

Case No. 85850

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**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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**APPEAL**

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

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**APPELLANT'S APPENDIX**

**VOLUME 3**

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ESTHER C. RODRIGUEZ (SBN 6473)  
RODRIGUEZ LAW OFFICES, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
(702) 302-8400

DANIEL F. POLSENBERG (SBN 2376)  
ABRAHAM G. SMITH (SBN 13,250)  
LAUREN D. WIGGINTON (SBN 15,835)  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
(702) 949-8200

*Attorneys for Appellant*

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**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.

LEON GREENBERG  
RUTHANN DEVEREAUX-GONZALEZ  
LEON GREENBERG  
PROFESSIONAL CORPORATION  
2965 South Jones Blvd., Suite E3  
Las Vegas, Nevada 89146

CHRISTIAN GABROY  
GABROY LAW OFFICES  
170 S. Green Valley Parkway, Suite 280  
Henderson, Nevada 89012

*Attorneys for Respondents*

/s/ Jessie M. Helm  
An Employee of Lewis Roca Rothgerber Christie LLP

1 know, label the employee by number and what they did because right now, I mean, I'm  
2 assuming this is a driver, this --

3 MS. RODRIGUEZ: Right.

4 DISCOVERY COMMISSIONER: -- sheet I have is a taxi cab driver.

5 MR. GREENBERG: It's three drivers on that sheet, Your Honor. Each two  
6 columns refers to one individual.

7 MS. RODRIGUEZ: That's right because --

8 DISCOVERY COMMISSIONER: Okay.

9 MS. RODRIGUEZ: -- there are -- I haven't looked at the entirety, but he's  
10 probably right. It probably is about 400 or so. It's -- we tried to compile everything to give  
11 him everything from that time period, and it does read in columns.

12 MR. GREENBERG: Your Honor, you had mentioned that I had calculated the  
13 hourly wage on the other piece of paper. The point, the significance, of where it says seven-  
14 twenty-five an hour, if you divide the eight-eighty -- eighty-eight-point-forty-eight, is this is  
15 from January 2015. This individual is being paid less than the minimum wage.

16 DISCOVERY COMMISSIONER: Yeah, I --

17 MR. GREENBERG: Minimum wage in Nevada is --

18 DISCOVERY COMMISSIONER: -- figured that out.

19 MR. GREENBERG: -- eight-twenty-five. Yes. That's the reason why it was  
20 noted.

21 But, Your Honor, the other problem with the production here is that the way  
22 this should be set up, Your Honor, is the employee's name should be here in one column,  
23 column A, and all of this other information should be in multiple columns going across, so  
24 everything is indexed to one employee. The problem with this set-up, Your Honor -- and  
25 this is done intentionally by Defendants -- is that this is going to have to be completely

1 reformatted for analytic purposes because --

2 DISCOVERY COMMISSIONER: Well, before we make a statement like that,  
3 let's have some support for the intentional aspect of this because this may be the way they  
4 keep their books.

5 MR. GREENBERG: Your Honor, this is not the way the QuickBooks is able  
6 to produce the information. If I was given an opportunity to go to the QuickBooks data, I  
7 could probably do this myself. I actually work with QuickBooks. I can get a QuickBooks  
8 person to do it.

9 DISCOVERY COMMISSIONER: We're not gonna do that.

10 MR. GREENBERG: Well, then they need to provide it in a way that's usable.  
11 Ms. Rodriguez is testifying here she doesn't know how to do it. She spoke with the person at  
12 the -- the client. They don't understand it. Maybe they don't, okay.

13 MS. RODRIGUEZ: That's not what I said.

14 MR. GREENBERG: I can --

15 MS. RODRIGUEZ: I said I didn't understand what he wanted.

16 MR. GREENBERG: Your Honor, she doesn't understand because she doesn't  
17 communicate with me, and I explained in my letter of January 11<sup>th</sup>, to which she never  
18 responded in any fashion until today.

19 DISCOVERY COMMISSIONER: Well, your communication needs to be  
20 better.

21 MR. GREENBERG: I agree, Your Honor, it should be better, and I apologize.

22 DISCOVERY COMMISSIONER: And I can't -- I expect -- you're adults. I  
23 expect you to communicate professionally and reasonably and be responsive. But I,  
24 candidly, don't know if it's gonna make a difference or if it's in writing or oral exactly -- and  
25 for the reason that I think that there are so many issues right now. But I am expecting a fresh

1 start when we get these motions resolved by the District Court Judge. We will be starting  
2 fresh, and we will be addressing the issues, if necessary, from the beginning. But under  
3 Bahena, the recommendations date back, they're retro. So that could cause the Defendant a  
4 little bit of difficulty.

5 Having said that, I understand where we're at legally, and I want the Court to  
6 resolve the issues before the Court, and I'm hoping that the Supreme Court will address the  
7 writ, but I can't tell you that's going to happen in any -- in the near future.

8 So what I'm concerned about today is I think that there is an agreement, at  
9 least principal -- there is an agreement that we can at least disclose the data from 2014  
10 forward. We can't disclose the names of the employees, but we should be able to break it  
11 down so that, you know, we don't have three employees in one column. I don't understand  
12 that.

13 MS. RODRIGUEZ: That's just -- it's -- he asked for lump-sum data, and we  
14 tried to format so that it would usable for him.

15 DISCOVERY COMMISSIONER: But I said you need to identify it by driver  
16 and put a number next to the driver, and that is not what I'm seeing.

17 MS. RODRIGUEZ: But when we got together on that, Your Honor, we had a  
18 discussion, and, in fact, I think you kind of pointed to him and said couldn't you easily have  
19 put a number on this. I mean, we can redo this for him and put a number 1 through 400.

20 DISCOVERY COMMISSIONER: I don't want to have to go back and listen  
21 to my hearings from before.

22 MS. RODRIGUEZ: We could redo the data.

23 DISCOVERY COMMISSIONER: But I am --

24 MS. RODRIGUEZ: I'll redo it.

25 DISCOVERY COMMISSIONER: -- really confident that I said put a number

1 by the employee --

2 MS. RODRIGUEZ: I can do that.

3 DISCOVERY COMMISSIONER: -- replace the employee name with a  
4 number.

5 MS. RODRIGUEZ: That's --

6 MR. GREENBERG: Your Honor --

7 MS. RODRIGUEZ: I'll redo the data. That's not a problem, Your Honor.

8 And I, you know, really I want to highlight to Your Honor when Mr. Greenberg and I speak,  
9 it's -- I don't believe that it's adversarial. I don't think we've raised our voices at each other,  
10 and we seem to sometimes I think we get on the same page about things, and then I do get  
11 confirming letters that say completely the opposite of what I think that we've agreed upon.  
12 So we -- I'm in agreement that I will try to work better with Mr. Greenberg in  
13 communicating, but we just have not been on the same page about this, what he wants, and  
14 what A Cab is able to provide.

15 DISCOVERY COMMISSIONER: Well, this is what I want. It's gonna be all  
16 about me at this point. This is what I want. I want the 2014 data forward produced from the  
17 QuickBooks in a meaningful production so that the -- each employee stands by him or  
18 herself, but you have to put the number down to replace the name. But the grouping -- so it  
19 looks like, okay, so this involves three people. I think that's extremely confusing.

20 MR. GREENBERG: Your Honor --

21 MS. RODRIGUEZ: That's just the way it prints.

22 MR. GREENBERG: Your Honor, no, this is the way --

23 MS. RODRIGUEZ: Because it --

24 MR. GREENBERG: -- it appears on the screen. This is a spreadsheet that  
25 goes over 400 columns across, Your Honor. Okay.

1 DISCOVERY COMMISSIONER: Well, that's not workable.

2 MR. GREENBERG: It isn't workable, and it's not workable in this format, and  
3 there is no need to produce it in this format, Your Honor. And if Your Honor is unsure about  
4 this, I would simply ask leave to provide additional documentation to Your Honor. I will get  
5 someone who is well versed in QuickBooks to explain in detail, with examples, for the  
6 record or the Court as to why this should easily be produced in a linear format.

7 Your Honor, I've been litigating these cases for over 20 years. I have never  
8 had a problem with somebody insisting this is the only way to produce this information.  
9 This is not. This is the way to obstruct the analysis of the information. That is why  
10 Defendants are doing this, Your Honor.

11 MS. RODRIGUEZ: No, Your Honor.

12 MR. GREENBERG: And they have a history here of simply not producing  
13 information and not disclosing that they have electronic data. I'm sorry, Your Honor. I am  
14 going --

15 MS. RODRIGUEZ: I'm not really sure --

16 MR. GREENBERG: -- over history here, and that's probably not  
17 appropriate --

18 DISCOVERY COMMISSIONER: I'm trying --

19 MR. GREENBERG: -- very much.

20 DISCOVERY COMMISSIONER: -- to analyze in my -- to the best of my  
21 ability how we can at least get the information from 2014 forward exchanged in a  
22 meaningful way. So what I'm thinking of is having defense counsel submit to me in camera  
23 this production. I don't know why we have to have 400 columns across. I don't understand  
24 that.

25 I mean, what -- this is what we need. We need the employee, absent the name

1 at the present time, until reconsideration is decided, the wage earned, the I guess the date  
2 of --

3 MR. GREENBERG: The pay period, Your Honor.

4 DISCOVERY COMMISSIONER: -- pay period -- thank you. Can't even  
5 think anymore. -- the pay period, and whether there were any deductions taken and for what.  
6 That's what we need.

7 MR. GREENBERG: And the hours, Your Honor, the hours recorded for the  
8 pay period, Your Honor.

9 DISCOVERY COMMISSIONER: Right. Well, that is here.

10 MR. GREENBERG: That is --

11 DISCOVERY COMMISSIONER: I've got the hours recorded, the pay period,  
12 so the amount paid, whether there were any deductions and what they were for.

13 MR. GREENBERG: That is correct, but you don't actually have that  
14 information here because --

15 DISCOVERY COMMISSIONER: I don't have the deductions.

16 MR. GREENBERG: -- you don't have the deductions, you don't have an  
17 identity for the driver.

18 DISCOVERY COMMISSIONER: Because, if I recall correctly, this is about  
19 whether or not we comply with the minimum wage rule, whether or not we've offered  
20 insurance, health insurance or not, and whether that affects the rate of the minimum wage  
21 that has to be paid.

22 MR. GREENBERG: That's right, Your Honor, but we first need to look at  
23 the -- find out what these people were paid and how many hours they were working. If  
24 they're making ten dollars an hour, then there's no issue with that person for that pay period.  
25 We don't have to go any further, Your Honor. This should really be the first step, and we

1 haven't even gotten there, Your Honor.

2 DISCOVERY COMMISSIONER: Well, not for the lack of trying by the  
3 Court.

4 MS. RODRIGUEZ: And, Your Honor --

5 MR. GREENBERG: I appreciate that Your Honor is trying.

6 MS. RODRIGUEZ: -- all of the --

7 MR. GREENBERG: And I would like the opportunity to simply get Your  
8 Honor good, easy-to-understand information so as to not waste your time at hearing now or  
9 in the future on this so Your Honor can make an informed determination as to what should  
10 be done here if Your Honor is having difficulty understanding the way --

11 DISCOVERY COMMISSIONER: I'm not having difficulty understanding.  
12 What I'm having difficulty understanding is why can't we work this out between counsel;  
13 that's what I'm having difficulty understanding. Why can't we follow my prior Report and  
14 Recommendations? That's what I'm having difficulty understanding, sir.

15 MR. GREENBERG: I apologize, Your Honor.

16 DISCOVERY COMMISSIONER: You know, I'm fed up. You're adults.  
17 You're professionals. You're members of this Bar. You need to communicate and work  
18 together.

19 MR. GREENBERG: Your Honor, my problem is there has been no responsive  
20 communication.

21 MS. RODRIGUEZ: And that's not true.

22 MR. GREENBERG: I write to --

23 DISCOVERY COMMISSIONER: Well, apparently that is disputed.

24 MR. GREENBERG: I understand, Your Honor.

25 DISCOVERY COMMISSIONER: So how can we fix the problem? That's

1 what I'm concerned about, so when you go out the door I have some assurance that the data  
2 from 2014 forward is going to be produced in a meaningful way and not 400 columns across  
3 that mean nothing.

4 MR. GREENBERG: In respect --

5 MS. RODRIGUEZ: Your Honor, he can manipulate that data, and that was the  
6 whole point.

7 DISCOVERY COMMISSIONER: I don't want him manipulating it. I want  
8 you producing it --

9 MS. RODRIGUEZ: I'm gonna try --

10 DISCOVERY COMMISSIONER: -- in a meaningful format.

11 MS. RODRIGUEZ: I will try that, Your Honor. But the problem all along has  
12 been this -- he didn't want to look at the documents. He wanted data he could manipulate, so  
13 that's what we gave him, was data that he could --

14 MR. GREENBERG: Your Honor --

15 MS. RODRIGUEZ: -- do what he wanted.

16 DISCOVERY COMMISSIONER: I don't like the word manipulate. He  
17 wanted data that he could check and go through to determine whether or not your client  
18 complied with the law.

19 MS. RODRIGUEZ: I can't think of the right word, but I believe that that was  
20 his word, that he wanted to be able to cut and paste and be able to do formulas and things.

21 DISCOVERY COMMISSIONER: Well, he wants to be able --

22 MS. RODRIGUEZ: That's what I'm referring to.

23 DISCOVERY COMMISSIONER: -- to search the data.

24 MS. RODRIGUEZ: I'm referring to --

25 DISCOVERY COMMISSIONER: Or data.

1 MS. RODRIGUEZ: -- formulas when I'm talking about manipulating, that he  
2 can take gross wages, put a divided by hours and come up and see which one of those.  
3 That's my understanding.

4 DISCOVERY COMMISSIONER: But we can't determine that from what  
5 you've produced.

6 MS. RODRIGUEZ: Okay.

7 DISCOVERY COMMISSIONER: Because I don't know which employee  
8 we're talking about, and I also don't know if there was a deduction made for any reason, i.e.  
9 healthcare. That's what we really need.

10 MS. RODRIGUEZ: But we hadn't talked about that, his issue --

11 DISCOVERY COMMISSIONER: What do you think --

12 MS. RODRIGUEZ: -- that he's been --

13 DISCOVERY COMMISSIONER: -- this case is about?

14 MS. RODRIGUEZ: His issue has been for the names. He's been pushing for  
15 the names.

16 DISCOVERY COMMISSIONER: You know what?

17 MS. RODRIGUEZ: That was our last --

18 DISCOVERY COMMISSIONER: I'm really not going to address this further.  
19 I have explained to you what needs to be done. Do not, do not underestimate this Court. I  
20 have told you repeatedly that I understand the names are protected until the Court rules on  
21 the class certification. But I specifically requested you to produce the information and  
22 number the employees. I am confident I did that. If I have to go back and look, you're  
23 gonna pay a contribution for my time on having to do that. But I am confident that that was  
24 the plan, but that is not what you have produced here to the best of my ability to understand  
25 what this is. So you need to go back. You need to produce it by employee. You do not need

1 to identify the names until the Court has ruled on the class certification.

2 MS. RODRIGUEZ: Right.

3 DISCOVERY COMMISSIONER: You can use numbers, but you have to  
4 identify the hours worked, the pay period, the amount paid, and whether there were any  
5 deductions, specifically deductions for health insurance. So in my mind there should be  
6 three columns, not 400.

7 MR. GREENBERG: Your Honor, again, I need this information produced in a  
8 linear format. It is very easily done in that fashion, and if Your Honor wants me to come  
9 back, we will deal with that in the future. I don't want to have another production like what  
10 you're looking at right now, Your Honor.

11 MS. RODRIGUEZ: And I don't know what that means. What does that  
12 mean?

13 MR. GREENBERG: Your Honor, I will explain to counsel in writing with  
14 sufficient documentation, and I will explain to the Court in writing with substantial  
15 documentation exactly what is necessary to resolve the issue of the QuickBooks production  
16 short of the entire database turn over, which they don't want --

17 DISCOVERY COMMISSIONER: This is --

18 MR. GREENBERG: -- and I have never initially sought, Your Honor.

19 DISCOVERY COMMISSIONER: This is what I want you to do. I want you  
20 to put in writing to defense counsel, CC me on it, and hand deliver a copy to me so I have it.

21 MR. GREENBERG: Yes, Your Honor.

22 DISCOVERY COMMISSIONER: I want you to put in writing exactly what  
23 you want that QuickBook spreadsheet to look like, exactly.

24 MR. GREENBERG: Okay.

25 DISCOVERY COMMISSIONER: And an explanation of how it can be done

1 and why it should be able to be done in that respect.

2 MR. GREENBERG: Yes, Your Honor.

3 DISCOVERY COMMISSIONER: And then, defense counsel, I need you to  
4 go back and determine how you can identify the employees by number. I think that's easier  
5 than anything else. And I think I had even talked about keeping a sheet --

6 MR. GREENBERG: Key, Your Honor.

7 DISCOVERY COMMISSIONER: -- a key --

8 MR. GREENBERG: Yes.

9 DISCOVERY COMMISSIONER: -- right?

10 MR. GREENBERG: Yes, Your Honor.

11 DISCOVERY COMMISSIONER: Didn't I talk about that?

12 MR. GREENBERG: Yes, Your Honor.

13 DISCOVERY COMMISSIONER: It only had the names next to the numbers  
14 so that when we did have the class certification ruled upon, we could put the names with the  
15 numbers. So I don't understand what the problem is, but I expect counsel to rectify it  
16 immediately.

17 MR. GREENBERG: Your Honor --

18 DISCOVERY COMMISSIONER: I am gonna set this for -- I'm not having  
19 any Report and Recommendation today. I want counsel to work together to get a meaningful  
20 QuickBooks spreadsheet made available per employee as we've discussed. Plaintiffs'  
21 counsel's instructed to send defense counsel, with a copy to the Commissioner, an  
22 explanation of specifically what you want and how you can easily put that together, if you  
23 have an expert who can explain that or if you have somebody who can explain that, that's  
24 fine.

25 MR. GREENBERG: I will --

1 DISCOVERY COMMISSIONER: I need --

2 MR. GREENBERG: -- do that, Your Honor.

3 DISCOVERY COMMISSIONER: -- a CC of that letter because it's going on  
4 the left-hand side of the file. And then when you come back here on the -- in 30 days, I hope  
5 the Court will have a ruling on the stay.

6 MR. GREENBERG: I appreciate --

7 DISCOVERY COMMISSIONER: And the certification.

8 MR. GREENBERG: -- your patience, Your Honor, and I apologize --

9 DISCOVERY COMMISSIONER: Well, I apologize if I do not seem to be as  
10 patient as I normally am, but I am clearly at a loss as to how to effectively get this discovery  
11 disclosed. I just don't understand why it's been that big of an issue.

12 MR. GREENBERG: And, Your Honor, the communications between counsel  
13 have been absolutely abhorrent here, and I apologize for that, and I realize what I need to do  
14 is when I send a letter on January 11th and I'm not getting a response, I need to send a letter  
15 a week later saying I haven't gotten a response, and then a week later, and a week later, so  
16 there will be records, Your Honor, that I am not getting a response --

17 DISCOVERY COMMISSIONER: Well --

18 MR. GREENBERG: -- rather than us doing a he-said-she-said --

19 MS. RODRIGUEZ: I think he's already doing that.

20 MR. GREENBERG: -- in front of you 'cause I didn't do that, Your Honor, so  
21 there -- I did not make the effort to document the communication issues appropriately.

22 DISCOVERY COMMISSIONER: I understand how long this has been going  
23 on. This is your entire file. I understand how long this has been going on. Please do not  
24 underestimate my understanding of what is going on. I do not have answers on the  
25 QuickBook productions because this is something that it seems clear to me that you could

1 produce it in a better usable format, but I don't know that to be the case because I don't  
2 know what their QuickBooks looks like.

3 MR. GREENBERG: I understand, Your Honor, and --

4 MS. RODRIGUEZ: And, Your Honor, just, you know, we've talked about  
5 this, but we have this other class action lawsuit going through the same time period, same  
6 drivers. We have not been before you on any of these issues. We've worked it out with the  
7 other side. They have their expert. All state agencies, all federal agencies have all relied on  
8 the paper file, so when he's in here saying it's impossible for me to go through these paper  
9 files and prepare my case, everybody else has done that.

10 DISCOVERY COMMISSIONER: Well, I think his concern is being able to  
11 audit, and search, and look at the information. So, obviously, the Plaintiffs' counsel has had  
12 experience as well, and he is used to seeing this information in a certain format.

13 Is there another case that has been fully litigated in the public eye that you  
14 could produce a copy of the QuickBooks that you would like to see, similar to what you'd  
15 like to see the Defendant produce in the same format so that the Defendant could see what  
16 you've actually been able to obtain in another case?

17 MR. GREENBERG: I can review my files. There may be an exemplar of  
18 some sort along those lines, Your Honor, but if not, I will have something suitably produced  
19 as a visual sample so it can be easily understood, what we're talking about.

20 DISCOVERY COMMISSIONER: Attach it to your letter --

21 MR. GREENBERG: Absolutely, Your Honor.

22 DISCOVERY COMMISSIONER: -- that you're gonna write.

23 MR. GREENBERG: No. There needs to be an illustration here, not just a  
24 narrative description. It's not gonna be easy to understand without that. I appreciate that.  
25 That's why I gave Your Honor the illustration I gave you today.

1 DISCOVERY COMMISSIONER: And I'm gonna say what I think is  
2 important at this point though is to try to work together. I understand it's litigation. I know  
3 it can be difficult. But we just simply have to do a better job on both sides, and we have to  
4 try, even though we've objected to everything and appealed to everything, we have to try to  
5 at least produce the 2014 data forward in a meaningful format, and it would be helpful,  
6 Plaintiffs' counsel, if you would give defense counsel a copy of something that you have in  
7 another case so she can actually see, hey, other people do this.

8 MR. GREENBERG: Your Honor, I will produce an explanation with an  
9 illustration of what needs to be done here, and, in fact, I will go out and hire an independent  
10 person to go to their premises if Your Honor authorizes it and they want help, they want  
11 technical help. I have --

12 DISCOVERY COMMISSIONER: This is not --

13 MR. GREENBERG: -- worked with --

14 DISCOVERY COMMISSIONER: This is not a discussion for today.

15 MR. GREENBERG: I understand. That would be an eventual -- let's one  
16 thing at a time. Let's get the documentation to everybody on the record about what we're  
17 dealing with, and then we'll take it from there, Your Honor.

18 DISCOVERY COMMISSIONER: 2014 forward.

19 MR. GREENBERG: Yes, Your Honor.

20 DISCOVERY COMMISSIONER: Ms. Rodriguez, go back and see what --

21 MS. RODRIGUEZ: I will, Your Honor.

22 DISCOVERY COMMISSIONER: -- the deal is.

23 MS. RODRIGUEZ: I thought we had done that. I will redo it to number it for  
24 him. I'll see if it can be renumbered, you know, what employee --

25 DISCOVERY COMMISSIONER: But it's not just renumbering. It's also

1 providing the information --

2 MS. RODRIGUEZ: Right.

3 DISCOVERY COMMISSIONER: -- that's critical here. I mean, you know  
4 what this case is about. The deduction at issue is health insurance. That's the whole case.  
5 You should have known that from day one.

6 MS. RODRIGUEZ: Yeah.

7 DISCOVERY COMMISSIONER: So please don't tell me, well, they never  
8 asked for that. That is just beyond my comprehension. If you know what the case is about,  
9 you have obligation to produce relevant evidence under 16.1, so don't tell me that you didn't  
10 understand that, okay?

11 MR. GREENBERG: Your Honor, it's not just the deduction for health  
12 insurance. It would be any nontaxed deduction, nonlien deductions. There were other  
13 deductions employer was taking for property damage, for penalties that they imposed on  
14 employees for some reason, which do exist.

15 DISCOVERY COMMISSIONER: But that wouldn't necessarily violate the  
16 law.

17 MR. GREENBERG: It wouldn't violate the law, but if it reduced the pay for  
18 the period below --

19 DISCOVERY COMMISSIONER: Then you can see the --

20 MR. GREENBERG: -- below the minimum -- that's why I need that deduction  
21 information.

22 DISCOVERY COMMISSIONER: But they can do that. The issue that you  
23 are saying -- I mean, this is your case, as I understand it -- is that they did not either, one,  
24 offer the health insurance, or, number two, by taking that into account and deducting the  
25 wage rate it was violating the Nevada Constitution, right? I mean, all the other deductions

1 there's no argument that the Defendant can take those deductions, is there?

2 MR. GREENBERG: They can't take 'em if it reduces the pay below the  
3 minimum wage. You can't deduct a hundred dollars from somebody's paycheck for damage  
4 to their taxi if it's gonna reduce their hourly rate for that pay period below the eight-twenty-  
5 five or seven-twenty-five an hour. We can't do it, Your Honor. That triggers a minimum  
6 wage violation. That is why I need the deduction information.

7 DISCOVERY COMMISSIONER: So we need all the deductions, not just the  
8 health insurance.

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

10 DISCOVERY COMMISSIONER: But wouldn't there be one column for that?

11 MR. GREENBERG: Your Honor, it is definitely listed in an identifiable  
12 intersection, column, cell --

13 DISCOVERY COMMISSIONER: Okay.

14 MR. GREENBERG: -- in the QuickBooks, and I will demonstrate how this  
15 needs to be deduced, Your Honor.

16 MS. RODRIGUEZ: Well, that's --

17 MR. GREENBERG: And, again, I apologize for the failure of communication  
18 here. I could have done a better job. I should have done a better job so --

19 DISCOVERY COMMISSIONER: Well --

20 MR. GREENBERG: And I will do a better --

21 DISCOVERY COMMISSIONER: -- communication --

22 MR. GREENBERG: -- job.

23 DISCOVERY COMMISSIONER: -- is a two-way street.

24 MR. GREENBERG: Yes, Your Honor.

25 DISCOVERY COMMISSIONER: And I used to do a sufficient job at

1 communicating so that there is no issue of what I am expecting. But I think there should be  
2 no issue right now. I think I --

3 MR. GREENBERG: I will do a better job, Your Honor, promise.

4 DISCOVERY COMMISSIONER: I think I've made it very clear, Ms.  
5 Rodriguez, what I expect to be produced.

6 MS. RODRIGUEZ: I'm going to A Cab right after this, Your Honor. I'm  
7 going to see what they have in their QuickBooks and if that reformatting can be done. I'm --  
8 it has been very laborious on their side to have to pull -- I explained that at the last hearing.  
9 It's not as easy as Mr. Greenberg presented, that it's a matter of them redoing it, but we're  
10 gonna do our best to try --

11 DISCOVERY COMMISSIONER: But they have to --

12 MS. RODRIGUEZ: -- to comply.

13 DISCOVERY COMMISSIONER: -- prove too. I mean, the Plaintiff has the  
14 burden of proof, but on your affirmative defenses you do, and you have probably the burden  
15 of persuasion as well on those, right? Am I confusing it?

16 MR. GREENBERG: Well, Your Honor, I would just --

17 DISCOVERY COMMISSIONER: But --

18 MR. GREENBERG: Yes, Your Honor.

19 DISCOVERY COMMISSIONER: Forget that.

20 MR. GREENBERG: Okay.

21 DISCOVERY COMMISSIONER: Here's what needs to happen. You need to  
22 be able to defend your position that you didn't violate the minimum wage, if that's your  
23 defense, so you're going to necessarily need to show all the deductions and the payments that  
24 were made to each individual employee because if the Court says, yes, I agree this is a  
25 certified class, I'm gonna maintain that, then short of appealing you're going to have to

1 produce the information per employee.

2 MS. RODRIGUEZ: And it's, well, the most accurate documentation are the  
3 paper files, and they are there to demonstrate all of the deductions, all of the taxes,  
4 everything that we are now putting together for Mr. Greenberg electronically.

5 MR. GREENBERG: Your Honor, I would like to spare Defendants from any  
6 additional unnecessary burden 'cause they've been talking about the burden of getting this  
7 together. She said she's gonna go to the Defendant's office and work on it right away. I  
8 would urge them to wait until I get that communication we've been discussing out with  
9 guidance and instruction on the record about this. That's their choice, how they want -- what  
10 they want to spend their time doing, Your Honor, but I'm trying --

11 DISCOVERY COMMISSIONER: It would seem to me that would be prudent.

12 MR. GREENBERG: I'm trying to help everybody out here and make things  
13 easier. That's --

14 DISCOVERY COMMISSIONER: But I am not --

15 MR. GREENBERG: -- my point, Your Honor.

16 DISCOVERY COMMISSIONER: -- going to necessarily tell the lawyers how  
17 to do their job, but that does seem like it would be a prudent plan.

18 Nothing further today, no Report and Recommendations. I do expect a better  
19 job of communication, and I do expect, since it's not an issue, to produce in a workable  
20 format the information necessary from 2014 forward.

21 MR. GREENBERG: Yes, Your Honor. One sort of housekeeping issue is our  
22 schedule in this case. For example, I had expert designations this month. We have a close of  
23 discovery 6/29.

24 DISCOVERY COMMISSIONER: I'll have to address that when you come  
25 back and see me next time.

1 MR. GREENBERG: That's fine, Your Honor.

2 DISCOVERY COMMISSIONER: But your trial date of 1/3/17 has to stand. I  
3 think we have a five-year rule issue.

4 MR. GREENBERG: Not until 2018 on this case actually, Your Honor. It was  
5 filed October of 2012, and there was a stay for approximately six months or maybe even a  
6 little more. So we would be about two years off from --

7 DISCOVERY COMMISSIONER: I would want you to confirm when you  
8 think the five-year rule runs because I don't want to have a problem with that if I have to  
9 adjust the deadlines, so you'll need to reach an agreement and we'll have to put it on the  
10 record.

11 MR. GREENBERG: When we return, Your Honor.

12 DISCOVERY COMMISSIONER: Okay. I'm hoping 30 days is enough. I  
13 may be inclined to go out 45, just to be on the safe side.

14 MR. GREENBERG: That would be fine, Your Honor. I would ask that the  
15 Court just avoid May 26 because I have some other hearings on that date.

16 THE CLERK: May 20<sup>th</sup>.

17 DISCOVERY COMMISSIONER: May 20<sup>th</sup>, it's a Friday.

18 THE CLERK: At 10.

19 DISCOVERY COMMISSIONER: At 10.

20 MR. GREENBERG: That should be fine, Your Honor.

21 DISCOVERY COMMISSIONER: Ms. Rodriguez, does that work for you?

22 MS. RODRIGUEZ: I think that'll be fine, Your Honor.

23 DISCOVERY COMMISSIONER: May 20<sup>th</sup>, 2016, at 10 a.m. I'll see you  
24 then.

25 MR. GREENBERG: Thank you, Your Honor.

1 DISCOVERY COMMISSIONER: Thank you very much.

2 MS. RODRIGUEZ: Thank you.

3 [Proceeding concluded at 11:14 a.m.]

4 \* \* \*

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

7 

8 FRANCESCA HAAK  
9 Court Recorder/Transcriber

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33

33

  
CLERK OF THE COURT

**NEOJ**  
Esther C. Rodriguez, Esq.  
Nevada Bar No. 6473  
RODRIGUEZ LAW OFFICES, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
702-320-8400  
[info@rodriguezlaw.com](mailto:info@rodriguezlaw.com)

Michael K. Wall, Esq.  
Nevada Bar No. 2098  
Hutchinson & Steffen, LLC  
10080 West Alta Drive, Suite 200  
Las Vegas, Nevada 89145  
702-385-2500  
[mwall@hutchlegal.com](mailto:mwall@hutchlegal.com)  
*Attorneys for Defendants*

**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 ON  
DEFENDANTS' MOTION FOR  
RECONSIDERATION**

PLEASE TAKE NOTICE that an Order on Defendants' Motion for Reconsideration was  
entered by the Court on April 28, 2016. A copy is attached hereto.

DATED this 28<sup>th</sup> 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*

- 1
- 2
- 3
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Leon Greenberg, Esq.  
Leon Greenberg Professional Corporation  
2965 South Jones Boulevard, Suite E4  
Las Vegas, Nevada 89146  
*Counsel for Plaintiff*

/s/ Susan Dillow  
An Employee of Rodriguez Law Offices, P.C.

**Rodriguez Law Offices, P.C.**  
10161 Park ~~329000~~ Suite 150  
Las Vegas, Nevada 89145  
Tel (702) 320-8400  
Fax (702) 320-8401

ORIGINAL

1 **ORDR**

2 Esther C. Rodriguez, Esq.  
3 Nevada Bar No. 6473  
4 RODRIGUEZ LAW OFFICES, P.C.  
5 10161 Park Run Drive, Suite 150  
6 Las Vegas, Nevada 89145  
7 702-320-8400  
8 [info@rodriguezlaw.com](mailto:info@rodriguezlaw.com)

  
CLERK OF THE COURT

6 Michael K. Wall, Esq.  
7 Nevada Bar No. 2098  
8 Hutchinson & Steffen, LLC  
9 10080 West Alta Drive, Suite 200  
10 Las Vegas, Nevada 89145  
11 702-385-2500  
12 [mwall@hutchlegal.com](mailto:mwall@hutchlegal.com)  
13 *Attorneys for Defendants*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 MICHAEL MURRAY and MICHAEL RENO,  
13 Individually and on behalf of others similarly  
14 situated,

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

14 Plaintiffs,  
15 vs.

Hearing Date: March 28, 2016  
Hearing Time: Chambers

16 A CAB TAXI SERVICE LLC and A CAB, LLC,  
17 and CREIGHTON J. NADY,

18 Defendants.

19 **ORDER ON DEFENDANTS' MOTION FOR RECONSIDERATION**

20 Defendants' Motion for Reconsideration of this Honorable Court's prior Order of February  
21 10, 2016, granting Plaintiffs' Motion to Certify Class Action Pursuant to NRCP Rule 23(b)(2) and  
22 NRCP Rule 23(b)(3) and Denying Without Prejudice Plaintiffs' Motion to Appoint a Special  
23 Master Under NCRP (*sic*) 53, having come before this Court on March 28, 2016, before the  
24 Honorable Kenneth Cory in chambers,

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

27 . . .

28 . . .

1 **IT IS HEREBY ORDERED** that Defendants' Motion is **GRANTED IN PART** and  
 2 **DENIED IN PART.** The Motion is Granted as follows:

3 Plaintiffs' claims numbered 3 and 4 were not certified as class claims.

4 The Court further orders that the language on page 5, lines 11-13 regarding qualifying health  
 5 insurance is to be removed.

6 The Court further orders the language commencing on page 5 at line 26 that "Defendants do  
 7 not dispute" is to be removed. The balance of the Motion is DENIED. Plaintiffs to submit an  
 8 amended order with the above changes.

9 DATED this 25 day of April, 2016.

10  
 11   
 DISTRICT COURT JUDGE

12 Submitted by:

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

14  
 15 By: 

16 Esther C. Rodriguez, Esq.  
 Nevada State Bar No. 6473  
 10161 Park Run Drive, Suite 150  
 Las Vegas, Nevada 89145  
 Attorneys for Defendants

34

34

  
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  
(702) 383-6085  
(702) 385-1827(fax)  
leongreenberg@overtimelaw.com  
dana@overtimelaw.com  
Attorneys for Plaintiffs

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

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

11 Plaintiffs,

12 vs.

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

15 Defendants.  
16

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF ORDER

17 PLEASE TAKE NOTICE that the Court entered the attached Order Denying  
18 Defendants' Motion for Reconsideration of Two Orders entered March 4, 2016  
19 Pertaining to Discovery Commissioner's Reports and Recommendations in this matter  
20 on May 26, 2016.

21 Dated: May 27, 2016

22 LEON GREENBERG PROFESSIONAL CORP.

23 /s/ Leon Greenberg  
24

25 Leon Greenberg, Esq.  
26 Nevada Bar No. 8094  
27 2965 S. Jones Boulevard - Ste. E-3  
28 Las Vegas, NV 89146  
Tel (702) 383-6085  
Attorney for the Plaintiffs

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CERTIFICATE OF MAILING

The undersigned certifies that on May 27, 2016, she served the  
within:

Notice of Entry of Order Denying Defendants' Motion for Reconsideration of Two  
Orders entered March 4, 2016 Pertaining to Discovery Commissioner's Reports  
and Recommendations

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

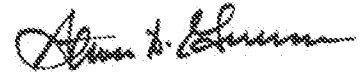
*/s/ Dana Sniegocki*

---

Dana Sniegocki

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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,

Case No.: A-12-669926-C

13 Plaintiffs,

DEPT.: I

14 vs.

Hearing Date: April 25, 2016

Hearing Time: Chambers

15 A CAB TAXI SERVICE LLC, A CAB,  
LLC, and CREIGHTON J. NADY,

16 Defendants.  
17  
18

19 Order Denying Defendants' Motion for Reconsideration of Two Orders Entered  
20 March 4, 2016, Pertaining to Discovery Commissioner's Reports &  
21 Recommendations


22 Defendants filed their Motion for Reconsideration of Two Orders Entered March 4,  
23 2016 Pertaining to Discovery Commissioner's Reports & Recommendations on March 21,  
24 2016. Plaintiffs filed their Response in Opposition on April 7, 2016. Defendants thereafter  
25 filed their Reply in support of their motion on April 18, 2016. This matter, having come  
26 before the Court for consideration in chambers on April 25, 2016, and after due  
27 consideration of the parties' respective briefs, and all pleadings and papers on file herein,  
28

1 and good cause appearing, therefore,

2 **IT IS HEREBY ORDERED:**

3 Defendants' Motion for Motion for Reconsideration of Two Orders Entered March  
4 4, 2016 Pertaining to Discovery Commissioner's Reports & Recommendations is  
5 **DENIED.**  
6

7  
8 **IT IS SO ORDERED.**

9  
10   
11 Honorable Kenneth Cory  
12 District Court Judge

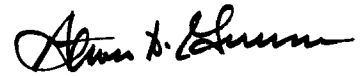
5/24/16  
Date ②

13 Respectfully submitted:

14   
15 LEON GREENBERG, ESQ.  
16 DANA SNEGOCKI, ESQ.  
17 LEON GREENBERG  
18 PROFESSIONAL CORPORATION  
19 2965 South Jones Blvd., #E3  
20 Las Vegas, NV 89146  
21 Tel (702) 383-6085  
22 Fax (702) 385-1827  
23 [dana@overlimelaw.com](mailto:dana@overlimelaw.com)  
24 Attorney for Plaintiffs  
25  
26  
27  
28

35

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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](mailto:leongreenberg@overtimelaw.com)  
10 [dana@overtimelaw.com](mailto:dana@overtimelaw.com)  
11 Attorneys for Plaintiffs

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

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

13 Plaintiffs,

14 vs.

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

17 Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF ORDER

18 PLEASE TAKE NOTICE that the Court entered the attached Order in this  
19 matter on June 7, 2016.

20 Dated: June 7, 2016

21 LEON GREENBERG PROFESSIONAL CORP.

22 /s/ Leon Greenberg

23 \_\_\_\_\_  
24 Leon Greenberg, Esq.  
25 Nevada Bar No. 8094  
26 2965 S. Jones Boulevard - Ste. E-3  
27 Las Vegas, NV 89146  
28 Tel (702) 383-6085  
Attorney for the Plaintiffs

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CERTIFICATE OF MAILING

The undersigned certifies that on June 7, 2016, she served the within:

**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 NCRP Rule 53 as Amended by this Court in Response to Defendants' Motion for Reconsideration heard in Chambers on March 28, 2016.**

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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CLERK OF THE COURT

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

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

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

15 Plaintiffs,

16 vs.

17 A CAB TAXI SERVICE LLC, A  
18 CAB, LLC, and CREIGHTON J.  
19 NADY,

20 Defendants.

Case No.: A-12-669926-C

DEPT.: I

21 **Order Granting Plaintiffs' Motion to Certify Class Action Pursuant to NRC**  
22 **P Rule 23(b)(2) and NRC Rule 23(b)(3) and Denying Without Prejudice**  
23 **Plaintiffs' Motion to Appoint a Special Master Under NCRP Rule 53**  
24 **as Amended by this Court in Response to Defendants' Motion for**  
25 **Reconsideration heard in Chambers on March 28, 2016**

26 Plaintiffs filed their Motion to Certify this Case as a Class Action Pursuant to  
27 NRC Rule 23(b)(3) and NRC Rule 23(b)(2), and appoint a Special Master, on May 19, 2015.  
28 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

1 hearing on November 3, 2015, with appearances by Leon Greenberg, Esq. and Dana  
2 Sniegocki, Esq. on behalf of all plaintiffs, and Esther Rodriguez, Esq., on behalf of all  
3 defendants, and the Court, having heard in Chambers on March 28, 2016 the  
4 defendants' motion for reconsideration of the Order entered by this Court on February  
5 10, 2016, granting in part and denying in part such motion by the plaintiffs, following  
6 the arguments of such counsel, and after due consideration of the parties' respective  
7 briefs, and all pleadings and papers on file herein, and good cause appearing, therefore  
8

9  
10 **THE COURT FINDS:**  
11

12 **That it had previously issued an Order on the aforesaid motion made by**  
13 **plaintiffs, which Order was entered on February 10, 2016 and which Order is**  
14 **now superseded and replaced by this Order as a result of the Court granting in**  
15 **part Defendants' Motion for Reconsideration of the February 10, 2016 Order**  
16 **which Motion for Reconsideration was heard in Chambers on March 28, 2016**  
17 **and an Order on the same entered on April 28, 2016.**  
18

19  
20 In Respect to the Request for Class Certification  
21

22 Upon review of the papers and pleadings on file in this matter, and the  
23 evidentiary record currently before the Court, the Court holds that plaintiffs have  
24 adequately established that the prerequisites of Nev. R. Civ. P. 23(b)(3) and 23(b)(2)  
25 are met to certify the requested classes seeking damages and suitable injunctive relief  
26 under Article 15, Section 16 of the Nevada Constitution (the "Minimum Wage  
27 Amendment") and NRS 608.040 (those are the First and Second Claims for Relief in  
28

1 the Second Amended and Supplemental Complaint) and grants the motion in respect  
2 to those claims. The Court makes no determinations of the merits of the claims  
3 asserted nor whether any minimum wages are actually owed to any class members, or  
4 whether any injunctive relief should actually be granted, as such issues are not  
5 properly considered on a motion for class certification. In compliance with what the  
6 Court believes is required, or at least directed by the Nevada Supreme Court as  
7 desirable, the Court also makes certain findings supporting its decision to grant class  
8 certification under NRCP Rule 23. *See, Beazer Homes Holding Corp. v. Eighth*  
9 *Judicial Dist. Court.*, 291 P.3d 128, 136 (2012) (En Banc) (Granting writ petition,  
10 finding district court erred in failing to conduct an NRCP Rule 23 analysis, and  
11 holding that “[u]ltimately, upon a motion to proceed as a class action, the district  
12 court must “thoroughly analyze NRCP 23's requirements and document its findings.””  
13 Citing *D.R. Horton v. Eighth Judicial Dist. Court (“First Light II”)*, 215 P.3d 697,  
14 704 (Nev. Sup. Ct. 2009).

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20 As an initial matter, the nature of the claims made in this case are of the sort for  
21 which class action treatment would, at least presumptively, likely be available if not  
22 sensible. A determination of whether an employee is owed unpaid minimum hourly  
23 wages requires that three things be determined: the hours worked, the wages paid, and  
24 the applicable hourly minimum wage. Once those three things are known the  
25 minimum wages owed, if any, are not subject to diminution by the employee’s  
26 contributory negligence, any state of mind of the parties, or anything else of an

1 individual nature that has been identified to the Court. Making those same three  
2 determinations, involving what is essentially a common formula, for a large group of  
3 persons, is very likely to involve an efficient process and common questions. The  
4 minimum hourly wage rate is set at a very modest level, meaning the amounts of  
5 unpaid minimum wages likely to be owed to any putative class member are going to  
6 presumptively be fairly small, an additional circumstance that would tend to weigh in  
7 favor of class certification.  
8

9  
10 In respect to granting the motion and the record presented in this case, the  
11 Court finds it persuasive that a prior United States Department of Labor ("USDOL")  
12 litigation initiated against the defendants resulted in a consent judgment obligating the  
13 defendants to pay \$139,834.80 in unpaid minimum wages to the USDOL for  
14 distribution to 430 taxi drivers under the federal Fair Labor Standards Act (the  
15 "FLSA") for the two year period from October 1, 2010 through October 2, 2012. The  
16 parties dispute the *collateral estoppel* significance of that consent judgment in this  
17 litigation. The Court does not determine that issue at this time, inasmuch as whether  
18 the plaintiffs are actually owed minimum wages (the "merits" of their claims) is not a  
19 finding that this Court need make, nor presumably one it should make, in the context  
20 of granting or denying a motion for class certification. The USDOL, as a public law  
21 enforcement agency has a duty, much like a prosecuting attorney in the criminal law  
22 context, to only institute civil litigation against employers when credible evidence  
23 exists that such employers have committed violations of the FLSA. Accordingly,  
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1 whether or not the consent judgment is deemed as a binding admission by defendants  
2 that they owe \$139,834.80 in unpaid minimum wages under the FLSA for distribution  
3 to 430 taxi drivers, it is appropriate for the Court to find that the Consent judgment  
4 constitutes substantial evidence that, at least at this stage in these proceedings,  
5 common questions exist that warrant the granting of class certification. The Court  
6 concludes that the record presented persuasively establishes that there are at least two  
7 common questions warranting class certification in this case for the purposes of  
8 NRCP Rule 23(b)(3) ("damages class" certification) that are coextensive with the  
9 period covered by the USDOL consent judgment and for the period prior to June of  
10 2014.  
11

12 The first such question would be whether the class members are owed  
13 additional minimum wages, beyond that agreed to be paid in the USDOL consent  
14 judgment, and for the period covered by the consent judgment, by virtue of the  
15 Minimum Wage Amendment imposing an hourly minimum wage rate that is \$1.00 an  
16 hour higher than the hourly minimum wage required by the FLSA for employees who  
17 do not receive "qualifying health insurance." The second such question would be  
18 whether the class members are owed additional minimum wages, beyond that alleged  
19 by USDOL for the period covered by the consent judgment, by virtue of the Minimum  
20 Wage Amendment not allowing an employer a "tip credit" towards its minimum wage  
21 requirements, something that the FLSA does grant to employers in respect to its  
22 minimum wage requirements. It is unknown whether the USDOL consent judgment  
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1 calculations include or exclude the application of any "tip credit" towards the FLSA  
2 minimum wage deficiency alleged by the USDOL against the defendants.

3  
4 In respect to the "tip credit" issue plaintiffs have also demonstrated a violation  
5 of Nevada's Constitution existing prior to June of 2014. Plaintiff has provided to the  
6 Court payroll records from 2014 for taxi driver employee and class member Michael  
7 Sargeant indicating that he was paid \$7.25 an hour but only when his tip earnings are  
8 included. Defendant has not produced any evidence (or even asserted) that the  
9 experience of Michael Sargeant in respect to the same was isolated and not common  
10 to many of its taxi driver employees. The Nevada Constitution's minimum wage  
11 requirements, unlike the FLSA, prohibits an employer from using a "tip credit" and  
12 applying an employee's tips towards any portion of its minimum wage obligation.  
13 The Sargeant payroll records, on their face, establish a violation of Nevada's  
14 minimum wage standards for a certain time period and strongly support the granting  
15 of the requested class certification.  
16

17  
18 The Court makes no finding that the foregoing two identified common  
19 questions are the only common questions present in this case that warrant class  
20 certification. Such two identified issues are sufficient for class certification as the  
21 commonality prerequisite of NRCP Rule 23(a) is satisfied when a "single common  
22 question of law or fact" is identified. *Shuette v. Beazer Homes Holdings Corp.*, 121  
23 Nev. 837, 848 (2005). In addition, there also appear to be common factual and legal  
24 issues presented by the claims made under NRS 608.040 for statutory "waiting time"  
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1 penalties for former taxi driver employees of defendants.. Such common questions  
2 are readily apparent as NRS 608.040 is a strict liability statute..

3  
4 The Court also finds that the other requirements for class certification under  
5 NRCF Rule 23(b)(3) are adequately satisfied upon the record presented. Numerosity  
6 is established as the United States Department of Labor investigation identified over  
7 430 potential class members in the consent judgment who may have claims for  
8 minimum wages under the Minimum Wage Amendment. "[A] putative class of forty  
9 or more generally will be found numerous." *Shuette*, 122 Nev. at 847. Similarly,  
10 adequacy of representation and typicality seem appropriately satisfied upon the record  
11 presented. It is undisputed that the two named plaintiffs, who were found in the  
12 USDOL consent judgment to be owed unpaid minimum wages under the FLSA, and  
13 additional class representative Michael Sargeant, whose payroll records show, on their  
14 face, a violation of Nevada's minimum wage requirements, are or have been taxi  
15 drivers employed by the defendants. Counsel for the plaintiffs have also  
16 demonstrated their significant experience in the handling of class actions. The Court  
17 also believes the superiority of a class resolution of these claims is established by their  
18 presumptively small individual amounts, the practical difficulties that the class  
19 members would encounter in attempting to litigate such claims individually and obtain  
20 individual counsel, the status of many class members as current employees of  
21 defendants who may be loath to pursue such claims out of fear of retaliation, and the  
22 desirability of centralizing the resolution of the common questions presented by the  
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1 over 430 class members in a single proceeding.

2 In respect to class certification under NRCP Rule 23(b)(2) for appropriate class  
3 wide injunctive relief the Court makes no finding that any such relief shall be granted,  
4 only that it will grant such class certification and consider at an appropriate time the  
5 form and manner, if any, of such injunction. The existence of common policies by  
6 defendants that either directly violate the rights of the class members to receive the  
7 minimum wages required by Nevada's Constitution, or that impair the enforcement of  
8 those rights and are otherwise illegal, are substantially supported by the evidence  
9 proffered by the plaintiffs. That evidence includes a written policy of defendants  
10 reserving the right to unilaterally deem certain time during a taxi driver's shift as non-  
11 compensable and non-working "personal time." Defendants have also failed to keep  
12 records of the hours worked by their taxi drivers for each pay period for a number  
13 years, despite having an obligation to maintain such records under NRS 608.215 and  
14 being advised by the USDOL in 2009 to keep such records. And as documented by  
15 the Michael Sargeant payroll records, the defendants, for a period of time after this  
16 Court's Order entered on February 11, 2013 finding that the Nevada Constitution's  
17 minimum wage provisions apply to defendants' taxicab drivers, failed to pay such  
18 minimum wages, such failure continuing through at least June of 2014. Plaintiffs  
19 have also alleged in sworn declarations that defendants have a policy of forcing their  
20 taxi drivers to falsify their working time records, allegations, which if true, may also  
21 warrant the granting of injunctive relief.

1 The Court notes that Nevada's Constitution commands this Court to grant the  
2 plaintiffs "all remedies available under the law or in equity" that are "appropriate" to  
3 "remedy any violation" of the Nevada Constitution's minimum wage requirements. In  
4 taking note of that command the Court does not, at this time, articulate what form, if  
5 any, an injunction may take, only that it is not precluding any of the forms of  
6 injunctive relief proposed by plaintiffs, including Ordering defendants to pay  
7 minimum wages to its taxi drivers in the future; Ordering defendants to maintain  
8 proper records of their taxi drivers' hours of work; Ordering notification to the  
9 defendants' taxi drivers of their rights to minimum wages under Nevada's  
10 Constitution; and Ordering the appointment of a Special Master to monitor  
11 defendants' compliance with such an injunction.

12  
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  
19  
20  
21  
22  
23 In Respect to the Request for the Appointment of a Special Master

24 Plaintiffs have also requested the appointment of a Special Master under NRC  
25 Rule 53, to be paid by defendants, to compile information on the hours of work of the  
26 class members as set forth in their daily trip sheets. The Court is not persuaded that  
27 the underlying reasons advanced by plaintiffs provide a sufficient basis to place the  
28

1 entirety of the financial burden of such a process upon the defendants. Accordingly,  
2 the Court denies that request without prejudice at this time.

3  
4 Therefore

5 **IT IS HEREBY ORDERED:**

6 Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(3) is

7  
8 **GRANTED.** The class shall consist of the class claims as alleged in the First and  
9 Second Claims for Relief in the Second Amended and Supplemental Complaint of all  
10 persons employed by any of the defendants as taxi drivers in the State of Nevada at  
11 anytime from July 1, 2007 through December 31, 2015, except such persons who file  
12 with the Court a written statement of their election to exclude themselves from the  
13 class as provided below. Also excluded from the class is Jasminka Dubric who has  
14 filed an individual lawsuit against the defendant A CAB LLC seeking unpaid  
15 minimum wages and alleging conversion by such defendant, such case pending before  
16 this Court under Case No. A-15-721063-C. The class claims are all claims for  
17 damages that the class members possess against the defendants under the Minimum  
18 Wage Amendment arising from unpaid minimum wages that are owed to the class  
19 members for work they performed for the defendants from July 1, 2007 through  
20 December 31, 2015 and all claims they may possess under NRS 608.040 if they are a  
21 former taxi driver employee of the defendants and are owed unpaid minimum wages  
22 that were not paid to them upon their employment termination as provided for by such  
23 statute Leon Greenberg and Dana Sniegocki of Leon Greenberg Professional  
24  
25  
26  
27  
28

1 Corporation are appointed as class counsel and the named plaintiffs Michael Murray  
2 and Michael Reno, and class member Michael Sargeant, are appointed as class  
3 representatives. The Court will allow discovery pertaining to the class members and  
4 the class claims.  
5

6 **IT IS FURTHER ORDERED:**  
7

8 Plaintiffs' Motion to Certify Class Action Pursuant to NRCP 23(b)(2) for  
9 appropriate equitable and injunctive relief as authorized by Article 15, Section 16 of  
10 Nevada's Constitution is **GRANTED** and the named plaintiffs Michael Murray and  
11 Michael Reno, and class member Michael Sargeant, are also appointed as class  
12 representatives for that purpose. The class shall consist of all persons employed by  
13 defendants as taxi drivers in the State of Nevada at any time from July 1, 2007  
14 through the present and continuing into the future until a further Order of this Court  
15 issues.  
16  
17  
18  
19

20 **IT IS FURTHER ORDERED:**  
21

22 (1) Defendants' counsel is to produce to plaintiffs' counsel, within 10 days  
23 of the service of Notice of Entry of this Order, the names and last known addresses of  
24 all persons employed as taxicab drivers by any of the defendants in the State of  
25 Nevada from July 1, 2007 through December 31, 2015, such information to be  
26 provided in an Excel or CSV or other agreed upon computer data file, as agreed upon  
27  
28

1 by counsel for the parties, containing separate fields for name, street address, city,  
2 state and zip code and suitable for use to mail the Notice of Class Action ;  
3  
4

5 (2) Plaintiffs' counsel, upon receipt of the names and addresses described in  
6 (1) above, shall have 40 days thereafter (and if such 40<sup>th</sup> day is a Saturday, Sunday or  
7 holiday the first following business day) to mail a Notice of Class Action in  
8 substantially the form annexed hereto as Exhibit "A" to such persons to notify them of  
9 the certification of this case as a class action pursuant to Nev. R. Civ. P. 23(b)(3) and  
10 shall promptly file with the Court a suitable declaration confirming that such mailing  
11 has been performed;  
12  
13  
14  
15

16 (3) The class members are enjoined from the date of entry of this Order, until  
17 or unless a further Order is issued by this Court, from prosecuting or compromising  
18 any of the class claims except as part of this action and only as pursuant to such  
19 Order; and  
20  
21  
22

23 (4) Class members seeking exclusion from the class must file a written  
24 statement with the Court setting forth their name, address, and election to be excluded  
25 from the class, no later than 55 days after the mailing of the Notice of Class Action as  
26 provided for in (2), above.  
27

28 **IT IS FURTHER ORDERED:**

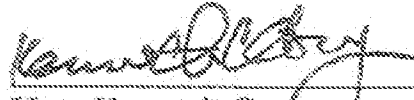
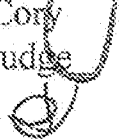
1 Plaintiffs' motion to appoint a Special Master under NRCP Rule 53 is denied  
2 without prejudice at this time.

3  
4  
5 IT IS FURTHER ORDERED:

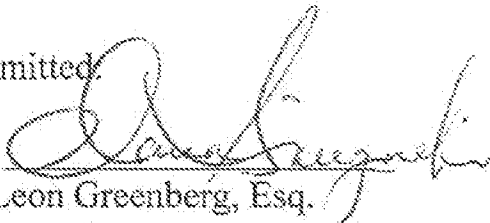
6 That the stay issued by this Court pending the Court's Reconsideration of Prior  
7 Order, such stay entered via the Court's Order of April 6, 2016, is dissolved.  
8

9  
10 IT IS SO ORDERED.

11 Dated this 3rd day of June, 2016.  
12

13   
14 Hon. Kenneth Cory  
15 District Court Judge  
16 

17 Submitted:

18 By:   
19 Leon Greenberg, Esq.  
20 Dana Sniegocki, Esq.  
21 LEON GREENBERG PROF. CORP.  
22 2965 S. Jones Blvd., Ste. E-3  
23 Las Vegas, NV 89146  
24 Attorneys for Plaintiffs  
25  
26  
27  
28

# 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?

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 can be sent to them at [leongreenberg@overtimelaw.com](mailto:leongreenberg@overtimelaw.com). Communications by email instead of telephone calls are preferred.

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You are not required to have your claim for unpaid minimum wages and other possible monies owed to you by A Cab 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 you should contact class counsel at 702-383-6085 or by email to [leongreenberg@overtimelaw.com](mailto: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:

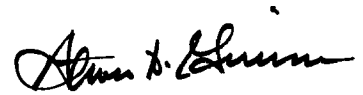
/s/ Hon. Kenneth Cory, District Court Judge

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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  
DISCOVERY  
COMMISSIONER'S REPORT  
AND RECOMMENDATIONS

22 PLEASE TAKE NOTICE that the Court entered the attached Order in this  
23 matter on July 13, 2016.

24 Dated: July 13, 2016

25 LEON GREENBERG PROFESSIONAL CORP.

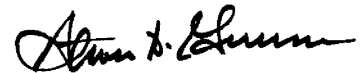
26 /s/ Leon Greenberg

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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ORIGINAL



CLERK OF THE COURT

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

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

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

15 Plaintiffs,

16 vs.

17 A CAB TAXI SERVICE LLC, A  
18 CAB, LLC, and CREIGHTON J.  
19 NADY,

20 Defendants.

Case No.: A-12-669926-C

DEPT.: I

21 DISCOVERY COMMISSIONER'S  
22 REPORT AND RECOMMENDATIONS

23 Hearing Date: May 20, 2016

24 Hearing Time: 10:00 a.m.

25 Attorney for Plaintiffs: Leon Greenberg, Esq. and Dana Sniegocki, Esq. of  
26 Leon Greenberg Professional Corporation

27 Attorney for Defendants: Esther Rodriguez, Esq. of Rodriguez Law Offices, P.C.  
28

## I.

**FINDINGS**

1. This matter was originally heard before the Discovery Commissioner on Plaintiffs' Motion to Compel the Production of Documents, which was first heard by the Court on March 18, 2015. The matter was set for several status checks, the most recent being on May 20, 2016.

2. The Discovery Commissioner finds that the parties have engaged in a good faith effort to comply with the Court's previous directives to exchange the computer data that was the subject of the plaintiffs' Motion to Compel filed on February 11, 2015.

3. The Discovery Commissioner also finds that an extension of the current discovery deadlines is warranted.

## II.

**RECOMMENDATIONS**

IT IS THEREFORE RECOMMENDED that the discovery deadlines in this matter are extended as follows:

**Close of Discovery:** **October 31, 2016**

**Deadline to Amend Pleadings and Add Parties:** **August 1, 2016**

**Deadline to Disclose Expert Reports:** **August 1, 2016**

**Deadline to Disclose Rebuttal Expert Reports:** **August 31, 2016**

**Dispositive Motion Deadline:** **November 23, 2016**

2.

*The trial date of 1-3-17 stands. BH*

1 The parties are further ordered to appear back before the Discovery

2 Commissioner on June 29, 2016 at 9:00 a.m. for a status check on compliance with  
3 the foregoing.  
4

5 ///

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CASE NAME: *Murray et al. v. A Cab Taxi Service LLC., et al.*

Case No. A-12-669926-C

Hearing Date: May 20, 2016

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: June 9, 2016.

  
DISCOVERY COMMISSIONER

Respectfully submitted:

Approved as to form and content:

  
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](mailto:dana@overtimelaw.com)  
Attorney for Plaintiffs

  
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@rodriguezlaw.com](mailto: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 16 day of June.

STEVEN D. GRIERSON

By Jennifer Lott  
DEPUTY CLERK

CASE NAME: *Murray et al. v. A Cab Taxi Service LLC., et al.*  
Case No. A-12-669926-C  
Hearing Date: May 20, 2016

### 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 \_\_\_\_\_ 2016, at \_\_\_\_:\_\_\_\_ a.m./p.m.

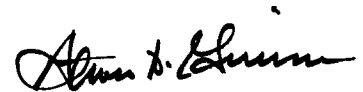
Dated this 8 day of July, 2016.

  
DISTRICT COURT JUDGE

*37*

*37*

TRAN



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

MICHAEL MURRAY, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 A CAB TAXI SERVICE LLC, )  
 )  
 Defendants. )

CASE NO. A-12-669926-C  
DEPT NO. I

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

**RE: PLAINTIFF'S MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS  
AND INTERROGATORY RESPONSES - STATUS CHECK: STATUS OF CASE**

WEDNESDAY, SEPTEMBER 07, 2016

APPEARANCES:

FOR THE PLAINTIFFS: LEON GREENBERG, ESQ.  
DANA SNIEGOCKI, ESQ.

FOR THE DEFENDANTS: MICHAEL K. WALL, ESQ.

RECORDED BY: FRANCESCA HAAK, COURT RECORDER  
TRANSCRIBED BY: JD REPORTING, INC.

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1 **LAS VEGAS, CLARK COUNTY, NEVADA, SEPTEMBER 7, 2016, 9:19 A.M.**

2 \* \* \* \* \*

3 COMMISSIONER BULLA: Murray.

4 MR. GREENBERG: Good morning, Your Honor. Leon  
5 Greenberg.

6 COMMISSIONER BULLA: I don't think everyone's --

7 MR. GREENBERG: I'm afraid --

8 You are here. Okay. I was expecting Ms. Rodriguez.  
9 Yes, let's discuss this, Your Honor.

10 MR. WALL: Good morning, Your Honor. Michael Wall  
11 for the defendants.

12 COMMISSIONER BULLA: Good morning.

13 MR. GREENBERG: Leon Greenberg for plaintiff, Your  
14 Honor.

15 COMMISSIONER BULLA: Good morning. Mr. Wall, did you  
16 substitute in?

17 MR. WALL: No, I'm counsel of record with Esther  
18 Rodriguez.

19 COMMISSIONER BULLA: Oh.

20 MR. WALL: She's generally the counsel, and I'm  
21 appellate counsel. She's in Utah today, and so I'm appearing  
22 on her behalf.

23 COMMISSIONER BULLA: I think you've appeared before.  
24 I apologize. I think I see so many cases that I can't always  
25 keep straight who's appearing when and for whom.

JD Reporting, Inc.

1 But this is really a status check hearing. I've read  
2 through everyone's supplemental briefs, and I just -- I don't  
3 know what happened on the motion to continue trial.

4 MR. GREENBERG: It was submitted last Tuesday I  
5 believe, Your Honor, and as of yesterday -- we checked the  
6 docket -- there was no decision from Judge Cory. It was on his  
7 chambers calendar.

8 COMMISSIONER BULLA: So hopefully you'll get a  
9 decision on that soon. I just want to say this: I am not  
10 going to bring you all back for another status check after  
11 today. If you have continued discovery difficulties, I will  
12 need to see a separate motion after you have a 2.34 conference.

13 But I will go through and address the concerns that  
14 were raised to me today. I recognize that some of them may not  
15 have been addressed in a 2.34 conference, or they may be issues  
16 that we really haven't previously addressed, but to the extent  
17 that I can help you today I will, but otherwise I'm going to  
18 need to see any other discovery disputes by motion, and I'm not  
19 going to keep bringing you back in because I think at this  
20 point it's counterproductive.

21 So let me just tell you what I did. I went through  
22 both of your supplemental documents, and for lack of a better  
23 way of doing it, let's just take the plaintiffs' document as  
24 the key.

25 And you're welcome both to have a seat if you'd like.

1           So as far as I can ascertain, the electronic data  
2 production has been completed. The issue is whether or not  
3 it's compatible, and I'm not really sure I understand this  
4 because first of all as a practical matter --

5           Counsel, do you want to state your appearance,  
6 please.

7           MS. SNIEGOCKI: Sorry. Dana Sniegocki for  
8 plaintiffs.

9           COMMISSIONER BULLA: Thank you.

10          As a practical matter, under our rules the defendant  
11 is only required to produce the information in the manner in  
12 which they keep it. Now, it's difficult sometimes because  
13 everybody has a different computer system or a different, you  
14 know, issues. So I try to say work together and find something  
15 that works. So I'm still not sure why -- this is the statement  
16 I don't understand: While the employee name is in the  
17 QuickBooks computer files and could have been produced with the  
18 data, defendants elected not to do so. I don't understand what  
19 that means.

20          MR. GREENBERG: Your Honor, to explain, there's a  
21 full cabinet stuffed with data. Defendants don't want to turn  
22 over the full cabinet, and that's fine. I don't need the whole  
23 file cabinet. They said, Look, let's just take out the  
24 particular folders we need, the files, the papers to use the  
25 analogy. Fine, I don't need the rest of the stuff.

1           The problem is what they took out can't be put  
2 together, okay. If I had everything in the file cabinet, if I  
3 had all the QuickBooks data -- because the QuickBooks in its  
4 organic form, Your Honor, has a name associated with every  
5 single entry, a person's name because a check was written with  
6 that person's name on it, not an ID number.

7           COMMISSIONER BULLA: So what did you get?

8           MR. GREENBERG: I got the QuickBooks data, but  
9 without the name. Instead of the name, they --

10          COMMISSIONER BULLA: Without the employee name  
11 corresponding to the data. How is that even possible?

12          MR. GREENBERG: Because each item -- like we have a  
13 gross wage, a net wage, tax deductions. Each separate piece of  
14 the payroll check is stored in individual sector or field of  
15 the computer database. You don't have to produce all the  
16 fields. The name is in one field, okay. You can produce the  
17 other fields without the name field, which is what they did,  
18 Your Honor, and again I --

19          COMMISSIONER BULLA: Who would do that?

20          MR. GREENBERG: Your Honor, I'm not defending what  
21 was done here.

22          COMMISSIONER BULLA: Mr. Wall, why would that --  
23 because here's the problem. There's a real failure-to-think  
24 problem going on right now, and I'm not quite sure why it is.  
25 I could speculate, but I choose not to. I think there's a -- I

1 don't know if it's being fearful of information or we're so  
2 used to exchanging information that we don't think about what  
3 we're exchanging.

4 But at some point, Mr. Wall, if this case is  
5 certified, letters are going to have to go to the employees. I  
6 mean, the Judge is going to approve the letter. He's going to  
7 ask for the list, and without knowing what the payroll is per  
8 employee, how are we going to figure that out?

9 MR. WALL: Well, it's not exactly -- the analogy that  
10 was used is not exactly correct. The information has been  
11 produced. It is in electronic format. There is a key from  
12 which you can determine which piece of evidence goes with each  
13 person. That's the key because the electronic data is stored  
14 in that manner, and it was produced. We have been --

15 COMMISSIONER BULLA: So you have a list of employees  
16 with a number by them that matches up with the key?

17 MR. WALL: It may be difficult for them to match it  
18 up, but it can be done, and as they admitted, we're still  
19 working on trying -- we don't have --

20 COMMISSIONER BULLA: Mr. Wall, you're not listening.  
21 It's going to be your responsibility to produce the employee  
22 list. The Court's going to ask you. I'm ready to -- you can  
23 send out your certification letter. Where's your list of  
24 employees? And how are you going to know that if you can't  
25 match the data to each employee?

1 MR. WALL: You can, and we're working on making it  
2 easier for them to do it, but with what we produced in the  
3 format that we have, it can be done.

4 COMMISSIONER BULLA: So why don't you do it for them.  
5 I'll give you two weeks to get it done.

6 MR. GREENBERG: Your Honor, just to be sure the  
7 Court's fully informed, the case has been certified. Notice  
8 has gone out. We have a list of names and addresses of class  
9 members.

10 COMMISSIONER BULLA: Okay. I'm sorry. I guess I was  
11 on your other case.

12 MR. GREENBERG: But this is -- this is just a minor  
13 detail though, Your Honor, because the fact remains is we still  
14 have to relate the information to particular --

15 COMMISSIONER BULLA: To the employee, fine.

16 MR. GREENBERG: -- to the class member.

17 COMMISSIONER BULLA: The defendant's going to get it  
18 done in two weeks and give you the list.

19 MR. WALL: We already provided it. He just admitted  
20 it.

21 COMMISSIONER BULLA: No, you get to match the names  
22 and the data since you said it --

23 MR. WALL: You can match the names with the data.

24 COMMISSIONER BULLA: Yeah, well, you're going to do  
25 it.

1 MR. WALL: We're going to do that.

2 COMMISSIONER BULLA: Two weeks.

3 MR. WALL: Thank you, Your Honor.

4 COMMISSIONER BULLA: You'll have two weeks.

5 MR. GREENBERG: Your Honor, I would suggest that the  
6 Court consider entering a default sort of result here, which is  
7 that if this isn't provided, if we don't have this matchup  
8 provided, the Court will simply direct the production of the  
9 entire -- of both of the databases, the QuickBooks and the Cab  
10 Manager databases, and it'll be my problem to put it together.  
11 I'm only suggesting that, Your Honor, not because I want this  
12 enormous amount of stuff to have to go through, but simply  
13 because we've been working with this for, like, a year and a  
14 half.

15 COMMISSIONER BULLA: Okay. So here's --

16 MR. GREENBERG: And time is becoming a problem in  
17 this case, Your Honor.

18 COMMISSIONER BULLA: Well, this case has been a  
19 problem from day one unfortunately. Here's what I'm going to  
20 recommend. If Mr. Wall -- I know he's going to get this done.

21 I'm going to give you two weeks to do it. So  
22 basically you're going to have the information to plaintiffs'  
23 counsel by September 21st. We're going to match the wage  
24 data or the wage information with the name. If you do not do  
25 that, plaintiffs' counsel is instructed to bring a Rule 37

1 motion up -- a Rule 37 motion for sanctions, and I will award  
2 it. I will award them, and I will provide alternative relief  
3 at that time.

4 I'm still not really crazy about the idea of giving  
5 you all their data.

6 MR. GREENBERG: I understand, Your Honor, and I'm not  
7 eager to have to be burdened with sorting through it either,  
8 and if I have the QuickBooks data with the names, it will  
9 substantially --

10 COMMISSIONER BULLA: The defendant has that data.

11 MR. GREENBERG: Right.

12 COMMISSIONER BULLA: He is -- the defendant is  
13 instructed to produce to you the name of the employee matched  
14 up with the wage information by September 21st of 2016, in a  
15 format that's usable, i.e. -- how do you want it? PDF? What  
16 do you want?

17 MR. GREENBERG: Your Honor, I need -- any data that's  
18 produced has to be produced in a CSV or an Excel file in a  
19 computer data format.

20 COMMISSIONER BULLA: Okay. Fine.

21 MR. GREENBERG: But just to be clear, Your Honor, the  
22 problem is not necessarily viewed as a question of not knowing  
23 which paycheck in QuickBooks relates to which employee because  
24 they gave me a list of employee numbers with names, and the  
25 QuickBooks data has the numbers. The problem is that that set

1 of information, names and numbers for QuickBooks doesn't match  
2 the Cab Manager data. The Cab Manager data which tells us what  
3 these people were doing has names, but those names, if I look  
4 up the name of the person in the Cab Manager data and I go to  
5 that list --

6 COMMISSIONER BULLA: That's a different problem.

7 MR. GREENBERG: Well, Your Honor, that's the problem  
8 that we're facing with the production.

9 MR. WALL: It's actually the only problem.

10 MR. GREENBERG: It is the cross-indexing of --

11 COMMISSIONER BULLA: Okay. So how do we solve this  
12 problem, my computer gurus?

13 MR. GREENBERG: Your Honor --

14 COMMISSIONER BULLA: Without turning over all of  
15 defendant's data.

16 MR. WALL: That's why this matter wasn't before Your  
17 Honor because --

18 COMMISSIONER BULLA: Well, it is now.

19 MR. WALL: I understand that.

20 COMMISSIONER BULLA: So let's deal with it.

21 MR. WALL: We're working on a -- we can't do it  
22 either. We're working on a method to try to do that, and we  
23 have been telling them that we're working on a method to try to  
24 do that because we're talking about two different programs  
25 which don't read together, and we're only required to produce

1 the information that we have, and if we produced the entire  
2 amount, they'd have the same problem.

3 COMMISSIONER BULLA: Okay. But, Mr. Wall, think of  
4 it this way. It's really no good producing information if it's  
5 not usable.

6 MR. WALL: And we're doing everything we can to make  
7 it usable.

8 COMMISSIONER BULLA: Okay. So what are you doing?

9 MR. WALL: We're trying to come up with a method  
10 for --

11 COMMISSIONER BULLA: Can we write a program that will  
12 interact with the two programs and bring the data together?

13 MR. WALL: We have our computer people trying to work  
14 on a way to interact between the two so that you'll be able  
15 to -- and they can do it now. You have to do it individually,  
16 and that's what they don't want to do. That's what we would  
17 do, but we're trying to come up with a way of doing that.

18 COMMISSIONER BULLA: How long is it going to take to  
19 do it individually? Hours? Days? Weeks? Months?

20 MR. WALL: Probably a month.

21 COMMISSIONER BULLA: Okay. Well, you don't have a  
22 month because your trial date's --

23 MR. WALL: I know. We have two weeks.

24 COMMISSIONER BULLA: Yeah. Well --

25 MR. WALL: And we're going to get it done.

1 COMMISSIONER BULLA: Here's my concern. I was giving  
2 you two weeks to do something that apparently isn't necessary  
3 because they have the numbers. I just wanted to make it easier  
4 because you have to match. So my two-week time frame was in  
5 order to match the wage data with an employee name, but that's  
6 not really what Mr. Greenberg wants. What he needs is to match  
7 the wage data in the QuickBooks to the Cab Manager data.

8 MR. WALL: Correct.

9 COMMISSIONER BULLA: And that's a different issue.

10 MR. WALL: Correct, Your Honor.

11 MR. GREENBERG: Your Honor, just to explain, the Cab  
12 Manager data will have Mr. Smith's name on the activity entry  
13 for the day, but it will have, say, a six-digit employee  
14 number. QuickBooks doesn't use six-digit employee numbers. So  
15 I can't match that given what they gave me. You understand,  
16 Your Honor? If I was produced --

17 COMMISSIONER BULLA: Well, they apparently can't do  
18 it either. So that's the problem. So somebody would either  
19 have to do it manually, and I am not inclined to give you all  
20 their data right now. I'm just not inclined to do it. I am  
21 inclined to tell them you need to get this accomplished in some  
22 way. I'm just concerned, you know, because I had a different  
23 understanding when I read this from what I really understand  
24 now to be the problem.

25 MR. GREENBERG: Your Honor, when I said that the

1 QuickBooks data gives me an identification of the employees  
2 through this list of numbers, that's a supposition based on  
3 what they gave me. I don't know if that's in fact true because  
4 again the QuickBook entries they gave me don't actually have  
5 employee names. This list, this key of names and numbers and  
6 employee numbers they gave me is completely separate. So I  
7 don't really know. It's conceivable that index may be garbled,  
8 okay. That's one explanation for the problem we're seeing  
9 potentially. I don't know, Your Honor.

10 COMMISSIONER BULLA: So I think I will reinstate my  
11 prior recommendation. Within two weeks the defendant will  
12 rerun the QuickBooks data, not putting in the number, but  
13 putting in the name matching to the wage information in an  
14 Excel format or whatever format that you've agreed to use.

15 MR. GREENBERG: Yes, Your Honor.

16 COMMISSIONER BULLA: Now, that doesn't address  
17 matching that data or data -- I don't -- I'm not really sure  
18 what the proper way of saying it is. Maybe it's where you grew  
19 up -- but matching the data in the QuickBooks to the Cab  
20 Manager information which I'm just not sure how easy that is to  
21 do based on what the defendants told me.

22 They're trying to write a program so the two programs  
23 can work together. Otherwise you're going to have to do it  
24 manually, but in order for it to be done manually if the  
25 defendant doesn't do it, then I would have to give you all of

1 their data to be able to do it manually, and I'm not sure I'm  
2 willing to do that at this point without trying to do a more  
3 effective -- trying to find a more effective solution.

4 MR. GREENBERG: Your Honor, the production of the  
5 QuickBooks data with the names for each paycheck in it will  
6 certainly be a tool that we can use to try to figure out what's  
7 going on here because I have names in every entry in the Cab  
8 Manager data. If I have names directly in the QuickBooks data  
9 for every entry, an attempt can be made to have my person  
10 further examine this and see if we can make more sense of it.

11 Whether it's going to be fully resolved, this  
12 cross-reference issue, I don't know. You could still have  
13 people with identical names or misspellings of names and so  
14 forth. It could be helpful if I had Social Security numbers  
15 produced with that simply because those are unique to each  
16 employee. So there would be no question as to --

17 COMMISSIONER BULLA: What about the last four digits?  
18 Because those are not privileged. Those are not protected.

19 MR. GREENBERG: That would be fine, Your Honor. I'm  
20 just trying to streamline the process. I am really trying to  
21 work with defendants on this. I'm not eager to assume the  
22 burden of having to dig through all of this massive information  
23 to get this done, but it needs to be done, and I am concerned  
24 about the time that it's going on here, Your Honor.

25 COMMISSIONER BULLA: In QuickBooks if we rerun --

1 Mr. Wall, if we rerun the data with the names of the employees  
2 instead of the numbers, can we also include the last four  
3 digits of their Social Security number?

4 MR. WALL: I do not know if that can be done.

5 COMMISSIONER BULLA: Will you check?

6 MR. WALL: I will check.

7 COMMISSIONER BULLA: Because that way if we can get a  
8 program written so that Cab Manager and QuickBooks can  
9 basically talk to each other, then that would be helpful, but  
10 if we don't get that program written, then manually you're  
11 going to have to try to work with the data that you have, and  
12 I'm just thinking that if we had at least on the QuickBooks  
13 data the full name of the employee and perhaps the last four  
14 digits of the Social Security number that would be helpful.

15 MR. GREENBERG: Your Honor, just as an operating  
16 matter, the Court should understand that defendants have always  
17 had a way to move the data between the systems because they had  
18 to have the data from the Cab Manager system --

19 COMMISSIONER BULLA: To create the QuickBooks.

20 MR. GREENBERG: -- to create the payroll every pay  
21 period for the workers. I don't know the intricacies of how  
22 they operate, but clearly they have experience doing this in  
23 some fashion. Again, Your Honor, we're trying to --

24 COMMISSIONER BULLA: But it's doing it in reverse. I  
25 just don't know. Listen, every time I think I know something

1 about the technology industry, I realize how little I do know.

2 MR. WALL: It's pretty complicated, but as I  
3 understand, they don't ever have to cross-reference them in  
4 order to make payroll or to do other things, and so they just  
5 haven't ever done this.

6 COMMISSIONER BULLA: Okay.

7 MR. GREENBERG: Well, Your Honor, do you want to  
8 clarify further the nature of the order? I mean, you're  
9 setting this two-week time period. If this is not resolved,  
10 you're directing plaintiff to have leave to bring a motion  
11 appropriately.

12 COMMISSIONER BULLA: Per Rule 37 sanctions after you  
13 have a 2.34 conference.

14 And if in two weeks, Mr. Wall, you have a better  
15 understanding or a better feel for, hey, give us another week  
16 and we think we can write a program, we're almost there and we  
17 can give you all the information you need with the  
18 cross-referencing between the Cab Manager and the QuickBooks,  
19 then wait to bring your motion.

20 MR. GREENBERG: Yes, Your Honor, and I have been  
21 confirming over the past two months with defendant's counsel  
22 vigorously to try to resolve this. Ms. Rodriguez, who's not  
23 here today has represented to me over the past three, four  
24 weeks that she has passed on the -- because I've given her  
25 specific technical examples of the problems we're facing in

1 writing, and she has passed them on to the technical people  
2 working with the defendants, and she's assured me that they're  
3 working on it. So I don't want to say that her representations  
4 are incorrect. It's just frustrating because of the time  
5 that's passed here.

6 COMMISSIONER BULLA: I understand.

7 MR. GREENBERG: But I think Your Honor's instructions  
8 on this point are clear. So I don't really want to take up  
9 more of the Court's time on this issue.

10 COMMISSIONER BULLA: You know, I probably need to  
11 bring you back. I was just trying to avoid it just because  
12 I -- I really want to have a motion before me if I'm going to  
13 start imposing Rule 37 sanctions for failure to comply with  
14 discovery.

15 MR. GREENBERG: Well, I understand, Your Honor.  
16 We've been to motion on this before. Your Honor remembers that  
17 there was the order that was issued. There were sanctions  
18 issued. We got to this point of getting, you know, an order on  
19 record --

20 COMMISSIONER BULLA: Right.

21 MR. GREENBERG: -- to produce this. We're not there  
22 yet. Certainly we can come back in three weeks or four weeks  
23 if the Court thinks that makes sense. You can have the order  
24 for production in two weeks with leave to make the motion at  
25 that point, whatever process Your Honor thinks is most

1 expedient, but we do need to do something fairly soon to  
2 resolve this if it doesn't get resolved, you know, voluntarily,  
3 so to speak.

4 COMMISSIONER BULLA: You have the five-year rule  
5 running next year.

6 MR. GREENBERG: Well, it's actually more like 2018  
7 because there was an extended stay.

8 COMMISSIONER BULLA: With the stays, okay.

9 MR. GREENBERG: But nonetheless --

10 COMMISSIONER BULLA: We need to get this case ready  
11 to go.

12 MR. GREENBERG: Yes, Your Honor.

13 COMMISSIONER BULLA: And it needs to be resolved one  
14 way or the other. So why don't I bring you back Wednesday.

15 October 5th or 12th?

16 THE CLERK: I think 5th is already -- has so many --

17 COMMISSIONER BULLA: 12th, October 12th at 9 a.m.  
18 I was so hoping to avoid this, but apparently that was not in  
19 the cards. If you work it out, you can tell me, and I'll take  
20 it off.

21 MR. GREENBERG: Okay, Your Honor. I mean, would it  
22 make sense for me to present a motion in two weeks anyway? I  
23 mean, I guess that wouldn't be ripe for hearing on the 12th  
24 unless we shorten time on it.

25 COMMISSIONER BULLA: I want you to -- right. I want

1 you to try to work together. When you come back and see me on  
2 the 12th, if nothing's been done and nothing's been  
3 accomplished, you can actually -- I'm having the information  
4 exchanged by September 21st. So you will know. I mean, if  
5 I'm setting you on the 12th, you could file your motion on an  
6 OST. You could present it to us on the 3rd of October, and we  
7 can get it set for the 12th.

8 MR. GREENBERG: Okay. If Your Honor feels that's a  
9 reasonable option under these circumstances as they develop,  
10 then I will keep that in mind to do so, Your Honor.

11 COMMISSIONER BULLA: Right. You need one full  
12 judicial day's notice for an order-shortening time motion. So  
13 you can present it to us technically the week of October 3rd  
14 sometime, and we could get it set for the 12th if necessary.

15 MR. GREENBERG: I hope it's not necessary.

16 COMMISSIONER BULLA: I hope so, too, but there's your  
17 option. But I will bring you back for a status check again on  
18 October 12th at 9 a.m.

19 Mr. Wall, will you do what you can to work on this  
20 issue?

21 MR. WALL: Yes, I will.

22 COMMISSIONER BULLA: All right. I appreciate it.

23 Then I guess the next item is this production of  
24 Excel file compiling trip sheet, work time, and production of  
25 PDF copies of trip sheets. I'm not really sure what the issues

1 are here.

2 MR. GREENBERG: Your Honor, in respect to the Excel  
3 file, I did include the excerpt of Mr. Nady's [phonetic]  
4 testimony where he testifies they spent \$140,000 compiling this  
5 analysis of the trip sheets, of about 30,000 trip sheets. They  
6 maintain that the trip sheets are the time records, and he  
7 testified it was produced at great expense. It's never been  
8 produced to me. It was created in response to an investigation  
9 by the US Department of Labor because they were going through  
10 an audit to review their --

11 COMMISSIONER BULLA: So he prepared this information  
12 for the Department of Labor, but you don't have it?

13 MR. GREENBERG: Well, I don't have it. That was the  
14 impetus for them to tally the trip sheets, so to speak, to  
15 create this time record.

16 COMMISSIONER BULLA: Okay. That was the  
17 hundred-thousand-dollar-plus project that they did for the  
18 Department of labor?

19 MR. GREENBERG: The Department of Labor didn't  
20 require them to do it. They did it in response to that audit.  
21 I mean, that was what -- that's what motivated it.

22 COMMISSIONER BULLA: Okay. And that's what you want.  
23 You want the information, the factual information that they put  
24 together for the audit?

25 MR. GREENBERG: The end product, the file that they

1 created, it's a tally of the time they claim the drivers worked  
2 every two weeks or every week. This is the kind of information  
3 they're actually supposed to keep by statute, Your Honor, but  
4 haven't. You know, an employer has a duty to keep a record of  
5 hours worked every pay period.

6 COMMISSIONER BULLA: So do you want the file, the PDF  
7 file that they put together on the trip sheets that they gave  
8 to the Department of Labor?

9 MR. GREENBERG: They -- yeah, it's the same one they  
10 gave. It's an Excel file, not a PDF, Your Honor.

11 COMMISSIONER BULLA: I'm sorry. Excel.

12 MR. GREENBERG: That's what I would like. Mr. Nady  
13 testified as to its existence. He said he could produce it.  
14 It has never been produced.

15 COMMISSIONER BULLA: All right. So, Mr. Wall, that  
16 needs to also be produced by September 21st, 2016.

17 MR. WALL: This is the problem when we don't get an  
18 opportunity to have this brought -- this was never brought in a  
19 motion before. We never got to brief it. The fact that there  
20 was testimony given that may or may not have been accurate is  
21 part of the problem here, and we didn't get an opportunity to  
22 address whether this document even exists. As far as we know,  
23 it doesn't exist, but we're doing our best to come up with that  
24 information --

25 COMMISSIONER BULLA: Okay. So --

1 MR. WALL: -- as his response admits.

2 COMMISSIONER BULLA: Okay. So produce it by the 21st  
3 or produce a sworn affidavit that you don't have it.

4 MR. WALL: Okay.

5 COMMISSIONER BULLA: By your client.

6 MR. GREENBERG: Your Honor, I've discussed this issue  
7 with Ms. Rodriguez in respect to them producing such a  
8 declaration. I think they have a burden to detail the efforts  
9 they've made to find a copy of this by talking to their agents,  
10 their attorneys, who they presumably provided a copy with,  
11 search the hard drives on their computers, their archive  
12 system.

13 In addition, Your Honor, they gave a copy to the  
14 United States Department of Labor. I think they have an  
15 obligation to go to the Department of Labor and see if they can  
16 get it from the Department of Labor if they claim they don't  
17 have it. The Department of Labor will not give it to me under  
18 a FOIA request.

19 COMMISSIONER BULLA: I know.

20 MR. GREENBERG: And I don't know that this Court has  
21 jurisdiction --

22 COMMISSIONER BULLA: I don't.

23 MR. GREENBERG: -- directly to subpoena that agency,  
24 but certainly they can make an effort. You understand my  
25 point, that they have an effort -- they have an obligation to

1 make some sort of effort not just to say well --

2 COMMISSIONER BULLA: Do you have a request to produce  
3 for this information separate, specifically?

4 MR. GREENBERG: Yes, we do, Your Honor. I mean --

5 COMMISSIONER BULLA: The PDF of -- or the Excel file  
6 that was given to the Department of Labor, do you have that  
7 specifically requested?

8 MR. GREENBERG: Yes, it is, Your Honor. I mean,  
9 we --

10 COMMISSIONER BULLA: Do you remember the number of  
11 the request?

12 MR. GREENBERG: Offhand I cannot tell you sitting  
13 right here.

14 COMMISSIONER BULLA: Okay. So --

15 MR. GREENBERG: But there was a general request that  
16 they produce everything they gave to the Department of Labor,  
17 and the testimony is they gave this to them.

18 MR. WALL: And there certainly hasn't been a motion  
19 that has been properly briefed for Your Honor to be sitting  
20 here and telling us what we have to produce and don't have to  
21 produce. We don't even know what the issue is because it  
22 hasn't been brought here properly.

23 COMMISSIONER BULLA: Okay. But you know what the  
24 issues are in the case. Would this be relevant information in  
25 this type of case, what was given to the Department of Labor?

1 Yeah, probably. So what are your 16.1 obligations independent  
2 of what they asked you?

3 MR. WALL: My 16.1 obligation is to produce  
4 everything that we have that comes within the category of what  
5 might be relevant that is in our control -- our possession or  
6 control or that we can get. We understand that. The point is  
7 that's not the point I'm making at all. The point is I don't  
8 have a request. I don't have a conference with counsel, and I  
9 don't have a motion on this. So it's coming up here in this  
10 manner, and it's even admitted in the document that it's coming  
11 up in this manner, that it's not ripe for any kind of judicial  
12 action on it, and yet judicial action is being taken on it.

13 COMMISSIONER BULLA: Mr. Wall, you have not been  
14 here.

15 MR. WALL: I understand that.

16 COMMISSIONER BULLA: Every status check hearing we  
17 talked about these issues. I believe we've talked about --  
18 this Department of Labor thing sounds familiar to me, but maybe  
19 we haven't. I don't know. But I have the authority  
20 independent of what's brought before me to make sure that this  
21 discovery is done properly.

22 MR. WALL: I apologize, Your Honor. I'm not in any  
23 way questioning your authority.

24 COMMISSIONER BULLA: Well, it sure sounded like it.

25 MR. WALL: I'm questioning the procedures that have

1 been followed to get us to this point, and we are working on  
2 this, as his document says, trying to get this document, but my  
3 understanding is we don't have it.

4 COMMISSIONER BULLA: Okay. Let me read you what 16.1  
5 says. A copy of or description by category and location of all  
6 documents, data compilations and tangible things that are in  
7 the possession, custody or control of the party and which are  
8 discoverable under Rule 26(b), and if you do some research,  
9 especially using the Federal Court decisions, I think you'll  
10 find out the control is exactly the ability to go to an agency  
11 and get the document, such as the IRS for tax returns, such as  
12 the Department of Labor, for your information, your client's  
13 information that they may have sent in relation to a dispute.  
14 It doesn't mean that you have to have possession of the  
15 document.

16 MR. WALL: Oh, I understand that, Your Honor.

17 COMMISSIONER BULLA: Okay. Well --

18 MR. WALL: And we have -- as has been --

19 COMMISSIONER BULLA: Did you identify the Department  
20 of Labor information in your 16.1 disclosures? Because you  
21 probably should have.

22 MR. WALL: If it had -- if counsel had been aware of  
23 it, I think it has been. Again, we didn't get to brief this.  
24 So I don't know exactly how we are on that, but --

25 COMMISSIONER BULLA: So when you come back in October

1 and see me, you can give me an update.

2 MR. WALL: I have --

3 COMMISSIONER BULLA: But as September 21st  
4 plaintiff said they have sent you a request to produce that  
5 would cover this. I don't know the answer to that because I  
6 don't have it. I'm sure it's in here somewhere, but I don't  
7 have it pulled up right in front of me, but you need to make  
8 all efforts to locate. Take some time, figure out where this  
9 information might be. Call the Department of Labor. Call the  
10 lawyers that assisted your client.

11 MR. WALL: Assuming Mr. Nady knew what he was talking  
12 about when he said it existed.

13 COMMISSIONER BULLA: And confirm that he knew what he  
14 was talking about.

15 MR. WALL: And I have no problem with that. The  
16 suggestion that was made that we produce it where we give an  
17 affidavit detailing what efforts we've gone to to produce it  
18 and that it does not exist and why, I have no problem with  
19 that, which was the original recommendation.

20 COMMISSIONER BULLA: All right. Let's do that, and  
21 then you can report back to me in October, and we'll see where  
22 we're at.

23 Production of PDF copies of trip sheets.

24 MR. GREENBERG: Your Honor, it's been ascertained  
25 through depositions in this case that the trip sheets

1 themselves are stored electronically. They're scanned and put  
2 on defendant's computer system. There are hundreds of  
3 thousands of these documents. I cannot work with hundreds of  
4 thousands of paper copies of these trip sheets, but they do  
5 contain information that defendants insist show the hours of  
6 work of the plaintiffs. That's disputed, but nonetheless it's  
7 a material issue in this case what those trip sheets show.

8 I would like them produced in the PDF form that  
9 defendants have kept them simply because that's the way to  
10 manage it, Your Honor. Defendants have offered to produce  
11 these on paper, which would be at a considerable cost, even at  
12 10 cents or 5 cents a page. We're talking hundreds of  
13 thousands of pages. It would be --

14 COMMISSIONER BULLA: Let's not do that. We'll kill  
15 too many trees.

16 MR. GREENBERG: I agree, Your Honor. So it has come  
17 to my attention that these are stored in PDF form; therefore,  
18 my request is simply that defendants produce those PDF files.  
19 I mean, they're computer files. They can put them on a hard  
20 drive, turn them over to me, and that'll be that. Again I --

21 COMMISSIONER BULLA: You'll bear the cost and expense  
22 of it?

23 MR. GREENBERG: I'll pay the \$500 for a hard drive.  
24 It's not, you know, 5000 or \$50,000 to make boxes and boxes of  
25 paper copies, Your Honor. That's the point.

1 I have discussed this with Ms. Rodriguez, and she has  
2 told me that defendants are investigating this. She wasn't  
3 really clear about where it was at. Again, I don't want to  
4 question her good-faith representations to me the defendants  
5 were trying to do something about it.

6 COMMISSIONER BULLA: Well, Mr. Wall will follow up  
7 with her.

8 MR. WALL: I will follow up with it. As it says,  
9 we're working on that.

10 COMMISSIONER BULLA: And the plaintiffs' counsel will  
11 provide the hard drive to download the PDF files at plaintiff  
12 counsel's expense. If there are any other costs associated  
13 with this process, have a 2.34 conference, and make sure you  
14 let the plaintiffs' counsel know.

15 And, Plaintiffs' Counsel, they can make the decision  
16 on how they want to handle it.

17 MR. GREENBERG: Or if we're not able to agree on the  
18 process, we will bring it to Your Honor.

19 COMMISSIONER BULLA: In October.

20 MR. WALL: File a motion.

21 COMMISSIONER BULLA: Can't wait. All right.

22 So this is finally the production of the updated and  
23 historic employee manual. This I don't really recall  
24 discussing before. If you've filed or if you've served a  
25 request to produce on the defendant, then you need to have a

1 2.34 conference on it. This was the one thing I had a big  
2 question mark by because I really don't recall.

3 MR. GREENBERG: Your Honor, again this has been  
4 discussed with Ms. Rodriguez in the past few weeks. She has  
5 told me that they are intending to take care of this. This is  
6 a small issue. I presume she's going to follow through with  
7 that. I have no reason to believe that she's misrepresenting  
8 anything to me on it.

9 COMMISSIONER BULLA: So for today I'm not going to  
10 put a recommendation forward on either the trip sheets, which  
11 is Item No. 3, or the updated and historic employee manual.  
12 You'll need to continue to talk to the defense counsel, work  
13 together on these issues, and then if necessary I will address  
14 them in October and give you a report and recommendations on  
15 those two items.

16 For today, the two items that I am going to give a  
17 report and recommendations on that plaintiffs' counsel will  
18 need to prepare from today's hearing is that there will be  
19 efforts made by the defendant to provide the employee names  
20 with the wage information and the last four digits of the  
21 Social Security number.

22 And also if they are able to work out a computer  
23 program so that the Cab Manager data and the QuickBooks data  
24 can be compiled together in however you need it done, that will  
25 also happen, but at a minimum I'm going to have them rerun the

1 employee wage information with the names and if possible the  
2 last four digits of the Social Security numbers of the  
3 employees and get that information to you by September 21st.

4 In addition to which with respect to the Department  
5 of Labor information and whether it's this Excel spreadsheet or  
6 PDF file or whatever it is that was submitted to the Department  
7 of Labor on the trip-sheets information that was used to  
8 support the defendant's position before the Department of  
9 Labor, that will need to be either produced or an affidavit  
10 will need to be submitted explaining the efforts that were  
11 undertaken to find that information and produce it, and those  
12 are the only two things I'm willing to do.

13 In addition today we will have our status check  
14 hearing on October 12th for further follow-up.

15 And if there are additional motions that need to be  
16 filed, including Rule 37 motion for sanctions, you'll need to  
17 make sure, Plaintiffs' Counsel, you'll have a meaningful 2.34  
18 conference first, and then file the motion on an  
19 order-shortening time. And I will hear it on October 12th.  
20 Maybe then we'll have an idea of when your trial date's going  
21 to be as well.

22 MR. GREENBERG: Yes, Your Honor. There is a motion  
23 to compel that is also before Your Honor today relating to two  
24 issues, one of which has been resolved, or at least I think it  
25 will be resolved based on Ms. Rodriguez's statements to me

1 which concerns the resolved issue being the identification of  
2 certain former employees.

3 The issue that's not resolved and is still before  
4 Your Honor has to do with this health insurance information.  
5 Certain materials for a two-year period have been provided, but  
6 nothing else has been provided, and the question becomes, well,  
7 if defendants can't detail what the requirements were to enroll  
8 in the health insurance plan during the relevant time period,  
9 the class period, what's going to happen?

10 I mean, you know, and of course my request would be  
11 that Your Honor recommend that simply if they are not producing  
12 this stuff, they just be precluded from claiming that they're  
13 entitled to pay the lower health insurance provided rate  
14 because we have no way to figure that out, whether they in fact  
15 complied with the requirement.

16 You know, there's this 10 percent of wage requirement  
17 for the premium, and, you know, the insurance has to meet  
18 certain requirements in respect to coverage. If they can't  
19 explain to us what that coverage was in 2010 or 2011, they  
20 shouldn't be allowed to make a claim that they can pay that  
21 lower rate, Your Honor.

22 COMMISSIONER BULLA: Thank you.

23 Mr Wall.

24 MR. WALL: Again, my understanding was that this  
25 matter had been resolved and that we had produced what we had

1 and that that was it. I didn't realize that that part of the  
2 motion that they felt was still pending, but here's the thing.  
3 The law requires, as I read it, that if the employer provides  
4 healthcare they can pay the lower amount. The law doesn't say  
5 anything about whether or not the employees accept that  
6 healthcare.

7 COMMISSIONER BULLA: They just have to offer it.

8 MR. WALL: Right. They just have to offer it. So  
9 what they have been looking for is we want to know which  
10 employees accepted it and which employees didn't accept it so  
11 that we can figure out which employees were at the higher rate  
12 and which employees were at the lower rate because the  
13 employees at the lower rate are probably going to have to drop  
14 out of this lawsuit because we're not going to be able to meet  
15 the floor that we have to meet in order to be able to stay into  
16 this.

17 And if we provided it, and we've already provided the  
18 information that we did, it's lower for everybody. It's not an  
19 individual thing. If the employee -- so --

20 COMMISSIONER BULLA: Well, but if they -- but here's  
21 the problem though. The people that -- I don't know if that's  
22 right because if they choose not to have the health insurance,  
23 don't you have to pay them at the higher rate?

24 MR. WALL: I don't believe that's true at all. The  
25 law certainly doesn't say that, and I haven't seen a case that

1 would say that. My reading is, it says, If the employer offers  
2 healthcare benefits, then they can pay at the lower rate. If  
3 it's offered, the employee can choose to take it or not take  
4 it, but they don't get to choose the higher rate. I don't see  
5 anything in the law that would support that argument.

6 COMMISSIONER BULLA: There are several cases out  
7 there. One may have already gone up to the Supreme Court on  
8 this issue. I'm not positive, Mr. Wall, and I apologize  
9 because, frankly, I see so many cases I really at this point am  
10 not sure, and I don't want to confuse anything, but --

11 MR. WALL: And honestly I'm not sure either.

12 COMMISSIONER BULLA: Yes.

13 MR. WALL: But the point is, I think we already  
14 produced all of this information. Everything we have, they  
15 have. They can make their arguments from it.

16 COMMISSIONER BULLA: Okay. Here's my recommendation.  
17 Let's talk to Ms. Rodriguez about this because you had already  
18 started discussions with her on this issue, right?

19 MR. GREENBERG: Well, we did, and she did -- I  
20 concede she gave me relevant information for two years going  
21 back to about 2014, but not for anything before that, and Your  
22 Honor is correct that the Supreme Court actually has a fully  
23 argued case dealing with some of these issues.

24 COMMISSIONER BULLA: They just haven't resolved it  
25 yet.

1 MR. GREENBERG: They haven't issued -- they haven't  
2 issued an opinion on it. So exactly how the law applies is  
3 open to question here, Your Honor, but the point is, if they  
4 say we can't tell you how much it cost in 2011 for someone to  
5 enroll for themselves, for their family members and what kind  
6 of benefits we were providing, because those are germane to  
7 knowing whether they make out this lower threshold. They have  
8 to provide insurance that costs --

9 COMMISSIONER BULLA: It can't be a loser insurance I  
10 would think.

11 MR. GREENBERG: It can't be -- right. The benefits  
12 have to be typical major medical.

13 COMMISSIONER BULLA: It has to be real. You can't  
14 offer medical insurance through Disneyland Insurance Company  
15 that doesn't exist. I mean, it has to be a real insurance  
16 company I would think.

17 MR. GREENBERG: Yes, Your Honor, and for --

18 COMMISSIONER BULLA: With real benefits.

19 MR. GREENBERG: And if there's a waiting period of  
20 six months or a year --

21 MR. WALL: I wish you'd tell that to my employer.

22 COMMISSIONER BULLA: What now?

23 MR. WALL: I wish he would tell that to my employer.

24 MR. GREENBERG: Your Honor, if there's a waiting  
25 period of six months or a year or other terms of qualification

1 so that the employee is working for an extended period of time  
2 but actually can't participate in the insurance too, that's a  
3 germane issue for the Court to consider as to whether they're  
4 actually providing something in addition to, as I said, what is  
5 the premium cost that they have to pay because there's this  
6 10 percent threshold, which means the cost has to be very small  
7 for the employee premium contribution for themselves and their  
8 family members.

9 We need information. I think Your Honor  
10 understands --

11 COMMISSIONER BULLA: I do.

12 MR. GREENBERG: -- that this is all germane to the  
13 issue. It they can't produce it, then, I mean, I think that  
14 should be the end of it. They can't produce it, then it's not  
15 going to be an issue in this case. They're simply going to --

16 COMMISSIONER BULLA: I think that's an evidentiary  
17 issue that really needs to go to Judge Cory because I think  
18 what you're really asking this Court to do -- and I wouldn't  
19 call it a discovery sanction necessarily -- I think it really  
20 should be an evidentiary ruling before the Judge. I'm not sure  
21 I would be comfortable.

22 I could certainly sanction them for not, you know,  
23 producing information that they should've produced earlier, but  
24 if they don't have it, if it doesn't exist, and if they've  
25 given you everything they can, then I think it's a motion in

1     limine or a partial summary judgment motion on that issue, that  
2     should go to Judge Cory for his decision.

3             MR. GREENBERG: Your Honor, to resolve this motion,  
4     perhaps you could simply adopt part of your other  
5     recommendation, which is to direct defendants to produce a  
6     detailed declaration explaining what efforts they've made to  
7     locate this information.

8             COMMISSIONER BULLA: Was this information sent in a  
9     request to produce? Because usually what I do, unless it's  
10    something where I really do feel like we need the affidavit on,  
11    like the DOL, the Department of Labor information, I'd like to  
12    have an affidavit on that from the defendant, but otherwise  
13    I'll just have them supplement their answer to the request to  
14    produce, which they are signing as an officer of the court and  
15    detail in there what efforts they undertook to comply with the  
16    request.

17            MR. GREENBERG: Your Honor, part of my -- that would  
18    be, I think, important in respect to them producing the  
19    historic records of what the benefits were and the costs were.

20            COMMISSIONER BULLA: Why don't you send an  
21    interrogatory.

22            MR. GREENBERG: Well, that's what I -- Your Honor,  
23    that was what I was actually getting to. The motion to compel,  
24    which was filed on June 9th, if you look on page 4, there are  
25    specific interrogatories saying, Identify to us each of the

1 class members who received these benefits, okay, and what the  
2 terms --

3 COMMISSIONER BULLA: But did you ask for the health  
4 insurance information specifically?

5 MR. GREENBERG: Yes, we did, Your Honor.

6 COMMISSIONER BULLA: What insurance did you provide?  
7 What was the company that you utilized? Did you ask all those  
8 questions?

9 MR. GREENBERG: We asked them to provide, yes, the  
10 health insurance information and the documents explaining.  
11 There's a summary description which employees get. It's a page  
12 or two that explains this is the benefit. This is the premium  
13 cost. If I had the summary statements, if I had those written  
14 documents which are relatively brief, I don't think the  
15 interrogatories need to be answered, and I've explained this to  
16 Ms. Rodriguez, but I don't have those written documents. I  
17 don't have answers to these interrogatories. So --

18 COMMISSIONER BULLA: So I'm going to compel the  
19 answers to the interrogatories with respect to the request for  
20 production of documents that deals with the insurance.

21 I'm going to require the defendant, if you do not  
22 have the information, to explain what efforts you undertook to  
23 obtain it and what you looked at.

24 Then at a minimum, I would think they utilized the  
25 services of an agent, an insurance agent, right, to purchase

1 the insurance through?

2 MR. GREENBERG: Your Honor, not only that, they have  
3 to remit premiums every month or every quarter.

4 COMMISSIONER BULLA: Okay. So --

5 MR. GREENBERG: They must have a record of who they  
6 remitted premiums for, who was covered.

7 COMMISSIONER BULLA: And you've asked all that?

8 MR. GREENBERG: Yes, I've asked that.

9 COMMISSIONER BULLA: Okay.

10 MR. GREENBERG: The interrogatories say, Identify  
11 who -- who --

12 COMMISSIONER BULLA: So the motion to compel today is  
13 granted to the extent that I did not address these issues  
14 before, and I'm going to require them to answer the  
15 interrogatories, the outstanding interrogatories on the  
16 insurance information and/or the request for production of  
17 documents by producing the documents which would then render  
18 the interrogatories not as important to answer necessarily, but  
19 I think they should answer both, actually, even if they refer  
20 to the documents that they produced. Otherwise, they'll need  
21 to set forth what steps they undertook to provide you with the  
22 information. So that will be in addition to the other items  
23 that I've already compelled.

24 MR. GREENBERG: Yes, Your Honor, and I think Your  
25 Honor's clear. Just to be sure the Court's fully informed, the

1 interrogatory answers I have right now say, Look at the  
2 QuickBooks data because that will tell you, and what the  
3 QuickBooks data tells us is just that they deducted certain  
4 amounts from certain people for certain kinds of insurance, but  
5 we don't know the particulars, Your Honor. So it's not  
6 sufficient.

7 COMMISSIONER BULLA: Did you ask who the insurance  
8 agent was in an interrogatory?

9 MR. GREENBERG: Your Honor --

10 COMMISSIONER BULLA: Did you ask what company they  
11 purchased the insurance through?

12 MR. GREENBERG: No, those were not specifically  
13 asked, Your Honor. They were not, but our concern is again the  
14 terms. If --

15 COMMISSIONER BULLA: Well, you may have to subpoena  
16 the insurance company. That's why you need to ask: Who did  
17 you get the insurance through? Who was your insurance agent?

18 MR. GREENBERG: Well, Your Honor, if -- look, if they  
19 can attest that they don't have this information, then we can  
20 investigate that, but nonetheless, Your Honor, as I was  
21 explaining, they know who was enrolled in the insurance every  
22 month because they sent the premium in, and they know what  
23 coverage they were paying for that. If they don't have those  
24 records anymore, let them explain that.

25 COMMISSIONER BULLA: Mr. Wall, you do a lot of

1 insurance work. Can you please help figure this out?

2 MR. WALL: Yes, Your Honor.

3 COMMISSIONER BULLA: Okay.

4 MR. GREENBERG: I think we --

5 COMMISSIONER BULLA: Anything further?

6 MR. GREENBERG: Your Honor, you've given us --

7 COMMISSIONER BULLA: I think Mr. Wall understands.

8 MR. GREENBERG: You've given us a lot of your time.

9 I apologize for --

10 COMMISSIONER BULLA: And I can't even give the  
11 audience the only credit for it.

12 All right. So this is what I need the plaintiffs'  
13 counsel to do.

14 MS. SNIEGOCKI: Ready.

15 COMMISSIONER BULLA: Please prepare the report and  
16 recommendations from today's hearing. The motion to compel is  
17 further granted within the parameters that we've discussed.  
18 I'm not going to award fees and costs today, but I will set  
19 this back for a status check hearing as I indicated, October  
20 12th at 9 a.m. If for some reason miraculously you're able  
21 to work everything out, you can let me know, and I'll take it  
22 off calendar. Otherwise, I'll see you.

23 And if you cannot work it out, and they don't produce  
24 the information that I've requested be produced to you,  
25 recommend to be produced you by September 21st, you're

1 welcome to bring a Rule 37 motion to my attention, and I will  
2 deal with it. You can set it on an order-shortening time to be  
3 heard on October 12th.

4 MS. SNIEGOCKI: The responses that were discussed in  
5 the motion to compel, those responses would be due the same  
6 day, the 9/21 date?

7 COMMISSIONER BULLA: I think there's no reason. It  
8 shouldn't be that difficult to find out who the insurance  
9 company was and ask your agent for a copy of the policy if  
10 necessary.

11 Mr. Wall, I think the 21st is doable. If you run  
12 into trouble, have a nice conference call with your colleagues  
13 and ask them for another week, but try to get it done. It  
14 needs to be done.

15 MR. WALL: Understood.

16 COMMISSIONER BULLA: This is just something that  
17 needs to be done, okay.

18 MR. WALL: Thank you, Your Honor.

19 MR. GREENBERG: Thank you, Your Honor.

20 COMMISSIONER BULLA: Anything further?

21 MR. WALL: Nothing, Your Honor.

22 COMMISSIONER BULLA: All right. I need my report and  
23 recommendations in 10 days. Status check will be --

24 THE CLERK: October 12th at 9.

25 COMMISSIONER BULLA: We'll just take care of it then.

1 Hopefully we won't be talking about it.

2 MR. GREENBERG: I hope not.

3 COMMISSIONER BULLA: Now, I'm serious about this.

4 MR. GREENBERG: Thank you for your patience.

5 COMMISSIONER BULLA: If you run into trouble,  
6 Mr. Wall, on getting this information together, if there is a  
7 problem, can we please conduct a conference call with the  
8 commissioner so I have the opportunity to help you before for  
9 October 12th so that we're not just spinning our wheels.

10 MR. GREENBERG: Your Honor, I will take that it would  
11 be advisable for us to do that prior to actually submitting any  
12 motion, as Your Honor also mentioned.

13 COMMISSIONER BULLA: Because I'd like the opportunity  
14 to try to work with you all to try to keep the cost of this  
15 litigation down and proportionate to what the case is all  
16 about, but I understand it's a serious case, and it's expensive  
17 because there are a lot of factors involved, and the technology  
18 needs to be obtained -- or the, you know, information needs to  
19 be obtained, and with the electronically stored information,  
20 that puts it in a different ballgame.

21 MR. GREENBERG: Thank you, Your Honor.

22 COMMISSIONER BULLA: Anything further?

23 MR. GREENBERG: No, Your Honor, and hopefully we  
24 won't be making that conference call with you or submitting  
25 that motion, but we'll do so --

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1 COMMISSIONER BULLA: All right. Well, I am inviting  
2 you to do that. I would prefer to do it that way. So if  
3 there's a real problem, and Mr. Wall says there's no way we can  
4 do this and this is why, then have a conference call with me so  
5 I can assist you in figuring it out.

6 MR. GREENBERG: I appreciate that, Your Honor.

7 COMMISSIONER BULLA: All right. Very good. Thank  
8 you.

9 MR. WALL: Thank you, Your Honor.

10 COMMISSIONER BULLA: Have a wonderful rest of the  
11 day.

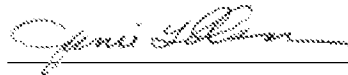
12 (Proceedings concluded 10:08 a.m.)

13 -oOo-

14 ATTEST: I do hereby certify that I have truly and correctly  
15 transcribed the audio/video proceedings in the above-entitled  
16 case.

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Janie L. Olsen  
Transcriber

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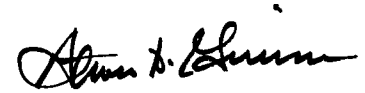
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TRAN



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

MICHAEL MURRAY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
A CAB TAXI SERVICE LLC, )  
 )  
Defendant. )  
 )  
AND OTHER PARTIES )

CASE NO. A-12-669926-C  
DEPT NO. I

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

**RE: MOTIONS  
STATUS CHECK: COMPLIANCE  
STATUS CHECK: PRODUCTION**

WEDNESDAY, OCTOBER 12, 2016

APPEARANCES:

FOR THE PLAINTIFFS: LEON GREENBERG, ESQ.  
DANA SNIEGOCKI, ESQ.

FOR THE DEFENDANTS: ESTHER C. RODRIGUEZ, ESQ.

RECORDED BY: FRANCESCA HAAK, COURT RECORDER  
TRANSCRIBED BY: JD REPORTING, INC.

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1       **LAS VEGAS, CLARK COUNTY, NEVADA, OCTOBER 12, 2016, 10:27 A.M.**

2                       \* \* \* \* \*

3               THE DISCOVERY COMMISSIONER: Everyone state your  
4 appearances, please, for the record.

5               MR. GREENBERG: Leon Greenberg, Dana Sniegocki for  
6 plaintiff, Your Honor.

7               THE DISCOVERY COMMISSIONER: Good morning.

8               MS. RODRIGUEZ: Good morning, Your Honor. Esther  
9 Rodriguez for the defendants.

10              THE DISCOVERY COMMISSIONER: Good morning. So just a  
11 brief housekeeping matter. We had the conference call on  
12 10/7 regarding the report and recommendations, and it was  
13 supposed to be resubmitted. Has that happened yet? Because  
14 I --

15              MR. GREENBERG: We have it right here. We would like  
16 it to be signed by both sides and given to Your Honor to  
17 discuss this, possibly we --

18              THE DISCOVERY COMMISSIONER: Do you want to --

19              MR. GREENBERG: Right here.

20              MS. RODRIGUEZ: Your Honor, I'm not sure what  
21 happened with Mr. Wall. He was the one that submitted the  
22 revisions and worked it out with Mr. Greenberg.

23              THE DISCOVERY COMMISSIONER: Right.

24              MS. RODRIGUEZ: He was supposed to be here this  
25 morning. I don't know what happened. Perhaps there was some

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1 confusion, but I think he indicated he was okay with this. So  
2 I'll go ahead and sign it, Your Honor. I just haven't -- I  
3 wasn't involved in the process.

4 THE DISCOVERY COMMISSIONER: Why don't you wait until  
5 after the hearing, take a quick look at it, sign it and then  
6 put in my inbox.

7 MR. GREENBERG: Yes, Your Honor.

8 THE DISCOVERY COMMISSIONER: All right.

9 MS. RODRIGUEZ: All right. Thank you.

10 THE DISCOVERY COMMISSIONER: So, okay. So second  
11 housekeeping matter. I looked at Judge Cory's notes from the  
12 September 22nd, 2016, hearing, and he indicates in there that  
13 I am to give whatever time I can to the monitoring of the  
14 discovery process in the area of controversy, which I'm not  
15 sure exactly what happened in that hearing and what I am  
16 supposed to be doing to further assist you.

17 I have had a number of hearings with you. We've  
18 dealt with a lot of issues. So I am a little distressed that  
19 somehow it makes it seem like I haven't been doing anything.  
20 I'm sure that's not what you intended to convey.

21 MS. RODRIGUEZ: No. No. In fact, I don't even think  
22 we had oral argument on that.

23 MS. SNIEGOCKI: Yes.

24 MR. GREENBERG: Your Honor, there wasn't actually any  
25 hearing held on this motion.

1 THE DISCOVERY COMMISSIONER: Oh, it's a --

2 MR. GREENBERG: And we're a little -- sort of in the  
3 dark as well in terms of exactly what Judge Cory was thinking.

4 THE DISCOVERY COMMISSIONER: Okay. So it's not just  
5 me.

6 MS. RODRIGUEZ: I agree.

7 THE DISCOVERY COMMISSIONER: I feel better now.

8 MS. RODRIGUEZ: And it's funny, Your Honor, because  
9 I'm sure you expected -- saved the best for last expecting  
10 perhaps for this to be lengthy, but in the hour Mr. Greenberg  
11 and I have actually been out in the hallway working out a lot  
12 of these issues. So you actually assisted us.

13 THE DISCOVERY COMMISSIONER: Oh, so my method worked,  
14 okay.

15 MS. RODRIGUEZ: You did. I think we actually have  
16 the majority of these issues resolved. If you're prepared, I  
17 can kind of go through some of them, and I --

18 THE DISCOVERY COMMISSIONER: Okay.

19 MS. RODRIGUEZ: -- and Mr. Greenberg can correct me  
20 if I'm wrong.

21 THE DISCOVERY COMMISSIONER: I'm sure he will.

22 MS. RODRIGUEZ: -- but the biggest issue that we were  
23 having difficulty with was first of all the QuickBooks data,  
24 the linking between the QuickBooks data and the Cab Manager  
25 data, and it sounded like -- I wasn't present at that one;

1 Mr. Wall was.

2 THE DISCOVERY COMMISSIONER: Right.

3 MS. RODRIGUEZ: But it sounded like the big key was  
4 the last four digits of the Social Security for each employee.  
5 That ended up being quite a task. It was not as easy as  
6 Mr. Greenberg I think may have anticipated. So what I ended up  
7 doing to be timely with your report was I did give him like a  
8 50 page list of all the employees with the Social Security  
9 number while we were trying to work up the electronic data that  
10 he actually wanted, and that was given to him timely by  
11 9/21 pursuant to your order.

12 The following week, when the internal IT guy came  
13 back from vacation, we did manage to work out the connection  
14 between the QuickBooks and the last four digits of the Social  
15 Security as Mr. Greenberg wanted, and that was turned over to  
16 him. So I believe that we're resolved on that issue. That was  
17 the big one.

18 THE DISCOVERY COMMISSIONER: Okay.

19 MS. RODRIGUEZ: Per my understanding. When I gave it  
20 to Mr. Greenberg -- and I'm sure you'll hear from him -- he  
21 didn't act like that was a big deal, that he was not  
22 necessarily interested in it. So I'm not sure. It was a big  
23 task from the perspective of the defense. It took a lot of  
24 overtime hours, but it has been done. I'm just not sure if  
25 there still remains an issue, or I just sense some

1 dissatisfaction from Mr. Greenberg on that issue.

2 THE DISCOVERY COMMISSIONER: Okay.

3 MS. RODRIGUEZ: Issue --

4 THE DISCOVERY COMMISSIONER: I'm sorry. Go ahead.

5 MS. RODRIGUEZ: Issue No. 2 has to do with this DOL  
6 spreadsheet, Department of Labor spreadsheet that was talked  
7 about in Mr. Nady's deposition. I gave Mr. Greenberg an  
8 affidavit from Mr. Nady indicating we couldn't locate it. He's  
9 asked the DOL for a copy of it. Mr. Greenberg did not like  
10 that affidavit. So we talked about it.

11 I've subsequently revised it, and I gave him another  
12 version. He still was not happy with it. So he has given me  
13 some suggested additions which I am in agreement with and I  
14 will incorporate it. I will write it up. I'll send it to him,  
15 and if he's in an agreement, I'll have Mr. Nady sign it, and in  
16 the meantime perhaps we will get a response from the Department  
17 of Labor. So I think we're on the same page with Issue No. 2.

18 Okay. Issue No. 3 has to do with the health plans.  
19 Per your order I gave him an affidavit saying I'm turning  
20 over -- or Mr. Nady to turn over everything having to do with  
21 the health plan summaries, and again I talked to Mr. Greenberg  
22 about that this morning. I'm not sure -- I asked -- I said,  
23 I'm not sure what else you want. We've given you everything  
24 there is. He has indicated that he wants me to go back and try  
25 to get the actual cost to the employer, the premiums that they

1 paid which will show the information of who they paid it to and  
2 the total cost to the employer, which I think is workable. I  
3 think we can retrieve that information.

4 THE DISCOVERY COMMISSIONER: I think you're --

5 MS. RODRIGUEZ: So I will go back, and I will do  
6 that.

7 THE DISCOVERY COMMISSIONER: Your insurance company  
8 should have that.

9 MS. RODRIGUEZ: Correct. I think I can do that for  
10 Mr. Greenberg.

11 The other half of that, which I'm sure he'll talk  
12 about is a more detailed cost per employee, which it's my  
13 understanding that was addressed before you when Mr. Wall was  
14 present the last time about what is reflected in the QuickBooks  
15 information per employee to show whether they received coverage  
16 as an individual, as a family with their dependents, more  
17 detailed information, and it was my understanding from Mr. Wall  
18 that that issue was somewhat on hold because of the pending  
19 decision from the Supreme Court. So I kind of defer to  
20 Mr. Wall on that one.

21 But I also read that in your Discovery Commissioner's  
22 Report and Recommendation that that issue was somewhat deferred  
23 until we get more guidance on what exactly needs to be  
24 produced, but I think what we've given him in terms of the  
25 QuickBooks will already show a breakdown of which employee was

1 paying for insurance coverage and whether it shows vision,  
2 dental, whether it's medical, those kind of things, and I think  
3 that's enough to show whether the employee was covered or not,  
4 whether the 825 should kick in or the lower tier is applicable  
5 while we wait for further guidance from the Supreme Court. So  
6 that one's kind of iffy.

7 And I'll ask for more guidance from Your Honor on  
8 that particular issue as to what I need to go back and do  
9 because I don't think it's going to be that easy to figure out  
10 per employee the specifics of each of their contribution and  
11 the employer's contribution. I don't think that's something  
12 that's necessarily easily pulled.

13 THE DISCOVERY COMMISSIONER: Oh, it has to be. It  
14 just has to be. I can't imagine that it wouldn't be reflected  
15 somewhere in records. That would -- I would be surprised if it  
16 wasn't.

17 MS. RODRIGUEZ: Well, I think what we've given them  
18 in the QuickBooks is already in the payroll stubs. It says,  
19 \$10 for medical, \$5 for vision, \$5 for dental, that type of  
20 thing, but I think he's wanting something more specific, like,  
21 well, then who does that \$10 cover? Does that cover the  
22 individual? Does that cover the spouse? Does that cover the  
23 kids, that kind of thing? And so I'm a little fuzzy on that,  
24 what more detail we need to provide.

25 THE DISCOVERY COMMISSIONER: Okay. What about your

1 motion?

2 MS. RODRIGUEZ: Okay. My motion is on the  
3 depositions primarily, and I've tried to talk with  
4 Mr. Greenberg as to whether we can resolve that because I  
5 think -- I recognize that probably these depositions need to go  
6 forward. I think we just need to have some parameters set, and  
7 I'm trying to come to an agreement with him on that because  
8 some of it is duplicative from the first round.

9 Although he says Your Honor authorized a PMK, a  
10 30(b)(6) deposition pertaining to the computer files the first  
11 round, what actually occurred -- and I know Your Honor read the  
12 transcript -- that first notice was 23 categories with  
13 subparts, and he managed to use the word computer in each one  
14 of those the first time.

15 But now Round No. 2, a lot of those categories are  
16 duplicative. He specifically is asking for the computer  
17 information again on QuickBooks and Cab Manager, things like  
18 that, and I'm talking about, for example No. 9: All systems  
19 used by defendant, including computer systems to keep track of  
20 hours worked by drivers and their compensation paid; No. 12 --

21 THE DISCOVERY COMMISSIONER: It says --

22 MS. RODRIGUEZ: -- all computer system and  
23 software --

24 THE DISCOVERY COMMISSIONER: Well, it doesn't say  
25 computers. It says all systems on No. 9, at least what I'm

1 looking at. I'm going to make --

2 MS. RODRIGUEZ: Including computer systems and, yeah.

3 THE DISCOVERY COMMISSIONER: I'm going to make this  
4 really easy. Part of the reason you take the 30(b)(6)  
5 deposition is to bind the corporation. In this case, your  
6 client's going to probably bind the corporation because he  
7 essentially is the corporation. At his level he's going to  
8 bind even his individual testimony that's not directly in terms  
9 of a specific category. His answers arguably in his, quote,  
10 individual capacity are going to bind the corporation because  
11 of the level he's at. So we can have this very artificial  
12 distinction, but the bottom line is his deposition needs to be  
13 completed on the topic areas that have not been addressed  
14 previously and also in his individual capacity.

15 I would just do one deposition. I'd list the  
16 categories. I'd say he's going to be deposed individually and  
17 also in 30(b)(6) capacity on these topic areas because we know  
18 he's the 30(b)(6) deponent. There's no surprise here, but  
19 whether -- how you choose to conduct the deposition, I'm going  
20 to defer to you, and by the way, I would've been happy to have  
21 moved this motion to accommodate anyone's schedule today.

22 MR. GREENBERG: Oh, thank you, Your Honor.

23 THE DISCOVERY COMMISSIONER: I'm really sorry. I  
24 would've done that.

25 MR. GREENBERG: Oh, please, don't apologize. We need

1 your attention unfortunately. I hate to say that.

2 In respect to the 30(b)(6) deposition, Your Honor,  
3 it's up to defendants. If they're going to bring Mr. Nady in  
4 and designate him and bind the corporation and that's the  
5 understanding, then, of course, I'd much rather see us do one  
6 session, get the topics done, also examine him regarding his  
7 individual relationship with the company, which really concerns  
8 his financial dealings with the company in respect to the  
9 individual claims against him, and be done with it, Your Honor.

10 In respect to, as we were discussing outside with  
11 counsel, the 30(b)(6) topics, Your Honor, the parties may well  
12 be able to stipulate that certain things don't have to be  
13 testified at the deposition. For example, you know, Subject 14  
14 wants to know what sort of notices were given to the drivers  
15 about the minimum wage because this is part of the  
16 constitutional requirement. The defendant may just stipulate  
17 and say, well, all we did is we put a notice on the wall, and  
18 that was it. We didn't, you know, give them documents or  
19 individual notices, and that's fine. We stipulate that. We  
20 don't need to address Topic 14 at a deposition because it's  
21 done, okay.

22 There are certain things like that that I'd be happy  
23 to resolve. I don't need to waste my time and the parties'  
24 time with a deposition, but in respect to a lot of these other  
25 subjects, Your Honor, I don't hear Your Honor voicing the view

1 that I shouldn't be allowed to get these specifically answered  
2 at a 30(b)(6) deposition, and I can discuss them. A lot of  
3 them have to do with issues like, tell us on average how long  
4 were these drivers working. What were the policies regarding  
5 their break times, when they had to show up, when they could  
6 leave work. None of --

7 THE DISCOVERY COMMISSIONER: I think that's --

8 MS. RODRIGUEZ: I don't have an issue with that.

9 MR. GREENBERG: Okay.

10 THE DISCOVERY COMMISSIONER: Right. I think that's  
11 perfectly fine.

12 MR. GREENBERG: Okay, Your Honor.

13 THE DISCOVERY COMMISSIONER: Let me tell you the only  
14 thing I do have an issue with is the written discovery because  
15 to me this is postjudgment debtor discovery. It is not  
16 appropriate discovery at this point. I'm not saying you won't  
17 get it eventually, but you're going to have to get a judgment  
18 first. I understand -- you talk about the interrelationship  
19 between Mr. Nady and his company.

20 I think you can ask him about that at deposition, but  
21 I'm not really willing at this point to turn over his  
22 individual tax returns and all of the other information you've  
23 asked for in written discovery, not right now because we're not  
24 collecting a debt.

25 MR. GREENBERG: Well, Your Honor, I understand your

1 view on that, and what I would point out and request is that  
2 the basis for Mr. Nady's liability in this case is two tiered.  
3 I first have to establish that the employer, the corporation,  
4 actually owes the class some money, okay. Assuming the  
5 corporation owes the class money, if they satisfy that, then I  
6 don't -- we have no issue with Mr. Nady presumably. On the  
7 other hand, if they don't, well, then we might, which is this  
8 issue of the debtor-type discovery you're talking about.

9 But the problem is that in terms of proof at trial  
10 Mr. Nady is not stipulating that he's going to be liable here  
11 if the corporation is liable. I mean, he presumably can come  
12 to court and has a legal right to say, well, I'm an  
13 independent, separate legal person from the corporation. Just  
14 because the corporation's liable, it doesn't make me liable.  
15 So there's issues of fact regarding did he control the  
16 corporation, et cetera, and so forth. I don't think that's  
17 really in dispute. I mean, he's in charge clearly.

18 But the liability against him requires establishing  
19 that he benefited in some capacity from the corporation's  
20 misdeeds. If he never benefited, okay, if he received no  
21 economic benefit from the corporation's violations of the law,  
22 he has no liability. It's not enough that he simply gave the  
23 orders here. Do you understand, Your Honor?

24 THE DISCOVERY COMMISSIONER: I do, but I don't  
25 understand how production of tax returns and taxable income

1 because money's fungible, so I don't know how that would  
2 necessarily support your position. If he is paid a salary, you  
3 can find that out at deposition. You can find out how much  
4 he's paid.

5 I'd like you to get some foundation before I go  
6 ordering some of this information. I know we're running out of  
7 time here. I understand that, but to me going into his tax  
8 returns, preparation of all the documents for his tax returns,  
9 his amount of taxable income, the annual income that he earned  
10 versus the income of the entities and the current net worth of  
11 each of the defendants, that -- a lot of that information if it  
12 deals with punitive damages won't be turned over until 30 days  
13 prior to trial, but some of -- to make sure that the punitive  
14 claim still exists, but if it's to find out his relationship  
15 and his benefit, I'm not sure he can argue he doesn't benefit  
16 if he gets a salary.

17 MR. GREENBERG: I understand, Your Honor, and his  
18 individual net worth, his income from other sources is not  
19 within the scope of what should be disclosed here. If the  
20 wording includes that, then that's too broad; I agree, Your  
21 Honor. That's not the purpose of the inquiry here.

22 The other thing I was going to get to about this is I  
23 think this really is an issue that's addressed to bifurcation  
24 possibly with Judge Cory as the trial Judge. I mean, if Judge  
25 Cory intends for all the issues, all of the liability issues in

1 this case to go in front of a single jury for one trial, then  
2 that jury is going to have to hear evidence on whether there  
3 was benefit to Mr. Nady from his relationship with the  
4 corporation.

5 And I don't know how this sort of evidence dealing  
6 with his financial gain from the corporation's activity cannot  
7 come in to that review of factual information that the jury's  
8 going to have to weigh. Now, Judge Cory might prefer to  
9 bifurcate that. That's quite possible. I understand that, but  
10 at the moment I have no bifurcation order from him. Defendants  
11 have not requested bifurcation. So --

12 THE DISCOVERY COMMISSIONER: So what do we really  
13 need? See, that's where I'm struggling. What do we really  
14 need to show? I mean you can ask him what his salary is.

15 MS. RODRIGUEZ: He has.

16 THE DISCOVERY COMMISSIONER: Okay.

17 MS. RODRIGUEZ: Because if I'm recalling correctly,  
18 that was a bone of contention between us --

19 MR. GREENBERG: Yeah --

20 MS. RODRIGUEZ: -- is that in that last 30(b)(6), the  
21 very first one, he started off asking him whether he received a  
22 salary, did he take a draw, all of those.

23 THE DISCOVERY COMMISSIONER: Okay. Well --

24 MS. RODRIGUEZ: Those questions have been answered.

25 MR. GREENBERG: No, they -- Your Honor, he didn't

1 answer them. He said he didn't know.

2 THE DISCOVERY COMMISSIONER: Okay. So again my  
3 vision for this final deposition of Mr. Nady would be the one  
4 day, seven hours. I would request that you stick with your  
5 deposition topics on the 30(b)(6) that he has not addressed.  
6 You can go back and look at the first deposition. If he did  
7 not answer questions, you can reask them until we get some  
8 answers.

9 But from a document perspective, how can we narrow  
10 this so it gives you what you need without opening the full  
11 financial picture? Because I don't think you're entitled to  
12 that right now. If he says I got a salary, do you need a proof  
13 of a -- I don't know if he gets a 1099 or a W -- I don't know  
14 how he is paid out of the corporation. You need to find that  
15 out.

16 If there's supporting documentation that shows how  
17 he's paid, I'd probably be willing to give you that and whether  
18 it -- you know, properly redacted so income from other sources  
19 are not disclosed, but whether it's a W-2, a 1099 from the  
20 corporation, how is he paid? I suspect --

21 MR. GREENBERG: Your Honor, because it's an LLC --

22 THE DISCOVERY COMMISSIONER: How would it be paid?

23 MR. GREENBERG: Well, it's not just a question of a  
24 salary. I mean, he may get a draw. He may get distributions.

25 THE DISCOVERY COMMISSIONER: Right.

1           MR. GREENBERG: Earnings may be retained within the  
2 corporation as well, increasing the value of the corporate  
3 assets. He's the sole shareholder. So if the corporation's  
4 making a profit, and that profit is retained by the  
5 corporation, that's essentially property that he's increased  
6 the value as a result of the corporation's activities, as a  
7 result of the corporation's allegedly illegal activities. So  
8 he's benefited to that extent.

9           So, Your Honor, he could simply answer detailed  
10 interrogatories, and we could do that as a first step. Tell  
11 us -- you know, answer, tell us what was the value -- net value  
12 of the corporation's assets at the beginning, at the end of  
13 each of these years' time period. What did you receive in  
14 terms of property distributions, you and your family members?  
15 What did you receive in the form of salary during the time  
16 period?

17           THE DISCOVERY COMMISSIONER: Why would the family  
18 members be relevant?

19           MR. GREENBERG: Well --

20           THE DISCOVERY COMMISSIONER: Because if you have to  
21 show that he benefited, I'm not really willing to go into the  
22 family members' financial. They're not parties to this  
23 litigation.

24           MR. GREENBERG: Your Honor, I'm not interested in  
25 their financial status, but if they're receiving distributions

1 from the corporation, then if it's -- not, you know, if it's  
2 his cousin or something, I'm not going to -- you know, three  
3 times removed, I'm not going to get into that, but if it's his  
4 spouse, if it's his child, Your Honor, it is germane here  
5 because I mean it should be -- it could be and should be  
6 imputed to him, or at least that's an issue for somebody to  
7 weigh at trial, Your Honor.

8 He can answer detailed interrogatories as to these  
9 issues. We can see what he has to say. If further  
10 documentation of the financials themselves would be justified,  
11 we can visit that at that point. I'm willing to go through  
12 stages here, but he should at least have to place -- and it's  
13 going to be confidential, Your Honor. It'll all be under seal.  
14 It won't go anywhere, but he should at least have to come in at  
15 some stage at this point to demonstrate what financial benefit,  
16 if any. For all we know, the corporation has made no money, or  
17 maybe it's been very nominal. So that would provide him with a  
18 significant defense.

19 Again, Your Honor, if these claims are not  
20 bifurcated, I need to be able to come at trial and provide  
21 documentation as to the benefit to Mr. Nady. If Mr. Nady's  
22 total benefit for over the five-year period is only a hundred  
23 thousand dollars, then arguably that's the limit of his  
24 liability as well. So this goes to his defense. If Mr. Nady  
25 simply wants to stipulate that he's going to be liable if the

1 corporation doesn't pay, then I don't need to do any of this,  
2 but he's not going to agree to that, and he has a right to make  
3 his defense. I understand that, Your Honor.

4 THE DISCOVERY COMMISSIONER: So here's what I'm  
5 concerned about. I think that -- again I go back to what do  
6 you really need right now, and I think what you need to find  
7 out is the relationship between Mr. Nady and the corporation,  
8 how he was paid, and he'll need to answer those questions, what  
9 distributions were made.

10 And I think you can talk about distributions to  
11 family members generally. I don't know if the amount -- again,  
12 you know, you're walking a very narrow path here because you do  
13 not want to invade the privacy of nonparties. I know they're  
14 family members. I think you can ask: Do any of your family  
15 members receive distribution of funds from the corporation?  
16 But I think the amount, I'm not really willing to require him  
17 to answer at least at deposition. I'll have to think about  
18 that further because I don't know -- then he'd have to be  
19 liable for those distributions.

20 I think you're entitled to know the total amount of  
21 distributions made for the year to him or to others. That  
22 might be something you could ask. I think you are probably  
23 entitled to know the amount of his distributions and how he did  
24 that. Was it a draw? I think you're certainly entitled to  
25 know whether the corporation made a profit in the years at

1 issue, and how much did they make? So I think these types of  
2 questions can be asked of him and answered.

3 Now, in terms of the supporting documentation, I  
4 think we need to get those answers first. I think -- I don't  
5 know how the distribution is made, but I think he needs to be  
6 able to show documentation to support the money that he  
7 received from the corporation.

8 MR. GREENBERG: Yes.

9 THE DISCOVERY COMMISSIONER: I think he also needs to  
10 show the net -- you know, what the profit was.

11 MR. GREENBERG: Your Honor, given that we have a  
12 number of topics to get into in the deposition, I understand  
13 you believe it's more appropriate for Mr. Nady to answer  
14 questions about these issues as you've outlined.

15 THE DISCOVERY COMMISSIONER: Or interrogatories.

16 MR. GREENBERG: Yes, I would prefer to do it  
17 through --

18 THE DISCOVERY COMMISSIONER: Yeah, you can do either  
19 way, and maybe that's what we do, is we protect -- right now I  
20 protect the discovery as served, but I allow you to go back and  
21 send detailed interrogatories on the financial information you  
22 need and the request to produce for specific supporting  
23 documentation.

24 I don't know why you need -- see I'm just -- do we  
25 need the taxi cab? What tax returns, if any, have been

1 disclosed?

2 MR. GREENBERG: None.

3 THE DISCOVERY COMMISSIONER: Okay.

4 MS. RODRIGUEZ: No.

5 THE DISCOVERY COMMISSIONER: So I would think we  
6 probably should have the corporate tax returns at least for the  
7 net profit, the profit losses made if that in fact is part of  
8 the demonstration of these claims. Now, usually if it's for  
9 purposes of punitive damages, I don't require that until 30  
10 days prior to trial, but with respect to Mr. Nady himself, I  
11 think the issue would be his own financial interest in the  
12 corporation and what distributions and payments have been made  
13 to him, and how do you prove that? Well, you probably prove it  
14 through some filings with the IRS I would think.

15 MR. GREENBERG: It would be a K-1 form, Your Honor.

16 THE DISCOVERY COMMISSIONER: A K-1.

17 MS. RODRIGUEZ: Yeah, I think that's fair, Your  
18 Honor. That makes sense, and, I mean, I don't know what it is  
19 and the circumstances, if there is a 1099, or a W-2, or a K-1,  
20 but I will go back and check.

21 THE DISCOVERY COMMISSIONER: It's probably a K-1,  
22 yeah.

23 MS. RODRIGUEZ: Well, it's an LLC, yeah. So.

24 THE DISCOVERY COMMISSIONER: Right.

25 MR. GREENBERG: Your Honor, just to be clear on the

1 record here, a K-1 will say what was distributed to Mr. Nady,  
2 but it's conceivable distributions may have been made even if  
3 the company wasn't unprofitable. So arguably me just  
4 knowing --

5 THE DISCOVERY COMMISSIONER: But you'll have both.

6 MR. GREENBERG: Well, right. That's what I just  
7 said. To see if there truly could establish a benefit, we need  
8 to look at the bigger picture. That's all I'm saying, which  
9 Your Honor understands.

10 THE DISCOVERY COMMISSIONER: So I'm trying to figure  
11 out what is the minimum financial information I can require the  
12 defendant to disclose to be able to meet your requirements for  
13 trial, and the punitive damage information, usually I say three  
14 years of net worth. So I don't know how that's going to play  
15 in this type of a case, but let's -- we're talking about the  
16 years from 2007 through 2015; is that correct?

17 MR. GREENBERG: Yes, Your Honor.

18 THE DISCOVERY COMMISSIONER: All right. So if we  
19 look at those years, we'll need to have Mr. Nady supply his  
20 distribution -- written proof of distribution for those years.

21 MR. GREENBERG: That would be the K-1 --

22 THE DISCOVERY COMMISSIONER: Or the however, 1099 or  
23 however it's done.

24 MR. GREENBERG: Right.

25 THE DISCOVERY COMMISSIONER: I doubt it's a W-2, but

1 I don't know that.

2 MR. GREENBERG: Well, to the extent he draws a salary  
3 as well, which presumably he does, then the W-2 should be  
4 produced as well.

5 THE DISCOVERY COMMISSIONER: So whether it's a  
6 distribution or a salary or however he's paid or both, that  
7 supporting documentation for Mr. Nady needs to be supplied for  
8 the years 2007 to 2015.

9 MR. GREENBERG: Yes, and in addition the corporate  
10 return, which would probably be an 1120 SS --

11 THE DISCOVERY COMMISSIONER: I think --

12 MR. GREENBERG: -- or 1120 --

13 THE DISCOVERY COMMISSIONER: -- the corporate returns  
14 are going to probably have to be provided.

15 MS. RODRIGUEZ: Well --

16 THE DISCOVERY COMMISSIONER: I don't necessarily see  
17 a way around that.

18 MS. RODRIGUEZ: I'm not sure why -- what the basis is  
19 for that because it sounds like --

20 THE DISCOVERY COMMISSIONER: Do you have --

21 MS. RODRIGUEZ: -- he's still looking at a back door  
22 to this postjudgment discovery on the corporate returns. I  
23 understood the profits. I mean, we can disclose that.

24 THE DISCOVERY COMMISSIONER: How about a profit and  
25 loss statement that was approved or filed?

1 MS. RODRIGUEZ: I think that's fair.

2 MR. GREENBERG: Well, I mean, Your Honor, yeah, the  
3 corporate return for a business that size would include the P  
4 and L. It's required, but --

5 THE DISCOVERY COMMISSIONER: Well, why don't we start  
6 with the P and L?

7 MR. GREENBERG: Okay. Then we will --

8 THE DISCOVERY COMMISSIONER: For the corporation for  
9 those years, and again here's my concern. Your trial date  
10 right now is 1/3 of '17, no?

11 MR. GREENBERG: That is to be changed until May, I  
12 believe.

13 MS. RODRIGUEZ: Yes.

14 THE DISCOVERY COMMISSIONER: Okay. Well, let me tell  
15 you what.

16 MR. GREENBERG: Well, that's --

17 THE DISCOVERY COMMISSIONER: The IRS does not work  
18 very quickly. So, Defense Counsel, if I were you, I would make  
19 sure I had complete financial records for your clients, both  
20 the company and Mr. Nady for that time frame.

21 MS. RODRIGUEZ: Yes, Your Honor.

22 THE DISCOVERY COMMISSIONER: And that doesn't mean  
23 you have to turn them all over right now, but the last thing I  
24 want is for us to be signing an IRS release form in April  
25 because you're not going to get the information. So that has

1 to happen, but today, you know, we're not collecting a judgment  
2 today. For today, what we need is to know what the  
3 profitability of the corporation was during 2007, 2015, and  
4 what distributions or salary Mr. Nady received for that same  
5 time frame, and then you all can take a look at that  
6 information and use it as you see fit.

7 MR. GREENBERG: I think that substantially addresses  
8 my concern, and let's work with that at the moment. If there  
9 is anything additional on that, I'll bring it to the Court's  
10 attention, but I am hopeful that we'll address what we need to  
11 address on that issue, Your Honor.

12 THE DISCOVERY COMMISSIONER: So on the defendant's  
13 motion for protective order, let me deal with that first. I'm  
14 going to have defense counsel prepare that report and  
15 recommendations.

16 I'm going to grant it in part and deny it in part.  
17 I'm going to probably deny it in large part, but I'm going to  
18 grant the protective order with respect to the written  
19 discovery that was served. So that includes both  
20 interrogatories and request to produce that are identified in  
21 the motion; however, I am providing alternative relief in that  
22 the defendant will provide supporting documentation and  
23 identification of distributions, salary, payment. Mr. Nady  
24 will provide that for the years 2007, 2015. That's number one.  
25 Number two, the corporate entity, A Cab Taxi Service

JD Reporting, Inc.

1 will provide its profit and loss statements for those years  
2 2007 to 2015.

3 The remainder of the financial information requested  
4 is protected at this time, but the Discovery Commissioner will  
5 revisit the issue, especially if it appears that punitive  
6 damages are going to be part of the trial.

7 And defendant is also required to ensure that  
8 complete financial records for those years for both Mr. Nady  
9 and his corporation are maintained pending further disclosure  
10 being ordered or recommended.

11 Okay. So that takes care of the -- oh, and then the  
12 deposition is going to go forward. I am going to limit it to  
13 one day, seven hours. It will be both in his individual  
14 capacity and representative capacity, specifically as a  
15 30(b)(6) witness. The deposition topics will not repeat topics  
16 that have already been addressed at the prior deposition. The  
17 parties may also agree to provide the information requested in  
18 some other format, whether by stipulation, interrogatory  
19 request to produce instead of deposition categories, but  
20 otherwise Mr. Nady, will be deposed both as the 30(b)(6)  
21 witness and in his individual capacity. I'm just limiting the  
22 deposition to the one day, seven hours.

23 Yes, sir.

24 MR. GREENBERG: One question about what I was hearing  
25 from you about the testimony that was given at the prior

1 deposition. Mr. Nady at the prior deposition, which did  
2 concern the record-keeping and the maintenance of records by  
3 the company, he stated on the record that he did not have  
4 knowledge and that other individuals did have knowledge as to  
5 certain subjects. So he was just an uninformed and unprepared  
6 30(b)(6) witness at that time, Your Honor. I don't believe  
7 defendants should be excused from now providing informed  
8 testimony as to those subject matters, Your Honor.

9 THE DISCOVERY COMMISSIONER: So let me just add the  
10 caveat that to the extent that other witnesses for the  
11 defendant may be more appropriate for the 30(b)(6) deposition  
12 part of the notice, then those witnesses will need to be  
13 provided. So maybe what you want to do is this. Maybe you  
14 want to issue your 30(b)(6) notice for the same day, same time,  
15 separately from the individual notice for Mr. Nady for the same  
16 date, same time, and then what I would recommend you do is  
17 depose maybe him -- you know, if there's some other witness  
18 there, maybe you take their deposition, and let them be  
19 through, and then let Mr. Nady be deposed.

20 But the one day, seven hours is limited to Mr. Nady.  
21 So this is going to be difficult to figure out unless I start  
22 splitting hours, and I really don't want to do that.

23 MR. GREENBERG: Well, Your Honor --

24 THE DISCOVERY COMMISSIONER: I could just say  
25 Mr. Nady's deposition will be limited to five hours in his

1 individual capacity. It seems to me I've done this before, and  
2 then the 30(b)(6) deposition will be one day, seven hours. So,  
3 you know --

4 MR. GREENBERG: Your Honor, I'm certainly --

5 THE DISCOVERY COMMISSIONER: -- is there a better way  
6 to do this?

7 MR. GREENBERG: I'm certainly -- if those were the  
8 parameters, I'm certainly willing to, you know, go to five  
9 hours, not seven hours in the spirit of cooperation here and  
10 respect to his individual testimony because honestly that  
11 should be less extensive I believe, Your Honor.

12 THE DISCOVERY COMMISSIONER: I'm just trying to think  
13 of the best way to do this, and I don't want to put false --  
14 not false, artificial limitations on you. I want you to take  
15 the deposition that makes sense, but I'm trying to think. I'm  
16 not sure if we have another deponent we're going to be able to  
17 complete this in one day, seven hours. That's my only concern.  
18 So I'm wondering if I just give you like two days, one full  
19 day, and a half a day, for completing the 30(b)(6) deposition  
20 and Mr. Nady's.

21 MR. GREENBERG: Your Honor, I think that's fine. My  
22 concern, Your Honor, is in respect to the 30(b)(6) deposition.  
23 When we went with this before, and that was limited just to  
24 these data record-keeping subject matters, Mr. Nady was  
25 fundamentally unprepared. He testified under oath he did

1 nothing to prepare. He had no information. He identified  
2 other sources of information during the deposition. I don't  
3 want a repeat of that, Your Honor. You understand.

4 THE DISCOVERY COMMISSIONER: No, I don't either. I  
5 don't want a repeat of that either, but here's my thought, and  
6 just bear with me a minute. What I don't want to do --

7 Ms. Rodriguez, are you going to have more than one?

8 MS. RODRIGUEZ: I'm going through the categories  
9 again, Your Honor, and that's my problem. I think that we need  
10 to get on the same page of what categories we're going to ask  
11 about because this is a bit overwhelming, and I think even if  
12 he only asked one question on each one of these we'd probably  
13 be at the seven hours, and so I really do want to work with  
14 Mr. Greenberg on this.

15 But this is what I was trying to discuss with him  
16 outside, and I kind of laughed telling him help me help you  
17 because if we can get on the same page about what the  
18 categories are, we can have the right person, and we can have  
19 the right questions prepared for, but this is -- and I don't  
20 mean to get sidetracked on this, Your Honor, but I have two  
21 issues.

22 One, I want to make sure we set this deposition on a  
23 date that you're available should we run into some issues, and  
24 I also want the deposition to start in the morning. These are  
25 logistics, but they're very important because Mr. Greenberg

1 likes to start right before lunch and keep the witness from  
2 having lunch and logistical issues like that. So it may sound  
3 petty, but it's important because we don't need to be there  
4 until 7 or 8 o'clock at night if we're going to have hours set  
5 by Your Honor, and I do want to get this done.

6 But the other issue that goes hand-in-hand with the  
7 categories and making sure we have the right person and what  
8 kind of led to a breakdown the first time is that Mr. Greenberg  
9 has in his mind that regardless of the categories or the notice  
10 that he can ask questions outside of the scope of the notice,  
11 and I can just merely object that it's improper, but the  
12 witness still needs to answer the question.

13 THE DISCOVERY COMMISSIONER: That's true.

14 MS. RODRIGUEZ: It is true, but if we're working to  
15 try to have a person prepared to answer for the notice, we'll  
16 stick to the notice rather than I'm going to prepare a witness  
17 for 23 categories with subparts, and then he's going to say,  
18 well, but I'm not going to ask those. I'm going to ask other  
19 stuff, and you can object at the time of trial.

20 THE DISCOVERY COMMISSIONER: I just want to make sure  
21 I'm looking at the correct notice.

22 MR. GREENBERG: That is Exhibit A, the current  
23 30(b)(6) notice, Your Honor.

24 THE DISCOVERY COMMISSIONER: Is Exhibit A, right?

25 MR. GREENBERG: Of the moving papers, Your Honor.

1 THE DISCOVERY COMMISSIONER: Okay. Good. Because  
2 there's 20 topics.

3 MS. RODRIGUEZ: 22, I believe.

4 THE DISCOVERY COMMISSIONER: Well, maybe I'm not  
5 reading it right.

6 MS. RODRIGUEZ: Yeah, I have 22.

7 THE DISCOVERY COMMISSIONER: Well, I have -- I have  
8 20.

9 MS. RODRIGUEZ: Let's see. Exhibit --

10 THE DISCOVERY COMMISSIONER: It's Exhibit A to their  
11 response.

12 MS. RODRIGUEZ: Oh. Let me see.

13 MR. GREENBERG: Well, there's 22 topics.

14 THE DISCOVERY COMMISSIONER: Well, this --

15 MS. RODRIGUEZ: It's Exhibit A to my motion.

16 MR. GREENBERG: Exhibit A to the motion is -- there's  
17 22 topics. This is dated September 1st, 2016, Your Honor.

18 THE DISCOVERY COMMISSIONER: Okay. All right. I'm  
19 looking at an old one. I'll tell you what I'd like to do. I'd  
20 like to take a quick break and let you two talk a little bit --  
21 the three of you, I'm sorry. There's three of you. Sorry --

22 MS. SNIEGOCKI: It's okay.

23 THE DISCOVERY COMMISSIONER: -- just go through these  
24 briefly. We need to take a quick break. I'll be back. We'll  
25 go through them, and I think some of these I might just say do

1 an interrogatory. Do an interrogatory. Let's do some  
2 alternative form of discovery, like for the affirmative  
3 defenses. Really, I'm sorry. I'm working as quickly as I can.  
4 I know it's late, and I appreciate your patience.

5 But I really think that we just need to go through  
6 these topic areas. At least you have to give me a better idea.  
7 I am looking at trying to be more efficient in discovery. The  
8 rules do allow you to discover information however you choose  
9 to do it, but I think it's time we really looked at our  
10 practices, and there is no reason that the affirmative defenses  
11 can't be sent out by interrogatory versus torturing Mr. Nady  
12 about them.

13 MR. GREENBERG: Your Honor, I don't think the  
14 affirmative defenses have any basis whatsoever. I mean, they  
15 should be withdrawn. This is a strict liability statute, but  
16 they made these affirmative defenses. So to the extent that  
17 they're objecting to the burden of providing discovery on them,  
18 Your Honor --

19 THE DISCOVERY COMMISSIONER: Well, I'm not --

20 MR. GREENBERG: -- it's a problem of their own  
21 making.

22 THE DISCOVERY COMMISSIONER: I'm not saying they  
23 don't get discovery on them. I'm saying let's do it via  
24 interrogatory versus a 30(b)(6) deposition.

25 MR. GREENBERG: Your Honor, if you wish, we can

1 certainly proceed in that fashion. The problem is that --  
2 well, Your Honor, you want us to do that; we can do that.

3 THE DISCOVERY COMMISSIONER: And, we'll --

4 MR. GREENBERG: We can exclude that subject matter  
5 entirely from the 30(b)(6) deposition. At this point I will  
6 serve interrogatories. I'd like the Court to expressly  
7 authorize that those interrogatories can exceed whatever my  
8 normal scope would be.

9 THE DISCOVERY COMMISSIONER: I was going to say you  
10 probably need more. So I was going to give you 40 additional  
11 interrogatories to take care of business.

12 MR. GREENBERG: Okay. Thank you. No, I will proceed  
13 on that area in that fashion. We will see where it leads us,  
14 Your Honor.

15 THE DISCOVERY COMMISSIONER: All right. So just take  
16 a few minutes. Talk about the categories. See what you  
17 realistically can do, and then let me think. I'll also think  
18 about the best way to handle the time frame for all of this.

19 MR. GREENBERG: Yes, Your Honor.

20 THE DISCOVERY COMMISSIONER: Thank you.

21 MR. GREENBERG: Thank you, Your Honor.

22 (Proceedings recessed 11:08 a.m. to 11:24 a.m.)

23 THE DISCOVERY COMMISSIONER: Sorry for the delay.  
24 Please feel free to have a seat. So here's what I'm thinking.  
25 I'm sure you all will let me know what you worked on, but what

1 I'm thinking is that why don't I just have the 30(b)(6)  
2 deposition one day, seven hours.

3 And, Defense Counsel, you provide the individuals  
4 that need to be responsive to those categories.

5 If the deposition of Mr. Nady goes over, that's fine.  
6 Then I'll give his deposition an extra day, three and a half  
7 hours, and if you need more time, you still aren't done, then I  
8 expect you to work it out together.

9 MR. GREENBERG: Your Honor, I think what you're  
10 saying is that let's reserve a full day for the 30(b)(6).

11 THE DISCOVERY COMMISSIONER: Right.

12 MR. GREENBERG: And a half a day for Mr. Nady  
13 separately. Let's try that, Your Honor. I'm really trying to  
14 be cooperative here.

15 THE DISCOVERY COMMISSIONER: I know.

16 MR. GREENBERG: I understand Your Honor's trying real  
17 hard to move this along.

18 Just one thing in respect to the 30(b)(6) deposition.  
19 There was discussion about these issues of the health insurance  
20 records and this Excel file that was being -- you know, the  
21 providing of these declarations that was part of the last  
22 report and recommendation, Your Honor. I think it would -- at  
23 this point, Your Honor, I would welcome the declarations  
24 regarding the attempts to locate the information, but you know  
25 something, I think I really should just inquire about this at a

1 deposition, and those should be 30(b)(6) deposition topics as  
2 well, Your Honor, because I just don't see that I'm getting,  
3 you know, that resolved, that issue resolved.

4 THE DISCOVERY COMMISSIONER: Get the declarations,  
5 and then put a topic area for that.

6 MR. GREENBERG: Okay. Just so it's understood that  
7 that's appropriate for me to inquire about, okay. Yeah, the  
8 declarations could streamline things.

9 We were discussing by the way, Your Honor --

10 MS. RODRIGUEZ: Hold on before you move on.

11 MR. GREENBERG: Yes.

12 MS. RODRIGUEZ: Are we just talking about one?  
13 Because I'm hearing plural, and I think we're just talking  
14 about one Excel spreadsheet, right? Is that what you want?

15 MR. GREENBERG: Yeah, there's just a question of one  
16 thing that this Excel spreadsheet --

17 THE DISCOVERY COMMISSIONER: There was a declaration  
18 that dealt with the Department of Labor.

19 MR. GREENBERG: Yes, Your Honor.

20 THE DISCOVERY COMMISSIONER: Is that what you're  
21 talking about? Because that's the declaration. So --

22 MR. GREENBERG: Right. It was --

23 THE DISCOVERY COMMISSIONER: -- obtain the  
24 declaration, then put it as a topic area for the 30(b)(6).

25 MR. GREENBERG: The other issue was the search for

1 the health insurance records, which, Your Honor, was also  
2 addressing.

3 THE DISCOVERY COMMISSIONER: That's fine.

4 MR. GREENBERG: Okay. I'm just --

5 THE DISCOVERY COMMISSIONER: Put that as a topic  
6 area.

7 MR. GREENBERG: I'm sorry to burden the Court --

8 THE DISCOVERY COMMISSIONER: No, you're not burdening  
9 me at all.

10 MR. GREENBERG: -- with more of these details, Your  
11 Honor. You know, otherwise, Your Honor, we were talking  
12 about -- well, you've given us a guideline for how to proceed  
13 with the deposition. We've spent a lot of time, of your time  
14 here. You gave us instruction on the production of various  
15 information, the financial information regarding Mr. Nady.

16 All I would like to say is let's proceed with the  
17 guidance you've given us. There was discussion about what's  
18 been accomplished with the QuickBooks production and the Cab  
19 Manager production, Your Honor. At this point I do think the  
20 QuickBooks production is resolved as best as I can tell. I  
21 don't want to say that a hundred percent. If there are issues,  
22 I will come back and document them to the Court, but I'm not  
23 aware of any at the present time.

24 In respect to the Cab Manager production, I just want  
25 to explain to the Court that I do have a concern, which is that

1 the data before 2013 lacks a substantial amount of information.  
2 It essentially has no time of day information. It only  
3 indicates that somebody worked, and I have spoke with some  
4 computer consulting people about this.

5 The data after 2013 has detailed time information,  
6 drop of the flag information, when the fares were posted, when  
7 the cab went in and when the cab went out. It doesn't make  
8 sense certainly on an off-the-cuff basis that the data would be  
9 preserved without that complete set of information, the time  
10 information prior to 2013. It just doesn't make sense. So I  
11 do want to inquire about what was done to gather that  
12 information, and presumably I have leave to do that.

13 I don't need to ask the Court's permission to inquire  
14 about that or pursue that at a deposition or otherwise or  
15 through nonparty discovery potentially, but I did just want to  
16 bring it to the Court's attention because we have been  
17 exploring this question of production. They have certainly  
18 produced to me a set of data that covers the time period of the  
19 Cab Manager, and I concede that. It's just that's the only  
20 issue that I have open in my mind about that, and I wanted to  
21 advise the Court.

22 THE DISCOVERY COMMISSIONER: Well, you may be able to  
23 talk to defense counsel about that and see if there's a way to  
24 resolve it. If not, make it a category.

25 MS. RODRIGUEZ: I can respond to that because when we

1 talked outside I misunderstood you, Mr. Greenberg.

2 MR. GREENBERG: Yeah.

3 MS. RODRIGUEZ: You were using the term QuickBooks,  
4 and that wasn't making any sense to me why that wasn't there  
5 pre2013, but now that I hear him speaking and he's saying Cab  
6 Manager, and what we talked about was that the categories are  
7 showing up, but it's blank; am I correct?

8 MR. GREENBERG: Well, there simply is no time of day  
9 information of any sort.

10 MS. RODRIGUEZ: Okay. It's my understanding -- and  
11 he is welcome to ask about this in the deposition, but it's my  
12 understanding because this has surfaced before, and I think we  
13 had talked about this, that information just it wasn't being  
14 captured. I think it's time in, time out, time activities.  
15 It's just not being captured.

16 MR. GREENBERG: Right.

17 THE DISCOVERY COMMISSIONER: Well, then produce  
18 someone who can discuss that and why.

19 MS. RODRIGUEZ: Yeah.

20 MR. GREENBERG: Okay.

21 MS. RODRIGUEZ: It's not an issue, Your Honor.

22 MR. GREENBERG: I appreciate the cooperation of  
23 defense counsel, and your help, Your Honor. I don't know that  
24 there's more we need to take up your time with right now.

25 THE DISCOVERY COMMISSIONER: Well, we have the health

1 plans, the detailed costs of employee per coverage of families  
2 versus individuals. I would think you could just do a category  
3 or include a category, right? Is there one included in your  
4 30(b)(6)?

5 MR. GREENBERG: That is asked. That is in the  
6 deposition notice. This is asked interrogatories that Your  
7 Honor directed be answered in the last report and  
8 recommendation which we will be submitting for Your Honor to  
9 send to Judge Cory.

10 THE DISCOVERY COMMISSIONER: Okay.

11 MR. GREENBERG: So I think we are making progress on  
12 that. I was saying we didn't want to take more of your time.

13 THE DISCOVERY COMMISSIONER: That's okay.

14 MR. GREENBERG: But there is this question of a  
15 schedule, a schedule going forward for this case, Your Honor.  
16 What I would propose the Court give us is a schedule would be a  
17 conclusion of discovery in this case by the end of March with a  
18 expert report by the end of this year, December, and I'm asking  
19 for that, Your Honor, because again I have just recently  
20 managed to get a hold of the necessary information in respect  
21 to the expert disclosures, if we're going to having a  
22 designated expert. I think there's a reasonable chance we may,  
23 and I'd like some time to work on that.

24 I think that's a reasonable schedule, Your Honor.  
25 The parties have been discussing about perhaps pursuing

1 mediation, but I don't know if that will -- if that will come  
2 to fruition, Your Honor. So we need to do our work here to  
3 move this case.

4 THE DISCOVERY COMMISSIONER: I can give you a  
5 scheduling order to include in the report and recommendations  
6 today the defense counsel is going to prepare. I just need to  
7 know when the Court is actually going to set the case for  
8 trial.

9 MS. SNIEGOCKI: We had it as May 3rd. There's an  
10 order with Judge Cory right now.

11 THE DISCOVERY COMMISSIONER: May 3rd?

12 MS. SNIEGOCKI: Yeah.

13 THE DISCOVERY COMMISSIONER: Okay. So here's the  
14 only problem. The dispositive motions would have to be  
15 filed -- and he may put this in his order -- at least by March  
16 23rd, and I don't know if you intend to file dispositive  
17 motions or not, but they're going to have to be filed by March  
18 23rd to be set and heard before trial.

19 MR. GREENBERG: Right.

20 THE DISCOVERY COMMISSIONER: So, you know, I can take  
21 your discovery out further than that, but the reality of it is  
22 that you're going to have to have those dispositive motions  
23 filed by March 23rd.

24 MR. GREENBERG: I'm willing to work with that time  
25 frame, Your Honor, in respect to the dispositive motions. I

1 presume it would be -- I would be the one likely to be making  
2 them or probably in part. I don't know that defendants would.

3 MS. RODRIGUEZ: Oh, yes, we would be filing those,  
4 and I'm a little confused because I got the proposed  
5 stipulation.

6 I believe this is your proposed stipulation and  
7 order, and we did have those dates. Am I wrong that our close  
8 of discovery is still February 28th, 2017, and --

9 MR. GREENBERG: Yeah, I was requesting that those be  
10 addressed at essentially 30 days. I mean, we had February  
11 28th. I was proposing end of March because the expert report  
12 under that schedule would be initially due --

13 THE DISCOVERY COMMISSIONER: November --

14 MR. GREENBERG: November 29th.

15 MS. RODRIGUEZ: November 29th, yes.

16 MR. GREENBERG: I'm finding that a little bit  
17 constraining given the time that I'm working with here and that  
18 I recently got the information. I'd like to have some more  
19 time to work on --

20 MS. RODRIGUEZ: Because that's my rebuttal,  
21 December 29th. This is what I had received from their office.

22 Does Your Honor want a copy of this?

23 THE DISCOVERY COMMISSIONER: No, that's okay.

24 MR. GREENBERG: Well, Your Honor, when that was  
25 furnished we had hoped to have the 30(b)(6) deposition done or

1 scheduled. Imminently we're probably not going to get to these  
2 depositions for another 30 days I would suspect at this point  
3 given, you know, schedule of counsel and so forth.

4 THE DISCOVERY COMMISSIONER: It is definitely March  
5 3rd -- or May 3rd is the trial date?

6 MS. SNIEGOCKI: It's not that it's definite. That  
7 was the proposed order that we submitted to Judge Cory that  
8 we're waiting to be signed. You had referred to his minute  
9 order where he was addressing the evidentiary. It's in there  
10 that he agrees to continue the trial. So we continued it by  
11 120 days.

12 THE DISCOVERY COMMISSIONER: But he didn't give you a  
13 specific date?

14 MR. GREENBERG: He didn't.

15 MS. SNIEGOCKI: No, he didn't.

16 MR. GREENBERG: He did not, Your Honor, and I am  
17 quite confident he would be cooperative with the parties in  
18 terms of moving that to June if we wanted, or some time later  
19 in the year. We're not going to have -- this case was under  
20 stay for an extended period of time.

21 THE DISCOVERY COMMISSIONER: Oh, that's right. I  
22 remember.

23 MR. GREENBERG: We're not going to have a  
24 trial-readiness issue, you know, for maybe another -- more than  
25 another year is my understanding until the second quarter or

1 something of 2018. So I don't think that Judge Cory should  
2 have a problem with that. We do need to move this case  
3 nonetheless. I do understand it is quite --

4 THE DISCOVERY COMMISSIONER: Well, you would be ready  
5 for trial June 12th of 2017, with your proposed dates.

6 MR. GREENBERG: That would be fine, Your Honor.

7 THE DISCOVERY COMMISSIONER: Ms. Rodriguez?

8 MS. RODRIGUEZ: Well, I had this discussion with  
9 Mr. Greenberg, and our position is to -- you know, he's  
10 requesting stays. He's requesting tollings of statutes or the  
11 five-year rule, and I've informed him that this indeed is -- my  
12 client in all honesty really wants to move this along. We're  
13 trying to produce things as fast as possible, and I will  
14 certainly work to try to stipulate, as Your Honor requested or  
15 suggested, on a lot of these categories.

16 But our preference is to not continue to delay this.  
17 It is causing Mr. Nady quite a bit of stress. He is an older  
18 man.

19 THE DISCOVERY COMMISSIONER: It's causing all of us  
20 stress.

21 MS. RODRIGUEZ: Yes, ma'am, it is, but I tried to  
22 emphasize that to Mr. Greenberg that we don't want to stay it.  
23 We don't want to toll it any further. Let's get it done and do  
24 what we need to do. So these were their proposed dates, and  
25 I'm not sure why now they're asking for more time again.

1 MR. GREENBERG: Your Honor --

2 THE DISCOVERY COMMISSIONER: So did you have the  
3 dispositive motion 3/28 of '17 if the close of discovery was  
4 2/28?

5 MS. RODRIGUEZ: I don't have those dates. I don't  
6 know what that is.

7 MS. SNIEGOCKI: That's it right there where you're  
8 looking.

9 THE DISCOVERY COMMISSIONER: But you just said --

10 MS. RODRIGUEZ: Oh, I'm sorry.

11 THE DISCOVERY COMMISSIONER: -- you had the  
12 stipulation. What is -- what did you agree to?

13 MR. GREENBERG: Your Honor, there was --

14 MS. RODRIGUEZ: March 23rd. I'm sorry. It says  
15 2016. I got confused.

16 THE DISCOVERY COMMISSIONER: I'm sorry.

17 MS. RODRIGUEZ: March 23rd, 2017, now.

18 THE DISCOVERY COMMISSIONER: And then the close of  
19 discovery is when?

20 MS. RODRIGUEZ: February 28th, 2017.

21 THE DISCOVERY COMMISSIONER: Okay. So why don't I  
22 just move the expert disclosure deadlines?

23 MR. GREENBERG: That's fine. Just move that one day,  
24 and keep the February 28th. That's fine.

25 THE DISCOVERY COMMISSIONER: Keep everything else the

1 same?

2 MR. GREENBERG: Yes, Your Honor.

3 THE DISCOVERY COMMISSIONER: The only thing that it  
4 does is it will limit the time you have to complete discovery  
5 after the rebuttal disclosures.

6 MR. GREENBERG: Yes, Your Honor.

7 THE DISCOVERY COMMISSIONER: That's it. So why don't  
8 I go ahead, and we'll put in the report and recommendations  
9 that the initial expert disclosure deadline will be December  
10 23rd of 2016; that's the best I can do.

11 MR. GREENBERG: Thank you, Your Honor.

12 THE DISCOVERY COMMISSIONER: And that the rebuttal  
13 deadline will be January 23rd of 2017, and then all other  
14 dates will remain as proposed.

15 MR. GREENBERG: That's fine, Your Honor. That'll  
16 work with us.

17 THE DISCOVERY COMMISSIONER: Will that work?

18 MR. GREENBERG: Yes.

19 THE DISCOVERY COMMISSIONER: Okay.

20 MR. GREENBERG: I think we can make that go ahead  
21 okay.

22 THE DISCOVERY COMMISSIONER: All right. So again I  
23 will also give the plaintiffs an additional 40 interrogatories  
24 to ask what other questions need to be asked.

25 MS. RODRIGUEZ: Is that duplicative? Is it an

1 and/or, or are you giving them another 40 to ask in  
2 interrogatories, and they still can ask it in the 30(b)(6)  
3 deposition? Because I thought it was we were going to try to  
4 work --

5 THE DISCOVERY COMMISSIONER: Okay. Let me tell you  
6 what I envisioned. I envisioned that some of these categories  
7 were going to come off the 30(b)(6) notice and be put in  
8 interrogatories. I don't envision duplicative effort. So if I  
9 didn't make that clear, I'll make it clear now. Why would I do  
10 that? Let's pull off the topics like the affirmative defenses.  
11 We'll take those areas that are better served by  
12 interrogatories.

13 Now, let me say this, and this is the caveat I told  
14 the other group of lawyers the other day. If once you get your  
15 answers back to the affirmative defenses and there's ambiguity,  
16 it's not clear, there's problems, then I may allow them to take  
17 another 30(b)(6) deposition on those categories. So I would  
18 just request that counsel really spend some time answering the  
19 interrogatories so I'm not forced into a position of saying,  
20 okay, you know, the interrogatories didn't work here. We've  
21 got to take another deposition because that I do not want to  
22 do.

23 MS. RODRIGUEZ: That makes sense, Your Honor. I  
24 understand.

25 THE DISCOVERY COMMISSIONER: Okay. So I feel like --

1 I feel like I'm forgetting something.

2 MS. RODRIGUEZ: Oh. I'm still a little fuzzy, and  
3 I'm sorry.

4 THE DISCOVERY COMMISSIONER: No, that's all right.

5 MS. RODRIGUEZ: I've got to go back a little.

6 THE DISCOVERY COMMISSIONER: I'm probably not very  
7 clear.

8 MS. RODRIGUEZ: On the health-benefits issue, because  
9 Mr. Greenberg said that you'd ordered that in the prior  
10 Discovery Commissioner -- the DCR&R.

11 THE DISCOVERY COMMISSIONER: I think I ordered all  
12 the health plans and health plan information to be disclosed.

13 MS. RODRIGUEZ: Okay. Okay.

14 THE DISCOVERY COMMISSIONER: That's my recollection.  
15 So if you've signed that report and recommendation --

16 MS. RODRIGUEZ: I did.

17 THE DISCOVERY COMMISSIONER: You can put it in my  
18 lovely little metal box outside.

19 MR. GREENBERG: And we get all of that done, Your  
20 Honor; we won't have to inquire about it hopefully at a  
21 deposition.

22 THE DISCOVERY COMMISSIONER: Okay. So the  
23 continuance we need is -- do we need a continuance on this,  
24 or --

25 THE CLERK: November 18th at 11.

1 THE DISCOVERY COMMISSIONER: Okay. November 18th  
2 at 11 is for the report and recommendations, and I will not set  
3 this for another continuance unless you want me to.

4 MR. GREENBERG: Well, it could be helpful, Your  
5 Honor. I don't know at this point. I mean, we have work to do  
6 here, and I don't want to bother the Court excessively. I know  
7 Judge Cory was sort of --

8 THE DISCOVERY COMMISSIONER: Well, he kind of made  
9 me --

10 MR. GREENBERG: -- leaning on you to do something  
11 here, and I think you've been doing a lot in this case. So.

12 THE DISCOVERY COMMISSIONER: Why don't we do this.  
13 November 18th is a Friday. Thanksgiving is the following  
14 week. I don't know if that's problematic for anyone. What if  
15 I just put it --

16 It is for you?

17 MS. RODRIGUEZ: It kind of is, Your Honor. If we  
18 could maybe bump it up a week or --

19 THE DISCOVERY COMMISSIONER: I'd like to see you  
20 before you have to disclose your experts. What about Friday,  
21 December 2nd?

22 MR. GREENBERG: That would be fine, Your Honor.

23 THE DISCOVERY COMMISSIONER: How would that be?

24 MS. RODRIGUEZ: For a status check or --

25 THE DISCOVERY COMMISSIONER: Yes, and also on the

1 report and recommendations. You indicated -- you're preparing  
2 the report and recommendations. You indicated the 18th wasn't  
3 good for you.

4 MS. RODRIGUEZ: You know, I take that back, Your  
5 Honor. I'm sorry. I can do the 18th because I have my nephew  
6 coming in that evening, but this would be a morning thing.

7 THE DISCOVERY COMMISSIONER: Okay. So why don't we  
8 put a status check on the report and recommendations from  
9 today's hearing, as well as a status check on the overall case  
10 on November 18th at 9 a.m., and I apologize that I called you  
11 late. I've got your big-box here, and I just wasn't sure how  
12 much time it would take. Unfortunately, I didn't think about  
13 how much time everything else was going to take, too. So thank  
14 you for your consideration of the timing and your  
15 professionalism on that.

16 MS. RODRIGUEZ: Thank you, Your Honor.

17 MR. GREENBERG: Thank you, Your Honor, you've been  
18 very patient with us.

19 THE DISCOVERY COMMISSIONER: All right. So please  
20 prepare the report and recommendation, Defense Counsel. Run it  
21 by plaintiff's counsel to approve as to form and content.  
22 Hopefully we won't be talking about it November 18th. If you  
23 work things out, and you feel like you would like to either  
24 continue the conference a month, you don't need it on  
25 November 18, you can let us know, and we can always continue it

1 if we need to.

2 MR. GREENBERG: Yes, Your Honor.

3 THE DISCOVERY COMMISSIONER: All right. Good luck  
4 with everything.

5 MS. RODRIGUEZ: Thank you.

6 MR. GREENBERG: Thank you.

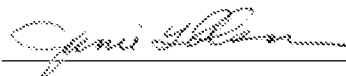
7 MS. SNIEGOCKI: Thank you.

8 THE DISCOVERY COMMISSIONER: Take good care.

9 (Proceedings concluded 11:42 a.m.)

10 -oOo-

11 ATTEST: I do hereby certify that I have truly and correctly  
12 transcribed the audio/video proceedings in the above-entitled  
13 case.

14  
15 

16 Janie L. Olsen  
17 Transcriber

39

39

*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, NOVEMBER 18, 2016

# RECORDER'S TRANSCRIPT OF PROCEEDINGS

STATUS CHECK: COMPLIANCE

APPEARANCES:

For the Plaintiffs:

LEON GREENBERG ESQ.,  
DANA SNIEGOCKI, ESQ.

For the Defendants:

ESTHER C. RODRIGUEZ, ESQ.  
MICHAEL K. WALL, ESQ.

RECORDED BY: FRANCESCA HAAK, COURT RECORDER

1 Las Vegas, Nevada - Friday, November 18, 2016, 9:04 a.m.

2 \* \* \* \* \*

3 DISCOVERY COMMISSIONER: Murray. I'm sorry. Can't read my own  
4 writing.

5 MR. GREENBERG: Close enough.

6 DISCOVERY COMMISSIONER: I obviously need more coffee. Come on  
7 up.

8 MR. GREENBERG: It's Friday, Your Honor.

9 DISCOVERY COMMISSIONER: Oh, I know. Could everyone state their  
10 appearances, please.

11 MR. GREENBERG: Leon Greenberg and Dana Sniegocki, for Plaintiffs, Your  
12 Honor.

13 MS. RODRIGUEZ: Good morning. Esther Rodriguez and Michael Wall, for  
14 the Defendants.

15 DISCOVERY COMMISSIONER: Good morning. So we're here on a status  
16 check on the case. I know that new case law has come down, which somewhat changes the  
17 landscape of this particular case, not necessarily for the substance of what needs to be  
18 discovered, but the time frame, because I think the statute of limitations was deemed to be  
19 two years, correct?

20 MR. WALL: That's correct.

21 DISCOVERY COMMISSIONER: So I had the Defendant preserve  
22 documents going back four years just in case and turn over two; I think that is adequate, at  
23 least the way I read the case law.

24 In addition, I think what the case law says is you just have to offer the  
25 insurance, and it doesn't even -- so the merits of the insurance itself I don't think is at issue,

1 except I think you can't charge more than a certain percentage of their wage.

2 MR. WALL: That's correct as well.

3 MR. GREENBERG: I think Your Honor is correct in that it's really a two-  
4 tiered inquiry at this point; was the insurance available to the worker; and what did the  
5 worker have to pay to exercise that option?

6 DISCOVERY COMMISSIONER: I don't know if I would use the word  
7 available because I don't know if that is really the test. I mean, it may not be available to  
8 certain workers because they just can't afford it or they choose not to do it. It doesn't have to  
9 be affordable, at least right now, until we have other case law on this. As I'm understanding  
10 it, all the employer has to do is offer the insurance; am I right on that?

11 MR. WALL: It just has to be offered and it just has to qualify under the law as  
12 being offered, and it doesn't matter how much they have to pay for it because the question is  
13 the statute I think was clear from the beginning, and the Court interpreted it as I said that the  
14 Court -- or as I suggested the Court would interpret it, and that is if the insurance was  
15 offered, then we know what the amount it, and if it wasn't offered, we know what the  
16 amount is in discovery into --

17 DISCOVERY COMMISSIONER: The type of insurance is really irrelevant.

18 MR. WALL: Exactly.

19 DISCOVERY COMMISSIONER: That's how I read the decision.

20 MR. GREENBERG: In this case, Your Honor, I don't really have any  
21 questions regarding the insufficiency of the plan that the employer was running here. It was  
22 a major medical plan. I'm not saying it was some sort of inadequate coverage to the extent  
23 the employee could participate.

24 DISCOVERY COMMISSIONER: Right.

25 MR. GREENBERG: But there are qualifications to participate. There's a

1 waiting period. You can't be part time, for example. So if you don't meet those  
2 qualifications, it's not available to you, assuming --

3 DISCOVERY COMMISSIONER: Right, but the statute doesn't require it to  
4 be, and I think that's -- I think you really need to go back and look at that case law. I don't  
5 think you have to give insurance to part-time employees, pretty confident of that.

6 MR. GREENBERG: Your Honor, the Labor Commissioner issued regulations  
7 actually stating that for a six-month waiting period it didn't have to be available, but you  
8 could still pay the lower minimum wage. The Labor Commissioner also issued regulations  
9 saying that in terms of computing the ten percent cost to the employee under the amendment  
10 you could include tip earnings. The Supreme Court struck down that tip earnings inclusion  
11 regulation from the Labor Commissioner --

12 DISCOVERY COMMISSIONER: Right.

13 MR. GREENBERG: -- and said the Labor Commissioner has no authority to  
14 issue regulations in this area, and the inquiry again is whether the employer has made the  
15 option of insurance accessible to the employee. The option of the insurance is not accessible  
16 for six months if you have to wait for six months to qualify, Your Honor. Given the  
17 Supreme Court's ruling, it's very clear that if the employer has a plan but you can't access it  
18 because you're on a waiting period or because you're in part-time status, you must be paid  
19 the 8.25, not the 7.25.

20 DISCOVERY COMMISSIONER: Is this an issue in this case or not?

21 MS. RODRIGUEZ: No, I don't believe so.

22 MR. GREENBERG: It is an -- it is an issue, it's a very important issue in this  
23 case.

24 DISCOVERY COMMISSIONER: Well, what is the issue; clarify it for me.

25 MR. GREENBERG: The issue, again, Your Honor, there's two issues. The

1 first issue is did employee Smith in April of 2016 have the ability and option to enroll in the  
2 plan; was he qualified; was he on a waiting period; was he part time? That is the first  
3 inquiry.

4 The second inquiry is what would it have cost Smith to actually participate in  
5 the plan --

6 DISCOVERY COMMISSIONER: It just can't be more than ten percent of the  
7 wage.

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

9 DISCOVERY COMMISSIONER: And you cannot include the tips. I  
10 understand that. But I don't think the first prong is correct. I think it's offer it, not whether  
11 or not the individual employee can actually access it. If you can point me to some part of  
12 that opinion that supports your position, I will reread it. I think there were a couple of  
13 opinions that came down.

14 MR. GREENBERG: It's the --

15 DISCOVERY COMMISSIONER: Three.

16 MR. GREENBERG: -- the MDC case that Your Honor -- that was issued the  
17 other week, Your Honor.

18 DISCOVERY COMMISSIONER: So let's just --

19 MR. WALL: No language in that case that supports the argument that's now  
20 being made, Your Honor.

21 DISCOVERY COMMISSIONER: I'm going to -- I'll reread all three of them.  
22 But here's my thought on this. Even assuming Plaintiff's counsel's position is correct, I  
23 don't see why we cannot answer this -- these issues in very simple interrogatories. What was  
24 your waiting period, you know.

25 MS. RODRIGUEZ: That's been answered.

1 DISCOVERY COMMISSIONER: I mean, right?

2 MR. GREENBERG: It has not --

3 MS. RODRIGUEZ: That's been answered.

4 MR. GREENBERG: -- been answered, Your Honor.

5 MS. RODRIGUEZ: I believe it has.

6 DISCOVERY COMMISSIONER: Okay. So then --

7 MS. RODRIGUEZ: I didn't bring it with me, but.

8 DISCOVERY COMMISSIONER: -- I'm -- So I go back to my initial  
9 question. Is this really an issue in this case in terms of discovery, not in terms of trial. I  
10 understand, you know, we'll see how that plays out, but in terms of discovery, it sounds like  
11 you have everything you need on the insurance front.

12 MR. GREENBERG: That is not correct, Your Honor, but --

13 DISCOVERY COMMISSIONER: What else do you need?

14 MR. GREENBERG: My position, Your Honor, is that it is Defendants'  
15 burden to show each employee had the option to participate in the insurance for every time  
16 period that they're claiming they could pay just the lower minimum wage. Judge Cory has  
17 not ruled on that issue. He has instructed in his prior order that Your Honor should help us  
18 try to get to the bottom of this, create an appropriate record as to what the insurance status  
19 was; I'm trying to do that, Your Honor.

20 The employer here every month was keeping tab of the status of each  
21 employee. If somebody fell out of compliance because they went to part-time status, they  
22 would have Cobra access or they'd have to pay a higher premium to access the insurance.  
23 The employer knew that. They told the employee, hey, if you want to continue participation,  
24 your status is changing, you're going to have to pay more money, or when the employee  
25 went through their six-month waiting period they told the employee, okay, these are your

1 insurance options, this is what it's going to cost for you, for you and your spouse, your  
2 family, et cetera. They were -- a business week-to-week, month-to-month, tracking all of  
3 this information and monitoring it. They had to, Your Honor, because obviously they're not  
4 just going to give out insurance and pay for insurance unless they have to, and also by  
5 running an insurance plan they have to meet some pretty rigid state, federal regulations to  
6 make it --

7 DISCOVERY COMMISSIONER: I thought you --

8 MR. GREENBERG: -- available.

9 DISCOVERY COMMISSIONER: Okay. I don't mean to --

10 MR. GREENBERG: Okay.

11 DISCOVERY COMMISSIONER: -- interrupt you.

12 MR. GREENBERG: But, Your Honor, I don't have that.

13 DISCOVERY COMMISSIONER: But you don't have a problem with their  
14 plan in this case, so what discovery do you need from the Defendants related -- from the  
15 Defendant related to the insurance?

16 MR. GREENBERG: I need --

17 DISCOVERY COMMISSIONER: Because that's where I'm struggling.

18 MR. GREENBERG: Defendants need to answer interrogatories that ask them  
19 to provide the two things I explained to Your Honor. Tell us for each member of this class  
20 what time period they had the option to participate in the plan and during those time periods  
21 that they actually had the option, tell us what it would have cost them; they haven't provided  
22 that information, Your Honor.

23 They say that it's too burdensome.

24 DISCOVERY COMMISSIONER: Well, they provided the cost of the plan,  
25 right?

1 MS. RODRIGUEZ: Yes.

2 MR. GREENBERG: Your Honor, for certain time periods they have. For  
3 three years I do have statements as to the cost of --

4 DISCOVERY COMMISSIONER: But you don't get more than that because  
5 of the statute of limitations. You get two years.

6 MR. GREENBERG: Your Honor, this case has been pending since 2012. I do  
7 not have information from 2010. I do not have information from 2011. I do not have  
8 information from 2014. Okay? There's --

9 MS. RODRIGUEZ: I just gave that to him.

10 MR. GREENBERG: There's a six-year time period. We're in 2016 now.  
11 Well, let's just go through 2015, Your Honor. There's a five-year time period here that's at  
12 issue because the class was certified for damages through the end of 2015, okay? I only have  
13 that information for three of the five years. They provided me with summaries that say what  
14 the cost was, okay? That doesn't tell me who is eligible to participate. It tells me some  
15 important information, Your Honor, but it's not complete, and I also don't have information  
16 regarding the employee's status.

17 Defendants are going to claim that the employee status, the individual  
18 employee status, is germane to figuring the cost. A family participant has to pay much more  
19 than a single participant.

20 DISCOVERY COMMISSIONER: I don't think that matters -- that's what I'm  
21 telling you -- under those new cases. The test is did the employer offer the employee  
22 insurance. The character and quality of the insurance, except for it can't be more than ten  
23 percent of their wage, not including tips, is what is germane now.

24 You know, I'm just following what the Supreme Court is saying.

25 MR. GREENBERG: Your Honor, I'm addressing the ten percent issue. The

1 constitutional amendment requires coverage for dependents, not just the employee, so if the  
2 employee has dependents, the cost is more, and it bears very strongly on that ten percent  
3 issue.

4 They have information in their files as to the dependent status of the class  
5 members. They file W4 forms that say whether they're married or not. They have to  
6 process that for payroll taxes, for tax withholding purposes.

7 DISCOVERY COMMISSIONER: Well, they may not choose to exercise their  
8 option. See, that's the problem.

9 MR. GREENBERG: Yes.

10 MR. WALL: He's trying to make an end runaround the decision, Your Honor,  
11 because the decision didn't favor his position, and that end run is this -- that we look at it on  
12 an individual basis. The Nevada Supreme Court refused to look at it on an individual basis.  
13 The employer has to offer insurance, and if the employer does, the employer pays all of their  
14 employees at a certain rate, and if they don't, they pay the employees at a different rate. We  
15 don't get to go individually and say did they have insurance in this month, and if they didn't,  
16 they get this rate, and if they did, they got that rate. There's no language in the opinion and  
17 no language in the statute --

18 DISCOVERY COMMISSIONER: Well, let's --

19 MR. WALL: -- that would come close to supporting that argument.

20 DISCOVERY COMMISSIONER: Let's talk about it practically. So we have  
21 a part-time employee that's employed as of 2010, and now arguably part of the class because  
22 you go two years back, right? So we're 2010 forward. And he decides he's going to be a  
23 full time, so he goes to the employer and says, you know, I'm going to be in a full-time  
24 employee now, what are my insurance options? And the employer says these are your  
25 options. And he says, no, thank you, I want the higher rate. Okay.

1 MR. GREENBERG: Well, Your Honor, he doesn't get the higher rate if the  
2 options comply with the minimum wage amendment. He has a choice. He can either take  
3 the insurance or not take the insurance.

4 DISCOVERY COMMISSIONER: And then get the lower rate.

5 MR. GREENBERG: And get the lower rate. The lower rate inures to the  
6 benefit of the employer if the employer offers the qualifying insurance.

7 DISCOVERY COMMISSIONER: And that's what the Supreme Court has  
8 held. So --

9 MR. GREENBERG: Absolutely, Your Honor.

10 DISCOVERY COMMISSIONER: So the issue then becomes, as long as it  
11 qualifies, i.e. is not more than ten percent of the wage, right? And what you're saying to me  
12 is if you have a member that has a family, it's going to be more than ten percent of the wage.  
13 How do we know that?

14 MR. GREENBERG: Because we have information for three years, and the  
15 family contribution is, you know, \$400 a month, whereas the single contribution is \$100 a  
16 month. That \$400-a-month number is not going to meet the ten percent threshold.

17 DISCOVERY COMMISSIONER: Mr. Wall, did the Court address that  
18 specifically?

19 MR. GREENBERG: In the Supreme Court decisions, it did not. Your Honor,  
20 it might be more helpful for us to brief this in some capacity. I mean, I want to help the  
21 Court get to the bottom of it, or if you think the District Court should address the issue --

22 DISCOVERY COMMISSIONER: I'm thinking the Supreme Court is going to  
23 see it back.

24 MR. GREENBERG: -- with Judge Cory. I'm just trying to help out, Your  
25 Honor. I understand Your Honor's really trying to get to the bottom of what's at issue.

1 DISCOVERY COMMISSIONER: Well, I'm just trying to make sure that all  
2 the discovery is exchanged that's meaningful and relevant under the current case law  
3 because we have had these three cases come down that have changed the landscape a little  
4 bit of these types of cases, and I think we have to acknowledge that. We may not agree with  
5 the decisions of the Supreme Court, but they -- you know, sorry, that's the law in Nevada  
6 and we have to abide by it. If you want to challenge the law later on an appropriate  
7 challenge, you can certainly do that, or try to do that. But, you know, right now this is the  
8 law that governs, and we have to respect that law.

9 So my question one more time is what are you missing for discovery purposes?  
10 We've got our time frame late 2010 to late 2015.

11 MS. RODRIGUEZ: October.

12 DISCOVERY COMMISSIONER: October. Okay. So we've got our time  
13 frame now. We're not going back seven years. We're going back five, which is consistent  
14 with the statute of limitations determination by the Nevada Supreme Court. So Ms.  
15 Rodriguez is telling me that she has provided you with the information of insurance for the  
16 years in question, and you're saying, no, you don't have it, so I'm going to ask Ms.  
17 Rodriguez to go back, check your interrogatory answers, and make sure that you have  
18 provided the cost of insurance to all of the Defendants' employees for the time frame at  
19 issue. All right? We'll do that first.

20 And then I guess we'll have to -- you'll have to provide the cost of an  
21 individual, the individual plan cost, the family plan cost. I would say we have to do that.  
22 I'm still -- I think the Court certified your class. I'm not sure who's part of your class.

23 MR. GREENBERG: Class consists of all drivers from July 2007 through  
24 December 31<sup>st</sup>, 2015, for damages purposes, and for equitable relief it is all drivers,  
25 including --

1 DISCOVERY COMMISSIONER: Okay. But that time frame had to change  
2 for that case law.

3 MR. GREENBERG: Your Honor --

4 MS. RODRIGUEZ: We have a motion pending.

5 MR. GREENBERG: And, Your Honor, there's going to be a motion brought  
6 before Judge Cory regarding an equitable toll of the statute of limitations. This is an issue  
7 that was raised to him before, which was why he certified the class back to 2007. So that's  
8 not been completely resolved, Your Honor. But again, Your Honor's absolutely correct. We  
9 need the information as to what the employees had to pay towards the insurance. I have that  
10 information for three years, as I said. I don't have it for the other two years or for whatever  
11 additional time period --

12 DISCOVERY COMMISSIONER: Ms. Rodriguez --

13 MR. GREENBERG: -- is at issue. Three years, okay?

14 DISCOVERY COMMISSIONER: -- she's going to go back and check.

15 MR. GREENBERG: But, Your Honor, I also need the information regarding  
16 whether the employees could even enroll in the plan. If the employee --

17 DISCOVERY COMMISSIONER: Simple question, very simple question,  
18 what was the waiting period prior to being able to enroll in the plan?

19 MR. GREENBERG: Your Honor, it's not limited to the waiting period. It's  
20 also limited to the work hours issue. If an employee didn't do enough shifts, if they're  
21 working three days a week, they wouldn't qualify. Again, Defendants were tracking this  
22 every month for every employee. They have to because they can't discriminate in access to  
23 the plan under federal law, so they kept records of this.

24 DISCOVERY COMMISSIONER: I don't know.

25 MR. GREENBERG: They need to provide that information to me to tell me

1 who could participate in the plan; they have not done so. They have this information.

2 DISCOVERY COMMISSIONER: But --

3 MR. GREENBERG: They need to provide it.

4 DISCOVERY COMMISSIONER: But because someone changes status  
5 doesn't mean that they've done anything wrong under the law.

6 MR. WALL: It's not an individual thing. They offer the insurance that  
7 qualifies and pay less, or they don't offer the insurance that qualifies and pay more. It's not  
8 a I offered it to this individual, I offered it to this individual, I offered it to this individual.  
9 The Nevada Supreme Court hasn't suggested that we would have to do that kind of an  
10 analysis, and there's nothing in the statute that would suggest such an analysis.

11 All they have to do is offer qualified insurance. That's what the statute  
12 requires. And all we have to do is prove that they offered the qualified insurance and  
13 provide the documentation, which we've already done multiple times.

14 MR. GREENBERG: But, Your Honor, Defendant is saying if we offer it to  
15 half the employees, and the other half cannot participate in the plan, we can pay a hundred  
16 percent of the employees 7.25 an hour. It is not the way the minimum wage amendment  
17 works. You cannot offer it. You can't give them the option to participate if they can't access  
18 the plan because they're part time, for example. So, Your Honor, we need that information.  
19 They had to be keeping track of this information. They have not provided it.

20 DISCOVERY COMMISSIONER: So this is the information that I do want  
21 disclosed, and then you'll have to brief the rest. You'll have to bring a proper motion to  
22 compel.

23 The information that I do want the Defendant to disclose is the cost of the  
24 different plans for all five years at issue.

25 MR. GREENBERG: Cost to the employees, Your Honor, please.

1 DISCOVERY COMMISSIONER: The cost of the employee.

2 MR. GREENBERG: And based upon levels of participation, family, single,  
3 and so forth, Your Honor, correct?

4 DISCOVERY COMMISSIONER: I think we have that, what the options are,  
5 for each individual to look at, what the cost of the plan was, if it was just for them  
6 individually versus their family for all the five years at issue. I'm not going back to '07.  
7 You'll have to brief that as part of your motion to compel. And I want to know who -- what  
8 the criteria is to have -- to be able to access the plan, you know, what is the waiting period;  
9 how many hours of a shift do you have to work; can the employees change their minds, you  
10 know, and access the plan; if they do, how long do they have to wait; is there a 30-day  
11 waiting period before they can change their plan?

12 MR. GREENBERG: Your Honor, just to make it easier, actual participation of  
13 a plan is not germane; we know that from the Supreme Court decisions. Whether somebody  
14 chose to enroll has no bearing on the minimum wage.

15 DISCOVERY COMMISSIONER: Which really cuts across -- which cuts  
16 against your argument on individual participation. So I'm just -- that's what I think we need  
17 to do currently, just what was the -- what were the plans available to the employees, and  
18 what was the criteria to participate in those plans, and what was the waiting period, the  
19 different waiting periods that might apply --

20 MS. RODRIGUEZ: Right.

21 DISCOVERY COMMISSIONER: -- to the different types of employees.

22 MR. GREENBERG: Your Honor, I have a further request which, again, is  
23 Defendants in the normal course of their business were making a determination as to whether  
24 someone could participate in the plan. I should be provided with that information. If they  
25 tell me what the criteria was, then I'm left with having to sort through the other information

1 they gave me to determine whether somebody could or couldn't participate in the plan.

2 DISCOVERY COMMISSIONER: Do you have the list of employees -- right?

3 MS. RODRIGUEZ: Yes.

4 DISCOVERY COMMISSIONER: That's been provided to you.

5 MS. RODRIGUEZ: Yes.

6 DISCOVERY COMMISSIONER: And on that list have we indicated who  
7 participated in insurance and who didn't?

8 MS. RODRIGUEZ: They can tell from all of the QuickBooks data that we  
9 gave it was a deduction for medical health insurance, so, yes, they can tell when it started,  
10 how much was paid by the employee.

11 MR. GREENBERG: Your Honor, we cannot tell that from that information.  
12 But, more importantly perhaps, it doesn't tell us whether somebody could participate who  
13 did not, okay? It's not whether they chose to participate.

14 DISCOVERY COMMISSIONER: But --

15 MR. GREENBERG: It's whether they had the option to participate. The  
16 QuickBooks records --

17 DISCOVERY COMMISSIONER: You know what? I'm not going to hear  
18 any more of this today --

19 MR. GREENBERG: Okay. Yes, Your Honor.

20 DISCOVERY COMMISSIONER: -- with all due respect. This is what I'm  
21 going to do. I've given you the criteria or the information that I do want Ms. Rodriguez to  
22 provide you. Hopefully, there's an interrogatory out there that would cover that, so update  
23 your information or double-check and make sure that Plaintiffs have all the information they  
24 need for the years at issue, okay? So we're going to take care of that first.

25 Anything further will have to be briefed.

1 MR. GREENBERG: Yes, Your Honor. There is, in fact, a motion pending to  
2 compel for hearing on December 9<sup>th</sup> that involves these issues that was already filed.

3 DISCOVERY COMMISSIONER: So we'll take it up then.

4 MR. GREENBERG: We'll take it up then, and I think what I should do is  
5 perhaps supplement that submission.

6 Could I have counsel's agreement that we can supplement say by November  
7 30<sup>th</sup>?

8 DISCOVERY COMMISSIONER: You'll have my agreement because it'll be  
9 my decision to make. You can supplement.

10 MR. GREENBERG: Okay. Just before they respond because --

11 DISCOVERY COMMISSIONER: I don't know what --

12 MR. GREENBERG: -- we're discussing this now.

13 DISCOVERY COMMISSIONER: I don't know what this is, when counsel  
14 start talking to each other.

15 MR. GREENBERG: Okay.

16 DISCOVERY COMMISSIONER: You know.

17 MR. GREENBERG: Thank you, Your Honor.

18 DISCOVERY COMMISSIONER: You need to direct your request to me, and  
19 I'll make that decision.

20 MR. GREENBERG: Okay, Your Honor. I apologize.

21 DISCOVERY COMMISSIONER: I have no problem if you supplement.

22 MR. GREENBERG: Thank you, Your Honor.

23 DISCOVERY COMMISSIONER: And both sides can do that as well.

24 MS. RODRIGUEZ: Thank you, Your Honor.

25 DISCOVERY COMMISSIONER: Okay. Now we have another problem with

1 the trial date. I had at the last hearing, which is October 12<sup>th</sup>, I had given you some dates,  
2 and a trial ready date of 6/12 of '17. Nobody complained about the dates, and lo' and behold  
3 I have an objection by the Defendants to the Report and Recommendation. Really? Why  
4 didn't you ask me when you were here in front of me? Why didn't you say something about  
5 the date? I'm not even sure under Bahena you can now raise that issue before the District  
6 Court Judge, number one. Number two, he's likely going to send it back to me to deal with.  
7 So why didn't you address it if there was a problem? I don't know why you didn't address it  
8 during the hearing, number one, and, number two, why did you object to the Report and  
9 Recommendation? Are we just trying to make life difficult for Judge Cory?

10 MS. RODRIGUEZ: Your Honor, that was my objection, so let me speak to  
11 that.

12 DISCOVERY COMMISSIONER: It was your objection.

13 MS. RODRIGUEZ: Let me speak to that. I apologize. That was my error,  
14 and I'm not sure if I should have handled that differently. What happened was when I --

15 DISCOVERY COMMISSIONER: You should have.

16 MS. RODRIGUEZ: Yes, I should have, okay. I'm sorry.

17 DISCOVERY COMMISSIONER: I'll just --

18 MS. RODRIGUEZ: When I went back --

19 DISCOVERY COMMISSIONER: -- clarify that.

20 MS. RODRIGUEZ: -- to my office, I saw that December 23<sup>rd</sup> landed on a  
21 Friday, and the pattern of this case has been that I do receive things after hours, and I just  
22 started looking at this thinking we're going to get our initial reports from the Plaintiff the  
23 evening of Friday, December 23<sup>rd</sup>, before the Christmas holidays and everything else, so --

24 DISCOVERY COMMISSIONER: I --

25 MS. RODRIGUEZ: -- all I asked for was a few more days on the rebuttal.

1 DISCOVERY COMMISSIONER: But, Ms. Rodriguez, you should have said  
2 something during the time we had the hearing.

3 MS. RODRIGUEZ: I agree.

4 DISCOVERY COMMISSIONER: I gave you those dates, and then you  
5 object, and you make more work for the District Court Judge on an issue that we could have  
6 resolved at the hearing or thereafter.

7 So I'm just asking counsel. You are welcome to object to any of my rulings.  
8 That is your right. But think it through, and certainly if you have an opportunity to correct a  
9 problem during the hearing, let me have the opportunity to help you.

10 MS. RODRIGUEZ: I agree, Your Honor. I apologize, and, like I said, I didn't  
11 realize it until I went back to try to start calendaring these dates 'cause this -- I did object to  
12 him asking for further extensions, and I didn't realize it was going to land on us on  
13 December 23<sup>rd</sup> until I put it in the calendar.

14 DISCOVERY COMMISSIONER: That's what happens sometimes. All right.  
15 Well, I'm just saying this one more time. You could have corrected the problem during the  
16 hearing, but let's correct it now, and let's take that objection off calendar.

17 MS. RODRIGUEZ: Sure.

18 DISCOVERY COMMISSIONER: Unless you want to keep it on for some  
19 other reason.

20 MS. RODRIGUEZ: No. Absolutely not. That was it. That was --

21 DISCOVERY COMMISSIONER: Okay.

22 MS. RODRIGUEZ: -- a limited objection.

23 DISCOVERY COMMISSIONER: So let's talk about this. The initial expert  
24 disclosures are currently due December 23<sup>rd</sup> of 2016. What if I move everything thirty days;  
25 any problem with that?

1 MR. GREENBERG: That would put us at January 23<sup>rd</sup> for our initial  
2 disclosure on the expert, Your Honor.

3 DISCOVERY COMMISSIONER: Right.

4 MR. GREENBERG: And Defendant sometime end of February I guess or the  
5 beginning of March was the other date?

6 DISCOVERY COMMISSIONER: I did not stage these between Plaintiffs and  
7 Defendants. I just gave one date.

8 MR. GREENBERG: Oh, yeah, I'm sorry. Initial versus rebuttal.

9 DISCOVERY COMMISSIONER: Yeah.

10 MR. GREENBERG: I have it confused, Your Honor.

11 DISCOVERY COMMISSIONER: Initial versus --

12 MR. GREENBERG: I --

13 DISCOVERY COMMISSIONER: Okay.

14 MR. GREENBERG: I apologize. Look, I would appreciate having, you know,  
15 a comfortable period of time to deal with a rebuttal report as well, Your Honor. I mean, both  
16 sides obviously would. So I don't have any problem with the change in schedule, and I don't  
17 have any problem with a change in the trial date. If Defendants would be willing to take the  
18 41E issue out of the equation here, even just for a month, or two months, or whatever we  
19 might put off a trial date, then that's fine. I'm not going to push towards trial. My concern,  
20 of course, is the 41E burdens placed on me as Plaintiffs, Your Honor.

21 DISCOVERY COMMISSIONER: Well, and it's placed on the Court as well,  
22 so I can't go out more than thirty days. It probably will change the trial date a little bit.

23 MS. RODRIGUEZ: I think that was the problem, Your Honor, the last time is  
24 why you were limited in how far out you wanted to push his initial dates, and we spent some  
25 time talking about that, but, again, I didn't see where that would put the rebuttal expert,

1 'cause I know Your Honor was concerned about the dispositive motion date of March 23<sup>rd</sup>.

2 DISCOVERY COMMISSIONER: Well, the Judge has not moved the trial  
3 date at the moment, so I think I can give you new deadlines and a new date. I will need  
4 somebody to prepare the Report and Recommendations from today's hearing, which also  
5 needs to vacate the objection to the other Report and Recommendation, so I'll have defense  
6 counsel prepare it. But let's think about dates that make sense, and we'll -- I'll have to bump  
7 the trial date out, and I'll let the Department know.

8 MR. GREENBERG: Yes, Your Honor.

9 DISCOVERY COMMISSIONER: If I close your discovery in April, I can  
10 certainly have an initial expert disclosure deadline in January.

11 MR. GREENBERG: That would be desirable, Your Honor.

12 DISCOVERY COMMISSIONER: Okay. And I'll give you a few more days  
13 so it doesn't fall on a Monday.

14 MR. GREENBERG: Thank you.

15 DISCOVERY COMMISSIONER: So that I get an objection because it fell on  
16 a Monday.

17 All right. Your close of discovery will be April 28<sup>th</sup> of 2017; last day to amend  
18 pleadings, add parties, initial expert disclosure date is January 27<sup>th</sup> of 2017, and that's your  
19 initial expert disclosure, January 27<sup>th</sup> of 2017; your rebuttal disclosure will be February -- I'll  
20 make that February 28<sup>th</sup> of 2017 -- it'll give you one more extra day; and dispositive motions  
21 will be May -- it's probably going to be a dispositive motion case, isn't it?

22 MR. GREENBERG: In part I suspect, Your Honor.

23 DISCOVERY COMMISSIONER: May 30<sup>th</sup> of 2017. Now, that's a day after  
24 Memorial Day. I can make it -- let's make it 5/31; that makes it Tuesday.

25 MR. GREENBERG: Yes, Your Honor.

1 DISCOVERY COMMISSIONER: Or, I'm sorry, yes, that makes it -- that  
2 makes it Wednesday, 5/31/17 is dispositive motion deadline. There's always going to be a  
3 holiday. I'll do my best to work with you all, but you realize this is a five-year-old case.  
4 That means that you will be now ready for trial July 10<sup>th</sup> of 2017, and I will let the  
5 Department know that.

6 MR. GREENBERG: Yes, Your Honor. There is another issue that I did want  
7 to bring to the Court's attention. There are other issues we could talk about, but I don't  
8 know how much time you want to devote to us right now.

9 DISCOVERY COMMISSIONER: Well, I think if we took a vote of the  
10 audience, they would probably vote that we be finished relatively quickly. Here's my  
11 thought. You're coming back December 9<sup>th</sup>?

12 MR. GREENBERG: Yes.

13 DISCOVERY COMMISSIONER: Why don't we talk about it then, unless  
14 there's something I can quickly handle.

15 MR. GREENBERG: Just one thing that I would like to address, Your Honor.  
16 We are doing the deposition of Defendants next Tuesday.

17 DISCOVERY COMMISSIONER: Okay.

18 MR. GREENBERG: There has been a great deal of difficulty in the prior  
19 deposition, as Your Honor may recall. I don't know if there's any facility here in the  
20 courthouse where we could do the deposition where Your Honor could actually be available  
21 in person. I know Your Honor is very busy, but I figured I'd make the request. In 23 years  
22 I've never made a request for supervised deposition.

23 DISCOVERY COMMISSIONER: Okay.

24 MR. GREENBERG: I'm just mentioning the idea to Your Honor, but --

25 DISCOVERY COMMISSIONER: Is it going to be videotaped?

1 MR. GREENBERG: It will be, Your Honor.

2 DISCOVERY COMMISSIONER: Okay. So here's my proposal to you all.  
3 When does the deposition actually occur?

4 MR. GREENBERG: We are scheduled for Tuesday at 9:30 or 10:00.

5 DISCOVERY COMMISSIONER: Okay. So I will be in calendar Tuesday  
6 morning, but I will be available on Tuesday. I want you to call me if you have a problem. If  
7 it appears that you are not able to resolve your problems, and it continues to be contentious  
8 and problematic -- and, defense counsel, you need to get your client under control, end of  
9 discussion -- then I will make accommodations. You'll terminate the deposition under 30D,  
10 move for a protective order, and I'll make accommodations. It's not as easy as it sounds to  
11 have access to a secure place in the courtroom. I have done it before. You know, I've made  
12 rulings before to that effect, but it is not easy. So --

13 MR. GREENBERG: Yes.

14 DISCOVERY COMMISSIONER: -- I would like you all to try your best to do  
15 this, I mean, in a very civilized fashion.

16 MS. RODRIGUEZ: Well, I'm sure Plaintiff's counsel is going to equally be  
17 courteous to my client.

18 DISCOVERY COMMISSIONER: I would hope so.

19 MR. GREENBERG: I will --

20 DISCOVERY COMMISSIONER: But I'll have the video tape, so I'll be able  
21 to see if there's a problem. And I'm serious about this. If you have to discontinue the  
22 deposition, either side, for any reason, because both sides have access to 30D, and I hear the  
23 motion for protective order, the losing party will pay fees and costs, so I'm just -- you know,  
24 it's not even a threat. It's in the rule. It permits it. So I would move forward with that  
25 understanding. I think it's going to be okay this time. I'm going to think positively. That's

1 my one positive thought for the week, and I frankly haven't had much positive thoughts.

2 MR. GREENBERG: Well, I hope we can bring that to fruition, Your Honor.  
3 We're going to work hard to make that happen.

4 DISCOVERY COMMISSIONER: Okay. Videotape it. Call me if there's a  
5 problem. I'm serious. You need to call me, and if I have to come down there for the  
6 afternoon session, I will. I don't have calendar in the afternoon. If I have to come down, I  
7 will. But I'd like you all to try to work it out.

8 MR. GREENBERG: If we have to reach Your Honor, is there a time after 11  
9 or whatever that we should try to call you that you would be available most likely?

10 DISCOVERY COMMISSIONER: I don't know if I'm going to have an 11:00  
11 calendar on Tuesday. I would say 11:15 is safe.

12 MS. RODRIGUEZ: Your Honor, I'm sorry, I have one quick issue.

13 DISCOVERY COMMISSIONER: Yes.

14 MS. RODRIGUEZ: The last time we were here you ordered the disclosure of  
15 any income distributions from the owner's family.

16 DISCOVERY COMMISSIONER: Right.

17 MS. RODRIGUEZ: I'm in the process of getting those. I expect them to be  
18 produced to Mr. Greenberg either today or Monday from the CPA.

19 DISCOVERY COMMISSIONER: Okay.

20 MS. RODRIGUEZ: Can we get some kind of confidentiality for the  
21 nonparties' income statements? This is not Mr. Nady. This is his children that are not  
22 parties to this matter.

23 MR. GREENBERG: Your Honor, it can all be confidential, whether it's Mr. --  
24 I mean, subject to the Court approving --

25 DISCOVERY COMMISSIONER: Yeah.

1 MR. GREENBERG: It's --

2 DISCOVERY COMMISSIONER: I agree.

3 MR. GREENBERG: -- used in the public record.

4 DISCOVERY COMMISSIONER: This time I definitely agree, so make sure  
5 you put that provision in, that this information that will be disclosed will remain confidential  
6 within the confines of the litigation under Rule 26C; make sure you put that Rule in because  
7 that's the exception to the sealing of records, under 26C, until such time as otherwise ordered  
8 by the District Court Judge.

9 MR. GREENBERG: Yes, Your Honor.

10 DISCOVERY COMMISSIONER: Okay?

11 MR. GREENBERG: That makes perfect sense.

12 DISCOVERY COMMISSIONER: And then, you know, all bets are off when  
13 we get to trial, but at least -- unless you -- you'll have to renew your motion for protective  
14 order at trial, okay?

15 MS. RODRIGUEZ: Right.

16 DISCOVERY COMMISSIONER: But definitely let's put that provision in the  
17 Report and Recommendations from today's hearing, which defense counsel is going to  
18 prepare with the new dates. I will take the responsibility of notifying the Department as  
19 well, but you'll need to get the Report and Recommendations done so I can give a copy of  
20 that to the Department so they can reset that trial date, and they have not reset it yet, so we  
21 need to make sure we get that taken care of as soon as possible.

22 MS. RODRIGUEZ: Okay.

23 DISCOVERY COMMISSIONER: And defense counsel is going to prepare  
24 my Report and Recommendation; run it by Plaintiff's counsel to approve as to form and  
25 content; and the status check for that will be?

1 THE CLERK: December 9<sup>th</sup> at 9 a.m.

2 DISCOVERY COMMISSIONER: Ms. Rodriguez, don't be here for that.

3 MS. RODRIGUEZ: I'm sorry?

4 DISCOVERY COMMISSIONER: Don't be here for that.

5 MS. RODRIGUEZ: Oh, I won't, Your Honor.

6 DISCOVERY COMMISSIONER: All right. Good luck, and --

7 MS. RODRIGUEZ: Thank you.

8 DISCOVERY COMMISSIONER: -- I will look forward to seeing you all  
9 December 9<sup>th</sup>. Happy Thanksgiving.

10 MR. GREENBERG: Yes, Your Honor.

11 MS. RODRIGUEZ: Thank you.

12 MR. GREENBERG: Happy holiday.

13 [Proceeding concluded at 9:38 a.m.]

14 \* \* \*

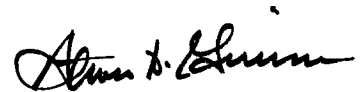
15 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-  
16 video recording of this proceeding in the above-entitled case.

17 

18 FRANCESCA HAAK  
19 Court Recorder/Transcriber

40

40



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

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

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

13 Plaintiffs,

14 vs.

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

17 Defendants.

Case No.: A-12-669926-C

Dept.: I

NOTICE OF ENTRY OF ORDER

18 PLEASE TAKE NOTICE that the Court entered the attached Order Granting in  
19 Part and Denying in Part Plaintiffs' Motion to Continue Trial Date and Extend  
20 Discovery Schedule and for Other Relief on November 21, 2016.

21 Dated: November 23, 2016

22 LEON GREENBERG PROFESSIONAL CORP.

23 /s/ Leon Greenberg

24 Leon Greenberg, Esq.  
25 Nevada Bar No. 8094  
26 2965 S. Jones Boulevard - Ste. E-3  
27 Las Vegas, NV 89146  
28 Tel (702) 383-6085  
Attorney for the Plaintiffs

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000672

  
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](mailto:leongreenberg@overtimelaw.com)  
6 [dana@overtimelaw.com](mailto: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: August 29, 2016

Hearing Time: Chambers

19 **Order Granting in Part and Denying in Part Plaintiffs' Motion to Continue Trial Date**  
20 **and Extend Discovery Schedule and for Other Relief**

21 Plaintiffs' filed their Motion to Continue Trial Date and Extend Discovery Schedule  
22 and for Other Relief on July 25, 2016. Defendants' Response in Opposition was filed on  
23 August 15, 2016. Plaintiffs' Reply in Support of their Motion was filed on August 23, 2016.  
24 This matter, having come before the Court for consideration in chambers on August 29,  
25 2016, and after due consideration of the parties' respective briefs, and all pleadings and  
26 papers on file herein, and good cause appearing, therefore,  
27  
28

1           **THE COURT FINDS:**

2           Plaintiffs' Motion sought a continuation of the current trial date and the discovery  
3 schedule by a period of at least 60 days and for as much as 120 days or longer. The  
4 Court finds such an extension and continuation is warranted.

5  
6           Plaintiffs' Motion also sought an order deeming it defendants' burden to provide to  
7 plaintiffs' counsel the information germane to determining whether, for each payroll period  
8 of each class member's claim, the defendants were entitled to pay that class member the  
9 "lower tier" (currently \$7.25 per hour) "health benefits provided" minimum wage. This  
10 information would include, for each pay period, (1) whether the class member was eligible  
11 to enroll in the health insurance benefits provided by defendants; (2) whether the class  
12 member was actually in a "covered status," meaning they could actually receive benefits  
13 from the health insurance for claims arising during the entire pay period; (3) the nature of  
14 such benefits provided to the class member, including coverage limitations, co-pays, and  
15 deductible amounts; and (4) the amount the class member had to pay per pay period or  
16 month as an insurance premium contribution to receive such health insurance benefits,  
17 including the amount they would have to pay not just to secure such insurance for  
18 themselves but to obtain such insurance for their spouses and dependents. Plaintiffs  
19 argue that if such materials are not provided by defendants for any class member for any  
20 time period defendants should be barred from taking advantage of the "lower tier"  
21 (currently \$7.25 per hour) "health benefits provided" minimum wage rate available to  
22 employers under Nevada's Constitution for that class member and such time period.  
23 Essentially, plaintiffs are arguing that the burden of proof relative to this issue under  
24 Nevada's Constitution is properly placed upon employers, in this case the defendants.  
25  
26  
27  
28

1 Plaintiffs do not cite any precedents holding such a burden of proof is properly placed  
2 upon employers in respect to this issue. Nor is the Court aware of any such precedents.

3 The Court declines to address, at this time, whether plaintiffs' burden of proof  
4 arguments should be adopted by the Court, which would deny defendants the right to pay  
5 the Nevada Constitution's "lower tier" minimum wage rate for any period of time that  
6 defendants failed to produce evidence germane to determining whether that "lower tier"  
7 rate applied to a class member. But the Court is also concerned that defendants do not  
8 seem to appreciate the gravity of the plaintiffs' claims made in this case, in that they arise  
9 directly under Nevada's Constitution and the Court must afford them the highest level of  
10 legal protection given their constitutional nature. So while the Court wants to move  
11 cautiously, and for that reason will not issue the burden of proof ruling sought by the  
12 plaintiffs at this time, it is also compelled to caution the defendants that taking a cavalier  
13 attitude, or showing a less than grave concern, about the plaintiffs' allegations in this case  
14 of a wholesale denial of constitutional rights by the defendants, is extremely unwise.

15  
16  
17 In respect to this portion of plaintiffs' motion, the Court finds that the allegations by  
18 the plaintiffs, alleging a violation of their constitutional rights to minimum wage, are indeed  
19 claims of a serious nature, and that a careful examination of those serious allegations and  
20 the evidence that underlies them must be made by the Court. To the extent that plaintiffs  
21 are unable to prove their allegations in the matter because defendants are in sole  
22 possession of evidence plaintiffs would utilize, and barring some privilege that protects  
23 disclosure of that evidence, it will not do for defendants to simply fail to produce the  
24 evidence. In the event that defendants protest that they do not possess such evidence,  
25 then it is the proper course for this Court to determine the truth of that position through all  
26 means necessary and reasonable. At this time the Court believes it is best to allow  
27  
28

1 defendants' recently filed Motion for a Protective Order to proceed with the Discovery  
2 Commissioner and will echo the request made by defendants in that motion that the  
3 Discovery Commissioner give what time she can to the monitoring of the discovery  
4 process in this area of controversy. Only after discovery discloses whether the  
5 defendants could provide the already ordered discovery will the Court, if it is necessary,  
6 reach the merits of plaintiffs' request to shift the burden of proof on this issue and/or take  
7 other measures.  
8

9 Plaintiffs' Motion also sought an Order granting class certification on the claims  
10 made against defendant Nady in the Third and Fourth Claims for Relief in the Second  
11 Amended Complaint. Those claims seek to impose liability against Nady based his  
12 alleged misuse of the corporate defendant to illegally injure its employees, the class  
13 members, and by such illegal actions unjustly enrich himself. The Court finds that those  
14 claims asserted against Defendant Nady are completely derivative of the claims against  
15 the corporate defendant already certified for class treatment by this Court, in that if the  
16 class members were not injured by the corporate defendant they have no claim against  
17 Nady. The Court also finds that the allegations upon which Nady's liability are based,  
18 which exclusively concern his relationship with the corporate defendant, involve issues of  
19 law and fact common to the class members. As a result, since the Court, in its Order  
20 entered June 7, 2016, already found that the elements of class certification under Nev. R.  
21 Civ. P. 23 have been satisfied in respect to the corporate defendant, the Court finds that  
22 class certification of the Third and Fourth Claims for relief against defendant Nady is also  
23 proper. Therefore,  
24  
25

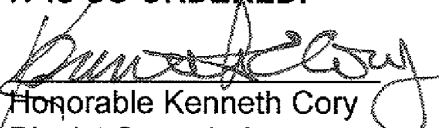
26 **IT IS HEREBY ORDERED** that Plaintiffs' Motion to Continue Trial Date and Extend  
27 Discovery Schedule and for Other Relief is **GRANTED** in part and **DENIED** in part.  
28

Plaintiffs' request to extend the discovery schedule in this matter and continue the trial date is **GRANTED**. Plaintiffs' Motion for Class Certification as to the third and fourth claims for relief is **GRANTED**. Plaintiffs request to shift the evidentiary burden of proof as it relates to applicable minimum wage rate for the certified class of plaintiffs is **DENIED** without prejudice and will, if necessary, be considered again by the Court consistent with this Opinion.

Trial of this matter is reset to ~~May 3, 2016~~ <sup>June 26, 2016</sup> <sub>ccc</sub>

In respect to continuing to extending the discovery schedule, the parties are instructed to prepare an EDCR 2.35 Stipulation and Order and submit the same to Chambers for approval.

IT IS SO ORDERED.

  
Honorable Kenneth Cory  
District Court Judge

11-9-16  
Date

Respectfully submitted,

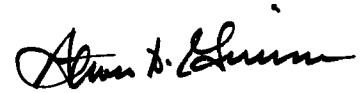
  
LEON GREENBERG, ESQ.  
DANA SNEGOCKI, ESQ.  
LEON GREENBERG  
PROFESSIONAL CORPORATION  
2965 South Jones Blvd., #E3  
Las Vegas, NV 89146  
Tel (702) 383-6085  
Fax (702) 385-1827  
[dana@overtimelaw.com](mailto:dana@overtimelaw.com)  
Attorney for Plaintiffs

Approved as to Form and Content

**NOT APPROVED**  
ESTHER C. RODRIGUEZ, ESQ.  
RODRIGUEZ LAW OFFICES, P.C.  
10161 Park Run Drive.  
Suite 150  
Las Vegas, NV 89145  
Tel: (702) 320-8400  
[info@rodriguezlaw.com](mailto:info@rodriguezlaw.com)  
Attorney for Defendants

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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

MICHAEL MURRAY, et al.,	.	CASE NO. A-12-669926-C
	.	
Plaintiffs,	.	DEPT. NO. I
	.	
vs.	.	
	.	<b>TRANSCRIPT OF</b>
A CAB SERVICE, LLC, et al.,	.	<b>PROCEEDINGS</b>
	.	
Defendants.	.	
. . . . .	.	

BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

**MOTION TO COMPEL INTERROGATORY RESPONSES**  
**STATUS CHECK: COMPLIANCE - REPORT AND RECOMMENDATION**

FRIDAY, DECEMBER 9, 2016

APPEARANCES:

FOR THE PLAINTIFFS:	LEON GREENBERG, ESQ.
FOR THE DEFENDANTS:	ESTHER C. RODRIGUEZ, ESQ.
	MICHAEL K. WALL, ESQ.

COURT RECORDER:

FRANCESCA HAAK  
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC  
Englewood, CO 80110  
(303) 798-0890

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1       LAS VEGAS, NEVADA, FRIDAY, DECEMBER 9, 2016, 10:10 A.M.

2               DISCOVERY COMMISSIONER: Murray. You know what, I  
3 realized I forgot something on my desk. I had put the Report  
4 and Recommendations out separately. I am so sorry. And  
5 unfortunately, my Marshal will never find it. So let me step  
6 off and I'll be right back.

7               MR. GREENBERG: Yes.

8                       (Pause in the proceedings)

9               DISCOVERY COMMISSIONER: I apologize about that.  
10 Why don't you all have -- state your appearances and then  
11 please have a seat.

12              MR. GREENBERG: Leon Greenberg for plaintiff, Your  
13 Honor.

14              MS. RODRIGUEZ: Good morning, Your Honor. Esther  
15 Rodriguez for the defendants.

16              MR. WALL: Michael Wall also for the defendants.

17              DISCOVERY COMMISSIONER: How about a mandatory  
18 Settlement Conference?

19              MR. GREENBERG: Your Honor, I have no problem with  
20 that as long as it is going to suspend the 41(e) five-year  
21 rule period. And, I guess if the Court orders it, it has to,  
22 because the case obviously can't proceed if the Court is  
23 ordering people to a Settlement Conference. But that's up to  
24 the Court.

25              DISCOVERY COMMISSIONER: I don't think I can suspend

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1 the 41(e). I think that has to be agreement by counsel.

2 MR. GREENBERG: That is my only qualification, Your  
3 Honor.

4 DISCOVERY COMMISSIONER: Okay. Well, I tried.

5 I have two Report and Recommendations that were  
6 submitted from the November 18th hearing. They're pretty much  
7 alike. I need to understand what the dispute was and why,  
8 because I want to sign one of these and get it to the Judge.

9 I think the happiest day of my life will be when I  
10 receive one Report and Recommendations in this case that  
11 everybody signs off on. I think there might have been one,  
12 maybe, I'm not sure. That would make me happy. It would be a  
13 nice holiday gift.

14 All right. So, I'm looking at both of them. I have  
15 looked at the letters. I think I understand what the  
16 distinction is. And it deals with this concept -- let's see,  
17 I thought I had it. I think it dealt with the cost to the  
18 employees.

19 MR. GREENBERG: Paragraph 6, Your Honor.

20 MS. RODRIGUEZ: May I speak to that, Your Honor?

21 DISCOVERY COMMISSIONER: And it appears to me that  
22 Ms. Rodriguez took this directly from my Minutes. So, I don't  
23 understand why this was not agreed to by plaintiffs' counsel,  
24 because what I specifically said is that Ms. Rodriguez will  
25 provide the cost to employees of plans for all five years at

1 issue, all levels, meaning, you know, different  
2 classifications of employees. And two, what criteria had to  
3 be met to participate in the plan, to have access to the  
4 plans, which would include the waiting period. And I can add  
5 that in. Well, and it is added in. And waiting periods for  
6 access to the plans. That's what I ordered -- or recommended  
7 from the November 18th hearing.

8 So the fact that plaintiffs' counsel, you disputed  
9 that when it's clearly in my Minutes concerns me. And I'm not  
10 relitigating issues with you all. If I make a recommendation  
11 and you don't like it, there's a -- there's a forum for that  
12 which some of you have used often. So there's a way to do  
13 that. And that's objecting to what I do, which is perfectly  
14 fine as long as you do it timely. But that concerns me.

15 So plaintiff's counsel, I don't know what the  
16 thought process was there because I did make that decision.

17 MR. GREENBERG: Your Honor, the problem is that  
18 defendants have previously produced to me in this case the  
19 cost of the insurance as paid by the employer. That does --  
20 that's completely irrelevant in this case. It's the costs  
21 that the employees had to pay that is germane --

22 DISCOVERY COMMISSIONER: Well --

23 MR. GREENBERG: -- which -- which is why to say  
24 costs of health insurance --

25 DISCOVERY COMMISSIONER: I --

1 MR. GREENBERG: -- not cost of health insurance to  
2 employees is important, Your Honor.

3 DISCOVERY COMMISSIONER: Well --

4 MR. GREENBERG: If they provide it anyway to the  
5 employees and you -- and it says, it says qualification.

6 DISCOVERY COMMISSIONER: Individual and family  
7 plans. I don't know how much more clear I could have made  
8 that. I'm sorry, I didn't say, employees, although I may  
9 have. I haven't looked at --

10 MR. GREENBERG: Actually, I have --

11 DISCOVERY COMMISSIONER: -- at my transcript.

12 MR. GREENBERG: -- I have your Minutes here, Your  
13 Honor. And it says three things; Ms. Rodriguez will provide,  
14 one, cost to employees --

15 DISCOVERY COMMISSIONER: Right.

16 MR. GREENBERG: -- of plans for all five years of  
17 issue.

18 DISCOVERY COMMISSIONER: Right.

19 MR. GREENBERG: That was all I wanted in -- in what  
20 I submitted to you in -- not cost of health insurance, cost of  
21 health insurance paid by employees because that --

22 DISCOVERY COMMISSIONER: Okay.

23 MR. GREENBERG: -- it -- it's different.

24 DISCOVERY COMMISSIONER: For all employees at all  
25 levels; okay?

1 MR. GREENBERG: Or paid by employees is what -- is  
2 -- is -- "for" I guess means "pay" because what does "for"  
3 mean? It's coming from them, not the employer. I just don't  
4 want them to give me what the employer was paying. I got this  
5 before. It's useless, Your Honor.

6 MS. RODRIGUEZ: Your Honor --

7 MR. GREENBERG: That's all.

8 MS. RODRIGUEZ: -- the reason he got that was  
9 because he was insisting upon the employer costs at the last  
10 time and I've --

11 DISCOVERY COMMISSIONER: I'm not going to --

12 MS. RODRIGUEZ: -- ordered that transcript.

13 DISCOVERY COMMISSIONER: -- revisit that issue.

14 MS. RODRIGUEZ: But as far as the employees, your  
15 order was very clear to us, and that's what we were getting to  
16 Mr. Greenberg, and he knows that. We had an extensive hour  
17 long conference on this issue.

18 He just wants rewording included in there that goes  
19 far beyond any other issues that we talked about at the last  
20 hearing, far beyond his Motions to Compel or anything that was  
21 even discussed, he wants all this -- you can see it in his  
22 letter, page 2, that he wants what this Report and  
23 Recommendation does not do. It does not order the defendants  
24 to specify whether any class members actually had a spouse or  
25 children while employed with defendants.

1           It also should say that the -- there is no  
2 obligation to provide that dependent status information as  
3 well. We didn't even talk about those issues. So why are we  
4 wanting to include this in the DCR&R?

5           DISCOVERY COMMISSIONER: So this is what I  
6 envisioned; the costs of health insurance for the five years  
7 at issue for all employees, at all levels. And then I have  
8 individual plan and family plan, and then I'm going to add,  
9 "paid for by the employees".

10          MR. GREENBERG: Thank you, Your Honor. I apologize  
11 for an inability to --

12          DISCOVERY COMMISSIONER: Well --

13          MR. GREENBERG: -- to work this out.

14          DISCOVERY COMMISSIONER: -- apparently --

15          MR. GREENBERG: We worked out everything else on the  
16 order. So there was -- there was some cooperation here, Your  
17 Honor.

18          DISCOVERY COMMISSIONER: Okay.

19          MS. RODRIGUEZ: Where we're going with that, Your  
20 Honor, though, just so that we're clear; I appreciate your  
21 clarification. That's what we're envisioning, which was the  
22 employee health benefit summaries that show that exact  
23 information as opposed to an individual, Joe, Susie, Bob, this  
24 is what each one paid, this is when they paid. We didn't  
25 understand that to be your order, Your Honor.

1 DISCOVERY COMMISSIONER: What I envisioned was, what  
2 was the cost in year one to employees who wanted an individual  
3 plan; \$6.20. What was the cost to employees in year one if  
4 they wanted the family plan; \$20.06. That's what I  
5 envisioned.

6 Not broken down, because I think the law is clear,  
7 and I know plaintiffs' counsel may disagree with me on this,  
8 and I've -- please feel free to take it up again if -- I don't  
9 -- I don't know if you're going to get a different result if  
10 there's something that was missed. But you just have to offer  
11 the insurance. And it has to be, I think, what, 20 percent?

12 MR. GREENBERG: Ten percent.

13 DISCOVERY COMMISSIONER: Ten percent.

14 MR. GREENBERG: -- of the wages paid, Your Honor.

15 DISCOVERY COMMISSIONER: Okay. So you should be  
16 able to figure that out.

17 MR. GREENBERG: Yes, Your Honor.

18 DISCOVERY COMMISSIONER: All right?

19 MS. RODRIGUEZ: Thank you, Your Honor.

20 DISCOVERY COMMISSIONER: Anything further on this  
21 Report and Recommendations?

22 MR. GREENBERG: No, Your Honor, I don't -- not from  
23 the plaintiff.

24 DISCOVERY COMMISSIONER: Okay. So with that change,  
25 I'm going to sign it after we're done with the hearing.

1 MR. GREENBERG: Thank you, Your Honor.

2 DISCOVERY COMMISSIONER: All right.

3 Okay. Now, I've read the supplements. And I think  
4 the interrogatories at issue that still have not been  
5 responded to apparently to plaintiffs' satisfaction are 8, 9,  
6 10, 15 and 19. Am I right on that?

7 MR. GREENBERG: Yes, Your Honor.

8 DISCOVERY COMMISSIONER: Okay.

9 MS. RODRIGUEZ: I'm sorry, Your Honor. Could you  
10 repeat those? Eight, 9, 10 --

11 DISCOVERY COMMISSIONER: Fifteen and 19.

12 MS. RODRIGUEZ: Thank you.

13 DISCOVERY COMMISSIONER: And 8 and 9, as I  
14 understand it, include information on hire dates and rehire  
15 dates. And as I understand it, that's important, because if  
16 you rehire like in probably any company out there it starts  
17 the time frame running again, the waiting period for health  
18 insurance.

19 MR. GREENBERG: Yes, Your Honor. That is my  
20 concern.

21 DISCOVERY COMMISSIONER: So they would have to have  
22 both dates. If there's a rehire date, that date would need --  
23 the hire date and the rehire date would need to both be  
24 provided per employee. Now, I don't know if that has been  
25 provided. I don't know in what form it's been provided.

1 And it also might affect the costs of insurance,  
2 because if they go in at year one under certain costs, then  
3 they leave the employment for whatever reason and they're  
4 rehired in year four, and now the costs have increased, you  
5 know, that could affect, you know, potentially this 10 percent  
6 factor. But I think that the hire dates and the rehire dates  
7 have to be provided. I don't know a way around that.

8 MS. RODRIGUEZ: Your Honor, can I address that,  
9 please?

10 DISCOVERY COMMISSIONER: Yes.

11 MS. RODRIGUEZ: What I ran for Mr. Greenberg, or  
12 what my client ran for Mr. Greenberg was, we gave him all the  
13 hire dates.

14 DISCOVERY COMMISSIONER: Um-hum.

15 MS. RODRIGUEZ: All of the separation dates for 2010  
16 through 2015. Mr. Greenberg has come up with a handful of  
17 discrepancies where it's not necessarily matching what's in  
18 this list versus what's in the Quickbooks data.

19 DISCOVERY COMMISSIONER: Right.

20 MS. RODRIGUEZ: I've informed him that we are going  
21 through his handful of examples to try to figure out why there  
22 is a discrepancy. On the very first one I can tell you that  
23 he is complaining that we have a later hire date and we have  
24 no Quickbooks data. And that is because this particular  
25 person, this is Mr. Babinchak, when he was rehired he never

1 worked as a driver, he just worked as a dispatcher. So he's  
2 not going to be in the class. He's not a -- relevant to this  
3 lawsuit. And we can do an explanation to any discrepancy that  
4 Mr. Greenberg should find.

5 I'm happy to do that. I'm happy to work with him on  
6 that thing. The problem is, in trying to go back and find  
7 original hire dates and rehire, I believe the way the program  
8 is set up is that when they're rehired, the original hire date  
9 is wiped out.

10 DISCOVERY COMMISSIONER: Okay.

11 MS. RODRIGUEZ: So --

12 DISCOVERY COMMISSIONER: Okay.

13 MS. RODRIGUEZ: -- if we can work together to just  
14 address the specific discrepancies rather than going through  
15 900 personnel files to figure out who was -- who was a rehire  
16 versus an original hire when it's not necessary, because --

17 DISCOVERY COMMISSIONER: Well, you have --

18 MS. RODRIGUEZ: -- there's no problem.

19 DISCOVERY COMMISSIONER: -- some information to  
20 track the hire and the rehire because that's how plaintiffs'  
21 counsel found the discrepancy.

22 MS. RODRIGUEZ: Right.

23 DISCOVERY COMMISSIONER: So what program is it that  
24 eliminates the first hire date?

25 MS. RODRIGUEZ: Well, what he -- that's Quickbooks.

1 DISCOVERY COMMISSIONER: Okay.

2 MS. RODRIGUEZ: So what he found was he had a 2008  
3 data for this Mr. Babinchak, but he doesn't have a 2010, or  
4 excuse me, 2013 I believe is what we're talking about. And  
5 that's because in 2013 he was a dispatcher, so he's not going  
6 to have Quickbooks data. We only ran Quickbooks data for the  
7 drivers. And so that could be easily explained.

8 But I'm just saying, if he runs into any of those  
9 discrepancies doing his analysis, which I think he's come up  
10 with like six of them or so, we're going through those to  
11 figure out why their hire dates are not matching up with what  
12 he received in the Quickbooks data.

13 DISCOVERY COMMISSIONER: As an aside, when are we  
14 going to send out the letter to these class individuals?

15 MR. GREENBERG: Notice has been dispatched, Your  
16 Honor.

17 DISCOVERY COMMISSIONER: Okay.

18 MR. GREENBERG: And there have been no excluders  
19 from the class.

20 DISCOVERY COMMISSIONER: There's been no -- I'm  
21 sorry, no --

22 MR. GREENBERG: There's been no excluders. No one  
23 has --

24 DISCOVERY COMMISSIONER: Okay.

25 MR. GREENBERG: -- opted out from the class.

1 DISCOVERY COMMISSIONER: Okay.

2 MR. GREENBERG: So the --

3 DISCOVERY COMMISSIONER: Got it.

4 MR. GREENBERG: -- class is certified and we are  
5 prepared to proceed however the Court decides to proceed on a  
6 class basis.

7 DISCOVERY COMMISSIONER: Okay.

8 MR. GREENBERG: In respect to this issue of the hire  
9 dates and the termination dates, Your Honor, I don't have the  
10 entirety of the payroll employee information from the  
11 Quickbooks data. This discussion that Ms. Rodriguez was  
12 engaging in about Mr. Babinchak not being a member of the  
13 class for this time period, which is why the discrepancy was  
14 coming up, she never told me about before.

15 It's quite possible that may explain that  
16 discrepancy. That's a unique case that I saw, Your Honor. I  
17 only examined less than 20 of the payroll records I had  
18 against the dates they gave me. I listed to Ms. Rodriguez, of  
19 that 20, 5 that I found with discrepancies which is a  
20 significant percentage.

21 Most of the discrepancies, Your Honor, seem to be a  
22 rehire situation, because I can see in the payroll data this  
23 guy was there in 2010 to 2011, but they're telling me we hired  
24 him in 2012 and he left in 2014. So the implication is  
25 clearly that there was a year he wasn't there, and they just

1 gave me the last date of hire, date of termination.

2 I would be happy to work with defendants to try to  
3 resolve this. Unfortunately, as Your Honor was observing, we  
4 haven't worked together real well and I apologize for that.

5 The problem is, I -- and Your Honor appreciates  
6 these hire dates are important in terms of assessing the  
7 potential damages --

8 DISCOVERY COMMISSIONER: I do.

9 MR. GREENBERG: -- these -- these people --

10 DISCOVERY COMMISSIONER: I understand.

11 MR. GREENBERG: -- may be entitled to. So, I'm not  
12 -- I'm not trying to complicate things. But how do we  
13 determine the hire dates? If I'm simply to determine a hire  
14 date based upon the first date, first payroll date that  
15 appears in the Quickbooks data, and if there is no information  
16 in the Quickbooks, say, for 60 days, I can -- I can then  
17 assume that that person terminated.

18 And then if they come back in, in six months after  
19 they -- whatever, that's a new hire, I can work within that  
20 framework, do you understand, Your Honor, to do my analysis  
21 for purposes of trial. But I would need their stipulation to  
22 that approach. I don't know if they want to agree to that  
23 kind of approach.

24 Ultimately, Your Honor, the burden is on them as the  
25 employer to have maintained these records. If they have these

1 hire dates in 700 or so personnel files, because there's only  
2 about 1,000 individuals in total who are within the time  
3 period. And of that 1,000, there's only perhaps 700 that  
4 we're even concerned about, because some of these people only  
5 worked a few weeks, a month, so it's not going to be an issue  
6 in terms of determining what their status --

7 DISCOVERY COMMISSIONER: Damages.

8 MR. GREENBERG: -- was.

9 DISCOVERY COMMISSIONER: Yeah.

10 MR. GREENBERG: So, look, Your Honor, if -- and this  
11 is addressed in -- in my -- in the letter on my supplement,  
12 Your Honor, Exhibit B. If they have to sit down and have a  
13 clerk go through 700 individual personnel files to check the  
14 notes as to when somebody was hired or fired, well, that's not  
15 great, Your Honor.

16 But, I mean, look, you could look at 10 files in an  
17 hour, I would think. It's not terribly sophisticated work.  
18 You're talking a week project for a clerical person; okay?

19 DISCOVERY COMMISSIONER: Do you know how far behind  
20 they are? Are you asking me to do it, or are you asking --

21 MR. GREENBERG: Well, I'm --

22 DISCOVERY COMMISSIONER: -- them to do it?

23 MR. GREENBERG: -- I'm explaining, this would be  
24 defendants' burden. It's their information. The fact that  
25 they didn't keep this information computerized and easily

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1 accessible shouldn't inure to an inability for us to establish  
2 what --

3 DISCOVERY COMMISSIONER: No.

4 MR. GREENBERG: -- these individuals were entitled  
5 to, Your Honor.

6 DISCOVERY COMMISSIONER: We don't have time to play  
7 around with this case anymore. It's been going on. You've  
8 seen me multiple occasions. And the fact of the matter is, it  
9 concerns me that we just aren't able to put together some  
10 basic information.

11 I don't know if there's a way on the program to  
12 print out hire and rehire dates, and print out what the job  
13 description was at the initial hire and the rehire, because  
14 the initial hire date, if it falls within the time frame of  
15 the class then, clearly, clearly that person can be utilized  
16 for damages. But if they rehire as a dispatcher then that  
17 rehire period's irrelevant, because they are not a member of  
18 the class on the rehire.

19 MR. GREENBERG: Yes, Your Honor.

20 DISCOVERY COMMISSIONER: So can we do something like  
21 that? Can we print out from the program everybody's hire date  
22 and rehire date and whether they were --

23 MR. GREENBERG: Ms. Rodriguez was just representing  
24 to Your Honor that the historic -- first hire period  
25 information is erased from the system.

1 DISCOVERY COMMISSIONER: But --

2 MR. GREENBERG: This was what she was saying just a  
3 little --

4 MS. RODRIGUEZ: I believe that's the case.

5 MR. GREENBERG: -- a little while ago, Your Honor.

6 DISCOVERY COMMISSIONER: But you have the initial  
7 hire date. Where did you get that --

8 MS. RODRIGUEZ: Right.

9 DISCOVERY COMMISSIONER: -- information?

10 MS. RODRIGUEZ: I gave that to him.

11 MR. GREENBERG: Well, Your Honor --

12 DISCOVERY COMMISSIONER: How did you get it?

13 MS. RODRIGUEZ: From Quickbooks.

14 DISCOVERY COMMISSIONER: Okay. So --

15 MS. RODRIGUEZ: So only if they're rehired is it  
16 wiped out. If there's a separation -- if they worked back in  
17 2007, like Mr. Babinchak, he worked back in 2007 as a driver.  
18 So when he was rehired in 2012, that's the date that I gave  
19 Mr. Greenberg. And it shows that -- so this is what flagged  
20 him, because he says, oh, I'm seeing Mr. -- Mr. Babinchak was  
21 hired in 2012, and I have no Quickbooks data. We have a  
22 problem. And I only have Quickbooks data back from 2007 and  
23 2008 when he was a driver; okay?

24 So, that's correct, because he worked as a driver.  
25 We gave him all the Quickbooks data. But then he left, and

1 when he comes back he's a dispatcher, so he's not going to  
2 have Quickbooks data for him.

3 DISCOVERY COMMISSIONER: Okay. But, I guess I'm  
4 confused, because I thought what you said is when they get  
5 rehired it's the rehire date that stands. But --

6 MS. RODRIGUEZ: Yes.

7 DISCOVERY COMMISSIONER: Okay. But you were able to  
8 go back to 2007 and give plaintiffs' counsel that initial hire  
9 date.

10 MS. RODRIGUEZ: Right.

11 DISCOVERY COMMISSIONER: Where did you get that  
12 information?

13 MS. RODRIGUEZ: No, ma'am. No, Your Honor. That's  
14 not -- perhaps I'm not explaining that right. What he got was  
15 Quickbooks data from 2007 and 2008 --

16 MR. GREENBERG: The payroll, Your Honor.

17 MS. RODRIGUEZ: -- the payroll. He's got paychecks  
18 for Mr. --

19 DISCOVERY COMMISSIONER: But not the hire date?

20 MS. RODRIGUEZ: The hire date showing a later date.  
21 His rehire date.

22 DISCOVERY COMMISSIONER: I see.

23 MS. RODRIGUEZ: So that's why it --

24 DISCOVERY COMMISSIONER: So it's not that the --

25 MS. RODRIGUEZ: -- flagged it.

1 DISCOVERY COMMISSIONER: -- data is missing, the  
2 data on the Quickbooks still remains. It's the hire date --

3 MS. RODRIGUEZ: Yes.

4 DISCOVERY COMMISSIONER: -- that changes.

5 MS. RODRIGUEZ: Correct.

6 MR. GREENBERG: Your Honor --

7 DISCOVERY COMMISSIONER: Oh boy, okay.

8 MR. GREENBERG: This is certainly possible, Your  
9 Honor. I can't dispute the accuracy of it, although I have  
10 very little confidence in the defendants' forthrightness in  
11 terms of producing any information.

12 MS. RODRIGUEZ: Well, I don't appreciate --

13 MR. GREENBERG: But --

14 MS. RODRIGUEZ: -- that because we --

15 MR. GREENBERG: But --

16 DISCOVERY COMMISSIONER: Yeah, I -- I --

17 MR. GREENBERG: But that -- but that's not --

18 DISCOVERY COMMISSIONER: Hey.

19 MR. GREENBERG: But that's neither here nor there,  
20 Your Honor.

21 DISCOVERY COMMISSIONER: Can we not --

22 MR. GREENBERG: Okay?

23 DISCOVERY COMMISSIONER: -- say that? Can we --

24 MR. GREENBERG: Okay.

25 DISCOVERY COMMISSIONER: -- just not disparage

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1 counsel?

2 MR. GREENBERG: Oh, no, it's not counsel --

3 DISCOVERY COMMISSIONER: If you truly believe --

4 MR. GREENBERG: -- Your Honor.

5 DISCOVERY COMMISSIONER: -- that then just keep it  
6 to yourself.

7 MR. GREENBERG: No, Your Honor --

8 DISCOVERY COMMISSIONER: But I don't want to hear  
9 it, because I --

10 MR. GREENBERG: -- I --

11 DISCOVERY COMMISSIONER: -- actually think fairly  
12 highly -- I think highly of these defense counsel. So --

13 MR. GREENBERG: Your Honor, I'm not disparaging  
14 counsel. It's -- it is their client that they're working  
15 with. They're doing their job here and I -- they are not  
16 misrepresenting anything that -- within their control. I  
17 mean, they -- they work with what their client informs them  
18 of. My concern is what their client is informing them of,  
19 Your Honor.

20 Again we've been through this repeatedly though in  
21 this case. The information is inaccessible, it can't be  
22 copied off the hard drive. We had -- Your Honor knows the  
23 history here. We had this prior deposition production.

24 My point, Your Honor, is if they're saying we can't  
25 locate this hire information accurately from the Quickbooks

1 because it was erased historically, which is what they're  
2 representing, then they need to go back and look in their  
3 personnel files and give it to me. It should be -- because,  
4 Your Honor, if they don't --

5 DISCOVERY COMMISSIONER: I don't even think they  
6 have to do that, because the data is not eliminated on  
7 Quickbooks.

8 MS. RODRIGUEZ: Right.

9 DISCOVERY COMMISSIONER: So -- so here's my --

10 MS. RODRIGUEZ: And all I'm saying --

11 DISCOVERY COMMISSIONER: -- question, Mr. Wall; do  
12 you have individuals in your firm -- I know there are 700  
13 files -- do you have individuals in your firm who can compare  
14 the data on the hire date, the rehire date, to the underlying  
15 data on the Quickbooks and come up with hire dates and rehire  
16 dates for the 700 approximate employees that are members of  
17 this class?

18 MR. WALL: I seriously doubt that that could be done  
19 with -- that way. But just for your understanding, I'm  
20 appellate counsel. I'm not trial counsel in this case.

21 DISCOVERY COMMISSIONER: Okay.

22 MR. WALL: So it's not my firm who's involved in the  
23 discovery and the production of documents --

24 DISCOVERY COMMISSIONER: You're just here as --

25 MR. WALL: -- and all that stuff.

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1 DISCOVERY COMMISSIONER: -- appellate counsel.

2 MR. WALL: I'm here as appellate counsel to give  
3 advice because it appears this case may be headed in that  
4 direction.

5 MS. RODRIGUEZ: And, Your Honor, all I'm saying is,  
6 he's doing this analysis, and if he finds such a handful of  
7 discrepancies let's work through them and figure out why -- I  
8 can go back and if he tells me, Mr. Babinchak, I look it up  
9 and I can see he's a dispatcher, or he's out of the class, we  
10 shouldn't even be talking about him. He's not --

11 DISCOVERY COMMISSIONER: But don't you think it's  
12 your burden to be able to be able to explain that?

13 MS. RODRIGUEZ: I don't, Your Honor, because every  
14 time he's asked for these -- we have our way of defending this  
15 case, which is going to be by the trip sheets and the data  
16 that we're relying upon. These are all things that have been  
17 produced at his request.

18 He's requested it in a number of fashions. And when  
19 I was arguing this isn't relevant, this is not used for  
20 payroll, etcetera, well, now when it's not matching up he's  
21 complaining and wants us to redo it again.

22 And I'm saying, rather than us going through a  
23 thousand files, why don't you just tell us the ones that  
24 you're running into a discrepancy. We can look them up and we  
25 can give you the proof as to why there is a discrepancy,

1 because he already knows who they are.

2 DISCOVERY COMMISSIONER: Well, he's only --

3 MS. RODRIGUEZ: Why would we --

4 MR. GREENBERG: Your Honor --

5 MS. RODRIGUEZ: -- have to search for --

6 DISCOVERY COMMISSIONER: -- looked at --

7 MS. RODRIGUEZ: -- search through a thousand when  
8 there's not going to be a discrepancy?

9 DISCOVERY COMMISSIONER: He's only looked through a  
10 small percentage of them.

11 MR. GREENBERG: Your Honor, I was willing to agree  
12 to some universal parameters here. As I said, if somebody  
13 shows they're not getting a paycheck for 60 days, if I can at  
14 that point say they left, and if they come back after that  
15 point, it's deemed to rehire, we can simply stipulate and work  
16 off of the existing payroll data. But I don't think that  
17 they're willing to agree to that.

18 It's only by looking at these gaps in the paycheck  
19 history that this came to my attention as I was explaining to  
20 Your Honor before. I'm not looking to make things more  
21 complicated. I'm willing to work within some kind of frame  
22 work like that where we just say, hey, this guy disappeared  
23 from the payroll for 60 days, so if he comes back in we're  
24 going to treat him as a new hire for insurance purposes.  
25 //

1           And we could -- I tell you what, Your Honor, we  
2 could have that universal agreement. They would stipulate to  
3 that. And we'll give them some time if they -- and I'll  
4 produce the list of whoever has the 60 day gap. I'll give  
5 them the list. And if they want to come in and dispute and  
6 say, okay, this guy Smith and Jones didn't really leave, they  
7 maintained status, they weren't rehires --

8           MS. RODRIGUEZ: Right.

9           MR. GREENBERG: -- then we can work it out at that  
10 point.

11          MS. RODRIGUEZ: That's fine with me.

12          MR. GREENBERG: I'm willing to do that, Your Honor.

13          DISCOVERY COMMISSIONER: Okay.

14          MR. GREENBERG: But we need an appropriate  
15 stipulation as to this process.

16          MS. RODRIGUEZ: I think I'm understanding --

17          MR. GREENBERG: Do you see what I'm saying?

18          MS. RODRIGUEZ: -- what he wants. And that's -- I  
19 think that's what I'm advocating for is let's look at the ones  
20 that -- where there is some type of discrepancy and figure out  
21 what's going on with those guys.

22          MR. GREENBERG: Well, Your Honor, I don't want to  
23 have the burden of examining the ones in discrepancy. I can  
24 identify everybody in the payroll who there's a 60 day gap  
25 with and I will give it to them.

1 But unless they come forward with some proof that  
2 that 60 day gap didn't constitute a reemployment period, it'll  
3 that that they left and they were rehired when the payroll  
4 starts to reappear for them; okay?

5 I can't be involved with having to document for each  
6 particular person individually; you understand what I'm  
7 saying, whether they were re-employed or not a re-employed  
8 situation.

9 DISCOVERY COMMISSIONER: Do you have, based on your  
10 information, plaintiffs' counsel, do you have a list of all  
11 the employees where you found this 60 day discrepancy?

12 MR. GREENBERG: I can have that produced. That's  
13 fairly easy to do.

14 DISCOVERY COMMISSIONER: Okay. Let's start there.  
15 Produce the list to the defendant. And defendant, you'll need  
16 to address Interrogatories 8 and 9 using that list, to the  
17 best of your ability. If they are rehired for some other job,  
18 you can say that, and say they weren't part of the class at  
19 that point.

20 MS. RODRIGUEZ: Right.

21 DISCOVERY COMMISSIONER: If -- but I need to get the  
22 initial hire date to the best of everybody's ability, you need  
23 to agree on those initial hire dates, whether it's a hire and  
24 a rehire, or a hire and a rehire that means that the person is  
25 no longer part of the class because they're doing a different

1 job.

2 MR. GREENBERG: I think, Your Honor's approach there  
3 makes sense. By the way, they can -- they can identify these  
4 60 day gaps just as easily as I can. But I'll do it, Your  
5 Honor. I don't mind. It's not -- it's not a difficult task  
6 at all. But I'll give it to them and we'll pursue it further.  
7 I mean, I think that's what Your Honor is instructing us to do  
8 and I think that makes sense. I'm certainly --

9 DISCOVERY COMMISSIONER: I --

10 MR. GREENBERG: -- willing, again.

11 DISCOVERY COMMISSIONER: I want -- let me make this  
12 clear; for each member of this class, I want the hire date and  
13 the rehire date if it means that the person is still  
14 maintained in that class. If -- and if they're not then that  
15 needs to be confirmed.

16 So, Person A is hired in 2008, leaves for whatever  
17 reason in 2011, is rehired in 2012, but is no longer a driver,  
18 is a dispatcher, then the applicable period is the 2008 to the  
19 2011.

20 MR. GREENBERG: Absolutely, Your Honor. In fact  
21 the --

22 DISCOVERY COMMISSIONER: But that needs to be  
23 confirmed.

24 MR. GREENBERG: I don't even need the rehire date in  
25 that situation because they're not a class member --

1 DISCOVERY COMMISSIONER: Right.

2 MR. GREENBERG: -- when they come back to  
3 employment.

4 MS. RODRIGUEZ: That's what I'm saying is very  
5 difficult, Your Honor, to go through a thousand files to  
6 figure that out, because these cab drivers come and go --

7 DISCOVERY COMMISSIONER: Well, it --

8 MS. RODRIGUEZ: -- quite a bit.

9 DISCOVERY COMMISSIONER: -- it's not --

10 MS. RODRIGUEZ: But if he's --

11 DISCOVERY COMMISSIONER: -- going to be a thousand  
12 files, it's going to be the list where there's a 60 day gap.

13 MS. RODRIGUEZ: Okay. Perfect.

14 MR. GREENBERG: I mean, yes, Your Honor, I just want  
15 to point out something; it's not difficult for them to see  
16 that the person came back in a different position, because the  
17 pay type will not be the same pay type. The cab drivers are  
18 all paid in identifiable commission type --

19 DISCOVERY COMMISSIONER: Right.

20 MR. GREENBERG: -- because that's their  
21 compensation. If you come back as a dispatcher, that's not  
22 how you're paid, so it's obvious he's not --

23 MS. RODRIGUEZ: I agree with that.

24 MR. GREENBERG: -- a class member; okay?

25 MS. RODRIGUEZ: If we're just talking about the list

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1 we can look at the codes, we can get to the bottom of it.

2 DISCOVERY COMMISSIONER: Okay. So I'm assuming, as  
3 much as I don't want to do that, I am assuming that there is a  
4 group of these 700 that it's really clear they're part of the  
5 class and we've got a hire date and we don't need to worry  
6 about the rehire date.

7 MR. GREENBERG: Look, Your Honor, again, if there  
8 isn't a gap of 60 days, I'm willing to just assume that they  
9 were continuous employees for health insurance purposes. I'm  
10 not --

11 DISCOVERY COMMISSIONER: Okay.

12 MR. GREENBERG: I'm not going to demand that a  
13 further inquiry be on that. I'm trying to simplify and  
14 streamline the process here. But if there's a gap of 60 days  
15 on a payroll being issued to them --

16 DISCOVERY COMMISSIONER: Let's start there.

17 MR. GREENBERG: -- yes, then we will -- we will  
18 investigate further as Your Honor is instructing us.

19 DISCOVERY COMMISSIONER: And then, Ms. Rodriguez,  
20 you need to supplement Interrogatories 8 and 9. You can do it  
21 by attaching a document if that's easier. But you need to  
22 explain what you did. And you will only be concerned about  
23 the list that plaintiffs' counsel provides you where there's  
24 at least a 60 day gap.

25 MS. RODRIGUEZ: I understand, Your Honor.

1 DISCOVERY COMMISSIONER: Okay. Number 10, the date  
2 each class member was eligible for health insurance benefits.  
3 So this should be relatively easy to calculate, I would think.  
4 And maybe all you need is an agreement. I don't know how long  
5 the waiting period was. How long was the waiting period?

6 MR. GREENBERG: It varied, Your Honor.

7 MS. RODRIGUEZ: It did vary. And I will -- I'm  
8 hoping to have that information to Mr. Greenberg by early next  
9 week. I have a preliminary -- no, I apologize, I don't have a  
10 preliminary list on that one. We're having to go back and try  
11 to figure out for the early years, the 2010 through 2012,  
12 there's a problem there.

13 And it did fluctuate. Sometimes it was 30 days,  
14 sometimes it was 60 days. And so I'm trying to get as  
15 specific as possible. We're actually having to go through the  
16 personnel files to find the letters that may have been sent to  
17 the different drivers hired at different years to say your  
18 waiting period is 60 days, your waiting period is 30 days, to  
19 get as close of a date as possible for how long the waiting  
20 periods were and the -- fluctuating between those five years.  
21 So, I hope to get that to him Monday or Tuesday.

22 DISCOVERY COMMISSIONER: So while you're going  
23 through the personnel files why can't you address  
24 Interrogatories 8 and 9 at the same time?

25 MS. RODRIGUEZ: We're not going through all the

1 personnel files. We're finding certain drivers that were  
2 hired --

3 DISCOVERY COMMISSIONER: Okay.

4 MS. RODRIGUEZ: -- like for certain years.

5 DISCOVERY COMMISSIONER: Fine. All right. So do  
6 you think you'll be able to get him that information when?

7 MS. RODRIGUEZ: Next week.

8 DISCOVERY COMMISSIONER: Okay. And that would  
9 address Interrogatory No. 10.

10 MR. GREENBERG: I hope so, Your Honor. That --

11 DISCOVERY COMMISSIONER: Hopefully.

12 MR. GREENBERG: -- that is our hope, of course.

13 DISCOVERY COMMISSIONER: Okay. Then Interrogatory  
14 No. 15 is the summary of health insurance benefits. And I  
15 think we had spoken about this before. And the substance of  
16 the benefits offered may not be that germane. It's the fact  
17 that they are, in fact, offered insurance --

18 MR. GREENBERG: Well --

19 DISCOVERY COMMISSIONER: -- and take advantage of  
20 it.

21 MR. GREENBERG: -- Your Honor, my concern isn't the  
22 contents of the plans, because the plans all seem to be major  
23 medical coverage. They're legitimate insurance plans; okay?  
24 So I don't -- I don't -- really concerned with that. What I  
25 am concerned with understanding though is what the waiting

1 periods were and the costs were.

2 Now, if defendants are going to specify when  
3 everybody became eligible, okay, I don't -- you know, the need  
4 for me to know the waiting periods is important in respect to  
5 just verifying the correctness of their representations. But  
6 that in and of itself is not a critical issue for eligibility.

7 But eligibility participate doesn't mean  
8 availability to pay the lower minimum wage because of the 10  
9 percent rule, Your Honor. So the other component I need to  
10 know here is not just eligibility, but cost to the employee,  
11 which was -- we were addressing earlier in the DCCR. I have  
12 statement as to cost of employee for three years. This is at  
13 page 6 of my Reply.

14 DISCOVERY COMMISSIONER: Um-hum. I'm on it.

15 MR. GREENBERG: There's actually a year missing  
16 here, this chart is missing the year 2012 for some reason.  
17 But there are four years, including that missing year, on the  
18 chart that I do not know what either the waiting period or the  
19 participatory cost was. Assuming I know that they were  
20 eligible, I still need to know what they had to pay and then  
21 compare that to their wages to see if the -- if the 10 percent  
22 was met and the employer could pay the lower minimum wage. So  
23 I'm still waiting to get that information, Your Honor,  
24 regarding the employee premium contribution.

25 DISCOVERY COMMISSIONER: And it would vary. I mean,

1 here's the problem that I'm assuming on commission the  
2 salaries varied; right?

3 MR. GREENBERG: The compensation varies every pay  
4 period --

5 DISCOVERY COMMISSIONER: The compensation varied --

6 MR. GREENBERG: -- Your Honor.

7 DISCOVERY COMMISSIONER: -- every pay period. So  
8 how do we deal with that?

9 MR. GREENBERG: Well, Your Honor, it's 10 percent,  
10 there's an -- of the pay -- there's an amount they have to  
11 have deducted every paycheck. So, I mean, my position would  
12 be if -- if the paycheck deduction was more than 10 percent  
13 of the gross wages for that period of time, they couldn't pay  
14 the 7.25. This may be an issue that will have to be addressed  
15 to the District Judge. They may have a different view as to  
16 how the 10 percent should be calculated. Maybe they'll say it  
17 isn't done on a pay period by pay period basis.

18 The deductions were made every pay period. So I  
19 think that's the easiest and the most sensible way to do it in  
20 terms of the cost, 10 percent issue.

21 MR. WALL: The Court hasn't -- the Supreme Court  
22 hasn't addressed this issue.

23 DISCOVERY COMMISSIONER: Okay.

24 MR. WALL: It's not addressed in the --

25 DISCOVERY COMMISSIONER: In the two --

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1 MR. WALL: -- the opinions that came out.

2 DISCOVERY COMMISSIONER: -- opinions, okay.

3 MR. WALL: The waiting period may or may not be  
4 relevant at all because in our -- a very strong argument can  
5 be made that if the company offers insurance, it pays a  
6 certain amount. It's not like during that 60 day period while  
7 you're waiting to become eligible you get paid a higher  
8 amount. And then once you take the insurance, they get to pay  
9 you a lower amount.

10 DISCOVERY COMMISSIONER: I don't disagree with you,  
11 but I don't think the Court has --

12 MR. WALL: Exactly.

13 DISCOVERY COMMISSIONER: -- specifically addressed  
14 that issue.

15 MR. WALL: The Court has not addressed that issue at  
16 all. I anticipate that when the Court addresses that issue  
17 the waiting period will become irrelevant. That's one of the  
18 reasons that we're here is because that's an issue that is  
19 working its way through the systems.

20 So we have all of those kinds of issues. And the  
21 ten -- and how we're going to apply the ten percent amount  
22 when there's a fluctuation, certainly, the Court is never  
23 going to require that we go through month-by-month. And in  
24 this month he didn't make 10 percent so you have to pay the  
25 higher amount, and in this month, he did and, you know, and

1 you're going to go with every employee through every single  
2 month of their employment.

3 DISCOVERY COMMISSIONER: I don't know how they --

4 MR. WALL: I can't imagine the Court will require  
5 that.

6 DISCOVERY COMMISSIONER: I don't know how the  
7 Court's going to handle that. But I don't disagree with your  
8 analysis. But somehow they're going to have to handle it.  
9 And maybe it's annually, the annual premium to the annual  
10 salary.

11 MR. GREENBERG: Yes, Your Honor. But I still --

12 DISCOVERY COMMISSIONER: But -- but --

13 MR. GREENBERG: -- we still need to know what the  
14 premium is.

15 DISCOVERY COMMISSIONER: Yeah. But, I agree with  
16 you, and I thought I had ordered that last time.

17 MS. RODRIGUEZ: Um-hum. And that's what I did --  
18 have preliminary information. I was confused. I just  
19 received this last night from my client. I just haven't had a  
20 chance to speak with the payroll folks before I release it to  
21 Mr. Greenberg. So I anticipate being able to give the -- give  
22 this to him this afternoon, if not Monday morning, if I can  
23 reach her. I don't know if she works today.

24 DISCOVERY COMMISSIONER: And that's in relation to  
25 15?

1 MS. RODRIGUEZ: Is that all --

2 DISCOVERY COMMISSIONER: Which is --

3 MS. RODRIGUEZ: -- of the costs? It's the costs per  
4 -- it's -- it's what was in the DCR&R, as well.

5 DISCOVERY COMMISSIONER: Summary of health insurance  
6 benefits offered for the applicable time period is Number 15.  
7 And I think what you just indicated you have probably --

8 MS. RODRIGUEZ: I have costs to the employee, costs  
9 with employee and spouse, costs to employee and children, and  
10 family costs for all of the applicable years.

11 DISCOVERY COMMISSIONER: That would be Number 10, I  
12 think, actually.

13 MR. GREENBERG: Yes, Your Honor. Well, it's related  
14 but, I mean, the numbers in the interrogatory. But that is  
15 definitely what we're talking about we need. We need to know  
16 what --

17 DISCOVERY COMMISSIONER: Okay.

18 MR. GREENBERG: -- what the premium costs were, Your  
19 Honor.

20 DISCOVERY COMMISSIONER: Right. So that had been  
21 previously recommended.

22 MS. RODRIGUEZ: Um-hum.

23 DISCOVERY COMMISSIONER: And in terms of  
24 Interrogatory No. 10, you know, they want each class member to  
25 be eligible. I think you wait and see what information you

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1 get once Ms. Rodriguez puts it together. It really is the  
2 waiting period, I think at this point, for being able to  
3 access the health insurance. I'm not going to have them go  
4 per each class member. There should be -- the Quickbooks  
5 should show though what the wage difference was; right?

6 MR. GREENBERG: Well, not necessarily, Your Honor.  
7 I want to -- I want to streamline things. I want to wait to  
8 see what we get from the defendants rather than take up more  
9 of your -- more of your time with things that we may not need  
10 to explore.

11 The only point here, Your Honor, is that even if  
12 somebody's eligible, we still need to understand the 10  
13 percentage issue. It doesn't resolve the insurance issue  
14 entirely just because they were eligible. The ten percent  
15 issue, Your Honor, in turn, is influenced by the dependent  
16 status of the employee because the family coverage is much  
17 more expensive.

18 So did the employee have a spouse? Did they have  
19 children to insure, as well? Okay. I believe --

20 DISCOVERY COMMISSIONER: Well, I'm --

21 MR. GREENBERG: -- it should -- yes?

22 DISCOVERY COMMISSIONER: -- not going to have them  
23 identify all that information. I think -- all that I think is  
24 reasonable at this point is, you know, when did they have the  
25 ability to pay for the insurance or when --

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1 MR. GREENBERG: Yes.

2 DISCOVERY COMMISSIONER: -- you know, when did it --  
3 the waiting period expire so that they had the ability to buy  
4 insurance and whether they bought the individual or family  
5 plan. I don't think you need to know the details.

6 MR. GREENBERG: Your Honor, the only other potential  
7 qualification regarding their ability to participate in the  
8 insurance is whether they maintained full-time status. They  
9 had to work 30 hours a week. I don't -- I'm just -- I'm just  
10 letting Your Honor know that. I'm not asking the Court to do  
11 anything about that or to address that issue. Let's see what  
12 we get on the information they're producing, and if that  
13 raises an issue for class members, I just want the Court to  
14 know, I may come back to --

15 DISCOVERY COMMISSIONER: Interrogatory No. 10, I  
16 think is the one we're talking about in relation to all the  
17 dates that each class member were eligible to participate in  
18 health benefits. And again, I think, Ms. Rodriguez, if I  
19 understand correctly, that's part of the information you're  
20 putting together. Am I correct on that?

21 MS. RODRIGUEZ: I'm sorry. I'm searching for the  
22 interrogatory exactly. But would this be the waiting periods?  
23 I believe it's the waiting periods, and if so, yes.

24 DISCOVERY COMMISSIONER: Because it says, "All dates  
25 each class member was eligible to participate." So that would

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1 mean the waiting period --

2 MS. RODRIGUEZ: Okay.

3 DISCOVERY COMMISSIONER: -- had expired and this is  
4 the date they were eligible to participate. Now, the issue is  
5 whether or not they did. And did they get paid a lower rate  
6 because of it, and could they pay the premiums? Did -- was  
7 that less than the 10 percent? And, you know, it's going to  
8 be very difficult in this type of a case where we have  
9 fluctuating income.

10 MS. RODRIGUEZ: Um-hum.

11 MR. GREENBERG: Well, Your Honor, they may have been  
12 under the 10 percent sometimes and not other times. But there  
13 is -- there is also an issue, Your Honor, again, in respect to  
14 what the cost was for the family versus the individual. And  
15 it's not actual enrollment, it's simply that they had the  
16 opportunity to participate. They didn't have to take the  
17 coverage.

18 DISCOVERY COMMISSIONER: Right. But --

19 MS. RODRIGUEZ: He's getting that.

20 DISCOVERY COMMISSIONER: Okay. So you're going to  
21 get --

22 MR. GREENBERG: Yes, Your Honor.

23 DISCOVERY COMMISSIONER: -- I believe you're going  
24 to receive information that addresses Interrogatory No. 10.

25 MR. GREENBERG: Yeah. I think so, Your Honor.

1 That's what I've been hearing. And I'm looking forward to  
2 seeing that. And if -- and --

3 DISCOVERY COMMISSIONER: I'm looking forward to you  
4 receiving it.

5 MR. GREENBERG: And if there's issues, we will be  
6 back on it. I don't want to raise more issues about it  
7 because it's just speculation at this point, Your Honor.

8 DISCOVERY COMMISSIONER: Okay. So --

9 MR. GREENBERG: I haven't seen what they're --

10 DISCOVERY COMMISSIONER: -- interrogatory --

11 MR. GREENBERG: -- giving me.

12 DISCOVERY COMMISSIONER: Sorry, I didn't mean to  
13 interrupt you. Interrogatory No. 15, there are periods that  
14 you have the information for and periods you don't. Ms.  
15 Rodriguez, can you please go back and check the periods that  
16 counsel says he does not have the information for and --

17 MS. RODRIGUEZ: What are we talking about? I'm  
18 sorry.

19 MR. GREENBERG: I believe Ms. Rodriguez --

20 MS. RODRIGUEZ: Is it the employee benefit plans  
21 again?

22 MR. GREENBERG: -- the -- the premium costs --

23 MS. RODRIGUEZ: Oh, yes.

24 MR. GREENBERG: -- I --

25 MS. RODRIGUEZ: That's what he's going to get today.

1 MR. GREENBERG: Yes, Your Honor. I believe she said  
2 that they are providing that.

3 DISCOVERY COMMISSIONER: Okay.

4 MR. GREENBERG: So I'm hopeful --

5 DISCOVERY COMMISSIONER: So that takes --

6 MR. GREENBERG: -- I'll see that.

7 DISCOVERY COMMISSIONER: -- care of 15 hopefully.

8 MR. GREENBERG: Yes, Your Honor.

9 DISCOVERY COMMISSIONER: And then Number 19, it's  
10 just a decision, Ms. Rodriguez, you're going to have to make.  
11 Are you going to blame a third party for the alleged issues in  
12 this case? If you are, you have to identify them. If you're  
13 not, then you need to withdraw the affirmative defense.

14 MS. RODRIGUEZ: I'm sorry. I've just located the  
15 affirm -- that -- yeah, he just sent me a whole bunch of these  
16 on affirmative defenses to specify. And I think I did  
17 identify, we asserted the Labor Commissioner who gave the  
18 instructions to the defendant, and he proceeded under that  
19 instruction.

20 DISCOVERY COMMISSIONER: I'm not sure suing the  
21 Labor Commissioner is such a good plan.

22 MS. RODRIGUEZ: No, that's why we've withheld in  
23 doing so. And I think the other cab companies have, as well.  
24 But there has been affidavits supplied in this from the Labor  
25 Commissioner about what their understanding were -- was about

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1 the -- the minimum wage amendments and those type of things.  
2 So that was one of the affirmative defenses, is that the A Cab  
3 did receive instructions to the contrary of these accusations  
4 that they deliberately were violating the law.

5 DISCOVERY COMMISSIONER: Okay. Any further third  
6 party that may have any type of responsibility in this case?

7 MS. RODRIGUEZ: I'm sorry, Your Honor, I'm looking  
8 for it. I have so many documents, and I wasn't sure what we  
9 were going to be addressing specifically on this one. I  
10 thought actually today we were only talking about the  
11 healthcare issue, because we did talk to Mr. Greenberg earlier  
12 this week and -- to ascertain what he was still moving to  
13 compel. And the only thing I understood that he had an issue  
14 with was this health insurance items that we've just gone over  
15 as well as the profit and loss documents and the tax documents  
16 which I did turn over to him.

17 And I don't know if you're intending to address  
18 that, as well, because we did turn everything over to him, but  
19 he chose not to go forward with that deposition of Mr. Nady.  
20 So I don't even see where that's one of these interrogatories  
21 anymore. So, in all honesty, Your Honor, I'm trying to get a  
22 handle on what he feels he still is lacking.

23 MR. GREENBERG: Your Honor, if we could simply have  
24 a supplement to Number 19, just identifying by name whoever  
25 these third parties are and that'll be the end of it.

1 DISCOVERY COMMISSIONER: That -- and the only third  
2 party that you may have reference to is the Nevada Labor  
3 Commissioner?

4 MR. GREENBERG: That is my understanding, Your  
5 Honor.

6 MS. RODRIGUEZ: Okay.

7 DISCOVERY COMMISSIONER: All right. So if there are  
8 no others, then just clarify that, Ms. Rodriguez --

9 MS. RODRIGUEZ: I will.

10 DISCOVERY COMMISSIONER: -- in your answer.

11 MS. RODRIGUEZ: I will.

12 DISCOVERY COMMISSIONER: And look at your  
13 affirmative defenses and make sure you're going to proceed  
14 accordingly with those defenses or agree to abandon them.

15 MS. RODRIGUEZ: I understand.

16 DISCOVERY COMMISSIONER: Work out some sort of an  
17 arrangement with plaintiffs' counsel on that.

18 MS. RODRIGUEZ: Okay.

19 DISCOVERY COMMISSIONER: All right. I don't have  
20 anything further today on my list. So if there is something  
21 additional that you all have, then I need to discuss it.

22 MS. RODRIGUEZ: I do have that -- that issue with  
23 the deposition of Mr. Nady, because Your Honor ordered that to  
24 go forward, both the PMK, the 30(b)(6), as well as the four-  
25 hour deposition of Mr. Nady.

1 DISCOVERY COMMISSIONER: Individually, right?

2 MS. RODRIGUEZ: Correct. And we had that set on  
3 December 1st. And I turned over everything that Your Honor  
4 ordered, the Profit and Loss Statements for the appropriate  
5 years, the tax information for Mr. Nady, as well as all his  
6 family members.

7 And Mr. Greenberg earlier this week indicated he  
8 still had a problem with that and that's why he abandoned that  
9 -- that date. We don't have a new date. I would like to get  
10 that back on calendar if he's going to proceed, because I  
11 don't want this lingering into next year where now we have a  
12 whole new set of issues that he's going to depose Mr. Nady  
13 about, so.

14 DISCOVERY COMMISSIONER: Well, you have until April  
15 28th of 2017 to complete discovery. I've already given you  
16 that deadline. Your expert disclosures, however, are due at  
17 the end of January. So it makes sense to me that your  
18 client's deposition is completed well in advance of those  
19 expert disclosure deadlines.

20 MS. RODRIGUEZ: Right. But I do have a trial, a  
21 two-week trial in January, so I don't want to be up against  
22 that -- that deadline again. And --

23 DISCOVERY COMMISSIONER: Which is fair.

24 MS. RODRIGUEZ: -- and Mr. Nady won't give -- I  
25 mean, excuse me, Mr. Greenberg doesn't indicate that he's

1 wanting to proceed at this point.

2 MR. GREENBERG: Your Honor, if I may? I don't  
3 believe that it's terribly likely expert testimony is going to  
4 be implicated by Mr. Nady's liability which is the purpose of  
5 his deposition.

6 I am very concerned about the health insurance  
7 information, because if I need to assemble some analysis of  
8 damages that's going to, you know, factor into the work of --

9 DISCOVERY COMMISSIONER: Does that affect your --

10 MR. GREENBERG: -- an expert potentially.

11 DISCOVERY COMMISSIONER: -- questioning of Mr. Nady  
12 though? I just don't understand that.

13 MR. GREENBERG: Marginally, Your Honor. I mean, the  
14 liability pled against Mr. Nady is not 100 percent based upon  
15 the liability of A Cab. He's not conceding he's responsible  
16 for whatever A Cab's responsible for. It's a very narrow form  
17 of liability based upon his acts or omissions or alter ego  
18 status in respect to the company.

19 So the question is, did he direct the company to  
20 engage in the illegal acts alleged, and did he actually  
21 benefit from that. That was the purpose of seeking the  
22 financial disclosures, the tax information. Presumably, he  
23 has a good defense if he didn't actually profit. Do you  
24 understand what I'm saying?

25 DISCOVERY COMMISSIONER: Just a little practice

1 pointer --

2 MR. GREENBERG: Yes.

3 DISCOVERY COMMISSIONER: -- at deposition; I  
4 probably wouldn't use the term "illegal" when you ask him the  
5 question. That's number one.

6 Number two, why can't you take that deposition  
7 currently?

8 MR. GREENBERG: Because I don't know what his profit  
9 was from the company. And they're not willing -- they gave me  
10 a net income amount for the company, A Cab. They are not  
11 willing to stipulate that that is the net amount of gain that  
12 Mr. Nady received from the company's business.

13 DISCOVERY COMMISSIONER: Maybe you should ask him  
14 during deposition.

15 MR. GREENBERG: Your Honor, I asked him 2015 in his  
16 deposition to tell me what --

17 DISCOVERY COMMISSIONER: Yeah, but that deposition  
18 didn't go very well.

19 MR. GREENBERG: It didn't go very well. And his  
20 answer was, I don't know; okay? Whatever the income was to  
21 the company is going on his 1040, because he is apparently the  
22 only member of the LLC. If there's more than one member of an  
23 LLC, it must file a separate return, a K-1 is issued. There  
24 is no K-1. They don't have to issue a K-1. So essentially he  
25 is the company.

1 I would find what the income was by looking at his  
2 Schedule C and his Schedule E of his 1040. I wouldn't need  
3 the rest of his 1040 because it would have to be listed on one  
4 or both of those schedules. They don't want to produce that  
5 information to me. They don't want to stipulate that the net  
6 income of the company was, in fact, the net income to Mr. Nady  
7 during the relevant time period.

8 So how -- if I'm going to go to trial, Your Honor,  
9 and I'm going to get a finding responsibility by Mr. Nady, and  
10 he's going to say, well, I'm not responsible to the extent  
11 greater than what my profit was how -- how -- and what my  
12 financial gain was from the supposed illegal activities, then  
13 how am I going to establish what that number is? Isn't the  
14 burden on me to show the extent of what he should be  
15 responsible for?

16 If he's going to assume 100 percent responsibility  
17 if A Cab can't pay a judgment, then I don't care. But if he's  
18 going to interpose this defense then I need to be able to  
19 establish for purposes of trial what -- well, what was his  
20 gain?

21 DISCOVERY COMMISSIONER: Isn't that more  
22 appropriately for a judgment debtor exam once you get a  
23 judgment?

24 MR. GREENBERG: Your Honor, a judgment, they're not  
25 joint and severally liable defendants here. Presumably, he is

1 liable only to the amount of his gain, or at least he has a  
2 defense to raise based on that. So you're saying that I  
3 should proceed to trial, get a judgment. If A Cab doesn't  
4 pay, then determine in a supplementary proceeding what the  
5 extent of his liability is based on his gain from the  
6 operations.

7 It could be approached that way. And if the  
8 District Judge authorized it, and I reserved my rights in that  
9 fashion, my right -- you know, my clients' interests would be  
10 protected. I acknowledge that, Your Honor. I just don't know  
11 that that makes sense; okay?

12 DISCOVERY COMMISSIONER: I don't know what makes  
13 sense anymore on this case to be candid with you.

14 MS. RODRIGUEZ: Your Honor?

15 DISCOVERY COMMISSIONER: Have you turned over all  
16 the financial information --

17 MS. RODRIGUEZ: I did.

18 DISCOVERY COMMISSIONER: -- that I previously  
19 ordered?

20 MS. RODRIGUEZ: Yes.

21 DISCOVERY COMMISSIONER: What's the problem --

22 MS. RODRIGUEZ: Exactly.

23 DISCOVERY COMMISSIONER: -- with regard to the --  
24 you know, the net worth?

25 MS. RODRIGUEZ: We just had -- we -- you had these

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1 arguments before. We spent an hour --

2 DISCOVERY COMMISSIONER: I know.

3 MS. RODRIGUEZ: -- arguing about this and Your Honor  
4 said we didn't have to turn over the full tax --

5 DISCOVERY COMMISSIONER: I did.

6 MS. RODRIGUEZ: -- documents. We turned over the  
7 Profit and Loss Statements as you ordered. We turned over all  
8 of the tax information, the W-2s I believe, W-2s --

9 MR. GREENBERG: There is no W-2, Your Honor.

10 MS. RODRIGUEZ: -- for Nady. What did she receive?  
11 1099's. I'm sorry. I was -- I was thinking of the wrong tax  
12 form.

13 DISCOVERY COMMISSIONER: All right.

14 MS. RODRIGUEZ: 1099s for Nady and family as  
15 ordered.

16 DISCOVERY COMMISSIONER: Okay. Mr. Greenberg --

17 MS. RODRIGUEZ: I told Mr. Greenberg --

18 MR. GREENBERG: Yes, Your Honor?

19 MS. RODRIGUEZ: -- anything else, he needs to ask  
20 Mr. Nady at the deposition. If he's interested in -- in the  
21 interplay between the company and what Nady profits from, he's  
22 got the tax documents in front of him. He can thoroughly ask  
23 him all of that at a deposition. I don't know why he chose to  
24 abandon that deposition.

25 DISCOVERY COMMISSIONER: Well, I think he probably

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1 wants the other information on the health insurance which you  
2 are working on providing him.

3 MS. RODRIGUEZ: That has nothing to -- that was the  
4 PMK. That was the 30(b)(6). Or he -- probably he's going to  
5 notice another 30(b)(6) on the health insurance.

6 DISCOVERY COMMISSIONER: You know what; I'm going to  
7 rely on you all to prepare your case for trial. You know it  
8 much better than I do, and I know it better than I would like  
9 to know it. So you all need to get busy, get your discovery  
10 exchanged.

11 Mr. Greenberg, I would go ahead and take his  
12 deposition. If you want to wait for the health insurance so  
13 you can take the PMK and his individual deposition at one  
14 time, take it. Ask the financial questions that you feel you  
15 need to ask. You're either going to draw an objection and an  
16 instruction not to answer, and then I will have to deal with  
17 it by a separate motion.

18 But I can't do anymore right now. This is what I  
19 can do. If you're not satisfied, you're welcome to talk to  
20 the District Court Judge.

21 MR. GREENBERG: Yes, Your Honor.

22 DISCOVERY COMMISSIONER: But you have the Profit and  
23 Loss. You have his 1099 forms.

24 MS. RODRIGUEZ: All Income Statements as well.

25 DISCOVERY COMMISSIONER: All Income Statements.

1 MR. GREENBERG: I -- I --

2 DISCOVERY COMMISSIONER: Move forward.

3 MS. RODRIGUEZ: And there will not be an instruction  
4 not to answer. That's what I told Mr. Greenberg; he's ready  
5 to answer these questions.

6 MR. GREENBERG: Your Honor, again, some of these  
7 issues involve evidentiary determinations and how the case  
8 would proceed at trial or --

9 DISCOVERY COMMISSIONER: I understand.

10 MR. GREENBERG: -- potential judgment. And perhaps  
11 I should address them to the District Court. If Your Honor is  
12 not going to order the production of Schedule C and the  
13 Schedule E of the 1040, then you're not. I understand.

14 DISCOVERY COMMISSIONER: I'm not. And I --

15 MR. GREENBERG: And I don't want to belabor the  
16 point.

17 DISCOVERY COMMISSIONER: We've already addressed  
18 that issue.

19 MR. GREENBERG: Okay.

20 DISCOVERY COMMISSIONER: I've already ordered the  
21 financial documents.

22 MR. GREENBERG: Then --

23 DISCOVERY COMMISSIONER: If -- if you think that my  
24 recommendation was not appropriate, then you should object.

25 MS. RODRIGUEZ: I think he did object. Didn't --

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1 MR. GREENBERG: Well --

2 MS. RODRIGUEZ: -- you object already?

3 DISCOVERY COMMISSIONER: And what did the --

4 MR. GREENBERG: -- Your Honor --

5 DISCOVERY COMMISSIONER: -- Judge say?

6 MR. GREENBERG: -- I couldn't really object to the  
7 financial disclosures because I didn't have them until about a  
8 week ago or 10 days ago.

9 What I'd ask Your Honor to do, is if we could have a  
10 Report and Recommendation just confirming you're not ordering  
11 disclosure of the Schedule C and the Schedule E of Mr. Nady,  
12 and the 1040s, I'll have it in the record. And that way, if I  
13 want to object to that ruling by Your Honor, I'll take it --

14 DISCOVERY COMMISSIONER: But I've already --

15 MR. GREENBERG: -- to District Judge.

16 DISCOVERY COMMISSIONER: -- made that decision.

17 MR. GREENBERG: Well, you -- you --

18 DISCOVERY COMMISSIONER: You do a Motion to  
19 Reconsider to the District Court Judge. You sign the order.  
20 If you signed it, do a Motion to Reconsider to him. I don't  
21 want to -- I don't want to revisit that issue because I've  
22 already made a recommendation on it.

23 MR. GREENBERG: Well --

24 DISCOVERY COMMISSIONER: If the Judge has signed it,  
25 then do a Motion to Reconsider to the Judge.

1 MR. GREENBERG: Okay.

2 MS. RODRIGUEZ: Right.

3 MR. GREENBERG: Then -- then that's -- then that's  
4 how we need to proceed --

5 DISCOVERY COMMISSIONER: Okay.

6 MR. GREENBERG: -- if -- if necessary, Your Honor.

7 There are at least three or four other issues that  
8 are outstanding. I don't know if the Court wants to take the  
9 time to address them.

10 DISCOVERY COMMISSIONER: Well, we could --

11 MR. GREENBERG: It's up to Your Honor.

12 DISCOVERY COMMISSIONER: Well, we could take a vote  
13 of the audience. I think the answer is going to be "no". But  
14 actually everyone seems to be enjoying the argument now, so  
15 I'm getting, you know, encouragement here.

16 What else do we have to address, Mr. Greenberg? Can  
17 you just give me a list?

18 MR. GREENBERG: Your Honor, this is in -- primarily  
19 in the second supplement I submitted to Your Honor. There  
20 were disclosures at Mr. Nady's recent deposition regarding  
21 materials that have not been produced or that are otherwise  
22 germane and can be produced.

23 DISCOVERY COMMISSIONER: Can you just give me a  
24 list?

25 MR. GREENBERG: Okay. There are Excels of the daily

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1 time every driver worked. They're called "J-Rolls" sometimes.  
2 These exist. They were maintained in the normal course of  
3 business. I --

4 DISCOVERY COMMISSIONER: Haven't I already addressed  
5 this issue?

6 MR. GREENBERG: Your Honor, they were --

7 MS. RODRIGUEZ: Your Honor, I've --

8 MR. GREENBERG: -- they were --

9 MS. RODRIGUEZ: -- just received the supplement  
10 yesterday and he's got a whole new list of items. And I'm  
11 really not prepared to address all of that.

12 DISCOVERY COMMISSIONER: Okay.

13 MS. RODRIGUEZ: You -- you ordered a certain time  
14 for supplements. We just got this yesterday.

15 DISCOVERY COMMISSIONER: Okay.

16 MR. GREENBERG: Your Honor --

17 DISCOVERY COMMISSIONER: So the J-Rolls, I thought  
18 we had address that like months ago. So maybe --

19 MR. GREENBERG: Yes, Your Honor --

20 DISCOVERY COMMISSIONER: -- I'm confused.

21 MR. GREENBERG: -- and they were never produced.

22 And Mr. Nady doesn't -- at his deposition confirms the  
23 existence of these things, says if -- they should be in the  
24 computer system. If they're there, we can produce them. Why  
25 they weren't produced, he has no explanation. They should be

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1 produced. They should have been produced, Your Honor.

2 DISCOVERY COMMISSIONER: What's the second item?

3 MR. GREENBERG: The second issue, Your Honor, is  
4 that Mr. Nady testified that the Quickbooks system will  
5 indicate to us whether someone is recorded as having a spouse,  
6 being married or unmarried. This is required on a W-4 form  
7 for every employee and it will also tell us how many  
8 dependents they're claiming for tax purposes.

9 We would like that information produced because it's  
10 going to tell us what the cost was for a particular employee.  
11 Somebody who isn't married, Your Honor, clearly has no  
12 interest in getting spousal coverage.

13 DISCOVERY COMMISSIONER: Well, then it's going to  
14 show whether they took the individual plan or the family plan.  
15 I am not inclined to go further.

16 MR. GREENBERG: Your Honor, it's not going to show  
17 whether they took any plan. It's simply going to tell us  
18 whether they had a spouse to insure. That's all. We --

19 DISCOVERY COMMISSIONER: No. You can tell that --  
20 the issue is, did they offer health insurance and was it  
21 within the 10 percent of their overall salary. Those are the  
22 issues. You don't need --

23 MR. GREENBERG: Yeah.

24 DISCOVERY COMMISSIONER: -- to know everybody's  
25 individual arrangements.

1 MR. GREENBERG: Your Honor, defendants will argue  
2 that for the single person they complied, but maybe not for  
3 the spouse or the person -- the person who was married or had  
4 dependents because it cost the person with the spouse more,  
5 Your Honor.

6 DISCOVERY COMMISSIONER: I understand that. But you  
7 can make that argument without knowing these details.

8 MR. GREENBERG: But, Your Honor, how am I going to  
9 know who had to -- who had the spouse and had to pay more and  
10 didn't --

11 DISCOVERY COMMISSIONER: Because you're going to see  
12 the payment being made.

13 MR. GREENBERG: No, I won't, Your Honor. If they  
14 didn't enroll, I won't see it. And they could have enrolled  
15 only for themselves --

16 DISCOVERY COMMISSIONER: Well --

17 MR. GREENBERG: -- not for the spouse. The plans  
18 didn't even offer spousal coverage for certain time periods,  
19 so they weren't eligible to enroll their spouse.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. GREENBERG: I have that from the disclosures.  
22 If Your Honor wants this briefed more fully and we should  
23 return, I will do so. I appreciate we're taking up a lot of  
24 your time.

25 DISCOVERY COMMISSIONER: So my question is, we have

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1 the date of hire, the date of rehire. We have the financial  
2 information, the amount that the plan was offered. So should  
3 not we -- shouldn't we be able to derive whether they took an  
4 individual plan, no plan, or the family plan? Isn't there a  
5 way to capture that information?

6 MR. GREENBERG: Your Honor, it's not whether they  
7 took any plan. It's whether they could have covered  
8 themselves and their dependents within the 10 percent once  
9 they were eligible.

10 DISCOVERY COMMISSIONER: Well, you don't need to  
11 know all the details.

12 MR. GREENBERG: Your Honor, if they -- if they had a  
13 spouse, they couldn't cover the spouse if the plan didn't  
14 offer spousal coverage which --

15 DISCOVERY COMMISSIONER: But that's a different --

16 MR. GREENBERG: -- it didn't.

17 DISCOVERY COMMISSIONER: -- issue. We're --

18 MR. GREENBERG: No, Your Honor --

19 DISCOVERY COMMISSIONER: -- just going in circles.

20 MR. GREENBERG: Your --

21 DISCOVERY COMMISSIONER: I -- I don't want to spend  
22 anymore time --

23 MR. GREENBERG: Can I -- can I --

24 DISCOVERY COMMISSIONER: -- on that issue. What is  
25 your third issue?

1 MR. GREENBERG: Your Honor, all I would ask is  
2 permission to brief that issue and return it by motion.

3 DISCOVERY COMMISSIONER: Then you'll have to bring a  
4 separate motion.

5 MR. GREENBERG: Thank you, Your Honor.

6 DISCOVERY COMMISSIONER: Number three, what's your  
7 third issue?

8 MR. GREENBERG: Your Honor, there was testimony at  
9 the deposition that we -- we noticed Mr. Nady as a 30(b)(6)  
10 witness to tell us about the PDF storage, electronic scanned  
11 storage of trip sheets. He came to the deposition. He could  
12 tell us nothing about that.

13 DISCOVERY COMMISSIONER: You have the trip sheets  
14 now.

15 MR. GREENBERG: Your Honor, I don't have them in the  
16 PDF form. If they're stored in PDF form, not 500,000 pages of  
17 paper form, I want them, and they should be produced, and it's  
18 very easy to produce them. Mr. Nady even testified at his  
19 deposition that if they were there --

20 DISCOVERY COMMISSIONER: Didn't we address --

21 MR. GREENBERG: -- they could be copied.

22 DISCOVERY COMMISSIONER: -- these issues before? Is  
23 this like Groundhog Day where I'm hearing the same things all  
24 over again? Because that's --

25 MR. GREENBERG: Yes, you --

1 DISCOVERY COMMISSIONER: -- how I feel.

2 MR. GREENBERG: -- you are, Your Honor, because I  
3 don't --

4 MS. RODRIGUEZ: And it's not the subject of --

5 MR. GREENBERG: -- I don't get --

6 MS. RODRIGUEZ: -- any of his Motions to Compel.

7 MR. GREENBERG: -- I don't get production or  
8 forthrightness from --

9 MS. RODRIGUEZ: That's not true.

10 MR. GREENBERG: -- not from counsel, but from the  
11 defendants about --

12 DISCOVERY COMMISSIONER: Well --

13 MR. GREENBERG: -- the materials that they have --

14 DISCOVERY COMMISSIONER: -- but counsel's --

15 MR. GREENBERG: -- and can produce.

16 DISCOVERY COMMISSIONER: -- the one who's  
17 responsible.

18 Ms. Rodriguez, what was the deal with the PDF format  
19 on this? I cannot recall.

20 MS. RODRIGUEZ: The PDFs have always been made  
21 available to him. That was our argument for two years, that  
22 he's welcome to come look at this PDFs. Now, I have contacted  
23 Jim Morgan -- back to Jim Morgan, the computer guy -- to  
24 figure out how he can copy 500,000 PDFs to Mr. Greenberg. I  
25 went back last night and I reviewed one of your earlier

1 transcripts where this was discussed, where he's going to  
2 furnish an external disk drive, I believe, to have them  
3 copied. I --

4 DISCOVERY COMMISSIONER: That's right. Weren't --

5 MS. RODRIGUEZ: -- I believe it's --

6 DISCOVERY COMMISSIONER: -- we to do that?

7 MS. RODRIGUEZ: Yes, Mr. Wall was present for that  
8 one. I think --

9 MR. GREENBERG: Your Honor --

10 MS. RODRIGUEZ: -- I missed that one. And I did  
11 talk to Mr. Morgan about that. He suggests that he purchase  
12 it and bill Mr. Greenberg. I think it's going to be less than  
13 the \$500 that Mr. Greenberg offered. I'll certainly discuss  
14 it with him --

15 MR. GREENBERG: Yes, Your Honor.

16 MS. RODRIGUEZ: -- prior.

17 DISCOVERY COMMISSIONER: Okay.

18 MS. RODRIGUEZ: But just for viruses and bugs and  
19 things like that, just for protection.

20 DISCOVERY COMMISSIONER: Okay.

21 MS. RODRIGUEZ: So it's in the works.

22 MR. GREENBERG: Your Honor?

23 MS. RODRIGUEZ: But it's a huge project. It's not  
24 -- I know Mr. Greenberg thinks miraculously my client can push  
25 a button and give him all this electronic data but it's --

1 it's a lot more complex. And --

2 DISCOVERY COMMISSIONER: I understand.

3 MS. RODRIGUEZ: -- this has been a shell game for  
4 us, too, because every time we give him something it's -- it's  
5 quite a production and then he doesn't like it. And so then  
6 we're back here asking for something else.

7 MR. GREENBERG: And, Your Honor --

8 DISCOVERY COMMISSIONER: All right. I'm -- I'm  
9 going to let counsel follow-up on the PDF issue.

10 MR. GREENBERG: Okay. So we -- we will -- we will  
11 leave that for further hopeful -- hopeful resolution --

12 DISCOVERY COMMISSIONER: Hopeful resolution.

13 MR. GREENBERG: -- by counsel.

14 The one remaining issue that I wanted to bring to  
15 Your Honor's attention was this Department of Labor Excel file  
16 and this request that had been made to the Department of Labor  
17 for that file. I have asked defendants to sign an  
18 authorization waiving one of the FOIA exemptions. There's a  
19 FOIA exemption where the Department of Labor will not disclose  
20 information from a private business.

21 DISCOVERY COMMISSIONER: Haven't we talked about  
22 this as well?

23 MS. RODRIGUEZ: Yes. But this is a --

24 DISCOVERY COMMISSIONER: What was the --

25 MS. RODRIGUEZ: -- new one.

1 DISCOVERY COMMISSIONER: -- ultimate -- okay.

2 MS. RODRIGUEZ: This is a new one where he's wanting  
3 Mr. Nady to sign a full authorization. So we've never -- no,  
4 that's -- that's a new one that I just got yesterday.

5 DISCOVERY COMMISSIONER: Okay. So you're going to  
6 have to have a 2.34 conference on it and bring a separate  
7 Motion to Compel.

8 MR. GREENBERG: We will do so, Your Honor.

9 DISCOVERY COMMISSIONER: All right. And you might  
10 want to address the J-Roll while you're at it.

11 Okay. I'm not going to handle anything further  
12 today.

13 MR. GREENBERG: Yes, Your Honor.

14 DISCOVERY COMMISSIONER: I really am not inclined to  
15 set you for another Status Check. I am inclined to tell you,  
16 though, that I will hear that motion, Mr. Greenberg. You just  
17 need to prepare it and file it. And that's when you'll come  
18 back.

19 MR. GREENBERG: That will presumably be in January  
20 sometime, Your Honor.

21 DISCOVERY COMMISSIONER: Okay.

22 MR. GREENBERG: And I hope you have a good holiday  
23 because you won't be seeing us until after the holidays, so  
24 that should make it a little better.

25 DISCOVERY COMMISSIONER: Well, I don't know about

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1 that. I might go through withdrawals.

2 Okay. So prepare your motion, if necessary, but  
3 let's give defense counsel an opportunity to pull together  
4 some of the additional information. Have your 2.34. Make  
5 sure, Ms. Rodriguez, you provide the cost of the hard drive or  
6 whatever mechanism Mr. Morgan's going to use to download this  
7 information, so Mr. Greenberg knows in advance what it is  
8 going to cost.

9 MS. RODRIGUEZ: Right.

10 DISCOVERY COMMISSIONER: Okay?

11 MS. RODRIGUEZ: I understand.

12 DISCOVERY COMMISSIONER: All right.

13 THE CLERK: Who's going to be preparing the Report  
14 and Recommendation?

15 DISCOVERY COMMISSIONER: Do we need a Report and  
16 Recommendation from today's hearing? Yes, we do. Ms.  
17 Rodriguez, you are going to prepare it. You're going to run  
18 it by counsel to approve as to form and content. That would  
19 be a really nice holiday gift for me, if you all could sign  
20 off on one Report and Recommendation. If you can't just  
21 submit your own and I'll look at both of them.

22 MR. GREENBERG: We -- we did come close on the one,  
23 Your Honor.

24 DISCOVERY COMMISSIONER: You did. I --

25 MR. GREENBERG: It was --

1 DISCOVERY COMMISSIONER: -- grant you.

2 MR. GREENBERG: -- but one sentence, perhaps.

3 DISCOVERY COMMISSIONER: One paragraph.

4 MR. GREENBERG: Yes.

5 DISCOVERY COMMISSIONER: One paragraph issue. All  
6 right. Well, let's --

7 MR. GREENBERG: Thank you, Your Honor.

8 DISCOVERY COMMISSIONER: -- let's try a little  
9 harder this time; okay? All right.

10 THE CLERK: January 13th at 11:00 for the Status  
11 Check.

12 DISCOVERY COMMISSIONER: On the Report and  
13 Recommendations only.

14 MR. GREENBERG: Okay.

15 DISCOVERY COMMISSIONER: I'm not setting this case  
16 for another Status Check. I will hear additional motion work  
17 when it becomes necessary. I need to make sure your trial  
18 gets reset, too. I don't think it has been yet. So, I need  
19 to follow up on that.

20 MS. RODRIGUEZ: I don't know.

21 MR. GREENBERG: I thought I saw the order from Judge  
22 Cory on that. I apologize. I don't know, Your Honor.

23 DISCOVERY COMMISSIONER: Okay. All right.

24 MS. RODRIGUEZ: I don't think so.

25 DISCOVERY COMMISSIONER: If I don't see you all

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1 before, Happy Holidays.

2 MS. RODRIGUEZ: Thank you, Your Honor. You too.

3 MR. WALL: Thank you, Your Honor.

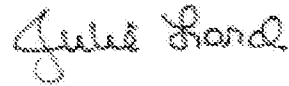
4 (Proceeding concluded at 11:12 a.m.)

5 \* \* \* \* \*

6 CERTIFICATE

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

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JULIE LORD, INDEPENDENT TRANSCRIBER

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CLERK OF THE COURT

1 RTRAN  
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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 )  
8 MICHAEL MURRAY, ET AL., )

9 Plaintiffs, )

10 vs. )

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

12 Defendants. )  
13 )  
14 )

CASE NO. A669926

DEPT. XVIII

15 BEFORE THE HONORABLE BONNIE A. BULLA, DISCOVERY COMMISSIONER  
16 WEDNESDAY, JANUARY 25, 2017

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

19 APPEARANCES:

20 For the Plaintiffs:

LEON GREENBERG, ESQ.  
DANA SNIEGOCKI, ESQ.

22 For the Defendants:

ESTHER C. RODRIGUEZ, ESQ.  
MICHAEL K. WALL, ESQ.

24  
25 RECORDED BY: FRANCESCA HAAK, COURT RECORDER

1 Las Vegas, Nevada - Wednesday, January 25, 2017, 9:32 a.m.

2 \* \* \* \* \*

3 DISCOVERY COMMISSIONER: Murray. Could everyone state their appearances,  
4 please.

5 MR. GREENBERG: Good morning, Your Honor. Leon Greenberg and Dana  
6 Sniegocki, for Plaintiffs.

7 MS. SNIEGOCKI: Good morning.

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

10 MR. WALL: And Michael Wall, for the Defendants.

11 DISCOVERY COMMISSIONER: Good morning. So I reread the MDC Restaurants  
12 case again. I think the case is being made far too complicated on the discovery front, and I  
13 really believe some decisions have to be made to get this case ready for trial. I understand  
14 that there's a movement to have the case deemed complex, but I think, at the end of the day,  
15 the issues are not that complex. I think they've been made complex for reasons that I'm not  
16 sure I fully understand. But if you look at that case, the MDC Restaurants case, the Supreme  
17 Court said that that ten percent value of income has to be based on taxable income, taxable  
18 income. That means what each of the drivers claimed at the time they filed their income tax  
19 returns.

20 So what do we really need to demonstrate whether or not insurance was  
21 offered that did not go over ten percent of their taxable income? We need their W2s. We  
22 need their tax returns.

23 MR. GREENBERG: Your Honor --

24 DISCOVERY COMMISSIONER: I'm -- just a minute. I'm not done. The other  
25 option we have is to send out a survey.

1 Now, the Court I believe has already deemed the class certified, correct?

2 MR. GREENBERG: Yes, Your Honor.

3 DISCOVERY COMMISSIONER: So at some point we have to communicate with  
4 members of the class, so why not develop a letter or some simple survey asking for that  
5 information in terms of, you know -- and if they'll give it to you. They may not want to  
6 participate in the class; do they have to; I don't think they have to.

7 MR. GREENBERG: Your Honor, to answer that question, they do not. There was a  
8 period for exclusion. No one elected to exclude. But, Your Honor, it's income from the  
9 employer. We know what the income is from the employer.

10 DISCOVERY COMMISSIONER: That's all you're entitled to know under this case.

11 MR. GREENBERG: Your Honor, Your Honor was referring to the ten percent. You  
12 can't exceed that ten percent of the income from the employer, but there's two portions of  
13 that. There is the income from the employer and there's the cost of the insurance. The cost  
14 of the insurance is not uniform, Your Honor. They must provide it to the employee and the  
15 dependents. If the employee is married, the cost is significantly greater. In fact, it's not even  
16 available if they're married.

17 DISCOVERY COMMISSIONER: Well --

18 MR. GREENBERG: It's not available to the spouse. That's --

19 DISCOVERY COMMISSIONER: It was available though, that's the thing. See, I  
20 don't understand when it became okay to say something is that is not. I don't understand. It  
21 was available. It was made available.

22 MR. GREENBERG: To the employee, Your Honor.

23 DISCOVERY COMMISSIONER: I think -- and I do have a question on this because  
24 there was a certain period of time that you allege it was not available to the dependents, but  
25 the Defendants' position is it's always been available to the dependents.

1 MR. GREENBERG: Your Honor --

2 DISCOVERY COMMISSIONER: You can't have it both ways.

3 MR. GREENBERG: Your Honor, there's two issues. It's not available to spouses  
4 during particular periods of time. They just refused to cover spouses. That happened --

5 DISCOVERY COMMISSIONER: And what is your basis for making that statement  
6 in front of the Court?

7 MR. GREENBERG: It's in their disclosures, Your Honor. If they want to deny it --

8 DISCOVERY COMMISSIONER: I want to see it. I want to see what you're talking  
9 about.

10 MS. RODRIGUEZ: May I approach, Your Honor? I have a copy --

11 DISCOVERY COMMISSIONER: Yes.

12 MS. RODRIGUEZ: -- of what I've -- this is the -- what I gave you, the Bates stamp  
13 1917. Thank you.

14 MR. GREENBERG: Yes.

15 [Ms. Rodriguez handing document to the Marshal]

16 MS. RODRIGUEZ: Your Honor, it was offered all the way through June of 2015, so  
17 we're only talking a six-month period, and now that actually that Mr. Greenberg brought that  
18 to the employer's attention, it's been reinstated. We did some follow-up with the insurance  
19 to make sure there was no spousal coverage, and I don't know why the new insurance wrote  
20 it like that, but for -- we're only talking about June '15 through 12/15.

21 DISCOVERY COMMISSIONER: May I keep this?

22 MS. RODRIGUEZ: That's six months. Pardon me?

23 DISCOVERY COMMISSIONER: May I keep this?

24 MS. RODRIGUEZ: Yes, ma'am. Yes. Yes, Your Honor.

25 DISCOVERY COMMISSIONER: June '15 to --

1 MS. RODRIGUEZ: Twelve-fifteen -- well, that would be the period for Mr.  
2 Greenberg. It's all the way through present that there is, for some reason, there is no  
3 spousal. The dependents, the kids, are covered.

4 DISCOVERY COMMISSIONER: When did the spouses stop being covered?

5 MS. RODRIGUEZ: June 1<sup>st</sup>, 2015.

6 DISCOVERY COMMISSIONER: And are they currently covered?

7 MS. RODRIGUEZ: I don't know if that's kicked in, but there's efforts made to  
8 reinstate that.

9 DISCOVERY COMMISSIONER: So we have at least a six-month period of time --

10 MS. RODRIGUEZ: Right.

11 DISCOVERY COMMISSIONER: -- where there's probably going to be some  
12 damages attributable to not providing the coverage if the lower rate was paid.

13 MS. RODRIGUEZ: I can represent to you, however, in all of that other time period  
14 that the class has been certified, there were very few people, like less than ten, probably less  
15 than five, that opted to take the spousal coverage.

16 DISCOVERY COMMISSIONER: Well, they couldn't have opted to take it because  
17 it didn't exist during that time.

18 MS. RODRIGUEZ: It was offered. It was offered. His class is certified from  
19 October 2012 -- or his -- that's the date of his complaint -- through December 2015.

20 DISCOVERY COMMISSIONER: Isn't it through the present?

21 MR. GREENBERG: It's through the present for equitable relief, Your Honor.

22 DISCOVERY COMMISSIONER: Right.

23 MR. GREENBERG: And there is a request to extend the damages class to the current  
24 date that's pending.

25 And this case is returning to Judge Cory, by the way, Your Honor.

1 DISCOVERY COMMISSIONER: I know.

2 MR. GREENBERG: Okay. Your Honor is aware.

3 DISCOVERY COMMISSIONER: I read the minutes.

4 MR. GREENBERG: Your Honor, but the issue is that the cost to get the dependent on  
5 the spousal coverage would require more than ten percent of the wages. That's the problem,  
6 Your Honor.

7 DISCOVERY COMMISSIONER: How do you know that? How are we going to  
8 prove that at trial?

9 MR. GREENBERG: Well, Your Honor, this is discussed actually in my motion.

10 DISCOVERY COMMISSIONER: You know what?

11 MR. GREENBERG: I gave --

12 DISCOVERY COMMISSIONER: I understand you --

13 MR. GREENBERG: And I will point --

14 DISCOVERY COMMISSIONER: Excuse me.

15 MR. GREENBERG: Yes, Your Honor.

16 DISCOVERY COMMISSIONER: You discuss things ad nauseam. I'm asking you a  
17 direct question now. I want a direct answer. How do you intend to prove that at trial? What  
18 are you going to do? What do you need to show to prove that under the MDC Restaurants  
19 case?

20 MR. GREENBERG: Your Honor, if the premium per two-week pay period was, for  
21 hypothetical purposes, \$200 to cover the family, that means the employee would have had to  
22 make \$2,000 in the two-week pay period from their wages; do you understand?

23 DISCOVERY COMMISSIONER: I --

24 MR. GREENBERG: And if the employee was only paid seven-twenty-five an hour,  
25 they wouldn't make \$2,000.

1 DISCOVERY COMMISSIONER: What documents are you going to have to show to  
2 the Court or to the jury to show each employee's taxable income? What are you going to  
3 need?

4 MR. GREENBERG: I have the payroll, Your Honor. It's not their taxable income if  
5 they --

6 DISCOVERY COMMISSIONER: Yes, it is. That's what the Court said.

7 MR. GREENBERG: Your Honor --

8 DISCOVERY COMMISSIONER: It's the taxable income.

9 MR. GREENBERG: From the employer, Your Honor. That's what --

10 DISCOVERY COMMISSIONER: Right.

11 MR. GREENBERG: That's what -- right, from the wages.

12 DISCOVERY COMMISSIONER: Right.

13 MR. GREENBERG: The wages they were paid. I have the payroll, Your Honor. We  
14 know what they were paid.

15 DISCOVERY COMMISSIONER: Gross taxable income. It's from the employee's  
16 gross taxable income from the employer that does not include tips or anything else.

17 MR. GREENBERG: Yes, Your Honor.

18 DISCOVERY COMMISSIONER: So what is -- how are we going to demonstrate  
19 that? How are you going to demonstrate that to --

20 MR. GREENBERG: I have the payroll. I have the W2 information. It was produced  
21 to me, Your Honor.

22 DISCOVERY COMMISSIONER: Okay.

23 MR. GREENBERG: I have all of that.

24 DISCOVERY COMMISSIONER: So you're going to put the W2 information in for  
25 each employee, is that what you're going to do, for --

1 MR. GREENBERG: I'm going to take --

2 DISCOVERY COMMISSIONER: -- the time frame?

3 MR. GREENBERG: I already have, Your Honor, taken the payroll for each  
4 employee.

5 DISCOVERY COMMISSIONER: Okay.

6 MR. GREENBERG: Okay. And --

7 DISCOVERY COMMISSIONER: Do you have --

8 MR. GREENBERG: And I can run it against what the cost of the insurance was per  
9 every payroll period. Was it more than ten percent or less than ten percent?

10 DISCOVERY COMMISSIONER: Okay. So you have the information available to  
11 you now to do that.

12 MR. GREENBERG: The only thing I'm lacking is the dependent status. The cost is  
13 not uniform for every employee. Some have families, some have spouses.

14 DISCOVERY COMMISSIONER: Well --

15 MR. GREENBERG: That's --

16 DISCOVERY COMMISSIONER: -- the rate is uniform though. The cost --

17 MS. RODRIGUEZ: Right.

18 DISCOVERY COMMISSIONER: -- of the insurance is uniform.

19 MR. GREENBERG: No, it's not. If I have a wife, I'm going to pay far more to  
20 insure myself and my wife than just myself.

21 DISCOVERY COMMISSIONER: But your cost is no different from your  
22 colleague's cost if she has a husband and children.

23 MR. GREENBERG: If we both --

24 DISCOVERY COMMISSIONER: It's the same amount. Look. I'm looking at it.

25 MR. GREENBERG: It's the same amount --

1 DISCOVERY COMMISSIONER: That's the premium.

2 MR. GREENBERG: -- for everybody who has a spouse. It's the same amount --

3 DISCOVERY COMMISSIONER: Right.

4 MR. GREENBERG: -- for everybody who has children to insure. The --

5 DISCOVERY COMMISSIONER: Exactly.

6 MR. GREENBERG: But the problem, Your Honor, is I don't know which of the  
7 class members were married. I don't know which were claiming dependents. Defendants  
8 have substantial information on that in their payroll system.

9 DISCOVERY COMMISSIONER: Okay. So now I'm going to go back full circle  
10 and ask you why don't we send out to the members of the class -- why don't we send out  
11 some sort of informal survey or statement that they need to fill out?

12 MR. GREENBERG: Because, Your Honor, the marital status is absolutely in the  
13 payroll. When you file a W4, every employer has to have the employee check a box that  
14 says --

15 DISCOVERY COMMISSIONER: So you have that.

16 MR. GREENBERG: -- married. I don't have that. I don't know their marital status  
17 'cause they refuse to give it to me, Your Honor.

18 We have Mr. Nady's deposition. He --

19 DISCOVERY COMMISSIONER: But you're representing all these class claimants,  
20 right? Why can't you get it? Why can't you do a survey --

21 MR. GREENBERG: Because, Your Honor --

22 DISCOVERY COMMISSIONER: -- and get that information?

23 MR. GREENBERG: -- the purpose of the class process is to make the litigation  
24 effective to vindicate the rights of the class members uniformly.

25 DISCOVERY COMMISSIONER: Well, it is not --

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