ: Thank you.

1 DISCOVERY COMMISSIONER: No other Rule 37 sanctions at this point.
2 But the further Rule 37 sanctions are denied without prejudice, but I am going to award the
3 fees and costs for having to bring the motion, but they'll have to -- Plaintiffs' counsel, you'll
4 just have to do your supplement.

5 MR. GREENBERG: Yes, Your Honor. I understand.

6 DISCOVERY COMMISSIONER: So I make sure I have the right number.

7 And I don't think there's anything further to do today. I would request -- when
8 are you going back in front of Judge Cory? Do you have a hearing set?

9 MR. GREENBERG: We do not, Your Honor.

10 MS. RODRIGUEZ: No, Your Honor.

11 DISCOVERY COMMISSIONER: Okay. So one of you will need to go back
12 in front of the Judge and make the determination as to how the class certification notice is
13 going to be prepared and proceed. And, you know, I leave that to you all. You know what
14 your next step is in that regard.

15 MR. GREENBERG: That will be addressed in the order that will be --

16 DISCOVERY COMMISSIONER: Okay.

17 MR. GREENBERG: -- submitted on the minute order. He was provided with
18 a draft on the moving papers.

19 DISCOVERY COMMISSIONER: Okay.

20 MR. GREENBERG: So it will be requested. He approved the notice
21 procedure --

22 DISCOVERY COMMISSIONER: So it --

23 MR. GREENBERG: -- now.

24 DISCOVERY COMMISSIONER: -- would make the Commissioner very
25 happy if, before you return to see me in March, that the names of the drivers have been

1 disclosed.

2 MR. GREENBERG: That will be part of the order going to Judge Cory --

3 DISCOVERY COMMISSIONER: Because that has to be done now. Okay?

4 MS. RODRIGUEZ: Okay.

5 DISCOVERY COMMISSIONER: All right. I don't have anything further
6 today. Do you all have anything further?

7 MR. GREENBERG: We have nothing further, Your Honor.

8 DISCOVERY COMMISSIONER: Okay.

9 MR. GREENBERG: In terms --

10 DISCOVERY COMMISSIONER: I do need defense counsel to prepare my
11 Report and Recommendation from today's hearing because I am denying -- I had continued
12 the motion on the Rule 37 sanctions, which is denied in part and granted in part, and it's just
13 granted with respect -- very limited with respect to bringing the motion, but that award will
14 be made at the time of the next hearing. I also need you to put the next hearing date and time
15 in the motion -- or in the Report and Recommendations.

16 MS. RODRIGUEZ: I will.

17 MR. GREENBERG: Your Honor --

18 DISCOVERY COMMISSIONER: Thank you.

19 MR. GREENBERG: -- defense counsel will presumably take the opportunity
20 to include in the Report and Recommendation a statement that the Court does not believe
21 that the deduction information from the payroll should be produced. I don't need --

22 DISCOVERY COMMISSIONER: I don't need to have that included in the
23 Report and Recommendations because I haven't made that decision yet. I tend to agree with
24 the defense counsel on that, but then you asked me not to make a decision --

25 MR. GREENBERG: That's correct, Your Honor.

1 DISCOVERY COMMISSIONER: -- pending further discussions between the
2 two of you, so I'm going to honor that. I'm just saying I don't know if the deduction part -- I
3 mean, my wage, your -- well, you're different. You all are employed differently. But as an
4 employee, you know, my wage -- the deductions don't affect the wage rate, so I'm not sure
5 how they do here.

6 MR. GREENBERG: Your Honor, if the employer is deducting for accidents,
7 for money loaned to the employee with interest, which is what was happening at this
8 company, it --

9 DISCOVERY COMMISSIONER: Well, that's a different issue.

10 MR. GREENBERG: Yes, Your Honor. Those are the deductions I'm
11 interested in, not the tax deductions, not the child support deductions, 'cause those don't
12 implicate --

13 DISCOVERY COMMISSIONER: Okay. Why don't you all have your 2.34
14 conference on this issue, and then we can address it further when you return to see me in
15 March.

16 MR. GREENBERG: Thank you, Your Honor.

17 DISCOVERY COMMISSIONER: And then we'll also address the discovery
18 deadlines, if you're not able to work that out by 2.35 stipulation.

19 MS. RODRIGUEZ: Okay.

20 DISCOVERY COMMISSIONER: So the next hearing date will be March 16th
21 at 10 a.m. We will address the imposition of the attorney's fees for having to bring the
22 motion for sanctions. We will address compliance with discovery. We will address class
23 certification issues, and we will discuss the discovery deadlines at that time.

24 THE CLERK: And the status check for the Report and Recommendation is
25 February 19th at 11.

1 DISCOVERY COMMISSIONER: And that's only for defense counsel to be
2 here, but I do need you to address the motion for sanctions.

3 MS. RODRIGUEZ: I understand. Thank you, Your Honor.

4 MR. GREENBERG: Thank you, Your Honor.

5 DISCOVERY COMMISSIONER: Thank you. And make sure you run it by
6 Plaintiffs' counsel to approve as to form and content.

7 MS. RODRIGUEZ: I will.

8 DISCOVERY COMMISSIONER: Thank you.

9 [Proceeding concluded at 9:53 a.m.]

10 * * *

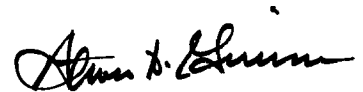
11 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
12 video recording of this proceeding in the above-entitled case.

13 

14 FRANCESCA HAAK
15 Court Recorder/Transcriber

24

24



CLERK OF THE COURT

1 **NOEO**

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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 February 10, 2016.

24 Dated: February 10, 2016

25 LEON GREENBERG PROFESSIONAL CORP.

26 /s/ Leon Greenberg

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NOTICE OF ENTRY OF ORDER

TO:

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

Sydney Saucier

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ORDR


CLERK OF THE COURT

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Case No.: A-12-669926-C

DEPT.: I

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC, A
CAB, LLC, and CREIGHTON J.
NADY,
Defendants.

**Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCR
Rule 23(b)(2) and NRCR Rule 23(b)(3) and Denying Without Prejudice
Plaintiffs' Motion to Appoint a Special Master Under NCRP Rule 53**

Plaintiffs filed their Motion to Certify this Case as a Class Action Pursuant to
NRCR 23(b)(3) and NRCR 23(b)(2), and appoint a Special Master, on May 19, 2015.
Defendants' Response in Opposition to plaintiffs' motion was filed on June 8, 2015.
Plaintiffs thereafter filed their Reply to defendants' Response in Opposition to
plaintiffs' motion on July 13, 2015. This matter, having come before the Court for
hearing on November 3, 2015, with appearances by Leon Greenberg, Esq. and Dana

1 Sniegocki, Esq. on behalf of all plaintiffs, and Esther Rodriguez, Esq., on behalf of all
2 defendants, and following the arguments of such counsel, and after due consideration
3 of the parties' respective briefs, and all pleadings and papers on file herein, and good
4 cause appearing, therefore

6 **THE COURT FINDS:**

8 In Respect to the Request for Class Certification

9 Upon review of the papers and pleadings on file in this matter, and the
10 evidentiary record currently before the Court, the Court holds that plaintiffs have
11 adequately established that the prerequisites of Nev. R. Civ. P. 23(b)(3) and 23(b)(2)
12 are met to certify the requested classes seeking damages and suitable injunctive relief
13 under Article 15, Section 16 of the Nevada Constitution (the "Minimum Wage
14 Amendment") and NRS 608.040 and the claims asserted against defendant Nady in
15 the Third and Fourth Claims for Relief in the Second Amended and Supplemental
16 Complaint and grants the motion. The Court makes no determinations of the merits
17 of the claims asserted nor whether any minimum wages are actually owed to any class
18 members, or whether any injunctive relief should actually be granted, as such issues
19 are not properly considered on a motion for class certification. In compliance with
20 what the Court believes is required, or at least directed by the Nevada Supreme Court
21 as desirable, the Court also makes certain findings supporting its decision to grant
22 class certification under NRCP Rule 23. *See, Beazer Homes Holding Corp. v. Eighth*
23 *Judicial Dist. Court.*, 291 P.3d 128, 136 (2012) (En Banc) (Granting writ petition,
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1 finding district court erred in failing to conduct an NRCP Rule 23 analysis, and
2 holding that “[u]ltimately, upon a motion to proceed as a class action, the district
3 court must “thoroughly analyze NRCP 23's requirements and document its findings.””
4 Citing *D.R. Horton v. Eighth Judicial Dist. Court* (“*First Light II*”), 215 P.3d 697,
5 704 (Nev. Sup. Ct. 2009).

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8 As an initial matter, the nature of the claims made in this case are of the sort for
9 which class action treatment would, at least presumptively, likely be available if not
10 sensible. A determination of whether an employee is owed unpaid minimum hourly
11 wages requires that three things be determined: the hours worked, the wages paid, and
12 the applicable hourly minimum wage. Once those three things are known the
13 minimum wages owed, if any, are not subject to diminution by the employee’s
14 contributory negligence, any state of mind of the parties, or anything else of an
15 individual nature that has been identified to the Court. Making those same three
16 determinations, involving what is essentially a common formula, for a large group of
17 persons, is very likely to involve an efficient process and common questions. The
18 minimum hourly wage rate is set at a very modest level, meaning the amounts of
19 unpaid minimum wages likely to be owed to any putative class member are going to
20 presumptively be fairly small, an additional circumstance that would tend to weigh in
21 favor of class certification.
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27 In respect to granting the motion and the record presented in this case, the
28 Court finds it persuasive that a prior United States Department of Labor (“USDOL”)

1 litigation initiated against the defendants resulted in a consent judgment obligating the
2 defendants to pay \$139,834.80 in unpaid minimum wages to the USDOL for
3 distribution to 430 taxi drivers under the federal Fair Labor Standards Act (the
4 “FLSA”) for the two year period from October 1, 2010 through October 2, 2012. The
5 parties dispute the *collateral estoppel* significance of that consent judgment in this
6 litigation. The Court does not determine that issue at this time, inasmuch as whether
7 the plaintiffs are actually owed minimum wages (the “merits” of their claims) is not a
8 finding that this Court need make, nor presumably one it should make, in the context
9 of granting or denying a motion for class certification. The USDOL, as a public law
10 enforcement agency has a duty, much like a prosecuting attorney in the criminal law
11 context, to only institute civil litigation against employers when credible evidence
12 exists that such employers have committed violations of the FLSA. Accordingly,
13 whether or not the consent judgment is deemed as a binding admission by defendants
14 that they owe \$139,834.80 in unpaid minimum wages under the FLSA for distribution
15 to 430 taxi drivers, it is appropriate for the Court to find that the Consent judgment
16 constitutes substantial evidence that, at least at this stage in these proceedings,
17 common questions exist that warrant the granting of class certification. The Court
18 concludes that the record presented persuasively establishes that there are at least two
19 common questions warranting class certification in this case for the purposes of
20 NRCP Rule 23(b)(3) (“damages class” certification) that are coextensive with the
21 period covered by the USDOL consent judgment and for the period prior to June of
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1 2014.

2 The first such question would be whether the class members are owed
3 additional minimum wages, beyond that agreed to be paid in the USDOL consent
4 judgment, and for the period covered by the consent judgment, by virtue of the
5 Minimum Wage Amendment imposing an hourly minimum wage rate that is \$1.00 an
6 hour higher than the hourly minimum wage required by the FLSA for employees who
7 do not receive “qualifying health insurance.” The Court concludes that resolving
8 such “qualifying health insurance” question involves issues common to all of the class
9 members and defendants have not proffered any meaningful evidence tending to
10 contradict such conclusion. The second such question would be whether the class
11 members are owed additional minimum wages, beyond that alleged by USDOL for
12 the period covered by the consent judgment, by virtue of the Minimum Wage
13 Amendment not allowing an employer a “tip credit” towards its minimum wage
14 requirements, something that the FLSA does grant to employers in respect to its
15 minimum wage requirements. It is unknown whether the USDOL consent judgment
16 calculations include or exclude the application of any “tip credit” towards the FLSA
17 minimum wage deficiency alleged by the USDOL against the defendants.
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24 In respect to the “tip credit” issue plaintiffs have also demonstrated, and
25 defendants do not dispute, a violation of Nevada’s Constitution existing prior to June
26 of 2014. Plaintiff has provided to the Court payroll records from 2014 for taxi driver
27 employee and class member Michael Sargeant indicating that he was paid \$7.25 an
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1 hour but only when his tip earnings are included. Defendant does not dispute the
2 accuracy of those records. Nor has it produced any evidence (or even asserted) that
3 the experience of Michael Sargeant in respect to the same was isolated and not
4 common to many of its taxi driver employees. The Nevada Constitution's minimum
5 wage requirements, unlike the FLSA, prohibits an employer from using a "tip credit"
6 and applying an employee's tips towards any portion of its minimum wage obligation.
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8 The Sargeant payroll records, on their face, establish a violation of Nevada's
9 minimum wage standards for a certain time period and strongly support the granting
10 of the requested class certification.
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13 The Court makes no finding that the foregoing two identified common
14 questions are the only common questions present in this case that warrant class
15 certification. Such two identified issues are sufficient for class certification as the
16 commonality prerequisite of NRCP Rule 23(a) is satisfied when a "single common
17 question of law or fact" is identified. *Shuette v. Beazer Homes Holdings Corp.*, 121
18 Nev. 837, 848 (2005). In addition, there also appear to be common factual and legal
19 issues presented by the claims made under NRS 608.040 for statutory "waiting time"
20 penalties for former taxi driver employees of defendants and whether defendant Nady
21 can be found, personally liable, as alleged in the Third and Fourth Claims for Relief in
22 the Second Amended and Supplemental Complaint, for any monies owed to the class
23 members that would otherwise be just the responsibility of the corporate defendants.
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25 Such common questions are readily apparent as NRS 608.040 is a strict liability
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1 statute and the conduct alleged by Nady that would impose liability upon him is
2 common to the class, as it involves his direction and control of the corporate
3 defendants and not his actions towards any class member individually.
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5 The Court also finds that the other requirements for class certification under
6 NRCP Rule 23(b)(3) are adequately satisfied upon the record presented. Numerosity
7 is established as the United States Department of Labor investigation identified over
8 430 potential class members in the consent judgment who may have claims for
9 minimum wages under the Minimum Wage Amendment. “[A] putative class of forty
10 or more generally will be found numerous.” *Shuette*, 122 Nev. at 847. Similarly,
11 adequacy of representation and typicality seem appropriately satisfied upon the record
12 presented. It is undisputed that the two named plaintiffs, who were found in the
13 USDOL consent judgment to be owed unpaid minimum wages under the FLSA, and
14 additional class representative Michael Sargeant, whose payroll records show, on their
15 face, a violation of Nevada’s minimum wage requirements, are or have been taxi
16 drivers employed by the defendants. Counsel for the plaintiffs have also
17 demonstrated their significant experience in the handling of class actions. The Court
18 also believes the superiority of a class resolution of these claims is established by their
19 presumptively small individual amounts, the practical difficulties that the class
20 members would encounter in attempting to litigate such claims individually and obtain
21 individual counsel, the status of many class members as current employees of
22 defendants who may be loath to pursue such claims out of fear of retaliation, and the
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1 desirability of centralizing the resolution of the common questions presented by the
2 over 430 class members in a single proceeding.

3
4 In respect to class certification under NRCP Rule 23(b)(2) for appropriate class
5 wide injunctive relief the Court makes no finding that any such relief shall be granted,
6 only that it will grant such class certification and consider at an appropriate time the
7 form and manner, if any, of such injunction. The existence of common policies by
8 defendants that either directly violate the rights of the class members to receive the
9 minimum wages required by Nevada's Constitution, or that impair the enforcement of
10 those rights and are otherwise illegal, are substantially supported by the evidence
11 proffered by the plaintiffs. That evidence includes a written policy of defendants
12 reserving the right to unilaterally deem certain time during a taxi driver's shift as non-
13 compensable and non-working "personal time." Defendants have also failed to keep
14 records of the hours worked by their taxi drivers for each pay period for a number
15 years, despite having an obligation to maintain such records under NRS 608.215 and
16 being advised by the USDOL in 2009 to keep such records. And as documented by
17 the Michael Sargeant payroll records, the defendants, for a period of time after this
18 Court's Order entered on February 11, 2013 finding that the Nevada Constitution's
19 minimum wage provisions apply to defendants' taxicab drivers, failed to pay such
20 minimum wages, such failure continuing through at least June of 2014. Plaintiffs
21 have also alleged in sworn declarations that defendants have a policy of forcing their
22 taxi drivers to falsify their working time records, allegations, which if true, may also
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1 warrant the granting of injunctive relief.

2 The Court notes that Nevada's Constitution commands this Court to grant the
3 plaintiffs "all remedies available under the law or in equity" that are "appropriate" to
4 "remedy any violation" of the Nevada Constitution's minimum wage requirements. In
5 taking note of that command the Court does not, at this time, articulate what form, if
6 any, an injunction may take, only that it is not precluding any of the forms of
7 injunctive relief proposed by plaintiffs, including Ordering defendants to pay
8 minimum wages to its taxi drivers in the future; Ordering defendants to maintain
9 proper records of their taxi drivers' hours of work; Ordering notification to the
10 defendants' taxi drivers of their rights to minimum wages under Nevada's
11 Constitution; and Ordering the appointment of a Special Master to monitor
12 defendants' compliance with such an injunction.

13 Defendants have not proffered evidence or arguments convincing the Court that
14 it should doubt the accuracy of the foregoing findings. The Court is also mindful that
15 *Shuette* supports the premise that it is better for the Court to initially grant class
16 certification, if appropriate, and "reevaluate the certification in light of any problems
17 that appear post-discovery or later in the proceedings." *Shuette* 124 P.3d at 544.

18 In Respect to the Request for the Appointment of a Special Master

19 Plaintiffs have also requested the appointment of a Special Master under NRC
20 Rule 53, to be paid by defendants, to compile information on the hours of work of the
21 class members as set forth in their daily trip sheets. The Court is not persuaded that
22

1 the underlying reasons advanced by plaintiffs provide a sufficient basis to place the
2 entirety of the financial burden of such a process upon the defendants. Accordingly,
3 the Court denies that request without prejudice at this time.
4

5 Therefore

6 **IT IS HEREBY ORDERED:**
7

8 Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(3) is
9 **GRANTED.** The class shall consist of the class claims as alleged in the Second
10 Amended and Supplemental Complaint of all persons employed by any of the
11 defendants as taxi drivers in the State of Nevada at anytime from July 1, 2007 through
12 December 31, 2015, except such persons who file with the Court a written statement
13 of their election to exclude themselves from the class as provided below. Also
14 excluded from the class is Jasminka Dubric who has filed an individual lawsuit
15 against the defendant A CAB LLC seeking unpaid minimum wages and alleging
16 conversion by such defendant, such case pending before this Court under Case No. A-
17 15-721063-C. The class claims are all claims for damages that the class members
18 possess against the defendants under the Minimum Wage Amendment arising from
19 unpaid minimum wages that are owed to the class members for work they performed
20 for the defendants from July 1, 2007 through December 31, 2015; all claims they may
21 possess under NRS 608.040 if they are a former taxi driver employee of the
22 defendants and are owed unpaid minimum wages that were not paid to them upon
23 their employment termination as provided for by such statute; and the claims alleged
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1 against defendant Nady in the third and fourth claims for relief in the Second
2 Amended and Supplemental Complaint. Leon Greenberg and Dana Sniegocki of
3 Leon Greenberg Professional Corporation are appointed as class counsel and the
4 named plaintiffs Michael Murray and Michael Reno, and class member Michael
5 Sargeant, are appointed as class representatives. The Court will allow discovery
6 pertaining to the class members and the class claims.
7

8
9 **IT IS FURTHER ORDERED:**

10 Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(2) for
11 appropriate equitable and injunctive relief as authorized by Article 15, Section 16 of
12 Nevada's Constitution is **GRANTED** and the named plaintiffs Michael Murray and
13 Michael Reno, and class member Michael Sargeant, are also appointed as class
14 representatives for that purpose. The class shall consist of all persons employed by
15 defendants as taxi drivers in the State of Nevada at any time from July 1, 2007
16 through the present and continuing into the future until a further Order of this Court
17 issues.
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22 **IT IS FURTHER ORDERED:**
23

24
25 (1) Defendants' counsel is to produce to plaintiffs' counsel, within 10 days
26 of the service of Notice of Entry of this Order, the names and last known addresses of
27 all persons employed as taxicab drivers by any of the defendants in the State of
28

1 Nevada from July 1, 2007 through December 31, 2015, such information to be
2 provided in an Excel or CSV or other agreed upon computer data file, as agreed upon
3 by counsel for the parties, containing separate fields for name, street address, city,
4 state and zip code and suitable for use to mail the Notice of Class Action ;
5
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7

8 (2) Plaintiffs' counsel, upon receipt of the names and addresses described in
9 (1) above, shall have 40 days thereafter (and if such 40th day is a Saturday, Sunday or
10 holiday the first following business day) to mail a Notice of Class Action in
11 substantially the form annexed hereto as Exhibit "A" to such persons to notify them of
12 the certification of this case as a class action pursuant to Nev. R. Civ. P. 23(b)(3) and
13 shall promptly file with the Court a suitable declaration confirming that such mailing
14 has been performed;
15
16
17

18 (3) The class members are enjoined from the date of entry of this Order, until
19 or unless a further Order is issued by this Court, from prosecuting or compromising
20 any of the class claims except as part of this action and only as pursuant to such
21 Order; and
22
23
24

25 (4) Class members seeking exclusion from the class must file a written
26 statement with the Court setting forth their name, address, and election to be excluded
27 from the class, no later than 55 days after the mailing of the Notice of Class Action as
28

provided for in (2), above.

IT IS FURTHER ORDERED:

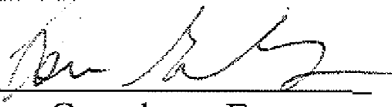
Plaintiffs' motion to appoint a Special Master under NRCP Rule 53 is denied without prejudice at this time.

IT IS SO ORDERED.

Dated this 9 day of Jan, 2016.


Hon. Kenneth Cory
District Court Judge

Submitted:

By: 
Leon Greenberg, Esq.
Dana Sniegocki, Esq.
LEON GREENBERG PROF. CORP.
2965 S. Jones Blvd., Ste. E-3
Las Vegas, NV 89146
Attorneys for Plaintiffs

Approved as to form and content:

By: Not Approved
ESTHER C. RODRIGUEZ, ESQ.
NV Bar 006473
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10161 Park Run Drive.
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Las Vegas, NV 89145
Tel: (702) 320-8400
Fax (702) 320-8401
info@rodriguezlaw.com
Attorney for Defendants

EXHIBIT "A"

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

NOTICE OF CLASS
ACTION
CERTIFICATION

You are being sent this notice because you are a member of the class of current and former taxi drivers employed by A CAB TAXI SERVICE LLC and A CAB, LLC ("A-Cab") that has been certified by the Court. Your rights as a class member are discussed in this notice.

NOTICE OF CLASS ACTION CERTIFICATION

On [date] this Court issued an Order certifying this case as a class action for all taxi driver employees of A-Cab (the "class members") who were employed at anytime from July 1, 2007 to December 31, 2015. The purpose of such class action certification is to resolve the following questions:

- (1) Does A-Cab owe class members any unpaid minimum wages pursuant to Nevada's Constitution?
- (2) If they do owe class members minimum wages, what is the amount each is owed and must now be paid by A-Cab?
- (3) What additional money, if any, should A-Cab pay to the class members besides unpaid minimum wages?
- (4) For those class members who have terminated their employment with A-Cab since October 8, 2010, what, if any, additional money, up to 30 days unpaid wages, are owed to them by A-Cab under Nevada Revised Statutes 608.040?
- (5) Is the defendant CREIGHTON J. NADY ("Nady") responsible for paying any money owed by A-Cab to the class members?

The class certification in this case may also be amended or revised in the future which means the Court may not answer all of the above questions or may answer additional questions.

NOTICE OF YOUR RIGHTS AS A CLASS MEMBER

If you wish to have your claim as a class member decided as part of this case you do not need to do anything. The class is represented by Leon Greenberg and Dana Sniegocki (the "class counsel"). Their attorney office is Leon Greenberg Professional Corporation, located at 2965 South Jones Street, Suite E-3, Las Vegas, Nevada, 89146. Their telephone number is 702-383-6085 and email

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can be sent to them at leongreenberg@overtimelaw.com. Communications by email instead of telephone calls are preferred.

You are not required to have your claim for unpaid minimum wages and other possible monies owed to you by A Cab or Nady decided as part of this case. If you wish to exclude yourself from the class you may do so by filing a written and signed statement in this Court's file on this case with the Clerk of the Eighth Judicial District Court, which is located at 200 Lewis Avenue, Las Vegas, Nevada, 89101 no later than [insert date 55 days after mailing] setting forth your name and address and stating that you are excluding yourself from this case. If you do not exclude yourself from the class you will be bound by any judgment rendered in this case, whether favorable or unfavorable to the class. If you remain a member of the class you may enter an appearance with the Court through an attorney of your own selection. You do need not get an attorney to represent you in this case and if you fail to do so you will be represented by class counsel.

THE COURT IS NEUTRAL

No determination has been made that A-Cab or Nady owes any class members any money. The Court is neutral in this case and is not advising you to take any particular course of action. If you have questions about this notice or your legal rights against A-Cab and Nady you should contact class counsel at 702-383-6085 or by email to leongreenberg@overtimelaw.com or consult with another attorney. The Court cannot advise you about what you should do.

NO RETALIATION IS PERMITTED IF YOU CHOOSE TO PARTICIPATE IN THIS LAWSUIT

Nevada's Constitution protects you from any retaliation or discharge from your employment for participating in this case or remaining a member of the class. You cannot be punished by A-Cab or fired from your employment with them for being a class member. A-Cab cannot fire you or punish you if this case is successful in collecting money for the class members and you receive a share of that money.

IT IS SO ORDERED

Date:

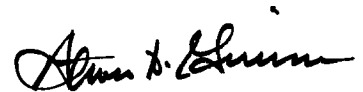
/s/ Hon. Kenneth Cory, District Court Judge

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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 E3
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 ORDER

22 PLEASE TAKE NOTICE that the Court entered the attached Order in this
23 matter on February 18, 2016

24 Dated: February 18, 2016

25 LEON GREENBERG PROFESSIONAL CORP.

26 /s/ Leon Greenberg

27 Leon Greenberg, Esq.
28 Nevada Bar No. 8094
2965 S. Jones Boulevard - Ste. E-3
Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Plaintiffs

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1 CERTIFICATE OF SERVICE

2
3 The undersigned certifies that on February 18, 2016, she served the
4 within:
5

6 NOTICE OF ENTRY OF ORDER

7 by court electronic service to:

8 TO:

9 Esther C. Rodriguez, Esq.
10 RODRIGUEZ LAW OFFICES, P.C.
11 10161 Park Run Drive, Suite 150
12 Las Vegas, NV 89145
13

14 /s/ *Sydney Saucier*

15 Sydney Saucier
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CLERK OF THE COURT

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

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

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

13 Plaintiffs,

14 vs.

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

16 Defendants.
17
18

Case No.: A-12-669926-C

DEPT.: I

Hearing Date: November 3, 2015

Hearing Time: 9:00 a.m.

19 **Order Denying Defendant's Motion to Dismiss and**
20 **For Summary Judgment Against Michael Murray**


21 Defendants filed their Motion to Dismiss and for Summary Judgment against Michael
22 Murray on September 21, 2015. Plaintiff's Response in Opposition to defendant's motion
23 was filed on October 8, 2015. Defendants thereafter filed their Reply to plaintiff's Response
24 in Opposition to defendants' motion on October 27, 2015. This matter, having come before
25 the Court for hearing on November 3, 2015, with appearances by Leon Greenberg, Esq.
26 and Dana Sniegocki, Esq., on behalf of all plaintiffs, and Esther Rodriguez, Esq., on behalf
27 of all defendants, and following the arguments of such counsel, and after due consideration
28

1 of the parties' respective briefs, and all pleadings and papers on file herein, and good
2 cause appearing, therefore

3 **IT IS HEREBY ORDERED:**

4 Defendants' Motion to Dismiss and for Summary Judgment against Michael Murray
5 is DENIED without prejudice.
6

7 **IT IS SO ORDERED.**

8
9 
10 Honorable Kenneth Cory
11 District Court Judge
12

Feb 17, 2016
Date

13 Respectfully submitted:

14 
15
16 LEON GREENBERG, ESQ.
17 DANA SNIEGOCKI, ESQ.
18 LEON GREENBERG
19 PROFESSIONAL CORPORATION
20 2965 South Jones Blvd., #E4
21 Las Vegas, NV 89146
22 Tel (702) 383-6085
23 Fax (702) 385-1827
24 dana@overtimelaw.com
25 Attorney for Plaintiffs

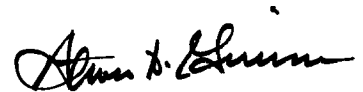
Approved as to form and content:

NOT APPROVED

ESTHER C. RODRIGUEZ, ESQ.
NV Bar 006473
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive,
Suite 150
Las Vegas, NV 89145
Tel: (702) 320-8400
Fax (702) 320-8401
info@rodriguezlawn.com
Attorney for Defendant

26

26



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 E3
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 ORDER

22 PLEASE TAKE NOTICE that the Court entered the attached Order in this
23 matter on February 18, 2016

24 Dated: February 18, 2016

25 LEON GREENBERG PROFESSIONAL CORP.

26 /s/ Leon Greenberg

27 Leon Greenberg, Esq.
28 Nevada Bar No. 8094
2965 S. Jones Boulevard - Ste. E-3
Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Plaintiffs

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1 CERTIFICATE OF SERVICE
2

3 The undersigned certifies that on February 18, 2016, she served the
4 within:
5

6 NOTICE OF ENTRY OF ORDER

7 by court electronic service to:

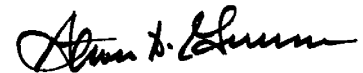
8 TO:

9 Esther C. Rodriguez, Esq.
10 RODRIGUEZ LAW OFFICES, P.C.
11 10161 Park Run Drive, Suite 150
12 Las Vegas, NV 89145
13

14 /s/ *Sydney Saucier*

15 Sydney Saucier
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CLERK OF THE COURT

LEON GREENBERG, ESQ.
Nevada Bar No.: 8094
DANA SNIEGOCKI, ESQ.
Nevada Bar No.: 11715
Leon Greenberg Professional Corporation
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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, A CAB,
LLC, and CREIGHTON J. NADY,

Defendants.

Case No.: A-12-669926-C

DEPT.: I

Hearing Date: November 3, 2015

Hearing Time: 9:00 a.m.

**Order Denying Defendant's Motion to Dismiss and
For Summary Judgment Against Michael Reno**

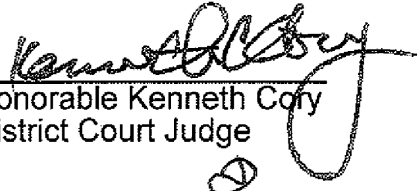
Defendants filed their Motion to Dismiss and for Summary Judgment against Michael Reno on September 21, 2015. Plaintiff's Response in Opposition to defendant's motion was filed on October 8, 2015. Defendants thereafter filed their Reply to plaintiff's Response in Opposition to defendants' motion on October 27, 2015. This matter, having come before the Court for hearing on November 3, 2015, with appearances by Leon Greenberg, Esq. and Dana Sniegocki, Esq., on behalf of all plaintiffs, and Esther Rodriguez, Esq., on behalf of all defendants, and following the arguments of such counsel, and after due consideration

of the parties' respective briefs, and all pleadings and papers on file herein, and good cause appearing, therefore

IT IS HEREBY ORDERED:

Defendants' Motion to Dismiss and for Summary Judgment against Michael Reno is DENIED without prejudice.

IT IS SO ORDERED.


Honorable Kenneth Cory
District Court Judge


Feb 9, 2019
Date

Respectfully submitted:


LEON GREENBERG, ESQ.
DANA SNEGOCKI, 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

Approved as to form and content:

NOT APPROVED


ESTHER C. RODRIGUEZ, ESQ.
NV Bar 006473
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10161 Park Run Drive.
Suite 150
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Tel: (702) 320-8400
Fax (702) 320-8401
info@rodriguezlawn.com
Attorney for Defendant

27

27


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 E3
6 Las Vegas, Nevada 89146
7 (702) 383-6085
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9 leongreenberg@overtimelaw.com
10 dana@overtimelaw.com
11 Attorneys for Plaintiffs

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

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

18 Plaintiffs,)

19 vs.)

20 A CAB TAXI SERVICE LLC, and A)
21 CAB, LLC,)

22 Defendants.)
23
24
25
26
27
28

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Court entered the attached Order in this
matter on March 3, 2016.

Dated: March 4, 2016

LEON GREENBERG PROFESSIONAL CORP.

/s/ Leon Greenberg

Leon Greenberg, Esq.
Nevada Bar No. 8094
2965 S. Jones Boulevard - Ste. E-3
Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Plaintiffs

000439

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CERTIFICATE OF MAILING

The undersigned certifies that on March 4, 2016, she served the within:

Notice of Entry of Order on Discovery Commissioner's Report and Recommendation

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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ORIGINAL


CLERK OF THE COURT

DCRR
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
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leongreenberg@overtimelaw.com
dana@overtimelaw.com
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, and A
CAB, LLC,

Defendants.

Case No.: A-12-669926-C

Dept.: I

DISCOVERY
COMMISSIONER'S REPORT
AND RECOMMENDATIONS

HEARING DATE: January 13, 2016

HEARING TIME: 9:00 a.m.

Attorney for Plaintiffs Leon Greenberg, Esq., and Dana Sniegocki, Esq., of
Leon Greenberg
Professional Corporation

Attorney for Defendants Esther Rodriguez, Esq., of Rodriguez Law Offices, P.C.

I.

FINDINGS

1. The matter was before the Discovery Commissioner for a status check on
compliance on Plaintiffs' Motion to Compel the Production of Documents, which was
heard by the Court on March 18, 2015, May 20, 2015, and on November 18, 2015, and

1 was heard on that date along with Plaintiffs' Motion to Extend the Discovery Schedule
2 as well as plaintiffs' request for attorneys' fees and costs in connection with taking the
3 deposition of James Morgan and defendants' Nev. R. Civ. P. 30(b)(6) witness,
4 Creighton J. Nady, as requested in Plaintiffs' Supplemental Brief to their Motion to
5 Compel the Production of Documents.

6 2. As a result of the hearing of November 18, 2015, a Discovery Commissioner
7 Report and Recommendations was prepared and submitted by Plaintiffs, over the
8 objections of Defendants. After revising the document to comply with her directions,
9 the Discovery Commissioner signed the DCR&R on December 11, 2015; and the
10 document was served upon the parties on December 17, 2015. The DCR&R contained
11 compliance deadlines of December 31, 2015. Defendants timely filed their objections
12 to the DCR&R, and requested a District Court hearing on the issues or in the
13 alternative, requested the District Court modify the order to limit the scope of time and
14 years outlined by the Discovery Commissioner.

15 3. As of the status check of January 13, 2016, the District Court Judge had neither
16 signed the DCR&R nor set the matter for hearing. On January 8, 2016 the District
17 Court Judge entered a minute order granting class action certification in this matter
18 and directing the submission of final Order for signature in respect to the same. Such
19 final Order has not as of January 28, 2016, been entered.

20 4. In the interim, Defendants made efforts to comply with the Discovery
21 Commissioner's direction by, on January 8, 2016, providing to Plaintiffs' counsel
22 certain electronic data stored in both the Cab Manager program and the Quickbooks
23 program. This data was intended by Defendants to be inclusive from the time period
24 of June 2014 to present. Plaintiffs' counsel advised the Court that they have not had a
25 chance, as of January 13, 2016, to review the Cab Manager provided data but had
26 reviewed the Quickbooks data. Plaintiffs' counsel further advised that the
27 Quickbooks data production was inadequate and unuseable as it failed to identify the
28 produced payroll information with particular employees, either by name or unique

1 identifier.

2 5. After reviewing the record, hearing the representations by counsel, and
3 considering the request for costs and fees made by plaintiffs in their supplemental
4 brief to their Motion to Compel the Production of Documents, the Discovery
5 Commissioner finds that defendants must supplement the production of electronic data
6 records to include the names of the taxicab drivers (or some unique identifier) that
7 correspond with the records produced by the defendants so that such records may be
8 properly analyzed and identified by plaintiffs' counsel. The Discovery Commissioner
9 further finds that Plaintiffs' request for Rule 37 sanctions should be granted in part and
10 denied in part.

11 6. The request is granted as to allowing Plaintiffs to submit an affidavit consistent
12 with the factors outlined in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d
13 31 (1969) for the attorney time spent and costs associated with preparing and arguing
14 the motion. The request for further Rule 37 sanctions, as it relates to plaintiffs'
15 counsels' fees and costs associated with taking the deposition of Creighton J. Nady
16 defendants' Rule 30(b)(6) witness, is denied without prejudice.

17 II.

18 RECOMMENDATIONS

19 IT IS HEREBY RECOMMENDED that the Plaintiffs' request for Rule 37
20 sanctions is GRANTED in part and DENIED in part. The Request is granted as to
21 allowing Plaintiffs to submit an affidavit consistent with the factors outlined in
22 *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969) for the attorney
23 time spent and costs associated with preparing the motion. Counsel for Plaintiffs is to
24 prepare an affidavit consistent with the factors outlined in *Brunzell* by March 1, 2016.
25 Defendants will be provided an opportunity to oppose Plaintiffs' submission.

26 IT IS FURTHER RECOMMENDED that Plaintiffs' requests for further Rule 37
27 sanctions beyond those specified in the immediately preceding paragraph are denied
28 without prejudice.

Case Name: *Murray v. A Cab, LLC et al.*
Case No.: A-12-669926-C
Hearing date: January 13, 2016

IT IS FURTHER RECOMMENDED that Defendants disclose the names of the drivers before March 16, 2016.

IT IS FURTHER RECOMMENDED that the parties appear before the Commissioner for a status check regarding further proceedings on March 16, 2016 at 10:00 a.m.

The Discovery Commissioner, having met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED this 10 day of February, 2016.


DISCOVERY COMMISSIONER

Submitted by:


**LEON GREENBERG
PROFESSIONAL CORPORATION**


LEON GREENBERG, ESQ.
Nevada Bar No.: 8094
DANA SNIEGOCKI, ESQ.
Nevada Bar No.: 11715
2965 South Jones Boulevard, Suite E4
Las Vegas, Nevada 89146
Tel (702) 383-6085
Fax (702) 385-1827
dana@overtimelaw.com
Attorney for Plaintiffs

Approved as to form and content:

RODRIGUEZ LAW OFFICES, P.C.

NOT APPROVED


ESTHER C. RODRIGUEZ, ESQ.
Nevada Bar No.: 6473
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Tel: (702) 320-8400
Fax (702) 320-8401
info@rodriguezlaw.com
Attorney for Defendants

NOTICE

Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

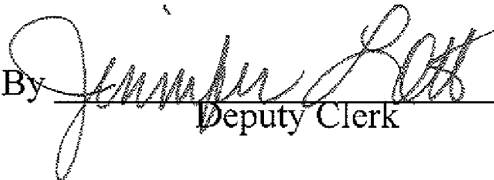
[Pursuant to E.D.C.R. 2.34(f) an objection must be filed and served no more than five (5) days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. See E.D.C.R. 2.34(f)]

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____, 2016.

X _____ Placed in the folder of Plaintiff/Defendant's counsel in the Clerk's office on the 11 day of Feb., 2016.

STEVEN D. GRIERSON

By 
Deputy Clerk

Case Name: Murray v. A Cab, LLC et al.
Case No.: A-12-669926-C

ORDER

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

_____ The parties having waived the right to object thereto,

~~X~~^{mm} No timely objections having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),

_____ Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

* * *

AND

~~X~~ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner attached hereto.

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report and Recommendations is set for _____, 2016, at ____:____ a.m.

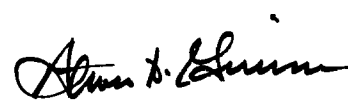
Dated this 2 day of March, 2016.



DISTRICT COURT JUDGE

28

28


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 E3
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 ORDER

22 PLEASE TAKE NOTICE that the Court entered the attached Order on the
23 Discovery Commissioner's Report and Recommendations in this matter on March 4,
24 2016.

25 Dated: March 4, 2016

26 LEON GREENBERG PROFESSIONAL CORP.
27 /s/ Leon Greenberg

28 Leon Greenberg, Esq.
Nevada Bar No. 8094
2965 S. Jones Boulevard - Ste. E-3
Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Plaintiffs

000447

000447

CERTIFICATE OF MAILING

The undersigned certifies that on March 4, 2016, she served the within:

Notice of Entry of Order on Discovery Commissioner's Report and Recommendation

by court electronic service to:

TO:

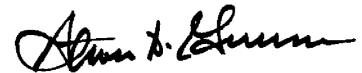
Esther C. Rodriguez, Esq.
RODRIGUEZ LAW OFFICES, P.C.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

/s/ Dana Sniegocki

Dana Sniegocki

000448

000448



CLERK OF THE COURT

DCRR
LEON GREENBERG, ESQ.
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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, A
CAB, LLC, and CREIGHTON J.
NADY,

Defendants.

Case No.: A-12-669926-C

DEPT.: I

DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATION

Hearing Date: November 18, 2015
Hearing Time: 9:00 a.m.

Attorney for Plaintiff Dana Sniegocki, Esq. and Leon Greenberg, Esq. of
Leon Greenberg Professional Corporation

Attorney for Defendant: Esther Rodriguez, Esq. of Rodriguez Law Offices, P.C

I.

FINDINGS

1. This matter was heard before the Discovery Commissioner on Plaintiffs' Motion to Compel the Production of Documents, which was originally heard by the Court on March 18, 2015 and continued for a further hearing on November 18, 2015 and was heard on that date along with Plaintiffs' Motion to Extend the Discovery Schedule. This matter was also heard on a status check to advise the Court of the parties' progress on conducting Rule 30(b)(6) depositions, first recommended by the Discovery Commissioner at the May 20, 2015 status check, on information relevant to the plaintiffs' Motion to Compel Production of Documents.

2. Plaintiffs' motion to compel seeks the production of those portions of the electronic computer data records from defendants' Cab Manager software system which would assist at trial in determining the times that defendants' taxi drivers start and end their shifts, ^{as well as the location and activity of any given} ~~the defendants not otherwise maintaining any computerized time~~ ^{Cab. M} ~~records on their taxi drivers' hours of work.~~ ^{Plaintiffs position is as follows:} Taxi drivers conduct certain activities at the start and end of their shifts which activities communicate information into the Cab Manager software. Those activities involve having the bar codes on their Taxicab Authority identification cards and trip sheets scanned and uploading their taxi meter totals into the Cab Manager software system. The taxi drivers also deposit money into electronic drop safes at the end of their shifts and information about that activity

1 may also be communicated to the Cab Manager software. The trip sheets the taxi
2 drivers use also come with "start times" printed on them and those "start times" are
3 printed by the Cab Manager software. The times the defendants' taxi drivers
4 conducted the foregoing activities, and the printed "start times" on their trip sheets, if
5 preserved in the Cab Manager computer data records, are relevant and discoverable
6 information that should be produced. In addition, records showing that a particular
7 taxi cab was operated by a particular taxi driver on a particular day, along with the
8 attendant records, if any, of the times during such day such taxi cab was operated, and
9 placed into service and taken out of service, is relevant and discoverable information
10 that should be produced. ^{Based on the foregoing, I} Defendants are to produce the portion of the Cab Manager
11 computer data records containing the foregoing information for all of defendants'
12 taxicab drivers from October 8, 2008 through the present. ^{and/or cabs in} Additionally, plaintiffs'
13 request for electronic computer data records from defendants' Quickbooks software
14 system showing the wages paid (excluding tips actually received or credited as gross
15 income), shifts worked, and hours worked (or hours recorded for payroll purposes or
16 minimum wage compliance purposes as having been worked), of defendants' taxicab
17 drivers also seeks relevant information that can be produced and must be produced for
18 the time period of October 8, 2008 through the present.

25
26
27 3. Defendants have not complied with their obligation to respond to
28 ~~plaintiffs' discovery requests in an informed, good faith, and appropriate manner.~~ ^{discovery requests timely and in accordance with NACCP 16.1.} The

1 defendants' principal, Creighton J. Nady, ^{told} ~~misrepresented to~~ the Court at the March 18,
 2 2015 hearing the difficulties defendants' faced in producing the information originally
 3 sought by plaintiffs in February 2015 and specifically that burdensome computer
 4 "code" would have to be written to produce such information. ^{This representation} ~~A conclusion that such~~
 5 ~~misrepresentation was intentional is supported by the course of events in this case.~~
 6 ~~Even if that misrepresentation was not intentional it was, by defendants' own~~
 7 ~~admission, uninformed, not the product of appropriate due diligence, and without any~~
 8 ~~actual basis in fact.~~ ^{or} Despite having a duty to do so, defendants never inquired with
 9 any knowledgeable person, which clearly should have been their computer consultant
 10 James Morgan, about what would be necessary to produce such information. ~~Such~~
 11 ~~dereliction of their responsibility to cooperate with the discovery process, or their~~
 12 ~~affirmative misrepresentation, resulted in the need for plaintiffs' counsel to conduct a~~
 13 Rule 34 inspection that was terminated early by defendants, ^{or} and ultimately resulted in
 14 ^{the Discovery Commissioner recommending the Plaintiffs take the} ~~the unnecessary~~ deposition of non-party James Morgan. The foundational information
 15 ^{to determine the accessibility of the information at issue.} ~~secured from James Morgan on the Cab Manager system during that deposition was~~
 16 always available to defendants. Defendants should have ^{been able to consult} ~~complied with their duty to~~
 17 ~~inquire~~ ^{or} with James Morgan about producing the information sought by plaintiffs and
 18 taken appropriate action to produce such information. There was no need for the
 19 deposition of James Morgan.

4. Defendants' non-compliance with their obligation to respond to plaintiffs' discovery request in an informed, ~~good faith~~^W, and appropriate manner, was also manifested in the deposition held of defendants' principal, Creighton J. Nady as an NRCP Rule 30(b)(6) witness. ~~That deposition was required for the same reason, defendants' failure to comply with their discovery obligations as specified in paragraph 3, supra, as the unnecessary deposition of James Morgan. Many or most of the NRCP Rule 30(b)(6) subjects inquired about at that deposition were unnecessary for the same reasons the James Morgan deposition was unnecessary.~~ In addition the conduct of Mr. Nady at the deposition was ~~highly inappropriate and~~^W inexcusable. ~~He was not a proper NRCP Rule 30(b)(6) deposition witness as he conceded he made no~~

~~attempt to inform himself as to certain noticed deposition topics, that he was not informed about those topics, and indicated other personnel of the defendants, known to him, had knowledge about those topics. He was abusive to examining counsel, and Plaintiffs' position is that he was also evasive and confrontational beyond any appropriate or allowable boundaries, and was not cautioned or counseled to curb his behavior by defendants' counsel.~~

uninformed as to several & pre areas, which has not been specifically addressed. W
Unfortunately, it does not appear based on a review of the record Mr. Nady was effectively

5. An extension of the discovery schedule, as requested by the plaintiffs, is also warranted in light of the plaintiffs' motion to compel the production of documents which has been pending for eight months and the resolution of which was delayed by defendants. Accordingly, the discovery deadlines in this matter will be extended as specified below.

II.

RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED that Plaintiffs' Motion to Compel the Production of Documents is GRANTED. The electronic computer data records from the Cab Manager software system recording the dates, times, and activities specified in paragraph 2 of the Findings shall be produced by defendants for each of their taxicab drivers, and taxi cabs, from October 8, 2008 through the present must be produced. Such information is to be produced in an Excel spreadsheet format or in an otherwise searchable electronic format and be produced to plaintiffs on or before December 31, 2015.

Defendants' counsel is instructed to work with Cab Manager personnel, including Jim Morgan who provided testimony in this matter regarding the Cab Manager software system and stated he had the ability to review the Cab Manager computer data records and segregate and produce the information, if it existed, specified in paragraph 2 of the Findings.

Difficulties in producing the Cab Manager information
~~Defendants' counsel should also communicate with plaintiffs' counsel should~~
as recommended may result in the Commissioner
~~any issues arise with the production of the records being compelled. As the testimony~~

it requiring
~~of Morgan indicates that the entire Cab Manager database can be copied and produced.~~
to be

The specifics of such production will be
~~in bulk without difficulty, should the portion of the data being compelled by this~~
deferred until such time it becomes necessary in
~~Report and Recommendation be unable to be extracted and provided to the plaintiffs'~~

~~counsel, the Court will require the entire contents of the Cab Manager database to be~~

1 ~~turned over to plaintiffs' counsel who must then sort and extract the relevant~~
 2 ~~information plaintiffs sought in their motion to compel.~~ *Or* Additionally, defendants
 3 must also provide to plaintiffs' counsel, no later than December 31, 2015, electronic
 4 computer data records in Excel spreadsheet or an otherwise searchable electronic
 5 format from defendants' Quickbooks system as specified in paragraph 2 of the
 6 Findings for the time period of October 8, 2008 through the present.
 7

9 No other information contained within defendants' Quickbooks system, such as
 10 defendants' internal business or accounts payable records, are being compelled in this
 11 Report and Recommendation, provided that defendants produce the information as
 12 specified in paragraph 2 of the Findings. If they fail to do so, or assert they cannot
 13 extract such information, the *Discovery Commissioner will likely require*
 14 ~~Court will require the parties to enter into a suitable~~
 15

16 ~~protective order preserving the confidentiality of the Quickbooks database and~~
 17 *for the applicable time frame to be produced*
 18 ~~defendants shall turn over the entire contents of the Quickbooks database to plaintiffs'~~
 19 *Subject to an appropriate protective order. The*
 20 ~~counsel who must then sort and extract the relevant information plaintiffs sought in~~
 21 *specifics of such production will be deferred until*
 22 ~~their motion to compel~~ *Such time as it becomes necessary.*

21 IT IS FURTHER RECOMMENDED that based upon paragraph 3 of the
 22 Findings defendants are ordered to pay the costs and fees of plaintiffs' counsel for
 23 having to proceed with the unnecessary deposition of James Morgan on July 8, 2015.
 24 The Discovery Commissioner has determined that plaintiffs' counsel must be
 25 reimbursed \$638.95 for court reporter fees, plus \$400 per hour for plaintiffs' counsel's
 26 time in connection with the Morgan deposition. The Discovery Commissioner is
 27
 28

1 satisfied that plaintiffs' counsel's time records showing 2.5 hours of preparation, 2.8
2 hours of attendance, and 1.2 hours for travel relating to the Morgan deposition are fair.

3 Accordingly, defendants are required to submit to plaintiffs' counsel, a check for
4 \$3,238.95 to cover the costs and fees associated with the Morgan deposition. *These*

5 *Costs and fees will be due and owing within 30 days after this Report*
6 IT IS FURTHER RECOMMENDED that based upon paragraphs 3 and 4 of the *Recommendation*

7 Findings the imposition of additional fees and costs upon defendants in connection
8 with plaintiffs' motion to compel, including but not limited to the deposition of *IS signed by me*
9 Creighton J. Nady, be reserved for further consideration and recommendations by the *District Court Judge M.*

10 Discovery Commissioner at the parties' next status check on January 13, 2016. *at*
11 *9:00 a.m. M*

12 Finally, the discovery deadlines in this matter are extended as follows:

13 **Close of Discovery:** **June 29, 2016**

14 **Deadline to Amend Pleadings and Add Parties:** **April 1, 2016**

15 **Deadline to Disclose Expert Reports:** **April 1, 2016**

16 **Deadline to Disclose Rebuttal Expert Reports:** **April 29, 2016**

17 **Dispositive Motion Deadline:** **July 29, 2015**

18 *Further, the case will now be ready for trial on or after*
19 *The parties are further ordered to appear back before the Discovery 9-12-16*
20 *and the current*

21 Commissioner on January 13, 2016 at 9:00 a.m. for a status check on compliance
22 with the foregoing. The parties may provide additional briefings to the Discovery
23 Commissioner regarding compliance with this Report and Recommendation no later
24 than January 8, 2016.

trial date is
of 1-4-16 is
vacated. M

CASE NAME: *Murray et al. v. A Cab Taxi Service LLC., et al.*

Case No. A-12-669926-C

Hearing Date: November 18, 2015

The Discovery Commissioner, met with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

DATED: December 11, 2015.



DISCOVERY COMMISSIONER

Respectfully submitted:

Approved as to form and content:


 LEON GREENBERG, ESQ.
 DANA SNIEGOCKI, ESQ.
 LEON GREENBERG
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 Attorney for Plaintiffs

Not Approved

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 Tel: (702) 320-8400
 Fax (702) 320-8401
info@rodriguezlaw.com
 Attorney for Defendant

NOTICE

Pursuant to N.R.C.P. 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

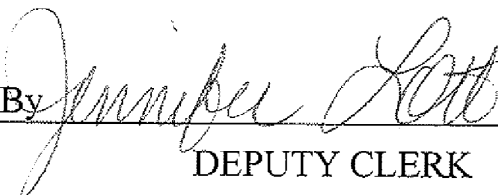
[Pursuant to E.D.C.R. 2.34(f), an objection must be filed and served no more than five (5) days after receipt of the Discovery Commissioner's Report. The Commissioner's Report is deemed received when signed and dated by a party, his attorney or his attorney's employee, or three (3) days after mailing to a party or his attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of the party's lawyer in the Clerk's office. See E.D.C.R. 2.34(f).]

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to the parties at the following address on the _____ day of _____.

X Placed in the folders of Plaintiff's/Defendant's counsel in the Clerk's Office on the 17 day of Dec.

STEVEN D. GRIERSON

By 
DEPUTY CLERK

CASE NAME: *Murray et al. v. A Cab Taxi Service LLC., et al.*

Case No. A-12-669926-C

Hearing Date: November 18, 2015

ORDER

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

_____ The parties having waived the right to object thereto,

_____ No timely objections having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),

☒ Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

☒ AND

☒ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner:

_____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report and Recommendations is set for the _____ day of _____ 2015, at ____:____ a.m./p.m.

Dated this 29 day of Feb, 2015.


DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

The undersigned certifies that on March 4, 2016, she served the within:

Order on Discovery Commissioner's Report and Recommendation

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

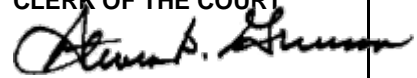
Dana Sniegocki

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29

29



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
WEDNESDAY, MARCH 16, 2016

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

DEFENDANT'S OPPOSITION TO MOTION TO IMPOSE SANCTIONS
ON ORDER SHORTENING TIME AND COUNTERMOTION FOR
SANCTIONS AGAINST PLAINTIFFS

APPEARANCES:

For the Plaintiffs:	LEON GREENBERG, ESQ.
For the Defendants:	ESTHER C. RODRIGUEZ, ESQ. MICHAEL K. WALL, ESQ.

RECORDED BY: Lisa Lizotte, Court Recorder

1 LAS VEGAS, NEVADA, WEDNESDAY, MARCH 16, 2016, 9:20 A.M.

2 * * * * *

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

5 THE COURT: Good morning.

6 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez for the
7 defendants.

8 MR. WALL: Michael Wall for the defendants.

9 MR. GREENBERG: Good morning, Your Honor. Leon Greenberg for the
10 plaintiffs.

11 THE COURT: Good morning. Let me tell you where we are, where I think
12 we are, and what I think would probably be the best way to proceed, and then you
13 all can tell me if you think that that's not good. As I see it, you're due today in front
14 of the Discovery Commissioner. Is that still on?

15 MR. GREENBERG: That was continued until April 8th by the Discovery
16 Commissioner yesterday. I understand she wanted to get some understanding as
17 to what Your Honor is going to do.

18 THE COURT: Yeah. All right. We have pending today's motions, both of
19 which are for sanctions for violating the Court's order. We have on the 28th on the
20 chambers calendar the motion for reconsideration. On the 4th we have -- these
21 are all chambers now I'm speaking of -- the defendants' motion for a stay pending
22 reconsideration of the prior order. And on the 18th, defendants' motion for stay of
23 pending proceedings, which I assume both of those are -- speak to the same issues.

24 MS. RODRIGUEZ: Pretty much, Your Honor.

1 THE COURT: Yeah. So here's what I'm inclined to do at this point. To
2 sort of clear up the log jam, I'm going to actually deny the last motion. That is
3 defendants' motion for stay pending proceedings schedule for the 18th in chambers,
4 on the theory that we will reach the subject matter of that motion in the prior one
5 which is set for chambers on the 4th, and that is defendants' motion for stay pending
6 Court's reconsideration of prior order.

7 MS. RODRIGUEZ: Your Honor, may I --

8 THE COURT: Yeah.

9 MS. RODRIGUEZ: -- add a little clarification to that? The motion for stay,
10 the first one that is set, pertains only to a stay on the class order --

11 THE COURT: Okay.

12 MS. RODRIGUEZ: -- while Your Honor had a chance to hear the briefing
13 on the reconsideration.

14 THE COURT: Yeah.

15 MS. RODRIGUEZ: The latter one, stay for the proceedings, is a more
16 comprehensive issue.

17 THE COURT: Okay. So you would say we need to leave that one on
18 calendar?

19 MS. RODRIGUEZ: Yes. And what we were going to request, and I can't
20 tell if Your Honor is going in this direction, was to hear all of those or to set them all
21 on the same day for oral argument.

22 THE COURT: Well, I could do that, but here's why we generally put
23 motions for reconsideration on a chambers calendar. I've already heard the
24 arguments. It's kind of a question of whether I've misperceived a point of fact or

1 the law, and that generally can be done in chambers.

2 MS. RODRIGUEZ: This is a little different because -- I understand that,
3 Your Honor, and if you'll see the basis of the reconsideration is not to ask you to
4 reconsider your ruling, but ultimately the order that was submitted to you, which
5 I believe was about 13 pages or so, included a number of items that weren't either
6 brought up in the hearing before you or have been changed according to -- there's
7 a dispute on the actual wording of the order.

8 THE COURT: All right. I see what you're saying.

9 MS. RODRIGUEZ: So that's why I felt it was -- we may want to have a
10 discussion about what should be included and what should not be included in the
11 order.

12 THE COURT: All right. Well, then I would propose to put the motion for
13 reconsideration presently on chambers for March 28th, put it on an oral argument,
14 and probably only that one. And perhaps it will be dispositive of at least the next
15 motion, which is the motion for stay pending Court's reconsideration, and try to cut
16 through the log jam we've got going here that way.

17 I will tell you both that I'm not much inclined to grant either of the
18 motions today. I think that we have -- my view is that these kinds of matters are
19 important. The law provides for them. I'm speaking of class actions. The law
20 provides for them and it's necessary to be pretty careful how you proceed with them.
21 And so the fact that you guys wound up at loggerheads wanting the Court -- each
22 wanting the Court to slap the other down, I don't think it's helpful. I really don't think
23 it's helpful and I don't frankly see that there's -- that the best way for this Court to
24 get past the point we're at now and get through the legal issues which are raised,

1 which are really the important things, is to deny both these motions and then see
2 what happens with reconsideration and with any further stay beyond that.

3 MR. GREENBERG: Your Honor, if I may?

4 THE COURT: Yes.

5 MR. GREENBERG: I appreciate Your Honor needs to proceed in an
6 appropriate deliberative fashion, and my problem with our circumstances here, Your
7 Honor -- I would not have moved in this fashion if not for the fact that this motion
8 for class certification was filed in May. It was fully briefed with reply in July. And
9 there was a flurry of responsive motions, four different motions, two to dismiss,
10 for summary judgment by defendants, etcetera, etcetera. Your Honor held over
11 four hours of argument and hearings in November on this. Your Honor has been
12 extremely sensible in reviewing the issues and in allowing deliberation and
13 submission of argument by counsel. This is not a shoot from the hip situation,
14 Your Honor.

15 And the problem here is that defendants are moving in the fashion
16 they're moving specifically to delay the progress of this case, which was filed in
17 October of 2012. It's now three and a half years old. And they have essentially --
18 I just spoke with counsel outside and maybe you can give me some guidance on
19 this, Your Honor, the Report and Recommendation of the Discovery Commissioner
20 directed the production of class-wide discovery from October 2008 forward. Your
21 Honor adopted and signed that Report and Recommendation --

22 THE COURT: Uh-huh.

23 MR. GREENBERG: -- which is now an order of this Court earlier this
24 month. Counsel outside just told me that they are not going to produce any of that

1 information prior to June of 2014. And this is consistent with their position that
2 they're simply not going to comply with these orders of the Court or allow this case
3 to progress in the normal course unless they are forced to do so. They didn't raise
4 these issues that they're now raising on re-argument in a timely fashion. They never
5 came to me and said we're not going to comply with the requirement that you send
6 out the class notice.

7 So, Your Honor, this is not an isolated situation. And in respect to
8 what I just told you regarding they're advising me they're not going to comply with
9 the earlier order regarding the class-wide discovery, should I bring a motion to Your
10 Honor to have contempt or enforcement issued as to that, or should I bring that back
11 to the Discovery Commissioner? Does Your Honor have a preference in respect
12 to that issue?

13 THE COURT: Well, I would say that we need to get fully and finally past
14 this point of impasse and then see where the chips fall. In other words, if these
15 challenges do not produce the result the defendant wants, then I would expect
16 you're going to go full speed ahead. And I would expect that if I have considered
17 their issues and determined that in my view they are not well-founded, then the
18 process of litigation will have been observed and it will be time then to see what
19 consequences may flow.

20 Just because I say I'm not much inclined to grant motions for sanctions
21 today does not mean that at a later point when the Court can have a better vantage,
22 a better viewpoint to determine if a party has really been just dragging their heels or
23 not or determine if whatever the things they think you're doing are that you're doing
24 it, from that point then I'm much better -- I can better tell which side is or is not the

1 one that's really being an impediment to the litigation process here.

2 MR. GREENBERG: Your Honor, I fully respect it's your imperative to
3 proceed as you feel best. I just wanted to explain the background here and why
4 I have proceeded in the fashion to the Court, because essentially defendants are
5 securing their objective by this behavior, which is just to delay the progress of this
6 litigation. Ultimately when Your Honor denies the reconsideration and we move
7 forward as you're hypothesizing, possibly, but let me not waste more --

8 THE COURT: Well, the way -- here's my view, too. In the long run
9 sometimes a party's delaying tactics can come back to haunt them because, as
10 you know, we have a five year rule. We're going to get this case to trial, at least
11 unless I can see that there is a dispositive motion on the defendant's behalf.

12 MS. RODRIGUEZ: I would like to respond to some of those, Your Honor.

13 THE COURT: Hang on. Hang on just a second. Then we're going to have
14 to -- if nothing changes, now going to consider -- reconsider the motion -- if nothing
15 changes, then we look at how much time is left and that's the ballfield for how long
16 to get discovery done. And at that point, then, knowing that there's only so much
17 time, if a party is not compliant then the other side can bring any appropriate motion
18 they need to.

19 MR. GREENBERG: Well, that concerns me, Your Honor, because that puts
20 me at a disadvantage as the plaintiff because I have to comply with the five year rule.
21 Defendants, it's a safe shelter for them from any liability. But, Your Honor, back to
22 my question to the Court, which is that should I bring a request for enforcement in
23 respect to the class discovery order that Your Honor adopted on March 4th to Your
24 Honor or should I bring that back to the Discovery Commissioner? Because I have

1 just been told they are not going to comply with that order.

2 THE COURT: Well, I am --

3 MR. GREENBERG: And I need to move this case along.

4 THE COURT: I would say you bring it where you normally bring it, which is
5 to the Discovery Commissioner. She's fully capable of enforcing her own orders.

6 MR. GREENBERG: That's fine, Your Honor. I just -- I want to make things
7 efficient. I apologize for taking up so much of your time with background discussion.

8 THE COURT: No problem.

9 MR. GREENBERG: It sounds like we'll be back here on the 28th, is what
10 Your Honor is instructing of us.

11 THE COURT: That's -- well, not on the 28th. We're going to have to -- if
12 we're going to argue that one, we have to give it a new date.

13 (The Court confers with the clerk)

14 THE COURT: Here's my problem, Ms. Rodriguez, in changing this to an
15 oral calendar, oral argument calendar. It's a matter of scheduling. It's going to be
16 extremely difficult to get it in. We have a period of almost two weeks where we will
17 be dark and so it will be kicking it way far out there. I don't want to do that. I want to
18 get this resolved, decide whatever's going to happen and go forward.

19 MS. RODRIGUEZ: Well, the problem is is that order as submitted is a mess.

20 THE COURT: Well, and have you pointed that out in your --

21 MS. RODRIGUEZ: I have, Your Honor.

22 THE COURT: Excellent.

23 MS. RODRIGUEZ: But, you know, we would like to continue to brief on this
24 issue. I just received his opposition and I haven't had a chance to review it. But

1 obviously we want to file a reply to that.

2 THE COURT: Okay.

3 MS. RODRIGUEZ: And it's a lot more comprehensive. And the plaintiff --
4 it's at the plaintiffs' doing. They've really muddied the waters by sticking a lot of
5 things in the order. If they had just drafted the order as instructed by the Court,
6 we wouldn't have this issue.

7 THE COURT: Okay.

8 MS. RODRIGUEZ: And I attempted to call Mr. Greenberg to discuss this.
9 We had a 30-minute discussion about it to say here's all the things that you've stuck
10 in this order that are improper.

11 THE COURT: Uh-huh.

12 MS. RODRIGUEZ: And Mr. Greenberg's attitude throughout this whole thing
13 has been an all or nothing. He was unwilling to compromise on this at all. And that's
14 why I brought the motion for reconsideration --

15 THE COURT: Very good.

16 MS. RODRIGUEZ: -- and the motion for stay because -- and that's -- what
17 I wanted to respond to is his complete mischaracterization that we have at all been
18 delaying this or obstructing. If Your Honor will go back and review the pleadings, this
19 matter has been continuously stayed at his request. All of the pleadings pertaining
20 to the stay have been at Mr. Greenberg's request to stay. So we've not delayed this,
21 as he's painting, you know, since 2012. This is the first time I'm asking for a stay.
22 This is also the first time that I'm asking for sanctions. Every single motion that he's
23 brought has always been accompanied by a request for sanctions and he's been
24 repeatedly denied --

1 THE COURT: Uh-huh.

2 MS. RODRIGUEZ: -- before the Discovery Commissioner for sanctions.
3 This is the first time I asked for sanctions because I believe that he's being very
4 abusive in asking for the order shortening time today, having us drop everything to
5 draft a response, when he knows that there's a motion for reconsideration pending.
6 We discussed it. And then he said, well, that doesn't matter, I want full compliance
7 immediately. And I said, well, then you've left me no choice, then, to file a motion
8 for stay, which I did.

9 THE COURT: Uh-huh.

10 MS. RODRIGUEZ: And then nevertheless he still files a motion to compel
11 on order shortening time on Friday. And so, you know, with his declaration he hasn't
12 put anything in there as to why he has to take up the Court's time this morning on
13 an order shortening time on an emergency basis, when he knows these issues are
14 pending, these motions are pending. That's why I asked for a countermotion for
15 sanctions --

16 THE COURT: Okay.

17 MS. RODRIGUEZ: -- because it's clear he's just abusing the process,
18 Your Honor.

19 THE COURT: Well, here's my suggestion. Both sides of this are very
20 experienced counsel. I think it's time for everyone to step back and take a deep
21 breath. I think it's time for me to let you know that this case is going to proceed
22 apace. In other words, I'm not -- I have no intention of allowing this case to languish
23 so that very difficult discovery matters must be resolved quickly. There needs to be
24 time for this to be litigated, you know, with deliberation. So that's why I say I think it's

1 time for me to consider the motion for reconsideration and to fully and finally resolve
2 whether the main points of that order are going to change or not and perhaps if there
3 are other points that can all get resolved. But it's not going to help to paper each
4 other with motions for sanctions at this point. As I said, if at a later point you can
5 determine that, see, I was right, and you feel compelled to file a motion for sanctions,
6 go for it. At that point I will be in a much better position to tell who's been dragging
7 their feet or who's been, according to you, changing the orders, including a bunch of
8 stuff that the Court never indicated, and who's been rocking the boat.

9 MR. GREENBERG: Your Honor, I just want to apologize to the Court to the
10 extent that I maybe burdened the Court with this hearing today. I would not have
11 proceeded in this fashion if defendants had come in promptly on an order shortening
12 time, secured a stay and said, look, we have serious issues here, the Court needs
13 to look at this. Because Your Honor is saying I think we should look at this and
14 I understand that, and if that had been the process they had gone to, of course I
15 wouldn't have sought to compel compliance with the order.

16 THE COURT: Uh-huh.

17 MR. GREENBERG: It's just their behavior, Your Honor, was, well, we're not
18 going to -- we're not going to abide by the order and, you know, we'll must move for
19 re-argument and, you know, just essentially give ourselves a unilateral stay of the
20 order's enforcement. And the orders of the Court need to be respected --

21 THE COURT: Frustrating.

22 MR. GREENBERG: -- and there's a process for them to raise their issues
23 and there's a process for Your Honor to consider it. And Your Honor feels those
24 issues are being raised and they should be considered and I respect that. So to

1 the extent that I came here today, Your Honor --

2 THE COURT: You know, here's --

3 MR. GREENBERG: -- I just want to make clear why that developed.

4 THE COURT: Yeah. And I appreciate that.

5 MR. GREENBERG: It was not my preference to proceed in that fashion.

6 THE COURT: I appreciate that and I'm not faulting you for filing a motion
7 for sanctions when you felt that it was warranted, nor --

8 MS. RODRIGUEZ: Your Honor, we followed the process there.

9 THE COURT: Nor Ms. Rodriguez. But we need to get down to the nub of
10 this thing and get it finally resolved and then see who's going to be behind the eight
11 ball, if anybody.

12 MR. GREENBERG: I think that's very fair, Your Honor, and your instructions
13 to us we'll do our best to follow through with. We are going to have this remain on
14 chambers calendar for the 28th, I hope?

15 THE COURT: The 28th.

16 MR. GREENBERG: Okay. And hopefully Your Honor will get us a decision
17 shortly thereafter.

18 THE COURT: That is my complete intention.

19 MR. GREENBERG: I appreciate it, Your Honor.

20 MS. RODRIGUEZ: Your Honor, are we talking about the motion for
21 reconsideration and then the motion for stay of the proceedings? Because as I
22 briefly indicated, that has to do with a prospective retroactive issue that, again, the
23 four hour hearing that he's referring to didn't just address the class action issue, as
24 Your Honor is aware. That was a number of motions.

1 THE COURT: Let me tell you again what my scheduling is. I have the
2 motion for reconsideration on the 28th of this month as a chambers matter. I have
3 your motion for stay pending Court's reconsideration of prior order for the 4th of April.
4 It's a chambers calendar again. And I was -- you know, I was inclined to let your
5 other motion for stay actually be denied, assuming that the issues of that would be
6 resolved in the prior one. If you don't think they will, then what I'm going to do is
7 simply move up that consideration. It's now scheduled for the 18th.

8 (Court confers with the clerk)

9 THE COURT: All right. We've just moved the last motion for stay pending
10 proceedings. We've moved that up to the 11th.

11 MR. GREENBERG: Your Honor, I would be happy to see that go on the
12 28th calendar. I'll put my opposition in by Friday. It's not -- there's nothing very
13 complicated about it. In respect to the one that's scheduled for the 4th, Your Honor
14 today is effectively granting a stay --

15 THE COURT: Uh-huh.

16 MR. GREENBERG: -- of Your Honor's order and reconsideration. So the
17 stay request on chambers for the 4th has sort of been rendered irrelevant, Your
18 Honor, since you're not ordering compliance with the order at this time. I would like
19 to resolve this.

20 THE COURT: Well, okay, so you can get your response to the motion for
21 reconsideration scheduled for the 28th --

22 MR. GREENBERG: The motion for reconsideration opposition has already
23 been filed, Your Honor.

24 THE COURT: Okay.

1 MR. GREENBERG: And the request for a stay of entire proceedings
2 which is currently on chambers for the 18th, I would ask the Court to move that to
3 chambers for the 28th, the same day. I will file my opposition this Friday. There's
4 nothing very complicated about this.

5 THE COURT: Uh-huh.

6 MR. GREENBERG: I mean, there is a writ petition pending before the
7 Nevada Supreme Court. That's the basis for the request to stay these proceedings.

8 THE COURT: Okay.

9 MR. GREENBERG: And Your Honor will evaluate the merits of that request
10 as you see best, Your Honor.

11 THE COURT: All right. I will do that. As I said, I want to be sure that each
12 of these things gets their due consideration and deliberation. But I do not want to
13 have any further log jam than what we have presently. I'm intent on clearing that out.

14 So the defendants' motion for stay pending proceedings is scheduled
15 for the 28th of this month. And the only other operative date -- I lost my voice
16 already -- will be April 4th for the motion for stay pending Court's reconsideration.
17 Actually, there's really no reason to hold that out, is there?

18 MR. GREENBERG: Your Honor is granting a de facto stay at this point,
19 since you're not ordering enforcement of the order pending reconsideration. So the
20 motion on for the 4th --

21 THE COURT: All right, that takes care of it.

22 MR. GREENBERG: -- is really irrelevant, Your Honor.

23 THE COURT: Very good. Then that motion is granted, with the
24 understanding that once the Court rules on the motion for reconsideration on the

1 28th, that the stay will be resolved or dissolved, one of the two.

2 MR. WALL: Understood, Your Honor.

3 MS. RODRIGUEZ: Right. Okay.

4 MR. GREENBERG: That's understood, Your Honor.

5 THE COURT: All right. Any further motions that you mentioned, a motion
6 to compel or whatever may be appropriate --

7 MR. GREENBERG: Your Honor seems to think that in the normal course
8 that might be better addressed to the Discovery Commissioner, so I will get that on
9 file with her and she'll have to address that issue.

10 THE COURT: Very good. All right.

11 MS. RODRIGUEZ: So the pending -- the big stay, then, is April 4th or
12 March 28th?

13 THE COURT: Well, which one do you consider the big stay? The one
14 that's presently scheduled for the 18th?

15 MS. RODRIGUEZ: Well, you granted one.

16 THE COURT: Yeah.

17 MS. RODRIGUEZ: And the other one, stay pending proceedings, is the
18 one I'm referring to. So -- and I'm sorry, I heard two different dates.

19 THE COURT: Well, that's the one that he's indicated he can get a
20 response to me quickly and I'll schedule that for the 28th.

21 MR. GREENBERG: The response will be filed Friday --

22 THE COURT: Okay.

23 MR. GREENBERG: -- the 18th.

24 THE COURT: Very good. So that one will be moved to the chambers

1 calendar of the 28th.

2 MR. GREENBERG: Hopefully we are concluded, Your Honor. We don't
3 need to take up more of your time.

4 THE COURT: Anything else?

5 MS. RODRIGUEZ: That's fine. Thank you, Your Honor.

6 MR. GREENBERG: Thank you, Your Honor.

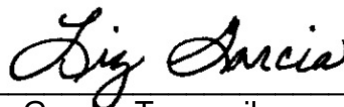
7 MR. WALL: Thank you, Your Honor.

8 THE COURT: All right. Thank you all.

9 (PROCEEDINGS CONCLUDED AT 9:46 A.M.)

10 * * * * *

11
12 ATTEST: I do hereby certify that I have truly and correctly transcribed the
13 audio/video proceedings in the above-entitled case to the best of my ability.

14 

15 Liz Garcia, Transcriber
16 LGM Transcription Service
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CLERK OF THE COURT

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DISTRICT COURT**CLARK COUNTY, NEVADA**

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

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,
 and CREIGHTON J. NADY,

Defendants.

**NOTICE OF ENTRY OF ORDER
 DENYING PLAINTIFFS' MOTION TO
 IMPOSE SANCTIONS AGAINST
 DEFENDANTS**

PLEASE TAKE NOTICE that an Order Denying Plaintiffs' Motion to Impose Sanctions
 Against Defendants for Violating This Court's Order of February 10, 2016 and Compelling
 Compliance with That Order on An Order Shortening Time was entered by the Court on April 6,
 2016. A copy is attached hereto.

DATED this 7th day of April, 2016.

RODRIGUEZ LAW OFFICES, P. C.

/s/ Esther C. Rodriguez, Esq.
 Esther C. Rodriguez, Esq.
 Nevada State Bar No. 006473
 10161 Park Run Drive, Suite 150
 Las Vegas, Nevada 89145
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 7th day of April, 2016, 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.
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2965 South Jones Boulevard, Suite E4
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Counsel for Plaintiff

/s/ Susan Dillow
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CLERK OF THE COURT

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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,
and CREIGHTON J. NADY,

Defendants.

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

Hearing Date: March 16, 2016
Hearing Time: 9:00 a.m.

ORDER DENYING PLAINTIFFS' MOTION

**TO IMPOSE SANCTIONS AGAINST DEFENDANTS FOR VIOLATING THIS COURT'S
ORDER OF FEBRUARY 10, 2016 and COMPELLING COMPLIANCE WITH THAT
ORDER ON AN ORDER SHORTENING TIME**

Plaintiffs' Motion to Impose Sanctions Against Defendants for Violating This Court's Order
of February 10, 2016 and Compelling Compliance with That Order on An Order Shortening Time
filed on March 11, 2016, and having come before this Court on March 16, 2016, before the
Honorable Kenneth Cory,
...

1 The Court having, read all the pleadings and papers on file herein, hearing the arguments of
2 the parties, and good cause appearing,

3 **IT IS HEREBY ORDERED** that Plaintiffs' Motion **IS DENIED**.

4 DATED this 29 day of March, 2016.

5
6 
DISTRICT COURT JUDGE

7 Submitted by:

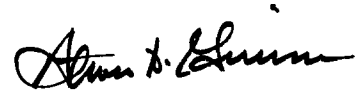
8 **RODRIGUEZ LAW OFFICES, P. C.**

9
10 By: 

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,
and CREIGHTON J. NADY,

Defendants.

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

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANTS' MOTION
FOR STAY PENDING COURT'S
RECONSIDERATION OF PRIOR
ORDER**

PLEASE TAKE NOTICE that an Order Granting Defendants' Motion for Stay Pending Court's Reconsideration of Prior Order was entered by the Court on April 6, 2016. A copy is attached hereto.

DATED this 7th day of April, 2016.

RODRIGUEZ LAW OFFICES, P. C.

/s/ Esther C. Rodriguez, Esq.
Esther C. Rodriguez, Esq.
Nevada State Bar No. 006473
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 7th day of April, 2016, 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:

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/s/ Susan Dillow
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

A CAB TAXI SERVICE LLC and A CAB, LLC,
and CREIGHTON J. NADY,

Defendants.

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

Hearing Date: March 16, 2016
Hearing Time: 9:00 a.m.

ORDER GRANTING DEFENDANTS' MOTION FOR STAY

PENDING COURT'S RECONSIDERATION OF PRIOR ORDER

Defendants' Motion for Stay Pending Court's Reconsideration of Prior Order having come
before this Court on March 16, 2016, before the Honorable Kenneth Cory,

The Court having, read all the pleadings and papers on file herein, hearing the arguments of
the parties, and good cause appearing,

...

...

...

...

1 **IT IS HEREBY ORDERED** that Defendants' Motion for Stay **IS GRANTED** until such
 2 time as the Court renders its decision on Defendants' Motion for Reconsideration filed February 25,
 3 2016, and presently set for hearing on March 28, 2016.

4 DATED this 29 day of March, 2016.

5
 6 
 DISTRICT COURT JUDGE

7 Submitted by:

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

9
 10 By: 

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Allen D. Levine
CLERK OF THE COURT

MICHAEL MURRAY, ET AL.,

Plaintiffs,

VS.

A CAB TAXI SERVICE LLC, ET AL.,

Defendants.

BEFORE THE HONORABLE BONNIE A. BULLA, DISCOVERY COMMISSIONER

FRIDAY, APRIL 8, 2016

RECORDER'S TRANSCRIPT OF PROCEEDINGS
FURTHER PROCEEDINGS: DISCOVERY PRODUCTION/DEFERRED RULING

APPEARANCES:

For the Plaintiffs:

LEON GREENBERG ESQ.,
DANA SNIEGOCKI, ESQ.

For the Defendants:

ESTHER C. RODRIGUEZ, ESQ.

RECORDED BY: FRANCESCA HAAK, COURT RECORDER

1 Las Vegas, Nevada - Friday, April 8, 2016, 10:27 a.m.

2 * * * * *

3 DISCOVERY COMMISSIONER: Murray.

4 MR. GREENBERG: Good morning, Your Honor. Leon Greenberg, Dana
5 Sniegocki, for Plaintiffs.

6 DISCOVERY COMMISSIONER: Good morning.

7 MS. RODRIGUEZ: Good morning, Your Honor. Esther Rodriguez, for the
8 Defendants.

9 DISCOVERY COMMISSIONER: Good morning again. Okay. So we're
10 here on the status check. Unfortunately, I don't think the District Court Judge has made all
11 the decisions that need to be made for me to really thoroughly address the issues. I was half
12 inclined just to contact you all and say, you know what, let's just move this a little bit. But I
13 thought, in light of the supplemental briefing, and what was being discussed, I thought that
14 maybe we should try to address a few of the issues.

15 I do think though apparently that the Judge has put a protective order or a stay
16 in place, right --

17 MR. GREENBERG: Your Honor --

18 DISCOVERY COMMISSIONER: -- until the --

19 MR. GREENBERG: -- the stay only refers to his February 10th order. It does
20 not stay the proceedings. There is a separate motion pending before Judge Cory to stay all
21 proceedings; that motion has not been ruled upon, and there is confusion because of the
22 language in the order that came down and was entered two days ago or one day ago, but that
23 referred to a motion originally returnable April 4th, which was to stay compliance with the
24 February 10th class certification order. That order directed production of names and
25 addresses and circulation of notice.

1 DISCOVERY COMMISSIONER: That's stayed --

2 MR. GREENBERG: That is stayed, Your Honor.

3 DISCOVERY COMMISSIONER: -- pending the certification.

4 MS. RODRIGUEZ: No.

5 MR. GREENBERG: Pending reconsideration --

6 DISCOVERY COMMISSIONER: Reconsideration --

7 MR. GREENBERG: -- which will --

8 DISCOVERY COMMISSIONER: -- of class certification. Okay.

9 MR. GREENBERG: Yes, Your Honor.

10 DISCOVERY COMMISSIONER: But now there is another motion to stay all
11 the proceedings, but the Judge has not ruled on that yet. Is it set for hearing?

12 MR. GREENBERG: That is --

13 MS. RODRIGUEZ: It's -- sorry.

14 MR. GREENBERG: No hearing, but it is set for --

15 MS. RODRIGUEZ: I believe Judge Cory set all of those on March 28th. We
16 just don't have a decision.

17 DISCOVERY COMMISSIONER: Okay.

18 MS. RODRIGUEZ: In chambers.

19 DISCOVERY COMMISSIONER: Okay, because that, obviously, impacts
20 what I can do and cannot do to assist you all. But -- and I don't know what the Court is
21 going to do. I have no information. I have not received any decision.

22 So I think -- I'm really torn because in some respects I just want to continue
23 this so I know what the Judge is going to do on the stay. But I also want to alleviate some of
24 the concern regarding the request for fees and costs. Perhaps I just didn't communicate fully
25 the last time you all were here. I'm not entertaining any more fees and costs from the

1 Plaintiff. I'm just not gonna do it right now. I had awarded the fees and costs. I think that
2 they've been paid, have they not?

3 MS. RODRIGUEZ: No, Your Honor, but --

4 DISCOVERY COMMISSIONER: Okay.

5 MS. RODRIGUEZ: -- we'll get those paid.

6 DISCOVERY COMMISSIONER: All right.

7 MR. GREENBERG: Your Honor, that's subject to reconsideration too before
8 Judge Cory. They filed objections; Judge Cory denied the objections; and then they filed for
9 reconsideration of that --

10 DISCOVERY COMMISSIONER: Okay.

11 MR. GREENBERG: -- order as well, Your Honor.

12 DISCOVERY COMMISSIONER: Well --

13 MS. RODRIGUEZ: He's right, Your Honor. I misspoke. I was confused.
14 There's -- we've got so many conflicting motions going on right now.

15 DISCOVERY COMMISSIONER: Okay. Well, I feel confident about what I
16 previously awarded in terms of fees and costs. I'm not inclined to give any more today, but I
17 am hesitant to actually put anything in the Report and Recommendations because of the
18 pending motions.

19 I think that there's a writ regarding the time you can go back on the effect of
20 the law on the minimum wage, but I looked at that Thomas versus Yellow Cab case, and it
21 seems to me that the new legislation trumps the exemptions, as I read it, so it seems to me
22 that the cab companies -- and I think the Court's already found that, although that may be
23 part of the reconsideration -- that the cab companies have to provide minimum wage.

24 MR. GREENBERG: Your Honor, the Ninth Circuit has looked at that issue.
25 They've said that the requirement was effective as of 2006, which was the adoption of the

1 constitutional amendment. The reasoning of the Thomas decision talks about constitutional
2 supremacy overriding the prior statutory exemptions.

3 DISCOVERY COMMISSIONER: Right.

4 MR. GREENBERG: There's been District Court -- every District Court Judge
5 that has looked at this issue, including Judge Israel, Judge Bell, in this Court have also said
6 that it was effective as of 2006, Your Honor. But it is true --

7 DISCOVERY COMMISSIONER: Okay.

8 MR. GREENBERG: -- there is a writ petition pending before the Supreme
9 Court that has been briefed with an answer, and it is not decided as of today, to my
10 knowledge, Your Honor.

11 But what I would like to point out is that in this particular case Judge Cory
12 denied Defendants' motion to dismiss in February of 2013, which was 15 months prior to the
13 Thomas decision, and he reached the same conclusion that Thomas did, which is that the
14 companies had to pay the minimum wage.

15 So to say that there's some sort of perspective application rationale here in this
16 case clearly doesn't make any sense because Defendants had an order telling them in
17 February of 2013 -- not June of 2014, 15, months later -- that they had to do this, and Judge
18 Cory obviously was right on the law. So --

19 DISCOVERY COMMISSIONER: And so we're going back, not just to 2014,
20 we have to go back to the timeframe of the statute of limitations, which is what I think I
21 recommended.

22 MR. GREENBERG: You did, Your Honor. You ordered production back
23 to --

24 DISCOVERY COMMISSIONER: For four years.

25 MR. GREENBERG: -- back to 2008. This case was filed in October of 2012.

1 DISCOVERY COMMISSIONER: Right.

2 MR. GREENBERG: My fundamental concern, Your Honor, is to develop the
3 record here, get the information that the Defendants have that they've denied having, that
4 they've refused to produce, that they've produced in an unusable form. We've been 14
5 months now, Your Honor, on this motion, and we're still back, and we still haven't made
6 hardly any progress, except establishing that certain information exists that they denied
7 exists, and it can produced. Otherwise though, we really haven't accomplished anything,
8 Your Honor, in terms of getting the production done.

9 DISCOVERY COMMISSIONER: Well, I hope that's not completely true, but
10 I think part of the problem is we have a dispute over what the Plaintiff is legally entitled to.
11 We have a reconsideration on the class certification. We have a reconsideration on my
12 sanctions. We have a reconsideration on apparently just about everything, but I need to let
13 the Court deal with that.

14 Now, here's what I am going to tell you --

15 MR. GREENBERG: Yes, Your Honor.

16 DISCOVERY COMMISSIONER: -- is that if the reconsideration is denied,
17 the Court may or may not stay the case. If the Court stays the case -- and we have to wait for
18 the writ outcome I guess -- 'cause the request to stay is based on the other case, not on this
19 case. I don't know if the Court's going to do that, but if there is some issue of stay, then we
20 have to wait for the decision. If the Court's not going to stay it, then I am going to uphold
21 my prior ruling that we have to go back to 2008. And if that information is not produced
22 back to that date, then I may be inclined to give more award of sanctions and fees. I'm just
23 not gonna do it today.

24 MR. GREENBERG: I understand, Your Honor, and I just want to state for the
25 record you did direct that I had leave to submit a further application at our meeting in

1 January, which is why it was done.

2 DISCOVERY COMMISSIONER: Okay.

3 MR. GREENBERG: But I understand. I would prefer if Your Honor simply
4 reserves the issue.

5 DISCOVERY COMMISSIONER: I will.

6 MR. GREENBERG: As you're saying, you're not making a determination as
7 to an award today, but perhaps in the future we can revisit that, depending on circumstances
8 as they develop. I would prefer that your determination today be in that mode, Your Honor.

9 DISCOVERY COMMISSIONER: Well, I'm not going to recommend
10 anything actually because I'm not going to have you do a Report and Recommendations
11 from today's hearing.

12 MR. GREENBERG: Yes, Your Honor.

13 DISCOVERY COMMISSIONER: I just don't think it's prudent, with
14 everything else pending, and I want the Court to decide what the Court is going to do
15 because that will affect my decision.

16 But I think the fees and costs that were supplemented went back. It was too --
17 it was not what I intended, so I may not have made it clear, so I promise you that if I do
18 decide to revisit the fees and costs issue because of the noncompliance, once the Court
19 makes the Court's decision, then I will give you better direction.

20 MR. GREENBERG: Thank you, Your Honor.

21 DISCOVERY COMMISSIONER: Okay. But I'm not going to do anything
22 today. And, unfortunately, maybe we should have handled it a little differently, but --

23 MR. GREENBERG: Yes, Your Honor.

24 DISCOVERY COMMISSIONER: -- I want the Court to know -- I want the
25 parties to understand that if the Court upholds what I have previously done, and I do have an

1 expectation that my prior recommendations will be complied with, and I am concerned
2 because I indicated that if the information could not be provided, that I would be inclined to
3 require the entire CAB Manager program and QuickBooks to be turned over for the relevant
4 timeframe.

5 MS. RODRIGUEZ: May I speak, Your Honor? I'd like to --

6 DISCOVERY COMMISSIONER: Yes.

7 MS. RODRIGUEZ: I'd like to talk about some of those issues before we
8 reconvene again 'cause I understand Your Honor's position on this, and you hit it right on
9 the head. It's -- the big question is the ruling from Judge Cory and the ruling from the
10 Supreme Court as to the effective date. You're right, all the Courts have ruled that those
11 exemptions are gone, but the big question that we don't have guidance on -- and he's going
12 to the Ninth Circuit -- is when does it start. And so what we have done, as we've informed
13 Your Honor before, is we have turned over all of the electronic data from what the cab
14 industry believes is the appropriate effective date --

15 DISCOVERY COMMISSIONER: But I --

16 MS. RODRIGUEZ: -- which is June 2014.

17 DISCOVERY COMMISSIONER: But I ruled differently. See, I already
18 recommended it to be different, so technically -- and the Judge signed off on it, so
19 technically right now you have violated a Court order.

20 MS. RODRIGUEZ: I understand that, and that --

21 DISCOVERY COMMISSIONER: You don't get to choose. You would have
22 almost been better not complying at all because now you have directly gone against my
23 recommendation, which is now an order in the case.

24 Now, I know the Judge is gonna reconsider it. I understand that. But what I'm
25 saying, under the Bahena decision, if, after reconsideration, my recommendation is upheld,

1 it's retro.

2 MS. RODRIGUEZ: I understand that, but, Your Honor, I do want to refresh
3 your recollection that we actually didn't have a signed order. Judge Cory sat --
4 unfortunately, sat on your recommendation for quite a few months, and in the interim we
5 went ahead and produced all of that, so we produced it absent an order, Your Honor, so we
6 have been trying to comply with that, and I would like to continue to comply with that, and
7 that's why I want to put these issues out on the table, because one of his -- we have turned
8 over the E-data, the electronic data, and what I attached -- I don't know if you received a
9 copy of my opposition because --

10 DISCOVERY COMMISSIONER: I did.

11 MS. RODRIGUEZ: Okay. Well, what we have to have a frank discussion
12 about is back to the beginning of this dispute is whether that electronic data is the exact same
13 thing as the paper documents that we have offered him, and what I attached from the
14 QuickBooks is to show that, yes, it is. These have always been available to him. He doesn't
15 want to look at 'em. We had this other class action firm that we've -- we have no problem
16 with. We're working together. We've completed discovery. They have an expert that's
17 reviewed all of this, and they don't have an issue with it, but Mr. Greenberg wants it in a
18 particular format, and in his latest response he has just said that he wants it in a single-line
19 format instead of a double-lines format.

20 I went back to my QuickBooks program person. She has no idea what he's
21 talking about. I have no idea what he's talking about. He's free to manipulate the data as he
22 wanted, but if he would just give me an example of what he's talking about, we'll try to redo
23 the data for him again.

24 MR. GREENBERG: Your Honor, I wrote to Defendants on January 11th about
25 this; I never got a response.

1 MS. RODRIGUEZ: And that's not true, Your Honor.

2 MR. GREENBERG: Defendant --

3 MS. RODRIGUEZ: We've been talking --

4 DISCOVERY COMMISSIONER: Okay.

5 MS. RODRIGUEZ: -- on the phone.

6 DISCOVERY COMMISSIONER: Here's what I don't want to do today. I
7 don't want to get into a battle over he-said-she-said. It's just not productive. We have an
8 issue that we have to resolve. Does the data that was turned over from 2014 -- is it the same
9 as the paper stuff?

10 MR. GREENBERG: Your Honor, okay.

11 DISCOVERY COMMISSIONER: Answer the question yes or no. It's a yes
12 or no question.

13 MR. GREENBERG: It has to be, Your Honor, if -- since the paper stuff is
14 produced from the QuickBooks. We have testimony from Mr. Nady that the payroll is
15 produced from the QuickBooks. It has to be the same, Your Honor.

16 DISCOVERY COMMISSIONER: All right. So --

17 MR. GREENBERG: If it's not the same, then Defendants aren't producing the
18 original electronic information properly.

19 DISCOVERY COMMISSIONER: So if you had all the information in the
20 paper documentation, I understood that you wanted it perhaps in electronic format for ease of
21 convenience, but the documents themselves are identical, so there's no hiding the ball here
22 by the Defendant.

23 MR. GREENBERG: Your Honor, the documents would number hundreds of
24 thousands of pages. They originate in the electronic records. In fact, there is no reason for
25 Defendant to even keep that information for historical purposes in a paper format.

1 Presumably they would print it out and give it to me because it is much more efficiently kept
2 in the QuickBooks data. It's originally created from that data. It was maintained in that
3 format. I'm entitled to it, Your Honor. It will be impossible, as a practical matter, to
4 conduct an audit for over a thousand individuals week by week, for hours and wages, to --

5 DISCOVERY COMMISSIONER: But we are --

6 MR. GREENBERG: -- determine if there are minimum wage deficiencies
7 looking at paper data, Your Honor.

8 DISCOVERY COMMISSIONER: We are arguing over two separate issues,
9 and I'm not going to argue about it. I have already ordered them --

10 MR. GREENBERG: I apologize.

11 DISCOVERY COMMISSIONER: -- to produce the data in electronic format,
12 okay? That's already been done. They've produced it from 2014 forward. They disagree
13 with the prior recommendation, right?

14 MR. GREENBERG: Your Honor, they have not produced the QuickBooks
15 data from June of 2014. This is addressed in my letter of January 11th, if you'd like to look at
16 what was submitted --

17 DISCOVERY COMMISSIONER: I am not --

18 MR. GREENBERG: -- to you --

19 DISCOVERY COMMISSIONER: I did not read through everything
20 because --

21 MR. GREENBERG: Understand, Your Honor.

22 DISCOVERY COMMISSIONER: -- there were issues with the Court not
23 making a decision. I looked briefly at your written documentation. But my understanding is
24 they did, in fact, produce the QuickBooks from 2014 to the present.

25 MR. GREENBERG: Your Honor, they have not, and we can review that, and I

1 will demonstrate to you how they have not. And if they are to produce, they say it's June
2 2014 forward, fine, we can deal with that right now, and we can defer dealing with anything
3 before that because of your concern about the other actions of the Court. That would be very
4 advisable in my view, Your Honor, but, of course, it's your decision what the Court should
5 deal with at this time, if it should deal with that piece of the production, so to speak, right
6 now.

7 DISCOVERY COMMISSIONER: But Ms. Rodriguez has said she produced
8 it.

9 MS. RODRIGUEZ: I don't understand what he believes is missing.

10 MR. GREENBERG: Your Honor --

11 MS. RODRIGUEZ: Because it's my understanding -- I mean --

12 DISCOVERY COMMISSIONER: Is it produced in electronic format?

13 MS. RODRIGUEZ: I believe it is, Your Honor.

14 MR. GREENBERG: Your Honor, would you like to see what's actually
15 produced? I can show you a sample. Visually you can understand it. It's very easy.

16 MS. RODRIGUEZ: I attached a sample.

17 MR. GREENBERG: I can get -- no, you did not. You -- actually you're right,
18 you did attach it, but I can demonstrate to Your Honor what the problem is, if you would like
19 to see.

20 DISCOVERY COMMISSIONER: Okay. Let me take a look at it.

21 MS. RODRIGUEZ: And that's what I've been asking for. I don't know what
22 the problem is. I don't know what he's dissatisfied with.

23 DISCOVERY COMMISSIONER: Show counsel first. Show defense counsel
24 first.

25 MR. GREENBERG: Yes, of course, Your Honor.

1 DISCOVERY COMMISSIONER: And explain it. Tell her first.

2 MR. GREENBERG: There are two pages to this data, Your Honor.

3 DISCOVERY COMMISSIONER: And where did the pages come from; are
4 they --

5 MR. GREENBERG: This is --

6 DISCOVERY COMMISSIONER: -- printouts from the electronic
7 information?

8 MR. GREENBERG: Yes.

9 If you could give these two pages to the Court, Your Honor.

10 [Handing documents to the Marshal]

11 There is a page -- and I will give two pages to defense counsel. Here are two
12 pages for you.

13 [Handing documents to Ms. Rodriguez]

14 What you're looking at, one is on the long print view, Your Honor, which is
15 the landscape print, the other is on the portrait view, the short print view; you understand
16 what I mean by that? It says on the long print view three employees, okay. If you look to
17 the far left of that long printout --

18 DISCOVERY COMMISSIONER: Yes.

19 MR. GREENBERG: -- we have various lines with descriptions.

20 DISCOVERY COMMISSIONER: Right.

21 MR. GREENBERG: Okay? And then -- that's one column. Then there's a
22 column for hours and there's a column that says January 9th, 2015, okay?

23 DISCOVERY COMMISSIONER: Which I'm assuming is the date worked.

24 MR. GREENBERG: Well, the pay period.

25 DISCOVERY COMMISSIONER: Okay.

1 MR. GREENBERG: The week or two-week period, whatever it is, two --

2 DISCOVERY COMMISSIONER: Okay.

3 MR. GREENBERG: -- weeks, I guess, Your Honor.

4 So what it is is these Excel files that were produced from QuickBook, as it
5 says, are approximately 400 columns across, okay. You need to look at two columns to
6 determine anything about an individual employee. You need to look at the hours, and you
7 need to look at the column that's under the date, which has various numbers relating to
8 driver commission, total gross pay, adjusted gross pay, net pay.

9 Now, as a starting point, Your Honor, the numbers for total gross pay, adjusted
10 gross pay, and net pay are all the same. I have no information on the deductions that were
11 taken from pay. Deductions were taken from pay for purposes of accidents, for purposes of
12 fines, for other assessments that were made against the employees that in certain instances
13 could very well reduce their actual pay below the minimum wage. I need that information.
14 This was discussed in my letter of January 11th to Defendants, which was never responded
15 to. It is with my supplement of March 11th filed with Your Honor.

16 Now, in addition --

17 MS. RODRIGUEZ: Before he moves on --

18 MR. GREENBERG: -- the problem here --

19 MS. RODRIGUEZ: -- Your Honor addressed that at our last hearing, and
20 we've never talked about the deductions. We were to show him what was contained in the
21 QuickBooks, which was the gross hours, and the -- excuse me, the gross pay and the hours.

22 MR. GREENBERG: Your Honor, in addition, the problem here, okay -- and --
23 is that this information, what is important is the hours and what was paid. I think Your
24 Honor understands that. That's how we're gonna find out if there's a minimum wage
25 deficiency from this information, Your Honor.

1 However, when you look at this information, we don't know which two
2 columns refer to any particular employee. There is no employee identification number in
3 this production. There is no name. So I have approximately 400 columns relating to over
4 200 individuals, but I have no idea who they are. So, for example, if I -- and this is produced
5 as a sequence of 50 or so Excel files, one for each pay period. So I can look in one pay
6 period and see if there's deficiencies for, you know, 200 unique people in that pay period,
7 but when I go to the next pay period, I can't match it up, Your Honor. The next pay period I
8 have no idea who these people are.

9 DISCOVERY COMMISSIONER: So we have a problem because they've
10 done a motion to reconsider class certification, so the identity of the employees has not yet
11 been determined, and we have to have that reconsideration heard first, and then I think you
12 are definitely entitled to the names and the employees. And, until that time, it seems like on
13 the shorter form you've been able to calculate the wage --

14 MR. GREENBERG: Well --

15 DISCOVERY COMMISSIONER: -- of seven-twenty-five an hour.

16 MR. GREENBERG: -- I will explain the significance of that, but just your last
17 comment, Your Honor, your prior order directed him to substitute identifiers for the
18 employee names. They didn't have to give me the employee names.

19 DISCOVERY COMMISSIONER: I understand that.

20 MR. GREENBERG: So as this data exists right now, it is completely useless
21 in terms of me being able to identify any group of employees in terms of who actually is
22 owed potentially anything based on this data because I have no individual -- I have no way to
23 link this to even a John Doe or a number one, two, three individual.

24 DISCOVERY COMMISSIONER: Or what their employment was.

25 MR. GREENBERG: Yes, Your Honor.

1 MS. RODRIGUEZ: Your Honor, I offered to do that because you indicated at
2 our last hearing that we could do such a thing, just easily numbering them, and we said he
3 could do that. He's got the electronic data. I called him. I talked to him about that. It was
4 basically an all or nothing, and he wants it back to 2007, not pursuant to your order, but to
5 2008, and that's basically why it's up for reconsideration.

6 MR. GREENBERG: Your Honor, I would appreciate it if Your Honor would
7 instruct defense counsel to please correspond with me in writing about discovery issues and
8 respond to --

9 DISCOVERY COMMISSIONER: Not gonna do it.

10 MR. GREENBERG: -- my written --

11 DISCOVERY COMMISSIONER: You all are grownups.

12 MR. GREENBERG: Well, okay.

13 DISCOVERY COMMISSIONER: You need to be able to talk with each
14 other. If I have to do something like that -- I am not going to do that. I would highly
15 encourage you to confirm your conversations, but once communication breaks down, there
16 will be additional problems, and I expect you all to pick up the phone and be able to talk to
17 each other. That's ridiculous.

18 MR. GREENBERG: Your Honor, it is ridiculous. In 23 years of practice, I
19 have never made that request to a Court. But what Ms. Rodriguez just told you just isn't true.
20 We had no such conversation since my January 11th letter, and there is no way I could insert
21 employee IDs with this information. How do I know if the guy --

22 DISCOVERY COMMISSIONER: I will agree with that because I don't know
23 how to do it. So I think there is a problem here so we need to figure out how to make it
24 workable, at least from 2014 forward. So if you're not going to give the names over right
25 now because of the pending motion, then how can we do this where we know what, you